

Northparkes Purchase Order General Conditions for the Supply of Goods (and Associated Services)

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1. Definitions and interpretation

1.1 Definitions

In these General Conditions and the Contract the following terms have the meanings set out below:

Associated Services means the services (if any) identified in the Purchase Order that are to be performed by the Supplier.

Business Day means a day on which banks are open for business in the place in respect of which an obligation is to be performed or, in respect of Clause 31, the place to which a Notice is sent.

Cancellation Date is defined in Clause 25.2(b)(iii).

Claim means any action, suit, proceeding or demand of any kind (including by or against any or all of the Company, or its Personnel by Personnel of the Supplier or any third party).

Company is defined in the Purchase Order.

Company Competencies is defined in Clause 17.5(b).

Company Induction Courses is defined in Clause 17.5(a).

Company Representative is, initially, as defined in the Purchase Order, and includes:

- (a) such other person as the Company may, in writing, substitute for that representative; or
- (b) any person authorised by that representative to perform any of that representative's powers, duties, discretions or authorities.

Company's Personal Information means the Personal Information that the Company transfers to the Supplier from time to time in connection with the Contract.

Confidential Information means the Contract, and any information (in whatever form) or Documentation of a confidential nature (or which the Supplier or its Personnel ought reasonably to know to be confidential) which relates to the business, affairs or activities of the Company (including in relation to the Supply) and which:

- (a) is disclosed to the Supplier or its Personnel by or on behalf of the Company;
- (b) is generated by the Supplier or its Personnel in performing the Supply; or
- (c) otherwise comes to the knowledge of the Supplier or its Personnel.

Contract is defined in Clause 2.1.

Contract Price is defined in Clause 9.1.

Corporations Act means the Corporations Act 2001 (Cth).

Customs Duties means any tax or tariff imposed, claimed, levied or assessed by, or payable to, any Government Agency in relation to the import or export of Goods.

Deducted Amount is defined in Clause 12.2(a).

Defects Liability Period means (as applicable) the period identified as such in the Purchase Order or, where such period is not identified in the Purchase Order, the period of 1 year following receipt of a particular Good by the Company.

Delivery Point means the place identified in the Purchase Order for delivery of the Goods.

Dispute is defined in Clause 26.1.

Dispute Notice is defined in Clause 26.1.

Dispute Representative is defined in Clause 26.2(a).

Documentation includes plans, designs, drawings, calculations, engineering information, data, specifications, sketches, notes, samples, reports, maps, accounts, operating manuals, training materials and any other material specified in the Contract (and whether embodied in tangible or electronic form).

Excise Duties means any tax imposed, claimed, levied or assessed by, or payable to, any Government Agency in relation to the production or manufacture of Goods.

Facilities means any accommodation, sustenance, transportation, medical or toilet facilities.

Force Majeure means an event or cause which is beyond the control of the Party claiming force majeure, not able to be overcome by the exercise of reasonable care, proper precautions and the consideration of reasonable alternatives with the intention of avoiding the effects of the force majeure by that Party, and which could not have been reasonably foreseen, and includes (subject to satisfying the requirements of the foregoing):

- (a) an act of God (other than adverse weather);
- (b) cyclones, fire, flood; or
- (c) acts of war, acts of public enemies, terrorist acts, riots or civil commotions.

Goods means the goods, materials, supplies, equipment or other items identified in the Purchase Order.

Government Agency means any government or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

HSE Management Plan(s) is defined in Clause 17.4(a).

HSE Policies and Standards is defined in Clause 17.3(a)

Indemnified Parties is defined in Clause 23.2.

Indirect Transaction Taxes means any value added tax, goods and services tax or similar tax including, without limit, sales, use or consumption taxes, imposed, claimed, levied or assessed by, or payable to, any Government Agency, but does not include any related penalty, fine or interest thereon.

Input Tax Credit means any entitlement to a credit for, or offset against, reduction in or refund of, Indirect Transaction Taxes, in relation to any acquisition or the receipt of any supply.

Intellectual Property Rights means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registerable), rights in relation to registered or unregistered trade marks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.

Joint Venture means an unincorporated joint venture, if any, on behalf of which the Company is a party to the Contract as agent.

Joint Venturers means, in respect of a Joint Venture, the participants in that Joint Venture.

Liabilities means damages, Claims, losses, liabilities, costs and expenses of any kind.

Official includes:

- (a) any officer or employee of any Government Agency, or any person acting in an official capacity on behalf of any such Government Agency;
- (b) any officer, employee or official of a political party;
- (c) any candidate for political office; or
- (d) any officer or employee of a public international organisation (for example, the United Nations, IMF or World Bank).

Party means a party to the Contract.

Personal Information has the meaning given in the Privacy Act.

Personnel means:

- (a) in relation to the Supplier, any of its employees, Sub-contractors (including Sub-contractors' Personnel), agents and representatives involved either directly or indirectly in the performance of the Supply;
- (b) in relation to the Company, any of its past or present officers, employees, agents (including, for the purposes of Clause 23, the entity entering into the Contract for and on behalf of Joint Venturers (if applicable) and that entity's past or present officers, employees, agents or representatives) or representatives; and
- (c) in relation to a Sub-contractor, any of its employees, agents or representatives involved either directly or indirectly in the performance of the Supply.

Privacy Act means the *Privacy Act 1988* (Cth).

Processing means collecting, holding, using, transferring, destroying and any other dealing.

Purchase Order means individual purchase orders as may be issued by the Company to the Supplier in respect of the supply of Goods or the performance of Associated Services which shall be subject to the terms of the Contract.

Related Body Corporate has the meaning given in the Corporations Act.

Site means the Company's premises identified in the Purchase Order.

Specifications means the specifications for the Supply and any modification of those specifications as directed by the Company Representative in accordance with the Contract.

Sub-contractor means any person engaged by the Supplier in accordance with Clause 34 to perform all or any part of the Supply on behalf of the Supplier.

Supplier means the Party (as identified in the Purchase Order) responsible for providing the Supply.

Supplier Default Notice is defined in Clause 25.1.

Supplier Insurances is defined in Clause 22.1.

Supplier Representative is defined in the Purchase Order.

Supply means the supply of Goods and the performance of any Associated Services in accordance with the Contract.

Supply Chain means all steps and processes involved in the provision of the Supply to the Company, commencing with the sourcing of the Goods and (if applicable) Associated Services and finishing with the use of the Goods and Associated Services by the Company.

Tax or Taxes means, unless the contrary intention is expressed, any and all taxes, including, without limitation, Indirect Transaction Taxes, excise, stamp, documentary, customs, import/export, payroll, personal, property, real property, interest equalisation, business, occupation, turnover, income, corporation, capital, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed by any Government Agency or otherwise payable.

Tax Invoice means an invoice or other document, including without limit a credit note or debit note, in a form that is valid under the applicable law of the jurisdiction in which a liability to pay Indirect Transaction Taxes is imposed, claimed, levied or assessed, which must be held by a person for that person to be able to claim Input Tax Credits.

Tender means the Supplier's offer or counter-offer in writing to perform the Supply whether described as a "tender" or "proposal" or otherwise.

Term is defined in Clause 7.

Termination Notice is defined in Clause 24.1.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) The meaning of general words is not limited by specific examples introduced by **including** or **for example**.
- (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes all of them.
- (f) A reference to a person or a Party includes a reference to that person's or Party's executors, administrators, successors, substitutes (including persons taking by way of novation), assigns (in the case of a person) and permitted assigns (in the case of a Party).
- (g) A reference to a Clause is a reference to a clause of, these General Conditions.
- (h) A reference to an Act or legislation, includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to *use* in the context of dealing with Intellectual Property Rights includes using, exploiting, copying, adapting, creating derivative works, developing, modifying, disclosing and communicating.
- (j) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- (k) Where it is provided that the Supplier will perform any act or provide any thing at its cost, this means the Supplier will not be entitled to any additional compensation for such act or thing and the cost will be deemed to be included in the Contract Price.

