

PROCUREMENT TERMS AND CONDITIONS

1. Definitions

In these Terms and Conditions:

- 1.1 **Agreement** means the agreement comprising the Purchase Order, these Terms and Conditions, and any other documents specified in the Purchase Order.
- 1.2 **Claim** means any claim, action, suit, demand, proceeding, notice, litigation, investigation, or judgment whether based in contract, tort, under statute or otherwise.
- 1.3 **Company** means Powertech Pty Ltd ACN 081 990 052 trading as Powertech.
- 1.4 **Corporate Social Responsibility Laws** include but are not limited to: equal opportunity laws, corruption and bribery laws, anti-money laundering laws, anti-modern slavery laws and laws dealing with the supply and/or export of sanctioned goods, services or information to foreign nationals or institutions, or the engagement in sanctioned activities, in any jurisdiction applicable to the Company and the Supplier.
- 1.5 **Defects** means any part of the Goods or Services that do not conform with clause 8.1 and Defective has a corresponding meaning.
- 1.6 **Defects Liability Period** is defined in clause 8.1 (j).
- 1.7 **Delivery Date** means the date for delivery of the Goods or performance of the Services stated in the Purchase Order, or if no date is stated, as reasonably directed by the Company.
- 1.8 **Delivery Point** means the place specified in the Purchase Order.
- 1.9 **Dispute** means any dispute or difference between the Supplier and the Company in connection with this Agreement or its subject matter.
- 1.10 **Force Majeure Event** is defined in clause 17.1.
- 1.11 **Goods** means the goods described in the Purchase Order and all goods, materials, supplies, equipment, or other things to be supplied as part of the Services.
- 1.12 **GST** has the meaning given within the A New Tax System (Goods and Services Tax) Act 1999.
- 1.13 **Intellectual Property Rights** means any patent, registered design, trademark or name, proprietary systems or information, copyright or other right which is protected or registered, or capable of protection or registration and any rights to apply for the registration or renewal of such rights.
- 1.14 **IP Warranty** is defined in clause 8.1(i).
- 1.15 **Insolvency Event** means any form of external administration of the property of any person whether under the provision of the Corporations Act 2001, the Bankruptcy Act 1996 or any other similar legislation or otherwise including bankruptcy, winding up, liquidation, voluntary administration and the appointing of a receiver or a receiver and manager.
- 1.16 **Law** means any applicable statute, rules, regulations, by-laws, codes, standards, ordinances, licences, orders, official policies, directions, requirements, authorisations and guidelines in force from time to time, whether made by a State, Territory, The Commonwealth or local government or by regulatory departments, bodies, instrumentalities, Ministers, agencies, or statutory authorities.
- 1.17 **Price** means the amount specified in the Purchase Order for the provision of Goods and/or Services.
- 1.18 **Purchase Order** means the purchase order issued by the Company to the Supplier in respect of the supply of the Goods and/or Services.
- 1.19 **Services** means the services described in the Purchase Order and the work to be performed by the Supplier as specified in this Agreement and includes (without limitation) the supply, hire, or provision of any Goods.
- 1.20 **Specification** means the specification of the Goods and/or Services set out in the Purchase Order.
- 1.21 **Supplier** means the supplier named in the Purchase Order.
- 1.22 **Terms and Conditions** means the terms and conditions set out in this document.

2. Terms and Conditions

- 2.1 Subject to clause 2.2:
 - a) these Terms and Conditions apply to the purchase of Goods and Services by the Company to the exclusion of all other terms and conditions, including any which the Supplier purports to apply or are endorsed on any correspondence or documents issued by the Supplier, irrespective of their date of communication to the Company;
 - b) the Agreement constitutes the entire agreement between the parties and supersedes any prior understandings (whether oral or written) regarding its subject matter.
- 2.2 To the extent of any inconsistency between these Terms and Conditions and the Purchase Order, the Purchase Order will prevail.
- 2.3 The operation of the Sale of Goods (Vienna Convention) Act is expressly excluded.

3. Supply of Goods and/or Services

- 3.1 The Supplier must supply the Goods and Services to the Company in accordance with this Agreement.
- 3.2 Services must be performed by the person(s) specified to perform the Services in the Purchase Order (if any). The Supplier must, at the request of the Company, remove or replace any personnel involved in performing the Services on the Site.
- 3.3 The Supplier must:
 - a) make the necessary arrangements for obtaining access, approvals, equipment, and facilities necessary to supply the Goods and Services;
 - b) use its own materials and equipment, at its cost, to provide the Goods and Services unless otherwise agreed in writing with the Company; and
 - c) if the Company supplies materials or equipment for use by the Supplier (Company Equipment), keep the Company Equipment maintained and properly secured and comply with all directions given by the Company in relation to the Company Equipment.

