

## 1. DEFINITIONS

In these Conditions and elsewhere in the Contract, unless a contrary intention appears the following shall mean:

**Anti-Bribery and Anti-Corruption Legislation** includes any statute, law, code, regulation or similar instrument in connection with the prohibition of bribery and corruption (including by virtue of the place of domicile or operations of MEGAVAR and the Customer) including but not limited to the Criminal Code Act 1995(Cth), the Crimes Act 1914(Cth), the Financial Management and Accountability Act 1997(Cth), the Commonwealth Authorities and Companies Act 1997(Cth), the Corporations Act 2001(Cth) and the Bribery Act 2010(UK).

**Customer** means the Customer described in the Contract Particulars or if no description has been provided, the entity to which MEGAVAR is providing the Services.

**Completion Date** means the date specified in the Contract Particulars or any extension thereof agreed in writing between the parties, on which the Customer must complete or deliver the Goods.

**Conditions** means these standard MEGAVAR terms and conditions.

**Contract** means the agreement between the Customer and MEGAVAR evidenced by the Conditions, the Contract Particulars and/or MEGAVAR Purchase Order, and all other documents which are listed in the Contract Particulars or incorporated by written reference into the Contract by MEGAVAR. The Conditions take precedence over all other documents including those listed in the Contract Particulars and any other documents provided by the Customer.

**Contract Sum** means the total sum submitted by MEGAVAR either as a lump sum fixed price, hourly rate, schedule of fees, cost plus or a combination of these as detailed in the Contract Particulars.

**Delivery Place** means the place Goods are to be delivered as specified in the Contract Particulars.

**Dispute** has the meaning in clause 25.

**Force Majeure** means act of God, act or omission of government, war, blockade, embargo, hostilities, fire, earthquake, flood, explosion, accident at sea, inclement weather conditions, industrial disputes (except where restricted to employees of MEGAVAR), sabotage or commotion, act or omission of the Customer, or by any cause (whether similar or not to any of the above events) beyond the reasonable control of MEGAVAR.

**Goods** means the goods, products, materials or equipment supplied by Customer and specified in the Contract Particulars and otherwise in the Contract and/or a MEGAVAR Purchase Order.

**Intellectual Property** means any intellectual property whether protected by statute, at common law or in equity, including any patent, invention, copyright or design right (whether or not registerable), in any design, specification, process, technique, software, know-how, trade secret, technical information, financial information, business method and confidential information.

**Item** means an item in the Contract Particulars.

**MEGAVAR** means MEGAVAR Pty Ltd (ABN 88 104 344 765) the entity bound to perform and complete the Services.

**Performance Period Cycle** means, where the Services are to be performed and completed on more than one occasion during the total performance period, the frequency or occasions stated in the Contract Particulars for a single performance.

**PPSA** means the Personal Property Securities Act 2009 (Cth)

**Services** means all the services MEGAVAR has agreed to perform for the Customer under the contract, and as specified in the contract particulars and/or MEGAVAR invoice, and includes everything reasonably necessary for the proper performance of MEGAVAR's obligations and discharge of MEGAVAR's liabilities.

**Single Performance** means a performance of the Services on one occasion.

**Premises** means the location where the Services are to be performed, and includes, where the context so requires, anything on the Premises.

**Works** means the scope of works being tendered for as detailed in the MEGAVAR's offer which is inclusive of the Goods and/or Services.

## 2. PERFORMANCE

MEGAVAR shall perform and complete the Services in accordance with the contract and directions authorised by the contract.

## 3. PRICE

The Contract Price is net and exclusive of GST and is Australian Dollars (unless otherwise stated).

## 4. PAYMENT

- 4.1. Any purchase order issued by the Customer in relation to this contract is in order to establish payment authority for internal accounting purposes. No purchase order shall be considered to be a counter offer, amendment, modification, or other revision to the terms of this contract. No term or condition included in the Customer's purchase order will have any force or effect.
- 4.2. MEGAVAR shall claim payment in accordance with the Contract Particulars.
- 4.3. Except as otherwise agreed by MEGAVAR in writing, the Customer, shall pay all invoiced amounts in Australian dollars, without right of set off, within 14 days from the date of the MEGAVAR Invoice.
- 4.4. Credit is provided, and overdue payments are subject to, the provisions of the Building and Construction Industry Security of Payments Act, in the state of Tasmania, unless another jurisdiction has been agreed.

