

## SUEZ GENERAL TERMS AND CONDITIONS OF PURCHASE OF GOODS AND/OR SERVICES

You warrant and represent that: (a) these General Conditions were provided to you sufficiently prior to the agreement to enter into the Contract, in order for you to effectively review, discuss and negotiate these General Conditions; (b) you have fully reviewed and understood these General Conditions; (c) these General Conditions are the subsequent result of your review, and the parties' discussion and negotiation (and it incorporates the parties' agreed amendments); and (d) you have freely chosen to agree to the General Conditions in the fulfilment of your commercial objectives, and having regard to your risks, obligations and liabilities. On reliance of each of your warranties and representations, we have agreed to purchase the Goods and/or Services from you.

Unless our Purchase Order expressly states that other terms and conditions are to apply to the purchase of Goods and/or Services, or attaches other terms and conditions for the purchase of Goods and/or Services, the parties' agreement for the purchase of Goods and/or Services will consist of our Purchase Order, these General Conditions, the documents referred to in the Purchase Order (excluding all of your terms and conditions that may be contained in or referenced by the documents referred to in the Purchase Order), and any additional agreed terms and conditions expressly stated in our Purchase Order (altogether, the **Contract**). Without limiting the preceding sentence, all other terms and conditions are excluded from the parties' agreement including any terms or conditions which you may purport to apply under any quotation, catalogue, confirmation of order, delivery notice, invoice or any other similar document. No course of dealing or business between us and you will be relevant to explain or supplement any term or condition save as provided for in accordance with these General Conditions. In the event of a conflict or inconsistency between these General Conditions and any additional agreed terms and conditions expressly stated in our Purchase Order, those additional terms and conditions will prevail to the extent of any inconsistency.

### 1. Definitions and Interpretation

#### 1.1 Definitions

Unless the context otherwise requires, in these General Conditions the following terms have the meanings set out below:

'SUEZ' 'we', 'us' and 'our' means the SUEZ entity issuing the Purchase Order.

'You' and 'your' means the person, firm and/or company to whom the Purchase Order is addressed.

'Authorised' means authorised by our Requestor.

'Business Day' means days excluding Saturdays, Sundays and public holidays in New South Wales.

'Contract' has the meaning given to that term in the second paragraph of this document.

'Delivery Date' means the date for the delivery of the Goods and/or for the completion of performance of the Services (as the case may be) stipulated in the Purchase Order and includes such other delivery date(s) as may be mutually agreed in writing between us and you.

'General Conditions' means these General Terms and Conditions of Purchase of Goods and/or Services.

'Goods' means any goods, materials, equipment, articles, items or substances to be supplied by you under the Contract.

'GST Act' means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

'Invoice' means: (a) a written statement (in electronic or such other form as directed by us) submitted by you to us in accordance with Clause 14.1; or (b) a RTCI.

'Intellectual Property Rights' means all rights in or to any copyright (and rights analogous to copyright), patents, database rights, registered design or other design rights, utility model, moral right, trade mark (whether registered or not and including any rights in get up or trade dress), brand name, service mark, trade name, eligible layout right, chip topography right and any other intellectual property and industrial protection rights whether registrable or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any such rights.

'Invoice Date' means in respect of: (a) a written statement submitted by you to us in accordance with Clause 14.1, the date of receipt by us of such statement; and (b) a RTCI, the date of issue to you.

'Order Amendment' means each Authorised amendment to any Purchase Order, each such Order Amendment (where applicable) having precedence over any earlier Order Amendment.

'Our Goods' means any articles or things belonging to us.

'Packaging' means any type of packaging in which the Goods are supplied to us, including bags, cases, drums, pallets and other containers.

'Personal Information' means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not, or any other definitions of the term or any corresponding term under applicable laws, which you collect or handle in the performance of, or in connection with, the Contract (including but not limited to Personal Information provided to you by us).

'Price' has the meaning given in Clause 3 below.

'Privacy Act' means the *Privacy Act 1988* (Cth).

'Proportionate Liability Legislation' means the following: (a) *Civil Liability Act 2002* (NSW); (b) *Civil Liability Act 2003* (Qld); (c) *Wrongs Act 1958* (Vic); (d) *Civil Liability Act 2002* (WA); (e) the *Law Reform (Contributory Negligence and Apportionment of Liability (Proportionate Liability)) Amendment Act 2005* (SA); (f) *Proportionate Liability Act 2005* (NT) and the *Building Act 1996* (NT); (g) *Civil Liability Act 2002* amended by the *Civil Liability Amendment (Proportionate Liability) Act 2005* (Tas) and the *Building Act 2000* (Tas); and (h) the *Civil Law (Wrongs) Act 2002* (ACT) and the *Building Act 2004* (ACT).

'RTCI' means a recipient created tax invoice issued by us to you pursuant to Clause 14.5.

'Purchase Order' means our Authorised purchase order as may be issued by us to you in respect of the supply of Goods or the performance of Services.

'Requestor' means the person specified as such in the Purchase Order, and may include the person we may in writing substitute for that person.

'Services' means any works or services to be supplied by you under the Contract.

'Related Body Corporate' has the meaning given in the *Corporations Act 2001* (Cth).

