

## CONDITIONS OF CONTRACT

1. These terms and conditions apply to, and are taken to be incorporated into, any Purchase Order, and all Purchase Orders will be governed by these terms and conditions. To the extent of any inconsistency between the terms of any Purchase Order and these terms and conditions, these terms and conditions will have precedence.
2. Subject to this clause, the Price is exclusive of any GST. The following provisions apply in respect of the calculation of the amount which is payable in respect of a supply of any goods or services made in relation to a Purchase Order which is a taxable supply:
  - (a) If the Supplier is making the supply and if the Supplier has provided to Multi Span a tax invoice for the supply with its payment claim, Multi Span shall, in addition to any other consideration, pay to the Supplier the amount of GST in respect of the supply.
  - (b) If the Supplier is making the supply and if the Supplier fails to provide a tax invoice to Multi Span with the payment claim, Multi Span and the Supplier agree that the Price will be amended so that it is inclusive of GST.
  - (c) If Multi Span is making a supply to the Supplier which is a taxable supply, the Supplier shall in addition to any other amount which is payable by the Supplier to Multi Span pay to Multi Span the amount of GST in respect of the supply. Upon receipt of payment for the amount payable and the amount of GST, Multi Span shall provide a tax invoice to the Supplier.

Terms defined in the GST Law (as that term is defined under the A New Tax System (Goods and Services Act) 1999) have the same meaning in this clause unless provided otherwise.

3. On completion of the supply of all goods and services to be supplied under a Purchase Order in accordance with the Supplier's obligations under the Purchase Order, the Supplier shall submit a payment claim which must:
  - (a) identify any goods and services to which the payment claim relates;
  - (b) state the amount of the progress payment that the Supplier claims is payable by Multi Span;
  - (c) request payment of the amount of the progress payment that the Supplier claims is payable by Multi Span; and
  - (d) include other information as is prescribed from time to time by a regulation made pursuant to the Building Industry Fairness (Security of Payment) Act 2017 (Qld) as amended.

Multi Span may require the Supplier to provide a Valid Invoice to Multi Span in respect of any goods or services supplied.

4. Multi Span will:
  - (a) assess the amount owing within 15 Business Days; and
  - (b) if, under a Purchase Order, the Supplier is performing any building work within the meaning of the Queensland Building and Construction Commission Act 1991 (as amended), pay the amount of the assessment within 25 Business Days after Multi Span receives a payment claim complying with clause 3 from the Supplier;
  - (c) if, under a Purchase Order, Supplier is not performing any building work within the meaning of the Queensland Building and Construction Commission Act 1991 (as amended), pay the amount of the assessment on the date which is 30 days after the end of the month following Multi Span receiving a payment claim complying with clause 3 from the Supplier.

If the Supplier makes a payment claim under the Building Industry Fairness (Security of Payment) Act 2017 (Qld) (as amended) then, unless Multi Span gives a payment schedule under that Act, the Supplier agrees that an assessment under clause 4 (if any is given in writing) and given to the Subcontractor within 15 Business Days of the payment claim under that Act will be the payment schedule in respect of that payment claim for the purposes of that Act.

The Supplier agrees that Multi Span may make all payments in Australian dollars.

