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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 unless the context requires otherwise:

Authority means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

Cancellation Date has the meaning given in Clause 20.1(c) and Clause 21.1(c).

Claim means any action, suit, legal or administrative proceeding or demand of any kind.

Commencement Date means the date of acknowledgement or confirmation of receipt of the Purchase Order by the Contractor.

Completion means the supply of all Goods and completion of all Services specified in the Contract in accordance with the Contract and to the reasonable satisfaction of the Purchaser.

Contract Price means the aggregate amount payable (excluding GST payable in accordance with Clause 9 by the Purchaser to the Contractor as set out in the Purchase Order which is inclusive of any applicable Taxes and all expenses incurred by the Contractor in relation to the performance of the Works.

Contractor Default Notice has the meaning given in Clause 20.1.

Contractor Insurances has the meaning given in Clause 15.1.

Date for Completion means the date by which the Contractor must achieve Completion which, at the date of the Contract is as stated in the Purchase Order or another date determined in accordance with the Contract.

Date of Completion means:

- (a) the date upon which Completion was reached; or
- (b) where another date is determined in any arbitration or litigation as the date upon which Completion was reached, that other date.

Defect means any defect, flaw, deficiency or omission in the Services or Goods or any part of them that does not comply with the Contract.

Defects Liability Period means the period(s) set out in the Purchase Order.

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

Dispute has the meaning given in Clause 22.1.

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).

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Environment means components of the earth including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism;
- (d) any human-made or modified structures and areas;
- (e) the aesthetic or amenity values of an area; and
- (f) humans.

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

Force Majeure means an event or circumstance that:

- (a) is beyond the reasonable control of the Contractor;
- (b) causes or results in default or delay in performance by the Contractor of any of its obligations under the Contract;
- (c) is not the result of the Contractor's party's breach of the Contract; and
- (d) could not be overcome by the exercise of due care, proper precautions and the consideration of reasonable alternatives with the intention of avoiding the effects of the force majeure, and which could not have been reasonably foreseen,

excluding;

- (e) strikes or industrial action of any kind (except for state-wide or national strikes or industrial action);
- (f) adverse weather of any kind (other than to the extent that such adverse weather prevents road access to the Site for a continuous period of no less than 14 days); and
- (g) any event or cause to the extent to which the risk for such event or cause has expressly been reserved or allocated to the affected party under the Contract.

Goods means the goods, materials, supplies, equipment or other items identified in the Purchase Order to be supplied by the Contractor in accordance with the Contract.

GST means the same as in the GST Law.

GST Law means the same as "GST Law" in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Indemnified Parties has the meaning given in Clause 17.1.

Insolvency Event means, in respect of the Purchaser or the Contractor (as the case may be), any of the following events:

- (a) a receiver, receiver/manager, administrator, trustee, controller (as defined for the purposes of section 9 of the *Corporations Act 2001* (Cth)) or similar officer is appointed (and whose appointment is not withdrawn within five days) in respect of it or substantially over all of its assets;
- (b) a liquidator or provisional liquidator is appointed;
- (c) an order is made, or a meeting convened, or a resolution is passed, for the purpose of:

- (i) appointing a person referred to in paragraphs (a) or (b);
 - (ii) winding up; or
 - (iii) proposing or implementing a scheme of arrangement;
- (d) a moratorium of any debts or an official assignment or a composition or an arrangement (formal or informal) with its creditors or any similar proceeding or arrangement by which its assets are subjected conditionally or unconditionally to the control of its creditors is ordered, declared or agreed to, or is applied for and the application is not withdrawn, stayed or dismissed within 30 days;
 - (e) an application has been made in connection, which is preparatory to, or could result in any of the circumstances in paragraphs (b) or (c) above, and is not stayed, withdrawn or dismissed within 30 days;
 - (f) it admits in writing that it is insolvent;
 - (g) it is declared to be insolvent or becomes unable to pay all its debts as and when they become due and payable;
 - (h) any writ of execution, garnishee order, *mareva* injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to substantially all of its assets;
 - (i) any act is done or event occurs that under the Law from time to time of a country other than Australia has an analogous or similar effect to any of the events in paragraphs (a) to (h); or
 - (j) in respect of the Contractor only, a judgment is entered against it for a sum in excess of \$1,000,000 and that sum remains unsatisfied or is not appealed by the Contractor for a period of 21 days.

Intellectual Property Right 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 registrable), rights in relation to registered or unregistered trademarks, 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.

Invoice means an invoice referred to in Clause 10.2 and in the form referred to in Clause 10.2(b).

Law means:

- (a) the present or future requirements of any statute, regulation, order, rule, subordinate legislation, common law, equity or other document enforceable under any statute, regulation, order, rule or subordinate legislation, common law or equity; and
- (b) the lawful requirements, directions or instructions of any Authority.

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

Notice has the meaning given in Clause 24.1.

Notice of Dispute has the meaning given in Clause 22.1.

Purchaser Default Notice has the meaning given in Clause 21.1.

Purchaser's Default has the meaning given in Clause 21.1.

Party means a party to the Contract and includes its executors, administrators, successors and permitted assigns.

Personnel means:

- (a) in relation to the Contractor:
 - (i) any of its directors, officers, employees, Subcontractors (including Subcontractors' Personnel), agents and representatives;
 - (ii) each Related Body Corporate of the Contractor (and the directors, officers, employees, Subcontractors, agents and representative of each Related Body Corporate); and
 - (iii) any other persons for whom the Contractor and each Related Body Corporate (or their Subcontractors) are responsible or with whom the Contractor and any of its Related Bodies Corporate are in partnership or any other form of business association; and
- (b) in relation to the Purchaser, any of its past or present officers, employees, agents or representatives.

Purchase Order means individual purchase orders as may be issued by the Purchaser to the Contractor in respect of the supply of Goods and/or the performance of Services.

Rejection Notice has the meaning given in Clause 11.1(b).

Related Body Corporate has the meaning given to related body corporate in the *Corporations Act 2001* (Cth).

