

## **KDR Gold Coast Pty Ltd – Purchase Order Terms and Conditions (Services)**

### **1 SERVICES**

- 1.1 The Contractor must perform the Services at the Site during the Term for the Price in accordance with this Purchase Order.
- 1.2 The Contractor is taken to have carefully examined all documents and other information furnished by KDGC relating to the performance of the Services and to have fully satisfied itself of all conditions, risks, contingencies and other circumstances which might affect the performance of the Services including conditions at the Site, and to have made due allowance for these in the Price.

### **2 WARRANTIES**

- 2.1 The Contractor represents and warrants that the Services will be carried out:
- (a) with due care and skill and to a standard of diligence that would reasonably be expected from a prudent, expert and experienced provider of those Services;
  - (b) using appropriately qualified and trained personnel;
  - (c) in accordance with KDGC's directions and to the reasonable satisfaction of KDGC;
  - (d) to comply with all applicable Australian Standards and all Legal Requirements;
  - (e) so that they are fit for the purpose for which they are intended (or any purpose which may be reasonably inferred from this Purchase Order; and
  - (f) in compliance with all policies and procedures of KDGC or the controller of the Site on which the Services are being provided and which have been disclosed to the Contractor.

### **3 PRICE**

- 3.1 The Price is fixed and will not be subject to adjustment for rise and fall, exchange rate variations or any changes in general or market specific economic conditions.
- 3.2 Except as expressly provided in this Purchase Order, the Price includes all taxes, duties, levies and fees (including GST) which are payable in relation to the performance of the Services. The Contractor must pay all such taxes, duties, levies and fees.
- 3.3 The Price will not be varied for any reason except where expressly agreed in writing, signed by an authorised representative of KDGC.

- 3.4 The Contractor must on completion of the performance of the Services issue an invoice to KDGC. If GST is payable and included in the Price, the invoice must be in the form of a valid tax invoice. All invoices must be itemised and be in a form which clearly indicates any GST component already paid by the Contractor for which KDGC is entitled to claim an input credit.
- 3.5 KDGC will pay the Contractor the applicable Price for the Services properly performed and validly invoiced in accordance with Clause 3.4, by the end of the next month which immediately follows the month in which a valid invoice for those Services is received by the KDGC Contact.
- 3.6 KDGC may make payment by cheque, bank cheque, transfer or cash payment or in any manner otherwise agreed in writing by the parties.
- 3.7 Payment is not evidence of the value of the Services or an admission of liability or that the Services are satisfactory but a payment on account only.
- 3.8 KDGC may set off against any amount owing to the Contractor, any amount owed by the Contractor to KDGC under this Purchase Order.

### **4 VARIATION**

- 4.1 KDGC may direct the Contractor by a notice in writing to perform a Variation.
- 4.2 Within 14 days of KDGC issuing a notice under clause 4.1, the Contractor must advise KDGC how much the Variation will cost and the timeframe for it to be performed.
- 4.3 If KDGC accepts the terms of the Variation proposed by the Contractor in accordance with clause 4.2, the Contractor must proceed with the Variation.

### **5 EXTENSIONS OF TIME**

- 5.1 If the Contractor reasonably believes that the Services will not be delivered by the expiry of the Term, the Contractor must give KDGC immediate notice of that fact.
- 5.2 If the Contractor gives notice under clause 5.1 KDGC may at its absolute discretion:
- (a) extend the Term by notifying the Contractor of a later date;
  - (b) refuse to extend the Term; or
  - (c) cancel this Purchase Order without liability to KDGC.
- 5.3 KDGC may, at any time, and for any reason whatsoever, by notice in writing to the Contractor extend the Term, but is not required to do so for the benefit of the Contractor.
- 5.4 The Contractor must take all reasonable steps necessary to minimise the effect of any delay on the performance of the Services.

**6 INTERFACE WITH OTHERS**

6.1 The Contractor acknowledges that it shall not have exclusive access to or possession of the KDGC Site. The Contractor will take all reasonable precautions to ensure that the performance of the Services will cause as little disturbance and inconvenience as possible to KDGC or any other person who has access to KDGC's Site.

**7 PERSONNEL**

7.1 The Contractor must not subcontract the whole or part of its obligations under this Purchase Order to a third party without the prior written consent of KDGC. KDGC may impose any conditions it considers appropriate when giving the aforementioned consent.

7.2 The Contractor is fully responsible for supplying the Services and for ensuring compliance with the requirements of this Purchase Order and will not be relieved of that responsibility because it has subcontracted any part of the Services to a subcontractor. The Contractor is liable for acts or omission of its subcontractor as if the same were acts or omissions of the Contractor.

7.3 KDGC may at any time direct the Contractor (including any subcontractors engaged by the Contractor) to remove from any of KDGC's Site or from the performance of the Services any person employed or engaged by the Contractor who:

- (a) KDGC believes is incompetent or negligent in the performance of their duties;
- (b) fails to submit to or fails to satisfactorily pass KDGC's security requirements;
- (c) fails to comply with KDGC's policies or procedures; or
- (d) misconducts himself or herself (in which case KDGC may remove any applicable security clearance).

