



STANDARD PURCHASING TERMS AND CONDITIONS

EFFECTIVE DATE & PRECEDENCE

These Terms and Conditions (Terms) take effect on and from 1 July 2022 (the Effective Date).

From the Effective Date:

- (a) these Terms apply to all supplies of goods and services by the Supplier to PEM;
- (b) these Terms supersede and prevail over all prior agreements or arrangements;
- (c) no prior course of dealing has any effect to the extent of inconsistency; and
- (d) continued supply after the Effective Date constitutes acceptance.

These Terms apply **notwithstanding that the Supplier's engagement commenced prior to the Effective Date.**

1. AGREEMENT & ACCEPTANCE

1.1 The Agreement comprises:

- (a) any purchase order, work order or subcontract (Order);
- (b) special conditions in the Order;
- (c) these Terms.

1.2 Precedence is as listed above.

1.3 Supplier terms are excluded

1.4 The Supplier accepts this Agreement:

- (i) by signing an Order;
- (ii) by written confirmation; or
- (iii) by commencing work, mobilising to site, or supplying goods or labour.

Commencement constitutes **unconditional and irrevocable acceptance.**

2. AGRICULTURAL CONTEXT & SECURITY OF PAYMENT

2.1 The parties acknowledge:

- (a) PEM operates in agricultural and primary production;
- (b) the works are agricultural in nature; and

(c) to the extent permitted by law, the Building and Construction Industry Security of Payment Act 2002 (Vic) does not apply.

2.2 Works are seasonal, weather-dependent and time-critical.

3. TIME OF THE ESSENCE

Time is of the essence. Delay may permanently deprive PEM of an agricultural season and constitutes a material breach.

4. PERFORMANCE & WARRANTIES

The Supplier warrants goods and services are lawful, fit for purpose, defect-free and performed with due skill and care.

5. NO VARIATIONS

No variation to scope, price, timing or method is valid without prior express written approval of PEM.

6. WET WEATHER & FORCE EVENTS

PEM may suspend works for wet weather or events beyond its control. No amount is payable until PEM determines otherwise.

7. PRICE & INCLUSIONS

Prices are fixed and all-inclusive, including labour, superannuation, fuel, repairs, insurance, overheads and profit.

8. WORK ORDERS & EXPENDITURE LIMITS

Any single expense exceeding \$1,000 requires a written PEM work order. Unauthorised costs are not payable.

9. INVOICING, PAYMENT & ACCELERATED PAYMENTS

9.1 Invoices may only be issued for works accepted in writing.

9.2 Payment terms: 30 days EOM from acceptance.

9.3 Invoices must be submitted within 90 days of performance or are barred.

9.4 If the Supplier requests that PEM pay any valid, undisputed invoice earlier than the standard trading terms (being 30 days EOM), PEM may elect to do so, in which case the invoiced amount payable by PEM will be discounted in PEM's favour by 5% of the invoiced amount, and payment of the discounted amount will constitute full settlement of that invoice.

10. DEFERRED PAYMENTS, INTEREST & DISPUTES

10.1 PEM may, in its sole discretion, defer payment of any invoice, in whole or in part, where seasonal factors or events beyond PEM's reasonable control materially affect PEM's income or cash flow.

10.2 Approved deferred amounts accrue interest at 7.5% per annum, calculated on a simple interest basis, calculated and payable monthly, but only if and from the date the Supplier requests such interest in writing.

10.3 No interest is payable on disputed or unauthorised claims unless and until the dispute is resolved in the Supplier's favour, in which case interest (if requested under clause 10.2) will run only on the undisputed amount from the date it became deferred.

11. SET-OFF

PEM may set-off any amount claimed by the Supplier against damages, liquidated damages, overpayments, repair costs or third-party claims.

12. LIQUIDATED DAMAGES (UNLIMITED)

Liquidated damages of \$1,500 per day apply for delay, uncapped and in addition to actual losses, being a genuine pre-estimate of loss.

