

BENGALLA PURCHASE ORDER GENERAL CONDITIONS

Table of Contents		
1. DEFINITIONS	3	
2. LANGUAGE, CAPACITY AND COMPANY INFORMATION	4	
2.1 Interpretation	4	
2.2 Joint Venture	5	
2.3 Supplier Investigations	5	
2.4 Company Information	5	
3. SUPPLY ARRANGEMENTS	5	
3.1 Purchase Orders	5	
3.2 Performance of the Supply	5	
3.3 Statements of Work	5	
4. REPRESENTATIONS AND WARRANTIES	6	
4.1 Supplier's Representations, Warranties and Covenants	6	
4.2 Third Party Warranties	6	
5. DEFECTS LIABILITY	6	
5.1 Correction of deficient Services	6	
5.2 Warranty	6	
5.3 Commencement of Defects Liability Period	6	
5.4 Rectification of defects	6	
5.5 Subcontractor warranty deed	6	
6. THE SUPPLIER MUST ENSURE THAT EACH SUBCONTRACTOR ENTERS INTO A WARRANTY DEED IN FAVOUR OF THE COMPANY (OR ITS NOMINEE) SUBSTANTIALLY IN THE FORM OF SCHEDULE F (SUBCONTRACTOR WARRANTY DEED). TERM	6	
7. REPRESENTATIVES	6	
8. DELIVERY, TITLE AND RISK	6	
8.1 Delivery of Goods	6	
8.2 Title and Risk	6	
9. PRICES AND PAYMENT TERMS	6	
9.1 General	6	
9.2 Taxes	7	
9.3 Invoicing	7	
9.4 Applicable Currency	7	
9.5 Payment	8	
9.6 Disputed Tax Invoices	8	
9.7 Deductions	8	
9.8 Liens	8	
9.9 Greenhouse Gas Emissions	8	
10. ALTERNATIVE SUPPLY	8	
11. COST INFORMATION AND SAFETY AND INSURANCE VERIFICATION	8	
11.1 Provision of Cost Information	8	
11.2 Safety and Insurance Verification	8	
12. NO MINIMUM PURCHASE OR EXCLUSIVITY	8	
13. PACKING AND DISPATCH	8	
14. SITE ACCESS AND COMPLIANCE WITH POLICIES	8	
15. FORCE MAJEURE	9	
15.1 Notice and Obligation to Remedy or Mitigate	9	
15.2 Termination	9	
16. INSURANCES	9	
16.1 Supplier Insurances	9	
16.2 General and Product Liability Insurance	9	
16.3 Workers' Compensation and Employer's Liability Insurances	9	
16.4 Supplier's Plant and Equipment	9	
16.5 Goods in transit	9	
16.6 Motor Vehicle/Automobile Third Party Liability Insurance	9	
16.7 Professional Indemnity Insurance	10	
16.8 Marine Insurance	10	
16.9 Aviation Insurance	10	
16.10 Insurance terms	10	
16.11 Notification under Supplier's policy	10	
16.12 Sub-contractors' insurance	11	
16.13 Insurance claims and payment of insurance excess	11	
16.14 Survival of Clause	11	
17. LIABILITY AND INDEMNITY	11	
17.1 Indemnity	11	
17.2 Exclusions	11	
18. TERMINATION	11	
18.1 Immediate Termination	11	
18.2 Termination For Other Breach or Insolvency	11	
18.3 No Fault Termination	11	
18.4 Effect of Termination	11	
19. CONFIDENTIAL INFORMATION	11	
19.1 Obligation of Confidentiality	11	
19.2 Permitted Disclosure	11	
19.3 Exceptions	11	
19.4 Return of Confidential Information	12	
20. PUBLIC ANNOUNCEMENTS	12	
21. INTELLECTUAL PROPERTY RIGHTS IN THE SUPPLY	12	
21.1 Company IP and Supplier IP	12	
21.2 Contract IP	12	
21.3 Third Party Intellectual Property	12	
22. BUSINESS STANDARDS	12	
22.1 Illegal Information Brokering	12	
22.2 Anticorruption	12	
22.3 Personal Data	12	
22.4 Data Protection	12	
23. MISCELLANEOUS	12	

23.1 Independent Contractor Status	12
23.2 Assignment and Subcontracting	13
23.3 Entire Contract	13
23.4 Proportionate Liability	13
23.5 PPSA	13
23.6 Security of Payment	13
23.7 Further Assurances	13
23.8 Severability	14
23.9 Waiver	14
23.10 Amendments, Variations and Change Orders	14
23.11 Governing Law	14
23.12 Forum	14
23.13 Indigenous / Community Relations	14
23.14 Execution and Transmission	14
23.15 Costs	14
23.16 Notices	14
23.17 Business Day	14

1. DEFINITIONS

In the Contract, the following terms have the meanings set out below unless the context requires otherwise:

Affiliate means any business entity or other form of enterprise, which controls, is controlled by, or is under common control with, a Party.

Applicable Laws means all laws, regulations, rules, treaties and orders of any local, state, provincial, territorial and federal Government Agency applicable to a Party, the Contract or the Supply.

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 23.16, the place to which a notice is sent.

Change of Control means where a person who did not (directly or indirectly) effectively control Supplier at the date of Contract, either alone or together with others, acquires control of Supplier.

Change Order means a written document requesting a change to an aspect of the Supply, subject to Clause 23.10, and must be titled as a "Change Order".

Claim means any action, cause of action, suit, proceeding, claim or demand of any kind.

Company means the entity identified as Company in the Key Terms.

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

Company IP means the Intellectual Property Rights of Company or an End User (as the case requires) which:

- (a) are in existence at the date of the Contract; or
- (b) come into existence after the date of the Contract otherwise than in connection with the Contract.

Company Representative means the person identified in the Key Terms as Company Representative and any replacement appointed in accordance with Clause 7.

Confidential Information means any non-public information that the disclosing Party (including an End User) designates as confidential or that, under the circumstances of its disclosure, should reasonably be considered as confidential (including the Contract), whether in relation to the business, affairs, Intellectual Property or activities of a Party, an End User or of a third party which the disclosing Party is obligated to keep confidential.

Contract is defined in the Key Terms.

