

PURCHASE / SERVICE ORDER GENERAL TERMS AND CONDITIONS

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1. FORM OF CONTRACT

1.1 Purchase/Service Order

- (a) Subject to clauses 1.1(d) and 1.1(e), the Purchase/Service Order incorporates these General Terms and Conditions and any other special terms and conditions, drawings or specifications set out in the Purchase/Service Order. Nothing contained in any quotation, proposal, correspondence, discussion or negotiation prior to the date of the Purchase/Service Order is incorporated into, or has any effect on, the Purchase/Service Order unless expressly set out in the Purchase/Service Order.
- (b) The Supplier will be deemed to have accepted the Purchase/Service Order if it:
 - (i) signs the Purchase/Service Order;
 - (ii) confirms its acceptance of the Purchase/Service Order verbally or in writing;
 - (iii) accepts the Purchase/Service Order through the OMS; or
 - (iv) commences performance of the Supply that is the subject of the Purchase/Service Order.
- (c) Once a Purchase Order has been accepted by the Supplier it will form a binding contract between Ventia and the Supplier.
- (d) The Purchase/Service Order may be issued under, and governed by, a contract already in place between the Supplier and Ventia (**Governing Contract**). If so:
 - (i) the terms and conditions in the Governing Contract will apply to the Purchase/Service Order; and
 - (ii) these General Terms and Conditions (other than clauses 1.1(d) and (e)) will not apply to the Purchase/Service Order.
- (e) If there is more than one Governing Contract that may apply to the Supplies, and the Purchase/Service Order does not identify which Governing Contract applies, Ventia may (acting reasonably) notify the Supplier under which Governing Contract the Purchase/Service Order was issued and the Purchase/Service Order will be governed by that Governing Contract.

1.2 Ambiguities

If the Supplier discovers any ambiguity in the Purchase/Service Order it must notify Ventia in writing as soon as reasonably possible. If Ventia agrees that there is an ambiguity, the parties will work together (acting reasonably) to resolve it. The parties agree that there will be no ambiguity if the issue is resolved by applying the following order of precedence:

- (a) the Purchase/Service Order;
- (b) any other special terms and conditions, drawings or specifications set out in the Purchase/Service Order; and
- (c) these General Terms and Conditions.

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2. PERFORMANCE

2.1 Performance

The Supplier must perform the Supplies in accordance with:

- (a) the Purchase/Service Order;
- (b) Ventia's directions;
- (c) Good Industry Practice;
- (d) all applicable Standards; and
- (e) the Critical Risk Protocols applicable to the Supplies.

2.2 Supplier Qualifications

The Supplier represents and warrants to Ventia that it has the necessary skills, licences, approvals, resources and experience to successfully perform the Supplies in accordance with the requirements of the Purchase/Service Order.

2.3 Licences and Laws

The Supplier must comply with all applicable Laws.

2.4 Ancillary Items

Each Supply includes the supply and performance of all ancillary and minor items not expressly mentioned in the Purchase/Service Order but which are necessary for the satisfactory performance of the Supply.

2.5 Supplier to Inform Itself

- (a) The Supplier acknowledges and agrees that it has:
 - (i) carefully examined all documents furnished by Ventia; and
 - (ii) fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances described in or inferred from those documents or which a supplier exercising Good Industry Practice having made reasonable enquiries should have foreseen might affect the performance of the Supplies.
- (b) Unless otherwise expressly stated in the Purchase/Service Order, no increase in the Purchase/Service Order price will be allowed for the Supplier's failure to ensure that it is fully informed regarding all of the circumstances relating to the Purchase/Service Order as required by this Clause 2.5.

2.6 Health and Safety

- (a) If the Supplier or its Personnel attend any site owned or operated by Ventia, or any site where Ventia or its Personnel are working, the Supplier must and must ensure that its Personnel:

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- (i) value safety above all else with the objective of achieving zero harm;
 - (ii) comply with all policies, signage, rules, requirements, procedures, and directions of Ventia (and, if applicable, the appointed principal contractor) at the site in connection with health and safety;
 - (iii) not interfere with, move, modify or ignore safety signage, safety protection arrangements or safety equipment, including emergency equipment;
 - (iv) comply with applicable laws and Good Industry Practice in connection with work health and safety and, where necessary, hold appropriate permits, licences, certificates and accreditation to perform the work they are required to perform in a safe and competent manner;
 - (v) ensure its Personnel wear all appropriate personal protective equipment including eye protection and are not impaired by alcohol or drugs (prescribed and non-prescribed);
 - (vi) promptly notify Ventia of any actual or potential hazard, unsafe area or work practice that may lead to any personal injury;
 - (vii) promptly notify Ventia of any safety incident that occurs, no matter how minor;
 - (viii) immediately, and within 12 hours, notify Ventia of any lost-time injury or other serious injury, or incident or near miss which could have resulted in a lost-time injury or other serious injury, in connection with the Supply; and
 - (ix) if the Supplier is required to notify a government authority of any work health and safety incident or matter, notify Ventia of that incident or matter at the same time.
- (b) The Supplier must investigate any incident notified under Clause 2.6(a)(vii) or (viii) and provide a written report to Ventia within 5 days after the incident, containing any details that Ventia may reasonably require.

2.7 Ventia policies

The Supplier warrants that it has read and will comply with the Code of Conduct and Critical Risk Protocols and any other Ventia policy identified in the Purchase/Service Order or notified in writing by Ventia (acting reasonably) from time to time.

