



General Terms and Conditions for Goods and Services

General Terms and Conditions for Goods and Services

1 Your Obligations

- 1.1 You must:
- (a) perform the Services and Deliver the Goods in accordance with:
 - (i) this Contract;
 - (ii) the Standards;
 - (iii) Good Industry Practice;
 - (iv) the Policies and Procedures;
 - (v) all applicable Laws; and
 - (vi) the directions of Our Representative and without delay;
 - (b) ensure that the Goods are Delivered to the Delivery Place on or before the Date for Delivery;
 - (c) ensure that the Services are Completed on or before the Date for Completion;
 - (d) when on the Site, comply with the directions of Our Representative;
 - (e) obtain and comply with all licences, permits, determinations, permissions, approvals and consents required from a Government Authority or under any Law relating to the supply of Goods and performance of the Services or otherwise in connection with this Contract (**Approvals**), unless otherwise specified in this Contract; and
 - (f) provide us with evidence of your compliance with this Contract whenever reasonably requested by us.
- 1.2 By accepting a purchase order from us, you waive the right to rely on any terms and conditions (whether, without limitation, printed on, added to or contained in, any of your quotations, proposals, invoices, order acknowledgements, confirmations, acceptances, deliverables, bills of lading or other instruments).
- 1.3 Minor items not expressly mentioned in this Contract but which are necessary for the satisfactory completion of the Services and Delivery of the Goods shall be performed by you without adjustment to the Contract Price.

2 Our Obligations

- 2.1 Subject to any rights of ours under this Contract and to you performing your obligations under this Contract, we will:
- (a) give you access to the Site as required;
- 2.2 pay you the Contract Price.

3 Warranties

- You warrant that:
- 3.1 the Goods will be new, and free from Defects;
 - 3.2 the Goods will be of merchantable quality and Fit for Purpose;
 - 3.3 the Goods and Services will comply with all the requirements of this Contract;
 - 3.4 the Goods will be free from any encumbrance, lien, mortgage, security interest, charge or any other third party interest from the time when title to the Goods passes to us; and

3.5 the Contract Price includes an allowance for all items, works, goods, services, costs, expenses, escalation, rise and fall and taxes, duties or fees of any nature for the performance of the Services and Delivery of the Goods.

4 Design

- 4.1 This clause 4 only applies if the Scope of Goods and Services includes design.
- 4.2 You must submit your design to us for review in sufficient time so as not to delay the Delivery of the Goods and performance of the Services.
- 4.3 You must not carry out any work in relation to your design unless we have:
- (a) reviewed your design and advised you that we have no comments; or
 - (b) advised you that we do not wish to review your design.
- 4.4 If we provide comments on your design, you must amend the design in accordance with those comments.
- 4.5 The provision of comments by us does not relieve you of your obligation to design the Goods so that they are Fit for Purposes.
- 4.6 You must provide us with copies of the design and inspection certificates required by any Laws or for us to obtain any approval, consent or certificate, or otherwise required by this Contract or us in relation to your design.

5 Intellectual Property

- 5.1 You agree that all Project IP Rights will be vested in us and will be our property as and when created and you assign and must ensure that all of your Personnel assign all their respective right, title and interest in and to the Project IP Rights to us.
- 5.2 We grant to you a non-exclusive, non-transferable, royalty free and revocable licence to use our Background Intellectual Property Rights and the Project IP Rights solely for the purposes of performing your obligations under this Contract.
- 5.3 You grant to us and our Related Bodies Corporate a non-exclusive, transferable, royalty free, irrevocable, perpetual licence to use, reproduce, configure, adapt and modify (including a right to sublicense) your Background Intellectual Property Rights (and Project IP Rights, to the extent that any assignment in accordance with clause 5.1 is not or not yet effective) for the purpose of completing the works which we are engaged to perform as part of the Project and using, operating, maintaining, repairing, making improvements to, upgrading or altering those works or any other works in which the works are incorporated or selling or financing the works or the Project.
- 5.4 You warrant that the Services and the Goods will not infringe any Intellectual Property Rights of a third party.
- 5.5 On our request, you must execute any formal assignment or other document required to give effect to this clause 5.

6 Information Provided by Us

- 6.1 Information and documents provided by us remain our property.

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6.2 Information or documents of any nature made available to you by or on behalf of us do not constitute a warranty or representation of any kind by us. You agree that you have checked and verified such information and documents for accuracy, correctness and completeness.

6.3 You have No Claim against us on account of any alleged statement, warranty, representation or documentary material made or provided by us.

7 Liability

7.1 You remain liable for the performance of the Services and the Delivery of the Goods despite you:

- (a) subcontracting any part of the performance of the Services or supply of the Goods;
- (b) our review, approval or acceptance of the Goods or Services; or
- (c) any insurances you effected.

7.2 Subject to clause 7.4, neither party has any liability to the other for any Consequential Loss.

7.3 Subject to clause 7.4, each party's liability to the other arising out of or in connection with this Contract is limited to the Contract Price.

7.4 Clauses 7.2 and 7.3 do not apply:

- (a) for matters which cannot be limited or excluded at Law;
- (b) with respect to your liability, under your indemnity obligations under clause 16;
- (c) for breach of clause 5.4 or clause 25;
- (d) for breach of Law or Approvals by a party or its Personnel;
- (e) to the extent that a party is insured and it recovers proceeds for the relevant Claim or Loss under an insurance policy, would have been entitled to recover under such an insurance policy for the relevant Claim or Loss but for the act or omission of that party (including a failure to diligently pursue a claim), in which case that party's liability will be limited to the amount recovered or which would have been recovered but for that party's act or omission; or
- (f) arising out of, or in connection with, criminal or fraudulent activities, Wilful Misconduct or Wilful Default by a party or its Personnel.

