



POL-29

Supply Agreement

Terms & Conditions of

Purchase & Supply

Rev 1.03



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Terms and Conditions

1. Definitions

CEM	Central Earthmoving Company Pty Ltd trading as Centrals CEM (ABN 31 114 978 675) of 222 Goulds Rd, Geraldton, Western Australia, 6532
Day(s)	Means a calendar day unless expressed otherwise.
Delivery Date	The date specified within the Purchase Order which the Supplier is to deliver the Goods and Services by.
Financing Statement or Financing Change	Have the meanings given to them in the PPSA.
Goods	Those goods specified within the Purchase Order, which may be varied by CEM, that the Supplier is to provide under the Supply Agreement in addition to any fittings, materials, spare parts, or associated equipment that may be required for the proper use those specified goods.
Grantor	Has the meaning given to that term in clause 15.1.
PPSA	Means the Personal Property Securities Act 2009 (Cth).
Project	The project specified within the Purchase Order
Purchase Order	The applicable Purchase Order bearing an order number issued by CEM to the Supplier which forms part of the Supply Agreement. The Purchase Order issued by CEM is the only instrument that will be recognised by CEM as authority for charging Goods and/or Services to our account.
Secured Party	Has the meaning given to that term in clause 15.1.
Security Interest	Means a Security Interest as defined in the PPSA
Services	Those services specified within the Purchase Order that the Supplier is provide or perform under the Supply Agreement including the operation of any Goods.
Supplier	The party specified within the Purchase Order as being responsible for the supply of Goods and Services.
Supply Agreement	The agreement between CEM and the Supplier as defined at Clause 2.1 of these terms and conditions.
Supply Period	The duration of time specified within the Purchase Order throughout which the Supplier is to supply the Goods or Services.
Supply Personnel	All employees, contractors, agents or other representatives of the Supplier engaged in the supply of the Goods and Services under the Supply Agreement, including the operators of any Goods.
Supply Point	The location specified within the Purchase Order that the Supplier is to deliver or supply to Goods and Services to.
Supply Price	The total amount specified within the Purchase Order, as varied in accordance with the Supply Agreement, to be paid by CEM to the Supplier for its performance of its obligations under the Supply Agreement.

2. Documents and Order of Precedence

- 2.1. These terms and conditions apply when CEM issues a Purchase Order to a Supplier after which a Supply Agreement is formed which consists of the following documents:
 - a) The Purchase Order;
 - b) These terms and conditions; and
 - c) Any other document which is incorporated by CEM by reference or as an attachment to the above documents.
- 2.2. If there is any inconsistency, ambiguity or conflict between the provisions of the above documents forming the Supply Agreement then, unless otherwise stated, the documents take precedence in the order detailed under Clause 2.1 above.
- 2.3. The Supply Agreement constitutes the entire agreement between CEM and the Supplier which supersedes all prior communications, arrangements, proposals, representations and negotiations between the parties (including any terms and conditions provided by the Supplier whether included within its quotation or otherwise).
- 2.4. To the extent the Supplier's terms and conditions are supplied with the Goods and/or Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of the Supply Agreement (even if a representative of CEM signs those terms and conditions or annexes the terms and conditions to the Purchase Order).
- 2.5. Upon receipt of a Purchase Order, unless otherwise specified in the Supply Agreement, the performance of the Supply Agreement by the Supplier shall constitute acceptance of the Supply Agreement.
- 2.6. The Supply Agreement may only be amended by the written agreement of both CEM and the Supplier.
- 2.7. If there is a current subcontract in place between CEM (as the main contractor) and the Supplier (as the subcontractor) in relation to the Goods and/or Services to be provided under the Purchase Order, the terms and conditions of that subcontract will prevail to the extent of any conflict or inconsistency between the terms and conditions of that contract and these terms and conditions.

