

PURCHASE ORDER STANDARD TERMS AND CONDITIONS

1. INTERPRETATION

1.1 In these Standard Conditions, except to the extent that the context otherwise requires:

'Act of Insolvency' is deemed to occur if the Supplier:

- (a) informs another Party in writing or creditors generally that it is insolvent;
- (b) commits an act of bankruptcy;
- (c) has a bankruptcy petition presented against it;
- (d) is made bankrupt;
- (e) a receiver, manager, receiver and manager, trustee, administrator, controller (as that term is defined in section 9 of the *Corporations Act 2001* (Cth)) is appointed in respect of the Supplier or any asset of the Supplier;
- (f) a liquidator or provisional liquidator is appointed in respect of the Supplier;
- (g) an application is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
 - (A) appointing a person referred to in paragraph (e) or (f);
 - (B) winding up the Supplier; or
 - (C) proposing or implementing a scheme or arrangement in respect of the Supplier;
- (h) the Supplier stops or suspends payment to creditors generally or enters into an arrangement, assignment or composition with or for the benefit of its creditors generally or any class of them or proposes to do so; or
- (i) anything analogous or having a similar effect to an event listed in paragraphs (a) to (i) occurs;

'Business Day' means any day which is not a weekend day or a public holiday at the Delivery Place;

'Code' means the National Code of Practice for the Construction Industry;

'Code Monitoring Group' has the same meaning as is given to that term in the Guidelines;

'Delivery Place' means the place specified in the "Delivery Address" section of the Purchase Order;

'Delivery Date' means the time and/or date for delivery for the Goods specified in the Purchase Order. If no time/date is specified in the Purchase Order, it is the time/date which has been notified to the Supplier by Golding or the time/date which an objective third party would consider reasonable having regard to the intended purpose of the Goods;

'Golding' means Golding Contractors Pty Ltd ABN 88 009 734 794;

'Golding's Representative' means the person specified as Golding's contact person on the Purchase Order;

'Goods' means the products, goods, items or similar to be supplied by the Supplier to Golding, as specified or referenced in the Purchase Order. For clarity, the supply of Goods includes the provision of the Services;

'GST' has the same meaning as in the GST Law;

'GST Law' has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

'Guidelines' means the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry revised June 2006 and the Australian Government Industry Guidelines revised September 2005;

'Intellectual Property' means any invention, patent, trade mark, copyright, industrial design or process of manufacture or similar right;

'Legislative Requirements' includes:

- (a) acts, regulations, by-laws, ordinances, orders, awards, local laws and proclamations of the Commonwealth and the State or territory relating to the supply of Goods or the performance of Services; and
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the supply of Goods or the performance of Services;
- (c) fees and charges payable in connection with paragraphs (a) and (b).

'Party' or **'Parties'** means Golding or/and the Supplier;

'PPE' means, at a minimum, a long sleeved shirt with reflective tape, long work trousers or work jeans, a hard hat, eye protection, steel cap boots, sunscreen, safety/rigging gloves and ear protection;

'Purchase Order' means the formal "Purchase Order" issued by Golding to the Supplier for the Goods which Golding requires;

'Related Entity' has the same meaning as given to that term in the Guidelines;

'Services' means any services which are incidental to, or required for, the supply of the Goods by the Supplier, including fabrication, testing, customs arrangements and transportation, whether or not specified in the Purchase Order;

'Standard Conditions' means these "Purchase Order Standard Terms and Conditions";

'Standard Contract' means the Purchase Order and these Standard Conditions;

'Supplier' means the person specified in the "Vendor Address" field of the Purchase Order;

'Tax Invoice' has the same meaning as in the GST Law; and

'Taxable Supply' has the same meaning as in the GST Law.

1.2 In the Standard Contract, except to the extent that the context otherwise requires:

- (a) words importing the singular include the plural and vice versa unless the context otherwise requires;
- (b) references to 'A\$', 'dollar', '\$' or "AUD" and to any amount not otherwise designated is to be construed as a reference to Australian currency;
- (c) clause headings are for convenience of reference only and shall not effect the construction of this Contract;
- (d) a reference to a person includes a firm, body corporate or unincorporated association or authority;
- (e) 'includes' in any form is not a word of limitation; and
- (f) any reference to time is to the time at the Delivery Place.

