

PURCHASE ORDER TERMS AND CONDITIONS – GOODS AND SERVICES

1. **WAFI-GOLPU SERVICES LIMITED** (PNG company number 1-63562), of 11 Mile, Okuk Highway, Morobe Province, Papua New Guinea (“**WGSL**”) is entering into this Agreement with the Supplier (as defined below) on its own behalf and, unless specified otherwise by WGSL, as agent for and on behalf of the participants in the Wafi-Golpu Joint Venture (**WGJV**).
2. WGSL orders certain goods and/or services through the issue of a computer-generated purchase order (**Purchase Order**) which contains, among other things, details of the supplier (**Supplier**), a description and quantity of any goods that are required (**Goods**), details of any services to be provided (**Services**), the date required for delivery of any Goods and/or Services (**Delivery Date**), the price to be paid (**Price**) and various other details. A Purchase Order can be for Goods or Services or both.
3. If a Purchase Order is issued pursuant to a signed agreement between WGSL and the Supplier, the terms of that signed agreement apply to the Goods or Services. If no signed agreement exists, then by supplying any Goods or Services under a Purchase Order issued by WGSL, the Supplier agrees to be bound by these terms and conditions. Any Supplier's terms and conditions supplied with or in provision of the Goods or Services will be of no legal effect and will not be binding on WGSL.
4. The Supplier must supply the Goods and/or the Services in accordance with the instructions contained or specifications referred to in the Purchase Order by the Delivery Date for the Price. Time is of the essence with respect to the Delivery Date.

Payment terms and taxes

5. The Supplier may invoice WGSL: (a) upon final delivery of all Goods or Services; (b) on a monthly basis if the supply of Goods and Services takes longer than a month, provided Goods or Services have in fact been supplied in the preceding month; or (c) at such other milestones as set out in the Purchase Order. The Price is fixed and not subject to change.
6. By submitting an invoice, the Supplier represents and warrants to WGSL that it has paid all sub-contractors and its employees involved in the supply of the Goods or Services for all goods or services supplied by those sub-contractors up to the date of the invoice.
7. The Purchase Order reference number must be quoted on all invoices submitted. Invoices not bearing the correct Purchase Order number will not be processed.
8. Invoices and supporting documentation must be submitted by email to invoicecontrol@wafigolpujv.com Faxes are not acceptable and will not be processed.
9. All correspondence including invoices must be addressed to “**Wafi-Golpu Services Limited**”.
10. Upon presentation of a valid tax invoice (as that term is defined at law), WGSL will pay the Supplier within 30 days of the end of the month of receipt. All payments under this Agreement will be made by WGSL by bank transfer into the Supplier's nominated bank account and cash payments will not be made. The payment by WGSL of any amount (whether in dispute or not) will not constitute the acceptance of the Goods or Services, or admission of any liability or obligation to make that payment.
11. WGSL may set off or deduct from any amounts due to the Supplier any moneys due from the Supplier to WGSL under this Agreement or otherwise.
12. The Price is exclusive of GST but is inclusive of all other taxes, fees, levies, duties and charges payable in connection with the supply of the Goods or Services (including withholding for prescribed payments or group tax). If GST is imposed on any taxable supply made under the Purchase Order for which WGSL is liable, WGSL will not be required to pay the GST until the Supplier provides WGSL with a valid tax invoice.
13. The parties acknowledge that Australian GST is not applicable to the supply of Goods or Services to WGSL from Australia.
14. If required by law to do so, WGSL may deduct any amounts of withholding tax legally required to be deducted and pay such amounts directly to the relevant taxation authority on behalf of the Supplier and WGSL will not be required to gross up the payment. For the avoidance of doubt, any amounts of withholding tax so deducted and paid shall be treated as if paid to the Supplier and shall be included as part of the Price.
15. If pursuant to the *Income Tax Act 1959* (PNG), any payment under this Agreement is a “Business Income Payment”, WGSL is required to deduct and remit 10% of any such Business Income Payments made under this Agreement unless the Supplier provides a current “Certificate of Compliance” or “Nil Deduction Authority” issued to them by the PNG IRC.
16. The parties acknowledge that this Agreement may be a Prescribed Contract and the Supplier may be a Foreign Contractor as defined in terms of section 196F of the *Income Tax Act 1959* (PNG). Taking into account the requirements of the applicable legislation, WGSL is required to determine whether or not the Agreement is a prescribed contract. If the Company determines that the Agreement is a prescribed contract in terms of the Act it is deemed to be the agent of the Supplier for all purposes of the Income Tax Act and is required to:
 - I. provide the Commissioner General with a signed copy of this Agreement within 14 days of signing; and;
 - II. make such foreign contractor withholding tax deductions from the Price as may be required and pay such amounts to the Commissioner General on behalf of the Supplier.
17. In the event that the Supplier or the Contractor is a PNG resident entity and the Price is referenced in the Purchase Order in a currency other than PNG Kina, that Price will be payable in the PNG Kina equivalent. “**Equivalent**” means the amount in PNGK which is equivalent to the foreign currency amount referred to in any Tax Invoice, calculated by reference to the spot rate provided to WGSL by Westpac Bank PNG Limited as of the date of payment. The WGSL's Financial Manager or delegate will provide this rate to the Supplier on the day of payment.
18. No payment of the Price will be made to the Supplier unless and until written confirmation is received from the Commissioner General that arrangements have been made to his satisfaction for the payment of any income tax to be paid by the Supplier.
19. Where the Purchase Order provides for payments to be made outside Papua New Guinea and/or in a currency other than Kina, the obligation of WGSL to make payment are subject to WGSL obtaining any necessary approval or authorisation under the *Central Banking (Foreign Exchange and Gold) Regulation* or any other law relating to exchange control. Payments from WGSL to any PNG incorporated or resident entity will be made in Kina.