Contract IP means all Intellectual Property (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the provision of the Supply or the Contract, including all Intellectual Property in anything developed by Supplier in providing the Supply, any Intellectual Property in the Documentation provided by Company to Supplier, and any Intellectual Property in the Documentation provided to Company by Supplier, but does not include any Supplier IP.

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

Defects Liability Period means 18 months from the date of completion of the Services or 18 months from the date title to the Goods passes to Company (as the case may be), unless another period of time is specified in Schedule C or a SOW.

Delivery Date means the date(s) specified in the Contract or relevant PO for the provision of the Supply to Company at the

Delivery Point, and if not so specified, Delivery Date means a reasonable time after Supplier receives a relevant PO.

Delivery Point means the delivery point or points set out in the Key Terms.

Documentation includes plans, designs, drawings, calculations, engineering information, specifications, data, sketches, notes, samples, reports, accounts, maps, manuals, training materials, maintenance manuals, testing and commissioning data, instruction books, equipment asset record and any other material specified in the Contract, whether in tangible or electronic form.

Effective Date is defined in the Key Terms.

End User means an entity identified in the Contract (or notified to Supplier by Company) to whom Company provides goods and/or services comprising, or derived from, in whole or in part, the Supply.

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

Force Majeure means an event or cause that is beyond the control of the Party claiming force majeure, not able to be overcome by the exercise of reasonable care, proper precautions or consideration of reasonable alternatives to avoid the effects of the force majeure by that Party, and that could not have been reasonably foreseen, but specifically does not include inclement weather that is not unusual at the Site or place where the Supply is provided, lack of raw materials or supplies, mechanical breakdown (unless otherwise caused by a Force Majeure event), strikes, lockouts, slowdowns or other labour disruption of a Party or its Personnel, or the financial condition of a Party.

Goods means the products, materials, supplies, equipment, Documentation to be developed under the Contract, or other items, if any, identified in Schedule C, to be supplied by Supplier under the Contract.

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

Hazardous Substances means any substance that:

- (a) is recognised as a pollutant, contaminant, dangerous or toxic substance, hazardous or toxic chemical, hazardous waste or substance under Applicable Laws including asbestos and anything containing asbestos; or
- (b) requires investigation, reporting, removal or remediation under Applicable Laws.

HSE Policies and Standards means Company's health, safety and environmental policies and standards in force from time to time.

Illegal Information Brokering means the practice by which an individual or entity approaches a contractor, subcontractor, vendor or other supplier, and offers confidential information or illegal or illicit influence in order to obtain business through bribery, fraud, or corruption of a competitive bidding process or other dishonest activity.

Indemnified Parties means Company, any entity on behalf of which Company enters into the Contract, each End User and their respective Personnel.

Indirect Transaction Taxes mean any value added tax, goods and services tax or similar tax (including, without limitation, sales and use or consumption / harmonised taxes) imposed, claimed, levied or assessed by, or payable to, any Government Agency in relation to the acquisition, receipt or sale of the Supply, but does not include any related penalty, fine or interest thereon.

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

Intellectual Property means trademarks, service marks, trade names, copyrights, mask works, moral rights, designs, inventions, patents, patent rights, trade secrets, know how, proprietary information and other intellectual property in any and all countries, unions, and jurisdictions and under any and all laws, regulations, treaties, conventions and agreements. Intellectual Property includes registrations of, and applications to register, copyrights, trademarks and service marks, and further includes patent applications.

Invoice means an invoice or other document (including, without limitation, a credit note or debit note), in a form which is valid under the Applicable Laws of the jurisdiction where the Indirect Transaction Taxes are imposed, claimed, levied or assessed, and which, if applicable, would enable Company to claim an Input Tax Credit.

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

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

Key Terms means the executed form of agreement to which these General Conditions are attached.

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

Party means a party to the Contract.

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 laws or data protection laws in the country where:

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

Personnel means the directors, officers, employees, agents, contractors, subcontractors, advisors, consultants or representatives of a Party or its contractors, subcontractors, advisors or consultants involved either directly or indirectly in the provision of the Supply, and including in relation to Company or an End User and its directors, officers, employees, agents or representatives.

Price means the price (which may include rates and/or consulting fees), subject to applicable adjustments or discounts, for the Goods and/or Services, as specified in Schedule D or a SOW.

Purchase Order ("PO") means a purchase order or service order issued by Company to Supplier for the supply of Goods and/or Services.

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

Services means the services identified in Schedule C or a SOW to be performed by Supplier under the Contract.

Site means the location or premises of Company, or other location identified in the Contract, a SOW or a PO.

Special Conditions means the provisions, if any, in Schedule B that modify, or add to, these General Conditions.

Specifications means specifications, quality assurances, performance indicators or other measures for the Supply specified in the Contract.

Standards means:

- (a) any standards referred to in the Contract;
- (b) any relevant Australian Standards;
- (c) any applicable standards issued by a Government Agency or by the entity that issues standards in the state, province or territory identified in Company's address in the Key Terms;
- (d) all principles, practices and standards of due care, skill and diligence normally practiced by recognised firms in performing services or supplying goods of a similar nature; and
- (e) Company's HSE Policies and Standards.

Statement of Work ("SOW") means a mutually agreed to document executed by the Parties pursuant to the Contract for the provision of Services and/or Goods.

Supplier means the entity identified as Supplier in the Key Terms.

Supplier IP means the Intellectual Property of Supplier that:

- (a) is in existence as of the Effective Date; or
- (b) comes into existence after the Effective Date otherwise than in connection with the Contract.

Supplier Representative means the person identified in the Key Terms as Supplier Representative and any replacement appointed in accordance with Clause 7.

Supply means the performance of the Services and supply of the Goods by Supplier under the Contract.

Supply Timetable means the schedule set out in Schedule C or a SOW detailing dates or times for beginning and completing the Supply (including any stages thereto).

Tax and Taxes means any and all taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever, including, without limitation, Customs Duties, Excise Duties (including fuel duty, levy or impost), stamp, documentary, payroll, personal, property, real property, interest equalisation, business, occupation, turnover, income, corporation, capital, profits, gains, gross receipts, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed by any Government Agency or otherwise payable.

Term is defined in the Key Terms, and includes any renewals agreed in writing between the Parties.

2. LANGUAGE, CAPACITY AND COMPANY INFORMATION

2.1 Interpretation

The following rules apply under the Contract unless the context requires otherwise:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and conversely;
- (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; and
- (f) a reference to a person or Party includes a reference to that person's or Party's executors, administrators, successors, substitutes (including by novation),

assigns (in the case of a person) and permitted assigns (in the case of a Party).