2.8 Order Management System

If directed by Ventia, the Supplier must at its own cost and risk use the OMS nominated by Ventia in relation to the performance of its obligations under the Purchase/Service Order.

3. QUALITY

3.1 Quality Standards

The Supplier must comply with the standards of quality specified in the Purchase/Service Order. If no standards are specified in the Purchase/Service Order, the Supplier must comply with standards of quality consistent with Good Industry Practice.

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3.2 Materials and Workmanship

- (a) All Supplies must be suitable for the purpose for which they are required as stated in, or reasonably ascertainable from, the Purchase/Service Order.
- (b) The Supplier must use new and undamaged materials (unless otherwise specified in the Purchase/Service Order) and the workmanship must be of a high quality and standard.

3.3 Defects and Warranty

- (a) The Supplier warrants that the Supplies will:
 - (i) be free from defects in design, materials or workmanship;
 - (ii) be free from liens, charges, encumbrances, mortgages or other defects in title;
 - (iii) be new (unless otherwise specified in the Purchase/Service Order) and made to the quality specified in the Purchase/Service Order;
 - (iv) conform to the conditions and specifications set out in the Purchase/Service Order;
 - (v) conform to all applicable Laws; and
 - (vi) without limiting Clause 3.1, be performed in accordance with any performance standard specified in the Purchase/Service Order.
- (b) The warranties in Clause 3.3(a) are in addition to any statutory warranties applicable to the Supplies.
- (c) During the Warranty Period, Ventia may give written notice to the Supplier of any failure or defect in the Supplies. The Supplier must as soon as reasonably possible, and within the time reasonably directed by Ventia, and at no cost to Ventia:
 - (i) correct any defect in the Services covered by the warranty, by way of re-performance of the Services such that the Services comply with the requirements of the Purchase/Service Order and are otherwise acceptable to Ventia (acting reasonably); or
 - (ii) correct any defect or failure in the Goods covered by the warranty, by way of repair, replacement, modification such that the Goods comply with the requirements of the Purchase/Service Order and are otherwise acceptable to Ventia (acting reasonably).
- (d) If the Supplier fails to correct any defect or failure within the time reasonably directed by Ventia, Ventia will have the right to rectify the Supplies itself or have the rectification undertaken by a third party. All costs reasonably incurred by Ventia in doing so will be a debt due and payable by the Supplier to Ventia.
- (e) Any Services re-performed or rectified and/or any Goods repaired under warranty will be subject to a further full Warranty Period commencing on the date of completion of any such re-performance, rectification or repair, provided that the Warranty Period will not exceed 24 months in the aggregate.

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3.4 Testing and Inspection

- (a) The Supplier must test the Supplies in accordance with the requirements of the Purchase/Service Order, including any specification included with the Purchase/Service Order. Unless otherwise stated in the Purchase/Service Order, any tests and the costs of carrying out those tests will be the responsibility of the Supplier. The results of tests must be promptly supplied to Ventia in writing.
- (b) Ventia may, acting reasonably, direct the Supplier to undertake additional tests not stated in the Purchase/Service Order. If those tests demonstrate that the Supply is in accordance with the Purchase/Service Order, Ventia will pay the Suppliers reasonable, direct, additional costs of carrying out the test.
- (c) Ventia will have the right to inspect and monitor performance of the Supplies and the Supplier must give Ventia access to the Supplier's premises for such purpose during its normal working hours.
- (d) The Supplies will not be accepted by Ventia until inspected and approved by Ventia.
- (e) Any inspection by Ventia will not relieve the Supplier from its obligations to comply with the requirements of the Purchase/Service Order and will in no way impair Ventia's right to require subsequent correction or re-performance of non-conforming Supplies.

4. VARIATIONS

- 4.1 Ventia may increase, decrease, vary, omit (including to award the omitted work to third parties) or change the timing for or required method of execution of any of the work under the Purchase/Service Order and the Supplier must carry out any such variation as directed by Ventia.
- 4.2 Ventia and Supplier must negotiate in good faith to agree in writing the Supplier's price (addition or reduction) for any variation, and any effect on the Delivery Date(s), prior to the Supplier carrying out any variation. If agreement cannot be reached, Ventia will determine (acting reasonably) a price for the variation and its effect on the Delivery Date(s).
- 4.3 The Supplier must not vary the work under the Purchase/Service Order or any condition thereof, except as directed and approved by Ventia in writing. No variation will invalidate the Purchase/Service Order.

5. DELIVERY AND DELAY

- 5.1 Unless otherwise specified in the Purchase/Service Order, the Supplier must deliver the Goods FOT, adequately packaged and protected to ensure safe delivery, to the delivery point and by the relevant Delivery Date(s) or, if there is no Delivery Date, promptly.
- 5.2 Unless otherwise specified in the Purchase/Service Order, the Supplier must perform the Services to Ventia's reasonable satisfaction by the relevant Delivery Date(s) or, if there is no Delivery Date, as soon as reasonably possible.
- 5.3 The Goods will become the property of Ventia upon delivery of the Goods to Ventia, as evidenced by the signature on the delivery docket of a duly authorised representative of Ventia. Such signature is not, and will not be deemed to be, an acknowledgement of the acceptability of the Goods. Notwithstanding that Ventia has taken delivery of the Goods, the Supplier will remain responsible for any loss or damage to the

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Goods, which may have occurred prior to delivery, and for any non-compliance of the Goods with the requirements of the Purchase/Service Order.