4. Delivery

- 4.1 The Supplier must ensure that all Goods are secured and packed in a manner that protects them against damage and deterioration during transportation to, and storage in, the delivery location.
- 4.2 The Supplier must deliver the Goods to the Delivery Point, and perform the Services, by the Delivery Date(s). The Supplier must strictly comply with any direction given to it by the Company in relation to the manner of performance of the Services or delivery of the Goods to the Delivery Point.
- 4.3 Should it become apparent to the Supplier that the Delivery Date(s) for the delivery of the Goods or performance of the Services will not be met, the Supplier must immediately notify the Company when performance will occur. If complete performance does not occur on the Delivery Date(s), the Company may terminate the Agreement in accordance with clause 18.1.
- 4.4 Payment of the Goods or Services or signing delivery receipts before inspection does not constitute acceptance of the Goods or Services.

5. Inspection

- 5.1 The Supplier agrees that the Purchaser, its client or their designated agents may enter upon the premises of the Supplier (or its supplier's subcontractors) at any time for the purpose of inspection and expediting of all work on Goods or Services contained in the Purchase Order. The Supplier shall

- make this a condition of any subcontracted works.
- 5.2 Upon inspection under clause 5.1, the Purchaser or its designated agent may reject any Goods or Services performed or being performed that does not conform with the Purchase Order, whereupon the Goods and Services rejected shall be replaced or re-performed at no additional cost to the Purchaser.
- 5.3 Any inspection and expediting done by the Purchaser or its designated agent shall not relieve the Supplier, or any obligations contained in the Purchase Order.
- 5.4 The Purchaser shall not be deemed to have accepted the Goods unless and until:
- a) the Purchaser has had a reasonable opportunity of examining the Goods and to conduct appropriate acceptance testing for the purpose of ascertaining whether they are in conformity with the Purchase order; and
 - b) the Purchaser notifies the Supplier that the Purchaser has accepted the Goods.
- 5.5 The Purchaser will promptly after inspection notify the Supplier of any defects in or damage to the Goods and hold any Goods found to be defective or damaged ('Defective Goods') for the Supplier's instructions for a reasonable period not exceeding 30 days. If the Supplier's instructions are not received within such a period, the Purchaser may return the Defective Goods at the Supplier's expense and risk, and any expense incurred by the Purchaser constitute a debt due and payable by the Supplier to the Purchaser.
- 5.6 Notwithstanding clause 7 of these terms and conditions, In the case of Defective Goods:
- a) acceptance and ownership of and title to the Defective Goods will not pass to the Purchaser;
 - b) the Purchaser shall be under no liability to accept or pay for the Defective Goods or their costs of Delivery;
 - c) property and risk in respect of those Defective Goods shall remain with the Supplier; and
 - d) the Purchaser reserves the right to make a Claim against the Supplier in respect of any such Defective Goods.
- 6. Payment and Price**
- 6.1 The Supplier must submit to the Company on the Delivery Date or within 7 days of the Delivery Date an invoice setting out the Purchase Order number and amount owing by the Company for the supply of goods and/or services.
- 6.2 Invoices must be supported by such records and other documents as are reasonable to substantiate the amounts claimed by the Supplier.
- 6.3 The Company will make payment within 30 days of the end of the month of the invoice, unless other terms have been agreed to in writing by the company.
- 6.4 The Company may withhold payment until all Goods have been tested and accepted by the Company.
- 6.5 If the Company disputes the amount of an invoice, the Company will not be required to pay the amount in Dispute until the Dispute is resolved.
- 6.6 Payment of a tax invoice may be withheld if the Supplier is in breach of any terms of this Agreement until the breach is resolved.
- 6.7 Unless stated otherwise in the Purchase Order, the prices shown in the Purchase Order are in Australian currency, firm, not subject to adjustment, and exclusive of GST.
- 7. Title and risk**
- 7.1 The Supplier warrants that it has good title to the Goods and that the Goods are free from any encumbrances, liens or any third party claims whatsoever.
- 7.2 Title to all Goods passes to the Company on delivery or, if the Company pays any amount before delivery, pro-rata the amount paid, at the time of payment.
- 7.3 Transfer of the title will not affect the rights of the Company as stated in the Agreement.
- 7.4 Risk in the Goods will be with the Supplier until the delivery of the Goods and receipt by the Company at the Delivery Point.

