

LiftRite Hire And Sales Pty Ltd
Terms and Conditions of Purchase

1. DEFINITIONS

LiftRite means Liftrite Hire and Sales Pty Ltd trading as LiftRite Hire & Sales (ABN 52 009 063 003).

Agreement means this agreement, comprising:

- (a) the Purchase Order; and
- (b) the Terms.

Authority means any government or local authority, any department, minister or agency of government, or any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised securities exchange.

Business Day means any day which is not a Saturday, Sunday or public holiday in Western Australia.

Claim means any claim, notice, demand, suit, account, action, proceeding, arbitration, litigation (including reasonable legal costs), investigation or judgment of any nature, absolute or contingent, liquidated or unliquidated, whether known or unknown, whether directly or indirectly, or whether in Law, contract, tort, negligence, statute (including strict liability) or any claim for any liability, damages, losses, costs, expenses, expenditure, charge, compensation, payment, remedy, debt, lien, relief or payment, or relief from any obligation under the Agreement.

Completion Date means the date specified on the Purchase Order by which the Goods are to be delivered to the Delivery Address or the Services are to be completed.

Defective means Goods and/or Services (or any aspect of them) which are not in accordance with this Agreement and the Purchase Order, or which are damaged, deficient, faulty, inadequate or incomplete in any respect.

Delivery Address means the place for delivery specified on the Purchase Order or otherwise agreed in writing between the Parties.

Force Majeure Event means any event or circumstance (or combination of events and circumstances) which:

- (a) is beyond the control of the party affected by that event or circumstance or both which could not reasonably have been foreseen at the time of entering into this Agreement and which could not reasonably have been provided against or prevented by the party affected including but not limited to an act of God, war declared or undeclared, blockage, revolution, riot, insurrection, civil commotion, sabotage, lightning, fire, earthquake, storm or flood on the Site, plague and explosion, governmental or governmental agency restraint, expropriation, prohibition, government-declared epidemic or pandemic, intervention or embargo;
- (b) causes delay in, or prevention of, the performance by the affected party of any of its obligations under the Agreement; and
- (c) cannot be prevented, overcome or remedied by the exercise by the affected party of a standard of care and diligence consistent with that of a prudent and competent company or person.

Goods means the goods, if any, described on the Purchase Order.

GST has the meaning given to that term under the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Law means:

- (a) Commonwealth, State and local government legislation including regulations, by-laws, orders, awards and proclamations;

- (b) common law and equity;

- (c) Authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals);

- (d) guide-lines of Authorities with which the Supplier is legally required to comply with;

- (e) without limiting this definition, the *Modern Slavery Act 2018 (Cth)* and anti-corruption legislation, together with associated practices, policies and guidelines; and

- (f) without limiting this definition, environmental protection legislation.

LiftRite's Personnel means LiftRite's officers, representatives, employees and agents.

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

Purchase Order means the purchase order for Goods and/or Services issued by LiftRite to the Supplier from time to time containing, among other things, a description of the Goods and/or Services required.

Price means the price set out in the Purchase Order which is exclusive of GST, but is inclusive of all other costs, fees and charges.

Security Interest has the meaning given to it in the PPSA.

Services means the services, if any, described in the Purchase Order.

Site means any site for the performance of Services set out in the Purchase Order.

Site Standards and Procedures means all guidelines, rules, requirements or Site-specific conditions which LiftRite relays or makes available to the Supplier from time to time, including but not limited to any occupational health and safety policies and procedures.

Supplier means the party identified as such in the Purchase Order.

Supplier's Personnel means the Supplier's officers, employees, contractors, sub-contractors and agents.

Terms means these Terms and Conditions of Purchase.

Warranty Period means the period of twelve (12) months from the date on which the Goods are delivered or the Service is performed.

2. RULES FOR INTERPRETING THESE TERMS

In the Agreement (unless the context otherwise requires):

- (a) words in the singular include the plural and vice-versa;

- (b) a reference to any party includes that party's executors, administrators, substitutes, successors and permitted assigns;

- (c) a reference to '\$', 'AUD' or 'dollar' is to Australian currency;

- (d) all rights granted to and all obligations imposed on two or more parties are joint and several in application unless expressed otherwise

- (e) headings are for convenience only and do not affect interpretation of this Agreement;

- (f) no rule of construction applies to the disadvantage of a party on the basis that the party put forward this Contract or any part of it; and

- (g) words denoting any gender include all genders.

3. SUPPLY OF GOODS AND/OR SERVICES

3.1 In consideration of payment of the Price by LiftRite, the Supplier must supply the Goods and/or perform the Services

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in strict accordance with the Purchase Order issued by LiftRite and these Terms.

3.2 To the extent the Supplier's terms and conditions are supplied with the Goods or Services (including as printed on consignment notes or other documents) or provided to LiftRite, those terms and conditions will be of no legal effect and will not constitute part of the Purchase Order (including where any of LiftRite's Personnel signs those terms and conditions or annexes the terms and conditions to the Purchase Order).

3.3 The Supplier must, in supplying the Goods and/or performing the Services:

(a) not unduly interfere with LiftRite's activities or the activities of any other person at the Delivery Address;

(b) be aware of and comply with and ensure that the Supplier's Personnel are aware of and comply with:

(i) all applicable Laws;

(ii) all Site Standards and Procedures, to the extent that they are applicable to the supply of the Goods or the performance of the Services by the Supplier; and

(iii) all directions and orders given by LiftRite's representatives and agents or any person authorised by Law to give directions to the Supplier;

(c) ensure that the Supplier's Personnel perform all Services in a good and workmanlike manner to a high commercial standard and that all the Supplier's Personnel entering LiftRite's premises, the Delivery Address or the Site perform all works connected to the provision of the Goods and/or Services in a safe manner in compliance with all Laws and are properly qualified for, and skilled in, the performance of their tasks and do not in any manner whatsoever prejudice the Supplier and LiftRite's compliance with all Laws, safe and working practices and continuity of work;

(d) provide all information and assistance that LiftRite reasonably requires in connection with any Law in relation to the supply of the Goods or the performance of the Services;

(e) provide all Goods free of any security interest, charge, lien or other encumbrance; and

(f) on request by LiftRite, provide to LiftRite and LiftRite's Personnel any information and assistance required to identify, evaluate, implement and report on any matter required under any Law in respect of anything used, produced or created in connection with the performance of the Supplier's obligations under this Agreement.

4. DELIVERY

4.1 The Supplier must deliver the Goods and/or Services to the Delivery Address unless instructed otherwise in writing by LiftRite.

4.2 The Supplier must ensure that the Goods are not damaged in transit or in storage.

4.3 Any delivery of Goods by the Supplier must be accompanied by a delivery note specifying the Purchase Order number, delivery destination, contents, quantity and date, to be provided to LiftRite on delivery.

4.4 Without limiting the Supplier's obligations and LiftRite's rights under this Agreement or otherwise, the Supplier must immediately notify LiftRite in writing if its provision or delivery of Goods or Services will be or may be delayed.

4.5 On delivery of the Goods by the Supplier, LiftRite may in its sole discretion inspect the Goods and reject the Goods if they do not comply with this Agreement or are otherwise Defective, damaged or non-compliant in any respect.

4.6 The Supplier must promptly provide LiftRite at its request with copies of all plans, designs, drawings, specifications, reports, data and other information relating to the provision of the Goods and/or Services.

5. TIME FOR PERFORMANCE

5.1 The Supplier must complete the delivery of the Goods to the Delivery Address and/or complete the performance of the Services, by the Completion Date.

5.2 Unless otherwise expressly agreed in writing by LiftRite, time shall be strictly of the essence in relation to performance of the Purchase Order by the Supplier.

5.3 Unless otherwise specified in the Purchase Order, without limiting LiftRite's rights, if the Supplier fails to complete delivery of the Goods/performance of the Services within fourteen (14) Business Days of the Completion Date, LiftRite may at its sole and absolute discretion terminate the Purchase Order without any liability whatsoever to the Supplier.

5.4 Notwithstanding any other clause of the Agreement, if clause 5 is found for any reason to be void, invalid or otherwise inoperative so as to disentitle LiftRite from claiming delay liquidated damages, then LiftRite is entitled to claim against the Supplier damages at law at the rate provided under clause in respect of the Supplier's failure to complete the performance of the Purchase Order by the Completion Date.

6. TITLE AND RISK

6.1 Title in Goods passes to LiftRite upon the earlier of delivery of the Goods to LiftRite (or its agent) or payment of the Price by LiftRite.

6.2 Risk in the Goods passes to LiftRite when the Goods are delivered to the Delivery Address and accepted by LiftRite.

6.3 Upon any part-payment for the Goods prior to delivery of the Goods to the Delivery Address, right title and interest in the Goods passes to LiftRite pro-rata as tenants in common with the Supplier.

6.4 Notwithstanding whether title in the Goods has or has not passed to LiftRite:

(a) a part-payment of the Goods by LiftRite gives rise to a Security Interest in the Goods in favour of LiftRite; and

(b) LiftRite may register a Security Interest under the PPSA in respect of the Goods to be supplied and the Supplier agrees to do all things reasonably required to assist LiftRite effect such registration.

7. PRICE

7.1 LiftRite must pay the Supplier the Price for the Goods and/or Services.

7.2 The Price is inclusive of all fees, charges, costs and expenses incurred by the Supplier in connection with the supply of the Goods and/or performance of the Services including all charges for packing, insurance and delivery of the Goods and the cost of any materials or items used or supplied in the performance of the Services.

7.3 The Price cannot be varied unless agreed by the parties in writing.

7.4 The Price is inclusive of all taxes and duties, except GST.

8. GST

8.1 If GST is imposed on any supply made by the Supplier under or in connection with a Purchase Order, the Supplier may recover from LiftRite, in addition to the Price, an amount equal to the GST payable under Law in respect of that supply.

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8.2 The Supplier must first provide LiftRite with a valid tax invoice before LiftRite will pay the GST amount to the Supplier under this clause.

9. INVOICING

9.1 Upon delivery of the Goods and/or completion of the Services, the Supplier must send LiftRite a valid invoice, which must include the information set out in clause 9.2. Any invoices provided otherwise that in accordance with this clause are not payable by LiftRite.

9.2 The Supplier's invoice must include the following details:

- (a) a reference to the relevant Purchase Order number;
- (b) a detailed description of the delivered Goods or performed Services, including the date of delivery and/or period of Services in respect of which the invoice relates and the relevant quantity;
- (c) an individual reference number for LiftRite to quote with remittance of payment;
- (d) the Price relating to the Goods and/or Services, broken down to reflect any Price components set out in the Purchase Order; and
- (e) the amount of any applicable GST.

9.3 Where the Price is calculated on a 'cost plus', 'schedule of rates' or 'per day' basis, LiftRite may, within a reasonable period of time after the date of the relevant invoice, audit or assess the Supplier's records to determine if the Price has been correctly calculated and the Supplier agrees to do all things necessary to enable LiftRite to do so.

9.4 LiftRite will pay all tax invoices that comply with clause 9.2 within thirty-one (31) days from the end of month in which the Supplier's invoice is received by email or via the post, except where LiftRite disputes the invoice, in which case:

- (a) LiftRite may withhold payment of the disputed amount pending resolution of the dispute; and
- (b) if the resolution of the dispute determines that LiftRite must pay an amount to the Supplier, LiftRite must pay that amount upon resolution of that dispute.

9.5 LiftRite may reduce any payment due to the Supplier under this Agreement by any amount which the Supplier must pay LiftRite, including costs, charges, damages and expenses and any debts owed by the Supplier to LiftRite on any account whatsoever. This does not limit LiftRite's right to recover those amounts by other means.

10. GUARANTEE

10.1 The Supplier guarantees that the Goods and/or Services are in strict accordance with the description set out in the Purchase Order.

10.2 If the Supplier gives LiftRite a sample of the Goods or a demonstration of the Services, the Goods and/or Services must be of the same nature and quality as the sample or demonstration given.

10.3 The Goods and/or Services must be fit for the purpose for which goods and/or services of the same kind are commonly supplied or bought and for any other purpose LiftRite expressly specifies in the Purchase Order or otherwise.

10.4 The Goods must be of acceptable quality, safe and free from defects, acceptable in appearance and finish and do all things that the Goods are ordinarily used for.

10.5 The Goods and/or Services must comply with all Laws, including but not limited to any applicable Australian Standards.

11. WARRANTY PERIOD

11.1 If, during the Warranty Period, any of the Goods or Services are found to be Defective, LiftRite may in its sole discretion:

- (a) require the Supplier to repair or replace the Defective Goods at the Supplier's sole cost within a time-frame considered reasonable by LiftRite, or reject the Defective Goods and require the Supplier to reimburse LiftRite the Price paid or payable on account of the Defective Goods in addition to any other loss or damage incurred by LiftRite in connection with the Defective Goods;
- (b) reject the Defective Services and require the Supplier to re-perform the Defective Services at the Supplier's sole cost within a time-frame considered reasonable by LiftRite or reimburse LiftRite for the Price paid or payable on account of the Defective Services in addition to any other loss or damage incurred by LiftRite in connection with the Defective Services;
- (c) repair or make good the Defective Goods itself or re-perform or make-good the Defective Services itself.

11.2 If LiftRite requests the Supplier to repair or replace any Defective Goods that have been incorporated into larger equipment or facilities, the Supplier must reimburse LiftRite for any direct or indirect expense or cost incurred by LiftRite in removing the Defective Goods from such larger equipment or facilities, and re-installing any repaired or replacement Goods into the larger equipment or facilities.

11.3 The Supplier must reimburse LiftRite on demand for all direct and indirect expenses and costs incurred by LiftRite connected to or arising out of the Supplier's provision of Defective Goods or Services including LiftRite's costs of repairing, re-performing or making good any Defective Goods or Services.

11.4 The provisions relating to any warranty for Defective Goods and/or Services under these Terms shall be in addition to and without limiting any conditions or warranty expressed or implied by any Law or otherwise howsoever and in particular, without limiting the generality of the forgoing, the Supplier's liability under this Agreement shall be in addition to any condition or warranty in LiftRite's favour implied by any Law.

12. CONFIDENTIALITY

12.1 Neither party may disclose to any third party information obtained in relation to the other party in connection with or arising from this Agreement or the provision of the Goods and/or Services (including any intellectual property), the other party's business or the other party's officers, representatives, agents and employees, unless and until such information is within the public domain (other than by a breach of this clause), or express written consent has been given by the other party, or as required by Law.

12.2 Each party shall indemnify the other and keep the other party indemnified from and against all Claims whatsoever arising from any breach of this clause by the indemnifying party.

13. INTELLECTUAL PROPERTY

13.1 The specifications, drawings, technical instructions or any other documentation, designs, or intellectual property whatsoever issued to the Supplier by LiftRite during tendering and at the time of establishing this Agreement will remain the exclusive property of LiftRite and are to be kept strictly confidential.

13.2 The Supplier warrants that:

- (a) the Goods supplied and/or Services performed by the Supplier and the license granted by it to LiftRite do not

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infringe any intellectual property rights of any third party in the world; and

(b) the Goods supplied and/or Services performed are not subject to any intellectual property rights of any third party that in any way restrict the rights of LiftRite or its clients to use, sell or otherwise exploit the same.

14. INDEMNITY

The Supplier will indemnify LiftRite and LiftRite's Personnel and will keep LiftRite and LiftRite's Personnel indemnified from and against all Claims, including without limitation, personal injury (including illness or disability), or death of any person and all loss, expense and liability (including legal costs) including but not limited to damage to or destruction of or loss of use of any property (including property of LiftRite or LiftRite's Personnel) caused or contributed to by the act or omission of the Supplier or the Supplier's Personnel or by any breach of this Agreement by the Supplier, except to the extent that it has been caused or contributed to by the intentional default or unlawful or negligent act or omission of LiftRite.

15. FORCE MAJEURE

15.1 The parties agree that:

(a) A party will not be liable for any delay or failure to perform any of its obligations under the Agreement if, as soon as possible after the beginning of the Force Majeure Event affecting the ability of the party to perform any of its obligations under the Agreement, it gives a notice to the other party that complies with clause 15.2.

(b) The Purchase Order will suspend in the event and for the period of the Force Majeure Event, provided that each parties' obligations contained in this clause are complied with and provided that the party affected by the Force Majeure Event is at all times taking all necessary steps to comply with its obligations under this Agreement.

15.2 A notice given under clause 15.1 must:

- (a) specify the obligations the party cannot perform;
- (b) fully describe the Force Majeure Event;
- (c) estimate the time during which the Force Majeure Event will continue; and
- (d) specify the measures proposed to be adopted to remedy or abate the Force Majeure.

15.3 Any change to the Completion Date is the Supplier's sole remedy for any delays resulting from Force Majeure Event where the Supplier is the affected party and the Supplier is not entitled to any increase in the Price or any damages, costs or expenses in connection with the Force Majeure Event.

16. BREACH AND TERMINATION

16.1 In addition to any other right granted to LiftRite under the Agreement, LiftRite may terminate a Purchase Order:

(a) in its absolute discretion by giving the Supplier fourteen (14) Business Days' written notice; or

(b) if the Supplier defaults on any of the terms of the Purchase Order for any reason (including insolvency) by written notice:

(i) where the default is not capable of remedy, with immediate effect; or

(ii) where the default is capable of remedy but the Supplier fails to remedy such default within seven (7) Business Days of being served with a written notice by LiftRite.

16.2 In the event that LiftRite terminates a Purchase Order under clause 16.1(a), subject to any other rights of LiftRite under this Agreement, LiftRite must:

(a) pay for the Goods delivered or Services provided by the Supplier in accordance with the Purchase Order prior to the date of termination; and

(b) reimburse the Supplier for the direct costs of materials the Supplier reasonably ordered prior to the date of receipt of the notice of termination for the purpose of providing the Goods and or performing the Services and which the Supplier is legally liable to accept and cannot otherwise utilise, provided that the materials are delivered to the Delivery Address and become LiftRite's property upon payment,

and the Supplier shall not otherwise be entitled to any compensation whether by way of damages, profit, loss or expense, including without limitation anticipated profits, incurred as a result of a termination of the Purchase Order under this clause.

16.3 Notwithstanding any other clause of this Agreement, if LiftRite terminates the Purchase Order pursuant to clause 16.1(b), the provisions of clause 16.2 do not apply and the Supplier is liable for all direct and indirect costs, losses or other amounts that are incurred by LiftRite as a result of the termination including all legal costs and costs incurred to procure any replacement goods or services.

16.4 Except where expressly provided, termination under this clause does not affect the ability of any party to enforce a right that may have accrued to is under the Agreement prior to termination.

17. INSURANCES

17.1 The Supplier must at all times during the performance of the Purchase Order effect and maintain the following insurances:

(a) Public liability insurance for at least \$20 million for any one event and unlimited in the aggregate and products liability insurance for at least \$20 million for any one event and in the aggregate, which shall contain a principal's indemnity extension in favour of LiftRite for liability to any third party arising out of the performance of this Purchase Order by the Supplier; and

(b) where the Purchase Order provides for the provision of professional services, professional indemnity insurance for not less than \$10 million limit of indemnity for any one claim with one reinstatement of the limit during any 12 month period of insurance. This policy is to be maintained for a period of 7 years following completion of the supply of the Goods and/or provision of the Services (as applicable).

(c) Workers Compensation Insurance covering liability whilst conducting works for LiftRite as ordered, under the laws of Western Australia & Common Law with a cover of not less than \$50 million in respect of any individual employee and / or in the aggregate.

(d) Motor Vehicle Third Party Liability Insurance (if applicable) in respect of all motor vehicles including those required to be licensed or otherwise registered by law which are in your or our control in connection with works ordered for an amount of \$20 million in respect of each claim and unlimited in the aggregate in respect of all claims made during each period of insurance.

17.2 If requested by LiftRite at any time, the Supplier must provide copies of certificates of currency of the above insurances.

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17.3 Where any part of works are subcontracted to another party, the supplier is obligated to ensure that party holds appropriate insurances meeting the requirements of this agreement.

18. DISPUTE RESOLUTION AND GOVERNING LAW

18.1 Procedure for resolving disputes

(a) The parties agree that all disputes and disagreements relating to or arising out of this Agreement must be resolved in accordance with this clause 18.

(b) If a dispute arises then either party may give notice to the other party that must:

(i) be in writing; and

(ii) include or be accompanied by reasonable particulars of the dispute.

(c) If a notice is given under sub-clause 18, then a senior management representative or equivalent of each of the parties must meet within seven (7) Business Days of receipt of the notice (or such other time as the parties may agree) and use reasonable endeavours acting in good faith to resolve the dispute.

(d) If the dispute is not resolved by the senior management representatives within the period referred to in sub-clause 18.1(c), either party may commence proceedings for the resolution of the dispute.

18.2 Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Agreement.

18.3 Notwithstanding any other provision of this Agreement, LiftRite may commence proceedings in relation to any dispute at any time where it seeks urgent interlocutory relief.

18.4 This Agreement is governed by the law in force in the State of Western Australia.

19. NOTICES

19.1 Any notice, consent, approval, request or direction to be given under these Terms must be given personally, e-mail or registered mail addressed to the party as specified in clause 19.2 below or at such other addresses as may be notified in writing to the other party from time to time.

19.2 Any notice, consent, approval or direction sent in accordance with this clause will be deemed to have been duly given, served and received:

(a) If personally delivered, upon receipt by the recipient;

(b) If sent by pre-paid post, three (3) Business Days after the date of posting; and

(c) If sent by e-mail, upon receipt by the sender of a successful transmission report provided that if the email is sent after 4:00 pm on a Business Day or is sent on a day that is not Business Day, the notice shall be deemed to have been received on the following Business Day.

19.3 Addresses:

(a) LiftRite: PO Box 1362, Canning Vale DC WA 6970; and

(b) Supplier: as notified in writing by the Supplier when the Agreement is signed.

20. MISCELLANEOUS

20.1 Nothing in the Agreement constitutes a relationship of employer and employee, principal and agent or partnership between LiftRite and the Supplier. The parties acknowledge and agree that this is fundamental to the basis on which they have entered into the Agreement.

20.2 Any waiver of a term of the Agreement or consent to departure from a term of the Agreement by either of the parties shall only be effective in the specific instance and for

the purpose for which it was given, even if the terms of any waiver are not so limited. No default or delay on the part of either party in exercising any rights, powers or privileges shall not operate as a waiver of them or any other right nor shall a single or partial exercise of any other rights, power of privilege.

20.3 If there is inconsistency or ambiguity between any parts of the Agreement, these Terms prevail to the extent of any inconsistency.

20.4 This Agreement is the whole agreement between the parties as to its subject matter and if this Agreement is inconsistent with any other document or agreement between the parties, it prevails to the extent of the inconsistency.

20.5 The parties agree that each term of this Agreement is deemed to be severable and independent and if all or any part of a provision is judged invalid, the removal of that provision or part will not affect the validity or enforceability of the remaining provisions.

20.6 The Supplier must not assign the benefit of this Agreement without the prior written consent of LiftRite which may be withheld at its sole and absolute discretion.

20.7 The Supplier acknowledges that it has had the opportunity to obtain independent legal advice in entering into this Agreement.

20.8 The terms of this Agreement can only be amended or replaced by written agreement between the parties.