

### 1 DEFINITIONS

In the Contract, unless the context requires otherwise:

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

**Company** means the party receiving the Deliverables in accordance with the Contract, being that party specified in the Purchase Order.

**Company IP** means any Intellectual Property Rights of the Company (or licensed to the Company by a third party) which the Company makes available, contributes, brings to or uses in connection with the Contract.

**Company's Property** means any plant, equipment, tools, appliances, materials, drawings, data, specifications or other property and items that the Company provides to the Supplier to enable it to perform the Supplier's Obligations.

**Completion** means:

- (a) the Deliverables have been supplied and are substantially in accordance with the requirements of the Contract, except for minor Defects which do not prevent the Deliverables from being reasonably capable of being used for their intended purpose;
- (b) the Deliverables have passed all completion tests (if any) described in the Contract for the purposes of determining whether the Deliverables are Complete; and
- (c) all warranties, certificates, approvals, manuals, documents and other information required under the Contract for Completion to be achieved have been supplied to the Company,

and **Complete** has a corresponding meaning.

**Confidential Information** means the Contract and all information (regardless of its form) which is disclosed directly or indirectly by the Company to the Supplier or Supplier's Personnel which is treated or designated as confidential, or which the Supplier or the Supplier's Personnel ought to know is confidential, but does not include information which is or becomes public knowledge (other than by the Supplier's disclosure or breach of the Contract).

**Contract** means the Purchase Order, these standard terms and conditions for the Purchase Order and any schedules (including any annexures to any schedules) attached to, or incorporated by reference in, the Purchase Order or these standard terms and conditions.

**Date for Completion** means the date for Completion specified in the Purchase Order.

**Date for Delivery** means the date for delivery of the Goods to the Delivery Point specified in the Purchase Order.

**Date of Completion** means the date that the Deliverables are Complete.

**Date of Delivery** means the date on which the Goods are delivered to the Delivery Point.

**Defect** in respect of a Deliverable, means any aspect of the Deliverable not in accordance with the Contract, or any damage, deficiency, fault or inadequacy in design, performance, workmanship, quality or makeup, and **Defective** has a corresponding meaning.

**Defects Liability Period** means a period of 12 months commencing:

- (a) in respect of the Goods, on the Date of Delivery; and
- (b) in respect of the Services, on the Date of Completion,

and, where relevant, any additional period of time specified in accordance with clause 10.3.

**Deliverables** means each deliverable, including Goods or Services (or both), to be supplied by the Supplier under the Contract.

**Delivery Point** means the place identified for the Delivery of the Goods in the Purchase Order or if no place is specified, as directed by the Company for delivery of the Goods.

**Excluded Loss** means any loss of production, loss or revenue, loss of profit, loss of business reputation, business interruptions, loss of opportunities, loss of anticipated savings or wasted overheads.

**Force Majeure** means any of the following occurring in Australia:

- (a) act of God, including cyclone, flood, earthquake, tsunami, bushfire, volcanic activity and sandstorm;
- (b) epidemic, pandemic or quarantine by order of a Authority;

- (c) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, act of terrorism, rebellion, riot, revolution, insurrection, martial law or confiscation by order of any Authority;
- (d) ionising radiations or contamination by radioactivity from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel; and
- (e) industrial action or dispute which affects Western Australia or Australia generally and is not directed at the affected Party or any of its Personnel,

to the extent it:

- (a) was not caused by an act or omission of the affected Party or its Personnel;
- (b) was beyond the reasonable control of the affected Party or its Personnel; and
- (c) could not have been avoided or overcome by the affected Party or its Personnel taking reasonable precautions or steps.

**Goods** means the goods identified in the Purchase Order to be delivered by the Supplier and includes any part of the specified goods.

**Gross Negligence** means a negligent act or omission resulting from a conscious or reckless disregard or indifference.

**GST** means goods and services tax or similar value added tax levied or imposed in Australia pursuant to *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Insolvency Event** means, in respect of the Supplier, the following events: appointment of an administrator, appointment of a liquidator, appointment of a provisional liquidator, appointment of a controller (including any receiver or receiver and manager), insolvency, bankruptcy, winding up or any event analogous to these events.

**Intellectual Property Rights** means all intellectual and industrial property rights, including trade marks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts, database rights, including any application or right to apply for registration of any of these rights.

**Invoice** means an invoice submitted by the Supplier in accordance with clause 11.3 which meets the requirements of a "Tax Invoice" for the purposes of *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Law** means any law in force in Australia, whether common law, equity or any law under any statute, subordinate legislation, ordinance or code.

**Party** means the Company or the Supplier (as applicable), and **Parties** means both of them.

**Personnel** means:

- (a) in relation to the Supplier, any of its employees, agents or representatives, and any Related Body Corporate or Subcontractor, and any of their respective employees, agents and representatives, involved either directly or indirectly in the supply of the Deliverables; and
- (b) in relation to the Company, any Related Body Corporate, and any of their respective employees, agents or representatives (but excludes the Supplier's Personnel).