Services means the services identified in the Purchase Order to be performed by the Contractor in accordance with the Contract.

Site means the land and other places to be made available and any other lands and places made available to the Contractor by the Purchaser for the purpose of the Contract.

Subcontractor means any person engaged by the Contractor in accordance with Clause 25 to perform all or any part of the Works on behalf of the Contractor.

Tax Invoice means the same as in the GST Law.

Taxes means any tax imposed, levied or charged by an Authority and includes, without limitation, any excise duties, stamp or similar duties, customs duties, withholding taxes, value added or similar transaction taxes and any penalties or interest relating thereto.

Works means:

- (a) the manufacture, supply and delivery of the Goods and all things to be performed in accordance with the Contract; and

- (b) the Services and all services to be carried out and performed by the Contractor in accordance with the Contract.

1.2 Interpretation

In the Contract, unless the context requires otherwise:

- (a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
- (b) time for doing any act or thing under this Contract will, if it ends on a Saturday, Sunday or statutory or public holiday, be deemed to end on the day next following which is not a Saturday, Sunday or statutory or public holiday;
- (c) clause headings and subclause headings shall not form part of, nor be used in the interpretation of, the Contract;
- (d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context;
- (e) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing; and
- (f) this Contract is not to be interpreted against the interest of a Party merely because that Party proposed this Contract or some provision in it or because that Party relies on a provision of this Contract to protect itself.

2. Evidence of Contract and Precedence of Documents

2.1 Contract

- (a) The Contract consists of the following documents, which have the following order of precedence:
 - (i) the Purchase Order; and
 - (ii) these General Conditions as may be amended by the Purchase Order.
- (b) If the Contractor's terms and conditions are supplied in connection with the performance of the Services or delivery of any Goods (including when accepting or acknowledging a Purchase Order), such terms and conditions will be of no legal effect and will not form part of this Contract (notwithstanding the endorsement, acceptance or signing of any such document by a representative of the Purchaser).
- (c) In the absence of written acknowledgment of a Purchase Order, the supply of any Goods or performance of any Services by the Contractor will be deemed to be an acceptance of this Contract on the terms contained in this Contract and to the exclusion of any Contractor supplied terms and conditions.

2.2 Discrepancies

The Parties agree that unless otherwise directed by the Purchaser, where the omission, inconsistency, ambiguity,

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inadequacy or discrepancy is between any documents forming part of the Contract, the documents will be given precedence in accordance with the order in which they are listed in Clause 2.1.

2.3 Entire agreement

Except as may be specified in the Purchase Order, this Contract contains the entire agreement between the Parties with respect to its subject matter and it sets out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the Parties and supersedes all earlier Conduct by or between the Parties in connection with its subject matter. Neither Party has relied on or is relying on any other Contract in entering into this Contract and completing the transactions contemplated by it.

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 Contractor and the Purchaser.

3. Performance by the Contractor

3.1 The Works

The Contractor must perform the Works:

- (a) in accordance with:
 - (i) the terms of the Contract;
 - (ii) the terms of any scope document included with the Purchaser Order; and
 - (iii) all applicable Laws;
- (b) in the quantities and by the time set out in the Purchase Order; and
- (c) for the Contract Price.

3.2 Commencement

The Contractor will commence and continue to diligently perform the Works on and from the Commencement Date.

3.3 Contractor to provide labour, equipment and other requirements

Unless otherwise provided in the Contract, the Contractor must supply all Personnel, labour, supervision, tools, equipment and other requirements to perform the Works.

3.4 Form of Design Documents

If the Contractor provides any Documentation in hard copy, it shall also provide an electronic copy to the Purchaser at the same time. The Contractor shall ensure that any copies of Documentation provided to the Purchaser are:

- (a) in native format;
- (b) capable of amendment by the Purchaser;
- (c) in the case of drawing, in "dwg" format; and
- (d) otherwise in a format as required by the Contract or directed by the Purchaser.

4. Contractor's Warranties

4.1 Contractor's warranties

In addition to the warranties contained in Clause 6.1, the Contractor warrants that:

- (a) in relation to the supply of any Goods:
 - (i) the supply of Goods will be undertaken in an efficient manner and by the Date for Completion;
 - (ii) the Goods will conform to all applicable Laws;
 - (iii) the Goods will be new and of good and merchantable quality;
 - (iv) the Goods will be free from Defects in design, materials and workmanship, and suitable for the relevant purpose of those Goods;
 - (v) the Goods will be free of encumbrances and it has good and marketable title to the Goods;
 - (vi) the Purchaser will receive good title to the Goods free of any charge, encumbrance, privilege, security interest or other defect in title; and
 - (vii) it will obtain at its cost all usual trade warranties and any warranties specifically requested by the Purchaser and that on completion of the supply of the Goods and performance of the Services it will assign the benefit of any such unexpired warranties to the Purchaser including any warranties obtained from the Contractor's Subcontractors; and
- (b) in relation to the performance of any Services:
 - (i) the performance of the Services will be undertaken in an efficient manner and by the Date for Completion;
 - (ii) any deliverables required to be produced as part of the Services will be fit for all purposes stated in or which are reasonably ascertainable from this Contract;
 - (iii) the Contractor 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
 - (iv) any equipment used on Site by the Contractor will be in safe working condition, will comply with all Laws which are applicable to such equipment and will be operated by suitably qualified and competent Personnel, to the satisfaction of the Purchaser.

4.2 Copies of trade warranties

Copies of trade warranties referred to in Clause 4.1(a)(vii) must be supplied to the Purchaser with Invoices.

- (ii) applicable rates or prices in the Contract;
- (iii) rates or prices in a schedule of unit prices, to the extent that it is reasonable to use them; and
- (iv) reasonable rates or prices, which shall include a reasonable amount for profit and overheads.

5. Variations

5.1 Permitted variations by Contractor

The Contractor must not alter the Works in any way except as directed or permitted in writing by the Purchaser.

