



1.1 Definitions

The following definitions apply in this document.

Authorisation means any licence, permit, consent, approval, determination, certificate or other requirement of any Government Agency having jurisdiction over the Equipment, Goods and/or Services or the Site.

Authorised Representative means, for a party:

- (a) a company secretary or director of the party or an employee of the party whose title includes the word "manager", "director", "counsel", "chief" or "head";
- (b) a person who is acting temporarily in one of those positions; or
- (c) a person, or a person holding a position, nominated by the party to the other party.

Business Day means:

- (a) for determining when a notice, consent or other communication is given, a day that is not a Saturday, Sunday or public holiday in the place to which the notice, consent or other communication is sent; and
- (b) for any other purpose, a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in the State or Territory of Australia in which the Equipment, Goods and/or Services are to be provided.

Commencement Date means the date of execution of this document.

Completion means the Equipment or Goods and/or Services have been supplied in accordance with the requirements of the Contract and confirmed by the Purchaser's Representative.

Contract means the contractual relationship between the parties constituted by this document and the relating Purchase Order.

Corporations Act means the Corporations Act 2001 (Cth).

Customer means the end recipient of the Equipment, Goods / Services through execution of the Purchase Order

Defect means any part of the Equipment, Goods and/or Services not in accordance with the requirements of the Contract.

Defects Correction Period means the period beginning on the date on which the Purchaser's Representative issues a notice under clause 10.1(a) and lasting for the period specified in clause 11.1(a).

Encumbrance means:

- (a) a mortgage, charge, pledge, lien, power of attorney or title retention arrangement, a right of set-off or right to withhold payment of a deposit or other money, a notice under section 255 of the Income Tax Assessment Act 1936 (Cth), subdivision 260-A in schedule 1 of the Taxation Administration Act 1953 (Cth) or any similar legislation;
- (b) any other interest or arrangement of any kind that secures the payment of money or the performance of an obligation or which gives a creditor priority over unsecured creditors in relation to any property; or
- (c) any agreement to create any of them or to allow any of them to exist.

Equipment, Goods and/or Services means the Equipment, Goods and/or Services (or any one or combination of the Equipment, Goods and Services) specified in the Particulars.

Expiry Date means the date which is three (3) years after the Commencement Date.

Government Agency means:



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

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

Insolvency Event means any one of the following in respect of a party to this Contract:

- (a) a notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
- (b) the corporation entering a deed of company arrangement with creditors;
- (c) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
- (d) an application is made to a court for the winding up of the corporation and not stayed within 14 days;
- (e) a winding up order is made in respect of the corporation;
- (f) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up); or
- (g) a mortgagee of any property of the corporation takes possession of that property.

IP Rights means intellectual property rights (present or future) being all rights conferred under statute, common law and equity, including those with and in relation to inventions, patents, designs and all other rights resulting from intellectual activity in the industrial field, any patent, registered design, trademark or name, copyright or other protected right.

Materials or Standards of Workmanship means all goods/efforts utilised resulting in finished product/work acceptable as meets the Customer's entitlement.

Payment Terms means 45 days from date of invoice issued.

Purchaser is as described in the Particulars.

Purchase Order is the document issued per job, confirming specific scope of works detail and cost.

Purchaser's Representative means the person so described in the Particulars or as notified by the Purchaser from time to time.

Scope of Work means the scope of work for the Equipment, Goods and/or Services.

Security Interest is any bill of sale (as defined in any law), mortgage, charge, lien, pledge, hypothecation, title retention arrangement, trust, power or other encumbrance whatsoever as or having effect as a security for the payment of any monetary obligation or the observance of any other obligation (whether present or future, or actual or contingent).

Site means the site specified in a Purchase Order.

Standards means all Australian standards published by Standards Australia applicable to the Supplier's obligations under the Contract.

Supplier is as described in the Particulars.

Tax means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

Test means any test set out in the Scope of Works.

1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (a) legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (b) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (c) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (d) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (e) anything (including a right, obligation or concept) includes each part of it and any part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (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.
- (f) The word agreement includes an undertaking or other binding understanding, whether or not in writing.
- (g) The expression this document includes the agreement, arrangement, understanding or transaction recorded in this document.
- (h) All references to \$ or dollars is to the currency of Australia.

1.2 Non-Business Days

If the day on or by which a person must do something under this document is not a Business Day the person must do it on or by the next Business Day.

