

1 DEFINITIONS

In this Contract unless the context otherwise requires:

"Acceptable" means, in relation to Goods:

- (a) the Goods are in accordance with the requirements of the Contract, as reasonably determined by the Purchaser, except for minor defects which do not:
 - (i) prevent the Goods from being reasonably capable of being used for the intended purpose of the Goods, including any purpose in the Contract; or
 - (ii) adversely affect the normal use of the Goods;
- (b) where the Contract so requires, the Goods satisfy acceptance testing; and
- (c) documents and other information required under the Contract and any other documents and information which, in the Purchaser's opinion, are essential for the use, operation and maintenance of the Goods have been supplied to the Purchaser.

"Acceptance" means the stage at which the Goods have been delivered to the Delivery Location and the earlier of when:

- (a) the Purchaser has notified the Supplier that the Goods are Acceptable; and
- (b) the Purchaser has failed to notify the Supplier that the Goods are either Acceptable or are not Acceptable and the time allowed for the Purchaser to do so by this Contract (including these Terms and Conditions) has expired.

"Approved Security" means the security required to be provided by the Supplier in the form of an unconditional undertaking with no expiry date and given by a financial institution approved by the Purchaser with operating branches within the State or Territory in which the Project is located.

"Completion" means that stage in the carrying out of the Works/Services when:

- (a) the Works/Services are complete except for minor Defects which do not prevent the Works/Services from being reasonably capable of being used for its intended purpose and the rectification of which will not prejudice the convenient use of the Works/Services;
- (b) those tests which are required by this Contract to be carried out and passed have been carried out and passed;
- (c) documents and other information required under the Contract and any other documents and information which, in the Purchaser's opinion, are essential for the use, operation and maintenance of the Work/Services have been supplied to the Purchaser;
- (d) the Supplier has provided to the Purchaser any approvals, consents or certificates relating to and necessary for the completion, use or occupation of the Works/Services; and
- (e) the Supplier has done everything else which is expressed in this Contract to be a condition precedent to, or something that must be done before, Completion;

"Contract" means the Purchase Order and these Terms and Conditions;

"Date for Delivery" means the date/s and/or time/s on which:

- (a) the Goods are to be delivered to the Delivery Location and achieve Acceptance; and/or
- (b) the Works/Services provided are to achieve Completion, as specified in the Purchase Order or as directed by the Purchaser.

"Date of Delivery" means the date/s and/or time/s on which:

- (a) the Goods are actually delivered to the Delivery Location and achieve Acceptance; and/or
- (b) the Works/Services actually achieve Completion.

"day" means calendar day, unless otherwise stated;

"Defective" means:

- (a) in relation to Goods: Goods which are not in accordance with this Contract or Goods failing to perform at a satisfactory level for the Purchaser's purposes or in accordance with the level of performance typically expected of goods of a similar specification;
- (b) in relation to Works/Services: Works/Services which are not in accordance with this Contract, are not of the standard expected of a competent professional contractor/supplier experienced in providing the same or similar works and/or services or are not in accordance with any reasonable Direction by the Purchaser,

and **"Defect(s) will have a corresponding meaning.**

"Defects Liability Period" means the period, if any, stated in the Contract after:

- (a) in case of Goods, the Goods are notified by the Purchaser as being Acceptable; and
- (b) in the case of Works/Services, Completion has been achieved for all the Works/Services;

"Delivery Location" means the location specified in the Purchase Order, or as otherwise directed by the Purchaser, to where the Supplier must deliver the Goods and/or perform the Works/Services;

"Direction" means a direction, decision, demand, determination, instruction, notice, order, rejection or requirement of the Purchaser;

"Dispute" means any dispute or difference arising under or in connection with this Contract on which the parties have failed to agree and which a party wishes to raise as an issue to be resolved.

"Goods" means the goods, materials or products described and specified in the Purchase Order including all necessary ancillary and associated items, things or works and/or services;

"Insolvency Event" means in relation to a party, an event where any one of the following occurs: the bankruptcy, winding up or insolvency of that party; or that party enters into any scheme of arrangement or composition; or a receiver or administrator is appointed to any property of that party, but only to the extent that the Corporations Act 2001 (Cth) does not prevent a party from terminating this Contract because of that Insolvency Event;

"Intellectual Property" means any intellectual or industrial property rights, whether registered or unregistered, including without limitation:

- (a) all patents, trade marks, copyright, designs, trade secrets, know-how and other rights in any design, materials, processes, documents and methods of working; and

(b) all licences and other rights to use or to grant the use of any of the foregoing;

"Notice of Dispute" a written notice to the other party that identifies the nature, basis and, if relevant, indicative quantum, of the Dispute, together with sufficient details and supporting documentation to allow the other party to properly assess the Dispute.

"Payment Claim" means the claim for payment made by the Supplier in accordance with this Contract;

"Price" means:

- (a) where there is a lump sum in the Purchase Order, that lump sum; or
- (b) where there are rates in the Purchase Order, the sum ascertained by multiplying those rates by the quantity properly delivered and performed in accordance with this Contract; or
- (c) where there are both rates and lump sums in the Purchase Order, the aggregate of the sums referred to in paragraphs (a) and (b), as adjusted under this Contract;

"Project" means the project for which the Purchaser is carrying out its own works;

"Purchase Order" means the document issued by the Purchaser to the Supplier to order the Goods and/or Works/Services, and includes any specifications, drawings or other documents that may be contained or referred to therein or annexed thereto;

"Purchaser" means the party identified as the Purchaser in the Purchase Order.

"Purchaser Responsibilities" means those tasks described in the Contract as being the sole responsibility of the Purchaser.

"Purchaser Supplied Items" means items described in the Contract to be supplied by the Purchaser to the Supplier free of charge for use solely in performance of the Supplier's Contract obligations and in accordance with any terms and conditions notified to the Supplier by the Purchaser.

"Separable Portion" means each item, part or portion of the Goods and Works/Services as identified under, or in accordance with, this Contract.

"Site" means the location where the Purchaser is undertaking the Project;

"Security of Payment Act" means legislation applying in the jurisdiction where the supply of the Goods and/or Works/Services takes place, that has amongst its objectives

the creation of a statutory entitlement to progress payments for the performance of construction work or provides procedures for determining or securing payment of that entitlement, pending any final assessment under the relevant construction contract including the Building and Construction Industry Security of Payment Act 1999 (NSW), the Building and Construction Industry Security of Payment Act 2002 (Vic), the Building Industry Fairness (Security of Payment) Act 2017 (Qld), the Queensland Building and Construction Commission Act 1991 (Qld), the Construction Contracts Act 2004 (WA), the Construction Contracts (Security of Payments) Act 2004 (NT), the Building and Construction Industry Security of Payment Act 2009 (SA), Building and Construction Industry Security of Payment Act 2009 (Tas) or the Building and Construction Industry Security of Payment Act 2009 (ACT);

"Special Conditions" means provisions of the Purchase Order which are inconsistent with any term or condition of these Terms and Conditions;

"Supplier" means the party identified as the supplier in the Purchase Order;

"Terms and Conditions" means this document titled "Purchase Order Terms and Conditions";

"Variation" means any:

- (a) change in the quantity of the Goods and/or Works/Services including omitting any Goods and/or Works/Services with a view to undertaking the supply and/or performance by the Purchaser itself or by a third party;
- (b) change in the character or quality of the Goods and/or Works/Services; or
- (c) any other change in the scope of the supply under this Contract, as directed by the Purchaser in writing and identified as a Variation.

"Works/Services" means the works and/or services described and specified in the Purchase Order including all necessary ancillary and associated consumables, things or works and/or services.

2 INTERPRETATION

2.1 In this Contract unless a contrary intention appears:

- (a) clause headings are inserted for convenience only and will not be used in the interpretation of this Contract;
- (b) a reference to the word "including" and similar expressions are not words of limitation;
- (c) any Special Conditions forming part of this Contract will take precedence over these Terms and Conditions and these Terms and Conditions will take precedence over all annexures, schedules or appendices to this Contract;
- (d) references to parties, clauses, schedules or annexures are references to parties, clauses, schedules or annexures to, or of, this Contract and a reference to this Contract includes any schedule or annexure;
- (e) a reference to this Contract or to any other agreement, deed or document, includes respectively, this Contract or that other agreement, deed or document as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to a person includes a reference to a firm, body corporate, an unincorporated body or other entity however constituted;
- (g) a party includes the party's executives, administrators, successors and permitted assigns;
- (h) if a party consists of more than one person this Contract binds them jointly and each of them severally;
- (i) references to payments to any party shall be construed to include payments to another person upon the direction of such party;
- (j) references to any legislation, or to any section or provision of any legislation, includes any statutory modification or re-enactment or any statutory provision substituted for it, and any ordinances, by-laws, regulations and other statutory instruments issued under such legislation;
- (k) where a party executes this Contract in its capacity as a trustee, a reference to that party includes any substituted or additional trustee;
- (l) an obligation, covenant, representation or warranty on the part of more than one party shall be deemed to be an obligation, covenant, representation or warranty on the part of those parties jointly and each of them severally;
- (m) the singular will include the plural and vice versa and a reference to any gender includes all genders; and
- (n) a reference to dollars or \$ is to Australian Dollars.

3 AGREEMENT TO SUPPLY GOODS AND/OR WORKS/SERVICES

3.1 The acceptance by the Supplier of a Purchase Order constitutes a contract for the supply of the Goods and/or performance of the Works/Services in accordance with the terms and conditions of this Contract. The Supplier agrees to supply the Goods and/or perform the Works/Services to the Purchaser in consideration for the Price.

4 WARRANTIES

4.1 The Supplier warrants and represents that the Purchaser will have ownership of the Goods and/or the product of the Works/Services free of any charge, lien, encumbrance or any other interest by a third party and that the Purchaser will have the ownership of all Intellectual Property relating to the Goods and/or Works/Services.

4.2 In relation to Goods, the Supplier warrants and represents that the Goods:

- (a) are new, of merchantable quality, are not Defective, are fit for the purposes for which the Purchaser requires them and are in accordance with the requirements of this Contract;
- (b) will be capable of operating satisfactorily and safely in the environment to which they will be exposed;
- (c) correspond with any sample and/or description made available by the Purchaser to the Supplier, or provided to the Purchaser by the Supplier; and
- (d) are in compliance with any applicable standards, including, but not limited to any applicable Australian Standards and any other relevant standards.

4.3 In relation to Works/Services, the Supplier must:

- (a) perform the Works/Services to the standard of professional care, skill, judgement and diligence expected of a competent professional contractor/supplier experienced in providing the same or similar works and/or services;

- (b) follow any reasonable Direction by the Purchaser;
- (c) rectify all deficiencies, defects, faults, errors and omissions in the Works/Services, which are not caused solely by the Purchaser, at no cost to the Purchaser. If any such deficiency, defect, error or omission in the Works/Services causes the Purchaser to incur any loss, then the Supplier must fully compensate the Purchaser for that loss;
- (d) ensure the Works/Services are in compliance with any applicable standards, including, but not limited to any applicable Australian Standards and any other relevant standards; and
- (e) utilise the nominated personnel to perform the Works/Services.
- 4.4 The Supplier will be encompassed by and adhere to the Purchaser's management plans detailed in the Purchaser Order. The Supplier acknowledges that it has examined the management plans and is satisfied with the contents for the purposes of complying with its obligations under this Contract.
- 4.5 The Supplier must obtain at its costs all manufacturer warranties and guarantees that apply to the Goods and procure the assignment to the Purchaser of the benefit of such warranties or guarantees on or before delivery of the Goods to the Purchaser.
- 5 DIRECTIONS**
- 5.1 The Supplier and its personnel, consultants, agents and subcontractors, must comply with the Purchaser's Directions whether oral or in writing. Where an oral Direction is given, the Purchaser must, if requested to do so by the Supplier, confirm the Direction in writing within a reasonable time.
- 6 DELIVERY OF THE GOODS AND/OR WORKS/SERVICES**
- 6.1 The Goods will be delivered to the Delivery Location on the Date for Delivery, or, if no date is specified, as soon as is reasonably possible and in accordance with any Direction given by the Purchaser. Delivery may be required on any day.
- 6.2 The Works/Services must:
- (a) be commenced immediately upon the acceptance by the Supplier of a Purchase Order or as otherwise directed by the Purchaser;
- (b) achieve Completion on or before the Date for Delivery; and
- (c) carried out at the Delivery Location.
- 6.3 The Purchaser may, at its sole and absolute discretion, amend the Date for Delivery to an earlier or later date by giving notice to the Supplier of the new Date for Delivery. The Purchaser is not under any circumstances obliged to exercise this discretion reasonably or for the benefit of the Supplier. If the amended Date for Delivery is later, the Supplier must not deliver the Goods and/or Works/Services until the amended later Date for Delivery and is not entitled to claim any additional payments as a result of the amended later Date for Delivery.
- 6.4 On the Date of Delivery, the Supplier must, at its own expense (unless otherwise directed by the Purchaser), promptly unload the Goods at the area(s) of the Delivery Location as directed by the Purchaser. The Purchaser will provide suitable and safe access for delivery vehicles used by the Supplier at all times.
- 6.5 The Supplier must:
- (a) provide to the Purchaser a detailed program for the projected supply of the Goods and/or Works/Services and strictly abide by that program;
- (b) promptly advise the Purchaser when the Goods have been dispatched to the Delivery Location and provide the anticipated delivery time;
- (c) promptly advise the Purchaser when the Goods arrive at the Delivery Location;
- (d) ensure that the Goods are suitably packed to avoid damage in transit or storage;
- (e) ensure that the Goods are undamaged upon arrival to the Delivery Location;
- (f) ensure that all Goods are clearly marked and identified;
- (g) ensure that any Supplier personnel, consultants, agents or subcontractors present at the Delivery Location observe the rules of the Delivery Location, including any personal protective equipment requirements;
- (h) in the event that the Goods are lost, damaged or destroyed during delivery to the Delivery Location, indemnify the Purchaser for any losses in relation to that loss, damage or destruction;
- (i) ensure that the Goods have a delivery docket attached to them at the time that they are dispatched to be delivered to the Delivery Location that is signed by the person delivering the Goods; and
- (j) at the time of delivery, have the delivery docket signed by the Purchaser's representative, stating the time and date of delivery. Signed delivery dockets will be evidence of delivery only and will not constitute or be deemed to constitute acceptance of the Goods by the Purchaser.
- 6.6 Without prejudice and in addition to its other rights under this Contract, if the Supplier:
- (a) delivers the wrong type, quantity or quality of Goods then the Purchaser may accept or reject, entirely or in part the Goods delivered and where the Goods are to be returned to the Supplier, shall be packaged and returned at the Supplier's expense; and/or
- (b) delivers the Goods at a time or place other than the Date for Delivery and the Delivery Location, then the Purchaser may refuse or reject the Goods,
- the Purchaser may, without prior notice, procure the Goods from another supplier, and the Supplier will be liable for any additional costs incurred by the Purchaser.
- 7 INSPECTION AND TESTING**
- 7.1 At any time, the Purchaser is entitled to inspect, examine and test the Goods and/or Works/Services. No inspection or testing, nor the results of the inspection or testing by the Purchaser will in any way relieve or reduce the obligations of the Supplier to the Purchaser under this Contract or otherwise.
- 7.2 At all reasonable times, the Purchaser has the right to carry out site inspections, examinations and testing at the Supplier's premises or any other premises where the Goods are being manufactured or stored.
- 7.3 The Supplier must:
- (a) provide to the Purchaser, at the Purchaser's request, copies of all technical and quality documentation and information relating to the Goods and/or Works/Services and all other reasonable assistance; and
- (b) ensure that the Purchaser is provided with access to the Supplier's premises or any other premises where the Goods are or were being manufactured or stored,
- to enable the Purchaser to inspect, examine and test the Goods and/or Works/Services.
- 7.4 If the inspections, examinations or tests show the Goods and/or Work/Services to be Defective, the costs incurred by the Purchaser in conducting the inspections, examinations and tests will be a debt due from the Supplier to the Purchaser.
- 8 ACCEPTANCE AND REJECTION OF GOODS AND/OR WORKS/SERVICES**
- 8.1 The Purchaser must use best endeavours to inspect and assess the Goods as soon as practicable after the Date of Delivery (being the later of seven (7) days after the Date of Delivery and any other period nominated in the Contract) and advise the Supplier whether the Goods are Acceptable. If the Goods are not Acceptable:
- (a) the Purchaser must provide reasons;
- (b) the Supplier must re-deliver the Goods,
- and the process of delivery by the Supplier and assessment by the Purchaser whether the Goods are Acceptable is repeated until Acceptance is achieved.
- 8.2 A failure by the Purchaser to inspect or assess the Goods, or the Acceptance of the Goods by the Purchaser, which are or will be Defective, does not constitute a waiver and does not relieve the Supplier from its obligation under the Contract
- 8.3 If, at any time prior to the expiration of the Defects Liability Period, it is apparent to the Purchaser that the Goods and/or Works/Services are Defective, then the Purchaser may, at its sole discretion:
- (a) return the Defective Goods to the Supplier;
- (b) direct the Supplier to rectify any omissions or defects in the Defective Goods and/or Works/Services within a period of time determined at the Purchaser's discretion;
- (c) direct the Supplier to replace the Defective Goods within a period of time determined at the Purchaser's discretion; and/or
- (d) withhold any payment due to the Supplier.
- 8.4 In the event that the Supplier fails to comply with such a Direction within the time specified by the Purchaser, then the Purchaser may have the work of rectification, removal and/or replacement carried out by third parties and the actual cost of doing so will be a debt due from the Supplier to the Purchaser. All costs associated with:
- (a) repairing, reinstating or replacing Defective Goods and/or Works/Services;
- (b) any other materials or part of the Project affected; or
- (c) any other losses incidental to the failure of the Goods and/or Works/Services, will be to the account of the Supplier.
- 9 SEPARABLE PORTIONS**
- 9.1 In these Terms and Conditions, the expressions:
- (a) Acceptable;
- (b) Completion;
- (c) Date for Delivery;
- (d) Date of Delivery;
- (e) Defective and Defect(s); and
- (f) Defects Liability Period,
- apply separately to each Separable Portion and references therein to the Goods and Works/Services means so much of the Goods and Works/Services as is comprised in the relevant Separable Portion.
- 9.2 In addition to any Separable Portions stated in the Contract, Separable Portions may be directed by the Purchaser at any time, who shall identify for each Separable Portion, the:
- (a) portion of the Goods and Works/Services;
- (b) Date for Delivery; and
- (c) respective amounts for security (including Approved Security), retention and liquidated damages (all calculated pro-rata according to the ratio of the Purchaser's valuation of the Separable Portion to the Price).
- 10 DEFECTS LIABILITY PERIOD**
- 10.1 At any time up to 14 days after the expiry of the Defects Liability Period, the Purchaser may direct the Supplier to rectify any Defect. The Supplier must comply with any Direction within the time stated in the Direction, or if no time is stated, within a reasonable time.
- 10.2 If the Supplier fails to comply with a Direction given under this clause, or where the rectification work is required urgently, the Purchaser may perform the work or have the work performed by itself or by others. The cost to the Purchaser of having the work performed will be a debt due from the Supplier to the Purchaser.
- 11 TRANSFER OF TITLE AND RISK**
- 11.1 Title in the Goods and/or Works/Services will be transferred to the Purchaser upon the earlier of:
- (a) payment for the Goods and Works/Services by the Purchaser; or
- (b) the Date of Delivery.
- 11.2 Risk of the Goods and/or Works/Services remains with the Supplier and only transfers to the Purchaser when:
- (a) in case of Goods, all the Goods are notified by the Purchaser as being Acceptable; and
- (b) in the case of Works/Services, Completion has been achieved for all the Works/Services.
- 12 PAYMENT**
- 12.1 The Price and/or each rate making up the Price is fixed, is exclusive of GST (unless stated otherwise) and will not be subject to adjustment for rise and fall or for exchange rate variations. Unless expressly stated in this Contract, no other sums, fees or charges will be payable in relation to the Goods supplied and/or Works/Services performed, or in relation to this Contract generally.
- 12.2 Unless stated otherwise in the Contract, the Supplier must submit to the Purchaser a Payment Claim on the last day of each month. If a Payment Claim is submitted earlier than the last day of the month, then the Purchaser will deem that the Payment Claim was submitted on the last day of the month. If a Payment Claim is submitted later than the last day of the month or if it was submitted earlier than the last day of the month but is not in the form required by this clause, then the Purchaser will deem that the Payment Claim is not submitted until the last day of the following month. Each Payment Claim must:
- (a) contain sufficient detail for the Purchaser to calculate the amount owing;
- (b) be provided in a format approved by the Purchaser and constitute a valid tax invoice; and
- (c) include all supporting documentation.
- 12.3 The amount payable by the Purchaser to the Supplier in relation to each Payment Claim is calculated as follows:
- (a) if rates apply, by applying the rates to the quantities of Goods delivered and/or Works/Services performed by the Supplier in accordance with this Contract, as measured by the Purchaser;
- (b) otherwise, by valuing the Goods and/or Works/Services supplied and work completed to the date of the Payment Claim (as a proportion of the Price);
- (c) by adding or subtracting any other amounts due from one party to the other under the Contract; and
- (d) by deducting retention money pursuant to this Contract.
- 12.4 The Purchaser must assess each Payment Claim within twenty-one (21) days of deemed submission under clause 12.2. If the Payment Claim is not assessed within that time, the Payment Claim is deemed to be disputed in full.
- 12.5 The Purchaser must pay the Supplier the amount calculated by the Purchaser as payable in relation to the Payment Claim within the earlier of:
- (a) Thirty (30) days from the day in which the Payment Claim was deemed to have been submitted;
- (b) if a Security of Payment Act applies and makes payment mandatory within a shorter period of time than thirty (30) days, the last day of the mandatory payment period pursuant to the Security of Payment Act from the date the Payment Claim is deemed to have been submitted under this clause.
- 12.6 Following the delivery of the last Goods and those Goods being deemed Acceptable and/or Completion of the Works/Services, the Supplier will submit its final Payment

Claim and releases the Purchaser from any liability to make any other payments (other than the final Payment Claim as assessed) to the Supplier.

12.7 Payment for the Goods and/or Works/Services does not constitute acceptance of the Goods and/or Works/Services but is a payment on account only.

12.8 Without limiting the Purchaser's rights under any provision in this Contract, the Purchaser may deduct from any sums due to the Supplier (including in respect of a Payment Claim or any retention) any sum which the Purchaser asserts is or may become payable by the Supplier to the Purchaser, whether or not:

- the Purchaser's right to payment arises by way of damages (whether liquidated or unliquidated), debt, restitution or otherwise; or
- the factual basis giving rise to the Purchaser's right to payment arises out of this Contract, any other contract between the Purchaser and Supplier, or is independent of this Contract or any other contract.

Nothing in this clause will affect the right of the Purchaser to recover from the Supplier the whole of any such sum or any balance that remains owing.

13 VARIATIONS

13.1 The Purchaser may, at any time, issue a Variation and the Supplier must perform the Variation. The Supplier must provide an estimate of the cost of the Variation and the impact on the Date for Delivery within seven (7) days of the Variation being issued.

13.2 If the Supplier considers that a Direction from the Purchaser is a Direction for a Variation but which does not comply with the formal requirements of a Variation, in order to have any entitlement arising from that Direction, the Supplier must, within seven (7) days of that Direction and before commencing work pursuant to the Direction, notify the Purchaser in writing that the Supplier considers that the work is a Variation together with an estimate of the cost of the Variation and the impact on the Date for Delivery.

13.3 Where the Purchaser issues a Variation, the Price will be altered by an amount calculated in the following order of priority:

- to the extent that the parties have agreed the amount of the alteration, then the amount agreed;
- to the extent that this Contract provides for the amount of the alteration, then that amount;
- to the extent that the rates contained in this Contract apply, by applying those rates to the quantities properly supplied in accordance with this Contract;
- failing any of the above being applicable, then by the amount reasonably assessed by the Purchaser.

13.4 To have any entitlement to any extra payment or for an extension of time as a consequence of performing a Variation, or, the Goods or Works/Services the subject of a Direction which it considers to be a Direction for a Variation, the Supplier must strictly comply with the requirements of this clause 13.

14 EXTENSION OF TIME

14.1 The Supplier must, on becoming aware of anything which will probably cause delay to the Acceptance of the Goods and/or Completion of the Works/Services shall promptly, and in any event within 24 hours, give the Purchaser written notice of that cause, the estimated delay and mitigation steps the Supplier is taking to mitigate the delay.

14.2 The Purchaser may, by notice in writing to the Supplier, extend the Date for Delivery. The Purchaser is not under any circumstances obliged to exercise this discretion reasonably or for the benefit of the Supplier. The Supplier is not entitled to claim any additional payments as a result of the later Date for Delivery.

14.3 The Supplier is only entitled to an extension to the Date for Delivery when:

- the Supplier can demonstrate that it actually has been or will be delayed in achieving the Date for Delivery by a Variation or any act or omission by the Purchaser, the Purchaser's personnel, consultants, agents or subcontractors;
- the cause was beyond the reasonable control of the Supplier;
- the Supplier has not contributed to the cause and has taken all reasonable steps to mitigate the effect of the delay; and
- the Supplier has given the Purchaser all notices strictly in accordance with the requirements of this clause.

14.4 Where one period of delay has more than one cause, and if one or more of those causes is not a cause for which the Supplier is entitled to claim an extension of time, the Supplier will have no entitlement to an extension of time for that period of delay.

14.5 Where the Supplier wishes to make a claim for an extension of time, the Supplier must give a notice in writing to the Purchaser within seven (7) days of the commencement of the cause of the delay which provides full detailed particulars of the cause of the delay, how that cause has delayed or will delay the Supplier from achieving the Date for Delivery, the period of the delay (including the dates of commencement and, if applicable, conclusion of the delay) and the extension of time claimed.

14.6 The Purchaser will determine the period of any extension of time to the Date for Delivery to which the Supplier is entitled as a consequence of the alleged cause of the delay. A failure of the Purchaser to grant a reasonable extension of time will not cause the Date for Delivery to be set at large.

14.7 The Supplier's sole remedy for delay shall be an extension of time to the Date for Delivery as provided in this Contract and the Supplier shall not be entitled to any costs, losses, expenses or damages as a result of or in connection with any delay or extension of time.

14.8 Except as provided in this clause 14, the Supplier will have no entitlement to claim any extension of time or any costs in relation to delay or disruption.

15 LATE DELIVERY

15.1 If the Supplier does not achieve:

- Acceptance of the Goods; or
- Completion of the Work/Services,

by the Date for Delivery (including in respect of any Separable Portion), the Supplier will be liable to the Purchaser for liquidated damages in the amount identified in the Contract from the Date for Delivery up to and including the Date of Delivery. The amount is a debt due from the Supplier to the Purchaser.

15.2 All amounts of such liquidated damages for which the Supplier may become liable under this Contract are agreed to be a genuine pre-estimate of the loss which may be sustained by the Purchaser in the event that the Supplier fails to comply with the relevant obligation under the Contract and are not a penalty.

15.3 The payment of liquidated damages under this Contract does not prevent the Purchaser from exercising any other rights and remedies provided for under this Contract and does not relieve the Supplier from its obligations to diligently deliver the Goods and perform the Work/Services or from any other obligations and liabilities under the Contract.

15.4 If:

- the Contract does not have any amount stated or any provision completed for liquidated damages; or
- any provision in the Contract is completed by words which indicate that liquidated damages will not apply to this Contract (including by the use of the words 'not applicable', 'nil' or otherwise); or
- if the imposition of liquidated damages is found to be unenforceable for any reason,

the Supplier must indemnify the Purchaser from any loss, cost, damage or expense suffered or incurred by the Purchaser by reason of the Supplier not achieving

Acceptance of the Goods and/or Completion of the Works/Services by the Date for Delivery.

16 ACCESS

16.1 The Supplier acknowledges that if the Supplier enters the Site or any other premises, the Supplier must take all measures necessary to protect people and property, avoid unnecessary interference with the passage of people and vehicles and prevent nuisance and unnecessary noise and disturbance.

16.2 The Supplier must obtain all necessary permits and approvals to supply the Goods to the Delivery Location and/or undertake the Works/Services at the Delivery Location.

16.3 The Supplier must ensure that its personnel, consultants, agents or subcontractors act in a safe and lawful manner and that they comply with all relevant safety legislation and with the Purchaser's safety standards and policies when they are on the Site or on any other premises.

16.4 The Purchaser is not responsible for any damage done to the Supplier's property (including property of the Supplier's personnel, consultants, agents or subcontractors) or for any personal injury sustained by any of the Supplier's personnel, consultants, agents or subcontractors occurring on the Site or any other premises. The Supplier unconditionally and irrevocably releases the Purchaser from that responsibility and indemnifies the Purchaser against any loss or damage which the Purchaser or any of the Purchaser's related bodies corporate as that term is defined in the Corporations Act 2001 (Cth) (hereafter referred to as "**Related Bodies Corporate**") suffer as a result of any third party bringing an action against the Purchaser or against any of the Purchaser's Related Bodies Corporate in respect of any such circumstances.

17 HEALTH AND SAFETY

17.1 The Supplier must provide to the Purchaser, a Material Safety Data Sheets (MSDS) and identify potential hazards in the use and application of material substances prior to or on delivery of the Goods. Such information must include measures and precautions to be taken in storing and handling the Goods.

17.2 Where Goods supplied by the Supplier to the Purchaser are plant and/or equipment or where the performance of the Works/Services requires plant and/or equipment to be used, the Supplier must ensure:

- the plant and equipment is in safe working order, repair and condition and complies with current occupational health and safety legislation or codes of practice;
- that a compliance certificate is provided by the Supplier to the Purchaser confirming that the plant and equipment is in compliance with current occupational health and safety legislation or codes of practice; and
- safe operating instructions are provided and operators have received an induction in the safe use of the plant and equipment.

18 PURCHASER SUPPLIED ITEMS AND PURCHASER RESPONSIBILITIES

18.1 The Purchaser will use reasonable endeavours to:

- perform the Purchaser Responsibilities; and
- supply the Purchaser Supplied Items.

18.2 The Supplier will be liable for any damage to the Purchaser Supplied Items caused directly or indirectly by the Supplier, its personnel, consultants, agents and subcontractors and will pay the costs associated with repairing the damaged Purchaser Supplied Items.

18.3 Except as set out in this clause, the Supplier acknowledges and agrees that the Purchaser is not required to provide any resources, assistance or other items to the Supplier in order for the Supplier to supply the Goods and perform the Works/Services and its obligations under this Contract.

19 INDEMNITY AND LIABILITY

19.1 The Supplier will be liable for, and must indemnify the Purchaser and keep the Purchaser indemnified from and against any liability and any loss or damage of any kind whatsoever arising directly or indirectly from or in connection with the Goods and/or Works/Services, the supply of the Goods and/or the performance of the Works/Services, and this Contract, except to the extent that any liability, loss or damage is solely and directly caused by the Purchaser's wilful misconduct or negligence.

19.2 The provisions of this clause will survive the expiration or termination of this Contract.

19.3 Every exemption, limitation, defence, immunity or other benefit contained in this Contract to which the Purchaser is entitled will also be held by the Purchaser's personnel.

19.4 It is not necessary for the Purchaser to incur expense or make payment before enforcing a right of indemnity conferred by this Contract.

19.5 Notwithstanding any other clause in this Contract, the Purchaser's aggregate liability whether under or for breach of this Contract, or at law or in equity, will be limited (to the extent permitted by law) to the greater of:

- Price; or
- proceeds (if any) of any relevant insurance coverage maintained by the Purchaser under this Contract less the amount of any deductible paid by the Purchaser in relation to that coverage.

19.6 Notwithstanding any other provision of this Contract and to the full extent permitted by law, the Purchaser will not be liable to the Supplier, on any basis (including negligence, tort, contract, statute or otherwise), for any loss of profits, loss of business, loss of revenue, loss of goodwill, cost of capital, loss of use of property, loss of anticipated savings, increase in capital costs, increase in operating costs or any other financial or economic loss or indirect, special, incidental, or consequential loss or consequential damage arising under or in connection with this Contract.

19.7 It is agreed that to the extent permitted by law the operation of Part 1F of the Civil Liability Act 2002 (WA) (and any equivalent statutory provision in any other State or Territory) is excluded in relation to any claims brought by the Purchaser against the Supplier in connection with this Contract whether such claims are sought to be enforced in contract, tort or otherwise.

20 INSURANCE

20.1 The Supplier must effect and maintain the following insurance policies for the duration of the Contract:

- if the Supplier is responsible for transporting the Goods or any other items, transit insurance covering damage to Goods and any other items to be incorporated or used in relation to the Goods, while in transit;
- public liability insurance that provides cover of at least \$10 million per event in relation to liability arising out of personal injury, death, disease or illness, or liability to third parties for loss or damage to property caused by or in connection with the Goods and/or Works/Services or otherwise in relation to the Supplier's performance of this Contract;
- workers' compensation insurance against its liability to its employees or persons deemed to be employees as required under any applicable legislation; and
- if the Supplier must carry out any design work or other professional services, professional indemnity insurance that provides cover of at least \$1 million per event that covers any liability of the Supplier in respect of a breach of duty owed by the Supplier in the course of the performance of the Supplier's business or profession, whether as a result of Contract, misleading or deceptive conduct, negligence or otherwise.

- 20.2 If the Supplier fails to comply with any provisions relating to insurance, the Purchaser may, but is not obliged to, effect, renew, or pay the premium due in respect of the relevant insurance policies, and may recover the cost of doing so as a debt due from the Supplier.
- 20.3 Compliance with all provisions relating to insurance is a condition precedent to payment. The Purchaser shall not be in breach of this Contract should payment be delayed or withheld due to the Supplier's non-compliance with such provisions.
- 20.4 In relation to each insurance policy referred to in this clause 20, the Supplier must:
- with the exception of the professional indemnity policy (if it is required), cover the Purchaser's entire liability for claims arising from or in connection with the performance of the supply of Goods and/or Works/Services under this Contract;
 - with the exception of the professional indemnity policy (if it is required), ensure that all insurances required to be taken out pursuant to this clause 20 are treated as primary insurances which will be required to respond in priority to any insurance taken out by the Purchaser or the principal in respect of the same or similar risk; any deductible under any insurance taken out by the Supplier shall be borne wholly by the Supplier;
 - with the exception of the professional indemnity policy (if it is required), require its insurers to name the principal, the Purchaser and their officers, employees and agents, and to include a cross liability provision stipulating that such insurances shall apply as though separate policies had been issued to each insured;
 - with the exception of the professional indemnity policy (if it is required), if the Purchaser is not a named insured, cause its insurers to waive all rights of subrogation against the Purchaser in respect of any claim arising out of the insurance policies;
 - provide to the Purchaser, as soon as practicable or following any request from the Purchaser, certificates of currency, the terms and conditions of each of the insurance policies, and any other evidence of the insurance policies that the Purchaser reasonably requires; and
 - provide the Purchaser with a copy of any notice, cancellation, non-renewal or material alteration given by the insurer within twenty-four (24) hours of receipt.
- 21 RETENTION AND SECURITY**
- 21.1 If required by the Contract, the Supplier must allow retention and/or provide security for performance of all and any of its obligations under this Contract, for the amount and in the manner specified in the Contract. Where the security required to be provided by the Supplier is Approved Security:
- the Supplier must provide the Purchaser with two Approved Securities each for 50% of the amount specified in the Contract within the earlier of the seven (7) days after the date of the Contract and seven (7) days prior to the Supplier's access to the Site; and
 - if the total Price increases by more than 10% (from the amount stated in the Purchase Order), the Purchaser may retain from any amount which is due to the Purchaser such further amounts as are required to ensure the amount of security held continues to equal the amount required for security under this clause.
- 21.2 The Purchaser is entitled to convert the security into cash at any time and may utilise the security to pay for any costs, expenses or damages which the Purchaser claims that it has incurred or might in the future incur as a consequence of any act or omission of the Supplier which the Purchaser asserts constitutes a breach of the Contract.
- 21.3 The Purchaser must:
- within 28 days after:
 - in case of Goods, all the Goods (if there are Separable Portions, under all Separable Portions) are notified by the Purchaser as being Acceptable; and
 - in the case of Works/Services, Completion (if there are Separable Portions, under all Separable Portions) has been achieved for all the Works/Services, release 50% of any retention or security held, and any and all Defects have been completed to the satisfaction of the Purchaser; and
 - release the balance of the retention or security held within 28 days of the expiry of the Defects Liability Period (and if there are Separable Portions, the last Defects Liability Period), provided all Defects have been completed to the satisfaction of the Purchaser.
- 21.4 The Purchaser is not obliged to pay the Supplier interest on the retention or Approved Security, the proceeds of the Approved Security, if it is converted into cash, and will not hold the proceeds or money referred to in this clause on trust for the Supplier.
- 22 DEFAULT**
- 22.1 In addition to any other rights that the Purchaser has under this Contract or at law, if the Supplier commits a breach of any obligation in this Contract which, in the Purchaser's opinion is capable of remedy, the Purchaser may give the Supplier a written notice of default. A notice provided under this clause 22.1 must specify the breach and the date by which the Supplier must rectify the breach.
- 22.2 Time is of the essence and if the Supplier has not performed any of its obligations under this Contract within the prescribed time periods, then the Purchaser is entitled, at its sole discretion, to treat such a breach as a breach which is not capable of remedy.
- 22.3 If:
- the Supplier fails to rectify the default within the time specified in a notice given under clause 22.1;
 - the breach is, in the Purchaser's opinion, not capable of being remedied; or
 - an Insolvency Event occurs in relation to the Supplier,
- the Purchaser may, by notice in writing, do either or both of the following:
- suspend payments due or which may become due under this Contract; and/or
 - either:
 - immediately take over the incomplete Goods and/or Works/Services and the Supplier's plant and equipment at the Site, and at its option have the Goods and/or Works/Services completed and delivered by itself or others; or
 - terminate this Contract, in which case the respective rights and liabilities of the parties will be the same as they would be at common law if the Supplier had wrongfully repudiated the Contract.
- 22.4 If the Purchaser exercises the power in clause 22.3(e)(i), then, when the Goods have been delivered and deemed Acceptable and/or Works/Services have achieved Completion, and when anything else the Supplier was obligated to undertake pursuant to this Contract has been done, the Purchaser must calculate the difference between:
- the additional cost of having the Supplier's obligations completed by itself (including its own management and administrative costs) or any other third party or parties, and any other loss, cost, damage or expense suffered or incurred by reason of the Supplier's default; and
 - the amount of suspended payments and security (including any retention) called on by the Purchaser.
- 22.5 If the calculation results in a shortfall to the Purchaser, the Supplier must pay the amount of the shortfall to the Purchaser within seven (7) days of a written demand for payment.
- 22.6 If the Purchaser commits a substantial breach of this Contract, the Supplier may give the Purchaser a written notice of default. A notice provided under this clause 22.6 must specify the breach and the date by which the Purchaser must rectify the breach, which must not be earlier than twenty-eight (28) days from the date of the notice. If the Purchaser does not remedy the breach within the required period, the Supplier may terminate the Contract by notice immediately. The Supplier will have no right to terminate the Contract unless it has strictly complied with this clause. The Supplier has no other rights for the Purchaser's breach of this Contract (including no right to suspend its obligations) other than under this clause 22.6. The agreed interest rate on any late payments by the Purchaser is 2% simple interest per annum.
- 22.7 If it is determined that a termination of this Contract by the Purchaser is wrongful, such termination will be deemed a termination for convenience under clause 23 and the Supplier's rights and remedies upon termination will be limited to those set out under clause 23.
- 23 TERMINATION FOR CONVENIENCE**
- 23.1 The Purchaser may in its absolute discretion terminate the Contract, in whole or in part, for its convenience, by providing notice to the Supplier.
- 23.2 Upon receipt of the notice of termination for convenience, the Supplier must not place any further orders for Goods or incur any further liabilities for the purposes of the Contract and must comply with any Directions contained in the notice of termination for convenience.
- 23.3 In the event of termination for convenience by the Purchaser, the Supplier may only claim payment from the Purchaser for any Goods and/or Works/Services supplied and/or performed in accordance with the Contract at the date of termination and not included in any previous payment.
- 23.4 No action taken by the Purchaser under this clause 23 will operate to prejudice the rights, remedies, powers, authorities and discretions of the Purchaser and the accrued liabilities of the Supplier (all of which must continue in full force and effect as if there had been no such termination) with respect to the Goods delivered and/or Works/Services that are completed in accordance with the Contract.
- 24 GST**
- 24.1 In this clause 24, GST means GST within the meaning of A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended) and terms which are defined in that Act have the same meaning in this Contract.
- 24.2 Unless otherwise expressly stated, the Price and any other amounts due to the Supplier are exclusive of GST.
- 24.3 In addition to any payment obligation of the Purchaser for a taxable supply in connection with this agreement, the Purchaser must pay to the Supplier the GST payable by the Supplier on any taxable supply under this Contract.
- 24.4 If this Contract requires a party to pay for, reimburse or compensate against any expense or liability (reimbursable expense) incurred by the other party (payee) to a third party, the amount to be paid, reimbursed or compensated is the amount of the reimbursable expense net of any input tax credit to which the payee is entitled in respect of the reimbursable expense (net amount).
- 25 DISPUTE RESOLUTION**
- 25.1 In the event of a Dispute, either party may deliver a Notice of Dispute.
- 25.2 If a Notice of Dispute is delivered, senior executives of both parties having authority to resolve the Dispute must meet within fourteen (14) days after the delivery of the Notice of Dispute to attempt to resolve the Dispute. Unless otherwise agreed in writing, all communications at, or relating to, the meeting are without prejudice.
- 25.3 If a Dispute is not resolved, either party may, but is not obliged to, commence legal proceedings. It is a condition precedent to either party commencing legal proceedings in respect of a Dispute that:
- a Notice of Dispute has been delivered in relation to the Dispute; and
 - a senior executive conference has taken place pursuant to clause 25.2 (or the Party seeking to issue legal proceedings has attempted to arrange an senior executive conference to take place) to attempt to resolve the Dispute; and
 - at least sixty (60) days have passed after delivery of the relevant Notice of Dispute.
- 26 BUILDING CODE REQUIREMENTS**
- 26.1 The Code for the Tendering and Performance of Building Work 2016 (Cth) (as amended) ("**Building Code**") may apply to this Project. By agreeing to undertake the supply of Goods and/or perform the Works/Services, you will be taken to have read and to agree to comply with the Building Code should the Building Code apply to the Project. The Building Code is available at: <https://www.legislation.gov.au/Details/F2019C00289>.
- 27 CONFIDENTIALITY**
- 27.1 The Supplier must not, and must ensure that each of its subcontractors does not, without the express prior written consent of the Purchaser, divulge to third parties or use for their own or any other purposes:
- any information relating to the Project or Site; and
 - any information relating to the Goods and/or Works/Services, unless that information has been published or made available to the public at large, other than due to a breach of an obligation of confidentiality.
- 28 ASSIGNMENT AND SUBCONTRACTING**
- 28.1 The Supplier will not subcontract or engage any sub-supplier or at any time purport to charge, assign or encumber this Contract without the prior consent in writing of the Purchaser and then only on such terms as the Purchaser in its discretion will approve.
- 29 CLAUSES SURVIVING TERMINATION**
- 29.1 All provisions of this Contract, whether express or implied, which:
- are expressed to survive expiry or termination of this Contract;
 - by their nature ought to survive expiry or termination of this Contract;
 - are ancillary to the main purpose of the Contract;
 - regulate a defaulting party's obligation to pay compensation to the other party; and
 - give effect to the provisions of this clause, survive expiry or termination of this Contract and are enforceable at any time at law.
- 30 NOTICES**
- 30.1 A notice, demand, certification, process or other communication relating to this Contract must be in writing in English and may be given by an agent of the sender. A communication may only be given by being:
- personally delivered;
 - left at the Party's current address for notices;
 - sent to the Party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
 - sent by email to the Party's current email address for notices.
- 30.2 The particulars for delivery of notices are initially those of the contact person of each party as set out in the Contract. Each party may change its particulars for delivery of notices by notice to the other.
- 30.3 A communication is given if posted:
- within Australia to an Australian address, four days after posting; or



- (b) in any other case, 14 days after posting.
- 30.4 A communication by email must be in letter format attached to the email and the relevant email must be in an appropriate and commonly used format and any attached file must be a PDF or other appropriate and commonly used format. It is deemed to be given on the first to occur of the following:
- (a) when it is dispatched by the sender to each of the email addresses specified by the recipient, unless for each of the addresses, the sender receives an automatic notification that the email has not been received (other than an out of office greeting for the named addressee) and it receives the notification within 2 hours of the last to occur (for all the addressees) of:
 - (i) dispatch if in the business hours in the city of the recipient's address; or
 - (ii) if not, the business day in such city;
 - (b) the sender receiving a message from the intended recipient's information system confirming delivery of the email; and
 - (c) the email being available to read at one of the email addresses specified by the sender.
- 30.5 If a communication is given after 5.00 pm in the place of receipt it is taken as having been given on the next day.
- 31 GENERAL**
- 31.1 This Contract is governed by the laws of the State of Western Australia and the parties submit to the exclusive jurisdiction of the courts of Western Australia.
- 31.2 Unless otherwise stated in this Contract, none of the terms and conditions of this Contract will be varied, waived, discharged or released either at law or equity, except with prior consent, in writing by both parties. Any waiver provided in writing is limited to the relevant specified instance and is not a general waiver.
- 31.3 Every provision of this Contract shall be deemed to be severable and if any provision of this Contract shall be void or illegal or unenforceable for any reason then the same shall be deemed to be severed and omitted here from and this Contract with such provision thus severed and omitted and with such consequent amendment as may be necessary shall otherwise remain in full force and effect.
- 31.4 This Contract constitutes the entire, final and concluded agreement between the parties in respect of the Goods and/or Works/Services. Subject to the other express terms of this Contract, no prior or subsequent representation, quotations or terms and conditions (whether verbal or in writing) by the Purchaser or the Supplier, or any of their respective employees or agents, will bind the parties. The Supplier warrants that it did not rely upon any information, representations or statements provided by the Purchaser for the purposes of entering into this Contract and that it did so upon its own investigations and determinations. To the extent that the Supplier's terms and conditions are supplied with Goods and/or Works/Services the subject of a Purchase Order, the Supplier's terms and conditions shall be of no legal effect and shall not constitute part of the contract for supply and purchase of those Goods and/or Works/Services.
- 31.5 The Supplier is an independent contractor of the Purchaser and this Contract does not constitute a partnership or a joint venture or employment relationship between the parties, or authorise a party to assume or create any obligations on behalf of another party except as specifically permitted under this Contract.