

Purchase Order Terms and Conditions

Goods and/or Services

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;

"Claim" means any claim, demand, action, suit or proceeding of any kind and includes any Claim for an increase in the Price or any other payment of money (including damages) or for an extension of time:

- (a) under, arising out of, or in any way in connection with the Contract, including any Direction of the Purchaser;
- (b) arising out of, or in any way in connection with the supply of Goods and/or performance of the Services, or either Party's conduct before the Contract; or
- (c) otherwise at law or in equity, including by statute, in tort (for negligence or otherwise, including negligent misrepresentation) or for restitution;

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

- (a) the Services are complete;
- (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 required, have been supplied to the Purchaser; and
- (d) 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;

"Consequential Loss" means any loss of revenue, loss of profit loss of production and/or loss of revenue arising out of, or in any way in connection with this Contract;

"Contract" means the Purchase Order, these Terms and Conditions, and includes all annexures, schedules and appendices to this Contract, including any specifications, drawings or other documents that may be contained or referred to therein or annexed thereto;

"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 Services performed 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 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 guaranteed performance levels specified in this Contract (and if nothing is specified, the level of performance typically expected of goods of a similar specification);
- (b) in relation to Services: 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 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 Services, Completion has been achieved for all the Services;

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

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

"Dispute" means any dispute or difference arising out of 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;

"Exempt Liability" means any one or more of the following:

- (a) liability of the Supplier to the extent that the Supplier:
 - (i) is entitled to be indemnified for such liability under a policy of insurance effected pursuant to the requirements of the Contract; or
 - (ii) would have been entitled to be indemnified for such liability under a policy of insurance effected pursuant to the requirements of the Contract but for the Supplier's failure to comply with the terms and conditions of the relevant policy or its obligations under the Contract in respect of such policy (including without limitation, procuring and maintaining an insurance policy);
- (b) liability of the Supplier in respect of liquidated damages payable under the Contract;
- (c) liability of the Supplier in respect of personal injury or death, or loss of or damage to third party property;
- (d) liability arising from the Supplier abandoning the supply of the Goods or Services, or repudiating the Contract;
- (e) Claims by third parties against the Purchaser with whom the Purchaser does not have a contractual relationship in relation to the Site; or
- (f) liability of the Supplier arising from a failure to comply with any laws;

"Goods" means the equipment, 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, trademarks, 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;

"Modern Slavery" has the meaning given to it in Modern Slavery Laws;

"Modern Slavery Laws" means:

- (a) the *Modern Slavery Act 2018* (Cth); and

- (b) if applicable, any law of a State or Territory of Australia or other jurisdiction in which the Purchaser and the Supplier are registered, conduct business or in which activities relevant to the supply of Goods and/or performance of the Services are conducted in respect of modern slavery matters or issues which:

- (i) affect the operations and supply chains of the Supplier; or
- (ii) prohibits 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);

"Motor Vehicle Insurance" means an insurance policy effected and maintained by the Supplier that must cover all motor vehicles (whether owned, hired or leased by the Supplier) used in the performance of this Contract with compulsory motor vehicle third party insurance, and comprehensive motor vehicle and third-party liability insurance with a minimum limit of liability of \$30 million and the policy shall include a waiver of subrogation in favour of the Purchaser;

"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;

"Parties" means the Purchaser and the Supplier and **"Party"** means either one of them as the context dictates;

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

"Payment Milestone" has the meaning given to it in clause 12.2;

"Personnel" means:

- (a) in relation to the Supplier, any of its employees, contractors, agents and representatives involved either directly or indirectly in the supply of the Goods and/or performance of the Services; and
- (b) in relation to the Purchaser, any of the Purchaser's officers, employees, agents or contractors (other than the Supplier);

"Plant and Equipment Insurance" means an insurance policy effected and maintained by the Supplier that must cover material loss or damage to any plant and equipment (whether owned, hired or leased by the Supplier) used in the performance of this Contract for its market value and the policy shall include a waiver of subrogation in favour of the Purchaser;

"Price" means:

- (a) where there is a lump sum in the Purchase Order, that lump sum;
- (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 lump sums and rates in the Purchase Order, the aggregate of the sums referred to in paragraphs (a) and (b),

as adjusted under this Contract;