8. Warranty

- 8.1 Without limiting any other warranty or obligation under the Agreement, the Supplier warrants:
- a) the Services will be performed, and the Goods will be manufactured, to the standard of care, skill and diligence normally expected of a reputable and competent Supplier of similar Goods and Services;
 - b) the Services will be performed in a safe manner, by appropriately qualified and trained personnel;
 - c) the Goods are new, genuine, of merchantable quality, fit for the purpose intended, and free of defects in materials, workmanship, and design;
 - d) the Goods and Services will comply with the Specification and all applicable laws and Australian Standards;
 - e) the Goods will be appropriately packaged to protect against damage during handling, transit, and storage;
 - f) the Goods will correspond to any sample provided to the Company before the Purchase Order was issued;
 - g) if the Supplier demonstrated the Services to the Company before the Purchase Order was issued, the Services will correspond in nature and quality with the Services demonstrated;
 - h) if the Supplier showed to the Company a result achieved by the Services before the Purchase Order was issued, the Services will correspond in nature and quality with the services which achieved that result;
 - i) the sale or use of the Goods or Services will not infringe or contribute to the infringement of any Intellectual Property Rights (IP Warranty); and
 - j) there will be no defect or failure or malfunction of the Goods and Services (except to the extent attributable to wrongful use or failure to maintain) during a period of 12 months from the Delivery Date(s) or other defects period stated by the Company in the Purchase Order (Defects Liability Period).
- 8.2 The Company is not liable to pay the Supplier for any Goods or Services that contain Defects until the Defects have been adequately remedied.
- 8.3 Upon receipt of notice that Goods or Services contain Defects, the Supplier shall:
- a) diligently, and within the timeframe specified in the notice, or if any plan for rectification is approved by the Company, in accordance with such plan; and
 - b) at its own cost and expense (and no cost to the Company) re-perform, replace, or repair and make good the Goods or Services or part thereof found to be Defective (at the Company's option).
- 8.4 With respect of any remedial work of Defects performed by the Supplier under this clause 8, the Defects Liability Period will be extended for a period of 12 months from the date the remedial work is completed, or other defects period as stated by the Company in the Purchase Order.
- 8.5 If the Supplier fails to rectify any Defect (or diligently perform such rectification) in accordance with clause 8.3, the Company may rectify the Defect and the cost of such rectification will be a debt due and recoverable from the Supplier and may be deducted from any monies owing to the Supplier by the Company.
- 8.6 The Company's rights under clauses 8.3 and 8.5 are in addition to and not in lieu of any other remedies it may have at law or in equity.
- 8.7 The Supplier must ensure the Company has the full benefit of any manufacturer's warranties applicable to the Goods (and pursue such warranties on the Company's behalf if it requests).

9. Confidentiality

- 9.1 The Supplier must keep all information relating to the Company, its technology, projects and operations, the Services, and the Agreement strictly confidential.

10. Intellectual Property Rights

- 10.1 The Supplier warrants that the supply of the Goods and Services under these Terms and Conditions and any use of them by the Purchaser or any other person for any purpose, will not infringe any Intellectual Property Rights. The Supplier undertakes at its expense to defend, protect and hold harmless the Purchaser and the users of the Purchaser's products or services from and against any claim for infringement of any Intellectual Property Rights arising by reason of the supply and/or use of the Goods or Services.
- 10.2 The Company will retain sole ownership of all Intellectual Property Rights in all documents, materials and inventions which are generated, created or acquired (excluding use under licence from a third party) by the Supplier or the Supplier's personnel directly in connection with the performance of the Goods or Services under this Agreement (Relevant Intellectual Property Rights) for its own use and benefit in any manner it sees fit without any further fee payable to or consent required from the Supplier.
- 10.3 Each party will continue to retain sole ownership of all Intellectual Property Rights owned by that party before the provision of the Goods or Services commenced, or any Intellectual Property Rights acquired or developed by that party independently of the performance of this Agreement.
- 10.4 Each party grants to the other party a perpetual, non-exclusive royalty-free licence to its Background Intellectual Property as far as reasonably necessary for the Supplier to perform this Agreement and for the Company to obtain the benefit of the Goods and Services.

11. Compliance with applicable laws

- 11.1 The Supplier must comply with and ensure its personnel comply with all applicable laws and relevant standards published by the Standards Association of Australia that relate in any way to the supply of the Goods or performance of Services under this Agreement.

