

**1 GENERAL OBLIGATIONS OF THE PARTIES**

- 1.1 In consideration for MPC Kinetic paying the Supplier the Fee, the Supplier will perform the Works and bring them to completion for MPC Kinetic at the Site on or before the Delivery Date.
- 1.2 The Supplier must perform the Works in accordance with all technical and other requirements (including any policies and procedures of MPC Kinetic and those applicable at the Site) as advised by MPC Kinetic in, or reasonably inferred from, the PO or otherwise advised by MPC Kinetic.
- 1.3 The Supplier acknowledges that it will not be granted access to the Site by MPC Kinetic until it has complied with the preconditions to Site access notified by MPC Kinetic or which the Supplier should reasonably have been aware of.
- 1.4 The Supplier must comply with all directions of MPC Kinetic whilst on Site.
- 1.5 The Works will only be considered performed by the Supplier only once MPC Kinetic has indicated in writing that it has accepted that the Works conform with the Contract.
- 1.6 The Supplier acknowledges that the Fee is its full and only compensation in connection with the performance of the Works under this Contract and the Supplier will have no Claim against MPC Kinetic for remuneration in connection with the performance of the Works.

**2 WARRANTIES IN RELATION TO WORKS**

- 2.1 The Supplier warrants that the Works:
  - (a) will be performed by skilled and competent personnel;
  - (b) be appropriate for the Site;
  - (c) comply with all laws;
  - (d) are fit for the purpose advised by MPC Kinetic or, if nothing is advised, the purpose for which these types of Works are usually performed; and
  - (e) are of merchantable quality.

**3 SECURITY**

- 3.1 10% of each portion of the Fee certified by MPC Kinetic each month will be retained MPC Kinetic from payment to the Supplier.
- 3.2 The Supplier must provide security to MPC Kinetic for the purpose of ensuring the due and proper performance by the Supplier of its obligations under this Contract. The security will be one of the following (at MPC Kinetic’s discretion):
  - (a) retention of an amount equal to 10% of the Fee payable to the Supplier each month; or
  - (b) an unconditional bank guarantee in the form, and from a financier, acceptable to MPC Kinetic.
- 3.3 MPC Kinetic is entitled at any time:

- (a) to subtract from the security all sums due and owing to it under this Contract by the Supplier; and
- (b) to present the security for payment if the Supplier is in breach of this Contract or if MPC Kinetic is otherwise entitled to have recourse to the security under or in connection with this Contract.

- 3.4 Subject to any rights it may have under this Contract, within 10 Business Days of receipt of the written request from the Supplier (provided that the Supplier has complied with all its obligations under and in connection with this Contract), MPC Kinetic will release:

- (a) 50% of the security then held by MPC Kinetic to the Supplier after the date the Works are certified as complete by MPC Kinetic; and
- (b) 50% of the security then held by MPC Kinetic to the Supplier after the expiry of the Term.

**4 HEALTH, ENVIRONMENT & SAFETY**

- 4.1 The Supplier must implement and carry out the Works in accordance with its own or MPC Kinetic’s quality assurance system (as specified by MPC Kinetic) and allow MPC Kinetic access at all times for quality monitoring and auditing.
- 4.2 The Supplier will provide a ‘Quality Management Plan’, ‘Safety Management Plan’ and ‘Environmental Management Plan’ and any other relevant management plans for the Works required by MPC Kinetic. Each plan must meet the requirements of MPC Kinetic, and no Works may proceed until MPC Kinetic has approved these plans.

