

1 DEFINITIONS

- 1.1 **Agreement** means the agreement between Keysbrook and the Contractor as set out in these Terms and Conditions, the Schedules, the Purchase Order and any Special Conditions.
- 1.2 **Contractor** means the person, business or company named in the Purchase Order who is required to supply the Goods or Services and includes any person, business or company engaged by the Contractor, whether or not employed by the Contractor.
- 1.3 **Goods** means any materials, supplies, plant, equipment or other things to be supplied (if any) and includes the supply, hire or provision of any Goods by the Contractor to Keysbrook, as specified in the Agreement.
- 1.4 **IP** means all intellectual property rights existing anywhere in the world including any patent, design right, copyright, trade mark protected circuit layout, trade secret, confidential information, or other right whether existing under statute, at common law, in equity or otherwise.
- 1.5 **Keysbrook** means Keysbrook Leucoxene Pty Ltd (ABN 49 137 091 297).
- 1.6 **Purchase Order** means the purchase order initiating and forming part of this Agreement.
- 1.7 **Schedules** mean Schedule 1 (Insurance) and Schedule 2 (Hire of Goods) to these Terms and Conditions.
- 1.8 **Services** means all the work to be performed by the Contractor (if any) as set out in this Agreement, and any additions, substitutions and variations required by Keysbrook and agreed between Keysbrook and the Contractor in writing.
- 1.9 **Site** means Keysbrook's premises, wherever located or any other place designated in the Purchase Order or any Special Conditions but does not include the Contractor's premises or the premises of Keysbrook's freight forwarder.
- 1.10 **Special Conditions** means any additional terms attached to the Purchase Order by Keysbrook.
- 1.11 **Term** means the term (if any) for the hire of Goods or provision of Services specified in the Purchase Order.
- 1.12 **Terms and Conditions** means the terms and conditions set out in these clauses 1 through 17.

2 AGREEMENT

- 2.1 The Agreement constitutes the whole of the agreement for the supply by the Contractor to Keysbrook of the Goods and /or Services described in the Purchase Order and any Special Conditions.
- 2.2 The delivery of Goods or the commencement of performance of any Services by the Contractor will constitute acceptance by the Contractor of the Agreement.
- 2.3 No other terms will apply to this agreement whether or not they are contained in any order acknowledgment, invoice or other document, whether dated before or after the date of the Purchase Order, unless those terms are expressly agreed to in writing by the duly authorised representatives of Keysbrook and the Contractor.
- 2.4 If the Purchase Order or the Special Conditions contain any terms which are inconsistent with these Terms and Conditions or any Schedule, then the Purchase Order and the Special Conditions will prevail to the extent of the inconsistency. It is acknowledged
- 2.5 that the Special Conditions may use the terms 'Contractor' and 'Principal', 'Vendor' and 'Purchaser' or other terminology, instead of the terms 'Contractor' and 'Keysbrook' respectively and the Agreement will be interpreted accordingly.
- 2.6 Time will be of the essence in relation to the supply of Goods and the performance of the Services and the Contractor must comply strictly with the date indicated on the Purchase Order or any Special Conditions for delivery of the Goods or performance of the Services.

3 PRICES, PAYMENT, GST, OTHER TAXES

- 3.1 Keysbrook must pay the Contractor for the Goods or Services in accordance with the prices set out in the Purchase Order or any Special Conditions. Unless stated otherwise, prices are in Australian dollars and exclude GST, but include all other costs incurred by the Contractor in relation to the Goods or Services, including but not limited to the cost of delivery, cartage and freight, testing, certification, packaging, handling, storage, insurance, taxes, tariffs, duty and excise.
- 3.2 Keysbrook must (subject to the Goods having been satisfactorily received, or the Services having been satisfactorily completed and accepted by Keysbrook) pay the amount properly invoiced by the Contractor (except to the extent that the invoice is in dispute) within thirty (30) days after the end of the month in which a tax invoice has been received by Keysbrook.
- 3.3 Keysbrook must promptly notify the Contractor of any dispute in relation to any invoice and provide the Contractor with details of any disputed item in any invoice.
- 3.4 Keysbrook may deduct from such amount as may be due and payable by Keysbrook pursuant to this Agreement, any amounts payable by the Contractor to Keysbrook on any account whatsoever.

