

1 GENERAL OBLIGATIONS OF THE PARTIES

- 1.1 In consideration for MPC Kinetic paying the Supplier the Fee, the Supplier will perform the Services for MPC Kinetic at the Site or other such place approved by MPC Kinetic:
 - (a) on or before the Delivery Date; or
 - (b) between the date of the PO and the Delivery Date (as the circumstance requires).
- 1.2 Unless otherwise specified in the PO, the Supplier is responsible for the performance of all services and provision of all labour, plant, equipment and materials required for the performance of the Services.
- 1.3 The Supplier must perform the Services 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.
- 1.4 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.
- 1.5 The Supplier must comply with all directions of MPC Kinetic whilst on Site.
- 1.6 The Services will only be considered performed by the Supplier only once MPC Kinetic has indicated in writing that it has accepted that the Services conform with the Contract. For clarity, the signing of the Supplier's or its agent's delivery docket or otherwise at the time of physical delivery to the Site is not an indication that MPC Kinetic has accepted the Services.
- 1.7 The Supplier acknowledges that the Fee is its full and only compensation in connection with the performance of the Services under this Contract and the Supplier will have no Claim against MPC Kinetic for remuneration in connection with the performance of the Services.

2 WARRANTIES IN RELATION TO SERVICES

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

3 TITLE & RISK

- 3.1 To the extent that the performance of the Services 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.

- 3.2 At the time the goods forming part of the Services 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.

4 VARIATIONS

- 4.1 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, Services and the Supplier must comply with the direction.
- 4.2 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.
- 4.3 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.
- 4.4 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, Services, or written directions of this kind from anyone other than MPC Kinetic's representative identified in the PO.

5 INSURANCE

- 5.1 During the Term, the Supplier will effect and maintain:
 - (a) 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;
 - (b) compulsory third party and comprehensive motor vehicle insurance; and
 - (c) workers' compensation insurance as required by law.

- 5.2 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.

6 DEFECTIVE OR NON-CONFORMING SERVICES

- 6.1 If at any time during the Term MPC Kinetic considers that the Services 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 Services within the timeframe specified by MPC Kinetic at its own cost;

- (b) accept the Services but backcharge the Supplier for the reduction in value of the Services and any other costs incurred by MPC Kinetic as a result of the non-conformance or defect; or
- (c) immediately terminate the Contract.

7 PAYMENT

- 7.1 The Supplier will provide a Tax Invoice for the relevant portion of the Fee to MPC Kinetic on the last day of the month following the date the Services were performed by the Supplier. 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.
- 7.2 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;
 - (b) Kinetic Logging Services Pty Ltd - kls.ap@mpckinetic.com;
 - (c) Kinetic Well Intervention Services Pty Ltd - kwis.ap@mpckinetic.com;
 - (d) Kinetic Fluid Management and Production Services Pty Ltd - kfm.ap@mpckinetic.com;
 - (e) Kinetic Chemicals Pty Ltd - kc.ap@mpckinetic.com;
 - (f) ARC Equipment Pty Ltd – admin@arcequipment.com.au; or
 - (g) Kinetic Well Services Limited - kws.ap@mpckinetic.com,
- and must be addressed to 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 Services performed;
 - (j) a calculation of the Fee claimed with supporting documentation satisfactory to MPC Kinetic; and
 - (k) copies of delivery dockets and timesheets signed by an authorised representative of MPC Kinetic.
- 7.3 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, amended 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 Services 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.

- 7.4 No interest will be payable by MPC Kinetic in respect of any Tax Invoice which is due but unpaid.
- 7.5 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.
- 7.6 Upon submission of the final Tax Invoice or expiry of the timeframe for submission of the final Tax Invoice under clause 7.1, the Supplier releases and discharges MPC Kinetic from all Claims whatsoever which the Supplier may have against MPC Kinetic in connection with the Services or this Contract.

8 LIABILITY

- 8.1 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.
- 8.2 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.

9 TERMINATION

- 9.1 MPC Kinetic may terminate this Contract by written notice to other party if:
- (a) subject to clause 6.1(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 Services; or
 - (d) the Supplier suffers an Insolvency Event.
- 9.2 If the Contract is terminated pursuant to clauses 6.1(c) or 9.1:
- (i) MPC Kinetic will not be liable to the Supplier for the Fee; and
 - (ii) if applicable, the Supplier will be liable to collect any goods forming part of the Services from the Site and remove them in accordance with MPC Kinetic's instructions at the Supplier's cost.
- 9.3 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, 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.
- 10 INTELLECTUAL PROPERTY**
- 10.1 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.
- 10.2 The Supplier provides a perpetual, worldwide, royalty-free, non-exclusive, transferable and sub-licensable 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 Services.
- 11 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 Services 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.

12 DEFINITIONS & INTERPRETATION

12.1 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 'Services 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.

'GST Act' means the *A New Tax System (Goods and Services 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.

'Services' means any services specified in, or reasonably inferred from, the PO or otherwise required by MPC Kinetic, including the supply of any goods.

'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 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 Services are last performed by the Supplier.

12.2 Review in relation to a Deliverable, means the process of verifying that a Deliverable complies with the requirements of the Agreement.

Site means the site specified in Schedule 1 or such other location approved by the Owner.

Special Conditions means the special conditions (if any) set out in Schedule 2.

12.3 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.

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