"Professional Indemnity Insurance" means an insurance policy effected and maintained by the Supplier that must be not less than \$5 million for each and every claim, with one automatic reinstatement of the limit of indemnity;

"Progress Payment" has the meaning given to it in clause 12.2(b);

"Proportionate Liability Legislation" means, if the governing law of this Contract is:

- (a) Western Australia, then Part 1F of the Civil Liability Act 2002 (WA);
- (b) New South Wales, then Part 4 of the Civil Liability Act 2002 (NSW);
- (c) Queensland, then Chapter 2, Part 2 of the Civil Liability Act 2003 (Qld);
- (d) Tasmania, then Part 9A of the Civil Liability Act 2002 (Tas);
- (e) Northern Territory, then the Proportionate Liability Act 2005 (NT);
- (f) Victoria, then Part IVAA of the Wrongs Act 1958 (Vic);
- (g) South Australia, then Part 3 of the Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA); or
- (h) Australian Capital Territory, then Chapter 7A of the Civil Law (Wrongs) Act 2002 (ACT).

"Public and Products Liability Insurance" means insurance that provides cover of at least \$20 million per event (limited to \$20 million in the aggregate for products liability) in relation to liability arising out of personal injury, death, disease or illness or liability to third parties for loss or damage to real or personal property to the extent caused by or in connection with the performance or purported performance of the Contract and the policy shall include an indemnity for the Purchaser for their vicarious liability arising out of the negligent actions of the Supplier;

"Purchase Order" means the Purchaser's formal document to which these Terms and Conditions are attached that is issued by the Purchaser to the Supplier to order the Goods and/or Services;

"Purchaser" means JSW Australia Pty Ltd (ACN 125 989 791) as identified as the Purchaser in the Purchase Order;

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

"Site" means the location where the Purchaser requires the Supplier to perform the Services and this may be the same location as the Delivery Location;

"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;

"Term" means a period of time specified in the Purchase Order (which, may be expressed on the Purchase Order as a Date for Delivery) or as directed by the Purchaser;

"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 Services including omitting any Goods and/or 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 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; and
- "Workers' Compensation and Employer's Liability Insurance"** means an insurance policy effected and maintained by the Supplier that must cover against its liability to the Supplier's Personnel or persons deemed to be employees as required under any applicable statute relating to workers' or accident compensation (including for industrial diseases), which must include a principal's indemnity extension and waiver of subrogation in favour of the Principal for liability under applicable legislation and at common law with a minimum limit of not less than \$50 million.

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) if there is any inconsistency between the parts of this Contract, the part listed earlier in this clause 2.1(c) prevails to the extent of the inconsistency as follows:
 - (i) any Special Conditions forming part of this Contract will take precedence over these Terms and Conditions;
 - (ii) these Terms and Conditions will take precedence over the Purchase Order (but not any Special Conditions in the Purchase Order);
 - (iii) the Purchase Order will take precedence over all annexures, schedules or appendices to this Contract; and
 - (iv) if there is any inconsistency between these other parts of the Contract not listed in this clause 2.1(c), then the following order of priority will apply:

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- (A) the part that imposes a greater or higher requirement, standard, quality, level, quantum or scope; and
- (B) if none, the part listed earlier in the Contract, will prevail to the extent of the inconsistency.
- (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, regulation, ordinance, by-law, code, instruments or other law, (or to any section or provision of any legislation, regulation, ordinance, by-law, code, instruments or other law), includes any statutory modification (including any statutory provision substituted for any section or provision), consolidations, amendments, re-enactments or replacements of any of them;
- (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 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 Services in accordance with the terms and conditions of this Contract. The Supplier agrees to supply the Goods and/or perform the 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 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 Services.
- 4.2 In relation to Goods, the Supplier warrants and represents that the Goods:
- (a) are new (unless otherwise expressly stated in this Contract that the Goods are not new), of merchantable quality, are not Defective, are fit for purpose 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 Supplier to the Purchaser, or provided to the Supplier by the Purchaser; 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 Services, the Supplier represents and warrants that it will:
- (a) perform the 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 services;
- (b) follow any reasonable Direction by the Purchaser;
- (c) rectify all deficiencies, Defects, faults, errors and omissions in the 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 Services causes the Purchaser to incur any loss, then the Supplier must fully compensate the Purchaser for that loss);
- (d) ensure the Services are in compliance with any applicable standards, including, but not limited to any applicable Australian Standards and any other relevant standards;
- (e) utilise the nominated personnel to perform the Services; and
- (f) duly comply (at its own cost) with any special requirements of the Purchaser and/or the Site from time to time including, but not limited to, any inductions, training or other programmes relating to their respective occupational health and safety policies or general operational matters.
- 4.4 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 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.
- 5.2 If the Supplier finds any discrepancy, error or ambiguity in the Contract, it must inform the Purchaser's representative immediately and follow the Directions of the Purchaser's representative. The Supplier will have no entitlement to any Claim as a result of complying with any such Direction.
- 6 DELIVERY OF THE GOODS AND/OR 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 Services must:
- (a) be commenced immediately upon the:
- (i) acceptance by the Supplier of a Purchase Order;
- (ii) the date for commencement as specified in the Purchase Order; or
- (iii) as otherwise directed by the Purchaser;
- (b) be performed:
- (i) if there is no Term, so that the Services achieve Completion on or before the Date for Delivery; or
- (ii) if there is a Term, so that the Services are performed for the duration of the Term; and
- (c) be 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 or if there is a Term, extend the Term by giving notice to the Supplier. Where there is a Date for Delivery, the Supplier must not deliver the Goods and/or 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 load the Goods (if the Delivery Location is not the Site) or unload the Goods at the area(s) of the Delivery Location as directed by the Purchaser (if the Delivery Location is the Site). If the Delivery Location is the Site, the Purchaser will provide suitable and safe access for delivery vehicles used by the Supplier at all times.
- 6.5 The Supplier must:
- (a) promptly advise the Purchaser when the Goods have been dispatched to the Delivery Location and provide the anticipated delivery time;
- (b) promptly advise the Purchaser when the Goods arrive at the Delivery Location;
- (c) ensure that the Goods are suitably packed to avoid damage in transit or storage;
- (d) ensure that the Goods are undamaged upon arrival to the Delivery Location;
- (e) ensure that all Goods are clearly marked and identified;
- (f) 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;
- (g) 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;
- (h) 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
- (i) at the time of delivery of the Goods, 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, the Goods 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 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 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 Services.
- 7.4 If the inspections, examinations or tests show the Goods and/or 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 SERVICES**
- 8.1 If there is a Date for Delivery, the Purchaser must use best endeavours to inspect and assess:
- (a) 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:
- (i) the Purchaser must provide reasons; and
- (ii) the Supplier must re-deliver the Goods so that the Goods are no longer Defective, and the process of delivery by the Supplier and assessment by the Purchaser whether the Goods are Acceptable is repeated until Acceptance is achieved.
- (b) the Services 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 Services have reached Completion. If the Services have not reached Completion:
- (i) the Purchaser must provide reasons; and
- (ii) the Supplier must reperform the Services so that the Services are no longer Defective, and the process of performance by the Supplier and assessment by the Purchaser whether the Services have reached Completion is repeated until Completion is achieved.
- 8.2 A failure by the Purchaser to inspect or assess the:
- (a) Goods, or the Acceptance of Goods by the Purchaser; or
- (b) Services, or the Completion of the Services 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 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 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 a Direction under clause 8.3 within the time specified by the Purchaser, then the Purchaser may have the work of rectification, removal and/or replacement carried out by itself or 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 Services;
- (b) any other materials or part of the Site affected; or
- (c) any other losses incidental to the failure of the Goods and/or Services, will be to the account of the Supplier.
- 9 DEFECTS LIABILITY PERIOD**
- 9.1 Without limiting clauses 8.3 and 8.4, at any time up to fourteen (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.
- 9.2 Without limiting clauses 8.3 and 8.4, if the Supplier fails to comply with a Direction given under clause 9.1, 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.
- 10 DOCUMENTATION**
- 10.1 Notwithstanding any other clause of this Contract that specifies specific documentation to be provided under the Contract, the Supplier must provide the Purchaser with all documentation necessary for the effective installation, operation, use and maintenance of the Goods and/or Services without assistance from the Supplier.
- 10.2 All documentation provided to the Purchaser under this Contract must be in English, current and up to date versions, accurate, comply with any applicable requirements of any authorities and be acceptable to the Purchaser.
- 11 TRANSFER OF TITLE AND RISK**
- 11.1 Title in the Goods and/or Services will be transferred to the Purchaser upon the earlier of:
- (a) payment for the Goods and Services by the Purchaser; or
- (b) the Date of Delivery.

