

PART 1 – General Terms and Conditions

1. **Definitions and Interpretation:** In this Contract:

Babcock means the relevant member of the Babcock Australasia Group as specified on the Purchase Order and its related bodies companies (as defined by the *Corporations Act 2001* (Cth)).

Contract means (in order of precedence) the Purchase Order, these Purchase Order Terms (Parts 3, 2 and 1 as applicable, in that order) and any schedules and attachments to a Purchase Order.

Delivery Date means the date for delivery of the Supplies as specified in the relevant PO or otherwise as specified in writing by Babcock.

GST means Goods and Services Tax as defined in the *New Tax System (Goods and Services Tax) Act* (Cth).

Intellectual Property Rights or IPR means all patents, copyrights, design rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off unfair competition rights, rights in designs, rights in confidential information (including know-how and trade secrets) and other rights in the nature of intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection anywhere in the world.

Purchase Order or PO means any document issued by Babcock for the supply by the Supplier of Supplies and includes any amendment.

Specifications means (in order of priority) (a) any description of or representation about the Supplies provided to Babcock and referred to in the Purchase Order, and (b) the Supplier's published specifications for the Supplies.

Supplies means any goods and/or services supplied under this Contract and includes any documents and materials required to be delivered in conjunction with the Supplies.

Supplier means the entity from whom goods or services are ordered as specified on the Purchase Order.

Total Price means the total price as stated on the relevant PO.

WHS Legislation means the Work Health and Safety Act 2011 (Cth), the Work Health and Safety Regulations 2011 (Cth) and any corresponding WHS law as defined in section 4 of the Work Health and Safety Act 2011 (Cth).

Any other capitalised word used in these Terms has the meaning given to it in the Purchase Order.

2. **Commencement and Term:** This Contract may be formed electronically with the Supplier. The binding Contract between Babcock and the Supplier will come into existence on the earlier of the date the Supplier confirms acceptance of the Contract, or the Supplier commences delivery of any of the Supplies and will continue until the delivery of the Supplies in accordance with this Contract, unless this Contract is terminated earlier in accordance with these Purchase Order Terms.

3. **Relationship of the Parties:** Nothing in this Contract is intended to, or shall be deemed to, establish any relationship of joint venture, agency, partnership or exclusive arrangement between any of the parties, nor authorise either party to make or enter into any commitments for or on behalf of the any of the other parties. The Supplier is not an employee of Babcock or its customers and is not entitled to any superannuation or other fringe benefits from Babcock or its customers. The Supplier has no right to assume or create any obligations of any kind, express or implied, in the name of or on behalf of Babcock or its customers.

4. **Delivery:** The Supplier must deliver the Supplies to the delivery address on the Delivery Date and in accordance with any delivery instructions. On delivery (if goods) or completion (if services), the Supplier must obtain the name (printed) and signature of either the Babcock employee or a representative that receives the Supplies.

5. **Delay:** If the Supplier becomes aware of an actual or potential circumstance that has adversely affected or is likely to adversely affect its performance of its obligations under this Contract (a "Delay"), the Supplier must: (a) notify Babcock immediately (but in any event no longer than within three (3) days) of that actual or potential Delay; (b) take all steps necessary to minimise the impact of the Delay on Babcock; and (c) comply with any work around plans agreed with Babcock and all reasonable requests made by Babcock to rectify the Delay.

6. **Inspection and Acceptance:** Babcock or its authorised agent has the right to inspect the Supplies and has the right to reject any Supplies that do not conform to this Contract. If the Supplies do not comply with the Specifications, Babcock may terminate this Contract or require the Supplier to promptly modify or resupply the Supplies, at no additional cost to Babcock, so that they comply with the Specifications. Execution of a delivery document or payment by Babcock does not constitute acceptance by Babcock.

7. **Price:** The prices are fixed and the Total Price includes all levies, duties, taxes (including GST, unless expressly stated as being exclusive of GST), insurance, packaging and delivery costs. The total amount payable by Babcock under this Contract will not exceed: (a) the Total Price; or (b) if no Total Price is stated on the PO, the amount specifically authorised in writing by the Babcock contact.

8. **Payment:** Unless otherwise agreed, the Supplier will only invoice Babcock on the completion of the services or on or after the delivery of the goods. Each invoice must itemise the GST included in the prices, state the PO number and be addressed to the Babcock contact at the address for invoices specified in the PO. Babcock will pay a correctly rendered invoice 30 days from the end of the month in which the invoice was received. Babcock is entitled to withhold payment of any invoice to the extent that it relates to Supplies that do not meet the Specifications and may set off any liability of the Supplier to Babcock against any liability of Babcock to the Supplier.

