

1 Provision of Goods or Services

- (a) By providing the Goods or Services referred to in the purchase order, the Supplier agrees to be bound by:
- (i) these Terms and Conditions; and
 - (ii) the purchase order and documents referred to therein,
- (collectively, this “**Agreement**”). In the event of any conflict between these Terms and Conditions and the purchase order and documents referred to therein, the documents will take precedence in the order listed above.
- (b) The Supplier and its Personnel must, in providing the Goods or Services, use its best endeavours not to interfere with any of the Company’s activities or the activities of any other person on the Company’s sites or premises and ensure that the Company’s sites and premises are left secure, clean, orderly and fit for immediate use.
- (c) The Supplier and its Personnel must obtain and maintain (at their own expense) any authorisations, licences, permits or consents necessary for providing the Goods or Services.
- (d) The Supplier represents and warrants on a continuing basis that:
- (i) the Goods and Services will (as applicable):
 - (A) comply with any relevant legislation, standards and industry best practices;
 - (B) conform to the description, data, drawings, plans, specifications, and performance or operation criteria (as applicable) contained or referred to in the Agreement, and any samples which have been provided by or on behalf of the Supplier;
 - (C) be supplied with copies of all material safety data sheets for dangerous goods;
 - (D) be free from any defect in design, workmanship and makeup;
 - (E) be provided with due care and skill and be of high quality and workmanship;
 - (F) be provided by appropriately qualified, competent, skilled, experienced and professional personnel;
 - (G) be fit for the purpose stated in or otherwise reasonably inferred from the Agreement; and
 - (H) not infringe or contribute to the infringement of any intellectual property rights;
 - (ii) any Goods will be properly and safely packed and delivered to, and any Services will be provided at, the place specified in the purchase order; and
 - (iii) any information supplied by the Supplier or its Personnel relating to this Agreement, or the Goods or Services is true and correct.
- (e) Unless the Agreement specifies otherwise, the Supplier must supply, at its own expense, all labour, plant, equipment, tools, appliances or other property and items the Supplier requires to fulfil its obligations under the Agreement.
- (f) Any plant, equipment, tools, appliances or other property and items that the Company provides to the Supplier are used at its own risk and remain the property of the Company and must only be used for the purposes of fulfilling the Supplier’s obligations under this Agreement.

2 Inspection and acceptance

- (a) If the Company or any of its Personnel signs a docket or other document required by the Supplier to acknowledge performance, acceptance or delivery of any Goods or Services, the Company will not be taken to have accepted the Goods or Services as being in accordance with this Agreement (whether as to quality or quantity). This applies notwithstanding any terms and conditions appearing on any such docket or document.

- (b) The Company must have a reasonable time to inspect the Goods after delivery. The Company may inspect or witness tests on the Goods or Services or their results at any time. If on inspection or testing the Company reasonably believes any Goods or Services to be defective, the Company may (as applicable):
- (i) reject those Goods by returning them to the Supplier;
 - (ii) reject those Services by notifying the Supplier in writing; or
 - (iii) require the Supplier to repair, rectify or resupply those Goods or Services at its cost (including the cost of transport).
- (c) The Supplier must refund, when requested, any payments made by the Company in respect of defective Goods or Services which the Company rejects.
- (d) The Supplier must reimburse the Company for any expenses the Company incurs in returning or repairing defective Goods and in rectifying defective services.
- (e) If, at any time during a period of 12 months (or such longer period as is specified in the purchase order) after delivery of the Goods or completion of the Services, the Company becomes aware that any of the Goods or Services do not comply with this Agreement (including any warranty given under this Agreement) (**Defect**), and the Company notifies the Supplier of such Defect within this period, the Supplier must at its own cost immediately rectify any Defect so that the relevant Goods and Services comply with the requirements of this Agreement.