**5 SITE CONDITIONS**

- 5.1 The Supplier agrees and warrants that:
  - (a) it has been deemed to have undertaken a visual inspection of the Site and its surroundings and the Supplier will not be entitled to make any Claim against MPC Kinetic due to the lack of visual Site inspection;
  - (b) any information or documentation provided by or on behalf of MPC Kinetic:
    - (i) has been or will be provided only for the Supplier’s convenience;
    - (ii) has not been and will not be relied upon by the Supplier for any purpose (including entering into this Contract or performing its obligations under this Contract); and
    - (iii) must be reviewed and independently verified by the Supplier.
- 5.2 MPC Kinetic does not:
  - (a) assume any responsibility or duty of care in respect of; nor
  - (b) warrant, guarantee or make any representation as to,

any information provided by or on behalf of MPC Kinetic (including its accuracy, completeness or adequacy for the purposes of this Contract) or the condition of the Site or its surroundings, and MPC Kinetic shall not be liable to the Supplier in contract, tort, equity, under statute or otherwise arising from or in connection with the information and documentation provided by or on behalf of MPC Kinetic, the non-provision of any other information by MPC Kinetic or the condition of the Site or its surroundings.

**6 TITLE & RISK**

- 6.1 To the extent that the performance of the Works includes the supply of goods, the Supplier takes full risk in damage to, and loss of, those goods until they are supplied to MPC Kinetic.
- 6.2 At the time the goods forming part of the Works are supplied to, and accepted by, MPC Kinetic, title to the goods and risk in damage to, and loss or destruction of, the goods, passes from the Supplier to MPC Kinetic.

**7 VARIATIONS**

- 7.1 MPC Kinetic’s representative identified in the PO may direct the Supplier in writing at any time to change the character of, increase or decrease the quantity or frequency of, or supply new or additional, Works and the Supplier must comply with the direction.
- 7.2 Within 48 hours of the Supplier receiving a direction from MPC Kinetic under this clause, the Supplier will provide MPC Kinetic with the details of the effect of that direction on the Fee and Delivery Date.
- 7.3 If accepted in writing by MPC Kinetic, the modified Fee and Delivery Date will apply to this Contract. If MPC Kinetic does not agree with the modified Fee and/or Delivery Date, and the parties cannot otherwise agree on the modified Fee and Delivery Date, MPC Kinetic will advise the Supplier of a reasonable modification to the Fee and Delivery Date, which will apply to this Contract from that point forward.
- 7.4 The Supplier will have no Claim against MPC Kinetic for verbal directions to change the character of, increase or decrease the quantity of, or supply new or additional, Works, or written directions of this kind from anyone other than MPC Kinetic’s representative identified in the PO.

**8 INSURANCE**

- 8.1 During the Term, the Supplier will effect and maintain:
  - (a) a contract works insurance policy covering damage to, or loss of, the Works with a limit of liability equal to the Fee;
  - (b) public liability insurance with a limit of not less than \$20,000,000.00 per occurrence for

- personal injury, death and property damage which includes MPC Kinetic as an additional insured;
- (c) compulsory third party and comprehensive motor vehicle insurance; and
- (d) workers' compensation insurance as required by law.

- 8.2 Within 24 hours of a request from MPC Kinetic the Supplier must provide evidence in the form of a certificate of currency to MPC Kinetic that the insurance required by this Contract is in place.

**9 LATE, DEFECTIVE OR NON-CONFORMING WORKS**

- 9.1 If the Works are not completed in accordance with this Contract on or before the Delivery Date, the costs incurred by MPC Kinetic in connection with the late completion will be a debt due and payable by the Supplier to MPC Kinetic.
- 9.2 If at any time during the Term MPC Kinetic considers that the Works performed have not been performed in accordance with the Contract or are otherwise defective, MPC Kinetic may:
  - (a) require the Supplier to rectify or re-perform the Works within the timeframe specified by MPC Kinetic at its own cost;
  - (b) accept the Works but back charge the Supplier for the reduction in value of the Works and any other costs incurred by MPC Kinetic as a result of the non-conformance or defect; or
  - (c) immediately terminate the Contract.