2.2 Joint Venture

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

- (a) 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 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 Company may at any time without the consent of 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 Company for and on behalf of the Joint Venturers;
 - (iv) the benefit of the respective duties and obligations of Supplier under the Contract are deemed to enure to each of the Joint Venturers, and 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 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), Supplier must deal only with Company; and
 - (vii) 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.

2.3 Supplier Investigations

Supplier acknowledges that it has informed, and/or been given every opportunity to inform, itself prior to entering into the Contract and must continue to inform itself as to the location, topography and local surface and subsurface conditions of the Site; weather, road and transportation; plant, equipment, materials, consumables, supplies, facilities and tools needed for the performance of the Supply; and all other matters which could affect progress or performance of the Supply.

2.4 Company Information

Regarding any information provided to Supplier or its Personnel in relation to the Contract (including, in connection with any request for proposal, quote, etc.), there is no representation or warranty, express or implied, that the information is complete, accurate, useful, feasible, suitable or error free. Supplier and its Personnel accept all risk of use of, and reliance on, such information.

3. SUPPLY ARRANGEMENTS

3.1 Purchase Orders

- (a) When Company elects to obtain the Supply, it will issue a PO to Supplier containing the following information, plus any other applicable terms:
 - (i) the specific Goods or Services ordered;
 - (ii) the Site(s) or Delivery Points where the Supply will be provided;
 - (iii) the Delivery Date(s); and
 - (iv) the Prices.
- (b) Each PO is governed by the terms and conditions of the Contract and is accepted by Supplier on the first of the following to occur:
 - (i) Supplier communicating its acceptance to Company;
 - (ii) any performance by Supplier under the PO; or
 - (iii) the passage of 5 days after receipt of the PO without written notice to Company that Supplier does not accept; provided that Supplier may not reject a PO that complies with the Contract.
- (c) Any additional terms and conditions provided in a PO (except to the extent authorised by the Contract), or any additional terms and conditions provided by Supplier, shall be null and void. Company may revoke or withdraw a PO, in whole or part, prior to Supplier's acceptance.

3.2 Performance of the Supply

Upon acceptance of a PO under Clause 3.1, Supplier must provide the Supply according to the Contract, including the Supply Timetable and all relevant Delivery Dates. Time is of the essence in Supplier's performance under the Contract.

3.3 Statements of Work

- (a) The Parties may enter into SOWs governed by the Contract for the provision of certain Services (and associated Goods) to Company, which must be provided and paid for as provided in the relevant SOW.
- (b) Each SOW must reference the Contract, Company and Supplier and be governed by the Contract. There may be more than one SOW under the Contract. Each SOW must be substantially in the form of Schedule E, and will be effective when executed by authorised representatives of the Parties.
- (c) Each SOW must contain, at a minimum, the following information related to the Services under that SOW:
 - (i) a description of the Services, (and Goods, if any);
 - (ii) the Site(s) where Services will be performed or Goods delivered;
 - (iii) any Specifications and Standards in addition to those in the Contract;
 - (iv) the Supply Timetable;
 - (v) names of any specified Supplier Personnel providing the Services;
 - (vi) a project manager for each Party; and
 - (vii) the Prices.
- (d) The Parties agree that a SOW may not be used to add to, or amend, the Contract except as specifically set forth in Clauses 2.1(d) or 3.3(c) above.

4. REPRESENTATIONS AND WARRANTIES

4.1 Supplier's Representations, Warranties and Covenants

- (a) Supplier represents, warrants and covenants to Company that:
- (i) the Services will conform to the Specifications and Standards and will be free from any errors, omissions or other defects;
 - (ii) all Goods will be of merchantable quality, free from defects in design, materials and workmanship, conform to the Specifications and Standards, and be fit for their intended purpose;
 - (iii) in relation to the performance of the Supply:
 - (A) 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
 - (B) any equipment used on-Site by Supplier will be in safe working condition, will comply with all Applicable Laws and will be operated by suitably qualified and competent Personnel, to the satisfaction of Company;
 - (iv) Supplier has, or at the time of delivery to Company will have, good and marketable title to the Goods with the right to transfer such title to Company free and clear of all liens, claims, charges, hypothecs, security interests or any other encumbrances;
 - (v) Supplier is properly licensed, equipped, organised and financed to perform all its obligations under the Contract and that there are no circumstances that will interfere, conflict or affect its ability to perform its obligations in a timely and satisfactory manner;
 - (vi) the Goods and/or Services do not and will not infringe the Intellectual Property rights of a third party;
 - (vii) the Goods and Services will be provided in accordance with all Applicable Laws; and
 - (viii) except to the extent specifically detailed in the Specifications, the Goods (including temporary fittings such as gaskets) are 100% free of all Hazardous Substances.
- (b) These warranties are in addition to any other warranties that Supplier may provide in respect of the Services and/or Goods, which warranties must not restrict or limit the warranties set out above.

4.2 Third Party Warranties

Supplier will provide to Company (by assignment or otherwise) all manufacturer's warranties provided with respect to the Goods and will not take any action that will void or impair any third party warranty unless authorised by Company.

5. DEFECTS LIABILITY

5.1 Correction of deficient Services

Upon receipt of a Notice from Company Representative during the Term (or during the Defects Liability Period as the case requires) of any deficiency in the Services (except for a defect in any Good, in respect of which Clauses 5.2, 5.3 and 5.4 apply), Supplier must correct such deficiency (including by way of providing such additional services necessary to correct such deficiency) at no cost to Company prior to the time specified in the Notice.

5.2 Warranty

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

5.3 Commencement of Defects Liability Period

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

5.4 Rectification of defects

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

5.5 Subcontractor warranty deed

The Supplier must ensure that each subcontractor enters into a warranty deed in favour of the Company (or its nominee) substantially in the form of Schedule F (Subcontractor Warranty Deed).

6. TERM

The Contract will commence on the Effective Date and will remain in force until the expiration of the Term unless terminated earlier in accordance with the Contract.

7. REPRESENTATIVES

The Company Representative and Supplier Representative will act as the Parties' primary contacts with respect to the Contract. Either Party may change its representative upon written notice to the other Party.

