

Primero Group Limited (ACN 149 964 045)
Terms and Conditions of Purchase

All orders are accepted and sales are made subject only to the Terms and Conditions hereinafter stipulated. The proceeding with any order by the Supplier shall be deemed acceptance by the Supplier of such Terms and Conditions.

1. GENERAL

- (a) In these Terms and Conditions, the following definitions shall apply:
 - (i) **Agreement** means:
 - (A) the Order;
 - (B) any document incorporated by reference in the Order; and
 - (C) these Terms and Conditions.
 - (ii) **Apportionment Legislation** means any legislation under which an apportionment may be made.
 - (iii) **Company** means Primero Group Limited (ACN 149 964 045).
 - (iv) **Supplier** means the person, entity, business or company described (or any person acting on behalf of and with authority of the Supplier) on the Order in respect of the Goods and services.
 - (v) **Defects Liability Period** means the period of 12 months.
 - (vi) **Delivery Date** means the date for delivery of the Goods and completion of any services as stated in the Order.
 - (vii) **Goods** means the goods stated in the Order, or otherwise agreed by the parties, including but not limited to the raw materials, finished or semi-finished materials, or articles, machinery, parts, spares, commodities and any other goods, products, materials or services to be supplied by the Supplier and whether one or a number of items whether or not identical or similar.
 - (viii) **GST** has the meaning given to it under *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
 - (ix) **HSE** means health, safety and environment.
 - (x) **Order** means a document issued by the Company entitled "Purchase Order" or similar, and any direction (whether written or otherwise) issued by the Company.
 - (xi) **PPSA** means the *Personal Property Securities Act 2009 (Cth)*.
 - (xii) **Purchase Order Price** means the price set out in the Agreement or otherwise agreed by the parties, which is exclusive of GST.
 - (xiii) **Related Body Corporate** has the meaning provided in section 50 of the *Corporations Act 2001 (Cth)*.
 - (xiv) **Security Agreement** means the security agreement under the PPSA created between the Company and the Supplier under the Agreement, and the following words have the meaning given to them by the PPSA:
 - (A) Security Interest;
 - (B) Purchase Money Security Interest;
 - (C) Financing Statement;
 - (D) Financing Change Statement;
 - (E) Proceeds;
 - (F) Accessions;
 - (G) Verification Statement; and

- (H) Register.
- (xv) **Site** means the site stated in the Order or otherwise agreed by the parties.
- (xvi) **Specification** means all codes, standards, drawings and specifications applicable to the Agreement, referred to in the Agreement or otherwise incorporated into the Agreement by reference.
- (xvii) **Terms and Conditions** means these terms and conditions.
- (b) The Supplier agrees that these Terms and Conditions are incorporated in any contract made between the Company and the Supplier relative to the Goods and services described in the order or other contractual documents annexed thereto.
- (c) In the Agreement measurements of physical quantities are in Australian legal units of measurement within the meaning of the *National Measurement Act 1960 (Cth)* and, where any conversion is required from other units to Australian legal units of measurement, the Conversion Factors in schedule 34 of the regulations under that Act must be used or, if those regulations contain no appropriate conversion factor, the conversion factor from Australian Standard AS/NZS 1376-1996 must be used.

2. ORDERS

No Order may be altered without the Company's express written consent.

3. NATURE OF AGREEMENT

- (a) The Supplier must immediately commence performance of its obligations under the Agreement and take all steps to, at its own cost, deliver the Goods and complete any services before the Delivery Date.
- (b) The Supplier acknowledges that the Agreement does not restrict the Company from obtaining goods of any kind from other suppliers, including goods that are similar or identical to the Goods.
- (c) The Supplier is taken to have carefully examined all documents and other information furnished by the Company relating to the supply of the Goods and to have fully satisfied itself of all conditions, risks, contingencies and other circumstances which might affect the supply of the Goods and to have made due allowance for these in the Purchase Order Price.
- (d) The Supplier must not subcontract any part of the Agreement without the prior written approval of the Company, which may be given or withheld in the Company's absolute discretion.
- (e) The Supplier must ensure that the Goods are supplied, and any services are performed, in accordance with the Agreement, all laws and any quality assurance requirements prescribed in the Agreement. Where no quality assurance requirements are specified, the Goods and any services must comply with the highest standards applicable.
- (f) If the Company or any of its representatives signs a docket or other document provided by the Supplier, the Company will not be taken to have accepted the Goods as being in accordance with the Agreement (whether as to quality or quantity). This applies notwithstanding any terms and conditions appearing on any such docket or

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document.