5. The Supplier must:
  - (a) deliver to the address specified in the Purchase Order to a location as nominated by Multi Span; and
  - (b) at its own cost comply with all Regulatory Requirements relevant to the supply (including, without limitation, the manufacture, testing, supply, transportation and delivery) of goods or services the subject of the Purchase Order.
6. Property in any goods supplied pursuant to a Purchase Order will pass to Multi Span upon the earlier of delivery and unloading by the Supplier to the address specified in the Purchase Order or payment being made for the goods. Risk to any goods supplied pursuant to a Purchase Order will pass to Multi Span upon delivery and unloading by the Supplier to the address specified in the Purchase Order if all of the goods supplied are in accordance with the description of the goods as ordered by Multi Span and are of merchantable quality and are in accordance with the warranty given by the Supplier pursuant to clause 13 and property in the goods has passed to Multi Span.
7. The Supplier is responsible for all transportation and insurance costs up to and including delivery and unloading at the delivery address.
8. Receipt of any goods or services by Multi Span will not constitute acceptance of those goods or services.
9. Notwithstanding any document to the contrary (whether or not signed by or on behalf of Multi Span), the suitability of any goods or services received can only be confirmed by Multi Span by way of delivery of a notice in writing on Multi Span letterhead to the Supplier and after Multi Span has inspected all of any goods supplied and any work or goods (whether or not the goods have been supplied by the Supplier) affected by any services supplied.
10. The Supplier must make good, or pay to Multi Span the cost of making good any damage done by the Supplier, its agents, workers, employees or subcontractors in providing the goods or services supplied by the Supplier by way of the Purchase Order.
11. If the Supplier becomes aware that any Purchase Order will not be satisfied within the applicable timeframe, then, without limitation to the Supplier's obligations or the remedies of Multi Span, the Supplier must notify Multi Span as soon as possible and in any event within 24 hours.
12. The Supplier must use its best endeavours to satisfy any changes in quantity or delivery dates requested in respect of a Purchase Order, including additional quantities.
13. The Supplier warrants that:
  - (a) any goods or services supplied pursuant to a Purchase Order will:
    - (i) conform with Quality, the Specifications and all applicable laws;
    - (ii) unless the Specifications say otherwise, be in a new and unused condition;
    - (iii) be fit for any purpose stated in the Specifications, or if no purpose is stated, the purpose for which those or similar goods could reasonably be expected to be required be packaged and labelled in accordance with the Specifications and any Regulatory Requirements; and
    - (iv) be in accordance with any relevant Regulatory Requirements unless the Specifications say otherwise;
  - (b) upon delivery, Multi Span will hold legal and beneficial title to all goods delivered to Multi Span pursuant to a Purchase Order, free of any third party interests or encumbrances;
  - (c) the supply of goods or services to Multi Span pursuant to a Purchase Order, and the subsequent use or exploitation of those goods or services by Multi Span, will not infringe the Intellectual Property Rights or any other rights of any third party;

- (d) the Supplier has full power and authority to enter into and perform its obligations under these terms and conditions;
  - (e) if the Supplier is required to have a licence or permit (including, without limitation under the Queensland Building and Construction Commission Act 1991 (Qld) (as amended)) to lawfully perform any of its obligations under a Purchase Order, it has at all times the licence or permit to lawfully perform its obligations.
14. Without limitation to Multi Span's rights with respect to any failure to conform to Quality, the Supplier will be obliged to immediately replace at its sole cost any product not in conformity with Quality. Without limitation to Multi Span's rights, if the Supplier does not (at any time) hold any licence or permit (including, without limitation under the Queensland Building and Construction Commission Act 1991 (Qld) (as amended)) required to lawfully perform any of its obligations under a Purchase Order, the Supplier will be in substantial breach of contract.
  15. The Supplier indemnifies Multi Span and will keep Multi Span and its Personnel indemnified from and against all claims and losses (including legal costs on a full indemnity basis), that the other may suffer or incur as a result of or in connection with any breach of these terms and conditions, including any warranties, or any act or error or omission of the Supplier or the Supplier's Personnel in relation to the supply of goods or services to Multi Span, or any flaw or defect in the goods or services received.
  16. Without limitation, the *indemnity in clause 15* will apply to Claims and Losses arising out of any actual or alleged injury, damage, death or other consequence occurring to any person as a result, directly or indirectly, of the possession, use or consumption of any goods, whether claimed by reason of negligence, product defect or otherwise and regardless of the form in which any such Claim is made.
  17. The Supplier unequivocally and forever releases Multi Span from any and all liability, including in negligence, in respect of any cost, losses, expense, injury (including death or personal injury) or damages that the Supplier suffers in supplying the goods or services under the Purchase Order to Multi Span. The sole and highest amount payable to the Supplier in respect any Purchase Order will be the Price.
  18. The release and indemnities in these terms and conditions are continuing and will survive termination of any transaction contemplated by these terms and conditions.
  19. Multi Span may notify the Supplier of its cancellation of any Purchase Order at any time prior to delivery of the relevant goods or services. In such circumstances Multi Span will not be obliged to pay any amount or compensation to the Supplier with respect to the Purchase Order.
  20. Multi Span may deduct from and set off against the Price any debt or other liquidated or unliquidated amount due by the Supplier to Multi Span or claimed by Multi Span against the Supplier (including without limitation a claim for damages), whether due under these terms and conditions or otherwise or the claim arises in relation to the supply of the goods or services under the Purchase Order or otherwise.
  21. All Intellectual Property Rights in any New Material created for, or provided to, Multi Span pursuant to a Purchase Order will vest in Multi Span. The Supplier will sign all documents and do all other things requested by Multi Span in order to give effect to this clause, or perfect or register Multi Span's title to the relevant Intellectual Property Rights.
  22. Unless otherwise mutually agreed by Multi Span in writing, only Multi Span may make any public disclosure with reference to any Purchase Order or the supply of goods or services by the Supplier to Multi Span. This clause does not apply to anything that is required to be disclosed by law or the rules of any relevant stock exchange or regulator, provided the Supplier promptly gives Multi Span notice prior to disclosing.
  23. The Supplier's obligations in clauses 21 and 22 are continuing obligations and survive the completion of any transaction contemplated by a Purchase Order.

