

# Purchase Order Terms and Conditions

## 1. Application of these terms

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- (a) If:
  - (i) the parties have entered into a written contract in the form of (or substantially in the form of) the Contractor's standard or template agreement, covering the subject matter of this agreement, the terms of that written contract shall apply to the relationship between the parties and the terms of this agreement shall not have any legal effect; or
  - (ii) the parties have not entered into a written contract in the form of (or substantially in the form of) the Contractor's standard or template agreement, this purchase order states all of the express terms of the agreement between the parties in respect of its subject matter. It supersedes and prevails over all discussions, negotiations, understandings, credit application terms and conditions, supplier terms and conditions, quotation terms and conditions and all other agreements in respect of its subject matter.
- (b) The parties agree that in no case will any discussions, negotiations or understandings; or credit application terms and conditions, supplier terms and conditions, quotation terms and conditions or any other agreements, apply as between the parties, whether purportedly or actually given by the Supplier before or after the date of the purchase order and notwithstanding there may be a reference to the Supplier's quotation on the purchase order or otherwise.

## 2. Deliverables

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- (a) The Contractor engages the Supplier to supply the Deliverables, and the Supplier agrees to supply the Deliverables, in accordance with the terms and conditions contained in this agreement which is formed by the issuance of a purchase order to the Supplier.
- (b) If some or all of the Deliverables have been supplied prior to the Commencement Date, the provisions of this agreement will apply as if those Deliverables had been supplied on the Commencement Date.
- (c) This agreement does not convey any rights of exclusivity on the Supplier and for avoidance of doubt does not prevent the Contractor from entering into arrangements or agreements with third parties for the supply of goods or services equivalent or similar to the Deliverables.
- (d) If the Deliverables are being supplied for a project which has received or will receive any direct or indirect funding from a State, Territory or Federal Government, the Supplier must comply with the Building Code of Practice and provide all reasonable assistance to the Contractor to enable it to comply with its obligations under the Building Code of Practice.

## 3. Deliverables Standards

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- (a) The Supplier must supply the Deliverables:

- (i) with due care and skill using that standard of diligence that would reasonably be expected from a prudent and experienced provider of goods and services which are similar to the Deliverables in Australia;
- (ii) in compliance with:
  - (A) this agreement;
  - (B) all applicable industry standards;
  - (C) all Laws (including WH&S Legislation) applicable to the Deliverables;
  - (D) all Policies; and
  - (E) all reasonable directions of the Contractor and/or the owner or controller of the Site; and
- (iii) to the satisfaction of the Contractor (acting reasonably).
- (b) The Deliverables must be fit for the purposes directed by the Contractor and stated or inferred from this agreement, and for which goods and/or services of the same kind are commonly supplied.
- (c) Neither party may do or take part in any act or thing which detracts or may detract the other party's goodwill, commercial reputation or overall public image and may not make any media releases or social media posts without the other party's prior written consent (at its absolute discretion).
- (d) Without limiting the Specifications, the Supplier must supply all things necessary or desirable to use the Deliverables, including all manuals, warranties, test certificates, safety data sheets, technical data sheets, batch numbers and all documents and certificates otherwise required by Law.
- (e) The Supplier must supply the Deliverables to the Contractor strictly in accordance with the Specifications. A breach of this clause will be considered a breach of a material obligation by the Supplier under this agreement for the purposes of clause 11.2(a).

#### 4. Time for Performance and Suspension

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- (a) The Supplier must perform and supply the Deliverables promptly, with due expedition and without delay and in accordance with the Contractor's directions regarding the dates, time and locations for the supply of the Deliverables by the Supplier to the Contractor.
- (b) Unless otherwise specified in the purchase order, the Price includes (and the Supplier is responsible for) all mobilisation, demobilisation, accommodation and transportation or delivery costs associated with the performance of and/or delivery of the Deliverables to or at the Site.
- (c) The Contractor may suspend the supply of all or any of the Deliverables for any time on written notice to the Supplier. In such circumstances, the Contractor will pay for Deliverables delivered (and not rejected by) the Contractor in accordance with this agreement. Further, if the suspension was:
  - (i) caused or contributed to by the Supplier, the Contractor will not be liable to the Supplier for any further payment or Loss; or

- (ii) not caused or contributed to by the Supplier, the Contractor will also pay the Supplier its unavoidable additional reasonable direct costs actually and properly incurred as a direct result of the suspension and in accordance with any directions given by the Contractor, after taking all reasonable steps to minimise the impact of, and mitigate its costs arising from, those circumstances,

and the Supplier must recommence the supply of Deliverables in accordance with the Contractor's direction to do so.

## 5. Records and Reporting

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- (a) The Supplier acknowledges that the Contractor is under legal and contractual obligations to maintain records of its projects to which the Deliverables form a part and agrees that the Supplier shall maintain accurate and complete records (in compliance with all Laws) in relation to the Deliverables (**Records**) to enable the Contractor to fulfil its record keeping obligations.
- (b) The Supplier must promptly provide copies of Records to the Contractor on request and permit the Contractor (or any third party appointed by the Contractor) to audit the Records and the performance of the Supplier's obligations against this agreement.
- (c) The Supplier must provide and ensure that its Associates provide the Contractor, or any third party on behalf of the Contractor, with all reasonable assistance, including the provision of any information reasonably requested by the Contractor or the third party (as the case may be) in relation to an audit pursuant to subclause (b).
- (d) The Supplier must comply with any other reasonable reporting requirements notified by the Contractor to the Supplier from time to time and compliance with such requirements is included in the Price.

## 6. Warranties

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### 6.1 Supplier warranties

The Supplier warrants to the Contractor that:

- (a) it holds (and will continue to hold during the Term) all accreditations, licences, permits, approvals and authorisations required by Law to provide the Deliverables;
- (b) the Deliverables:
  - (i) comply with this agreement, including the Specifications and all relevant Laws;
  - (ii) are provided by appropriately qualified and trained personnel with due care and skill in a proper, competent and professional manner;
  - (iii) are fit for the purpose for which goods or services of the same kind are commonly supplied; and
  - (iv) are provided so as to avoid any unreasonable disruption of, interference with, or nuisance or inconvenience to people or property, including at the relevant Site; and

- (c) it has fully informed itself in relation to all matters relevant to the supply of the Deliverables under this agreement.

## 6.2 Mutual warranties

Each party warrants to the other party that:

- (a) it has the power to execute, deliver and perform its obligations under this agreement; and
- (b) all necessary corporate and other action has been taken to authorise that execution, delivery and performance.

## 6.3 Australian Consumer Law Consumer Guarantees

This agreement is deemed to include all consumer guarantees that the Contractor would be entitled to as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**Australian Consumer Law**) as if the Contractor were a 'consumer' within the meaning of section 3 of the Australian Consumer Law. Such consumer guarantees will be incorporated into this agreement as warranties given by the Supplier to the Contractor.

## 6.4 Reliance on warranties

The warranties given by each party in this agreement are given on the Commencement Date and continuously throughout the Term. Each party enters into this agreement in reliance on the warranties given by the other party in this agreement.

## 7. Defective Deliverables

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- (a) If the Contractor becomes aware of any Defective Deliverables (whether before or after delivery or supply), the Contractor may direct the Supplier (at its cost) to do any one or more of the following (including reasonable times for commencement and completion):
  - (i) refund to the Contractor any payments made by the Contractor in respect of any Defective Deliverables that the Contractor rejects;
  - (ii) remove the Defective Deliverables from the relevant Site;
  - (iii) redesign, reconstruct, replace or correct the Defective Deliverables;
  - (iv) not deliver the Defective Deliverables; and
  - (v) re-perform the Defective Deliverables.
- (b) If the Supplier fails to comply with a direction given under clause 7(a), the Contractor may have the Defective Deliverables rectified or re-performed by persons other than the Supplier and the cost of such rectification or re-performance will be a debt due and owing by the Supplier to the Contractor.