**10 PAYMENT**

- 10.1 The Supplier will provide a Tax Invoice for the portion of the Fee relevant to the Work performed during the previous month to MPC Kinetic every month whilst the Works are being performed and in the month after the Works are complete in accordance with the Contract. MPC Kinetic may (at its discretion) choose to issue a RCTI to the Supplier, in which case the Supplier will not issue a Tax Invoice to MPC Kinetic. Both parties agree that they are, and will remain, registered for GST and will immediately advise the other party if it ceases to be registered for GST.
- 10.2 All Tax Invoices from the Supplier must be addressed to the following email, where the MPC Kinetic entity is:
  - (a) MPC Group Pty Ltd, MPC Kinetic Holdings Limited, MPC Kinetic Holdings (2) Pty Ltd, MPC Group Holdings Pty Ltd, MPC Group Holdings (2) Pty Ltd or MPC Group Holdings (3) Pty Ltd - [accountsmpc@mpckinetic.com](mailto:accountsmpc@mpckinetic.com);
  - (b) Kinetic Logging Services Pty Ltd - [kls.ap@mpckinetic.com](mailto:kls.ap@mpckinetic.com);
  - (c) Kinetic Well Intervention Services Pty Ltd - [kwis.ap@mpckinetic.com](mailto:kwis.ap@mpckinetic.com);
  - (d) Kinetic Fluid Management and Production Services Pty Ltd - [kfm.ap@mpckinetic.com](mailto:kfm.ap@mpckinetic.com);

- (e) Kinetic Chemicals Pty Ltd - [kc.ap@mpckinetic.com](mailto:kc.ap@mpckinetic.com);
  - (f) Well Equipment Solutions Pty Ltd - [wes.admin@mpckinetic.com](mailto:wes.admin@mpckinetic.com); or
  - (g) Kinetic Well Services Limited - [kws.ap@mpckinetic.com](mailto:kws.ap@mpckinetic.com),
- and the MPC Kinetic representative specified in the Purchase Order, and must include:
- (h) the MPC Kinetic 'Purchase Order number';
  - (i) a detailed description of the Works performed;
  - (j) a calculation of the Fee claimed with supporting documentation satisfactory to MPC Kinetic;
  - (k) copies of delivery dockets and timesheets signed by an authorised representative of MPC Kinetic; and
  - (l) any other information or documentation requested by MPC Kinetic.
- 10.3 MPC Kinetic will pay the amount of valid Tax Invoices issued by the Supplier under this clause within 45 days from the end of the month of the date of the Tax Invoice, provided that:
- (a) the Tax Invoice complies with this Contract; and
  - (b) the date of the Tax Invoice does not pre-date the date the Works were performed under this Contract, except where MPC Kinetic disputes the Tax Invoice;
  - (c) MPC Kinetic will pay the undisputed part of the Tax Invoice (if any) within this timeframe. However, MPC Kinetic will only be obligated to pay the undisputed part of the Tax Invoice if the Supplier retracts and reissues its Tax Invoice in the amount requested by MPC Kinetic or issues a credit note for the difference; and
  - (d) if the resolution of the dispute determines that MPC Kinetic is to pay an amount to the Supplier, MPC Kinetic will pay that amount upon resolution of that dispute.
- 10.4 No interest will be payable by MPC Kinetic in respect of any Tax Invoice which is due but unpaid.
- 10.5 If MPC Kinetic is of the opinion that there is more money owing from the Supplier to MPC Kinetic than is payable by MPC Kinetic to the Supplier, MPC Kinetic may advise the Supplier of this fact and issue a Tax Invoice to the Supplier for the total amount owing. The Supplier will pay the amount specified in the Tax Invoice to MPC Kinetic within 14 days of the date of the Tax Invoice.
- 10.6 Upon submission of the final Tax Invoice or expiry of the timeframe for submission of the final Tax Invoice under clause 10.1, the Supplier releases and discharges MPC Kinetic from all Claims whatsoever

which the Supplier may have against MPC Kinetic in connection with the Works or this Contract.

**11 LIABILITY**

- 11.1 The Supplier will indemnify MPC Kinetic and its officers, employees and agents against all Claims arising out of, or in connection with:
- (a) the Supplier's breach of this Contract, including a breach of warranty; and
  - (b) the Supplier's negligent acts or omissions.
- 11.2 MPC Kinetic will not be liable for any Claim by the Supplier unless the Supplier provides MPC Kinetic with written notice of the details (including the legal basis, factual basis and quantum) of the Claim within Supplier has given MPC Kinetic written notice of the Claim within five (5) days of the time when the Supplier should have first become aware of the facts or circumstances giving rise to the Claim.