8 The Site

8.1 When you access the Site, you must perform the Services and Deliver the Goods (if relevant) in accordance with the relevant workplace health and safety requirements (including the work health and safety Laws relevant to the Site) as well as any of our workplace health and safety plans and requirements, which we notify to you from time to time.

8.2 You must provide and maintain a safe working environment for persons carrying out or affected by this Contract and identify and take any appropriate precautions.

8.3 You must ensure that your Personnel comply with the Policies and Procedures as well as any Site residential behaviour policies. If any of your Personnel fail to comply with any Policies and Procedures or such

residential policies, this may lead to the offending individual being removed from Site and barred from the Site. You will bear the cost and time consequences of such removal.

8.4 We may audit your health and safety practices or engage a third party to do the same. You must provide reasonable assistance to us in order for us to perform the audit.

8.5 When you are accessing the Site, you must ensure that you do not interfere or disrupt:

- (a) the work of other contractors, including by preventing their access to the Site or any works; or
- (b) any operations at the Site.

9 Personnel and Subcontracting

9.1 You must not subcontract any substantial part or all of the performance of the Services or the Delivery of the Goods except with our prior written consent, which approval may be withheld in our absolute discretion. Any subcontract must be on terms consistent with this Contract and is subject to our approval.

9.2 You must appoint a representative for the duration of this Contract, who has been approved by us. Any directions given by us (including by Our Representative) to Your Representative will be deemed within your knowledge.

9.3 Our Representative may direct that you remove from the Site any person who in our reasonable opinion is guilty of misconduct, is incompetent, negligent or otherwise interfering with the orderly progress of the other work at the Site.

9.4 You must co-operate and co-ordinate with other contractors at the Site or associated with the Delivery of Goods and performance of the Services.

9.5 Your Representative must attend any Site meetings as requested by us.

9.6 You are responsible for managing your Personnel and industrial relations with, or in relation to, your Personnel (including the employees of your subcontractors at every tier) and must do so using a high standard of skill, care and diligence. You must not hinder or adversely affect our Personnel and our industrial relations or any other employer at the Site or otherwise providing Services to the Site.

10 Risk and Title to the Goods

10.1 Risk in the Goods passes from you to us upon Delivery of the Goods to the Delivery Place.

10.2 Title in the Goods passes from you to us upon full payment for the Goods.

10.3 Risk in the Services passes from you to us upon Completion.

10.4 Title in the Services passes from you to us upon full payment for the Services.

10.5 If we are required to make payment (in part or whole) for the Goods prior to the Goods being delivered, we may request security as a pre-condition to payment. If we request security in item 17 of the Details, you must provide us with security:

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- (a) in the form requested by us, and if the security requested is a bank guarantee or performance bond, it must be:
- (i) unconditional and irrevocable and payable in Perth on demand;
 - (ii) from a provider approved by us; and
 - (iii) otherwise on terms reasonably required by us;
- (b) at the same time as submitting a claim for payment for the Goods;
- (c) in the amount specified by us, which will be for the whole or part of the pre-payment.
- 10.6 If you provide us with security in accordance with clause 10.3, we may have recourse to that security if you fail to perform your obligations under this Contract.
- 10.7 You must not take any steps to injunct or otherwise restrain:
- (a) us from using any sum or sums received from the conversion of any security;
 - (b) us from exercising any rights under any security; or
 - (c) the issuer of the security from exercising its rights or performing its obligations under the security.
- 10.8 We will return any security provided under this clause 10 when the Goods are Delivered.
- ## 11 Insurance
- 11.1 You must effect and maintain the following insurances to the extent required to cover your liabilities under this Contract:
- (a) insurance for the Goods with a sum insured for the value of the Goods plus 10%;
 - (b) public and products liability insurance covering legal liability to pay compensation for bodily injury, death, sickness or disease to any person and loss, destruction or damage to real or personal property (including resultant loss of use), arising directly or indirectly from your obligations under this Contract. The policy must include a principal's indemnity extension and a cross liability clause;
 - (c) any other insurance required by Laws, including Workers' Compensation; and
 - (d) when attending client's Site, industrial disease insurance;
- and if required in the Details, you must effect and maintain:
- (e) professional indemnity insurance;
 - (f) when Goods are shipped and while in transit in ports, Marine transit insurance; and/or
 - (g) plant, property and equipment insurance in respect of all plant, equipment and any other property owned, operated or controlled by you or your Personnel or, subcontractors for which you are responsible or which you bring to or use on the Site including transit risk or at other places where your obligations under this Contract are performed for not less than the market value of the plant and equipment. The policy must include
- a waiver of subrogation, a principal's indemnity extension and a cross liability clause.
- 11.2 You must maintain the insurances set out in clause 11.1 for the term of this Contract, except for:
- (a) the professional indemnity policy which must be maintained from the commencement of this Contract until the date that is 7 years following expiry of this Contract; and
 - (b) insurance of the Goods which must be maintained from the commencement of this Contract until the Goods are Delivered to the Delivery Place.
- 11.3 You must obtain the insurances set out in 11.1 on commercially reasonable terms and from an insurer acceptable to us with a minimum S&P rating of at least A-.
- 11.4 You must ensure that all policies of insurance required to be taken out by you under this Contract include us as named co-insured and you must do anything we reasonably request to protect us as an insured. However, if the relevant insurer refuses to include us as a named co-insured, you must ensure that the policy notes our interest under this Contract.
- 11.5 If requested by us, the terms of coverage shall be evidenced upon provision of policy wordings, schedules and certificates of currency (on insurer letterhead) by you to us.
- 11.6 If you fail to effect and maintain the required insurances, you will be in breach of this Contract and we may (at our discretion) effect the insurances and recover this cost from you, including by calling on any security you have provided.
- 11.7 You must:
- (a) ensure that you arrange and pay the premium costs of the insurance policies set out in 11.1;
 - (b) ensure that all of your subcontractors maintain insurance on materially equivalent terms as you are required by the terms specified in this Contract;
 - (c) provide at least thirty (30) Business Days' prior written notice to us of any cancellation or material change to any of the policies referred to in 11.1;
 - (d) not knowingly permit or suffer to be done any act, matter or thing whereby any insurance required to be effected under this Contract may be vitiated or rendered void or voidable;
 - (e) give full, true and particular information relevant to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any policy or policies of insurance or the payment of any or all moneys under that policy or policies; and
 - (f) at all times comply with the terms and conditions of the insurances arranged by you and pay all excesses and deductibles under the terms of such insurances.
- 11.8 If an event occurs or a circumstance arises which may give rise to a claim under any insurance policy to be taken out by you under this Contract, (i) notify us within 10 Business Days of that event, (ii) actively make a claim under the relevant policy and remit to us any insurance proceeds recovered by you in respect of our rights and interests under or in connection with this