9. **Goods and Services Tax:** Where GST is applicable to the supply of the Supplies, the Supplier must ensure that any invoice or other request or demand for payment constitutes a valid tax invoice in accordance with GST laws that will enable Babcock to claim tax credits in respect of Supplies to which the invoice relates and acknowledges that no amount will be due and payable by Babcock in respect of any such supply unless Babcock has received from the Supplier such an invoice. The Supplier is responsible to ensure the invoice or other request or demand for payment specifies the correct amount of GST.

10. **Risk and Title:** Risk in the Supplies will pass to Babcock when the Supplies are delivered. Title in the Supplies (other than documents or materials licensed under clause 12) will pass to Babcock on the earlier of acceptance of or payment for the Supplies.

11. **Cancellation:** Babcock may cancel or reduce the quantity of Supplies by notifying the Supplier before the relevant Delivery Date or if the Supplier fails to supply the Supplies on the Delivery Date. In the case of Supplier default, Babcock will not be liable for any amounts or expenses for cancelled or reduced Supplies. Where the cancellation or reduction does not relate to a default by the Supplier, Babcock will only be liable for payments to the Supplier for Supplies accepted in accordance with clause 6 before the cancellation/reduction and any reasonable costs incurred by the Supplier that are directly attributable to the cancellation/reduction, if the Supplier substantiates these amounts to the satisfaction of Babcock.

12. **IPR:** The Supplier assigns to Babcock or its nominee ownership of all IPR in any document or material created for Babcock in the supply of the Supplies. To the extent that ownership of IPR is not assigned to Babcock or its nominee, the Supplier grants Babcock (and its customers and contractors) a world-wide, non-exclusive, paid up, royalty free, perpetual licence to use, amend and copy IPR in the Supplies so that Babcock (and its respective customers and contractors) can make full use of the Supplies.

13. **Warranty:** The Supplier warrants that: (a) all goods supplied by the Supplier are: (i) new and in good condition; (ii) compliant with all relevant standards and industry codes; (iii) free from defects in design, materials and workmanship; (iv) of good and merchantable quality and fit for their intended purposes; and (v) compliant with the Specifications; (b) any services supplied by the Supplier will: (i) be supplied with the degree of skill, care and diligence that would be expected of a skilled professional experienced in providing the same or similar services; (ii) comply with all reasonable directions of Babcock; and (iii) comply with all Babcock's conduct policies (as notified to the Supplier by Babcock from time to time) and relevant standards and industry codes; and (c) the Supplies and their use and supply will not breach any obligation of confidence or infringe any IPR of any person.

14. **Breach of Warranty:** If the Supplier becomes aware, or Babcock notifies the Supplier, that the Supplies fail to comply with any of the warranties given under this Contract, the Supplier must, without prejudice to any other rights of Babcock: (a) in the case of the warranties provided under clause 13(a), during the period of 12 months (or such longer period as may be agreed) from the acceptance of the Supplies fix or replace any non-compliance; and (b) in the case of any other warranty provided under this Contract, promptly (at Babcock's option): (i) remedy that failure (including by replacing or resupplying the Supplies), (ii) provide to Babcock a full refund of the price paid for the Supplies, or (iii) deduct in accordance with Babcock's directions the price paid for the Supplies from any amounts owing to the Supplier.

15. **Indemnity:** The Supplier indemnifies Babcock against all costs, claims, demands, liabilities, expenses, damages and losses (on a full indemnity basis and whether incurred by or awarded against Babcock) that Babcock may sustain or incur as a result, whether directly or indirectly, of: (a) a claim that the Supplies or their use or supply breaches any obligation of confidence or infringes the IPR of any person; (b) a claim,