**8 SECURITY INTEREST**

8.1 If the Contractor believes that a Security Interest arises under this Purchase Order it must notify KDGC in writing at least 5 days before the Contractor takes steps to register such Security Interest on the PPS Register.

8.2 Within 10 days of the earlier of:

- (a) the expiry or termination of this Purchase Order; or
- (b) receipt of the Price,

the Contractor will at its cost procure the removal from the PPS Register each Security Interest it has registered in respect of the Services, and must provide KDGC with written verification of the removal of the Security Interests pursuant to section 157 of the PPSA.

**9 INSURANCE AND INDEMNITY**

9.1 Unless KDGC expressly agrees otherwise, the Contractor must procure and maintain the following insurances:

- (a) **public and products liability insurance** written on an occurrence basis with a limit of indemnity of not less than \$10,000,000 for each and every occurrence and, in the case of product liability, no less than \$10,000,000 in the aggregate during any 12 month period of insurance which covers the liability of the Contractor in respect of bodily injury to any third party, third party property damage and advertising liability;
- (b) **motor vehicle insurance**, covering all mechanically propelled vehicles that are registered, or capable of being registered, for road use and are at any time used in connection with this Purchase Order;
- (c) **workers compensation insurance** as required by law in the State or territory the Services are being provided;
- (d) to the extent the Contractor is providing professional services **professional indemnity insurance** providing coverage for the Contractor's professional responsibilities to KDGC with a sum insured of not less than \$5,000,000.

9.2 The Contractor indemnifies KDGC against any action, liability, costs, damages, loss or expenses suffered or incurred by KDGC as a consequence of any action or omission by the Contractor, its contractors, employees or agents, including in connection with the performance of the Services.

**10 CONFIDENTIALITY**

Without the prior written consent of KDGC, this Purchase Order must be treated as confidential and must not be disclosed to any person (unless required by law) or be used for advertisement, display or publication.

**11 NON-COMPLIANT SERVICES**

11.1 If KDGC is not reasonably satisfied that the Services comply in all respects with the requirements of this Purchase Order, then KDGC may by notice require the Contractor to take such steps as are necessary to ensure that the Services comply with this Purchase Order;

11.2 If the Contractor fails, within a reasonable time, to ensure that the Services comply with this Purchase Order (and in any event not later than 14 days, unless otherwise agreed by KDGC), then KDGC may at its option:

- (a) notify the Contractor that KDGC rejects the Services which do not comply with this Purchase Order, in which case the Contractor must refund any payments made by KDGC in relation to the same; or
- (b) procure another service provider to perform the non-compliant Services, in

which case any additional costs incurred by KDGC in having such Services performed by another service provider will be a debt due and payable by the Contractor to KDGC.

- 11.3 KDGC's rights under this clause are in addition to its other rights under this Purchase Order.

## 12 DRAWINGS AND TOOLS

All tools, patterns, materials, drawings, specifications and other data provided by KDGC in connection with this Purchase Order:

- (a) remain the property of KDGC (except that the Contractor is responsible for making good any damage done to them while they are in the possession of the Contractor);
- (b) must be used solely for the purpose of this Purchase Order;
- (c) must not be passed to or divulged to any third party except with the express consent of KDGC in writing; and
- (d) must be returned by the Contractor to KDGC on completion of this Purchase Order.

## 13 INTELLECTUAL PROPERTY RIGHTS

- 13.1 The Contractor warrants that it has all Intellectual Property Rights necessary to perform the Services in accordance with this Purchase Order and indemnifies KDGC against any loss suffered or incurred by KDGC as a consequence of any claim by a third party that the Services, anything the Contractor does in supplying the Services or providing the Services or KDGC's use of the Services infringes or allegedly infringes the Intellectual Property Rights of any person.

- 13.2 The Contractor grants KDGC a perpetual, non-transferable, royalty-free licence of any Intellectual Property Rights required in order to use, adapt, rectify, consume, sell or otherwise receive the benefit of the Services in the manner reasonably intended by KDGC at the date of this Purchase Order.

## 14 FORCE MAJEURE

- 14.1 If an affected party is wholly or partly unable to carry out any obligation under this Purchase Order because of Force Majeure, then provided that the affected party:
- (a) gives the non-affected party prompt notice of that Force Majeure including reasonably full particulars of the event relied on and so far as known the probable extent to which it will be unable to perform or be delayed in performing that obligation; and
  - (b) uses all reasonable diligence to remove or remedy that Force Majeure as quickly as possible,

that obligation is suspended to the extent that it is affected by the continuation of the Force Majeure.

## 15 TERMINATION

- 15.1 KDGC may suspend all or part of the performance of the Services at any time for any period of time by giving notice to the Contractor. The Contractor must comply with the notice and recommence performance when notified by KDGC. The Contractor will not be entitled to any additional payment arising as a result of the suspension.

- 15.2 KDGC may terminate this Purchase Order immediately by notice in writing to the Contractor if the Contractor:

- (a) commits a material breach of this Purchase Order and does not remedy the breach within 7 days of being required to do so by KDGC (or any longer period as the parties may agree in writing); or
- (b) commits an Insolvent Event.

