

Mirvac's Terms and Conditions

1. Introduction

(a) The Supplier (as identified in the Purchase Order) agrees to supply the Goods and/or Services (as each may be relevantly described in the Purchase Order) (together the Deliverables) to Mirvac Procurement Pty Ltd ACN 003 142 649 (or its relevant Related Body Corporate (as defined in the *Corporations Act 2001* (Cth)) and/or affiliates) (**Mirvac**) on the terms set out in both these Terms and Conditions and the Purchase Order (together the **Purchase Agreement**)

(b) The Supplier agrees that:

- (i) subject to clause 1(b) (ii) and (iv) of these Terms and Conditions, the Purchase Agreement constitutes the entire agreement between Mirvac and the Supplier with respect to the supply of the Deliverables;
- (ii) if another written agreement governing the purchase of the Deliverables has, at the time of the Purchase Order, been executed between Mirvac and Supplier (**Existing Agreement**), the terms of such Existing Agreement will prevail solely to the extent such Existing Agreement conflicts with these Terms and Conditions, unless expressly stated otherwise in such Existing Agreement; and
- (iii) these Terms and Conditions apply to the exclusion of Supplier's conditions of sale or supply (if any), which Supplier is deemed to waive by accepting the Purchase Order; and
- (iv) this clause does not exclude a party's liability for prior false, misleading or deceptive statements or misrepresentations, whether oral or written.

2. Acceptance of Purchase Order

The Supplier is deemed to have accepted the Purchase Order upon the earliest of any acknowledgement of written acceptance of the Purchase Order, commencement of supply of the Deliverables, or upon the expiration of 5 business days after receiving the Purchase Order.

3. Provision of Deliverables

The Supplier will provide Deliverables as specified in the Purchase Order.

4. Packing, Postage, Shipment and Delivery (Goods)

(a) **Packing**

- (i) The Supplier will preserve, pack, package, and handle the Goods to protect them from loss or damage in accordance with good commercial practice relevant to those particular Goods and any reasonable specifications in the Purchase Order.
- (ii) The Supplier will be liable for, and will promptly refund to Mirvac, the amount of any loss or damage due to the Supplier's failure to properly preserve, pack, package or handle such Goods in accordance with clause 4(a)(i) of these Terms and Conditions.
- (iii) The Supplier will include with each shipment of Goods an itemised packing list which include a Purchase Order number specific to that Purchase Order (Purchase Order Number), any applicable product numbers, a description and the quantity of each of the Goods shipped, weight, and the date of shipment.
- (iv) The Supplier will make the Purchase Order Number plainly visible on every invoice, package, bill of lading, and shipping order that it provides.

(b) **Postage**

Unless specified in the Purchase Order, the Supplier will not charge for packing, boxing, transporting or storage. In circumstances where the transportation costs of the Goods are specified to be payable by Mirvac, the Supplier must arrange such transportation in order to secure the lowest possible cost of transportation.

(c) **Timing**

- (i) Time is of the essence in Supplier's performance of its obligations.
- (ii) The Supplier will, as soon as practicable, notify Mirvac if the Supplier's timing of performance of obligations under the Purchase Agreement is delayed or likely to be delayed.
- (iii) Mirvac's acceptance of any notice from the Supplier under clause 5(b) of these Terms and Conditions will not constitute Mirvac's waiver of any of the Supplier's obligations.

(d) **Terms**

- (i) Unless otherwise expressly agreed to in writing, title and risk in all Goods will pass to Mirvac at the delivery address specified in the Purchase Order.
- (ii) All Goods will be received by Mirvac, subject to its rights of inspection and rejection (Mircac acting reasonably). Passing of title and risk in the Goods does not affect any other right that may accrue or have accrued to Mirvac, whether in law or under this

Purchase Agreement, and does not constitute nor shall it be deemed to constitute any admission by Mirvac as to the fulfilment of the performance obligations of the Supplier.

(e) Incorrect Delivery

(i) Incorrect Deliveries will be any delivery of Goods delivered:

- 1) in excess of the amounts stated on the Purchase Order;
- 2) more than three (3) business days prior to the delivery date specified on the Purchase Order (**Delivery Date**) ; or
- 3) after the Delivery Date.