**Personal Information** has the meaning given in the Privacy Act.

**Policies and Procedures** means the Company's policies and procedures that are:

- (a) available on the Company's website or intranet;
- (b) provided by the Company to the Supplier in any format; or
- (c) set out or referred to in any schedule attached to the Contract (if any),

(or any combination) as amended and varied from time to time.

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

**PPS Law** means the PPSA, and any amendment made at any time to the *Corporations Act 2001* (Cth) or any other legislation as a consequence of the PPSA.

**Price** means:

- (a) where the Purchase Order states that the Price is based on a lump sum or lump sums, that lump sum or the aggregate of the lump sums;

- (b) where the Purchase Order states that the Price is based on rates, the sum ascertained by multiplying those rates by the quantities properly supplied in accordance with this Purchase Order;
- (c) where the Purchase Order states that the Price is based on a lump sum or lump sums and rates, the aggregate of the lump sum or lump sums and the sum ascertained by multiplying the rates by the quantities properly supplied in accordance with this Purchase Order; or
- (d) where none of paragraphs (a), (b), or (c) of this definition applies, the price for the Deliverables (exclusive of GST) set out in the in the Purchase Order.

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

**Processing** means, in relation to information, collecting, holding, using, disclosing, transferring, storing, accessing, viewing, destroying and any other operation which may be performed upon the information and 'Processes' has a corresponding meaning.

**Purchase Order** means the purchase order issued by the Company to the Supplier in respect of the supply of the Deliverables, and includes any schedules, specifications or drawings that may be contained in it or annexed to it.

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

**Services** means the services identified in the Purchase Order that are to be performed by the Supplier, including the delivery of any goods and performance of services ancillary to the Services.

**Services Requirements** means that:

- (a) the Services meet the requirements of the Contract; and
- (b) those tests which are required by the Contract to be carried out and passed in respect of the Services have been carried out and passed (or, where no such tests are set out in the Contract, any tests which are commonly required for services of the same nature of the Services have been carried out and passed).

**Site** means the location where the Services will be performed or the Goods will be used or stored by the Company, as set out in the Purchase Order, or as otherwise advised by the Company.

**Subcontractor** means any person engaged by the Supplier to supply all or any part of the Deliverables.

**Supplier** means the supplier identified in the Purchase Order.

**Supplier IP** means any Intellectual Property Rights of the Supplier (or Intellectual Property Rights licensed to the Supplier by a third party) which:

- (a) is in existence before the date of the Contract or comes into existence after the date of the Contract other than in connection with the Contract, the Goods or the Services; and
- (b) which the Supplier makes available, contributes, brings to or uses in connection with the Contract.

**Supplier's Obligations** means all of the Supplier's obligations under the Contract.

**Taxes** means any present or future tax, royalty, levy, impost, deduction, assessment, charge, excise, fee, withholding or duty of any nature imposed, assessed, charged, levied or collected by any government agency or other body authorised by Law, but does not include GST.

**Term** means the period from the date of the Contract until the Date of Completion.

**Variation** means any addition, reduction or other change to any part of the Goods or Services (or both, where applicable) to be supplied or performed under the Contract.

**Variation Order** means a notice issued by the Company under clause 18.4 directing the Supplier to carry out a Variation requested under clause 18.2.

**Variation Proposal** means a written proposal from the Supplier which sets out the Supplier's additional costs or savings and the effect on the Date for Delivery or the Date for Completion (as applicable) for performing a Variation requested under clause 18.2.

**WHS Accreditation Scheme** means the Work Health and Safety Accreditation Scheme established under the *Federal Safety Commissioner Act 2022* (Cth) and specified in the *Federal Safety Commissioner (Accreditation Scheme) Rules 2023* (Cth).

**WHS System** means the Supplier's work health and safety management system, outlining the roles and operating procedures for the supply of Goods and performance of Services on the Site, so as to secure the health and safety of all persons affected by the work and services performed by or on behalf of the Supplier under the Contract.

## 2 SUPPLY OF GOODS AND SERVICES

- 2.1 In consideration of the payment of the Price by the Company, the Supplier must supply the Deliverables to the Company in accordance with the Contract.
- 2.2 Unless expressly agreed to in writing by the Company, to the extent permitted by Law, no other terms or conditions, including the Supplier's own terms and conditions even where they have been provided to the Company or signed by a representative of the Company, will apply or have any legal effect in connection with the supply of the Deliverables or the performance of the Contract.