5.2 Directions by the Purchaser for variations

- (a) During the performance of the Works, the Purchaser may by notice direct or permit the Contractor to vary the Works without prejudice to the Contract. The Contractor must comply with the notice, and is bound as if any variation made by it were included in the Contract.
- (b) If the variation requires the omission of work, the Purchaser may have the omitted work carried out by others or not as it sees fit.
- (c) A direction by the Purchaser to the Contractor to perform the Works in accordance with the Contract is not a variation.
- (d) If the Contractor considers that a variation directed by the Purchaser under paragraph (a), will result in delay or disruption requiring an extension to the Date for Completion or additional costs, it must, within 10 days of the direction, give the Purchaser a notice in writing setting out the following details:
 - (i) the direction that the Contractor considers requires an extension to the Date for Completion or additional costs;
 - (ii) the proposed extension to the Date for Completion; and
 - (iii) the proposed adjustment to the Contract Price (if any).
- (e) Within five days of receipt of the notice under paragraph (d), the Purchaser must either direct the Contractor to proceed with the variation or withdraw the direction.

5.3 Valuation of variation

- (a) If the Purchaser directs the Contractor to proceed with a variation under Clause 5.2(e), the Purchaser will determine (acting reasonably):
 - (i) the adjustment to the Contract Price (if any), calculated in accordance with paragraph (b); and
 - (ii) any extension to the Date for Completion, having due regard to all the relevant circumstances, including the Contractor's proposed extension or adjustment under Clause 5.2(d).
- (b) The Purchaser shall price each variation using the following order of precedence:
 - (i) prior agreement;

6. Defects Liability

6.1 Warranty

The Contractor warrants the Works against any Defect until expiry of the Defects Liability Period (as may be extended in accordance with the Contract).

6.2 Correction of Defects

At any time prior to expiry of the Defects Liability Period, the Purchaser may, in respect of any Defect:

- (a) direct the Contractor to correct such Defect (including redesign, repair or replace the affected items or parts of the Works or providing such additional services necessary to correct such Defect) at the Contractor's cost; or
- (b) notify the Contractor that the Purchaser elects to accept the Defect, in which case there will be a deemed variation and the Contract Price will be reduced by an amount to be determined in accordance with Clause 5.3.

6.3 Commencement of Defects Liability Period

The Defects Liability Period will commence on and from the later of:

- (a) the date of delivery of the Goods to the Delivery Point (in respect of each item of Goods); and
- (b) the Date of Completion of the Services.

6.4 Extended Defects Liability Period

- (a) A further Defects Liability Period will apply to any Works which are corrected pursuant to Clause 6.2(a) (**Extended Defects Liability Period**).
- (b) The Extended Defects Liability Period will commence on the date the Contractor corrects any Works and ends 12 months from that date.

6.5 Failure to rectify

If the Contractor fails to promptly rectify any Defect in the Works in accordance with Clause 6.2, the Purchaser may rectify any Defect in the Goods or Services at the Contractor's risk and cost and any costs and expenses incurred by the Purchaser will be recoverable from the Contractor as a debt due and payable.

7. Delivery, Title and Risk in Goods

7.1 Delivery

The Contractor must deliver the Goods to the Delivery Point.

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7.2 Notification of despatch dates

The Contractor must notify the Purchaser promptly of the date of despatch of each item and the estimated date of arrival at the Delivery Point.

7.3 Title

Title in the Goods or any self-sustaining part or separately identifiable unit of the Goods to be supplied by the Contractor under the Contract passes to the Purchaser upon the earlier of:

- (a) payment in respect of those Goods, or self-sustaining part or separately identifiable unit of the Goods, by the Purchaser; and
- (b) the Goods being delivered to the Delivery Point and (if applicable), inspected in accordance with Clause 11 and accepted by the Purchaser.

7.4 Risk and care of Goods

- (a) Risk in the Goods and responsibility for the care of the Goods will remain with the Contractor until such time as the Goods are delivered to the Purchaser in accordance with Clause 7.1.
- (b) If loss or damage occurs to the Goods while the Goods are at the Contractor's risk, the Contractor must, at its cost, but at the Purchaser's sole discretion, replace or repair the Goods.

8. Time and Progress

8.1 Time

The Contractor must perform the Works by the Date for Completion.

8.2 Extensions of time

- (a) Subject to paragraph (b) and Clause 8.3, the Contractor will be entitled to an extension to the Date for Completion if and only to the extent that the Contractor is delayed in reaching Completion by the Date for Completion by either of the following causes:
 - (i) any breach, act or omission of the Purchaser (not permitted under the Contract); or
 - (ii) any event of Force Majeure,and in each case, subject to:
 - (iii) the cause of delay not being as a result of a breach of contract or negligence, recklessness or default of the Contractor or its subcontractors;
 - (iv) the cause of delay not being beyond the reasonable control of the Contractor; and
 - (v) the cause of delay not being the occurrence of an event or the existence of circumstances the risk of which has been accepted by the Contractor under this Contract.

- (b) If the Contractor considers itself to be entitled to an extension to the Date for Completion, the Contractor must:
 - (i) as soon as it becomes aware of the cause of delay, give the Purchaser a notice describing the event or circumstance giving rise to the delay;
 - (ii) use reasonable endeavours to mitigate the consequences of any such delay or any delay which actually occurs; and
 - (iii) as soon as reasonably practicable and to the extent reasonably practicable, remedy the cause of such delay or any delay which actually occurs and minimise its effects.
- (c) Within 21 days after the Contractor became aware, or should reasonably have become aware, of the cause of delay, or within such other time as is proposed by the Contractor and approved by the Purchaser in its absolute discretion, the Contractor must provide the Purchaser with a detailed claim that includes full supporting particulars of:
 - (i) the basis of the claim; and
 - (ii) the Contractor's proposed extension to the Date for Completion.
- (d) If the event or circumstance giving rise to the delay is continuing after the claim submitted under paragraph (c):
 - (i) the fully detailed claim provided under paragraph (c) must be considered as interim;
 - (ii) the Contractor must send further interim claims at monthly intervals, giving particulars of the accumulated delay, and such further details as the Purchaser may require; and
 - (iii) the Contractor must provide the Purchaser with a detailed final claim of the effects resulting from the event or circumstance giving rise to the delay has ended, or within such other period as is proposed by the Contractor and approved by the Purchaser in its absolute discretion.
- (e) Within 28 days of the notice referred to in paragraph (c) or paragraph (d)(iii), the Purchaser must respond with its assessment of the Contractor's claim, including reasons for any rejection, and may, in its absolute discretion, request any necessary further particulars.
- (f) If the Purchaser approves a claim under paragraph (e), the Purchaser must determine (acting reasonably), the extension to the Date for Completion.
- (g) The Contractor acknowledges that any entitlement of the Contractor to an extension to the Date for Completion under this Clause 8.2 will be the Contractor's sole remedy in respect of the relevant cause of delay and except as provided in this Clause 8.2:

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- (i) the Purchaser is not liable for, or in connection with, any Claim by the Contractor; and
 - (ii) the Contractor will not make any Claim, arising out of, or in connection with, the relevant cause of delay.
- (h) Without limiting this Clause, the Purchaser may, in its absolute discretion (which discretion does not have to be exercised for the benefit of the Contractor) extend the Date for Completion.

9. Taxes

9.1 Same meaning as GST Law

Words defined in the GST Law have the same meaning in this clause, unless it is clear that a different meaning is intended.

9.2 GST payable

In addition to paying the Contract Price and providing any other such consideration under the Contract, which are exclusive of GST, the Purchaser must:

- (a) pay to the Contractor an amount equal to any GST payable by the Contractor on any supply to the Purchaser by the Contractor under the Contract; and
- (b) make that payment of that GST as and when the Purchaser pays or provides the consideration for the supply or any part of it in accordance with the Contract.

9.3 Invoice

The Contractor must issue a Tax Invoice to the Purchaser for any supply in relation to which the Contractor may recover GST from the Purchaser under the Contract, on or before the due date for payment of the consideration for the supply or any part of it.

9.4 Adjustments

The Contractor must refund to the Purchaser:

- (a) any overpayment by the Purchaser for GST; and
- (b) any refund of GST received by the Contractor for whatever reason,

in relation to the Contract within 14 days of the Contractor becoming aware of the overpayment or such refund of GST is received by the Contractor, whichever is the earlier.

9.5 Indemnities

- (a) If any Party has a claim under or in connection with the Contract for a cost on which that Party must pay GST, the claim is for the cost plus all GST (except any GST for which that Party is entitled to an input tax credit).
- (b) If a Party has a claim under or in connection with the Contract whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

9.6 Warranty by the Contractor that it is registered for GST

If requested by the Purchaser, the Contractor must provide satisfactory evidence that it is registered or required to be registered for GST. The Contractor must immediately notify the Purchaser if it ceases to be registered for GST.

9.7 General tax indemnity

- (a) The Contractor must pay all wages, superannuation and any other contributions or payments required by law to be paid to, in respect of or arising in relation to the employment of any Personnel engaged by the Contractor in the performance of any Services. The Contractor acknowledges that such persons are not the employees of the Purchaser and the Contractor bears, and the Purchaser does not bear, any liability for such payments.
- (b) If the Purchaser becomes liable for payment of superannuation, taxes (including without limitation pay roll tax or fringe benefits tax), withholding, or any other charge or contribution however imposed in respect of, or calculated by reference to, the Contractor, or its Personnel, the Contractor indemnifies the Purchaser for such payments (including all legal and other costs, penalties, fines or interest in respect of such payments) made or amounts incurred by the Purchaser as a result of any claim or action (including without limitation a claim or action brought by the Contractor, its Personnel or any Authority), with regard to any amount referred to in this clause.

9.8 Power to withhold if no ABN

The Purchaser is entitled to withhold from any payment to the Contractor such amounts as are required for the Purchaser to comply with the provisions of the *Taxation Administration Act 1953* (Cth) and related legislation.

10. Payments to Contractor

10.1 Method of payment

Unless otherwise provided in the Contract, all payments required to be made to the Contractor by the Purchaser pursuant to the Contract for the performance of the Works must be made in the currency specified in the Purchase Order by electronic funds transfer into the Contractor's nominated bank account.

10.2 Invoices

- (a) The Contractor must, unless otherwise agreed with the Purchaser, render an Invoice to the Purchaser in relation to the performance of the Works at the end of each month during the period in which the Works are performed and calculated by reference to the prices, fees or other amounts specified in the Purchase Order.
- (b) Invoices must be in a form acceptable to the Purchaser and must contain the following information:
 - (i) a brief description of the Goods (if any) supplied in the period covered by the Invoice;

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- (ii) a brief description of the Services (if any) performed in the period covered by the Invoice;
- (iii) any further verification or Documentation in relation to the Invoice as is reasonably required by the Purchaser; and
- (iv) any further information stipulated in any applicable Law (including any information necessary to make the Invoice a Tax Invoice), or by the Purchaser, so that the Purchaser will receive the benefit of any Tax benefit in relation to the Works.

10.3 Payment of Invoices

Subject to Clauses 10.4, 10.5, 16.2 and 20, the Purchaser must pay to the Contractor the amount shown on the Invoice within the period of time specified in the Purchase Order.

10.4 Disputed Invoices

- (a) If the Purchaser disputes any amount shown on an Invoice it must:
 - (i) notify the Contractor within 10 days of receipt of the Invoice in dispute; and
 - (ii) pay any amounts on the Invoice not in dispute.
- (b) The payment by the Purchaser of any amount on an Invoice that is not in dispute is not considered acceptance by the Purchaser of the amount in dispute.
- (c) Any dispute regarding Invoices under this Clause 10.4 will be resolved in accordance with Clause 22, and a notice provided under paragraph (a) will be taken to be a notice of Dispute for that purpose.

