Purchase Order Terms and Conditions

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;

"**Background IP**" means any Intellectual Property rights developed by a Party independent of this Contract or is in existence prior to the date of this Contract;

"**Business Conduct Laws**" means all legal requirements that apply to the Purchaser, the Supplier or to this Contract relating to:

(a) anti-competitive behaviour (including entering or giving effect to an agreement, and any other form of coordination or cooperation whether past, present or potential) that is unlawful or otherwise restricted or prohibited under any applicable competition law; and
(b) anti-bribery, anti-corruption and anti-money laundering under any applicable law, including without limitation, the Australian Criminal Code 1995 (Cth);

"**Change in Control**" means in respect of any entity, a change in the entity or entities who, directly or indirectly, ultimately Control that entity other than as a result of any dealing in securities listed on a stock exchange;

"**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;

"**Client**" means the entity that the Purchaser has been engaged by in respect of the Project (if applicable);

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

(a) the Services are complete except for minor Defects which do not prevent the 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 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 have been supplied to the Purchaser;
(d) the Supplier has provided to the Purchaser any approvals, consents or certificates relating to and necessary for completion, use or occupation; 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;

"**Consequential Loss**" means any indirect loss (being loss which, at the date of this Contract, was not in the reasonable contemplation of the Parties), pure economic loss, loss of revenue, loss of profit or anticipated profit, loss of patronage, loss of opportunity, loss of goodwill, loss of contract, loss arising from business interruption, loss of production, loss of use, loss of anticipated savings or the cost of capital or other financing costs arising out of, or in any way in connection with this Contract;

"**Contract**" means the Purchase Order (if any) ,these Terms and Conditions and any other documents agreed to by the Parties.;

"**Contract IP**" means all Intellectual Property (present or future) created, discovered or coming into existence in connection with the performance of the Contract (including all Intellectual Property in anything developed by the Supplier in performance of the Contract) or in connection with the Goods, Services, or Project, including the Contract Material and Document Deliverables;

"**Contract Material**" means those documents (including information stored by electronic or other means) and materials created or required to be created under the Contract including documents, information and data stored by any means;

"**Control**" has the meaning given in section 50AA of the Corporations Act except that in addition an entity controls a second entity if the:

(a) first entity would be taken to control the second entity but for subsection 50AA(4) of the Corporations Act; or
(b) first entity has voting power (as defined in section 610 of the Corporations Act) of at least 50% in the second entity;

"**Corporations Act**" means the Corporations Act 2001 (Cth);

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

(f) the Goods are to be delivered to the Delivery Location and achieve Acceptance; and/or
(g) the 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 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 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 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 Services, Completion has been achieved for all the 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 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;

"**Document Deliverables**" means any Contract Material which is created by and to be handed over by the Supplier to the Purchaser as a component of the Goods, Services or Project;

"**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 for infringement of any Intellectual Property rights and the indemnity pursuant to clause 31.8;
(c) liability of the Supplier for breaches of clause 27 (Privacy Act), clause 28 (Modern Slavery) or clause 29 (Business Conduct);
(d) liability of the Supplier in respect of liquidated damages payable under the Contract;
(e) liability of the Supplier in respect of personal injury or death, or loss of or damage to third party property;
(f) liability arising out of or in connection with Gross Negligence, Wilful Default, fraud or criminal conduct by the Supplier;
(g) liability arising from the Supplier abandoning the supply of the Goods or Services, or repudiating the Contract;
(h) Claims by third parties against the Purchaser with whom the Purchaser does not have a contractual relationship in relation to the Project; or
(i) liability of the Supplier arising from a failure to comply with any laws;

"**Fit for Contract Purpose**" means satisfies each of the purposes, objectives, functions, uses and requirements for which the Goods and/or Services are required by the Purchaser as contained in this Contract or reasonably inferred from this Contract;

"**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;

"**Gross Negligence**" means any negligent act or negligent omission resulting from a reckless and serious disregard of the consequences of a risk which the Supplier or Supplier's Personnel was aware of or ought to reasonably have been aware would result in loss being incurred by the Purchaser;

"**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;

"**MACA Codes of Business Conduct**" means the Purchaser's codes of business conduct as amended from time to time (copies of which are available at: https://www.maca.net.au/corporate-governance/corporate-governance-practices/);