## 8. Price

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- (a) The Contractor must pay the Price for the Deliverables to the Supplier in accordance with the terms of this agreement.

- (b) Unless otherwise stated in this agreement, the Price is inclusive of:
  - (i) all costs incurred by the Supplier in supplying the Deliverables (including all labour costs and Supplier Equipment costs); and
  - (ii) all federal, state and territory taxes and duties (other than GST).
- (c) The Price excludes GST.
- (d) Subject to any change in the Price resulting from the application of any express provision of this agreement, the Price is fixed.
- (e) Subject to clause 14(b), the Supplier must invoice the Contractor for Deliverables within 10 Business Days prior to the end of the month.
- (f) Subject to clause 8(g), the Contractor must pay the invoiced amount due to the Supplier within 30 days from the end of the month in which the invoice is received. The Supplier must provide the Contractor with bank account details into which payments by the Contractor are to be deposited.
- (g) If any invoiced amount is disputed by the Contractor, the Contractor must pay the undisputed amount to the Supplier in accordance with this agreement.

## 9. GST

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- (a) Words or expressions used in this clause that are defined in the GST Law have the same meaning given to them in the GST Law.
- (b) Unless otherwise stated, any amount specified in this agreement as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.
- (c) If a party makes a taxable supply under this agreement (**Supplier**), then the recipient of the taxable supply (**Recipient**) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.
- (d) Notwithstanding any other provision of this agreement, a Recipient is not obliged under this agreement to pay the amount of any GST payable until the Supplier provides it with a valid tax invoice for the taxable supply.
- (e) If an adjustment event arises in relation to a taxable supply made by a Supplier under this agreement, the amount paid or payable by the Recipient pursuant to clause 9(c) will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.
- (f) If a third party makes a taxable supply and this agreement requires a party to this agreement (**the payer**) to pay for, reimburse or contribute to (**pay**) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.
- (g) This clause does not merge on completion and will continue to apply after expiration or termination of this agreement.

## 10. Term

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- (a) This agreement is effective from the Commencement Date and continues for the Term or the date of earlier termination of this agreement in accordance with its terms.
- (b) The Supplier acknowledges that there may be situations outside of the Contractor's control (such as termination of its head contract) where the Contractor may be required to terminate this agreement for its convenience. Accordingly, the parties agree that the Contractor may, in its absolute discretion, terminate this agreement at will for any reason on not less than 7 days written notice to the Supplier. If the Contractor terminates this agreement under this clause, the Supplier is entitled to:
  - (i) the cost of materials reasonably ordered by the Supplier as required to supply the Deliverables which the Supplier is legally liable to accept, but only if on payment these unincorporated materials become the property of the Contractor, free of any encumbrance;
  - (ii) the reasonable direct costs actually and properly incurred by the Supplier, but only to the extent that the Supplier complies with a strict duty to mitigate costs; and
  - (iii) the costs reasonably incurred by the Supplier prior to receiving notice of termination in the expectation of supplying the Deliverables, where those costs have not been recovered through any other payment by the Contractor, but only to the extent that the Supplier complies with a strict duty to mitigate costs,

but in no event will the Supplier be entitled to an amount that exceeds the Price.

## 11. Termination

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### 11.1 Insolvency

Subject to the application of the Corporations Act, if an Insolvency Event occurs, either party may terminate this agreement by notice in writing effective from the date of the notice.

### 11.2 Termination rights

If either party (**defaulting party**):

- (a) breaches a material obligation in this agreement and, in the reasonable opinion of the non-defaulting party, the breach:
  - (i) cannot be remedied; or
  - (ii) can be remedied but is not remedied by the defaulting party within 5 Business Days after the non-defaulting party gives the defaulting party notice of the breach; or
- (b) commits fraud or an act of serious or wilful misconduct,

(each a **Termination Event**), the non-defaulting party may:

- (c) terminate this agreement immediately by notice to the other party; and
- (d) exercise its rights as if it had accepted a repudiation of this agreement by the other party.

### 11.3 Consequences of expiry or termination

On expiry or termination of this agreement:

- (a) the Supplier must stop working on any incomplete or undelivered Deliverables;
- (b) if requested by the Contractor, the Supplier must deliver to the Contractor all completed Deliverables which conform in quality to the requirements of this agreement;
- (c) within 5 Business Days after the date of expiry or termination, each party must return to the other party the other party's Confidential Information; and
- (d) any accrued rights and remedies of each party as at the date of termination are unaffected.

## 12. Intellectual Property Rights

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- (a) The Supplier remains the owner or licensee (as the case may be) of all Intellectual Property Rights owned or used by the Supplier prior to the date of this agreement (**Supplier Background Intellectual Property Rights**).
- (b) The Supplier grants or must procure the granting to the Contractor of a non-exclusive, royalty-free licence to use the Supplier Background Intellectual Property Rights for the purpose of using, or otherwise obtaining the benefit of, the Deliverables.
- (c) The Contractor remains the owner or licensee (as the case may be) of all Intellectual Property Rights owned or used by the Contractor prior to the date of this agreement.
- (d) Any Intellectual Property Rights developed by the Supplier solely, or developed by the Supplier and the Contractor, in connection with this agreement will vest in the Contractor upon creation and are owned by the Contractor. The Supplier assigns all right, title and interest in such Intellectual Property Rights to the Contractor. The Supplier must provide the Contractor with all reasonable assistance, at the Contractor's cost, to protect such Intellectual Property Rights, including obtaining patents and other registered protection in the Contractor's name and irrevocable consent for the benefit of the Contractor, from the author of any artistic work created in connection with the Deliverables sufficient to allow the unimpeded use of the artistic work.

## 13. Confidentiality

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### 13.1 No disclosure

- (a) Other than as permitted under clause 13.2, neither party may disclose to any person the Confidential Information.
- (b) The Supplier must not use Confidential Information for any purpose except as required to perform and supply the Deliverables in accordance with this agreement.

### 13.2 Permitted disclosures

A party (**Disclosing Party**) may disclose the Confidential Information of the other party:

- (a) to its Related Bodies Corporate, its Associate and/or a Associate of its Related Bodies Corporate that need to know the Confidential Information for the purposes of this agreement, subject to the Disclosing Party taking reasonable steps to ensure that any such Related Bodies Corporate and/or Associate (as applicable) are fully aware of the confidential nature of the Confidential Information before the disclosure is made;
- (b) which is required to be disclosed by Law, provided that the Disclosing Party has:
  - (i) given the other party prior notice where practicable; and
  - (ii) provided all assistance and co-operation which the other party reasonably considers necessary for that purpose; and
- (c) to professional advisers of a party or to potential buyers of the party or the party's business, provided that the recipients of such Confidential Information are subject to obligations of confidentiality.

### 13.3 Associates undertaking

- (a) Each party must ensure that its Related Bodies Corporate and Associates who have or may have access to the Confidential Information of the other party are aware of the confidential nature of the Confidential Information and treat the Confidential Information accordingly and must procure that any such Related Bodies Corporate and/or Associates keep such information confidential.
- (b) The Disclosing Party holds the benefit of this clause 13 for itself and for each of its Related Bodies Corporate.