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- 11.2 Risk of the Goods and/or Services remains with the Supplier and only transfers to the Purchaser when:
- in case of Goods, all the Goods are notified by the Purchaser as being Acceptable; and
 - in the case of Services, Completion has been achieved for all the 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 Services performed, or in relation to this Contract generally.
- 12.2 The Supplier's entitlement to receive payment for the Goods supplied and/or Services performed under this Contract may be either by:
- payment milestones by submitting Payment Claims upon achievement of the payment milestones terms of payment specified in this Contract ("**Payment Milestones**"); and/or
 - periodic progress payment by the submitting of Payment Claims in accordance with clause 15.5 ("**Progress Payments**").
- 12.3 Each Payment Claim must:
- contain sufficient detail for the Purchaser to calculate the amount owing;
 - be provided in a format approved by the Purchaser and, if required by the Purchaser, constitute a valid tax invoice; and
 - include all supporting documentation.
- 12.4 Unless this Contract provides that the Price (or part of the Price) is to be paid to the Supplier in Payments Milestones, the Supplier will be paid in Progress Payments by submitting Payment Claims in accordance with this clause 12.4. 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.
- 12.5 The amount payable by the Purchaser to the Supplier in relation to each Payment Claim is calculated as follows:
- if rates apply, by applying the rates to the quantities of Goods delivered and/or Services performed by the Supplier in accordance with this Contract, as measured by the Purchaser;
 - by valuing the Goods and/or Services:
 - completed to the date of the Payment Claim (as a proportion of the Price) as valued by the Purchaser; or
 - according to the achievement of the applicable Payment Milestones, as certified by the Purchaser's representative;
 - by adding or subtracting any other amounts due from one Party to the other under the Contract; and
 - by deducting retention money pursuant to this Contract.
- 12.6 The Purchaser must assess each Payment Claim within twenty-one (21) days of submission (or deemed submission under clause 12.4). If no valid tax invoice has been provided by the Supplier, the Supplier must submit a valid tax invoice within two (2) business days of the Purchaser's assessment of the Payment Claim.
- 12.7 The Purchaser must pay the Supplier the amount calculated by the Purchaser as payable in relation to the Payment Claim within forty-five (45) days from the end of the month in which the Payment Claim was submitted, or deemed to have been submitted, as the case may be.
- 12.8 Following the delivery of the last Goods and those Goods being deemed Acceptable and/or Completion of the Services, the Supplier will submit its final Payment Claim and automatically releases the Purchaser from any liability to make any other payments (other than the final Payment Claim as assessed) to the Supplier.
- 12.9 Payment for the Goods and/or Services does not constitute acceptance of the Goods and/or Services but is a payment on account only.
- 12.10 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, including:
- any debts or moneys due or becoming due by the Supplier (or the Supplier's Personnel) to the Purchaser; and
 - any Claim to money which the Purchaser has or may have against the Supplier (or the Supplier's Personnel) whether the Purchaser's right to payment arises by way of damages (whether liquidated or unliquidated), debt, restitution or otherwise, arising under or in connection with this Contract and/or the Site.
- 13 VARIATIONS**
- 13.1 The Purchaser may, at any time, issue a Variation and the Supplier must perform the Variation. The Supplier must, within seven (7) days of the Variation being issued, provide an estimate of the cost of the Variation and the impact on the Date for Delivery or if there is a Term, the impact the performance of the Services.
- 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 or if there is a Term, the performance of the Services.
- 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; and
 - failing any of the above being applicable, then by the amount reasonably assessed by the Purchaser.
- 14 EXTENSION OF TIME AND/OR DISPENSATION FROM PERFORMANCE**
- 14.1 The Supplier must, on becoming aware of anything which will probably cause delay to the Acceptance of the Goods, Completion of the Services and/or performance of the Services (if there is a Term), 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 or if there is a Term, grant a dispensation from performing Services. 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 or if there is a Term, dispensation from performing the Services.
