

SUPPLIER TERMS & CONDITIONS

PROJECT NO: []20[]-[]

This Agreement is dated [.../.../...] 20[...], (“Date”) and is made between:

<p>CMW Geosciences of [.....] (“CMW”) CMW representative [.....] email: [admin@cmwgeo.com]</p> <p>SIGNED for and on behalf of CMW by: [.....] Name: [.....] Capacity: [.....]</p>	<p>ABN: [.....]</p>
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AND

<p>[.....] of [.....] (“Supplier”) Supplier representative [.....] email: [.....]</p> <p>SIGNED for and on behalf of Supplier by: [.....] Name: [.....] Capacity: [.....]</p>	<p>ABN: [.....]</p>
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AGREEMENT DETAILS

Description of the Works: As per proposal document reference: [.....], dated [.../.../...] 20[...]
(“**Works**”)

Location of the Works: [.....]

Price (if lump sum amount agreed): \$[.....] (excl. GST)

Hourly Rate (excl. GST) (where applicable): \$[.....]

Date for Completion of the Works: [.../.../...]

Defects Notification Period: [.....] which shall apply from the date for Completion of the Works.

It shall be a condition precedent to the entering into of this Agreement that the Supplier provide to CMW on or before the Date a current and valid certificate of currency for the following insurances:

- Public Liability Insurance: [Not Less than [\$20] million]
- Professional Indemnity Insurance: [Not less than [\$1] million]
- Vehicle Insurance: [Not less than [\$10] million]

TERMS AND CONDITIONS

1 DEFINITIONS

Agreement means the agreement made between the Parties on the Date, incorporating the terms and conditions set out here and including for the avoidance of doubt, the Purchase Order.

Charges or **Price** (if a lump sum amount has been agreed by CMW) means the charge made by the Supplier and the amount payable by CMW for the Services detailed in the Purchase Order, always as agreed to by CMW herein.

Confidential Information means any information howsoever disclosed to the Supplier and which is identified by CMW as confidential, or which in the circumstances of its disclosure the Supplier knows or ought to have known is confidential, excluding information which:

- a. is available to the public, other than as a result of a breach of an obligation of confidentiality owed to CMW;
- b. becomes known to the Supplier otherwise than by disclosure of CMW;
- c. was within the Supplier's knowledge without being confidential and prior to receipt of that information from CMW; or
- d. is or has been independently discovered or developed by the Supplier without the use of CMW's confidential information.

Date means the date on which this Agreement is entered into, as shown above.

Day means a calendar day.

Goods means the goods to be supplied by the Supplier to CMW in accordance with the Purchase Order.

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

GST means Goods and Services Tax.

Parties means CMW and the Supplier and **Party** means either one of them.

Proposal means the proposal document referred to in the Description of the Works above.

Purchase Order means and includes:

- a. the relevant purchase order for the purchase of the Goods or the Services as the case may be, issued by CMW to the Supplier, attached hereto and initialled by the Parties for the purposes of identification; and
- b. the Proposal.

Services means the services to be provided by the Supplier to CMW in accordance with the terms of this Agreement and the Purchase Order.

Supplier means the entity named above, bearing the referenced ABN.

Terms means the terms and conditions set out in this Agreement.

Works means the scope of Works set out above and in the Proposal.

2 SUPPLIER'S DUTIES

2.1 The Supplier will:

- a. supply the Goods and/or the Services as the case may be, in accordance with the terms and conditions set out in this Agreement;
- b. carry out the Works in a proper and workmanlike manner, with all due care, skill and diligence, competently and to the reasonable satisfaction of CMW;
- c. satisfy itself that all investigations and enquiries necessary have been made, including, without limitation, services detection, hand excavation and document searches, to the full extent necessary to prevent loss or damage;
- d. comply with any drawings, specifications and any reasonable instructions given by CMW;
- e. comply with all relevant laws, codes and industry recognised standards and agreements;
- f. complete the Works within the time stated above, unless otherwise agreed by CMW in writing and in any event, in a timely manner;

- g. where Goods are required to be delivered, deliver such Goods by the time specified in the Purchase Order;
- h. not subcontract the Works, the Services or the supply of the Goods as the case may be or any part thereof, without the prior written consent of CMW;
- i. comply with all occupational health and safety laws, regulations and requirements and generally carry out the Works in a manner which ensures the safety and protection of all persons, property, plant and equipment at all times; and
- j. undertake to CMW that it will complete the Works using its own or hired, properly maintained and safe equipment.