Terms applicable to Purchase Orders for Goods

20. WGSL may by written notification to the Supplier change the quantity of Goods and/or Services ordered or cancel the Purchase Order with the consent of the Supplier (which is not to be unreasonably withheld).
21. Risk in Goods will pass to WGSL at the point of delivery. Title in Goods will pass to WGSL upon payment.
22. The Supplier warrants that, as at the Delivery Date the Goods will be:

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- a) new (unless otherwise specified in the Purchase Order);
 - b) of merchantable quality;
 - c) free from defects due to faulty design, materials and workmanship;
 - d) fit for their intended purpose as set out in the Purchase Order; and
 - e) in compliance with all relevant laws.
- This Agreement does not exclude or in any way limit other warranties provided by Law.
23. The Supplier further warrants that:
- a) it has good and marketable title to the Goods and that WGSL will receive title to the Goods free of any charge, security interest, lien or encumbrance;
 - b) the Goods conform in quality and description with the specifications, drawings and other descriptions contained in the Purchase Order or in samples provided by the Supplier; and
 - c) no patent, trade mark, copyright or other intellectual property rights are infringed by the supply or use of the Goods.
24. Prior to the delivery of the Goods, the Supplier must provide to WGSL all manuals, operating instructions, importer's, manufacturer's and any applicable third-party warranties, safety information (including 'MSDS') and other necessary or relevant data relating to use of the Goods together with any other information reasonably requested by WGSL in respect of the Goods.
25. At any time in the 12 months after the Delivery Date, if a defect in the Goods is identified, the Supplier must rectify that defect within a reasonable time at no cost to WGSL. If the defect requires urgent rectification (including for safety reasons) WGSL may perform the rectification and the cost of that rectification will be a debt due and payable by the Supplier to WGSL.
26. The Supplier must maintain appropriate insurances against the risks associated with delivering Goods to WGSL including but not limited to:
- a) Public and Product liability insurance in an amount of no less than PKG5,000,000; and
 - b) Transit risk insurance (if applicable) to the value of the Goods.
27. The Supplier must wherever possible note the interests of WGSL on its insurance policies and provide certificates of currency on an annual basis or when requested by WGSL.
- Terms applicable to Purchase Orders for Services**
28. The Supplier warrants that it and each of its personnel and sub-contractors (if any) is or are qualified and has or have the capacity, experience, resources, skill and expertise to provide the Services in accordance with the requirements of the Purchase Order and this Agreement.
29. The Supplier warrants that the Services are fit for purpose, will be provided in a safe and timely manner in accordance with any copyright or other intellectual property rights are infringed by the supply or use of the Services.
30. The Supplier must, and must ensure that all of its personnel and sub-contractors (if any):
- a) at all times when on a site operated or managed by or on behalf of WGSL (**Site**) comply with the policies and procedures of WGSL and/or WGJV relating to the provision of the Services including the WGJV Code of Ethics, health, safety and environment policies which are available at request. Nothing in any such policies and/or procedures gives rise to a legal right or benefit enforceable by the Supplier;
 - b) not harm or damage the environment in the course of performing the Services and promptly clean up any damage caused by it or its personnel (at no cost to WGSL)
 - c) at all times on Site act in accordance with the reasonable directions of WGSL; and
 - d) obtain and maintain, at the Supplier's expense, all licences or permits necessary for the provision of the Services under all applicable laws.
31. Unless previously agreed in writing with WGSL, the Supplier must supply all equipment necessary to perform the Services. Any vehicles or machinery supplied by the Supplier must be properly registered with the appropriate government authority, roadworthy and regularly inspected for mechanical safety.
32. Upon receipt of a notice from WGSL of any deficiency in the Services at any time up to 12 months after the Delivery Date, the Supplier must correct such deficiency (including by way of providing such additional Services necessary to correct that deficiency) prior to the reasonable time specified in the notice at no cost to WGSL.
33. The Supplier must maintain appropriate insurances against the risks associated with delivering Services to WGSL, (which may include a Site presence), including but not limited to:
- a) Public liability insurance in an amount of no less than PKG5,000,000, or such lesser amount as may be approved in writing by WGSL;
 - b) Worker's compensation insurance coverage when on Site;
 - c) Third party liability motor vehicle insurance when on Site in accordance with the minimum statutory requirements; and
 - d) Where the Services include professional advice or design services, Professional indemnity insurance for no less than the equivalent of PKG 5,000,000.
- The Supplier must wherever possible note the interests of WGSL on its insurance policies and provide certificates of currency on an annual basis or when requested by WGSL.
- Terms applicable to all Purchase Orders**
34. The Supplier must at all times comply with all applicable laws in providing the Goods or Services.
35. WGSL will own all intellectual property (including copyright) in any and all materials or documentation (in electronic or other form) created in the course of performing the Purchase Order and this Agreement. The Supplier grants to WGSL an irrevocable, perpetual, transferable and royalty-free licence to its pre-existing intellectual property to the extent necessary to all WGSL to use and freely enjoy the Goods and/or Services.
36. WGSL may at any time prior to delivery of the Goods or Services issue a written direction to the Supplier to:
- a) increase or decrease the quantities of the Goods or Services or any part of them;
 - b) omit any part of the Goods or Services;
 - c) change the character, quality or performance requirements of the Goods;
 - d) change the dimensions of the Goods or any part of them; or
 - e) change the scope of the Services.
37. The Supplier shall as soon as practicable after receiving a direction under clause 36 notify WGSL whether the proposed variation can be effected, together with the effect on the Delivery Date and the Price (if any). A variation will not be effective unless and until WGSL and the Supplier have agreed in writing the scope and extent of the variation and the effect of the variation (if any) on the Delivery Date and the Price.
38. The Supplier agrees to indemnify WGSL and its related companies (including the participants in the WGJV) against any loss or damage arising directly from: (i) breach of contract by the Supplier; (ii) any negligent, reckless or willful act or omission of the Supplier (including any of its personnel); (iii) any damage, loss or destruction of property

