

TERMS AND CONDITIONS FOR PURCHASE ORDERS

ISSUED BY ADHERETTES GROUP PTY LTD ACN 166 642 791 OF 359 PLUMMER STREET, PORT MELBOURNE VIC
3207
(ADHERETTES)

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Agreement means these terms and conditions, the Purchase Order issued by Adherettes and any attachments included with or referred to in the Purchase Order.

Authorities means any State, municipal, public, local or other authority or body claiming authority or jurisdiction over the Project or the Goods and/or Services.

Contractor means the party cited in the Purchase Order as the supplier of the Goods and/or Services.

day means calendar day.

Documentation means all documents prepared by or developed by or on behalf of, or provided to, the Contractor in the course of or arising out of the Project (including all documents, designs, plans, specifications, computer readable disks, tapes, other machine-readable records, models and samples prepared, received, processed or generated by or on behalf of the Contractor) other than documents which are for the sole purpose of its own records.

Fee means the fee specified in the Purchase Order.

Goods means the goods (if any) specified in the Purchase Order to be supplied by the time specified in the Purchase Order.

Law or **Laws** means acts, ordinances, regulations, by-laws, proclamations and subordinate legislation made under, by or pursuant to any commonwealth or state statute (including amendments to such legislation), or a requirement of any Authorities (including but not limited to any licence, permit, consent, approval, determination, certificate or other requirement), affecting the Project or the Goods and/or Services.

Purchase Order means the purchase order issued by Adherettes.

Services means the work and other services (if any) specified in the Purchase Order, to be carried out and completed by the time specified in the Purchase Order.

SOPA means the *Building and Construction Industry Security of Payment Act 2002* (Vic) and similar legislation in other States of Australia.

Termination Event means where the Contractor:

- (a) is an individual, commits an act of bankruptcy, has a bankruptcy petition presented against it or is made bankrupt;
- (b) is a corporation, is placed under official management (voluntarily or otherwise), has a receiver, liquidator or administrator appointed to it or has a winding up order made or creditors petition served on it; or
- (c) breaches this Agreement or refuses or fails to comply with, or ignores, a direction from Adherettes.

Warranties means and includes the following warranties given by the Contractor to Adherettes at the time of acceptance of the Purchase Order and repeated on delivery of the Goods and/or supply of the Services, in addition to any other express warranties in the Agreement:

- (a) that it has and will at all times have the particular skills, experience and ability to provide the Goods and/or Services;
- (b) that it will provide the Goods and/or perform the Services with the degree of skill, care and diligence of a professional experienced in the provision of these type of Goods and/or Services for a project similar to the Project, and within the times stipulated in this Agreement;
- (c) that the Goods and/or Services are suitable and complete in all respects for the requirements of this Agreement and the Project and that there are no ambiguities or discrepancies in the Agreement;
- (d) that all Goods and/or Services provided by the Contractor will comply with all relevant Laws and will meet or exceed any relevant Australian Standard and will be fit for the specific purpose for which they are intended;
- (e) that where no Australian Standard is applicable to the Goods and/or Services, then the Goods and/or Services will meet or exceed best industry practice and standards; and
- (f) that the Goods and/or Services and the provision of the Goods and/or performance of the Services do not infringe any patent, registered design copyright or other protected right or intellectual property right.

1.2 Interpretation of Goods and/or Services

Where this Agreement provides for:

- (a) the provision of Goods only, the references to "Goods and/or Services" shall be read as if they refer only to Goods;
- (b) the provision of Services only, the references to "Goods and/or Services" shall be read as if they refer only to Services; or
- (c) the provision of Goods and Services, the references to "Goods and/or Services" shall be read as if they refer to Goods and Services.

1.3 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) unless otherwise provided, the Fee is in Australian currency;
- (b) the clause headings shall not form part of the Agreement and shall not be used in its interpretation;
- (c) words in the singular include the plural and vice versa;
- (d) the word 'including' and any variant of that word shall not be construed as words of limitation; and
- (e) no term or provision will be construed against Adherettes on the basis that the Agreement or the term in question was put forward by Adherettes.