'Shipping Address' means the place(s) specified in the Contract for delivery of the Goods and/or performance of the Services.

'SUEZ Australia Group' means SUEZ Australia Holding Pty Ltd, any of its Related Body Corporates, and any joint venture in which SUEZ Australia Holding Pty Ltd or any of its Related Body Corporates has a participating interest, and anybody corporate or joint venture managed by SUEZ Australia Holding Pty Ltd or any of its Related Body Corporates.

#### 1.2 Interpretation

The following rules apply unless the context requires otherwise:

- (a) A reference to a person or a party includes reference to that person's or party's executors, administrators, successors, substitutes, assigns (in the case of a person), and permitted assigns (in the case of a party);

## SUEZ GENERAL TERMS AND CONDITIONS OF PURCHASE OF GOODS AND/OR SERVICES

- (b) A reference to a Clause is a clause of these General Conditions;
- (c) A reference to an Act or legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (d) A singular word includes the plural and vice versa;
- (e) A reference to a document or agreement (including a reference to the Contract) is to that document or agreement as amended, supplemented, varied or replaced;
- (f) The meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'such as' or 'for example' (or similar phrases) do not limit what else might be included; and
- (g) No rule of contract interpretation must be applied in the interpretation of this Contract to the disadvantage of one party on the basis that it prepared or put forward any document comprising part of this Contract.

### 2. The Contract

- 2.1 You agree to sell and supply, and we agree to purchase, the Goods and/or Services (as the case may be) in accordance with the Contract.
- 2.2 Nothing in the Contract requires us to acquire any minimum level of Goods and/or Services from you, and there is no exclusivity obligation on us under the Contract.

### 3. Price

- 3.1 You will sell and supply us the Goods and/or Services for the Price stated in, or calculated in accordance with, the Purchase Order. Unless otherwise stated, the Price will be inclusive of (and the Price has allowed for) all of your obligations and liabilities that may arise under the Contract, all the risks, costs and expenses of complying with each of the terms and conditions of the Contract and the exercise of any or all of our rights under the Contract including under Clauses 22.2 and 23.3, and all costs of manufacture, storage, packing, delivery, transportation, installation and commissioning (as applicable), insurance, and/or other levies and taxes imposed by any relevant authority on the Goods and/or Services. Any additional charges or variation to the price of the Goods and/or Services requires our prior written agreement.
- 3.2 The Price is fixed and is not subject to any adjustment except as set out in the Contract.

### 4. Amending a Purchase Order

- 4.1 We have the right, before delivery of the Goods or completion of the Services, to send you an Order Amendment adding to, deleting or modifying the Goods and/or Services, including making changes to the specifications, designs or drawings.
- 4.2 If an Order Amendment causes an increase or decrease in the cost of, or the time required for, the delivery or the performance of the Goods and/or Services, you may claim an adjustment to the Price and/or Delivery Date. The claim must be made in writing within 30 days of receipt of the Order Amendment.
- 4.3 On receipt of the claim for adjustment, the Price and/or Delivery Date will be adjusted as follows: a) as agreed by the parties; (b) if there is no agreement by the parties, in accordance with the applicable rates or fees in the Contract and/or a reasonable adjustment to the Delivery Date granted by SUEZ (as the case may be); and (c) to the extent that Clauses 4.3(a) and 4.3(b) do not apply to the Price adjustment, in accordance with reasonable rates or fees.
- 4.4 Nothing in this Clause will excuse you from proceeding to perform this Contract as amended by the Order Amendment.

### 5. Warranties, Liability and Insurance

- 5.1 You warrant that all Goods supplied to us will: (a) be free from defects and faulty design; (b) be of good workmanship and of sound and proper material; (c) conform in every respect with the quantity, quality, description and, if relevant, any samples, patterns, drawings, plan, specifications and any other requirements stipulated in the Contract; (d) be of merchantable quality and fit for the purpose made known to you, and the purposes for which goods of a similar kind are commonly supplied; and (e) be new (unless otherwise specified by us in the Contract).
- 5.2 You must provide the Services to us: (a) with reasonable skill, due care and diligence by using suitably skilled, experienced and qualified personnel and if the personnel are named in the Purchase Order, you must not use any other personnel other than those named in the Purchase Order to provide the Services unless otherwise agreed by us in writing; (b) in compliance with the specifications and requirements stipulated in the Purchase Order; and (c) fit for the purpose made known to you, and the purposes for which services of a similar kind are commonly performed.
- 5.3 You warrant that all Goods and Services supplied by you will at all times comply with or be performed (as the case may be) in accordance with all prevailing applicable laws, regulations and guidelines of the relevant authorities, and all Australian Standards.
- 5.4 You warrant that you will comply, and will ensure that your employees, agents and subcontractors operate under lawful employment agreements, have the right to work in Australia and possess all necessary work permits/visas
- 5.5 You warrant that you will comply, and will ensure that your employees, agents and subcontractors comply, at all times with our applicable plans, policies and procedures from time to time in force and notified to you.
- 5.6 All warranties are in addition to any statutory or other applicable warranties and will apply for the benefit of us and our successors, assignees and customers.
- 5.7 Without prejudice to our remedies at law in respect of your breach of any of your warranties or obligations set out in these General Conditions, you indemnify and keep us indemnified in full and at all times against all claims, loss, demands, actions, damages, costs, expenses (including legal expenses) and liabilities whatsoever (if any) awarded against or incurred, sustained, suffered or paid by us, to the extent arising out of or in connection with the supply of the Goods and/or performance of the Services or a breach of the Contract, in respect of: (a) any personal injury, illness or death to any person; (b) any damage to any property; (c) any claim that the Goods or Services infringe, or their importation, use or resale infringes, or the assignment of the Works to us infringes, the Intellectual Property Rights of any other person anywhere in the world, except to the extent that the claim arises from your strict compliance with any specification supplied by us; or (d) any liability to consumers in respect of the Goods and/or Services. Your indemnity is reduced to the extent that our negligent act or omission caused or contributed to the event giving rise to the obligation to indemnify.

