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AIA Australia Ltd Purchase Order Conditions

Individual terms are defined in Schedule 1.

1. **Purchase** -The Purchase Order constitutes an acceptance by the Buyer to purchase the Goods and/or acquire the Goods described in the Supplier's offer given to the Buyer in such quantity and on such other terms as stated in the Purchase Order subject to these Conditions, whereby the contract is concluded.
 - 1.1. These Conditions shall apply to the exclusion of any conditions on which any quotation or offer has been given to the Buyer or subject to which the Purchase Order is accepted or purported to be accepted by the Supplier. The Purchaser Order may contain additional conditions which shall apply to this order.
 - 1.2. No variation to the Purchase Order or these Conditions shall be binding unless agreed in writing between the Buyer and the Supplier.
 - 1.3. In the event of any inconsistency amongst the Purchase Order and these Conditions, the terms of the Purchase Order shall prevail.
 - 1.4. Notwithstanding any other term of these Conditions, if the Purchase Order provides a contract reference number [or other reference to a document or agreement] relating to a duly executed contract between Buyer and Supplier, the terms of the referenced contract shall govern the relevant Purchase Order to the exclusion of all terms contained in these Conditions.

2. **Description and Quality of Goods** - Supplier warrants and represents to Buyer that:
 - 2.1. The Goods shall be fit for their purpose, of satisfactory and of merchantable quality and free from any defects in material and workmanship.
 - 2.2. In the case of Goods which are identified as a specified model or grade, the Goods shall conform to the recognised or published specifications for that model or grade.

3. **Services** - The Supplier shall perform for Buyer the services listed in the Purchase Order and in any other appendices agreed by the Parties (the "Services") and the Supplier shall: (i) deliver the Services in a timely and professional manner consistent with the highest industry standards; (ii) shall meet or exceed the service levels (if any) specified in the Purchase Order in any other appendices agreed by the Parties and (iii) shall provide the Services by the completion dates set forth in the Purchase Order. If the Supplier is providing

any of the Services at any Buyer facility, the Supplier shall observe and comply with all Buyer security procedures, rules, regulations, policies (including all information security policies, standards and guidelines if using Buyer's systems, networks and applications), working hours and holiday schedules and will use reasonable efforts to minimize any disruption to Buyer's normal business operations.

4. **Delivery** - The Goods shall be adequately packed for shipping and/or transportation in accordance with the specific packaging method provided by the Buyer or where there are no specific instructions, the Goods shall be adequately packed in accordance with good industry practice. The Supplier shall procure the delivery of the Goods within normal business hours to the Delivery Location, during the Delivery Period. Delivery shall be deemed to be complete only when:
 - 4.1. All of the Goods (together with any shipping documentation necessary to obtain customs or other clearance and any other documentation specified in the Purchase Order) have been delivered to the Delivery Location; and
 - 4.2. An authorised representative of the Buyer has signed a receipt for the same ("Delivery Completion"). Time shall be of the essence. If Delivery Completion does not occur within the Delivery Period, Buyer may terminate the Purchase Order with no obligation to accept or pay for the Goods and the Supplier shall reimburse on demand any additional reasonable costs and expenses incurred by Buyer in obtaining replacement Goods.
5. **Risk** - Risk in the Goods shall pass to Buyer upon Delivery Completion. Except for Goods that consist of software, property in and title to the Goods shall pass to Buyer upon Delivery Completion or (if earlier) payment for the Goods.
6. **Acceptance of Goods** - The signing of a delivery receipt or payment of any moneys shall not constitute acceptance by the Buyer of the Goods. The Buyer may carry out such inspections and tests as they see fit to assess conformance of the Goods and the Supplier shall provide reasonable assistance free of charge. All Goods delivered shall not be deemed to have been accepted by Buyer otherwise than in accordance with Clause 8 of these Conditions.
7. **Acceptance of Services** - Buyer shall have the right to review all Services performed by the Supplier hereunder, including acceptance testing of any work product produced. Unless otherwise agreed by the Parties, Buyer's acceptance of the Services and the work product will be based on acceptance criteria agreed by both Parties in writing provided that if no acceptance criteria are included, Buyer's acceptance will be based on Buyer's reasonable satisfaction or non-satisfaction with the Service(s) or work product. Buyer will notify the Supplier, in writing, if the work product or any Service is not acceptable to Buyer within thirty (30) days, with explanation, after Buyer's receipt of the completed work product or Service(s). Upon any such notice, the Supplier must correct the work product and/or Service(s) at no additional charge to Buyer so that the work product and/or Service(s) is acceptable to Buyer in accordance with these Conditions.