- 14.3 The Supplier is only entitled to an extension to the Date for Delivery or if there is a Term, dispensation from performing the Services when:
- the Supplier can demonstrate that it actually has been or will be delayed in achieving the Date for Delivery or the performance of the Services by:
 - a Variation; or
 - an act or omissions by the Purchaser or Purchaser's Personnel which is not authorised or contemplated by this Contract;
 - the Goods and/or Services which is delayed is on the critical path;
 - 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.
- 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 or if there is a Term, a dispensation from performing the Services, the Supplier must give a notice in writing to the Purchaser within five (5) days of the commencement of the cause of the delay occurring 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 or if there is a Term, the performance of the Services, the period of the delay (including the dates of commencement and, if applicable, conclusion of the delay) and the extension of time claimed or if there is a Term, dispensation of the performance of the Services.
- 14.6 The Purchaser will determine the period of any extension of time to the Date for Delivery or if there is a Term, dispensation from performing the Services 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 Except as otherwise expressly provided in this clause 14, the:
- Supplier's sole remedy for delay shall be an extension of time to the Date for Delivery or if there is a Term, dispensation from performing the Services 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, extension of time or if there is a Term, dispensation from performing the Services; and
 - Supplier will have no entitlement to claim any extension of time, dispensation from performing the Services (if there is a Term) 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 Services,
- by the Date for Delivery, 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 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
 - the imposition of liquidated damages is found to be unenforceable for any reason, the Purchaser will be entitled to Claim in respect of the delay and 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 Services by the Date for Delivery.
- 16 ACCESS**
- 16.1 The Supplier acknowledges that if the Supplier enters the Delivery Location, 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 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 Delivery Location, Site or on any other premises.
- 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 Services requires plant and/or equipment to be used, the Supplier must ensure:
- the plant and/or 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 INDEMNITY AND LIABILITY**
- 18.1 The Supplier will be liable for, and must indemnify the Purchaser and keep the Purchaser indemnified from and against any liability and any loss, injury or damage of any kind whatsoever arising directly or indirectly from or in connection with the Goods and/or Services, the supply of the Goods and/or the performance of the 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.
- 18.2 Notwithstanding any other provision of this Contract to the contrary and to the full extent permitted by law, neither Party will be liable to the other (including in respect of any indemnity), on any basis (including negligence, tort, contract, statute, equity or otherwise), for any Consequential Loss arising out of or in connection with this Contract, and the Purchaser is released from any liability to the Supplier, and the Supplier is released from any liability to the Purchaser, in respect of such Consequential Loss (but nothing in this clause 18.2 will affect or reduce the Supplier's liability to the Purchaser arising out of or in connection with any Exempt Liability).
- 18.3 It is agreed that to the extent permitted by law the operation of the Proportionate Liability Legislation 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.
- 18.4 If any of the provisions of the Proportionate Liability Legislation apply to any Claim between the Purchaser and the Supplier whether in contract, tort or otherwise, the Supplier will indemnify the Purchaser against:
- any liability to or claim by any other person; and
 - any cost, loss, expense or damage incurred by the Purchaser, of which the Supplier would be liable but for the operation of the Proportionate Liability Legislation.
- 19 INSURANCE**
- 19.1 The Supplier must for the duration of the Contract, effect and maintain:

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- (a) Motor Vehicle Insurance;
- (b) Plant and Equipment Insurance;
- (c) Public and Products Liability Insurance;
- (d) Workers' Compensation & Employers' Liability Insurance; and
- (e) Professional Indemnity Insurance (if the Supplier is providing professional services in connection with the supply of Goods and/or performance of Services under this Contract).
- 19.2 In relation to each insurance policy referred to in clause 19.1, the Supplier must:
- (a) provide to the Purchaser certificates of currency and any other evidence of the insurance policies that the Purchaser reasonably requires not less than seven (7) days prior to commencing the supply of the Goods and/or performance of the Services and thereafter not less than seven (7) days prior to the date set for the annual renewal of each required insurance or following any request from the Purchaser; and
- (b) provide the Purchaser with a copy of any notice, cancellation, non-renewal or material alteration given by the insurer within 24 hours of receipt.
- 19.3 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 Supplier's non-compliance with such provisions.
- 20 DEFAULT**
- 20.1 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.
- 20.2 If:
- (a) the Supplier fails to rectify the default within the time specified in a notice given under clause 20.1;
- (b) the breach is, in the Purchaser's opinion, not capable of being remedied; or
- (c) an Insolvency Event occurs in relation to the Supplier,
- the Purchaser may, by notice in writing, do either or both of the following:
- (d) suspend payments due or which may become due under this Contract; and/or
- (e) either:
- (i) immediately take over the incomplete Goods and/or Services and the Supplier's plant and equipment at the Site, and at its option have the Goods and/or Services completed and delivered by itself or others; or
- (ii) 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.
- 20.3 If the Purchaser exercises the power in clause 20.2(e)(i), then, when the Goods have been delivered and deemed Acceptable and/or 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:
- (a) 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
- (b) the amount of suspended payments called on by the Purchaser.
- 20.4 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.
- 20.5 If the Purchaser commits a breach of this Contract, the Supplier may give the Purchaser a written notice of default. A notice provided under this clause 20.5 must specify the breach and the date by which the Purchaser must rectify the breach, which must not be earlier than fourteen (14) 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. If the Contract is terminated pursuant to this clause, the Supplier is only entitled to claim and be paid the value of the Goods supplied and/or Services undertaken up to the date of termination and not included in any previous payment (as assessed if it was a Payment Claim).
- 20.6 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 22 and the Supplier's rights and remedies upon termination will be limited to those set out under clause 22.
- 21 SUSPENSION**
- 21.1 The Purchaser may, at any time, direct the Supplier to immediately suspend all or part of the supply of the Goods and/or performance of the Services and, at its sole discretion, direct the Supplier to immediately recommence the supply of the Goods and/or performance of the Services. The Supplier shall thereupon do all things possible to reduce any expense or cost consequent upon the suspension. The suspension shall not vitiate the Contract.
- 21.2 The Supplier will have no entitlement to claim any costs in relation to a suspension directed under clause 21.1 (including for any delay or disruption).
- 22 TERMINATION FOR CONVENIENCE**
- 22.1 The Purchaser may in its absolute discretion terminate the Contract, in whole or in part, for its convenience, by providing notice to the Supplier.
- 22.2 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.
- 22.3 In the event of termination for convenience by the Purchaser, the Supplier may only claim payment from the Purchaser for any Goods and/or Services supplied and/or performed in accordance with the Contract at the date of termination and not included in any previous payment (as assessed if it was a Payment Claim).
- 23 GST**
- 23.1 In this clause 23, "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.
- 23.2 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.
- 23.3 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**).
- 24 DISPUTE RESOLUTION**
- 24.1 In the event of a Dispute, either Party may deliver a Notice of Dispute.
- 24.2 Notwithstanding the existence of a dispute, the Supplier shall continue to perform the Contract, including compliance by the Supplier with all Directions by the Purchaser.
- 24.3 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 ("**Executive Conference**"). Unless otherwise agreed in writing, all communications at, or relating to, the Executive Conference are without prejudice.
- 24.4 Subject only to clause 24.5, it is a condition precedent to either Party commencing legal proceedings in respect of a Dispute that:
- (a) a Notice of Dispute has been delivered in relation to the Dispute;
- (b) an Executive Conference has taken place (or the Party seeking to issue legal proceedings has attempted to arrange an Executive Conference to take place) to attempt to resolve the Dispute;