10.5 Purchaser Deduction, Set-Off and Withholding Rights

Without limiting the Purchaser's rights and notwithstanding the rights of the Contractor under any other provision of the Contract, the Purchaser may deduct from, or set-off against, any money due or becoming due to the Contractor under the Contract:

- (a) all debts and moneys due from the Contractor or its Personnel to the Purchaser; and
- (b) all Liabilities which the Purchaser may have paid, suffered or incurred and which the Contractor or its Personnel is or are liable to bear, pay or reimburse to the Purchaser under the Contract.

11. Inspection of Goods

11.1 Inspection

- (a) The Purchaser 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.
- (b) If, upon inspection, the Goods:
 - (i) do not comply with the requirements of the Contract; or

- (ii) are considered to be inferior, damaged or Defective,
the Purchaser may reject the Goods by written notice to the Contractor (**Rejection Notice**).
- (c) The signing of a delivery docket or similar receipt of delivery by the Purchaser does not constitute acceptance of the Goods.

11.2 Access

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

11.3 Consequences of rejection

- (a) The Contractor must replace all rejected Goods with Goods of a standard which complies with the requirements of the Contract, at no additional cost to the Purchaser, within seven days from the date of the Rejection Notice.
- (b) If a Rejection Notice is issued under Clause 11.1 after the Goods have been delivered to the Delivery Point:
 - (i) any rejected Goods must, within 30 days from the date of the Rejection Notice be removed by the Contractor from the Purchaser's premises at no cost to the Purchaser;
 - (ii) if, on the expiry of 30 days from the date of the Rejection Notice, the rejected Goods have not been removed from the Purchaser's premises, the Purchaser may return the Goods freight forward, at the Contractor's risk, to the Contractor; and
 - (iii) all goods which have been identified in a Rejection Notice will be held by the Purchaser at the Contractor's risk, until such time as the Goods are collected by, or returned to the Contractor, in accordance with paragraphs (i) or (ii).

12. Compliance with Laws, Regulations and Policies

The Contractor must at all times:

- (a) comply with any applicable Laws and industry standards relating to its obligations under the Contract and ensure that each of its Personnel does the same; and
 - (b) comply with:
 - (i) the terms of any applicable documented policy or procedure; and
 - (ii) all lawful requirements and directions of the Purchaser,
- in relation to any actions undertaken in relation to the performance of the Works or otherwise pursuant to the

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Contract, and ensure that each of its Personnel does the same; and

- (c) ensure it holds all licences and other rights required to be held in connection with performance of the Works under any Law, and ensure that each of its Personnel does the same.

13. Health, Safety and Environment

13.1 Environment

- (a) The Contractor must not, and must ensure that all of its Personnel do not, cause harm or damage to the Environment in the course of performing the Works that is in breach of any policy or procedure of the Purchaser and must comply with all applicable Law relating to the Environment.
- (b) The Contractor is responsible for, and must make good, any harm or damage to the Environment caused by or in connection with the performance of the Works that is in breach of any Law or any policy or procedure of the Purchaser (including any pollution or contamination of or outside the Site).
- (c) Without limiting paragraphs (a) or (b), the Contractor must mitigate any harm or damage to the Environment caused by it or its Personnel in the course of performing the Works.
- (d) The Contractor must, and must ensure that all of its Personnel:
 - (i) immediately report to the Purchaser any harm or damage to the Environment caused by it or the Contractor's Personnel, in connection with the performance of the Works that is in breach of any Law or policy or procedure of the Purchaser; and
 - (ii) ensure the safe transportation, handling, storage and usage of all substances brought onto the Site in connection with the performance of the Works.
- (e) The Purchaser may at any time direct the Contractor to carry out, at the Contractor's expense, any Environmental clean-up or rectification works deemed necessary by the Purchaser as a result of any act or omission of the Contractor in breach of paragraphs (a) to (d).
- (f) Without limiting the indemnity under Clause 17, the Contractor acknowledges that as between the Purchaser and the Contractor, the Contractor is responsible for any harm or damage to the Environment caused by the Contractor or its Personnel in the course of performing the Works.

13.2 Health and Safety

The Contractor must, and must ensure its Personnel:

- (a) identify and exercise all reasonably necessary controls and precautions to ensure the health and safety of its Personnel and all persons who may be affected by the

performance of the Services, including by (without limitation):

- (i) providing employees with adequate personal protective clothing and equipment to protect them against hazards; and
 - (ii) ensuring that plant, equipment and substances are used, cleaned, handled, maintained, processed, transported, stored or disposed of (as the case may be) in a matter that, so far as is reasonably practicable, is safe, without risk to health and in compliance with the Contract;
- (b) immediately comply with any directions on safety issued by any Authority or by the Purchaser;
 - (c) comply with:
 - (i) all applicable Laws relating to health and safety; and
 - (ii) any policy or procedure of the Purchaser from time to time with respect to matters of health and safety;
 - (d) obtain and maintain any authorisations required by any Laws to be held by the Contractor in relation to the performance of the Works, which the Purchaser cannot hold or which the Parties agrees that the Contractor should hold;
 - (e) ensure, so far as is reasonably practicable, no accident or damage occurs on or to the Site from any cause;
 - (f) only use equipment on Site that is in safe working condition, complies with all Laws applicable to such equipment and which must be operated by suitably qualified and competent Personnel of the Contractor, to the satisfaction of the Purchaser; and
 - (g) consult, cooperate and coordinate with the Purchaser and its Personnel at all reasonable times on matters related to health and safety at the Site.

14. Access to the Site

14.1 Purchaser obligations

Provided the Contractor has complied with Clause 15, the Purchaser will give the Contractor access to the Site, or relevant part of the Site, as is required to enable the Contractor to comply with its obligations under the Contract.

14.2 Conditions of access

The Contractor:

- (a) enters the Site at its own risk (and must ensure its Personnel know they enter the Site at their own risk);
- (b) is not entitled to exclusive possession of the Site; and
- (c) must co-operate with the Purchaser's Personnel and the Purchaser's other contractors and workmen and give them any information or data reasonably necessary or expedient to ensure proper performance of their respective work.