8. **Non-Conformant Goods** - Where the Goods do not conform in any way (are "Non-Conformant"), or become Non-Conformant within 12 months of Delivery Completion, the Buyer shall have the right either on delivery or upon becoming aware of such Non-Conformity, to:
- 8.1. Reject such Goods in part or in whole; or
 - 8.2. Require the Supplier, at its sole expense, to collect, repair or replace the Non-Conformant Goods as soon as possible and in any event within fifteen (15) days or such shorter period as set out in Buyer's notice ("Remedy Period"). If the Goods remain Non-Conformant following the Remedy Period, the Buyer shall, without prejudice to other entitlements, have the right to require the Supplier to collect the rejected Goods at their sole-expense and risk and reimburse in full: (a) all moneys paid by Buyer in respect of such Goods; and (b) any additional reasonable costs and expenses incurred by the Buyer in obtaining replacement Goods. The Buyer shall have the right to dispose of the rejected Goods in any manner without liability to the Supplier if the rejected Goods are not collected within ten (10) days from the date of notice of collection.
 - 8.3. Require the Supplier to pay the Buyer an amount equal to the cost of repairing such Goods.
9. **Fees** - Buyer shall pay the Supplier the fees set forth in the Purchase Order for agreed Goods or Services. Buyer shall not be liable for any additional fees (including but not limited to bank charges) unless the Buyer has given prior written approval to such additional fees.
10. **Payment Terms** - The Buyer shall pay all undisputed amounts within thirty (30) days of Buyer's receipt of a correct invoice from the Supplier.
11. **Invoicing** - All invoices for Services submitted by the Supplier for payment must be in such form as agreed with the Buyer and accompanied by substantiating documentation including but not limited to timesheets, indicating hours worked and work performed, if applicable, and other records and information as Buyer may from time to time require to allow Buyer to review the correctness of invoices. All invoices shall be submitted only after Buyer's acceptance of the relevant Goods or Services in accordance with the terms of these Conditions.
- 11A. **GST** –
- 11A.1 A party paying for a taxable supply must also pay an amount for GST in addition to any consideration (excluding GST) that is payable for that taxable supply. The additional amount must be paid at the same time and in the same way as the consideration for the taxable supply.
 - 11A.2 A party making a taxable supply to another party under the Contract Documents must issue a tax invoice (as that term is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) to the other party), setting out the amount of the GST payable by that other party, at or before the time of payment of the additional amount for GST.

12. Confidential Information

- 12.1. Neither Party shall disclose to any third Party any Confidential Information of the other Party, or use the other Party's Confidential Information except in the proper performance of its obligations (or, in the case of Buyer, use of Goods or utilization of the Services provided under the Purchase Order). "Confidential Information" means any information which relates to any research, development, trade secrets, customers, systems or business affairs of a Party, but does not include information which (i) is at the time of its disclosure publicly known; or (ii) was rightfully known by the receiving Party at the time of disclosure; or (iii) is lawfully received from a third Party not bound by any confidentiality obligations to the owner of such Confidential Information.
- 12.2. A Party may disclose the other Party's Confidential Information on a "need to know basis" to its Affiliates and to employees, officers, agents, consultants or subcontractors "representatives" who need to know such information for the purposes of carrying out the Party's obligations under the Contract Documents, provided that the disclosing Party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this Clause 12 as though they were a Party to the Conditions. The disclosing Party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this Clause.
- 12.3. Either Party may disclose the Confidential Information if required by laws; governmental or professional regulations to which the Party is subject provided that where permitted by law and regulation the Party will give reasonable notice to the other Party of such disclosure, and will furnish only that portion of the Confidential Information which the Party is legally required to disclose.
- 12.4. If there is a breach or threatened breach, remedies at law may be inadequate and the injured Party will have the right, without proof of special damages (in addition to its other legal rights) to seek an injunction or other equitable relief for enforcement.