## 3 SUPPLIER'S OBLIGATIONS

- 3.1 The Supplier must, and must ensure that all Supplier's Personnel, in performing the Supplier's Obligations:
  - (a) comply with all applicable Laws, applicable Policies and Procedures, and any reasonable instructions given by the Company;
  - (b) not interfere with the Company's activities or the activities of any other person at the Delivery Point or any place where the Supplier provides the Services;
  - (c) carry out and perform the Supplier's Obligations in a safe manner and in a way which does not prejudice safe working practices, safety and care of property or continuity of work;
  - (d) unless otherwise set out in the Contract, supply all plant, resources and equipment necessary to perform the Services; and
  - (e) provide all such information and assistance as the Company reasonably requires.
- 3.2 The Supplier must:
  - (a) provide all things and take all necessary measures to protect:
    - (1) the health, safety and welfare of all personnel involved in the supply and performance of the Supplier's Obligations, including the Company's Personnel, Supplier's Personnel and third parties; and
    - (2) the environment;
  - (b) at all times when on Site, immediately report to the Company any safety, cultural heritage or environmental incidents of any kind, including potential incidents and any damage to property; and
  - (c) clean up at its own cost any damage to the environment at a Site caused by it or its Personnel in connection with the performance of the Supplier's Obligations.
- 3.3 The Supplier must, if requested by the Company in writing, ensure that any Supplier Personnel that, in the Company's reasonable opinion:
  - (a) has engaged in illegal, fraudulent or negligent conduct;
  - (b) has performed the Supplier's Obligations whilst under the influence of alcohol or illegally obtained drugs;
  - (c) does not satisfy, or has not acted in a manner which satisfies, the standards required by clause 9.2; or
  - (d) is otherwise a risk to the safety of any person, property or the environment,

has no further involvement in the performance of the Supplier's Obligations without the Company's prior written consent and will promptly remove such Supplier Personnel from the Site.
- 3.4 The Company is not liable to the Supplier for any loss or claim arising from the removal of any Supplier Personnel from the Supplier's Obligations under clause 3.3, and to the extent permitted by Law, the Supplier:
  - (a) waives all rights of recourse against the Company in respect of; and
  - (b) indemnifies the Company from and against, any such loss or claim.

**4 TIME FOR PERFORMANCE**

- 4.1 The Supplier must:
- (a) perform the Supplier's Obligations diligently, with due expedition and without delay; and
  - (b) achieve Completion by the Date for Completion.
- 4.2 The Company is not obliged to accept delivery of the Goods to the Delivery Point prior to the Date for Delivery.
- 4.3 If the Supplier considers that the Date for Completion has been, or is likely to be, delayed, the Supplier must immediately give the Company notice of the delay, including details of the nature, cause and the likely extent of the delay.

**5 SITE ACCESS**

- 5.1 The Company grants to the Supplier a non-exclusive and non-assignable licence to access the Site during the Term to perform the Supplier's Obligations in accordance with the Contract.
- 5.2 The Supplier must comply, and must ensure that the Supplier's Personnel comply, with:
- (a) the site requirements for the Site that the Company advises the Supplier of from time to time, including completion of a Site induction (at the Supplier's cost); and
  - (b) any direction of the Company relating to those site requirements.

**6 RECEIPT, INSPECTION AND ACCEPTANCE OF GOODS AND SERVICES**

- 6.1 The Supplier must allow the Company, or a representative of the Company, at all reasonable times, to inspect, examine, review and witness tests of the Deliverables, or the performance of the Services, and to carry out site inspections at the Supplier's premises or wherever the Goods are stored or in the course of manufacture.
- 6.2 The Supplier must deliver the Goods in full to the Delivery Point and perform the Services (as applicable) in accordance with the Contract, including at the times stated in the Contract.
- 6.3 Acceptance of the Deliverables occurs on the earlier of:
- (a) a representative of the Company notifying the Supplier in writing that the Deliverables have been accepted; or
  - (b) the lapse of 30 days after delivery of the Goods to the Delivery Point without the Company notifying the Supplier in writing that the Goods have been rejected.
- 6.4 If the Company notifies the Supplier in writing that the Goods have been rejected prior to the expiry of the period specified in clause 6.3(b), the Supplier must, at its cost (including costs of collection and redelivery if applicable), promptly rectify or replace the Goods so that the requirements of the Contract are met. The Company has no liability to pay for Goods that are subject to a notice of rejection.
- 6.5 Signed delivery documents are only confirmation of the number of packages or cartons delivered and will not constitute acceptance by the Company of the Goods.
- 6.6 The Supplier must, where it is required to perform (or re-perform) any Services under the Contract, give notice to the Company when, in its opinion, the Services are complete and meet the Services Requirements.
- 6.7 If the Company notifies the Supplier in writing that the Services do not meet the Services Requirements, the Company may issue a notice to the Supplier within 30 days of receiving a notice from the Supplier under clause 6.6 stating the reasons why the Services do not meet the Services Requirements.
- 6.8 Following receipt of a notice from the Company pursuant to clause 6.7, the Supplier must, at its cost, re-perform the Services, or that part of the Services that do not meet the Services Requirements, until the Services Requirements are met. The Company has no liability to pay for Services that are subject to a notice from the Company pursuant to clause 6.7.
- 6.9 Acceptance of the Deliverables by the Company does not constitute approval of the Deliverables or prejudice any claim the Company may have in connection with the Deliverables.