- (g) Every exemption, limitation, defence, immunity, indemnity or other benefit contained in the Agreement or otherwise to which the Company is entitled will be held by the Company as trustee for the benefit of, and will extend to protect, each of the Company's Related Bodies Corporate, and the Company's and its Related Body Corporate's personnel.

4. WARRANTIES

- (a) The Supplier warrants that, and must ensure that:
- (i) the Goods and any services will comply with:
 - (A) the Agreement (including any description in the Agreement);
 - (B) any Specifications;
 - (C) any other warranties or guarantees contained in the Agreement;
 - (D) all applicable Australian standards; and
 - (E) all Australian legislation, regulations and any code with which the Supplier or Goods must comply;
 - (ii) the Goods and any services will be fit for their intended purpose;
 - (iii) it has the necessary skills, resources and experience to successfully, effectively and efficiently supply the Goods, perform any services and comply with the Agreement; and
 - (iv) it has all intellectual property rights (including any patents, trade marks and copyright) necessary to supply the Goods and perform any services in accordance with the Agreement, and that the supply of the Goods will not infringe any intellectual property rights of a third party.
- (b) If the Supplier is proposing to supply the Company with Goods made of recycled or re-cut material, the Supplier must obtain the consent of the Company (which may be withheld by the Company in its absolute discretion).
- (c) The warranties in clause 4(a) are in addition to any warranties which are or may be implied under any legislation applicable to the Goods and any services.

5. QUOTATION AND PRICE

- (a) The Purchase Order Price includes all taxes, levies, duties and fees (excluding GST) which are payable in relation to the Goods. For the avoidance of doubt, the Supplier must pay all taxes, levies, duties and fees which are deemed to be included in the Purchase Order Price in accordance with this clause 5(a).
- (b) The Purchase Order Price includes and the Supplier shall be responsible for all charges in relation to insurance, packing, crating, delivery (whether by road, rail, ship or air) and import of the Goods and any sales tax or other government imposts payable in relation to the Goods or services. Any costs incurred as a consequence of currency fluctuations shall be to the Supplier's account.
- (c) These Terms and Conditions shall not be affected by any impositions or alterations of customs duties, and any such impositions or alterations shall be to the account of the Supplier.

6. PAYMENT TERMS

- (a) Once the Goods have been Delivered to the Site and all services (if any) have been completed, the Supplier may give the Company a valid tax invoice for the Goods supplied and any services performed (**Invoice**). An Invoice must include:
- (i) a reference to the Agreement;
 - (ii) a valid Order number;
 - (iii) a detailed description of the delivered Goods and any services, including the date of delivery in respect of which the Invoice relates and the relevant quantity;
 - (iv) an individual reference number for the Company to quote with remittance of payment; and
 - (v) the Purchase Order Price broken down to reflect the Purchase Order Price components in the Agreement.
- (b) The Company must pay the Supplier the undisputed portion of the amount determined by the Company as the appropriate proportion of the Purchase Order Price for the Goods delivered and any services performed (having regard to the provisions of the Agreement) within 45 days of the end of the month in which the Invoice is received by the Company.
- (c) The Company may deduct from any amount owing to the Supplier any debt or other monies which may become due and payable from the Supplier to the Company under the Agreement or otherwise.
- (d) The Company may pay the Purchase Order Price by electronic funds transfer to an account nominated by the Supplier in writing.
- (e) All payments by the Company will be on account only and will not be an admission that the Goods or any services comply with the Agreement.

