

APPENDIX 1: STANDARD TERMS & CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES**DEFINITIONS:**

"Confidential Information" means all information, technical data, trade secrets or know-how relating to the projects, the business affairs or finances of Ertech Holdings or any of its Related Corporations or any other project, undertaking, development or otherwise of Ertech Holdings or any of its Related Corporations whether commenced prior to or after the date of this Agreement, and includes, without limitation, all information, technical data, trade secrets or know-how relating to research, products, software, services, developments, inventions, processes, designs, drawings, engineering, marketing, clients, suppliers, or arrangements with clients and suppliers of Ertech Holdings or any of its Related Corporations

"Contractor" means the person or corporation providing the goods or Services in accordance with the Purchase Order.

"Date of Completion" means the specified date in which a good or service must be either delivered or services completed.

"Deliver", "delivers", "delivery" or "delivered" means transfer of the Goods into the physical custody of Ertech Holdings at the delivery points nominated in the Purchase Order.

"Goods" means all goods, equipment, material, articles, drawings, data or any other property or parts to be provided to Ertech Holdings under the Purchase Order and includes, without expediting, quality assurance and control, painting, packing and delivery as specified or required hereunder, Goods includes, but is not limited to, software and data in electronic format, whether or not they are licensed by the Contractor to Ertech Holdings.

"Purchase Order" means this document, which, together with any other documents referenced therein, constitutes the contract between Ertech Holdings and the Contractor.

"Services" means the services provided by the Contractor in accordance with the Purchase Order.

"Ertech Holdings" means the following entities within Ertech Holdings Pty Ltd (ABN 93 008 999 353), Ertech Pty Ltd (ABN 46 094 416 887), Ertech EC Pty Ltd (ABN 66 169 441 543), Formaction Concrete Civils Pty Ltd (ABN 17 121 583 266) and Ertech Geomarine Pty Ltd (ABN 26 155 997 069).

1. GENERAL

Any additions to the General Conditions shall be in writing and included as Special Conditions in the Purchase Order. In the event of any inconsistency between these General Conditions and any Special Conditions, the latter shall prevail. Changes in Ertech Holdings requirements or any Contractor's alternative conditions or supply proposals shall be agreed in writing.

2. PRICE BASIS

The Purchase Order price is firm and fixed and is not subject to variation for any rise or fall in contract costs or exchange rates. Prices shall be exclusive of Goods and Services Tax (GST). Prices should include customs duty, packaging, marking, handling, freight/delivery Free-in-Store, insurance and all amounts payable for patents, copyright or royalties.

3. TAXES AND CHARGES

A tax invoice must be submitted showing the GST exclusive price, GST component and net price for each line item and as invoice totals. All other Government taxes and charges (including Customs Duty, and Excise on Fuel) necessary to complete the work shall be included in the price. Withholding Tax, if applicable, may be deducted by Ertech Holdings from the price.

4. PAYMENT OF ACCOUNTS

Ertech Holdings standard terms are the latter of 30 days from the end of month in which the goods or services were accepted and invoiced for or 30 days from receipt of tax invoice.

Ertech Holdings will respond to any claim within 10 days from its receipt of any claim in writing informing the Contractor of its acceptance or rejection of Contractor's claim either in whole or in part.

5. PERFORMANCE OF THE CONTRACT

The Contractor shall deliver the Goods or Services to Ertech Holdings at the time, or times, and in the manner required by the Purchase Order. The Contractor shall ensure that the Goods and Services comply with all other requirements of the Purchase Order. Ertech Holdings may reject Goods and Services, which do not comply with the Purchase Order. Ertech Holdings may, with reasonable notice, terminate the Purchase Order for breach of conditions of contract.

6. WARRANTIES

The warranty period in respect of any Goods supplied or Services provided under the Purchase Order and Contract shall commence on the day of delivery or acceptance (whichever occurs last) of the Goods and Services. It shall be valid for 90 days, or the length of the Contractor's or Manufacturer's or Services, the Contractor shall replace or make good the defective Goods of Services, including delivery and incidental costs. The Contractor may, at its option pay Ertech Holdings the replacement cost.