3 Title and risk

- (a) Risk in the Goods passes to the Company when the Goods are delivered to the Site.
- (b) Title in the Goods passes to the Company on the earlier of risk passing to the Company and payment of the Price.
- (c) The Supplier warrants that immediately prior to delivery of the Goods, it has complete ownership of the Goods free of any Security Interest (other than any Security Interest created under this Agreement) and will provide the Goods to the Company on that basis and the Company will be entitled to clear, complete and quiet possession of the Goods.
- (d) The Supplier hereby waives any Security Interest (other than any Security Interest created under this Agreement) it may have over the Goods which are delivered to the Company pursuant to this Agreement.

4 Price, invoicing and payment

- (a) In this clause 4, terms or expressions which have a defined meaning in the GST Act have the same meaning given in the GST Act. The GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Subject to the Supplier’s performance of its obligations under this Agreement, the Company must pay the Supplier the Price in accordance with this Agreement.
- (c) The Price is inclusive of all duties and taxes (except GST) and costs incurred by the Supplier and its Personnel in providing the Goods or Services including all charges for packaging, packing, insurance, delivery and unloading of the Goods and the cost of any items used or supplied in conjunction with the Services. The Price is fixed and will not be subject to variation for rise and fall, exchange rate variations or any other variation.
- (d) The Supplier must submit tax invoices to the Company no earlier than (as applicable):
- (i) in relation to Goods, upon delivery and acceptance of the Goods as set out in clause 2, unless the purchase order states that milestone payments will be made, in which case tax invoices may be issued on achievement of the relevant milestones; and

- (ii) in relation to Services, on completion of the Services, unless the purchase order states that progress payments are to be made or the Agreement constitutes a construction contract to which the Security of Payment Act applies, in which case at the times specified in the purchase order (or if there is no time stipulated, on the last day of each month commencing on the month in which the Services were first performed until the Services have been completed),

(Claim Date).

- (e) The tax invoice must be in a form acceptable to the Company and must contain the following information:

- (i) the agreement number or purchase order number;
- (ii) a brief description of the Goods or Services supplied in the relevant period to which the tax invoice relates;
- (iii) include the amount due and payable, which must be calculated as follows:
 - (A) in relation to Goods, if the purchase order provides that milestone payments apply, in accordance with the milestone payments stated in the Purchase Order;
 - (B) in relation to Goods, if there are no milestone payments, the amount payable for the Goods following delivery using the rates and prices in the purchase order;
 - (C) in relation to Services, by valuing the Services completed to the date of the tax invoice in the relevant period using the applicable rates and prices;
 - (D) adding or deducting any amount due from one party to the other under the Agreement;
- (iv) any further information stipulated in the GST Act or any other applicable tax legislation, or by the Company, so that the Company will receive the benefit of any tax credit or refund in relation to the supply of the Goods and/or Services; and
- (v) such other accurate verification documentation as may be requested by the Company.

- (f) If this purchase order constitutes a construction contract to which the Security of Payment Act applies, within 10 Business Days of the later of the Claim Date and the date that the Supplier's tax invoice is received by the Company, the Company must give to the Supplier a payment schedule indicating the amount payable and the reasons why the amount scheduled for payment is less than the amount claimed in the invoice.

- (g) Within one Business Day of receipt of a payment schedule from the Company under clause 4(f), the Supplier must provide to the Company an adjustment note or revised tax invoice.

- (h) Subject to the Supplier complying with this clause 4, the Company will pay invoices rendered to the Company by the Supplier under this clause 4:

- (i) within 30 days from the end of the month of receipt of that invoice, subject to clause 4(i); or
- (ii) where either or both:
 - (A) this purchase order constitutes a construction contract to which the Security of Payment Act applies; or
 - (B) the Supplier is a Small Business,

within 20 Business Days of the later of the Claim Date and the date that the Company received the invoice that the Supplier submitted pursuant to clause 4(d).

- (i) If the Company disputes any amount claimed by the Supplier to be due and payable, the Company will pay the undisputed part of the invoice (if any) and withhold the balance pending resolution of the dispute. If the resolution of the dispute determines that the Company must pay an amount to the

Supplier, the Company will pay that amount upon resolution of the dispute.