- 5.4 The Supplier must take all reasonable steps to minimise or prevent any delay in the performance of the Supplies. Ventia may grant an extension of time to a Delivery Date provided:
- (a) the delay is caused by a Delay Event; and
 - (a) the Supplier has notified Ventia in writing within seven (7) days after the Supplier becomes aware, or should reasonably have become aware, of the delay (or such other time as may be specified in the Purchase/Service Order) of its claim for an extension of time. Ventia will not be liable for any extension of time claim that is not notified in writing by the Supplier to Ventia within seven (7) days after the Supplier becomes aware, or should reasonably have become aware, of the delay.
- 5.5 If the Supplier fails to complete a Supply by the relevant Delivery Date, the Supplier will be liable to pay Ventia liquidated damages for delay in the amount stated in the Purchase/Service Order per day after the Date for Completion up to and including the earlier of:
- (a) the date the Supply is completed; or
 - (b) the date the Purchase/Service Order is terminated.
- 5.6 The parties agree that the liquidated damages stated in the Purchase/Service Order serve a legitimate commercial purpose and are a genuine pre-estimate of the loss that Ventia will suffer if the Supplier fails to complete a Supply by the relevant Delivery Date and are not a penalty.
- 5.7 If there are no liquidated damages stated in the Purchase/Service Order, or if liquidated damages are found to be void or unenforceable for any reason, the Supplier indemnifies Ventia against any loss or liability suffered or incurred by Ventia, directly or indirectly, arising out of or in connection with the Supplier's failure to complete a Supply by the relevant Delivery Date.

6. INSURANCE

- 6.1 In relation to the Services, the Supplier must effect and maintain:
- (a) public and product liability insurance to the value of \$20 million per claim and in the aggregate;
 - (b) workers compensation insurance as required by law;
 - (c) motor vehicle third party damage insurance;
 - (d) motor vehicle insurance including death or injury cover as required by State and Federal legislation; and
 - (e) such other insurances reasonably required by Ventia that are consistent with Good Industry Practice and which a prudent subcontractor would reasonably procure in connection with the Supplies, or otherwise required by law, and in either case upon terms reasonably acceptable to Ventia.
- 6.2 In relation to the Goods, the Supplier must effect and maintain any policies of insurance specified in the Purchase/Service Order or required by law.

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7. PRICE AND PAYMENT

- 7.1 Unless otherwise stated in the Purchase/Service Order, prices will be fixed and not subject to any escalation or adjustment for rise and fall in costs for any cause, including changes in the cost of labour, plant, equipment, materials, goods, taxes (other than GST), freight, excise, duty, fees, or charges.
- 7.2 The Supplier will be responsible for the payment of all relevant Australian (Federal, State and Local Government) and overseas taxes, goods and services taxes, PAYG taxes, duties and charges payable with respect to the Supplies. The Purchase/Service Order price will be deemed to be inclusive of all such taxes, duties and charges.
- 7.3 Unless other payment terms are specified in the Purchase/Service Order, the Supplier is entitled to submit an invoice on a milestone basis following completion of a Supply. The Purchase/Service Order reference number must be quoted on all invoices. Invoices that do not quote a Purchase/Service Order reference number may be returned to the Supplier for rectification and resubmission.
- 7.4 If Ventia does not propose to pay the full amount of the invoice, Ventia may assess the invoice and issue a payment schedule:
- (a) identifying the invoice to which it relates;
 - (a) indicating the amount of the payment (if any) that Ventia proposes to make (the **scheduled amount**); and
 - (b) if the scheduled amount is less than the claimed amount, indicating why the scheduled amount is less and (if it is less because Ventia is withholding payment for any reason) Ventia's reasons for withholding payment.
- 7.5 Ventia will pay the amount of the invoice, or, if there is a payment schedule, the scheduled amount, within 45 days from the first day of the month after the month in which the invoice is submitted.
- 7.6 In relation to:
- (a) a Supplier providing Services, the Supplier must include with each invoice required in Clause 7.3 a statement that all remuneration or other amounts payable by the Supplier to any of its employees, consultants or subcontractors have been paid by law or under any industrial instrument in respect of the Services.
 - (b) a Supplier who has performed Services in New South Wales:
 - (i) (or otherwise has liabilities which arise under the *Payroll Tax Act 2007 (NSW)*), the Supplier must include with each invoice required in Clause 7.3, a statement by the Supplier in accordance with the requirements of clause 18 of Schedule 2 of the *Payroll Tax Act 2007 (NSW)*; and
 - (ii) the Supplier must include with each invoice required in clause 7.3, a statement by the Supplier in accordance with the requirements of section 175B(4) of the *Workers Compensation Act 1987 (NSW)*.

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- 7.7 Ventia may withhold any payment due to the Supplier until it receives from the Supplier the relevant statement required by Clause 7.6(a) and, if applicable, 7.6(b).
- 7.8 Ventia may set-off or deduct from any monies due and payable to the Supplier any monies that are due and payable, or Ventia reasonably considers are due and payable, to Ventia by the Supplier.

8. GST

8.1 In this Clause 8:

- (a) “**GST Amount**”, “**GST-exclusive Consideration**”, “**Recipient**”, “**RCTI**”, “**Supply Party**” and “**Tax Invoice**” have the meanings given in this Clause 8; and
- (b) other terms used that are defined in *A New Tax System (Goods & Services) Act 1999 (Cth)* (“**GST Act**”), have the same meanings in this Clause 8.