24. Purchase Orders will only bind Multi Span if they are signed by a Multi Span officer or employee who is duly authorised to place the Purchase Order.
25. The Supplier must not subcontract its obligations under any Purchase Order or these terms and conditions without the prior consent in writing of Multi Span.
26. Multi Span may assign its rights under any Purchase Order or these terms and conditions without the prior consent of the Supplier.
27. The relevant Purchase Order and these terms and conditions supersede all prior representations, communications, documents, statements and understandings and agreements, whether oral or in writing, in relation to its subject matter.
28. The Supplier is an independent contractor. Nothing in any Purchase Order or these terms and conditions creates a relationship of employment, trust, agency, joint venture or partnership between the Supplier and Multi Span.
29. To avoid any doubt, in as far as a Purchase Order calls for the Supplier to supply any services to Multi Span, the Supplier is an independent contractor hired on a contract for service, with the sole and absolute charge of conducting the business or undertaking relevant to the provision of those services. Multi Span is a customer and consumer of the goods or services provided under the Purchase Order, and owes no responsibilities or obligations to the Supplier in respect of:
  - (a) Insurances;
  - (b) Workplace Health and Safety Obligations; or
  - (c) Employment conditions or pay conditions
30. These terms and conditions are governed by the laws of Queensland, Australia. The parties submit to the non-exclusive jurisdiction of the courts of that State.
31. In respect of any legislation directly relevant to provision of contract terms:
  - (a) The parties have agreed that the final, settled terms are transparent, fair, and reasonably necessary in order to protect the legitimate interests of the parties to the contract.
  - (b) This clause shall be deemed to be prima facie evidence that any term which advantages a party was reasonably necessary in order to protect the legitimate interests of the party so advantaged.
  - (c) To the extent that this Contract is subject to the provisions of legislation relating to the fairness of contract terms the Supplier agrees:
    - (i) that it has had an opportunity to read and review this contract before signing; and
    - (ii) to the full extent permitted by law, that the provisions relating to the fairness of contract terms are deemed satisfied, and to the extent that they are not satisfied are, to the full extent permitted by law, deemed waived.
32. The Supplier agrees that it will ensure that it has at all times any licence or permit which is required to perform its obligations under a Purchase Order amended).
33. The Supplier is not entitled to set-off against, or in reduction of, any amount due to or claimed by Multi Span under a Purchase Order or otherwise or deduct from any amount due to or claimed by Multi Span under a Purchase Order or otherwise, any amount claimed by the Supplier (including any claim for an amount which the Supplier asserts is owing a Purchase Order or otherwise, including a claim for damages).
34. If the supply of goods or services under a Purchase Order includes building work within the meaning of the Queensland Building and Construction Commission Act 1991 (as amended), the Supplier must during the supply and during the Defects Liability Period, at its own expense, rectify all defects at times directed by Multi Span and otherwise at times and in a manner causing as little inconvenience as is reasonably possible to any other trades or users/occupants on the site where the building work is or was carried out. If the Supplier fails comply with a direction from Multi Span to rectify any

work, Multi Span may have the work rectified or the materials removed and replaced by others and the cost is a debt due and payable by the Supplier to Multi Span.

35. If the Supplier is a corporation and a Purchase Order is signed by a director or shareholder of the Supplier on behalf of the Supplier, the person signing the Purchase Order also personally guarantees that the Supplier will comply with its obligations.
36. The Subcontractor must not:
- (i) create any security interest or lien over any of Multi Span's Personal Property whatsoever (other than security interests granted in Multi Span's favour);
  - (ii) sell, lease or dispose of its interest in the Multi Span's Personal Property;
  - (iii) give possession of Multi Span's Personal Property to another person except where Multi Span expressly authorises it to do so;
  - (iv) permit any of the Multi Span's Personal Property to become an accession to or commingled with any asset that is not part of the project of which he goods or services supplied forms part
  - (v) change its name without first giving Multi Span 15 Business Days' notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.