1.3 Joint Venture

If the Contract specifies that the Company enters into, and is party to, the Contract for and on behalf of Joint Venturers under a Joint Venture, then the following paragraphs apply:

- (a) The Company is a party to the Contract as agent severally for each of the Joint Venturers in their respective percentage interests in the Joint Venture.
- (b) The Parties acknowledge and agree that:
 - (i) the obligations and liabilities of the Joint Venturers to the Supplier are several only (and will not be, nor be construed to be, either joint or joint and several), in accordance with the Joint Venturer's respective percentage interest from time to time in the Joint Venture;
 - (ii) the percentage interests of the Joint Venturers, and the identity and number of Joint Venturers, may change from time to time and the Company may at any time without the consent of the Supplier assign its rights and obligations under the Contract to an incoming agent or manager on behalf of the Joint Venturers;
 - (iii) the rights and remedies in and under the Contract may be exercised by the Company for and on behalf of the Joint Venturers;
 - (iv) the benefit of the respective duties and obligations of the Supplier under the Contract are deemed to enure to each of the Joint Venturers, and the Company is severally authorised to enforce those duties and obligations on the Joint Venturers' behalf;
 - (v) all Notices to be given or made pursuant to the Contract relating to the Joint Venture may be given or made (as the case requires) by the Company on behalf of the Joint Venturers or any one or more of them;
 - (vi) in dealing with the Joint Venturers, for all purposes under or in connection with the Contract (including, for the avoidance of doubt, any Purchase Order), the Supplier must deal only with the Company; and
 - (vii) the Company will not be liable for the failure of the Joint Venturers (or any one or more of them) to perform its or their obligations under the Contract.

2. Evidence of Contract and precedence of documents

2.1 Contract

The **Contract** consists of the following documents:

- (a) the Purchase Order;
- (b) these General Conditions;
- (c) any other document which is attached to, or incorporated by reference in, the Purchase Order or these General Conditions.

2.2 Precedence of Contract documents

If there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of

precedence in accordance with the order in which they are listed in Clause 2.1.

2.3 Entire agreement

- (a) The Contract contains the entire agreement between the Company and the Supplier with respect to its subject matter and supersedes all prior communications and negotiations between the Company and the Supplier in this regard, unless those communications expressly form part of the Contract.
- (b) No terms or conditions submitted by either party that are in addition to, different from or inconsistent with those contained herein or in the Purchase Order, including, without limitation, the Supplier's printed terms and conditions, and any terms and conditions contained in any Supplier's quotation, invoice, order acknowledgment, confirmation, acceptance, bill of lading or other instrument, shall be binding upon either party unless specifically and expressly agreed to in a writing signed by duly authorised representatives of both parties.

2.4 Amendment to be in writing

No amendment or variation of the Contract is valid or binding on a Party unless made in writing and signed by the Supplier and the Company.

3. Accuracy of information

3.1 No representation by Company

The Company has endeavoured and will continue to endeavour (without being obliged to do so) to ensure the accuracy of any information provided to, or obtained by, the Supplier or its Personnel through a conducted Site visit, a pre-bid conference or otherwise obtained by the Supplier or its Personnel from the Company. However, the Company does not warrant or guarantee the accuracy, sufficiency or otherwise of such information and disclaims all responsibility for it. The Parties acknowledge that any information so provided is for the convenience of the Supplier only and does not form part of the Contract unless otherwise expressly agreed by the Parties in writing, and that any Tender submitted by the Supplier and its subsequent execution and performance of the Contract is deemed to have been based on the Supplier's own investigations and determinations.

3.2 Supplier satisfied with accuracy

The Supplier agrees that it has satisfied itself as to the accuracy of any information given to it at any time prior to the execution of the Contract and accepts full responsibility for any use by it of such information including, without limitation, responsibility for any conclusions drawn by it from such information.

3.3 No relief

Failure by the Supplier to do all or any of the things it is deemed to have done under this Clause 3 will not relieve the Supplier from any of its obligations under the Contract.

3.4 Company not liable

The Company is not liable for any Liabilities incurred or suffered by the Supplier as a result of its reliance in any way upon any information given to it by the Company.

4. Performance by Supplier

The Supplier must perform the Supply in accordance with the terms of the Contract and in consideration of the payment of the Contract Price by the Company.

5. Supplier's warranties

5.1 Supplier's warranties

In addition to the warranty contained in Clause 30.1 and the warranty contained in Clause 6.1, the Supplier warrants that:

- (a) all of the Supply will be provided in an efficient manner in accordance with all applicable legislation and laws or regulations;
- (b) all of the Supply will be of the highest standard and in accordance with the Company's specifications (where those specifications are made known to the Supplier) or in the absence of such specifications, in accordance with any applicable standards set by the Standards Association of Australia;
- (c) in relation to the performance of the Supply:
 - (i) the Supplier and its Personnel will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work; and
 - (ii) any equipment used on-Site by the Supplier will be in safe working condition, will comply with all legislation which is applicable to such equipment and will be operated by suitably qualified and competent Personnel, to the satisfaction of the Company; and
- (d) in relation to the provision of Goods as part of the Supply:
 - (i) the Goods will be of merchantable quality;
 - (ii) the Goods will be free from defects in design, materials and workmanship, and suitable for the relevant purpose of those Goods;
 - (iii) it has good and marketable title to the Goods and the Company will receive title to the Goods free of any charge or encumbrance; and
 - (iv) it will obtain at its cost all usual trade warranties and any warranties specifically requested by the Company and that on completion of the Supply it will assign the benefit of any such unexpired warranties to the Company including any warranties obtained from the Supplier's Sub-contractors.
- (e) all information and materials forming part of the Tender (if any) are true and correct in every respect and are not misleading or deceptive and the Supplier has not withheld from the Company any information concerning the Supplier, its experience or expertise which might reasonably be supposed to be material to the Company in determining whether or not to engage the Supplier to perform the Supply or the price at which or the terms on which the Company would be prepared to engage the Supplier to perform the Supply.

5.2 Copies of trade warranties

Copies of trade warranties referred to in Clause 5.1(d)(iv) must be supplied to the Company with Invoices.

6. Defects liability

6.1 Warranty

The Supplier warrants each Good against any defect which arises during the Defects Liability Period.

6.2 Commencement of Defects Liability Period

In respect of each Good, the Defects Liability Period will commence on and from the date that Good is accepted by the Company Representative in writing.

6.3 Rectification of defects

Upon receipt of a notice from the Company Representative of any defect in any Good during the Defects Liability Period due to defective design, materials, workmanship, unmerchantable quality or unfitness for intended purpose, the affected items or parts must be redesigned, repaired or replaced as appropriate by the Supplier at no cost to the Company prior to the expiration of the time specified in the notice. If the Supplier fails to make the necessary redesign, repair or replacement within the period specified, the Company may perform or cause to be performed such redesign, repair or replacement at the Supplier's risk and cost and any costs and expenses incurred by the Company will be recoverable from the Supplier as a debt due and payable.

7. Term

The Contract will commence on the earlier of the date of acknowledgment of receipt of the Purchase Order by the Supplier or the date the Supplier commences to perform the Supply, and will remain in force, unless terminated earlier in accordance with the Contract, until the completion by the Supplier of all of its obligations under the Contract (**Term**).

8. Delivery, title and risk

8.1 Delivery

The Supplier must deliver the Goods to the Delivery Point.

8.2 Title

Full unencumbered title to each Good will pass to the Company upon the earlier of:

- (a) the Company making payment in full to the Supplier for that Good; or
- (b) the Good being delivered to the Delivery Point, (if applicable) inspected in accordance with Clause 16 and accepted by the Company Representative.

8.3 Risk

Risk in each Good will remain with the Supplier until its delivery to, and acceptance by the Company Representative.

9. Contract Price

9.1 Contract Price

The **Contract Price** means the aggregate amount payable (excluding Indirect Transaction Taxes payable in accordance with Clause 10) by the Company to the Supplier in relation to the Supply pursuant to Clause 11.3 or as varied in accordance with Clause 10.6.

