

TERMS AND CONDITIONS FOR THE SUPPLY OF DELIVERABLES

1. Formation of Agreement

- 1.1. Upon KDR Gold Coast Pty Ltd (KDGC) accepting a quotation provided by the Supplier, KDGC shall issue a Purchase Order to the Supplier, which will be governed by these Terms and Conditions.
- 1.2. The Agreement is formed between KDGC and the Supplier when KDGC confirms acceptance of the Supplier's quotation by issuing a Purchase Order.
- 1.3. The Supplier is taken to have carefully examined all documents and other information furnished by KDGC relating to the supply of the Deliverables and to have fully satisfied itself of all conditions, risks, contingencies and other circumstances which might affect the supply of the Deliverables, and to have made due allowance for these in the Price.
- 1.4. In the event of any ambiguity, discrepancy or inconsistency between any document forming part of this Agreement, the following order of precedence will apply:
 - (a) these Terms and Conditions;
 - (b) the Purchase Order; and
 - (c) any document incorporated by express reference as part of this Agreement.

2. Quotation Not Binding

- 2.1. Any quotation for the Deliverables provided by the Supplier to KDGC shall not bind KDGC unless a Purchase Order is issued by KDGC pursuant to clause 1.2.

3. Warranties

- 3.1. The Supplier represents and warrants that it will, in delivering the Deliverables:
 - (a) ensure that the Deliverables are supplied and/or conducted in accordance with this Agreement and the standard of diligence, care and efficiency expected of a skilled, trained, competent and experienced person performing similar work to the Supplier;
 - (b) comply with the description in the Purchase Order, any relevant patterns or specifications and all applicable Australian Standards;
 - (c) ensure that any Deliverables delivered to KDGC are new, safe, of good merchantable quality and fit for the purpose for which they are required, intended or ordinarily used;
 - (d) comply with the provisions of any law, legislation, regulation, standard, code (including in relation to health, safety and environment) applicable to them; and
 - (e) comply with all policies and procedures of KDGC which have been disclosed to the Supplier and all reasonable directions from KDGC.
- 3.2. The warranties in clause 3.1 are in addition to any warranties or service guarantees given by the Supplier or implied by law.

4. Price

- 4.1. The Price is fixed and will not be adjusted for any reason except where expressly agreed in writing, signed by an authorised representative of KDGC.
- 4.2. Except as expressly provided in the Purchase Order, the Price includes all taxes, duties, levies and fees (GST inclusive) and all costs incurred for complying with the requirements of this Agreement in relation to the Deliverables. The Supplier must pay all such taxes, duties, levies and fees.

5. Invoices

- 5.1. All invoices must be itemised and be in a form which clearly indicates any GST component already paid by the Supplier for which KDGC is entitled to claim an input credit.
- 5.2. KDGC will not be liable to pay any invoice that does not comply with clauses 4 and 5.
- 5.3. Subject to the Deliverables meeting the requirements of this Agreement, KDGC will pay the Supplier upon receipt of a correctly rendered tax invoice, by the end of the next month which immediately follows the month in which an invoice for those Deliverables is received under clause 8.
- 5.4. Payment will be made to the Supplier by Electronic Transfer (EFT), or in any manner otherwise agreed in writing by the parties.
- 5.5. Payment is not evidence of the value of the Deliverables or an admission of liability or that the Deliverables are satisfactory but a payment on account only.
- 5.6. KDGC may set off against any amount owing to the Supplier any amount owed by the Supplier to KDGC, including monies owing under any agreement between KDGC and the Supplier.
- 5.7. The Supplier must promptly repay to KDGC any amounts paid in excess of amounts due to the Supplier.

6. Variation

- 6.1. The terms of this Agreement may not be varied, except as expressly agreed in writing by both parties.
- 6.2. KDGC may cancel or reduce the quantity of the Deliverables by notice to the Supplier within a reasonable time prior to delivery. KDGC will not be liable to pay for any such reduction or cancellation.

7. Transportation and Packaging

- 7.1. The Supplier must at its own cost, package, mark and label the Deliverables before delivery to KDGC in accordance with any specification, Australian Standard or applicable law for packaging, marking or labelling or otherwise in a manner reasonably expected of the Supplier having regard to the nature of the Deliverables.
- 7.2. Unless otherwise specified in the Purchase Order, the cost of delivery of the Deliverables (including all transport costs, packaging and reasonably appropriate insurance cover), and all packing, loading and unloading is included in the Price for the Deliverables.