8.2 Each party acknowledges and agrees that:

- (a) at the time of entering into the Purchase/Service Order, it is registered for GST;
- (b) it must promptly provide written evidence of its GST registration on request; and
- (c) it must promptly notify the other party in writing if it ceases to be registered for GST.

8.3 In respect of payments to be calculated under or in connection with the Purchase/Service Order:

- (a) when calculating the amount payable or other consideration to be provided for a supply, the amounts used in the calculation are to exclude any GST component; and
- (b) if the payment is relevant to a cost, expense or loss suffered or incurred by a party, then the payment will be reduced by any input tax credit to which that party, or the representative member of any GST group of which that party is a member, is entitled in respect of that cost, expense or loss.

8.4 For each supply made by a party (**Supply Party**) under or in connection with the Purchase/Service Order on which GST is imposed:

- (a) the amount payable or to be provided for that supply under the Purchase/Service Order but for the application of this Clause 8.3 (**GST-exclusive Consideration**) will be increased by, and the recipient of the supply (**Recipient**) must also pay to the Supply Party, an amount (**GST Amount**) equal to the GST-exclusive Consideration multiplied by the prevailing rate of GST; and
- (b) the GST Amount must be paid to the Supply Party by the Recipient without set off, deduction or requirement for demand, at the same time as the GST-exclusive Consideration is payable or to be provided,

subject to a valid tax invoice being provided in respect of the GST-exclusive Consideration.

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- 8.5 If and to the extent an adjustment event arises in respect of a supply made under or in connection with the Purchase/Service Order, then:
- (a) if the Supply Party's corrected GST Amount is less than the previously attributed GST Amount, the Supply Party must refund the difference to the Recipient;
 - (b) if the Supply Party's corrected GST Amount is greater than the previously attributed GST Amount, the Recipient must pay the difference to the Supply Party; and
 - (c) Ventia will issue an adjustment note to the Supplier.

9. INDEMNIFICATION AND LIABILITY

- 9.1 The Supplier indemnifies Ventia and its officers, employees and agents against any all claims, demands, proceedings, liabilities, costs, charges and expenses suffered or incurred, directly or indirectly, arising out of or in connection with:
- (a) a breach of the Purchase/Service Order by the Supplier;
 - (b) any defect in the Supplies or any damage caused by a defect in the Supplies;
 - (c) any breach of Law by the Supplier or its Personnel;
 - (d) any deliberate or reckless breach or default, any misleading or deceptive conduct, negligent or fraudulent misrepresentation, abandonment of the Purchase/Service Order, fraud, criminal conduct, or gross negligence of the Supplier or its Personnel;
 - (e) physical damage to property to the extent caused or contributed to by the Supplier or its Personnel or resulting from the performance of a Supply;
 - (f) personal injury (including illness) to, or death of, any person, to the extent caused or contributed to by the Supplier or its Personnel or resulting from the performance of a Supply;
 - (g) any claim, finding or determination that an employee or subcontractor of the Supplier is an employee of Ventia or is entitled to the payment of any remuneration or benefit from Ventia that would usually be paid to an employee;
 - (h) the Supplier not being registered for GST; or
 - (i) the Supplier or a Supply infringing any third party's Intellectual Property Rights.
- 9.2 The Supplier's liability to indemnify Ventia under any indemnity in the Purchase/Service Order will be reduced proportionately to the extent that the relevant claim, demand, proceeding, liability, cost, charge or expense was caused by Ventia's negligence or breach of the Purchase/Service Order.
- 9.3 Neither party will be liable to the other for any loss of production, loss of revenue, loss of profit, loss of opportunity, loss of use, loss of data, or any indirect or consequential loss under or in connection with the Purchase/Service Order, whether arising in contract, tort (including negligence), equity, statute, implied duties or on any other basis.

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- 9.4 Clause 9.3 does not limit the Supplier's liability:
- (a) for liquidated damages or general damages for delay under Clause 5;
 - (b) for death or personal injury (including illness);
 - (c) for property damage;
 - (d) which:
 - (i) the Supplier has recovered under a policy of insurance (or could recover if it were to pursue a claim under such a policy); or
 - (ii) is insured (or should have been insured if the Supplier complied with its obligations under the Purchase/Service Order);
 - (e) for any Wilful Misconduct;
 - (f) for any breach of Law by the Supplier or its Personnel;
 - (g) for any fines or statutory penalties;
 - (h) breach of Clause 11 (Intellectual Property);
 - (i) (where there is a Head Contract) for any act, breach or omission of the Supplier or its Personnel that causes Ventia to breach, or suffer loss under, the Head Contract;
 - (j) any breach of Clauses 12 (Anti-bribery, corruption, and money laundering), 13 (Modern Slavery) 15.2 (Confidentiality), 15.3 (Data Security) or 15.4 (Privacy); or
 - (k) which cannot be excluded at law.

10. SUSPENSION AND TERMINATION

10.1 Suspension

- (a) Ventia may, at any time by written notice, suspend all or part of the Purchase/Service Order for any reason.
- (b) Upon receipt of a notice of suspension, the Supplier will cease work in accordance with the notice.
- (c) The Supplier must recommence the work under the Purchase/Service Order as soon as possible after being directed to do so by Ventia.