### 6. Work At Our Premises

If you supply any Goods or Services to or at our premises, you must (at your cost):

- a) ensure that you and your employees, agents and subcontractors comply with all safety, security and on site regulations or rules as may be

## SUEZ GENERAL TERMS AND CONDITIONS OF PURCHASE OF GOODS AND/OR SERVICES

- applicable from time to time and with which we require you to comply in the course of performing the Contract; and
- b) ensure that your employees, agents and subcontractors personnel undergo an induction prior to entering the relevant premises.

### 7. Progress, Inspection and Testing

- 7.1 You will (at your cost) provide any programs of manufacture, performance and delivery that we may require. You will notify us without delay if your progress falls behind, or is at risk of falling behind, any of these programs.
- 7.2 We have the right, for the purpose of ensuring your compliance with the Contract, to send inspectors, representatives and/or agents to check (on giving no less than 2 Business Days' notice) progress at your facilities or premises (or the premises of any relevant subcontractors or any other person associated with you), to inspect all or any of the Goods and/or Services during their manufacture and processing period. Your agreement with any relevant subcontractor or other relevant person must reserve such right for us. You will provide all assistance reasonably required to facilitate our inspections. If we are not satisfied with the results of our inspections that you are complying with the Contract, you will take all necessary steps to remedy the non-compliance. Our inspections or approvals (or failure to inspect or approve) do not constitute or imply an acceptance of the relevant Goods and/or Services by us, and will not relieve you from your obligations under the Contract.
- 7.3 You must give reasonable notice to us of your testing of the Goods and/or Services ('Supplier Tests') and we or our representatives may attend Supplier Tests. You will provide us with such test certificates as we may reasonably require from time to time for any Supplier Tests.

### 8. Ethics and Sustainable Development

- 8.1 The SUEZ Australia Group has developed policies setting out its rules on ethical conduct and sustainable development, including the "Ethics Charter", "Ethics in Practice" guidelines and a policy entitled "Ethics in Supplier Relations" (together 'SUEZ Ethics Policies'). You acknowledge that you have received a copy of the SUEZ Ethics Policies which can also be found at <http://www.SUEZ.com.au/resources/publications/policies-procedures/>. You are expected to read, understand and adhere to the SUEZ Ethics Policies, and we reserve the right to monitor and/or audit your adherence to the SUEZ Ethics Policies. You also agree to ensure that your employees, subcontractors and agents supplying the Goods and/or performing the Services are aware of and adhere to the SUEZ Ethics Policies.
- 8.2 You undertake to adhere to the following ethical rules and to ensure the adherence to these rules by your employees, agents and subcontractors:
- (a) to refrain from using child labour or any other form of forced or compulsory labour in accordance with the International Labour Organization's standards;
  - (b) to refrain from any form of discrimination within your company or with regard to your agents or subcontractors;
  - (c) to ensure the safety of your personnel and third parties;
  - (d) to employ personnel strictly in compliance with all relevant laws and regulations;
  - (e) to respect the environment when designing, manufacturing, using and disposing or recycling of your products and minimizing any negative impact on the environment in compliance with all relevant national and international standards relating to environmental and public health legislation; and
  - (f) to proscribe during the performance of the Contract any form of corruption whatsoever.

### 9. Health, Safety and the Environment

- 9.1 You must supply the Goods and Services, and at all times act, in compliance with: (a) our policies, procedures and directions relating to health, safety and the environment; and (b) all relevant statutory requirements, including those relating to work, health, safety and the environment, the supply of Goods and Services, and in particular to the marking of hazardous Goods, the provision of data sheets for hazardous materials, and all relevant regulations relating to food.
- 9.2 Hazardous Goods must be clearly marked and display the name of the material in English. Transport and other documents must include declaration of the hazard and name of the material in English, and Goods must be accompanied by safety and emergency information in English.