(ii) At Mirvac's option and the Supplier's risk and expense, Mirvac (acting reasonably) may store such Goods for a reasonable amount of time or reject such Goods and return them to the Supplier.

5. Change Orders

(a) No later than 5 business days before the Delivery Date, by written request (including via email or facsimile), Mirvac may, acting reasonably, suspend its purchase of Deliverables or make changes in: (i) the quantities, scope, or Delivery Date of Deliverables ordered; (ii) applicable drawings, designs, or specifications; (iii) the method of shipment or packing of Goods; and (iv) the place of delivery of Goods or performance of Services.

(b) If a change referred to in clause 5(a)(i) of these Terms and Conditions causes an increase in the cost of or the timing required for the Supplier's performance, and the Supplier promptly notifies Mirvac in writing of this fact, then:

- (i) the price and delivery schedule of the Deliverables corresponding to such changed portion of the Purchase Order will be equitably adjusted as the parties mutually agree.
- (ii) the parties will modify the Purchase Order accordingly in writing.

(c) Nothing in clause 5 of these Terms and Conditions is intended to excuse the Supplier from performing pursuant to the Purchase Agreement as changed or amended.

6. Acceptance of Deliverables

Mirvac's acceptance of the Deliverables will be in accordance with the acceptance criteria specified in the Purchase Order. If there are no such criteria, then, to be deemed accepted by Mirvac, the person named as the representative for Mirvac in the Purchase Order must

sign, print their name, and date the delivery docket.

7. Return

- (a) Mirvac has the right to return to the Supplier, at the Supplier's own risk and expense, including, without limitation, transportation and insurance charges, Goods that:
 - (i) do not meet the warranties specified in clause 10 of these Terms and Conditions;
 - (ii) are not accepted pursuant to clause 6 of these Terms and Conditions; and
 - (iii) constitute over shipments or early shipments by the Supplier.

8. Prices

The prices for the Deliverables will be as specified in the Purchase Order.

9. Payments and additional expenses

- (a) Mirvac will make all payments due to the Supplier in accordance with the Purchase Agreement within 30 business days of the date which is the later of:
 - (i) the Delivery Date;
 - (ii) the date of Mirvac's acceptance of all of the Deliverables; or
 - (iii) Mirvac's receipt of a correct invoice and certifications of conformance of the Deliverables to the specifications in the Purchase Order.
- (b) The Supplier will comply with any of Mirvac's reasonable requests regarding payments under protest or any refunds, claims, litigation, or proceedings with respect to any such taxes and will make appropriate adjustments to afford Mirvac the benefit of any refund or reduction in such taxes.
- (c) Other than those costs set out in clause 9(d) and clause 9(e) of these Terms and Conditions Mirvac will reimburse any additional costs incurred by the Supplier in performance of its obligations under this Purchase Agreement where the Supplier has provided Mirvac with sufficiently detailed records of such additional costs and obtained the prior written approval of Mirvac to incur such additional costs.
- (d) Except for state and local sales or use taxes levied on purchases under the Purchase Agreement and required by law to be collected by the Supplier, Mirvac will not be liable for any sales, use, excise, value added, ad valorem or other taxes unless otherwise specified in the Purchase Agreement.
- (e) The Supplier will separately state on all invoices any sales or use taxes imposed. The

Supplier will not collect or remit, and Mirvac will not be liable for, any such taxes if Mirvac has provided Supplier with a tax exemption certificate. If the Supplier invoices Mirvac for any tax not required, the Supplier will notify Mirvac and promptly take all necessary and proper steps to procure a refund and pay such amount to Mirvac.

10. **Warranties**

(a) The Supplier represents and warrants that:

- (i) the Deliverables are of merchantable quality and are fit for the purpose for which they are sold and are free from defects and are free of any risk of defect in material, workmanship or design;
- (ii) the Deliverables conform to any specifications and descriptions in the Purchase Order;
- (iii) the Deliverables are suitable for the purposes for which they are intended by Mirvac including without limitation purposes made known to the Supplier;
- (iv) all Goods are new and unused, unless otherwise specified by Mirvac; and
- (v) any Goods consisting of software will:
 - 1) function properly in conformity with its documentation;
 - 2) in relation to the provision of the Goods and/or Services it will not introduce any harmful code into any Goods or Services provided by (or on behalf of) the Supplier or into the solutions or systems used in connection with the Services or software; and
 - 3) not include any open source software.