1.3 Resolution of Ambiguities

- (a) If there is any ambiguity, discrepancy or inconsistency in the documents which make up the Contract, the order of precedence set out in the Particulars will apply.
- (b) If the Supplier becomes aware of any ambiguity, discrepancy or inconsistency in the documents which make up the Contract, the Supplier must seek the Purchaser's directions as to the interpretation to be followed.

2. SUPPLY AND PURCHASE

- (a) The Purchaser agrees to purchase the Equipment, Goods and/or Services from the Supplier, and the Supplier agrees to supply the Equipment, Goods and/or Services on the terms set out in this document.
- (b) This document sets out the terms and conditions upon and subject to which the Supplier will supply the Equipment, Goods and/or Services.

3. PURCHASE ORDERS

3.1 Supply of Equipment, Goods and/or Services

The Purchaser may require the Supplier to supply the Equipment, Goods and/or Services at any time during the term of this Contract.

3.2 Purchase Orders

- (a) The Purchaser shall issue a Purchase Order to the Supplier for each purchase of Equipment, Goods and/or Services.
- (b) All Equipment, Goods and/or Services supplied to the Purchaser by the Supplier shall be supplied or provided pursuant to a Purchase Order.

3.3 Content of Purchase Orders

A Purchase Order shall include:

- (a) a description of the Equipment, Goods and/or Services to be supplied;
- (b) the Price;
- (c) the date by which the Equipment, Goods and/or Services must be supplied;
- (d) the Site or the place for delivery of the Goods or Equipment (if not the Site);
- (e) the relevant contact details for the site.

3.4 Purchase Order constitutes a contract

- (a) Each Purchase Order will, upon receipt by the Supplier, constitute a separate binding contract between the Purchaser and the Supplier for the supply of the Equipment, Goods and/or Services by the Supplier and the purchase of the Equipment, Goods and/or Services the Purchaser specified in the Purchase Order, on the terms and conditions set out in this document and the relevant Purchase Order.
- (b) The Supplier acknowledges that the Purchaser is not obliged to issue Purchase Orders under this document and may purchase Equipment, Goods and/or Services from other suppliers.

3.5 Variation to Purchase Order

- (a) Any change to the Scope of Works or cost of works under a Purchase Order must be approved by the Purchaser in writing and be the subject of an amended Purchase Order.
- (b) The Supplier shall request a variation to a Purchase Order in writing containing a description of the variation sought and an explanation of the reason for such request, providing evidence wherever possible.
- (c) A varied Purchase Order issued by the Purchaser shall be the sole evidence of any such agreement.

3.6 The Purchaser may, in its absolute discretion and without limitation:

- (a) authorise a variation to a Purchase Order and issue the appropriate authority;

- (b) reject a variation, in which case the Supplier must complete the works in accordance with the original Purchase Order;
- (c) where the Purchaser considers that the proposed variation should have reasonably been foreseen or contemplated by the Supplier prior to accepting a Purchase Order, require the Supplier to complete the additional works at the Supplier's own cost (and the Purchase Order will be deemed amended accordingly).

3.7 Works outside the Purchase Order

If, during the provision of any works, the Supplier is requested by a Customer to provide any other service, do work, or supply goods, whether as part of the Scope of Work or outside the works indicated via a Purchase Order, the Supplier shall immediately notify the Purchaser of such request, and shall not provide any such service or supply any goods without the Purchaser's prior written approval.

4. MATERIALS AND WORK

4.1 Scope of Work, Standards and Codes

- (a) The Supplier warrants and shall ensure that the Equipment, Goods and/or Services supplied to the Purchaser under this Contract will comply with:
 - (a) the Scope of Work as stipulated on the Purchase Order; and
 - (b) all applicable Australian and international standards and/or regulations including the latest revision of any such standards and/or regulations, and including on-site inductions;
- (b) The Supplier shall use Materials and Standards of Workmanship required by this Contract. In the absence of any other requirement, the Supplier shall use suitable matching materials or closest possible as approved by the Purchaser's Representative.
- (c) The Supplier will ensure all personnel are aware of and adhere to the Supplier Code of Conduct as issued and from time to time updated by the Purchaser.

4.2 On-Site Services by Supplier

While on Site, the Supplier, its employees and subcontractors shall

- (a) be cognisant of and comply with all occupational health and safety (OHS) legislation and comply with all directions of the Purchaser which may reasonably be given in relation to health, safety and environmental matters (see Safety Policy, attached), including the Purchaser's permit to work procedure.
- (b) comply with all reasonable directions of the Purchaser.
- (c) perform all work as an independent contractor and not as an agent or employee of the Purchaser.