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2. ENGAGEMENT OF CONTRACTOR

2.1 Appointment

- (a) Adherettes appoints the Contractor to provide the Goods and/or Services in accordance with this Agreement, and the Contractor must provide the Goods and/or perform the Services as required by this Agreement.
- (b) The Contractor warrants that any artwork and production files provided by or on behalf of Adherettes are suitable and complete for the provision of the Goods and/or Services and the Contractor must immediately advise Adherettes in writing if the artwork and production files are in any way unsuitable or deficient.
- (c) The Contractor must fully and completely inform itself of all of Adherettes' requirements for the Goods and/or Services (and by providing or purporting to provide the Goods and/or performing or purporting to perform the Services deems that it has done so) and must comply with all instructions given by Adherettes regarding the Goods and/or Services.
- (d) The Contractor acknowledges that Adherettes may appoint a representative to carry out all of Adherettes' functions and to give directions under this Agreement.

2.2 Variations

Adherettes may direct the Contractor to perform a variation, and the Contractor must promptly comply with any such direction. The Contractor must not vary the Goods and/or Services except as directed in writing by Adherettes. The Fee may be adjusted, in respect of variations, by a reasonable amount as determined by Adherettes.

2.3 Warranties

The Contractor gives the Warranties to Adherettes, and acknowledges that Adherettes has entered into this Agreement relying on, amongst other things, the Warranties.

2.4 Indemnity

The Contractor is liable for, and indemnifies and keeps Adherettes indemnified against any liability, claim, action, suit, demand, damage, loss, charge, expense, cost (legal or otherwise) ("Loss") suffered or alleged to have been suffered, and any Loss incurred or alleged to have been incurred arising out of or by reason of a breach by the Contractor of any of its obligations under this Agreement (including a breach of any Warranties) in any way connected with the provision (or non-provision) of the Goods or performance (or non-performance) of the Services.

This indemnity extends to and includes any Loss suffered or alleged to have been suffered by Adherettes for labour and equipment hire costs (including after hour costs) and any council, statutory authority or utility permit fees arising out of or by reason of the provision (or non-provision) of the Goods or performance (or non-performance) of the Services.

The Contractor's liability under this clause will be reduced proportionately having regard to any contribution by Adherettes to any Loss.

3. SUPPLY OF GOODS AND/OR PROVISION OF SERVICES

- (a) If the Contractor proposes any change to the date for delivery (or dates for delivery) for any reason, the Contractor must immediately give written notice to Adherettes, who may in its absolute discretion accept or reject any such proposal.
- (b) If the Contractor fails to deliver the Goods and/or Services by the date or dates specified in this Agreement or by Adherettes, or fails to comply with this Agreement, then Adherettes may without prejudice to any of its other rights under this Agreement:
 - (i) refuse the Goods and/or Services delivered or left at the delivery site, or proposed to be provided or performed; and
 - (ii) procure similar Goods and/or Services elsewhere,

and the Contractor will be liable for all additional costs and losses incurred by Adherettes as a consequence of such failure (including the costs incurred by Adherettes by reason of such failure and any delay damages which Adherettes is liable to pay to the principal or head contractor).

- (c) Acceptance of the Goods and/or Services is subject to Adherettes' approval. Adherettes reserves the right to inspect any or all Goods prior to despatch from the Contractor's premises or on or after delivery. Such inspection does not imply acceptance of Goods by Adherettes and does not relieve the Contractor from its responsibilities, liabilities, warranties or guarantees. Where Adherettes finds that Goods are not acceptable, Adherettes may at the Contractor's expense either rectify the Goods into a condition acceptable to Adherettes or return the Goods to the Contractor and may deduct the costs of such repair or return in accordance with clause 5.5.
- (d) The property and the risk in Goods delivered or left at the delivery site nominated by Adherettes does not pass from the Contractor to Adherettes until Adherettes has inspected and accepted the same by written notice to the Contractor or Adherettes has paid for the Goods, whichever occurs first.
- (e) The Contractor must do all things to provide to Adherettes (and its successors, customers, assignees, purchasers and users of the Goods and/or Services) the benefit of all warranties, guarantees and undertakings in respect of the Goods and/or Services:
 - (i) directly from the Contractor; and
 - (ii) from the manufacturer and supplier(s) of the Goods and/or Services.

