

**1. Contract**

- 1.1. If APC Company Pty Ltd, t/a "Keto Pumps Australia"(ABN 66 114 924 908) or Pump Technology Services Pty Ltd (ABN 62 009 213 772) ("KETO") issues an order, a purchase order, an offer to purchase, a letter of acceptance or notice of intention to proceed or the like in any form whatsoever ("Purchase Order") to acquire any services specified in the Purchase Order ("services") from a supplier identified in the Purchase Order ("Supplier"), the Supplier is deemed to have accepted the Purchase Order if it acknowledges or confirms the Purchase Order or proceeds with the supply of the services or otherwise acts in any other manner consistent with accepting the Purchase Order (for example, commencing to perform the services).
- 1.2. On acceptance of the Purchase Order by the Supplier, a contract ("Contract") is formed on the terms contained in:
  - the Purchase Order;
  - Schedule 1 - Special Conditions (if any)
  - Schedule 2 – Scope of Services
  - any other documents attached or referred to in the Purchase Order, Schedule 1 or Schedule 2.

In the event of any conflict or inconsistency among the documents referred to in the preceding paragraph, the order of priority shall be the order in which such documents are listed above.

- 1.3. KETO will not be bound by any terms other than those listed above as constituting the Contract, unless such terms are agreed in writing by KETO and the Supplier as expressly forming part of the Contract. For the avoidance of doubt, any terms or conditions contained in, issued with or printed on any quotation, tender, proposal, offer, order acknowledgment, order confirmation, letter of acceptance, notice of intention to proceed or the like issued by the Supplier do not form part of the Contract and are of no effect whatsoever.

**2. Services**

- 2.1. The Supplier must supply the services in accordance with the Contract and in accordance with all reasonable directions and requirements of KETO.
- 2.2. The Supplier must perform the services with due care and skill, in a professional, efficient, careful, diligent, proper and safe manner, and to best industry standards and best professional standards applying to the Services.
- 2.3. The Supplier must supply the services at the place and by the time or times stipulated in the Contract or if none are stipulated, at the place and by the time or times directed reasonably by KETO.
- 2.4. The Supplier hereby represents to KETO that:
  - a) the services correspond to the description in the Contract and conform to all relevant specifications, samples and/or descriptions therefor;
  - b) the services are fit and sufficient for the purpose for which they are intended;
  - c) the services are of the quality specified in the Contract or, if no quality is specified, the acceptable quality;
  - d) the services strictly comply with all applicable laws, regulations, standards and codes.
- 2.5. The Supplier must ensure that the Supplier's personnel competent and have all the necessary and appropriate skills, training, background and valid qualifications to carry out the duties and responsibilities of their positions and the tasks allocated to them.
- 2.6. The Supplier acknowledges that the obligations in this clause 2 are essential conditions of the Contract.

**3. Price and payment**

- 3.1. KETO must pay the Supplier the price for the services as specified in the Contract. Unless specified otherwise in the Contract, the price shall be payable upon completion of the services and within 30 days from the invoice.
- 3.2. The price is fixed and firm and, unless otherwise stated in the Contract, the price shall be exclusive of any applicable GST. KETO must reimburse the Supplier for the amount of any GST payable in respect of any supply made under or in connection with the Contract, provided that the Supplier provides KETO with a tax invoice in respect of that supply.
- 3.3. The price shall be payable in the "currency" stated in the Contract or if none is stated, in Australian dollars.

- 3.4. The amount otherwise payable by KETO to the Supplier shall be reduced by any amount due from the Supplier to KETO or that KETO is entitled to be paid, or to deduct, set off or withhold under the Contract or under any other contract with the Supplier, for breach or otherwise, which amount shall be a debt owing from the Supplier to KETO.

**4. Completion**

- 4.1. Except as otherwise provided elsewhere in the Contract, completion shall be deemed to have occurred when the services have been completed by the Supplier at the time and place specified in the Contract or directed by KETO and when KETO has inspected the services and satisfied itself that they are apparently in conformity with the requirements of the Contract.
- 4.2. KETO or any third party authorised by KETO may inspect the services at any time prior to their completion.

**5. Variations****5.1. Variations by KETO**

KETO may direct the Supplier to vary the services to be supplied under the Contract and the Supplier shall comply with such direction. The price of any variation shall be agreed between the parties, or if not agreed, priced in accordance with reasonable rates and prices determined by KETO. The price of any variation shall be added to or deducted from the price, as the case may be.

**6. Insurance and Indemnity**

- 6.1. During the Contract, the Supplier shall at its own cost and in a form acceptable to KETO, maintain the following insurance:
  - a) workers compensation insurance in accordance with the applicable regulations;
  - b) insurance of its own plant, equipment and vehicles for their replacement value;
  - c) an occurrence based public and product liability insurance covering liability arising out of any injury to or death of any person or any loss of or damage to any property, including any loss of use, for an amount not less than AU\$10,000,000 in respect of any one occurrence; and
  - d) if the provision of the services involves the provision of professional services, a professional indemnity insurance to a minimum value of AU\$10,000,000 for each and every claim in respect of liability arising by reason of any act, omission or error of the Supplier in performance of the professional services.