5. QUALITY ASSURANCE, RECORDS AND AUDITS

5.1 Quality assurance

In respect of the Equipment or Goods, the Purchaser's Representative or Purchaser's Contact may direct the Supplier to:

- (a) supply particulars of the mode and place of manufacture, the source of supply of materials and other components, the performance capacities and other related information; and
- (b) arrange inspection at such place or sources by the Purchaser's Representative or persons authorised by the Purchaser.

5.2 Quality system

The Supplier must:

- (a) if required in the Particulars submit a Contract specific quality management or control plan ("Quality Plan").
- (b) ensure that the Purchaser's Representative has access to the quality system of the Supplier and subcontractors so as to enable monitoring and quality auditing;
- (c) carry out and record all inspections and Tests as directed by the Purchaser's Representative;
- (d) only use a testing authority approved by the Purchaser's Representative; and
- (e) without limitation, comply with the requirements relating to quality in the Scope of Work.

5.3 Control of Product Non Conformances

The Supplier is to maintain a system for control of any non-conforming items associated with the Equipment, Goods and/or Services and share this with the Purchaser upon request.

6. PATENTS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY

RIGHTS

- (a) The Purchaser acknowledges that all IP Rights developed by the Supplier vest in the Supplier.
- (b) The Supplier warrants that any design, materials, documents and methods of working provided by the Supplier will not infringe any patent, registered design, trademark or name or other protected right.
- (c) The Supplier shall indemnify the Purchaser against any claims against, or costs, losses or damages suffered or incurred by, the Purchaser arising out of, or in any way in connection with, any actual or alleged infringement of any patent, registered design, trademark or name or other protected right.
- (d) Any plans or designs supplied by the Purchaser remain with the Purchaser.
- (e) The Supplier must not reproduce or use any plans or designs, in whole or in part, other than for the purpose of completing the provision of Equipment, Goods, or Services to which those plans or designs apply.

7. RISKS AND INSURANCE

7.1 Insurance of Goods and Equipment

- (a) The Supplier must effect and maintain an insurance policy covering the Equipment or Goods for their full value from time to time against loss and damage, including loss or damage while the Equipment or Goods are in transit.
- (b) The policy must be effected within 7 days of receiving the Purchase Order and until the Equipment or Goods have been handed over to the Purchaser and are in the Purchaser's care, custody and control.

7.2 Public Liability Insurance

- (a) Prior to any work being undertaken on the Site, the Supplier must effect and have in place public liability insurance with a minimum amount of **\$5 million** per occurrence, or on occasion higher coverage may be required.
- (b) The public liability insurance must be maintained until the expiration of the last Defects Correction Period.

7.3 Insurance by the Supplier

Where the insurance policies required by clause 8.1 and 8.2 are to be effected by the Supplier:

- (a) the policy must be with an insurer and on terms (including excesses) approved by the Purchaser, which

- approval must not be unreasonably withheld;
- (b) the Purchaser may require the Supplier to provide proof that insurance has been effected and is being maintained and if the Supplier fails to provide proof to the Purchaser in a form satisfactory of the Purchaser when requested, the Purchaser shall not be required to make any payment until satisfactory proof is provided (without limiting the generality of the foregoing, the Purchaser may require the Supplier to provide relevant certificates of currency of the required insurance policy); and
 - (c) if the Supplier fails to provide proof of satisfactory insurance within 14 days of a written request for proof, the Purchaser may effect insurance and the cost shall be a debt due to the Purchaser from the Supplier and will be assessed by the Purchaser's Representative as a variation to the Price.

7.4 Workers Compensation Insurance

From the date of this document until the expiration of the last Defects Correction Period, the Supplier must have in place workers compensation insurance as may be required and appropriate in order to comply with statutory requirements.

7.5 Workplace Health & Safety

The Supplier shall at all times comply fully with all Laws (including but not limited to occupational health and safety Laws).

- (a) The Supplier will provide for its employees and agents a safe environment from which to conduct building and restoration works.
- (b) All employees of the Supplier attending site will hold a current Bay Building Group induction card to the satisfaction of the Purchaser, and present this card if requested.
- (c) Where required by Law, the Supplier must execute a safe work method statement (SWMS) to the satisfaction of the Purchaser prior to the execution of a Purchase Order.
- (d) The Supplier agrees to accommodate site audit/s undertaken by a Purchaser's Representative at the time and place of the Purchaser's Representative's choosing.
- (e) The Supplier agrees that any corrective action/s placed upon the Supplier as a result of the site audits referenced in clause 8.5(d) will be completed within 7 days of notification of the corrective action/s required.