10.2 Termination by Default

Ventia may by written notice to the Supplier:

- (a) terminate the Purchase/Service Order; or
- (b) take any or all Supplies out of the Supplier's hands,

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if:

- (c) the Supplier suffers an Insolvency Event;
- (d) the Supplier is in breach of the Purchase/Service Order and that breach is:
 - (i) incapable of remedy; or
 - (ii) capable of remedy but the Supplier fails to remedy the breach within 7 days after receiving a written notice from Ventia requiring it to do so;
- (e) the Supplier breaches the Critical Risk Protocols or the Code of Conduct;
- (f) the Supplier breaches any Law in connection with the Purchase/Service Order;
- (g) the Supplier regularly or persistently breaches the Purchase/Service Order (including a persistent failure to proceed with expedition and without delay), whether or not Ventia has required the Supplier to remedy any or all of the breaches;
- (h) the Supplier breaches Clauses 12 (Anti-Bribery, Corruption, and Money Laundering) or 13 (Modern Slavery); or
- (i) the Purchase/Service Order otherwise entitles Ventia to terminate the Purchase/Service Order.

10.3 Termination for Ventia's convenience

Notwithstanding any other provisions of the Purchase/Service Order, Ventia may for any reason in its absolute discretion terminate the Purchase/Service Order by giving fourteen (14) days written notice to the Supplier.

10.4 Supplier's Rights and Obligations on Suspension /Termination

- (a) In the event of suspension of the Purchase/Service Order, except to the extent the need to suspend is caused or contributed to by the Supplier or its Personnel, the Supplier will be entitled to payment of its additional, reasonable, direct costs unavoidably incurred in connection with the suspension (without any element of profit or off-site overheads). The Supplier must do all things reasonably possible to mitigate its costs.
- (b) If Ventia exercises its right under Clause 10.2(a):
 - (i) Ventia may immediately suspend any further payment to the Supplier. Any additional monies required by Ventia to complete the Supplies in excess of what Ventia would have paid under the Purchase/Service Order will be a debt due and payable by the Supplier to Ventia; and
 - (ii) the Supplier must:
 - (1) immediately stop performing Supplies under the terminated Purchase/Service Order, except to the extent necessary to make the Supplies safe;
 - (2) comply with Ventia's directions in respect of the terminated Purchase/Service Order;

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- (3) take all available steps to minimise loss resulting from that termination; and
 - (4) if applicable, return any Ventia property in the custody or control of the Supplier or its Personnel to Ventia.
- (c) If Ventia exercises its right under Clause 10.2(b):
 - (i) the Supplier will have no claim for further payment in respect of the Purchase/Service Order;
 - (ii) Ventia may take any steps necessary to complete the Supplies taken out of the Supplier's hands; and
 - (iii) upon completion of the Supplies terminated or taken out of the Supplier's hands, Ventia will certify the loss incurred by Ventia in completing the relevant Supply and in connection with the termination of the Supply. If the amount certified is greater than the amount that Ventia would have paid to the Supplier to complete the Supply, the balance will be a debt due from the Supplier to Ventia.
- (d) In the event of termination by Ventia under Clause 10.3, and provided the Supplier is not in default, Ventia will pay the Supplier for work carried out prior to termination and all reasonable costs associated with the cancellation of any orders placed by Ventia prior to termination. Ventia will not otherwise be liable for any other costs of the Supplier in respect of the termination.

11. INTELLECTUAL PROPERTY

- (a) Each party retains ownership of its own Background IP.
- (a) The Supplier grants Ventia an assignable, sub-licensable, non-exclusive, royalty-free, worldwide, perpetual, and irrevocable license in the Supplier's Background IP to the extent required to receive, use, and enjoy the full benefit of each Supply.
- (b) The Supplier assigns to Ventia all Intellectual Property Rights in each Supply, other than the Background IP, immediately on creation. If directed by Ventia, the Supplier must take all steps, including executing all relevant documents, to complete such assignment.
- (c) Ventia grants to the Supplier a non-exclusive, non-transferable, royalty free, personal licence to use the Intellectual Property Rights in each Supply to the extent directly necessary to perform its obligations under the Purchase/Service Order. The Supplier may sublicense to approved subcontractors to the extent necessary to perform the Supply.
- (d) If a Supply includes any third-party Intellectual Property Rights, the Supplier must procure rights in respect of such third-party Intellectual Property Rights which enable Ventia to receive, use and otherwise enjoy the full benefit of the Supply as required by this Clause 11.
- (e) The Supplier warrants that the performance of its obligations under the Purchase/Service Order and the Supplies will not infringe any third party's Intellectual Property Rights.

12. ANTI-BRIBERY, CORRUPTION, AND MONEY LAUNDERING

The Supplier must comply with all applicable Laws (including the *Criminal Code Act 1995* (Cth)) relating to anti-bribery, corruption, or money laundering.

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13. MODERN SLAVERY

13.1 The Supplier warrants that:

- (a) it is compliant with the Modern Slavery Act;
- (b) if it is a reporting entity under the Modern Slavery Act, it is compliant with its obligation to submit modern slavery statements and those modern slavery statements are complete and accurate;
- (c) it has never committed, or been investigated for, an offence under the Modern Slavery Act or any other applicable law in any jurisdiction concerning Modern Slavery;
- (d) it actively investigates and manages the risk of Modern Slavery in its operations and supply chain; and
- (e) there are no known or suspected instances of Modern Slavery (current or historical) in its operations or those of its supply chain.