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Contract or any liability to third parties and (iii) ensure that we are kept fully informed of any subsequent actions and developments concerning the relevant claim.

12 Time for Performance

12.1 You must Deliver the Goods to the Delivery Place by the Date for Delivery.

12.2 You must Complete the Services by the Date for Completion.

12.3 We may request you to provide a program in relation to the performance of the Services and supply of the Goods in a form reasonably acceptable to us. You must not, without reasonable cause, depart from such program. You must update the program whenever reasonably required by us, and at a minimum:

- (a) monthly; and
- (b) whenever an extension of time has been granted under this clause 12.

12.4 If you are delayed in performing the Services or delivering the Goods for any reason, including due to a Delay Event, you must notify us in writing within 3 Business Days after the delay commences, giving details of the delay and any proposed measures for avoiding or mitigating the delay (**Delay Notice**). If you fail to comply with this requirement, you will have No Claim against us in relation to the delay.

12.5 We may direct you to implement any of the measures set out in the Delay Notice.

12.6 If the delay the subject of the Delay Notice is a Delay Event, within 3 Business Days of the Delay Notice given under clause 12.4, you must provide us with a claim for an extension of time, specifying:

- (a) the details of the Delay Event;
- (b) the number of days extension of time you are claiming;
- (c) the measures you have taken or will take to mitigate or avoid the delay;
- (d) evidence that no reasonable reprogramming of your obligations could avoid the effect of the Delay Event;
- (e) if the Delay Event is a breach of our obligations under this Contract, the estimate of your reasonable costs incurred as a result of the Delay Event;
- (f) evidence that the delay has delayed your activities on the critical path of the current program; and
- (g) any other information reasonably requested by us.

If you fail to provide the required information within the required time, you will have No Claim against us in relation to the delay.

12.7 If:

- (a) you have given the Delay Notice pursuant to clause 12.4;
- (b) you have submitted an extension of time claim in accordance with the requirements of clause 12.6;

(c) you have actually been delayed in Completing the Services by the Date for Completion or Delivering the Goods by the Date for Delivery by reason of a Delay Event; and

(d) you have taken reasonable steps to mitigate the delay or avoid the effects of the delay,

we may grant you a reasonable extension to the Date for Delivery or the Date for Completion (as applicable). If we do not grant you an extension to the Date for Delivery or the Date of Completion within 30 Business Days of your notice, an extension to the Date for Delivery or the Date of Completion (as applicable) will be deemed to have been rejected. Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not a Delay Event which entitles you to an extension of time, then to the extent that the delays are concurrent, you are not entitled to an extension of time to the Date for Delivery or the Date for Completion (as applicable).

12.8 A delay by us or the failure by us to grant a reasonable extension of time or to grant an extension of time will not cause the Date for Delivery or the Date for Completion (as applicable) to be set at large.

12.9 Subject to clause 12.10, your entitlement to an extension to the Date for Completion is your sole remedy for any delay or disruption caused to the performance of the Services and Delivery of the Goods and subject to that entitlement you will have No Claim against us in relation to any delay.

12.10 If we grant an extension to the Date for Delivery or the Date for Completion by reason of our breach of this Contract, we will reimburse to you your actual, reasonable and direct costs incurred as a result of the delay.

12.11 We may extend the Date for Delivery or the Date for Completion at any time and from time to time, without any obligation to act for your benefit.

13 Liquidated Damages

13.1 If the Details require liquidated damages for delay, if you do not Deliver the Goods by the Date for Delivery or if you do not achieve Completion of the Services by the Date for Completion, we may deduct from any payment to you, or otherwise recover from you, liquidated damages at the rate set out in the Details for each day up until and including the earlier of the Date of Delivery or Date for Completion (as applicable), and the date this Contract is terminated.

13.2 Your liability to us for liquidated damages under clause 13.1 of this Contract is limited to the amount set out in the Details. Subject to clause 13.3, the payment of liquidated damages is our sole financial remedy for delay in Delivery of the Goods or Completion of the Services (as applicable).

13.3 If the liquidated damages referred to in clause 13.2 are found to be void or unenforceable, we reserve our right to claim general damages from you at Law, capped at the limit of liquidated damages set out in the Details.

14 Suspension

14.1 We may direct you to suspend the carrying out of the whole or part of the supply of the Goods or performance of the Services for such time as we think fit, if we, acting reasonably, are of the opinion it is necessary.