7.6 Licenses

The Supplier shall ensure that any task undertaken is only performed by a person holding current licenses and suitable qualifications requisite for performing such a task and shall promptly provide evidence of such licenses or qualifications to the Purchaser on request.

8. TIME

8.1 Start

The Supplier must commence its obligations immediately on acceptance of the Purchase Order via BBG trade portal.

8.2 Progress

- (a) The Supplier must supply and/or install the Equipment, Goods or Services by the Timeframe set out in a Purchase Order.
- (b) The Supplier acknowledges that the Purchaser will not be obliged to provide the Supplier with sole and uninterrupted or continuous access to the Site for the purposes of installing the Equipment, Goods or providing the Services.

8.3 Time for Completion

If the Supplier fails to achieve Completion by the date specified in the Purchase Order or subsequent written notification, the Purchaser may immediately terminate the Purchase Order and engage another supplier to provide the relevant Equipment, Goods and/or Services. Any additional costs borne by the Purchaser may be passed on to the originally appointed Supplier.

9. ACCEPTANCE / REJECTION OF EQUIPMENT, GOODS AND/OR SERVICES

9.1 Notice of Completion

- (a) If the Equipment, Goods and/or Services supplied by the Supplier to the Purchaser is in accordance with the requirements of the Contract then within seven days after:
 - (i) the date of delivery of the Equipment, Goods or completion of the Services; and
 - (ii) the completion of any tests which under the Contract are to be carried out before Completion, whichever is the later, the Purchaser's Representative shall assess whether Completion has been achieved and, if so, issue a notice to that effect.
- (b) If the Equipment, Goods and/or Services supplied by the Supplier to the Purchaser is not in accordance with the requirements of the Contract then the Purchaser's Representative shall issue to the Supplier a notice stating in writing the reasons why the Purchaser's Representative considers that the Equipment, Goods and/or Services are not in accordance with the requirements of the Contract.

9.2 Supplier to advise action

Within seven days after receipt of a notice under clause 9.1 (b) the Supplier shall advise the Purchaser's Representative in writing of what the Supplier is prepared to do. The Supplier shall indicate:

- a) whether the Supplier proposes to replace or correct the Equipment or Goods or re-perform the Services;
- b) whether the Supplier proposes to correct the Equipment, Goods and/or Services at the Site where it is located and, if so, the nature of the work involved, the access which the Supplier will require and the disruption, if any, which might be caused to the Purchaser;
- c) the times likely to be involved; and
- d) any other alternative which the Supplier offers.

9.3 Purchaser's Decision on Supplier's Proposal

Within seven days of receipt of the Supplier's written offer under clause 9.2, the Purchaser's Representative shall in writing to the Supplier either:

- (a) accept the Supplier's offer;
- (b) give the Supplier a notice of rejection; or
- (c) advise the Supplier that the Purchaser elects to accept the Equipment, Goods and/or Services and claim damages.

9.4 Replacement or Correction

On receipt of a notice under clause 9.3(a) the Supplier shall proceed promptly as agreed. If the Supplier recovers possession of the Equipment or Goods belonging to the Purchaser the recovered Equipment or Goods shall remain the property of the Purchaser. If it is replaced with new Equipment or Goods then title to the new Equipment or Goods will pass to the Purchaser upon delivery of the new Equipment or Goods to the Purchaser and thereupon title to the recovered Equipment or Goods will pass to the Supplier.

9.5 Removal of Rejected Equipment or Goods

- (a) On receipt of a notice of rejection under clause 9.3(b) the Supplier shall repay to the Purchaser all monies which the Supplier has received from the Purchaser in relation to the rejected Equipment or Goods. Upon repayment of the monies, the Supplier shall own the rejected Equipment or Goods and shall remove it from the Site.
- (b) The Purchaser shall have the right to recover from the Supplier any damages exceeding the amount repaid which the Purchaser suffers by reason of the failure of the Supplier to supply Equipment, Goods and/or Services in accordance with the requirements of the Contract.

9.6 Purchaser accepts Equipment, Goods and/or Services

If the Purchaser elects to accept the Equipment or Goods which is not in accordance with the requirements of the Contract, then ownership of the Equipment or Goods will pass to the Purchaser upon delivery to the Supplier of the notice under clause 9.3(c) and the Purchaser shall have the right to recover from the Supplier damages which the Purchaser suffers by reason of the failure of the Supplier to supply Equipment, Goods and/or Services which is in accordance with the requirements of the Contract.