8. DELIVERY, TITLE AND RISK

8.1 Delivery of Goods

Supplier must deliver the Goods to Company at the Delivery Point.

8.2 Title and Risk

- (a) Title to the Goods will pass to Company upon the earlier of:
- (i) delivery (and acceptance) of the Goods to Company at the Delivery Point; or
 - (ii) payment for the Goods, unless provided otherwise in Schedule D.
- (b) Risk of loss of, or damage to, the Goods will pass to Company upon delivery (and acceptance) of the Goods to Company at the Delivery Point.
- (c) Company will have the right to inspect any Goods prior to accepting delivery and may reject any non-conforming Goods.

9. PRICES AND PAYMENT TERMS

9.1 General

Supplier must supply the Supply for the Price. The Price is inclusive and Supplier will be solely responsible for all:

- (a) associated costs of the Supply, unless expressly provided otherwise in Schedule D;

- (b) expenses incurred by Supplier in providing the Supply, unless otherwise specified in Schedule D; and
- (c) Taxes, subject to Clause 9.2.

9.2 Taxes

(a) **Taxes (excluding Indirect Transaction Taxes)**

- (i) Unless expressly provided otherwise, the Price and all amounts payable under the Contract (including any Liabilities or amounts by way of reimbursement or otherwise) are inclusive of all Taxes, but exclusive of any Indirect Transaction Taxes, subject to Clause 9.2(a)(ii).
- (ii) Where Indirect Transaction Taxes are payable under the Contract, and if Supplier is required under Applicable Laws to pay the Indirect Transaction Taxes to the appropriate Government Agency, provided that Supplier has first provided Company with a valid Invoice, Company will pay to Supplier an additional amount equal to the Indirect Transaction Taxes payable by Supplier.
- (iii) If Company deems that any Indirect Transaction Taxes have been over-charged, inappropriately levied or that an exemption, reduction, concession, drawback, refund, rebate or remission applies, Company may, by written notice to Supplier, require Supplier to contest such Indirect Transaction Taxes with the relevant Government Agency at the cost, direction and control of Company. Where the contest is successful, Supplier will pass on to Company, the full economic benefit of the exemption, reduction, concession, drawback, refund, rebate or remission of Indirect Transaction Taxes, as applicable.

(b) **Withholding Taxes**

- (i) Company may withhold payment of the amount of any Taxes required to satisfy any withholding obligations under Applicable Laws for the Supply provided by Supplier, unless Supplier provides Company with valid documentation (received prior to the date when the payment is due) showing that an exemption applies in the jurisdiction where the Supply is provided. In such event, Company will use its best endeavours to furnish Supplier with all receipts, proof of payment and other relevant documentation for all deductions and withholding taxes so paid to the applicable Government Agency. For the avoidance of doubt, Company will not be liable to Supplier for withholding the amount of Taxes required to satisfy withholding obligations under this Clause.
- (ii) Where Company makes payment to Supplier without withholding or deducting the amount of Taxes required to satisfy withholding obligations under Applicable Laws Supplier must reimburse or otherwise pay to Company 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.

(c) **Customs Duties and Excise Duties**

- (i) Where Supplier is the importer of record for the Goods, Supplier must:
 - (A) be responsible for, and remit payment of all Customs Duties as well as any other fiscal charges to the applicable Government Agency; and

- (B) use its best endeavours to ensure that any Goods are imported free of applicable Customs Duties including, without limitation, through the use of applicable bilateral free trade agreements or special trade concession (or the equivalent).

- (ii) At the request of Company, Supplier must make, or provide Company with all information and documentation that is necessary for Company to make applications or certifications required by Applicable Laws for:
 - (A) refund, rebate, drawback, remission or other reduction of Customs Duties or Excise Duties; and
 - (B) 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).

- (iii) If Company deems that any Customs Duties and Excise Duties have been over-charged, inappropriately levied or that an exemption, reduction, concession, drawback, refund, rebate or remission applies, Company may, by written notice to Supplier, require Supplier to contest such Customs Duties and Excise Duties with the relevant Government Agency at the cost, direction and control of Company. Where the contest is successful, Supplier will pass on to Company, the full economic benefit of the exemption, reduction, concession, drawback, refund, rebate or remission of Customs Duties and Excise Duties, as applicable.

9.3 Invoicing

Unless otherwise provided in Schedule D, Supplier will Invoice Company within 15 days after the month in which the Goods or Services were supplied and each Invoice must be submitted to Company's address in the Key Terms, or other location as Company may designate and must include, at a minimum:

- (a) Company's PO number, if any;
- (b) an itemisation of, (including Prices), the Goods and Services covered by the Invoice;
- (c) Indirect Transaction Taxes, if any, for which Supplier seeks payment by Company pursuant to Clause 9.2; and
- (d) a duly signed written statement (in the form issued by the New South Wales Government set out in Schedule G (Subcontractor's Statement)) which complies with the Contractor's obligations under section 127 of the *Industrial Relations Act 1996* (NSW), Schedule 2, Part 5 of the *Pay-roll Tax Act 2007* (NSW) and section 175B of the *Workers Compensation Act 1987* (NSW) (or any equivalent later laws) to provide a statement to the "Principal Contractor" as contemplated by those Acts.

If Supplier fails to include an amount payable to Supplier on an Invoice, it must notify Company in writing of its claim within 30 days after delivery of such Invoice. Any such claim not made within the 30 day period is deemed waived.

9.4 Applicable Currency

Unless otherwise indicated in Schedule D or an applicable SOW, all Invoices, Prices and payments will be stated and made in Australian dollars.

9.5 **Payment**

Unless otherwise specified in Schedule D or the applicable SOW, Company will make payment of all undisputed amounts due to Supplier 45 days following the end of the calendar month in which the Invoice is received. Unless otherwise specified in Schedule D, if an Invoice for Goods is received by Company before delivery of the Goods, the time period for payment will not begin until the end of the calendar month in which the Goods are actually delivered to Company. Payment of an Invoice shall be on account only and is not evidence or an admission by Company that any of the Supply conforms to the Contract. Company will notify Supplier in writing of any disputed amount in an Invoice.