**7 TITLE AND RISK**

- 7.1 Title to the Goods will pass from the Supplier to the Company upon the earlier of:
- (a) payment of any part of the Price; and
  - (b) the Goods being delivered to the Delivery Point.
- 7.2 The Supplier bears all risk in the Goods until acceptance of the Goods occurs in accordance with clause 6.3, at which time risk passes to the Company.
- 7.3 The Supplier warrants that title in the Goods will be transferred to the Company in accordance with clause 7.1 without any liens, charges, security interests or encumbrances.
- 7.4 If the Company notifies the Supplier in writing that the Goods have been rejected prior to the expiry of the period specified in clause 6.3(b), then risk does not pass to the Company until the Supplier rectifies or replaces the Goods in accordance with clause 6.4.

**8 PACKAGING, MARKING AND PRODUCTION INFORMATION**

- 8.1 The Supplier must ensure that the Goods are suitably packed to avoid damage in transit or in storage.
- 8.2 Notwithstanding clause 8.1, packaging must be designed to facilitate inspection and repacking for on-forwarding and storage.
- 8.3 All Goods, delivery notes and other relevant documents must be clearly marked with the number of the Purchase Order pursuant to which those Goods were ordered, the material number (where applicable) and the Delivery Point specified in the Purchase Order.
- 8.4 Failure to comply with this clause 8 entitles the Company to reject the Goods and return them to the Supplier, at the Supplier's expense.
- 8.5 Prior to delivery or included within the packaging of the Goods at delivery of any Goods, the Supplier must provide to the Company all safety information, instruction manuals and other necessary or relevant data relating to the Company's use of the Goods, including material safety data sheets.

**9 QUALITY OF GOODS AND SERVICES**

- 9.1 The Supplier must ensure that:
- (a) the Deliverables conform to the description and standards specified in the Contract;
  - (b) the Deliverables are fit for their intended purpose as stated in, or as reasonably ascertainable from, the Contract and to the extent that the Deliverables include design Services, the works being designed will be fit for their intended purpose as stated in, or as reasonably ascertainable from, the Contract;
  - (c) if the Supplier gave the Company samples of the Goods, demonstrations of the Services, or represented that a result could be achieved by the Services before the Company entered into the Contract, the relevant Deliverables correspond in nature and quality with the samples and demonstrations (as applicable) or the services that achieved that result (as the case may be); and
  - (d) any Goods are new and of merchantable quality.
- 9.2 The Supplier warrants that the Supplier's Personnel engaged in the supply of the Deliverables have all the necessary skills, training and qualifications to ensure full and proper supply of the Deliverables in accordance with the Contract.
- 9.3 The Supplier must ensure that the Company has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Supplier must, at its cost, pursue any manufacturer's warranties on the Company's behalf if the Company requests).

**10 DEFECTS**

- 10.1 At any time following delivery of any Goods or performance of Services, and prior to the expiry of the Defects Liability Period, the Supplier must, at its cost and at the Company's direction, promptly rectify all Defects (other than a Defect caused by the Company).
- 10.2 If the Company directs the Supplier to rectify a Defect and the Supplier fails to rectify that Defect within a reasonable time specified by the Company:

- (a) the Company may, without prejudice to any other rights the Company may have against the Supplier, rectify or engage another contractor to rectify the Defect; and
  - (b) the rectification costs incurred by the Company will be a debt due and payable on demand from the Supplier to the Company.
- 10.3 Where any Defect has been rectified under the Contract, the rectification work will be subject to an additional Defects Liability Period commencing on the date the relevant rectification works are completed.
- 10.4 Nothing in this clause 10 prejudices any other right that the Company may have against the Supplier arising out of the failure of the Supplier to supply the Goods or perform the Services in accordance with the Contract.