## 5. INTEREST

If the Customer fails to pay MEGAVAR the full amount stated in the MEGAVAR Invoice in accordance with clause 4, then MEGAVAR will charge interest on the amount unpaid by the Customer at a rate of 18% per annum calculated on daily rests from the date on which such default arose.

## 6. VARIATIONS

MEGAVAR will not vary the Services except as directed in writing by the Customer. The Customer may direct MEGAVAR to vary the Services or perform additional Services provided they are capable of being performed under the provisions of the Contract. A reasonable price will be agreed and added to the contract sum if necessary.

## 7. ACCESS TO PREMISES

- 7.1. The Customer must provide MEGAVAR:
  - a) Reasonable access to the Premises to enable MEGAVAR to properly perform the Services.
  - b) Details of entrances and exits to and from the premises and any security arrangements to be observed in connection with the premises or access to them.
- 7.2 MEGAVAR employees will:
  - a) Use entrances and exits provided by the Customer and comply with access arrangements and security measures
  - b) Carry suitable identification
  - c) Regularly remove rubbish and surplus material which results from the performance of the services
  - d) Not examine, copy, remove or otherwise interfere with anything on the premises except for the purpose of performing the Services
  - e) Comply with site safety and security protocols and directions of any "first responders" in the event of fire or on-site emergency.

## 8. LATENT CONDITIONS

Latent Conditions are physical conditions affecting the Premises including artificial things but excluding weather conditions which differ materially from the physical conditions which MEGAVAR reasonably anticipated at the time of submitting its offer. MEGAVAR will be entitled to claim an extension of time and reasonable costs directly incurred as a result of a Latent Condition.

## 9. LIMITATION OF LIABILITY

Notwithstanding any other provision of this Contract and to the full extent permitted at law, the total liability of MEGAVAR to the Customer arising out of or in connection with this Contract for all loss, damage, cost or expense suffered or incurred whether in contract or tort (including negligence), in equity, in restitution, by way of warranty or indemnity or under statute shall be limited to no more than 50% of the Contract Price.

## 10. CONSEQUENTIAL LOSS

Notwithstanding any other provision of this Contract and to the full extent permitted at law, neither party is liable for any indirect, special, contingent or consequential type losses or damages which includes but is not limited to loss of actual or anticipated profits, loss of opportunity, loss of goodwill or loss of revenue.

#### 11. PROPORTIONATE LIABILITY

Subject to clauses 9 and 10 above, MEGAVAR shall be proportionately liable to the extent that MEGAVAR caused or contributed to such claim, demand, proceeding, cost, expense, loss, liability or damage under the Contract.

#### 12. TIME AND PROGRESS

MEGAVAR will commence the Services as stated in the Contract Particulars.

MEGAVAR will ensure that the Services are performed in accordance with the Performance Period Cycles stated in the Contract Particulars, and completed within the contract period stated in the Contract Particulars.

If a single performance of the Service is delayed by a cause of delay beyond MEGAVAR's reasonable control (including a delay by the Customer or anyone for whom the Customer is responsible) MEGAVAR shall be entitled to a reasonable extension of time for that Single Performance.

The Customer shall reimburse MEGAVAR all reasonable costs including but not limited to overheads incurred by MEGAVAR for any delays except for delays caused by MEGAVAR itself.

#### 13. RETURNED GOODS

MEGAVAR is not under any duty to accept Goods returned by the Customer. If MEGAVAR agrees to accept returned Goods from the Customer, the Customer must return the Goods to MEGAVAR at any place directed by MEGAVAR and on such other terms as MEGAVAR directs.

#### 14. STORAGE

MEGAVAR reserves the right to make a reasonable charge for storage of the Goods or any component of the Customer to be used in manufacture or supply of the Goods, if delivery instructions are not provided by the Customer within 14 days of a request by MEGAVAR.