1.3 Nothing in the Standard Contract will be construed or interpreted against Golding or to Golding's disadvantage on the basis that Golding prepared or caused the Standard Contract to be prepared.

2. ACCEPTANCE OF ORDER

2.1 Notwithstanding clause 2.2, the consignment or supply of any Goods or the commencement of performance of any Services by the Supplier will constitute acceptance by the Supplier of the Standard Contract.

2.2 If the Supplier is unable to or does not wish to totally comply with every aspect of the Standard Contract (including the supply of the total order, the exact items specified or the required Delivery Date or any of the Standard Conditions), the Supplier must notify Golding's Representative in writing within 48 hours of receipt of the Purchase Order. Failure to notify within this time is deemed acceptance of the Standard Contract by the Supplier.

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- 2.3 Where the Parties have agreed upon and Golding has signed a negotiated contract in connection with the supply of the Goods (whether before or after the Purchase Order is issued), the terms and conditions of that contract will apply.
- 2.4 Subject to clause 2.3, the Standard Contract exclusively governs the relationship between the Parties in connection with the supply of the Goods to the exclusion of any documentation, arrangement or terms and conditions, including those of the Supplier.
- 2.5 Upon acceptance of the Standard Contract by the Supplier, the Supplier agrees to supply the Goods to Golding, at the Delivery Place, by the Delivery Date and otherwise in accordance with this Standard Contract.
- 3. PRICE**
- 3.1 Subject to clause 3.2 and unless otherwise stated in the Purchase Order, the lump sum price or rates shown on the Purchase Order are firm in Australian Dollars and not subject to variation or rise and fall without Golding's prior written approval.
- 3.2 Unless stated otherwise on the Purchase Order, the price is inclusive of all delivery, cartage and freight charges, wrapping and packaging costs, taxes (excluding GST), tariffs, duties, customs levies, excise, insurance, wharfage charges, storage charges and sales taxes, and any other statutory costs, personnel charges, impositions, charges or out-of-pocket or other expenses incurred up to actual delivery of the Goods to Golding to the point stated in the 'Delivery Address' field of the Purchase Order.
- 4. VARIATIONS**
- 4.1 Golding reserves the right at any time to vary the Standard Contract by written direction. If a variation causes an increase or decrease in the price (excluding loss of profits) or a change to the Delivery Date, the Supplier must notify the Golding Representative within 5 Business Days of receipt of the variation.
- 4.2 If the Supplier does not notify Golding within the timeframe specified in clause 4.1, the Supplier will be obligated to perform the variation and will be barred from making any claim whatsoever against Golding in connection with the variation. If the Supplier notifies Golding under clause 4.1 within the required timeframe, the Supplier must not effect the variation until the Parties have negotiated an equitable adjustment to the price or Delivery Date. If the Parties cannot agree on an equitable adjustment to the price or Delivery Date, Golding may exercise its rights under clause 15.2.
- 5. INVOICING & PAYMENT**
- 5.1 Provided that the Goods have been accepted in writing by Golding, at any times specified in the Purchase Order (if any), or otherwise after the Goods have been delivered to the Delivery Place, the Supplier must send a valid Tax Invoice for the price specified in the Purchase Order, clearly showing the Purchase Order number, addressed to Golding to the following address:
- ACCOUNTS PAYABLE
GOLDING CONTRACTORS PTY LTD
PO BOX 1625
GLADSTONE 4680.
Email: accounts@golding.com.au
- 5.2 Golding is not obliged to pay any Tax Invoice that does not contain a valid Purchase Order number or which is not for the price specified in the Purchase Order and any such invoice will be returned to the Supplier unpaid.
- 5.3 Subject to clause 5.4, payment of the Tax Invoice will be made by Golding in Australian currency on or before the date which is one (1) month and 15 days of the end of the month in which the Tax Invoice is received by Golding (unless this date is a Business Day, in which case payment will be made on the next Business Day).
- 5.4 Golding may deduct or set-off from any monies due or becoming due to the Supplier:
- (a) any and all costs, charges, damages and expenses which Golding may have suffered, paid or incurred in connection with or arising out of the subject of the Purchase Order for which the Supplier is or was liable but failed to pay plus a 10% mark up; and
 - (b) all debts owing by the Supplier to Golding on any account whatsoever plus a 10% mark up.
- 5.5 Golding will pay the Supplier by electronic funds transfer. Golding will e-mail a remittance advice to the Supplier specifying the Tax Invoices for which payment is being made when payment is made by electronic funds transfer to the Supplier's nominated account.
- 6. PACKAGING, MARKING AND CONSIGNMENT**
- 6.1 All Goods supplied under the Purchase Order must be clearly marked with the Purchase Order number and must be safely and securely packed, and otherwise prepared for shipment so as to comply with all Legislative Requirements and to prevent the ingress of dust and moisture and reasonable impact damage.
- 7. DELIVERY DOCUMENTATION, INSPECTION AND ACCEPTANCE**
- 7.1 The Supplier must ensure that all Supplier delivery documentation bears the applicable Purchase Order number and the Delivery Place.
- 7.2 Where practical, the Supplier's delivery documentation should be attached to each box, container or item.
- 7.3 The quantity of Goods delivered must not be greater than the amount specified in the Purchase Order or as subsequently varied by Golding. Golding may return excess quantities to the Supplier at the address specified in the Purchase Order at the Supplier's expense.
- 7.4 Signing of the Supplier's delivery documentation by Golding's nominated carrier or other representative does not constitute acceptance of the Goods by Golding. Golding reserves the right to conduct a thorough inspection of the Goods prior to acceptance. If the inspection reveals that the Goods, or any component of the Goods, do not comply with the description, conditions and warranties of the Standard Contract, Golding may reject the Goods or component of the Goods, by giving written notice of rejection to the Supplier. If the Goods are rejected, the Supplier will bear all costs associated with the return and replacement or rectification of the Goods.
- 7.5 The Supplier's delivery documentation must include any relevant material safety data sheets for any items supplied.
- 8. SPECIFICATIONS**
- 8.1 Unless otherwise agreed in writing, the Supplier is totally responsible for the design, supply of materials, fabrication, testing, packaging, loading onto and off transport and delivery of the Goods in accordance with Golding's specifications detailed in the Standard Contract. If no specifications are included in the Purchase Order, the Supplier must comply with the directions (written and oral) of Golding in relation to the requirements for the Goods. Golding reserves the right to verify at the Supplier's premises that the Goods conform to the specification at any time prior to the Delivery Date.
- 8.2 Substitute Goods will not be accepted without Golding's prior written approval.
- 8.3 The Supplier confirms that it has requested from Golding and is in possession of all drawings, specifications and other