10. DEFECTS CORRECTION

10.1 Defects Correction Obligations

- (a) The Defects Correction Period shall operate during the period stated in the Particulars or 52 weeks whichever is the later.
- (b) At any time prior to the 14th day after the expiration of the Defects Correction Period, the Purchaser's Representative may notify the Supplier of any omission or Defect in the Equipment, Goods and/or Services which exists at acceptance or becomes apparent prior to the expiration of the Defects Correction Period.
- (c) Within 7 days of receiving notification of the omission or Defect the Supplier shall, at its election, repair or replace the defective work. All transportation costs of replacement components of the Equipment or Goods will be borne by the Supplier.
- (d) If it is necessary for the Supplier to carry out rectification, the Supplier shall do so at times and in a manner which causes as little inconvenience to the Purchaser as is reasonably possible.
- (e) If the Supplier is unable to complete defective works as required by the Purchaser, the Purchaser may have that work carried out by others and the cost is a debt due and payable by the Supplier to the



- Purchaser
- (f) In addition to exercising other rights and remedies, the Purchaser may set-off such debt against a retention held and any amount due or which becomes payable to the Supplier in connection with this Contract.

11. PAYMENT

11.1 Payment Obligation

The Purchaser must pay the Supplier the Price as stipulated on the Purchase Order including any authorised variations.

11.2 Payment Claims

The Supplier must give the Purchaser's Representative claims for payment on account of the Price:

- (a) in the time frame specified in this Contract;
- (b) in the format the Purchaser's Representative requires which may include evidence requested by the Purchaser's Representative of the value of work completed in accordance with the Contract and the amount claimed; and
- (c) to the address specified by the Purchaser's Representative.

11.3 Payment

Subject to the Purchaser's rights of set off, the Purchaser must within the agreed time frame specified in the Payment Terms, assess and pay the Supplier the amount due.

12. GST

12.1 Interpretation

Words defined in the GST Law have the same meaning in this clause unless otherwise defined.

12.2 Amounts exclusive of GST

For the avoidance of doubt, all prices or other amounts referred to in this Contract are stated exclusive of GST.

12.3 GST Payable

In addition to any amount paid or provided by the Purchaser under the terms of this Contract, for the supply from the Supplier, the Purchaser shall pay to the Supplier, at the same time and in the same manner as the relevant consideration, the amount of any GST for which the supplier is liable in relation to the supply.

12.4 Tax Invoice

The recipient need not pay any amount unless and until the supplier has issued to the recipient a tax invoice in relation to the supply.

12.5 Claims and Indemnities

- (a) If a party has a claim under or in connection with this Contract for a cost on which that party must pay GST, the claim is for the GST exclusive cost plus any GST payable on the claim, provided that a tax invoice is issued in accordance with clause 13.4.

- (b) If a party has a claim under or in connection with this Contract whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue calculated will be GST exclusive (whether that amount is separate or included as part of a larger amount plus any GST payable on the claim, provided that a tax invoice is issued in accordance with clause 13.4).

12.6 Adjustments

The Supplier must promptly create an adjustment note for, and refund to the Purchaser, the amount of any overpayment by the Purchaser for GST.

13. INVOICES

13.1 RCTI

The Supplier agrees that the Purchaser can issue GST (Goods and Services Tax) compliant tax invoices (Recipient Created Tax Invoices) on its behalf in respect of all payments made under this agreement. The Supplier

- (a) agrees they are registered for GST at the time of entering into this agreement;
- (b) agrees they will notify the Purchaser if they cease to be registered for GST;
- (c) will complete and submit RCTI's via the trades portal upon completion of works;
- (d) confirms acceptance that the invoice date will be considered as the date the RCTI is submitted via the portal, and it is from this date that the agreed Payment Terms will apply.

13.2 Labour & PAYG

The Supplier shall conduct the business of a Purchaser Order with a Purchaser in an approved operating structure. The Supplier shall employ labour and pay PAYG and payroll tax as required by law. Under no circumstances will the Supplier or its agents, servants, workers or employees hold themselves to be employees' servants or agents of the Purchaser. In the event of failure by the Supplier to operate in an approved structure whereby the Purchaser incurs a liability for PAYG, payroll tax or work-cover or any other statutory obligation then the Purchaser shall be entitled to recover any such tax, premiums and penalties together with any other costs associated with such failure and may deduct such from monies due under an order or orders.

13.3 Proof of Payment

The Supplier agrees, if requested by the Purchaser, to provide proof of payment to workers, and suppliers engaged by the Supplier for the works in the form of a Statutory Declaration. The Supplier agrees to provide said Statutory Declaration within 72 hours of the request.

