

1. Interpretation

In these Terms and Conditions of Purchase:

Agreement means the contract between the Buyer and the Supplier and includes these Terms and Conditions of Purchase, the Schedules and any Purchase Order.

Buyer means one or more of the following legal entities which issues a Purchase Order to the Supplier for the Goods and/or Services: Orontide Madco Pty Ltd (ABN 91 009 393 355) trading as Orontide Engineering Services; Orontide Wovodich Pty Ltd (ABN 82 127 228 880) trading as Orontide Engineering Services South West; Orontide Robil Pty Ltd (ABN68 077 441 368) trading as Orontide Engineering Services Pilbara or Orontide Alphablast Pty Ltd (ABN 61 122 186 967) trading as Orontide Industrial Services of 54 Sparks Road Henderson Western Australia (referred to jointly and severally), which is the buyer of the Goods and/or Services.

Goods means the goods specified in the Purchase Order.

Purchase Order means the order for the Goods constituted by this document.

Schedules means the schedules (if any) to this Agreement which include the following:

Schedule 1 – Special Conditions;

Schedule 2 – HSEQ Questionnaire;

Services means the services specified in the Purchase Order

Supplier means the supplier of the Goods and/or Services specified in the Purchase Order

Terms and Conditions of Purchase means these Terms and Conditions of Purchase.

2. General

2.1 The acceptance of the Purchase Order by the Supplier includes acceptance of the Agreement as the sole basis of the purchase to the exclusion of any conditions of sale appearing on any document of the Supplier. Modification of the Agreement expressed in any document of the Supplier does not apply to the Agreement unless expressly accepted in writing by the Buyer.

2.2 The Supplier will accept the Purchase Order by proceeding with the supply of Goods and/or Services or providing acceptance in writing.

2.3 To the extent of any inconsistency between parts of the Agreement, the following parts will prevail in order of precedence:

- (a) Purchase Order;
- (b) Schedules; and
- (c) Terms and Conditions of Purchase.

3. Alterations

3.1 No changes to the Purchase Order are to be made by the Supplier without the written agreement of the Buyer.

4. Price

4.1 This Purchase Order is placed on a firm price basis in accordance with the price(s) listed on the Purchase Order (and is not subject to increases in price without the Buyer's prior approval in writing) and includes delivery to the destination stated in this Purchase Order and the off-loading of any Goods by the Supplier at the point of destination.

5. Quality

5.1 It is a term of the essence of this Agreement that the Goods and or Services must comply strictly with every aspect of the technical specifications where applicable, and without limiting the foregoing, that any variations in size, configuration or performance are to be strictly within specified tolerances.

5.2 Goods

- (a) The goods and all materials used must conform to description, be of sound materials and quality and be equal in all respects to any specification forming part of this Agreement. Any in-progress inspection or acceptance by the Buyer will not affect this requirement.
- (b) All Goods and/or Services supplied pursuant to the Agreement shall comply with all relevant statutory requirements relating to standards, provisions in legislation and local authority by-laws.
- (c) The Goods shall be fit for the purpose for which goods of the same kind are commonly supplied and any other purpose made known to the Supplier, be of merchantable quality and be free from any defect in material and workmanship. In addition, such Goods shall carry any applicable manufacturer's warranty which shall pass on to any purchaser from the Buyer without liability to the Buyer.

5.3 Services

- (a) the Services will be carried out with a high standard of care and diligence and in accordance with all applicable laws, regulations, codes of practice, national standards and applicable ethics and other regulatory approvals;
- (b) the Services are to be carried out by personnel of the Supplier who have the necessary skills, experience, qualifications, resources, capacity and know-how to supply the Services in accordance with this Agreement;
- (c) if the Supplier provided the Buyer with a demonstration of the Services before a Purchase Order was issued by the Buyer, then the Services will correspond in nature and quality with the Services demonstrated;
- (d) if the Supplier demonstrated a result achieved by the Services before a Purchase Order was issued by the Buyer, the Services will correspond with the nature and quality of the services that produced that result;
- (e) the Services must be fit for the purpose for which services of the same kind are commonly supplied and any other purpose made known to the Supplier, the goods or items used to supply services must be of merchantable quality and in accordance with 5.2(c).

6. Indemnity and liability between Buyer and Supplier

6.1 The Supplier at their own expense must make good by repair or replacement all defects attributable to faulty design and/or workmanship which appear in the Goods and/or Service within the Suppliers guaranteed warranty period or within a period of twelve (12) months from the date of delivery whichever is the longer period.

