

**Standard Terms and Conditions for Supply of Goods and/or Services**
**1. Acceptance**

- 1.1. These standard terms and conditions for the supply of goods and/or services (**Standard Terms**) are between Pangea Geosystems Pty Ltd, ABN 65 605 970 858 its successors and assignees (**Supplier/Service Provider**) and the person, organisation or entity described as the purchaser in the Quotation (**Purchaser**), together referred to as the 'Parties'.
- 1.2. Any Quotation given by the Supplier lapses if not accepted by the Purchaser within 30 days of the date of the Quotation.
- 1.3. The Purchaser agrees that the Quotation and these Standard Terms (the **Contract**), will form the entire agreement between the Parties, superseding all previous communications and negotiations, under which the Supplier will provide Goods and/or Services to the Purchaser.
- 1.4. Where the supply of Goods and/or Services by the Supplier to the Purchaser purports to be made on or subject to terms and conditions other than these Standard Terms, the Purchaser agrees that such other terms and conditions are disregarded, do not form part of the Contract and have no legal effect, unless the Supplier agrees otherwise in writing.
- 1.5. Any variation to these Standard Terms shall be inapplicable unless the Supplier agrees otherwise in writing.
- 1.6. Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods and/ or Services referred to in them. They shall not form part of the Contract nor have any legal effect.
- 1.7. The Contract comes into existence, and the Purchaser will be bound by, and deemed to have accepted, this Contract on that date upon which the Purchaser issues a Purchase Order for Goods and/or Services offered in the Quotation.

**2. Goods and/or Services**

- 2.1. The Supplier agrees to provide the Goods and/ or Services in accordance with the Contract.
- 2.2. The Purchaser acknowledges and agrees that:
  - a. any dates for the provision of Goods and/or Services provided by the Supplier (whether stated in the Contract, verbally or otherwise) are estimates only;

- b. that the Supplier is under no obligation to provide the Goods and/or Services by or within those dates; and
- c. the Supplier's failure to do so will not constitute a breach of this Contract, unless the Goods and/or Services are not provided within a reasonable and timely manner;

This clause 2.2 seeks to ensure that the Purchaser is aware that nominated dates cannot always be specific. Delivery is based on lead-time and ETAs, not specific dates; and

- d. the Supplier will provide the Goods and/or Services within a reasonable and timely manner.
- 2.3. Despite anything to the contrary, to the maximum extent permitted by law, the Supplier will not be responsible, and will have no liability, for any works, services, goods, materials or items which:
    - a. do not form part of the Goods and/or Services, as particularised in the Quotation or any Purchase Order;

- 2.4. This clause will survive termination or expiry of this Contract.

**3. Delivery of Goods**

- 3.1. The Supplier shall deliver the Goods to the location set out in the Quotation or such other location as the parties may agree (**Delivery Location**) at any time after Supplier notifies the Purchaser that the Goods are ready to be provided.
- 3.2. The Purchaser acknowledges and agrees that:
  - a. The Supplier accepts no responsibility or duty for delivery but may elect to arrange delivery at its discretion and without liability, at the Purchaser's cost and responsibility in all things.
  - b. The Purchaser shall be deemed to have accepted delivery and liability for the Goods when the Supplier notifies them that the Goods are ready for collection or they are delivered to a carrier for delivery or to the Purchaser's business premises or Site, whether attended or not.
  - c. The Purchaser agrees that a certificate purporting to be signed by the Supplier confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket.
  - d. Once notified by the Supplier that the Goods are ready for collection or delivery, the Purchaser agrees to pay all subsequent costs of the Supplier in holding them.