**12 TERMINATION**

- 12.1 MPC Kinetic may terminate this Contract by written notice to other party if:
- (a) subject to clause 9.2(c), the Supplier commits a breach of this Contract and fails to remedy that breach within 2 Business Days of receipt of a notice identifying the breach;
  - (b) the Supplier commits fraud or misconduct or has an actual or potential conflict of interest which cannot be resolved to MPC Kinetic's satisfaction;
  - (c) the Supplier has or is likely to commit a serious safety breach in relation to the performance of the Works; or
  - (d) the Supplier suffers an Insolvency Event.
- 12.2 If the Contract is terminated pursuant to clauses 9.2(c) or 12.1:
- (i) MPC Kinetic will not be liable to the Supplier for the Fee; and
  - (ii) if applicable, the Supplier will liable to demobilise from Site in accordance with MPC Kinetic's instructions at the Supplier's cost.
- 12.3 MPC Kinetic may terminate this Contract at any time for any reason by written notice to the Supplier. If the Contract is terminated under this clause and MPC Kinetic is entitled to compensation from its client for the project for which the Works are being performed, MPC Kinetic will only be liable to the Supplier for its actual, direct, mitigated, reasonable and verifiable costs incurred as a result of the termination to the extent it is paid them by the client.

**13 INTELLECTUAL PROPERTY**

- 13.1 The right and title to all new Intellectual Property Rights created under or in connection with this Contract will vest in MPC Kinetic upon creation.
- 13.2 The Supplier provides a perpetual, worldwide, royalty-free, non-exclusive, transferable and sub-licencable licence to MPC Kinetic (and any third parties to whom MPC Kinetic need to grant a sub-

licence) to use, modify, amend, enhance and copy all Intellectual Property Rights which were in existence at the time this Contract commenced but which are incorporated into, are necessary for the use of, or otherwise form part of the Works.

**14 GENERAL**

- (a) This Contract may only be amended by written agreement between all parties.
- (b) This Contract becomes binding once the Supplier commences the performance of the Works or the PO is issued, whichever is the earlier.
- (c) The Supplier must notify MPC Kinetic of any actual or potential conflict of interest immediately upon becoming aware of it and must follow the instructions of MPC Kinetic in relation to resolving that conflict.
- (d) The Supplier must not sub-contract, assign or novate any of its rights or obligations under the Contract without the prior written consent of MPC Kinetic.
- (e) MPC Kinetic may assign or novate, in whole or in part, its rights and obligations under the Contract during or after the expiry of the Term, without the prior written consent of the Supplier and the Supplier must execute any documentation to effect any assignment or novation at its own cost.
- (f) This Contract supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties.
- (g) A right under this Contract may only be waived in writing signed by the party granting the waiver and is effective only to the extent specifically set out in that waiver.
- (h) The law in effect at the Site will govern this Contract. Each party irrevocably submits to the exclusive jurisdiction of the courts of that law and courts competent to hear appeals from those courts.
- (i) A clause or part of a clause of this Contract that is illegal or unenforceable may be severed from this Contract and the remaining clauses or parts of the clause of this Contract continue in force.
- (j) Any notice, Tax Invoice or document given under the Contract shall be deemed to be sufficiently served, if delivered, posted (by prepaid post), faxed or emailed to a party as per the details in the PO or such other updated details provided by the party:
  - (i) if it is posted, on the second Business Day following the date on which it was posted,
  - (ii) if served by facsimile transmission and transmitted by facsimile out of normal

- business hours (being 8:00am-5:00pm on a Business Day) the Business Day which next follows the day of transmission,
- (iii) in the case of electronic delivery, at the time shown in the delivery confirmation report generated by the sender's email system, or where a confirmation report is not generated, unless the sender receives a return notification that the email was not delivered, undeliverable or similar, at the time which is 12 hours from the time the email was sent, but if such time is outside of normal business hours, the next Business Day, and
- (iv) otherwise, any notice, Tax Invoice or document will be deemed to be received at the time of actual receipt.
- (k) Other than a Tax Invoice, all notices under this Contract must be given to, and by, the party's representative identified in the PO.