9.2 Contract Price to be inclusive

- (a) All expenses incurred by the Supplier in relation to the provision of the Supply, including, without limitation, travel expenses and subsistence expenses, will be deemed to be included in the Contract Price and the Contract Price includes any applicable Taxes.
- (b) The Supplier must separately disclose to the Company details of any Customs Duties included in the Contract Price.
- (c) Section 152(1)(a) of the *Customs Act 1901* (Cth) does not apply to the Contract.

9.3 Greenhouse gas emissions

Notwithstanding any other provision of this Contract, the Supplier is not entitled to be reimbursed by the Company for any amount that the Supplier pays or is liable to pay as a result of the Supplier, or a Related Body Corporate of the Supplier, being required by a law to surrender tradeable permits or to pay a Tax as a consequence of:

- (a) the emission of greenhouse gases in the course of producing or supplying the Goods or performing any Associated Services supplied under the Contract; or
- (b) performing the Supply.

10. Taxes

10.1 Taxes (including Indirect Transaction Taxes)

- (a) All amounts payable under or in connection with this Contract, (including any amount by way of reimbursement, indemnity, damages or otherwise) are:
 - (i) inclusive of Taxes; and
 - (ii) exclusive of Indirect Transaction Taxes, unless expressed otherwise.
- (b) If Indirect Transaction Taxes are payable on a supply, transfer or sale (**supply**) made under or in connection with this Contract, and if the party making that supply (**supplier**) is liable, under the applicable law, to pay, or collect and remit, the Indirect Transaction Taxes to the appropriate Government Agency, the party receiving that supply (**recipient**) shall pay to the supplier an additional amount equal to the Indirect Transaction Taxes payable by the supplier in respect of the supply. The recipient must pay the additional amount to the supplier on the date when the Contract Price (or part thereof) is provided to the supplier (subject to a Tax Invoice being received prior to payment date). This sub-clause does not apply to the extent that the consideration for the supply is expressed to be inclusive of Indirect Transaction Taxes.
- (c) The supplier shall ensure that each invoice it presents to the recipient in respect of any Indirect Transaction Taxes is a Tax Invoice. If the supplier

fails to provide the recipient with a Tax Invoice within the time period required by applicable law of that jurisdiction, the recipient may withhold payment of the amount payable on account of Indirect Transaction Taxes, either pursuant to sub-clause (b) or as part of the consideration where that consideration is expressed to be inclusive of Indirect Transaction Taxes, until such time as a Tax Invoice is received.

- (d) Any reference in:
 - (i) this Contract to a cost, expense or other liability (**Cost**) incurred by a party; or
 - (ii) the calculation of consideration or of any indemnity, reimbursement or similar amount to a Cost,

must exclude the amount of any Input Tax Credit entitlement of that party in relation to that Cost.

- (e) Each Party will take all reasonable steps to cooperate with and provide all necessary assistance to the other Party to ensure so far as possible that the Taxes treatment is accepted by the relevant Government Agency, including the provision of invoices, proof of payment, proof of source and/or origination and other documentation for this purpose.

10.2 Withholding Taxes

- (a) If a party (**payer**) is required by any applicable law to make a deduction or withholding from a payment to the other party (**payee**) for or on account of any Taxes, the payer is entitled to make that deduction or withholding unless the payee provides the payer with valid documentation (received prior to the date when the payment is to be made) showing to the satisfaction of the payer that an exemption applies. If the payer is required by law to deduct or withhold, then the payer shall use its best endeavours to furnish the payee with all receipts, proof of payment and other relevant documentation for all deductions and withholding Taxes so paid to the relevant Government Authority. For the avoidance of doubt, the payer will not be liable to pay any amount to the payee on account of an amount deducted or withheld in accordance with this clause.
- (b) Where a payment is made without a deduction or withholding for or on account of Taxes and such a deduction or withholding was required by any applicable law, the payee shall reimburse the payer for, or otherwise pay to the payer, the amount that should have been withheld or deducted within 14 days of receiving an official receipt (or certified copy) or other documentation evidencing the amount that was required to have been withheld or deducted.

10.3 Customs and Excise Duties

- (a) Where the recipient elects to acquire Goods and the supplier is the importer of record, the supplier will:
 - (i) be responsible for, and remit payment of all Customs Duties assessed by or payable to any Government Agency as well as any other foreign shipping charges; and
 - (ii) use its best endeavours to ensure that any Goods are imported free of Customs Duties including, without limit, through the use of applicable bilateral free trade agreements (or the equivalent).

- (b) The supplier will, at the recipient's request, provide the recipient with all information and documentation necessary for the recipient to make or assess the supplier's entitlement to make, in accordance with any applicable laws, applications or certifications for:
- (i) a drawback, refund, rebate, remission or other reduction of Customs Duties or Excise Duties; and
 - (ii) Customs Duties or Excise Duties concessions, including, without limit, exemptions, reductions, duty-free access and preferential rates of duty available under bilateral free trade agreements (or the equivalent).
- (c) The supplier must make any application or certification requested by the recipient in a form that is satisfactory to the recipient. Where any such application or certification is successful, the supplier will pass on to the recipient the full economic benefit of the exemption, reduction, concession, drawback, refund, rebate or remission of Customs Duty or Excise Duty, as appropriate, by way of a reduction in the Contract Price. This clause applies regardless of the shipping, insurance or freight terms used.

10.4 Survival

This clause will continue to apply after expiration or termination of this Contract.

10.5 International contracts only

- (a) If, in respect of a Tax audit or a levied Tax assessment, the appropriate Government Agency seeks payment of Indirect Transaction Taxes from the supplier for which the supplier seeks reimbursement from the recipient, then, unless the supplier notifies the recipient in writing of the Indirect Transaction Taxes payable at least 30 days prior to the expiration date of the right to appeal the imposition thereof, any reimbursement by the recipient will be at its sole discretion.
- (b) If the recipient deems that any Indirect Transaction Taxes paid to the supplier under Clause 10.1(b) have been inappropriately levied or that an exemption applies, the recipient may, by written notice to the supplier, require the supplier to contest such Indirect Transaction Taxes at the recipient's sole expense and subject to its direction and control.
- (c) The supplier shall do all things reasonably necessary to ensure that the recipient remains eligible for any exemption, credit, set-off, deduction or similar amount to which the recipient is entitled as a purchaser or recipient of any supply under any applicable laws, whether the Indirect Transaction Taxes are paid by the supplier or directly by the recipient. If an exemption to payment of Indirect Transaction Taxes applies, the recipient shall provide the supplier with a valid tax exemption certificate or equivalent documentation required by any applicable laws in the jurisdiction where the supply takes place.

11. Payments to Supplier

11.1 Method of payment

- (a) Unless otherwise provided in the Contract, all payments required to be made to the Supplier by the Company pursuant to the Contract in relation

to the performance of the Supply must be made in the currency specified in the Purchase Order by electronic funds transfer into the Supplier's nominated bank account.

- (b) If the Contract provides that any of the amounts referred to in Clause 11.1(a) are to be paid to the Supplier:
- (i) outside Australia;
 - (ii) other than in Australian currency; or
 - (iii) in a manner subject to control by any Government Agency,

payment is conditional upon the Company obtaining the necessary authorities and consents to the making of that payment.

11.2 Invoices

- (a) The Supplier must, unless otherwise agreed with the Company, render an Invoice to the Company in relation to the provision of the Supply at the end of each month during the period in which Supply is provided and calculated by reference to the prices, fees or other amounts specified in the Purchase Order.
- (b) Invoices must be in a form acceptable to the Company and must contain the following information:
- (i) the number of the Purchase Order to which the Invoice relates;
 - (ii) a brief description of the Supply provided in the period covered by the Invoice; and
 - (iii) any further verification or documentation in relation to the Invoice as is reasonably required by the Company.

11.3 Payment of Invoices

Subject to Clauses 11.4, 12, 22.10(e) and 25.2(b), the Company must pay to the Supplier the amount shown on the Invoice within 45 days following the end of the month in which the Invoice is received.