4. INSURANCES

- (a) Before the Contractor provides the Goods and/or commences the Services, the Contractor must, at its cost, effect and maintain the insurances set out in Schedule 1.
- (b) All insurances shall be effected with an insurer and on terms both approved by Adherettes.

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- (c) The Contractor must as soon as possible notify Adherettes if for any reason any policy of insurance under this Agreement terminates, lapses or is otherwise not renewed.
- (d) Other than for Professional Indemnity and Workers Compensation insurance, insurances shall be effected in the joint names of Adherettes and the Contractor, or alternatively, note the interests of Adherettes, and shall provide that all conditions, agreements and endorsements (with the exception of the limit of liability) operate as if there was a separate policy of insurance covering each of the insured.
- (e) When requested by Adherettes, the Contractor must permit Adherettes to inspect and take copies of any policy, evidence of currency of the insurances referred to in this clause 4. If the Contractor does not comply with its obligations under this clause 4, Adherettes may take out insurance of the type which is the subject of the Contractor's failure, defer making any further payment to the Contractor until the Contractor has complied, or do both. Any cost incurred by Adherettes in taking out such insurance shall be a debt due and payable by the Contractor to Adherettes, or may at any time be set off by Adherettes against payment of the Fee.

5. FEE AND PAYMENT

5.1 Fee

Provided that Adherettes is satisfied that:

- (a) the Contractor has provided the Goods and/or performed the Services in accordance with this Agreement;
- (b) the Contractor has complied with each of its obligations under this Agreement; and
- (c) it has received of a proper tax invoice from the Contractor in respect of any claim for payment of the Fee

and subject to clause 5.5 and any other right of set off that Adherettes has, Adherettes will pay the Contractor the Fee.

5.2 Fee fixed

The parties agree that the Fee is fixed and is not subject to rise and fall except as expressly set out in this Agreement.

5.3 Claims for payment

- (a) The Contractor shall submit written progress claims for payment of the Fee in accordance with the Purchase Order setting out the Contractor's valuation of the Goods provided and/or the Services performed and accompanied by such information and documentation as is required by Adherettes to verify the claim.
- (b) The Contractor must not include in a progress claim any claim for a variation or any other claim under this Agreement which purports to adjust the Fee or is a claim for any amount in addition to the Fee or any claim otherwise (including for damages for breach of contract, quasi-contract or quantum meruit) unless the amount of any such claim has been agreed by Adherettes in writing, or the amount has been disputed and has been referred to and

resolved under the dispute resolution procedure under this Agreement.

- (c) The Contractor acknowledges that Adherettes may withhold retention moneys from any amount payable to the Contractor under this Agreement or seek other security from the Contractor as a precondition to any payment being made to the Contractor. Such security or retentions will not exceed 5% of the Fee and such security or retentions will be returned at the expiration of such defects liability period advised in writing by Adherettes, and in the absence of any such advice, at the expiration of twenty four months from the last date of the delivery of the Goods and/or supply of the Services.

5.4 Payment

On or before the last business day in the month following the month in which the Contractor's progress claim is made, and subject to clause 5.5 and any other entitlement under the Agreement to deduct moneys from the Contractor, Adherettes shall pay to the Contractor the amount assessed by Adherettes as due to the Contractor. The Contractor is only entitled (including for the purposes of SOPA) to a progress payment of the amount assessed by Adherettes under this clause 5.4 less any moneys that may be set off or deducted by Adherettes pursuant to this Agreement upon a date which is the last business day in the month following the month in which the progress claim is made, which date shall for the purposes of the SOPA be the reference date. Any payment made by Adherettes to the Contractor does not constitute approval of any work nor will it be taken as an admission or evidence that any work, Goods or aspect of the Services has been satisfactorily carried out in accordance with this Agreement. Any adjudication application pursuant to any SOPA regime must be made to one of the following authorised nominating authorities: The Institute of Arbitrators and Mediators Australia, Building Adjudication Victoria Inc or Rialto Adjudications Pty Ltd.