### 13.4 Privacy

The Supplier must comply with the provisions of the *Privacy Act 1988* (Cth) (as amended) in relation to any Personal Information (as defined in the Privacy Act) provided to the Supplier by the Contractor or the Contractor's Associates.

## 14. Insurance

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- (a) The Supplier must, before the Commencement Date and at its own cost, take out and maintain during the Term with a reputable insurer the following insurance policies (which shall be primary):
  - (i) a comprehensive public liability insurance policy to cover all sums which the Supplier may become legally liable to pay as compensation consequent on:
    - (A) death of, or bodily injury (including disease or illness) to, any person; and
    - (B) loss of, or damage to, property,happening anywhere in Australia arising out of or in connection with this agreement, for at least \$20 million per occurrence and unlimited in the aggregate and which notes the Contractor as an insured party for its liability arising out of the performance by or on behalf of the Supplier of any contract with the Contractor;
  - (ii) if the Deliverables include any Goods, product liability insurance for a minimum cover of at least \$20 million per occurrence and in the aggregate in any one policy



year, which notes the Contractor as an insured party for its liability arising out of the Goods;

- (iii) if the Deliverables include any design, professional advice or other professional services, professional indemnity insurance in respect of the supply of the Deliverables in connection with this agreement for at least \$5 million (to be maintained during the Term of the agreement and for a period of not less than seven years after the expiry or termination of this agreement);
  - (iv) insurance in respect of all claims and liabilities arising, whether at common law or under statute, relating to workers' compensation or employer's liability, from any accident or injury to any person employed by the Supplier (or a Related Body Corporate) in connection with the Deliverables, which insurance must be in compliance with the Laws of the State in which the Deliverables are supplied. If:
    - (A) the jurisdiction allows, the policy must contain a principal's indemnity extension for act benefits and common law and a waiver of subrogation from the insurer, in favour of the Contractor; and
    - (B) any of the Supplier's directors are "working directors" involved in the supply of the Deliverables, those directors must be covered under a workers' compensation policy;
  - (v) if the use of any motor vehicle is required to provide the Deliverables, a policy of insurance covering liability for death or personal injury to any person, and for loss or damage to property, caused by the Supplier's ownership and/or use of any motor vehicles in the provision of the Deliverables. Unless otherwise limited by statute, the limit of liability provided by that policy must be for at least \$30 million;
  - (vi) if required by Law (including to enter or provide the Deliverables at the Site), industrial disease workers' compensation insurance;
  - (vii) if the Deliverables comprise hiring Goods to the Contractor, insurance covering all loss and damage to the Goods, for its market value;
  - (viii) if the Supplier is delivering (or arranging delivery of) the Goods, insurance which covers loss of or damage to the Goods during transit (or shall ensure that any third party transporting the Goods effects and maintains that insurance); and
  - (ix) any other insurance policies reasonably required by the Contractor from time to time.
- (b) Without prejudice to any other right it may have under this agreement, if the Supplier fails to comply with this clause 14 the Contractor may refuse to make payments owed to the Supplier under this agreement until the Supplier complies with this clause 14, which is a condition precedent to the Supplier's entitlement to make a claim for payment under this agreement.
- (c) On or before the Commencement Date and thereafter when requested by the Contractor, the Supplier must provide to the Contractor certificates of currency for all of the insurance policies it is required to maintain under this clause 14 and a copy of the relevant policies.
- (d) The Supplier must not do anything which prejudices any policy of insurance and must immediately notify the Contractor in writing of any event which results in an insurance policy being cancelled or altered where such alteration materially affects coverage under this agreement.

- (e) If any event occurs which may give rise to a claim involving the Contractor under any policy of insurance taken out by the Supplier under this clause 14, then the Supplier must:
  - (i) notify the Contractor within 14 days of that event; and
  - (ii) subject to any confidentiality requirements, ensure that the Contractor is kept fully informed of any subsequent actions and developments concerning the relevant claim.
- (f) The Supplier must ensure that any subcontractor engaged by the Supplier in relation to the supply of the Deliverables effects and maintains the insurances, and for the amounts, required by this clause 14.

## 15. Indemnity

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### 15.1 Indemnity by Supplier

To the extent permitted by Law, the Supplier indemnifies the Contractor from and against any Loss arising from or in connection with:

- (a) a material breach of this agreement by the Supplier;
- (b) personal injury to, or illness or death of, any person (including the Supplier's Associates, the Contractor's Associates or a third party) caused or contributed to by an act or omission of the Supplier in connection with the Deliverables;
- (c) damage to any property (including to any property of the Supplier, the Contractor or a third party) caused or contributed to by an act or omission of the Supplier in connection with the Deliverables;
- (d) any claim made against the Contractor by any of the Supplier's Associates in respect of any Law concerning remuneration, income tax, workers' compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal;
- (e) any claim by a third party against the Contractor caused or contributed to by an act or omission of the Supplier in connection with this agreement or the Deliverables;
- (f) the wilful misconduct, the wilful default, wilful negligence or fraud of, or breach of any Law by, the Supplier or its Associates;
- (g) any claim that the Deliverables or anything the Supplier does in connection with the Deliverables infringes or allegedly infringes the Intellectual Property Rights of any person;
- (h) the Contractor's use of the Deliverables infringes or allegedly infringes the Intellectual Property Rights of any person; and
- (i) the presence of any Contaminant, or substances which may give rise to or become a Contaminant, at any time brought or allowed on, emitted on or from or incorporated in the Site which is caused or contributed to by an act or omission of the Supplier in connection with the Deliverables.

## 15.2 **Extent to which indemnity will not apply**

The indemnity in clause 15.1 will not apply to the extent that any Loss is caused or contributed by the negligence of the Contractor, or its Associates (other than the Supplier or the Supplier's Associates).

## 15.3 **No incurring of expense necessary**

The Supplier acknowledges that it is not necessary for the Contractor to incur an expense or make a payment before enforcing a right of indemnity conferred by this agreement.

## 15.4 **Benefit of indemnity**

A reference to the Contractor in this clause 15.4 includes a reference to the Contractor's Associates, Related Bodies Corporate and their Associates (each, an **Indemnified Party**). The Contractor holds the benefit of this clause 15.4 for itself and on trust for each other Indemnified Party.

## 15.5 **Indemnity by Contractor**

To the extent permitted by Law, the Contractor indemnifies the Supplier from and against any Loss arising from or in connection with:

- (a) personal injury to, or illness or death of, any person (including the Supplier's Associates, the Contractor's Associates or a third party) caused or contributed to by an act or omission of the Contractor in connection with the Deliverables;
- (b) damage to any property (including to any property of the Supplier, the Contractor or a third party) caused or contributed to by an act or omission of the Contractor in connection with the Deliverables; and
- (c) the wilful misconduct, the wilful default, wilful negligence or fraud of, or breach of any Law by, the Contractor.

## 15.6 **Extent to which indemnity will not apply**

The indemnity in clause 15.5 will not apply to the extent that any Loss is caused or contributed by the act or omission of the Supplier or its Associates.