11.4 Disputed Invoices

If the Company disputes any amount shown on an Invoice, it must notify the Supplier within 21 days of receipt of the Invoice and must pay any amounts not in dispute in accordance with Clause 11.3, provided that the payment by the Company of any amount the subject of a disputed Invoice is not to be considered as an acceptance of the amount in dispute or of the Company's liability to make that payment.

11.5 Errors or exceptions in invoicing

Without limiting Clause 11.3, if the Supplier discovers or is advised of any errors or exceptions relating to its invoicing for the Supply, the Supplier and the Company will jointly review the nature of the errors or exceptions, and the Supplier must, if appropriate, take prompt corrective action and adjust the relevant invoice or refund overpayments.

12. Deduction from payments

12.1 Deductions

The Company may:

- (a) deduct from any moneys due or becoming due to the Supplier pursuant to Clause 11.3 the following amounts (plus any Indirect Transaction Taxes in

respect of such deductions payable in accordance with Clause 10):

- (i) all debts and moneys due from the Supplier or its Personnel to the Company;
 - (ii) all Liabilities which the Company may have paid, suffered or incurred and which or for which the Supplier or its Personnel is or are liable to bear, pay or reimburse to the Company (including pursuant to any indemnity contained in the Contract); and
 - (iii) the cost of remedying any defective or damaged Goods or performance of the Associated Services below a standard acceptable to the Company; or
- (b) without prejudice to the Company's rights pursuant to any other provision of the Contract, if the Supplier fails to perform any of its obligations under the Contract, without notice withhold payment of all or part of any amount payable to the Supplier under the Contract, until the matter has been remedied.

12.2 Deductions and withholdings required by law

- (a) If the Company is required by law to withhold or deduct any amount (**Deducted Amount**) from an amount payable under the Contract, the Deducted Amount will be treated as having been paid to the Supplier when it is withheld or deducted and the Company will not be liable to pay any amount on account of the Deducted Amount to the Supplier.
- (b) If the Company fails to withhold or deduct a Deducted Amount, the Company may:
 - (i) give notice to the Supplier demanding payment of an amount equal to the Deducted Amount and the Supplier will pay that amount to the Company within 30 days of receiving the notice;
 - (ii) deduct an amount equal to the Deducted Amount from any amounts payable by the Company to the Supplier and the amount so deducted will be treated as having been paid to the Supplier when it is deducted and the Company will not be liable to pay any amount on account of the Deducted Amount to the Supplier; or
 - (iii) recover an amount equal to the Deducted Amount by a combination of a demand under Clause 12.2(b)(i) and deducting an amount under Clause 12.2(b)(ii),

and in each case where the failure to withhold or deduct the Deducted Amount arises as a result of any act, omission or oversight of the Supplier, the Deducted Amount will include any fines, penalties or interest payable by the Company in respect of the Deducted Amount.

12.3 Notification of withholding or deductions

The Company must notify the Supplier of the details of any amounts withheld or deducted pursuant to Clauses 12.1 or 12.2.

12.4 Survival of Clause

This Clause 12 will survive the termination of the Contract.

13. No minimum purchase or exclusivity

13.1 No minimum purchase

Nothing in the Contract obliges the Company to request or acquire any minimum level of Supply from the Supplier.

13.2 No exclusivity

The Contract is not evidence of, nor does it create, an exclusive relationship between the Company and the Supplier in respect of the Supply (or any aspect of it).

14. Supplier Personnel

14.1 Supplier Personnel

The Supplier is required to supply all Personnel necessary for the proper performance of the Supply. Such Personnel must be appropriately qualified, competent and skilled to perform the relevant part of the Supply in respect of which they are engaged.

14.2 Engagement of Personnel

The Supplier must ensure that all Personnel of the Supplier engaged to provide any part of the Supply comply with Clauses 27 and 29 with respect to Confidential Information and Intellectual Property Rights.

14.3 Company may object to Personnel

The Company Representative may object to any of the Supplier's Personnel who, in the opinion of the Company Representative, is lacking in appropriate skills or qualifications, engages in misconduct or is incompetent or negligent. The Supplier must remove such Personnel upon receipt from the Company Representative of notice requiring it to do so and must not re-employ that person in connection with the Supply without the prior written consent of the Company Representative. In addition, the Supplier must at its cost replace such removed Personnel with suitably qualified, competent, skilled and approved Personnel.

15. Packing, despatch and transport

15.1 Supplier responsible

The Supplier is responsible, at its cost, for packing and transporting the Goods to the Delivery Point.

15.2 Where Company to arrange transport

If, pursuant to the terms of the Contract, the Company is obliged to arrange transport of all or some of the Goods, then the Supplier must notify the Company Representative of the details of those Goods ready for despatch in sufficient time to enable transport to be arranged.

15.3 Preparation for transport

The Supplier must pack and protect all Goods ready for despatch in accordance with best practice having regard to methods of carriage and handling and to the weather conditions through which they will pass whilst being transported to the Delivery Point. The Supplier must provide and fit all lifting and handling devices required for lifting and handling the Goods in transit.

15.4 Notification of despatch dates

The Supplier must notify the Company Representative promptly of the date of despatch of each item and the estimated date of arrival at the Delivery Point.

16. Inspection

16.1 Inspection

The Company Representative has the right to inspect any of the Goods at any time to determine whether the Goods are in accordance with the Contract and are to the standard provided for in the Contract.

16.2 Access

The Supplier must ensure that the Company has access to the Goods at all times and the Supplier must provide all facilities necessary for the supervision, inspection and testing of all Goods at the Site or wherever the Goods are stored or in the course of manufacture.

16.3 Cost of inspections

- (a) Subject to Clause 16.3(b), if upon inspection after a direction by the Company Representative to dismantle or open up any part of a Good, the Good so inspected is in accordance with the Contract, the whole of the expense incurred as a result of the dismantling or opening up and reassembly will be borne by the Company. If the Good is found not to be in accordance with the Contract the whole of the expense so incurred, including without limitation, any costs associated with putting that Good into a condition which is in accordance with the Contract, will be borne by the Supplier.
- (b) If the Company Representative gives the Supplier reasonable notice that the Company Representative wants to inspect any portion of a Good before it is assembled, and the Supplier assembles that Good without first giving the Company Representative a reasonable opportunity to inspect, any expense incurred as a result of dismantling or opening up and reassembling that Good will be borne by the Supplier.

16.4 Testing

The Supplier must conduct tests of the Goods or parts of the Goods in accordance with the Contract and otherwise as required in accordance with the relevant standards set by the Australian Standards Association and any applicable industry codes or, where there are no such standards or codes, in accordance with generally accepted practices.

17. Health, safety and environment

17.1 Application of Clause

This Clause 17 applies to the extent the Supplier or any of its Personnel are required to be on, or near the vicinity of, the Site for the purposes of the Supply.

17.2 Supplier acknowledgement

The Supplier acknowledges that there is a direct relationship between the Supplier's health, safety and environmental performance and the success of the Company's business.

17.3 Compliance with health, safety and environmental laws, policies and standards

The Supplier agrees to comply, and to ensure that its Personnel comply, with:

- (a) without limiting Clause 19, the Company's health, safety and environmental policies and associated standards applicable from time to time (a copy of

which has been provided to the Supplier) (**HSE Policies and Standards**);

- (b) without limiting Clause 20, all relevant health, safety and environmental legislation and laws in force from time to time; and
- (c) the health, safety and environmental conditions contained in this Clause 17.

17.4 Health, Safety and Environmental Management Plan

- (a) If it has not already been finalised as part of the submission of the Supplier's Tender (if any), the Supplier must, within 30 days after the date of the Contract, submit proposed health, safety and environmental management plan(s) (**HSE Management Plan(s)**) in accordance with the HSE Policies and Standards, for review by the Company Representative.
- (b) The Company Representative will review the proposed HSE Management Plan(s) and provide the Supplier with any request for amendments.
- (c) The Supplier and its Personnel may not commence work on-Site unless and until the HSE Management Plan(s) and any requested amendments to it have been approved by the Company Representative.
- (d) The Company Representative may at any time direct the Supplier to amend the approved HSE Management Plan(s) to adequately reflect any amendments to the HSE Policies and Standards.
- (e) The Supplier must keep a copy of the approved HSE Management Plan(s) at its on-Site office or work area at all times during the Term.