#### 15. TITLE AND RISK

- 15.1. MEGAVAR will deliver the Goods in accordance with the dates as set out in the Contract Particulars to the Premises nominated in the Contract Particulars.
- 15.2. On the Customer's receipt of the Goods, all risk relating to the Goods passes to the Customer. However, if the Customer provides any components to MEGAVAR for inclusion in the Goods the risk of those components remains with the Customer at all times.
- 15.3. MEGAVAR will use all reasonable care to provide suitable storage of the Customer's components but will not be liable for any loss or damage.
- 15.4. It is acknowledged by the Customer that MEGAVAR fulfils all of its obligations under this Contract once the Goods are delivered by MEGAVAR and received by the Customer or collected by the Customer, whichever the earlier.
- 15.5. Title in the Goods remains with MEGAVAR until all sums due and owing by the Customer to MEGAVAR are paid in full notwithstanding the delivery, receipt, collection or passing of risk to the Customer.
- 15.6. Until title of the Goods passes, MEGAVAR reserves and retains the following rights in relation to the Goods until all accounts owed by the Customer to MEGAVAR are fully paid:
  - a) to enter the Customer's Premises, or the premises of any associated entity or agent of the Customer where the Goods are located, without liability for trespass or any resulting damage and retake possession of the Goods; and
  - b) to keep or resell the Goods repossessed under this clause.

#### 16. PERSONAL PROPERTIES SECURITIES ACT

- 16.1. In clause 16 words and expressions not defined in these conditions have the same meaning as defined in the PPSA.
- 16.2. The Customer acknowledges that MEGAVAR has a purchase money security interest in the Goods including, but not limited to, where the Customer has not paid for the Goods in full prior to delivery.
- 16.3. The Customer acknowledges that if MEGAVAR has rights and interest in proceeds derived from the Goods such rights and interests constitute a security interest in such proceeds.
- 16.4. MEGAVAR may register any security interest on the PPSA register in any manner it chooses (including by registering one or more financing statements in relation to its interest in the Goods, with such expiry dates as MEGAVAR determines in its absolute discretion). The Customer must provide MEGAVAR with any information it requires for the purposes of giving effect to such registration.

- 16.5. For the purposes of section 157(3) of the PPSA, the Customer irrevocably and unconditionally waives its right to receive any notice from MEGAVAR in connection with the registration of a financing statement or a financing change statement in respect of the Goods.
- 16.6. If section 95 or chapter 4 of the PPSA would otherwise apply to the enforcement of any security interests then those provisions are excluded, to the extent possible.
- 16.7. The Customer must take any steps (including provide information) MEGAVAR reasonably requires to perfect or otherwise ensure the enforceability and priority of any security interest.
- 16.8. Neither the Customer nor MEGAVAR will disclose information of the kind described in PPSA section 275(1), unless section 275(7) of the PPSA applies.
- 16.9. Until MEGAVAR's security interest (whether perfected or not) is satisfied, the Customer agrees not to cause or allow a security interest of higher priority to be created in the Goods. If the Customer breaches this sub-clause, the Customer shall indemnify MEGAVAR for any cost, expense, loss or damage suffered.

## 17. WARRANTY

MEGAVAR warrants that:

- 17.1 The Goods will be of merchantable quality and be free from substantial defect in workmanship;
- 17.2 Any Goods manufactured or fabricated or Services performed by MEGAVAR or the Works will be performed to the standard agreed by the parties and as set out in the Contract Particulars;
- 17.3 MEGAVAR warrants the Goods for the period stated the Contract Particulars, and where no period is stated, 3 months following receipt of the Goods and only insofar as the defect is a result of faulty workmanship of MEGAVAR or the use of substandard materials by MEGAVAR. If the Customer finds a defect with the Goods or Services the Customer must notify MEGAVAR in writing of the defect within 7 days of discovery of the defect and must take all reasonable precautions to prevent the use of the Goods;
- 17.4 MEGAVAR will be responsible for the costs of actual rectification/replacement Services only and any associated costs (including removal or transportation costs) shall be borne by the Customer; and
- 17.5 If MEGAVAR uses a subcontractor or supplier or other person to perform any work under the Contract (Other Person), any work, labour and services carried out by the Other Person shall only be warranted by MEGAVAR to the degree that the Other Person indemnifies MEGAVAR
- 17.6 Any additional warranty provided by a manufacturer for Goods which MEGAVAR has supplied will be passed on to the Customer on agreement with the manufacturer.