9.6 **Disputed Tax Invoices**

- (a) If Company disputes any amount shown on an Invoice given by Supplier pursuant to Clause 9.3, Company Representative must, within 10 Business Days of receiving such an Invoice, issue a payment schedule to Supplier and Company evidencing the Company Representative's opinion of the amounts due from Company to Supplier and reasons for any difference from the amount claimed by Supplier.
- (b) If the Company Representative issues a payment schedule pursuant to Clause 9.6(a) Supplier must, within 2 Business Days, give Company an Invoice for the amount stated in that payment schedule.
- (c) Following the receipt of an Invoice given in accordance with Clause 9.6(b), Company must pay any amounts not in dispute in accordance with Clause 9.5, provided that such payment by Company of any amount is not to be considered as an acceptance of the amount in dispute or of Company's liability to make that payment.

9.7 **Deductions**

Without limiting any other remedy available to it, Company may deduct, set-off or withhold amounts due to Supplier for:

- (a) payment of any Liability for breach of the Contract;
- (b) the cost to remedy any non-compliant Goods or Services due to breach of warranty;
- (c) an amount Company is required to deduct under Applicable Laws; or
- (d) any other amount payable to Company under the Contract.

9.8 **Liens**

Supplier must make prompt payment of all debts or liabilities incurred by Supplier in connection with the Contract. Subject to Applicable Laws, by accepting payment, Supplier waives and releases all rights to, and at its sole cost will obtain prompt removal of, any mechanics', materialmen's, mining or similar lien, hypothec or claim against Company or its assets, that then exist or that may arise with respect to the Supply provided on or before the date of the relevant Invoice. All payments to Supplier under the Contract are contingent on Supplier providing proof of compliance with this Clause to Company upon request.

9.9 **Greenhouse Gas Emissions**

Notwithstanding any other provision of the Contract, Supplier is not entitled to be reimbursed by Company for any amount that Supplier pays or is liable to pay as a result of Supplier, or any of its Affiliates, being required by Applicable Laws to surrender tradeable permits or to pay a Tax as a consequence of:

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

- (b) the provision of the Goods or Services.

10. **ALTERNATIVE SUPPLY**

If Supplier is unable or unwilling to provide the Supply in accordance with the Contract, Company may, in its discretion, source such part of the Supply from a third party, and Supplier will be responsible for all incremental costs to Company associated with sourcing the alternative supply until Company reasonably determines that Supplier will resume performance of the relevant part of the Supply in accordance with the Contract and any alternate supply commitments of Company have expired.

11. **COST INFORMATION AND SAFETY AND INSURANCE VERIFICATION**

11.1 **Provision of Cost Information**

If any part of the Price is based on or includes third party costs that are passed through (including any Taxes for which Supplier seeks reimbursement under Clause 9.2), Supplier must give Company reasonable access to all such cost records for audit and verification of Invoices issued under, and relevant costs referred to in, the Contract. If an audit reveals an error in invoicing or amounts paid, Supplier must promptly correct the error and make reimbursements, as appropriate.

11.2 **Safety and Insurance Verification**

Upon Company's request, Supplier must provide safety and insurance information to Company (or a third party agency designated by Company), to verify Supplier's compliance with the safety and insurance requirements of the Contract. All costs associated with the provision and verification of this information must be borne by Supplier.

12. **NO MINIMUM PURCHASE OR EXCLUSIVITY**

Nothing in the Contract obligates Company to request or acquire any minimum level of Goods or Services from Supplier. The Contract is not evidence of, nor does it create, an exclusive relationship between Company and Supplier for the Supply, or any aspect of the Supply. No territorial protection or rights are given or intended to be given to Supplier under the Contract.

13. **PACKING AND DISPATCH**

Supplier must pack all Goods for transport to Company, in accordance with Company's freight preparation or packaging policy, if any, and must notify Company when the Goods are ready for dispatch. Unless specifically required by the Contract, packaging must not contain any Hazardous Substances.

14. **SITE ACCESS AND COMPLIANCE WITH POLICIES**

Supplier agrees that:

- (a) it must, at its cost, comply with, and ensure its Personnel comply with, all Applicable Laws, Company's or End User's policies and procedures and all applicable compliance policies and standards, any site specific terms, and other policies made available to Supplier by Company. Company may monitor and audit Supplier's compliance with this Clause;
- (b) Company may identify Supplier and/or certain of its Personnel as "Core Contractors". Supplier must ensure that any such Core Contractors undertake the mandatory compliance risk reduction training modules identified by Company from time to time within the timeframe specified;
- (c) it must, at its own cost, ensure its Personnel complete induction training courses required by Company prior to entering onto Company's Site; and
- (d) if Supplier enters onto any Company Site, it does so at its own risk, and will ensure that its Personnel are aware that they enter onto the Site at their own risk.

15. FORCE MAJEURE

15.1 Notice and Obligation to Remedy or Mitigate

A Party will not be liable for a delay or failure to perform obligations under the Contract due to Force Majeure if the invoking Party:

- (a) as soon as possible after the Force Majeure event, gives written notice to the other Party describing the Force Majeure in detail and the measures it proposes to remedy or mitigate the effects of the Force Majeure; and
- (b) uses all reasonable efforts to remedy or mitigate the effects of the Force Majeure.

If Supplier invokes Force Majeure but can partially supply any of the Supply then, at Company's request, Supplier must allocate the Supply to Company on no less than a pro rata share with its contracted customers based on total purchases during the preceding 6 month period.

15.2 Termination

If a Force Majeure exceeds 30 days, the other Party may terminate the Contract, the applicable SOW(s) or PO(s) by written notice to the Party invoking Force Majeure.

16. INSURANCES

16.1 Supplier Insurances

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 16.2, 16.3, 16.4, 16.5, 16.6, 16.7, 16.8 and 16.9 (**Supplier Insurances**) in relation to risks or occurrences arising, or which may arise, out of the performance of the Contract.

16.2 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 \$20,000,000 for each and every claim.
- (b) The insurance outlined in Clause 16.2(a) must, unless prohibited by law, be endorsed to:
 - (i) insure 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 Company and its Personnel arising out of the performance of the Contract;
 - (iv) cover "goods in the physical and legal control of Supplier" for an amount not less than the value of the "goods" held off the Site; and
 - (v) include a clause that provides that a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

16.3 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 Supplier or any person deemed to be an employee of Supplier.
- (b) The insurance outlined in Clause 16.3 must, unless prohibited by law, be endorsed to:
 - (i) indemnify Company against any liability which it may incur to Supplier's employees, arising by virtue of the applicable workers' compensation statute or regulations or at common law;
 - (ii) extend to include employees underground if any of the work under the Contract is to be performed underground; and
 - (iii) provide cover in respect of each and every claim for an amount not less than the minimum statutory requirements.
- (c) The insurance outlined in Clause 16.3(a) must, unless prohibited by law, waive all express or implied rights of subrogation against Company and its Personnel.

