

## ACRAN TERMS AND CONDITIONS OF ORDER

### 1. Definitions

The following terms used in this Contract shall have the following meanings:-

"Law" includes Acts, regulations, by-laws, ordinances, certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the Works and fees and charges payable in connection with the foregoing;

"Purchaser" shall mean Penina Pty Ltd trading as Acran;

"Seller" shall mean that entity identified overleaf to whom this order is directed by the Purchaser; "Insolvency Event" means if an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the *Corporations Act 2001* (Cth)) is appointed to, or over, any of the property or undertaking of the Seller, if the Seller is unable to pay its debts when they become due and payable, if the Seller ceases to carry on business or if the Seller or the Seller's property or undertaking becomes subject to a personal insolvency arrangement under part X *Bankruptcy Act 1966* (Cth) or a debt agreement under part IX *Bankruptcy Act 1966* (Cth).

"Works" means that work described overleaf to be completed in accordance with this Contract and includes but is not limited to the manufacture and supply of goods, plant, equipment, units, components, fittings, attachments of whatsoever kind or nature, the repair, maintenance, improvements, supply of labour and the performance of work on site;

"Site" means that location where the works are to be undertaken.

### 2. Conditions of Contract

This Contract constitutes the entire agreement between the Purchaser and the Seller and supersedes all prior arrangements written or oral. To the extent permitted by law, any statement, representation or promise made in any other document (including without limitation in any terms or conditions proposed by the Purchaser for the Works) or any discussion has no effect.

### 3. Assignment

The Seller must not assign a right under this Contract or otherwise deal with this Contract (including any payment to be made to the Seller under this Contract) without the written consent of the Purchaser.

### 4. Performance

The Seller must complete the Works with due care and skill, in accordance with this Contract and the Law. The Seller must comply with the Purchaser's reasonable directions in carrying out the Works.

### 5. Time

The Seller must commence and complete the Works strictly in accordance with the dates and times specified by the Purchaser or as stated overleaf. The Seller shall be entitled to claim an extension of time to the date it is required to complete the Works only to the extent the Seller is delayed by any act, default or omission of the Purchaser. The Seller must undertake reasonable endeavours to mitigate any delay (including without limitation a delay caused by the act, default or omission of the Purchaser). The Seller acknowledges that it shall not be entitled to any claim against the Purchaser for any delay or disruption costs, expenses, losses or damages for any reason (including without limitation an act, default or omission of the Purchaser) arising out of or in connection with this Contract, at tort (including negligence), in equity or otherwise.

### 6. Default

If the Seller fails to complete the Works or to deliver all goods to the site by the times or the dates specified by the Purchaser, breaches the Contract (including without limitation if the Supplier suspends performance of the Works, fails to proceed with the Works with due care and skill or is in breach of any Law) or suffers an Insolvency Event, then the Purchaser may, without notice to the Seller and without prejudice to any of its other rights under the Contract or at law, refuse to allow the Seller to undertake the Works or deliver goods to site and terminate the contract. The Purchaser may in its discretion procure others to undertake the Works or supply goods. The Seller shall be liable to the Purchaser for any additional costs or loss (including consequential loss) incurred by the Purchaser as a consequence of the Seller's failure or default pursuant to this clause.

### 7. Variations

7.1 The Seller must immediately commence carrying out a variation to the Works if instructed in writing by the Purchaser. No variation instructed by the Purchaser shall invalidate the Contract.

7.2 The Seller shall not carry out a variation to the Works and is not entitled to payment for a variation to the Works unless it is instructed in writing by the Purchaser.

7.3 The price of any variation shall be agreed between the Seller and the Purchaser, or failing agreement within 20 days of the written instruction for a variation issue by the Purchaser, shall be an amount valued by the Purchaser.

### 8. Responsibility for Works

Until the Purchaser gives a written notice to the Seller that it is not required to care for the Works (which the Seller acknowledges the Purchaser shall not be obliged to issue until the work for any client of the Purchaser is completed by the Purchaser), the Seller remains responsible for the care of the Works (including risk in any goods supplied to site but not yet incorporated in the Works) from the date the Works are undertaken (or the goods supplied to site). The Seller must make good any loss or damage to the Works (or the goods) at the Seller's own expense where loss or damage occurs while the Works (or goods) are within the Seller's care or where loss or damage is caused by any act, default or omission of the Seller or any of its employees, subcontractors, suppliers or agents.

### 9. Defects

9.1 The Seller shall be responsible for and will at its own cost rectify any defects in the Works.

9.2 Where the defect is in goods supplied by the Seller, the Purchaser may, in its sole discretion, either convert such goods into a condition acceptable to the Purchaser or return such goods to the Seller. The Purchaser's costs incurred in converting or returning the goods (including any amount paid for the goods) and any losses or damages incurred by the Purchaser as a result of the defective goods, may be deducted from any monies payable to the Seller.

### 10. Warranty

The Seller warrants to the Purchaser that any goods forming part of the Works are of merchantable quality and shall be fit for the Purchaser's purposes. The goods delivered to site shall be manufactured strictly in accordance with any plans and specifications provided and will comply with any standard issued by the Standards Association of Australia.

### 11. Intellectual Property

11.1 The Seller shall protect and indemnify the Purchaser from and against all claims, judgements and losses arising from infringement of any patent, registered design, trademark, copyright or other protected right in respect of the Works and the Purchaser shall have no liability in respect of any goods forming part of the Works being intermingled or combined with the works and goods of others.

11.2 All drawings, specification/s and any other documents issued by the Purchaser to the Seller pursuant to this Contract and the copyright therein are and shall remain as between the Purchaser and the Seller the property of the Purchaser and the Seller undertakes not to use, copy or reproduce for any purpose other than that stated in this Contract such drawings, specification and documents.