4 SUBCONTRACTS

- 4.1 The Contractor must not, without the prior written consent of Keysbrook, subcontract any portion of the Agreement except for the supply of raw materials or minor items.
- 4.2 The Contractor will be liable for the acts and omissions of its subcontractors as if they were the acts and omissions of the Contractor and will not, by subcontracting the supply of the Goods or performance of any part of the Services, be relieved of any of its obligations or liabilities under the Agreement.
- 4.3 No subcontract may contain any terms which are inconsistent with this Agreement.

5 INSURANCE

- 5.1 If the provision of the Goods or the performance of the Services involves the Contractor:
 - (a) entering the Site, then the Contractor must comply with Schedule 1 (Insurance); or

- (b) carrying out professional Services or design work or providing advice of any kind, then the Contractor must procure and effect at its own expense professional indemnity insurance for an amount of at least five million dollars (\$5,000,000). If requested by Keysbrook, the Contractor must provide Keysbrook with a certificate of currency for such professional indemnity insurance.

6 HIRE OF GOODS

- 6.1 If the provision of the Goods involves the hire of any Goods, then the Contractor must comply with Schedule 2 (Hire of Goods).

7 OBSERVANCE OF LAWS

- 7.1 The Contractor must:
- (a) comply with all applicable laws and with the requirements of any public authority or agency in relation to the supply of Goods and the performance of any Services, including, without limitation, those relating to safety, occupational health, drug and alcohol, environmental protection and regulation of procedures in connection with mines, machinery, electricity and construction works, and all regulations and orders made thereunder, together with any Keysbrook rules, policies or procedures and any reasonable directions issued by Keysbrook to the Contractor; and
 - (b) only use personnel who are skilled and competent and hold all necessary licences and qualifications. If Keysbrook requires it, those Contractor personnel must be approved by Keysbrook. The Contractor must promptly comply with any direction by Keysbrook for the removal of any Contractor personnel who are unsuitable or who breach any law or any of Keysbrook's rules, policies, procedures or reasonable directions.
- 7.2 The Contractor warrants that it holds all necessary permits, licences and approvals in relation to the supply of the Goods or Services and must, if requested by Keysbrook, provide copies of them to Keysbrook prior to commencement of supply or as requested by Keysbrook. The Contractor also warrants that it had adequate opportunity to consider and has carefully considered the Services to be performed and any relevant details of the Site (if applicable) and has appropriate expertise to perform the Agreement.
- 7.3 If any Goods to be supplied by the Contractor emit noise, dust, vibration, radiation or gas, have a high surface temperature or otherwise affect the environment or pose occupational health risks, the Contractor must, prior to supplying such Goods, provide full details of any emissions, effects or risks, including material safety data sheets (if applicable).
- 7.4 The Agreement is governed by and construed in accordance with the laws of Western Australia. Each party submits, on a nonexclusive basis, to the courts having jurisdiction in Western Australia with respect to any proceedings that may be brought in connection with the Agreement.

8 RISK, TITLE AND INSPECTION

- 8.1 Subject to clause 8.2, title to the Goods passes to Keysbrook free from encumbrances on payment of the price noted in the Purchase Order or in any Special Conditions. Risk in the Goods remains with the Contractor until delivery to the place specified in the Purchase Order or any Special Conditions.
- 8.2 All Goods will be accepted by Keysbrook subject to inspection by Keysbrook within a reasonable time after delivery and to Keysbrook being reasonably satisfied with the Goods.