### **11 PRICE AND INVOICING**

- 11.1 The Company must pay the Price to the Supplier for the Deliverables.
- 11.2 The Price is inclusive of all costs and expenses including packaging, freight, delivery, insurance, the cost of any miscellaneous services, compliance with the Contract and Taxes and, subject to clause 18, no additional amounts will be payable by the Company.
- 11.3 Subject to clause 11.4, on or promptly after the later of the Date of Delivery of the Goods or the Date of Completion of the Services, the Supplier must submit an Invoice to the Company for the amount due to the Supplier.
- 11.4 If agreed in writing by the Company, the Supplier may submit an Invoice to the Company at the end of each month for any Deliverables performed during that or previous months provided those Deliverables have not already been included in a previous Invoice issued to the Company.
- 11.5 An Invoice must include:
- (a) the Purchase Order number;
  - (b) a description of any Goods delivered, including the quantity of Goods and the Date of Delivery;
  - (c) a description of any Services performed;
  - (d) the amount being claimed for the Deliverables;
  - (e) the amount of any applicable GST; and
  - (f) any further information reasonably requested by the Company.
- 11.6 Invoices must be submitted to the details set out on the Purchase Order.
- 11.7 If an Invoice does not contain the information required in clause 11.5, the Company may, at its option, complete the missing details or return the incomplete Invoice to the Supplier, in which case the Supplier must submit a replacement Invoice compliant with clause 11.5.
- 11.8 Subject to the Supplier submitting an Invoice in accordance with clause 11.5 or a compliant Invoice in accordance with clause 11.7, the Company must pay the amount payable within 30 days.
- 11.9 Payment under this clause 11.6 will not be taken as proof or admission that all, or any part of, the Goods or the Services have been delivered or performed (as the case may be) to the satisfaction of the Company, but will be taken to be payment on account only.
- 11.10 The Supplier agrees that the Company may:
- (a) deduct from moneys due to the Supplier any money due or which may become due from the Supplier to the Company under, or in connection with, the Contract; and
  - (b) withhold payment of any amounts payable under the Contract pending resolution of any dispute.

### **12 GST**

- 12.1 The Supplier warrants that it is registered for GST purposes in Australia and, if requested by the Company, must provide to the Company sufficient evidence to substantiate that the Supplier is registered for GST purposes.

- 12.2 If GST is imposed on any supply made by the Supplier in connection with the Contract, the Supplier may recover from the Company, in addition to the Price, an amount equal to the GST payable in respect of that supply.
- 12.3 The Supplier must first provide the Company with an Invoice before the Company will pay the GST amount to the Supplier.

### **13 WHS SYSTEM**

- 13.1 This clause 13 applies where the Supplier performs Services at the Site or otherwise performs Services involving material work health and safety risks.
- 13.2 The Supplier must at all times maintain and comply with its WHS System as appropriate for the nature, scope and risks of the Goods and Services.
- 13.3 The WHS System must not be inconsistent with Company's notified site safety requirements, policies, procedures, standards and rules (where applicable), and must be compatible with them such that it can, where there is a requirement to operate under a single safety and health management system, enable that to be achieved.
- 13.4 The Supplier acknowledges and agrees that:
- (a) all Supplier's Personnel have been trained, competent and qualified to comply with its WHS System.
  - (b) the WHS System provided to the Company, complies with all Laws related to work health and safety.
- 13.5 To the extent that there is any discrepancy between the Company's notified site safety requirements, policies, procedures, standards or rules (where applicable) and the WHS System, the Company's requirements prevail. If a discrepancy is identified, the Supplier must immediately notify the Company of such discrepancy and as soon as practicable after becoming aware of the discrepancy propose an appropriate amendment to the WHS System so that such discrepancy is eliminated.
- 13.6 If the Supplier prepares, or is requested by the Company to prepare, a revised WHS System, the revised draft WHS System must be submitted to the Company for review.
- 13.7 Without limiting the Supplier's other obligations under the Contract, the Supplier must notify the Company as soon as practicable, but in any event pursuant to the Policies and Procedures, of any accident, injury, loss or damage which occurs at the Site.

### **14 INDUSTRIAL RELATIONS**

- 14.1 The Supplier is responsible for:
- (a) all industrial relations and employee relations management of all of the Supplier's Obligations;
  - (b) all time and cost implications arising out of or in connection with the management of all industrial relations matters or industrial actions relating to the Supplier's Obligations or the Site;
  - (c) all time and cost implications of the management of industrial relations; and
  - (d) using reasonable endeavours to maintain a harmonious industrial environment at the Site.

### **15 COMPANY'S PROPERTY**

- 15.1 The Supplier must not use any of the Company's Property or remove the Company's Property from the Site without the Company's prior written consent.
- 15.2 The Company's Property must only be used for the purposes of performing the Supplier's Obligations, and must be maintained and used in accordance with the manufacturer's specifications and operating instructions.
- 15.3 The Supplier bears the risk in the Company's Property from the time it is supplied by the Company until the Company's Property is returned into the custody and control of the Company, unless such Company Property is incorporated into the Deliverables, in which case risk in that the Company Property passes to the Company on the Date of Completion.

**16 SUPPLIER'S INSURANCE**

16.1 Unless the Company agrees otherwise in writing, the Supplier must (at its own cost) effect and maintain with a reputable insurer and on terms consistent with prudent risk management:

- (a) **(plant and equipment)** insurance covering the Supplier's materials, plant and equipment (if any) for their full replacement value;
- (b) **(motor vehicle third party liability insurance)** for an amount of not less than \$20,000,000. The Supplier must, in addition, comply with all statutory requirements concerning the arrangement of compulsory motor vehicle third party liability insurance;
- (c) **(workers' compensation insurance and employer's liability insurance)** which complies with applicable Laws, including cover for common law liability and, for employer's liability, for an amount not less than \$50,000,000;
- (d) **(public and product liability insurance):**
  - (1) for public liability, for an amount of not less than \$20,000,000 in respect of each and every claim, unlimited as to the number of occurrences; and
  - (2) for products liability, for an amount of not less than \$20,000,000 per claim and in the annual aggregate,

which includes a cross liability clause, principal's indemnity extension and waiver of subrogation against the Company and its Related Bodies Corporate;
- (e) **(professional indemnity insurance)** where the Supplier is providing professional services, of not less than \$5 million for each claim and in the aggregate which must be maintained for a period of at least 7 years after the Date of Completion or the earlier termination of the Contract; and
- (f) any additional insurance stated in the Purchase Order or required by an applicable Law or reasonably requested by the Company.