#### 4. Performance of Services and warranty

- 4.1. The Services must be performed by the Service Provider in accordance with the Contract and in accordance with any directions of the Purchaser, consistent with the provisions of the Contract.
- 4.2. The Service Provider shall provide the Services in the location set out in the Purchase Order or the Quotation or such other location as the parties may agree (Delivery Location).
- 4.3. The Service Provider warrants that on completion of Service, the Services shall:
  - a. conform in all respects with their description and any applicable Specification;
  - b. be free from installation and activation defects in design, material and workmanship;
  - c. be of satisfactory quality; and
  - d. be fit for the purpose held out by the Service Provider.
- 4.4. The Purchaser acknowledges and agrees that:
  - a. The Purchaser shall be deemed to have accepted performance of and liability for the Services when the Service Provider notifies them that the Services are completed at the Purchaser's business premises or Site, whether attended or not.
  - b. The Purchaser agrees that a certificate purporting to be signed by the Service Provider confirming performance of the Service shall be conclusive evidence of Work/Service completed, as shall any signed service delivery document such as a site visit report.

#### 5. Warranties for Goods

- 5.1. The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall:
  - a. conform in all material respects with their description and any applicable Specification;
  - b. be free from material defects in design, material and workmanship;
  - c. be of satisfactory quality; and
  - d. be fit for the purpose held out by the Supplier.
- 5.2. Subject to clause 5.3, if:
  - a. the Purchaser gives notice in writing to Supplier during the Warranty Period within a reasonable time of discovery that some or all the Goods do not comply with the Warranty set out in clause 5.1; and
  - b. the Supplier is given a reasonable opportunity of examining such Goods; and

- c. the Purchaser (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Purchaser's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 5.3. The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in Clause 5.1 in any of the following events:
  - a. the Purchaser makes any further use of such Goods after giving notice in accordance with Clause 5.2;
  - b. the defect arises because the Purchaser failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - c. the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Purchaser;
  - d. the Purchaser alters or repairs such Goods without the written consent of the Supplier;
  - e. the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal storage or working conditions; or

the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

#### 6. Title and Risk

- 6.1. The risk in the Goods shall pass to the Purchaser on completion of delivery, at the Delivery Location. Once risk in the Goods passes, the Purchaser will be solely responsible for the Goods.
- 6.2. Subject to clause 10, title in the Goods will remain with the Supplier until the Purchase Price, and all other amounts due and payable to us under the Contract have been paid in full by the Purchaser. Until title passes, the Purchaser must not do anything which seeks to create an encumbrance, lien, charge or other interest on or over the Goods.
- 6.3. This clause 6 will survive the termination or expiry of these Standard Terms.

#### 7. Purchaser's Responsibilities

- 7.1. The Purchaser acknowledges and agrees that it is responsible for:
  - a. checking that the Goods and/or Services comply with all relevant standard and regulatory

requirements before use or application of the Goods and/or Services; and

- b. ensuring that it complies with any manufacturer recommendations and directions as well as with sound commercial practice.
- 7.2. The Purchaser understands that the Goods may be delicate and susceptible to adverse conditions (for example, heat, rain, dust, cold, direct sunlight, contaminants and fuels). The Purchaser undertakes to comply with any specific storage or handling directions provided by the Supplier, or the manufacturer.

## 8. Liability and Indemnity

8.1. Despite anything to the contrary, to the maximum extent permitted by law:

- a. the Supplier excludes all express and implied warranties, representations and guarantees of any kind (whether under statute, law, equity or on any other basis), unless expressly stated in this Standard Terms.
- b. the Supplier's maximum aggregate Liability arising from or in connection with the Contract will be limited to, and must not exceed the portion of the Purchase Price paid by the Purchaser to the Supplier for the Goods and/or Services the subject of the relevant claim; and
- c. the Supplier will not be liable to the Purchaser for any loss of profit (including anticipated profit), loss of benefit (including anticipated benefit), loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings (including anticipated savings), loss of reputation, loss of and/or corruption of data (other than as arising out of the Supplier's/ Service Provider obligations,
- d. whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.