- demand, suit, action or proceeding by a third party arising from an act or omission of the Supplier in connection with this Contract whether negligent or not; (c) without limiting paragraph (b), any act or omission of the Supplier in connection with this Contract resulting in or contributing to (i) claims by any third party against Babcock in respect of personal injury or death, or (ii) loss of or damage to Babcock's or a third party's physical property; or (d) failure by the Supplier to comply with the requirements of the Contract.
16. **Insurance:** The Supplier must take out and maintain with a reputable insurer valid and enforceable insurance policies including: (a) Public and Product Liability insurance covering the Supplier and its Personnel against any liability to any party (including Babcock) arising out of or in connection with this Contract (and such policy must not include any exclusion of aviation liability) for an insured amount of not less than AU\$20 million per accident or incident claim and AU\$20M in the aggregate annually (or such lower amount agreed by Babcock in writing); (b) Workers Compensation insurance covering the Supplier for any claim against it by any person employed by the Supplier who provides services in relation to this Contract; (c) if requested by Babcock, Property insurance covering the Supplier for any loss or damage to any property used directly or indirectly in connection with the Supplies; (d) where the Supplier uses vehicles in connection with providing the Supplies and if requested by Babcock, Third Party Motor Vehicle insurance for an amount of at least AU\$20M; and (f) where the Supplies include services of a professional nature, Professional Indemnity insurance for an amount reasonably requested by Babcock.
 17. **Assignment and Contracting:** The Supplier must not assign the whole or any part of this Contract or use any subcontractors for supply of the Supplies without Babcock's prior written consent. If the Supplier uses a subcontractor, the Supplier remains liable for the subcontractor's performance.
 18. **Termination:** Babcock may terminate this Contract without any liability for compensation: (a) on 30 days' notice without being obliged to give any reason for so doing; or (b) immediately if the Supplier: (i) becomes insolvent or is petitioned in bankruptcy; (ii) being a company, a petition for winding up the company is presented; (iii) an order is made or an application is brought or a resolution is passed for its winding up; (iv) any step is taken to appoint a receiver or receiver and manager or administrator or liquidator to the Supplier; or (v) the Supplier makes any arrangement for the benefit of creditors; or (vi) the Supplier breaches any provision of this Contract. Any such termination by Babcock shall be without prejudice to any other of its rights.
 19. **Waiver:** The failure by Babcock to exercise any right or remedy in relation to any specific default by the Supplier, including by terminating this Contract or any part thereof when such a right arises shall not constitute a waiver by Babcock of any of its rights pursuant to this Contract.
 20. **Entire Agreement:** This Contract is the complete contract between Babcock and the Supplier in relation to the Supplies. No confirmation, shipment, delivery document, shrink-wrap licence or representation will vary this Contract.
 21. **Variation:** No variation of this Contract will be effective unless it is in writing and signed by an authorised representative of Babcock.
 22. **Confidentiality:** This Contract and any information which the Supplier obtains from Babcock relating to this Contract (whether in writing or otherwise) is Babcock's confidential information unless it is: (a) public knowledge at the time it is obtained by the Supplier, or (b) in the Supplier's lawful possession prior to being obtained from Babcock. The Supplier must keep Babcock's confidential information confidential, safe and secure, not disclose it to any person (except personnel of the Supplier who have a need to know) and return it when it has performed all of the work under this Contract or this Contract terminates or expires. The Supplier may not make any public statement about this Contract unless it has first obtained written consent from Babcock.
 23. **Privacy:** Where the Supplier collects any information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion (referred to as "**Personal Information**") in connection with the provision of the Supplies, the Supplier: (a) must take all reasonable steps to ensure that the Personal Information is protected against misuse and loss, and from unauthorised access, modification or disclosure; (b) must not, directly or indirectly use the Personal Information except to the extent necessary to provide the Supplies; (c) must not disclose the Personal Information whether directly or indirectly to any person without the prior written consent of Babcock; (d) may disclose the Personal Information to its personnel to the extent that they have a need to know for the purpose of providing the Supplies; (e) must provide appropriate training to its personnel that will be disclosed Personal Information with respect to the correct handling of the Personal Information so as to minimise the risk of accidental security breaches; (f) must ensure that its internal operating systems only permit authorised personnel to access the Personal Information; (g) must immediately notify Babcock when it becomes aware that use or disclosure of the Personal Information is required or authorised by or under law; and (h) must comply with all applicable privacy legislation and all guidelines issued by relevant regulatory bodies. On termination or expiry of this Contract, the Supplier must promptly return to Babcock or, if requested by Babcock, destroy all copies of the Personal Information, in which case any right to use, copy or disclose that Personal Information ceases.
 24. **Compliance with laws:** The Supplier must comply with all applicable laws, statutes and regulations touching or concerning this Contract including but not limited to those laws, statutes and regulations relating to anti-bribery and anti-corruption, health safety and environment, privacy and import and export control. The Supplier warrants that it holds, and will continue to hold, all licences, permits and authorisations necessary to provide the Supplies. The Supplier must not do or omit to do anything that will cause or lead to a breach of Babcock's Code of Business Conduct (<https://www.babcock.com.au/our-policies/>).
 25. **Business Ethics:** The Supplier warrants and represents that neither the Supplier nor, so far as the Supplier is aware, any person associated with it: (a) has been convicted of any offence involving bribery or corruption, fraud or dishonesty; (b) has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the applicable laws and regulations from clause 24; (c) has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contract; (d) the Supplier is not controlled or owned by a government or a government controlled entity; or (e) no officer or director of the Supplier or any person who has power of control or decision over the Supplier is a government official or has a familial relationship with a government official. The Supplier shall promptly notify Babcock if, at any time during the term of this Contract, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in this clause 25 at the relevant time. The Supplier will fully comply with any judgement against it from any court or tribunal (including overseas jurisdictions but excluding judgements under appeal or instances where the period for appeal or payment/settlement has not expired) relating to a breach of workplace relations law, occupational health and safety law or workers' compensation law.
 26. **Babcock premises and equipment:** If the Supplier uses facilities or equipment owned or controlled by Babcock or its customer (as applicable) in the course of this Contract, the Supplier: (a) acknowledges that such equipment and facilities remain the property of Babcock or its customer (as applicable); (b) will exercise due care and skill in using the equipment and facilities; (c) will only use the equipment and facilities for the purposes of this Contract; (d) will comply with all reasonable directions from Babcock or its customer (as applicable) regarding safety and security; (e) will keep the equipment and facilities in good condition; (f) will immediately notify Babcock of any loss of or damage to the equipment or facilities; (g) uses the equipment and facilities at its own risk.
 27. **WHS compliance:** Where the Supplies are designed, manufactured, supplied, installed, commissioned or constructed by the Supplier within Australia or the Supplier imports the Supplies into Australia (and is an importer for the purposes of the WHS Legislation), the Supplier shall: (a) comply with, and shall ensure that all subcontractors comply with, the applicable WHS Legislation when performing work under the Contract; and (b) where applicable, comply with, and must ensure that all subcontractors comply with, the obligation under the WHS Legislation to, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with Babcock, Babcock's customer(s), the Supplier or the subcontractors (as the case may be) and any other person who, concurrently with Babcock, Babcock's customer(s), the Contractor or the subcontractor (as the case may be), has a work health and safety duty under the WHS Legislation in relation to the same matter.
 28. **Access and Records:** Upon request the Supplier shall give access to Babcock, its customer or any person authorised by Babcock or its customer to premises or accounts to any of its records directly relevant to or impacting on the performance of work under this Contract.
 29. **Applicable Law:** The laws of South Australia apply to this Contract and the parties submit to the non-exclusive jurisdiction of the courts of South Australia.