14. DEFAULT AND TERMINATION

14.1 Supplier Default

The Purchaser may give a written notice under clause 15.3 to the Supplier, if the Supplier:

- (a) does not proceed with its activities regularly and diligently;
- (b) fails to effect, have in place or otherwise maintain or provide evidence of, insurance as required by clause 8;

- (c) fails to use the Materials or Standards of Workmanship required by the Contract;
- (d) does not comply with any direction of the Purchaser's Representative made in accordance with the Contract; or
- (e) is otherwise in substantial breach of the Contract.

14.2 Purchaser Default

The Supplier may give a written notice under clause 15.3 to the Purchaser if the Purchaser fails to pay the Supplier an amount due and payable under the Contract.

14.3 Contents of Notice of Default

- (a) A notice under this clause 15.3 must state:
 - i. that it is a notice under clause 15.3;
 - ii. the breach relied upon; and
 - iii. that the party giving the notice requires the other party to remedy the breach within 14 days of receiving the notice.
- (b) In the case of the Supplier, any notice under this clause 15.3 must be signed by an Authorised Representative of the Supplier.

14.4 Termination for Insolvency or Breach

If:

- (a) an Insolvency Event occurs to a party; or
- (b) a party does not remedy a breach of Contract the subject of a notice under clause 15.3 within 14 days of receiving the notice under clause 15.3,

then:

- (c) where that party is the Supplier, the Purchaser may by written notice to the Supplier terminate the Contract; or
- (d) where that party is the Purchaser, the Supplier may by written notice to the Purchaser:
 - i. suspend the whole or any part of the work being undertaken by it under the Contract; and
 - ii. if within 21 days of the date of this suspension the Purchaser fails to remedy the breach or if the breach is not capable of remedy or in the case of an Insolvency Event, to make arrangements reasonably satisfactory to the Supplier, terminate the Contract.

14.5 Rights of Parties on Termination

If the Contract is terminated the rights and liabilities of the parties shall be the same as if the defaulting party had wrongfully repudiated the Contract and the other party had elected to treat the Contract as at an end and recover damages.

14.6 Termination for convenience

Without prejudice to the Purchaser's other rights under this Contract, the Purchaser may at any time for its sole convenience, and for any reason, by written notice to the Supplier terminate any Purchase Order effective from the time stated in the Purchaser's notice or if no such time is stated, at the time the notice is given to the Supplier.

If the Purchaser terminates a Purchase Order under this clause, the Supplier will be entitled to payment of the amounts as determined by the Purchaser's Representative to ensure all Equipment, Goods and/or Services reasonably delivered are compensated for.

This clause will survive termination of the Contract.

15. DISPUTES

15.1 Notice of Dispute

If a dispute or difference arises between the Supplier and the Purchaser or between the Supplier and the Purchaser's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with, the Equipment, Goods and/or Services, or either party's conduct before the Contract, the dispute or difference must be determined in accordance with the following steps.

- (a) Written Notification - Where such a dispute or difference arises, either party may give a notice in writing to the other party specifying the issue.

If the dispute or difference is not resolved within 14 days of the date of the notice either party may escalate to

- (b) Executive Negotiation whereby a party may refer the dispute or difference to the persons described in the Particulars who must meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference with a further 7 day period; and

15.2 Continuance of performance

Despite the existence of a dispute, the parties must continue to perform their respective obligations under the Contract.

16. SUPPLIER'S REPRESENTATIONS AND WARRANTIES

16.1 General representations and warranties

The Supplier represents and warrants that:

- (a) it is a company registered under the Corporations Act (ACN) or registered holder of an Australian Business Number (ABN);
- (b) It has full legal capacity and power to:
 - i. own its property and carry on its business; and
 - ii. enter into this document and carry out the transactions that this document contemplates.
- (c) it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;
- (d) it holds each Authorisation that is necessary or desirable to:
 - i. enable it to properly execute this document and to carry out the transactions that this document contemplates;
 - ii. ensure that this document is legal, valid, binding and admissible in evidence; or
 - iii. enable it to properly carry on its business as it is now being conducted, and it is complying with any conditions to which any of these Authorisations is subject;
- (e) this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;
- (f) its payment obligations under this document rank at least equally with all its other unsecured and unsubordinated payment obligations (whether present or future, actual or contingent), other than obligations that are mandatorily preferred by law;
- (g) neither its execution of this document nor the carrying out by it of the transactions that this document contemplates does or will:
 - i. contravene any law to which it or any of its property is subject or any order of any Government Agency binding on it or any of its property;

- ii. contravene any Authorisation;
 - iii. contravene any undertaking or instrument binding on it or any of its property; or
 - iv. contravene its constitution or the powers or duties of its directors; and
- (h) it is not necessary or desirable, to ensure that this document is legal, valid, binding or admissible in evidence, that this document or any other document be filed or registered with any Government Agency, or that any Taxes be paid.