8. Delivery and Acceptance

- 8.1. The Supplier must deliver the Deliverables by the Delivery Date to the Delivery Location.
- 8.2. KDGC may refuse to accept delivery if the Deliverables do not comply with this Agreement.
- 8.3. The Supplier is to provide detailed delivery dockets with every delivery of Deliverables and a failure to comply with the delivery docket requirements may delay or preclude acceptance and payment for the Deliverables.
- 8.4. KDGC will not be taken to have accepted the Deliverables as being in accordance with the Agreement (whether as to quality or quantity) despite KDGC or any of its representatives signing a delivery docket or other document required by the Supplier to acknowledge Delivery.
- 8.5. The Supplier must give immediate notice to KDGC if the Supplier reasonably believes that the Deliverables (or part thereof) will not be delivered by the Delivery Date and KDGC may, in absolute discretion:
 - (a) extend the time for Delivery of the Deliverables;
 - (b) refuse delivery of the Deliverables; or
 - (c) cancel the Purchase Order without any liability to KDGC.
- 8.6. The Supplier must take all reasonable steps necessary to minimise any delay to the supply of Deliverables.

- 8.7. KDGC is not obliged to accept early delivery of the Deliverables. If KDGC does not accept early delivery of the Deliverables, the Supplier must, at its cost, hold the Deliverables in store until the Delivery Date.
- 8.8. KDGC is not obliged to accept any Deliverables in excess of the quantity specified in the Purchase Order.
- 8.9. KDGC may, at any time, and for any reason whatsoever, by notice in writing to the Supplier extend the time for Delivery of the Deliverables (but is not required to do so for the benefit of the Supplier).

9. Risk and Title

- 9.1. The Supplier warrants that it has unencumbered ownership of, and title to, the Deliverables and the Deliverables are free of any liens, charges and encumbrances.
- 9.2. The Supplier warrants that unencumbered title in the Deliverables will pass to KDGC on the earlier of:
 - (a) acceptance of the Deliverables by KDGC; or
 - (b) payment by KDGC.
- 9.3. Notwithstanding the passage of title in accordance with clause 9.2 the risk and responsibility for the Deliverables shall remain with the Supplier until acceptance of the Deliverables by KDGC.

10. Defective Deliverables

- 10.1. If within the 12 month period from the date of delivery, either:
 - (a) KDGC reasonably determines that the Deliverables are Defective Deliverables; or
 - (b) the Deliverables become Defective Deliverables,KDGC may, in its absolute discretion return those Deliverables to the Supplier (in which case the Supplier assumes the risk of the Deliverables on the date the Deliverables are returned to the Supplier).
- 10.2. If KDGC exercises its power under clause 10.1, the Supplier must pay KDGC:
 - (a) any amounts paid by KDGC for the Defective Deliverables;
 - (b) any costs incurred or losses suffered by KDGC in connection with the Defective Deliverables; and/or
 - (c) to replace or repair the Defective Deliverables at the Supplier's cost and within a reasonable period (including if necessary, uninstalling and/or removing the Defective Deliverables).

11. Insurance

- 11.1. The Supplier must procure and maintain the following Insurances:
 - (a) marine transit insurance, covering all insurable risks of physical loss or damage to the Deliverables, and/or merchandise or any other property in which KDGC has an insurable interest occurring at any time while in transit or in storage in the ordinary course of transit up to the agreed Delivery Date for not less than full replacement value;
 - (b) public and products liability insurance written on an occurrence basis with a limit of indemnity of not less than \$20,000,000 for each and every occurrence and, in the case of product liability, no less than \$20,000,000 in the aggregate during any 12-month period of insurance, which covers the liability of the Supplier in respect of bodily injury, third-party property damage and advertising liability;
 - (c) 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 delivering the Deliverables; and
 - (d) workers compensation insurance as required by law in the State or Territory the Deliverables are being delivered.

