

# Purchase Order Terms and Conditions

## 1 Definitions

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In these Purchase Order Terms and Conditions (unless the context otherwise requires) the following terms have the corresponding meanings:

<b>Term</b>	<b>Meaning</b>
<b>Acceptance</b>	has the meaning given in clause 8, and <b>Accept, Acceptable</b> and <b>Accepted</b> have corresponding meanings.
<b>Arc</b>	Arc Infrastructure Pty Ltd (ABN 42 094 721 301).
<b>Arc Data</b>	all data or information in any medium or format that is provided or made available to the Supplier by Arc, including as it may be transformed by the Supplier in connection with this Purchase Order Contract.
<b>Business Day</b>	a day on which banks are open for business in Perth, Western Australia, excluding a Saturday, Sunday, public holiday in Perth, Western Australia and 27, 28, 29, 30 and 31 December.
<b>Confidential Information</b>	information that is, by its nature, confidential or the receiving party knows, or ought to know, is confidential, including (without limitation) the terms of the Purchase Order Contract.
<b>Consequential Loss</b>	<p>any loss of business, loss of contract, loss of profit, economic loss (except to the limited extent set out below in this definition), loss of use, loss of business reputation, loss of opportunities, loss of anticipated savings or wasted overheads, increase in operating costs, loss of production, any port, shipping or demurrage costs or fees or financing costs howsoever arising and whether in any action in contract, tort (including negligence), in equity, product liability, under statute or any other basis, but expressly excluding:</p> <ol style="list-style-type: none"><li>1 in respect of any personal injury claim, special loss or economic loss as those terms are used in the context of personal injury claims;</li><li>2 any loss arising from claims by third parties, Arc's Personnel or the Supplier's Personnel in respect of property damage, personal injury, sickness or death; or</li><li>3 any loss, damage or cost arising out of or in connection with fraud or wilful misconduct.</li></ol>
<b>Date for Delivery</b>	the date or dates specified in the Purchase Order.

**Date of Delivery** the date on which the Deliverables are actually supplied to Arc in accordance with the Purchase Order Contract.

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**Deliverable** any goods to be supplied or services to be performed by the Supplier as set out in the Purchase Order and the relevant Scope of Services (if any), and includes the documentation supplied with those goods or services, variations and incidental work that can be reasonably inferred as necessary to satisfy the Purchase Order Contract.

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**Delivery Point** the place identified in the Purchase Order as the place that the Deliverables are to be delivered to.

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**Government Agency** any government, parliament, governmental, semi-governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, government minister, agency or entity of any kind.

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**GST and GST Law** has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax.

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**Incoterms** *Incoterms 2010* as published by the International Chamber of Commerce.

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**Intellectual Property** all intellectual and industrial property rights, including trade marks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts, database rights and other intellectual property rights as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation dated 14 July 1967 (as amended from time to time), including any application or right to apply for registration of any of these rights.

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**Law**

- 1 Commonwealth, State and local government legislation including regulations, by-laws, orders, awards and proclamations;
- 2 legislation of any other jurisdiction with which the relevant party must comply;
- 3 common law and equity;
- 4 Government Agency requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals); and
- 5 any decision, rule, ruling, binding order, interpretative decision, directive, guideline, request or requirement of any Government Agency or other authority with which the relevant party is legally required to comply.

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**Modern Slavery** has the meaning given to it in the *Modern Slavery Act 2018* (Cth).

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<b>Modern Slavery Laws</b>	all applicable Laws relating to Modern Slavery or similar matters including but not limited to the <i>Modern Slavery Act 2018</i> (Cth).
<b>Network</b>	the railway network and associated infrastructure in Western Australia under the ownership or control of Arc or its Related Bodies Corporate from time to time.
<b>Personnel</b>	the officers, employees, agents, contractors and consultants of each party and in the case of the Supplier, includes its subcontractors and any employees of those subcontractors.
<b>Price</b>	the amount specified in the Purchase Order or in a Quote that is payable by Arc for the Deliverables and is exclusive of GST unless stated to the contrary.
<b>Purchase Order</b>	a purchase order issued by Arc from time to time in a form suitable to Arc in its absolute discretion.
<b>Purchase Order Contract</b>	has the meaning given in clause 3(a).
<b>Quote</b>	a quote for the Deliverables that has been accepted by Arc.
<b>Related Body Corporate</b>	has the meaning given to that expression in the <i>Corporations Act 2001</i> (Cth).
<b>Scope of Services</b>	the scope of services that particularise what the Deliverables are and what they include and, if the Deliverables are services that are to be performed on an Arc controlled site, how those services are to be performed.
<b>Sitework Conditions</b>	means: <ol style="list-style-type: none"> <li>1 the Arc Network Safeworking Rules and Procedures as issued by Arc from time to time in accordance with Arc's safety management system approved under section 99 of the <i>Rail Safety National Law (WA) Act 2015</i> (WA); and</li> <li>2 any other Arc procedures relating to undertaking work on or about Arc's Network which are provided to the Supplier; and</li> <li>3 the requirements of <i>Rail Safety National Law (WA) Regulations 2015</i> (WA), Schedule 1, as applicable and as amended from time to time; copies of which Arc will provide as required.</li> </ol>
<b>Supplier</b>	the entity specified in the Purchase Order.