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documentation necessary to ensure compliance Golding's requirements for the Goods.

9. RISK AND TITLE

- 9.1 The Supplier is responsible for and accepts risks in the Goods until they have been accepted by Golding.
- 9.2 Without prejudice to Golding's right to return the Goods to the Supplier, title to the Goods (free of encumbrances and all other adverse interests and risk in the Goods), will pass to Golding on delivery to the Delivery Place, irrespective of whether payment has been made by Golding or not.
- 9.3 Goods are for use or resale by Golding or its associated companies and may be incorporated in any products. No claim for additional compensation may be made by the Supplier as a result of the use or resale of the Goods by Golding.

10. TIME FOR PERFORMANCE

- 10.1 Time is of the essence and the Supplier will ensure the Goods are delivered to the Delivery Place by the Delivery Date.
- 10.2 If the Supplier is delayed, or becomes aware of the likelihood of being delayed in the delivery of the Goods or performance of the Services by circumstances which could not reasonably have been foreseen by the Supplier and are beyond the Supplier's control, the Supplier must notify Golding within 24 hours of becoming aware of such circumstances. Golding may, upon notification by the Supplier within the required time, but at the absolute discretion of Golding, extend the Delivery Date. However, in such circumstances, Golding reserves the right to source the Goods through an alternative source.
- 10.3 If, owing to the failure of the Supplier to perform its obligations by the Delivery Date, Golding finds it necessary to make alternative arrangements for the supply of the Goods, the Supplier will reimburse Golding to the full extent of the amount by which the cost of the alternative arrangements exceed the cost of the arrangements between the Supplier and Golding.