9 PACKAGING AND DOCUMENTATION

- 9.1 The Contractor must adequately and safely package any Goods according to the requirements (if any) detailed in the Purchase Order or any Special Conditions. If there are no such requirements detailed, the Contractor must package the Goods in accordance with all applicable laws and good industry practice. The Contractor must ensure that Goods contained in packages are adequately protected from damage which may be caused during the normal course of rough road transport and prevent entry of dust and moisture.
- 9.2 The Contractor must:
- (a) submit one copy of each tax invoice or credit note in relation to each Purchase Order. Each tax invoice is to relate to only one order and is to show prices for each order line item; and
 - (b) mark the number of the Purchase Order and the relevant destination of the Goods on the packaging enclosing the Goods, and on all shipping notices, bills of lading, tax invoices, packing slips, cart notes and other documents.
- 9.3 All tax invoices must clearly show the Purchase Order number and must be addressed as follows: Accounts Payable, Keysbrook Leucoxene Pty Ltd, PO Box 96, North Dandalup, WA 6207.

10 INTELLECTUAL PROPERTY

- 10.1 The Contractor warrants that in supplying the Services neither Keysbrook nor the Contractor will infringe the IP of any third party.
- 10.2 All IP created by the Contractor (either by itself or jointly with any third party) in supplying the Goods and/ or Services or otherwise pursuant or incidental to this Agreement will be owned by Keysbrook. The Contractor must notify Keysbrook immediately of any such IP and assign to Keysbrook its entire right, title and interest in any such IP.
- 10.3 The Contractor must defend all claims, and must indemnify and hold Keysbrook harmless against liability of any nature, including costs and expenses, for and on account of any infringement of any third party's IP arising by reason of the nature, form or condition of any Goods or Services supplied by the Contractor under the Purchase Order or by reason of the use by Keysbrook of any such Goods or Services for any purpose intended by Keysbrook or reasonably foreseeable by the Contractor. If a party receives a notice of any claim of infringement of any third party's IP in relation to any Goods or Services supplied under the Purchase Order, that party must promptly give the other party notice of the claim.

11 TERMINATION

- 11.1 Either party may terminate this Agreement (without prejudice to any other rights) immediately by notice in writing to the other party if that other party:
- (a) is in breach of a material term of this Agreement;
 - (b) is in breach of a non-material term of this Agreement and fails to remedy that breach within seven (7) days of receiving written notice from the non-defaulting party specifying the breach and requiring its remedy; or
 - (c) commits an act of bankruptcy or insolvency or makes or endeavours to make any scheme of arrangement with creditors, or if any order appointing a receiver, receiver and manager or administrator or for the winding up of the other party (whether voluntary or otherwise) is made in any court of competent jurisdiction.
- 11.2 Keysbrook may terminate this Agreement at any time for any reason by giving the Contractor seven (7) days advance written notice. Upon expiration of the notice period, the Contractor shall cease its performance of any Services, cause the performance of the Services by any subcontractors to be ceased, except as the Keysbrook may otherwise direct in writing. Keysbrook shall pay to the Contractor the costs incurred by the Contractor in carrying out the Services to the time of termination, less any amounts previously paid to the Contractor. Keysbrook shall also pay to the Contractor all reasonable costs incurred by the Contractor as a consequence of the termination, provided however, the Company shall not be liable to pay any amount for loss of profits, damages or other claims asserted by the Contractor in respect of the incomplete portion of the Services. The aforementioned payments shall be the total extent of the Keysbrook's liability to the Contractor arising out of termination under this clause.
- 11.3 The parties agree that upon termination of the Agreement, the property in any materials appropriated to the manufacture or fabrication of any Goods will vest in Keysbrook and Keysbrook will be entitled to immediate possession of those Goods. 11.4 Any termination of the Agreement under this clause 11 will be without prejudice to any rights or remedies which either party may have against the other arising out of or connected with this Agreement prior to the date of termination.