3. Relationship of the Parties

- 3.1. The Supplier is an independent contractor under the Supply Agreement and is not to be taken to be an employee, agent, representative, joint venture partner or partner of CEM.
- 3.2. If the Supplier consists of two or more person/entities then they shall be bound jointly and severally by the Supply Agreement.
- 3.3. The Supply Agreement does not evidence nor create an exclusive relationship between CEM and the Supplier for the supply of any goods or services.
- 3.4. Unless expressed otherwise within the Supply Agreement, CEM is not bound to order or pay for any minimum level of Goods or Service from the Supplier

4. Supplier Obligation & Warranties

- 4.1. The Supplier must supply all Goods and/or Services in accordance with the Supply Agreement and all reasonable instructions given by CEM, in consideration of the payment of the Supply Price by CEM.
- 4.2. The Supplier must maintain at its cost for the duration of the Supply Period, all applicable

licenses, insurances, permits, registrations, certifications, approvals and the like for the proper use of the Goods and/or Services.

- 4.3. The Supplier must provide to CEM by the Delivery Date or as requested by CEM thereafter (and as a pre-condition to payment for the Goods and/or Services) all licenses, insurances, permits, registrations, certifications, approvals, operation manuals, plans and other documents and information that CEM reasonably requires. Without limitation as to the remedies available to CEM under the Supply Agreement or at law, the Supplier will be liable to CEM for any and all loss, cost, expense or liability incurred or suffered by CEM as a result of any delay in or failure to satisfy its obligations under this clause (except to extent the delay or failure is caused by CEM or its agents, employees or contractors).
- 4.4. The Supplier warrants that it has received and read all documents relevant to the Supply Agreement and has satisfied itself as to the accuracy of any information given to it at any time by CEM.
- 4.5. The Supplier warrants that all Goods supplied or used in the performance of the Supply Agreement will be, in addition to any other warranty implied at law:
 - a) identical to any sample provided by the Supplier to CEM;
 - b) of merchantable quality and fit for their intended purpose;
 - c) in a safe working condition;
 - d) regularly cleaned, serviced and maintained at the Supplier's cost;
 - e) stored in a safe and secure location at all times during the Supply Period (unless controlled by CEM);
 - f) compliant with any applicable legislation, regulations and site/project specific requirements;
 - g) free from all liens and encumbrances; and
 - h) in accordance with any specification provided by CEM to the supplier, or if no specification is provided, in accordance with any relevant and current Australian Standard published by SAI Global Limited.
- 4.6. The Supplier warrants that all Services supplied under the Supply Agreement will be, in addition to any other warranty implied at law, carried out:
 - a) in an efficient and expeditious manner;
 - b) with due skill and care;
 - c) by suitably qualified, competent and skilled personnel in a safe and workman like manner;
 - d) in accordance with all applicable legislation, regulations, site/project specific requirements or reasonable instruction given by CEM; and
 - e) in accordance with any specification provided by CEM to the supplier, or if no specification is provided, in accordance with any relevant and current Australian Standard published by SAI Global Limited.
- 4.7. The Supplier warrants that all Supply Personnel will:
 - a) possess their own tools and equipment necessary to perform the relevant part of the Services they have been engaged to perform;
 - b) be suitably qualified, competent, skilled and of the required fitness and health to perform the relevant part of the Services they have been engaged to perform; and
 - c) comply with any applicable legislation, regulations, site/project specific requirements or reasonable instruction given by CEM (including but not limited to undertaking any necessary induction courses or drug and alcohol tests);

d) Be paid in accordance with State and Federal legislative requirements, and any Site Specific Awards/Enterprise Agreements (if applicable).

4.8. The Supplier must immediately remove and replace any Supply Personnel at CEM's request where CEM reasonably considers such Supply Personnel do not conform to the requirements set out in Clause 4.6 above or has engaged in any inappropriate or negligent conduct.

5. Inspection Testing & Maintenance

5.1. The Supplier must provide any and all relevant documentation reasonably requested by CEM to evidence the Supplier's conformance and satisfaction of the warranties provided under Clause 4.

5.2. CEM may inspect and test any Goods at the Supplier's premises or onsite at any time prior to the Delivery Date or during the Supply Period. The Supplier must do everything necessary to enable CEM to inspect and test the Goods.