### 12. Price

The Seller warrants the price of the Works overleaf are fixed and firm and includes all incidental or reasonably inferred work required to complete the Works. The Seller warrants that neither the Works undertaken nor the goods supplied by it shall be subject to price escalation or increase for any reason including but not limited to sales tax, fluctuations in exchange rates, increase in the price of materials or labour, or any increased costs resulting from any industrial award agreement or contribution to superannuation or redundancy schemes.

### 13. Consequential Loss

The Purchaser shall not be liable to the Seller for any indirect, economic, special or consequential loss or damage, loss of revenue, loss of time, loss of goodwill, loss of anticipated savings, loss of opportunity, loss of production and loss of actual or anticipated profit, howsoever arising, including for any breach of the Contract, in tort (including negligence), in equity or otherwise.

### 14. Title to Goods

The Seller warrants that any goods supplied to the Purchaser in undertaking the Works are free from all liens, charges, mortgages, encumbrances or any other impediments to title. Title in the goods so supplied by the Seller to the Purchaser shall pass immediately upon payment to the Seller by the Purchaser and the Seller warrants it shall exercise no right of repossessing such goods from site.

### 15. Specified Requirements

The Seller acknowledges that the Purchaser or any person nominated by the Purchaser shall be entitled at any time to verify at its source that the Works undertaken (including the goods to be supplied) by the Seller conform to specified requirements. Verification by the Purchaser pursuant to this clause shall not absolve or detract from the Seller's responsibility to provide acceptable Works (or goods) nor shall it detract from the Purchaser's right to reject the works or goods.

Verification by the Purchaser shall not constitute evidence or acceptance by it of the Works (or goods) including without limitation that the Seller has effective quality control in place. The Seller acknowledges that the Purchaser's right to verify at source as stated in this clause includes the right to access the Seller's premises, facilities or site where the Works are being undertaken or the goods are being manufactured or supplied.

### 16. Payment

Progress payments made by the Purchaser to the Seller shall be on account only. The Purchaser shall be entitled to withhold payment of any claim or part thereof for the value of any part of the Works which is defective or not otherwise to the satisfaction of the Purchaser. The Purchaser shall not be obliged to make payments to the Seller of any monies under this Contract until the Seller provides to the Purchaser an original tax invoice (compliant with any requirements of *A New Tax System (Goods and Services Tax) Act 1999* (Cth)). Payment will be made within 45 days from the end of the month that a valid tax invoice is received by the Purchaser.

### 17. Indemnity & Insurance

Prior to the commencement of works the Seller shall effect and maintain during this Contract public and products liability insurance with a limit of liability of not less than \$10 million for any one occurrence, contracts works cover for the value of the Works and workers' compensation insurance for all employees as required by Law. The Seller shall be liable for and indemnifies the Purchaser against any legal liability, claim, loss or damage suffered by the Purchaser caused or contributed to by the Seller arising out of or in connection with the Contract or the Works (including without limitation for any death, injury or loss or damage to property, of the Purchaser or any third party, liquidated damages and consequential loss).

### 18. Work Health & Safety

The Seller shall comply in all respects with the provisions of the *Work Health & Safety Act 2011* (Qld), its regulations and codes of practice and ensure that all other persons in its employ also comply with the provisions, regulations and codes of practice.

The Seller indemnifies the Purchaser against all liability that the Purchaser may incur as result of a failure by the Seller to comply with his obligations pursuant to this clause 18.

### 19. Suspension

The Purchaser may, at any time and for any reason suspend the Works by giving the Seller written notice. When the Seller receives a notice of suspension, the Seller must suspend the Works until such time as it is directed to resume the Works. When directed, the Seller must resume the Works as soon as reasonably possible after a direction to resume the works.

### 20. Notification of Claims

If the Seller does not give to the Purchaser a written notice of any claim (including without limitation any claim made under a provision of this Contract), action, demand or proceeding it has or alleges against the Purchaser within 15 days of the occurrence of the events or circumstances giving rise to the claim, demand or proceeding first occurring, the Purchaser shall not be liable in connection with any claim, action, demand or proceeding arising from or related to those events or circumstances and the Supplier is absolutely barred from proceeding with any claim, action, demand or proceeding arising from or related to those events or circumstances.

### 21. Queensland Law

Queensland law governs this Contract. The Seller agrees that the *Sale of Goods (Vienna Convention) Act 1986* (Qld) will have no application to any matter in connection with either the Contract or the sale of any goods forming part of the Works. Each party irrevocably submits to the non-exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from them.

### 22. Deductions

Any debt or sum claimed by the Purchaser under this Contract whether liquidated or unliquidated may be deducted or set off from any amount owed by the Purchaser to the Seller.

### 23. PPSA

In this clause, the words 'Accession', 'Comingled', 'Personal Property', 'Financing Statement', 'Security Interest' and 'Verification Statement' have the meaning given to them in the *Personal Properties Securities Act 2009* (Cth) ('PPSA'). If the Purchaser determines that this document (or a transaction in connection with it) is or contains a Security Interest, the Seller agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Purchaser asks and considers necessary for the purposes of:

- ensuring that the Security Interest is enforceable, perfected and otherwise effective;
- enabling the Purchaser to apply for any registration, complete any Financing Statement or give any notification, in connection with the Security Interest; or
- enabling the Purchaser to exercise rights in connection with the Security Interest.

The Seller must not allow any of the Works supplied by the Seller to the Purchaser to become an Accession to or Comingled with any asset that is not owned by the Seller.

The Purchaser is not required to give any notice, and the Seller waives its rights to receive any notice under the PPSA (including notice of Verification Statement) unless the notice is required by the PPSA to be given (even though the Seller has waived the right to receive notice).