

1. DEFINITIONS AND INTERPRETATION

1.1. DEFINITIONS

In this Agreement, unless the context otherwise requires, the below listed terms have the following meanings:

“Agreement” means the commercial relationship between Mayfield and the Supplier comprising these Procurement - Standard Purchase Order Terms and Conditions, the Statement of Works, any agreed special or supplementary conditions, together with the Purchase Order.

“Business Day” means a working day being a day that is not a Saturday, a Sunday, or a public holiday in the State of South Australia or in the State or Territory where the Services are to be performed.

“Defect” means any aspect of the Goods supplied not in accordance with this Agreement, or any damage, error, omission, non-conformity, malfunction, deficiency, fault or inadequacy in the design, performance, workmanship, quality or makeup of the Goods or Services.

“Dollar” or **“\$”** means a reference to Australian currency unless specified otherwise.

“Force Majeure” means delays caused by events or circumstances beyond the Party’s reasonable control, including but not limited to; acts of God, peril of sea or air, explosion, sabotage, accident, embargo, natural disasters, disease control measures affecting manufacturing and/or shipping, border control restrictions, war, riots, insurrection and industrial disputes not in relation to the business of the Party so affected.

“Goods” means any product, item, commodity, material, or other thing supplied under this Agreement.

“GST” means Goods and Services Tax as set out in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

“Law” means legally binding enforceable requirements set out in any statute, ordinance, code, or regulations and includes other instruments made pursuant to it.

“Mayfield” means Mayfield Industries Pty Ltd, ABN 36 158 862 830 whose registered office is 3 Gidgie Court, Edinburgh SA 5111 as the purchaser.

“Party” means a party to this Agreement.

“Purchase Order” means a purchase order issued by Mayfield to the Supplier.

“Purchase Price” means the amount as appears in the Purchase Order including any amendments to the Purchase Price as agreed between the Parties.

“Services” means the services (if any) listed in the Purchase Order as varied in accordance with this Agreement from time to time.

“Statement of Works” or **“SOW”** means the description of the Goods to be supplied, or Services to be performed.

“Supplier” means the legal entity identified as the Supplier on the Purchase Order.

“Tax Invoice” means a tax invoice for GST purposes.

“Variation Proposal” means the variation proposal provided to Mayfield in accordance with clause 5.

1.2. INTERPRETATION

In this Agreement, except where the context otherwise requires:

- a) The singular includes the plural and vice versa.
- b) A reference to a gender includes all other genders.
- c) A reference to a definition that is capitalised may also be a reference to such definition in lower case.
- d) Another grammatical form of a defined word or expression has a corresponding meaning;
- e) A reference to a clause, paragraph, schedule, or annexure is to a clause or paragraph of, or schedule or annexure of, this Agreement.
- f) A reference to a document or instrument includes the document or instrument as novated, altered, supplemented, or replaced from time to time.
- g) Unless otherwise specified, a reference to time is to the time in South Australia.
- h) A reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity.

- i) A reference to a Law includes any consolidations, amendments, re-enactments, or replacements.
- j) If a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed, or the event must occur on or by the next Business Day.

2. PAYMENT, PAYMENT TERMS AND RETENTIONS

- 2.1 Payment will be made by electronic transfer of funds into the Supplier's nominated bank account.
- 2.2 Mayfield may deduct, by way of set off, amounts that are due and payable to Mayfield by the Supplier under this Agreement or otherwise.
- 2.3 All prices are to be quoted exclusive of GST.
- 2.4 Payment shall be made thirty (30) days from end of month from date of receipt of a Tax Invoice unless otherwise agreed.

3. DOCUMENTATION

Delivery dockets, packing lists, certificates of conformity, and/or other documentation as specified in Mayfield's Purchase Order, must accompany the supply of Goods to Mayfield at the address stated therein.

4. OWNERSHIP, TITLE AND RISK

- 4.1 Risk in, and title to, the Goods shall pass to Mayfield on delivery.
- 4.2 Mayfield and the Supplier shall retain ownership of any intellectual property that each owned as at the date of entering into this Agreement and thereafter. Where the Supplier supplies any item of intellectual property in accordance with this Agreement it shall, unless explicitly stated otherwise, remain the owner of that intellectual property. The Supplier will grant a non-exclusive, royalty free, transferable, and perpetual license to use that intellectual property for the purposes for which such license is granted.