- (j) Where a Price is calculated on a 'cost plus', 'schedule of rates' or 'per day' basis, the Company may audit the Supplier's records to determine if the Price has been correctly calculated at any time within 12 months after submission of the relevant tax invoice.
- (k) If any supply made under this Agreement is or becomes subject to GST, the party to whom the supply is made must pay to the party making the supply in addition to any consideration payable an additional amount on account of GST. If any party is required to reimburse or indemnify the other party for a cost, expense or liability (**Cost**) incurred by the other party, the amount of that Cost for the purpose of this Agreement is the amount of the Cost incurred less the amount of any credit or refund of GST to which the party incurring the Cost is entitled to claim.
 - (l) If the Company is entitled to an exemption or concession concerning any tax or import duty or import tariff with respect to the Goods or Services, the Supplier must apply for that concession or exemption and as far as possible promptly pass on to us the benefit of that concession or exemption.
 - (m) Unless required by law, no interest will be payable by the Company in respect of any invoice rendered to the Company by the Supplier under this clause 4 which remains due and payable and unpaid.
 - (n) The Company may withhold, retain or set off from any payment due to the Supplier under this Agreement any or all monies due, or becoming due, to the Company by the Supplier and any amounts the Company deems necessary to protect it against any costs, charges, expenses or damages for which the Supplier may be liable to us in connection with this Agreement or otherwise.
 - (o) All payments by the Company will be on account only and will not be an admission that the Goods or Services comply with this Agreement.
 - (p) Unless otherwise agreed, any money payable to the Supplier is to be paid in Australian Dollars.

5 Time

- (a) The Supplier must perform the Services:
 - (i) if there is a Term, for the Term; or
 - (ii) if there is no Term:
 - (A) until completion of the Services; and
 - (B) complete the Services by the Delivery Date.
- (b) The Supplier must deliver the Goods to the Site by the Delivery Date.
- (c) The Company is not obliged to accept early performance of the Services or delivery of the Goods prior to the Delivery Date unless agreed in writing.
- (d) The Supplier must notify the Company immediately upon the Supplier becoming aware or having reasonable grounds to believe that it will not be able to:
 - (i) deliver the Goods to the Site by the Delivery Date; or
 - (ii) complete the Services by the Delivery Date.
- (e) The Delivery Date and/or Term may be extended where the Supplier is delayed in the performance of the Services or delivery of the Goods by an act, omission or default of the Company (or its agents or employees), or for the Company's sole convenience. The period of an extension to the Delivery Date and/or Term will be determined by the Company in its sole discretion.

6 Insurance

- (a) The Supplier must take out and maintain, and must ensure that its subcontractors take out and maintain, at the Supplier and its subcontractors' own cost the following insurance policies:

- (i) public and products liability insurance with a minimum cover of \$50 million in relation to any one occurrence and unlimited as to the number of claims (in the aggregate with respect to products liability);
 - (ii) workers compensation insurance covering liability arising out of death of or injury to persons employed (or deemed to be employed) by the Supplier in connection with the Supplier's performance of their obligations under this Agreement (including statutory and common law liability). The workers compensation insurance policy must:
 - (A) comply with all statutory requirements including providing compulsory statutory workers compensation benefits;
 - (B) provide common law liability to a limit of not less than \$50 million in relation to any one occurrence and unlimited as to the number of occurrences;
 - (C) include a principal's indemnity extension for both statutory benefits and common law, in favour of the Company; and
 - (D) include a waiver of subrogation in favour of the Company.
 - (iii) insurance which covers the Goods for not less than the replacement value of the Goods, which insurance must be maintained until the Goods are accepted by the Company and title is transferred to the Company;
 - (iv) if the provision of the Goods and Services requires the Supplier to:
 - (A) provide or use plant and equipment – plant and equipment insurance for an amount not less than the market value of such plant and equipment;
 - (B) transport Goods – goods in transit insurance for the full replacement value of such Goods;
 - (C) use motor vehicles or other road registered plant on the Company's sites or premises – liability insurance with a minimum cover of \$20 million per claim and unlimited as to the number of claims; and
 - (D) provide directly or indirectly professional services – professional indemnity insurance with a minimum cover of \$5 million per claim and in the aggregate for all claims arising from the same event;
 - (v) any other insurances required by law.
- (b) The insurance policies the Supplier is required to take out and maintain in accordance with clauses 6(a)(i) and 6(a)(iv)(C) must include an extension to indemnify the Company as principal for legal liability arising out of or in connection with the Supplier's and its subcontractors' performance of their obligations under this Agreement.
 - (c) The insurance policies required to be maintained under this clause 6 must be maintained until the Goods and Services have been supplied, except in the case of professional indemnity insurance which must be maintained for a further period of 7 years.
 - (d) Before commencing the provision of Goods or Services (and at any other time upon request by the Company), the Supplier must provide the Company certificates of currency for any insurances required to be held by the Supplier or its Personnel under this Agreement. All costs incurred by the Company as a consequence of the Supplier or its Personnel not maintaining such insurances will be a debt due from the Supplier to the Company.

7 Liability and indemnities

- (a) The Supplier and its Personnel enter the Company's sites and premises at the Supplier and its Personnel's own risk.
- (b) Subject to clause 7(f), the Supplier is liable for and must indemnify the Company and keep it indemnified from and

against any liability and any loss or damage of any kind whatsoever arising out of or in connection with any negligent act, negligent omission or breach of this Agreement by the Supplier or its Personnel.

- (c) The Supplier will indemnify the Company against all claims in regard to wages that may become due and payable to the Supplier's employees and the employees of its subcontractors and all claims of its subcontractors and contractors of goods, labour or services provided in connection with the performance of this Agreement.
- (d) Neither party is liable to the other party for any loss of use, loss of revenue, loss of profit, loss of product or production, business interruption, loss of business opportunity, loss of savings, loss of use of capital or loss of goodwill arising out of or in connection with this Agreement except in relation to:
 - (i) any liability in respect of death or injury to persons or damage to property;
 - (ii) loss or liability to the extent that the Supplier is indemnified for the liability under any policy of insurance that it is required to maintain under this Agreement or would have been indemnified if it had complied with its obligations under this Agreement and the insurance policies;
 - (iii) breach of clause 12;
 - (iv) liability for wilful misconduct in breach of this Agreement which has substantial harmful consequences for the other party (including an intentional unlawful abandonment of this Agreement); or
 - (v) conduct which is so grossly careless that it amounts to a reckless disregard for the harmful, foreseeable and avoidable consequences which may result from it.
- (e) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Agreement.
- (f) Notwithstanding any other provision of this Agreement, the Supplier is not required to indemnify the Company for any liability to pay a fine for an offence under the *Work Health and Safety Act 2020 (WA)* or any regulations made thereunder.

8 Assignment and subcontracting

- (a) The Supplier may not assign all or any part of its rights or transfer its obligations under this Agreement without the Company's prior written consent.
- (b) The Company may assign all or any part of its rights or transfer its obligations under this Agreement without the Supplier's prior written consent.
- (c) The Supplier must not subcontract all or any part of its obligations under this Agreement without the Company's prior written consent.
- (d) The Supplier must ensure that its Personnel comply with this Agreement as if they were parties to it and the Supplier is liable for any acts, omissions and breaches of this Agreement by its Personnel as if those acts, omissions or breaches are those of the Supplier.

9 Suspension and termination

- (a) To the extent permitted by law, the Company may at any time and for any reason, suspend performance of this Agreement by giving the Supplier notice. If the Supplier receives a notice of suspension from the Company, the Supplier must immediately suspend performance of the relevant obligations until such time as the Company directs the Supplier to resume performance of those obligations by notice in writing. The Supplier will be entitled to payment of any additional direct costs which are unavoidably incurred as evidenced by supporting documents as a result of the suspension, provided that the suspension was not necessary because of an act, default or omission of the Supplier.