3 AGREEMENT EFFECTIVE

- 3.1 This Agreement shall come into effect on the Date.
- 3.2 Subject always to clause 4, the Supplier may be entitled to an extension of time to complete the Works where progress of the Works is delayed and the cause of such delay is entirely attributable to CMW.

4 VARIATIONS

- 4.1 A variation is an amendment of the terms of this Agreement. A variation will only be agreed by CMW in writing and shall be set out in an amendment to the Purchase Order. A variation so recorded shall only take effect following receipt by the Supplier of the amended Purchase Order. If a variation is agreed by the Parties, the Price will be adjusted to take into account any variation thereby agreed.
- 4.2 The terms of this Agreement cannot be modified other than in writing and no oral modifications shall be effective.
- 4.3 For the avoidance of doubt CMW will not pay any additional costs or expenses incurred by the Supplier, or grant an extension of time, in connection with a variation, unless the price (including any increase in the Price) and any extension of time has been agreed by the Parties in writing before any variation is carried out.

5 PAYMENT

- 5.1 Payment of the Price shall be made within the period stated in the Purchase Order, commencing on the receipt by CMW of a Valid Tax Invoice (as defined in the GST Act and complying with clause 8) issued by the Supplier.
- 5.2 All invoices issued by the Supplier to CMW must:
 - a. satisfy the requirements for a Valid Tax Invoice as specified in the GST Act;
 - b. be submitted to CMW on or about the fifth (5th) day of the calendar month following the calendar month in which the Goods are supplied or the Services provided, as the case may be;
 - c. state the Purchase Order reference number and reference any other written direction from CMW; and
 - d. be addressed to CMW Geosciences, attention the CMW representative named above at the email address given there.
- 5.3 CMW may set off by way of deduction the full amount of any loss or damage caused by or attributable to the Supplier, or the amount of any incomplete or unsatisfactory or defective work carried out by the Supplier, from any monies otherwise payable by CMW to the Supplier under this Agreement. Any shortfall shall be a debt due from the Supplier to CMW and Supplier hereby agrees to indemnify CMW against any and all costs, losses and expenses (including legal costs and expenses) for any legal action taken by CMW to recover such debt.
- 5.4 Title to all Goods shall pass to CMW free of any encumbrance upon payment tendered by CMW for those Goods.

6 INSURANCE

- 6.1 It is a term of this Agreement that the Supplier must take out and maintain for the duration of this Agreement all of the following insurances:
- a. appropriate Public Liability Insurance extending to an indemnification of CMW for all acts or omissions of the Supplier in not less than the amount stated above single limit per occurrence;
 - b. suitable worker's compensation and employer's liability insurance for cover against any and all liability, loss, claim or expense arising under common law or any applicable worker's or accident compensation statute or regulation in relation to any person employed or engaged by the Supplier in connection with this Agreement;
 - c. a policy of insurance providing cover for any loss or damage caused by any vehicle or equipment (if any) operated by the Supplier; and
 - d. Professional Indemnity Insurance not less than \$1,000,000 any one claim and in the aggregate to be maintained for the period of this agreement and thereafter for a period of no less than the defects notification period referred to above.
- 6.2 The policies referred to in clauses 6.1 must note the interest of CMW. Wherever relevant the policy territory coverage will include all areas where the Services are to be performed. The Supplier will, in accordance with the condition precedent set out above, produce current and valid certificates of currency and any other evidence reasonably requested by CMW to show that the insurances required under this Agreement or by law have been effected and are being maintained.