12 SUSPENSION OF SERVICES

- 12.1 Keysbrook may at any time, and from time to time, by written notice to the Contractor, suspend further performance of all or part of the Services, with such notice specifying the date of suspension and the estimated duration of the suspension. Upon receiving any such notice of suspension, the Contractor shall promptly suspend the Services to the extent specified and during the period of such suspension shall properly care for and protect all work in respect of such Services in progress and materials, supplies and equipment the Contractor has on hand for the performance of the Services. The Contractor shall use its best endeavours to utilise its materials, labour and equipment in such a manner as to mitigate costs associated with the suspension. Keysbrook may at any time withdraw the suspension by written notice to the Contractor and the Contractor shall on the specified date of withdrawal, resume diligent performance of the Services in respect of which the suspension is withdrawn.

13 INSPECTION OF WORKS AND RECORDS

- 13.1 The Contractor must provide Keysbrook or its representatives with full and free access to the shops, factories or other places of business of the Contractor at all reasonable times and with reasonable prior notice, in order that Keysbrook may inform itself as to the general conditions and progress of the Goods and Services covered by the Agreement and to witness any tests which may be required under the Agreement. No inspection pursuant to this Agreement shall be deemed an acceptance of the conditions then prevailing nor detract from Keysbrook's right to reject any Goods and Services not in accordance with this Agreement.
- 13.2 When requested by Keysbrook, the Contractor must issue to Keysbrook regular reports on the progress of the Goods and Services.
- 13.3 The Contractor must maintain proper records relating to the Agreement for a period that is consistent with good industry practice and must make those records available for inspection by Keysbrook when reasonably required by Keysbrook.

14 WARRANTIES

- 14.1 The Contractor warrants that, in the case of Goods:
- (a) they are –
 - (i) free from any encumbrance or rights held by third parties;
 - (ii) without defect or fault; and
 - (iii) are appropriate or suitable for their purpose.
 - (b) workmanship and materials used by the Contractor and Goods supplied pursuant to the Agreement will be in strict accordance with any drawings, specifications, samples and relevant conditions set out in the Purchase Order and any Special Conditions; and
 - (c) the Contractor must use its best endeavours to ensure that Keysbrook will have the full benefit of any manufacturer's warranties.
- 14.2 The Contractor warrants that, in the case of Services:
- (a) they will be provided to the standard of skill and care normally exercised by qualified and experienced professionals or tradespersons in the performance of similar services; and
 - (b) the Contractor's provision of the Services is not contrary to any obligation owed by the Contractor to any third party.
- 14.3 In the event that any parts of the Goods or Services are, in the reasonable opinion of Keysbrook, not in accordance with the requirements of the Agreement, then Keysbrook may in its entire discretion:
- 14.4 in relation to the Goods:
- (a) return the whole of the Goods or the defective parts thereof and the Contractor must pay to Keysbrook all amounts (if any) which have been paid by Keysbrook to the Contractor on account of the returned Goods, together with any costs incurred by Keysbrook in connection with the return of the Goods; or

- (i) give notice to the Contractor to promptly re-supply or remedy the Goods to Keysbrook's reasonable satisfaction and at no additional cost to Keysbrook. If the Contractor fails to make good the defective Goods within the period stipulated by Keysbrook, Keysbrook may itself make good or engage a third party to make good the defective Goods at the Contractor's cost.
- (b) in relation to the Services, give notice to the Contractor to promptly re-perform the Services to Keysbrook's reasonable satisfaction and at no additional cost to Keysbrook. If the Contractor fails to re-perform the Services within the period stipulated by Keysbrook, Keysbrook may itself perform the relevant Services or engage a third party to perform the relevant Services at the Contractor's cost; or
- (c) terminate the Agreement in so far as it relates to the Goods and Services to be supplied subsequent to such termination.

15 DEFECTS LIABILITY PERIOD

- 15.1 Except as otherwise agreed by the parties and set out in the Purchase Order or the Special Conditions, for:
- 15.2 supply and install contracts, the defects liability period will be twelve (12) months dating from the time of completion of installation; and
- 15.3 supply only contracts, the defects liability period will be six (6) months dating from the time of completion of installation by Keysbrook or any third party or twelve (12) months from the date of completion of delivery, whichever is the lesser.
- 15.4 If Keysbrook considers that there are any defects or omissions in any Goods or Services, then as soon as reasonably practicable after being given written notice by Keysbrook (acting reasonably), during the defects liability period, the Contractor must rectify those defects or omissions at its own cost. If the Contractor fails to make good the defective Goods or Services within the period stipulated by Keysbrook, Keysbrook may itself make good or engage a third party to make good the defective Goods or Services at the Contractor's cost.

