

Core Lithium General Conditions for Purchase Orders

1 Definition and Interpretation

1.1 Definitions

In these General Conditions and elsewhere in the Contract unless intention appears:

Approval means any licence, permit, registration, consent, approval, determination, certificate, administrative decision, permission or other requirement of any Government Authority having any jurisdiction in connection with the Works or under any applicable Law, which must be obtained or satisfied to perform the Works for their intended purpose.

Business Day means any day other than a Saturday, Sunday or public holiday in Darwin, Northern Territory.

Certificate of Completion means the certificate issued in accordance with clause 15.2 which certifies the Date of Completion.

Claim means, in relation to a party, a demand, claim, action or proceeding made or brought by or against the party, however arising and whether present, unascertained, immediate, future or contingent.

Commencement Date means the date when the Purchase Order is signed by the last of the parties to do so.

Company's Representative means the person so nominated in Purchase Order or any other person nominated by the Company from time to time under clause 5.1 to replace that person.

Completion means that stage of the Contractor's Activities when:

- (a) the Contractor's Activities (including the Works) have been completed in accordance with the Contract except for minor Defects which do not in any way impede the lawful, safe and convenient use of the Goods or Works;
- (b) the Contractor has delivered to the Company's Representative all Deliverables required under the Contract; and
- (c) all other requirements for Completion as may be specified in a Purchase Order have been completed.

Contract means this contract between the Company and the Contractor and includes the background, the schedules, annexures and any Purchase Orders issued under this contract.

Contract Price means the amount specified in the Purchase Order, as such may be adjusted in accordance with this Contract.

Contractor's Activities means all things or tasks which the Contractor is, or may be, required to do to comply with its obligations under this Contract including performance of the Works, supply of Goods, and performance of any Services, as more particularly described in the Scope of Work and any Purchase Order including (for the avoidance of doubt):

- (a) all activities set out in the Scope of Work, including all Deliverables;
- (b) any Variations in accordance with this Contract; and
- (c) rectification work.

Contractor's Representative means the person so named in the Purchase Order or any other person from time to time appointed as the Contractor's Representative in accordance with clause 5.2(e).

Corporations Act means the *Corporations Act 2001* (Cth).

Date for Completion means the date by which Completion must be achieved as specified in the Purchase Order or, in respect of a Stage, as specified in a Purchase Order, as adjusted in accordance with the Contract.

Date of Completion means, in respect of a Stage and in respect of completion of the entirety of the Contractor's Activities, the date on which Completion is certified to have

been achieved as set out in the Certificate of Completion or such other date determined in accordance with clause 19.

Defect means any aspect of the Contractor's Activities which is not in accordance with the requirements of this Contract.

Defects Liability Period means the period specified in the Purchase Order or, in respect of a Stage, as specified in the Purchase Order.

Deliverables means all materials, documents, drawings (including "as-builts"), specifications, reports, manuals, programmes, plans, aids, software, results, studies, calculations, maps, sketches, notes, data, samples and any other documents or information (whether in physical or electronic form, including unencrypted or in native file format) required under this Contract to be:

- (a) provided to or made available to the Contractor by the Company;
- (b) created or produced by the Contractor in the course of performing the Contractor's Activities; or
- (c) at any time derived from, or based on, anything described in paragraph (a) or (b).

Direction means any decision, demand, determination, direction, instruction, notice, order, rejection or requirement.

Existing IP means all Intellectual Property Rights together with all modifications, adaptations or developments to such Intellectual Property Rights by a party, or that party's agents, which is owned by, or is proprietary to, a party prior to the commencement of the Contractor's Activities.

Extension of Time means an extension of time to the Date for Completion to the extent that Completion has been delayed beyond the Date for Completion.

Force Majeure Event means an event or circumstance which:

- (a) is beyond the control and without the fault (including breach of this Contract) or negligence of the party affected by the event or circumstance;
- (b) by the exercise of reasonable diligence, the party affected is unable to prevent; and
- (c) is limited to:
 - (i) war (declared or not), blockade, revolution, riot, civil commotion or sabotage;
 - (ii) earthquakes, flood, fire or other physical forms of natural disasters, but excluding weather conditions, such as heat waves or rain, regardless of severity;
 - (iii) industrial disputes at a state wide or national level; and
 - (iv) pandemic.

Goods means the goods, materials, supplies, equipment or other items identified in a Purchase Order.

Government Authority means any national, state, local, regional, territorial or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body, having jurisdiction over the Contractor's Activities, the Company, the Contractor or the Site.

GST or Goods and Services Tax means the tax payable on taxable supplies under the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

Indemnified Parties means the Company, its Related Bodies Corporate and the directors, officers, employees, agents and the contractors (other than the Contractor, its directors, officers, employees, agents and its Related Bodies Corporate) of the Company and its Related Bodies Corporate.

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Indirect Loss means:

- (a) loss of profit, loss of revenue, loss of opportunity, damage to goodwill or reputation, loss of access to markets, loss of anticipated savings, business interruption, damage to credit rating, in each case whether direct, indirect, or consequential, and whether or not foreseeable at the Commencement Date; and
- (b) indirect or consequential damages, costs, losses or expenses of whatever nature, whether the losses described in (a) and (b) arise in contract, tort, including negligence or otherwise.

Insolvency Event means in relation to a party to this Contract, any of the following:

- (a) the party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with this Contract for financial reasons;
- (b) a trustee, receiver, receiver and manager, interim receiver, controller, administrator, custodian, sequestrator, provisional liquidator, liquidator or any foreign law equivalent or other person with similar power is appointed to the party;
- (c) the party:
 - (i) becomes bankrupt or insolvent within the meaning of section 95A of the Corporations Act or under any bankruptcy, insolvency or analogous Law;
 - (ii) would be presumed by a court to be insolvent under section 459C(2) of the Corporations Act;
 - (iii) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act) and fails to remedy that failure within 7 days after being required in writing to do so by the party issuing the statutory demand;
 - (iv) makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors;
 - (v) seeks relief from its obligations to creditors under any bankruptcy, insolvency or analogous Law;
 - (vi) commences any proceeding, files a petition or proposal to take advantage of any act of bankruptcy or insolvency;
 - (vii) resolves to, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, controller, administrator, custodian, sequestrator, provisional liquidator, liquidator or other person with similar power of itself or of all or a portion of its assets; or
 - (viii) files a petition or otherwise commences any proceeding seeking to enter into any compromise, reorganisation, arrangement, composition or readjustment under any applicable bankruptcy, insolvency or analogous Law affecting creditors' rights or consents to, or acquiesces in, the filing of such a petition, or commencement of such proceedings; or
- (d) any act is done or event occurs which, under applicable Law, has a similar effect to anything mentioned in paragraphs (b) or (c).

Intellectual Property Rights means any statutory and other proprietary rights in respect of inventions, innovations, patents, utility models, designs, circuit layouts, mask rights, copyright (including future copyright), confidential information, trade secrets, know-how, trademarks and any other right in respect of any intellectual property.

Law means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, rule or subordinate legislation.

Loss means losses, liabilities, Claims, proceedings, actions, demands, damages, costs, charges, expenses or diminution in value, however arising, and whether present or future, fixed or unascertained, actual or contingent.

Modern Slavery means any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, and other slavery-like exploitation as prohibited under all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the *Modern Slavery Act 2018* (Cth), the *Criminal Code Act 1995* (Cth), sch 1, divisions 270 and 271, *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Act 2015* (UK), sections 1, 2 and 4. For the avoidance of doubt, Modern Slavery includes any conditions or practices similar to those prohibited under those laws, statutes, regulations and codes.

Other Contractor means any supplier, contractor, consultant, tradesperson or other person engaged to do work other than the Contractor or its Subcontractors.

Personnel means:

- (a) in respect of the Contractor, any directors, officers, employees, consultants, agents and Subcontractors of the Contractor; and
- (b) in respect of the Company, any directors, officers, employees, consultants, agents and contractors of the Company (other than the Contractor).

Project IP means all Intellectual Property Rights created by the Contractor or any subcontractors during the performance of the Contractor's Activities, including the Intellectual Property Rights in the Deliverables.

