

1. CONTRACT

- 1.1 Topdrill Pty Ltd (ABN 46 118 519 609) (we, us, our) and the Supplier (you, your, yours) agree that you will supply the Goods and/or the Services to us on these Terms and Conditions.
- 1.2 The Purchase Order we issue to you together with these Terms and Conditions form the Contract between you and us.
- 1.3 You agree to be bound by the Contract on the first of the following:
- you commence supplying the Goods and/or Services;
 - you accept the Purchase Order, verbally or in writing; or
 - you submit a payment claim to us.
- 1.4 The Purchase Order prevails over these Terms and Conditions.
- 1.5 In entering the Contract, we do not guarantee the quantity, quality, regularity or profitability of the Goods and/or Services that we may engage you to supply.
- 1.6 If you supply terms and conditions with any quotation, payment claim, invoice or communication, by reference to a website, or with the Goods and/or Services (including consignment notes), those terms and conditions will not form part of the Contract (even if our representative signs and/or annexes those terms and conditions to the Purchase Order).

2. PERFORMANCE

- 2.1 You must ensure that any Goods and/or Services:
- are manufactured, supplied and/or carried out to a high standard in accordance with industry best practices;
 - comply with the Specification, all relevant Legislative Requirements, and Australian Standards;
 - are accompanied on delivery by all quality documentation, operations manuals and third-party warranties;
 - are made available to us or our representative at any time on our request, at any stage of manufacture; and
 - are supplied in accordance with any directions given by us to you.
- 2.2 You must obtain in your name all permits, registrations and licences necessary for you to perform the Contract.
- 2.3 You must supply the Goods and/or Services at the Site, the Delivery Address or any other location specified by us by the Delivery Date.
- 2.4 We are entitled to reject any Goods and/or Services that do not comply with the requirements of the Contract.
- 2.5 Time is of the essence in relation to the Contract.
- 2.6 You must notify us of any event that may lead to an actual or potential delay in the supply of the Goods and/or Services and its cause within 3 days of the event's occurrence.
- 2.7 You must not vary the Goods and/or Services without a written direction from us (**Variation**).
- 2.8 We may direct you to vary the Goods and/or Services by any one or more of the following:
- increasing, decreasing, substituting or omitting any part of the Goods and/or Services;
 - changing the character or quality;
 - carrying out additional work; or
 - resequencing the order of the Subcontract Works.
- 2.9 We will price each Variation using the following order of precedence:
- prior agreement;
 - reasonable rates or prices; or
 - a price determined by us, acting reasonably,
- 2.10 The price determined by us under clause 2.9 will be added to or deducted from the Subcontract Sum.
- 2.11 You must when supplying the Goods and/or Services:
- not interfere with our activities or those of our client, other contractors or any third party at the Site; and
 - comply with, and ensure that your Personnel comply with, all directions and orders given by or on behalf of us.

3. PRICE AND PAYMENT

- 3.1 The price for the Goods and/or Services is as stated in the Purchase Order (**Price**).
- 3.2 The Price excludes goods and services tax but includes any other applicable taxes, customs, excise and import duties, tariffs, fees, levies, charges, costs or expenses you incur in connection with the Contract, including transport, packing and insurance costs.
- 3.3 The Price is fixed and firm, and not subject to adjustment due to rise and fall, currency fluctuation, escalation in equipment, material or labour costs or any other reason.
- 3.4 You must submit a tax invoice to us by the 25th day of the month.
- 3.5 Each tax invoice must be correctly dated and comply with the following:
- state the Purchase Order number;
 - be emailed to invoices@topdrill.com.au;
 - list the particular Goods and/or Services supplied;
 - be supported by relevant records; and
 - include any information required by the Security of Payment Act.
- 3.6 If we request additional relevant records to verify the amount claimed, you must provide those records within 48 hours of the request.
- 3.7 You will not be entitled to payment under this Contract until you have:
- supplied the Goods/and or Services in accordance with the Contract; and
 - complied with all other obligations under the Contract including providing insurance under clause 7, quality documentation, warranties and manuals.
- 3.8 If you submit an invoice earlier than the time stated in clause 3.4, it will be deemed to have been submitted at the stated time for submission;
- 3.9 We may deduct from or set off against any monies which may be, or

become, payable to you any costs, expenses or damages due from you to us, or which we have incurred or consider we might incur, whether under this Contract, any other agreement or otherwise at law.