13.2 The Supplier must immediately notify Ventia:

- (a) if the Supplier identifies or suspects a breach of the Modern Slavery Act, or an instance of Modern Slavery, in the Supplier's operations or those of its supply chain; or
- (b) a government authority opens an investigation or makes an adverse finding in connection with the Modern Slavery Act, or any other applicable law in any jurisdiction concerning Modern Slavery, in respect of the Supplier's operations or those of its supply chain.

13.3 The Supplier must provide all information, documents, records, and access (including access to Personnel) requested by Ventia to permit Ventia to audit the Supplier's compliance with this Clause 13.

13.4 The Supplier must ensure that all subcontracts it enters into in connection with the Purchase/Service Order contain a clause in equivalent terms to this Clause 13.

14. DISPUTES AND APPLICABLE LAW

14.1 Applicable Law

Unless otherwise specified, the Purchase/Service Order will be governed and construed in accordance with the laws of the State or Territory in which the Supply is to be performed unless the Supply is to be performed in more than one State or Territory in which case the Purchase/Service Order will be governed and construed in accordance with the laws of New South Wales, Australia. Ventia and the Supplier submit to the non-exclusive jurisdiction of the courts of that State or Territory.

14.2 Disputes

- (a) Any dispute, disagreement, or difference between the parties in connection with a Supply or the Purchase/Service Order, including any dispute or difference as to the formation, validity, existence, or termination (**Dispute**), must be determined in accordance with this Clause 14.2.
- (b) The parties must continue to perform the Purchase/Service Order despite the existence of any Dispute.

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- (c) If a Dispute arises, either party may give the other party a written notice setting out reasonable details of the Dispute (**Dispute Notice**).
- (d) If the parties cannot resolve the Dispute arising within 21 days after the Dispute Notice, either party may refer the Dispute to the Australian Disputes Centre (**ADC**) for mediation. The dispute must be mediated within 30 days after it is referred to the ADC.
- (e) Neither party may litigate until the procedures in this Clause 14.2 have been complied with.

15. GENERAL

15.1 Use of Documentation

Documents prepared in relation to, or ancillary to the Purchase/Service Order, must not be copied or used for any other purpose than the performance of the Supplies by the Supplier to Ventia, without the prior written approval of Ventia.

15.2 Confidentiality

- (a) Any information provided by Ventia to the Supplier, which is noted as, or which is by its nature, confidential, must not be disclosed to any third party without the prior written consent of Ventia.
- (b) The Supplier must not issue any information which includes details about the Supplies and/or the Purchase/Service Order, for publication in any news or communication media, without the prior written approval of Ventia.
- (c) The obligations under this Clause 15.2 will be continuing obligations and will survive the completion or termination of the Purchase/Service Order for a period of 5 years from the completion or termination of the Purchase/Service Order.

15.3 Data Security

- (a) The Supplier must:
 - (i) protect Ventia Data from misuse, interference, loss, unauthorised access, modification or disclosure; and
 - (ii) if any Ventia Data is lost, destroyed, corrupted or altered (to the extent such loss, destruction, corruption was caused or contributed to by the Supplier or its Personnel) take all practical measures to restore the Ventia Data.
- (b) If the Supplier becomes aware of any Data Security Breach, the Supplier must:
 - (i) notify Ventia immediately;
 - (ii) cooperate fully and transparently with Ventia in relation to the investigation and resolution of the Data Security Breach; and
 - (iii) comply with Ventia's reasonable directions in relation to the Data Security Breach including for the purposes of remedying or mitigating the effects of the Data Security Breach.

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15.4 Privacy

If the Supplier is provided with, or has access to, any Personal Information under Ventia's control, the Supplier must:

- (a) comply with the Privacy Law in relation to Personal Information, whether or not it is an organisation bound by that Act;
- (b) only collect, store, use, disclose or otherwise deal with Personal Information as required for the purposes of performing its obligations under the Purchase/Service Order;
- (c) comply with all reasonable directions given by Ventia in relation to the management of the Personal Information, except to the extent that doing so would cause the Supplier to breach any applicable law;
- (d) not do anything that would put Ventia in breach of the Privacy Law;
- (e) provide such assistance as Ventia may reasonably request in order to enable Ventia to comply with the Privacy Law in relation to the Personal Information;
- (f) take such steps (if any) as are reasonable in the circumstances to ensure that the Personal Information is accurate, up-to date, complete and relevant;
- (g) take such steps as are reasonable in the circumstances to protect the Personal Information from misuse, interference and loss, and from unauthorised access, modification or disclosure;
- (h) destroy or permanently de-identify the personal information if that information is no longer needed to provide the Supplies; and
- (i) if the Supplier discloses any of the Personal Information to a third party:
 - (i) ensure that the third party complies with this Clause 15.4 in relation to the Personal Information as if it was the Supplier; and
 - (ii) accept responsibility for any act or omission by that third party in relation to the Personal Information as if it was an act or omission of the Supplier.

15.5 Waiver

No failure or delay on the part of Ventia in exercising any of its rights under the Purchase/Service Order will be construed as constituting a waiver of any such rights.

15.6 Subcontracting and Assignment

- (a) The Supplier must not subcontract nor assign all or any part of the Purchase/Service Order without Ventia's prior written approval. The Supplier must give Ventia any information reasonably requested to enable Ventia to consider a request for approval of a subcontractor.
- (b) Approval of Ventia to any subcontract will in no way relieve the Supplier of any of its obligations under the Purchase/Service Order. The Supplier will be responsible and liable for any act, default, omission, or negligence of a subcontractor as if it was the act, default, omission, or negligence of the Supplier itself.