- (b) The Company may immediately terminate this Agreement by notice in writing to the Supplier if:
 - (i) the Supplier becomes insolvent, bankrupt or is convicted of a criminal offence;
 - (ii) the Supplier or its Personnel breach any obligation under this Agreement which is unable to be remedied or, if it is able to be remedied, is not remedied within 14 days of the Company giving the Supplier notice to do so; or
 - (iii) in the Company's reasonable opinion, the Supplier or its Personnel have engaged in any unsafe work practices,

in which case the Company will not be obliged to make any payment to the Supplier, and if the Company does not exercise its rights under clause 14(g) to enforce a Security Interest, any payment already made to the Supplier under this Agreement must be immediately repaid to the Company in full.

- (c) The Supplier may terminate this Agreement if:
 - (i) the Company does not pay the Supplier any undisputed money due and owing to it under this Agreement; and
 - (ii) the Company does not pay that money within a further period of 20 business days after the Supplier serves written notice on the Company requiring payment.
- (d) In addition to any other termination rights that the Company has, the Company may cancel or terminate this Agreement at any time and in its sole discretion. If the Agreement is cancelled or terminated by the Company in accordance with this clause 9(d), subject to any rights of set off or deduction which the Company may have, the Company's only obligation will be to pay the Supplier for the direct costs and liabilities which have been unavoidably incurred by the Supplier as a result of compliance with this Agreement prior to the date of termination (as evidenced by supporting documentation).
- (e) If this Agreement is terminated under clause 9(b) or 9(c), the respective rights and liabilities of the parties will be the same as they would be at common law if the defaulting party had wrongfully repudiated this Agreement and the other party elected to treat this Agreement as at an end and recover damages.
- (f) Unless expressly stated otherwise, termination of this Agreement for any reason does not affect the rights or obligations of a party which have accrued prior to termination.

10 Site services

- (a) Subject to the compliance by the Supplier with the terms of the Agreement, the Company will give the Supplier access to the Company's sites as and when reasonably required to enable the Supplier to supply the Goods or Services.
- (b) The Supplier acknowledges and agrees with us that:
 - (i) the Company remains in possession of its sites at all times; and
 - (ii) the Company retains overriding control of its sites.
- (c) Where the supply of services requires the Supplier or its Personnel to enter the Company's site, the Supplier and its Personnel must comply with the Company's site rules and safety management plan, which are incorporated by reference into this Agreement.
- (d) While at the Company's sites and/or premises, the Supplier and its Personnel must comply with all of the Company's Policies, rules, procedures, requirements and directions (as notified by the Company or the Company's Personnel), including in respect of safety.
- (e) Copies of the Company's Policies, site rules and safety management plan are available upon request and the Supplier is responsible for the distribution of the Policies, site rules and safety management plan to its Personnel.
- (f) The Company may amend its Policies or site rules at any time. The Supplier must comply with such amendments from the time that notice of the amendments are provided to the Supplier.

- (g) The Supplier will be responsible for providing its Personnel with all necessary safety equipment and clothing at no cost to the Company. All Personnel are required to wear appropriate safety protection in accordance with the Company's Policies, site rules and safety management plan.
- (h) The Supplier must work co-operatively with other contractors at the Company's sites and will use all reasonable endeavours to avoid any conflict between its activities and the activities of other contractors.

11 Intellectual property

- (a) The Supplier hereby grants to the Company a non-exclusive, irrevocable, perpetual, royalty free licence to use, modify, adapt and sublicense any intellectual property in the Goods or Services provided by the Supplier under this Agreement.
- (b) The Supplier must do all things necessary to give full effect to the rights and obligations contained in this clause 11.
- (c) The Supplier warrants that provision of the Goods and Services will not infringe the intellectual property rights of any third party and that it has all intellectual property consents, licences and rights necessary to perform its obligations under this Agreement.

12 Confidentiality

- (a) Except to the extent necessary to comply with its obligations under this Agreement, the Supplier and its Personnel must not disclose to any person any information (including the existence of or terms of this Agreement) owned or relating to the Company, its business or its Personnel or customers without the written consent of the Company except to the extent required by a Court order or the rules of any securities exchange.
- (b) The Supplier must not advertise or issue any information, publication, document or article for publication or media releases or other publicity relating to the Goods or Services provided in accordance with this Agreement, or the Company's business without the prior written approval of the Company.
- (c) The obligations in this clause 12 survive termination of this Agreement.

13 Dispute resolution

- (a) Subject to clause 13(b), any dispute arising in relation to this Agreement (**Dispute**) must be determined in accordance with this clause 13.
- (b) Clause 13(a) does not prevent either party from applying to the Supreme Court of Western Australia for urgent injunctive relief in relation to this Agreement.
- (c) If a party alleges a Dispute has arisen it must give notice of that fact to the other party (**Dispute Notice**).
- (d) Within ten business days of service of a Dispute Notice, the Company's representative and a senior representative of the Supplier must meet and, confidentially and in good faith, attempt to resolve the Dispute. If the Dispute is not resolved within ten business days of the last date for the meeting of delegates under this clause, the matter will be and is hereby referred to confidential arbitration.
- (e) The seat of the arbitration will be Perth, Western Australia and the arbitration is to take place in Perth before one arbitrator. The arbitrator will be nominated by the President of the Resolution Institute, Australia and their successors upon the application of either party. The arbitration will be conducted in accordance with the Resolution Institute Arbitration Rules (as amended by the Resolution Institute from time to time).
- (f) To the extent permitted by law, the parties agree that:
 - (i) the powers conferred and restrictions imposed on a court by Part 1F of the *Civil Liability Act 2002 (WA)* are not conferred or imposed on the arbitrators appointed under this clause 13; and

- (ii) any such arbitrators will have no power to make an order or award in respect of a Dispute by applying or considering the provisions of Part 1F of the *Civil Liability Act 2002 (WA)* (or any equivalent statutory provisions in any other state or territory) which might, in the absence of this clause 13, have applied to any Dispute referred to arbitration.

14 PPSA

- (a) In this clause:
 - (i) financing statement, proceeds and verification statement have the meanings given to them by the PPSA; and
 - (ii) PPSR means the Personal Property Securities Register established under section 147 of the PPSA.
- (b) To secure all of its obligations under this Agreement, the Supplier grants to the Company a Security Interest in the Goods.
- (c) The Security Interest created under clause 14(b):
 - (i) will continue in the Goods until the Goods are under the care, custody and control of the Company; and
 - (ii) attaches to the proceeds of the Goods.
- (d) The Supplier acknowledges that the Company is entitled to register a financing statement on the PPSR to perfect the Company's Security Interest in the Goods.
- (e) The Supplier must do all things required by the Company to:
 - (i) ensure that the Company's Security Interest is perfected, enforceable and has the highest priority possible under the PPSA;
 - (ii) ensure that the Company has all information necessary to register a financing statement on the PPSR to perfect its Security Interest; and
 - (iii) enable the Company to exercise its rights in connection with the Security Interest.
- (f) The Supplier must not:
 - (i) grant, allow to exist or agree to any Security Interest in the Goods other than the Security Interest created under this Agreement; or
 - (ii) sell, lease or otherwise deal with the Goods except in accordance with this Agreement.
- (g) The Company may enforce its Security Interest in the Goods and any proceeds immediately upon the occurrence of a termination event described in clause 9(b) and the Supplier grants to the Company a license to enter onto any premises of the Supplier for the purpose of enforcing the Security Interest.
- (h) The Supplier waives its right to receive any notice under the PPSA (including the right to receive a verification statement in accordance with section 157 of the PPSA) unless the notice is required by the PPSA and the right to receive it cannot be waived by the Supplier, or otherwise excluded.
- (i) If title to the Goods passes to the Company prior to the Goods being under the care, custody and control of the Company, the Supplier grants to the Company a licence to enter onto any premises of the Supplier for the purposes of taking possession of those Goods.