5.5 Set off

Adherettes may deduct from moneys due to or claimed by the Contractor, or recover from the Contractor as a debt due and payable (including by having recourse to any security or retentions without giving notice to the Contractor):

- (a) any debt or other moneys due from the Contractor to Adherettes; and
- (b) any claim to money which Adherettes may have against the Contractor whether for damages (including liquidated damages imposed on Adherettes by any party in relation to the Project arising from a claim by Adherettes that the Project has been delayed by the Contractor) or in respect of any amount to be indemnified by the Contractor under clause 2.4 or otherwise,

whether under the Agreement or otherwise at law relating to the Goods and/ or Services.

5.6 Adequacy of Fee

The Contractor warrants that the Fee:

- (a) is appropriate and sufficient for the Goods and/or Services and takes account of all risks and contingencies (ascertainable and unascertainable) that may affect the Goods and/or Services; and

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- (b) includes minor or ancillary items not expressly mentioned in the Purchase Order which are necessary for the satisfactory completion of and provision of the Goods and/or performance of the Services including the connections between or to and from adjoining services or sites.

6. TERMINATION AND SUSPENSION

- (a) This Agreement may be terminated at any time by Adherettes giving written notice to the Contractor. Adherettes will not be liable to the Contractor for any payment, damages or compensation whatsoever in the event of such termination, other than as solely set out in accordance with clauses 6(b) and 6(c). Adherettes' rights pursuant to this clause 6(a) are additional to, and do not derogate from, Adherettes' other rights and remedies, which Adherettes may pursue and recover as if the Agreement was repudiated at common law by the Contractor and Adherettes accepted that repudiation.
- (b) If the termination is without cause and not connected with a Termination Event then, subject to clause 5.1(c) and provided further that the Contractor is not in breach of or has not defaulted in any of its obligations at the time of Adherettes' termination, the Contractor shall be paid a reasonable amount as determined by Adherettes having regard to the Fee and commensurate to the Goods and/or Services provided by the Contractor to the date of termination.
- (c) If the termination is due to a Termination Event, then Adherettes will not be required to make any further payment under the Agreement (if any is so payable) and may apply any retentions held by Adherettes or other security against:
- (i) any monies due and payable to Adherettes; and
 - (ii) progressively to meet the costs incurred by Adherettes in obtaining any substitute Goods and/or completing any incomplete Services and/or rectifying any defective Goods supplied and/or Services performed by the Contractor.
- (d) Adherettes shall account to the Contractor for all costs and expenses incurred by it in obtaining any substitute Goods and/or completing any incomplete Services and/or rectifying any defective Goods and/or Services ("completion cost"). If after Adherettes applies any retentions or other security, the completion cost is:
- (i) greater than the balance of the Fee owing to the Contractor pursuant to this Agreement, then Adherettes may recover such difference from the Contractor as a debt due and payable; or
 - (ii) less than the balance of the Fee owing to the Contractor pursuant to this agreement, then Adherettes shall pay such surplus money to the Contractor in full and final settlement of any and all claims that the Contractor has or may, but for this clause, have had arising from the termination.
- (e) If this Agreement is terminated, the Contractor must immediately deliver to Adherettes all

Documentation, and, if the Contractor has been providing Services, any other product of the Services generated by the Contractor which relates to the Services.

- (f) Adherettes may, without reason or cause and without any claim for extra cost or otherwise by the Contractor, direct the Contractor to suspend the supply of Goods or performance of Services. Adherettes may direct the Contractor to resume the supply of Goods and/or performance of the Services which have been suspended pursuant to this clause.

7. DISPUTES

- (a) If a dispute arises between the Contractor and Adherettes concerning any matter arising out of or in connection with this Agreement either party may give notice of that dispute to the other party.
- (b) Within 7 days of notice being given under clause 7(a), senior executives of the parties shall meet to endeavour to resolve the dispute. If the dispute is not resolved within 14 days of that meeting then the dispute shall be referred to an expert appointed by the parties (or, if the parties are unable to agree on an expert, an appropriately qualified engineer appointed by the President of Engineers Australia) for determination.
- (c) The existence of a dispute will not relieve the Contractor from supplying the Goods and/or performing the Services or any of its other obligations under and in accordance with this Agreement.