7. TITLE AND RISK

- (a) All title in the Goods shall pass to the Company upon the earlier of:
- (i) delivery of the Goods to the Site; and
 - (ii) payment of the Purchase Order Price (or the relevant portion thereof).
- (b) Risk in the Goods shall pass to the Company following delivery to the Site and acceptance by the Company.
- (c) In relation to the provision of services by the Supplier (if any), all risk in the works to which the services relate shall remain with the Supplier until the Supplier has completed all of its obligation in the Agreement, and the Supplier shall indemnify the Company for all loss or damage to such works during that period, regardless of the cause of such loss or damage.
- (d) The Supplier covenants with the Company not to charge, pledge, mortgage or otherwise encumber the Goods or any services in any way or grant nor otherwise give any Security Interest in the Goods or any services.

8. VARIATION

The Company may, by notice to the Supplier vary the quantity, quality or description of the Goods, the Delivery Date or any other aspect of the supply of the Goods or any services. The Price will be altered by a reasonable amount determined by the Company for that variation.

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9. DELIVERY

- (a) Time is of the essence in relation to the performance of the Supplier's obligations in the Agreement.
- (b) The Supplier must deliver the Goods to the Site, and complete any services, by the Delivery Date.
- (c) The Company is not obliged to accept delivery of the Goods prior to the Delivery Date.
- (d) The Supplier must notify the Company immediately upon the Supplier becoming aware or having reasonable grounds to believe that it will not be able to deliver the Goods to the Site by the Delivery Date.
- (e) The Delivery Date may be extended by the Company:
 - (i) where the Supplier is delayed in the supply or delivery of the Goods to the Site, or completion of any services, by the Delivery Date by a breach of the Agreement by the Company, strictly subject to the Supplier providing the Company with written notice of the delay within 5 business days of its occurrence; or
 - (ii) for the Company's sole convenience.
- (f) The period of any extension of time to the Delivery Date to which the Supplier is entitled pursuant to clause 9(e)(i) will be the reasonable period by which the Company determines the Supplier has been or will be delayed in effecting delivery of the Goods, or completing any services, by the Delivery Date as a consequence of the Company's breach of the Agreement.
- (g) The Supplier shall be time barred, and shall have no entitlement to an extension to the Delivery Date unless it strictly complies with its obligations in clause 9(e)(i).
- (h) If the Supplier fails to deliver the Goods, and complete any services, by the Delivery Date, the Supplier is liable to the Company for liquidated damages at the rate stated in the Agreement (if any) for every day after the Delivery Date up to and including the date the Goods are delivered and any services are completed, or the date of earlier termination of the Agreement.
- (i) If applicable, the parties acknowledge and agree that:
 - (i) the liquidated damages are an agreed genuine pre-estimate of the Company's loss if the Goods or services are delayed; and
 - (ii) if the Company's entitlement to, and the Supplier's liability for, liquidated damages is or becomes void, voidable or unenforceable for any reason, liquidated damages are not stated in the Agreement, or liquidated damages are stated as being "not applicable", "nil", "not used" or similar, the Company will be entitled to recover from the Supplier the costs, losses, damages and liabilities incurred or suffered by the Company arising out of the Supplier's failure to deliver the Goods, and complete any services, by the Delivery Date.

10. SITE

- (a) To the extent the Supplier or its personnel are required to be on or in the vicinity of the Site, the Supplier must:
 - (i) comply, and ensure its personnel comply,

with all legislative requirements and all policies, standards, rules and procedures of the Company or to be produced by the Supplier and approved by the Company in force from time to time, including in relation to HSE;

- (ii) submit and amend any HSE management plan(s) as reasonably required by the Company;
 - (iii) attend all induction courses as reasonably required by the Company;
 - (iv) permit the Company to have access to the Supplier's premises, documentation, data and personnel as necessary to enable the Company to verify, monitor and audit the Supplier's compliance with this clause 10;
 - (v) give the Company not less than 7 days prior written notice before commencing any services at the Site.
- (b) The Supplier acknowledges that it will not have exclusive possession of any part of the Site and will only be granted access to the Site to the extent necessary for the performance of any services. The Supplier must cooperate and coordinate its performance of this Agreement with other contractors and persons at the Site.

