

# 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 35, the place to which a Notice is sent.

**Change in Policies and Standards** means a change:

- (a) in the Policies and Standards which are in existence as at the commencement of the Term;
- (b) which takes effect after the commencement of the Term;
- (c) which results in terms and conditions of the applicable Policies and Standards being materially more onerous on the Supplier than those previously contained in the Policies and Standards,

but does not include any change in the Policies and Standards which was caused or contributed to by any act or omission of the Supplier or its Personnel.

**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 20.5(b).

**Company Completion Costs** is defined in Clause 29.4(a).

**Company Induction Courses** is defined in Clause 20.5(a).

**Company Representative** is, initially, the representative of the Company named in the Purchase Order or otherwise notified by the Company from time to time, 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 Data** means the Personal Data 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.

**Consequential Loss** means the following losses, regardless of whether such losses arise in contract (including under the Contract), in tort (including in negligence), under statute, in equity, by way of indemnity or otherwise:

- (a) loss of profit or anticipated profit;
- (b) loss of revenue or anticipated revenue;
- (c) loss of business opportunity or contract;
- (d) loss of or damage to goodwill, reputation, future reputation or publicity; or
- (e) cost of obtaining new financing or maintaining existing financing (including interest payments).

**Contract** is defined in Clause 2.1.

**Contract Price** is defined in Clause 11.1.

**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 15.2(a).

**Default Notice** is defined in Clause 29.1.

**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.

**Delivery Date** means the delivery date identified in the Purchase Order.

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

**Dispute** is defined in Clause 31.1.

**Dispute Notice** is defined in Clause 31.1.

**Dispute Representative** is defined in Clause 31.2(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).

**Drawings** means the drawings (if any) referred to in the Contract and includes such drawings as may from time to time be supplied to the Supplier by the Company for the purposes of the Contract and any Supplier Drawings.

**Encumbrance** means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or (2) of the PPSA, or any agreement to create any of them or allow them to exist.

**Equipment FFP Requirements** means and includes the Company's requirements applicable to the use and maintenance of equipment as set out in the Company's HSE Policies and Standards (including its Safety Management System, Electrical Engineering Control Plan (EECP) and

Mechanical Engineering Control Plan (MECP)) and associated risk assessments, procedures, and checklists relating to various types of equipment, including:

- (a) vehicles and mobile equipment;
- (b) equipment for use underground;
- (c) lighting plants, generators, and mobile electrical equipment;
- (d) hand tools;
- (e) welding machines; and
- (f) tyres and rims,

as at the commencement of the Term and as otherwise notified to the Supplier from time to time.

**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.

**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;
- (c) acts of war, acts of public enemies, terrorist acts, riots or civil commotions;
- (d) pandemics, epidemics; or
- (e) sanctions, acts of governments and authorities.

**Goods** means the goods, materials, supplies, equipment or other items identified in the Purchase Order to be provided by the Supplier and includes the Associated Services (if any).

**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 20.4(a).

**HSE Policies and Standards** is defined in Clause 20.3(a).

**Indemnified Parties** is defined in Clause 26.2.

**Indirect Transaction Taxes** means any value added tax, goods and services tax or similar tax including, without limitation, 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, and including any legal costs awarded against or incurred by a Party.

**Modern Slavery** means any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, and other slavery-like exploitation as prohibited under all applicable anti-slavery and human trafficking laws from time to time in force including but not limited to the *Modern Slavery Act 2018* (Cth) and the *Criminal Code Act 1995* (Cth), sch 1, divisions 270 and 271. For the avoidance of doubt, Modern Slavery includes any conditions or practices similar to those prohibited under those laws, statutes, regulations and codes.

**Notifiable Data Breach** occurs when there is either:

- (a) any loss of Personal Data; or
- (b) any unauthorised access to or disclosure of Personal Data,

and a reasonable person would believe that the loss or unauthorised disclosure is likely to cause serious harm to the individual to whom that Personal Data relates.

**Party** means a party to the Contract.

**Payment Act** means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

**Personal Data** means information relating to identifiable individuals and includes (but is not limited to) all information relating to individuals that is protected by privacy or data protection laws in the country where:

- (a) the individuals are located; or
- (b) the data relating to those individuals is processed,

and includes 'personal information' as that term is defined 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 26, 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.

**Policies and Standards** means any policies, procedures, protocols, training modules, work instructions, guidance notes, forms, templates, manuals or specifications of the Company notified or made available to the Supplier by the Company or referred to in the Contract including the HSE Policies and Standards.

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

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

**Purchase Order** means an individual purchase order 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 40 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 Drawings** means any and all drawings prepared by the Supplier or any of its Sub-contractors in connection with the Contract including drawings relating to any Goods (including spares) supplied under the Contract.

**Supplier Insurances** is defined in Clause 25.1.

**Supplier Representative** is the representative of the Supplier named 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 taxes or duties, 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 or Invoice** means an invoice or other document, including without limitation 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 8.

**Wilful Misconduct** means any act or omission which was deliberate and wrongful, including any deliberate or purposeful breach of an express term of this Contract, with reckless disregard or wanton indifference as to the likely consequences.

## 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 Purchase Order 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; and

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 written agreements between the Parties in this regard.
- (b) No terms or conditions submitted by either party that are in addition to, different from or inconsistent with those contained in the Contract, 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

- (a) The Company has endeavoured and will continue to endeavour 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 or on behalf of the Company. However, the Company does not warrant or guarantee the accuracy, sufficiency or otherwise of such information and disclaims all responsibility for it, except to the extent agreed in this Contract.
- (b) The Parties acknowledge that any information so provided to, or obtained by, the Supplier or its Personnel:
  - (i) is not information upon which the Supplier reasonably ought to rely upon unless it is provided to the Supplier by the Company specifically in contemplation of this Contract or for the purposes of the Supply the subject of this Contract; and
  - (ii) 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.

### 3.2 Supplier satisfied with accuracy

- (a) The Supplier agrees that it has reviewed and considered all information given by, or obtained from, the Company for any obvious or reasonably apparent inaccuracy, incompleteness, error, ambiguity or other deficiency in the information.