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- or any personal injury, illness or death caused by the Supplier (including any of its personnel) in connection with the performance of the Purchase Order; (iv) any breach of a law by the Supplier; and (v) any claims arising from infringement of a third party's intellectual property rights arising from the performance of the Purchase Order by the Supplier.
39. WGS� may immediately suspend the performance of the Services at any time and for any reason by giving written notice to the Supplier. If WGS� does so, WGS� and the Supplier must agree in good faith as to whether any additional Price is payable to the Supplier for Services already performed at the time of suspension (and the Supplier shall seek to mitigate its exposure to such additional fees wherever possible). No additional Price or compensation will be payable to the Supplier if the suspension is related to a disruption caused by the Supplier's own workforce, or by the actions of the local community resulting from acts by the Supplier which in any way affects WGS�'s operations.
40. If either party is affected by an event or circumstance that is beyond its reasonable control it may notify the other party of force majeure in which case performance of the Purchase Order will be suspended at no cost to either party. The affected party must take all reasonable steps to mitigate the event of force majeure and seek to resume performance of the Purchase Order as soon as possible. If the event of force majeure is not resolved within 30 days, either party may terminate this Agreement on written notice to the other.
41. WGS� may at its sole discretion, terminate this Purchase Order without cause at any time by giving 2 business days' notice of termination to the Supplier, in which case clause 45 applies.
42. If the Supplier is in breach of this Agreement WGS� may issue a notice to the Supplier setting out the nature of the breach and providing a reasonable time (to be no less than 21 days) in which to rectify that breach. If the Supplier does not rectify the breach within that reasonable time, WGS� may terminate this Purchase Order by providing further written notice.
43. If WGS� fails to make timely payment or commits a material breach of the Purchase Order, the Supplier may issue a notice to WGS� setting out the nature of the breach and providing a reasonable time (to be no less than 21 days) for WGS� to rectify that breach. If WGS� does not rectify the breach within that time, the Supplier may terminate this Purchase Order by providing further written notice.
44. If either party becomes insolvent or bankrupt, is taken to be insolvent or bankrupt in accordance with applicable laws, or comes under the control of an external party such as an administrator, receiver or liquidator, then the non-defaulting party may by written notice to the other immediately terminate this Agreement.
45. If this Agreement is terminated for any reason other than breach by the Supplier, the Supplier will be entitled to be paid for all Goods or Services actually delivered to WGS� as at the date of termination. The Supplier must refund any payments made for Goods that have not yet been delivered. No other compensation will be payable, including for loss of profits, loss of opportunity or loss of revenue.
46. Where a dispute, disagreement or difference arises between the parties in connection with this Agreement or any Purchase Order, then the disputing party shall notify the other party in writing of the basis of the dispute. Within 21 days of receipt of a notice the contract representatives from both parties will discuss the details of the dispute in good faith, and will provide any and all necessary details associated with the dispute in order to make every reasonable effort to reach an amicable resolution. If the dispute is not resolved by the parties' representatives within 14 days, then the matter shall be escalated to the senior management of both parties who shall negotiate in good faith with a view to resolving the dispute. If the dispute remains unresolved after a further 14 days or the parties have not agreed an alternative means of resolving the dispute, then the parties will approach the President of the Lae Chamber of Commerce to appoint a mediator to assist in the resolution. The Mediation Rules of the National Court of Papua New Guinea apply to any mediation of a dispute and the parties must comply with those rules. No party shall be entitled to commence or maintain any action or proceeding (other than interlocutory relief) until this procedure has been followed.