**Supplier Code of Conduct** means Arc's supplier code of conduct, accessible at <https://www.arcinfra.com/supplier-information> as revised from time to time.

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**Taxes**

- 1 includes all taxes, fees, levies, duties and charges imposed or assessed in respect of the Purchase Order Contract by all Government Agencies including income tax (including withholding for prescribed payments or group tax), payroll tax, statutory superannuation contributions and workers' compensation payments and contributions, sales tax, customs duty, excise tax, and stamp duty; but,
- 2 does not include GST.

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**Term** has the meaning given in clause 5.

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**Variation** an increase or decrease of any part of a specific Deliverable, a change in character or quality of any part of a Deliverable, an omission of any part of a Deliverable, a change in Price or a change to the Delivery Point, delivery mode or Date for Delivery.

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## 2 Interpretation

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In these Purchase Order Terms and Conditions, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in these Purchase Order Terms and Conditions have a corresponding meaning;
- (d) no provision of these Purchase Order Terms and Conditions will be construed adversely to a party solely on the ground that the party was responsible for the preparation of these Purchase Order Terms and Conditions or that provision;
- (e) a reference to any Law includes:
  - (1) that Law as amended or re-enacted;
  - (2) a statute, regulation or provision enacted in replacement of that Law;
  - (3) another regulation or other statutory instrument made or issued under that Law; and
  - (4) any amendment made to a statute, regulation or provision as a consequence of another statute, regulation or provision; and
- (f) a reference to "includes" or "including" must be construed without limitation.

## 3 Formation of Purchase Order Contract

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- (a) Subject to clause 3(b) and 3(g), if Arc issues a Purchase Order to the Supplier, it constitutes an offer by Arc to engage the Supplier to supply the Deliverables

described in the Purchase Order on the terms of these Purchase Order Terms and Conditions, and the supply, the Purchase Order document, together with these Purchase Order Terms and Conditions, form the Purchase Order Contract.

- (b) Any terms and conditions supplied with the Deliverables by the Supplier (including as printed on consignment notes or other documents), will be of no legal effect and will not form part of the Purchase Order Contract (even if any Arc representative signs or annexes those terms and conditions to the Arc Purchase Order).
- (c) The following documents constitute the Purchase Order Contract in the following order of precedence (from highest to lowest):
  - (1) the Purchase Order;
  - (2) these Purchase Order Terms and Conditions;
  - (3) the Scope of Services, if any; and
  - (4) the Arc Sitework Conditions and Arc procedures as provided to the Supplier by Arc.
- (d) A Purchase Order Contract for the supply of the Deliverables is formed between Arc and the Supplier when the Supplier:
  - (1) communicates to Arc in a way that confirms or implies acceptance; or
  - (2) the Supplier supplies, or begins to supply, the Deliverables.
- (e) Arc enters into the Purchase Order Contract on its own behalf and as agent for its Related Bodies Corporate.
- (f) Except where the context requires otherwise, references in the Purchase Order Contract to "Arc" are references to Arc in its own right as recipient of the Deliverables and otherwise as agent for its Related Bodies Corporate.
- (g) If there is an existing contract between the parties for the supply of the Deliverables (including any master or umbrella type contract agreed between the parties), the parties acknowledge and agree that the terms of that contract prevail to the extent of any inconsistency with the terms of the Purchase Order Contract.