- (b) 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, or otherwise, satisfied itself as to any obvious or reasonably apparent, inaccuracy, incompleteness, error, ambiguity or other deficiency in the information, and subject to the terms of this Contract the Supplier 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

- (a) Except as provided in Clause 3.4(b), 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 or otherwise obtained from the Company.
- (b) Where it is expressly agreed in writing that information provided by the Company is to form part of the Contract or where the Company has provided information to the Supplier expressly stating the extent to which the Supplier may rely upon such information (or any part of it) given to it by the Company, the parties agree that:
- (i) the Supplier, provided it has done all of the things it is deemed to have done under this Clause 3, may rely upon such information (but not including information contained in appendices or other documents incorporated only by reference) for the purposes of providing the Supply and to the extent stated in the Contract or otherwise stated by the Company Representative; and
  - (ii) if the Supplier has relied on such information for that purpose and there is a material inaccuracy or error in the information, then the Supplier must promptly give a written notice to the Company Representative containing:
    - (A) a description of the information given to the Supplier by the Company;
    - (B) details of the inaccuracy or error in the information;
    - (C) the manner in which the Supplier has relied upon the information; and
    - (D) an estimate of the Supplier's increased time and costs in performing the Supply caused by its reliance upon the information; and
  - (iii) if a notice is given by the Supplier which complies with Clause 3.4(b)(ii), the Supplier will be entitled to a reasonable adjustment to the Contract Price to reflect the Supplier's increased costs in

performing the Supply but the Supplier has no other Claim and the Company is not otherwise liable to the Supplier in connection with the information.

## 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 warranties contained elsewhere in the Contract, including without limitation in Clauses 7.1, 34.2 and 36.1, the Supplier warrants that:

- (a) all of the Supply will be provided in an efficient manner in accordance with all applicable laws, regulations and/or Government Agency requirements;
- (b) all of the Supply will be performed in a professional manner consistent with industry and/or professional best practice 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 applicable laws, regulations and Government Agency requirements and will be operated by suitably qualified and competent Personnel, to the reasonable 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. Equipment fit-for-purpose requirements

### 6.1 Supplier's equipment fit for purpose obligations

Unless otherwise stated in the Purchase Order or the Company's HSE Policies and Standards or unless otherwise agreed by the Company Representative, the Supplier must ensure, at its own cost, that all equipment provided in the Supply, including the Goods and any equipment used in the provision of any Associated Services, is:

- (a) in the case of the Goods, compliant with the Equipment FFP Requirements prior to delivery to the Delivery Point;
- (b) inspected, assessed, and certified by the Company Representative (or their nominated delegate) as compliant with the Equipment FFP Requirements:
  - (i) prior to use at the Site; and
  - (ii) at such other times reasonably required by the Company;
- (c) inspected by the Company Representative (or their nominated delegate) as compliant with the Equipment FFP Requirements each calendar quarter during the Term; and
- (d) modified in accordance with any reasonable requirements of the Company Representative arising from its inspection, assessment and/or certification of the equipment pursuant to sub-clause (b) or (c) above,

and the Supplier will be required to provide the Company Representative with all Documentation (including Supplier Drawings) and to do all further acts and things which are reasonably necessary to ensure that the equipment, including any modifications, comply with the Equipment FFP Requirements.

### 6.2 Changes in FFP requirements

The Company may change or modify the Equipment FFP Requirements at any time during the Term by giving Notice of such changes to the Supplier.

### 6.3 Modification of equipment

If any equipment provided or used by the Supplier in the performance of the Supply does not satisfy the Equipment FFP Requirements because the Company has made changes to the Equipment FFP Requirements after the date of delivery of the equipment to the Site) then the Company may:

- (a) direct the Supplier to comply with such changes to the Equipment FFP Requirements (including by carrying out any modifications to the relevant equipment) within a reasonable time; or
- (b) carry out such modifications to the equipment itself,

in order for the equipment to be made compliant with the Equipment FFP Requirements.

### 6.4 Costs of modifications

- (a) Where the changes to the Equipment FFP Requirements are related to or made necessary due to:
  - (i) any default, act or omission, Wilful Misconduct or negligence of the Supplier or the Supplier's Personnel;
  - (ii) any incident on Site involving the Supplier, the Supplier's equipment, or the Supplier's Personnel;
  - (iii) any direction or recommendation of a Government Agency; or
  - (iv) the Supplier providing an item of equipment which is comparable to an item of equipment previously certified and modified (as applicable) for use at the Site and which is available to perform the Supply,

the Supplier is responsible for all costs associated with the modifications required to be made to the equipment to comply with the amended Equipment FFP Requirements and any costs and expenses incurred by the Company in modifying the equipment to so comply will be recoverable from the Supplier as a debt due and immediately payable on demand.

- (b) Where the changes to the Equipment FFP Requirements are made necessary for any other reason and where the Company directs the Supplier to comply with such changes, the Company will reimburse the Supplier for the actual, direct and unavoidable costs reasonably and necessarily incurred to modify the equipment in order to comply with the changes to the Equipment FFP Requirements provided that the Supplier has taken all reasonable steps to minimise the costs incurred and provides the Company upon request with copies of its relevant documentation in order to verify the amounts claimed.

## 7. Defects liability

### 7.1 Warranty

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

## 7.2 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, or where no such written acceptance is provided by the Company, the Defects Liability Period will commence on and from the date that Good is delivered to the Delivery Point.

## 7.3 Rectification of defective Goods

- (a) 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 within a reasonable time period determined by the Company having regard to the nature of the defect and specified in the notice.
- (b) If the Supplier fails to make the necessary redesign, repair or replacement within the period specified in the notice from the Company, 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 immediately payable and the Supplier will be required to provide the Company with all Documentation and to do all further acts and things which are reasonably necessary for the Company to perform or cause to be performed any redesign, repair or replacement of the affected items, parts or Goods.

## 7.4 Correction of deficient Associated Services

Upon receipt of a notice from the Company Representative during the Term of any deficiency in the Associated Services (except for a defect in any Good, in respect of which Clauses 7.1, 7.2 and 7.3 apply), the Supplier must correct such deficiency (including by way of providing such additional services necessary to correct such deficiency) at no cost to the Company within a reasonable time period determined by the Company and specified in the notice.

## 8. Term

The Contract will commence on the earlier of:

- (a) the date of acceptance of the Purchase Order by the Supplier; or
- (b) the date the Supplier commences to perform the Supply,

unless the Purchase Order is withdrawn by the Company, 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**).

## 9. Representatives

### 9.1 Performance

The Supply must be performed by the Supplier in accordance with the Contract and in accordance with any directions of the Company Representative pursuant to the provisions of the Contract.