Proportionate Liability Legislation means the *Proportionate Liability Act 2005* (NT).

Purchase Order means the purchase order for the Contractor's Activities issued by the Company which contains the Contract Specifics including, amongst other things, a short description of the Contractor's Activities, any referenced Scope of Works, Contract Price and the time and date on or from which the Company requires the Contractor's Activities to be provided.

Qualifying Cause of Delay means:

- (a) a Relief Event; or
- (b) a Force Majeure Event.

Related Bodies Corporate has the meaning given to it by sections 9 and 50 of the Corporations Act.

Relief Event means:

- (a) a breach of this Contract by the Company; or
- (b) an act or omission of the Company, the Company's Representative or Other Contractor engaged by the Company (other than an act or omission that is authorised or permitted under this Contract).

Scope of Work means the scope of goods and services referred to in a Purchase Order.

Services means the services identified in a Purchase Order.

Site means any such land or premises described in the Purchase Order. Where this is not explicitly stated, the Site means the Company's primary place of business.

Site Conditions are any physical conditions on, above, below or about the Site or its surroundings, including:

- (a) natural and artificial conditions;
- (b) contamination or the existence of any hazardous substance or thing;
- (c) geotechnical and subsurface conditions;
- (d) services or facilities; and
- (e) conditions of existing improvements.

Stage means a separable portion of the Contractor's Activities as may be specified in a Purchase Order.

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Subcontractor means any person (including suppliers and consultants) engaged by the Contractor for the performance of any of the Works.

Variation means, unless otherwise stated in this Contract, any change to the Works including any addition, increase, decrease, omission, deletion or removal to or from the Works.

Works means the physical components of the Contractor's Activities that the Contractor is required to construct, commission, complete and hand over to the Company in accordance with the Contract (including the supply of the Goods and performance of the Services if applicable).

1.2 Interpretation

The following rules apply in interpreting this Contract except where the context requires otherwise:

- (a) a reference to:
 - (i) a party or parties includes a reference to its successors and permitted assigns in accordance with this Contract;
 - (ii) any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision; and
 - (iii) any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
- (b) a reference to dollars, \$ or a monetary amount is in Australian dollars;
- (c) the singular includes the plural and vice versa, a word denoting any gender includes all genders;
- (d) a word denoting an individual or person includes a corporation, trust or partnership and vice versa;
- (e) headings are for convenience of reference only and will not affect the interpretation of this Contract;
- (f) if an example is given of anything the example does not limit the scope of that thing. Also, the word "including" and similar expressions are not and must not be treated as words of limitation;
- (g) this Contract must not be construed adversely against a party just because that party prepared it;
- (h) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (i) a reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form;
- (j) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (k) a reference to a right or obligation of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately.

1.3 Precedence

- (a) If the Contractor discovers any inconsistency, ambiguity, discrepancy or inadequacy in or between any document forming part of this Contract, the Contractor must notify the Company in writing.
- (b) In the event of any inconsistency, ambiguity, discrepancy or inadequacy between any of the documents listed below, a document will have priority in descending order:
 - (i) the Purchase Order including Contract Price, dates and any Scope of Work

referenced in that Purchase Order, but not the terms and conditions of the Purchase Order;

- (ii) clauses 1 to 23 of this Contract;
- (iii) any Scope of Work attached to the Purchase Order; and
- (iv) any other attachments or annexures to the Purchase Order.

2 Fundamental Obligations

2.1 Contractor's obligations

The Contractor must perform the Contractor's Activities:

- (a) in accordance with the requirements of this Contract and any applicable Purchase Order; and
- (b) so that they are fit for their intended purposes.

2.2 Company's obligations

The Company must, in accordance with the requirements of this Contract:

- (a) allow the Contractor to perform the Contractor's Activities;
- (b) give the Contractor sufficient access to the Site to allow it to perform the Contractor's Activities; and
- (c) pay to the Contractor the Contract Price for the Contractor's proper performance of the Contractor's Activities and its other obligations under this Contract.

3 Acknowledgement of Purchase Order and Contract formation

- (a) Subject to Clause 3(c), the Contract is formed once the Contractor acknowledges receipt of the Purchase Order in writing by signing the Purchase Order, and once formed, is the only authority which the Company will recognise for charging for the Works. Acceptance of the Purchase Order (including by electronic mail) or performance of the Works, Goods or Services set out in the Purchase Order by the Contractor constitutes acceptance of the Purchase Order and the Contract (including any documents forming part of the Contract, referred to in clause 1.3(b)).
- (b) If the Contractor's written acknowledgement of the Purchase Order contains, or is accompanied by, terms additional to or different from those contained in the Contract prior to that acknowledgement, no Contract is formed unless the terms are:
 - (i) attached to the Contract; and
 - (ii) agreed to by the Company in writing.
- (c) Unless the Company and the Contractor have executed a specific contract (other than this Contract) in respect of the supply of goods and/or performance of services, each Purchase Order will constitute a separate binding Contract between the parties for the Contractor's Activities:
 - (i) for the Contract Price;
 - (ii) on the terms and conditions specified in that Purchase Order; and
 - (iii) otherwise on the terms and conditions of this Contract.
- (d) No terms and conditions endorsed upon, delivered with or contained in the Contractor's proposal, acknowledgment of a Purchase Order, Scope of Work or any other document shall form part of the contract created by that Purchase Order and the Contractor waives any rights which it otherwise might have to rely on such terms and conditions.
- (e) Termination, cessation or unenforceability of one Purchase Order will not affect (or otherwise cause the termination, cessation or unenforceability of) this Contract or any other Purchase Order.

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- (f) The Contractor's Activities under a Purchase Order will commence on the commencement date specified in that Purchase Order.
- (g) If the Purchase Order specifies a Date for Completion in respect of certain Contractor's Activities that amount to a Stage of Works, then the Contractor's Activities the subject of the Purchase Order will be treated as a Stage, with a separate Commencement Date, Date for Completion and Defects Liability Period applicable to that Stage of Works as specified in the Purchase Order.
- (h) In the absence of written acknowledgement of the Purchase Order, the performance of any of the Works by the Contractor will be deemed to be an acceptance of the Contract on the terms contained in the Contract submitted to the Contractor by the Company.

4 Performance of Contractor's Activities

4.1 Description of Contractor's Activities

The Contractor must perform the Contractor's Activities in accordance with:

- (a) the Scope of Work;
- (b) best practice in the relevant industry;
- (c) any Direction of the Company's Representative given or purported to be given under a provision of this Contract, including any Variation directed by the Company's Representative by a document titled "Variation Order"; and
- (d) the other requirements of this Contract and any applicable Purchase Order.

4.2 All work included

The Contractor warrants that it has, and it will be deemed to have, allowed for the provision of all plant, equipment, materials and work necessary to properly perform the Contractor's Activities, whether or not expressly mentioned in the Scope of Work.

4.3 Compliance with Law

The Contractor must in carrying out the Contractor's Activities:

- (a) comply with all applicable Law;
- (b) obtain, and fulfil the conditions of, all Approvals except for those specified in the Purchase Order or Scope of Work which were either obtained prior to the Commencement Date or will be obtained after the Commencement Date by the Company; and
- (c) prepare and give the Company's Representative any documents that a Government Authority requires in order for the Company to obtain the Approvals it requires in connection with the Contractor's Activities.

4.4 Subcontracting

- (a) The Contractor:
 - (i) must not subcontract any work without the prior written approval of the Company's Representative;
 - (ii) will be fully responsible for the Contractor's Activities despite subcontracting the carrying out of any part of the Contractor's Activities; and
 - (iii) must procure a warranty from such Subcontractor in favour of the Contractor and the Company in respect of any equipment or materials procured for use in the Contractor's Activities.
- (b) No subcontract entered into by the Contractor shall bind or purport to bind the Company and each subcontract shall provide for its immediate termination in the event of termination of this Contract or immediate suspension in the event of suspension of all or any relevant part of the Contractor's Activities.

- (c) The Company may make its consent conditional upon the subcontract including provisions that the Subcontractor must:
 - (i) comply with all relevant terms of this Contract including, without limitation, the confidentiality obligations in clause 20;
 - (ii) not assign or subcontract without the Company's written consent; and
 - (iii) effect and maintain insurance on the same terms as the Contractor is required to in this Contract.