12. Health, Safety, Environmental and Social Responsibility

- 12.1 Without limiting clause 11, the Supplier must strictly comply with and ensure that all its personnel strictly comply with:
- all applicable laws in relation to health, safety, and environmental protection;
 - all Corporate Social Responsibility Laws; and
 - all policies and procedures notified to the Supplier by the Company from time to time and all lawful directions of the Company

The Supplier must use reasonable endeavours to ensure all persons in its supply chain comply with Corporate Social Responsibility Laws.

13. Insurance

- 13.1 The Supplier must procure and maintain the following insurances with reputable insurers on terms approved by the Company:
- public and products liability insurance for not less than \$10,000,000 or such other amount as the Company reasonably specifies;
 - insurance which covers the Goods for their replacement value until delivery of the Goods to the Delivery Point;
 - if the Services include advice or other professional services, professional liability insurance for not less than \$5,000,000 or such amount as the Company reasonably specifies.
 - Workers' compensation insurance as required by law; and
 - such other insurances as the Company reasonably requires,
- and provide certificates of currency upon the Company's request.

14. Indemnity

- 14.1 Unless due solely to a negligent act or omission of the Purchaser, the Supplier shall be liable for and must indemnify the Purchaser, its directors, officers, employees, contractors and agents against any and all Claims arising whether at common law, in equity, or under statute and caused or

contributed to, whether wholly or in part, directly or indirectly by:

- the performance, purported performance or non-performance of the Goods or Services;
- any breach of the Supplier's warranties;
- other terms of this Agreement; and
- acts of negligence, omissions or wilful misconduct of the Supplier's directors, officers, employees, contractors and agents resulting in:
 - injury to or death of any person;
 - loss or damage to any property; or
 - any other loss whatsoever.

15. Consequential Loss

- 15.1 Neither party will be liable to the other for any consequential loss or damages of any nature whatsoever whether based on contract, warranty, tort (including negligence) or otherwise including (but not limited to) those arising out of delay, loss of product, loss of production, business interruption, loss of revenue or loss of profits howsoever arising.

16. Disputes

- 16.1 If a dispute arises out of or in connection with the Agreement, then either party may by notice in writing served on the other party require that such dispute be resolved in accordance with clause 16.2.
- 16.2 Within fourteen (14) days after service of a notice under clause 16.1, senior representatives of each party must meet and use their best endeavours to resolve the dispute or agree on a process for resolving the dispute. If the dispute is not resolved or a process for resolving the dispute is not agreed to within 28 days of service of the notice referred to in clause 16.1, then the dispute may be resolved through litigation.

17. Force Majeure

- 17.1 Force Majeure Event means any event beyond the reasonable control of a party including the following events:
- Acts of war, invasion, acts of foreign enemy hostilities (whether war be declared or not), civil war, revolution, insurrection, military or usurped power or terrorism;
 - ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
 - contamination caused by any hazardous or toxic material or waste (including asbestos) existing on the site prior to the date of the Agreement or brought onto the Site after this date by or on behalf of the Customer;
 - shipping congestion at port of loading/unloading, blockades, embargos, shortage of transport, import restrictions or currency restrictions;
 - sabotage, strikes, lockouts, go-slow or any other industrial dispute or disturbance; and
 - Acts of God including all severe weather conditions, natural disasters, earthquakes, volcanic activity, hurricanes, cyclones, floods, fires, tsunamis and lightning strikes.
- 17.2 If a Force Majeure Event occurs:
- the party affected by the Force Majeure Event will submit a notice to the other party as soon as practicable of the Force Majeure Event and the extent to which that party is unable to comply with its obligations;
 - the obligations of a party under this Agreement will be suspended to the extent that it is wholly or partially precluded from complying with its obligations under this Agreement by the Force Majeure Event;
 - the affected party will use all reasonable diligence and endeavours to seek remedy, avoid or overcome the Force Majeure Event as quickly as practicable and otherwise seek to minimise any delays which may result from the Force Majeure Event;
 - the affected party will promptly on the cessation of the Force Majeure Event notify the other party of the cessation and recommence performance of its obligations under this Agreement; and
 - if the affected party is the Supplier, an amendment to the Delivery Date shall be the Supplier's sole remedy for any delays caused by the Force Majeure Event. The Supplier

is not entitled to any increases in Price, damages, expenses or costs in relation to the effect of the Force Majeure Event.