47. The Supplier may not assign this Purchase Order without WGS�'s prior written consent at its sole discretion. The Supplier may only sub-contract performance of the Services with WGS�'s prior written consent, which must not be unreasonably withheld. WGS� may assign all or part of this Agreement to any related company.
48. Nothing in this Agreement constitutes a joint venture, agency, employment, partnership or other fiduciary relationship between WGS� and the Supplier. The Supplier acknowledges that it has no authority to bind WGS�. At all times, the Supplier is an independent contractor and not an employee or agent of WGS�.
49. The Supplier must not, and must ensure, that the Supplier's personnel and sub-contractors do not, without the prior written approval of WGS�'s use any information provided by WGS� for any purpose other than as necessary for the supply of the Goods or Services. Information provided by WGS� must be treated in confidence and must not be disclosed other than to the extent such disclosure is expressly required by law. Nothing in this Agreement shall prevent or hinder a party from reporting alleged corporate misconduct to any regulator under any Anti-Corruption Legislation or "Whistle-blower" protection law or rule and does not prohibit or seek to impede a person from communicating directly with any regulator about a possible securities violation law.
50. Except as required by law, no media release or public announcement may be made by the Supplier in relation to the existence or subject matter of this Agreement or the Purchase Order unless the Supplier first receives the written consent of WGS�.
51. Without the prior written approval of WGS�, an officer, employee, sub-contractor or agent of the Supplier must not:
- give or receive either directly or indirectly any commission, fee, rebate, gift, benefit or entertainment of significant value to or from any officer, employee or agent of WGS� or government agency or department; or
 - enter into any business agreement with, any officer, employee or agent of WGS� or government agency or department,
 - other than as a representative of the Supplier or in the ordinary and proper course of business between any of those parties.
52. The Supplier must not, directly or indirectly, offer, pay, promise to pay or authorise the giving of money or anything of value to an official, or to any other person, while knowing or being aware of a high probability that all or a portion of such money or thing of value may be offered, given or promised for the purpose of influencing the act, decision or omission of that official to obtain or retain business related to the agreement, to direct business related to the Purchase order to any person, or to obtain any improper advantage or benefit.
53. The Supplier warrants that it is familiar with the provisions of the Anticorruption Legislation and it is not in breach of, nor has it engaged in, any conduct that would constitute a breach of the Anticorruption Legislation. "**Anticorruption Legislation**" means any legislation implementing the Organization for Economic Cooperation and Development's convention on Combating Bribery of Foreign Public Officials

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- in International Business Transactions or otherwise prohibiting bribery and corruption which may be relevant to any transaction contemplated by this document.
54. The Supplier represents that at the date of the Purchase Order its obligations under this Agreement do not give rise to a conflict of interest.
 55. The Supplier must immediately notify WGS� upon becoming aware that it has a conflict of interest or that such a conflict may arise. The Supplier must take reasonable steps to avoid or overcome the conflict of interest without in any way adversely affecting its continued performance under this Agreement.
 56. The provisions of clause 11, 12, 22, 23, 24, 39, 44, 45, 49, 50, 51 to 53 inclusive and this clause 56 shall survive the termination of this Agreement.
 57. This Agreement is governed by the laws of Papua New Guinea and the parties submit to the exclusive jurisdiction of the courts of Papua New Guinea.
 58. This Agreement supersedes all previous agreements in respect of its subject matter and contains the entire agreement between the parties.
 59. The Supplier acknowledges and undertakes to abide by the International Human Rights Standards for Law Enforcement including the Voluntary Principles on Security and Human Rights in relation to the supply of Goods and Services under this Agreement.