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- (c) Ventia may assign (in whole or any part) its rights under the Purchase/Service Order to any person without the Supplier's approval. Ventia may novate or transfer (in whole or any part) the Purchase/Service Order to any person who has financial capacity to perform Ventia's obligations under the Purchase/Service Order, at any time without the Supplier's approval and the Supplier must execute any document(s) reasonably required to give effect to such assignment or novation.

15.7 Entire Agreement

The Purchase/Service Order constitutes the entire agreement between Ventia and the Supplier. The parties will not be bound by or liable for any term, condition, statement, representation, promise or understanding not set out in the Purchase/Service Order.

15.8 Communications

- (a) The Supplier must comply with Ventia's reasonable directions in connection with the Supplies.
- (b) Any notice or other communication required under the Purchase/Service Order must be delivered in writing and must be in a form which can be read, copied and recorded conveniently. Verbal instructions or directions from Ventia will be confirmed in writing to the Supplier within a reasonable time. The notice will take effect from the time when it is delivered to or received at the nominated address of the parties.

15.9 Relationship

In relation to the performance of Services, the Supplier will provide the Services as an independent contractor and nothing in the Purchase/Service Order will be construed so as to constitute the Supplier as an employee of Ventia or constitute a partnership between the parties or so as to constitute either party as the agent or legal representative of the other party.

15.10 Significant Events

- (a) The Supplier must immediately (and within 1 Business Day) notify Ventia if it becomes aware of the actual or likely occurrence of a Significant Event, including:
 - (i) a summary of the Significant Event;
 - (ii) the date the Significant Event occurred (if it has occurred); and
 - (iii) any Personnel of the Supplier that are involved.
- (b) Ventia may direct the Supplier that an event is a Significant Event and, if so directed, the Supplier must give the notice required under clause 15.10(a).
- (c) Ventia may direct the Supplier to provide additional documents or information regarding a Significant Event and the Supplier must give the additional documents or information within 2 Business Days.
- (d) If directed by Ventia, the Supplier must (within 5 Business Days after being directed to do so) prepare a draft remediation plan in connection a Significant Event and submit that draft remediation plan to Ventia for approval, including:

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- (i) how the Supplier proposes to:
 - (1) remedy the Significant Event;
 - (2) ensure that the Significant Event (or any similar Significant Event) does not occur again; and
 - (3) report its progress in implementing the remediation plan;
 - (ii) confirmation that the Significant Event, and implementation of the remediation plan, will not impact the Supplier's compliance with this Purchase/Service Order; and
 - (iii) any other matter reasonably directed by Ventia.
- (e) Ventia may, at its discretion, by notice to the Supplier:
- (i) approve the remediation plan; or
 - (ii) reject the remediation plan.
- (f) If Ventia rejects the remediation plan in accordance with 15.10(e)(ii), the Supplier must revise and re-submit the remediation plan within 2 Business Days. Clause 15.10(d) will apply again until Ventia approves the remediation plan.
- (g) The Supplier must:
- (i) strictly comply with the approved remediation plan.
 - (ii) report to Ventia its progress in implementing the remediation plan (including providing relevant evidence, documents and information) in accordance with the remediation plan and as otherwise reasonably directed by Ventia.

16. DEFINITIONS AND INTERPRETATION

16.1 Definitions

In these General Terms and Conditions:

"Background IP" means any Intellectual Property Rights developed by a party independent of the Purchase/Service Order or the Supplies or prior to the date of the Purchase/Service Order.

"Business Day" means any day except a Saturday or Sunday, a day between Christmas Day and New Year's Day (both inclusive) and any public holiday in the State or Territory in which the relevant Supplies is to be performed.

"Clause" means a clause of these General Terms and Conditions.

"Code of Conduct" means Ventia's Code of Conduct as may be amended or updated by Ventia from time to time. A current version of the Code is available on Ventia's website: <https://www.ventia.com/who-we-are/code-of-conduct>.

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“**Critical Risk Protocols**” means the protocols developed by Ventia that outline the supervision and management of specific critical risks that people on Ventia’s projects are commonly exposed to, including in relation to:

- (a) lifting operations;
- (b) working around mobile plant;
- (c) working at height;
- (d) working near traffic;
- (e) working near live services;
- (f) excavations;
- (g) hazardous energies;
- (h) confined spaces;
- (i) hazardous substances; and
- (j) driving and remote travel,

as may be amended or updated by Ventia from time to time. A current version of the Critical Risk Protocols is available on Ventia’s website: <https://connect.ventia.com/safety/>.

“**Data Security Breach**” means any breach by the Supplier of Clause 15.3 or any actual, suspected, or potential breach of the security of Ventia Data or any security vulnerability which could compromise the security of Ventia Data.

“**day**” means a calendar day.

“**Delay Event**” means:

- (a) a breach or wrongful act of prevention by Ventia;
- (b) a suspension directed by Ventia, except to the extent the need to suspend is caused or contributed to by the Supplier or its Personnel; or
- (c) a variation directed by Ventia.

“**Delivery Date**” means a delivery date specified in the Purchase/Service Order by which the Supplier must deliver the Goods or complete the Services (as relevant).

“**FOT**” means, in relation to delivery of the Goods, free on truck (or other transport) and includes the responsibility (and associated costs) for packing, loading, transportation and insurance (for the full replacement value of the Goods) to the nominated delivery point for the Goods.