- 17.3 The parties acknowledge that in the event of an occurrence of a Force Majeure Event affecting the Supplier, the Company will be entitled to have the Goods supplied and Services performed by a person other than the Supplier during the period of the occurrence of the Force Majeure Event.
- 17.4 Either party may terminate this Agreement by giving written Notice to the other party if a Force Majeure Event continues for a period of six (6) months after a written notice is given under clause 17.2(a) in respect of that Force Majeure Event.
- 17.5 If this Agreement is terminated pursuant to clause 17.4:
- a) the Company (without prejudice to any other rights or remedies it has) must pay the Supplier in accordance with clause 5, after receipt of an invoice, of the portion of the Price due to the Supplier for the Goods delivered and Services performed in the relevant period up to the date of termination; and
 - b) the Supplier is not entitled to any other Claim.

18. Termination

- 18.1 If the Supplier:
- a) becomes insolvent or commits an act of bankruptcy;
 - b) fails to perform the Services, or deliver the Goods, by the Delivery Date(s);
 - c) is in breach of any of these Terms and Conditions and fails to remedy the breach within 7 days of receiving written notice from the Company of the breach;
 - d) has neglected or omitted to carry out any direction of the Company in respect of the Agreement and fails to comply with the direction within 7 days of receiving a notice to comply from the Company; or
 - e) has intimated that it is unwilling or unable to complete its obligations under the Agreement,
- the Company may terminate the Agreement without prejudice to its rights to recover damages or any other rights and make such other arrangements as the Company may consider necessary. Any additional expenditure incurred by the Company in connection therewith will be a debt due from the Supplier to the Company and payable on demand.
- 18.2 The Company may terminate the Agreement at any time at its absolute discretion without assigning any reason for the termination. In such circumstances, the Company will pay the Supplier for any Goods and Services already supplied and all costs reasonably incurred by the Supplier up to the time of termination. Any Goods and Services so paid for, whether completed or not, will become the property of the Company. The Supplier must provide all necessary supporting and substantiating documentation to evidence the costs incurred. The Company's liability to Supplier must under no circumstances exceed the amount for the Goods and Services otherwise payable under this Agreement.

19. Variation

- 19.1 The Purchaser may at any time prior to acceptance of the Goods or Services make any change(s) to any or all of the Purchase Order. If such change(s) cause an increase or decrease in the Price or change to the Delivery Date, a fair and equitable variation of the Price and Delivery Date shall be mutually agreed, or in the absence of agreement, as may

be reasonably determined by the Purchaser.

20. Notices

- 20.1 A notice served under this Agreement will be deemed to have been properly served if sent in writing to the address of the recipient as specified in the Purchase Order or otherwise notified by the recipient by prepaid mail, personally delivered, or email.

21. Set off

- 21.1 Without prejudice to any other rights, the Company may deduct from any amounts which may be, or become, payable to the Supplier, any money which may be or become payable from the Supplier to the Company including, without limitation, amounts which are stated in this Agreement to be debts due and payable by the Supplier to the Company.

22. Severability

- 22.1 If any clause, or portion of a clause, in this Agreement is considered invalid under the rule of law, it shall be regarded as stricken while the remainder of this Agreement shall continue to be in full effect.
- 22.2 Where any ambiguity, inconsistency or discrepancy exists between these Terms of Engagement and any other document forming part of the Agreement, these Terms of Conditions will take precedence.

23. Waiver

- 23.1 A party's failure or delay to exercise a power or right is not a waiver of that right. A waiver by the Purchaser is only effective if it is in writing and then only in relation to the particular obligation or breach in respect of which it was given and not in respect of any other breach or of any other provision.

24. Independent contractor

- 24.1 The Supplier provides all Goods and Services under these Terms and Conditions as an independent contractor.

25. Assignment

- 25.1 The Supplier may not assign the whole or any part of this Agreement without the prior approval of the Company.

26. Subcontracting

- 26.1 The Supplier must not engage any subcontractor to supply the Goods or perform the Services without the prior written consent of the Company.
- 26.2 The Supplier will ensure that any subcontractor it engages complies with the terms of this Agreement.
- 26.3 The engagement of a subcontractor does not relieve the Supplier from any of its obligations under this Agreement.
- 26.4 The subcontractor's performance, including the subcontractor's acts and omissions, shall be deemed to be the performance, act and omission of the Supplier.

27. Governing Law and jurisdiction

- 27.1 This Agreement is governed by the laws of the State of Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia.