

GENERAL TERMS AND CONDITIONS

GF-08

1. **Definitions:** The following words shall, where the context permits, have the following meanings: "**Purchase Order(s)**" (hereafter referred to as "**PO**") means these conditions together with all documents attached hereto or incorporated herein by reference including the documents identified in Clause 3 of these *Terms and Conditions*; "**Purchaser**" means Civil and Allied Technical Construction Pty Ltd (ABN 78 077 924 120) referred hereafter as CATCON; "**Vendor**" means the person, firm or corporation to whom this PO is addressed; and "**Goods**" means all materials, labour, equipment, documentation, services and all other obligations, duties, responsibilities and other works required to be furnished or performed by Vendor under the PO.
2. **Contract:** The PO together with all documents attached hereto or incorporated therein by reference, shall constitute the entire terms of the PO and supersedes all previous correspondence, communications and existing terms and conditions. In the absence of a written acceptance by Vendor, the commencement of any work on site by Vendor in pursuance of the PO shall be deemed an acceptance thereof and the contract shall be formed upon the terms and conditions set forth in the PO. In any other circumstances this PO shall not be deemed an agreed contract until the Purchaser has issued a formal PO by its purchasing department. For the avoidance of doubt, the requirements for liability and indemnity contained in this PO supersede those contained in any prior agreements. The Vendor also understands and agrees that liability it has incurred in relation to works performed under other (including previous) PO for CATCON can be offset by CATCON against monies due by CATCON under this PO consistent with the principles set out in Clause 10 of these *Terms and Conditions*.
3. **Precedence of Documents:** It is agreed that the order of precedence of documents shall be as follows, with (1) being the highest precedence: **(1)** Any Special Conditions, **(2)** The PO face sheet, **(3)** These *Terms and Conditions*, **(4)** Terms and Conditions contained in any enclosed agreement or conditions, **(5)** Specifications, **(6)** Drawings, **(7)** Any Vendor referenced documents.
4. **Inconsistencies:** In the event of any inconsistencies, ambiguities or discrepancies that arise in or between the documents forming this agreement which cannot be resolved by applying the order of precedence set out in clause 3, it is agreed that the highest standard or most stringent requirement on the Vendor has precedence over the lower or less stringent requirement. If the Vendor discovers any such inconsistency, ambiguity or discrepancy, between or within the documents comprising the PO, the Vendor shall forthwith notify CATCON.
5. **General Scope of Contract:** This contract requires the Vendor to supply the Goods as detailed in, and in compliance with this PO. The Vendor understands that the engagement is based on CATCON's expectation that the Vendor has the expert knowledge of the Goods supplied or undertaken. If the scope is subject to a reduction under the terms of this PO or by agreement, then the Vendor shall not be entitled to any payment, including payment for overhead, profit, loss of income or lost opportunity cost in respect to such reduction.
6. **Statutory Requirements:** The Vendor shall ensure that its supply and delivery of the Materials or Service satisfies all of the requirements of all relevant Acts of Parliament and all ordinances, regulations, by-laws, orders and proclamations made or issued there under applicable to the sale, supply and delivery of the Goods and, where necessary, secure all necessary approvals and pay all fees incurred in connection with the sale, supply or delivery thereof to CATCON.
7. **Delivery:** The following delivery requirements shall be met by the Vendor when the works to be performed under this PO includes delivery of goods to site or requires recording of works:
 - a) Delivery shall be made to such locations and at such times as shall be nominated by CATCON in the PO. The Vendor shall supply two (2) copies of the delivery dockets to CATCON: one (1) with the delivery of Goods and one (1) enclosed with the invoice;
 - b) Upon delivery the Materials shall be accompanied by a delivery document with CATCON's PO number nominated thereon;
 - c) The Price shall be inclusive of all freight insurance and other charges in or in connection with the forwarding of Materials to CATCON;
 - d) All elements of the Goods delivered by the Vendor shall be at the risk of the Vendor and no liability to pay for them shall arise until that element of the Goods is approved and accepted by CATCON;
 - e) CATCON or its authorised representative may inspect, examine or test the Goods to verify compliance to the requirements of this PO;
 - f) Upon return of Materials which are not fit for purpose, not acceptable or unwanted by, CATCON, the Vendor shall reimburse CATCON for:
 - i) any amounts paid by CATCON on account of the price of the returned element of the Materials; and
 - ii) any costs incurred by CATCON in connection with the delivery and return of the relevant element of the returned Materials;
 - g) All deliveries are to be received and signed for by a CATCON representative;
 - h) No services shall be provided in excess of the PO amount; and
 - i) If the Gross Vehicle Mass (GMV) of the delivery is in excess of 4.5 tonne, the Vendor is to comply with the requirements of the *Heavy Vehicle National Law* and CATCON's procedure SPG-12 *Chain of Responsibility* available from our website (<http://www.catcon.com.au>). Further the transport company used by the Vendor must complete the *Heavy Vehicle Transport Checklist* with each delivery and have it available with the delivery vehicle. As required, the Vendor is required to have the consignor to complete a complying *Container Weight Declaration* form.

- 8. Record keeping:** Any signature to a delivery document by a CATCON representative is an acknowledgement of a delivery event only. In case of timesheets; signature does not constitute verification of the record. Products or services are subject to compliance to this PO. No agreement to quantum or quality or acceptance of any Vendor terms and conditions is implied.
- 9. Terms of Payment:** CATCON shall pay the Price to the Contractor in the calendar month following the month of receipt of invoice, subject to the following conditions precedent to payment:
- a) Any payment made is on an 'on-account' basis;
 - b) A duly signed statutory declaration is provided in the form supplied by CATCON confirming payment of all service providers, subcontractors and suppliers used to deliver Goods under the PO and that that all Worker's entitlements and all statutory charges have been paid by the Vendor in connection with the labour required to complete the works under this agreement. For the avoidance of doubt this includes superannuation, long service leave, worker's compensation, PAYG and payroll tax;
 - c) The Vendor having fully complied with the terms and conditions of this agreement;
 - d) Original invoices shall be accompanied by matching delivery dockets relating to the provision of Goods, Materials and/or Services;
 - e) The Vendor having quoted relevant PO number onto each invoice; and
 - f) The Vendor having included with each invoice a detailed claim breakdown assigning a value to each individual work activity claimed and adequate proof of purchase and performance of each of the claimed work activities is provided (including third party invoices).

In addition, the following payment terms apply:

- g) The Vendor is only entitled to one payment claim per month;
 - h) The Vendor shall submit the Tax Invoice;
 - i) The Vendor agrees that the service of invoices, payment claim, or payment request shall only be served by post to CATCON's Head Office or by email to invoices@catcon.com.au addressed to the attention of 'accounts payable'. Communication of these documents to any other CATCON representative will not be deemed a valid service of these documents;
 - j) The Vendor agrees that the service of documents in support of any invoice, claim or payment request must be served by post or as email attachment. The Vendor has agreed and understands that if these documents are communicated by download link or similar that these documents not be retrieved by CATCON from such delivery service and will not be deemed a valid service of these documents;
 - k) The Vendor shall submit a claim in the form of the Tax Invoice to CATCON's Head Office by close of business the 7th day of the following month in which the Goods, Materials and/or Services were provided. CATCON shall pay the Contractor, subject to adherence to the conditions of the PO and the terms and conditions contained herein by the Contractor, within 45 days of the end of the month in which the Goods, Materials and/or Services were provided;
 - l) Failure by the Vendor to submit a claim in the form of the tax invoice, payment claim or payment request to CATCON's head office by the date stipulated in clause 8(k) will result in the claim being deemed a claim for work performed in the month of receipt of that claim and the applicable payment terms become 45 days from the end of month in which the claim is received;
 - m) The Price being in accordance with and not exceeding this value or works described in this agreement (unless the value stated on this PO is a rate confirmation only, payment will not be made on invoice amounts exceeding this PO value);
 - n) No interest shall be payable on any monies that remain unpaid after the expiration of this 45-day period. The Vendor herewith indemnifies CATCON against any costs or charges associated with Collection Agency fees or any other fees levied by the Vendor as a result of non-adherence to the payment terms noted herein;
 - o) Invoices submitted later than one (1) month after the period in which the Goods were provided will be subject to an extended payment term of 90 days. Additional time in excess of the agreed payment terms will apply for a final claim to allow for complete and final assessment of all previous claims;
 - p) In relation to a final balance of payment: Until the Vendor delivers to CATCON a duly executed valid and enforceable release form being a document prepared by CATCON evidencing the release and discharge of CATCON from any claims of the Vendor pursuant to this PO; and
 - q) Any payments made by electronic funds transfer (EFT) will only be made to the account details nominated on the tax invoice received.
- 9. Acceptance of Goods:** The Vendor agrees that that CATCON are entitled to reject, at any time, Goods which do not comply with the requirements of this agreement. CATCON shall only be obliged to accept completion or delivery of Goods insofar it fully complies with the terms of this agreement. If the Goods do not fully comply then the Vendor shall, if so required by CATCON, remove all such rejected elements of the Goods and replace the same with Goods acceptable to CATCON. All freight, insurance and other cost incurred whatsoever in connection with the replacement of rejected Goods shall be paid and borne by the Vendor.
- 10. Non-compliant work:** CATCON may direct the Vendor to rectify any defect or works not performed in accordance with the requirements set out in this agreement. CATCON may specify a reasonable time within which the Vendor must rectify the defect or non-compliant works. The vendor must comply with a direction under this clause within the reasonable time as required by CATCON. CATCON may remedy any non-compliant work on

behalf of the Vendor if the Vendor does not comply with any direction under this clause. The Vendor shall be liable for any cost associated with remediation of non-compliant work.

- 11. Back-charge:** In the event that CATCON directs in accordance with clause 10 that the Goods do not comply with the requirements set out in this agreement or is subject to a defect, and the Vendor upon notification thereof does not commence remedial action either at all or in a manner considered acceptable by CATCON, then CATCON has the right to have remediation works undertaken on behalf of the Vendor and the exercise by CATCON of this right shall not detract from any of CATCON's other rights under this agreement or otherwise at law in respect of the lack of compliance or defect. It is agreed that the direct and indirect cost to CATCON of such remediation works (including, where the remediation works have not yet been commenced/completed, as estimated by CATCON) will be recoverable by CATCON from the Vendor by either **(1)** as a debt due and payable by the Vendor; **(2)** a deduction CATCON from any monies otherwise due by CATCON to the Vendor; **(3)** a withdrawal by CATCON out of any bond or guarantee held by CATCON or, **(4)** at CATCON's request, will be secured in CATCON's favour by the Vendor which security shall be in the form of an unconditional bank guarantee. For the avoidance of doubt, any deductions described herein can relate to monies due to CATCON under this agreement or any other agreement with the Vendor that may be associated with other works or projects.
- 12. Material Breach:** Unless express agreement otherwise, the following events are deemed material breaches of this agreement by the Vendor: **(1)** Failure to comply with the requirements of this agreement within the agreed time; **(2)** Failure to rectify defective or non-compliant Goods within reasonable time; **(3)** Failure to provide security (if applicable); **(4)** Reaching the delay damages cap (as applicable); **(5)** A default event such as the Vendor entering into external administration or liquidation; **(6)** Any other conduct by the Vendor that substantially and adversely affect the interest of CATCON.
- 13. Taking over of Works:** CATCON may take-out of hands from the Vendor the scope of works agreed within with this agreement following a material breach of contract. CATCON may subsequently complete the remaining works of this PO and any additional cost in excess of the unpaid balance of the agreement will become a debt payable by the Vendor to CATCON.
- 14. Termination:** Without prejudice to any of CATCON's other rights, entitlements or powers under this agreement, CATCON may by written notice to the Vendor terminate this Agreement if the Vendor commits a material breach of this agreement which is not capable of being remedied or is not remedied within 7 days (or such other time determined by CATCON) of being required to do so by CATCON. Upon termination, CATCON shall be liable only for those amounts which have become payable as at the date of termination and any cost, loss or damage to CATCON as a result of termination shall be valued and deducted from any monies owed to the Vendor under this agreement.
- 15. Property of the Goods:** Where any part of entire payment for any element of Goods is made by CATCON the entire title to the Goods shall pass without exclusion or limitation but subject to CATCON's right to rejection of the Goods in the event that any part of the Goods is discovered to not comply with the terms of this PO.
- 16. Warranty:** The Vendor warrants that all of the Goods: **(1)** Will conform to the requirements of this agreement; **(2)** Shall be of good merchantable quality and fit for the known purpose for which it is sold; **(3)** Are new (unless otherwise specified); **(4)** comply with all relevant Australian Standards; **(5)** Are free from all liens and encumbrances and the Vendor has a good marketable title thereto; and **(6)** Shall be delivered by the due delivery date specified in this agreement.

These warranties are in addition to any and all warranties offered by the Vendor and/or arising by operation of law and nothing contained herein shall be construed as limiting or restricting such warranties. The work and Goods are subject to a 12 months defect liability period unless more stringent requirements are set out in this Contract.

- 17. Skill and Care:** The Vendor agrees that: **(1)** the Vendor and Vendor associates have the skill, expertise, resources and experience to perform the works; **(2)** The work will be performed using a high standard of skill, care and diligence and in accordance with Good Industry Practices. The Vendor acknowledges that CATCON is relying on the Vendor's expertise, skill and judgement in the Vendor's performance of the work; **(3)** If the Vendor is engaged to supply materials, plant or tools to perform work on site then the Vendor has the care and liability for these materials, plant or tools until incorporated in the works and accepted by CATCON, or in until removed from site by the Vendor upon completion of the works under the PO.
- 18. General Matters**
 - a)** Unless otherwise provided all reference to sums of money shall be in terms of Australian currency, all documents and communications shall be in the English language and all references to measurements, quantities and dimensions and units shall be in terms of Commonwealth legal units.
 - b)** The laws in force in the State of South Australia shall apply to this contract and the parties shall submit to the jurisdiction of the courts of the same.
- 19. Assignment:** The Vendor shall not, without the prior written approval of CATCON, assign the Contract or assign, mortgage, charge, encumber any of the moneys payable under this PO.
- 20. No Waiver:** No failure or delay on the part of a party to exercise any right or remedy hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any such right or remedy preclude any other further exercise thereof.
- 21. Time of the Essence:** Time shall be of the essence as regard to any date or period under the terms and conditions.
- 22. Public Liability Insurance:** The Vendor shall effect Public Liability Insurance to cover its liability to third parties for loss or damage to property (including loss of use thereof) and death of or injury to any person arising out of or resulting from an act, default or omission of the Vendor or of others for whom the Vendor is responsible and

shall indemnify CATCON in respect of and shall insure against any liability, loss, claim or proceedings whatsoever in respect of or in connection with the death of or injury to any person, or any loss of or damage to any property arising out of or in any way connected with or caused by execution of the Goods as detailed in this PO. With respect to Public Liability Insurance, the policy shall be of not less than \$20 million. Before commencing the works associated with this PO and whenever requested by CATCON the Vendor to produce evidence that it has satisfied its insurance obligations.

- 23. Site Compliance:** The Vendor's personnel working on a CATCON site pursuant to works ordered under this agreement must comply with the requirements of the site Project Management Plan. Such compliance includes (but is not limited to): Compliance with health, safety and environmental regulations; Having zero drugs and alcohol policy; Submitting to random testing for drugs and alcohol; Compliance with site induction requirements; and the supply of safe work method statements. More specifically compliance to minimum PPE requirements, Operators having appropriate tickets/licences, all personnel to have a General Induction Training (White Card) in accordance with the National Code of Practice and compliance with environmental management.
- 24. Site Agreements:** Any agreements made on site between CATCON site representatives and the Vendor, in addition to this agreement will not be valid and enforceable unless the agreements have been made by the CATCON representative in accordance with CATCON's Delegation & Approvals Model. The Vendor is advised that CATCON's site personnel has limited authorisation approvals and that changes to this agreement that come with a cost impact must be approved by CATCON's Head Office purchasing department.
- 25. National Code of Practice Compliance:** The [Code for the Tendering and Performance of Building Work 2016](#) and [Building Code 2013](#), applies to any works undertaken for CATCON. By agreeing to undertake the works, the Vendor will be taken to have read and agreed to comply with the Code and Guidelines available from <http://employment.gov.au/building-code>.
- 26. Quality:** The quality of the Goods delivered shall not differ from that specified in the Contract Documents unless the change in quality is ordered by CATCON in a written form specifically referring to the amendment of the quality. If the PO provides no details about quality requirements, the Goods and the works shall comply with the relevant Australian Standards and local Service Authority Standards.
- 27. Labour supply:** The rates and prices associated with this agreement include the following:
 The Vendor shall:
- a) make all payments for workers' compensation, payroll tax, superannuation, PAYG and workers remuneration;
 - b) manage and pay all accrued benefits associated with the labour supplied in accordance with statutory or government legislation and acts and in accordance with applicable industrial or site agreement;
 - c) ensure that all workers are appropriately trained and are fit and capable for the carrying out of the works contained within this agreement;
 - d) ensure that there is an appropriate employment or industrial agreement in place between the Vendor and its Employees;
 - e) ensure full compliance with the Labour Hire Licencing Act 2017, hold a licence as legislated effective from applicable dates in each state;
 - f) ensure that the labour associated with this agreement meets all applicable government legislation with regard to the employment of persons in Australia;
 - g) ensure that the labour supplied do not require supervision by CATCON; and
 - h) The labour supplied shall comply with CATCON's site-based time management and recording systems such as ID Tech System which pay operate by finger scan recording at the start and end of each shift.

The Vendor agrees that CATCON may audit the Vendors records to verify compliance.

- 28. Indemnity:** The Vendor agrees to indemnify and hold CATCON indemnified from and against any liability howsoever arising from loss or damage; **(1)** in respect of personal injury to or death of any person including labour supplied by the Vendor; and **(2)** to any real or property of any person, caused directly or indirectly by any act or omission by or on the part of labour supplied. These indemnities shall not be vitiated, defeated or diminished by reason of any failure on the part of CATCON to supervise or control the work of the labour supplied and the Vendor expressly acknowledges that it is not the obligation of CATCON to do so.