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15. Insurances

15.1 Contractor Insurance

The Contractor is required to effect and maintain throughout the Term and any additional period the Purchaser deems necessary, at its sole cost and expense each of the insurances described in Clauses 15.2, 15.3, 15.4, 15.5 and 15.6 (**Contractor Insurances**) in relation to risks or occurrences arising, or which may arise, out of the performance of the Contract from financially sound and reputable insurance companies acceptable to the Purchaser (such consent not to be withheld unreasonably).

15.2 Workers' Compensation and Employers' Liability Insurances

- (a) The Contractor must effect and maintain workers' compensation and employers' liability insurance against any liability to Personnel arising as a result of the performance of the Works whether arising at common law or under any statute relating to workers' compensation or employers' liability and occupational/industrial disease where required by Law, with such insurance being endorsed to provide a principal's indemnity extension (including common law) in favour of the Purchaser.
- (b) The insurance outlined in paragraph (a) must, unless prohibited by Law, be endorsed to:
- (i) indemnify the Purchaser against any liability which it may incur to the Contractor's employees, arising by virtue of the applicable workers' compensation statute or regulations or at common law; and
- (ii) provide cover in respect of any one employee or number of employees arising out of the one event for an amount not less than the minimum statutory requirements and \$50,000,000 in respect of common law.
- (c) The insurance outlined in paragraph (a) must, unless prohibited by Law, waive all express or implied rights of subrogation against the Purchaser and its Personnel.

15.3 Contractor's Plant and Equipment

- (a) The Contractor must effect and maintain insurance covering the physical loss of, or damage to, constructional plant used at the Site for the work and the Purchaser temporary works and plant and equipment owned by the Contractor or for which they are responsible, including transit risks notwithstanding the mode of transport, for an amount equal to the full replacement value of like kind and quality of the item insured.
- (b) The insurance outlined in paragraph (a) must, unless prohibited by Law, waive all express or implied rights of subrogation against the Purchaser and its Personnel.

15.4 Professional Indemnity Insurance

- (a) The Contractor must effect and maintain professional indemnity insurance with levels of cover not less than the amount stated in the Purchase Order.
- (b) The insurance must be maintained until after the Date of Completion and thereafter for a period of six years.
- (c) The insurance outlined in paragraph (a) must, unless prohibited by Law, waive all express or implied rights of subrogation against the Purchaser and its Personnel.

15.5 Combined Public and Products Liability Insurance

- (a) The Contractor must effect and maintain for the duration of the Contract, a public and products liability policy for physical loss of, loss of use of, or damage to tangible property and the death of, illness of or injury to any person (other than liability which the law requires to be covered under a workers' compensation insurance policy), having a limit of liability of \$20,000,000 for any one occurrence in respect of public liability and a limit of not less than \$20,000,000 in the aggregate in respect of product liability. Such policy shall be written on an occurrence basis.
- (b) Unless otherwise agreed by the Parties, the insurance must be extended to cover the Purchaser for its liability arising out of the acts or omissions of the Contractor under the Contract and cover the respective rights and interests and liabilities to third parties of the Parties and subcontractors from time to time, whenever engaged in the Contract.

15.6 Marine or Air Cargo Transportation

- (a) The Contractor must effect and maintain, in the names of the Purchaser and the Contractor and its Subcontractors, marine or air cargo transportation insurance covering the physical loss of, or damage to, Goods arising during the transportation of Goods from its origin to the Delivery Point against loss or damage arising from an insurable cause other than for the exclusions noted on the policy. The insurance must be for a limit of not less than the full replacement cost of the Goods.
- (b) The insurance outlined in paragraph (a) must, unless prohibited by Law, waive all express or implied rights of subrogation against the Purchaser and its Personnel.

15.7 Subcontractors' insurance

The Contractor must ensure that its Subcontractors have the benefit of or effect and maintain insurances similar to the Contractor Insurances required to be effected by the Contractor.

15.8 Insurance claims and payment of insurance excess (deductible)

The Contractor will be responsible for the payment of any excess or deductible relating to the insurances effected by the Contractor and the Contractor will not be entitled to recover any

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excess or deductible paid from the Purchaser or any Related Body Corporate of the Purchaser.

16. Inspection and Provisions of Insurance Policies

16.1 Proof of Insurance

If requested in writing by the Purchaser, the Contractor must provide satisfactory evidence (including a full copy of each policy including the schedules and endorsements and a certificate of currency) of such insurance effected and maintained.

16.2 Failure to produce proof of insurance

If after being so requested, the Contractor fails promptly to provide satisfactory evidence of compliance, then without prejudice to other rights or remedies, the Purchaser may insure and the cost will be moneys due and payable from the Contractor.

16.3 Notices of potential claims

The Contractor must, as soon as practicable, inform the Purchaser in writing of any occurrence that may give rise to a claim under any insurance policy required by Clause 15 and must keep the Purchaser informed of subsequent developments concerning the claim. The Contractor must ensure that Subcontractors in respect of their operations similarly inform the Parties.

16.4 Survival of Clause

This Clause 16 will survive the expiry or earlier termination of the Contract.

17. Indemnity

17.1 Indemnity

Notwithstanding any other provision of the Contract (but subject to clause 17.1A), the Contractor indemnifies the Purchaser, its Personnel and any Related Bodies Corporate and each of their officers, agents and employees (in this Clause, the **Indemnified Parties**), against all damage, expense (including legal costs on a full indemnity basis), loss or liability of any nature suffered or incurred by the Purchaser arising out of:

- (a) the breach by the Contractor or its Personnel of any of the Contractor's obligations (including any warranty) under the Contract; and
- (b) any act or omission by the Contractor or its Personnel arising out of the performance or non-performance of the Contract,

including any injury to, or death of any person, or loss or damage of or to any property of the Indemnified Parties or any third parties caused by the Contractor or any of its Personnel.

17.1A Indemnity

The Contractor will not be liable to the Purchaser for any loss of actual or anticipated profits, income, revenue, production, use, contract, business, or savings or loss due to business interruption suffered by the Purchaser, whether arising out of, under or in connection with the Contract.