“**General Terms and Conditions**” means this document.

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"Goods" means all goods, equipment, materials, articles, or any other property or parts to be provided to Ventia by the Supplier under the Purchase/Service Order and includes all ancillary activities such as design, manufacture, inspection, testing, expediting, quality assurance and control, painting, packing and delivery as specified or required hereunder.

"Good Industry Practice" means performing the Supply in an effective, efficient, careful, skilful, diligent, and safe manner, with the degree of skill, care, diligence, and foresight which may reasonably be expected of an experienced professional performing works or services, or supplying goods, similar to the Supply.

"Head Contract" means a contract (if any) between Ventia (or a Ventia Related Body Corporate) and Ventia's client, in connection with which Ventia is procuring a Supply;

"Insolvency Event" means where:

- (a) the Supplier informs Ventia, or its creditors generally, or Ventia reasonably forms the view that the Supplier is insolvent or is financially unable to proceed with the Supplies;
- (b) execution is levied against the Supplier by a creditor;
- (c) if the Supplier is an individual person or a partnership including an individual person, and if that person:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt;
 - (iv) makes a proposal for a scheme of arrangement or a composition; or
 - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under applicable law; or
- (d) if the Supplier is a corporation:
 - (i) notice is given of a meeting of creditors with a view to the Supplier entering a deed of company arrangement;
 - (ii) the Supplier enters a deed of company arrangement with creditors;
 - (iii) a controller, receiver or administrator is appointed in respect of the Supplier;
 - (iv) an application is made to a court for the Supplier's winding up and not stayed within 14 days;
 - (v) a winding up order is made in respect of the Supplier;
 - (vi) the Supplier resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or

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(vii) a mortgagee of any of the Supplier's property takes possession of that property.

"Intellectual Property Rights" means all intellectual property and proprietary rights (whether registered or unregistered) including copyright and analogous rights, any right to have information (including confidential information) kept confidential, rights in relation to inventions or discoveries including patent rights, patent applications, trade secrets, technical data, formulae, know how, designs, trade names, brand names and registered or unregistered trademarks including service marks, and moral rights.

"Laws" means by-laws, ordinances, regulations, proclamations, orders and rules and with the lawful requirements of public authorities and other authorities in any way related to the Supplies including all laws in relation to occupational health and safety.

"Modern Slavery" has the meaning given in the Modern Slavery Act.

"Modern Slavery Act" means the *Modern Slavery Act 2018* (Cth).

"OMS" means a work order management or compliance management system notified by Ventia in writing or otherwise used by Ventia in connection with the Purchase/Service Order or the Supplies.

"Personal Information" has the meaning given in the Privacy Law.

"Personnel" means a party's officers, employees, agents, Related Body Corporates, contractors, consultants, or subcontractors (of any tier).

"Privacy Law" means the *Privacy Act 1988* (Cth).

"Purchase/Service Order" means the purchase order and/or service order (with a unique reference number) issued by Ventia to the Supplier which incorporates these General Terms and Conditions.

"Related Body Corporate" has the meaning given to that term in section 50 of the *Corporations Act 2001* (Cth).

"Supplier" means the person performing the Supplies, as identified in the Purchase/Service Order.

"Supplies" means the Services and/or the supply of Goods that the Supplier is required to perform or supply in accordance with the Purchase/Service Order, and **"Supply"** has an equivalent meaning.

"Services" means the services and/or works as set out and further detailed in the Purchase/Service Order.

"Significant Event" means:

- (a) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Supplier or the Supplier's Personnel that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation, or
- (b) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Supplier or the Supplier's Personnel, that may adversely impact on:
 - (i) compliance with Laws;

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- (ii) compliance with Ventia's policies (including the Critical Risk Protocols or the Code of Conduct) or, if applicable, any Ventia client policies included in the Purchase/Service Order or notified by Ventia to the Supplier
- (iii) Ventia's reputation or, if applicable, Ventia's client's reputation.

"Standards" means the Australian Standards published by Standards Australia and any other codes or standards identified in the Purchase/Service Order or with which a subcontractor or supplier exercising Good Industry Practice would apply in connection with the Supplies.

"Ventia" means the Ventia entity named on the Purchase/Service Order or, if no such entity is named, Ventia Australia Pty Limited (ABN 11 093 114 553).

"Ventia Data" means data of any kind of Ventia, or a Ventia related body corporate, or of any customer or supplier of Ventia or a Ventia related body corporate, that the Supplier accesses, stores or handles in connection with the Purchase/Service Order or any Supply.

"Warranty Period" means:

- (a) in relation to Services, the period commencing on the date of completion of the Services and lasting for a period of one (1) year after that date; and
- (b) in relation to Goods, the date of the final supply of the Goods to the nominated delivery point and lasting for a period of one (1) year after that date.

"Wilful Misconduct" means any deliberate or reckless breach or default, any misleading or deceptive conduct, negligent or fraudulent misrepresentation, abandonment of the Purchase/Service Order, fraud, criminal conduct, or gross negligence of the Supplier or its Personnel.

16.2 Interpretation

Words importing the singular are deemed to include the plural and vice versa. Headings and subheadings are inserted for convenience only and must not be used to interpret the text. Words denoting a natural person will include a corporation and vice versa. The words 'include', 'including' and 'includes' and the expressions 'for example' and 'such as', are not words or expressions of limitation.