## 16. **Anti-Slavery**

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- (a) The Supplier must ensure that it complies with all Anti-slavery Laws.
- (b) The Supplier represents and warrants that, as at the date of this agreement:
  - (i) it has investigated its labour practices to satisfy itself that there is no slavery or human trafficking used anywhere in its business or supply chain; and
  - (ii) the Supplier and all its Associates and Related Body Corporates:
    - (A) have not been convicted of any offence involving slavery or human trafficking; or

- (B) to the best of its knowledge has not been or is the subject of a formal complaint, investigation, inquiry or enforcement proceedings by any person or regulatory body in connection with slavery or human trafficking.
- (c) The Supplier must ensure that its supply chains implement anti-slavery and human trafficking due diligence procedures relating to their supply chains.
- (d) The Supplier must give the Contractor all information requested by the Contractor to report on or to comply with Anti-slavery Laws, or any direction of any Authority, promptly after a request from the Contractor to do so.

## 17. Dispute Resolution

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- (a) If a dispute or difference arises between the parties arising out of, under or in relation to the agreement a party may issue a notice giving details of the nature of the dispute and stating that it is a 'Notice of Dispute' under this clause 17(a).
- (b) The party receiving the Notice of Dispute must respond to it within 14 days of receipt.
- (c) Within 14 days after a notice has been given under clause 17(a) (or other period as may be agreed between the parties), the Contractor and the Supplier must meet and attempt to resolve the dispute or difference.
- (d) If the dispute or difference is not settled within two days of a meeting being convened under clause 17(c) (or within any further time as the parties may agree) and if the parties so agree, the dispute may be:
  - (i) made the subject of mediation before a mediator agreed between the parties, to be conducted in accordance with the then current edition of the 'Rules for the Mediation of Commercial Disputes' of the Resolution Institute; or
  - (ii) referred to an independent person agreed between the parties (**Expert**), who is experienced in dealing with the matters which are the subject of the dispute or difference, for an opinion on the dispute or difference in accordance with the then current edition of the 'Expert Determination Rules' of the Resolution Institute,and each party must bear its own costs in respect of the mediation or referral to the Expert, and must bear one half of the cost of the mediator or the Expert and of the mediation or referral process costs.
- (e) The parties agree that nothing in clause 17(d) constitutes an arbitration agreement within the meaning of the Commercial Arbitration Legislation.
- (f) Subject to subclause (h) the dispute or difference may not be referred to litigation by either party:
  - (i) unless the parties fail to meet in accordance with clause 17(c) or following the meeting fail to agree within the prescribed time period that the dispute or difference is to be made the subject of mediation or is to be referred to an Expert for an opinion;
  - (ii) until 14 days after a party has terminated the mediation by written notice to the other party and the mediator; or

- (iii) until 14 days after a party has given written notice to the other party that it disagrees with the Expert's opinion.
- (g) Notwithstanding the existence of a dispute or difference, the parties must continue to perform their respective obligations under the agreement unless otherwise agreed by the other party.
- (h) Nothing in this clause 17 prejudices the right of a party to institute proceedings to enforce payment due under the agreement or to seek injunctive or urgent declaratory relief.
- (i) Nothing in this clause 17 will affect, restrict or limit the Supplier's right to:
  - (i) make an adjudication application in relation to a payment dispute under the SOP Legislation; and
  - (ii) suspend the supply of the Deliverables under the SOP Legislation,and the parties must comply with the process, requirements and determinations under the SOP Legislation.

## 18. Notices

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### 18.1 Requirements

All notices, requests, demands, consents, approvals, or other communications under this agreement (**Notice**) to, by or from a party must be:

- (a) in writing;
- (b) in English or accompanied by a certified translation into English;
- (c) addressed to a party in accordance with its details set out in the purchase order or as most recently specified by that party by Notice to the other party (**Notified Contact Details**); and
- (d) signed by the sending party or a person duly authorised by the sending party or, if a Notice is sent by email (if applicable), sent by the sending party.

### 18.2 How a Notice must be given

In addition to any other method of giving Notices permitted by statute, a Notice must be:

- (a) delivered personally;
- (b) sent by express post if sent within Australia;
- (c) sent by airmail if sent to a place outside Australia;
- (d) sent by airmail if sent from a place outside Australia; or
- (e) sent by email.

### 18.3 When Notices considered given and received

Subject to clause 18.4, a Notice takes effect when received (or such later time as specified in it) and a Notice is regarded as being given by the sending party and received by the receiving party:

- (a) if delivered by hand to the address set out in the Notified Contact Details, when delivered to that address;
- (b) if sent from a place within Australia by express post to the address set out in the Notified Contact Details which is an address that is within Australia, at 9.00 am on the second Business Day after the date of posting;
- (c) if sent from a place within Australia by airmail to the address set out in the Notified Contact Details which is an address outside Australia, at 9.00 am on the tenth Business Day after the date of posting;
- (d) if sent from a place outside Australia by airmail to the address set out in the Notified Contact Details which is an address that is within or outside Australia, at 9.00 am on the twelfth Business Day after the date of posting; and
- (e) if sent by email to the email address set out in the Notified Contact Details, when the email (including any attachment) is sent to the receiving party at that email address, unless the sending party receives a notification of delivery failure within 24 hours of the email being sent.

### 18.4 Time of delivery and receipt

If pursuant to clause 18.3 a Notice would be regarded as given and received on a day that is not a Business Day or after 5.00 pm on a Business Day, then the Notice will be deemed as given and received at 9.00 am on the next Business Day.

## 19. General

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### 19.1 Assignment

- (a) Neither party may assign other than to a Related Body Corporate or otherwise deal with any of its rights under this agreement, without the prior written consent of the other party (acting reasonably). However, the Supplier acknowledges that there may be circumstances where the Contract may be required to assign or deal with its rights under this agreement (such as a contractual requirement under its head contract). Accordingly, the parties agree that the Contractor may assign to, or deal with any of its rights under this agreement in favour of, the Contractor's client or otherwise as directed by its client, without the consent of the Supplier.
- (b) An assignment in breach of clause 19.1(a) is intended by the parties to be void and of no force and effect.
- (c) In this clause 19.1:
  - (i) **Change of Control** means, in relation to a party that is not a natural person nor a corporation listed on the Australian Stock Exchange, the occurrence of an event or series of events that result in a person or persons:
    - (A) that did not have Control of that party prior to the event or series of events, having Control of that party following that event or series of events; or

(B) that had Control of that party prior to the event or series of events ceasing to have Control of that party; and

(ii) **Control** means in relation to a corporation or other body, the power to determine:

(A) the outcome of decisions about the financial and operating policies of that corporation or body; or

(B) the membership of the majority of the board of directors (or members of a governing body having functions similar to a board of directors) of that corporation or body,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights, and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or equity interests of that corporation or body (as applicable) or otherwise.

(d) A Change of Control of a party, or an assignment of the Supplier's invoices, debt factoring or any similar arrangement, are deemed to be an assignment for the purposes of clause 19.1(a).

## 19.2 Subcontracting

(a) The Supplier may not subcontract any of its obligations under this agreement without the prior written consent of the Contractor (acting reasonably).

(b) The Supplier is not as a result of any subcontracting arrangement relieved from the performance of any obligation under this agreement.

(c) The Supplier is liable to the Contractor for any act or omission, default or negligence of any supplier or any employee or agent of the Supplier as if it were the act, omission, default or negligence of the Supplier.

(d) The Supplier must ensure that all subcontractors engaged by the Supplier in relation to the supply of the Deliverables in accordance with this clause 19.2 comply with all relevant Laws including those relating to insurance cover for workers.