16.2 The Supplier must provide to the Company, within 3 business days of a written request, certificates of currency for each of the insurance policies required under this clause 16.

16.3 Subject to clause 16.2, if the Supplier subcontracts any part of the Supplier's Obligations, then the Supplier must ensure that every Subcontractor effects and maintains insurances required under this clause 16, as appropriate for the work being performed by that Subcontractor, before the Subcontractor commences any of the Supplier's Obligations.

16.4 If the Supplier fails to comply with any of its obligations under this clause 16, the Company may, by notice in writing to the Supplier, immediately suspend the Contract or refuse payment of any amount due to the Supplier until evidence of insurance required by this clause 16 is produced to the Company.

**17 INDEMNITIES AND LIMITS OF LIABILITY**

17.1 The Supplier indemnifies the Company, each of the Company's Personnel and each of the Company's Related Bodies Corporate from and against any claims (including third party claims) and losses suffered or incurred by any of them arising out of, or in connection with, any negligent or wrongful act or omission of the Supplier or any of the Supplier's Personnel. This indemnity will be proportionately reduced to the extent the claim or loss is caused by the negligence of the Company or the Company's Personnel.

17.2 Neither Party is liable to the other for Excluded Loss.

17.3 A Party's liability to the other Party in respect of loss under the Contract in the aggregate for all claims is limited to the greater of:

- (a) 2 × the Price; and
- (b) \$200,000.

17.4 The exclusion of liability in clause 17.2 and limit of liability in clause 17.3 does not apply in respect of:

- (a) injury to, or illness or death of, any person;
- (b) damage to, or loss or destruction of, any property;
- (c) a breach of the Party's obligations under the Contract relating to Intellectual Property Rights, confidentiality or privacy;

(d) liability for a third party's loss under an indemnity in clause 17.1;

(e) to the extent the liable Party recovers insurance proceeds in respect of the liability from an insurance policy required to be effected in accordance with the Contract, or would have recovered insurance proceeds if it had complied with the Contract, complied with the terms of the relevant insurance policy, and taken all reasonable steps to diligently pursue any potential claim; or

(f) fraud, criminal offence, wilful default, wilful misconduct or Gross Negligence of the liable Party or any of its Personnel.

17.5 For the purposes of determining the amounts recoverable under clause 17.4(e), the exclusions and limits of liability in clauses 17.2 and 17.3 must be disregarded.

**18 VARIATIONS**

18.1 The Supplier must not change the Deliverables, including an addition, reduction or omission to any part of the Deliverables except in accordance with this clause 18.

18.2 If at any time the Company notifies the Supplier that it requires a Variation, the Supplier must promptly provide a Variation Proposal.

18.3 The Supplier may initiate and submit a Variation Proposal to the Company.

18.4 If the Company accepts a Variation Proposal, the Company will issue a Variation Order to the Supplier and:

- (a) the Supplier must then carry out the Variation;
- (b) the Price will be adjusted by the amount set out in the relevant Variation Proposal;
- (c) the Date for Completion will be adjusted as set out in the Variation Proposal; and
- (d) if the Variation is in respect of the Goods, the Date for Delivery will be adjusted as set out in the Variation Proposal.

18.5 The Supplier will not be entitled, in any circumstances, to an adjustment to the Price or any extension of time except as set out in a Variation Order.

**19 INTELLECTUAL PROPERTY RIGHTS**

19.1 Subject to clause 19.3, the Supplier IP remains vested in the Supplier and the Company IP remains vested in the Company.

19.2 The Company will own all Intellectual Property that the Supplier creates in the performance of the Services and the supply of the Goods.

19.3 The Supplier grants to the Company a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable licence (with the right to grant sub-licenses on the same terms) to use the Supplier IP to the extent necessary to use the Goods and the Services (as applicable).

**20 CONFIDENTIALITY AND PRIVACY**

20.1 The Supplier must not use any Confidential Information or disclose any Confidential Information other than to any of the Supplier's Personnel who need to know the information to perform the Services or deliver the Goods, to the Supplier's legal advisers, or where required by Law.

20.2 Where the Supplier Processes Personal Information in connection with the Contract, the Supplier will:

- (a) comply with the Privacy Act; and
- (b) take all appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Information and against accidental loss, disclosure or destruction of, or damage to, Personal Information.