6.2 The Supplier must perform any such repair or replacement forthwith and must indemnify the Buyer in respect of any loss or damage suffered as a result of any delays in any such repair or replacement. Such loss or damage includes but is not limited to any compensation that the Buyer is obliged to pay to a third party as a result of any delays in any such repair or replacement.

6.3 The Supplier's obligations to repair or replace in accordance with clauses 6.1 and 6.2 are cumulative of other remedies that are available to the Buyer in the event of a defect of any part of the Goods and/or Services.

6.4 The Supplier shall also indemnify the Buyer in respect of all damage or injury occurring (whether before or after the above mentioned period expires) to any person or any property and against all actions, suits, claims, demands, costs, charges or expenses arising in connection therewith to the extent that the same have been occasioned by the negligence of the Supplier, his servants or agents. The obligations of the Supplier under this paragraph shall be without prejudice to any other claims the Buyer may have against the Supplier in respect of unsatisfactory or defective goods.

6.5 The Supplier shall be liable for and indemnifies the Buyer against all loss, damages, costs and expenses arising out of or in connection with the Supplier not complying with the whole or any part of the Agreement.

6.6 Notwithstanding any other provision in this Agreement, the Buyer shall not be liable to the Supplier for any kind of special, incidental, indirect or consequential loss or damage, including without limitation any loss of opportunity, loss of production or increased cost of production, loss of revenue, profit or anticipated profit, or economic loss, to the maximum extent permitted by law.

6.7 Notwithstanding any provision to the contrary, to the maximum extent permitted by law, the Buyer's aggregate liability for loss or damage in contract, tort (including but not limited to negligence), in equity, product liability, under statute (to the extent that it is possible to limit or exclude such liability), or otherwise at law to the Supplier or any other party arising under or in connection with or for breach of this Agreement and whether arising in connection with one or more events is limited to making payment to the Supplier for the Goods and/or Services as specified on the Purchase Order.

7. Insurance

7.1 The Supplier shall take out and maintain the following insurance for the duration of this Agreement and any extension of it:

- (a) Workers Compensation, Employers' Liability and any other insurance required by any applicable law with a limit of liability of not less than \$50,000,000 (or such other amount as the Buyer agrees to in writing) per event, in respect of any person employed or engaged by the Supplier or deemed to be so employed. Where permitted by law, such insurance shall contain a principal's indemnity extension for both statutory liability and common law liability in favour of the Buyer and its respective officers and employees, and shall further contain a waiver of subrogation in favour of the Buyer and its respective officers and employees;
- (b) Public Liability insurance and Product Liability Insurance written on an occurrence basis covering the Supplier's performance of its obligations under this Agreement each with a limit of not less than \$20,000,000 (or such other amount as the Buyer agrees to in writing) for any one occurrence. The relevant policies shall be extended to cover the Buyer for its vicarious liability as principal arising from the Suppliers performance of this Agreement
- (c) Motor Vehicle Liability insurance (including "gap" coverage for claims in

respect of personal injury or death not covered nor able to be covered by insurance referred to in Subclause (b) above) in respect of all mechanically propelled vehicles used by the Supplier in connection with the performance of its obligations under the Agreement for an amount of not less than \$20,000,000 for any one occurrence and unlimited in the annual aggregate (or such other amount as the Buyer agrees to in writing). The policy shall be extended to cover the Buyer for its vicarious liability as principal arising from the Suppliers performance of its obligations under this Agreement;

- (d) Compulsory Motor Vehicle Third Party Liability insurance as required by law in the relevant States or Territories in which the Suppliers performance of its obligations are carried out;
 - (e) Insurance against loss or damage to the Suppliers property used in conjunction with the Services for not less than market value. This includes items which are hired, leased or otherwise acquired by the Supplier. The policy shall be extended to cover the Buyer for its vicarious liability as principal arising from the Suppliers performance of the Services under this Agreement;
 - (f) Professional Indemnity insurance covering breaches of professional duty by the Supplier with a limit of indemnity of not less than \$2,000,000 any one claim and in the annual aggregate (or such other amount as the Buyer agrees to in writing). This insurance must be maintained for the term of the Agreement and for a period of not less than 7 years following the date of completion or termination of the Agreement.
 - (g) Any additional insurance by law or as requested by the Buyer.
- 7.2 The Supplier shall ensure that all sub-contractors used by the Supplier in performance of the Services carry and maintain similar insurances as referred to in this Clause.
- 7.3 Before proceeding with its obligations under the Agreement and at such other times as the Buyer may require, the Supplier shall provide to the Buyer evidence of the existence and coverage of insurances required under this Clause.