### 9.2 Company Representative

- (a) The Company Representative is responsible for giving directions for and on behalf of the Company as provided in the Contract.
- (b) Directions given to the Supplier by any person other than the Company Representative will not bind the Company unless ratified by the Company Representative.

### 9.3 Supplier Representative

- (a) The Supplier Representative is responsible for liaising with the Company Representative in relation to any of the matters referred to in Clause 9.2, and the Supplier Representative will have full power to legally bind the Supplier in respect of all matters arising out of the Contract.
- (b) Any direction which the Company Representative gives to a Supplier Representative is deemed to have been given to the Supplier for and on behalf of the Company and the Supplier must comply with that direction accordingly. Any communication given, or document signed, by a Supplier Representative is deemed to have been given or signed by the Supplier and will bind the Supplier. Matters within the knowledge of a Supplier Representative are deemed to be within the knowledge of the Supplier.

### 9.4 Change in Representatives

Either Party may from time to time revoke the appointment of its representative and appoint another person as its representative and that Party must give notice of such revocation and appointment to the other Party.

## 10. Delivery, title and risk

### 10.1 Delivery

The Supplier must deliver the Goods to the Delivery Point on or before the Delivery Date.

### 10.2 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 and accepted by the Company.

### 10.3 Risk

Risk in each Good will remain with the Supplier until it has been delivered to the Delivery Point and accepted by the Company.

## 11. Contract Price

### 11.1 Contract Price

The **Contract Price** means the aggregate amount payable (excluding Indirect Transaction Taxes payable in accordance with Clause 12) by the Company to the Supplier in relation to the Supply pursuant to Clause 13.3.

### 11.2 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, subsistence expenses, and expenses incurred in modifying any equipment to comply with the Company's FFP Requirements, 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.

### 11.3 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 under the Contract; or
- (b) performing the Supply.

## 12. Taxes

### 12.1 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; but
  - (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 paid to the supplier (subject to a Tax Invoice being received prior to the

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 the applicable law of that jurisdiction, the recipient may withhold payment of the amount payable on account of Indirect Transaction Taxes, either pursuant to Clause 12.1(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,
  - (iii) 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.

### 12.2 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 Agency. 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.

### 12.3 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.

### 12.4 Survival

This Clause 12 will continue to apply after expiration or termination of this Contract.

### 12.5 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 12.1(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.

## 13. Payments to Supplier

### 13.1 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 13.1(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.
- (c) Payments made by the Company are on account only and are not:
  - (i) evidence of the value of the Supply or that the Supply has been satisfactorily carried out in accordance with the Contract;
  - (ii) an admission of liability on the part of the Company; or
  - (iii) approval by the Company of the Supplier's performance or compliance with the Contract.

### 13.2 Invoices

- (a) The Supplier must, unless otherwise agreed with the Company, render a Tax Invoice to the Company in relation to the provision of the Supply at the end of each month during the Term and calculated by reference to the prices, fees or other amounts specified in the Purchase Order.
- (b) Tax 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.

### 13.3 Payment of Invoices

- (a) Subject to Clauses 13.4, 15, 25.10(e) and 29.2, 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.
- (b) If an amount is payable by the Supplier to the Company, the Supplier must pay that amount within 45 days of receipt of a written demand from the Company.

### 13.4 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 13.3, 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.

### 13.5 Errors or exceptions in invoicing

Without limiting Clause 13.3, 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 Tax Invoice and/or refund overpayments.

### 13.6 Security of Payment

- (a) This Clause 13.6 only applies where, and to the extent that, the Payment Act is applicable to any part of the Supply.
- (b) Nothing in the Contract will affect, restrict or limit the Supplier's right to:
  - (i) refer for adjudication any dispute falling within section 17 of the Payment Act; and
  - (ii) suspend the Supply under section 27 of the Payment Act.
- (c) Notwithstanding anything else in the Contract, the Supplier must:
  - (i) promptly give the Company a copy of any notice the Supplier receives from a subcontractor under section 27 of the Payment Act; and
  - (ii) ensure that each subcontractor promptly gives the Company a copy of any notice that the subcontractor receives from another person under section 27 of the Payment Act.
- (d) If the Company becomes aware that a subcontractor is entitled to suspend work (which forms part of the Supply) under section 27 of the Payment Act, the Company may (in its absolute discretion) pay the subcontractor such money that is, or may be, owing to the secondary subcontractor for work forming part of the Supply and any amount paid by the

Company is recoverable from the Supplier as a debt due and immediately payable to the Company.

- (e) For the purposes of this Clause 13.6:

- (i) work refers to work which the Supplier is, or may be, required to execute or provide under the Contract and includes goods, materials, plant, equipment, design and other services and temporary works; and
- (ii) a reference to a subcontractor refers to any person engaged by the Supplier, its subcontractors or any other person to carry out work which forms part of the Supply.

## 14. PPSA

### 14.1 Meaning of terms

In this Clause 14, "security interest", "secured party", "perfected", "personal property", "possession" and "control" have the meanings given to them in the PPSA.

### 14.2 Further assurance

Whenever a Party requests that the other Party does anything reasonably necessary to ensure this Contract and any security interest granted under it is fully effective, enforceable and perfected with the priority to which they are entitled under the PPSA, that Party will promptly do so at its own cost. 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.

### 14.3 PPSA exclusions

- (a) To the extent this Contract or the transactions contemplated by it create a security interest under the PPSA, the parties contract out of each provision of the PPSA which section 115 permits, other than sections 96, 117, 118, 120, 123, 126, 128, 129, 134(1) and 135.
- (b) Nothing in this clause or the provisions of the PPSA set out in Clause 14.3(a) above shall derogate from the terms of this Contract.
- (c) Each party waives its right to receive:
  - (i) each notice which sections 144 or 157 of the PPSA permits it to waive and, to the extent capable of being waived, notice under any other provision of the PPSA; and
  - (ii) anything from the secured party under section 275 of the PPSA and each Party agrees not to make any request



of the secured party of the other Party under that section.

#### 14.4 Permitted disclosure

Despite Clause 32, a Party may disclose confidential information:

- (a) for the purposes of enforcing this Contract, in a proceeding arising out of or connected with this Contract or to the extent that disclosure is regarded by a Party as necessary to protect its interests under this Contract;
- (b) as required by any Government Agency or any procedure for discovery in any proceedings;
- (c) as required under law (except that this clause 14.4(c) does not require or allow a Party to disclose any information of the kind referred to in section 275(1) of the PPSA); or
- (d) to its legal advisers and consultants.