13. Warranty – The Supplier warrants to Buyer that:

- 13.1. They have the authority to enter into such an agreement with these Conditions and are able to provide the Goods and the obligations under in the Conditions do not conflict with the Supplier's other obligations;
- 13.2. It is and will be fully authorised to provide the Goods without any additional approvals required from any third parties;
- 13.3. The Goods are new and genuine;
- 13.4. All manufacturers' or licensor's warranties (as the case may be) of the Goods extend through the Supplier to the Buyer;
- 13.5. It will ensure that there is no functionality designed into or otherwise included in the Goods which is not known to the Buyer or could be harmful or will prevent the operation in whole or in part of the Buyer's equipment, facilities or operations;
- 13.6. The Goods/materials and documentation provided by the Supplier do not and will not infringe third party's patent, trademark, copyright, design or other intellectual property rights in any part of the world;

13.7. The Goods come with full title and ownership, free from all encumbrances; and

13.8. Buyer shall have the right to use for its own purposes, any ideas, methods, techniques, materials and information provided to Buyer as a result of the Conditions without restriction, liability or obligation, except as may be specified herein.

14. Limitation on Liability

14.1. Except for a Party's negligence, willful misconduct, fraud or fraudulent misrepresentation, breach of its confidentiality obligations or indemnification obligations or acts or omissions resulting in death of personal injury:

14.2. In no event shall either Party be liable for special or consequential damages arising under or in any way connected with the Purchase Order, whether or not the possibility of such damages has been disclosed to such Party in advance or could have been reasonably foreseen by such Party, and

14.3. Neither Party's liability under the Purchase Order shall exceed the amount paid or payable to the Supplier by the Buyer under the Purchase Order.

14.4. Notwithstanding any provisions of the Purchase Order, the Supplier must indemnify, defend, and hold harmless Buyer, its Affiliates, and their respective officers, directors, and employees from any and all third Party claims, damages, or other expenses (including reasonable legal fees) due to any breach of these Conditions by the Supplier.

15. Insurance - Without limiting the Supplier's other obligations under the Purchase Order, the Supplier understands that it may be required to deliver the Goods to the Delivery Location. The Supplier shall take out and maintain adequate insurance against accidental damage to the property of the Buyer and third parties' risk insurance in the joint names of the Supplier and its sub-contractors of any tier engaged in the delivery of the Goods to the Buyer. In connection with any Services to be performed by the Supplier, the Supplier shall obtain and maintain appropriate insurance coverage based on the Services to be performed including general liability, employee's compensation and professional liability.

16. Term and Termination - Without prejudice to any rights or remedies Buyer may have under law, Buyer may, by written notice to the Supplier, terminate with immediate effect the Purchase Order or any part thereof without any liability whatsoever, if:

16.1. The Supplier violates or breaches any of the provisions of these Conditions or the Purchase Order; and such breach is not cured within thirty (30) days following receipt of written notice from the Buyer;

16.2. Any proceedings in insolvency, bankruptcy (including reorganization), liquidation or winding up are instituted against the Supplier, whether filed or instituted by the Supplier, voluntary or involuntary, a trustee, administrator, controller, receiver and manager or receiver is appointed over the Supplier, or any assignment is made for the benefit of creditors of the Supplier, or any analogous event occurs in relation to the Supplier; or

16.3. There is a change in the ownership or control of the Supplier.

17. **Complete Agreement** - The agreement is not intended to create a partnership, joint venture or agency relationship between the Parties. The Purchase Order, these Conditions, any appendices and any documents attached hereto (which shall be incorporated by reference) (collectively “the Contract Documents”) are the entire agreement between the Parties with respect to the subject matter of the Conditions. No change or amendment to the Contract Documents will be valid unless it is in writing and signed by an authorised representative of both Parties.
18. **Severability** - If any provision of these Conditions is found to be illegal or unenforceable by a court of competent jurisdiction, the rest of these Conditions will remain valid; and the illegal or unenforceable provision will be automatically modified as needed to make that provision enforceable.
19. **Notices** - Any notice given under these Conditions shall be in writing and shall be effective when delivered personally to the address set forth, or five (5) days following mailing by registered post. Either Party may designate a different address by notice to the other Party given in the accordance herewith.
20. **Assignment and Subcontracting** - These Conditions may be assigned or otherwise transferred by the Buyer to an Affiliate on prior written notice to the Supplier. The Supplier may not assign any Conditions without the Buyer’s prior written consent. These Conditions shall be binding on the Parties’ successors and permitted assigns. The Supplier shall not subcontract or otherwise delegate the performance of the Contract or other obligations hereunder without Buyer’s prior written consent; provided that in the event Buyer so consents, the Supplier shall remain directly responsible and liable to Buyer for the work and activities of each such subcontractor, for each such subcontractor’s compliance with the Purchase Order and for each such subcontractor’s acts and omissions, as well as for any payments required to be made to such subcontractors.
21. **Independent Contractor** – The Supplier’s relationship with Buyer shall be that of an independent contractor. The Supplier assumes full responsibility for the acts of any employees or other individuals it has engaged to perform Services. The Supplier, and not Buyer, is solely responsible for the compensation of its employees and any other individuals performing Services, and for all obligations owed to its employees and any other individuals performing Services. The Supplier shall be solely responsible for all tax returns (and all costs related thereto) required to be filed with or made to any tax authority with respect to the Supplier’s performance of Services and receipt of fees under a Purchase Order. Without prejudice to Clause 14, the Supplier must indemnify, defend, and hold harmless the Buyer, its Affiliates, and their respective officers, directors, and employees harmless from and against all losses, damages, and expenses (including reasonable legal fees) resulting from the actions of the Supplier employees or other engaged by the Supplier to perform Services.
22. **Publicity** –The Supplier must not use the name, trademarks, service marks, logos, domain names, Web sites, or any other identifiers of Buyer or any Affiliate in any way without prior written approval of Buyer.