(b) If the Supplier is not the owner of any software included in the Deliverables or the manufacturer of any Goods, the Supplier assigns to Mirvac all warranties and remedies available to the Supplier under its agreements with such owners or manufacturers which will be in addition to all other warranties, whether express or implied, and will survive delivery, inspection, acceptance, or payment by Mirvac.

(c) The Supplier represents and warrants that:

- (i) the Supplier has good, unencumbered title or sufficient licensed rights to every part of the Deliverables and has conveyed to Mirvac such unencumbered title or sufficient licensed rights under the Purchase Agreement;
- (ii) the Services will be of professional quality and/or performed consistently with

generally accepted industry standards;

- (iii) it will obtain and assign or otherwise provide to Mirvac the benefits of its warranties and guarantees provided by manufacturers or suppliers of material or equipment incorporated into the Goods or Services, and will perform its responsibilities so that such warranties or guarantees remain in full effect;
- (iv) there is no actual or potential conflict of interest in the Supplier performing any of its obligations under this Performance Agreement;
- (v) the Supplier's performance under this Purchase Agreement does not require the breach by the Supplier or Mirvac of any agreement or obligation to keep in confidence the proprietary information of another party or otherwise violate any actual or implied obligation the Supplier may have to any third party; and
- (vi) the Supplier will comply with all applicable laws and regulations; the Services will be rendered with due care and skill; and the Supplier has read and will comply with the Mirvac Vendor Code of Conduct (which can be found here: <https://www.mirvac.com/about/our-partners/our-policies>) and any updates made to the Mirvac Vendor Code of Conduct which Mirvac gives the Supplier reasonable notice of, provided that where an update to the Mirvac Vendor Code of Conduct has a material effect on the cost of performing the Services or delivery of Goods, the parties will acting reasonably seek to agree a reasonable adjustment to the amounts payable under the Purchase Agreement.
- (vii) Notwithstanding any acceptance by Mirvac under clause 6 of these Terms and Conditions, if any of the Deliverables delivered by the Supplier do not meet the warranties specified in clause 10 of these Terms and Conditions or which might be otherwise applicable to the Supplier's obligations under this Performance Agreement, Mirvac may elect to:
 - 1) require the Supplier to correct any defective or nonconforming Deliverables by repair or replacement at no charge to Mirvac;
 - 2) return any defective or nonconforming Goods to the Supplier at the Supplier's expense and recover from the Supplier any payments made under this Performance Agreement;
 - 3) correct the defective or nonconforming Deliverables itself and charge the Supplier the cost of such correction;
 - 4) obtain a refund from the Supplier for all amounts paid for any defective or nonconforming Deliverables; or

- 5) use the defective Deliverables and require an appropriate reduction in price.
- (d) Mirvac's approval of the Deliverables will not relieve the Supplier of the warranties set in clause 10 of these Terms and Conditions, nor will Mirvac's waiver of any requirement regarding any acceptance criteria, drawing or specification for one or more of the Deliverables constitute a waiver of such requirements for the remaining Deliverables to be delivered unless Mirvac confirms otherwise in writing.

11. Termination

- (a) Mirvac can terminate the Purchase Agreement with respect to Deliverables, in whole or in part, at any time, with or without cause, by providing the Supplier with reasonable written notice (of not less than (3) business days) in which case:
 - (i) termination of this Purchase Agreement will be effective from the date specified in the termination notice; and
 - (ii) Mirvac will make any payments due under the Purchase Agreement as at the date specified in the termination notice.
- (b) Upon termination in accordance with clause 11(a) of these Terms and Conditions, the Supplier will, to the extent and at the times specified by Mirvac:
 - (i) stop all work under the Purchase Order and place no further orders for materials to complete such work;
 - (ii) if requested by Mirvac, assign to Mirvac all of the Supplier's rights, title and interests under terminated subcontracts and orders;
 - (iii) protect all property in which Mirvac has or may acquire an interest;
 - (iv) transfer title and make delivery to Mirvac of all articles, materials, work in process, and other things held or acquired by the Supplier in connection with the terminated portion of the Purchase Agreement; and
 - (v) promptly comply with Mirvac's instructions in relation to any matter without waiting for payment of any amounts it may claim against Mirvac.
- (c) Either party will have the unrestricted right to cancel and terminate the Purchase Agreement without any cost or liability to the other party immediately if a party becomes aware of:
 - (i) the other party's insolvency or inability to meet obligations as they become due;
 - (ii) filing of voluntary or involuntary petition of bankruptcy by or against the other party;