17.2 Survival

The indemnity in this Clause 17 will survive the expiry or earlier termination of the Contract.

18. Confidential Information

(a) Subject to paragraph (b), the Contractor must keep confidential and ensure its Personnel keep confidential the terms of this Contract, any documents produced under this Contract, any information leading to the creation of this Contract and any information supplied by the Purchaser pursuant to this Contract.

(b) The Contractor is not obliged to keep any information confidential:

- (i) which is otherwise in the public domain other than by breach of this Contract by the Contractor;
- (ii) which the Contractor can prove was lawfully in its care, custody or control prior to disclosure of the information to the Contractor and was not otherwise acquired from the Purchaser directly or indirectly;
- (iii) the disclosure of which is given with the prior written consent of the Purchaser; or
- (iv) the disclosure of which is required by:

- (A) the operation of any Law;
- (B) the Listing Rules of the Australian Stock Exchange or other public stock exchange (if applicable); or
- (C) required by a court in the course of proceedings to which the Contractor is a party.

(c) This Clause 18 survives termination of the Contract and remains in force after all other obligations under this Contract have expired.

19. Termination for convenience

19.1 Right to terminate

The Purchaser may, at any time for the Purchaser's convenience in its absolute discretion, terminate this Contract or any part of it by giving the Contractor not less than 30 days' written notice.

19.2 Rights on termination

(a) If the Purchaser gives the Contractor a notice pursuant to Clause 19.1, the Purchaser shall pay the Contractor:

- (i) those amounts to which the Contractor is entitled for the performance of its obligations under the Contract up to the date of termination, less any amounts previously paid by the Purchaser; and
- (ii) the reasonable and unavoidable costs incurred by the Contractor on account of such termination.

(b) The payment of the amounts in paragraph (a) will be the Contractor's sole and exclusive remedy for the

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termination of the Contract by the Purchaser pursuant to Clause 19.1.

20. Contractor Default and Insolvency

20.1 Contractor Default

If the Contractor commits a substantial breach of the Contract listed below, the Purchaser may, by hand or by registered post, give the Contractor a written notice (**Contractor Default Notice**) setting out:

- (a) the alleged substantial breach;
- (b) the period within which the Contractor must cure the substantial breach (being not less than seven days from the date of the Contractor Default Notice); and
- (c) that if the breach is not remedied within the period specified in the Contractor Default Notice or is incapable of remedy, the Purchaser may terminate the Contract or any part of it with effect from a specified date (**Cancellation Date**).

20.2 Substantial Breaches

Substantial breaches include:

- (a) failing to:
 - (i) provide evidence of insurance;
 - (ii) comply with a direction of the Purchaser pursuant to subclause 6.2; or
 - (iii) use the materials or standards of work required by the Contract;within seven days of the Contractor's obligation to do so;
- (b) failing to proceed with due expedition and without delay; and
- (c) wrongful suspension of work.

20.3 Failure to rectify

If the Contractor fails to cure the substantial breach by the period stated in the Contractor Default Notice, the Purchaser may by written notice to the Contractor:

- (a) take out of the Contractor's hands the whole or part of the Works remaining to be completed (the cost of completion of the Works being recoverable from the Contractor as a debt due to the Purchaser by the Contractor); or
- (b) terminate the Contract.

20.4 Obligations upon termination

If the Contract is terminated pursuant to Clause 20.3, the Contract is terminated from the Cancellation Date and the Contractor must cease the performance of the Works to the extent specified in the Contractor Default Notice and take any other action reasonably required by the Purchaser in relation to the termination.

20.5 Rights on termination

If the Contract is terminated pursuant to Clauses 20.3 or 20.6, the Parties' rights, remedies and liabilities will be the same as they would have been under the Law governing the Contract had the Contractor repudiated the Contract and the Purchaser elected to treat the Contract as at an end and recover damages, which election the Purchaser hereby irrevocably makes.

20.6 Contractor Insolvency or Bankruptcy

If in respect of the Contractor an Insolvency Event occurs, the Purchaser may terminate the Contract by notice to the Contractor or any other person in whom the Contract has been vested.

21. Default by the Purchaser

21.1 Purchaser Default

Subject to Clauses 10.4, 10.5, 16.2 and 20, if the Purchaser fails to make a payment due and payable pursuant to the Contractor for a period of more than 90 days, the Contractor may, by hand or by registered post, serve a notice of default (the **Purchaser Default Notice**) on the Purchaser setting out:

- (a) the alleged circumstances of the non-payment;
- (b) the period within which the Purchaser must cure the non-payment (being not less than 30 days from the date of the Purchaser Default Notice); and
- (c) that if the non-payment is not remedied within the period specified in the Purchaser Default Notice or is incapable of remedy, the Contractor may terminate the Contract or any part of it with effect from a specified date (**Cancellation Date**).

21.2 Failure to rectify

If the Purchaser fails to cure the non-payment by the stated date and time, the Contractor may by written notice to the Purchaser:

- (a) cease supply of all or any part of the Goods until such time as the Purchaser's default is remedied;
- (b) cease performance of all or any part of the Services until such time as the Purchaser's Default is remedied; or
- (c) terminate the Contract.

21.3 Rights on termination

If the Contract is terminated pursuant to Clauses 21.2 or 21.4, the Parties' rights, remedies and liabilities will be the same as they would have been under the Law governing the Contract had the Purchaser repudiated the Contract and the Contractor elected to treat the Contract as at an end and recover damages.

21.4 The Purchaser insolvency or bankruptcy

If the Purchaser suffers an Insolvency Event, the Contractor may terminate the Contract by notice to the Purchaser or any other person in whom the Contract has been vested.

22. Dispute Resolution

22.1 Dispute

If a dispute or difference between the Parties arises in connection with the subject matter of the Contract (*Dispute*), then either Party may give the other a written notice of Dispute adequately identifying and providing details of the Dispute.

22.2 Conference

Promptly after the date of receipt by the other Party of a notice of Dispute, the Parties must meet to discuss and attempt to resolve the Dispute.