#### 14.5 Survival of obligation

This Clause 14 survives the expiry or termination of this Contract.

### 15. Deduction from payments

#### 15.1 Deductions

The Company may:

- (a) deduct from any moneys due or becoming due to the Supplier pursuant to Clause 13 the following amounts (plus any Indirect Transaction Taxes in respect of such deductions payable in accordance with Clause 12):
  - (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 remedying or re-performing any Associated Services which the Supplier has performed below the standard required by the Contract; 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.

#### 15.2 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 15.2(b)(i) and deducting an amount under Clause 15.2(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.

#### 15.3 Notification of withholding or deductions

The Company must notify the Supplier of the details of any amounts withheld or deducted pursuant to Clauses 15.1 or 15.2.

#### 15.4 Survival of Clause

This Clause 15 will survive the termination or expiry of the Contract.

### 16. No minimum purchase or exclusivity

#### 16.1 No minimum purchase

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

#### 16.2 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 the Supply).

### 17. Supplier Personnel

#### 17.1 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.

#### 17.2 Engagement of Personnel

The Supplier must ensure that all Personnel of the Supplier engaged to provide any part of the Supply comply with Clauses 32, 33, 34, 36 and 37 with



respect to Confidential Information, public announcements Intellectual Property Rights, modern slavery and compliance with the Code of Conduct Policy.

### 17.3 Company may object to Personnel

The Company Representative may object to any of the Supplier's Personnel who, in the reasonable 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 and skilled Personnel approved by the Company.

## 18. Packing, despatch and transport

### 18.1 Supplier responsible

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

### 18.2 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.

### 18.3 Preparation for transport

- (a) 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.
- (b) The Supplier must provide and fit all lifting and handling devices required for lifting and handling the Goods in transit.

### 18.4 Notification of despatch dates

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

## 19. Inspection

### 19.1 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.

### 19.2 Access

The Supplier must ensure that the Company has access to the Goods and the Supplier must provide all facilities and access necessary for the supervision, inspection and testing of all Goods at

the Site or subject to the Company providing reasonable prior notice, at another location where the Goods are stored or in the course of manufacture.

### 19.3 Cost of inspections

- (a) Subject to Clause 19.3(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 it, any expense incurred as a result of the Supplier dismantling or opening up and reassembling that Good will be borne by the Supplier.

### 19.4 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.

## 20. Health, safety and environment

### 20.1 Application of Clause

This Clause 20 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 performing the Supply.

### 20.2 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.

### 20.3 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 22, the Company's health, safety and environmental policies and associated standards a copy of which has been provided or made available to the Supplier (**HSE Policies and Standards**);
- (b) without limiting Clause 23, 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 20.

#### **20.4 Health, Safety and Environmental Management Plan**

- (a) The Supplier must on request by the Company submit proposed health, safety and environmental management plan(s) (**HSE Management Plan(s)**) consistent and in accordance with the HSE Policies and Standards, for review by the Company Representative within a reasonable time of the Company's request.
- (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 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.

#### **20.5 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 or the Site, 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 any Supplier 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 all required Company Competencies in relation to access to the Site.

#### **20.6 Supplier to remain liable**

Nothing in this Clause 20 (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.

#### **20.7 Removal from Site**

Notwithstanding any other term of the Contract, in the event of any breach of 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/or
- (b) require the Supplier and/or any of its Personnel to remove any material or substance that the Supplier supplied to the Site (including any mixture of materials or substances containing such material or substance that the Supplier supplied to the Site) from the Site,

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.

#### **20.8 Right of audit of Supplier performance**

The Supplier must provide the Company with such documentation and access to the Supplier's Personnel as the Company reasonably requests 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 20;
- (b) the Policies and Standards; and
- (c) the other requirements of the Contract.

#### **20.9 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 20.8, if deficiencies are identified by an audit undertaken under Clause 20.8 the Supplier must take prompt corrective action and notify the Company of such action.

### **21. Access to Site**

#### **21.1 Access**

Without limiting Clause 25.10(e) or this Clause 21, unless otherwise agreed, the Company will grant to the Supplier access to the Site on and from the later of:

- (a) the commencement of the Term under and in accordance with Clause 8; and
- (b) the date which is 7 days after the Supplier has given the Company Representative written notice of its intention to commence performance of the Supply on the Site.

## 21.2 Supplier obligations

- (a) Prior to commencement of the Supplier's performance 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.

## 21.3 Right to deny access

If the Supplier or its Personnel fail to comply with any of the requirements of Clause 20 or this Clause 21, then the Company Representative may in its discretion deny that person or those persons access to the Site or permit such access subject to reasonable terms and conditions.

## 21.4 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 necessary for the performance of the Supply.

## 22. Compliance with Company policies

- (a) During the Term, the Supplier must, and must ensure that its Personnel, comply with the Policies and Standards of the Company as reasonably required and notified by the Company from time to time by notice to the Supplier in writing.
- (b) Where there is a Change in Policies and Standards during the Term:
  - (i) the Supplier must give a written notice to the Company Representative within 5 Business Days after the Change in Policies and Standards containing:
    - (A) details of the Change in Policies and Standards; and
    - (B) an estimate of the Supplier's increased or decreased costs of complying with the Change in Policies and Standards including sufficient information to support the estimate; and
  - (ii) if a notice is given by the Supplier which complies with Clause 22(b), then within 5 Business Days after the notice being given, the Company Representative may:

(A) direct the Supplier to disregard the Change in Policies and Standards; or

(B) direct the Supplier to comply with the Change in Policies and Standards and the Supplier will be entitled to a reasonable adjustment to the Contract Price to reflect the Supplier's increased or decreased costs to comply with the Change in Policies and Standards, and

- (c) If there is a change in the Policies and Standards which does not constitute a Change in Policies and Standards, the Supplier must comply with the change and will not be entitled to make, and the Company will not be liable upon, any Claim arising out of or in any way in connection with such change.

## 23. Laws

### 23.1 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, licences, permits and authorities;
  - (ii) give all necessary notices;
  - (iii) pay all necessary fees, deposits and Taxes; and
  - (iv) where required to ensure the Company receives the full use, benefit and enjoyment of the Supply, prepare and supply to the Company any Supplier Drawings requested by the Company,

and, if requested by the Company, must provide evidence of the matters referred to in this Clause 23.1(b).