"**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 Services or supply of Goods 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),
  in the applicable jurisdiction;

"**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 the claim for payment made by the Supplier in accordance with this Contract;

"**Personal Information**" has the meaning given to it in section 6 of the Privacy Act;

"**Personnel**" means:

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

"**Price**" means:

(a) where there is a lump sum in the Purchase Order, that lump sum;
(b) where there are unit prices in the Purchase Order, the sum of the products ascertained by multiplying the quantity of Goods and the corresponding unit prices in the Unit Price List;
(c) 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
(d) where there are lump sums, unit prices and rates in the Purchase Order, the aggregate of the sums referred to in paragraphs (a), (b) and (c),

as adjusted under this Contract;

"**Privacy Act**" means the Privacy Act 1988 (Cth);

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

"**Program**" a program for the projected supply of the Goods and/or performance of the Services prepared by the Supplier containing the information reasonably required by the Purchaser and accepted by the Purchaser.

"**Proportionate Liability Legislation**" means;

(a) if the governing law of this Contract is the law of Western Australia, then Part 1F of the Civil Liability Act 2002 (WA);

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

"**Purchase Order**" means the document issued by the Purchaser to the Supplier to order the Goods and/or 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 or the party who actually receives the Goods and/or Services if this is a different Party;
"**Secondary Subcontractor**" means a subcontractor, including a consultant and a supplier, to the Supplier;
"**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 is undertaking the Project and this may be the same location as the Delivery Location;
"**Security of Payment Act**" means legislation applying in the jurisdiction where the supply of the Goods and/or 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";
"**Unit Price List**" means the unit prices for any part or item of the Goods which may also include lump sums, other sums, quantities, lead times and prices as specified in the Contract;
"**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;
"**Wilful Default**" means, in respect of the Supplier:
(a) any fraud, fraudulent concealment or dishonesty;
(b) any wanton or reckless act or omission (including failure to perform duty) of the Supplier or any of its Personnel with reckless indifference to the possible harmful consequences arising from that act or omission;
(c) any breach of contract made by the Supplier in circumstances where it knew it was a breach; or
(d) any illegal of malicious act or omission of the Supplier or any of its Personnel;

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;
(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:
(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 or the supply of Goods and/or Services by the Supplier (whichever occurs first) constitutes the Supplier's acceptance of these Terms and Conditions and the formation of 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 subject to clause 31, the Purchaser will have the ownership of all Intellectual Property relating to the Goods and/or Services.
4.2 In relation to Goods and without limiting any warranties imposed on the Supplier at law the Supplier warrants and represents that the Goods:
(a) are new, of merchantable quality, are not Defective, are Fit for Contract 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 Purchaser to the Supplier, or provided to the Purchaser by the Supplier;
(d) are in compliance with any applicable standards, including, but not limited to any applicable Australian Standards and any other relevant standards; and
(e) it will duly comply (at its own cost) with any special requirements of the Purchaser and/or the Project 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.
4.3 In relation to Services and without limiting any warranties imposed on the Supplier at law, the Supplier must:
(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 works and/or 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) it will duly comply (at its own cost) with any special requirements of the Purchaser and/or the Project 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 will be encompassed by and adhere to the Purchaser's management plans detailed in the Purchase 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.
4.6 The Supplier represents and warrants that it will take all necessary measures to comply with all relevant policies of the Purchaser and laws applicable to the Project, the Site, and the Goods and/or Services, including health, safety, environment protection and security.

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.
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 SUPPLIER PERSONNEL

6.1 The Purchaser has the right to:
(a) interview and/or evaluate the experience and qualifications of every person who will be involved in undertaking the Services on behalf of the Supplier; and
(b) in its absolute discretion, require the replacement or removal of any person who, in the sole opinion of the Purchaser, is unsuitable to be engaged in undertaking the Services.
6.2 Notwithstanding any other clause of the Contract, the Supplier must assign sufficient number of experienced, qualified and skilled personnel to the Project to enable the proper performance and completion of the supply of the Good and/or Services in accordance with the Contract.
6.3 If the Purchaser provides any inductions, training or other programmes relating to occupational health and safety policies or general operational matters to the Supplier's Personnel and for which the Supplier is responsible under clause 4.2(e) and/or 4.3(f) then the cost of such inductions, training or other programmes provided by the Purchaser shall be reimbursed by the Supplier to the Purchaser and such amount shall be a debt due and payable to the Purchaser.