### 10. Delivery and Packaging

- 10.1 You must deliver all Goods and perform all Services expeditiously and without delay, and in any case by the Delivery Date and at the Shipping Address. Delivery of the Goods will occur when the Goods (free of all defects and damage) have been delivered to the Shipping Address, and we have provided written receipt of the Goods. You are entitled to claim an adjustment to the Delivery Date to the extent that delivery of the Goods and/or completion of the Services by the Delivery Date have been delayed by our act or omission or our breach of the Contract.
- 10.2 You must ensure that all Goods supplied are properly labelled, packed, secured and protected against damage and deterioration in transit, and despatched (at your cost) to arrive in good condition. All Goods must bear the description, the quantity of the contents and the Purchase Order Number on each package. Unless otherwise stated in the Purchase Order, all packaging will be non-returnable and you must not make any additional charge for containers, packaging material, crating, boxing, or storage in relation to the Goods and/or Services. If the Contract states that packaging is returnable, you must give us full instructions before delivery. You must pay the cost of all carriage and handling for the return of any packaging. We will not be liable for any packaging lost or damaged in transit.
- 10.3 Unless otherwise agreed in writing prior to the Delivery Date, we assume no obligation or risk whatsoever for Goods shipped or delivered in excess of the quantity stated in the Purchase Order. If you deliver Goods in excess of the quantity stated in the Purchase Order, we may either return such excess Goods to you at your cost; or require you to take possession of such Goods from our premises or from the premises of our customer(s).
- 10.4 We require a reasonable time after delivery of the Goods and/or performance of the Services to inspect, review and/or test the Goods and/or Services for conformance to the requirements of the Contract. Unless we have notified you in writing that we have accepted the Goods and/or Services, we will not be deemed to have accepted any Goods and/or Services until we have had a reasonable time to inspect them following its delivery or performance.
- 10.5 You will give us reasonable advance notice of the date and method of each delivery and supply, and comply with our reasonable instructions relating to these arrangements. You will rectify or replace at your cost any Goods damaged or lost in transit. You must provide us with all

## SUEZ GENERAL TERMS AND CONDITIONS OF PURCHASE OF GOODS AND/OR SERVICES

working drawings, operating instructions, maintenance manuals, plans, specifications, trainings, demonstrations and information reasonably necessary or reasonably required by us to enable us to use the Goods and/or the Services for their intended purpose. You must also provide us with all certificates of origin, quantity, quality, insurance and compliance with industry requirements or standards in such form as we may from time to time reasonably request.

- 10.6 You must make sure that the following documents and/or information accompany each delivery of Goods to us: packing slips; original bill of lading, and/or other relevant transportation receipts; quantity of goods delivered; relevant purchase order number.
- 10.7 You must: (a) send on the Delivery Date, a separate advice note which includes details of the Goods and/or Services to be (as applicable) delivered or performed at the Shipping Address, together with an invoice for each delivery or consignment of the Goods and/or Services; and (b) mark clearly the Purchase Order Number on each package, packing notes, invoices, monthly statements and all other correspondence or documents relating to the Purchase Order.

### 11. Late Delivery and Performance

- 11.1 If the Goods and Services or any part of them are not delivered or completed by the Delivery Date and at the Shipping Address, then we may cancel (at no cost) any undelivered or unperformed balance of the Goods or Services. We may also reject and return for full credit, and at your cost, any other Goods and/or Services that we believe can no longer be used as originally contemplated by us owing to the failure to deliver or perform in accordance with the Contract. We may then engage a third party to provide the same or similar Goods and/or Services.
- 11.2 Instead of Clause 11.1, if there is any delay by you in delivering or completing the Goods and/or Services by the Delivery Date which had not been specifically agreed by us in writing, you will reimburse us for the losses, costs and expenses that we have directly incurred arising from your late delivery or completion.

### 12. Title and Risk

- 12.1 You will bear all risks of loss or damage to the Goods until they have been delivered to us, or a party/parties designated in writing by us, at the Shipping Address, and the Goods have been accepted in accordance with Clause 10.4. Until such time of risk passing, you will insure them in accordance with the Contract.
- 12.2 Legal and equitable ownership of the Goods (free of all liens, charges, encumbrances and security interests) will pass to us:  
(a) when the Goods have been delivered to us; or, if earlier, when they have been paid for in full; or,  
(b) if we make any advance or stage payment, at the time such payment is made.
- 12.3 If ownership passes prior to delivery of the Goods, you will immediately upon receipt of payment (in full or an advance or stage payment as applicable), appropriate the Goods and keep them separate from all other goods in your possession and must mark the Goods as our property).

### 13. Rejection

- 13.1 Notwithstanding any prior payment, the Goods and/or Services are subject to inspection, review and/or testing within a reasonable time of delivery or performance, and if the Goods and/or Services do not conform to the requirements of the Contract, we have the right to either: (a) reject any Goods or Services (in whole or in part), in which case you must refund the Price to us in full; or (b) require you to repair, replace, re-perform or make good the non-conforming Goods and/or Services within 14 days and at no cost to us. If you fail to repair, replace, re-perform or make good the non-conforming Goods and/or Services within 14 days, we may repair, replace, re-perform or make good the non-conforming Goods and/or Services ourselves or engage a third party to do so, and you will reimburse us for our costs and expenses incurred of doing so.
- 13.2 You must collect all rejected Goods within a reasonable time of rejection or we will return them to you at your risk and expense.