## 19.3 Trusts

If the Supplier is the trustee of a trust (**Trust**), it enters into this agreement both as trustee of that Trust and in its personal capacity and it warrants that:

(a) it has power to enter into and perform its obligations under this agreement in its capacity as trustee of the Trust;

(b) the Trust has been validly created and is in existence at the date of this agreement;

(c) the Supplier has been validly appointed as trustee of the Trust and is the sole trustee of the Trust;

(d) the Supplier has valid rights of indemnity against the assets of the Trust, which rights are available for satisfaction of all liabilities and other obligations incurred by it under this agreement; and

- (e) the rights of the beneficiaries of the Trust relating to, and their interests in, the property of the Trust are subject to the prior rights and interests of the Supplier in the property of the Trust pursuant to its right of indemnity.

#### 19.4 **Set off**

Without limiting the Contractor's other rights and remedies under the agreement or otherwise, the Contractor may at any time and from time to time deduct from monies otherwise due to the Supplier any money due under this agreement and all losses, costs, expenses and damages suffered by the Contractor (including damages for all any breach of contract at Law) in respect of which the Supplier is liable. This clause 19.4 does not affect the right of the Contractor to recover the debt, the monies claimed or any balance after exercising any rights under this clause 19.4 by any other means available under the agreement or at Law.

#### 19.5 **No Security Interest**

The Supplier acknowledges and agrees that under no circumstances will it have or be granted (and that it must not register or otherwise seek to create or perfect) any Security Interest or lien over any of the Contractor's Personal Property (whether a general Security Interest, an all present and after acquired property Security Interest or otherwise).

#### 19.6 **Liability of Contractor**

The Contractor's total aggregate liability arising out of or in connection with this agreement whether in contract, tort (including, without limitation, negligence), under an indemnity or otherwise at Law or in equity is limited to an aggregate amount which is equal to 100% of Price for the Deliverables. Notwithstanding any other provision of this agreement, the Contractor shall not be liable for any Consequential Loss under any circumstances arising out of, or in any way in connection with this agreement, whether arising in contract, in tort (including negligence), in equity, by operation of Law or otherwise.

#### 19.7 **Liability of Supplier**

- (a) Subject to subparagraph (b) below, the Supplier's aggregate liability arising out of or in connection with this agreement whether in contract, tort (including, without limitation, negligence), under an indemnity or otherwise at Law or in equity is limited to an aggregate amount which is equal to:

- (i) where the Price is less than or equal to \$100,000, the lesser of:

- (A) three times the Price; and

- (B) \$100,000; or

- (ii) where the Price is greater than \$100,000, 100% of the Price,

and the Supplier shall not be liable for any loss of revenue, loss of income, loss of business, loss of profits, loss of production, loss of or damage to goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, loss of or damage to credit rating, loss of anticipated savings, loss or denial of opportunity or any other loss, damage, cost or expense incurred by the Contractor that is indirect or consequential.

- (b) The Supplier's limit and exclusion of liability in subparagraph (a) shall not apply to liability:

- (i) which cannot be excluded or limited by Law;



- (ii) for or in connection with any breach of Laws;
- (iii) for claims in respect of personal illness, injury or death or loss of or damage to any property;
- (iv) for any infringement of the Intellectual Property Rights of any other person;
- (v) for breach of any obligations of confidentiality;
- (vi) in respect of Defective Deliverables;
- (vii) which is indemnified by any insurance policy or which would have been indemnified but for the Supplier's act or omission, including:
  - (A) failure to obtain and maintain insurance;
  - (B) act or omission prejudicing or vitiating the insurance cover; or
  - (C) failure to diligently and properly pursue a claim, including paying any applicable excess or deductible; or
- (viii) in respect of fraud, wilful acts or omissions, wilful abandonment of this agreement, or criminal, illegal or unlawful acts.

#### 19.8 **Proportionate Liability**

The Supplier acknowledges that the Contractor's head contracts exclude the Proportionate Liability Law and require the Contractor to include this position in its agreements. Accordingly, to the maximum extent permitted by Law, the operation of the Proportionate Liability Law is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this agreement, regardless of the manner in which such rights, obligations or liabilities are sought to be enforced. The Supplier must ensure that any subcontract it enters into for the purpose of supplying the Deliverables includes a corresponding clause.

#### 19.9 **Amendment of terms and conditions**

The Supplier acknowledges that the Contractor may update its purchase order terms and conditions from time to time. However, the version of the purchase order terms and conditions which appear on the Contractor's website, or are otherwise provided to the Supplier, at the time the parties enter into a particular agreement for the Deliverables will be the terms which shall apply to that particular agreement and require the mutual agreement of the parties in order to be amended.

#### 19.10 **Costs and expenses**

Each party must pay its own costs (including legal costs) and expenses in connection with the negotiation, preparation, execution and delivery of this agreement.

#### 19.11 **Waiver**

- (a) A waiver of a right, remedy or power must be in writing and signed by the party giving the waiver. A party does not waive a right, remedy or power if it delays in exercising, fails to exercise or only partially exercises that right, remedy or power; and

- (b) A waiver given by a party in accordance with clause 19.10(a) is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be construed as a waiver of that obligation or breach on any other occasion.

#### 19.12 **Severance**

If a provision in this agreement is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of this agreement.

#### 19.13 **Governing law and jurisdiction**

This agreement is governed by and is to be construed under the laws in force in the Governing Law State. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the Governing Law State and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

#### 19.14 **No reliance**

Neither party has relied on any statement by the other party which has not been expressly included in this agreement.

#### 19.15 **Entire agreement**

Without limiting clause 1, this agreement states all of the express terms of the agreement between the parties in respect of its subject matter. It supersedes all discussions, negotiations, understandings, credit application terms and conditions, purchase order terms and conditions, supplier terms and conditions, and all other agreements in respect of its subject matter.

#### 19.16 **Relationship of parties**

Nothing in this agreement creates a partnership, joint venture, employment or fiduciary relationship between the parties or gives a party authority to bind any other party in any way.

#### 19.17 **Conditions on exercise of rights**

A party may impose reasonable conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this agreement. Any such conditions must be complied with by the party relying on the consent, approval or waiver.

#### 19.18 **Remedies cumulative**

Except as provided in this agreement and permitted by law, the rights, powers and remedies provided in this agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this agreement.

## 19.19 Clauses that survive termination

- (a) Without limiting or impacting upon the continued operation of any clause which as a matter of construction is intended to survive the termination of this agreement, clauses 5, 6, 11.3, 12, 13, 15, 17 and 19 survive the termination of this agreement.
- (b) Each indemnity contained in this agreement is a continuing obligation, independent from the other obligations of the parties and survives the termination of this agreement.

## 20. Definitions and Interpretation Clauses

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### 20.1 Definitions

In this agreement:

**Anti-slavery Laws** means all Laws relating to exploitation of a worker, human trafficking, slavery, slavery-like behaviour, servitude, forced labour, child labour, debt bondage or deceptive recruiting for labour or services (or similar) in force from time to time.

**Associate** means, in respect of a party, an officer, director, employee, agent, contractor, consultant, invitee or supplier of that party (other than the other party).

**Authority** means any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality and any private electricity, telecommunications, gas or other utility company having statutory rights in relation to the Deliverables.

**Building Code of Practice** means, if the Deliverables are in relation to building work which has received or will receive any direct or indirect funding from the government, the relevant code which applies to that building work.

**Business Day** means a day on which banks are open for business in the State or Territory in which the Deliverables are delivered or performed, excluding a Saturday, Sunday or public holiday in the capital city of that State or Territory.

**Commencement Date** means the date the purchase order is issued by the Contractor to the Supplier.

**Commercial Arbitration Legislation** means the Law relating to arbitration in the State or Territory in which the Deliverables are delivered or performed.

**Confidential Information** means:

- (a) the terms of this agreement; and
- (b) all information, know-how, ideas, concepts, technology, industrial, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form) relating to or developed in connection with or in support of the business of a party or a Related Body Corporate of a party which is disclosed, communicated or delivered to, learnt by, or which otherwise comes to the knowledge of or into the possession of the other party under or in connection with this agreement,

but does not include:

- (c) information which is or becomes generally available in the public domain (other than through any breach of confidence);

- (d) information rightfully received by the other party from a third person who is under no obligation of confidentiality in relation to the information and who has not obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the first party; or
- (e) information which has been independently developed by the other party.

**Consequential Loss** means any loss of revenue, loss of income, loss of business, loss of profits, loss of production, loss of or damage to goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, losses arising from claims by third parties, loss of or damage to credit rating, loss of anticipated savings, loss or denial of opportunity or any other loss, damage, cost or expense incurred by a party or any other person that is indirect or consequential.

**Contaminant** means a solid, liquid, gas, odour, heat, sound, vibration, radiation or substance which makes or may make the Site or the surrounding Environment:

- (a) unsafe or unfit for habitation or occupation by persons or animals;
- (b) not comply with any Law relating to the Environment; or
- (c) not satisfy the contamination criteria or standards published or adopted by a relevant Authority.

**Contractor** means the party who is purchasing the Deliverables under this agreement.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Defective Deliverables** includes:

- (a) any Deliverables which are not in conformity with this agreement;
- (b) any Services which are required to be performed pursuant to this agreement which have not been performed;
- (c) any Goods which are required to be supplied pursuant to this agreement which have not been supplied; and
- (d) any failure to deliver or perform the Deliverables in accordance with this agreement.

**Deliverables** means the services and/or goods described in the purchase order (or any annexure or attachment to the purchase order).

**Environment** means the physical factors of the surroundings of human beings including the land, waters, atmosphere, climate, sound, odours, tastes, the biological factors of animals and plants, and the social factor of aesthetics.

**Goods** means any goods, materials, plant, equipment, items or documents provided or to be provided by the Supplier as part of the Deliverables.

**Governing Law State** means Western Australia.

**GST**, GST Law and other terms used in clause 9 have the meaning used in the *A New Tax System (Goods and Subcontract Works Tax) Act 1999* (Cth), except that 'GST Law' includes any applicable rulings issued by the Commissioner of Taxation.

**HSEQ Requirements** means the Contractor's Health, Safety, Environment and Quality requirements as advised to the Supplier from time to time.

**Insolvency Event** means the occurrence of any of the following events:

- (a) where a party is a natural person, the person becomes bankrupt, files or is served with a petition in bankruptcy or is served with a bankruptcy notice, the person is unable to pay his/her debts as and when they become due and payable or a creditor's meeting in relation to the person is called;
- (b) an application is made to a court for an order or an order is made that a body corporate be wound up, and the application is not withdrawn, stayed or dismissed within 21 days of being made;
- (c) appointment of a liquidator, provisional liquidator, administrator, receiver, receiver and manager or controller in respect of a body corporate or its assets;
- (d) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (e) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved;
- (f) a body corporate is or states that it is insolvent as that term is defined in section 95A of the Corporations Act;
- (g) as a result of the operation of section 459F(1) of the Corporations Act, a body corporate is taken to have failed to comply with a statutory demand;
- (h) a body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act;
- (i) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable law;
- (j) a body corporate ceases to carry on business; or
- (k) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Intellectual Property Rights** means any and all intellectual and industrial property rights anywhere in the world (including present and future intellectual property rights) including (but not limited to) rights in respect of or in connection with:

- (a) any related confidential information (including but not limited to the Confidential Information), trade secrets, know-how or any right to have information kept confidential;
- (b) copyright (including moral rights, future copyright and rights in the nature of or analogous to copyright) throughout the world in all literary works, artistic works, computer software and any other works or subject matter in which copyright subsists and may in the future subsist;
- (c) inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or techniques;

- (d) trade and service marks (whether registered or unregistered), business names, trade names, domain names, logos and get-up; and
- (e) proprietary rights under the *Circuit Layouts Act 1989* (Cth),

whether or not existing at the date of this agreement and whether or not registered or registrable and includes any and all variations, modifications or enhancements to each of them together with any application or right to apply for registration of those rights and includes all renewals and extensions.

**Law** means:

- (a) legislation, ordinances, regulations, by-laws, orders, awards, proclamations, directions and codes of practice or conduct of the Commonwealth, a State or Territory or any Authority;
- (b) certificates, licences, consents, permits, approvals, qualifications, registrations, standards or requirements (including the payment of fees and charges) of organisations having jurisdiction in connection with the supply of the Deliverables under this agreement; and
- (c) all other laws from which legal rights and obligations may arise.

**Loss** means any loss, cost, damage, expense (including lawyer's fees and expenses on a full indemnity basis), claim, demand or liability.

**Moral Right** means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, which rights are created by the *Copyright Act 1968* (Cth), and if any work is used in any jurisdiction other than in Australia, any similar right capable of protection under the laws of that jurisdiction.

**Personal Property** means property that is personal property (as defined in the PPSA) and to which the PPSA applies.

**Policies** means:

- (a) any policies or procedures adopted by the Contractor or the owner or controller of the Site from time to time, copies of which will be provided to the Supplier by the Contractor on request; and
- (b) any other policies or procedures as notified by the Contractor to the Supplier from time to time.

**PPS Law** means:

- (a) the PPSA and any regulations made under the PPSA as amended from time to time; and
- (b) any amendment made to any other Law as a consequence of the PPSA or any regulations made under the PPSA including amendments to the Corporations Act.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Price** means the price for the Deliverables payable by the Contractor to the Supplier as set out in the purchase order, or as calculated for actual quantities supplied using the rates on the purchase order.

**Proportionate Liability Law** means the Law which provides (whether on a voluntary or mandatory basis) for the apportionment of liability for a legal wrong between different persons, including concurrent wrongdoers, in the State or Territory in which the Deliverables are delivered or performed.

**Related Body Corporate** has the meaning given to it in section 9 of the Corporations Act.

**Security Interest** means:

- (a) in relation to any Personal Property, has the same meaning as in the PPSA; and
- (b) in relation to property other than Personal Property, means any security or the payment of money or performance of obligations including any security or preferential interest or arrangement of any kind, or any other right of or arrangement with any creditor to have its claims satisfied prior to other creditors with, or from proceeds of sale of, any asset including, without limitation, retention of title other than in the ordinary course of business and any deposit of money by way of security.

**Services** means any services provided or to be provided by the Supplier as part of the Deliverables.

**Site** means any land, place or site at which the Deliverables are to be delivered or performed.

**SOP Legislation** means the Law which regulate the resolution of payment disputes under a construction contract, in the State or Territory in which the Deliverables are delivered or.

**Specifications** means the specifications, drawings and any other documents (if any) annexed or attached to, or incorporated by reference in, the purchase order.

**Supplier** means the party who is supplying the Deliverables under this agreement.

**Supplier Equipment** has the meaning given in clause 24(a).

**Term** means the term of this agreement commencing on the Commencement Date and expiring upon the completion of the Supplier's obligations under this agreement.

**WH&S Legislation** means the Law relating to workplace health and safety in the State or Territory in which the Deliverables are delivered or performed.

## 20.2 Interpretation

In this agreement:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this agreement;
- (b) the singular includes the plural and the plural includes the singular and a gender includes all other genders;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- (d) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any Authority (whether or not having a separate legal identity);
- (e) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this agreement and a reference to this agreement includes any clause, annexure, exhibit and schedule;
- (f) a reference to a document (including this agreement) includes all amendments or supplements to, or replacements or novations of, that document;

- (g) a reference to a party to any document includes that party's successors and permitted assigns;
- (h) a reference to time is to time in the State or Territory in which the Deliverables are delivered or performed;
- (i) a reference to any legislation or Building Code of Practice includes all delegated legislation made under it and includes all amendments, consolidations, replacements or re-enactments of any of them, from time to time;
- (j) a promise, agreement, representation or warranty by two or more persons binds them jointly and severally;
- (k) the Supplier's obligations to rectify any Defective Deliverables are paramount and are not affected, relieved or diminished by any limitation or exclusion of liability or Loss;
- (l) a provision of this agreement may not be construed adversely against a party solely on the ground that the party (or that party's Associate) was responsible for the preparation of this agreement or the preparation or proposal of that provision;
- (m) a reference to a body, other than a party to this agreement (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (n) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in this agreement do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;
- (o) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
- (p) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;
- (q) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5.00 pm on that day, it is taken to have occurred or been done on the next day; and
- (r) a reference to '\$', 'A\$', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia.

## 21. Additional clauses which apply to the supply of Goods

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### 21.1 Title, Possession and Risk

If the Supplier is supplying Goods:

- (a) title to the Goods passes to the Contractor on the earlier of:
  - (i) the first date on which the Contractor makes a payment in respect of the Goods; or
  - (ii) the date on which the Goods are delivered to the Contractor under this agreement;and



- (b) risk in the Goods passes to the Contractor when the Goods are delivered to the Contractor under this agreement and the Contractor signs a delivery receipt acknowledging delivery.

## 21.2 Supplier warranties

The Supplier warrants to the Contractor that:

- (a) the subsequent use or on-sale of those Goods, will not infringe the Intellectual Property Rights of any third party
- (b) those Goods are owned by the Supplier or will at the time of supply to the Contractor be owned by the Supplier;
- (c) those Goods are free of any Security Interests; and
- (d) those Goods are new (including being made of new components), free from deficiencies in design, manufacture and workmanship.

## 21.3 Inspection and Testing of Goods

- (a) If the Supplier is supplying Goods, the Contractor may inspect and/or test the Goods prior to and/or after they have been supplied by the Supplier.
- (b) The Supplier must provide the Contractor with access to the premises of the Supplier (upon reasonable request and notice) in order to enable the Contractor to inspect and/or test the Goods in accordance with clause 21.3(a) above.
- (c) The Contractor's inspection, testing or acceptance of or payment for some or all of the Goods does not in any way:
  - (i) change or affect the Supplier's obligations under this agreement; or
  - (ii) affect the Contractor's rights to:
    - (A) make a claim for any Loss it may suffer because of the Supplier's breach of any warranty or failure to fulfil any of its other obligations under this agreement; and/or
    - (B) reject any Defective Deliverables.

## 21.4 Personal Property Security

- (a) If the Supplier is supplying Goods, the Supplier grants a Security Interest in the Goods so as to secure performance of its obligations under this agreement and any payment of the Price made by the Contractor.
- (b) If the Contractor determines that the agreement (or a transaction in connection with it) is or contains a Security Interest for the purposes of the PPSA, the Supplier agrees to do anything (such as obtain consents, sign and produce documents, get documents completed and signed, and supply information) at its cost which the Contractor asks for and considers necessary (acting reasonably) for the purposes of enabling the Contractor:
  - (i) to apply for any registration (under whatever collateral class the Contractor thinks fit);
  - (ii) give any notification, in connection with the Security Interest; and

- (iii) to exercise rights in connection with the Security Interest,
- so that:
- (iv) the Security Interest is enforceable, perfected (including where possible, by control in addition to registration) and otherwise effective; and
  - (v) the Security Interest has the priority required by the Contractor; and
  - (vi) consents to any such registration or notification and agrees not to make an amendment demand.
- (c) Without limiting clause 19.5, the Supplier must:
- (i) not create or register any Security Interest or lien over any of the Contractor's Personal Property (whether a general Security Interest, an all present and after acquired property Security Interest or otherwise); and
  - (ii) notify the Contractor at least 10 Business Days before:
    - (A) the Supplier changes its name, principal place of business or place of registration or incorporation;
    - (B) any ABN or ARBN allocated to the Supplier changes, is cancelled or otherwise ceases to apply to it (or if it does not have an ABN or ARBN or one is allocated, or otherwise starts to apply, to it); and
    - (C) the Supplier becomes trustee of a trust, or a partner in a partnership.
- (d) To the extent the Law permits:
- (i) for the purposes of sections 115(1) and 115(7) of the PPSA:
    - (A) the Contractor need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) and 132(4); and
    - (B) sections 142 and 143,are excluded;
  - (ii) for the purposes of section 115(7) of the PPSA, the Contractor need not comply with sections 132 and 137(3);
  - (iii) if the PPSA is amended after the date of the agreement to permit the Supplier and the Contractor to agree to exclude other provisions of the PPSA, the Contractor may notify the Supplier that the Contractor need not comply with any of those provisions as notified to the Supplier by the Contractor; and
  - (iv) the Supplier agrees not to exercise its rights under section 275 of the PPSA, or to authorise the disclosure of any information under that section.
- (e) To the extent the Law permits, the Supplier waives its rights to receive:
- (i) any notice required under any provision of the PPSA (including a notice of a verification statement); and

- (ii) any notice, or lapse of time, that is required by any other Law before the Contractor or a receiver exercises a right, power or remedy under the Subcontract.
- (f) If the Law, which requires a period of notice or a lapse of time to be given, cannot be excluded, but the Law provides that the period of notice or lapse of time may be agreed, that period or lapse is 1 day or the minimum period the Law allows to be agreed (whichever is the longer).
- (g) However, nothing in this clause 21.4 prohibits the Contractor or any receiver from giving a notice under the PPSA or any other Law.

## 22. Additional clauses which apply to the provision of Services

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### 22.1 Supplier's Associates

If the Supplier is providing Services:

- (a) the Supplier must provide, at its own expense, appropriately experienced, qualified, accredited, licensed and trained Associates;
- (b) the Contractor has no responsibility to the Supplier or to the Supplier's Associates in respect of any remuneration, taxation instalments, workers' compensation, superannuation, annual leave, sick leave, long service leave, public holidays, redundancy payments or any other similar benefits under any industrial agreement or law;
- (c) the Supplier's Associates have no right or authority to bind the Contractor, assume or create any obligations for or on behalf of the Contractor, or make any representations or warranties for or on behalf of the Contractor and must in no way represent or hold themselves out as having such right or authority (including being in a relationship of employment, partnership, agency or joint venture with the Contractor and will not do any act or thing whereby any employment, partnership, agency or joint venture will be presumed or implied);
- (d) upon request, the Supplier must provide copies of all documents reasonably required by the Contractor to verify that all Associates who will provide the Deliverables are competent and appropriately qualified, accredited, licensed and trained to provide the Deliverables; and
- (e) all of the Supplier's Associates who will provide the Deliverables must be fit for work, which includes without limitation that the Associates are in a physical, mental and emotional state that enables him or her to perform the Services in a competent and diligent manner, and in a manner that does not (or is not likely to) adversely affect the safety or health of themselves or others.