7 DELIVERY OF THE GOODS AND/OR SERVICES

7.1 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.
7.2 The Services must:
(a) be commenced immediately upon the earlier of:
(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) achieve Completion on or before the Date for Delivery; and
(c) carried out at the Delivery Location.
7.3 The Purchaser may, amend the Date for Delivery (acting reasonably) 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 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.

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7.4 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.

7.5 The Supplier must if requested by the Purchaser:
- (a) provide to the Purchaser a Program 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.

7.6 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 (in its absolute discretion) refuse or reject the Goods, without prior notice or procure the Goods from another supplier, and the Supplier will be liable for any additional costs incurred by the Purchaser.

8 INSPECTION AND TESTING

8.1 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.

8.2 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.

8.3 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.

8.4 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.

9 ACCEPTANCE AND REJECTION OF GOODS AND/OR SERVICES

9.1 The Purchaser must use best endeavours to inspect and assess the:
- (a) 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 or not 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,

  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) 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.

9.2 A failure by the Purchaser to inspect or assess the:
- (a) Goods, or the Acceptance of Goods by the Purchaser; or
- (b) Services, of 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.

9.3 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.

9.4 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 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 Services,

will be to the account of the Supplier.

10 DEFECTS LIABILITY PERIOD

10.1 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.

10.2 If the Supplier fails to comply with a Direction given under this clause, or where rectification work is required urgently with respect to the Goods and/or Services, the Purchaser may perform the work or have the work performed 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 DOCUMENTATION

11.1 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.

11.2 Notwithstanding any other clause of this Contract that specifies specific documentation to be provided under the Contract, the Supplier must provide the Purchaser with:
- (a) all documentation necessary for the effective installation, operation, use and maintenance of the Goods and/or Services without assistance from the Supplier; and
- (b) keep available to the Purchaser at the place of manufacture, fabrication or assembly of any significant part of the Goods, a set of the documents affecting that part.

12 TRANSFER OF TITLE AND RISK

12.1 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.

12.2 Risk of the Goods and/or Services remains with the Supplier and only transfers to the Purchaser when:
- (a) in the case of Goods, all the Goods are delivered in accordance with these terms; and
- (b) in the case of Services, Completion has been achieved for all the Services.

13 PAYMENT

13.1 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.

13.2 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.

13.3 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 Services performed by the Supplier in accordance with this Contract, as measured by the Purchaser;
- (b) if unit prices apply, by applying the unit prices to the quantities of Goods delivered and/or Services performed by the Supplier in accordance with this Contract, as measured by the Purchaser;
- (c) otherwise, by valuing the Goods and/or Services supplied and work completed to the date of the Payment Claim (as a proportion of the Price);
- (d) by adding or subtracting any other amounts due from one Party to the other under the Contract; and
- (e) by deducting retention money pursuant to this Contract.

13.4 The Purchaser must assess each Payment Claim within twenty-one (21) days of deemed submission under clause 13.2.

13.5 The Purchaser must pay the Supplier the amount calculated by the Purchaser as payable in relation to the Payment Claim within as follows:
- (a) if a Security of Payment Act does not apply to the supply of Goods and/or performance of the Services, then within forty-five (45) days from the end of the month in which the Payment Claim was deemed to have been submitted; or
- (b) if a Security of Payment Act applies to the supply of Goods and/or performance of the Services, then within
  - (i) forty-two (42) days from the day in which the Payment Claim was deemed to have been submitted; or
  - (ii) if a Security of Payment Act makes payment mandatory within a shorter period of time than forty-two (42) 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.

13.6 To the extent permitted by law, the Purchaser shall not be liable for any Claim submitted by the Supplier more than six (6) months following the delivery of Goods and/or completion of the Services.

13.7 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.

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

13.9 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:
- (a) any debts or moneys due or becoming due by the Supplier (or the Supplier's Personnel) to the Purchaser; and
- (b) 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 Project. For the avoidance of doubt, 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.

14 VARIATIONS

14.1 The Purchaser may, at any time, issue a Variation, 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, 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.

14.2 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.

14.3 Where the Purchaser issues a Variation, the Price will be altered by an amount calculated in the following order of priority:
- (a) to the extent that the Parties have agreed the amount of the alteration, then the amount agreed;
- (b) to the extent that this Contract provides for the amount of the alteration, then that amount;
- (c) 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

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(d) failing any of the above being applicable, then by the amount reasonably assessed by the Purchaser.