16 INDEMNITY

- 16.1 The Contractor shall indemnify and keep indemnified Keysbrook, its directors, officers, employees and agents and hold each and all of them harmless from and against any liability, loss, damage, claim, suit, action, demand, costs (including without limitation solicitor/client legal costs) or expense howsoever arising directly or indirectly out of or from:
- 16.2 the death of or injury to any Contractor personnel, its agents, any subcontractors or any of their employees or any other persons; and
- 16.3 loss or damage howsoever arising either directly or indirectly to any property howsoever arising as a direct or indirect consequence of either (a) or (b) above, for which the Contractor, its personnel, agents and /or its subcontractors may be responsible or liable whether at common law, or under any contract or pursuant to any statute, regulation or by-law howsoever arising, provided that this indemnity is only to the extent of negligence of the Contractor, its personnel, agents or subcontractors as the case may be.

17 MISCELLANEOUS

- 17.1 The parties must keep confidential all information of a confidential or commercially sensitive nature acquired as a result of this Agreement.
- 17.2 The Contractor will be an independent contractor and nothing in this agreement shall be deemed to constitute the Contractor or any of its personnel or sub-contractors as an agent; and 17.3 Failure by Keysbrook to insist on strict performance of any term or condition of this Agreement (including compliance with any specifications detailed in the Purchase Order or any Special Conditions) will not be deemed to be a waiver of any of Keysbrook's rights or remedies under the Agreement nor of any rights arising out of any breach or default of the Contractor.

18 HEALTH, SAFETY, ENVIRONMENT REGULATION

- 18.1 The Goods must be packed in a form consistent with best industry practices and all applicable Laws and safety requirements.
- 18.2 The Supplier must provide to Keysbrook all safety information and other necessary or relevant data relating to Keysbrook's use of the Goods, including material safety data sheets.
- 18.3 At all times when on Site, comply with all reasonable directions of Keysbrook (including in relation to health and safety, industrial relations and environmental matters).

SCHEDULE 1 – INSURANCE

- SC1.1 In addition to the Terms and Conditions, this Schedule 1 will apply if the Contractor is required to enter any Site. This Schedule 1 will not apply if the Services are carried out only at the Contractor's premises or in relation to Goods to be delivered to Keysbrook or Keysbrook's freight forwarder.
- SC1.2 The Contractor must at its own expense procure and maintain the following insurances:
 - (a) employers' liability and workers' compensation insurance (including any common law liability of an employer to an employee) which is endorsed to indemnify Keysbrook for any liability to persons employed by the Contractor or any of its sub-contractors and which complies with the laws for the time being in force in the State(s) where the Goods or Services are supplied;
 - (b) where the Contractor will bring any motor vehicle or equipment owned, operated or controlled by the Contractor onto any Site, comprehensive and third party property damage and injury to persons liability insurance covering all such motor vehicles and equipment, for an amount of at least ten million dollars (\$10,000,000) arising out of any one event, such insurance to include bodily gap cover;
 - (c) public and products liability insurance for an amount of at least ten million dollars (\$10,000,000) to cover the Contractor's legal liability in respect of occurrences resulting in:
 - (i) death of or bodily injury (including illness); or
 - (ii) damage to property not belonging to nor held neither in trust nor in the care, custody or control of the Contractor, arising out of or in the course of or caused by the supply of the Goods or Services. This

policy must include worker to worker liability risks. Where the Contractor brings any unregistered motor vehicles onto any Site, this policy must extend to include liability arising out of the use of any unregistered motor vehicles.