4.5 Conflict of interest

The Contractor warrants that:

- (a) as at the Commencement Date, no conflict of interest exists or is likely to arise in the performance of the Contractor's Activities;
- (b) it will ensure that no conflict of interest exists or is likely to arise in the performance of the Contractor's Activities; and
- (c) if any such conflict of interest or risk of such conflict of interest arises, the Contractor will notify the Company's Representative immediately in writing of that conflict or risk and take such steps as may be required by the Company's Representative to remove or minimise the conflict or risk of conflict.

4.6 Protection of people and property

- (a) The Contractor must perform the Contractor's Activities:
 - (i) safely and in a manner that does not put the health and safety of persons at risk; and
 - (ii) in a manner that protects property.
- (b) If the Company's Representative reasonably considers there is a risk to the health and safety of people or damage to property arising from the Contractor's Activities, the Company's Representative may direct the Contractor to change its manner of working or to cease working.

4.7 Cooperation with Other Contractors

The Contractor must:

- (a) carefully co-ordinate and interface the Contractor's Activities with the work carried out or to be carried out by Other Contractors; and
- (b) perform the Contractor's Activities so as to avoid interfering with, disrupting or delaying the work of Other Contractors.
- (c) The Contractor agrees that:
 - (i) such coordination and interface does not detract from or otherwise affect the Contractor's warranties, obligations or liabilities under or in connection with this Contract; and
 - (ii) it is not entitled to claim any additional cost or expense or any adjustment to the Contract Price or to claim any extension to the Date for Completion or to make any Claim under this Contract or any applicable law in relation to such matters.

5 Personnel

5.1 Company's Representative

- (a) The Company's Representative will give Directions and perform all its other functions under this Contract as the agent of the Company (and not as an independent certifier, assessor or valuer).
- (b) The Contractor must comply with any Direction by the Company's Representative given or purported to be given under a provision of this Contract.
- (c) Except where this Contract otherwise provides, the Company's Representative may give a Direction

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orally but will as soon as practicable confirm it in writing.

- (d) The Company may at any time replace the Company's Representative, in which event the Company will appoint another person as the Company's Representative and notify the Contractor of that appointment.
- (e) The Company's Representative may by written notice to the Contractor appoint persons (or revoke any appointment) to exercise any of the Company's Representative's functions under this Contract.

5.2 Contractor's Representative

- (a) The Contractor must appoint a representative who must have authority to act on behalf of the Contractor in respect of the Contract.
- (b) The Contractor must promptly notify the Company in writing of any appointment or replacement of the Contractor's Representative.
- (c) A Direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.
- (d) Matters within the knowledge of the Contractor's Representative are deemed to be within the knowledge of the Contractor.
- (e) If the Company's Representative makes a reasonable objection to the appointment of a representative by the Contractor, the Contractor must terminate the appointment and appoint another representative, subject again to the reasonable objection of the Company's Representative.

5.3 Contractor's obligations as to employees and Subcontractors

The Contractor must ensure that all individuals engaged in the performance of the Contractor's Activities:

- (a) are careful, skilled and experienced in their respective trades and callings; and
- (b) comply with the Company's requirements in respect of the Site, as notified by the Company to the Contractor from time to time.

5.4 Removal of persons

- (a) The Company's Representative may by notice in writing instruct the Contractor to remove any person engaged in the performance of the Contractor's Activities who, in the reasonable opinion of the Company's Representative, is guilty of misconduct or is incompetent, negligent or is acting, or has acted, in an unsafe manner.
- (b) The Contractor must ensure that any such person is not again employed in the performance of the Contractor's Activities.

5.5 Status of Contractor's employees

The employees, agents or Subcontractors of the Contractor will not be deemed to be employees, agents or subcontractors of the Company. The Contractor will pay all costs associated with its employees, agents and Subcontractors.

5.6 Industrial relations

The Contractor must, in performing the Contractor's Activities:

- (a) assume sole responsibility for and manage all aspects of industrial relations in respect of its employees, agents and Subcontractors;
- (b) ensure that the rates of pay and conditions of employment specified in all relevant industrial awards, enterprise and project agreements and any relevant Laws, for all employees engaged by it or its agents or Subcontractors, are always observed in full; and
- (c) keep the Company's Representative fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the performance of the Contractor's Activities.

6 Site Access and Site Conditions

6.1 Access to the Site

- (a) Subject to the Contractor's compliance with clause 6.1(b), the Company must provide the Contractor access to the Site on and from the date set out in the Purchase Order to the extent necessary to perform the Contractor's Activities.
- (b) The Contractor must comply with:
 - (i) the Company's conditions of Site access; and
 - (ii) the Directions of the Company's Representative.
- (c) The Contractor and the Contractor's Personnel must ensure the Site is left clean, orderly and fit for immediate use.
- (d) The Contractor must, in accessing and remaining on the Site:
 - (i) not interfere with the Company's activities on the Site;
 - (ii) ensure that all Contractor's Personnel have undertaken all Site induction procedures;
 - (iii) comply with, and ensure that all Contractor's Personnel comply with:
 - (A) all applicable policies, procedures and requirements, specified by the Company; and
 - (B) all Directions, reasonably given or imposed by the Company's Representative, in relation to the Contractor's access to the Site.
- (e) The Contractor acknowledges that nothing in the Contract confers upon the Contractor exclusive possession of, or exclusive access to, the Site.
- (f) A failure by the Company to fulfil its obligations under this clause 6.1 will not be a breach of the Contract but will be a ground upon which the Contractor may apply for an Extension of Time under clause 10.2 and delay costs under clause 10.7.

6.2 Contractor to inform itself

- (a) The Contractor warrants that it has, and it will be deemed to have, done everything that would be expected of a prudent, competent and experienced contractor in:
 - (i) assessing the risks which it is assuming under this Contract; and
 - (ii) ensuring that the Contract Price contains allowances to protect it against any of these risks eventuating,

including:

- (iii) visiting and inspecting the Site and its surroundings; and
 - (iv) making its own assessment of the risks associated with the Site Conditions.
- (b) The Contractor acknowledges that it will not be entitled to any Claim, including:
 - (i) any increase in the Contract Price; or
 - (ii) any Extension of Time,
 based in whole or in part upon any discrepancy between the actual Site Conditions encountered by the Contractor during the progress of the Contractor's Activities and those Site Conditions which the Contractor anticipated, or should have anticipated (acting reasonably), at the date of the Contract.

6.3 Site information

The Company:

- (a) does not warrant, guarantee or make any representation about the accuracy, adequacy,

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suitability or completeness of any information or data made available to the Contractor as to the Site Conditions, whether before or after the Commencement Date, and the Contractor acknowledges that such information or data does not form part of this Contract; and

- (b) to the extent permitted by Law, will not be liable upon any Claim by the Contractor arising out of, or in any way in connection with, such information or data.

6.4 Contract management meetings

- (a) The parties must meet on a monthly basis or as otherwise set out in the Purchase Order.
- (b) The purpose of the meetings will be to formally monitor the Contractor's performance, identify opportunities to facilitate improvements to the performance of the Contractor's Activities and discuss and address such other matters as the Company's Representative may require from time to time in connection with the Contractor's Activities.

6.5 Non-reliance

The Contractor:

- (a) warrants that it did not in any way rely upon:
- (i) any information, data, representation, statement or document made by or provided to the Contractor by the Company, the Company's Representative or anyone else on behalf of the Company; or
- (ii) the accuracy, adequacy, suitability or completeness of any such information, data, representation, statement or document,

for the purposes of entering into this Contract, except to the extent that any such information, data, representation, statement or document forms part of this Contract;

- (b) warrants that it enters into this Contract based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that the Company has entered into this Contract relying upon the warranties in paragraphs (a) and (b).