11. SUPPLIER'S WARRANTIES

- 11.1 These provisions are in addition to and not a substitution for any warranties or conditions implied by the Competition and Consumer Act 2010 (Cth), any legislation relating to the sale of goods or services in any State or Territory or any similar legislation implying warranties or conditions in contracts for the sale of goods or services.
- 11.2 The Supplier warrants that all Goods supplied or Services performed pursuant to the Standard Contract:
 - (a) conform to the specifications, drawings, samples or other description furnished by Golding or the Supplier in connection with the supply of the Goods;
 - (b) are fit and sufficient for the purposes intended;
 - (c) will be accompanied by the manufacturer quality certificates
 - (d) in the case of Goods:
 - (A) are of good material and workmanship and free from defect or fault of any kind; and
 - (B) are free of encumbrances and that the Supplier has good title to them;
 - (e) in the case of Services, are executed in an efficient manner to standards of skill and care normally exercised by qualified and experienced professional or trade persons in the performance of similar services; and
 - (f) comply with all applicable Legislative Requirements.

- 11.3 If it is discovered at any time after Golding has accepted the Goods that any Goods supplied by the Supplier are defective or

faulty or do not conform to the requirements or instructions of, or specifications of, the Purchase Order or other requirements of Golding, do not include the manufacturer quality certificates of, or any fault or defect appears in the materials, manufacture, or performance of the Goods, then Golding, at its sole discretion, may reject or accept the Goods, or require that any such Goods be repaired or replaced, as the case may be, by the Supplier at no additional cost to Golding. For clarity, if any Services performed by the Supplier in connection with the Goods are not effected, supplied, or performed in a sound and workmanlike manner to the reasonable satisfaction of Golding, then the Supplier must rework or effect the Services to the satisfaction of Golding, at no additional cost to Golding. All additional testing, calibrations, reports or support documentation that may be required by Golding for repaired Goods or Services rework, will be performed by the Supplier at no additional cost to Golding.

12. INTELLECTUAL PROPERTY

- 12.1 The Supplier will grant, and must ensure that third parties grant, an irrevocable, royalty-free, perpetual, transferable, sub-licensable licence to use all Intellectual Property in and arising out of the Goods and any other deliverables provided to Golding in connection with the supply of the Goods for any purpose.
- 12.2 The Supplier warrants that the Goods, the deliverables provided to Golding in connection with the Goods and their use or resale, alone or in combination, according to the Supplier's specifications or recommendations, if any, will not infringe any Intellectual Property.
- 12.3 The Supplier agrees to indemnify, and keep indemnified, Golding against all judgments, liabilities, costs and expenses which arise or result from any actual or alleged infringement of Intellectual Property.

12A. QUALITY

- 12A.1 At all times during the supply of the Goods, the Supplier must:
 - (a) have quality management system which is certified by an appropriate third party.
 - (b) supply the Goods in accordance with that quality management system.
- 12A.2 Upon request by Golding, the Supplier must do all things necessary to allow Golding to audit the Supplier's quality management system, including but not limited to, allowing Golding to access the Supplier's premises or other place where the Goods are being supplied (or are being prepared to be supplied) and providing copies of documentation to Golding. If the audit reveals what Golding considers to be deficiencies in the Supplier's quality management system, the Supplier must immediately rectify those deficiencies at its own cost.
- 12A.3 The Supplier acknowledges that the purpose of the Supplier having a quality management system is to assist the Supplier comply with its obligations under this Standard Contract. Accordingly, compliance by the Supplier with its quality management system will not relieve the Supplier from any of its obligations under this Standard Contract.