16.2 Warranties relating to the Equipment, Goods and/or Services

The Supplier represents and warrants to the Purchaser that, on the date on which the Equipment, Goods and/or Services is supplied to the Purchaser:

- (a) the Supplier will have good title to the Equipment or Goods, free and clear of all Encumbrances, and that in purchasing the Equipment, Goods and/or Services from the Supplier the Purchaser will acquire good title to the Equipment, Goods and/or Services free and clear of all Encumbrances (including any right of claim of any Supplier);
- (b) the Equipment, Goods and/or Services will correspond in all respects with its description in the Particulars and the Scope of Work;
- (c) the Equipment or Goods will be in a sound and serviceable condition and the Services will be performed with due care and skill;
- (d) the Equipment, Goods and/or Services will be of merchantable quality;
- (e) the Equipment or Goods will be fit for any particular purpose which the Purchaser has made known (whether expressly or by implication) to the Supplier, and will be fit also for the purpose for which Equipment or Goods of a similar nature is commonly supplied;
- (f) the Equipment or Goods and the performance of the Services will comply with all applicable laws including Acts, ordinances, regulations, by-laws and other subordinate legislation and all requirements of relevant Government Agencies;
- (g) any consumer product safety standard or consumer product information standard relating to the Equipment, Goods and/or Services will be fully complied with; and
- (h) holds all relevant Authorisations, licences and certificates required to carry out supplied Services.

The Supplier agrees to uphold warranty on all work performed for 2 years on non-structural works and 6 years on structural work.

16.3 Exclusion of consumer type claims

The Purchaser is not a manufacturer or dealer in goods, and may rely absolutely on the Supplier to ensure that any consumer product safety standards and consumer product information standards relating to the Equipment or Goods are fully complied with.

17. NOTICES

17.1 How to give a notice

A notice, consent or other communication under this document is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and either:
 - i. delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address;
 - ii. sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full without error; or
 - iii. sent by email to the email address.

17.2 When a notice is given

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is delivered or sent by fax, if received:
 - i. by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - ii. after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and
- (b) if it is sent by mail:
 - i. within Australia – three Business Days after posting; or
 - ii. to or from a place outside Australia – seven Business Days after posting;

and

- (c) if sent by email, at the time shown on the delivery receipt stating that the email was received by the sender.

17.3 Address for notices

A person's address, fax number and e-mail address are those set out in the Particulars, or as the person notifies the sender.

18. AMENDMENT, ASSIGNMENT AND SUBCONTRACTING

18.1 Amendment

This document can only be amended, supplemented, replaced or novated by another document signed by the authorised representatives of each party.

18.2 Assignment

- (a) The Supplier may only assign, declare a trust over or otherwise deal with its rights under this document with the written consent of the Purchaser.
- (b) The Purchaser may assign, novate or otherwise deal with any or all of its rights under the Contract or the Security or create any Security Interest over the Contract or the Security, in each case, without the consent of the Supplier.

18.3 Subcontracting

- (a) The Supplier may not subcontract any of its obligations under this Contract without the Purchaser's prior written consent which may not be unreasonably withheld.
- (b) The Supplier must only engage subcontractors who have been previously on-boarded by the Purchaser.

- (c) Subcontracting does not relieve the Supplier from any of its liabilities or obligations under the Contract. The Supplier is liable to the Purchaser for the acts and omissions of subcontractors and employees and agents of subcontractors as if they were acts or omissions of the Supplier.
- (d) There will be no subrogation from the Supplier's subcontractor/s to the Purchaser with regard any subcontractor/s engaged by the Supplier.

19. GENERAL

19.1 Operation of this document

- (a) Subject to paragraph (b), this document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

19.2 Operation of indemnities

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) A party may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.

19.3 Consents

Where this document contemplates that the Purchaser may agree or consent to something (however it is described), the Purchaser may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions, unless this document expressly contemplates otherwise.

19.4 Exclusion of contrary legislation

Any legislation that adversely affects an obligation of the Supplier, or the exercise by the Purchaser of a right or remedy, under or relating to this document is excluded to the full extent permitted by law.