Australian Purchase Order Terms

30. **Survival:** The expiry or termination of this Contract for any reason will not affect the coming into force or the continuation in force of any of its provisions which expressly or by implication are intended to come into force or continue in force on or after the termination.

PART 2 – Commonwealth Specific Terms

The following terms are applicable where the end customer is the Commonwealth of Australia:

31. **Novation:** The Supplier consents to this Contract being novated from Babcock to a related company or to the Commonwealth and will do all things reasonably required by Babcock to give effect to such novation if requested by Babcock.
32. **Workplace Gender:** The Supplier warrants that it is not an employer named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth), and will notify Babcock as soon as is reasonably practicable in the event such circumstances change.
33. **Indigenous Procurement Policy:** The Supplier must use its reasonable endeavours to increase its: (a) purchasing from Indigenous enterprises; and (b) employment of Indigenous Australians. In the performance of the Contract. For the purposes of this clause "Indigenous enterprise" means an organisation that is 50 per cent or more Indigenous owned that is operating a business.
34. **Commonwealth Policies:** Unless otherwise agreed in writing, the Supplier shall use reasonable endeavours to comply with and require Supplier's personnel and subcontractors to comply with Commonwealth policies of general application relevant or applicable to this Contract, including:
- (a) DI ADMIN POL and in particular: (i) Annex C, AG4 - Incident reporting and management and the Incident Reporting and Management Manual; (ii) Annex C, AG5 - Conflicts of interest and declarations of interest and the Integrity Policy Manual; (iii) Annex J, PPL 7 - Required behaviours in Defence and Chapter 3 of the Complaints and Alternative Resolutions Manual;
 - (b) Gifts, hospitality and sponsorship as detailed in DI(G) PERS 25-7;
 - (c) ADF alcohol policy as detailed in DI(G) PERS 15-1;
 - (d) Public Interest Disclosure policy as detailed at <http://www.ombudsman.gov.au/about/making-a-disclosure>;
 - (e) Performance Exchange Program functional policy as detailed at: <http://www.defence.gov.au/casg/DoingBusiness/Industry/Industryprograms/PerformanceExchangeScorecard>;
 - (e) other Commonwealth policies reasonably notified by Babcock.
35. **Defence Security:** Where the Supplier requires access to any Commonwealth Premises, or to any security classified information or assets, in order to perform the obligations of this Contract, the Supplier shall: (a) comply with any security requirements (including those contained in the Defence Security Principles Framework (DSPF)) notified to the Supplier by Babcock; and (b) ensure that Supplier personnel are aware of and comply with the Commonwealth's security requirements.

PART 3 – Special Conditions

To be inserted if applicable.

A copy of this Contract can also be downloaded at <https://www.babcock.com.au/suppliers>