5.3. The Supplier must repair any damaged Goods and carry out any service or maintenance works in a diligent and expeditious manner onsite. All repair works to the Goods will be at the Supplier's costs unless the associated damage was caused by the misuse of the Goods by CEM or through a negligent act or omission by CEM. CEM will not be charged for the Goods or Services for the period they are inoperable due to any servicing or repair works unless such works are necessary as a result of any misuse of the Goods by CEM or through a negligent act or omission by CEM (in which case the standby rate only is to apply). The Supplier must as soon as practicable, provide a replacement for any Goods which will be inoperable for more than 5 days (or less days if requested by CEM because of project requirements) due to any servicing or repair works.

6. Time & Place of Supply

6.1. The Supplier must supply the Goods and/or Services to the Supply Point by the Delivery Date and where applicable, for the duration of the Supply Period.

6.2. CEM may increase or decrease the Supply Period at its absolute discretion to any period of time that CEM thinks is reasonable, by providing written notice to the Supplier.

6.3. CEM may vary the Supply Point for any of the Goods or Services at its absolute discretion by providing written notice to the Supplier.

7. Delivery, Risk & Title

7.1. The Supplier is responsible at its cost for the packing and transporting the Goods safely to the Supply Point.

7.2. Risk in the Goods vests in the Supplier until they have been accepted by CEM at the Supply Point or until the expiration of the Supply Period (whichever occurs last).

7.3. Title in the Goods shall remain with the Supplier unless a subsequent agreement is made for CEM to purchase the Goods.

7.4. Unless agreed otherwise, the Supplier is responsible at its cost to collect the Goods and demobilise its Supply Personnel upon the expiration of the Supply Period or the termination of the Supply Agreement.

8. Defects

8.1. Unless otherwise specified in the Supply Agreement, a defects liability period of 12 months applies from either the date of delivery to the specified delivery point or the installation of the Goods or Services by the Supplier, whichever is the later.

9. Variation of Goods & Service

9.1. The type, quality or quantity of Goods or Services may be varied from time to time by written notice provided by CEM to the Supplier.

10. Insurance

10.1. In addition to any insurance the Supplier is required to take out and maintain at law, the Supplier must take out and maintain at its own expense and with a reputable insurance company, such policies of insurance which may reasonably be required by CEM having regard to the nature of the Goods and Services being supplied. In any event, the Supplier shall maintain relevant and prudent insurance cover for its liabilities covering all events that may cause loss of or damage to property or injury or death of a person in the performance of the Supply Agreement. Such insurance shall at least cover:

- a) Public Liability
- b) Goods in transit
- c) Product liability
- d) The Supplier's plant, tools and equipment used during the Supplier's performance of the Supply Agreement
- e) Motor Vehicle/Automobile Third Party Liability
- f) Workers' compensation and employers' liability insurances covering all Liabilities, whether arising under statute, common law or civil law, in relation to the death of, or injury to, any employee of the Supplier or any person deemed to be an employee of the Supplier.

10.2. The Supplier shall, on request, produce copies of certificates of currency for each and any relevant insurance policy.

10.3. The policies for the insurances to be taken out and maintained by the Supplier must, unless prohibited by law:

- a) insure CEM and its personnel for their respective rights and interests arising out of or in connection to the Supply Agreement;
- b) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party
- c) waive all express or implied rights of subrogation against CEM and its personnel arising out of or in connection to the Supply Agreement; and
- d) include a clause that provides a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the

10.4. The Supplier shall ensure that every subcontractor it engages in relation to the Supply Agreement carries similar policies of insurance or is covered under the Supplier's own policies.

10.5. If the Supplier becomes aware of an event which may give rise to a claim involving CEM under any policy of insurance maintained by the Supplier, the Supplier must notify CEM and must ensure that the CEM is kept fully informed of subsequent action or developments concerning the claim.

10.6. The Subcontractor's compliance with this Clause 9 is a precondition to the Supplier's entitlement to any payment by CEM.

11. Indemnity

11.1. The Supplier shall unconditionally and irrevocably indemnify CEM and keep CEM indemnified against all losses, damages, costs, charges, liabilities, expenses, penalties, claims, proceedings, actions and suits whatsoever and how so ever arising out of or in connection with the Supply Agreement (including, without limitation, arising in connection with any default by the Supplier). However, the Supplier's liability to indemnify CEM under this clause will be reduced proportionally to the extent that a negligent act or omission by CEM contributed to the applicable injury, death, loss or damage.