8. Inspection and return

- 8.1 All Goods or Services received are subject to inspection within a reasonable time after delivery or before delivery at the Buyer's discretion irrespective of date of payment. Signed delivery dockets do not mean acceptance by the Buyer of Goods or Services delivered but only the number of packages or cartons delivered. The Buyer must promptly notify the Supplier of any defects appearing, and hold Goods or Services so found to be defective for the Supplier's instructions and at the Supplier's risk for a reasonable period not exceeding 12 months. If the Goods or Service are defective and the Supplier's instructions are not received within that period, the Buyer may engage another contractor to undertake the works and for the cost of such remediation to be payable forthwith by the Supplier and may be set off by the Buyer against any moneys otherwise due by the Buyer to the Supplier.

9. Royalties

- 9.1 Goods are for the use of or re-sale by the Buyer or its associated companies and may be incorporated in any products (whether owned or used or possessed by the Buyer). The Supplier must not make any claim for royalties or other additional compensation from the Buyer by reason of or connected with such use, re-sale or manufacture.

10. Patent rights

- 10.1 The Supplier agrees to defend, protect and indemnify the Buyer, its successors and assigns, from and against any claim arising from the lawful use of the Goods and/or Services by the Buyer or third parties including all claims for actual or alleged infringement of any letters patent, trademarks, copyright, design, confidential information or similar protection whether granted by the Commonwealth of Australia or any foreign state or the common law, provided that the Supplier will not indemnify the Buyer, its successors and assigns from or against any claim to the extent that such claim arises as a result of the negligence, wilful misconduct, fraud or breach of duty of the Buyer, its successors and assigns or any of their partners, employees or agents.
- 10.2 If the Supplier makes any representation or statement directly or indirectly to the Buyer that the Goods and/or Services ordered are protected by one or more patents and any such patent is found to be invalid, the Buyer may forthwith cancel this Purchase Order or any contract arising from this Purchase Order and recover any money paid to the Supplier under this agreement as a liquidated debt.

11. Special dies, etc to remain purchaser's property

- 11.1 Special dies, tools, patterns and drawings specially created or commissioned by the Supplier at the cost of the Buyer for the manufacture of the Goods (Buyer's Tools), remain the Buyer's property whether during or after the termination of this Agreement.
- 11.2 The Supplier must use reasonable endeavours to keep the Buyers Tools in good condition.
- 11.3 The Supplier agrees that it will not without the Buyer's prior written consent, use any Buyer's Tool in the production, manufacture or design of any other articles, nor of larger quantities of the Goods than those required by this Agreement.

- 11.4 While the Supplier is in possession of the Buyer's Tools, it acknowledges that it is a bailee of them and owes the Buyer the duties, responsibilities and liabilities of a bailee.

- 11.5 At the termination of this contract each Buyer's Tool must be disposed of as the Buyer directs.

12. Designs and specifications to be retained in confidence

Any Goods or Services made or done according to the Buyer's design or specifications or developed for the Buyer at the direction of the Buyer, or any original or copy designs or specifications supplied by the Buyer are held by the Supplier on the Buyer's behalf and at the Buyer's disposal and must not be disclosed or furnished to any other person, firm or government without the Buyer's prior written consent. The Supplier must take all reasonable precautions to protect such confidentiality.

13. Packing costs and standard

- (a) The Supplier and any of its agents or suppliers must not include a charge to the Buyer for wrapping, packing, cartons or crating unless authority for such charge is expressly incorporated in this Purchase Order.
- (b) Where the Goods are to be shipped by a third party carrier then in that event, the Goods should be packed in accordance with the carriers' reasonable requirements in order to secure reasonable transportation and insurance rates.

14. Advertising

A party must not, without the other party's prior written consent, advertise or publish the fact that the Supplier has contracted with the Buyer in relation to the Goods and/or Services.

15. Delivery documents

- (a) The Supplier must invoice the Buyer promptly following delivery of the Goods or Services.
- (b) The Supplier must dispatch packing lists, shipping documents and certified invoices to the Buyer's office by direct mail on the day of shipment unless a different method or date of dispatch (or both) is agreed by the Buyer.