The warranty period in respect of Services provided under the Purchase Order and Contract shall commence on the day of delivery or commencement (whichever occurs first) of the Services. It shall continue to be valid for 8 years after the date of completion of the Services.

7. QUALITY ASSURANCE

An Ertech Holdings representative may perform inspection of completed Goods and Services or, where practicable, a Quality Management Representative (QMR) may perform quality audit and quality surveillance, as defined in AS/NZS ISO 9000, during production of the Goods or Services. The Contractor shall permit the Ertech Holdings representative or QMR full and free access to its premises or service work areas at all reasonable times, and shall provide at its own expense such facilities and assistance as the Ertech Holdings Representative or QMR may require for the purpose of this clause.

8. ASSIGNMENT / SUBCONTRACTING

The Contractor shall not assign the Purchase Order, nor subcontract any part of the Purchase Order, without the prior written consent of Ertech Holdings, except for such parts of the Purchase Order as is customary in the carrying out of similar contracts. No assignment or subcontracting shall relieve the Contractor from any of its obligations under the Purchase Order or impose any liability upon Ertech Holdings to an assignee or subcontractor.

9. TITLE, ACCEPTANCE AND RISK

Title to the Goods shall vest in Ertech Holdings upon delivery to and acceptance by Ertech Holdings. The risk of any loss or damage to the Goods, or in relation to the Service, or any part thereof, shall remain with the Contractor until delivery to, or acceptance by, Ertech Holdings, whichever is the later.

10. NOTICES

Any notice, request or other communication served under the Purchase Order, shall be in writing, and delivered promptly to Ertech Holdings or the Contractor at the addresses in the Purchase Order.

11. EXISTING CONTRACTS AND STANDING OFFERS

Where this Purchase Order is issued under the terms of a Blanket Order, or to extend the terms of an existing contract, the terms of that Blanket Order or contract shall prevail, except for any Special conditions, which shall take precedence.

12. INDEMNITY

The Contractor indemnifies the Ertech Holdings and its officers, employees, contractors and agents against all damage, expense (including reasonable lawyers' fees and expenses), loss or liability of any nature suffered or incurred by the Purchaser or its officers, employees, contractors or

agents arising out of the performance or non-performance of its obligations under this Purchase Order including:

- i. loss of or damage to property of Ertech Holdings;
- ii. damage, expense, loss or liability in respect of loss of or damage to any other property (including without limitation, the Principal's such property);
- iii. damage, expense, loss or liability in respect of personal injury, disease, illness or death
- iv. financial loss or expense;
- v. damage to the Environment; and
- vi. economic loss.
- vii. breach of warranties required under this Purchase Order

13. DISPUTE RESOLUTION

- i. The required method of determination of unresolved disputes will be by amicable agreement at the senior management level of Ertech Holdings and the Contractor. Accordingly, if a dispute under this Agreement arises, the Parties agree to try to resolve the dispute at the senior management level of both Parties.
- ii. If the Parties cannot resolve a dispute referred to in clause 13(i) within 21 days the dispute is first raised by the Parties, the Parties agree that the dispute must then be referred to mediation with the Australian Commercial Disputes Centre ("ACDC"). The dispute referred to the ACDC for mediation must be heard by the ACDC within 30 days after the dispute is referred to the ACDC.
- iii. The Parties agree to adhere to the procedures set out in clauses 13(i) and 13(ii) before enforcing any other rights permitted by Law in the resolution of any disputes under this Agreement.

14. WAIVER

A waiver by Ertech Holdings, or the Contractor, in respect of any breach of a condition or provision of this Purchase Order shall not be deemed to be a waiver in respect of any other condition or provision, or of any subsequent breach.