8. INTELLECTUAL PROPERTY AND INFORMATION

8.1 Copyright

- (a) Unless the Contractor within seven days of the issue of the Purchase order notifies Adherettes in writing to the contrary, any intellectual property in the Documentation and the products of the Services vest in Adherettes.
- (b) Upon the Contractor providing the notification in accordance with clause 8.1(a), it grants to Adherettes an irrevocable, unconditional and royalty-free licence (including the right to sub-licence) to use any Documentation and, where Services are being provided, the products of the Services, and any intellectual property in the Documentation and the products of the Services for any purpose. This licence includes and extends to any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to the Goods (if applicable) and/or the Project.
- (c) Unless requested to be delivered to Adherettes, upon completion of the Goods and/or Services, the Contractor must archive and maintain in safe custody all Documentation in its possession for a period of seven years.

8.2 Project information and publicity

The Contractor must not disclose and must use its best endeavours to ensure that its employees do not disclose to any person or make public information obtained by it relating to the Project or the Goods or the Services or the business of Adherettes without the prior written approval of

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Adherettes. Clause 8.2 will continue to bind the Contractor after the Goods and/or Services have been provided or after termination of this Agreement.

8.3 Records

The Contractor must keep accurate records of the supply of the Goods and/or performance of the Services. The Contractor must at the request of Adherettes deliver to Adherettes all Documentation in its possession or power relating to the Goods and/or Services boxed and indexed as requested by Adherettes. Upon completion of the supply of the Goods and/or performance of the Services the Contractor must archive and maintain all Documentation in its possession for a period of seven years.

9. GENERAL

- (a) This Agreement will apply to any Goods supplied by and/or Services performed by the Contractor prior to the issue of the Purchase Order.
- (b) Adherettes at its discretion may assign, transfer or novate this Agreement or any of its rights or obligations under this Agreement.

- (c) The Contractor agrees to execute all necessary documents and do all acts necessary to give effect to such assignment, transfer or novation.
- (d) This Agreement is governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of that State.
- (e) This Agreement is the entire agreement between the parties in relation to the Goods and/or Services and supersedes all previous agreements, proposals, representations, letters, correspondence and discussions.
- (f) If any provision of this Agreement is invalid, illegal or unenforceable in any respect the validity, legality and enforceability of the remaining provisions will not be affected and such invalid, illegal or unenforceable provision is to be severed from this Agreement.

Schedule 1
Insurances

	Requirements for insurance	Duration of cover
Professional Indemnity	A professional indemnity policy of insurance in respect of legal liability arising from a breach of professional duty, in a form reasonably acceptable to Adherettes. The level of cover shall be for not less than \$10 million for any one claim, there shall be one automatic reinstatement and the Contractor's excess shall be no greater than \$30,000.	The insurance cover shall be maintained for a period of 10 years following completion of the Services under the Agreement, or for a period of 10 years from the issue of a final certificate in relation to the Project, whichever is the later.
Public Liability	A public liability policy of insurance which covers Adherettes and the Contractor and is in a form reasonably acceptable to Adherettes. The policy of insurance shall be for an amount in respect of any one occurrence and in the aggregate not less than \$20 million.	The insurance cover shall be maintained until the Contractor completes carrying out the Services.
Workers Compensation	The Contractor shall insure against liability for death or injury to persons employed by the Contractor, any subcontractor or employee of any subcontractor, including liability by statute and at common law or other statutory insurance scheme (Commonwealth or State).	The insurance cover shall be maintained as required by law.
Plant and Equipment Insurance	A policy of insurance to cover claims for loss of or damage to those things used, or work undertaken, by the Contractor to perform the Services or any part of them but which will not form part of any works being constructed by or the construction of which is being managed by, Adherettes, including a waiver of rights against Adherettes, the Contractor and all subcontractors engaged by the Contractor.	The insurance cover shall be maintained until the Contractor completes carrying out the Services.

Where the Contractor transports Goods:

Transit	A policy of insurance to cover claims for loss of or damage to goods in transit from the time such goods leave any warehouse or place of storage for the commencement of the transit, and continuing during the ordinary course of transit until delivery to the site the subject of the Project.	The insurance cover shall be maintained until the Contractor completes carrying out the Services.
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