**21 FORCE MAJEURE**

21.1 A Party whose performance of its non-financial obligations under the Contract is, or will be, affected by an event of Force Majeure must, if it wants to claim the benefit of a suspension under clause 21.2, promptly give the other Party a written claim detailing:

- (a) the nature and extent of the event of Force Majeure; and
- (b) the effect the Party reasonably expects the event of Force Majeure will have on its obligations under the Contract.

- 21.2 If a Party gives notice under clause 21.1, the Party's non-financial obligations under the Contract are suspended to the extent that the event of Force Majeure prevents or delays their performance.
- 21.3 As soon as reasonably possible after an event of Force Majeure ceases to prevent or delay a Party's performance of obligations suspended under clause 21.2, the Party must notify the other Party in writing and resume performance of those obligations.
- 21.4 Each Party must take reasonable steps to mitigate or overcome the effects that an event of Force Majeure has on its obligations under the Contract.

## **22 WHS ACCREDITATION SCHEME**

- 22.1 This clause 22 only applies where the WHS Accreditation Scheme applies to the Contract.
- 22.2 The Supplier warrants that:
- (a) from the date of the Contract, it is accredited under the WHS Accreditation Scheme; and
  - (b) it will remain accredited under the WHS Accreditation Scheme on a continuous basis during the Term.
- 22.3 The Supplier must:
- (a) maintain accreditation under the WHS Accreditation Scheme; and
  - (b) comply with all conditions of the WHS Accreditation Scheme accreditation,
- on a continuous basis during the performance of the Contract.
- 22.4 The Supplier must, promptly following each request from the Company, provide the Company with evidence (in a form satisfactory to the Company) that the Supplier is complying with clause 22.3.
- 22.5 Without limiting clause 22.3, if the Supplier's accreditation under the WHS Accreditation Scheme will expire during the performance of the Contract, the Supplier must ensure that, before the accreditation expires, the Supplier's accreditation is extended or replaced.

## **23 TERMINATION**

- 23.1 The Company may terminate the Contract by notice to the Supplier:
- (a) at any time for any reason whatsoever on 7 days' written notice to the Supplier;
  - (b) immediately if the Supplier commits a breach of the Contract and fails to remedy that breach within the reasonable time period specified in a written notice of the breach from the Company to the Supplier or the Company, acting reasonably, does not believe the breach is capable of remedy; or
  - (c) immediately if an Insolvency Event occurs.
- 23.2 On termination of the Contract, the Supplier must immediately cease performance of the Supplier's Obligations, promptly return to the Company any Confidential Information, property and documents which the Company owns or in which the Company has an interest, and comply with the Company's directions including any direction to protect the Company's Property in the Supplier's possession.
- 23.3 If the Contract is terminated under clause 23.1(a):
- (a) the Company must pay the Supplier that part of the Price for any Supplier's Obligations performed prior to termination that have not already been paid by the Company; and
  - (b) the Supplier is not entitled to, and the Company is not liable for, any additional amounts whatsoever.
- 23.4 Subject to clause 23.3, termination of the Contract is without prejudice to the rights and obligations of the Parties under the Contract arising prior to the date the Contract is terminated or arising out of matters or circumstances occurring prior to that date.

## **24 DISPUTE RESOLUTION**

- 24.1 Neither Party may commence any action, bring any proceedings or seek any relief or remedy from a court, except interlocutory or equitable relief, in respect of a dispute until they have complied with the dispute resolution process in accordance with this clause 24.

- 24.2 If any dispute arises between the Parties, either Party must give written notice to the dispute to the other Party.
- 24.3 A senior representative of each of the Parties will meet for the purpose of resolving the dispute within 21 days after the service of the notice provided under clause 24.2.
- 24.4 If the dispute is not resolved within 30 days after the service of the notice provided under clause 24.2, then either Party may commence court proceedings.
- 24.5 The Supplier must continue to perform its obligations under the Contract notwithstanding the existence of any disputes.

## **25 PPSA**

- 25.1 Words and phrases used in the Contract that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.
- 25.2 If the Company determines that the Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Supplier agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Company asks and considers necessary for the purposes of:
- (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
  - (b) enabling the Company to apply for any registration, complete any financing statement or give any notification, in connection with the security interest so that the Company has the priority required by it; or
  - (c) enabling the Company to exercise rights in connection with the security interest.
- 25.3 If the Supplier holds any security interests for the purposes of the PPS Law and if failure by the Supplier to perfect such security interests would materially adversely affect the security interests the Company holds or affect its business, the Supplier agrees to perfect that security interest and to implement, maintain and comply in all material respects with, procedures for the perfection of those security interests. The Supplier must take all steps under the PPS Law to continuously perfect any such security interests including all steps necessary:
- (a) for it to obtain the highest ranking priority possible in respect of the security interest (such as perfecting a purchase money security interest or perfecting a security interest by control); and
  - (b) to reduce as far as possible the risk of a third party acquiring an interest free of the security interest (such as including the serial number in a financing statement for personal property that may or must be described by a serial number).
- 25.4 Notwithstanding clause 20, neither the Company nor the Supplier will disclose information of the kind mentioned the PPSA section 275(1), and the Supplier will not authorise, and will ensure that no other party authorises, the disclosure of such information. This clause 25.4 does not prevent disclosure where that disclosure is required under the PPSA section 275 because of the operation of the PPSA section 275(7).