- (iii) institution of legal proceedings against the other party by creditors or stockholders; or
 - (iv) appointment of a receiver for the other party by any court of competent jurisdiction.
- (d) All written confidential information (including without limitation, information incorporated in computer software or held in electronic storage media) together with any analyses, compilations, studies, reports or other documents or materials containing or based on such confidential information as are in possession, power or control of the Supplier shall be returned to Mirvac or destroyed by the Supplier, when requested by Mirvac. If requested, the Supplier must certify in writing to Mirvac, within thirty (30) days, full compliance with this clause.

12. Proprietary Interest

(a) For the purpose of these Terms and Conditions:

(i) **Intellectual Property Rights** includes, but is not limited to:

- 1) patents and patent applications;
- 2) works of authorship including mask work or topography rights, copyrights, copyright applications, copyright registrations and “moral” rights;
- 3) the protection of trade and industrial secrets and confidential information;
- 4) other proprietary rights relating to intangible intellectual property (excluding trademarks, trade names and service marks);
- 5) analogous rights to the above; and
- 6) divisions, continuations, renewals, re-issuances, and extensions of the above (as applicable) now existing or filed, issued, or acquired in the future.

(ii) **Technology** means all technical information, know-how, ideas, concepts, processes, procedures, designs, schematics, works of authorship, inventions, and discoveries (which are patentable, copyrightable, registration as a mask work or topography, protectable as a trade secret or otherwise protectable as an Intellectual Property Right), owned by a party or licensed to a party (to the extent such party has the right to sublicense).

(b) The Supplier grants Mirvac and its subcontractors an irrevocable, perpetual, assignable, non-exclusive, fully paid-up, royalty-free license, with the right to sublicense, to use any Technology as it is embedded or incorporated in any Goods, or that is necessary for the use of a Good, including any bug fixes, updates or upgrades thereto developed by the

Supplier for the Goods and to make, sell, offer for sale, import, export a component of, and otherwise dispose of the Goods. Subject to the foregoing sentence, the Supplier will retain ownership of all Intellectual Property Rights in the Goods. Nothing in the Purchase Agreement will be construed as a grant of any license, right, or interest in any trademark. Unless otherwise agreed by parties, any software comprising Deliverables is being licensed and not sold, and the parties agree that the words “purchase,” “sold” and similar terms mean “license.”

- (c) The Supplier agrees that Mirvac is the sole and exclusive owner of all Deliverables or portions thereof developed as a result of Deliverables provided under the Purchase Agreement (**Developed Deliverables**). The Supplier irrevocably assigns and transfers to Mirvac all of its right and title to, and interest in, Developed Deliverables, including all associated Intellectual Property Rights.
- (d) Without limiting clause 12(a) or (b) of these Terms and Conditions:
 - (i) the Developed Deliverables are “works made for hire” to the extent permitted by law; and
 - (ii) the Supplier will not assert, and otherwise waives, any “moral rights” in the Developed Deliverables and assigns to Mirvac all “moral rights” in the Developed Deliverables.
- (e) If for any reason such Developed Deliverables are not works made for hire, the Supplier hereby assigns all right, title and interest in such materials to Mirvac and agrees to assist Mirvac, at Mirvac’s expense, to perfect such interest.
- (f) The Supplier will obtain and assign and hereby does assign to Mirvac a non-exclusive, royalty-free, irrevocable, perpetual, assignable, sub licensable license to all third -party Intellectual Property Rights delivered with, incorporated into, or necessary to use the Deliverables as contemplated by the Purchase Agreement.