12. Supply Price

12.1. Unless otherwise specified in the Supply Agreement, all rates and lump sum prices specified in the Purchase Order are:

- a) fixed and not subject to the rise or fall in costs;
- b) in Australian Dollars;
- c) exclusive of GST;
- d) inclusive of any costs associated with travel, transport, delivery, mobilisation and demobilisation with respect to the Goods or Supply Personnel;
- e) With respect to Goods, inclusive of any ongoing costs for fuel, maintenance, spare parts, labour for servicing and other similar or applicable operation costs;
- f) With respect to the Supply Personnel, inclusive of any overtime or shiftwork, breaks, annual leave, sick leave or other contractual or statutory entitlements payable to the Supply Personnel; and
- g) inclusive of all other direct and indirect taxes, levies, duties, costs and charges, including but not limited to those related to the emission of greenhouse gases.

12.2. Unless otherwise specified in the Supply Agreement, CEM shall be responsible for the accommodation, messing and meals for the Supply Personnel while onsite.

13. Payment

13.1. The Supplier is to issue a monthly invoice to CEM for goods and services supplied each month up to and including the 25th day of the month. The invoice must be received no later than the 5th day of the following month to be included in payment for that month. Invoices received after the 5th day of the following month will be deemed to be for the current month.

13.2. The amount claimed is to be calculated by reference to the rates or lump sum prices specified within the Purchase Order.

13.3. Invoices must contain the following information:

- a) the Purchase Order number to which the invoice relates;
- b) all necessary information required for it to constitute a valid invoice under the applicable taxation legislation and regulations;
- c) a detailed description of the amounts claims and the Goods and Services provided in the month covered by the invoice; and
- d) any further verification or documentation in relation to the invoice as reasonably required by CEM to assess it.

13.4. If CEM disputes any amount claimed by the Supplier within an invoice, it must notify the Supplier in writing within 28 days from its receipt of the relevant invoice with the following details:

- a) the item(s) in dispute;
- b) the amount in dispute of each item; and
- c) a brief basis for why each item is disputed.

d) CEM's failure to issue the written notice with 28 days deems the invoice to be disputed in whole.

13.5. All amounts paid to the Supplier are "on account" only and are not to be construed as the Company's acceptance of the Goods or Services provided or the amount paid.

13.6. Without prejudice to any other rights of CEM, CEM may deduct from any moneys which may be, or become, payable to the Supplier, any costs, expenses, losses or damages which CEM has incurred or reasonably considers it might incur in the future as a consequence of any act or omission of the Supplier or the Supplier's employees, consultants, agents or secondary subcontractors, under or in connection with any contract between the CEM and the Supplier including, without limitation, for which the Supplier is liable under clause 4.3.

14. Suspension

14.1. CEM may direct the Supplier to suspend the whole or any part of the supply of Goods or Services for any period that CEM considers will be necessary and reasonable and for any reason, by notice in writing to the Supplier.

14.2. If the suspension is directed for a reason other than a default of the Supplier, the Supplier will be entitled to claim payment for the supply of Goods and Services being suspended but at the standby rate only specified in the Purchase Order.

14.3. The Subcontractor must recommence the supply of Goods or Services suspended if and when directed by CEM.

15. Personal Property Securities Act (PPSA)

15.1. If one Party (the "Secured Party") determines that the Contract (or a transaction in connection with it) is or contains a Security Interest, the other Party (the "Grantor") agrees to promptly do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which is reasonably requested by the Secured Party and which is reasonably necessary for the purposes of:

- a) ensuring that the Security Interest is enforceable, perfected (including, where possible, by "control" (as defined in the PPSA) in addition to registration) and otherwise effective; or
- b) enabling the Secured Party to apply for any registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by the Secured Party; or
- c) enabling the Secured Party to exercise rights in connection with the Security Interest, but only to the extent of the Security Interest created.