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- 14.2 If we direct you to suspend under clause 14.1, you must suspend the Delivery of the Goods or performance of the Services in accordance with the direction, including within the time required by the direction, which may be immediately.
- 14.3 If the suspension is due to an act or omission by us and you have incurred extra cost as a direct consequence of the suspension, you may give Our Representative a written claim with supporting particulars of the reasonable extra costs within 10 Business Days after the suspension and we will pay for such actual, reasonable and direct extra costs in accordance with clause 15.2.
- 14.4 You must recommence supply of the Goods or performance of the Services upon our direction to recommence.
- 15 Variations**
- 15.1 We may direct a Variation in writing to you in a document titled "**Variation Order**".
- 15.2 If the direction will cause you to incur more or less cost, you must notify us prior to carrying out the Variation and in any case within 3 Business Days of the date of the Variation Order, giving details of:
- (a) any effect on the Date for Completion or the Date for Delivery (as relevant);
 - (b) the additional costs you expect to incur or costs you expect to save (as the case may be); and
 - (c) whether the Variation is in conflict with any Laws.
- 15.3 If you consider that you have been requested or directed to carry out a Variation, but we have not given you a Variation Order, you must give written notice within 3 Business Days of the date of the direction to Our Representative giving your opinion and the effect which you anticipate that the Variation will have on the items in clause 15.2.
- 15.4 If you do not give the notice in accordance with clause 15.2 or clause 15.3 (as applicable), you will have No Claim against us relating to the Variation.
- 15.5 The price of a Variation will be determined by agreement between the parties or, if not agreed, by us using:
- (a) rates and prices stated in this Contract; or
 - (b) reasonable rates and prices.
- 16 Indemnity**
- 16.1 You indemnify us and our Personnel from and against:
- (a) any loss or damage to our property, whether within or outside the Site; or
 - (b) any Claim or Loss suffered or incurred by us in connection with:
 - (i) illness, injury to, or death of any person;
 - (ii) the loss or damage of any third party property; or
 - (iii) breach of any applicable Laws or Approvals,
- in each case, in connection with your performance of this Contract.
- 16.2 Your liability to indemnify us and our Personnel under this clause will be reduced to the extent that our or our Personnel's breach of this Contract or negligence contributed to the Claim or Loss.
- 17 Protection of People and Property**
- 17.1 Insofar as compliance with this Contract permits, you must:
- (a) take measures necessary to protect people and property;
 - (b) avoid unnecessary interference with the passage of people and vehicles; and
 - (c) prevent nuisance and unreasonable noise and disturbance.
- 17.2 If you damage property, you shall promptly rectify the damage and pay any compensation which the law requires you to pay.
- 17.3 If you fail to comply with an obligation under this clause 17, we, after Our Representative has given reasonable written notice to you and in addition to our other rights and remedies, may have the obligation performed by others. The cost thereby incurred shall be certified by Our Representative as moneys due from you to us.
- 18 Delivery and Completion**
- 18.1 You must procure and transport, at your own risk and expense to the Delivery Place, the Goods in an expeditious and orderly manner and as further described in this Contract. You must, at your own expense, handle all imported Goods at the point of import (if any) and any formalities for customs clearance, and provided that if the applicable Laws require any application or act to be made by or in our name, we must take all necessary steps to comply with all applicable Laws. You must assist us in complying with those Laws.
- 18.2 You must notify Our Representative when you consider that Delivery has been achieved, Our Representative will inspect the Goods at the Delivery Place to determine whether Delivery has been achieved. If the Delivery Place is not the Site, you must allow a reasonable time for Our Representative to attend the Delivery Place.
- 18.3 Within 5 Business Days of our inspection of the Goods, we will:
- (a) confirm Delivery to you, specifying the Date of Delivery; or
 - (b) advise of what further steps need to be taken before Delivery is achieved.
- 18.4 If we advise you of further steps under clause 18.3(b), you must remove the Goods from the Delivery Place and promptly perform those steps until Delivery has been achieved, in which case the process in clauses 18.2 and 18.3 apply again until Our Representative confirm Delivery.
- 18.5 You must notify Our Representative when you consider that Completion has been achieved and Our Representative will assess the Services and to determine whether Completion has been achieved.
- 18.6 Within 2 Business Days of our inspection of the Services, we will:
- (a) confirm Completion to you, specifying the Date of Completion; or