7 Quality and Defects

7.1 Workmanship and materials

The Contractor must, in carrying out the Contractor's Activities:

- (a) use workmanship:
- (i) of the standard prescribed in this Contract, and to the extent it is not so prescribed, of a standard consistent with the best industry standards for work of a nature similar to the Contractor's Activities; and
- (ii) which is fit for its purpose;
- (b) use materials:
- (i) which are new and comply with the requirements of this Contract and which are consistent with the best industry standards for work of a nature similar to the Contractor's Activities; and
- (ii) of merchantable quality, which are fit for their purpose and consistent with the nature and character of the Contractor's Activities;
- (c) use care, skill, judgment and diligence to the standard prescribed in this Contract, and to the extent it is not so prescribed, of a standard consistent with the best industry standards for work of a nature similar to the Contractor's Activities;
- (d) perform the Contractor's Activities in a manner that is safe to both people and the environment, in accordance with Law and best industry standards for work of a nature similar to the Contractor's Activities;

- (e) perform the Contractor's Activities in a manner to enable the Works:
- (i) to operate in accordance with the requirements of the Scope of Work; and
- (ii) to be fit for their intended purpose; and
- (iii) comply with the requirements of this Contract.

7.2 Quality assurance

The Contractor:

- (a) must implement a quality assurance system representing best industry standards;
- (b) must allow the Company's Representative access to the quality system of the Contractor and its Subcontractors to enable monitoring and quality auditing; and
- (c) will not be relieved from compliance with any of its obligations or from any of its liabilities whether under this Contract or otherwise by Law as a result of:
- (i) the implementation of, and compliance with, the quality assurance requirements under this clause 7.2;
- (ii) any Direction given by the Company's Representative concerning the Contractor's quality assurance system or its compliance or non-compliance with that system;
- (iii) any audit or other monitoring by the Company's Representative, or anyone else acting on behalf of the Company, of the Contractor's compliance with the quality assurance system; or
- (iv) any failure by the Company's Representative, or anyone else acting on behalf of the Company, to detect any Defect including where any such failure arises from any negligence on the part of the Company's Representative or other person.

7.3 Right to inspect

- (a) The Company's Representative may at any time:
- (i) review, audit or inspect the performance of the Contractor's Activities; and
- (ii) undertake formal inspections of the Contractor's Activities,
- to assess compliance.
- (b) The Contractor acknowledges that:
- (i) the Company's Representative owes no duty to the Contractor to inspect the Contractor's Activities; and
- (ii) no inspection of the Contractor's Activities by the Company's Representative will in any way lessen or otherwise affect:
- (A) the Contractor's obligations whether under this Contract or otherwise by Law; or
- (B) the Company's rights against the Contractor whether under this Contract or otherwise by Law.

7.4 Defects

- (a) The Contractor must:
- (i) correct all Defects found in the Works or the Contractor's Activities before the Date of Completion; and
- (ii) diligently repair, replace or otherwise make good any Defects and any damage to the Works caused by a Defect during the Defects Liability Period.
- (b) If prior to the Date of Completion or during the Defects Liability Period the Company's

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Representative discovers or believes there is a Defect, the Company's Representative may give the Contractor an instruction specifying the Defect and doing one or more of the following:

- (i) requiring the Contractor to correct the Defect, or any part of it, and specifying the time within which this must occur; or
 - (ii) advising the Contractor that the Company will accept the Works, or any part thereof, despite the Defect.
- (c) If an instruction is given under clause 7.4(b)(i), the Contractor must correct the Defect:
- (i) within the time specified in the Company's Representative's instruction; and
 - (ii) at times and in a manner which causes as little inconvenience to the users of the Site as is reasonably possible.

7.5 Acceptance of work

If:

- (a) an instruction is given under clause 7.4(b)(ii); and
- (b) the Contractor is responsible for the Defect (or the relevant part of it),

the Contract Price will be reduced by the amount determined by the Company's Representative which represents the cost of correcting the Defect (or the relevant part of it).

8 Title and Ownership

- (a) Title to the Works or any part of it becomes the property of the Company, and ownership passes to the Company, free from liens and other encumbrances, when the Works or any corresponding part of it:
 - (i) is paid for;
 - (ii) is incorporated into or forms part of the Works; or
 - (iii) becomes a fixture on the Site,
 whichever is earlier.
- (b) The Contractor must ensure that all unfixed goods are:
 - (i) clearly marked as the property of the Company; and
 - (ii) stored separately from any other goods or materials.

9 Force Majeure

- (a) No party will be liable to the other for any failure in the performance or observance on its part of any obligation or condition expressed or implied in this Contract (other than an obligation to pay money) to the extent that such failure is attributable to a Force Majeure Event.
- (b) A party affected by a Force Majeure Event must:
 - (i) promptly notify the other party giving full particulars of the Force Majeure Event and the probable delay in the performance or observance of the obligation or condition;
 - (ii) mitigate the effects of the event of the Force Majeure Event using all reasonable precautions and any reasonable alternative measures; and
 - (iii) resume performance of its obligations as soon as practicable but, in any case, no later than 30 days, after termination or abatement of the Force Majeure Event.
- (c) A party affected by a Force Majeure Event is not required to settle any strike, or other labour dispute on terms contrary to its wishes or contest the validity or enforceability of any Law or legally enforceable order by way of legal proceedings.
- (d) If a Force Majeure Event continues:

- (i) for a continuous period of 120 or more days; or
- (ii) for successive periods totalling 120 or more days within any period of 360 days,

then the party not claiming the protection of this provision may terminate this Contract or the applicable Purchase Order with immediate effect by notice in writing to the other party.

10 Time for Performance

10.1 Progress and time

The Contractor must regularly and diligently progress the Contractor's Activities with due expedition and without delay and in accordance with any timing requirements set out in the Scope of Work and any program approved by the Company's Representative.

10.2 Extensions of Time

- (a) Other than as set out in this clause 10.2, the Contractor bears all risk of delay to the progress of the Contractor's Activities.
- (b) The Contractor is only entitled to an Extension of Time (under the Contract or otherwise at Law) if the following conditions precedent are satisfied:
 - (i) the Contractor gives written notice to the Company's Representative of the fact or likelihood of delay within five Business Days after the cause of the delay first arises;
 - (ii) within 10 Business Days of the commencement of the Relief Event submit a written Claim to the Company's Representative which includes details of the following:
 - (A) the cause of the delay;
 - (B) how Completion is likely to be delayed;
 - (C) the date on which the cause of the delay first arose;
 - (D) a Claim for an Extension of Time specifying the number of days claimed;
 - (E) a statement of the facts, matters and circumstances on which the Claim is based; and
 - (F) the steps which the Contractor is taking or will take to avoid or mitigate the adverse effects that the delay has on its obligations;
 - (iii) the cause of the delay is a Qualifying Cause of Delay;
 - (iv) the achievement of Completion will be delayed beyond the Date for Completion;
 - (v) the Contractor has taken reasonable measures to mitigate the effect of the delay event;
 - (vi) the cause of the delay is not directly or indirectly caused by the failure of the Contractor to fulfil its obligations under the Contract; and
 - (vii) the Contractor has complied with this clause 10.2.
- (c) The Company's Representative may give a written Direction to the Contractor to provide the Company's Representative with further information in support of the Contractor's Extension of Time. The Contractor must give that supporting information within five Business Days of that written direction.
- (d) If the cause of delay is more than 15 Business Days, in addition to the notices required under clauses 10.2(b)(i) and 10.2(b)(ii), it is a condition precedent to

the Contractor's entitlement to an Extension of Time (under the Contract or otherwise at Law) that the Contractor gives written notice to the Company's Representative every 10 Business Days from the date of submission of the notice under clause 10.2(b)(ii) with the information required under clause 10.2(b)(ii). The Contractor must advise the Company's Representative if the notice is an interim notice, and when the notice is the final notice to be submitted under this clause.