16.4 Supplier's Plant and Equipment

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

16.5 Goods in transit

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

16.6 Motor Vehicle/Automobile Third Party Liability Insurance

- (a) If the performance of the Contract requires Supplier or its Personnel to use or provide for use motor vehicles, 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 16.6(a) must, unless prohibited by law, be endorsed to:
 - (i) insure 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 Company and its Personnel arising out of the performance of the Contract; and

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

16.7 Professional Indemnity Insurance

If the performance of the Contract includes or is related to the provision of professional advice or services, Supplier must effect and maintain throughout the Term and for a period of not less than 7 years after termination of the Contract or completion of 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 Supplier under the Contract. Such insurance must provide cover to an amount of not less than the amount stated in the Key Terms, or if there is nothing stated in the Key Terms \$5,000,000 for each and every claim.

16.8 Marine Insurance

- (a) If the performance of the Contract requires or involves the use of watercraft, Supplier must maintain or require the owners of such watercraft to maintain:
 - (i) marine hull and 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 \$10,000,000 for each and every claim.
- (d) The insurance outlined in Clause 16.8(a) must, unless prohibited by law, be endorsed to:
 - (i) insure 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 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.

16.9 Aviation Insurance

- (a) If the performance of the Contract requires or involves the use of aircraft (including helicopters), Supplier must maintain or require owners of such aircraft to maintain:
 - (i) aircraft hull insurance, on all aircraft so used, with a limit of cover not less than the market value of the aircraft; and
 - (ii) liability insurance including coverage for injuries or death of crew, passengers and any other person, and in respect of loss of or damage to cargo. Such insurance must provide cover to an amount of not less than \$10,000,000 for each and every claim.
- (b) The insurance outlined in Clause 16.9(a) must, unless prohibited by law, be endorsed to:

- (i) insure 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 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.

16.10 Insurance terms

- (a) If 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 Company. The Company reserves the right to require Supplier to reduce the amount of any self-insured retention, excess or deductible where such amount is considered by Company as being unreasonable in the circumstances of the Contract.
- (b) 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 16 will limit 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, Supplier must provide Company with an insurance certificate of currency or such evidence as Company may reasonably require that Supplier and its Sub-contractors are insured in accordance with the Contract.
- (e) In the event that Supplier fails to, or fails to ensure that it Sub-contractors, effect or keep in force any of the insurances required pursuant to the Contract, 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 Supplier;
 - (ii) refuse Supplier and its Personnel access to all or any part of the Site; and/or
 - (iii) treat the failure to insure as a default under the Contract.
- (f) All Supplier Insurances must not be varied to the detriment of Company or its Personnel, cancelled or allowed to lapse unless Supplier has received a written consent from Company.

16.11 Notification under Supplier's policy

If Supplier becomes aware of an event which may give rise to a claim involving Company under any policy of insurance effected by Supplier as required by this Clause 16 Supplier must notify Company and must ensure that Company is kept fully informed of subsequent action or developments concerning the claim.

16.12 Sub-contractors' insurance

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

16.13 Insurance claims and payment of insurance excess

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

16.14 Survival of Clause

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

17. LIABILITY AND INDEMNITY

17.1 Indemnity

Subject to Clause 17.2, Supplier will indemnify and hold harmless each of the Indemnified Parties from and against all Claims and Liabilities, or assertion of Liabilities, arising out of:

- (a) an act or omission (including negligence of any kind) of Supplier or its Personnel resulting in:
 - (i) personal injury;
 - (ii) death;
 - (iii) infringement of Intellectual Property;
 - (iv) breach of confidentiality; or
 - (v) any loss of or damage to property;
- (b) breach of the Contract; or
- (c) a Claim made against an Indemnified Party by any of Supplier's Personnel regarding workers' compensation or other employee benefit.

17.2 Exclusions

Supplier will not be liable under Clause 17.1 to the extent that the Liability was caused, or contributed to, by (as the case requires) Company's or an End User's negligent acts or omissions or wilful misconduct.

18. TERMINATION

18.1 Immediate Termination

If Supplier or its Personnel fails to comply with any HSE Policies and Standards, which non-compliance presents, in Company's reasonable opinion, a material threat to health, safety or the environment, Company may immediately terminate the Contract without liability by written notice.

18.2 Termination For Other Breach or Insolvency

- (a) Subject to Clause 18.1, Company may terminate the Contract or any SOW or PO, or any part thereof, without liability, by written notice if Supplier:
 - (i) breaches any of its obligations under the Contract and such breach continues for 30 days after receipt of written notice of the breach; or
 - (ii) becomes insolvent, bankrupt, makes an assignment for the benefit of its creditors or files a petition or other proceeding in bankruptcy or for protection from its creditors, or if a receiver or

trustee in bankruptcy is appointed over all or any of its assets or business, or any proceeding in bankruptcy, receivership or liquidation is initiated against such Party and is not dismissed within 30 days.

- (b) Supplier may terminate the Contract, SOW or PO if Company fails to make payment of an undisputed amount, as specified in Clause 9.5, and such breach continues for 30 days after receipt of written notice of the breach.

18.3 No Fault Termination

Company may, in its absolute and sole discretion, terminate or suspend the Contract or any SOW or PO, in whole or in part, upon prior written notice to Supplier. If Company terminates the Contract, a SOW or PO under this Clause 18.3, the only amounts recoverable by Supplier will be limited to (as applicable):

- (a) amounts due by Company to Supplier for the Supply actually provided prior to the date of the termination; and
- (b) actual costs that Supplier is not otherwise able to recover or mitigate, incurred by Supplier solely as a result of the termination for:
 - (i) materials already purchased by Supplier solely for the provision of Goods; and
 - (ii) removing Supplier's equipment (if any) from the Site, back to its place of origin.