14.4 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 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 14.

15 EXTENSION OF TIME

15.1 The Supplier must, on becoming aware of anything which will or is likely to cause delay to the Acceptance of the Goods and/or Completion of the 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.

15.2 The Purchaser may, by notice in writing to the Supplier, extend the Date for Delivery (acting reasonably). The Purchaser is not under any circumstances obliged to exercise this discretion 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.

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

(a) the Supplier can demonstrate that it actually has been or will be delayed in achieving the Date for Delivery by:
  (i) a Variation; or
  (ii) any act or omission by the Purchaser or Purchaser's Personnel,
(b) the cause was beyond the reasonable control of the Supplier;
(c) the Supplier has not contributed to the cause and has taken all reasonable steps to mitigate the effect of the delay; and
(d) the Supplier has given the Purchaser all notices strictly in accordance with the requirements of this clause.

15.4 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 to the extent that the causes of delay occur concurrently.

15.5 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 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, the period of the delay (including the dates of commencement and, if applicable, conclusion of the delay) and the extension of time claimed.

15.6 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.

15.7 For each day that the Date for Delivery is extended by the Purchaser in accordance with clause 15.6 due to a breach of this Contract by the Purchaser, the Purchaser will pay the Supplier the direct on-site costs (but not any off-site overheads or profit) that are actually, properly and reasonably incurred by the Supplier and provided the Supplier has supplied the Purchaser with evidence satisfactory to the Purchaser of the relevant amount.

15.8 Except as otherwise expressly provided in this clause 15, the:

(a) 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.
(b) Supplier will have no entitlement to claim any extension of time or any costs in relation to delay or disruption.

16 LATE DELIVERY

16.1 If the Supplier does not achieve:

(a) Acceptance of the Goods; or
(b) Completion of the 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.

16.2 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.

16.3 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.

16.4 If:

(a) the Contract does not have any amount stated or any provision completed for liquidated damages; or
(b) 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
(c) if 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.

17 ACCESS

17.1 The Supplier acknowledges that if the Supplier enters the Site or any other premises in connection with the Contract, 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.

17.2 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.

17.3 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.

17.4 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.

18 HEALTH AND SAFETY

18.1 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.

18.2 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:

(a) 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;
(b) 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
(c) safe operating instructions are provided and operators have received an induction in the safe use of the plant and equipment.

19 INDEMNITY AND LIABILITY

19.1 The Supplier acknowledges that if the Supplier enters the Delivery Location, then to the extent permitted by law, the Supplier does so at the Supplier's own risk and in compliance with all applicable Site rules, or as otherwise directed by the Purchaser.

19.2 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 out of an act or omission of the Supplier or its Personnel or a breach of the Contract by the Supplier or its Personnel, but the indemnity shall be reduced proportionately to the extent that the act or omission of the Purchaser or Purchaser's Personnel may have contributed to the liability, injury loss or damage.

19.3 Notwithstanding any other provision in this Contract to the contrary (but subject to clause 26.7) and to the extent permitted by law, the Supplier's total aggregate liability to the Purchaser whether arising out of or in connection with the Contract, under statute, in tort (for negligence or otherwise) or any other basis in law or equity, is limited to the greater of the:

(a) 200% of the Price; and
(b) the limit of any relevant insurance coverage required to be maintained by the Supplier under this Contract,

but nothing in this clause 19.3 will affect or reduce the Supplier's liability arising out of or in connection with any Exempt Liability and such liability will not be taken into account in determining whether the Supplier's limitation has been reached.

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 provision in this Contract and to the extent permitted by law, the Purchaser's total aggregate liability whether arising out of or in connection with the Contract, under statute, in tort (for negligence or otherwise) or any other basis in law or in equity, will be limited to the greater of the:

(a) Price;
(b) the limit of any relevant insurance coverage required to be maintained by the Purchaser under this Contract.