10.3 Determination of Extension of Time

- (a) The Company's Representative must, within 15 Business Days of receipt of the latter of:
 - (i) a written notice given by the Contractor under clause 10.2(b)(ii);
 - (ii) the information referred to in clause 10.2(c); and
 - (iii) the final written notice given by the Contractor under clause 10.2(d)
 give the Contractor:
 - (iv) written notice of a reasonable Extension of Time, if any, which is granted, as determined by the Company's Representative pursuant to clause 10.2, and the new Date for Completion; or
 - (v) if no extension is given, written notice of that decision.
- (b) The Company's Representative will reduce any entitlement to relief it would otherwise have notified to the Company and the Contractor under clause 10.3(a) to the extent that the Contractor:
 - (i) contributed to the Relief Event; or
 - (ii) failed to take all steps necessary to preclude the Relief Event or to avoid or minimise the consequences of the Relief Event.
- (c) The Company's Representative's decision under clause 10.3(a) will be based on all of the information reasonably available to it at the time of making the decision.
- (d) If the Company's Representative does not provide a written notice in accordance with clause 10.3(a), the Company's Representative is deemed to have given a written notice that no extension is given.

10.4 Independent discretion to extend time

- (a) The Company may, in its absolute discretion, extend the Date for Completion at any time.
- (b) The Company is not obliged to act reasonably in exercising that discretion or exercise the discretion for the benefit of the Contractor.
- (c) Clause 10.4(a) is for the sole benefit of the Company and does not waive any of the Company's rights or conditions precedent to the Contractor's entitlement to an Extension of Time.

10.5 Variations and reduction in time

- (a) Adjustments to the Date for Completion as a result of Variations will be dealt with pursuant to clause 14.3.
- (b) If the scope of the Contractor's Activities is reduced, the Date for Completion will be adjusted to an earlier date as reasonably determined by the Company's Representative.

10.6 Concurrent delays

If 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 cause of delay which gives rise to an entitlement to an Extension of Time under the Contract, then, to the extent of the concurrency, the Contractor will not be entitled to an Extension of Time.

10.7 Delay Costs

- (a) If the Contractor has been granted an Extension of Time for a Relief Event and has necessarily and reasonably incurred extra cost as a direct consequence of the delay, the Contractor must give to the Company's Representative notice of its Claim for delay costs at the same time as the notice referred to in clause 10.2(b), including all available particulars and supporting documentation and a statement that it is a notice under this clause 10.7.
- (b) The Contractor's Claim under clause 10.7(a) must not include any amount in respect of profit.
- (c) It is a condition precedent to the Contractor's entitlement to recover any amount representing extra costs necessarily incurred under clause 10.7(a) that the Contractor provide the notices in accordance with clause 10.7(a).
- (d) The sums payable under this clause 10.7 represent the Contractor's sole entitlement to compensation for delay or disruption, including delay or disruption caused by the Company, whether in breach of the Contract or otherwise and is in substitution for and excludes the Contractor's rights and remedies at common law (including the right to recover damages for breach of contract or otherwise).

11 Suspension

- (a) The Company's Representative may instruct the Contractor to suspend and, after a suspension has been instructed, to re-commence, the carrying out of all or a part of the Contractor's Activities.
- (b) If a suspension under this clause 11 arises as a result of:
 - (i) the Contractor's failure to perform its obligations in accordance with this Contract, the Contractor will not be entitled to make any Claim against the Company arising out of, or in any way in connection with, the suspension; or
 - (ii) a cause other than the Contractor's failure to perform its obligations in accordance with this Contract, then:
 - (A) an instruction to suspend under this clause 11 will entitle the Contractor to be paid by the Company the reasonable extra costs (not including any profit, loss of profit or offsite overheads) necessarily incurred by the Contractor as a result of the suspension as determined by the Company's Representative;
 - (B) the Contractor must take all steps possible to mitigate the extra costs incurred by it as a result of the suspension; and
 - (C) the Contractor will not be entitled to make any Claim against the Company arising out of, or in any way in connection with, the suspension other than under this paragraph (ii).

12 Payment

12.1 Payment obligation

Subject to any right to set-off that the Company may have under this Contract, the Company must pay the Contractor the Contract Price in accordance with clause 12.3 and the Purchase Order for the Contractor's proper performance of the Contractor's Activities and its other obligations under this Contract.

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12.2 Application of the Payments Act

To the extent payment under the Contract is subject to any legislation governing payments to contractors or suppliers in the building or construction industry (**Payments Act**):

- (a) the Contractor must immediately notify the Company of:
 - (i) the Contractor receiving; or
 - (ii) the Contractor becoming aware of any party providing any work, services or supply required in connection with the Contractor's Activities receiving,
- any notice pursuant to the Payments Act;
- (b) the Contractor must, when the Contractor gives the Company any written communication (including a claim or notice) under or in relation to the Payments Act, deliver that communication to the Company's address for notices set out in the Purchase Order;
- (c) the amount of each progress payment to which the Contractor is at any time entitled in relation to this Contract will be calculated in accordance with all provisions of the Contract relevant to the amount which the Contractor may claim or the Company must pay;
- (d) if the Contractor suspends the Contractor's Activities pursuant to the Payments Act, the Contractor will have no claim other than as expressly provided for by the Payments Act; and
- (e) if any of the Contractor's Subcontractors suspend the provision of any work, services or supply pursuant to the Payments Act, the Contractor will have no Claim (including, without limitation, for an Extension of Time).

12.3 Invoice

The Contractor must submit tax invoices to the Company on the first Business Day of each month for the Contractor's Activities undertaken during the previous calendar month, which invoice must include:

- (a) a detailed description of the Contractor's Activities performed;
- (b) an individual reference number for the Company to quote with remittance payment;
- (c) the Contract Price relating to the Contractor's Activities, broken down to contain sufficient information to enable the Company to check that the amount claimed is correct and must also set out those items of expenditure, if any, in respect of which reimbursement is claimed together with such other documents, such as receipts or invoices, as may be necessary to verify the Contractor's expenditure;
- (d) the amount of GST;
- (e) the Company's Representative; and
- (f) any other information or documents reasonably requested by the Company.

12.4 Payment

- (a) All undisputed amounts due to the Contractor under this Contract shall be paid by the Company to the Contractor's designated bank account within 30 days of receipt of the invoice.
- (b) In the event that a dispute arises as to any Claim for payment made by the Contractor or the amount of any payment which the Company is to make to the Contractor, then:
- (c) the undisputed amount shall be paid in accordance with clause 12.4(a);
 - (i) the Company shall within 15 Business Days of receipt of the invoice detail in writing to the Contractor the specific grounds upon which it disputes the disputed amount;

- (ii) the parties shall endeavour to resolve all disputes as quickly as possible, failing which the matter must be resolved in accordance with clause 19; and
- (iii) if the resolution of the dispute pursuant to clause 19 determines that the Company is to pay an amount to the Contractor, the Company must pay that amount within 10 Business Days after that determination has been made.
- (d) The Company may set off any amount that may become payable by it to the Contractor against any amount that is or may become payable by the Contractor to the Company under this Contract or otherwise.

12.5 GST exclusive

- (a) Where a party (supplier) makes any supply under or in connection with this Contract to the other party (recipient), the recipient must pay to the supplier an amount equal to any GST that the supplier is or becomes liable to pay in respect of the supply.
- (b) Any amount payable under clause 12.4(a) must be paid at the same time as payment for the supply giving rise to the obligation to pay GST, or if a valid Tax Invoice has not been given to the recipient prior to that time, within 14 days of the issue of a valid Tax Invoice by the supplier to the recipient.
- (c) Other than in respect of GST, any taxes, levies, imposts, deductions, charges, withholdings and duties imposed on any matter relating to or connected with the provision of the Contractor's Activities or the price for the Contractor's Activities must be paid by the Contractor and the Contractor must indemnify and hold the Company harmless against any liability for the same.
- (d) If the Company is entitled to any exemption or concession concerning GST or any other tax, import duty or tariff with respect to the Contractor's Activities, the Contractor must use all reasonable endeavours to apply for that exemption or concession and to pass that benefit on to the Company.

13 Contractor's Warranties

The Contractor warrants and represents that, as at the Commencement Date of this Contract, the Commencement Date of any Purchase Order and at all other relevant times:

- (a) it is duly incorporated and has obtained all necessary Approvals to execute and perform its obligations under this Contract;
- (b) it has satisfied itself as to all matters affecting the performance of the Contractor's Activities including:
 - (i) the Company's requirements for the Contractor's Activities; and
 - (ii) all risks which may arise (including those affecting the timing or cost of the Contractor's Activities);
- (c) the Contractor's Activities will be rendered with professional skill, care and diligence and be of high quality and workmanship and otherwise satisfactory to the Company;
- (d) it will at its own cost rectify any non-performance, errors, omissions, defects or deficiencies in the Contractor's Activities; and
- (e) the Contractor and the Contractor's Personnel have read and understood all information, documents, policies, procedures and, if relevant, Site rules provided by the Company and will comply with all requirements contained therein.