18.4 Effect of Termination

Expiry or termination will be without prejudice to any rights and remedies of either Party, including injunctive relief. The Parties' rights and obligations in Clauses 4, 5, 9, 10, 16, 17, 19, 21, 22 and 23 will survive expiry or termination of the Contract. If a Party terminates only certain SOWs or POs under this Clause 18.4, the remainder of the Contract, SOWs or POs will continue in force (but without prejudice to any rights of termination which subsequently arise).

19. CONFIDENTIAL INFORMATION

19.1 Obligation of Confidentiality

Each Party undertakes and agrees:

- (a) to hold in strict confidence all Confidential Information of the other Party and not to disclose or permit or cause such Confidential Information to be disclosed to any person except as permitted under this Clause 19; and
- (b) not to use the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from the Confidential Information), except to the extent necessary to comply with, or exercise its rights under, the Contract,

unless the Party has obtained the prior written consent of the other Party (which consent may be withheld by the other Party in its discretion).

19.2 Permitted Disclosure

A Party may disclose the other Party's Confidential Information on a need to know basis to its Personnel, provided that such Personnel must be bound by an obligation to keep such Confidential Information confidential.

19.3 Exceptions

Clause 19.1 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 19 or any other obligations of confidence imposed on a Party; or

- (b) the disclosure of information in order to comply with Applicable Laws or legally binding order or requirement of a court or Government Agency, provided that prior to such disclosure the Party required to make the disclosure gives immediate written notice to the other Party, to the extent reasonably practical, with full particulars of the proposed disclosure.

19.4 Return of Confidential Information

If requested by the disclosing Party in writing, whether prior to or after the expiration or earlier termination of the Contract, the receiving Party must promptly deliver to the disclosing Party all Confidential Information in its (or any of its Personnel's) custody, possession or control.

20. PUBLIC ANNOUNCEMENTS

Except as required by Applicable Laws or as otherwise permitted by the Contract, 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 Company.

21. INTELLECTUAL PROPERTY RIGHTS IN THE SUPPLY

21.1 Company IP and Supplier IP

- (a) Each entity remains the owner of all of its Intellectual Property, meaning Supplier owns all Supplier IP and Company owns all Company IP, and nothing in the Contract prevents or limits that entity's use or exploitation of its respective Intellectual Property.
- (b) Neither Party will reproduce, communicate, use, register or attempt to register any interest in, or otherwise deal with, the Intellectual Property of the other including filing for patent protection, except to the extent permitted under the Contract.
- (c) If Supplier IP is included in the Supply, Supplier grants Company or other End User (as the case requires) and its Personnel a non-exclusive, assignable, transferable, perpetual, royalty free licence to use the Supplier IP in any way necessary to use, maintain and/or repair the Supply.

21.2 Contract IP

The Parties agree that:

- (a) all Contract IP will be vested in Company or other End Users (as the case requires) and will be Company's (or other End User's) property as and when created and Supplier assigns and must ensure that all its Personnel assign all right, title and interest in and to the Contract IP to Company or other End User (as the case requires), free and clear of all liens, charges, hypothecs, security interests, claims, third party rights to use or acquire such Contract IP or other encumbrances whatsoever;
- (b) Supplier unconditionally and irrevocably waives all moral rights (and/or unconditionally and irrevocably consents to any act that would infringe its moral rights), and must cause any Personnel or third parties engaged in the creation of any Contract IP to do the same; and
- (c) at Company's request, Supplier must deliver any formal assignment, consent, waiver or other document required to give effect to this Clause 21.2. Any Documentation containing Contract IP must be marked as directed by Company to identify Company's (or other End User's) ownership of Contract IP.

21.3 Third Party Intellectual Property

Supplier warrants that if any Intellectual Property of any third party is included in the Supply, or if Company or its Personnel will reasonably need to use the Intellectual Property of a third party in the use and enjoyment of the Supply, Supplier has obtained or will obtain from the third party(ies), all necessary licences and consents to use all such Intellectual Property, at no additional cost to Company.

22. BUSINESS STANDARDS

22.1 Illegal Information Brokering

Supplier recognises that the practice of Illegal Information Brokering or any other corruption of the Contract award process is not permitted by Company and Supplier represents and warrants that it has not and will not utilise Illegal Information Brokering in connection with the Contract.

22.2 Anticorruption

- (a) Each Party must maintain internal policies, procedures and controls to prevent its Personnel from engaging in bribery and corruption. Copies of such policies, procedures and controls must be made available to the other Party upon request.
- (b) Each Party or its Personnel, in connection with the Contract, must not directly or indirectly, offer, promise, give, demand or accept any bribe or other undue advantage in order to obtain, retain or direct business or secure any improper advantage in the conduct of business. This applies whether dealing with government or private individuals or enterprises.

22.3 Personal Data

Each Party agrees to comply with all Applicable Laws relating to privacy and protection of any information relating to identifiable individuals (and includes all information relating to individuals) that is protected by Applicable Laws that is obtained by or disclosed to them pursuant to the Contract.

22.4 Data Protection

In addition to its obligations under Clause 22.3, Supplier agrees to:

- (a) only collect, use, disclose or process Company's Personal Data for the purposes of providing the Supply under the Contract, and as directed by Company;
- (b) immediately notify Company if:
 - (i) an individual complains to Supplier that his/her Company Personal Data has been inappropriately handled; or
 - (ii) the disclosure of Company's Personal Data is or may be required by law;
- (c) put into place and maintain appropriate technical, physical and organisational measures to protect against processing, access or disclosure to Company's Personal Data; and
- (d) if requested by Company to do so for the purposes of Company's compliance with its global data privacy obligations, execute European Union model contracts for the transfer of Personal Data with Company or with Supplier's related companies or subcontractors.

23. MISCELLANEOUS

23.1 Independent Contractor Status

Supplier is an independent contractor and not an employee, agent or joint venture partner of Company. Company will not be responsible for, or have control or charge over, any of the acts or omissions of Supplier or its Personnel.

23.2 **Assignment and Subcontracting**

Supplier may not assign, transfer or subcontract all or any part of the Contract, any SOW or PO without Company's prior written consent. Any purported assignment, transfer or delegation by Supplier without required approval shall be null and void. The Contract will be binding upon and inure to the benefit of the permitted successors and assigns of each of the Parties. For the purpose of but without limiting this Clause 23.2, an assignment of this Contract will be deemed to have occurred where there has been a Change of Control.