## **4 Issuing Purchase Orders**

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- (a) Upon entering into a Purchase Order Contract, the Supplier must supply to Arc the Deliverables in accordance with the terms of the Purchase Order Contract.
- (b) Arc is not liable to the Supplier for any costs, fees, payments or losses whether at law, in equity or otherwise, for which a valid Purchase Order has not been issued by Arc.
- (c) The Supplier acknowledges and agrees that the Purchase Order Contract does not confer any exclusive rights to the Supplier to provide the Deliverables to Arc during the Term.

## **5 Term**

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The Purchase Order Contract commences at the time and date when clause 3(d) is satisfied and continues until the later of:

- (a) one year from the date that Acceptance occurs; or
- (b) the date that the Purchase Order Contract is terminated in accordance with clause 18 (Termination).

## **6 Warranties**

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- (a) The Supplier represents, warrants and agrees that:
  - (1) it has the right to sell the Deliverables to Arc;
  - (2) it and its Personnel will supply the Deliverables in a good, proper and workmanlike manner and will exercise the standard of care, skill, judgment and diligence reasonably expected of a contractor experienced in the supply of the same or similar Deliverables;
  - (3) it will deliver the Deliverables by the date specified in the Purchase Order Contract;
  - (4) time is of the essence for the completion and delivery of the Deliverables;
  - (5) no conflict of interest exists or is likely to arise as a result of the supply;
  - (6) all Arc and third party materials and facilities used by the Supplier are and will be maintained and returned in good condition, apart from reasonable wear and tear; and
  - (7) it will obtain for the benefit of Arc all usual manufacturers', suppliers' and any other applicable third party warranties in respect of the Deliverables, together with any other warranties required by Arc.
- (b) The Supplier represents, warrants and agrees that the Deliverables will:
  - (1) match the description referred to in the Purchase Order Contract and be free of encumbrances, liens and reservation of title;
  - (2) in the case of goods, be designed, fabricated, tested, packaged, (and, if required by the Purchase Order Contract, installed and commissioned) in accordance with all Laws;
  - (3) in the case of goods, be of merchantable quality, new (unless otherwise specified) and free from any defect, fault or omission; and
  - (4) be fit for Arc's purposes as made known (expressly or impliedly) to the Supplier.

## **7 Delivery requirements**

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- (a) The Supplier must:
  - (1) clearly mark all delivery documents with the Purchase Order number and must ensure those documents accompany the Deliverables;
  - (2) supply the Deliverables to the Delivery Point on the Date for Delivery in accordance with the Purchase Order Contract or as Arc may otherwise authorise or direct; and

- (3) if requested by Arc, provide an acknowledgement of the Purchase Order Contract to Arc prior to the Date for Delivery.
- (b) Where the Deliverables are goods, the Supplier must also notify Arc of any unloading requirements for the Deliverables prior to the Date for Delivery.
- (c) The Supplier will not subcontract its obligations under the Purchase Order Contract without Arc's prior written consent.
- (d) The Supplier must not despatch a quantity of Deliverables greater than the quantity specified in the Purchase Order. Arc may return any excess quantity above the quantity specified in the Purchase Order Contract to the Supplier at the Supplier's cost.

## 8 Acceptance

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- (a) **Acceptance** means:
  - (1) when Arc provides written notice to the Supplier confirming that the Deliverables are acceptable; or
  - (2) on the date which is 20 Business Days after the Date of Delivery, where Arc has not issued a written notice of rejection to the Supplier.
- (b) If Arc rejects Deliverables that are goods, the Supplier must, at its cost, promptly collect and remove the rejected Deliverables or Arc may return the Deliverables to the Supplier at the Supplier's expense.

## 9 Ownership and risk

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- (a) Transfer of ownership and risk from the Supplier to Arc will occur as defined by the Incoterm nominated on the Purchase Order.
- (b) If no Incoterm is nominated on the Purchase Order, ownership of the Deliverables will pass to Arc upon the earlier of payment of the Price by Arc or delivery of the Deliverables. The passing of ownership or the delivery of the Deliverables to Arc does not constitute Acceptance and does not affect Arc's rights to reject the Deliverables under clause 8.
- (c) If no Incoterm is nominated on the Purchase Order, risk in the Deliverables passes to Arc when the Deliverables are delivered to Arc and there has been Acceptance in accordance with clause 8.

## 10 Taxes

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- (a) The Supplier must pay all Taxes to the relevant Government Agency. If the Supplier pays any Taxes on behalf of Arc, the Supplier must provide Arc with documentary evidence of the payment of those Taxes.
- (b) Notwithstanding clause 10(a), the Supplier will be solely liable for income tax imposed on the Supplier in respect of income derived by the Supplier in the provision of any Deliverables.