16. Payment terms

- 16.1 The Supplier shall invoice the Buyer for the Goods and Services supplied on a monthly basis and the Buyer shall pay the Supplier the amount invoiced within 60 days from the end of the month following the receipt of the Suppliers invoice.
- 16.2 If the Buyer disputes any item or items invoiced, the Buyer shall notify the Supplier specifying the reasons therefore and withhold payment of the disputed item or items until settlement of the dispute. The Buyer shall pay the undisputed portion of the invoice.

17. Termination for Default

- 17.1 The Supplier will be in default where the Supplier fails to perform any obligation term, condition or stipulation contained in this Agreement and on its part to be performed and observed;
- 17.2 Where the Supplier is in default, the Buyer will issue a notice of default which outlines the nature of the default and will provide the Supplier with a period in which to rectify the default. It is agreed that in the event the Supplier has been granted Preferred Supplier Status the relevant period will be for 7 days on receipt of written notice from the Buyer. If the Preferred Supplier fails to provide a remedy within the 7 days the Buyer will have the right to terminate the Agreement in whole or in part.
- 17.3 Should the Supplier not rectify the default within the time period specified, the Buyer may without limiting its right to recover damages or any other right at law, issue a further notice terminating the contract from the date stated in the further notice.
- 17.4 Should the Buyer terminate the Agreement in accordance with clause 17.3, then the Supplier's only entitlement will be to receive payment for any Goods or Services that have been delivered in accordance with the Agreement but not yet paid for by the Buyer.
- 17.5 Under no circumstances will the Buyer's liability pursuant to clause 17.4 ever exceed the value of the Purchase Order for the Goods or Services.

- 17.6 For the avoidance of doubt, termination of this Agreement by the Buyer does not affect the availability to it of any other remedies or rights which the Buyer may have against the Supplier with respect to the performance or non-performance of this Agreement arising from any breach of this Agreement by the Supplier.

18. Termination for Convenience

- 18.1 Notwithstanding clauses 17.1-17.6 the Buyer may in its absolute discretion and without having to provide any reason, terminate the Agreement at any time by providing written notice to the Supplier.
- 18.2 In circumstances where the Buyer exercised its rights in accordance with 18.1, payment will only be made as follows:

- (a) If the Goods ordered by the Buyer are standard (off the shelf) the Buyer will not be obligated to make payment for any unshipped portion but will make payment (subject to other applicable terms of this agreement) for the goods actually shipped prior to such termination; or
- (b) if this Agreement covers Goods and/or Services, manufactured or fabricated, to the specifications of the Buyer then upon any termination under this sub-paragraph the Buyer shall pay to the Supplier the Supplier's out of pocket costs and expenses to date of such termination including its expense in connection with termination of any sub-contracts all as determined by the Buyer, but in no event shall the total amount exceed the purchase price specified in this Agreement. Upon such payment any goods and Services or uncompleted portions of the works shall be the property of the Buyer and subject to its disposition. Notwithstanding anything contained in this paragraph 18.2, under no circumstances will the Supplier be entitled to any anticipatory profits or any damages caused by such termination.

19. Responsibility

- 19.1 The Goods are at the Supplier's risk until delivered to the destination stated in this Order. Once the Goods are delivered to the destination stated in this Order the risk is transferred to the Buyer whether or not transfer of title occurs on delivery of the Goods.

20. No Exclusivity

- 20.1 For the avoidance of doubt, this Agreement does not have the effect of granting to the Supplier the exclusive rights to supply Goods and Services to the Buyer and the Buyer has no obligation under this Agreement or at law to purchase Goods and/or Services exclusively from the Supplier.
- 20.2 It is acknowledged by the Supplier that the Buyer is entitled to purchase Goods and Services from any other supplier as and when the need arises.

21. HSEQ Requirement

- 21.1 It is acknowledged by the Supplier the answers provided by the Supplier to the HSEQ questionnaire will be taken into consideration in selecting the Supplier for the Supply of goods and/or services.
- 21.2 The questionnaire is needed to determine if the Supplier has adopted minimum industry standards relating to the management of Health, Safety, Environment and Quality.
- 21.3 Without limiting any of the Buyer's rights at law, if any statements made in this Questionnaire are deemed by the Buyer to be false or a misrepresentation, then the Buyer in its sole discretion will be entitled to terminate this Agreement immediately without notice.