### 23.2 Consequences of breach

Notwithstanding any other Clause of these General Conditions or any other term of the Contract, in the event of any breach of Clause 22 or this Clause 23, 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 that the Supplier supplied to the Site (including any mixture of materials or substances containing such material or substance that the Supplier supplied to the Site) from the Site,

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 and the environment.

## 24. Force Majeure

### 24.1 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) due to Force Majeure 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 24.2.

### 24.2 Force Majeure notice

A notice given under Clause 24.1 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.

### 24.3 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.

## 25. Insurances

### 25.1 Supplier Insurances

Unless otherwise provided in the Purchase Order, 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 25.2, 25.3, 25.4, 25.5, 25.6, 25.7, 25.8 and 25.9 (**Supplier Insurances**) in relation to risks or occurrences arising, or which may arise, out of the performance of the Contract.

### 25.2 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\$20,000,000 for each and every claim.
- (b) The insurance outlined in Clause 25.2(a) must unless prohibited by law, waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract.

### 25.3 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 25.3(a) must provide cover in respect of each and every claim for an amount not less than the minimum statutory requirements.

### 25.4 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 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 Personnel.

### 25.5 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.

### 25.6 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 25.6(a) must, unless prohibited by law, waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract.

### 25.7 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 or expiry 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.

## 25.8 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\$20,000,000 for each and every claim.
- (b) The insurance outlined in Clause 25.8(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.

## 25.9 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 or property. 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 25.9(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.

## 25.10 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.
- (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 25 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 material 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.

## 25.11 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 25, the Supplier must notify the Company and must ensure that the Company is kept fully informed of subsequent action or developments concerning the claim.

## 25.12 Sub-contractors' insurance

The Supplier must ensure that its Sub-contractors have the benefit of or effect and maintain



insurances equivalent to the Supplier Insurances required to be effected by the Supplier.

**25.13 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 the subject of the claim.

**25.14 Survival of Clause**

This Clause 25 will survive the expiry or earlier termination of the Contract.

**26. Indemnities**

**26.1 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.

**26.2 Indemnity**

- (a) Subject to Clause 26.3, 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 out of or in connection with any one or more of the following:
  - (i) the breach by the Supplier or its Personnel of any of the Supplier's obligations (including any warranty) under the Contract;
  - (ii) any negligent act or omission, fraud or Wilful Misconduct by the Supplier or its Personnel arising out of the performance of the Contract; 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 26.2(a) on behalf of its Personnel and will hold any amount recovered, and the benefit of the indemnity in Clause 26.2(a) to which its Personnel is entitled, as trustee for and on behalf of its Personnel.
- (c) For the avoidance of doubt, the indemnity set out in this Clause 26.2 includes any legal

costs awarded against and/or incurred by the Indemnified Parties on a full indemnity basis.

**26.3 Exclusions**

The Supplier will not be liable under Clause 26.2 to the extent that the Liability was caused, or contributed to, by the Company's or its Personnel's negligent acts or omissions or Wilful Misconduct.

**26.4 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.

**26.5 No requirement for expense before enforcing indemnity**

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.

**27. Consequential Loss**

**27.1 Consequential Loss**

Notwithstanding any other provision of the Contract but subject to Clause 27.2 and to the extent permitted by law, neither Party is liable to the other Party for the other Party's Consequential Loss.

**27.2 Exclusions from Consequential Loss**

Clause 27.1 does not limit or exclude the Supplier's liability in respect of:

- (a) any personal injury to or death of any person or any loss or damage to third party property (other than the property of the Company);
- (b) its indemnity obligations under Clauses 32.4, 34.3, 36.6 and 41.5;
- (c) a breach of Clauses 32 or 34;
- (d) its obligations to rectify a defect or any damage caused by a defect or to rectify or re-perform any deficient Associated Services;
- (e) fraud, Wilful Misconduct or illegal acts of the Supplier or its Personnel;
- (f) the Supplier abandoning all or a substantial part of the Supply (to the extent that it evidences an intention of a party not to be bound by the Contract);
- (g) any amount recoverable under an insurance policy required to be effected and maintained under the Contract; or
- (h) any amount which would have been recoverable under an insurance policy required to be effected and maintained under the Contract but for:
  - (i) the Supplier failing to take out and maintain the insurances required by the Contract;
  - (ii) the Supplier vitiating or prejudicing any insurance policy;
  - (iii) the Supplier failing to make a claim under an insurance policy; or
  - (iv) the exclusion of liability for Consequential Loss in Clause 27.1.



## 28. No fault termination

### 28.1 Termination for convenience

- (a) The Company may, at any time in its absolute discretion, terminate the Contract or any part of it for any reason by giving the Supplier not less than 10 Business Days' notice of its intention to do so.
- (b) If for any reason a purported termination or action by the Company under Clause 29.2 is ineffective, the purported termination is not a breach or repudiation of the Contract and the Contract is deemed to have been terminated under Clause 28.1.

### 28.2 Supplier compensation

- (a) Following termination of the Contract by the Company pursuant to this Clause 28, the Supplier's sole entitlement is to be paid:
  - (i) the value of the Supply delivered prior to the termination date that the Company has not already paid for;
  - (ii) the cost of Goods properly ordered for which the Supplier has paid or is legally bound to pay and for which the Supplier has provided written evidence, to the satisfaction of the Company, of such payment or obligation to pay provided that upon payment by the Company, title in the Goods must be transferred to the Company;
  - (iii) the reasonable and unavoidable fixed costs, if any, necessarily and properly incurred by the Supplier solely as a result of the Contract, in terminating or otherwise dealing with any subcontracts entered into prior to the date of termination but only if the Supplier takes all reasonable steps to minimise these costs; and
  - (iv) the Supplier's reasonable out-of-pocket expenses which it has incurred solely as a result of the Contract and which it is unable to otherwise recover or mitigate, in:
    - (A) removing the Supplier's plant and equipment from the Site; and
    - (B) transporting the Supplier's Personnel back to their place of engagement.
- (b) For the purposes of Clause 28.2(a), the Supplier must provide the Company with such copies of its documentation including records, books and (subject to confidentiality restrictions) contracts as the Company may reasonably require in order to verify the amounts claimed by the Supplier.

## 29. Material Default and Insolvency

### 29.1 Default Notice

- (a) If a Party breaches a material term of the Contract, the non-defaulting Party may serve a notice of default (**Default Notice**) on that Party containing the information specified in Clause 29.1(b).