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- (b) advise of what further steps need to be taken before Completion is achieved.
- 18.7 If we advise you of further steps under clause 18.6(b), you must promptly perform those steps or re-perform those Services until Completion has been achieved, in which case the process in clause 18.6 applies again until Our Representative confirm Completion.
- 19 Defective Services and Goods**
- 19.1 If at any time, including during the Defects Liability Period, we discover a Defect, we may direct you to make good the Defect by repairing, rectifying, re-performing or replacing the Goods or the Services (as relevant) and any damage caused by the Defect unless we determine:
- (a) the Defect or the resulting damage has or may result in further loss, damage or injury if not rectified immediately;
 - (b) the Defect has or may result in a reduction of the performance of the works in which the Goods or Services are incorporated;
 - (c) a breach of Law or Approvals has occurred; or
 - (d) in the event of an emergency,
- in which case we will rectify the Defect ourselves and the cost of doing so will be a debt due from you to us.
- 19.2 If you are directed to make good a Defect, you must do so within the time reasonably required by us, in a manner which causes as little disruption and inconvenience to us as possible. The rectification, replacement, re-performance or other make good activity will be subject to a separate Defects Liability Period commencing on the date the Defect is made good. You must bear all incidental costs, including any cost of removal associated with the repair, replacement or making good the Defects.
- 19.3 If you fail to promptly comply with a direction to make good a Defect, we may make good the Defect ourselves and the cost of doing so will be a debt due from you to us.
- 20 Warranted Component Parts**
- 20.1 You must provide warranties for Warranted Component Parts for the duration of the Warranted Component Parts Period that are fully assignable to us.
- 20.2 The warranties provided under 20.1 must be from both the manufacturers, agents and suppliers of a Warranted Part Component and the installer of any Warranted Part Component. The warranties must also name both you and us as warrantee and if we discover during the Warranted Component Parts Defect Period a Defect in a Warranted Component Parts, we may direct you to warrant that the Warranted Component Parts will comply with all the requirements of this Contract.
- 21 Payment**
- 21.1 You may make claims for payment of the Contract Price at the times set out in the Purchase Order or in the Details, supported by appropriate evidence and based on the value of the Services that you have performed and Goods that you have delivered at that time. All payments under the Contract will be made in the currency stated in the Purchase Order or the Details.
- 21.2 Subject to our rights under this Contract we will pay you the amount stated in your claim within 30 Business Days after you submitted your claim under clause 21.1.
- 21.3 Payments made by us are payments on account only and are not to be taken as evidence of compliance with this Contract.
- 21.4 You are not entitled to claim payment for any Goods not delivered or any Services not performed, unless expressly set out in this Contract.
- 21.5 We may deduct from money due to you any money whatsoever due or which may become due from you to us for any reason.
- 21.6 In consideration of us making the final payment to you, you release us from all claims and actions and agree that you have No Claim against us arising out of or in connection with this Contract.
- 21.7 During the period of this Contract and for a further 2 years, our authorised representatives are entitled to access any relevant accounts, records, vouchers, receipts and documents (including data stored in computer files) for the purposes of ensuring that the terms of this Contract have been complied with and that all applications for payment have been and are being made in accordance with this Contract. Without prejudice to the foregoing, we have a right to conduct an audit of the basis of your invoices using your records. This right continues for 12 months after we pay the relevant invoice. If we exercise this right, you must make available to us all relevant records and documentation.
- 22 GST**
- 22.1 In this clause **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (**GST Act**) as amended or replaced. Words and expressions used in this clause which have a particular meaning in the GST law (as defined in the GST Act), applicable legislative determinations and Australian Taxation Office public rulings, have the same meaning, unless the context otherwise requires.
- 22.2 Unless GST is expressly included, the consideration to be paid or provided under any other clause of this Contract for any supply made under or in connection with this Contract does not include GST.
- 22.3 To the extent that any supply made under or in connection with this Contract is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time as the GST exclusive consideration is to be paid or provided, subject to receipt of a tax invoice.
- 22.4 If an adjustment event occurs in relation to a supply under or in connection with this Contract, the amount payable under subclause 22.3 will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties within 10 Business Days of an adjustment note being issued.
- 22.5 To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

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23 Termination

- 23.1 We may immediately terminate this Contract if:
- (a) you have committed a breach of this Contract and:
 - (i) the breach continues for more than 5 Business Days after we have given written notice of the breach; or
 - (ii) we consider (acting reasonably) that the breach is not capable of remedy;
 - (b) you have committed more than 3 breaches of this Contract for which we have given written notice, even though those breaches have been rectified;
 - (c) the cap on liquidated damages has been reached;
 - (d) if you are insolvent, have an administrator appointed or a controller (as defined in section 9 of the *Corporations Act 2001 (Cth)*) appointed over any of your property or in any way indicates that it is or will become unable to pay its debts as and when they become due or payable including if you:
 - (i) suspend payment of your debts; or
 - (ii) as an individual, commit an act of bankruptcy;
 - (e) there is a Wilful Default or Wilful Misconduct by you or your Personnel; or
 - (f) your aggregate liability under clause 7 is reached.
- 23.2 You have No Claim against us in relation to termination of this Contract in accordance with clause 23.1. If we terminate this Contract under clause 23.1, we may recover any Claim or Loss that we suffer arising out of or in connection with the termination of this Contract.
- 23.3 Without limitation or prejudice to any other right available to us under this Contract or at law, we may at any time and for whatever reason (including our convenience) terminate this Contract. In such circumstance, your exclusive remedy and entitlements are limited to:
- (a) the amount for the Goods delivered and Services properly carried out prior to the date of termination which would have been payable if this Contract had not been terminated and you had made a claim in accordance with clause 21 for work done up to the date of termination; and
 - (b) any cost or liability which in the circumstances was reasonably incurred by you in the expectation of completing your obligations.

24 Disputes

- 24.1 This Contract and all questions arising in connection with it are governed by and will be construed in accordance with the laws in force in the State of Western Australia. The parties agree that any conflict of laws rule that may otherwise refer the interpretation of this Contract to the laws of another jurisdiction, will not apply to this Contract. The language of this Contract shall be English and all documentation provided by the parties shall be in English.
- 24.2 Either party may give a notice in writing to the other giving formal notice and details of a dispute between the parties (**Notice of Dispute**).

24.3 Representatives of the parties having authority to settle the dispute must meet within 5 Business Days of service of the Notice of Dispute to attempt to resolve the dispute. If the Representatives cannot do so, subject to 24.4 below, either party may commence legal proceedings in the Courts of Western Australia in respect of the issues outlined in the Notice of Dispute.

24.4 If you are incorporated in a country which is not listed in the Schedule to the *Australian Foreign Judgements Regulations 1992 (Cth)*, then any dispute, difference, controversy or claim whatsoever arising out of or in connection with this Contract ("Dispute") shall be submitted to arbitration in accordance with, and subject to UNCITRAL Arbitration rules 2010 (as amended from time to time) on the following basis: (i) the venue of the arbitration must be in Perth, Western Australia; (ii) three arbitrators will be appointed by agreement between the Parties. If the parties cannot agree the appointment of the arbitrators, the arbitrators will be appointed by the Resolution Institute of Australia (National); (iii) the arbitrator(s) must be a Queens Counsel or Senior Counsel or a retired member of the Judiciary; (iv) the arbitration will be conducted in English.

24.5 Nothing in this clause 24 prevents a party from commencing proceedings to enforce payment due under this Contract or seek injunctive or urgent declaratory relief to the courts in the jurisdiction in which the other party or the item which is subject of such interlocutory or injunctive proceedings is situated. However, and for the avoidance of doubt, nothing in this clause shall give such local courts the jurisdiction or power to determine or adjudicate the substantive merits of any dispute or claim arising out of or in connection with this Contract.