### 14. Payment

- 14.1 Unless we expressly state otherwise in the Purchase Order we will pay you within 45 days from the date of receipt by us of a correct and complete invoice (with information on the Purchase Order Number and details of the Goods or Services supplied). Your invoice must be addressed to the person or department indicated on the Purchase Order and it must quote the full Purchase Order number. GST, where applicable, will be shown separately on all invoices. All invoices and payments must be in Australian dollars. We will not be held responsible for delays in payment caused by your failure to comply with our invoicing instructions.
- 14.2 All payments are a provisional payment on account and will be made without prejudice to our rights and remedies (whether at law or under the Contract) if the Goods or performance of the Services are unsatisfactory or are not in accordance with the Contract. If we dispute an invoiced amount, in whole or in part, we may withhold the disputed amount until the dispute has been resolved.
- 14.3 If required by applicable laws, we will deduct withholding tax (if any) on any amount payable to you and pay the same to the relevant tax authority and thereafter furnish to you, evidence of such payment. The amount net of withholding tax will be paid to you as the withholding tax will be borne by you.
- 14.4 We will be entitled to set-off any amounts which may be payable by us (including the price of the Goods and/or Services) against any amounts due, owing or payable by you to us under the Contract or under any other contract you may have with us.
- 14.5 At any time we may: (a) direct you to discontinue the provision of written statements pursuant to Clause 14.1, or to do such things, and provide such information, as we request to, amongst other things, enable us to create recipient created tax invoices; and (b) commence the issue of recipient created tax invoices (RCTIs) to you.

### 15. Your Warranty

- 15.1 Unless expressly stated otherwise in the Purchase Order, it is expressly agreed that in addition to any manufacturers' warranty:
- (a) you will promptly make good (at no cost to us) any defect in the Goods and/or Services that we discover under proper usage during the first 12 months of actual use or 18 months from the date of delivery or supply to us, whichever period ends first. Such defects may arise from your faulty design, your erroneous instructions as to use, inadequate or faulty materials, poor workmanship or any other breach of your obligations whether under the Contract or at law;
- (b) repairs or replacements to make good any defect will be covered by the warranty in Clause 15.1(a), for the warranty period set out in Clause 15.1(a) or for a period of 12 months from the date of repair or replacement (whichever is the greater);
- (c) you will ensure that compatible spares are available to facilitate repairs to the Goods (where applicable) at a reasonable price for a period of at least 5 years from the date of delivery of the Goods.



## SUEZ GENERAL TERMS AND CONDITIONS OF PURCHASE OF GOODS AND/OR SERVICES

15.2 If you fail to make good any defect in the Goods and/or Services within a reasonable time, we may make good the defect ourselves or engage a third party to do so, and you will reimburse us for our costs and expenses incurred of doing so.

### 16. Insurance

16.1 You will have and maintain in force with a reputable insurer during the period of the Contract:

- (a) any minimum insurance required under Australian legislation;
- (b) public liability insurance in respect of your performance of the Contract covering: loss or damage to our property, or the property of other persons; injury or death of any persons, and such other liabilities as are usually covered by such insurance, in the sum of at least \$20 million per event;
- (c) if applicable, insurance of the Goods during manufacture, and of Our Goods or property while in your possession, and during transport of the same between our premises and your premises, in a sum of at least their full replacement value; and
- (d) if you supply Goods under the Contract, product liability insurance in respect of any liability in the sum of at least \$20 million per event.

16.2 You will procure that such insurance will extend, where appropriate, to indemnify us as principal.

16.3 All relevant sums received under the required insurance will be applied in, or towards, satisfaction of any claims against you or replacement of the Goods or Services, or Our Goods, or our property or your property as the case may be.

16.4 You will comply with the terms and conditions of any insurance taken out by you and will bear the cost of all exclusions and limitations under such insurance.

16.5 You will supply to us a copy of all relevant certificates of insurance, and evidence that the policies are in force and that the premiums have been paid, when we require it.

16.6 If you fail to comply with your above insurance obligations, we may take out such insurance and you must reimburse such costs to us.

### 17. Our Property

All tools or materials, dies, jigs, fixtures, patterns or other items of equipment ('Equipment') and all drawings, specifications and other data or papers ('Documents') provided, commissioned or owned by us or created for us in connection with the Contract, together with all copies or reprints will remain our property at all times. Equipment must be marked by you as SUEZ's property. Equipment and Documents will be used by you solely for the purpose of fulfilling the Contract and will be returned to us on completion, cancellation or termination of the Contract. As from the date of completion, cancellation or termination of the Contract (as the case may be), you will make no further use, either directly or indirectly of any Documents, or of any information that comes from the Documents without our prior written consent.

### 18. Matters Beyond Control

18.1 If either party is delayed or prevented from performing its obligations under the Contract by circumstances beyond the reasonable control of that party (including, without limitation, any form of government intervention, or strikes or lockouts relevant to the Purchase Order, but in all instances excluding any breakdown or unavailability of that party's plant and equipment or any failure by that party to reach agreement with any third party necessary to enable that party to perform its obligations under the Contract), then: (a) provided that the circumstance does not result from that party's wrongful act or omission or that party's failure to act in a prudent and proper manner; and (b) the circumstance or its effects could not have been prevented, overcome or remedied by that party exercising reasonable precautions and the standard of care and diligence expected of an experienced and competent person; that party may, after giving notice to the other party, suspend performance of the affected obligations. If those obligations cannot be completed within a reasonable time after the Delivery Date in the Purchase Order, then either party may terminate the Contract by written notice to the other party.