8.2. Despite anything to the contrary, to the maximum extent permitted by law, the Supplier will have no Liability, and the Purchaser release and discharge us from all Liability, arising from or in connection with any:

- a. loss of, or damage to, the Goods and/or Services (or any item used in the provision of the Goods and/or Services), or any injury or loss to any person;
- b. loss or damage caused or contributed to by a Third Party;
- c. failure or delay in providing the Goods and/or Services; or
- d. breach of this Agreement or any law,

where caused or contributed to by any:

- e. event or circumstance beyond the Supplier's reasonable control; or
- f. act or omission of the Purchaser or the Purchaser's Personnel,
- g. and, in any event, any lack of functionality or suitability (or the absence of, or reduction in, any anticipated result, outcome or benefit) with respect to the Goods and/or Services.

8.3. This clause 8 will survive the termination or expiry of the Contract.

## 9. Confidential Information and Intellectual Property

9.1. The Purchaser shall be discreet and treat as confidential all documents, data, designs, drawings, processes or any information furnished by or on behalf of the Supplier in connection with the Quotation. Information furnished by the Purchaser to the Supplier will be treated by Supplier with the same obligation.

9.2. Subject to clause 9.1, the Purchaser is responsible for its agents, employees and related entities' obligation to secrecy and confidentiality.

9.3. Each party shall retain all its intellectual property rights to all documents, data, designs, drawings, Goods, and processes supplied to the other party.

## 10. Payment

10.1. The price of the Goods and/or Services shall be the price set out in the Quotation (**Purchase Price**).

10.2. The Supplier may, by giving notice to the Purchaser at any time up to 30 days before delivery, increase the price of the Goods and/or Services to reflect any increase in the cost that is due to:

- a. any factor beyond Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- b. any request by the Purchaser to change the Delivery Date(s), quantities or types of Goods ordered, or the Specification; or
- c. any delay caused by any instructions of the Purchaser or failure of the Purchaser to give Supplier adequate or accurate information or instructions.

10.3. The price of the Goods and Services:

- a. excludes Taxes and Levies, which the Purchaser shall additionally be liable to pay to Supplier at the prevailing rate, subject to the receipt of a valid GST/VAT invoice; and

- b. excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Purchaser.
- 10.4. The Supplier may invoice the Purchaser for the Goods on or at any time after the completion of delivery.
- 10.5. The Purchaser shall pay the invoice in full and in cleared funds by the end of the month following the month the invoice was dated. Payment shall be made to the bank account nominated in writing by Supplier. Time for payment is of the essence.
- 10.6. If the Purchaser fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Purchaser shall pay interest on the overdue amount at the rate of 4% per annum above the Reserve Bank of Australia's base rate from time to time. Such interest shall accrue on daily basis from the due date until actual payment of the overdue amount. The Purchaser shall pay the interest together with the overdue amount. The Purchaser shall indemnify Supplier against all costs that it incurs in recovering any debt owed.
- 10.7. The Purchaser shall pay all amounts due under the Contract in full (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Purchaser against any amount payable by Supplier to the Purchaser.
- 10.8. Payment will be required in full for Goods sold to Purchasers outside Australia, prior to release of Goods, unless otherwise agreed to in writing.

#### 11. Credit limit

If the Supplier grants to the Purchaser any credit facility or nominates any credit limit, this is an indication only of its intention at the time and it can vary or withdraw such facility or limit at any time on 24 hours' prior written notice to the Purchaser.

#### 12. PPSR/ PPSA

- 12.1. The Purchaser acknowledges and agrees that the Contract creates a registrable security interest in favour of the Supplier under the Personal Property Securities Act 2009 (Cth) (**PPSA**), and the Purchaser consent to it (and any other registrable interest created in connection with this Agreement) being registered on the Personal Property Securities Register (**PPSR**) (and the Purchaser must do all things to enable the Supplier to do so).
- 12.2. If, for any reason:
- a. due to any of the Purchaser's acts or omissions; or
  - b. the Purchaser is the subject of an insolvency event; or

- c. the Supplier's rights to or ownership of the Goods is prejudiced or will be lost whether by loss of priority under the PPSR or otherwise,

(each, an "Event") then it is expressly agreed that:

- d. the Contract is and shall be deemed to have been terminated by mutual agreement by the Parties on the day immediately preceding the Event (**Termination Date**);
- e. the Purchaser will and will be deemed to have surrendered the Goods to the Supplier on and from the Termination Date;
- f. if the Purchaser is still in possession of the Goods as at the Termination Date, the Purchaser agrees that it hold the Goods as a bare bailee only, and will grant to the Supplier (or its nominee) such rights of access necessary to repossess the Goods.