13. SAFETY AND ENVIRONMENT

- 13.1 If the Supplier is required to perform any Services on Golding's premises or sites, the Supplier must:
 - (a) comply with Golding's and its client's safety and environmental policies and all directions of Golding or Golding's client whilst at that premises or site;
 - (b) ensure that its employees, agents and contractors have and wear PPE;
 - (c) ensure that it is able to access the premises or site;

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- (d) ensure that any vehicles or equipment it brings to Golding's premises or the site:
- (i) are fit for their purpose;
 - (ii) meet any specific requirements for vehicles specified by the site operator, owner, Golding or its client;
 - (iii) are clean and free of materials, flora or fauna (eg. fire ants and noxious weeds); and
- (e) are being operated by competent personnel, and all costs associated with this will be borne by the Supplier.
- 13.2 At the request of Golding, the Supplier must provide evidence satisfactory to Golding of its compliance with this clause.
- 14. INSURANCE AND INDEMNITY**
- 14.1 The Supplier must effect and maintain the following insurance policies with reputable insurers from the date of the Purchase Order until the Goods are accepted by Golding:
- (a) public and products liability insurance with a limit of at least \$20,000,000.00 per occurrence; and
 - (b) workers compensation insurance as required by law.
- 14.2 Within 24 hours of a request from Golding, the Supplier must provide Golding with evidence satisfactory to Golding that the insurance required by clause 14.1 has been effected and maintained.
- 14.3 The Supplier agrees to indemnify and keep indemnified and hold harmless Golding, its directors, officers and employees from and against all actions, proceedings, claims, suits, demands, costs and expenses that are or may be made upon, brought against or incurred by Golding by or in respect of:
- (a) any breach of this Standard Contract or a Legislative Requirement;
 - (b) any personal injury, illness or death to any person or loss or damage to any property or any other loss or damage caused or contributed to by the Supplier, the Goods or the Supplier's employees, agents and contractors;
 - (c) any claim made against Golding by any person or entity arising out of the use, misuse, malfunctioning or failure of the Goods supplied by the Supplier;
 - (d) any fraud or wilful misconduct of the Supplier, its employees, employees, agents and contractors; and
 - (e) any penalty imposed on Golding for breach of any Legislative Requirement in connection with the Goods supplied by the Supplier.
- 15. TERMINATION**
- 15.1 Golding may immediately terminate, in whole or in part, the Standard Contract by giving written notice to the Supplier:
- (a) in the opinion of Golding, the Supplier has committed a serious safety breach or is performing the Services in an unsafe manner;
 - (b) the Supplier commits fraud or serious misconduct in the supply of the Goods;
 - (c) if the Supplier fails or refuses to comply with any lawful directions given by Golding or any person duly authorised by Golding in connection with the supply of the Goods;
 - (d) if the Supplier commits a serious or persistent breach of any of the provisions of the Standard Contract which is incapable of being remedied to the reasonable satisfaction of Golding; or
 - (e) for an Act of Insolvency.
- 15.2 Golding may terminate in whole or in part the unexecuted portion of this Standard Contract by written notice at any time for reasons other than those listed in clause 15.1 provided that Golding pays the Supplier for reasonable direct costs (excluding loss of profits) properly incurred by the Supplier as a direct result of such termination.
- 15.3 If this Standard Contract is terminated under clause 15.1, Golding will only be liable to pay the Supplier for any Goods which have been accepted in writing by Golding at the date of termination, subject to any right of set-off under this Standard Contract.
- 16. GST**
- 16.1 Unless expressed to the contrary in the Purchase Order, all amounts payable under the Standard Contract are exclusive of GST.
- 16.2 If any supply made under in connection with the Standard Contract is a Taxable Supply then the recipient of that supply will pay the GST in respect of that supply to the supplier on the provision of a valid Tax Invoice, where the GST is calculated in accordance with the GST Law on the basis that the consideration otherwise payable under the Standard Contract is the value of the Taxable Supply.
- 17. ASSIGNMENT**
- 17.1 The Supplier must not sub-contract, assign or novate any of its rights or obligations under the Standard Contract without the prior written consent of Golding.
- 17.2 Golding may assign or novate, in whole or in part, its rights and obligations under the Standard Contract without the prior written consent of the Supplier and the Supplier agrees to execute any documentation to effect any assignment or novation.
- 18. NO WAIVER**
- 18.1 The failure of a Party at any time to require full or partial performance of any provision of this Standard Contract does not affect in any way the full right of that Party to require that performance subsequently.
- 18.2 The waiver by any Party of a breach of a provision of this Standard Contract is not deemed a waiver of all or part of that provision or of any other provision or of the right of that Party to avail itself of its rights subsequently.
- 18.3 Any waiver of a breach of this Standard Contract must be in writing signed by the Party granting the waiver, and is effective only to the extent specifically set out in that waiver.
- 19. THE CODE AND GUIDELINES**
- 19.1 If the Code applies to Golding's contract with its client, the Supplier must, and must ensure that its employees, contractors and agents, with the Code and the Guidelines in the performance of the Services.
- 19.2 The Supplier acknowledges that it has obtained its own copy of the Code and Guidelines.
- 19.3 The Supplier agrees that that information concerning compliance with the Code, including details of whether or not a sanction has been imposed, may be used by the Commonwealth, its agents and ministers, and disclosed to others for the purposes of facilitating compliance with the Code and the exercise of their statutory and portfolio responsibilities. The Supplier must ensure that its contractors are also aware of, and agree to comply with, these rights of use and disclosure.
- 19.4 The Supplier must not engage a contractor in relation to the Services unless they are compliant with the Code and Guidelines or where the appointment would breach a sanction imposed by the Code Monitoring Group.
- 19.5 When requested by Golding, the Supplier must provide all information reasonably necessary to satisfy Golding of its compliance with this clause.