- (d) insurance covering all loss and damage to the Contractor's and any sub contractor's tools, plant and equipment used in connection with the Services under this agreement; and
- (e) any other insurance, which is required by law for the time being in force in the State(s) where the Goods or Services are to be supplied.

- SC1.3 When requested by Keysbrook, the Contractor must within 3 business days provide Keysbrook with certificates of currency in relation to the above policies of insurance. If at any time during the currency of this agreement, the Contractor has not satisfied Keysbrook that the required insurances are in place and current, then Keysbrook may refuse the Contractor entry to any Site and may withhold payment (without interest owing) of any amount owing to the Contractor.
- SC1.4 The Contractor shall ensure that, except where prohibited by any applicable law, each insurance policy it, or any subcontractor, is required to procure under this agreement:
- (a) is endorsed to name Keysbrook as 'Principal' under the contract of insurance and is deemed to be primary to any insurance effected by Keysbrook, so that Keysbrook's contract of insurance will operate only in excess of the Contractor's contracts of insurance and is endorsed accordingly; and
 - (b) must contain a clause under which the underwriter of the Contractor's insurances agrees to waive all rights of subrogation it has or may have against Keysbrook or its personnel (principal's endorsement).
- SC1.5 The effecting of insurance as required under this Agreement will not limit the obligations or responsibilities of the Contractor under the Agreement, at common law or under statute.
- SC1.6 The Contractor must notify Keysbrook, as soon as possible in writing and in any case not later than seven (7) days after the event, of all accidents or claims which arise out of or are in any way connected with this Agreement. In the event of a serious accident the advice must be immediate in person or by telephone to be followed as soon as possible in writing.

SCHEDULE 2 – HIRE OF GOODS

- SC2.1 In addition to the Terms and Conditions of this Agreement and any Special Conditions, the following terms and conditions will apply where the Agreement involves the hire of Goods by Keysbrook.
- SC2.2 Without limiting any other warranty or obligation under this Agreement, the Contractor warrants that it has provided to Keysbrook all information relating to:
- (a) the operating instructions for the Goods;
 - (b) the dangers associated with the Goods;
 - (c) the manufacturer's specifications; and
 - (d) any procedures necessary to ensure that persons properly using the Goods are not exposed to hazards.
- SC2.3 Unless otherwise stated in the Purchase Order, the Contractor must provide the following maintenance services to ensure that the Goods are available for use and operation by Keysbrook at all times in accordance with this Agreement:
- (a) compliance with the recommended maintenance procedures set out in technical manuals and operating instructions with the Goods;
 - (b) execution of all services and repair activities, including scheduled periodic services, minor and major repairs, mutually agreed accident damage and mutually approved modifications;
 - (c) supply and maintenance of spare parts, materials, lubricants and consumables (other than petroleum fuels); and
 - (d) compliance with any statutory maintenance requirements.
- SC2.4 Upon delivery of the Goods to Site, Keysbrook must determine and record the condition of the Goods. Keysbrook must provide a copy of this record to the Contractor.
- SC2.5 Upon the expiry of the Term and prior to the Goods being returned to the Contractor, Keysbrook and the Contractor must inspect the Goods and agree any material change in the condition of the Goods from that previously recorded (fair wear and tear excepted).
- SC2.6 Keysbrook and the Contractor acknowledge and agree that title in the Goods remains with the Contractor at all times. Risk in the Goods passes from the Contractor to Keysbrook when the Goods are delivered to Keysbrook or collected by Keysbrook. Risk passes back to the Contractor when the Goods are returned by Keysbrook to the Contractor, collected by the Contractor (which must be no later than seven days after notification by Keysbrook), or the expiration of the Term, whichever occurs first.
- SC2.7 If the Goods comprise any motor vehicles or equipment, the Contractor must ensure those Goods are licensed and kept licensed in accordance with all applicable laws. In addition the Contractor must at its own expense procure and maintain comprehensive and third party property damage and injury to persons liability insurance covering all such motor vehicles and equipment, for an amount of at least ten million dollars (\$10,000,000) arising out of one event.