14 Variations

14.1 Proposed Variation

- (a) At any time prior to the Date of Completion, the Company's Representative may issue a document titled "Proposed Variation" to the Contractor which will set out details of a proposed Variation which the Company is considering.
- (b) Within 10 Business Days of the receipt of a "Proposed Variation" the Contractor must provide the Company's Representative with a written notice in which the Contractor sets out:
 - (i) the adjustment (if any) to the Contract Price to perform the proposed Variation; and
 - (ii) the adjustment (if any) to the Date for Completion required to perform the proposed Variation.

14.2 Variation order

- (a) Whether or not the Company's Representative has issued a "Proposed Variation" under clause 14.1(a), the Company's Representative may, at any time prior to the Date of Completion, instruct the Contractor to perform a Variation by issuing by a written document to the Contractor titled "Variation Order" in which the Company's Representative will state one of the following:
 - (i) the proposed adjustment to the Contract Price and the adjustment to the Date for Completion as set out in the Contractor's notice under clause 14.1(b) (if any) is agreed and the Contract Price will be adjusted accordingly; or
 - (ii) any adjustment to the Contract Price and the Date for Completion will be determined under clause 14.3(b).
- (b) No Variation will invalidate this Contract irrespective of the nature, extent or value of the works or services the subject of the Variation.

14.3 Adjustment for Variation

The adjustment to the Contract Price and the Date for Completion for all Variations which have been the subject of a Direction by the Company's Representative will be:

- (a) where clause 14.2(a)(i) applies, as determined by agreement by the parties; or
- (b) failing agreement under clause 14.3(a), determined as follows:
 - (i) in respect of the adjustment to the Contract Price:
 - (A) by the Company's Representative using any rates or prices in this Contract to the extent they are applicable to, or it is reasonable to use them for valuing the Variation; or
 - (B) to the extent clause 14.3(b)(i)(A) does not apply, a reasonable amount:
 - (1) to be agreed between the parties; or
 - (2) failing agreement, determined by the Company's Representative; and
 - (ii) in respect of the adjustment to the Date for Completion, a reasonable adjustment as determined by the Company's Representative if the requirements of clause 10.2(b) and 10.6 are satisfied.

14.4 Omissions and deletions

If a Variation the subject of a Direction by the Company's

Representative omits or deletes any part of the Contractor's Activities, the Company may thereafter either perform this work itself or employ or engage Other Contractors to perform the omitted or deleted work.

14.5 Variations requested by Contractor

The Contractor may, for its convenience, request the Company's Representative to direct a Variation. Any such request must be in writing and must contain the following details:

- (a) a description of the Variation;
- (b) the additional or reduced costs or time involved in the Variation and any proposal for sharing any savings in costs with the Company including the amount; and
- (c) any benefits which will flow to the Company from the Variation.

14.6 Company's Representative's determination

- (a) After a request is made by the Contractor in accordance with clause 14.5, the Company's Representative will, in its absolute discretion, give a written notice to the Contractor:
 - (i) rejecting the request; or
 - (ii) approving the request either conditionally or unconditionally.
- (b) The Company's Representative will not be obliged to exercise its discretion for the benefit of the Contractor.

14.7 Variation approved by Company's Representative

If the Company's Representative issues a written notice under clause 14.6 approving the Contractor's request under clause 14.5:

- (a) unless otherwise agreed, the Contractor will not be entitled to make a Claim against the Company arising out of, or in any way in connection with, the Variation;
- (b) if the Contractor's request offered to share savings in cost with the Company, the Contract Price will be reduced by the amount offered by the Contractor in its request; and
- (c) the Contractor will be responsible for all parts of the Contractor's Activities which are in any way affected by the Variation.

15 Completion

15.1 Notices of Completion

The Contractor must give the Company's Representative written notice, in respect of each Stage and the whole of the Works:

- (a) seven days before the date on which the Contractor estimates Completion will occur; and
- (b) when the Contractor considers that Completion has been achieved.

15.2 Certificates of Completion

- (a) The Company's Representative must, within seven days after receipt of a notice under clause 15.1(a) either:
 - (i) issue a Certificate of Completion stating that the Contractor has reached Completion and the Date of Completion; or
 - (ii) notify the Contractor of any Defects, or any outstanding requirements, that prevent the achievement of Completion.
- (b) If the Company's Representative notifies the Contractor of any Defects in the Works, the Contractor must then correct such Defects and the procedure in clauses 15.1 and 15.2(a) must be repeated.

15.3 Use of the Works

No payment and no partial or entire use of the Works by the Company will be deemed to constitute Completion or release

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the Contractor from any of its obligations or liabilities under the Contract.

16 Indemnity and Liability

16.1 Risk of goods and materials

The Contractor will bear the risk of and indemnify the Company against:

- (a) any loss of or damage to unfixed goods and materials intended for installation as part of the Works but not yet installed, until they are installed, notwithstanding that ownership of all or part of the goods or materials may previously have passed to the Company; and
- (b) after goods or materials are installed as part of the Works, any loss of or damage to those goods or materials arising from any act or omission of the Contractor during the performance of the Contractor's Activities or from an event which occurred prior to installation.

16.2 Indemnity from the Contractor

- (a) To the extent permitted by law, the Contractor indemnifies the Indemnified Parties from and against all liability, Losses, damages, costs and expenses (including legal expenses) arising out of or in connection with:
 - (i) loss of, damage to, or destruction of any property;
 - (ii) personal injury (including psychological injury) or death; or
 - (iii) any breach of the Contractor's obligations under clause 20;
 suffered or incurred and arising from or in connection with any performance or non-performance or breach by the Contractor of its obligations under this Contract.
- (b) The Contractor's liability to indemnify the Indemnified Parties will be reduced proportionally to the extent that a negligent act or omission of the Indemnified Parties has contributed to their loss, expense or damage.

16.3 Indirect Loss

Subject to clause 16.8, neither party is liable to the other party under this Contract, law of tort (including negligence), statute, in equity or otherwise, for any Indirect Loss arising under, out of or in connection with this Contract.

16.4 Limitation of liability

- (a) Subject to clause 16.4(b) and clauses 16.8 and 16.9, the Contractor's liability to the Company under or in connection with this Contract, whether by way of indemnity, by statute, in tort or on any other basis in law or equity, is limited to the total aggregate Contract Price calculated to be paid under this Contract. The Company releases the Contractor and the Contractor's Personnel from any liability to the Company for any Claims above the limit of liability specified in this clause 16.4 that are made by or on behalf of any third party for any loss or damage arising from or in connection with the performance of the Contractor's Activities.
- (b) Clause 16.4(a) does not limit the liability of the Contractor:
 - (i) in cases of gross negligence, fraud, wilful misconduct, wilful default or illegal or unlawful acts;
 - (ii) in cases of death or personal injury caused by the Contractor;
 - (iii) in cases where there is any loss or damage to any real or personal property of the Indemnified Parties caused by the Contractor; or

- (iv) where it infringes the Intellectual Property Rights of any third party when providing the Goods and/or performing the Services.

16.5 No set-off

All amounts payable under this clause 16 must be paid in full (without any deduction, withholding, counter-claim or set-off) immediately on notice from the Company requiring payment.

16.6 No expense need be incurred

It is not necessary for any of the Indemnified Parties to incur any expense or make any payment before being entitled to enforce a right of indemnity under this Contract.

16.7 Survival and independence of indemnity

The indemnity in clause 16.2:

- (a) is a continuing obligation which is separate and independent from the Contractor's other obligations under this Contract or at Law; and
- (b) survives any suspension, termination or expiry of this Contract.

16.8 Proceeds of insurance

The limitations and exclusions of the Contractor's liability under clauses 16.3 and 16.4 do not apply to the extent that the Contractor is able to recover a higher amount under any insurance policy (or would have been able to recover a higher amount under any insurance policy which the Contractor was obliged to obtain and maintain under this Contract but failed to do so).