- (c) at least sixty (60) days have passed after delivery of the relevant Notice of Dispute; and
- (d) the Party seeking to issue legal proceedings has complied to the extent reasonably possible with its obligations in clause 24.
- 24.5 Nothing in this clause will prejudice the right of a Party to seek urgent injunctive or declaratory relief.
- 25 CONFIDENTIALITY**
- 25.1 The Supplier must not, and must ensure that each of its Personnel does not, without the express prior written consent of the Purchaser, divulge to third parties or use for their own or any other purposes:
- (a) any information relating to the Site; and
- (b) any information relating to the Goods and/or 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.
- 26 MODERN SLAVERY**
- 26.1 The Supplier warrants and agrees that it:
- (a) is aware of all applicable obligations of the Supplier under Modern Slavery Laws;
- (b) has complied, and will comply at all times, with Modern Slavery Laws;
- (c) has taken, and will continue to take, all reasonable and necessary steps to identify, investigate and eliminate Modern Slavery in its operations and supply chains to ensure no such Modern Slavery exists; and
- (d) will promptly upon request and at no cost to the Purchaser, provide all information reasonably requested by the Purchaser regarding the Supplier's operations and supply chains to enable the Purchaser to comply with its own obligations, including as to reporting, under Modern Slavery Laws.
- 27 SUBCONTRACTING, NOVATION AND ASSIGNMENT**
- 27.1 The Supplier must not at any time, without the prior written approval of the Purchaser:
- (a) subcontract this Contract (in whole or part) or engage any subcontractor;
- (b) novate its rights, interests, obligations or liabilities under this Contract; or
- (c) purport to charge, encumber or assign its rights, interests, obligations or liabilities under this Contract,
- and then only on such terms as the Purchaser in its sole discretion will approve (acting reasonably).
- 27.2 The Purchaser may, by giving reasonable notice to the Supplier, novate the Contract or assign its rights under the Contract to a third party and the Supplier will not be entitled to any compensation.
- 28 NOTIFICATION OF CLAIMS**
- 28.1 Notwithstanding any other provision of this Contract to the contrary and to the extent permitted by law or statute, the Supplier has no entitlement to make any Claim or claim any payment or reimbursement of any cost, loss, expense or damage (including for breach of this Contract) unless so provided in this Contract.
- 28.2 If this Contract does not contain specific notification provisions for certain claims, the Purchaser will not be liable for any Claim made by the Supplier in respect of any matter arising out of or in any way connected with this Contract unless the Claim, together with full particulars of its factual basis, legal basis and quantification are notified in writing to the Purchaser within seven (7) days of the first occurrence of the events or circumstances upon which the Claim is based.
- 29 NOTICES**
- 29.1 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:
- (a) personally delivered and left at the Party's current address for notices;
- (b) 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
- (c) sent by email to the Party's current email address for notices.
- 29.2 The particulars for delivery of notices are initially those of the representative of each Party as set out in the Contract. Each Party may change its particulars for delivery of notices by notice.
- 29.3 A communication is given if posted within Australia to an Australian address, four business days after posting or in any other case, fourteen (14) days after posting.
- 29.4 A communication sent by email:
- (a) must be in letter format, signed by the Party's representative and attached to the relevant email as a PDF file; and
- (b) is given on the first to occur of the following:
- (i) at the time shown in the delivery confirmation report generated by the sender's email system; or
- (ii) if the sender's email system does not generate a delivery confirmation report within twelve (12) hours after the time the email is sent, unless the sender receives a return email notification that the email was not delivered, undeliverable or similar, at the time which is twelve (12) hours from the time the email was sent.
- 29.5 If a communication is given after 5.00 pm in the place of receipt it is taken as having been given on the next business day, meaning a day that is not a Saturday, Sunday, a public holiday in Perth, Western Australia nor 27, 28, 29, 30 or 31 December.
- 30 GENERAL**
- 30.1 Unless otherwise stated in this Contract, 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. The UN Convention on Contracts for the International Sale of Goods (1989) is excluded and will not apply to this Contract.
- 30.2 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.
- 30.3 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, that provision shall be deemed to be severed and omitted from this Contract and all other provisions of the Contract will remain in full force and effect.
- 30.4 This Contract constitutes the entire, final and concluded agreement between the Parties in respect of the Goods and/or 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. To the extent that the Supplier's terms and conditions are supplied with Goods and/or 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 Services.
- 30.5 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.