19.5 Inconsistency with other documents

In the case of conflict in or ambiguity between any of the documents constituting this Contract, then the order of precedence will be the order set out below:

- (a) the Purchase Order;
- (b) these operative provisions;
- (c) any other documents expressly incorporated into this Contract by the operative provisions or the Particulars.

19.6 Confidentiality

This Contract and any documents or information relating to the Contract, Customer and the Equipment, Goods and/or Services are confidential and the Supplier must not disclose any of these to any third party without the



prior written consent of the Purchaser except to the extent that the disclosure is required for the Supplier to carry out its obligations under the Contract.

19.7 Counterparts

This document may be executed in counterparts.

19.8 Attorneys

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

19.9 Freedom of Association and Compliance with Industrial Laws

The Supplier must not support an industrial organisation to:

- (a) participate in any form of unauthorised industrial action or secondary boycott that affects the Equipment, Goods, or Services provided; or
- (b) except as required by law, demand or force any other person carrying out work for the Purchaser to:
 - i. join a union;
 - ii. make contributions to a specified superannuation fund; or
 - iii. make payments for redundancy or long service leave into a specified fund.

19.10 Engagement of Illegal Workers

The Supplier must not engage illegal workers on the Purchaser's Sites.

For the purposes of this clause, an 'illegal worker' is a person who is an Unlawful Non-Citizen who is working without a visa, or a Non-Citizen who is performing work in breach of a Visa Work Condition, and the following definitions also apply:

- i. 'Supplier' will, include the officers, employees, volunteers, bailees, agents and authorised subcontractors of the Supplier; and
 - ii. 'Non-Citizen' has the same meaning as under the Migration Act 1958; and
 - iii. 'Unlawful Non-Citizen' has the same meaning as under the Migration Act 1958; and
 - iv. 'Visa Work Condition' means a condition of a visa restricting the work that the Non-Citizen may do in Australia, and a reference to the Migration Act 1958 is a reference to that Act as amended or replaced from time to time.
- (a) The Supplier must ensure that no employee or independent contractor, including those engaged by any subcontractors, is an illegal worker whilst working on the Purchaser work sites.
 - (b) The Supplier must make compliance by any subcontractors with the provisions of this clause a condition of any subcontract.
 - (c) The Supplier must remove, or cause to be removed, any illegal worker from any involvement in the carrying out of the Services and arrange for their replacement at no cost and immediately upon becoming aware of the involvement of the illegal worker.
 - (d) For the avoidance of doubt, compliance with the Supplier's obligations under this clause will not excuse the Supplier from compliance with its obligations under this Contract.
 - (e) When requested in writing, the Supplier will provide evidence within 14 days that they have taken all reasonable steps to ensure that it has complied and is complying with their obligations under this clause.
 - (f) Suppliers may check a non-citizen's entitlement to work in Australia at www.immi.gov.au/vevo.

19.11 Modern Slavery

- (a) The Supplier warrants that it does not knowingly, and covenants that it will not knowingly:
 - i. engage in any form of Modern Slavery;
 - ii. engage a Supplier which in any way engages in any form of Modern Slavery; and
 - iii. give or receive goods or services from, or otherwise deal with, a Supplier which in any way engages in any form of Modern Slavery.

- (b) The Supplier will:
 - i. comply with Modern Slavery Laws;
 - ii. treat all its Workers with dignity and respect;
 - iii. not apply any form of threat, coercion, violence (including corporal punishment) or deception to any Worker;
 - iv. not discriminate against any Worker on the basis of any attribute protected by any anti-discrimination law;
 - v. do all that it reasonably can to ensure that all entities in its Supply Chains treat their Workers in a manner consistent with this clause 20.14(b).

- (c) The Supplier will, on the Purchaser's request:
 - i. provide a written statement confirming that it, all its Related Companies and all its Suppliers, are not in any way involved in any form of Modern Slavery; and
 - ii. take all reasonable steps to procure a written statement from any entity in any of its Supply Chains confirming that, that entity is not in any way involved in any form of Modern Slavery.

- (d) The Supplier will, whenever requested by the Purchaser, disclose all suppliers of goods or services in its Supply Chains (as at the time of the request) relevant to the supply of goods or services to the Purchaser

- (e) In the event the Supplier identifies an occurrence or risk of Modern Slavery in its own operations or within its Supply Chains, it will immediately:
 - i. take reasonable and appropriate steps to rectify that occurrence or mitigate that risk (including provision of an appropriate remedy for the victim of that occurrence); and
 - ii. notify the Purchaser of that occurrence or risk and the steps taken by the Supplier to rectify that occurrence or mitigate that risk.