15 Modern Slavery prevention

- (a) The Supplier represents and warrants on a continuing basis that neither the Supplier nor any of its directors, officers, employees, representatives, agents, contractors or subcontractors will engage in Modern Slavery.
- (b) The Supplier must provide, within a reasonable time, all information reasonably requested by the Company for the purposes of the *Modern Slavery Act 2018 (Cth)*. The Supplier represents and warrants that any information it supplies to the Company in accordance with this clause 15 is true and

accurate and may be relied upon by the Company for the purposes of the *Modern Slavery Act 2018 (Cth)*.

16 Anti-Corruption

- (a) The Supplier must comply with Anti-Corruption Laws and must procure compliance with Anti-Corruption Laws by all persons performing activities under or in connection with this Agreement for or on behalf of it (including, without limitation, its and its related bodies corporates', and its and their respective contractors and subcontractors', directors, officers, employees, agents, consultants and representatives).
- (b) The Supplier must have in place, maintain and enforce throughout the term of this Agreement its own policies and procedures to ensure compliance with Anti-Corruption Laws.
- (c) The Supplier must promptly report to the Company any act done or suspected to have been done which is in breach of Anti-Corruption Laws or this clause 16.
- (d) The Company may (without prejudice to any other rights it might have) terminate this Agreement immediately on written notice if the Company knows or believes, acting reasonably, that the Supplier has, or it likely to have, breached Anti-Corruption Laws or this clause 16 or a potential breach of Anti-Corruption Laws or this clause 16 is likely.

17 General

- (a) In performing this Agreement, the Supplier and its Personnel must comply with all applicable laws and the terms of any applicable licences or permits.
- (b) This Agreement:
 - (i) subject to paragraphs 17(b)(ii) and 17(b)(iii), supersedes all other communications and negotiations (whether oral or written) between the Supplier and the Company and any written terms of the Supplier (including any terms of the Supplier provided to the Company after the Company's purchase order is issued), in relation to the Goods and Services and constitutes the entire agreement between the Supplier and the Company in respect of those Goods and Services;
 - (ii) is to be read subject to any written and signed notice of award or contract between the parties in relation to the Goods and Services and the terms of any such written and signed notice of award or contract will apply to the exclusion of the terms of this Agreement; and
 - (iii) will be superseded by any subsequent written and signed notice or award or contract between the parties that relates to the Goods and Services, which notice of award or contract will apply retrospectively to any such Goods and Services.
- (c) Unless expressly stated otherwise, where a right or remedy is conferred on the Company under this Agreement, that right or remedy is in addition to, and not in substitution of, any other right or remedy conferred on the Company under this Agreement or according to law.
- (d) This Agreement is governed by the laws of Western Australia.
- (e) Where this Agreement allows the Company a discretion as to whether to do or not do any act, matter or thing of any kind, or confers on the Company a power or determination or right of opinion, approval, consent or the like, that discretion, power or right is absolute, unless the Agreement expressly states otherwise, and the Company is not obliged to give its reasons.
- (f) Each party will bear its own costs in relation to the negotiation, preparation and execution of this Agreement and any further documentation required.
- (g) No variation of this Agreement is effective unless made in writing and signed by each party. Any variation will only be applicable to the specific purchase order and will not apply to past or future purchase orders nor oblige the Company to agree to such a variation for any other purchase orders.
- (h) No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting

it. A single or partial waiver or exercise of a right or remedy under this Agreement does not prevent a further exercise of that or of any other right or remedy. Failure to exercise or delay in exercising a right or remedy under this Agreement does not operate as a waiver or prevent further exercise of that or any other right or remedy.

