

Terms of Purchase

In the absence of a separate agreement duly executed, between the parties, that specifically covers the same Goods or Services ("Separate Agreement"), these are the sole terms and conditions between the Purchaser and the Supplier. In circumstances that there is a Separate Agreement the terms and conditions of the Separate Agreement shall prevail to the extent of any conflict with these terms and conditions.

1. **Goods**

The Supplier will provide the Purchaser with the Goods and/or Services, and the Purchaser will pay for the Goods and/or Services, in accordance with this Agreement.

2. **Provision of Goods**

(a) **Time**

The Supplier must provide the Goods by the Delivery Date, in accordance with the Agreement. The Supplier acknowledges and agrees that delivery of the Goods by the Delivery Date is an essential term of this Agreement. The Supplier must notify the Purchaser in writing of anything that may delay delivery.

(b) **Inspection**

The Supplier shall permit the Purchaser to inspect the Goods prior to delivery. Any inspection carried out by the Purchaser shall not affect the Supplier's obligations under this Agreement or otherwise.

(c) **Quality**

The Supplier shall ensure that the Goods comply with the warranties given by the Supplier under Clause 11.

(d) **Packaging and storage**

The Supplier must comply with all applicable Australian and International standards and laws for the transport, testing, packaging, storage and handling and use of the Goods.

(e) **Warranty**

If the Supplier is not the manufacturer of the Goods, the Supplier shall ensure that any warranties or performance bonds granted by the manufacturer are in the name of the Purchaser as the beneficiary, assigned to the Purchaser or otherwise capable of being called upon by the Purchaser direct.

3. **Defective Goods or late delivery**

(a) If within 12 months of the later of the Delivery Date or the date of the Purchase Order, the supplied Goods are found to be defective or do not otherwise comply with these Terms of Purchase, the Purchaser may give notice to the Supplier requiring the Supplier, free of charge, to, at the option of the Purchaser:

- (i) resupply the Goods;
- (ii) replace any defective or damaged item or items comprising the Goods; or
- (iii) rectify any defects in or damage to, the Goods.

(b) Where the Supplier fails to deliver the Goods by the Delivery Date, or at the Delivery Point, the Purchaser may give written notice to the Supplier cancelling the purchase Order.

(c) the Purchaser's rights under this Clause supplement all other rights, powers and remedies the Purchaser might have. The exercise of those rights will not preclude or prejudice the exercise of any other rights, powers or remedies.

4. **Provision of Services**

(a) **Time**

The Supplier must perform the Services at the Services Location in accordance with the terms of this Agreement by the Completion Date. Completion of the Services by the Completion Date is an essential term of this Agreement. The Supplier must notify the Purchaser in writing of anything that may effect the completion of the Services by the Completion Date.

(b) **Notice**

If the Supplier has any reason to suspect or believe that the Services or part of Services may or will not be performed strictly in accordance with Clause 4(a) the Supplier must immediately notify the Purchaser (such notification not relieving the Supplier of its obligations under this Agreement).

(c) **Prior services**

Any Services provided prior to the date of this Agreement which were not provided under a separate written agreement are deemed to have been provided under this Agreement.

(d) **Variations**

The Purchaser may instruct the Supplier in writing to vary the scope (but not the general nature) of the Services. The Supplier must comply with that instruction subject only to agreeing a reasonable variation to the Purchase Price prior to commencing any work associated with the variation.

5. **Purchase Price**

(a) Subject to this Agreement, the Purchaser will pay the Purchase Price to the Supplier within 30 days of the receipt of the Supplier's tax invoice by the Purchaser. If the Purchase Price falls due for payment on a day that is not a business day, payment will be made on the next business day. The payment of the Purchase Price will not constitute an admission that the Supplier has supplied the Goods or Services in accordance with the Agreement.

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- (b) The Supplier may only issue a tax invoice for Services on completion of those Services (unless otherwise specified in the Purchase Order). the Purchaser may direct the Supplier as to the level of detail required for such invoices and may require the Supplier to provided evidence of the completion of the invoiced Services prior to payment.
- (c) Any amount which is required by law to be withheld by the Purchaser will be deducted from the amount payable to the Supplier.