19.6 Notwithstanding any other provision of this Contract to the contrary and to the full extent permitted by law:

(a) 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 under 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 19.6 will affect or reduce a Party's liability to the other Party arising out of or in connection with any Exempt Liability); and
(b) the Supplier will indemnify (and will keep indemnified) the Purchaser (and the Purchaser's Personnel) from and against any liabilities claimed or made on any basis (including negligence, tort, contract, statute, equity or otherwise) by third parties (with whom the Purchaser does not have a contractual relationship in relation to the Project) for Consequential Loss against the Purchaser (and the Purchaser's Personnel) directly or indirectly arising out of or in connection with the Goods, Services or this Contract to the extent that Consequential Loss was caused, or contributed to, by the Supplier.

19.7 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.

19.8 If any of the provisions of the Proportionate Liability Legislation apply to any claim between the Purchase and the Supplier whether in contract, tort or otherwise, the Supplier will indemnify the Purchaser against:

(a) any liability to or claim by any other person; and
(b) any cost, loss, expense or damage incurred by the Purchaser,

or which the Supplier would be liable but for the operation of the Proportionate Liability Legislation.

19.9 The provisions of this clause 19 will survive the expiration or termination of this Contract.

20 INSURANCE

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

(a) if the Supplier is responsible for transporting the Goods or any other items, goods and transit insurance covering damage to Goods (and if the Contract provides an amount, of at least the amount prescribed in the Contract) and any other items to be incorporated or used in relation to the Goods, while in transit;
(b) 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 Services or otherwise in relation to the Supplier's performance of this Contract and the public liability insurance must cover the Supplier and their Secondary Subcontractors;
(c) workers' compensation insurance against its liability to its employees or persons deemed to be employees as required under any applicable legislation; and
(d) if the Supplier must carry out any design work or other professional services, professional indemnity insurance that provides cover of at least $5 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:

(a) 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 Services under this Contract;
(b) 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

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deductible under any insurance taken out by the Supplier shall be borne wholly by the Supplier;

(c) with the exception of the professional indemnity policy (if it is required), require its insurers to include a principal's indemnity extension to cover the Purchaser for their vicarious liability arising out of the actions of the Supplier and/or their Secondary Subcontractors, a cross liability provision stipulating that such insurances shall apply as though separate policies had been issued to each insured;

(d) with the exception of the professional indemnity policy (if it is required), cause its insurers to waive all rights of subrogation against the Purchaser in respect of any claim arising out of the insurance policies;

(e) provide to the Purchaser, before commencing the supply of the Goods and/or the Services and being entitled to any payment under this Contract or following any request from the Purchaser, certificates of currency and any other evidence of the insurance policies that the Purchaser reasonably requires; and

(f) 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 DEFAULT

21.1 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 21.1 must specify the breach and the date by which the Supplier must rectify the breach. If there is no timeframe specified, then it shall be within a reasonable time.

21.2 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.

21.3 If:

(a) the Supplier fails to rectify the default within the time specified in a notice given under clause 21.1;

(b) the breach is, in the Purchaser's opinion, not capable of being remedied;

(c) in respect of clause 21.3(c), there is a Change in Control of the Supplier without the Purchaser's prior written approval; or

(d) an Insolvency Event occurs in relation to the Supplier,

the Purchaser may, by notice in writing, do either or both of the following:

(e) suspend payments due or which may become due under this Contract; and/or

(f) 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.

21.4 If the Purchaser exercises the power in clause 21.3(f)(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 and security (including any retention) called on by the Purchaser.

21.5 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.

21.6 If the Purchaser fails to comply with its payment obligations under this Contract, the Supplier may give the Purchaser a written notice of default. A notice provided under this clause 21.6 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 give the Purchaser a notice of termination that the Contract will be terminated for breach if the Purchaser does not remedy the breach within a further twenty-eight (28) days or fails to propose a reasonably remediation plan for the Purchaser to remedy, as soon as practicable, the breach subject of the breach notice. If the Purchaser does not remedy the breach following the notice of termination, 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 21.6. If the Contract is terminated pursuant to this clause, the Supplier is only entitled to claim and be paid:

(a) the value of the Goods supplied and/or Services undertaken up to the date of termination (as assessed if it was a Payment Claim); and

(b) the actual and reasonable costs incurred in demobilising the Supplier's plant, equipment and Personnel from the Delivery Location.

21.7 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 21 and the Supplier's rights and remedies upon termination will be limited to those set out under clause 21.

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 reasonable written 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:

(a) 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); and

(b) the actual and reasonable costs incurred in demobilising the Supplier's plant, equipment and Personnel from the Delivery Location.