The policies in clause 10.1(b) and (c) shall cover the respective rights, interests and liabilities of KETO and the Supplier.

The policy in clause 10.1(d) shall be maintained for a period of 6 years after completion of the services.

At the date of the Contract and whenever requested by KETO, the Supplier shall provide to KETO written evidence that the required insurances have been effected. If after being so requested by KETO, the Supplier fails promptly to do so KETO may withhold payment until such evidence is produced by the Supplier.

- 6.2. The Supplier shall indemnify and keep indemnified KETO from and against all claims, liability, loss, costs and damage howsoever arising out of or in connection with any breach of the Contract by the Supplier or any act or omission of the Supplier in respect of the services.

**7. Defects Liability**

- 7.1. Without limiting any of KETO's rights under the Contract or in general law, the Supplier hereby guarantees the services against any omissions, defects or failures (whether or not apparent) at any time from the date of delivery of all of the completion of the services until 12 months from such date, notwithstanding that such omissions, defects or failures may come to the attention of KETO at any time after expiry of that period.
- 7.2. Without limiting any other rights of KETO, if the Supplier breaches its obligations under clause 7.1, the Supplier shall, at the option of KETO:
  - a) refund the price; and/or

b) resupply the services,  
and the Supplier shall be liable for all resulting costs and expenses incurred by KETO.

7.3. KETO may, at its option, have any resupply of the services referred to in clause 7.2 undertaken by a third party or undertake the resupply itself, and all resulting costs and expenses shall be borne by the Supplier.

## 8. Intellectual Property and confidentiality

8.1. The Supplier hereby grants to KETO a perpetual, irrevocable, non-exclusive, royalty-free, transferable licence (with the right to sublicense to the end-user) to use all intellectual property (whether owned by the Supplier or not) associated with the services.

8.2. Each party shall keep confidential all information and documentation related to the Contract and the services except KETO is permitted to provide any such information and documentation to KETO's customer.

## 9. Suspension and termination

9.1. KETO may terminate or suspend the Contract:

- a) immediately by notice to the Supplier, if the Supplier is in breach of the Contract and fails to remedy the breach within 5 days of the receipt by it of a notice in writing from KETO specifying the breach and requiring the Supplier to remedy it;
- b) immediately by notice to the Supplier, in the event of non-compliance by the Supplier, its subcontractors or agents with clause 10 or occupational health and safety regulations or in case of serious imminent danger; or
- c) on 30 days' written notice for any or no reason.

9.2. KETO shall not be liable for any loss, cost or damage arising by reason of suspension or termination of the Contract pursuant to clause 9.1, but suspension or termination of the Contract shall be without prejudice to the rights of either party accruing prior to suspension or termination.

9.3. KETO may immediately by notice to the Supplier terminate the Contract or take out of the Supplier's hands the whole or part of the work remaining to be completed if the Supplier is or states that it is insolvent or likely to become insolvent, is or likely to become financially unable to proceed with the Contract, is subject to an application or an order for the appointment of a liquidator or administrator, is subject to any form of external administration, enters a deed of company arrangement with its creditors or is wound up or likely to be wound up.

## 10. Safety

10.1. The Supplier must maintain safe working conditions at all times, and comply with the relevant occupational health and safety and any KETO's occupational health and safety and environmental policies brought to the Supplier's attention or applicable at KETO's or KETO's customer's site.

10.2. The Supplier must ensure at all times that necessary protective equipment is provided and that any equipment and tools used for the supply of the services are in safe working condition.

10.3. The Supplier shall ensure that any subcontractor complies with the relevant occupational health and safety as well as any KETO's and KETO's customer's occupational health and safety and environmental policies and procedures.

## 11. Entire Contract

The Contract constitutes the entire agreement between the Supplier and KETO and supersedes all previous communications, whether oral or written, relating to the subject matter of the Contract. Except as otherwise expressly provided in the Contract and to the extent permitted by law, KETO excludes all statements, representations, warranties, conditions, promises, undertakings, covenants and other provisions, express or implied (and whether implied by law or otherwise) relating to the subject matter of the Contract.

## 12. Severance

If any provision or part of any provision of the Contract is invalid, illegal or unenforceable, such provision or part thereof shall be severed herefrom and the remainder shall continue in full force and effect.

## 13. Waiver

Any waiver by KETO of strict compliance with the Contract shall not (i) be deemed a waiver unless it is in writing and signed by an authorised officer of KETO; (ii) be deemed a continuing waiver of compliance.

## 14. Governing law

The Contract shall be governed by the law of Western Australia, Australia.

## 15. Assignment and subcontracting

The Supplier must not assign or subcontract any of its rights or obligations or transfer any of its liabilities under the Contract to any person without KETO's prior written consent. With any request for such consent, the Supplier shall give KETO written particulars of the assignment or subcontract and any additional information reasonably requested by KETO, including the proposed subcontract documents without prices.

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