17.5 Induction courses

- (a) Each of the Supplier's Personnel must attend all appropriate and relevant induction courses required by the Company (**Company Induction Courses**).
- (b) Where, pursuant to the operating rules for specific areas of the Company, any of the Supplier's Personnel are required to have specific skills for the performance of the Supply (**Company Competencies**), the induction and training requirements in relation to those Company Competencies must:
 - (i) be included in the HSE Management Plan(s);
 - (ii) to the extent they are not set out in the Specifications, be confirmed with the Company Representative; and
 - (iii) be undertaken by the relevant Personnel prior to the commencement of any work on, or near the vicinity of, the Site.
- (c) Unless otherwise agreed:
 - (i) the Company will arrange and pay for the Company Induction Courses and will be responsible for the costs of Supplier Personnel attending the Company Induction Courses; and
 - (ii) the Supplier will arrange and pay for all training courses in respect of Company Competencies and will be responsible for the costs of Supplier Personnel attending such training courses.
- (d) Any person visiting the Supplier on Site to meet Personnel working on the Site, and who is not performing any type of manual work, will also be

required to attend the relevant Company Induction Courses. However, this requirement will not apply if the visitor is accompanied at all times whilst on Site by a person who has attended all relevant Company Induction Courses, and has Company Competencies in relation to access to the Site.

17.6 Supplier to remain liable

Nothing in this Clause 17 (including the approval of the HSE Management Plan(s)) limits or removes any obligation or duty imposed on the Supplier or any of its Personnel (whether under the Contract or otherwise) to secure or have regard to the health and safety of any of its Personnel.

17.7 Removal from Site

Notwithstanding any other term of the Contract, in the event of any breach of this Clause 17, the Company may:

- (a) require the Supplier, Supplier's Personnel and/or any other person to leave the Site immediately; and
- (b) require the Supplier and/or any of its Personnel to remove any material or substance from the Site at the Supplier's cost,

and the Supplier must, at its own cost, ensure such request is immediately complied with and take all possible action to ensure the protection and safety of all works, personnel and the environment.

17.8 Right of audit of Supplier performance

The Supplier and its Personnel must permit the Company to have access to the Supplier's premises, any of their documentation and data (including documents stored in electronic form) and to interview the Supplier's Personnel in connection with the Supply, as necessary for Company Personnel to verify, monitor and audit the Supplier's compliance with:

- (a) the HSE Management Plan(s) and the health, safety and environmental conditions set out in this Clause 17; and
- (b) the Company policies identified in Clause 19.

17.9 Action by Supplier

Without limiting any other rights or remedies available to the Company as a result of the Supplier's non-compliance with any of the conditions, policies and standards referred to in Clause 17.8 if deficiencies are identified by an audit undertaken under Clause 17.8 the Supplier must take prompt corrective action and notify the Company of such action.

18. Access to Site

18.1 Access

Without limiting Clause 22.10(e) or this Clause 18, the Company will grant to the Supplier access to the Site on and from the date of the Contract and the Supplier must give the Company Representative at least 7 days' notice before commencing the Supply on the Site.

18.2 Supplier obligations

- (a) Prior to commencement of the Supply on the Site, the Supplier must notify the Company Representative of its normal times and periods of work and must give the Company Representative

at least 24 hours' notice of any alteration in its working hours or periods of work.

- (b) The Supplier must at all times consult with the Company Representative and obtain 14 days' prior written approval for any action likely to interfere with the Company's operations. The Company Representative must reply to any such request within 7 days of receipt of such request.

18.3 Right to deny access

If the Supplier or its Personnel fail to comply with any of the requirements of Clause 17 or this Clause 18, then the Company Representative may in its discretion deny that person or those persons access to the Site or permit such access subject to terms and conditions the Company Representative thinks appropriate.

18.4 No exclusive possession

The Supplier acknowledges that nothing in the Contract confers on it exclusive possession of the Site and that it will only be granted access to the Site to the extent deemed necessary by the Company Representative for the performance of the Supply.

19. Compliance with Company policies

During the Term, the Supplier must, and must ensure that its Personnel, comply with each of the rules and policies of the Company, as notified by the Company from time to time by notice to the Supplier in writing.

20. Laws

20.1 Compliance with laws

During the Term, the Supplier must:

- (a) comply with all applicable legislation, laws and Government Agency requirements relating to its obligations under the Contract and ensure that each of its Personnel does the same; and
- (b) in relation to the provision of the Supply, at its cost:
 - (i) obtain all necessary notices;
 - (ii) give all necessary notices;
 - (iii) pay all necessary fees, deposits and Taxes,

and, if requested by the Company, must provide evidence of the matters referred to in this Clause 20.1(b).

20.2 Consequences of breach

Notwithstanding any other Clause of these General Conditions or term of the Contract, in the event of any breach of Clause 19 or this Clause 20, the Company may:

- (a) require the Supplier, the Supplier's Personnel, and/or any other person to leave the Site immediately; and
- (b) require the Supplier and/or any of its Personnel to remove any material or substance from the Site at the Supplier's cost,

and the Supplier must, at its cost, ensure such request is immediately complied with and take all possible action to ensure the safety of all Personnel.

21. Force Majeure

21.1 Notice of Force Majeure

A Party will not be liable for any delay or failure to perform any of its obligations under the Contract (other than an obligation to pay money) if as soon as possible after the beginning of the Force Majeure affecting the ability of the Party to perform any of its obligations under the Contract, it gives a notice to the other party that complies with Clause 21.2.

21.2 Force Majeure notice

A notice given under Clause 21.1 must:

- (a) specify the obligations the Party cannot perform;
- (b) fully describe the Force Majeure;
- (c) estimate the time during which the Force Majeure will continue; and
- (d) specify the measures proposed to be adopted to remedy or abate the Force Majeure.

21.3 Obligation to remedy and mitigate

The Party that is prevented from carrying out its obligations under the Contract as a result of Force Majeure must:

- (a) remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible; and
- (b) take all action reasonably practicable to mitigate any Liabilities suffered by the other Party as a result of its failure to carry out its obligations under the Contract.

22. Insurances

22.1 Supplier Insurances

The Supplier is required, at its cost, to effect and maintain throughout the Term and any additional period specified in the Contract, each of the insurances described in Clauses 22.2, 22.3, 22.4, 22.5, 22.6, 22.7, 22.8 and 22.9 (**Supplier Insurances**) in relation to risks or occurrences arising, or which may arise, out of the performance of the Contract.

22.2 General and Product Liability Insurance

- (a) Insurance covering all Liabilities in respect of any injury to, or death of, any person not being a person who at the time of the occurrence is engaged in or upon the service of the insured under a contract of service or apprenticeship, or any loss, damage or destruction to property not belonging to nor in the care, custody or control of the insured, however caused. Such insurance must provide cover to an amount of not less than A\$10,000,000 for each and every claim.
- (b) The insurance outlined in Clause 22.2(a) must, unless prohibited by law, be endorsed to:
 - (i) insure the Company and its Personnel for their respective rights and interests arising out of the performance of the Contract;
 - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;

- (iii) waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract;
- (iv) cover "goods in the physical and legal control of the Supplier" for an amount not less than the value of the "goods" held off the Site; and
- (v) include a clause that provides that a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

22.3 Workers' Compensation and Employer's Liability Insurances

- (a) Workers' compensation and employers' liability insurances covering all Liabilities, whether arising under statute, common law or civil law, in relation to the death of, or injury to, any employee of the Supplier or any person deemed to be an employee of the Supplier.
- (b) The insurance outlined in Clause 22.3(a) must, unless prohibited by law, be endorsed to:
 - (i) indemnify the Company against any liability which it may incur to the Supplier's employees, arising by virtue of the applicable workers' compensation statute or regulations or at common law;
 - (ii) extend to include employees underground if any of the work under the Contract is to be performed underground; and
 - (iii) provide cover in respect of each and every claim for an amount not less than the minimum statutory requirements.
- (c) The insurance outlined in Clause 22.3(a) must, unless prohibited by law, waive all express or implied rights of subrogation against the Company and its Personnel.

22.4 Supplier's Plant and Equipment

If the performance of the Contract requires the Supplier to use or provide for use plant and equipment that will be used at the Site in connection with the Contract, the Supplier must maintain or require the owner of such plant and equipment (except where the owner of such plant or equipment is the Company) to maintain insurance covering all loss and damage to the supplier's plant and equipment, for its replacement value. The insurance must, unless prohibited by law, waive all express or implied rights of subrogation against the Company and its directors, officers and employees.

22.5 Goods in Transit

If the performance of the Contract requires the Supplier to transport Goods to or from the Site, unless otherwise advised by the Company in writing, the Supplier will maintain insurance covering loss of or damage to the Goods during transit, regardless of whether the Company has paid for those Goods. Such insurance must note the Company as a party insured under the policy.

22.6 Motor Vehicle/Automobile Third Party Liability Insurance

- (a) If the performance of the Contract requires the Supplier or its Personnel to use or provide for use motor vehicles, the Supplier must maintain or require the owners of such motor vehicles to

maintain third party liability insurance covering all Liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property arising from the use of such motor vehicles.

- (b) The insurance outlined in Clause 22.6(a) must, unless prohibited by law, be endorsed to:
- (i) insure the Company and its Personnel for their respective rights and interests arising out of the performance of the Contract;
 - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
 - (iii) waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract; and
 - (iv) include a clause that provides a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

22.7 Professional Indemnity Insurance

If the performance of the Contract includes or is related to the provision of professional advice or services, the Supplier must effect and maintain throughout the Term and for a period of not less than 3 years after termination of the Contract or completion of the Supplier's obligations under the Contract, professional indemnity insurance in respect of any negligent acts, errors or omissions in the advice or services provided by the Supplier under the Contract. Such insurance must provide cover to an amount of not less than A\$5,000,000 for each and every claim.

22.8 Marine Insurance

- (a) If the performance of the Contract requires or involves the use of watercraft, the Supplier must maintain or require the owners of such watercraft to maintain:
- (i) marine hull & machinery insurance, including collision liability, on all watercraft so used, with a limit of cover not less than the market value of the watercraft; and
 - (ii) protection and indemnity insurance including coverage for injuries or death of masters, mates and crews. Such insurance must provide cover to an amount of not less than A\$10,000,000 for each and every claim.
- (b) The insurance outlined in Clause 22.8(a) must, unless prohibited by law, be endorsed to:
- (i) insure the Company and its Personnel for their respective rights and interests arising out of the performance of the Contract;
 - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
 - (iii) waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract; and

- (iv) include a clause that provides that a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

22.9 Aviation Insurance

- (a) If the performance of the Contract requires or involves the use of aircraft (including helicopters), the Supplier must maintain or require owners of such aircraft to maintain:
- (i) aircraft hull insurance, on all aircraft so used, with a limit of cover not less than the market value of the aircraft; and
 - (ii) liability insurance including coverage for injuries or death of crew, passengers and any other person, and in respect of loss of or damage to cargo. Such insurance must provide cover to an amount of not less than A\$10,000,000 for each and every claim.
- (b) The insurance outlined in Clause 22.9(a) must, unless prohibited by law, be endorsed to:
- (i) insure the Company and its Personnel for their respective rights and interests arising out of the performance of the Contract;
 - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
 - (iii) waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract; and
 - (iv) include a clause that provides that a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

22.10 Insurance Terms

- (a) If the Supplier Insurances are subject to the application of any self-insured retention, excess or deductible, the amount of the self-insured retention, excess or deductible must be declared to the Company. The Company reserves the right to require the Supplier to reduce the amount of any self-insured retention, excess or deductible where such amount is considered by the Company as being unreasonable in the circumstances of the Contract.
- (b) The Supplier Insurances must be underwritten by a reputable insurer with a security rating from A.M. Best of not less than "A" and on terms and conditions consistent with prudent risk management practice.
- (c) No provision contained in this Clause 22 will limit the Supplier's liability in relation to the indemnities in the Contract.
- (d) Before performing any of the Supply, and each time the policies are renewed or varied, the Supplier must provide the Company with an insurance certificate of currency or such other evidence as the Company may reasonably require that the Supplier and its Sub-contractors are insured in accordance with the Contract.
- (e) In the event that the Supplier fails to, or fails to ensure that its Sub-contractors, effect or keep in

force any of the insurances required pursuant to the Contract, the Company may do one or more of the following:

- (i) effect and maintain such insurances and deduct the costs of such insurances from any moneys due to the Supplier;
 - (ii) refuse the Supplier and its Personnel access to all or any part of the Site; and/or
 - (iii) treat the failure to insure as a default under the Contract.
- (f) All Supplier Insurances must not be varied to the detriment of the Company or its Personnel, cancelled or allowed to lapse unless the Supplier has received a written consent from the Company.

(including any warranty) under the Contract and/or any Purchase Order;

- (ii) any negligent act or omission or wilful misconduct by the Supplier or its Personnel arising out of the performance of the Contract and/or any Purchase Order; or
- (iii) any claim made against the Company by any of the Supplier's Personnel in respect of relevant legislation concerning income tax, workers' compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal.

- (b) The Company is entitled to recover from the Supplier an amount due to its Personnel under the indemnity in Clause 23.2(a) on behalf of its Personnel and will hold any amount recovered, and the benefit of the indemnity in Clause 23.2(a) to which its Personnel is entitled, as trustee for and on behalf of its Personnel.

22.11 Notification under Supplier's policy

If the Supplier becomes aware of an event which may give rise to a claim involving the Company under any policy of insurance effected by the Supplier as required by this Clause 22, the Supplier must notify the Company and must ensure that the Company is kept fully informed of subsequent action or developments concerning the claim.

22.12 Sub-contractors' insurance

The Supplier must ensure that its Sub-contractors have the benefit of or effect and maintain insurances similar to the Supplier Insurances required to be effected by the Supplier.

22.13 Insurance claims and payments of insurance excess

- (a) The Supplier will be responsible for the payment of any excess or deductible relating to the insurances effected by the Supplier and the Supplier will not be entitled to recover from the Company any excess or deductible so paid by the Supplier.
- (b) The Supplier will be responsible for the payment of any excess or deductible relating to the insurances effected by the Supplier where the Company makes a claim under such policy, to the extent that the Company determines that the Supplier or any of its Personnel were responsible for the loss or damage.

22.14 Survival of Clause

This Clause 22 will survive the expiry or earlier termination of the Contract.

23. Indemnities

23.1 Acknowledgement

The Supplier acknowledges that if it enters on to the Site, it does so at the Supplier's own risk. The Supplier must ensure that its Personnel are also aware that they enter onto the Site at their own risk.

23.2 Indemnity

- (a) Subject to Clause 23.3, the Supplier will indemnify (and will keep indemnified) the Company, and its Personnel (**Indemnified Parties**) from and against all Liabilities that any Indemnified Party suffers, sustains or incurs, arising from any one or more of the following:
 - (i) the breach by the Supplier or its Personnel of any of the Supplier's obligations

23.3 Exclusions

The Supplier will not be liable under Clause 23.2 to the extent that the Liability was caused, or contributed to, by (as the case requires) the Company's negligent acts or omissions or wilful misconduct.

23.4 Indemnity continuing

Each indemnity in the Contract is a continuing obligation separate and independent from the Supplier's other obligations and survives termination of the Contract.

23.5 No requirement for expense before enforcing indemnity right

It is not necessary for the Company or its Personnel to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

24. No fault termination

24.1 Termination Notice

The Company may terminate the Contract or any part of it by giving the Supplier not less than 30 days' notice of its intention to do so (**Termination Notice**).

24.2 Obligations upon receipt of Termination Notice

Upon receipt of a Termination Notice, the Supplier must:

- (a) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of all Goods;
- (b) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination; and
- (c) take any other action reasonably required by the Company in relation to the termination.

24.3 Obligations upon termination

On the date of termination specified in the Termination Notice, the Supplier must:

- (a) immediately cease performance of the Supply in accordance with, but only to the extent specified in, the Termination Notice;
- (b) provide the Company with a detailed report in such form as the Company may require in relation to the Supply performed up to and including the date of receipt of the Termination Notice;

- (c) return to the Company any items issued to the Supplier by the Company during the Term;
- (d) offer the Company first right of refusal to purchase any of the Supplier's equipment used for the purposes of the Contract to be purchased by the Company at its depreciated value or such other value as agreed by the Parties; and
- (e) take any other action relating to the termination of the Contract as the Company may reasonably require.

24.4 Supplier compensation

- (a) Following termination of the Contract by the Company pursuant to this Clause 24, the Supplier is entitled to recover from the Company out-of-pocket expenses which it has incurred or will incur solely as a result of the Contract and which it is unable to otherwise recover or mitigate, including as a result of (if applicable):
 - (i) removing the Supplier's plant and equipment from the Site; and
 - (ii) transporting Supplier Personnel back to their place of engagement.
- (b) The amounts outlined in Clause 24.4(a) represent the only amounts or Liabilities recoverable from the Company by the Supplier following a termination of the Contract by the Company in accordance with this Clause 24.

25. Supplier Default

25.1 Supplier Default Notice

If the Supplier breaches any term of the Contract, the Company may serve a notice of default (**Supplier Default Notice**) on the Supplier containing the information specified in Clause 25.2.

25.2 Supplier Default Notice requirements

A Supplier Default Notice must:

- (a) either require that the breach be remedied within a specified period of not less than 30 days after service of the Supplier Default Notice on the Supplier or state that the breach is incapable of remedy; and
- (b) state that if the breach is not remedied within the period specified in the Supplier Default Notice or is incapable of remedy, then the Company may by further notice to the Supplier do one or more of the following:
 - (i) elect wholly or partly to suspend payment under the Contract until the breach has been remedied by the Supplier;
 - (ii) take such action as the Company deems necessary to cure the breach (the cost of such action so taken by the Company being recoverable from the Supplier as a debt due to the Company by the Supplier); or
 - (iii) terminate the Contract or any part of it with effect from a specified date (**Cancellation Date**).

25.3 Obligations upon termination

If the Company gives notice pursuant to Clause 25.2(b)(iii), the Contract is terminated from the Cancellation Date and the Supplier must:

- (a) cease performance of the Supply in accordance with, but only to the extent specified in, the Supplier Default Notice;
- (b) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of all Goods;
- (c) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination;
- (d) offer the Company first right of refusal to purchase any of the Supplier's equipment used for the purposes of the Contract to be purchased by the Company at its depreciated value or such other value as agreed by the Parties; and
- (e) take any other action reasonably required by the Company in relation to the termination.

25.4 No prejudice

Notwithstanding the terms of any Supplier Default Notice, no action taken by the Company under this Clause 25 will prejudice the existence of any of its rights and remedies under the Contract which the Company may have as a result of the relevant breach.

26. Dispute Resolution

26.1 Dispute

In the event of any dispute, question or difference of opinion between the Company and the Supplier arising out of or under the Contract (**Dispute**), a Party may give to the other Party a notice (**Dispute Notice**) specifying the Dispute and requiring its resolution under this Clause 26.

26.2 Dispute Representatives to seek resolution

- (a) If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party must nominate one representative from its senior management to resolve the Dispute (each, a **Dispute Representative**).
- (b) If the Dispute is not resolved within 30 days of the Dispute being referred to the respective Dispute Representatives, then either Party may commence legal proceedings in an appropriate court to resolve the matter.

26.3 Performance of obligations during Dispute

During the existence of any Dispute, the Parties must continue to perform all of their obligations under the Contract without prejudice to their position in respect of such Dispute, unless the Parties otherwise agree.

26.4 Urgent interlocutory relief

Nothing in this Clause 26 prevents a Party from seeking any urgent interlocutory relief which may be required in relation to the Contract.

27. Confidentiality

27.1 Obligation of confidentiality

The Supplier undertakes and agrees:

- (a) to hold in strict confidence all Confidential Information and not to disclose or permit or cause the Confidential Information to be disclosed to any person other than any of its Personnel who require the Confidential Information for the purposes of providing the Supply; and

- (b) not to make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from the Confidential Information), except and solely to the extent necessary for the performance of the Supply,

unless the Supplier has obtained the prior written consent of the Company to do so (which consent may be withheld by the Company in its discretion or given on such terms as it sees fit).

27.2 Exceptions

Clause 27.1 does not apply to:

- (a) information after it becomes generally available to the public other than as a result of the breach of this Clause 27 or any other obligations of confidence imposed on the Supplier; or
- (b) the disclosure of information in order to comply with any applicable law or legally binding order of any court, Government Agency or recognised stock exchange, provided that prior to such disclosure the Supplier gives notice to the Company with full particulars of the proposed disclosure.

27.3 Breach of consent

The breach of any of the conditions contained in a consent granted pursuant to Clause 27.1 will be deemed to be a breach of the Contract.

27.4 Indemnity

- (a) Without limiting Clause 23, the Supplier indemnifies the Company and its Personnel, and must keep them indemnified, in respect of any Liabilities incurred or sustained by them resulting from a breach of this Clause 27 by the Supplier or its Personnel.
- (b) The Company is entitled to recover from the Supplier an amount due to its Personnel under the indemnity in Clause 27.4(a) on behalf of that entity and will hold any amount recovered, and the benefit of the indemnity in Clause 27.4(a) to which that entity is entitled, as trustee for and on behalf of that entity.

27.5 Additional obligations

The obligations in this Clause 27 are in addition to and do not diminish the obligations of the Supplier in respect of secret and confidential information at common law or under any statute or trade or professional custom or use.

27.6 Return of Confidential Information

If requested by the Company, whether prior to or after the expiry or earlier termination of the Contract, the Supplier must promptly deliver to the Company all Confidential Information in the custody, possession or control of the Supplier or any of its Personnel.

27.7 Survival of Clause

This Clause 27 will survive the termination of the Contract.

28. Public announcements

Except as required by any applicable law or regulatory requirement or as otherwise permitted by the Contract, the Supplier may not make any public announcements or disclosures as to the Contract, or otherwise in relation

to the subject matter of the Contract, without the prior written consent of the Company. In this regard, no media release or public announcement will be made in relation to the existence of the Contract without the Company's written approval and should such approval be given, then the wording of such release and the manner of publication must first be approved in writing by the Company.

29. Intellectual Property Rights

29.1 Supplier Intellectual Property Rights

The Company acknowledges that the Supplier retains ownership of the Intellectual Property Rights of the Supplier used or created under the Contract and/or in the provision of the Services. To enable the Company to enjoy the benefit of the Services for the purpose of or in connection with the Company's business the Supplier grants to the Company a non-exclusive, transferable, royalty free, irrevocable and perpetual licence to use such Intellectual Property Rights for that purpose.

29.2 Third party Intellectual Property Rights

The Supplier warrants that to the extent that it uses or proposes to use the Intellectual Property Rights of any third party in the provision of the Supply, or to the extent the Company will use or might propose to use the Intellectual Property Rights of any third party in the use and enjoyment of the Supply:

- (a) it has obtained, or will obtain at no further cost to the Company, from the relevant third party all necessary licences and consents to use, or assignments of, such Intellectual Property Rights; and
- (b) that it will not breach any of the licences or assignments referred to in Clause 29.2(a).

29.3 Indemnity

- (a) Without limiting Clause 23, the Supplier indemnifies the Company and must keep the Company indemnified in respect of any Liabilities incurred or sustained by the Company resulting from any actual or alleged infringement of any Intellectual Property Rights of any third party arising out of or caused by:
- (i) the performance of the Supply by the Supplier;
 - (ii) the performance or operations of any other plant, machinery, tools, equipment, process, work, material, matter, thing or method used or supplied by the Supplier; or
 - (iii) the use and enjoyment of the Supply by the Company.
- (b) The Supplier must notify the Company immediately the Supplier becomes aware of a Claim being threatened or made against the Company in relation to any of the matters covered by the indemnity in Clause 29.3(a).
- (c) The Company may require the Supplier to conduct any litigation that may arise from a Claim referred to in Clause 29.3(b) and all negotiations for settlement of that Claim. However, the Supplier must not make any settlement or consent to any judgment, order or verdict against the Company without the Company's prior written consent.

29.4 Procurement of Intellectual Property Rights

If the Company is prevented from (as the case requires) operating or using the Goods and/or any Associated Services or any part of the Goods and/or any Associated Services as a result of any Claim in relation to an infringement of Intellectual Property Rights, the Supplier must (at its cost) take all reasonable steps to procure for the Company the right to (as the case requires) operate or use the Goods and/or any Associated Services or the relevant part of the Goods and/or any Associated Services for the purpose for which it was intended.

29.5 Procedure where Intellectual Property Rights cannot be procured

If the Supplier cannot procure the rights referred to in Clause 29.4 within a reasonable time (but not exceeding 60 days unless the Company Representative otherwise agrees), it must notify the Company Representative accordingly and the Company Representative may direct the Supplier to immediately (at the Supplier's cost):

- (a) alter the Goods or the relevant part of the Goods to avoid infringement or violation of the Intellectual Property Rights or any of them;
- (b) replace the Goods affected or the relevant part of the Goods with work or Goods which do not infringe or violate the Intellectual Property Rights; or
- (c) remove the Goods and reimburse the Company any compensation and other moneys already paid to the Supplier and pay to the Company any costs or other expenses that may have been paid or incurred by the Company in connection with the removed Goods.

30. Notices

30.1 Form of Notices

Unless otherwise specified in the Contract, any notice, demand, consent or other communication (**Notice**) given or made pursuant to the Contract must:

- (a) be in writing;
- (b) be marked to the attention of "the Company Secretary" for the Party to whom the Notice is addressed;
- (c) where given by the Company, be signed or authorised by either the Company Representative, a director or company secretary of the Company, or a duly authorised representative of the Company;
- (d) where given by the Supplier, be signed or authorised by either the Supplier Representative, a director or company secretary of the Supplier, or a duly authorised representative of the Supplier; and
- (e) be delivered by prepaid post, by hand or by facsimile to the Party to whom the Notice is addressed at its address shown in the Contract or such other address as that Party may have notified to the other Party.

30.2 Notices deemed given

A Notice will be taken to be duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address

in the same country) or 7 Business Days after the date of posting (if posted to an address in another country); or

- (c) in the case of facsimile, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of the recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day.

31. Compliance with Code of Conduct Policy and Core Contractor compliance training

31.1 Northparkes Code of Conduct Policy

In performing the Supply, the Supplier must, and must ensure that its Personnel:

- (a) comply or otherwise act in a manner consistent with the Company's code of business conduct policy (**Code of Conduct Policy**);
- (b) report all actual, alleged or suspected non-compliance with the Code of Conduct Policy to the Company or through the Company's reporting system; and
- (c) cooperate promptly and fully with the Company in any investigation of an alleged or suspected breach of Code of Conduct Policy.

31.2 Core Contractor compliance training

The Company may identify the Supplier and/or certain of its Personnel as "Core Contractors". The Supplier must ensure that any such Core Contractors undertake the mandatory compliance risk reduction training modules identified by the Company from time to time within the timeframe specified. Such training modules can be accessed through the Company's business system, and delivered as computer based training, or with the approval of the Company's relevant authorised Personnel, classroom based training.

32. Costs

32.1 Each Party to bear its own costs

Each Party must bear its own costs arising out of:

- (a) the negotiation, preparation and execution of the Contract; and
- (b) except as expressly provided otherwise in the Contract, any transaction contemplated by the Contract.

32.2 Stamp duty

All stamp duty which may be payable in any relevant jurisdiction on or in connection with the Contract, any Purchase Order or other document related to the Contract will be borne by the Supplier.

33. Status of Supplier

33.1 Independent contractor

At all times during the Term, and in the provision of the Supply, the Supplier is an independent contractor and

will not act as, or be or be regarded as, an agent or employee of the Company, and the Supplier and its Personnel will not be entitled to any benefits which would ordinarily accrue to any employee of the Company by virtue of their status as an employee.

33.2 Partnership and joint venture suppliers

Where the Supplier comprises more than one person they will be bound jointly and severally and by executing the Contract accept joint and several liability for any loss or damage that may be suffered or occasioned and any sum that may be or may become payable to the Company under the Contract.

34. Assignment and sub-contracting

34.1 Consent required

The Supplier is not permitted to assign or sub-contract all or any part of the Contract without the prior written consent of the Company, such permission being at the Company's discretion and on whatever terms and conditions the Company may think appropriate, including requiring the proposed assignee or Sub-contractor to be bound by any or all of the provisions of the Contract.

34.2 Obligations survive assignment or sub-contract

The Supplier acknowledges that no permitted assignment or sub-contract in any way relieves the Supplier from the performance of any of its obligations under the Contract.

34.3 Status of Sub-contractor

As between the Supplier and the Company, the Sub-contractor will be considered the agent and employee of the Supplier. For the purposes of the Contract, the acts and omissions of each Sub-contractor and its Personnel will be deemed to be the acts and omissions of the Supplier.

35. Privacy and data protection

35.1 Personal Information

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

35.2 Warranty

Each Party warrants to the other Party that it has complied with the Privacy Act in obtaining any Personal Information disclosed by it pursuant to the Contract.

35.3 Data protection

In addition to its obligations under the Privacy Act, the Supplier agrees to:

- (a) only Process the Company's Personal Information for the purposes of the Contract;
- (b) not disclose the Company's Personal Information to any other person without the Company's prior written consent, unless the disclosure is required by law;
- (c) immediately notify the Company that the disclosure of the Company's Personal Information may be required by law;
- (d) put into place and maintain appropriate technical and organisational measures against

unauthorised and/or unlawful Processing of the Company's Personal Information;

- (e) put into place and maintain appropriate technical and organisational measures against unauthorised access, loss, destruction, misuse, modification, disclosure or damage to the Company's Personal Information; and
- (f) take all necessary steps to ensure that its Processing of the Company's Personal Information will be fair and lawful and, for this purpose, the Supplier may reasonably enquire of the Company as to the manner in which the Company obtained the Company's Personal Information.

35.4 Individual complaints

- (a) If an individual complains to the Company that the Supplier (or any of its Personnel) has, in the performance of the Contract, handled his or her Personal Information inappropriately, the Company must promptly give the Supplier sufficient details about the complaint to minimise any further misuse.
- (b) If an individual complains to the Supplier that the Supplier (or any of its Personnel) has, in the performance of the Contract, handled his or her Personal Information inappropriately, the Supplier must:
 - (i) promptly inform the Company of the complaint; and
 - (ii) provided the individual has consented, provide the Company with the Personal Information that is the subject of the complaint.

35.5 Supplier indemnity

Without limiting Clause 23, the Supplier indemnifies the Company and must keep the Company indemnified in respect of all Liabilities incurred by or awarded against the Company relating to any breach by the Supplier of its obligations under the Privacy Act or this Clause 36.

35.6 Survival of Clause

This Clause 36 will survive the termination of the Contract.

36. Waiver

A failure to exercise, or any delay in exercising any right, power or remedy by a Party does not operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

37. Further assurances

Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of the Contract and the transactions contemplated by it.

38. Severability

38.1 Severability

Any provision of the Contract which is prohibited or unenforceable in any jurisdiction is ineffective as to that

jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of the Contract nor does it affect the validity or enforceability of that provision in any other jurisdiction.

38.2 Negotiation in good faith

Where a provision is prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid provision by a provision which is in accordance with the applicable law and which must be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to the Contract.

39. Governing law

The Contract is governed by the laws of New South Wales. Each Party submits to the non-exclusive jurisdiction of the Courts exercising jurisdiction there in connection with matters concerning the Contract.