## 18. QUALITY

- 18.1. Unless otherwise provided, MEGAVAR will use suitable new materials and proper and tradesman-like workmanship. Except to the extent that the Contract otherwise provides, MEGAVAR shall supply everything necessary for the proper performance of MEGAVAR's obligations and the discharge of MEGAVAR's liabilities.
- 18.2. If the Customer becomes aware of work by MEGAVAR that does not comply with the Contract, the Customer shall as soon as practicable give MEGAVAR written details thereof. MEGAVAR will carry out rectifications within a reasonable timeframe after receiving written notice, excluding:
  - a) Ordinary wear and tear;
  - b) Any damage which has been caused or contributed by the Customer's negligence or acts or omissions.

## 19. INTELLECTUAL PROPERTY

- 19.1. MEGAVAR retains all intellectual property and ownership rights of such in any Intellectual Property and other information relating to the Services which is created or modified by MEGAVAR during the Contract.
- 19.2. MEGAVAR hereby grants to the Customer a perpetual, irrevocable, non-exclusive, royalty free, transferable licence to use all Intellectual Property which is used or developed by MEGAVAR, for the purpose of or in connection with the Contract.
- 19.3. The Customer warrants that, unless otherwise provided in the Contract, design, materials, documents and methods of working, each specified in the Contract or provided and directed by the Customer shall not infringe any intellectual property right.
- 19.4. MEGAVAR warrants that any other design, materials, documents and methods of working, each or provided by MEGAVAR shall not infringe any intellectual property right.

## 12. INSURANCE

Before commencing the Services, MEGAVAR shall procure and maintain insurances as specified in the Contract Particulars.

## 20. CONFIDENTIALITY

- 20.1. The Customer acknowledges and agree that any information submitted by MEGAVAR in its offer which includes but is not limited to pricing, technical specifications and other information is commercial in confidence

and submitted solely for evaluation by the Customer. Such information must at all times remain confidential and shall not be disclosed to any third party without MEGAVAR's prior written consent.

- 20.2. If such information is disclosed to a third party with MEGAVAR's prior consent, the Customer must ensure that as a condition precedent to the passing of such information that the third party accepts and acknowledges to be bound by confidentiality obligations.

#### **21. ASBESTOS AND OTHER HAZARDOUS MATERIALS**

The Customer is responsible for ensuring Services being performed on the Customer's Premises are in an asbestos and hazardous free environment. The Customer is responsible for all costs arising as a result of the presence of asbestos, asbestos contaminated material or any other hazardous material in or on the Customer's Premises where the Services are required to be performed.

#### **22. INCONSISTENCY**

To the extent of any inconsistencies, the Conditions prevail over any other document.

#### **23. CANCELLATION**

- 23.1. Either party has the right to cancel this Contract because of any event beyond the reasonable control of either party which alters the ability of the cancelling party to fulfil the terms of this Contract.
- 23.2. If MEGAVAR cancels this Contract, the Customer agrees and acknowledges that it will not prosecute any claim in law or in equity against MEGAVAR. The Customer agrees if the Customer cancels it will pay to MEGAVAR all outstanding MEGAVAR Invoices and for all Goods and/or Services provided to the Customer up to the date of cancellation and the Customer indemnifies Megavar against any losses incurred by Megavar as a result of the termination. Any annual payments made prior to cancellation will not be refundable.

#### **24. FORCE MAJEURE**

If performance by MEGAVAR of any obligation under the Contract is prevented, restricted or delayed by Force Majeure then MEGAVAR shall be excused from and shall not be liable for failure in performance to the extent that prevention, restriction or delay and the time for performance shall be extended accordingly, however, if supply is delayed for more than 4 months by Force Majeure and the parties have not agreed upon a revised basis for continuing the supply at the end of the delay, then either party may after that period and while the cause of non-performance still exists terminate the Contract by not less than 30 days' notice in writing to the other party.