- 15.3 Despite any other provision of this Purchase Order, KDGC may terminate this Purchase Order at any time and for any reason by giving not less than 5 days' notice in writing to the Contractor.

- 15.4 Subject to any set off or deduction rights KDGC may have, upon termination KDGC's only obligation will be to pay the Contractor for Services which have been performed in accordance with this Purchase Order prior to the date of termination. For the avoidance of doubt KDGC will have no obligation to pay any other form of compensation to the Contractor for termination under this clause 15.

## 16 MISCELLANEOUS

- 16.1 In this Purchase Order:

- (a) headings are for convenience only and do not affect interpretation;
- (b) "includes" means includes without limitation;
- (c) a reference to a gender includes any gender;
- (d) a reference to "\$" is to be construed as a reference to Australian currency;
- (e) a reference to a party includes that party's successors and permitted assigns;
- (f) a reference to legislation includes any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it; and
- (g) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.

- 16.2 No waiver by KDGC of a breach of this Purchase Order by the Contractor constitutes a waiver for any subsequent or continuing breach by the Contractor.

- 16.3 This Purchase Order is governed by the law of the State or Territory at the Site in which the Services are to be performed. Each party

irrevocably submits to the non-exclusive jurisdiction of the courts this jurisdiction and any courts which have jurisdiction to hear appeals from any of those courts. A party must not object to the jurisdiction of a court merely because the forum is inconvenient.

16.4 If any provision or part of any provision, of this Purchase Order is invalid or otherwise unenforceable that provision or that part of the provision will be severed from this Purchase Order and the remainder of this Purchase Order will continue to be effective and valid notwithstanding such severance.

16.5 The Contractor must not, without the prior written approval of KDGC, assign, sub-contract or deal with its interest under this Purchase Order to a third party. Any such approval will not relieve the Contractor of its obligations under this Purchase Order.

## 17 DEFINITIONS

In these terms and conditions unless the context otherwise requires:

**Australian Standards** means any Australian Standard (as amended or replaced) issued by Standards Australia applying directly or indirectly to the Services;

**Contractor** means the Contractor providing the Services specified in the Fee Estimate;

**Fee Estimate** means the fee estimate, quote or other document setting out the key commercial terms as agreed by the parties in writing;

**Force Majeure** means an act of God, strike, lockout, war (declared or undeclared), blockade, act of public enemy, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental restraint (including an instruction or direction by a Local, State or Federal authority), riot, civil commotion, expropriation, prohibition, intervention or embargo, industrial conditions not limited to the Contractor, and any other occurrence of the kind listed above (including an instruction or direction by a public utility provider or emergency services), which is not reasonably within the control of the affected party;

**GST** has the meaning given in the *A New Tax System, (Goods and Services Tax) Act 1999 (Cth)*, and includes any payment made under or in accordance with the *GST and Related Matters Act 2000 (Qld)*;

**Insolvent Event** means any one of the following circumstances where the Contractor:

- (a) is (or states that it is) an insolvent under administration or insolvent (each defined under the *Corporations Act 2001 (Cth)*);
- (b) is in liquidation, provisional liquidation, under administration or wound up or has had a controller appointed to its property;
- (c) is subject to any arrangement, assignment, moratorium or composition,

protected from creditors under statute or dissolved;

- (d) has an application or order has been made, resolution passed, proposal put forward, or any other action is taken which is preparatory to or could result in any of (a), (b) or (c) above;
- (e) is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001 (Cth)*; or
- (f) something having a substantially similar effect to (a) to (e) happens under the law of any jurisdiction in relation to the Contractor which KDGC reasonably believes may prejudice the Contractor's ability to perform the Services;

**Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trademarks, designs, patents, inventions and other results of intellectual activity in any field whether or not registrable, registered or patentable;

**KDGC** means KDR Gold Coast Pty Ltd (ACN 150 236 936);

**KDGC Contact** means the individual designated as such in the Fee Estimate;

**Legal Requirements** means any Australian statute, ordinance, regulation, or by-law, and includes any licenses, permits and consents necessary for the Contractor to supply the Services;

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

**PPS Register** means the Personal Property Securities Register established under the PPSA;

**Price** means the amount payable by the Contractor for the Services as specified in the Fee Estimate;

**Purchase Order** means the document issued by KDGC called a "Purchase Order" which includes these terms and conditions and the Fee Estimate;

**Security Interest** has the meaning given in the PPSA;

**Services** means the services set out in the Fee Estimate;

**Site** means the location where the Services will be performed, as specified in the Fee Estimate;

**Term** means the time period during which the Services will be performed as specified in the Fee Estimate;

**Variation** means:

- (a) the inclusion of other services as Services to be performed by the Contractor under this Purchase Order;
- (b) a change in the character or quality of the Services to be supplied under this Purchase Order; or

**Commercial-in-confidence**

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- (c) an increase or decrease in the quantity of Services to be supplied under a Purchase Order.