- 3.10 Subject to your compliance with this clause 3, we will pay the amount determined as payable within 30 days of the end of the month in which the payment claim was submitted.
- 3.11 We will not pay interest on any overdue amount.
- 3.12 Payment by us of all or any part of a payment claim is on account only and is not approval of the Goods and/or Services.

4. WARRANTIES

- 4.1 You represent and warrant that:
- the Goods and/or Services will comply strictly with the Specification and all Legislative Requirements;
 - the Goods are manufactured from new materials and are of merchantable quality;
 - the Goods and/or Services are free from all Defects;
 - the Goods and/or Services are fit for their intended purpose;
 - you will, and will ensure your Personnel will, exercise the standards of diligence, due care and skill usually exercised by a prudent, qualified and competent supplier supplying equivalent goods or services;
 - all Personnel are appropriately qualified, competent, and skilled to perform the part of the Services for which they are engaged;
 - any equipment you use to deliver the Services is in safe working condition, complies with all Legislative Requirements and will be operated by suitably qualified, licensed, and accredited Personnel.
- 4.2 You must, at your cost, immediately rectify or replace (at our discretion) any Defective Goods or Services.
- 4.3 If you do not rectify or replace the Defective Goods or Services immediately we may do so or engage a third party to do so, without notifying you. The cost will be a debt due and immediately payable by you to us.
- 4.4 If we accept Defective Services once, that does not oblige us to accept any other Defective Services or limit any of our other legal rights.
- 4.5 You consent to:
- our assignment of any or all of the above warranties to any of our clients, related companies or entities; and
 - us holding on trust and enforcing the rights and obligations in this Contract on behalf of our clients, related companies and entities.

5. TITLE AND RISK

- 5.1 Risk in the Goods passes to us upon delivery, inspection and acceptance of the Goods at the Delivery Address.
- 5.2 Unencumbered title in the Goods and/or Services passes to us on the earlier of payment or delivery of the Goods.

6. LIABILITY AND INDEMNITY

- 6.1 You are liable for, indemnify and keep us indemnified against all loss, damage or expense, and release us from any claim, action, proceeding or demand arising directly or indirectly out of this Contract, including:
- death of, or personal injury to, any person;
 - loss or damage to any property; and
 - liability connected with any breach of the Contract, except to the extent caused by our wrongful act or omission.
- 6.2 To the extent permitted by law, our liability to you arising out of or in connection with the Contract is limited to the Price.
- 6.3 We are not liable to you for any indirect or consequential losses arising out of the Contract, including any loss of revenue, loss of profit, loss of production, loss of product, loss of use of any plant or facility, business interruption, loss of business opportunity, loss of business reputation, loss of contract, payment of liquidated sums, penalties or damages.

7. INSURANCE

- 7.1 For as long as you have obligations outstanding under the Contract, you must effect and maintain and ensure that all of your Personnel effect and maintain, at your own expense:
- all insurances specified in the Purchase Order;
 - workers' compensation and occupational/industrial disease and any other insurance required by any Legislative Requirement relating to your workers' compensation liability to any person;
 - employers' liability/common law insurance for an amount of \$50 million to cover Loss arising out of the supply of the Goods and/or Services in respect of persons employed or engaged or deemed to be employed by you;
 - if you are a sole trader or the Goods and/or Services will be supplied or performed by working directors, income protection or cover equivalent to that required by clause 7.1(b) and/or private accident and illness insurance to cover any of your working directors, for a period of up to 104 weeks on any one claim;
 - general third-party public and products liability insurance covering your operations, including liability arising from unregistered mechanically propelled vehicles, with a limit of liability of not less than \$20 million for any one occurrence and unlimited in the aggregate, extending cover to us as principal or providing insurance for us as principal in respect of our liability arising out of your acts or omissions;
 - if the Contract requires you to use motor vehicles, motor vehicle insurance with a limit of liability of not less than \$10 million for each and every claim;
 - an insurance policy covering the Goods and any plant and