16.9 Completion, re-performance or rectification

The limitations and exclusions of the Contractor's liability under clauses 16.3 and 16.4 do not limit or otherwise affect the Contractor's obligations under this Contract (including clauses 13 and 7.4) or a Purchase Order to complete, re-perform or rectify any of the Contractor's Activities which have been performed incorrectly or which are defective, deficient, incomplete or delayed.

17 Insurance

17.1 Insurances to be procured

The Contractor must, at its own expense, obtain and maintain with solvent and reputable insurers during the term of this Contract the insurance cover at the amounts specified below:

- (a) Contract Works Insurance - a limit of liability of not less than the full reinstatement or replacement value of the Works under the Contract, together with costs of demolition and removal of debris and contractors fees.
- (b) Public liability insurance - cover of \$20 million in respect of any one occurrence or series of occurrences arising from the one originating clause and unlimited as to the number of claims.
- (c) Professional indemnity insurance - where the Contractor's Activities includes design of the Works or any part of the Works or other professional services, professional indemnity insurance cover of \$20 million in respect of any one claim and in the aggregate.
- (d) Construction plant insurance - where the Contractor's Activities includes plant construction services, cover of market value of the construction plant.
- (e) Worker's compensation insurance covering liability arising out of death of or injury to persons employed (or deemed to be employed) by the Contractor in connection with their obligations under this Agreement (including statutory and common law liability) - the maximum amount required by Law.
- (f) Motor vehicle insurance - where vehicles are used in the provision of services, combined limit of not less than \$20 million in respect of property damage and third party bodily injury (other than as provided for by any compulsory statutory insurance scheme or

accident compensation scheme) in respect of any one accident or series of accidents arising out of the one event and unlimited as to the number of claims.

(g) Any other insurances required by law.

17.2 Provision of insurance policies

(a) The Contractor must, if requested by the Company, promptly provide evidence that the required insurances have been effected and continue in force (including evidence of payment of premiums):

- (i) prior to the commencement of the Contractor's Activities;
- (ii) prior to the Contractor or the Contractor's Personnel accessing the Site; and
- (iii) thereafter, as and when requested by the Company from time to time.

(b) If the Contractor has failed to obtain and maintain any required insurances, then the Company may (in addition to any other rights or remedies which it may have) obtain and maintain its own insurances and recover the cost from the Contractor as a debt immediately due and payable.

(c) The Contractor must, in respect of worker's compensation insurance, provide a principal's indemnity extension for both statutory benefits and common law in favour of the Company.

17.3 Company as a third party beneficiary

Except in respect of motor vehicle insurance and professional indemnity insurance, the insurances must:

- (a) cover the Company and any other interested parties nominated by the Company as third party beneficiaries;
- (b) provide that, insofar as the insurance policy covers more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) operate in the same manner as if there were a separate policy of insurance covering each of the persons in whose names the policy is effected;
- (c) include a cross liability clause in which the insurer agrees to waive all rights, remedies or relief to which it might become entitled by subrogation against any of the persons comprising the insured.

17.4 Subcontractors insurance

The Contractor shall cause every Subcontractor employed by the Contractor to carry insurance of types and amounts necessary to cover risks inherent in the work of the particular Subcontractors.

18 Termination

18.1 Preservation of rights

Subject to clause 18.7, nothing in this clause 18 or that a party does or fails to do pursuant to this clause 18 will prejudice the right of that party to exercise any right or remedy (including recovering damages) which it may have where the other party breaches (including repudiates) this Contract.

18.2 Contractor default

The Company may give a written notice under clause 18.4 to the Contractor, if the Contractor:

- (a) does not commence the Contractor's Activities in accordance with the requirements of this Contract;
- (b) suspends the Contractor's Activities other than in accordance with clauses 9, 11 or 18.5(d) or otherwise does not regularly and diligently progress the Contractor's Activities with due expedition and without delay;
- (c) fails to effect, have in place or otherwise maintain or provide evidence of, insurance as required by clause 17;

(d) does not comply with any Direction of the Company's Representative made in accordance with this Contract;

(e) abandons the Contractor's Activities or otherwise plainly demonstrates the intention not to continue performance of its obligations under this Contract;

(f) is in breach of any applicable Law; or

(g) is otherwise in breach of this Contract.

18.3 Company's default

The Contractor may give a written notice under clause 18.4 to the Company if the Company fails to pay the Contractor an amount due under clause 12.4.

18.4 Contents of notice of default

A notice under this clause 18.4 must state:

- (a) that it is a notice under clause 18.4;
- (b) the breach relied upon; and
- (c) that the party giving the notice requires the other party to remedy the breach within 15 Business Days of receiving the notice.

18.5 Termination for insolvency or breach

If:

- (a) an Insolvency Event occurs to a party, or where the Contractor comprises 2 or more persons, to any one of those persons; or
- (b) a party does not remedy a breach of Contract the subject of a notice under clause 18.4 within 15 Business Days of receiving the notice under clause 18.4,

then:

- (c) where that party is the Contractor, the Company may by written notice to the Contractor terminate this Contract; or
- (d) where that party is the Company, the Contractor may by written notice to the Company:
 - (i) suspend the whole or any part of the Contractor's Activities; and
 - (ii) if within 15 Business Days of the date of this suspension the Company fails:
 - (A) to remedy the breach; or
 - (B) if the breach is not capable of remedy or in the case of an Insolvency Event, to make arrangements reasonably satisfactory to the Contractor,
 - (iii) terminate this Contract.

The Contractor may at any time it sees fit remove a suspension under this clause 18.5.

18.6 Company's entitlements after termination

Subject to clause 18.1, if:

- (a) the Company terminates this Contract under clause 18.5; or
- (b) the Contractor repudiates this Contract and the Company otherwise terminates this Contract,

then:

- (c) the Company will:
 - (i) be entitled to take over and use, or require the Contractor to remove from the Site, all plant, equipment, materials, work and other things intended for the Contractor's Activities;
 - (ii) not be obliged to make any further payments to the Contractor; and
 - (iii) be entitled to recover from the Contractor any Loss suffered or incurred by it as a result of, or arising out of, or in any way in connection with, such termination; and

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- (d) the Contractor must immediately:
 - (i) where requested by the Company, novate to the Company (or the Company's nominee), any or all subcontracts between the Contractor and its Subcontractors;
 - (ii) deliver to the Company all items in which ownership has passed to the Company under this Contract; and
 - (iii) hand over to the Company all Deliverables prepared up to the date of termination (whether complete or not).

18.7 Contractor's entitlements after termination

- (a) If the Company repudiates this Contract or the Contractor otherwise terminates this Contract, the Contractor will:
 - (i) be entitled to Claim damages; and
 - (ii) not be entitled to a quantum meruit.
- (b) This clause 18.7 will survive any termination of this Contract.

18.8 Termination for convenience

Without prejudice to any of the Company's other rights, the Company may:

- (a) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate this Contract effective from the time stated in the Company's notice or if no such time is stated, at the time the notice is given to the Contractor; and
- (b) thereafter, at its absolute discretion, complete the uncompleted part of the Contractor's Activities either itself or by engaging Other Contractors.

18.9 Ipso Facto Laws

The parties agree that:

- (a) the rights of a party under the Contract are subject to the operation of sections 415D to 415G, 434J to 434M and 451E to 451H of the Corporations Act (*Ipso Facto Laws*); and
- (b) to the extent of inconsistency between any provision of the Contract and the Ipso Facto Laws the relevant provision of the Contract will be read down or severed from the Contract, so as to maintain as far as possible, the original effect and intent of the Contract.

19 Disputes

19.1 Notice of dispute

- (a) If a dispute or difference arises between the Contractor and the Company or between the Contractor and the Company's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or this Contract, or either party's conduct before this Contract, the dispute or difference must be determined in accordance with the procedure in this clause 19.
- (b) Where such a dispute or difference arises, either party may give a notice in writing to the Company's Representative and the other party specifying:
 - (i) the dispute or difference;
 - (ii) particulars of the party's reasons for being dissatisfied; and
 - (iii) the position which the party believes is correct.
- (c) The parties must continue to perform their obligations under this Contract despite the existence of any dispute or difference.