12. Indemnity

- 12.1. The Supplier releases and indemnifies KDGC from and against any claim, loss, liabilities, costs, damages or expenses suffered or incurred by KDGC or its Personnel in respect of:
- (a) any:
 - (i) damage to, loss or destruction of, or loss of use (whether total or partial) of, any real or personal property (including property belonging to KDGC or its Personnel);
 - (ii) any injury to, or death or disease of persons; or
 - (iii) any third-party suits, claims, actions, demands, proceedings, penalty, costs, charges or expenses not otherwise covered by paragraph i. or ii.,
to the extent caused or contributed to by or arising out of any act or omission of the Supplier in relation to, or in consequence of, the provision of the Deliverables (including the performance or non-performance by the Supplier of its obligations under this Agreement); and
 - (b) any breach or failure to comply with the terms of this Agreement by the Supplier; or
 - (c) any negligent or unlawful acts or omissions or Wilful Misconduct by the Supplier.
- 12.2. The Supplier's liability under clause 12.1 will be reduced to the extent that a claim, loss, liabilities, costs, damages or expenses arise from a fraudulent or negligent act or omission or Wilful Misconduct of KDGC.

13. Confidentiality

- 13.1. The Supplier must keep confidential all documents, reports, discussions and any other information in relation to this Agreement and any Purchase Order and must not, without the prior written consent of KDGC, disclose any such information to any person (unless required by law).

14. KDGC Materials

- 14.1. All materials (including any information, documents, tools, patterns, drawings, specifications and data) provided by KDGC:
- (a) shall remain the property of KDGC (except that the Supplier is responsible for making good any damage done to them while they are in the possession of the Supplier);
 - (b) must be solely used for the purpose of this Agreement;
 - (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 Supplier in the same state as provided to KDGC on completion of the Deliverable.

15. Force Majeure

- 15.1. If an affected party is wholly or partly unable to carry out any obligation under this Agreement 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 mitigate, remove or remedy that Force Majeure as quickly as and to the extent possible,

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

16. Work Health and Safety

- 16.1. The Supplier must and must procure that each of its Personnel:
- (a) comply with this Agreement, the *Work, Health and Safety Act 2011* (Cth), and all other relevant national and local safety laws;

- (b) cooperate and comply with any directions given by a principal contractor under any applicable workplace health and safety legislation; and
- (c) not cause the Principal or any principal contractor to breach any applicable workplace health and safety legislation;
- (d) when using KDGC premises or any facilities occupied or utilised by KDGC, comply with all KDGC's directions, procedures and policies from time to time relating to occupational health and safety, security or otherwise in relation to the use of and access to KDGC's premises or in regard to any facilities on KDGC's premises;
- (e) ensure that no injury or damage is caused to persons or property;
- (f) keep KDGC fully informed of all occupational health and safety incidents arising out of, or in any way in connection with the Deliverables as soon as possible after they occur;
- (g) where chemicals are included in or used in connection with the supply of the Deliverables, the Supplier must provide to KDGC in respect of each chemical product or material safety data sheet; and
- (h) where applicable, supply adequate health and safety information with the Deliverables and ensure that the Deliverables will be safe when properly used, supplied, maintained and stored and at all times keep KDGC informed of all relevant information which becomes known to the Supplier concerning the use, supply, maintenance and storage of any such relevant Deliverables.

17. Applicable Law

- 17.1. This Agreement shall be governed by and construed in accordance with the laws of the State of Queensland, Australia and each party submits to the non-exclusive jurisdiction of the courts of Queensland.

18. Intellectual Property Rights

- 18.1. The Supplier warrants that it has all Intellectual Property Rights necessary to supply the Deliverables in accordance with this Agreement and indemnifies KDGC against any loss suffered or incurred by KDGC as a consequence of any claim by a third party that it has a right to any property or Intellectual Property Right in the Deliverables.
- 18.2. The Supplier grants KDGC a permanent, perpetual, irrevocable, transferable, royalty-free, non-exclusive licence of any Intellectual Property Rights required in order to use, adapt, rectify, consume, sell or otherwise receive the benefit of the Deliverables in the manner reasonably intended by KDGC at the date of this Agreement.

19. Termination

- 19.1. KDGC may suspend all or part of the provision of the Deliverables at any time for any period of time by giving notice to the Supplier. The Supplier must comply with the notice and recommence providing the Deliverables when notified by KDGC. The Supplier will not be entitled to any additional payment arising as a result of a suspension where that suspension was issued due to an act or omission of the Supplier.
- 19.2. KDGC may terminate this Agreement immediately by notice in writing to the Supplier if the Supplier
- (a) commits a material breach of this Agreement 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) suffers an Insolvency Event.
- 19.3. Despite any other provision of this Agreement, KDGC may terminate this Agreement at any time and for any reason by giving notice in writing to the Supplier. Subject to any set off or deduction rights KDGC may have, upon termination KDGC's only obligation will be to pay the Supplier for Deliverables which have been ordered or delivered in accordance with this Agreement prior to the date of termination.