- (i) Any provision of this Agreement which is void or unenforceable is to be read down or severed to the extent it is possible to do so without affecting the validity or enforceability of this Agreement. The invalidity or enforceability of one or more of the provisions of this Agreement will not invalidate, or render unenforceable, the remaining provisions of this Agreement.
- (j) Nothing in this Agreement constitutes a joint venture, agency, partnership or other fiduciary relationship between the parties. The Supplier is an independent contractor and not an employee or agent of the Company.

18 Interpretation

- (a) In this Agreement:

Anti-Corruption Laws means all applicable laws, statutes, regulations and codes relating to the prevention of bribery, corruption and improper payments in any jurisdiction, including but not limited to the *Criminal Code Act 1995* (Cth).

Company means the party whose logo appears on the purchase order.

Delivery Date means the date referenced as 'Required By' in the purchase order, as extended by the Company under clause 5(e).

Goods means the good described or referred to in this Agreement, if any.

Modern Slavery has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).

Payment Times Small Business Identification Tool has the meaning given in the *Payment Times Reporting Rules 2020* (Cth) as may be updated from time to time.

Personnel means the employees, agents, contractors or subcontractors of a party (but the Company's "Personnel" do not include the Supplier's "Personnel").

Policies means all policies and procedures of the Company notified by the Company to the Supplier from time to time, as updated by the Company from time to time.

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

Price means:

- (a) if the purchase order states or otherwise references a document which states that the price is based on:
 - (i) a lump sum or lump sums, that lump sum or the aggregate of the lump sums;
 - (ii) rates, the sum ascertained by multiplying those rates by the quantities properly supplied in accordance with this Agreement; or
 - (iii) 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 Agreement; or
- (b) where (a) does not apply, the net amount stated in the purchase order.

Security Interests means a mortgage, caveat, charge, lien, pledge, security, interest, title retention arrangement, preferential right, trust arrangement, encumbrance, contractual right of set off, any security arrangement in favour of any person or any security arrangement which is deemed to be a security interest for the purposes of the PPSA.

Security of Payment Act means the *Building and Construction Industry (Security of Payment) Act 2021* (WA);

Services includes all services described or referred to in this Agreement and anything handed over to the Company or its representative by or on behalf of the Supplier, as the context requires, and all other things which can reasonably be inferred from the description of the services in this Agreement.

Site means the details in the box marked "deliver to" in the purchase order or any other site identified in the purchase order.

Small Business means an entity carrying on business in Australia that has an annual turnover of less than \$10 million and that is described as a small business in the Payment Times Small Business Identification Tool.

Supplier means the Supplier named in the purchase order.

Term means any term described in the purchase order or period of time in which any Services must be performed.

- (b) In this Agreement, unless the context requires otherwise:
 - (i) a word in this Agreement that has a capitalised first letter has the meaning given to it by this Agreement;
 - (ii) the singular includes the plural and vice versa;
 - (iii) headings are for reference only and do not affect the interpretation of this Agreement;
 - (iv) a reference to any legislation includes a reference to any proclamation, order, amendments or modification made under that legislation;
 - (v) where two or more persons are named as the Supplier, then the obligations on their part will bind and be observed and performed by them jointly and severally;
 - (vi) "include", "includes" and "including" means "includes without limitation";
 - (vii) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or benefits from it;
 - (viii) a reference to:
 - (A) a person includes that person's legal personal representatives, successors, assigns;
 - (B) time is to local time in Perth, Western Australia;
 - (C) "\$" or "dollars" is a reference to Australian currency unless otherwise agreed; and
 - (D) a clause is a reference to a clause of this Agreement;
 - (ix) if the date on or by which any payment must be made or notice given under this Agreement is not a Business Day, it must be made or given on or by the next Business Day;
 - (x) where time is calculated by reference to a day or event, that day or the day of that event is excluded; and
 - (xi) a notice or other communication means a notice or communication in writing in the English language, addressed to the email or postal addresses of the recipient party.