5. VARIATIONS AND CHANGES TO COST OF MATERIALS

- 5.1 Mayfield may, by notice in writing to the Supplier, request a variation to this Agreement in respect of the Goods or Services supplied under the Agreement.
- 5.2 On the request of Mayfield, the Supplier will, within 5 Business Days of the request, provide a proposal to Mayfield in respect of such a variation prior to implementing the changes as requested ("Variation Proposal"). The Variation Proposal shall include the impact of the variation on the SOW, Purchase Price, and the schedule for delivery of the Goods or completion of the Services.
- 5.3 The Variation Proposal must be valid for at least 5 Business Days.
- 5.4 This Agreement shall be amended on acceptance of the Variation Proposal by Mayfield.

6. EXTENSION OF TIME

The Supplier shall be entitled to an extension of time in respect of a delay if the Supplier, through no fault of its own, is delayed by Mayfield or by a Force Majeure event beyond its reasonable control.

7. RETURNS AND CANCELLATIONS

- 7.1 Unless otherwise agreed, the Supplier will not be obliged to accept cancellations for custom-made Goods once the Supplier has commenced manufacturing those Goods.
- 7.2 Unless otherwise agreed and subject to clause 7.1, Mayfield may return Goods purchased from the Supplier for credit subject to the following:
 - a) the Goods are returned to the Supplier with the original invoice;
 - b) the Goods are new and unused;
 - c) the Goods are in the original packaging, which has not been damaged or altered.
- 7.3 Except where Goods have been returned because they are faulty or incorrectly delivered in terms of the Agreement, credit for returned Goods will be in the form of exchange, company credit or refund at Mayfield's sole discretion.

- 7.4 Mayfield must advise the Supplier if it believes that Goods supplied are faulty within thirty (30) days of delivery.

8. PRODUCT AND SERVICE GUARANTEE AND WARRANTY

- 8.1 The Supplier warrants that it does not engage in any practices that amount to modern slavery under the Modern Slavery Act 2018 (Cth) and that the Supplier has taken diligent steps to ensure that their subcontractors and suppliers do not engage in modern slavery practices.
- 8.2 Unless otherwise specified, Goods manufactured by the Supplier must carry a warranty period of at least twelve (12) months against faults or defects excluding damage caused by those circumstances outlined in clause 8.3.
- 8.3 Subject to Australian Consumer Law, Goods supplied by the Supplier shall have the warranty provided by the manufacturer of the Goods. The Supplier will not be liable for any damage caused by:
- a) Mayfield's use of the Goods for other than the intended purpose.
 - b) The performance of maintenance or attempted repair by persons other than the Supplier or as authorised by the Supplier.

9. LIMITATIONS AND EXCLUSIONS OF LIABILITY

- 9.1 The Supplier shall not be liable for any damage to material, people or property, or the works caused by Mayfield.
- 9.2 The Supplier will not be liable for any delays caused by Mayfield.
- 9.3 Neither Party shall be liable to the other for any consequential, special, economic, incidental or indirect losses including, but not limited to, loss of production or production stoppage, loss of profit or anticipated profit, loss of revenue or other form of consideration, loss of income or anticipated savings, loss of use, loss of Agreement or repudiation of Agreement, loss of data, loss of goodwill or reputation, loss of opportunity, business interruption, holding over or overhead loss, loss of future business or for any punitive or exemplary damages.
- 9.4 Notwithstanding any other provision in this Agreement, the maximum aggregate liability of each Party to the other under this Agreement shall not exceed 100% of the Purchase Price.
- 9.5 The limitations of liability in clauses 9.3 and 9.4 do not apply in, arising from or connected to:
- a) The illness, injury or death of any person arising out of the performance or non-performance of the Supplier or its personnel under this Agreement.
 - b) The loss of, or damage to property.
 - c) Any willful misconduct, negligence, fraudulent act, or criminal act committed by the Supplier or its personnel.
 - d) Claims against intellectual property rights.
 - e) An insured liability that is recovered under the terms of any policy of insurance required under this Contract.
- 9.6 Notwithstanding any other term of this Agreement, the Supplier's liability for any loss or damage arising as a consequence of a breach of this Agreement or arising under any indemnity is reduced proportionally to the extent the act or omission (deliberate or negligent) of Mayfield.
- 9.7 The Supplier shall indemnify Mayfield against all liability, damages, costs, loss, expense, and damage of any nature whatsoever arising from Supplier's negligence, breach of duty of care, breach of statute or otherwise, which is caused by or arises from:
- a) The performance by the Supplier of the Order.
 - b) Infringement, breach or misuse of any patent, copyright, trademark, registered design or other industrial or intellectual property.
 - c) Failure to conform to or comply with the requirements of this Agreement.