22.4 No action taken by the Purchaser under this clause 21 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 Services that are completed in accordance with the Contract.

23 CUSTOMS CLEARANCE AND CUSTOMS DUTY

23.1 The Supplier is responsible for handling and clearing through customs in all applicable jurisdictions (including Australia), all overseas sourced Goods, materials, plant, and other items that are to be supplied by the Supplier under this Contract.

23.2 The Supplier must bear and pay for any Australian customs duty that may be payable in connection with the importation into Australia of:

(a) any plant or equipment used to manufacture or transport the Goods; and

(b) the Goods, materials, plant, or other items required to repair, replace or rectify any loss, damage or defect that the Supplier is required to repair, replace or rectify at its cost.

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 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.

25.3 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.

25.4 Subject only to clause 25.5, 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; and

(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 is obligations in clause 25.

25.5 Nothing in this clause will prejudice the right of a Party to seek urgent injunctive or declaratory relief.

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 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 PRIVACY ACT

27.1 Each Party agrees to comply with their obligations under the Privacy Act in respect of Personal Information obtained or disclosed to them pursuant to this Contract.

27.2 Each Party warrants to the other Party that is has complied with the Privacy Act in obtaining Personal Information disclosed pursuant to this Contract.

27.3 If the Supplier fails to comply with any aspect of this clause 27 then, without limiting any of the Purchaser's other rights under the Contract or at law the Supplier must indemnify the Purchaser against any loss arising out of or in connection with such failure.

28 MODERN SLAVERY

28.1 The Purchaser works to comply with the requirements of Modern Slavery Laws and expects the same of its consultants, suppliers and subcontractors.

28.2 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.

28.3 If the Supplier fails to remedy, or provide an acceptable plan to remedy, any identified instances of Modern Slavery within its operations and supply chain within the time frame specified by the Purchaser, the Purchaser may immediately terminate this Contract in accordance with clause 21.3.

29 BUSINESS CONDUCT

29.1 The Purchaser adopts a no tolerance policy in relation to bribery, corruption and secret commissions or profits. At all times, the Supplier and the Supplier's Personnel must comply with:

(a) MACA Codes of Business Conduct; and

(b) Business Conduct Laws.

29.2 The Supplier represents and warrants that as at the date of this Contract:

(a) it shall comply with MACA Codes of Business Conduct;

(b) it complies and shall continue to comply with all Business Conduct Laws; and

(c) it has not engaged in any anti-competitive behaviour in relation to the potential or actual terms and conditions of this Contract, including the Contract Sum;

(d) that neither it nor its directors have been convicted of any offence, and have not been the subject of any investigation or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence, under any applicable Business Conduct Laws; and

(e) to the best of its knowledge:

(i) no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract by itself, its Personnel or any Secondary Subcontractor; and

(ii) no public official (whether domestic or foreign) has an ownership interest in the Supplier.

29.3 The Supplier must:

(a) ensure that any Personnel of the Supplier will not, during the course of this Contract:

(i) engage in any activity or obtain any interest likely to conflict with or restrict the Supplier in performing its obligations under this Contract fairly and independently; or

(ii) make any offer, payment, promise of gifts or money or any other thing of value to any government official or employee, political party or political candidate for the purpose of influencing any act or decision by them, inducing them to act in violation of their lawful duty or securing any improper advantage;

(b) not commit any act or omission which causes or could cause it or the Purchaser to breach, or commit an offence under any Business Conduct Laws;

(c) immediately notify the Purchaser in writing if the Supplier has breached or there is a reasonable risk of the Supplier breaching this clause 29.

29.4 Without affecting any other express remedies referred to elsewhere in this Contract or any rights or remedies available at law or in equity, if the Supplier is in breach of this clause 29 or the Purchaser knows or believes, acting reasonably, that such a breach is imminent then:

(a) the Purchaser may immediately terminate this Contract in accordance with clause 21.3; and

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(b) the Purchaser will not be liable to:
(i) make any payment to the Supplier in respect of the Goods and/or Services, or other benefits that have been procured through, or related to, the breach; or
(ii) reimburse, indemnify or pay any compensation to the Supplier as a consequence of such termination regardless of any activities or agreements with additional third parties entered into before termination.