18.2 We will pay to you a sum which is fair and reasonable in the circumstances in respect of any Goods you delivered and/or Services you performed under the Contract prior to termination of the Contract under Clause 18.1, but only in respect of delivered Goods or completed Services which are of benefit to us as originally contemplated in the Contract.

### 19. Confidentiality

19.1 The existence and the terms of the Contract including any discussion and negotiations in respect of the Contract and all other information and materials relating to us or our business disclosed to you by or on behalf of us ('Confidential Material') prior to, at the time of or after the entering into the Contract will be our confidential information, excluding information which: (a) is already known by you as evidenced by your written records; (b) is in the public domain other than because of a breach of this Contract, any other confidentiality obligations or any applicable law; or (c) is disclosed to you by a third party without breach of confidentiality or any applicable law. Subject to Clause 19.2, you must keep the Confidential Material secure and must not use or disclose any of the Confidential Material to any person or use it for any purpose whatsoever other than for the purposes of the Contract. You must comply with our directions in relation to all Confidential Material.

19.2 You may disclose the Confidential Material only: (a) with our prior written consent; (b) where such disclosure is required for the purposes of compliance with applicable laws and legal requirements; and (c) to your employees who need to know it and to the extent required for the purpose of complying with your obligations under the Contract where such employees are bound by appropriate and legally binding confidentiality and non-use obligations. You will be fully responsible for any unauthorised disclosure or use of Confidential Material by your employees and your obligations set out in this Clause 19 will continue in full force and effect after the date of the performance, cancellation or termination of the Contract.

19.3 All documents, files and other items (in whatever format or medium) which contain or record Confidential Material will remain or become our property, and you must deliver them to us immediately or destroy them (at your cost) upon our request, together with all copies thereof and you must immediately cease all further use thereof.

19.4 You must not, and must ensure that your employees and personnel do not, in any way publicise the relationship with the SUEZ Australia Group without our prior written agreement.

19.5 You agree that we may disclose information about the Contract to any entity in the SUEZ Australia Group.

### 20. Intellectual Property Rights

20.1 All plans, drawings and designs supplied by us, or prepared by you for the purpose of the Contract, and all Intellectual Property Rights in those materials, will remain our property. You must use all plans, drawings and designs you prepare or obtain from us or our agents for the purposes of the Contract only, and you must deliver those materials to us upon completion of the Contract.

## SUEZ GENERAL TERMS AND CONDITIONS OF PURCHASE OF GOODS AND/OR SERVICES

- 20.2 You acknowledge that, in connection with the provision of any Goods and/or Services to us, you may develop works and/or materials, including documents, patents, models, software, data, formulae, specifications, inventions, concepts, processes, techniques, analyses, compilations, studies, reports, graphic designs, artwork, three dimensional designs, moulds, photographs, names and/or logos ('Works').
- 20.3 In connection with all Works which are developed and/or undertaken by you for us: (a) you assign to us all title, rights, benefits, interest and without restriction, the legal and beneficial ownership of all Intellectual Property Rights subsisting in or relating to any Works; (b) to the extent that any Intellectual Property Rights are not capable of being assigned at the date of the relevant Purchase Order, you will assign to us or such other person(s) designated by us, all such Intellectual Property Rights at such time and in such manner required by us; and (c) you will execute, do and deliver all such documents, acts and things at such time and in such manner as may be necessary, desirable or required by us to vest in us or such other person(s) designated by us, the full benefit of all Intellectual Property Rights subsisting in or relating to any Works.
- 20.4 To the extent any Goods and/or Services contain Intellectual Property Rights which were developed prior to the date of any applicable Purchase Order or Contract, or contain the Intellectual Property Rights of a third party, you grant to us a perpetual, irrevocable, world-wide, royalty free, transferable licence (including the right to sublicense) to use, copy, distribute and otherwise to make proper use in connection with our business or operations in any way such Intellectual Property Rights in connection with the Goods and/or Services the subject of the Purchase Order or Contract.
- 20.5 You warrant that neither the Goods or Services, nor our use of them, will infringe any Intellectual Property Rights of any third party anywhere in the world.
- 20.6 We, or where relevant an entity in the SUEZ Australia Group, are and will be deemed to be the proprietor of all SUEZ trademarks and all associated goodwill. You acknowledge and declare that you will not gain any right, title, benefit or interest in such trademarks or goodwill and will not make any use of the same for any purpose other than as expressly granted to you by us for the sole purpose of carrying out your obligations under the Contract, without our prior written approval.

### 21. Privacy and Personal Information

To the extent you collect or handle Personal Information, you agree to comply with:

- (a) all applicable laws relating to privacy and the processing of Personal Information, including without limitation the Privacy Act;
- (b) our privacy policy as amended from time to time and as available on our website; and
- (c) any directions given by us regarding the handling of Personal Information.