#### **25. DISPUTE RESOLUTION**

- 25.1. If a difference or dispute between the parties arises in connection with the subject matter or interpretation of this Contract, including a dispute concerning a claim in tort, under statute, or on any other basis in law or equity available under the law governing the Contract ('Dispute'), either party may by hand or registered post give the other party written notice of the dispute identifying and providing details of the dispute and entitled Dispute Notice ('Dispute Notice').
- 25.2. Within 14 days of receipt of Dispute Notice representatives of the parties having authority to bind the parties shall confer to seek to resolve the Dispute or agree on a method of doing so and whether that method shall be binding. If a resolution or method of resolution has not been agreed within 28 days of the receipt of Dispute Notice, the General Manager of the parties shall confer for the same purpose as the parties' representatives. All aspects of such conference(s) shall be privileged.
- 25.3. Neither party may institute legal proceedings in respect of any Dispute unless a Dispute Notice in respect thereof has first been given and then only after a period of 28 days from receipt of such Dispute Notice has elapsed.
- 25.4. If the dispute has not been resolved within 28 days of service of the Dispute Notice, the dispute will be referred to arbitration.

#### **26. ARBITRATION**

If within a further 14 days the parties have not agreed on an arbitrator, the arbitrator shall be nominated by the President of the Institute of Arbitrators and Mediators Australia. The arbitration shall be conducted in accordance with the rules of the Institute of Arbitrators and Mediators Australia for the Conduct of Commercial Arbitration.

#### **27. SUMMARY RELIEF**

Nothing in this contract shall prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief.

## 28. GENERAL

- 28.1. The Contract is governed by law as stipulated in the Contract Particulars and the parties submit to the non-exclusive jurisdiction of those Courts. Where there is no jurisdiction stipulated in the Contract Particulars the jurisdiction is Tasmania.
- 28.2. Any waiver partly or whole of the terms of the Contract will be valid only if in writing and signed by MEGAVAR.
- 28.3. Any provision of the Contract that is prohibited or unenforceable, such unenforceability shall not invalidate the remaining provisions of the Contract nor affect the validity or enforceability of that provision.
- 28.4. These conditions (which can only be waived in writing and signed by an authorised representative of MEGAVAR) prevail over all conditions of the Customer's order or other documents.
- 28.5. If additional terms and/or conditions are attached to, incorporated into or accompany the Customer's order, those terms and/or conditions are not accepted by MEGAVAR and do not form part of the Contract unless expressly accepted in writing or signed by an authorised representative of MEGAVAR.
- 28.6. Nothing in these conditions shall be read or applied so as to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by law and which by law cannot be excluded, restricted or modified.

## 29. LEGISLATIVE REQUIREMENTS

MEGAVAR shall satisfy all legislative requirements except those specified in the Contract particulars or which can only be satisfied by the Customer. MEGAVAR, upon finding that a legislative requirement is at variance with the Contract, shall promptly give the Customer written notice thereof. If a change in the legislative requirement:

- a) Necessitates a change to the Services; and
- b) Comes into effect less than 14 days before the submission of MEGAVAR's offer to the Customer but could not have been reasonably anticipated by MEGAVAR; and
- c) Causes MEGAVAR to incur more or less cost than otherwise would have been incurred, then

MEGAVAR shall assess the difference in cost which shall be added to or subtracted from the contract sum.

## 30. ANTI-BRIBERY AND CORRUPTION

- 30.1. MEGAVAR is committed to operating in a manner consistent with the laws of the jurisdiction in which it operates, including laws relating to anti-bribery and anti-corruption.
- 30.2. The Customer represents and warrants it complies with Anti-Bribery and Anti-Corruption Legislation and that it has not and will not breach any Anti-Bribery and Anti-Corruption Legislation in connection with the Contract.
- 30.3. If the Customer becomes aware of any breach or suspects a breach of Anti-Bribery and Anti-Corruption Legislation in connection with the Contract it must immediately notify MEGAVAR in writing and provide reasonable details of such breach or suspected breach and provide reasonable access to information, books and records relevant to such breach.
- 30.4. If MEGAVAR, acting reasonably, believes the Customer has breached Anti-Bribery and Anti-Corruption Legislation in connection with the Contract, MEGAVAR must give the Customer written notice of such. If the Customer, within 30 days of that written notice, fails to show there is no reasonable basis to conclude a breach has occurred, MEGAVAR may terminate the Contract without further notice to the Customer.