15. APPLICABLE LAW

This Purchase Order shall be governed by and construed in accordance with the laws of the State of Western Australia. The Contractor shall, in carrying out this Purchase Order, comply with the provisions of any relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or Local Authority.

16. STANDARDS

The Contractor warrants that all Goods and Services provided under this Purchase Order are to be supplied in accordance with recognised Industry standards or relevant Australian Standards. The Contractor expressly warrants and asserts that the goods or service being provided is fit for the purpose that such goods or services are being provided for.

17. SOFTWARE

The Contractor, warrants to Ertech Holdings that it owns all source code and or licenses pertaining to any software that it uses for the completion of the Services.

18. NON-DISCLOSURE OF CONFIDENTIAL INFORMATION

Except as otherwise required by relevant law, in its provision of the Services, the Contractor agrees, from the date of first disclosure of Confidential Information to the Contractor until the termination of this Agreement and for a period of five (5) years thereafter:

- i. that neither it nor any of its directors, officers, employees, agents and sub-contractors (as the case may be) shall use any Confidential Information for any purpose other than in the performance of the Consultancy Services;
- ii. that neither it nor any of its directors, officers, employees, agents and sub-contractors (as the case may be) shall disclose any Confidential Information to any person not authorised by Ertech Holdings in writing as a person authorised to receive such Confidential Information; and
- iii. to safeguard and to return to Ertech Holdings on demand, or in the case of Electronic Data, destroy at the option of Ertech Holdings, any Confidential Information contained in any material in its possession or control or that of any of its employees or agents.

In no way precluding its liability for damages the Ertech Holdings, the Contractor agrees that breach of this clause by it or its directors, officers, employees, agents and sub-contractors (as the case may be) will not be sufficiently compensated by damages and that Ertech Holdings will be entitled to obtain an injunction to restrain any anticipated or further breach.

19. INSURANCE

The Contractor must take out and maintain on terms approved by Ertech Holdings (which approval shall not be unreasonably withheld), the insurances referred below, from the date of commencement of Services or the provision of the goods, until the end of the Services or expiry of any warranty on the goods. Where permitted by law, the insurance policies must provide that the insurer waives all rights of subrogation against Ertech Holdings in respect of any claim made under the relevant policy.

If the Contractor fails to arrange or maintain such insurance, Ertech Holdings may arrange such insurance specified but is under no obligation to do so. The cost to Ertech Holdings for arranging and maintaining such insurance will be a debt due and owing by the Contractor to Ertech Holdings. The Contractor must ensure that any and all subcontractors (including suppliers) it engages to perform any of the Services or provide any of the Goods are similarly insured.

- i. Public Liability Insurance to a maximum value of \$10M
- ii. Workers Compensation Insurance to a maximum value of \$10M or At Law
- iii. Works Insurance to the value of \$10M
- iv. Vehicle Insurance to the value of \$5M
- v. Maritime insurance to the value of \$5M
- vi. Product Liability insurance to the value of \$10M

20. LIQUIDATED DAMAGES

If the Contractor fails to reach the Date of Completion the parties have agreed on a genuine pre-estimate of cost relating to such failure, the Contractor shall be indebted to Ertech Holdings for:

- i. extra cost incurred by Ertech Holdings for extended overheads and other damages;
- ii. If the failure by the Contractor causes Ertech Holdings to be in breach of a Main Contract, damages whether liquidated or otherwise which Ertech thereby becomes liable to pay the Principal.

The Contractor's indebtedness under clause 20(i) shall be liquidated and the Contractor shall pay Ertech Holdings liquidated damages at the rate specified in the Purchase Order for every day after the Date of Completion is exceeded till the date completion is reached or the Purchase Order is terminated, whichever the earlier event.

The Contractor's indebtedness under clause 20(ii) is not included in the liquidated damage applicable to clause 20(i)

21. ANTI-BRIBERY AND CORRUPTION

The Contractor warrants and represents that it has complied and will continue to comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption, and shall furnish proof of so doing when requested by Ertech Holdings.