### 22. Breach, termination and cancellation

- 22.1 We will be entitled to terminate the Contract by written notice immediately, or by giving such notice period as we deem appropriate, if:
- (a) you default in performance of any of your obligations under the Contract and, in the case of a default which is capable of remedy, we have given notice requiring the default to be remedied and you have not remedied the default within 14 days after the date of our notice to remedy;
  - (b) you have committed persistent breaches of the Contract, whether or not breaches of a similar nature, over any period of 28 consecutive days;
  - (c) you make any scheme of arrangement with your creditors, become subject to an administration order or go into bankruptcy, liquidation, or receivership;
  - (d) a receiver, controller, external manager or liquidator is appointed over any of your property or assets;
  - (e) the making or filing of an application for winding up is presented against you under any law relating to bankruptcy or insolvency and such petition is not set aside within thirty (30) days of its presentation in court upon an application by you;
  - (f) you become unable to pay your debts generally as they become due, or you cease or threaten to cease to carry on any part of your business; or
  - (g) we reasonably consider that any of the events set out in Clauses 22.1(c) to (f) is imminent.
- 22.2 Notwithstanding any provisions in these General Conditions to the contrary and in addition to any rights we may have under the Contract or at law, we will be entitled, at our absolute discretion and solely for our benefit, by written notice to you to cancel or terminate without cause at any time, the Contract in whole or in part with respect to any undelivered Goods or uncompleted Services, and to refuse to accept any further Services and any Goods not delivered and accepted at the date of such notice. Clause 23.3 will then apply and you will have no other claim, action or demand as a consequence of the termination.
- 22.3 You will be entitled to terminate the Contract by written notice immediately, or by giving such notice period as you deem appropriate, if:
- (a) we fail to pay any undisputed amount in default of our payment obligations under the Contract, and we have not remedied the default within 14 days after the date of your notice to remedy;
  - (b) we make any scheme of arrangement with our creditors, become subject to an administration order or go into bankruptcy, liquidation, or receivership;
  - (c) a receiver, controller, external manager or liquidator is appointed over any of our property or assets;
  - (d) the making or filing of an application for winding up is presented against us under any law relating to bankruptcy or insolvency and such petition is not set aside within thirty (30) days of its presentation in court upon an application by us;
  - (e) we become unable to pay our debts generally as they become due, or we cease or threaten to cease to carry on any part of our business; or
  - (f) you reasonably consider that any of the events set out in Clauses 22.3(b) to (e) is imminent.
- 22.4 Nothing in this Clause 22 excludes or restricts any right which the parties would otherwise have under the law to rescind or end the Contract or to treat themselves as discharged from further performance of their obligations under the Contract on any grounds (including misrepresentation, breach or frustration).

### 23. Consequences of terminating the Contract

- 23.1 The termination of the Contract under Clauses 22.1, 22.2 or 22.3 for any reason will:
- (a) subject to the other provisions of Clauses 22 and 23, discharge the parties from any liability for further performance of the Contract;
  - (b) be without prejudice to any rights or liabilities which have accrued prior to the date it terminated; and
  - (c) not affect the coming into force or the continuation in force of any provision of the Contract which is expressly or by implication intended to come into or continue in force on or after it terminated.
- 23.2 Upon the termination of the Contract, you will return to us all documents and materials (and all copies of them) containing our confidential

## SUEZ GENERAL TERMS AND CONDITIONS OF PURCHASE OF GOODS AND/OR SERVICES

information and certify in writing to us that you have complied with this requirement.

23.3 If we cancel or terminate the Contract under Clause 22.2:

- (a) we will pay to you the Price of Goods and/or Services delivered or performed up to the date of termination and accepted by us and not already paid for;
- (b) you will, if we require, complete all Goods partially manufactured and Services partially performed at the date of any notice and we will pay the Price (or for part performance a fair and reasonable proportion thereof) of all such Goods and Services as we accept;
- (c) you will be entitled to require us to take and pay for any raw materials you reasonably purchased specifically for the purpose of and irrevocably allocated to the Contract, but not otherwise included in any other payment, provided that such material:
  - i. is on delivery and examination in every way perfect and fit for use in the performance of the Contract; and
  - ii. cannot be used for any goods to be supplied in substitution for the cancelled Goods or for any other Goods which you are currently producing for us;
- (d) if Clause 23.3(c) applies, we will pay you the price you have reasonably contracted to pay for it; and
- (e) to the extent that it is not included in any other payment or Clauses 23.3(a) to (d), the reasonable direct costs you incurred as a direct and unavoidable result of the termination.

### 24. Assignment and Sub-contracting

- 24.1 We will be entitled to assign or transfer all or any of our rights and/or obligations under the Contract to any entity in the SUEZ Australia Group.
- 24.2 Subject to Clause 24.1, the parties must not without the other party's prior written consent (which must not be unreasonably withheld): (a) assign, mortgage, charge, dispose of or deal with any of their rights and/or obligations under the Contract; or (b) engage any agent, sub-contract or otherwise delegate the performance of any of their obligations under the Contract to any party. The restriction contained in this Clause 24.2(b) will not apply to sub-contracts for materials for minor details or for any part of which the manufacturers are named in the Contract.
- 24.3 You will be fully responsible for all goods and services supplied by your employees, agents and subcontractors, and you will be vicariously liable for the acts or omissions of your employees, agents and subcontractors as if they were your acts or omissions.
- 24.4 You will on request provide us with full details of any of your suppliers of goods or services which are or are intended to be incorporated in the Goods and/or Services supplied to us.