## **11 Defective Deliverables**

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- (a) During the Term, if Arc becomes aware that any Deliverables do not comply with the Purchase Order Contract, Arc may direct the Supplier to, at the Supplier's cost, rectify, replace or re-supply the Deliverables so that they comply with the Purchase Order Contract.
- (b) If the Supplier fails to comply with a direction given under clause 11(a), Arc may have the Deliverables rectified, replaced or re-supplied by another supplier so that they comply with the Purchase Order Contract and the cost of doing so will be a debt due and payable from the Supplier to Arc.

## **12 Payment and invoicing**

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### **12.1 Invoices**

- (a) The Supplier must deliver to Arc an invoice covering the Deliverables supplied or performed during the previous calendar month.
- (b) Invoices must quote the Purchase Order number associated with the Purchase Order Contract.
- (c) Where applicable, invoices must be substantiated by Arc approved timesheets and any other certification or supporting documentation as Arc may reasonably require.

### **12.2 Payment**

Subject to this clause 12, Arc will pay the amount set out in the invoice to the Supplier within 30 days of receipt of the invoice.

### **12.3 Expenses**

Any expenses incurred by the Supplier in supplying or performing the Deliverables will not be reimbursed by Arc unless agreed in writing prior to the expenditure, and for which proof of expenditure has been provided. Approved expenses will be paid at cost with no mark up.

### **12.4 Statement regarding payment of employees and subcontractors**

The invoice must include a written statement signed by an authorised employee of the Supplier in a form approved by Arc that the following have been paid:

- (a) all remuneration and other entitlements payable to or on behalf of the Supplier's employees in respect of the Deliverables during the period up to submission of the invoice;
- (b) all amounts payable to the Supplier's sub-contractors and suppliers in respect of the Deliverables; and
- (c) all relevant Taxes, duties, statutory fees, charges and other amounts payable by the Supplier in respect of the Deliverables.



## 12.5 Tax Invoice

Invoices provided to Arc by the Supplier must be Tax Invoices as defined in the GST Law.

## 12.6 Payment is not acceptance

Any payment of moneys by Arc to the Supplier under clause 12.2 is not:

- (a) evidence that the Deliverables comply with the Purchase Order Contract;
- (b) an admission of liability; or
- (c) approval by Arc of the Supplier's performance or compliance with the Purchase Order Contract,

and is only to be taken as payment on account and does not prevent Arc subsequently disputing an amount claimed for payment.

## 12.7 Disputes

Where there exists a bona fide dispute in relation to any amount set out in an invoice issued pursuant to the Purchase Order Contract, within the time required for payment Arc must pay the amount that is not in dispute.

## 12.8 Set off by Arc

- (a) Arc may deduct from moneys due to the Supplier any money due, or which may become due, from the Supplier to Arc under, or in connection with, the Purchase Order Contract.
- (b) Arc's entitlement to set off or deduct is not affected by:
  - (1) whether or not Arc has Accepted the Deliverables; or
  - (2) the existence of a dispute or disputes in relation to Arc's right to set off or deduct, or the amount which Arc intends to set off or deduct.

## 13 Variations

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- (a) At any time before supply of the Deliverables, Arc may direct the Supplier, in writing or by issuing an amended Purchase Order, to perform a Variation and the Supplier must, subject to clause 13(c), perform that Variation.
- (b) The Supplier must immediately give notice in writing to Arc if a Variation may or will affect any warranties given by the Supplier or the Price under the Purchase Order Contract and the Supplier must not perform that Variation unless and until Arc gives a further direction to perform that Variation.
- (c) The Supplier must not commence work on a Variation and will not be entitled to payment for a Variation unless and until:
  - (1) it has notified Arc in writing if the Variation will result in a change to the Price;
  - (2) Arc has agreed to the revised Price, if any; and

- (3) it has received a direction in writing or in the form of an amended Purchase Order from Arc to perform a Variation.