30 PUBLICITY

30.1 Except as required by law or otherwise permitted by the Contract, the Supplier must:
(a) promptly refer to the Purchaser any enquiries from the media concerning the Goods, Services, Project or Client; and
(b) not without the Purchaser's prior written consent (which consent must not be unreasonably withheld):
(i) make any public announcements or disclose any information for distribution through any communications media; or
(ii) place any advertisements (including without limitation, employment advertisements),
in relation to the Contract, the Goods, Services, Project or Client.

30.2 Except as required by law, the Supplier must not, without the Purchaser's prior written consent (which consent must not be unreasonably withheld):
(a) affix or exhibit, or permit any third party to affix or exhibit, any sign, light, embellishment, advertisement, name or notice on or to any land or structure on the Site;
(b) take or permit any person for whom it is responsible to take photographs or videos of the Goods, Services, the Project, the Site or operations of the Purchaser's Client; or
(c) use the Purchaser's logos, trademarks or other identifications.

31 INTELLECTUAL PROPERTY

31.1 Notwithstanding any other provision in this Contract to the contrary:
(a) each Party retains ownership of their Intellectual Property in any Background IP; and
(b) nothing in this Contract affects the ownership of the Supplier's Background IP.

31.2 Subject to clause 31.1, title to and the Intellectual Property in or relating to the Contract IP will vest in the Purchaser upon creation of the relevant Contract IP. To the extent the Intellectual Property in or relating to the Contract IP is not capable of being vested in the Purchaser because the Supplier does not own that Intellectual Property, the Supplier must procure for the Purchaser and the Purchaser's Client an irrevocable, perpetual and royalty free licence to use the Intellectual Property and such licence shall include use of the Goods and/or Services or any subsequent repairs to, servicing (including the supply of replacement parts), additions, alterations or maintenance to, the Goods and/or Services. The Supplier must do and perform all:
(a) things necessary and at the Supplier's cost to perfect the vesting; or
(b) further acts and execute and deliver all further documents (in a form and content reasonably acceptable to the Purchaser) required by law or reasonably requested by the Purchaser to give effect to the relevant licence.

31.3 In providing the Goods and/or Services, the Supplier grants to the Purchaser and the Purchaser's Client, a non-exclusive, transferable, royalty free, irrevocable and perpetual licence to use (including the copying of documents), configure, adapt the Supplier's Background IP:
(a) for the work under the Contract and to obtain the benefit of the Goods and/or Services; and
(b) for any other purpose related to the Services including use of the Services or any subsequent repairs to, servicing (including the supply of replacement parts), additions, alterations or maintenance to, the Services.

31.4 The Purchaser may sub-licence the Purchaser's rights to the Supplier's Background IP to any person where that person has been granted use of the Supplier's Background IP by the Purchaser.

31.5 The Purchaser grants the Supplier a non-exclusive licence to use the Purchaser's Background IP to the extent necessary for the Supplier to perform the work under this Contract.

31.6 The Supplier represents and warrants that, in providing the Goods and/or Services the Supplier owns or is licensed to use the Intellectual Property in the Background IP and Contract IP and indemnifies the Purchaser against any liability, loss or damage arising out of or in connection with the Background IP and Contract IP infringing the Intellectual Property of a third party.

31.7 The Supplier undertakes that it has obtained or will obtain valid consent from all relevant authors in the creation of any Background IP or Contract IP so that the use by the Purchaser or its assignees of will not infringe any Intellectual Property rights or any author's moral rights under the Copyright Act 1968 (Cth).

31.8 If the Supplier fails to comply with any aspect of this clause 31 then, without limiting any of the Purchaser's other rights under the Contract or at law the Supplier must indemnify the Purchaser against any loss arising out of or in connection with such failure.

32 CONFIDENTIALITY

32.1 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:
(a) any information relating to the Project or 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.

33 SUBCONTRACTING, NOVATION, ASSIGNMENT AND CHANGE IN CONTROL

33.1 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 Secondary Subcontractor (which approval must not be unreasonably withheld);
(b) novate its rights interests, obligations or liabilities under this Contract (which approval must not be unreasonably withheld);
(c) purport to charge, encumber or assign its rights, interests, obligations or liabilities under this Contract (which approval must not be unreasonably withheld); or
(d) permit a Change in Control of the Supplier (which approval shall be at the Purchaser's sole and absolute discretion),
and then only on such terms as the Purchaser in its discretion will approve (acting reasonably) and if required, the Supplier, the Purchaser and other Party will promptly execute a deed in the form provided by the Purchaser.