11. TECHNICAL MATERIAL

The Supplier must, without additional cost to the Company, supply all required plans, drawings, specifications, manuals, certificates, instructions, fabrication reports and the like in the form and at the times and in the numbers of copies specified in the Agreement or otherwise as required by the Company.

12. INTELLECTUAL PROPERTY

- (a) The Supplier hereby licenses the use by the Company of any copyright material, patents, registered designs or trademarks of which the Supplier is the owner or in the case of copyright material, patents, registered designs or trade marks of which the Supplier is a licensee, sub-licenses the Supplier's use of them, for the purpose of or in connection with the business of the Company.
- (b) The Supplier shall hold the Company harmless from, and indemnify the Company, against any infringement of any copyright, patent, registered design or trade mark with respect to any copyright patent, registered design or trade mark furnished to the Company by the Supplier.
- (c) The sale to and purchase by the Company of any Goods does not confer on the Supplier the license or right under any copyright, patent, registered design, or trademark which is the property of the Company or of which the Company is a licensee.

13. LICENSES

All Goods are sold and services performed by the Supplier on the basis that all licenses and permits under all relevant statutes, ordinances, rules and regulations have been obtained by and complied with by the Supplier.

14. INSURANCE

- (a) Prior to the Supplier performing any work pursuant to the Agreement, the Supplier must effect and maintain the following insurances for amounts not less than those specified:
 - (i) public and product liability insurance that has a limit of cover in respect of any one

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- occurrence of at least \$20 million;
- (ii) insurance for the Goods for their full replacement value including packaging and materials ordered for inclusion into the Goods against loss or damage including loss or damage in transit (marine or otherwise) until delivery of the Goods to the Site;
- (iii) employers liability and workers compensation insurance against any liability for death of, or injury to persons employed (or deemed to be employed) by the Supplier in the performance of its obligations in the Agreement whether under statute or common law, that has a limit of cover in respect of any one occurrence of at least \$50 million. Where permitted by law, the Supplier must procure an extension to this policy to indemnify the Company for the Company's liability under statute and at common law to person's engaged by the Supplier; and
- (iv) motor vehicle insurance:
 - (A) in respect of third party property damage and death or injury to persons for all plant, equipment and motor vehicles to be used in connection with the Agreement;
 - (B) with a limit of indemnity in respect of third party property damage of at least \$20 million for any one claim and unlimited in the aggregate; and
 - (C) for compulsory third party insurance covering death or injury to persons, as required by applicable law.
- (b) The Supplier must maintain, or cause to be maintained, the insurances referred to at clause 14(a) until the completion of all of its obligations in the Agreement.
- (c) Upon request, the Supplier must furnish to the Company certificates of currency evidencing the effecting and maintaining of the insurances required by clause 14(a).
- (d) If the Supplier fails to provide to the Company certificates of currency as required by clause 14(c), the Company may effect and maintain the relevant insurances and pay the premium. The costs incurred by the Company in connection with taking such action will be recoverable from the Supplier as a debt due and payable from the Supplier to the Company.

15. INDEMNITY

The Supplier indemnifies the Company, its Related Bodies Corporate and each of their officers, employees, agents and contractors (other than the Supplier) (**Indemnified Parties**) against any action, claim or proceeding brought or threatened to be brought against any Indemnified Parties (including all costs and expenses which an Indemnified Party may suffer or incur in disputing any such action, claim or proceeding) and any liability, cost, damage, liability or expense, suffered or incurred by an Indemnified Party, including any injury to any person or damage to any property, in respect of, in relation to or in connection with a breach of the Agreement by the Supplier, any warranties given by the Supplier being untrue, and any act or omission by the Supplier or its officers, employees, agents and contractors.

16. DEFAULT

- (a) If the Supplier breaches any term of the

Agreement, the Company may without prejudice to any other rights of the Company under the Agreement, subject to providing the Supplier with a period of 7 days to remedy the default to the absolute satisfaction of the Company, terminate the Agreement.