## **14 Intellectual Property**

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- (a) All Intellectual Property in any material produced by a party under the Purchase Order Contract will vest in Arc upon creation. The Supplier immediately assigns or transfers all Intellectual Property and ownership of such material to Arc.
- (b) Arc grants to the Supplier a royalty free and non-transferable licence to use the material in clause 14(a) for the purpose of performing the Purchase Order Contract during the Term.
- (c) Arc acknowledges that clause 14(a) does not affect the Intellectual Property in any pre-existing material proprietary to the Supplier which is incorporated into the Deliverables or any supporting materials. In such circumstances, the Supplier will grant or procure for Arc a royalty free, perpetual and irrevocable licence to use such pre-existing Intellectual Property to receive the benefit of the Deliverables.

## **15 Confidentiality**

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- (a) A party and its Personnel must not disclose Confidential Information of the other party without the first party's prior written consent, unless such disclosure is required by law or a stock exchange.
- (b) The Supplier and its Personnel that are engaged in the performance of the Purchase Order Contract must, on Arc's request, execute suitable confidentiality undertakings, agreements or deeds.

## **16 Compliance with Laws and Supplier Code of Conduct**

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- (a) The Supplier must obtain and maintain, at the Supplier's expense, any necessary licences for the supply or performance of the Deliverables in accordance with the Purchase Order Contract unless otherwise agreed in writing.
- (b) The Supplier must, and must ensure that the Supplier's Personnel, comply with all applicable Laws and licences (including those obtained by Arc) in supplying or performing the Deliverables.
- (c) The Supplier must supply Arc with all information in connection with the Deliverables and provide any assistance that may be necessary to enable Arc to comply with any Law and obtain any licence which Arc may be required to obtain.
- (d) The Supplier must comply with the Supplier Code of Conduct.

## **17 Insurance**

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### **17.1 Insurances to be effected**

- (a) The Supplier must (at its own cost) effect and maintain:
  - (1) public and products liability insurance cover on behalf of itself in the amount of \$20 million;

- (2) workers' compensation insurance; and
- (3) where the Deliverables involve the provision of services, professional indemnity insurance cover on behalf of itself in the amount of \$10 million,

for the Term, and in the case of professional indemnity insurance, continue to maintain professional indemnity insurance for 7 years from the expiry of the Term.

- (b) The Supplier must notify Arc prior to lapse or cancellation of any policy required in clause 17.1(a).

## 17.2 Supplier's further obligations

The Supplier must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the policies of insurance.

## 17.3 Primary

The insurances contemplated by this clause 17 are primary and not secondary to the indemnities referred to in this Purchase Order Contract.

## 18 Termination

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- (a) Arc may terminate the Purchase Order Contract in whole or in part by notice in writing:
  - (1) for convenience, by giving the Supplier not less than 14 days' written notice;
  - (2) immediately, if the Supplier commits a breach of the Purchase Order Contract which is capable of remedy and such breach is not remedied within 5 Business Days of written notice by Arc;
  - (3) immediately, if the Supplier commits a breach of the Purchase Order Contract which is not capable of remedy and fails to implement measures to prevent the recurrence of the breach acceptable to Arc within 5 Business Days of written notice by Arc;
  - (4) immediately, if the Supplier or any person supplying the Deliverables does not comply with all applicable laws and standards, directions of Arc and Arc's standards, policies and procedures relating to health, safety and the environment; or
  - (5) immediately, if the Supplier becomes, threatens to become or is in jeopardy of becoming insolvent or placed into administration.
- (b) Upon termination or expiry, the Supplier must provide all reasonable assistance necessary to enable the transfer of Arc's property and all related data, documentation and records to Arc or a third party nominated by Arc at no cost to Arc.

## **19 Indemnity**

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### **19.1 Supplier's wrongful act or omission**

The Supplier must indemnify Arc against any loss or claim suffered or incurred by Arc in connection with any wrongful act or omission by the Supplier, including any:

- (a) breach of contract, including any breach of this Purchase Order Contract;
- (b) tort, including negligence or breach of statutory duty; or
- (c) breach of equitable duty.

### **19.2 Third party claims**

The Supplier must indemnify Arc against any loss suffered or incurred in connection with any claim by a third party against Arc arising in connection with:

- (a) the Supplier's performance of this Purchase Order Contract; or
- (b) any Intellectual Property supplied by the Supplier, whether or not the loss arises in connection with a breach of duty or other wrongful conduct by the Supplier.

### **19.3 Benefit of indemnities**

- (a) In clauses 19.1 and 19.2, a reference to Arc includes a reference to Arc's Personnel, Arc's Related Bodies Corporate, and the directors, officers, agents, employees, contractors, consultants and suppliers of Arc's Related Bodies Corporate.
- (b) Arc holds the benefit of clauses 19.1 and 19.2 for itself and on trust for each other person specified in clause 19.3(a).