20. Assignment and Subcontracting

- 20.1. The United Nations Convention on Contracts for the International Sale of Goods is excluded and does not apply to this Agreement.
- 20.2. If any provision or part of any provision, of this Agreement is invalid or otherwise unenforceable that provision or that part of the provision will be severed from this Agreement and the remainder of this Agreement will continue to be effective and valid notwithstanding such severance.
- 20.3. The Supplier must not subcontract, assign, novate, transfer, mortgage or charge its interest in, or obligations under this Agreement (or any part of it) without KDGC's prior written consent.

21. Miscellaneous

- 21.1. In this Agreement:
- (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.
- 21.2. No waiver by KDGC of a breach of this Agreement by the Supplier constitutes a waiver for any subsequent or continuing breach by the Supplier.

22. Definitions

For the purposes of these terms and conditions and unless the context otherwise indicates:

Agreement means this agreement between KDGC and the Supplier formed in accordance with clause 1 which comprises these Terms and Conditions, the Purchase Order and any document incorporated by reference by written agreements of the parties.

Australian Standards means any Australian Standard (as amended or replaced) issued by Standards Australia applying directly or indirectly to the Deliverables.

Defective Deliverables means any Deliverables which do not comply with this Agreement or are otherwise defective in design, specification, performance, workmanship and/or makeup.

Deliverables means goods, services or goods and services.

Delivery Date means the date specified in the Purchase Order as the date and time by which the Supplier must deliver the Deliverables to the Delivery Location.

Delivery Location means the place specified for delivery by KDGC in the Purchase Order.

Force Majeure means:

- (a) acts of God, lightning strikes, earthquakes, floods, tempests, mud slides, washaways, explosions, fires and any natural disaster, or any other unforeseeable or irresistible action of natural forces;
- (b) acts of war, acts of public enemies, terrorism, civil commotion, malicious damage, sabotage, blockade, riot, insurrection, epidemic and revolution; and
- (c) embargo.

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).

Industrial Action means industrial action of any description including industrial action involving:

- (a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of work;

- (b) a ban, limitation or restriction on the performance of work, or acceptance of or offering for work; and
- (c) a failure or refusal by any person employed or engaged by the Supplier or its Personnel to attend for work.

Insolvency Event means any one of the following circumstances where the Supplier:

- (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 Supplier which KDGC reasonably believes may prejudice the Supplier's ability to supply Deliverables or to pass title in the Deliverables to KDGC.

Intellectual Property Rights includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including rights of any kind in:

- (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents, innovation patents or designs, including developments or improvements of equipment, technology, processes, methods or techniques;
- (b) literary works, dramatic works, musical works, artistic works, cinematograph films, television broadcasts, sound broadcasts, published editions of works and any other subject matter in which copyright (including future copyright and rights in the nature of or analogous to copyright) may, or may upon creation of the subject matter, subsist anywhere in the world;
- (c) registered and unregistered trade marks and service marks, including goodwill in the business concerned in the relevant goods or services;
- (d) trade, business or company names;
- (e) internet domain names; and
- (f) proprietary rights under the *Circuit Layouts Act 1989* (Cth),

whether created or in existence before or after the date of this Agreement (and whether developed or created for the purposes of this Agreement or for any other purpose) and includes any thing, whether tangible or intangible, which incorporates, embodies or is based on any of the things referred to in paragraphs (a) to (f) inclusive of this definition.

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

Personnel means in relation to a person, any Related Body Corporate of that person and any officer, employee, agent, contractor, consultant, nominee, licensee or advisor of that person.

Price means the amount specified as the Price for the Deliverables in the Supplier's quotation and accepted by KDGC in the Purchase Order.

Purchase Order means the document issued by KDGC marked as such, which includes an order number, name of the Supplier and details of the quantity, description and price of the Deliverables.

Related Body Corporate has the same meaning as in the *Corporations Act 2001* (Cth).

Supplier means the person, firm or corporation identified as such in the Purchase Order.

Willful Misconduct means an intentional act or omission with the knowledge that the act or omission was likely to have harmful consequences but does not, for the avoidance of doubt, include any innocent or negligent act, omission, mistake or error of judgement.