22.3 Court Proceedings

If the Dispute is not resolved within 30 days of the commencement of discussions between the Parties under Clause 22.2, then unless otherwise agreed by the Parties, either Party may terminate the dispute resolution process and may then commence court proceedings.

22.4 Summary or urgent relief

Nothing in this Clause 22 will prejudice the right of a Party to seek injunctive or declaratory relief in respect of a Dispute or any matter arising under the Contract.

22.5 Obligations to continue

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.

23. Intellectual Property Rights

23.1 Warranties

- (a) The Contractor warrants that, unless otherwise provided in the Contract, any design, materials, documents and methods of working provided by it for the purposes of the Contract shall not infringe any Intellectual Property Right.
- (b) The Contractor indemnifies the Purchaser against any such respective infringements.

23.2 Intellectual Property Rights granted to Purchaser

The Contractor (for all time and despite any termination of the Contract for any reason):

- (a) grants to the Purchaser;
 - (b) will ensure that the person legally entitled to do so grants to the Purchaser; and
 - (c) will do all things necessary to give effect to the grant to the Purchaser of,
- both:
- (d) in respect of all intellectual property in or relating to the design documents and all design, materials, processes, documents and methods of working relevant to the Works first prepared or created specifically for or in connection with the Works,

absolute title to the same (from the date it is prepared or created); and

- (e) in respect of all intellectual property in or relating to the design documents and all design, materials, processes, documents and methods of working relevant to the Works (other than design, materials, processes, documents or methods of working provided by the Purchaser) not first prepared or created specifically for or in connection with the Works, no less than an irrevocable, royalty free and fully assignable licence to use the same for the purposes of completing the design of, constructing, using, maintaining, upgrading, altering or otherwise dealing with the Works or any purpose associated with further development of improvements on the Site or any improvements on or proposed for other sites, premises or facilities which the Purchaser owns or operates (from the date it is used in connection with the Works).

23.3 Licence to Contractor

- (a) The Purchaser grants to the Contractor a non-exclusive, non-transferrable, revocable, royalty free licence to use for the purposes of executing the Works all design documents, design, materials, processes, documents and methods of working.
- (b) The Contractor will:
 - (i) ensure that such documents are used, copied and supplied only for the purpose of the Works; and
 - (ii) at the Contractor's cost, deliver all the design documents to the Purchaser on termination of the Contract for any reason.

23.4 Consent of authors

The Contractor warrants that:

- (a) the Contractor will use its best endeavours to obtain a consent from every individual involved in the carrying out of the Works who has, or may in the future have, any moral rights (as the expression is defined in the *Copyright Act 1968* (Cth)) (**Moral Rights**) relating to the Works or anything else provided by the Contractor as part of or in connection with the Works (**Copyright Works**) prior to Completion; and
- (b) each consent referred to in paragraph (a) must:
 - (i) allow the Purchaser or any person authorised by the Purchaser to do any act or omission (whether before or after the date of the consent) arising from or connected with the exercise by the Purchaser of its rights of ownership or use of the Copyright Works, which may (but for the consent) infringe the individual's Moral Rights; and
 - (ii) satisfy the requirements for consent set out in the *Copyright Act 1968* (Cth).

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23.5 Contractor indemnity

The Contractor indemnifies the Purchaser against any costs, expenses, claims, losses, damages or other liabilities whatsoever arising from or in connection with any breach of the warranties or obligations of the Contractor under Clause 23.4.

23.6 Exclusion of claims

The Contractor will have no claim arising from or in connection with:

- (a) the existence of any Moral Rights; or
- (b) the Contractor's obligations under Clause 23.4.

24. Notices

24.1 Form of Notices

Any notice, demand, consent or other communication (**Notice**) given or made pursuant to the Contract:

- (a) must be in writing; and
- (b) may be delivered by prepaid post, by hand or by facsimile to the Party to whom the notice is addressed at its address shown in the Contract or such other address as that Party may have notified to the other Party.

24.2 Notices deemed given

- (a) A Notice will be taken to be duly given:
 - (i) in the case of delivery by hand, when delivered;
 - (ii) in the case of delivery by ordinary post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) 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 errors.
- (b) If delivery or receipt occurs on a day that is not a Business Day in the place to which the Notice is sent or is later than 4pm (local time) at that place, it will be conclusively taken to have been duly given or made at the commencement of business on the next Business Day in that place.

24.3 Business Day

For the purposes of this Clause 24, **Business Day** means a day other than a Saturday, Sunday or a statutory or public holiday in Western Australia.

25. Assignment and Subcontracting

25.1 Assignment

- (a) The Contractor may not assign or grant a security interest over any right, benefit or interest under the Contract, without the prior written consent of the Purchaser.
- (b) The Purchaser may assign or grant a security interest over any right, benefit or interest under the Contract without the prior approval of the Contractor.

25.2 Subcontracting

- (a) The Contractor must not subcontract the whole of the performance of the Works.
- (b) Notwithstanding any subcontracting, the Contractor will be responsible for the acts or defaults of any Subcontractor, its agents or employees, as if they were the acts or defaults of the Contractor. Unless otherwise stated in the Purchase Order:
 - (i) the Contractor will not be required to obtain consent to a subcontract for which the Subcontractor is named in the Contract;
 - (ii) the prior consent of the Purchaser must be obtained to other proposed Subcontractors; and
 - (iii) the Contractor must give the Purchaser not less than 28 days' Notice of the intended date of the commencement of each Subcontractor's work.

25.3 Obligations survive assignment or subcontract

The Contractor acknowledges that no permitted assignment or subcontract in any way relieves the Contractor from the performance of any of its obligations under the Contract.

26. Waiver

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

27. 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.

28. Governing Law

The Contract is governed by the Laws of Western Australia. Each Party irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction there with respect to matters that arise out of or are in any way connected with the Contract.

29. Counterparts

This Contract may be executed in any number of counterparts. All counterparts together will be taken to constitute the one instrument.