- 12.3. The Supplier is entitled to a general lien over goods and property in its possession and entitled on the expiration of 14 days written notice to the Purchaser to dispose of such goods or property as the Supplier deems fit and apply the proceeds toward any debt that the Supplier considers is due and payable by the Purchaser to it.

#### 13. Termination

- 13.1. Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Purchaser if:
- a. the Purchaser commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of being notified in writing to do so;
  - b. the Purchaser takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
  - c. the Purchaser suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
  - d. the Purchaser's financial position deteriorates to such an extent that in Supplier's reasonable opinion the Purchaser's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 13.2. Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the

Purchaser and Supplier if the Purchaser becomes subject to any of the events listed in clause 13.1(a) to clause 13.1(d), or the Supplier reasonably believes that the Purchaser is about to become subject to any of them, or if the Purchaser fails to pay any amount due under this Contract on the due date for payment.

- 13.3. Without limiting its other rights or remedies, Supplier may terminate the Contract with immediate effect by giving written notice with a seven (7) day grace period to the Purchaser if the Purchaser fails to pay any amount due under the Contract on the due date for payment.
- 13.4. On termination of the Contract for any reason the Purchaser shall immediately pay to Supplier all of Supplier's outstanding unpaid invoices and applicable interest.
- 13.5. Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 13.6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

#### **14. Feedback and dispute resolution**

- 14.1. If there is a dispute between the parties in relation to the Contract, the Parties agree to the following dispute resolution procedure:
- a. The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith, within 7 days of receiving a notice under this clause to seek to resolve the dispute by agreement between them at an initial meeting. At any such meeting, each Party will be represented by a person having sufficient authority to bind the Parties.
  - b. If the Parties cannot agree how to resolve the dispute at that initial meeting, any Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, the complainant will ask the Law Society of Western Australia to appoint a mediator. The mediator will decide the time and place for mediation. The parties must attend the mediation in good faith, to seek to resolve the dispute.
- 14.2. Any attempts made by the parties to resolve a dispute pursuant to this clause 14 are without prejudice to other rights or entitlements of the parties under this Agreement, by law or in equity.

#### **15. Applicable law**

The contract will be governed by and interpreted in accordance with the laws in force in Western Australia.

#### **16. Cancellation**

Any request by the Purchaser for cancellation of a Purchase Order must be in writing and may be delivered by post, hand delivery or facsimile or email. The Purchaser is liable to reimburse the Supplier for the costs it has incurred for labour and materials in fulfilling the Purchase Order up to the date the request for cancellation is received and acknowledged by the Supplier.

#### **17. Waiver**

A party's failure or delay exercising a power or right does not operate as a waiver of the power or right. A waiver is not effective unless it is in writing.

#### **18. Amendment**

This Contract will only be amended by written agreement between Supplier and the Purchaser. Supplier and the Purchaser shall act reasonably in deciding whether to agree to an amendment or a variation, as requested by the other party.

#### **19. Negation of employment, partnership and agency**

This Contract does not create a relationship of employment, agency or partnership between Supplier and the Purchaser.

#### **20. Definitions and Interpretation**

##### **20.1. In these Standard Terms:**

**Delivery Date** means the delivery lead-time stipulated in the Quotation for the delivery of Goods and/or Services.

**Delivery Location** means the designated place where the Goods will be delivered, or the Services are to be performed.

**Goods** means any material, item or equipment, computer hardware and software and/or machinery specified in a Quotation.

**Property** includes every type of right, interest or thing which is legally capable of being owned and includes, but is not restricted to, physical goods, Goods and real property, as well as intangibles such as intellectual property, contract options and goodwill.