- (b) A Default Notice must:

- (i) state that it is a notice under this Clause 29.1;
- (ii) specify the relevant breach;
- (iii) if the breach is capable of being remedied, state that the breach must be remedied within a specified period of not less than 10 Business Days after service of the Default Notice or state that the breach is incapable of remedy.

### 29.2 Termination for Material Default

If the breach is not remedied within the period specified in the Default Notice or is incapable of remedy, then the non-defaulting Party may by further notice do one or more of the following:

- (a) if the non-defaulting Party is the Company, it may elect wholly or partly to suspend payment under the Contract until the breach has been remedied by the Supplier;
- (b) if the non-defaulting Party is the Supplier, suspend performance of all or any part of the Supply until such time as the Company's default is remedied;
- (c) take such action as the non-defaulting Party deems reasonably necessary to cure the breach (the cost of such action so taken by the non-defaulting Party being recoverable as a debt due and immediately payable by the other Party upon receipt of a written demand from the non-defaulting Party for such costs); or
- (d) terminate the Contract or any part of it with effect from a specified date.

### 29.3 Insolvency

If a Party becomes Insolvent, then the other Party may terminate the Contract with immediate effect by Notice to the Party which is Insolvent or any other person in who the Contract has been vested.

### 29.4 Cost of completing the Supply

- (a) If the Contract is terminated by the Company pursuant to Clauses 29.2(d) or 29.3, the Company is entitled to recover from the Supplier any loss, damage, cost or expense suffered or incurred by the Company in completing the Supply that are greater than the amount which would have been paid to the Supplier if the Supply had been completed by the Supplier (**Company Completion Costs**).
- (b) Following termination by the Company pursuant to Clauses 29.2(d) or 29.3, the Company may assess the Company Completion Costs that it considers it will incur. Such costs will be a debt due and immediately payable by the Supplier to the Company upon receipt by the Supplier of a written demand from the Company for such costs.

### 30. Termination generally

#### 30.1 Obligations upon receipt of termination Notice

Upon receipt or issue of a termination Notice pursuant to Clauses 28.1, 29.2(d) or 29.3, the Parties must:

- (a) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of the 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 other Party in relation to the termination.

#### 30.2 Obligations upon termination

- (a) Subject to Clause 30.2(b), if the Contract is terminated pursuant to Clauses 28.1, 29.2(d) or 29.3, then immediately upon the issue of the termination Notice or on the date of termination specified in the termination Notice, whichever is later, the Supplier must:
  - (i) cease performance of the Supply except for any work the Company may specify in the notice of termination for the sole purpose of protecting the Goods;
  - (ii) provide the Company with a detailed report in such form as the Company may reasonably require in relation to the Supply performed up to and including the date of termination as set out in the termination Notice;
  - (iii) deliver to the Company the parts of the Supply performed by the Supplier and any Goods procured by the Supplier up to the date of termination;
  - (iv) return to the Company any items issued to the Supplier by the Company during the Term;
  - (v) 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;
  - (vi) if required by the Company, assign, novate or transfer any subcontract for the performance of the Supply from the Supplier to the Company or its nominee on terms reasonably required by the Company or as otherwise agreed by the Parties;
  - (vii) remove all equipment (excluding any equipment forming part of the Goods) and Supplier's Personnel from the Site;
  - (viii) remove from the Site any wreckage, rubbish and debris of any kind as directed by the Company, and leave the whole of the Site which was within the Supplier's control or possession in a clean and safe condition; and
  - (ix) take any other action relating to the termination of the Contract as the Company may reasonably require.

- (b) If the Contract is terminated by the Supplier as a result of the material default of the Company in the form of non-payment of an amount owing, the Supplier's obligations pursuant to Clause 30.2(a) will be subject to the Company first paying the Supplier any amounts owing which are the subject of the Company's material default of the Contract.
- (c) Following termination of the Contract by the Supplier pursuant to Clause 29.2(d), the Supplier's sole entitlement is to be paid:
  - (i) the value of the Supply performed prior to the termination date that the Company has not already paid for;
  - (ii) the cost of Goods properly ordered for which the Supplier has paid or is legally bound to pay and for which the Supplier has provided written evidence, to the satisfaction of the Company, of such payment or obligation to pay provided that upon payment by the Company, title in the Goods must be transferred to the Company;
  - (iii) the reasonable and unavoidable fixed costs, if any, necessarily and properly incurred by the Supplier solely as a result of the Contract in terminating or otherwise dealing with any subcontracts entered into prior to the date of termination but only if the Supplier takes all reasonable steps to minimise these costs;
  - (iv) the Supplier's reasonable out-of-pocket expenses which the Supplier has incurred solely as a result of the Contract and which it is unable to otherwise recover or mitigate, in:
    - (A) removing the Supplier's plant and equipment from the Site; and
    - (B) transporting Supplier's Personnel back to their place of engagement; and
  - (v) the Supplier's reasonable and direct costs of producing the report referred to in Clause 30.2(a)(ii).
- (d) For the purposes of Clause 30.2(c), the Supplier must provide the Company with copies of its documentation including records, books and (subject to confidentiality restrictions) contracts as the Company may reasonably require in order to verify the amounts claimed by the Supplier.

#### 30.3 Rights on Termination

- (a) If the Contract is terminated pursuant to Clauses 29.2(d) or 29.3:
  - (i) no action taken by the non-defaulting Party will prejudice the existence of any of its rights and remedies under the Contract which the non-defaulting Party may have as a result of the relevant breach; and
  - (ii) except where expressly provided otherwise, rights of the non-defaulting Party will be the same as they would have been at law had the other Party repudiated the Contract and the non-

defaulting Party had elected to treat the Contract as at an end and recover damages.

- (b) If the Contract is terminated pursuant to Clauses 28.1, 29.2(d) or 29.3, then the Company may complete the Supply itself or engage a third party to complete the Supply.
- (c) If the Company repudiates the Contract and the Supplier accepts that repudiation, thereby terminating the Contract, the Supplier is entitled to damages but is not entitled to any other compensation in the nature of restitution or damages calculated on a quantum meruit.

## 31. Dispute Resolution

### 31.1 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 31.

### 31.2 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.

### 31.3 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.

### 31.4 Urgent interlocutory relief

Nothing in this Clause 31 prevents a Party from seeking any urgent interlocutory relief which may be required in relation to the Contract.

## 32. Confidentiality

### 32.1 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 absolute discretion or given on such terms as it sees fit).

### 32.2 Exceptions

Clause 32.1 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 32 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 and limits the disclosure to the maximum extent possible.