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20. GENERAL

- 20.1 The Standard Contract is to be governed by and construed in accordance with the laws of the State of Queensland.
- 20.2 The Supplier authorises Golding to access any of its sites, offices and documents at any time, whether prior to or after the Goods have been accepted by Golding and will cooperate fully with Golding in this regard.
- 20.3 At any time during the supply of the Goods, Golding may require the Supplier to demonstrate to Golding that it has the financial capacity to perform its obligations under the Standard Contract. To this end, the Supplier will allow Golding or another person appointed by it to audit the financial capacity of the Supplier. In this regard, the Supplier must:
- (a) comply with all reasonable requests of Golding or its appointee;
 - (b) provide Golding or its appointee with the Supplier's financial records; and
 - (c) allow Golding or its appointee to inspect any financial data kept by the Supplier.
- 20.4 Any term or condition being a whole clause or part of a clause which is invalid, unlawful, void or unenforceable and capable of severance without effecting any other term or condition in the Standard Contract shall be severed or read down to whatever is reasonable in the circumstances.
- 20.5 Subject to clause 5, any notice, Tax Invoice or document given under the Standard Contract shall be deemed to be sufficiently served, if it is posted by ordinary pre-paid post addressed to a Party at address for that Party specified in the Purchase Order and shall be deemed to have been received by that Party on the second Business Day following the date on which it was posted. Any notice, Tax Invoice or document given under the Standard Contract is deemed sufficiently served if it is faxed to the facsimile number for that Party specified in the Purchase Order. If served by facsimile transmission and transmitted by facsimile out of normal business hours (being 8:30am-5:00pm on a Business Day) then such notice, Tax Invoice or document shall be deemed to have been given on the Business Day which next follows the day of transmission. Otherwise, any notice, Tax Invoice or document will be deemed to be received at the time of actual receipt.
- 20.6 If the Supplier consists of more than one person, the provisions of the Standard Contract will bind such persons jointly and each of them severally and the persons comprising the Supplier will be jointly and severally liable for the obligations assumed by the Supplier under the Standard Contract.
- 20.7 The obligations of the Supplier under clauses 11, 12 and 14.3 will survive termination or completion of this Standard Contract.
- 20.8 The Parties agree that the terms of the Standard Contract are not to be construed as creating a partnership, association, employment or trust or other fiduciary relationship between the Parties.
- 20.9 No amendment or variation of this Standard Contract is valid or binding on a Party unless made in writing and signed by all Parties.
- 20.10 Subject to anything else in this Standard Contract and any prior communications between the Parties in relation to the quality requirements for the Goods, the Parties agree that the Standard Contract constitutes the entire agreement between the Parties in relation to the supply of the Goods.
- 20.11 For the purposes of the *Personal Property Security Act 2009* (Cth), to the extent that a "security interest" arises in respect of the Goods, the Supplier recognises that this is a "Security Agreement" relating to those Goods and that Golding may register its interest in those Goods.
- 20.12 Subject to the remainder of the terms of this Standard Contract, the terms of this Standard Contract contain the entire agreement between the parties in connection with the supply of the Goods, including any terms and conditions of, or proposed by, the Supplier.