**Purchase Order** means the commercial document issued by the Purchaser to the Supplier for the purchase of Goods and/or Services, in accordance with applicable industry standards.

**Quotation** means the formal statement entitled, 'Quotation', provided by the Supplier to the

Purchaser for supply of the Goods and/or Services required by the Purchaser.

**Services** means any, and all work to be performed on the Purchaser's premises in connection with the supply, installation and/or commissioning of the Goods.

**Site** means the specified place at which the Goods and/or Services will be used.

**Specification** means any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Purchaser and Supplier.

**Taxes and Duties** means any tax imposed, levied or charged and includes, without limitation, any excise duties, stamp or similar duties, customs duties, withholding taxes, goods and services tax (GST), value added tax (VAT) or similar transaction taxes and any penalties or interest relating the same.

**Third Party** means manufacturers, suppliers, transportation or logistics providers, consultants or subcontractors.

**APPENDIX: SUPPLY OF SOFTWARE, LICENSE TO THE SOFTWARE, SUPPORT SERVICES, TRAINING & DOCUMENTATION**

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**1. Supply of Software**

1.1 By the date indicated in the Quotation including the Purchase Order, the Service Provider shall:

- (a) deliver or make available to the Purchaser the number of copies of the Software and documentation as specified in the Purchase Order, in the format for such Software and documentation specified in the Purchase Order (or if no format is specified in an industry standard format); and
- (b) if required by the Purchaser, install one copy of the Software on the Purchaser's hardware systems in accordance with the Purchaser's directions or the appropriate direction to enable the Software's proper functionality.

1.2 Where the Service Provider is required to install the Software on the Purchaser's hardware systems, then the Purchaser must:

- (a) prepare its hardware systems for installation of the Software in accordance with the Service Provider's reasonable recommendations; and
- (b) give the Service Provider such assistance as the Service Provider reasonably requires, to ensure successful installation of the Software.

**2. License to the Software**

2.1 Subject to clause 2.2 below, by the date specified in the Quotation and including in the Purchase Order the Service Provider grants to the Purchaser, its employees, sub-contractors and authorized agents from time to time, a worldwide, non-exclusive, royalty-free (other than the Price set out in the Purchase Order) license, transferable within the Purchaser's other sites only, to:

- (a) use or otherwise utilise the Software and the documentation;
- (b) make as many copies of the Software reasonably required for backup, testing, security and archival purposes at no additional charge;
- (c) make as many copies of the documentation as reasonably necessary to make full use of the Software and for backup, testing, disaster recovery, security and archival purposes at no additional charge.

2.2 In the case of a Fixed Term License, the license granted by the Service Provider pursuant to clause 2.1 above shall be limited to an activation period specified in the Quotation or Purchase Order.

2.3 Unless otherwise permitted in writing by the Service Provider or applicable law, the Purchaser will not seek to rent out, lease, reverse engineer or disassemble the Software.

2.4 In the case of a Fixed Term License, the Purchaser may retain and continue to use one copy of the Software after the License activation period has expired or earlier Termination of the Purchase Order for archival, regulatory compliance or audit purposes.

**3. Support Services**

3.1 During the Support period specified in the Quotation and Purchase Order (or if none specified, during working hours in Perth, Australia), the Service Provider shall make available the first line Support facility described in the Quotation or in the Purchase Order to enable:

- (i) the Service Provider to respond to requests made to the first line Support by or on behalf of the Purchaser;
- (ii) the Service Provider to respond to technical and user questions relating to the Software; and
- (iii) the Purchaser to report any Defect to the Service Provider.

**4. Training & Documentation**

4.1 The Service Provider shall, if requested by the Purchaser, provide to the Purchaser's personnel, at the times and locations required by the Purchaser (and agreed upon by both parties as indicated in the Quotation or in the Purchase Order) any training that is necessary to enable the Purchaser's personnel to make full and proper use of the Software.

4.2 The Service Provider must provide the Purchaser with Documentation containing sufficient information to enable the Purchaser to make full and proper use of the Software.