6. Supplier Service Obligations

- (a) The Supplier must perform the Services:
 - (i) in accordance with this Agreement;
 - (ii) unless otherwise agreed by the Purchaser, at the Services Location;
 - (iii) in a competent, proper and workmanlike manner in accordance with good industry practice;
 - (iv) exercising a high standard of skill, diligence, knowledge, judgment and care;
 - (v) in a manner that is safe to both people and the environment;
 - (vi) in compliance with all the Purchaser safety, health and environmental policies made available to the Supplier from time to time;
 - (vii) in compliance with all applicable laws; and
 - (viii) using its best endeavours not to interfere with the activities of other persons working at the Services Location.
- (b) If requested by the Purchaser, the Supplier shall give to the Purchaser a program for the completion of the Services by the Completion Date.
- (c) If the Supplier engages agents or contractors to perform the Services, the Supplier shall ensure that such personnel are suitably qualified and competent.
- (d) In the performance of the Services at the Services Location, the Supplier shall comply with all reasonable directions of the Purchaser (or as the Purchaser may direct) and comply with any rules, policies and conditions referable to work being performed at the Services Location made available by the Purchaser to the Supplier.
- (e) The Supplier is responsible for all acts or omissions of its officers, employees and contractors in relation to the provision of the Services.
- (f) The Supplier is responsible for rectification of any environmental damage resulting from the Supplier's acts or omissions in performing the Services.

7. Costs and Taxes

- (a) The Supplier will bear and pay all costs and expenses in providing the Goods and/or Services. The Supplier's obligation under this Clause includes, but is not limited to, paying in relation to the Goods and/or Services, the cost of all labour, materials, supplies and services required to source and deliver the Goods and/or Services, all sales tax, import duty, export duty or other taxes or imposts (but excluding GST).

8. GST

- (a) Unless otherwise specified, any amounts payable under this Agreement are calculated or expressed exclusive of GST.
- (b) If GST is or becomes payable by a party for a supply under this Agreement, the recipient must pay to the supplier an amount equal to the GST payable on that supply.
- (c) An amount payable under this Clause must be paid:
 - (i) at the same time as the payment of the amount payable by the recipient in respect of that supply is due;
 - (ii) in addition to any amount payable by the recipient under this Agreement.
- (d) If the recipient fails to pay an amount payable under this Clause when due, the supplier may recover it from the recipient as a debt under this Agreement.
- (e) Unless a tax invoice for an amount payable under this Clause has already been provided, the supplier must deliver a tax invoice to the recipient within 14 days of receiving such payment.
- (f) If any payment to be made to a party under this Agreement to which this Clause applies is a reimbursement on indemnification of an expense or other liability incurred or to be incurred by that party, the amount of the payment must be reduced by the amount of any input tax credit to which the party is entitled for that expense or other liability, such reduction to be effected before calculation of the GST payable on that supply.

9. Title and Risk

- (a) Title to, and risk in, the Goods passes to the Purchaser upon acceptance of delivery in accordance with Clause 9(b). If the Goods are damaged or destroyed prior to delivery, the Purchaser may cancel the relevant order and is entitled to recover the whole or part of any payment made in relation to the damaged or destroyed Goods.
- (b) the Purchaser accepts the Goods if:
 - (i) the Purchaser advised the Supplier in writing that the Goods have been accepted (but signing for delivery does not constitute acceptance);
 - (ii) the Purchaser has not rejected the Goods within 7 days of the Delivery Date (provided that the Purchaser may only reject the Goods if any warranties relating to the Goods and given in this Agreement are untrue or have been breached or the Goods do not otherwise comply with the terms of this Agreement); or
 - (iii) the Purchaser uses the Goods in a manner that materially changes their condition.
- (c) The Purchaser's acceptance of the Goods will not preclude or prejudice any rights, powers or remedies the Purchaser may have as a result of a breach of any of the warranties given under this Agreement or any other term of this Agreement.

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10. Intellectual Property

The Supplier warrants that the use and on-sale of Goods by the Purchaser or the provision of the Services to the Purchaser will not infringe any patent, trademark, design, copyright or confidentiality undertaking either in Australia or elsewhere. The Supplier indemnifies the Purchaser and its successors or assigns against any loss, liability, costs or damages arising from breach of this warranty. the Purchaser

11. Supplier Warranties- Goods

In addition to any other representations or warranties implied by law, the Supplier warrants as follows:

- (a) it is the sole legal and beneficial owner of the Goods, free from all mortgages, charges, encumbrances, liens and other third party risks or claims;
- (b) the Goods conform with any specifications issued by the Purchaser;
- (c) the Goods conform with any samples or descriptions given by the Supplier to the Purchaser;
- (d) the Goods are new and of merchantable quality;
- (e) the Goods are fit for the purposes for which like goods would ordinarily be used;
- (f) the Goods satisfy the requirements of any standards that apply to them or goods of the same type as directed by any Government body, standards committee or regulatory body; and
- (g) the Goods satisfy the requirements of all laws applicable to them.