23.3 **Entire Contract**

The Contract contains the entire agreement between the Parties with respect to its subject matter and supersedes all prior communications and negotiations between the Parties, including requests for proposal or response to any proposal.

23.4 **Proportionate Liability**

The parties agree that, to the extent permitted by law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations and liabilities of the parties under or in relation to the Contract, whether they are sought to be enforced as a breach of contract or a claim in tort or otherwise.

23.5 **PPSA**

- (a) In this clause:
- (i) **PPSA** means the Personal Property Securities Act 2009 (Cth);
 - (ii) **PPS Register** means the Personal Property Securities Register established under section 147 of the PPSA; and
 - (iii) all capitalised terms not otherwise defined in this Contract have the meaning given to them in the PPSA.
- (b) Supplier acknowledges and agrees that:
- (i) the Contract constitutes a Security Agreement; and
 - (ii) the Contract creates a Security Interest of Company including in relation to:
 - (A) any and all goods, materials, components and other things (whether fixed or unfixed) intended for use in the Supply which are located on Site or off Site;
 - (B) all construction plant, temporary works and other things on Site or off Site as are used by Supplier or any subcontractors;
 - (C) the benefit of any subcontracts or other contracts which Company requires to be novated to Company or Company's nominee; and
 - (D) all data used in, or prepared for, the Supply,

(Collateral).

- (iii) Supplier consents to Company registering Company's Security Interest over the Collateral and shall ensure that each subcontractor consents to registering Company's Security Interest in the Collateral, where applicable.
- (c) Supplier undertakes to:
- (i) promptly sign any further documents and provide any further information (such information to be

complete, accurate and up-to date in all respects) which Company may reasonably require to:

- (A) register a Financing Statement or Financing Change Statement on the PPS Register in relation to a Security Interest over the Collateral;
 - (B) register any other document on the PPS Register which is necessary to perfect Company's Security Interest over the Collateral; or
 - (C) correct a defect in any Contract Document;
- (ii) not register, or permit to be registered by any third party including a subcontractor, a Financing Statement or a Financing Change Statement in respect of the Collateral without the prior consent of Company; and
- (iii) keep full and complete records of the Collateral.
- (d) Company and Supplier agree that:
- (i) to the extent permitted by law, the following provisions of the PPSA do not apply to this Contract: section 95; section 121(4); section 125; section 129; section 130; section 132(3)(d); section 132(4); section 135; section 142; and section 143.

23.6 **Security of Payment**

- (a) Supplier must promptly give Company a copy of any document (other than a payment claim in relation to which no further documentation has been received) Supplier gives or receives in connection with Security of Payment Act.
- (b) If Company becomes aware that a subcontractor is entitled to suspend work under section 27 of the Security of Payment Act, Company may (at its absolute and sole discretion) pay the subcontractor such money that is, or may be, owing to the subcontractor for work forming part of the Supply, and Company may recover from Supplier any amount paid as a debt.
- (c) Supplier indemnifies Company against any loss, expense or damage of any nature, including financial loss and lawyers' fees and expenses on an indemnity basis, suffered or incurred by Company arising out of:
 - (i) a suspension by a subcontractor under section 27 of the Security of Payment Act of work which forms part of the Supply; or
 - (ii) a failure by Supplier to comply with this clause 23.6.
- (d) If Company, in making a payment to Supplier under the Contract, fails to comply with a payment withholding request served on Company by a subcontractor, such that under the Security of Payment Act, Company becomes jointly and severally liable with Supplier in respect of the whole or any part of a debt owed by Supplier to the subcontractor, the debt so incurred will become an amount due from Supplier to Company. The amount will become due irrespective of whether the amount for which Company is liable to the subcontractor is greater than the amount which Supplier is ultimately required to pay the subcontractor.

23.7 **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.

23.8 Severability

If any provision of the Contract is declared invalid by any tribunal, the remaining provisions will not be affected thereby.

23.9 Waiver

Either Party's waiver of any breach of, or failure to enforce any term or condition of the Contract will not affect, limit or waive such Party's right to enforce and compel strict compliance with each and every term or condition of the Contract.

23.10 Amendments, Variations and Change Orders

No amendment or variation (including Change Orders) of the Contract is valid unless made in writing and signed by authorised Personnel of both Parties.

23.11 Governing Law

The Contract and the transactions contemplated by it are governed by the laws of New South Wales.

23.12 Forum

Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of and venue in the federal and/or state, provincial or territorial courts in the state, province or territory identified in Company's address as shown in the Key Terms, and the appropriate courts of appeal from such courts, for determining any dispute concerning the Contract or transactions of it.

23.13 Indigenous / Community Relations

Supplier recognises that Company encourages development for indigenous people and local communities and, in the performance of the Contract, Supplier undertakes to endeavour to identify and encourage opportunities which benefit indigenous people and local communities wherever possible.

23.14 Execution and Transmission

The Contract may be, subject to Applicable Laws:

- (a) executed electronically by the Parties;
- (b) executed in one or more counterparts; and
- (c) exchanged by the Parties by facsimile ("fax") or other means of electronic communication, at Company's discretion.

23.15 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.

23.16 Notices

- (a) Any notice, approval, consent or other communication under the Contract must be:
 - (i) in writing;
 - (ii) marked to the attention of the Supplier Representative or Company Representative (as applicable), and sent to the relevant address specified in the Key Terms; and
 - (iii) hand delivered or sent by nationally recognised courier or by mail, fax or e-mail.
- (b) Unless the notice specifies a later time, and subject to Applicable Laws, a notice will be effective as follows:
 - (i) for a hand delivery or delivery by courier, upon receipt;
 - (ii) for a letter sent by registered /certified mail, 5 days after postmark (7 days if postmarked from a foreign country);
 - (iii) for a fax, upon confirmation from the dispatching machine that indicates that the fax was sent in its entirety to the fax number of the recipient; and
 - (iv) for an e-mail, the notice must be included as an attachment to the e-mail (not simply contained in the e-mail text), and will be effective upon receipt of a delivery-receipt or other reliable electronic means to verify receipt; provided that if a notice is received on a day other than a Business Day, or is received after 5:00 pm in the jurisdiction of receipt, the notice will be effective the next day.
- (c) A Party may change its address for notices by providing written notice to that effect to the other Party.

23.17 Business Day

If the date for payment of any monies under the Contract falls on either a weekend or public holiday, the payment will be due on the following Business Day.