- (b) In the event of termination of the Agreement by the Company pursuant to clause 16(a), and without further notice to the Supplier, the Company may treat the whole of the Agreement and any other contract with the Company as repudiated and sue for damages.

17. TERMINATION FOR CONVENIENCE

- (a) The Company may immediately terminate the Agreement at any time for its convenience by giving the Supplier written notice.
- (b) Subject to any rights of set off or deduction which the Company may have, on termination of the Agreement pursuant to clause 17(a) the Company's sole obligation shall be the payment to the Supplier of the direct costs which have been unavoidably incurred by the Supplier as a result of its compliance with the Agreement prior to the date of termination as evidenced by supporting documents.
- (c) In the event of termination of the Agreement pursuant to clause 17(a), the Company shall have no liability for any claims by the Supplier for loss of profit, loss of revenue or loss of opportunity or contract in relation to such termination, and any liability for such claims is hereby excluded however so arising.

18. WAIVER

Any failure by the Company to insist upon strict performance of any obligation in the Agreement shall not be deemed a waiver thereof of any right that the Company may have and shall not be deemed a waiver of any subsequent breach of any term or condition.

19. DEFECTIVE GOODS

- (a) A Defects Liability Period will apply to each item which comprises the Goods and any services. Each Defects Liability Period will commence on delivery or, in the case of any services, completion of the services.
- (b) At any time up to 14 days after the expiry of a Defects Liability Period the Company may direct the Supplier to replace defective Goods or services, or to rectify an omission or defect in the relevant Goods or services. The Supplier must comply with the direction within the time stated in the direction, or if no time is stated, within a reasonable time.
- (c) The Supplier acknowledges that during the Defects Liability Period the Goods will be in use and that there may be limited access to the Goods for the purposes of carrying out any rectification pursuant to this clause 19.
- (d) If the Supplier fails to comply with a direction given under clause 19(b), or where the rectification work is required urgently, the Company may perform the work or have the work performed itself or by others. The cost to the Company of having the work performed will be a debt immediately due from the Supplier to the Company.
- (e) A separate Defects Liability Period shall commence on the rectification of any defect pursuant to clause 19(b) or 19(d).

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20. PPSA

- (a) The Supplier acknowledges and agrees that the Agreement:
 - (i) constitutes a Security Agreement for the purposes of the PPSA; and
 - (ii) creates a Security Interest in all Goods (including but not limited to all Accessions and serial numbered goods) and their Proceeds to secure the obligations of the Supplier to the Company under the Agreement.
- (b) The Supplier irrevocably consents to the Company at any time affecting and maintaining a registration on the Register (in any manner the Company considers appropriate) in relation to any Security Interest (including any Purchase Money Security Interest) contemplated or constituted by the Agreement in the Goods, any Accession and the Proceeds.
- (c) The Supplier undertakes to:
 - (i) promptly and at its own expense do all things and sign any further documents and/or provide any further assistance and/or provide any further relevant information (such information to be complete, accurate and up-to-date in all respects) which the Company may require to:
 - (A) obtain and/or register and/or maintain and/or perfect a Financing Statement or Financing Change Statement in relation to a Security Interest on the Register and/or enforce the Company's Security Interest in respect of the Goods supplied in accordance with the PPSA;
 - (B) register any other document required to be registered by the PPSA; or
 - (C) correct a defect in a statement referred to in clause 20(c)(i)(A) or 20(c)(i)(B).
 - (ii) indemnify, and upon demand reimburse, the Company for all expenses howsoever incurred in registering a Financing Statement or Financing Change Statement on the Register or releasing any Goods charged;
 - (iii) not register, procure or permit to be registered a Financing Statement or Financing Change Statement in respect of a Security Interest contemplated or constituted by the Agreement without the express prior written consent of the Company (which consent may be withheld for any reason in the Company's absolute discretion);
 - (iv) not register, procure or permit to be registered a Financing Statement or Financing Change Statement in respect of the Goods or a Security Interest in favour of a third party without the express prior written consent of the Company (which consent may be withheld for any reason in the Company's absolute discretion);
 - (v) not to change its name and or its details (including, but not limited to, changes in the Supplier's registered office address, facsimile number, trading name or business practice) without first notifying the Company of the new name or change in details not less than 14 days before the change takes effect; and
 - (vi) immediately advise the Company of any material change in its business practices which would result in a change in the nature of the Proceeds of the Goods.
- (d) The Supplier and the Company agree to contract-out of the PPSA in accordance with section 115 to the extent that section 115 applies for the benefit of, and does not impose a burden on the Company.
- (e) The Supplier hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- (f) To the fullest extent permissible by law the Supplier waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- (g) Unless otherwise expressly agreed to in writing by the Company, the Supplier waives its right to receive a Verification Statement in accordance with section 157(3)(b) of the PPSA.
- (h) Unless otherwise expressly agreed to in writing by the Company, the Supplier must not disclose any information of the kind referred to in section 275(1) of the PPSA to an interested person, or any other person required by an interested person.
- (i) The Supplier shall not sell or grant a Security Interest in the Goods without the Company's express prior written consent.
- (j) The Supplier shall unconditionally ratify any actions taken by the Company under this clause 20.