12. Supplier Warranties – Services

- (a) In addition to any other representations or warranties implied by law, the Supplier warrants as follows:
 - (i) the Services are fit for the purposes for which the Services would ordinarily be required and any other purposes notified by the Purchaser;
 - (ii) where the Purchaser has specified the requirements of the Services, the Services comply with the Purchaser requirements;
 - (iii) the Services satisfy the requirements of any standards that apply to them;
 - (iv) the Services will be performed in a competent, proper and workmanlike manner in accordance with good industry practice; and
 - (v) any individual engaged by the Supplier to perform the Services will have the necessary qualifications and accreditation.
- (b) If the Supplier breaches a warranty in Clause 11 or 12(a) or the Services do not comply with this Agreement, then at the Purchaser's discretion and upon demand by the Purchaser (and without limiting the Purchaser's rights, powers or remedies under this Agreement or at common law), the Supplier must at its expense:
 - (i) re-perform part or all of those Services; or
 - (ii) refund any amount paid by the Purchaser to the Supplier in relation to those Services;
- (c) If the Supplier fails to comply with Clause 12(b), the Purchaser may engage another Supplier to provide the Services and recover the Purchaser's costs of doing so from the Supplier as a debt.

13. Termination

- (a) The Purchaser may terminate an order or supply arrangement, by notice given to the Supplier, if any of the following circumstances occur:
 - (i) the Supplier breaches these terms; or
 - (ii) the Supplier becomes an "externally administered body corporate" or an "insolvent under administration" (as defined in the Corporations Act); or
- (b) Termination of the Agreement will not prejudice any right, power, remedy or claim that has arisen prior to termination.

14. Indemnity and Limitation of Liability

(a) Indemnity

Subject to Clause 14(b), the Supplier will be liable for and in respect of, and will indemnify and keep indemnified the Purchaser against, all Loss arising from a breach of any warranty contained in this Agreement.

(b) Limit of Liability

- (i) The Purchaser is not liable to the Supplier for any consequential or indirect loss or damage or for loss of revenue or profit, and loss of use or loss of opportunity arising in connection with this Agreement.
- (ii) The Supplier is not liable to the Purchaser for any consequential or indirect loss or damage or for loss of revenue or profit and loss of opportunity arising in connection with this Agreement unless such loss arises in respect of an event required to be covered by an insurance policy required by Clause 15, in which case the liability for such loss is limited to the level of cover required by Clause 15.
- (iii) The aggregate liability of the Purchaser under this Agreement is limited to payment of the Purchase Price for the Goods and/or the Services (as the case may be).
- (iv) The aggregate liability of the Supplier under this Agreement is limited to the aggregate of:
 - (A) the cost of resupply, replacement or rectification under Clauses 3(a) or 12(b); and
 - (B) the Purchase Price for the Goods and/or the Services (as the case may be)except to the extent that:

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- (C) the liability arises from or is referable to any personal injury, breach of the intellectual property indemnity, wilful default or fraud of the Supplier in which all cases the Supplier's liability is not limited; and
- (D) the liability arises from or is referable to an event to be covered by an insurance policy required by Clause 15, in which case the Supplier's liability is limited to the level of cover required by Clause 15.

15. **Insurance**

The Supplier must obtain and maintain such insurance against such risks, and on such terms, as a prudent supplier of the Goods and/or Services would undertake in each case with solvent and reputable insurers, including, without limitation, transit insurance (for an amount no less than the value of the Goods) and public and products liability insurance for the amount of \$20 million for any one loss or occurrence which insurance notes the interests of the Purchaser as a party to which cover extends.

16. **Assignment**

The Supplier cannot assign any of its rights or obligations under the Agreement. The Purchaser may assign or novate its rights and obligations under the Agreement by notice given to the Supplier.

17. **Notices**

- (a) A Notice must be in writing signed by or on behalf of the sender. A Notice may be given to the addressee by hand delivery, pre-paid mail, facsimile transmission or email.
- (b) If a Notice is sent by pre-paid mail it will be deemed to have been received by the addressee on the third business day after it is posted. If a Notice is sent by facsimile transmission or email, it will be deemed to have been received by the addressee when transmission has been confirmed by the sender's facsimile machine or software. A party may change its address or facsimile number by not less than 5 business days' notice to the other party.