24.6 If you:

- (a) do not have a registered office in Australia, you will be required to appoint an agent in Western Australia for receipt of legal notices and service of legal process. You will notify us the name and address of your agent. Any process to be served on you, and any notice to be given to you, may be validly served or given by being left at the address so notified; and
- (b) fail to meet your obligations under clause 24.6(a) within 30 days of the date of this Contract, then we may appoint ourselves a person in Western Australia to act as agent for you and will notify you of the appointment. You will be responsible for all costs incurred by us in so doing.

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

24.8 The parties have agreed to exclude the application of the United Nations Convention on Contracts for the International Sale of Goods to this Contract.

25 Confidentiality

25.1 You acknowledge and agree that:

- (a) the Confidential Information is valuable to us and has commercial value;
- (b) we will suffer Loss if you disclose, or permit the disclosure of, any of the Confidential Information in breach of this Contract; and
- (c) the Confidential Information remains the property of us at all times and neither you nor your

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- Personnel have any proprietary or other interest in the Confidential Information.
- 25.2 Subject to the terms of this Contract, you must:
- (a) at all times maintain the confidentiality of the Confidential Information;
 - (b) not use Confidential Information for any purpose other than performance of this Contract;
 - (c) not reverse engineer, decompile or disassemble any Confidential Information;
 - (d) only copy or reproduce Confidential Information to the extent required to perform this Contract, or as otherwise agreed in writing by us; and
 - (e) take appropriate measures to secure the Confidential Information so as to prevent unauthorised access.
- 25.3 You must not disclose any Confidential Information to any person except:
- (a) with our prior written consent;
 - (b) to your Personnel or a third party, but only to the extent required to perform your obligations under this Contract; or
 - (c) if you are required to do so by Law, a Government Authority or a recognised stock exchange, provided that prior to such disclosure you gives notice to us with full particulars of the proposed disclosure.
- 25.4 You must, prior to disclosure of Confidential Information to any person referred to in clause 25.3(b), procure from that person a confidentiality undertaking for the benefit of us which is consistent with the terms of this clause 25.
- 25.5 If you becomes aware of any unauthorised use or disclosure of Confidential Information, or any suspected or possible breach of this clause 25, you must:
- (a) immediately notify us giving details;
 - (b) do everything necessary to remedy the unauthorised use or disclosure of the Confidential Information, or to prevent the suspected or possible breach of this clause 25;
 - (c) comply with any direction by us in relation to such unauthorised use or disclosure or suspected or possible breach; and
 - (d) give us all assistance required in connection with any proceedings which we may institute against any person referred to in clause 25.3(b) for any breach of its confidentiality undertaking referred to in clause 25.4.
- 26 Business Ethics**
- 26.1 Neither you, nor any of your Personnel or subcontractors, are expected, permitted or authorised to take any action on our behalf, including any action which would violate any anti-corruption applicable Laws (including Laws of a country other than Australia which applies to us, you or any of our and your Personnel or subcontractors).
- 26.2 All financial statements, reports and applications for payment which are rendered by you under this Contract must completely and accurately reflect the facts about all the relevant activities, transactions and circumstances handled for the account of us.
- 26.3 You must immediately notify us in writing of any and all violations of this clause 26 upon becoming aware of such violations.
- 26.4 You must exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with our best interests.
- 26.5 You (i) covenant that you shall comply with the *Modern Slavery Act 2018 (Cth)*, (ii) warrant that you have thoroughly investigated your labour practices and those of your agents, contractors or subcontractors and directed them accordingly to investigate their own practices, to ensure that there is no forced labour or slavery used anywhere in its business or in the business of your agents, contractors or subcontractors (iii) warrant that you have put in place all necessary processes, procedures, investigations and compliance systems to ensure that the warranties made in this clause 26.5 will be valid at all times, (iv) warrant that you have taken, and you will take in the future, all necessary actions and investigations to remain compliant with applicable Laws in relation to modern slavery and exploitative practices and (v) covenant that you will provide us, upon request, information with respect to your supply chain and any other information reasonably required to enable us to comply with the *Modern Slavery Act 2018 (Cth)*.
- 27 Generally**
- 27.1 Capitalised terms not defined in this clause have the meaning given to them in the Details.
- 27.2 **Background Intellectual Property Rights** means the Intellectual Property Rights in connection with a party's activities which are owned by, or licensed to, that party and which:
- (a) are in existence as at the date of this Contract; or
 - (b) come into existence after the date of this Contract, otherwise than in connection with this Contract.
- 27.3 **Business Day** means any day that is not a Saturday, Sunday or gazetted public holiday in the State or Territory in which the Site is located.
- 27.4 **Claim** means any claim (including a claim for an increase in the Contract Price, the payment of money (including damages) or an extension of time), proceeding, action, demand or suit (including by way of contribution or indemnity), howsoever arising and whether made:
- (a) under or in connection with your performance of the Services or Delivery of the Goods; or
 - (b) otherwise at Law, including in tort (for negligence or otherwise, including negligent misrepresentation) or for restitution based on unjust enrichment.
- 27.5 **Completion** means:
- (a) the Services have been completed in accordance with this Contract;
 - (b) all tests which are required to be performed under this Contract prior to completion being achieved have been carried out and passed to our satisfaction;
 - (c) there are no Defects in the Services, apart from minor Defects which do not prevent the Services from being used for their intended purpose;