**15 DEFINITIONS & INTERPRETATION**

15.1 In this Contract:

- '**Business Day**' means a day that is not a Saturday or Sunday, a public holiday, nor 27, 28, 29, 30 or 31 December in any year at the Site.
- '**Claims**' means any claim, notice, demand, debt, account, lien, liability, action, proceedings or suit under, arising out of, or in any way in connection with the Contract.
- '**Contract**' means:
  - (a) these 'Works Terms and Conditions'; and
  - (b) the PO; and
  - (c) any documents or other information referenced in the PO,
 and in the event of an inconsistency, the order of precedence above will apply.
- '**Delivery Date**' means the date specified in the PO.
- '**Fee**' means the remuneration specified in the PO, as varied under clause 4. If it is not clear from the PO as to whether the Fee is a lump sum price or estimate based on a schedule of rates, the Fee is deemed to be a fixed and firm lump sum price.
- '**GST Act**' means the *A New Tax System (Goods and Works Tax) Act 1999* (Cth) or equivalent legislation.
- '**Insolvency Event**' means any of the following events:
  - (a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the *Corporations Act 2001* (Cth) or equivalent legislation), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the party;
  - (b) the party or the party's property or undertaking becomes subject to a personal insolvency arrangement under part X *Bankruptcy Act 1966* (Cth) (or equivalent legislation) or a debt

agreement under part IX *Bankruptcy Act 1966* (Cth) or equivalent legislation;

- (c) the party is, or becomes unable to, pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth) or equivalent legislation, or is presumed to be insolvent under the *Corporations Act 2001* (Cth) or equivalent legislation;
- (d) the party ceases to carry on business; or
- (e) an application or order is made for the liquidation of the party or a resolution is passed, or any steps are taken to liquidate or pass a resolution for the liquidation of the party, otherwise than for the purpose of an amalgamation or reconstruction.

**'Intellectual Property Rights'** means any invention, patent, trade mark, copyright, industrial design or process of manufacture or similar.

**'MPC Kinetic'** means the entity specified in the PO.

**'PO'** means the 'Purchase Order' issued by MPC Kinetic.

**'RCTI'** has the same meaning as in the GST Act.

**'Related Entity'** has the same meaning as in the *Corporations Act 2001* (Cth).

**'Site'** means the place specified as 'Deliver To' in the PO.

**'Works'** means any work specified in, or reasonably inferred from, the PO or otherwise required by MPC Kinetic. Unless specified otherwise in the PO or otherwise agreed in writing with MPC Kinetic, it includes:

- (a) the provision of all Site facilities (such as offices, furniture, amenities, crib rooms, store rooms and sheds);
- (b) transport, accommodation and meals for the Supplier's personnel;
- (c) the supply of temporary Site services such as electricity, construction water, drinking water, lighting and site access roads;
- (d) the provision of plant, equipment and other tooling;
- (e) the supply of materials, including any associated manufacture, security, loading, transportation, unloading, unpacking, stacking and assembly; and
- (f) any documents reasonably required to evidence the performance of the Works in accordance with the Contract.

**'Supplier'** means the entity identified as such in the PO.

**'Tax Invoice'** has the same meaning as in the GST Act.

**'Term'** means the period between the 'Order Date' in the PO or the date the Supplier first commenced performing Works (whichever is the earlier) and the expiry of all the Supplier's obligations under or in connection with this Contract, including the Warranty Period.

**'Warranty Period'** means 24 months from the date the Works are last performed by the Supplier.

15.2 In this Contract, unless the context indicates otherwise:

- (a) a singular word includes the plural and vice versa;
- (b) 'includes' in any form is not a word of limitation;
- (c) a reference to a party to this Contract or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns; and
- (d) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.

All terms and conditions of this Contract survive termination or expiry of the Contract.