18. **Miscellaneous**

- (a) No failure or delay by the Purchaser to exercise a right, power or remedy will operate as a waiver. No waiver by the Purchaser will be effective unless it is in writing signed by the Purchaser.
- (b) The Agreement is governed by the laws of the jurisdiction of the place in which the Purchaser has its registered address (the Jurisdiction). If the Purchaser is an Australian registered company, then the Jurisdiction will be the State of the registered office. If the Purchaser is a New Zealand registered company, then the Jurisdiction will be New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of the Jurisdiction.
- (c) **Precedence**
In the event of any inconsistency between the documents comprising the Agreement, the documents will prevail in the following order of precedence:
 - (i) Purchase Order;
 - (ii) Specifications;
 - (iii) the Special Conditions (if any) in the Schedule; and
 - (iv) these Terms of Purchase.
- (d) The Agreement constitutes the entire agreement between the Supplier and the Purchaser in relation to its subject matter. Any terms contained in any documents or information prepared by the Supplier seeking to limit or exclude liability concerning the Goods are deemed excluded. No modification or alteration to this Agreement shall be binding unless approved in writing by the Purchaser.

19. **Modern Slavery**

The Supplier must:

- (a) ensure that it complies with, and its officers and employees comply with, Modern Slavery Laws;
- (b) use reasonable endeavours to ensure its supply chain including any suppliers, equipment, goods or materials used in connection with performing this Agreement are not sourced or made through activities or conduct which would constitute Modern Slavery if performed in Australia or breach Modern Slavery Laws; and
- (c) implement, and continue to implement and improve, all necessary procedures to ensure that the Supplier complies with this clause 19 at all times, including due diligence and remediation processes, investigations and compliance systems;
- (d) promptly report to the Purchaser any Modern Slavery identified in the Supplier's business or supply chains and any remediation procedures.

The Supplier acknowledges and agrees that the Purchaser may share information provided under this clause 19 as required to comply with Modern Slavery Laws.

20. **Definitions**

In this agreement:

- (a) **Agreement** means these terms of purchase and the Purchase Order (including any Special Conditions in the Schedule) from the Purchaser to the Supplier together forming the terms and conditions of purchase of the Goods and/or Services.
- (b) **Completion Date** means the date by which the Services are to be completed as specified in the Purchase Order.
- (c) **Delivery Date** means the Delivery Date(s) for the Goods specified in the Purchase Order.

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- (d) **Delivery Point** means the Delivery Point(s) specified in the Purchase Order.
- (e) **Goods** means the Goods specified in the Purchase Order.
- (f) **Loss** means any cost, expense, loss, damage, liability or other amount.
- (g) **Modern Slavery** means slavery, servitude, forced labour, trafficking in persons (including orphanage trafficking of children), forced marriage, child labour, debt bondage and other slavery-like practices as defined in Modern Slavery Laws.
- (h) **Modern Slavery Laws** means the *Modern Slavery Act 2018 (Cth)*, Divisions 270 and 271 of the Criminal Code 1995 (Cth) and any other anti-Modern Slavery laws or regulations in force in Australia and where relevant, in other jurisdictions.
- (i) **Purchaser** means the purchasing entity specified in the Purchase Order being either TRILITY Pty Ltd (ABN 48 053 122 562), TRILITY Water Pty Ltd (ABN 94 004 012 873), TRILITY Macarthur Operations Pty Ltd (ABN 17 057 185 421), TRILITY Solutions Pty Ltd (ABN 88 009 395 340), TRILITY Solutions Australia Pty Ltd (ABN 91 101 568 914), TRILITY Solutions (SA) Pty Ltd (ABN 20 073 532 028) or TRILITY Services Pty Ltd (ABN 72 155 889 599) or TRILITY New Zealand Ltd (NZBN 9429047943117) all being wholly owned by TRILITY Group Pty Ltd (ABN 39 144 522 565)
- (j) **Purchase Price** means the Purchase Price for the Goods specified in the Purchase Order.
- (k) **Purchase Order** means the document initiated by the Purchaser and sent to the Supplier and is a summary of the Goods and/or Services that the Supplier will provide to the Purchaser.
- (l) **Services** means the services described in the Purchase Order, Specifications or Special Conditions (as the case may be).
- (m) **Services Location** means the location at which the majority of the Services are to be performed as may be specified in the Purchase Order.
- (n) **Specifications** means any specifications of the Purchaser (if any) attached to the Purchase Order.
- (o) **Supplier** means the party referred to as such in the Purchase Order.