### 32.3 Breach of consent

The breach of any of the conditions contained in a consent granted by the Company pursuant to Clause 32.1 will be deemed to be a breach of the Contract.

### 32.4 Indemnity

- (a) Without limiting Clause 26, 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 32 by the Supplier or its Personnel, except to the extent that the Liability was caused, or contributed to, by the Company's or its Personnel's negligent acts or omissions or Wilful Misconduct.
- (b) The Company is entitled to recover from the Supplier an amount due to its Personnel under the indemnity in Clause 32.4(a) on behalf of that person or entity and will hold any amount recovered, and the benefit of the indemnity in Clause 32.4(a) to which that person or entity is entitled, as trustee for and on their behalf.

### 32.5 Additional obligations

The obligations in this Clause 32 are in addition to and do not diminish the obligations of the Supplier in respect of secret and confidential information at common law, in equity or under any statute or trade or professional custom or use.

### 32.6 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 or permanently delete or destroy (at the Company's election) all Confidential Information in the custody, possession or control of the Supplier or any of its Personnel.

### 32.7 Survival of Clause

This Clause 32 will survive the termination of the Contract.

### 33. 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.

### 34. Intellectual Property Rights

#### 34.1 Supplier Intellectual Property Rights

- (a) The Company acknowledges that the Supplier retains ownership of the Intellectual Property Rights of the Supplier used or created under or in the performance of the Contract and/or in the provision of the Supply (Supplier IP).
- (b) To enable the Company to enjoy the benefit of the Supply 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 all Supplier IP for that purpose.

#### 34.2 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 34.2(a) in the performance of the Supply.

#### 34.3 Indemnity

- (a) Without limiting Clause 26, the Supplier indemnifies the Company and its Personnel and must keep the Company and its Personnel indemnified in respect of any Liabilities incurred or sustained by them resulting from any actual or alleged infringement of any Intellectual Property Rights of any third party arising out of or in connection with:
  - (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 or its Personnel.
- (b) The Supplier must notify the Company immediately if the Supplier becomes aware of a Claim being threatened or made against the Supplier or the Company in relation to any of the matters covered by the indemnity in Clause 34.3(a).
- (c) The Company may require the Supplier to conduct any litigation that may arise from a Claim referred to in Clause 34.3(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.
- (d) For the avoidance of doubt, the indemnity set out in this Clause 34.3 includes any legal costs awarded against and/or incurred by the Company or its Personnel on a full indemnity basis.

#### 34.4 Exclusions

The Supplier will not be liable under Clause 34.3 to the extent that the Liability was caused, or contributed to, by the Company's or its Personnel's negligent acts or omissions or Wilful Misconduct.

#### 34.5 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.

#### 34.6 Procedure where Intellectual Property Rights cannot be procured

- (a) If the Supplier cannot procure the rights referred to in Clause 34.4 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):
  - (i) alter the Goods or the relevant part of the Goods to avoid infringement or violation of the Intellectual Property Rights or any of them;
  - (ii) 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
  - (iii) 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.

## 35. Notices

### 35.1 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 and on the letterhead of the Party giving notice;
- (b) be marked to the attention of the representative of the Party to whom the Notice is addressed as provided for in the Purchase Order or pursuant to Clause 9;
- (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) may be delivered by prepaid post, by hand, by email, or by facsimile to the Party to whom the Notice is addressed at its address shown in the Purchase Order or such other address as that Party may have notified to the other Party in writing.

### 35.2 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, 3 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);
- (c) in the case of email, at the time the email is received by the recipient; or
- (d) 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 received or deemed to be received 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.

### 35.3 Service of documents

- (a) If a Notice, Claim or document under the Payment Act is required to be served on the Company, then it must be served at the Site address shown in the Purchase Order or such other address notified to the Supplier between the hours of 8.00am and 4.00pm

(local time). Any Notice, Claim or document under the Payment Act which is served on a day that is not a Business Day or is served later than 4.00pm (local time) it will be taken to have been duly served on the next Business Day.

- (b) If any Notice, Claim or document under the Payment Act is served on the Company in 'hard copy', the Supplier must also provide the Notice, Claim or document in a readily accessible electronic format at the time of service or on the day of service.

## 36. Modern Slavery

### 36.1 Modern Slavery warranties

- (a) The Supplier represents, warrants and undertakes:
  - (i) that the Supplier is committed to sustainable business practices and that no Supplier Personnel, Related Bodies Corporate, affiliate or any entity that performs the Supply for or provides services to or on behalf of the Supplier engages in Modern Slavery;
  - (ii) to comply with all statutory requirements including, without limitation, such requirements relating to the Supplier's or the Supplier Personnel's business or operations or the business or operations of its Related Bodies Corporate, affiliates or any of their Personnel and, to the extent applicable, its or their respective Supply Chains;
  - (iii) to develop and maintain policies and procedures to avoid engaging in Modern Slavery;
  - (iv) to notify the Company promptly upon becoming aware of any incident, complaint or allegation that the Supplier, the Supplier's Personnel or any of their Related Bodies Corporate, affiliates or any of their Personnel or any entity in its or their Supply Chains has engaged in Modern Slavery; and
  - (v) that it has not (and is not likely to be) subject to any adverse finding, enforcement action or any legal claim by or through any person or by a Government Agency connected to Modern Slavery.
- (b) The Supplier must have and maintain throughout the Term its own policies and procedures that are intended to ensure compliance with the warranties, representations and undertakings contained in this Clause 36.
- (c) The Supplier must not engage in any activity, practice or conduct that would constitute Modern Slavery.

### 36.2 Modern Slavery reporting and audit

- (a) The Supplier acknowledges that the Company has corporate reporting requirements with regard to Modern Slavery and shall provide to the Company a written



report or completed survey, upon request and at the Supplier's own expense, addressing the Supplier's Modern Slavery compliance measures (which may, for example, include Supply Chain due diligence, Supply Chain mapping, risk assessments, complaints, investigations and remediation measures).

- (b) In addition to the rights set out in Clause 20.8, 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 the Company to verify, monitor and audit the Supplier's compliance with this Clause 36 and its performance of the Supply.
- (c) The Company may make and retain copies of the Supplier's documentation and data for the purposes of the Company's own Modern Slavery compliance and reporting requirements.

### 36.3 Action by the 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 36.1, if deficiencies are identified by an audit undertaken under Clause 36.2, the Supplier must at its own cost take prompt corrective action, notify the Company of such action and perform all remediation activities reasonably required by the Company.