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- (d) those tests which are required by this Contract to be carried out have been carried out and passed;
- (e) documents and other information required under this Contract which, in our opinion, are essential for the use, operation and maintenance of the Services have been supplied and approved by us; and
- (f) you have done everything which this Contract requires you to do as a condition precedent to completion.
- 27.6 **Confidential Information** means:
- (a) this Contract;
- (b) our documents; and
- (c) any other material or information that:
- (i) is expressly provided or made available on a confidential basis;
- (ii) could reasonably be expected to have been provided or made available on a confidential basis;
- (iii) relates to our Personnel, or to the business, operations or know-how of us, our Related Bodies Corporate or a Relevant Entity; or
- (d) is disclosed information, meaning all materials provided by or on behalf of us to you or your Personnel (whether before or after the date of this Contract), in connection with this Contract.
- 27.7 **Consequential Loss** means loss of revenue, loss of profit or anticipated profit, loss of business or business opportunity, loss of a bargain, loss of anticipated savings or wasted overheads, loss of use, loss of production, loss of reputation, pure economic loss, special, penal or exemplary damages, loss of use and payment of liquidated sums, liquidated penalties or liquidated damages under any agreement (other than this Contract).
- 27.8 **Contract** means the purchase order issued by us and, where applicable, its Details, these General Conditions and all annexures, schedules and appendices attached to any of those documents.
- 27.9 **Day** means a calendar day.
- 27.10 **Date for Completion** means the date specified in the Purchase Order or the Details by which you must Complete the Services.
- 27.11 **Date for Delivery** means the date specified in the Purchase Order or the Details by which you must Deliver the Goods to the Delivery Place.
- 27.12 **Date of Completion** means the date that Completion is achieved and accepted by us.
- 27.13 **Date of Delivery** means the date that Delivery is achieved and accepted by us.
- 27.14 **Defect** means any defect, error or omission in the in the Services or Goods and any failure of the Goods or Services to comply with the requirements of this Contract.
- 27.15 **Defects Liability Period** means a period of twelve (12) months from the Date of Delivery or the Date of Completion, or otherwise the period set out in the Details.
- 27.16 **Delay Event** means:
- (a) a breach of this Contract by us;
- (b) suspension directed by us, except to the extent caused by you;
- (c) a Variation;
- (d) a Force Majeure Event; or
- (e) any other event which is expressly stated to be a Delay Event in this Contract.
- 27.17 **Deliver or Delivery** means:
- (a) the Goods have been delivered to the Delivery Place;
- (b) all tests which are required to be performed under this Contract prior to Delivery being achieved have been carried out and passed to our satisfaction;
- (c) there are no Defects in the Goods, apart from minor Defects which do not prevent the Goods from being used;
- (d) all documents and deliverables required to be provided under this Contract have been provided to us; and
- (e) you have done everything which this Contract requires you to do as a condition precedent to Delivery.
- 27.18 **Details** means the document attached to, or accompanying, where applicable, the purchase order issued by us, with the title "Details of Purchase Order" or similar. In the absence of such a document, the Contract is the purchase order issued by us, these General Conditions and all annexures, schedules and appendices attached to any of those documents
- 27.19 **Fit for Purpose** means fit for the purposes, uses and functions and meets the requirements described in, or reasonably able to be inferred from, this Contract.
- 27.20 **Force Majeure Event** means any one, or combination, of the following events or circumstances:
- (a) a cyclone named in accordance with the procedures determined and approved by the "World Meteorological Organisation's Tropical Cyclone Committees" and the effects of rain-bearing depression into which any such named cyclone may weaken;
- (b) hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster;
- (c) civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities;
- (d) fire caused by any of the events referred to in paragraphs (a), (b) or (c);
- (e) a change in Law to deal with COVID-19 that a Relevant Contractor would not have contemplated at the date of this Contract;
- (f) ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination;
- (g) any maritime loss or damage,
- but excludes any event or circumstances or its consequences to the extent:

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- (h) that it is caused by the breach of this Contract by the affected party or an act or omission of the affected party or its Personnel;
- (i) it was within the reasonable control of the affected party or its Personnel;
- (j) it could have been reasonably prevented or overcome by the affected party.
- 27.21 **Goods** means the machinery, plant, equipment, materials and other items of any kind, whether or not fixed or incorporated, described in the Purchase Order or the Details and which are to be delivered by you.
- 27.22 **Good Industry Practice** means:
- (a) as would ordinarily be expected of a Relevant Contractor;
- (b) in a manner which is:
- (i) efficient, professional and cost effective;
- (ii) safe to the environment (as that term is defined under the applicable Law); and
- (iii) in accordance with all applicable Laws;
- (c) by trained, knowledgeable and experienced Personnel using high quality, safe and appropriate equipment, tools and procedures, and adopting the highest industry standards;
- (d) with an adequate number of skilled Personnel, materials, resources and supplies in order to perform the Services and Deliver the Goods in accordance with this Contract;
- (e) using new and high quality fixtures, fittings, finishes, equipment, apparatus, machinery and all other items which are intended to form, or which form, part of the Goods or Services, which are free from Defects and appropriate for the environment in which they are intended to be used,
- and where this definition results in conflicting standards, the highest standard applies.
- 27.23 **Government Authority** means any national, state, local, regional, territorial or municipal government, ministry, governmental department or authority, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body, having jurisdiction over any aspect of the performance of this Contract.
- 27.24 **Include or including** are not words of limitation.
- 27.25 **Intellectual Property Rights** means:
- (a) all copyright and analogous rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, trade secrets, know-how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields; and
- (b) moral rights, which has the meaning given in the *Copyright Act 1968* (Cth).
- 27.26 **Laws** includes:
- (a) any treaty, statute, directive, ordinance, by-law, rule, order, decree, regulation, warrant, or delegated legislation, in each case, of any nation, state, jurisdiction, intergovernmental or supranational organisation, or of any political subdivision of the foregoing, where the Goods or Services are performed and delivered,
- (b) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth, Western Australia and the State or Territory in which the Site is located, or the Goods or Services are delivered;
- (c) Approvals; and
- (d) fees and charges payable in connection with the above.
- 27.27 **Loss** means any loss (whether direct or indirect), debt, obligation, cost (including legal costs, deductibles or increased premiums), expense, damages, fine, penalty, compensation, charge or any other liability of any kind, whether:
- (a) actual, prospective or contingent;
- (b) currently ascertainable or not; or
- (c) arising under or for breach of contract, in tort (including negligence), restitution, or otherwise at Law.
- 27.28 **No Claim** means no claim for money or adjustment to the Contract Price or for an extension of time to the Date for Completion or Date for Delivery or for costs, expenses, loss or damage or other relief on any basis whatsoever whether under this Contract, otherwise at law or in equity.
- 27.29 **Personnel** means a party's employees, contractors, agents, consultants, officers or representatives, and in our case, excludes you and your employees, contractors, agents, consultants, officers and representatives.
- 27.30 **Policies and Procedures** means the policies, plans, manuals, guidelines, instructions and other requirements which are specified in the Details or otherwise notified to you by us, as may be amended or updated from time to time.
- 27.31 **Project IP Rights** means all Intellectual Property Rights (present or future) created, discovered, or coming into existence as a result of or in connection with the this Contract, including tendering for this Contract.
- 27.32 **Related Body Corporate** means any related body corporate as defined in the *Corporations Act 2001* (Cth).
- 27.33 **Relevant Contractor** means a contractor that exercises the degree of skill, quality, care, diligence and prudence that would reasonably be expected of a competent, expert and experienced contractor undertaking work, tasks, services, functions, responsibilities and obligations similar to those of you under this Contract.
- 27.34 **Standards** means any standard or code of practice (international, national or otherwise) applicable to the Delivery of the Goods and performance of the Services which is:
- (a) stated in the Details; or
- (b) where no standard or code of practice is stated in Details in respect of any particular component of this Contract:

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- (i) a relevant Australian Standard; or
- (ii) where no relevant Australian Standard applies, in accordance with Good Industry Practice.
- 27.35 **Services** means the services described in the Purchase Order or the Details.
- 27.36 **Site** means the lands and other places which are from time to time made available to you by us for the purposes of this Contract and which is described in the Purchase Order or the Details.
- 27.37 **Variation** means a variation to nature, character or quality of the Goods or Services, provided that the variation is broadly within the scope of the Goods supplied and Services performed under this Contract.
- 27.38 **Warranted Component Part Defect** means any good or equipment which part of the Goods.
- 27.39 **Warranted Component Part Defect Period** means the period listed for any single or series of Warranted Component Parts in the Details and commencing on the later Delivery or Completion is achieved.
- 27.40 **Wilful Default** means a wilful or intentional breach of a term or condition of this Contract, but does not include any error of judgment or mistake made by:
- (a) the person alleged to be culpable;
- (b) any director, employee, agent or contractor of that person; or
- (c) in the exercise, in good faith, of any function, power, authority or discretion conferred on that person under this Contract or at Law.
- 27.41 **Wilful Misconduct** means:
- (a) an act or omission by you that arises as a result of a significant departure from the standard of care that would ordinarily be expected of a Relevant Contractor and involving a serious disregard to an obvious and material risk or its consequences;
- (b) fraud, fraudulent concealment or any other criminal or illegal act or omission; or
- (c) an act or omission, done or omitted to be done intentionally or recklessly and with conscience or indifference to, or disregard for, the rights or welfare of a person who is or may be affected.
- 27.42 A party cannot waive a right or benefit under this Contract except expressly in writing to the other party.
- 27.43 You agree that if there is a discrepancy, ambiguity or inconsistency in the documents forming this Contract, that we will direct the higher or more stringent quality or quantity and that you have allowed for this in the Contract Price.
- 27.44 Subject to clause 15, the terms of this Contract cannot be varied except by writing signed by both parties.
- 27.45 You must not assign or novate your rights and obligations under this Contract without our prior written consent. We have the right to assign or novate any or all of our rights and obligations under this Contract without your consent. You must do all such other things and execute all such documents as reasonably requested us in order to give effect to this clause 27.45.
- 27.46 This Contract is the entire agreement between in relation to its subject matter and supersedes any other agreement or negotiations between the parties.
- 27.47 A provision of this Contract must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Contract or the inclusion of a provision.
- 27.48 This Contract applies to the whole of the Services and the Goods, whether you Complete the Services or Deliver the Goods, or parts of the Services and the Goods before or after the execution of this Contract.
- 27.49 Unless expressly stated to the contrary in this Contract, all of your obligations under this Contract must be carried out and completed at your own cost.
- 27.50 Our rights, powers and remedies provided in this Contract are in addition to those provided by law independently of this Contract and each right, power and remedy (including any right of indemnity) is additional to and not exclusive of every other right, power or remedy provided in this Contract.
- 27.51 In this Contract, headings are for convenience only and do not affect interpretation, and the following rules apply unless the context requires otherwise:
- (a) the singular includes the plural and the converse also applies;
- (b) a gender includes all genders.
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) where two or more persons are named as you, then the obligations on their part will bind and be performed by them jointly and each of them severally;
- (e) a reference to:
- (i) legislation, or to a provision of legislation, includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (ii) a party in this Contract or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and where applicable, the party's legal personal representatives);
- (iii) an agreement or document (including a reference to this Contract) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Contract or that other agreement or document, and includes the recitals, schedules and annexure to that agreement or document; and
- (iv) a 'person' includes a reference to a natural person and a legal person.
- 27.52 This Contract may be executed in counterpart, with the counterparts together constituting this Contract.
- 27.53 Clauses 3.2, 5.4, 7, 11.2, 16, 23, 25 and 27 survive termination or expiry of this Contract