### 25. Exclusion and Limitation of Liability

- 25.1 In consideration of your agreement to Clauses 4, 11, 14.4, 22.2 and 23.3, and notwithstanding anything in these General Conditions to the contrary, and to the fullest extent permitted by law, you will not be liable to us for any punitive or exemplary damages or for any indirect loss or damage of any kind howsoever arising including, to the extent that any of the following is an indirect loss or damage, loss of profits, loss of revenue, business interruption, loss of business or loss of opportunity, whether founded in contract, tort (including negligence), strict liability or any other legal characterisation whatsoever. This Clause will not apply to claims by third parties against us in respect of personal injury, illness or death or loss or damage to property, or your liability for infringement of third party Intellectual Property Rights.

### 26. GST

- 26.1 Terms used in this Clause have the same meanings given to them in the GST Act.
- 26.2 Unless otherwise expressly stated, all prices or other sums payable under or in connection with the Contract are exclusive of GST.
- 26.3 If GST is imposed on any Supply you make under or in connection with the Contract, you may recover from us, in addition to the Price, an amount equal to the GST payable in respect of that Supply. You must provide us with a valid Tax Invoice before we will pay the amount of GST to you.

### 27. PPSA

- 27.1 Terms used in this Clause have the meaning given to them in the *Personal Property Securities Act 2009* (Cth).
- 27.2 Each party agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the party entitled to the benefit of a Security Interest asks and considers necessary for the purposes of: (a) ensuring that the Security Interests are enforceable, perfected and otherwise effective; (b) enabling the benefited party to apply for any registration, complete any Financing Statement or give any notification, in connection with the Security Interest; or (c) enabling the benefited party to exercise rights in connection with the Security Interest.
- 27.3 A party must not, except as contemplated by the Contract: (a) create any Security Interest or lien over; or (b) sell, lease, dispose of its interest in or give possession of (including by allowing the Personal Property to become an Accession or Fixture to the Personal Property of a third party); any Personal Property that is subject to a Security Interest without the prior written consent of the party entitled to the benefit of that Security Interest.

### 28. Proportionate Liability

- 28.1 To the maximum extent permitted by law, the parties agree that the Proportionate Liability Legislation will not have any application to the Contract, the supply and/or performance of the Goods and/or Services, the Good and/or Services, or any of the parties' rights, obligations or liabilities under the Contract (whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at law). The provisions of this Clause will survive the expiration or any termination of the Contract.

### 29. General

- 29.1 The parties are independent contractors for purposes of the Contract and nothing in the Contract will create, or be deemed to create any other relationship, including without limitation, that of a partnership; or of principal and agent; or employer and employee; or joint venture between us and you.

## SUEZ GENERAL TERMS AND CONDITIONS OF PURCHASE OF GOODS AND/OR SERVICES

- 29.2 The Contract constitutes the entire agreement between us and you with respect to its subject matter and supersedes all previous proposals, agreements and understandings whether written or oral between us and you prior to the date of the Contract. Any variation to or modification to the Contract may only be made by a written document signed by duly authorised representatives of both parties.
- 29.3 Except as expressly provided in the Contract to the contrary, the rights, powers and remedies arising out of or under the Contract are cumulative and do not exclude any other right, power or remedy of any party.
- 29.4 You acknowledge and declare that, in entering into the Contract, you have not relied on any representation, warranty or other provision except as expressly set out in the Purchase Order or, where applicable, the Order Amendment.
- 29.5 Each provision of the Contract (including each undertaking and each part of it) will be construed separately and independently from each other and if any provision of the Contract is held by any court or other competent authority to be void or unenforceable in whole or part, the remaining provisions of the Contract will continue to be valid and in full force and effect.
- 29.6 No waiver of any of the provisions of the Contract will be valid unless in writing and signed by or on behalf of the party giving the waiver. A failure at any time to enforce any provision of the Contract will in no way affect the right at a later date to require complete performance of the Contract.
- 29.7 Except as otherwise specified in this Agreement, all notices must be in writing, in English and addressed to the recipient at the address or email address set out in the Purchase Order or otherwise notified by the recipient to the other party from time to time and must be sent to the recipient by pre-paid post or email. A notice issued in accordance with this Clause 29 is deemed to have been duly given and received, if sent by pre-paid post, 3 days after the date of posting; or if sent by email, when the email is sent to that person's email address. An email is not sent to a person's email address if the sender receives any communication to the effect that the email is undeliverable or undelivered to the recipient's email address. Notices under Clause 22 must be sent by pre-paid post and not by email. If a notice is, or would be deemed to be, given by pre-paid post or email on a day which is not a Business Day, or after 5.00pm on a Business Day, the notice will be deemed to be given and received by the recipient at 9.00am on the next Business Day.
- 29.8 The Contract will be governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts in New South Wales.
- 29.9 The parties agree that the application of the United Nations Convention on Contracts for the International Sale of Goods ('Vienna Convention'), and any Act or legislation incorporating the Vienna Convention or giving the Vienna Convention force in law, are excluded from any matter in connection with the Contract and the Goods and/or Services.