### **19.4 Proportionate liability**

The indemnities in clauses 19.1 and 19.2(a) shall be reduced proportionately to the extent that the loss or claim was caused by acts or omissions of Arc or Arc's personnel, agents or representatives.

## **20 Limitation of liability**

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### **20.1 Limit of liability**

- (a) Subject to clauses 20.1(b) and 20.1(c), the liability of the Supplier and Arc to each other in respect of any loss under the Purchase Order Contract in the aggregate for all claims not specified in clause 20.1(b) will be limited to the greater of \$150,000 or 300% of the Price.
- (b) The limitation on the parties' liability in clause 20.1(a) does not apply to, limit or restrict in any way, the parties' liability for claims and losses:
  - (1) arising out of personal injury, sickness or death;
  - (2) arising out of claims from third parties;

- (3) arising out of wilful or criminal acts of, unlawful or fraudulent acts or omissions of, and fraudulent misrepresentation by, a party;
  - (4) subject to any indemnities provided by that party in the Purchase Order Contract (but excepting the indemnity given by the Supplier in clause 19.1); and
  - (5) in relation to any special, exemplary or punitive damages.
- (c) The cap on liability under clause 20.1(a) does not limit the Supplier's liability:
- (1) to the extent that the Supplier recovers or is entitled to recover under; or
  - (2) for amounts that would be recoverable but for the Supplier's breach of, an insurance policy or insurance policies required to be effected under this Purchase Order Contract. In that case, unless clause 20.1(b) applies, the limit of the Supplier's liability is the greater of the amount set out in clause 20.1(a) and the amount recovered, or entitled to be recovered, or which should have been recovered (but for the Supplier's breach of the insurance policy or this Purchase Order Contract) under the insurance policies.
- (d) For the purposes of clause 20.1(c), in determining the amount that has been recovered or would have been recoverable, no deduction must be made for a deductible paid to the insurer by the Supplier.

## 20.2 Consequential Loss

Notwithstanding clause 20.1, the parties will not be liable to each other for Consequential Loss:

- (a) save to the extent that the Supplier recovers or is entitled to recover Consequential Loss under an insurance policy or insurance policies; or
- (b) that would be recoverable, but for the Supplier's breach of an insurance policy or insurance policies.

## 21 Documentation

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- (a) The Supplier must ensure that any documentation supplied with the Deliverables is suitable, accurate, comprehensive, complete and compliant with all Laws, relevant standards, and quality assurance requirements in the Purchase Order Contract.
- (b) If there is an error, ambiguity or inadequacy in the documentation supplied with the Deliverables, the Supplier must rectify that documentation. No additional amount will be paid to the Supplier for any change to the documentation which is necessary as a consequence of that error, ambiguity or inadequacy.

## 22 Health, safety, the environment and heritage protection

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- (a) In performing its obligations under the Purchase Order Contract, the Supplier must comply with all applicable laws and standards relating to health, safety, the environment and heritage protection.

- (b) The Supplier acknowledges and agrees that, when the Supplier is on an Arc site, Arc may at any time:
  - (1) conduct random tests for alcohol and drugs on the Supplier's Personnel who enter Arc sites; and
  - (2) exclude from any Arc sites, or direct the Supplier to remove, any of the Supplier's Personnel who test positive for drugs or whose alcohol reading exceeds 0.00%.

## 23 Anti-corruption

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- (a) The Supplier represents, warrants and undertakes to Arc that it and its Personnel:
  - (1) have not offered, given or agreed to give and shall not during the term of the Purchase Order Contract offer, give or agree to give to any person any bribe with the object of obtaining a business advantage; and
  - (2) will not engage in any activity which would constitute an offence under any applicable anti-bribery Laws, including but not limited to the *Criminal Code Act 1995* (Cth), United States Foreign Corrupt Practices Act of 1977, the United Kingdom's bribery Act 2010 and Canada's Corruption of Public Officials Act.
- (b) The Supplier shall indemnify and hold harmless Arc and its directors, officers, employees, and agents from and against any claims, actions or proceedings of any nature that Arc incurs arising in connection with the Supplier's breach of any representation, warranty or other obligation in clause 23(a).