10. INSURANCE

The Supplier shall procure and maintain insurance cover with a reputable insurer for the following classes of risk in respect of work to be carried out under the Purchase Order: Public and Product Liability of, unless otherwise agreed, at least \$25 million and, if required, Professional Indemnity cover of, unless otherwise agreed, at least \$10 million and other insurances appropriate to the supply under this Agreement. On request of Mayfield, the Supplier will provide proof that appropriate insurance cover is in place.

11. CONFIDENTIALLY

The Parties shall keep strictly confidential between them all information of a confidential or proprietary nature shared under the Agreement. The Party receiving confidential information will not, during or after the term of this Agreement, use any such confidential information for any purpose other than to perform the Party's obligations or exercise the Party's rights under this Agreement or disclose any such Confidential Information to any third party.

12. DISPUTES

- 12.1 All reasonable endeavors shall be made to resolve any disagreement, doubt, difference, or dispute (Dispute) in relation to this Agreement by mutual agreement.
- 12.2 In the event that agreement has not been reached within ten (10) Business Days of the Dispute being notified in writing by one Party to the other, then either Party to the Dispute may give notice to the other that the matter be referred to formal mediation by a mediator and at a venue agreed to between the Parties or, failing agreement within ten (10) Business Days of the notice, by a mediator and at a venue appointed by the President of the Law Society of South Australia or his or her nominee (the Mediator) then:
- a) The mediation must commence as soon as reasonably practicable from the appointment of the Mediator.
 - b) The mediation is to take place by such procedures and at such times as the Parties and the Mediator may agree.
 - c) The Parties to the Dispute are to agree the costs and expenses of the mediation with the Mediator and the costs and expenses of the mediation shall be borne equally by the Parties to the Dispute.
- 12.3 If the Parties are unable to reach agreement through mediation, then either Party may commence proceedings to resolve that Dispute.
- 12.4 In the event of there being any dispute as to payment or non-payment of monies then in such case the provisions of the relevant Security for Payments Legislation shall apply.
- 12.5 Nothing in this Agreement shall prevent either Party from taking any action whatsoever seeking summary or urgent relief.

13. MISCELLANEOUS

- 13.1 Waiver: The waiver by either Party of any breach of the Agreement shall not operate as a waiver of any subsequent breach whether of the same nature or otherwise. The failure of either Party to exercise any right which it may have in the event of a breach of the Agreement shall not be deemed to be an abandonment or waiver of any right for damages injunction or otherwise.
- 13.2 Entire Agreement: This Agreement is the entire agreement and understanding for supply of Goods or Services between the Parties and merges all prior discussions, conditions, warranties, or representations with respect to the subject of this Agreement other than as expressly provided otherwise. Any qualification of these Conditions which may appear in the Supplier's notice of acceptance of the Purchase Order shall have no effect unless accepted in writing by Mayfield.
- 13.3 Severance: Each clause and sub-clause of the Agreement is to be read as a separate and severable provision. If any provision is found to be void or unenforceable, that provision may be severed, and the remainder of the Agreement must be interpreted as if the severed provision had never existed.

- 13.4 Force Majeure: The non-performance or delay in performance by a Party of any obligation under the Agreement is excused during the time and to the extent that such performance is prevented by a Force Majeure event, provided that the Party affected by the force majeure event uses its best endeavors to perform as soon as possible its obligations under the Agreement (including by the use of reasonable workarounds and interim measures). If a force majeure event continues for more than twenty (20) Business Days, either Party may terminate the Agreement immediately by notice in writing to the other Party.
- 13.5 Governing Law: This Agreement is governed by the laws of South Australia and each Party submits to the jurisdiction of the courts of South Australia.
- 13.6 Non-Merger: All obligations of the Parties which expressly or by their nature survive the expiration or termination of the Agreement shall continue in full force and effect notwithstanding such expiration or termination. Termination of the Services in accordance with the Agreement does not affect the clause relating to limitation of liability.