Without limiting or waiving the Supplier's obligations under this clause, if any security interest in any goods or services is registered on the Person Properties Securities Register, the Supplier undertakes to register a financing change statement in respect of the goods and services to release that security interest within 10 days of an assessment by the Builder of a claim for payment for the goods or services supplied under a Purchase Order which includes an amount for the value of the goods or services.

Words and phrases used in this clause that have defined meanings in the Person Property Securities Act 2009 (Cth) as amended ("PPSA") have the same meaning as in the PPSA unless the context otherwise indicates.

37. In these terms and conditions:
- (a) "Business Day" means:
    - (i) where used in clause 4(a), has the meaning in the Building Industry Fairness (Security of Payment) Act 2017 (Qld) as amended; and
    - (ii) where used elsewhere in the Contract, has the meaning in the Acts Interpretation Act 1954 (Qld) as amended.
  - (b) "**Claim**" includes any claim, action, judgment, arbitration, proceeding, suit, cause of action, defence set-off or demand.
  - (c) "Defects Liability Period" means the period commencing on the date upon which Multi Span pays the Supplier after the Supplier has completed all of the supply ("Date of Practical Completion") and expiring on the last to occur of the following events:
    - (i) 12 months after the Date of Practical Completion;
    - (ii) Multi Span being satisfied that the goods and services supplied have been satisfactorily tested by being used as an integral component of the use of the project of which they form part where both the goods and services supplied and the project must have remained free of omissions and defects for a continuous period of 12 months;

- (iii) 12 months after the Supplier has completed all of its obligations under a Purchase Order pursuant to which any goods and services have been supplied (including without limitation the rectification of any omissions and defects);
- (iv) the last day of any defects liability period applicable to the project.
- (d) **"GST"** means any goods and services tax, value added and consumption taxes, sales taxes and other similar taxes, but excludes income tax.
- (e) **"Intellectual Property Rights"** means any and all equitable and legal intellectual property and industrial protection rights throughout the world, both present and future, including any rights of or in connection with any confidential information, know how, copyright (including future copyright and rights in the nature of or analogous to copyright), inventions (including patents), designs, data and database rights, trademarks and service marks, and includes any right to apply for registration of such rights or renewals.
- (f) **"Losses"** includes losses, damages, costs, expenses and liabilities incurred by the person concerned, however arising, including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable, and includes loss of profit or expected profit, and diminution in value.
- (g) **"Multi Span"** means Multi Span Australia Group Pty Ltd ABN 31 147 474 628.
- (h) Multi Span's Personal Property means all personal property the subject of a security interest granted in favour of Multi Span under a Purchase Order.
- (i) **"New Material"** means all documents, software, data and any other materials or things which are supplied or brought into existence pursuant to, or for the purposes of, a Purchase Order, but excludes any materials that existed prior to, or was brought into existence independently of, the supply made pursuant to the Purchase Order.
- (j) **"Personnel"** means directors, officers, employees, contractors, subcontractors and agents.
- (k) **"Price"** means the price specified in the Purchase Order.
- (l) **"Purchase Order"** means a purchase order issued by Multi Span and under which Multi Span orders goods or services (including, without limitation, this Purchase Order).
- (m) **"Quality"** means conformity with Regulatory Requirements, any Specifications and any relevant Australian Standard published by Standards Australia or if there is no relevant Australian Standard, the International Standard published by the International Organization for Standardization.
- (n) **"Regulatory Requirements"** includes any requirements imposed by:
  - (i) codes, statutes, acts, legislation, regulations, by-laws, ordinances, statutory instrument, orders, awards and proclamations or any government or government agency of any country; and
  - (ii) certificates, licences, consents, permits, approvals and requirements of any organisation having jurisdiction in connection with the manufacture or supply of the relevant product or service;
- (o) **"Specifications"** means any specifications detailed in or accompanying the Purchase Order and any additional or replacement specifications notified by Multi Span and agreed to or accepted by the Supplier.
- (p) **"Supplier"** means the supplier of goods or services to Multi Span as named in a Purchase Order.
- (q) **"Valid Invoice"** means an invoice which is a tax invoice that complies with the GST Law (as that term is defined under the A New Tax System (Goods and Services Act) 1999), identifies the goods or services being invoiced, shows the correct Purchase Order number and that is issued in any form notified by Multi Span to the Supplier from time to time.