## 24 Cybersecurity

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- (a) The Supplier must, and must ensure that all Personnel:
  - (1) comply with security policies, standards, requirements and specifications of Arc relating to Arc Data;
  - (2) do all things that a reasonable and prudent entity would do to ensure that all Arc Data is safe and protected at all times from unauthorised access or use by a third party or misuse, modification, damage or destruction by any person;
  - (3) provide, implement and maintain protective measures for Arc Data that are no less rigorous than required under good industry practice and commensurate with the consequences and probability of unauthorised access to, or use, misuse, modification or loss of, Arc Data; and
  - (4) satisfactorily remediate any security vulnerabilities discovered within a reasonable timeframe (as directed by Arc).
- (b) If the Supplier becomes aware of any actual or suspected:
  - (1) action taken through the use of computer networks that result in an actual or potentially adverse effect on the Supplier's information system and/or Arc Data residing on that system (**Cyber Incident**); or
  - (2) any other unauthorised access or use by a third party or misuse, modification, damage or destruction by any person (**Other Incident**),

the Supplier must:

- (3) notify Arc immediately (and no later than 12 hours after becoming aware of the Cyber Incident or Other Incident); and
- (4) comply with any directions issued by Arc, including:
  - (A) notifying the Australian Cyber Security Centre, or any other relevant body, as required by Arc of the Cyber Incident or Other Incident;
  - (B) obtaining evidence about how, when and by whom the Supplier's information system and/or Arc Data has or may have been compromised, and providing that detail to Arc on request;
  - (C) preserving and protecting any evidence as described in subclause (B) above for a period of up to 12 months;
  - (D) implementing any mitigation strategies to reduce the impact of the Cyber Incident or Other Incident and/or the likelihood and/or impact of any future similar incident; and
  - (E) preserving and protecting Arc Data (including as necessary reverting to any backup or alternative site or taking other action to recover Arc Data).

## 25 Modern Slavery

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- (a) The Supplier must and must ensure its Personnel:
  - (1) comply with Modern Slavery Laws;
  - (2) not engage in any conduct or omission which may breach, or put Arc in breach, of any Modern Slavery Laws;
  - (3) comply with all policies, procedures, guidelines, codes (including the Supplier Code of Conduct and other codes of conduct) of Arc relating to Modern Slavery;
  - (4) do all things required or necessary to mitigate or reduce risks of Modern Slavery within the Supplier's operations or supply chain; and
  - (5) comply with all reasonable directions of Arc, and otherwise provide all assistance, records and information and do all things necessary to facilitate Arc to comply with its obligations under the Modern Slavery Laws and to verify the Supplier's compliance with this clause 25.
- (b) The Supplier warrants and represents that it (and its directors and/or employees):
  - (1) have not been convicted of any offence involving Modern Slavery; and
  - (2) have not been and is/are not the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of any Modern Slavery Laws.
- (c) The Supplier must notify Arc immediately (and in any case within 24 hours) in writing if it becomes aware or has reason to believe that it, its Personnel or any

other participants in its supply chain in connection with this Purchase Order Contract have breached, or potentially breached, any Modern Slavery Laws.

## 26 General

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- (a) The Purchase Order Contract is governed by the law in force in Western Australia and each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia.
- (b) Notices, approvals, consents or other communications in connection with the Purchase Order Contract must be in writing and hand delivered, sent by prepaid post or email to a party's address set out in the Purchase Order. Any notice given by the Supplier in relation to a dispute or termination of the Purchase Order Contract must be copied to Legal at Arc (legal@arcinfra.com) and sent by the same method and at the same time as the original notice.
- (c) A right may only be waived in writing, signed by the party giving the waiver and a waiver of a right on one occasion does not operate as a waiver of that right if it arises again.
- (d) The Supplier's rights and obligations under the Purchase Order Contract may not be assigned or novated without Arc's prior written consent, not to be unreasonably withheld.
- (e) The Supplier is an independent contractor. Nothing in the Purchase Order Contract gives rise to a relationship of employment, agency, partnership or joint venture between the parties.
- (f) If any term or part of the Purchase Order Contract is, or becomes for any reason, invalid or unenforceable at Law, that term or part of the Purchase Order Contract is severed and the remainder of the Purchase Order Contract continues to be valid and enforceable in all things.
- (g) Clauses 6, 10, 12.8, 14, 15, 18(b), 19, 20, 23, 24 and 25 of these Purchase Order Terms and Conditions survive termination of the Purchase Order Contract.