13. Confidentiality, Privacy and Security

- (a) Subject to the additional requirements of clause 13(b) of these Terms and Conditions regarding Personal Information, the Supplier agrees:
 - (i) that all information, data, and material it obtains from Mirvac in connection with the Purchase Agreement will be confidential information and is the sole property of Mirvac;
 - (ii) to use confidential information solely for the purposes of providing Deliverables under the Purchase Agreement. The Supplier will not disclose or make confidential information available to any third party, except as

specifically authorised by Mirvac in writing;

(iii) upon Mirvac's written request, to promptly return all Confidential Information and copies, or certify in writing that it has destroyed all such materials; and

(iv) to not bring to Mirvac or use in connection with the performance of its obligations under the Purchase Agreement any information, data, materials, or documents of a third party considered confidential or proprietary without the written authorisation of such party and Mirvac.

(b) If, under the Purchase Agreement, the Supplier receives, has access to, uses or stores Personal Information (as defined below), the Supplier agrees that it has the following obligations in this clause 13(b) of these Terms and Conditions:

(i) The parties agree that **Personal Information** is any information collected from or about individual persons that the Supplier obtains in any manner from any source in connection with the Purchase Agreement, including, without limitation, names, contact information, government identification information, financial account numbers and other financial or transaction information, demographic information, IP addresses, geolocation information, and any other information about individual persons or their use of Mirvac products, services or tools. Personal Information will in all circumstances be treated as confidential information.

(ii) The Supplier will establish and implement and thereafter maintain, administrative, physical and technical safeguards (Safeguards) that protect the security and privacy of Personal Information. The Safeguards will meet or exceed relevant industry standards and limit the collection, storage, disclosure, use of, or access to Personal Information solely to personnel and purposes authorised by the Purchase Agreement. The Safeguards will be appropriate to Supplier's role, operations, and exposure to Personal Information under the Purchase Agreement. The Supplier will ensure that anyone acting on the Supplier's behalf is subject to Supplier's Safeguards or otherwise provides equivalent or greater protections for the security and privacy of Personal Information. At any time upon Mirvac's reasonable request, the Supplier will cooperate with Mirvac's reasonable efforts to assess the adequacy of the Supplier's Safeguards and the safeguards of anyone acting on the Supplier's behalf.

(iii) The Supplier will notify Mirvac in the most expedient time possible under

the circumstances and without unreasonable delay when the Supplier has reason to believe that Personal Information has been or is reasonably likely to have been accessed for an unauthorised purpose or by unauthorised individuals (an "Incident") by email to procurement@mirvac.com.

(c) The Supplier will:

- (i) provide reasonable assistance to Mirvac in investigating, remedying and taking any other action Mirvac reasonably deems necessary regarding any Incident and any dispute, inquiry or claim that concerns the Incident, and
- (ii) provide Mirvac with reasonable assurances that the Supplier has corrected all circumstances under Supplier's control that led to or caused the Incident. The Supplier will provide reasonable prior notice to Mirvac of any third- party request or legal process relating to any Incident, including, but not limited to, any legal request or inquiry initiated by any governmental entity (foreign or domestic).

(d) The Supplier agrees that it will comply with additional confidentiality and information protection obligations in accordance with Mirvac's policies if, under the Purchase Agreement, the Supplier:

- (i) has direct access to Mirvac's users or customers:
- (ii) provides web applications, software as a service or other cloud services; or
- (iii) receives, has access to, uses or stores:
 - 1) Personal Information other than anonymised or publicly available Personal Information;
 - 2) data subject to special legal requirements (e.g., medical records); or
 - 3) sensitive legal or financial information or information relating to Mirvac's services, tools, systems, networks, computers or media containing such information.

Such additional confidentiality obligations and information protection obligations will be set forth in a separate written agreement between the parties.