- equipment provided by us while at your risk and your plant and equipment (including hired plant and equipment) for 100% of replacement value for accidental loss, destruction and damage at all times (including while in transit) and other risks as we may reasonably require from time to time;
- (h) if the Services include professional services, professional indemnity insurance with cover of not less than \$5 million for any one occurrence; and
- (i) all necessary insurance cover for all risks arising from performing your obligations under the Contract.
- 7.2 The insurance referred to in clauses 7.1(b), 7.1(c), 7.1(e) and 7.1(f) must extend to indemnify us as principal and provide a waiver by the insurer of all rights of subrogation, action or relief against us.
- 7.3 If you do not comply with your obligations under clause 7, we may take out and maintain relevant insurance, and the cost will be a debt due and payable by you to us on demand.
- 7.4 Insurance will not limit your liabilities or obligations under the Contract.
- 7.5 You must notify us immediately if any incident occurs that is likely to give rise to an insurance claim.
- 8. PERSONNEL**
- 8.1 You must comply with all relevant Legislative Requirements in relation to your Personnel, including:
- (a) work health and safety laws, including the *Work Health and Safety Act 2020* (WA) and all subsidiary legislation; and
- (b) the *Fair Work Act 2009* (Cth) and any other workplace or industrial laws concerning the employment of workers, income tax, workers' compensation, superannuation, annual leave, long service leave or any award, order, determination or agreement of a competent industrial or specialist tribunal.
- 8.2 You indemnify and will continue to indemnify us against any claims by your officers, employees or agents in respect of any such law, award, order, determination or agreement with which you are required to comply.
- 8.3 You are responsible for managing all industrial relations issues connected with your Personnel.
- 8.4 We may object to any Personnel at our absolute discretion, and you must remove and immediately replace such Personnel.
- 8.5 You must and must ensure that your Personnel adhere to any site-specific permits, procedures, and other work health and safety requirements.
- 8.6 You must ensure that all of your Personnel hold any relevant industry safety training card (blue card/white card) and are equipped at all times with appropriate personal protective equipment before the delivery of the Goods and/or commencement of the Services.
- 9. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**
- 9.1 You warrant that any design, equipment, methods of working and documentation used or produced by you in connection with the Services does not infringe any IP Right.
- 9.2 Ownership of IP Rights created under the Contract vests in us on creation. We grant you a non-exclusive, royalty-free, revocable licence to use such IP Rights to supply the Goods and/or Services.
- 9.3 The terms of this Contract are confidential. You must not disclose any information regarding the Contract, its subject matter or terms, or acquired as a result of the Contract to any third party (including by making any media release) without our prior written consent.
- 10. SUSPENSION OR TERMINATION**
- 10.1 To the extent permitted by law, we may terminate the Contract or reduce the scope of the Goods and/or Services if you:
- (a) fail to remedy any breach of the Contract within 3 Business Days of receiving written notice from us;
- (b) being a corporation, become insolvent, or have an administrator, controller or liquidator appointed under the *Corporations Act 2001* (Cth), or have receivers or managers appointed;
- (c) being an individual, are unable to pay your debts when they fall due or have a trustee in bankruptcy appointed; or
- (d) cease or threaten to cease to carry on business, in which case our liability to you will be limited to the payment of the Price for the Goods and/or Services supplied before termination.
- 10.2 In addition to our other rights under clause 10, we may terminate all or any part of the Contract by written notice to you at any time for any reason, in our absolute discretion.
- 10.3 On receipt of a notice of termination, you must immediately:
- (a) cease supply of the Goods and/or Services to the extent specified in the termination notice; and
- (b) take all possible action to mitigate any costs incurred by you due to the termination.
- 10.4 If we terminate the Contract under clause 10.2:
- (a) you are entitled to payment of the Price for Goods and/or Services supplied before termination or any Goods ordered and not able to be cancelled;
- (b) you are not entitled to any compensation for that cancellation other than as specified in clause 10.4; and
- (c) the compensation payable under clause 10.4 must not exceed the Price of the relevant Goods and/or Services.
- 10.5 Termination of the Contract does not affect or prejudice any legal or contractual rights accrued before termination, or release either party from any obligations that by their nature survive termination including indemnities and confidentiality.
- 11. DISPUTE RESOLUTION**
- 11.1 If any dispute arises between you and us in any way relating to this Contract:
- (a) we must confer within 3 Business Days of one of us giving written notice to the other that a dispute has arisen (**Dispute Notice**);
- (b) if we cannot resolve our difference or agree on a method for resolving it, we must submit the dispute for mediation by a mediator nominated by the Resolution Institute, with the mediator's costs shared equally between us but otherwise on terms determined by the nominated mediator.
- 11.2 If the dispute is not resolved within 4 weeks of the Dispute Notice, either party may commence legal proceedings.
- 11.3 Nothing in clause 11.2 prevents a party from applying for urgent interim or interlocutory relief.
- 11.4 We agree that for the Security of Payment Act, the authorised nominating authority will be the Resolution Institute.
- 12. GENERAL**
- 12.1 This Contract constitutes our entire agreement concerning its subject matter and supersedes all prior oral or written representations and agreements.
- 12.2 This Contract may only be varied in writing, signed by us both.
- 12.3 We may assign any of our rights or obligations under this Contract.
- 12.4 You may not assign your rights or obligations under this Contract without our prior written consent.
- 12.5 Waiver by either of us of a breach of any term of this Contract does not constitute a waiver of any later breach of the same or any other term.
- 12.6 If any provision or part-provision of this Contract is invalid or unenforceable, that provision will be deemed deleted to the extent necessary, and the remaining provisions of this Contract will remain in full force and effect.
- 12.7 Part 1F of the *Civil Liability Act 2002* (WA) is excluded.
- 12.8 Nothing in this Contract creates a relationship of employer and employee, principal and agent, partnership or joint venture between you and us or between us and any third party.
- 12.9 Neither of us has authority to act for or to bind the other than as expressly contemplated by this Contract.
- 12.10 Provisions of this Contract capable of having effect after the termination or expiry of this Contract remain in full force and effect following its termination or expiry.
- 12.11 The laws of Western Australia govern this Contract.
- 13. DEFINITIONS**
- 13.1 Capitalised terms used in these Terms and Conditions have the meaning given to them in the Purchase Order or in this clause 13:
- Defect and Defective** means any aspect of the Goods or the Services not in accordance with the Contract or which is damaged, deficient, faulty, inadequate or incomplete in design, performance, workmanship, quality or makeup.
- Delivery Address** means any address stated in the Purchase Order.
- Delivery Date** means the date for supply of the Goods or performance of the Services stated in the Purchase Order.
- Goods and/or Services** means the Goods and/or Services specified in the Purchase Order and includes any incidental services.
- IP Rights** means all industrial and intellectual property rights, whether protectable by statute, at common law or in equity, including all copyright and similar rights in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registrable), rights in relation to registered or unregistered trademarks and circuit layout designs.
- Legislative Requirements** means applicable laws, statutes, regulations, by-laws, orders, industrial awards, workplace agreements, proclamations, certificates, licenses, consents, permits, approvals, codes, standards and requirements of organisations.
- Personnel** means any person, employee, consultant or subcontractor engaged by you to provide any of the Goods and/or Services.
- Specification** means all codes, standards, drawings, materials schedules and specifications applicable to the Contract, referred to in the Purchase Order or otherwise incorporated into the Contract by reference and to be complied with by the Supplier.