7 CONFIDENTIAL INFORMATION, INTELLECTUAL PROPERTY AND DATA PROTECTION

- 7.1 The Supplier shall keep confidential all Confidential Information. All documents identified by CMW as Confidential Information and any copies in any form shall be returned to CMW following the termination of this Agreement for any reason whatsoever, or at any time at the request of CMW.
- 7.2 Ownership of and copyright in any written material produced by the Supplier and any intellectual property right developed by the Supplier under this Agreement shall vest in CMW on creation or production, to the extent permissible by law.
- 7.3 Supplier hereby undertakes to take all reasonable actions to ensure that any and all data and information received from CMW is secure and safeguarded from loss, misuse, unauthorised access, modification or unauthorised disclosure and that the Supplier will only disclose personal information in order to fulfil its obligations in providing the Services and not otherwise.

8 INDEMNITY

- 8.1 The Supplier hereby indemnifies and shall keep indemnified CMW against any and all claims, demands, losses, liabilities, costs, charges and expenses (including legal costs and expense) arising as a result of any act, neglect or default of the Supplier in the carrying out of the Services, unless caused by wilful misconduct on the part of CMW or any of its officers, employees or agents acting within the scope of their employment.

9 GST AND STATUS

- 9.1 Unless otherwise stated in this Agreement, the Charges, the Price and any other consideration specified does not include any amount for GST.
- 9.2 If a Party is entitled to be reimbursed or indemnified under this Agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the Party, or to which the representative

member for a GST group of which the other Party is a member, is entitled to an Input Tax Credit (as defined in the GST Act).

- 9.3 The Parties acknowledge that the Supplier (including its employees):
- a. is not an agent, servant, representative or employee of CMW; and
 - b. accrues no entitlement to holiday, long service or paid leave from CMW.
- 9.4 The Supplier hereby undertakes not to incur any obligation or make any representation on behalf of CMW that it is not authorised in writing beforehand to make.

10 TERMINATION

- 10.1 CMW may terminate this Agreement at any time and for any reason on the giving of not less than [five (5) Days] notice.
- 10.2 CMW may terminate this Agreement summarily by written notice where:
- a. Supplier commits a breach of the terms of this Agreement which is not capable of remedy (the determination of which shall be in CMW's sole discretion, but which shall include timely delivery);
 - b. Supplier has committed a breach of a term of this Agreement which is capable of remedy but has not remedied the breach within 7 Days of receipt of written notice identifying the breach and the action to be taken to remedy it;
 - c. subject always to *Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017 (Cth)*, the Supplier commits an act of insolvency, including going into voluntary administration, a receiver or controller is appointed to all or substantially all of its assets, or it publicly announces, applies for or becomes subject to a scheme of arrangement designed to avoid an insolvent winding up; or
 - d. Supplier novates, assigns or otherwise deals with or attempts to deal with its rights under this Agreement without CMW's prior written consent.

11 GENERAL

- 11.1 This Agreement, including the Description of the Works set out in the Proposal and any specifications, drawings and documents referred to in the Purchase Order shall constitute the entire agreement between the Parties.
- 11.2 Any notice given by one Party to the other must be in writing and delivered by hand (against receipt), sent by mail or courier or transmitted by email to the Party's email address given above, in each case addressed to the Party's representative.
- 11.3 For any project, this Agreement is governed by the laws of the state of the CMW office administering the project and the Parties submit to the non-exclusive jurisdiction of the courts of that State and Courts of Appeal.
- 11.4 All references to "Supplier" includes without limitation the Supplier's employees, agents and sub-suppliers and anyone else under the direction, control or responsibility of the Supplier.
- 11.5 Clauses 6, 7 8 and 11 shall survive the expiry or termination (for whatever reason) of this Agreement, together with any clauses that by necessary implication shall survive such expiry or termination.