## **26 ASSIGNMENT AND SUBCONTRACTING**

- 26.1 The Supplier must not assign or novate the Contract, or assign any other right, benefit or interest under the Contract to any person or entity without the prior written consent of the Company.
- 26.2 The Supplier must not, without the prior written consent of the Company, which consent must not be unreasonably withheld, subcontract any of the Supplier's Obligations. Any consent to subcontract does not relieve the Supplier from any liability or obligation under the Contract.
- 26.3 The Supplier is liable to the Company for the acts and omissions of any Subcontractor, its personnel and the Supplier's Personnel as if they were acts or omissions of the Supplier.
- 26.4 The Company may assign its rights or delegate any obligation in respect of the Contract or novate the Contract to a Related Body Corporate or a party financially capable of complying with the Company's obligations under the Contract, and the Supplier irrevocably consents to such assignment, delegation or novation.

The Supplier will execute any document reasonably required to give effect to the assignment, delegation or novation.

### 27 GENERAL

- 27.1 (**Entire Agreement**) The Contract comprises the entire agreement between the Parties and supersedes all prior contracts, arrangements, understandings or representations (if any) between the Parties in respect of its subject matter.
- 27.2 (**Notices**) Any notice or other communication relating to the Contract must be in writing, signed by or on behalf of the sender or its agent, and either hand delivered, sent by pre-paid post or emailed to the other Party at the address or email address set out in the Purchase Order or as otherwise notified by the relevant Party.
- 27.3 (**Survival**) Clauses 9, 16, 17, 18, 20, 27.8, 27.9, and any other provisions which are expressed to, or by their nature, survive expiry or termination of the Contract, will survive the termination or expiry of the Contract and will continue in full force and effect.
- 27.4 (**Governing law and jurisdiction**) The Contract is governed by the law in force in Western Australia and each Party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia.
- 27.5 (**No waiver**) No waiver of or variation to the Contract will be binding on the Parties unless in writing signed by the Parties.
- 27.6 (**Rights cumulative**) Except to the extent that the contrary intention expressly appears, the rights and remedies of the Company provided in the Contract are cumulative and do not exclude any rights or remedies provided by any Laws.
- 27.7 (**Discretion on consent**) Where the consent, approval or agreement of a Party is required under the Contract, that consent, approval or agreement may be given conditionally or unconditionally, or withheld by that Party in its absolute uncontrolled discretion, unless the Contract expressly provides otherwise.
- 27.8 (**Severability**) Any provision in the Contract which is invalid or unenforceable will be ineffective to the extent only of that voidness or unenforceability without invalidating the remaining provisions.
- 27.9 (**Costs and stamp duty**) Each Party must bear its own costs arising out of the negotiation, preparation and execution of the Contract. All stamp duty that may be payable, including any related fines and penalties, in any relevant jurisdiction on, or in connection with, the Contract must be borne by the Supplier.
- 27.10 (**Anti-bribery and modern slavery**) The Supplier must comply with all applicable anti-bribery, anti-corruption and modern slavery Laws and take reasonable steps to ensure that modern slavery, bribery and corrupt conduct do not occur in connection with the Contract or within its operations or supply chains.
- 27.11 (**Proportionate liability legislation**) To the extent permitted by Law, Part 1F of the *Civil Liability Act 2002* (WA) does not apply to the Contract.
- 27.12 (**Interpretation**) The following apply in the Contract (unless the context requires otherwise):
- (a) specifying anything after the words 'include' or 'for example' or similar expressions does not limit what else is included;
  - (b) a reference to the Contract means the Contract as amended, novated supplemented, varied or replaced from time to time;
  - (c) a reference to any legislation includes all subordinate legislation made under that legislation and amendments, consolidations, replacements or re-enactments of any of them;
  - (d) words importing the singular include the plural (and vice versa);
  - (e) headings are for convenience only and do not affect the interpretation of the Contract;
  - (f) a reference to any Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
  - (g) a reference to a clause, Party, schedule or attachment is a reference to a clause, Party, schedule or attachment to the Contract;

- (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (i) references to '\$' and 'dollars' are to the lawful currency of the Commonwealth of Australia;
- (j) a reference to 'day', 'month', 'quarter' or 'year' is a reference to a calendar day, calendar month, a calendar quarter or a calendar year; and
- (k) no rule of construction applies to the disadvantage of a Party on the basis that the Party was responsible for the preparation of the Contract or any part of it.