### 36.4 Notice

- (a) The Supplier must immediately notify the Company in writing if:
  - (i) it becomes aware or suspects that any of the representations, warranties or undertakings in Clause 36.1 are incorrect;
  - (ii) the Supplier, its Related Bodies Corporate, affiliates or any of its or their Personnel or an entity that performs work for and on behalf of the Supplier breaches any of the representations, warranties or undertakings in Clause 36.1; or
  - (iii) it becomes aware that a breach of any of the representations, warranties and undertakings in Clause 36.1 may have occurred.
- (b) Notification under this Clause 36.4 will be sufficient if and only if:
  - (i) the notification sets out adequate particulars of the breach or suspected breach; and
  - (ii) the notification sets out what steps the Supplier is taking to investigate the breach or potential breach.

### 36.5 Termination

Notwithstanding Clause 36.4, if the Supplier breaches Clause 36.1 or the Company reasonably suspects such a breach has occurred, without prejudice to any other remedy which the Company

may have, the Company may regard such breach as a material breach by the Supplier which is incapable of remedy for the purposes of its rights under Clause 29.

### 36.6 Indemnity

To the extent permitted by law, the Supplier indemnifies the Company and its Personnel, must keep the Company and its Personnel indemnified in respect of any Liabilities incurred or sustained by the Company or its Personnel arising out of or in connection with a breach of any representation, warranty and undertaking under this Clause 36, except to the extent that the Liability was caused, or contributed to, by the Company's or its Personnel's negligent acts or omissions or Wilful Misconduct.

### 36.7 Confidentiality

The Company may disclose any information (including any confidential information provided by the Supplier to it) concerning the identity, business and activities of the Supplier to any Government Agency in connection with enquiries made of the Company by a Government Agency concerning the Supplier.

### 36.8 Survival of Clause

This Clause 36 survives the expiry or termination of the Contract.

## 37. Compliance with the Code of Conduct Policy and Core Contractor compliance training

### 37.1 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-compliances 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 the Code of Conduct Policy.

### 37.2 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.

## 38. Costs

### 38.1 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.

### **38.2 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.

## **39. Status of Supplier**

### **39.1 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.

### **39.2 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.

## **40. Sub-contracting**

### **40.1 Consent required**

The Supplier is not permitted to sub-contract all or any part of the Contract without the prior written consent of the Company, such consent not to be unreasonably withheld or delayed subject to the Supplier:

- (a) ensuring that each Sub-contractor is engaged under a written agreement consistent with the Contract; and
- (b) providing the Company on request with copies of all subcontracts within 5 Business Days of a request from the Company.

### **40.2 Obligations survive sub-contract**

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

### **40.3 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.

## **41. Personal Data protection**

### **41.1 Personal Data**

Each Party agrees to comply with its obligations under all applicable laws relating to privacy and protection of Personal Data in respect of Personal Data obtained by or disclosed to them pursuant to this Contract.

### **41.2 Warranty**

Each Party warrants to the other Party that it has complied with, and will continue to comply with, all applicable laws in its processing of Personal Data (including its collection, use, disclosure, storage and handling of Personal Data) pursuant to this Contract.

### **41.3 Data protection**

In addition to its obligations under Clauses 41.1 and 41.2, the Supplier agrees to:

- (a) only collect, use, disclose or process the Company's Personal Data for the performance of its obligations under the Contract, and as directed by the Company;
- (b) not disclose the Company's Personal Data to any other person (including the data subject) without the Company's prior written request or consent, unless the disclosure is required by applicable laws;
- (c) immediately notify the Company that the disclosure of the Company's Personal Data is or may be required by applicable laws;
- (d) put into place and maintain appropriate technical, physical and organisational measures to protect against unauthorised access, loss, destruction, misuse, modification, disclosure or damage to the Company's Personal Data;
- (e) take all necessary steps to ensure that its collection, use, disclosure and handling of the Company's Personal Data 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 collected the Company's Personal Data; and
- (f) if requested by the Company to do so, execute EU model contracts for the transfer of Personal Data:
  - (i) with the Company; or
  - (ii) with any or all of the Supplier's Related Bodies Corporate or Subcontractors; and
- (g) immediately notify the Company and any relevant Government Agency of any Notifiable Data Breach.

### **41.4 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 Company's Personal Data inappropriately, the Company must promptly give the Supplier sufficient details about the complaint to enable the Supplier to take steps to address the subject of the complaint promptly. The Supplier must provide a written

response to the Company about how it has addressed the complaint as soon as possible, and in any event, no later than seven (7) days after the complaint is notified to the Supplier. The response must identify the steps that the Supplier has taken to address the complaint and if relevant, to minimise the risk of 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 Company's Personal Data inappropriately, the Supplier must:
  - (i) promptly inform the Company of the complaint;
  - (ii) provide the Company with the Company's Personal Data that is the subject of the complaint; and
  - (iii) provide a Notice to the Company about how the Supplier has addressed the complaint, and what steps the Supplier has taken to minimise the risk of further complaints.

#### **41.5 Supplier indemnity**

Without limiting Clause 26, the Supplier indemnifies the Company and must keep the Company indemnified from and against any and all Liabilities arising out of or in connection with the Supplier's actual or alleged breach of this Clause 41, except to the extent that the Liability was caused, or contributed to, by the Company's or its Personnel's negligent acts or omissions or Wilful Misconduct.

#### **41.6 Survival of Clause**

- (a) The Supplier must, on termination of this Contract, return, destroy, store or dispose of the Company's Personal Data as directed by the Company.
- (b) This Clause 41 will survive the expiry or termination of the Contract.

#### **42. Waiver**

- (a) A failure to exercise, or any delay in exercising any right, power or remedy by a Party does not operate as a waiver.
- (b) 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.

#### **43. 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.

#### **44. Severability**

##### **44.1 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.

##### **44.2 Negotiation in good faith**

Where a provision is prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid or unenforceable provision with 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.

#### **45. 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.

#### **46. Assignment**

- (a) The Supplier is not permitted to assign all or any part of the Contract without the prior written consent of the Company, such consent being at the Company's absolute discretion and on whatever terms and conditions the Company thinks appropriate, including requiring the proposed assignee to be bound by any or all of the provisions of the Contract.
- (b) The Company is not permitted to assign the Contract to the detriment of the Supplier without the Supplier's prior written consent.