## 23. Additional clauses which apply where the Supplier or its Associates are required to enter a Site

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### 23.1 Sites

If the Supplier or its Associates are required to enter a Site to provide the Deliverables:

- (a) the Supplier remains fully responsible for, and must exercise sufficient control over, its Associates irrespective of any review or acceptance of the Services by the Contractor;

- (b) the Supplier must ensure its Associates who provide the Services comply with the Policies, the Contractor's HSEQ Requirements and all lawful directions of the Contractor (including in relation to industrial relations on Site);
- (c) the Supplier must, and must ensure that its Associates, comply with all Laws, including WH&S Legislation, and where the Deliverables include any design the Supplier must exercise and fulfil the functions and obligations of a designer under the WH&S Legislation including registration of that design;
- (d) if requested by the Contractor, the Supplier must provide full pre-employment reference checks on all Associates who provide the Services, which may include police clearances, visa checks and other work clearances;
- (e) if requested by the Contractor, the Supplier is responsible to obtain (at its cost) all pre-employment medical assessments of all Associates who supply the Services;
- (f) the Supplier must ensure that its Associates attend any pre-mobilisation requirements, Site induction and questionnaires required by the Contractor or the owner or controller of the Site;
- (g) if requested by the Contractor, the Supplier must:
  - (i) liaise with the Contractor (including attending workshops) to ascertain whether there are any identified or potential work, health and safety hazards and risks in connection with the supply of the Deliverables;
  - (ii) identify, exercise and implement all precautionary measures necessary for the work, health and safety of and the welfare of all workers and other persons and other third parties who may be affected by the supply of the Deliverables; and
  - (iii) otherwise eliminate or if not possible, then minimise, work, health and safety hazards and risks in connection with the supply of the Deliverables;
- (h) if the Contractor gives notice to the Supplier that a Supplier's Associate involved in the delivery of the Deliverables has ceased to be acceptable to the Contractor (acting reasonably), the Supplier must take immediate steps to remove that Associate and provide an alternative Associate acceptable to the Contractor within the timeframe stipulated by the Contractor, at no cost to the Contractor;
- (i) the Supplier's Associates may only gain access to and enter and remain on the Site as specified in this agreement or as directed by the Contractor or the owner or controller of the Site;
- (j) the Supplier must not disrupt any activities on the Site and must ensure that it and its Associates:
  - (i) take all measures necessary to protect people and property;
  - (ii) avoid unnecessary interference with the passage of people and vehicles;
  - (iii) comply with any direction of the Contractor or the owner or controller of the Site with respect to parking vehicles in, on or around the Site;
  - (iv) do not undertake any activity which may result in a Contaminant being introduced to the Site, or use substances which may give rise to or become a Contaminant at any time; and
  - (v) prevent nuisance and unnecessary noise and disturbance;

- (k) the Supplier must ensure that the Site (or any part over which it has control) is kept secure, clean, orderly and fit for immediate use;
- (l) the Supplier must ensure each Site is left in the same condition as it was as at the time it entered the Site, fair wear and tear excepted;
- (m) the Supplier must immediately notify the Contractor of any breach (or potential breach) of any Law, including Laws relating to the Environment upon becoming aware of it; and
- (n) the Supplier must immediately notify the Contractor of any accident, injury, property damage or Contaminant which occurs during delivery of the Deliverables and co-operate with any investigations undertaken in relation to any accident, injury, property damage or Contaminant which occurs during delivery of the Deliverables.

## 23.2 Supplier warranties

The Supplier warrants to the Contractor that:

- (a) it and its Associates will act in a safe manner, in compliance with all Laws, including those Laws relating to immigration, anti-bribery and corruption, occupational health and safety and the environment; and
- (b) before entering into this agreement, it:
  - (i) inspected the Site, or was afforded an opportunity to inspect the Site;
  - (ii) investigated and/or allowed for all local and other conditions which may affect the supply of the Deliverables, including in relation to meteorological, geological, labour, accommodation, fuel, power, water, telecommunications and transport conditions; and
  - (iii) made its own enquiries to satisfy itself as to the truth and accuracy of, and has therefore not relied upon, any written or oral information provided by the Contractor.

## 24. Additional clauses which apply where Supplier Equipment is used

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- (a) If any plant, equipment, tools, appliances, property, consumables or items (**Supplier Equipment**) are required to supply the Deliverables or for the Supplier to otherwise fulfil its obligations under this agreement, the Supplier must supply the Supplier Equipment at its own expense.
- (b) Any Supplier Equipment supplied or used by the Supplier in conjunction with the Deliverables must throughout the Term be:
  - (i) of merchantable quality;
  - (ii) operated and maintained in accordance with the Policies;
  - (iii) fit for the purpose for which the Supplier Equipment is commonly used; and
  - (iv) comply with all applicable Laws.
- (c) If requested by the Contractor, the Supplier must provide the Contractor with the service history and records for the Supplier Equipment prior to mobilising it to Site and carry out

maintenance and services to that Supplier Equipment in accordance with manufacturer's requirements.

## 25. Additional clauses which apply to hire of Goods

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### 25.1 Deliverables Standards

If the Deliverables comprise hiring Goods to the Contractor:

- (a) the Supplier must provide the Contractor with:
  - (i) a copy of the current registration certificate for the Goods (if applicable);
  - (ii) a risk assessment including identification of any hazards in the design which a person using the Goods may be exposed, an assessment of the risk of injury or harm for each identified hazard and how that risk of injury or harm may be minimised; and
  - (iii) a copy of the safe operating instructions, pre-start inspection checklist for the Goods and maintenance records including the latest service and any fault information; and
- (b) any earthmoving equipment must be fitted with compliant roll over protection structures and falling object protection structures where required under Law.

### 25.2 Title, Possession and Risk

- (a) If the Deliverables comprise hiring Goods to the Contractor:
  - (i) the parties acknowledge that nothing in this agreement passes title in the Goods to the Contractor;
  - (ii) the Contractor shall not do anything or permit anything to be done to adversely affect the Supplier's interest as owner or lessee of the Goods;
  - (iii) during the Term, the Supplier and its Associates shall not:
    - (A) sell or otherwise dispose of its estate and interest in all or part of the Goods to any third party without the prior written consent of the Contractor (acting reasonably); and/or
    - (B) through their acts, omissions or negligence interfere with the Contractor's quiet, uninterrupted possession of the Goods; and
  - (iv) risk in the Goods will remain with the Supplier at all times.

### 25.3 Supplier warranties

The Supplier warrants to the Contractor that the Goods:

- (a) comply with any representations made by the Supplier to the Contractor in respect of the Goods' specifications (including any samples provided by or on behalf of the Supplier to the Contractor);

- (b) are owned by the Supplier or at the time of hire to the Contractor the Supplier will be entitled to legal possession of the Goods and be entitled to pass that possession to the Contractor;  
and
- (c) are good and workable condition and have been maintained and serviced in accordance with manufacturer's requirements.

#### 25.4 **Defective Deliverables**

If the Goods breakdown or become Defective Deliverables through no fault of the Contractor:

- (a) the Contractor may direct the Supplier to repair or replace the Goods and the time in which to do so;
- (b) the Supplier shall bear the cost of repair or replacement and no charges for the Goods shall apply from the time the Contractor notified the Supplier of the breakdown or that the Goods are Defective Deliverables; and
- (c) if the Supplier fails to repair or replace the Goods in the time directed by the Contractor, without limiting the Contractor's other rights under this agreement, the Contractor may have the Goods repaired or replaced by a third party and the cost of such repair or replacement shall be a debt due and owing by the Supplier to the Contractor.