23. **Governing Law** - These Conditions shall be construed in accordance with the laws of the State or Territory of Australia in which the Goods or Services are supplied or delivered. Both Parties agree that any Disputes arising under these Conditions shall be subject to the non-exclusive jurisdiction of the courts of that State or Territory.
24. **No Waiver** - The failure of either Party to insist upon or enforce strict performance by the other Party of any part of these Conditions or to enforce any right under these Conditions shall not be construed as a waiver or a relinquishment of such Party's right to assert or rely upon such provision or any other provision of these Conditions.
25. **Survival** -Clauses 2, 6, 7, 8, 9 and 10 (to the extent Fees and approved expenses were actually earned or incurred), 13, 14, 16, 17 and 18 will survive the completion, expiration, cancellation or termination (for any reason) of the agreement of which these Conditions form part.
26. **Compliance with laws** - The Supplier shall ensure that the Goods shall comply with all requirements of Australian laws (including the laws of the State or Territory of Australia in which the Goods or Services are supplied or delivered), including without limitation, the laws relating to the environmental protection.
27. **No inducement** – If the Supplier either directly or indirectly provides to any employee or contractor of the Buyer either before or after the placing of the Purchase Order, any benefit of any character whatsoever which might reasonably be construed as an inducement for the employee or contractor to show favour to the Supplier in respect of any matter including the placing of the Purchase Order, then the Buyer may by written notice to the Supplier, terminate with immediate effect the Purchase Order or any part thereof without any liability whatsoever.
28. **Third Party Rights** - Unless expressly provided to the contrary in these Conditions, these Conditions are not intended to, and do not give, any person who is not a party to them any right to enforce their provisions. Neither Party shall declare itself a trustee of the rights under these Conditions for the benefit of any third party.

Schedule 1 – Definition

“Affiliate” means any entity directly or indirectly Controlling, Controlled by, or under common Control with the Buyer where “Control” means the possession, directly or indirectly, of (i) the power to exercise or control the exercise of more than twenty five (25%) percent of the voting securities of such entity, by contract or otherwise, or (ii) management control of such entity; and “Controlled” and “Controlling” shall be construed accordingly.

"Buyer" means AIA Australia Limited ABN 79 004 837 861 or any other company issuing the Purchase Order to which these Conditions are attached.

“Conditions” means the terms laid out in the document which the Supplier must agree with before contracting with the Buyer.

“Delivery Location” means the delivery address stated in a Purchase Order or such other address as the Buyer may subsequently notify Supplier of in writing.

“Delivery Period” the expected time for the delivery of the Goods based on the Purchase Order.

"Dispute" means any dispute or difference of any kind whatsoever between the Buyer and the Supplier arising out of or in connection with the Contract Documents.

“Goods” means all products, articles or materials specified in a Purchase Order to be supplied in accordance with the Contract Documents.

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

"Purchase Order" means a written instruction given by the Buyer to the Supplier to perform, with respect to these Conditions.

“Party” the Buyer or the Supplier, and “parties” shall mean both of them.

"Purchase Price" means the total price for Goods set out in the Purchase Order.

“Supplier” means the person, firm or company to whom the Purchase Order is addressed.