21. ASSIGNMENT

- (a) None of the rights or obligations of the Supplier under the Agreement may be novated, assigned or transferred in whole or in part without the prior express written consent of the Company (which shall not be unreasonably withheld).
- (b) The Company may novate, assign or transfer in whole or in part any of its rights or interests in the Agreement, and the Supplier hereby consents to such novation, assignment or transfer and must provide all assistance reasonably required to give effect to such novation, assignment or transfer.

22. APPLICABLE LAW

The Agreement (and any proceedings whereby one party might be entitled to join the other as a third party) shall in all respects be governed by and construed in accordance with Western Australian law and the parties hereby submit to the non-exclusive jurisdiction of the Western Australian courts.

23. ENTIRE AGREEMENT

- (a) The Agreement represents the entire agreement between the Supplier and the Company with respect to the sale of Goods supplied or the performance of services produced.
- (b) The Agreement may not be varied, modified, amended or altered without the express written consent of the Company.
- (c) The Supplier hereby acknowledges that any terms and conditions attached to any communication between the parties shall not form part of the Agreement, and the Supplier's performance of its obligations under the Agreement shall be deemed to be an acceptance of the Agreement.
- (d) These Terms and Conditions apply to all future contracts entered into between the Supplier and the Company unless otherwise agreed to by the Company in writing.

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24. DISPUTE RESOLUTION

- (a) If at any time there is any dispute, question or difference of opinion between the parties concerning or arising out of the Agreement, or its validity, construction, meaning, operation or effect, or concerning the rights, duties or liabilities of either party (**Dispute**), then the parties shall as a condition precedent to the commencement of any proceedings in respect of the Dispute, forthwith confer in an endeavour to settle such Dispute.
- (b) The Supplier shall ensure that a senior executive officer who has authority to bind the Supplier attends the conference.
- (c) If the Supplier and the Company fail to agree within thirty (30) days after first conferring, either party may commence legal proceedings in an appropriate court to resolve the Dispute.

25. SURVIVAL

Clauses 1, 6, 7, 15, 19 and 26 shall survive the term and termination of the Agreement.

26. ENFORCEABILITY

- (a) If a provision of these Terms and Conditions can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- (b) If any provision or part of these Terms and Conditions is illegal, unenforceable or invalid, that provision or part is to be treated as removed from this document, but the rest of this document is not affected.

27. Exclusion and apportionment

- (a) The operation of, to the extent not prohibited by law, any Apportionment Legislation is excluded.
- (b) The Supplier indemnifies the Company against any claim, cost, expense or liability whatsoever arising out of or in connection with the Agreement which are caused or contributed to by any person, consultant or subcontractor engaged by the Supplier to perform any of the Supplier's obligations in connection with the Agreement, and for which the Supplier would have been liable to the Company but for, or which the Company is not able to recover from the Supplier because of, any apportionment under any Apportionment Legislation.