33.2 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.

34 CLAUSES SURVIVING TERMINATION

34.1 All provisions of this Contract, whether express or implied, which:
(a) are expressed to survive expiry or termination of this Contract;
(b) by their nature ought to survive expiry or termination of this Contract;
(c) are ancillary to the main purpose of the Contract;
(d) regulate a defaulting Party's obligation to pay compensation to the other Party; and
(e) give effect to the provisions of this clause,
survive expiry or termination of this Contract and are enforceable at any time at law.

35 NOTIFICATION OF CLAIMS

35.1 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.

35.2 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.

35.3 For the purposes of this clause, a notice will be taken to have not been given in time if it does not contain all of the information required by the Contract or the requirements for notification of the Claim prescribed in this Contract are not strictly complied with.

36 NOTICES

36.1 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.

36.2 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 to the other.

36.3 A communication is given if posted:
(a) within Australia to an Australian address, four days after posting; or
(b) in any other case, fourteen (14) days after posting.

36.4 A communication sent by email:
(a) must be in letter format, signed by the Party's representative as set out in Schedule1 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.

36.5 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 the State where the Project is located nor 27, 28, 29, 30 or 31 December.

36.6 Notwithstanding any other provision of this Contract to the contrary, the following notices cannot be sent by the Supplier to the Purchaser by email and must either be personally delivered pursuant to clause 36.1(a) or sent by post pursuant to clause 36.1(b);
(a) breach notices issued by the Supplier under clause 21.6;
(b) a termination notice issued by the Supplier under clause 21.6; or
(c) a Notice of Dispute issued by the Supplier under clause 25.1.

37 SUPPLIER AS TRUSTEE

37.1 This clause 37 applies only if the Supplier enters into this Contract as a trustee of a trust.

37.2 If applicable, the Supplier as trustee of a trust, in relation to this Contract:
(a) is liable both personally, and in its capacity as trustee of that trust;
(b) must not assign, transfer, mortgage, charge, release, waive, encumber or compromise its right of indemnity out of the assets of that trust, but retain and apply such indemnity only towards meeting its obligations under the Contract; and
(c) must not retire, resign nor by act or omission effect or facilitate a change to its status as the sole trustee of that trust without the prior written consent of the Purchaser.

38 PPSA

38.1 In this clause "PPSA" means the Personal Property Securities Act 2009 (Cth) and "security interest", "perfected", "personal property", "possession" and "control" have the meanings given to them in the PPSA.

38.2 Whenever the Purchaser requests that the Supplier do anything to ensure any security interest granted under this Contract is fully effective, enforceable and perfected with the priority required by the Purchaser, the Supplier must promptly do it. This may include:
(a) doing anything to make, procure or obtain any consent, authorisation, registration or approval in respect of anything, or to facilitate it;
(b) creating or executing (or procuring the creation or execution of) any document, including any form, notice, consent or agreement; and
(c) delivering documents or evidence of title or otherwise giving possession or control with respect to any personal property or other asset.

38.3 The Purchaser may ask the Supplier to provide information relating to a security interest (in favour of any person) in this Contract or any matter contemplated by this Contract, including requesting a copy of any form, notice, consent or agreement relating to such a security interest. The Supplier must promptly comply with such a request.

38.4 The Supplier must take reasonable steps to identify security interests in its favour and to perfect and protect them, with the highest priority reasonably available and create and implement appropriate policies and systems to promptly do so.

38.5 To the extent this Contract or the transactions contemplated by it give rise to a security interest under the PPSA, the parties contract out of each provision which section 115(1) or 115(7) of the PPSA permits them to contract out, other than sections 117 and 118 (relationship with land laws), 128 and 129 (disposal of collateral) and 134(1) and 135 (retention of collateral). Any disposal or other exercise of a right, power or remedy under this Contract or otherwise will only be taken to be under a provision listed in this paragraph if the exercising party so elects.

38.6 The Supplier must meet all of its obligations under this clause 38 solely at the Supplier's own cost.

39 GENERAL

39.1 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.

39.2 The UN Convention on Contracts for the International Sale of Goods (1989) is excluded and will not apply to this Contract.

39.3 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.

39.4 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.

39.5 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

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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 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.

39.6 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.

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