14. Indemnification

(a) The Supplier agrees to indemnify and hold harmless Mirvac, its subsidiaries, affiliates, successors, assigns, employees, agents, subcontractors and customers from any and

all claims, actions, demands, liabilities, losses, damages, costs including without limitation recall or withdrawal costs, (either voluntary or as a result of government direction), charges and expenses including, any reasonably incurred legal costs, (including without limitation claims due to injury to persons or damage to property, claims from third parties, losses arising from seeking alternative supply of the Goods or Services and costs incurred as a result of failure to meet the Delivery Date) arising out of or resulting from:

- (i) a defect in the Goods purchased or Services rendered under the Purchase Agreement;
- (ii) any negligent act or omission of the Supplier or its personnel, contractors, subcontractors and agents; or
- (iii) any breach of the Purchase Agreement by the Supplier or its personnel, contractors, subcontractors and agents; or any wilful or unlawful act, fault, or omission of the Supplier, its personnel, contractors, subcontractors and agents, in the performance of the Purchase Agreement,

except to the extent that any claims, action, demands, losses, damages or costs arise from a breach of this Agreement by Mirvac or Mirvac's negligence or wilful misconduct.

- (b) The Supplier will indemnify, defend and hold Mirvac and its officers, directors, agents, employees, successors and customers harmless against any and all claims, liabilities, losses, damages, settlements, costs and expenses (including attorneys' fees) made against or sustained by Mirvac arising from any claim that the Deliverables infringe or misappropriate any third party's Intellectual Property Rights, except to the extent that any claims, liabilities, losses, damages, settlements, costs or expenses arise from a breach of this Agreement by Mirvac or Mirvac's negligence or wilful misconduct..
- (c) If Mirvac's use of any of the Deliverables is enjoined or, in Mirvac's reasonable opinion, is likely to be enjoined as result of any such claim or allegation of infringement of Intellectual Property Rights, the Supplier agrees, at Mirvac's option to:
 - (i) accept return of the Deliverables from Mirvac and refund to Mirvac the amounts paid by Mirvac with respect to such Deliverables;
 - (ii) modify the Deliverables so that they become non-infringing but equivalent in functionality, quality, compatibility and performance; or
 - (iii) procure for Mirvac and its customers the right to continue using and distributing the Deliverables.
- (d) The obligation of the Supplier in clause 14(c) of these Terms and Conditions does not

apply to Deliverables modified by Mirvac after receipt of Deliverables, to the extent that the alleged infringement would not have occurred but for such modification.

- (e) If the Mirvac rejects Goods in accordance with the Purchase Agreement or terminates the Contract, the Supplier must:
 - (iv) in the case of Goods, promptly credit or refund to Mirvac the total of all amounts paid by Mirvac for the affected goods, and accept return of any of those Goods that have already been delivered to the Mirvac; and
 - (v) in the case of Services, promptly refund to Mirvac that part of the Price prepaid (if any) for affected Services.

15. Onsite attendance and Insurance

- (a) The Supplier must take such steps as may be reasonably necessary to prevent personal injury or property damage arising from the performance by any employees, agents or subcontractors of the Supplier at any of Mirvac's offices, premises or facilities.
- (b) The Supplier will secure and maintain such insurance against general liability and property damage.
- (c) The Supplier will also maintain workers compensation insurance as required by law in the state where Services will be provided, including employer's liability coverage.
- (d) Depending upon Services, Mirvac may reasonably require suppliers to carry additional insurance limits and coverages.
- (e) The Supplier will provide Mirvac with documentation evidencing the required coverage upon Mirvac's reasonable request.

16. Agreement

Nothing in this Purchase Agreement is intended to nor will be construed as limiting Mirvac's ability

to procure any products or services from anyone.

17. Communication

Without the prior written approval of Mirvac (which will not be unreasonably withheld), the Supplier will not issue any public statements or promotional materials disclosing the existence of this Purchase Agreement nor the delivery or performance of Deliverables.

18. Suppliers Obligations

- (a) The Supplier will keep and maintain complete and accurate books, records and accounts relating to its obligations under the Purchase Agreement.
- (b) Within 30 days of Mirvac's reasonable request, the Supplier will provide access to its books and records which are reasonably necessary for Mirvac to confirm the Supplier's compliance with the Purchase Agreement.
- (c) The obligations of the Supplier under the Purchase Agreement may not be assigned or subcontracted in whole or in part.

19. Total Agreement

- (a) Any provision of the Purchase Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so to be valid and enforceable.
- (b) To the extent that any provision which is invalid or unenforceable cannot be read down in accordance with clause 19(a) of these Terms and Conditions the provision may be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of the Purchase Agreement or affecting the validity or enforceability of that provision or any other jurisdiction.