15.2. The Grantor agrees:

- a) to provide at least [10] business days? notice of any change to its name, or any other information which might affect the details recorded in any Financing Statement registered by the Secured Party;
- b) not to change its place of business to a jurisdiction outside of Australia.
- c) everything that a Party is required to do under this clause 13 is at that Party's expense, and neither Party will be responsible for any costs or expenses incurred or payable by the other Party in relation to registering, maintaining or releasing any Security Interest, Financing Statement or Financing Change Statement or



giving any notice in relation to a Security Interest.

- 15.3. The parties agree that to the extent they may be excluded by law:
- a) sections 142 and 143 of the PPSA are excluded and the Secured Party need not comply with the following provisions of the PPSA: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and any other provision of the PPSA notified to the Grantor by the Secured Party after the date of the Contract; and
 - b) neither the Secured Party nor any receiver need give any notice required under any provision of the PPSA (except section 135).

This clause applies despite any other clause in the Contract.

16. Termination

- 16.1. CEM may terminate the Supply Agreement by writing to the Supplier giving reasons for the termination.
- 16.2. If the termination of the Supply Agreement is for a reason other than the Supplier's default, the Subcontractor will be entitled only to the value of the Goods and Services supplied up to the date of termination.
- 16.3. If the termination of the Supply Agreement is due to a default by the Supplier, the Supplier will not be entitled to further payments until the parties' rights have been determined.

17. Intellectual Property

- 17.1. Intellectual property rights in all documents that are created for the performance of the Supply Agreement or the Project will vest in CEM.
- 17.2. The Supplier must procure from any other authors of documents created for the performance of the Supply Agreement all intellectual property rights.
- 17.3. The Supplier must consent and procure from any other authors consent to waive all moral rights in connection with documents created for the performance of the Supply Agreement.
- 17.4. The Supplier must ensure that no intellectual property rights or moral rights of third parties are infringed in the performance of the Supplier's obligations under the Supply Agreement. The Supplier will be responsible for any licence that is required or any royalty or other cost that must be incurred in order to comply with this provision.

18. Confidentiality

- 18.1. The Supplier must not, without CEM's written consent, disclose any information or document in relation to the Supply Agreement, the Project or CEM's or the principal's businesses.
- 18.2. The restriction in Clause 15.1 does not apply to disclosure of documents or information as part of legal proceedings or to officers, employees, agents on a needs-to-know basis for the purposes of supplying the Goods and Services, provided that the Subcontractor has obtained an enforceable undertaking from those parties on similar terms to this clause.
- 18.3. A breach of this provision by the Supplier's officers, employees, agents or subcontractors is a breach of the provision by the Supplier.
- 18.4. Without limiting any other provision of the Supply Agreement, the provisions of this clause will survive termination and continue for a period of 10 years from termination of the Supply Agreement or the expiration of the Supply Period (whichever is earlier).

19. Resolution of Disputes

- 19.1. If a dispute arises out of or in connection to the Supply Agreement, Goods or Services, the Parties shall, within 10 days of a written notice detailing the dispute being issued by either party, hold a meeting in an attempt to negotiate in good faith to resolve the dispute.
- 19.2. Should the parties be unable to resolve the dispute within 28 days of the written notice under Clause 17.1 being issued, either party may refer the dispute to arbitration or litigation.
- 19.3. The Master Builders Association of WA shall appoint a suitably qualified arbitrator should the dispute be referred to arbitration and an adjudicator for the purposes of the Construction Contracts Act 2004.
- 19.4. If a dispute is referred to arbitration, the arbitration is to be conducted in accordance with the rules determined by the appointed arbitrator.

20. Governing of Law and Jurisdiction

- 20.1. The Supply Agreement is governed by the laws of Western Australia. Each party submits to the jurisdiction of the courts exercising jurisdiction in Western Australia in connection with any matters concerning the Supply Agreement.

21. No Waiver

- 21.1. No failure to exercise, or any delay in exercising, any right, power or remedy by CEM operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on CEM unless made in writing.

22. Further Assurances

- 22.1. Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or reasonable to give full effect to the provisions of the Supply Agreement.
- 22.2. Each party assures it fully understands and accepts the terms of the Supply Agreement.