13. STEP-IN RIGHTS

13.1 If:

(a) the Supplier defaults;
(b) PEM considers step-in necessary to ensure continuity of services; or
(c) the Supplier requests assistance, PEM may issue a Step-In Notice suspending the Supplier's obligations.

13.2 From the Step-In Notice date:

(a) PEM may perform the works itself or through others;
(b) PEM's payment obligations are suspended to that extent; and
(c) the Supplier must provide all reasonable assistance.

13.3 Step-in is without prejudice to PEM's other rights.

14. PPSA, SECURITY INTEREST & RETENTION OF TITLE

14.1 To secure payment of all amounts owed, the Supplier grants PEM a security interest (for the purposes of the Personal Property Securities Act 2009 (Cth)) in:

(a) goods supplied by PEM;
(b) materials incorporated into the works; and
(c) any plant or equipment brought onto a PEM site.

14.2 Title to PEM-supplied goods does not pass until all monies owing are paid.

14.3 PEM may register its security interest on the PPS Register.

14.4 The Supplier must not remove plant or goods from site while any amount remains owing.

15. REPAIRS & COST RECOVERY

PEM may recover all costs arising from the Supplier's acts or omissions, including internal staff labour and travel.

16. INSURANCE & RISK

The Supplier bears all risk for its own property and must maintain public liability insurance in the amount of at least \$20 million.

17. BIOSECURITY, WHS & SITE ACCESS

Compliance with biosecurity, WHS and chain-of-responsibility laws is a condition precedent to site access. PEM may immediately exclude non-compliant suppliers.

18. CONFIDENTIALITY & NO PROMOTION

The Supplier must not disclose the existence of the relationship, pricing or works, or use PEM sites for marketing or branding. Obligations are indefinite.

19. TERMINATION

PEM may terminate immediately for breach or insolvency, or on 7 days' notice for convenience.

20. NON-ASSIGNMENT, NO SUBCONTRACTING & NON-SOLICITATION

20.1 The Supplier must not, without PEM's express written consent:

- (a) assign or transfer this Agreement;
- (b) sell or assign any debt, invoice or claim;
- (c) transfer benefits to related entities; or
- (d) subcontract any work.

20.2 Any unauthorised dealing is void.

20.3 During the term of this Agreement and for **3 years** after the last supply of goods or services under it, the Supplier must not, without PEM's prior written consent:

- (a) directly or indirectly provide earthmoving, excavation, agricultural services contracting or related services (being services of the same type as those supplied to PEM) to any client or project of PEM with which the Supplier had contact or about which the Supplier obtained confidential information during the course of this Agreement; or
- (b) solicit, canvass or approach any such client or project for the purpose of providing such services.

20.4 If the Supplier breaches clause 20.3, the Supplier must, on demand, pay to PEM an amount equal to 100% of all fees and other amounts received by the Supplier from any client or project referred to in clause 20.3 in respect of the restricted services during the period of the

breach. The parties agree that this amount represents a genuine pre-estimate of PEM's loss of profit, loss of opportunity and damage to its client relationships arising from such breach.

21. RELATIONSHIP The Supplier is an independent contractor and bears commercial risk.

22. GOVERNING LAW The laws of the State or Territory where the works are performed apply.

23. SURVIVAL

Termination or expiry of this Agreement does not affect any provision which by its nature is intended to survive, including without limitation:

- (a) payment obligations;
- (b) set-off, claw-back and recovery rights;
- (c) liquidated damages and indemnities;
- (d) confidentiality and non-disclosure obligations;
- (e) non-assignment, no-subcontracting and restraint provisions;
- (f) PPSA, security interests and retention of title;
- (g) dispute resolution provisions; and
- (h) governing law and jurisdiction.

24. AVAILABILITY OF TERMS

These Terms are available at:

<https://www.parkerearthmoving.com.au/terms-and-conditions>

ENDS