19.2 Negotiation

The Company's Representative and the Contractor's Representative (or their nominees) must, within 5 Business Days of a notice being given under clause 19.1, meet and

undertake genuine and good faith negotiations with a view to resolving the dispute or difference.

19.3 Litigation

If the parties have not resolved a dispute or difference within 30 Business Days after a notice is given under clause 19.1, then either party may refer the dispute or difference to a court of competent jurisdiction.

19.4 Survive termination

This clause 19 will survive any termination of this Contract.

19.5 Continuation of Contractor's Activities

Despite the existence of a dispute or difference between the parties, the Contractor must:

- (a) continue to perform the Contractor's Activities; and
- (b) otherwise comply with its obligations under this Contract.

19.6 Urgent injunctive or declaratory relief

Nothing in this clause 19 shall prejudice the right of a party to seek urgent injunctive or declaratory relief in respect of a dispute under clause 19 or any matter arising under, or in connection with, this Contract or the Contractor's Activities.

20 Confidentiality, publicity and privacy

20.1 Contractor's obligations of confidentiality

- (a) Subject to any more onerous confidentiality obligations assumed by the Contractor under any confidentiality agreement that has previously been entered into with the Company (unless waived in writing by the Company), the Contractor must (and must ensure that the Contractor's Personnel):
 - (i) maintain the secrecy and confidentiality of all reports, records, data, studies, results, opinions or other information (including the terms of this Contract) owned by or relating to the Company or its business or its Personnel or customers created or obtained pursuant to this Contract or as a result of the Contractor's Activities; and
 - (ii) not disclose such information to any person without the Company's prior written approval (subject to any disclosures required by law or the rules of any generally recognised securities exchange).
- (b) The Contractor acknowledges:
 - (i) that damages may not be an appropriate remedy for any breach of the Contractor's obligations under clause 20.1(a); and
 - (ii) the Company may seek interlocutory, injunctive and or declaratory relief in relation to such breaches, in addition to any other right or remedy which it may have.

20.2 Publicity

The Contractor shall not make any public statements or press releases about, or relating to, any Contractor's Activities performed under this Contract without the Company's prior written consent, except as required by law or the rules of any generally recognised securities exchange.

20.3 Privacy

The Contractor must (and must ensure that the Contractor's Personnel) comply at all times with all legislation that applies to the collection, storage, retrieval, use and disposal of personal information as that term is defined under the *Privacy Act 1988* (Cth).

21 Intellectual property rights

21.1 Existing IP

All Existing IP shall remain exclusively owned by that party unless otherwise agreed in writing by the parties.

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21.2 Use of Existing IP

- (a) Notwithstanding clause 21.1, the Contractor grants or agrees to procure the grant to the Company (including its Related Bodies Corporate and its or their respective employees, agents, advisers and contractors) of, an irrevocable, transferable (including by way of sub-licence(s)), perpetual, unconditional, non-exclusive, unrestricted royalty free licence to use and copy the Contractor's Existing IP only to the extent reasonably required to enable the Company to make use of it for the Works, including to use, adapt, update, or amend any Deliverables, and for the ongoing business operations of the Company.
- (b) The Contractor must ensure that it secures all necessary rights and licences from subcontractors in order to meet its obligations under this clause 21.2.
- (c) The Company grants to the Contractor, a non-exclusive, unrestricted royalty free licence to use and copy the Company's Existing IP provided to the Contractor to the extent reasonably required to enable the Contractor to provide the Works.

21.3 Ownership of Project IP

- (a) Title to all Project IP will vest immediately on its creation in the Company. For the avoidance of doubt, the Company may use and disclose all the Deliverables freely without reference to or consent of the Contractor or any other person or entity.
- (b) The Contractor must not use any Deliverables for any purpose other than the performance of the Works.
- (c) The Contractor must ensure that it secures all necessary rights from subcontractors in order to ensure that exclusive property in the Deliverables vests in the Company in the manner set out in this clause 21.3.
- (d) The Contractor must provide all reasonable assistance requested by the Company to protect Project IP.

21.4 Survival of obligations

The obligations of the Contractor under this clause 21 are continuing obligations and will survive following the termination of this Contract.

22 Long service levy payment

The Contractor agrees that the Contract Price includes any levy payable by either the Contractor or the Company under any Law relating to the payment of portable long service leave in the construction industry.

23 General

23.1 Company's corporate group

The Contractor agrees that any entity in the Company's corporate group may, by written notice, elect to take the benefit of this Contract as if they were named as the parties to it.

23.2 Governing Law and jurisdiction

- (a) This Contract is governed by the laws of the Northern Territory.
- (b) Each Party submits to the jurisdiction of the courts of the Northern Territory and of any court that may hear appeals from any of those courts, for any proceedings in connection with this Contract.

23.3 Entire agreement

Subject to clause 3(c), this Contract and any Purchase Order issued under it comprises the whole agreement between the parties with respect to its subject matter. It sets out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersedes all earlier Conduct by or between the parties in connection with its subject matter.

23.4 Assignment

- (a) The Company may assign, novate or otherwise transfer any of its rights or obligations under this Contract to a Related Body Corporate without the prior written consent of the Contractor.
- (b) The Contractor must not assign or transfer any part of the Contractor's Activities or its rights, interest or obligations under this Contract, without the prior written consent of the Company. The Contractor will, despite any such consent, continue to be liable at all times for the performance of its obligations under this Contract.

23.5 Business ethics

- (a) The Contractor must act at all times in the Company's best interests, consistent with the standards of care applicable to the performance of the Contractor's Activities.
- (b) The Contractor represents and warrants to the Company that the Contractor has complied and shall comply with all applicable Laws governing, relating to or dealing with illegal payments, gifts, undue hospitality or gratuities or other corrupt business practices. The Contractor acknowledges that the Company and its Related Bodies Corporate desire, and are obliged, to comply with all provisions of any applicable anti-corruption Laws. The Contractor agrees to cooperate with and assist the Company and its Related Bodies Corporate with respect to such compliance.
- (c) The Contractor must not, in performing any of the Contractor's Activities, take action of any nature which would contravene any provision of any applicable anti-corruption Laws. The Contractor represents and warrants to the Company that in the performance of the Contractor's obligations under this Contract, the Contractor and its Personnel have not made and must not make, whether on the Contractor's own behalf, on behalf of the Company or the Company's Related Bodies Corporate or any Contractor's Personnel or on behalf of any other person, any offer of payment of or promise to pay, or gift of or promise to give, any money or anything of value, directly or indirectly, to:
 - (i) any officer, official, employee or representative of any Government Authority or of any department, agency, subdivision or instrumentality thereof; or
 - (ii) any political party, party official or candidate for political office; or
 - (iii) any person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any official, to any political party or official thereof, or any candidate for political office.
- (d) If the Contractor at any time receives any request relating to the Company or any of its Related Bodies Corporate that the Contractor reasonably believes may constitute a violation of any applicable Law, the Contractor must promptly notify the Company and shall provide the Company with all relevant particulars in respect to such a request.
- (e) All payments to the Contractor under this Contract will be solely by cheque or bank transfer made directly to the Contractor or the Contractor's account and no payment will be in cash, by bearer instrument or made to any person other than the Contractor.
- (f) The Contractor must immediately notify the Company in writing of any and all violations of this clause 23.5 upon becoming aware of those violations.
- (g) Should the Contractor or the Contractor's Personnel breach or contravene any of the provisions of this

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clause 23.5, the Company may, in addition to taking all remedies at the Company's disposal in such circumstances, terminate this Contract with immediate effect.

23.6 Modern Slavery Laws

- (a) The Contractor represents, warrants and undertakes, throughout the term of this Contract:
- (i) that neither the Contractor nor any of its directors, officers, employees, agents, representatives and Subcontractors engage in Modern Slavery;
 - (ii) to comply with all Modern Slavery reporting requirements applicable to it;
 - (iii) to develop and maintain policies and procedures to avoid engaging in Modern Slavery; and
 - (iv) to notify the Company promptly upon becoming aware of any incident, complaint or allegation that the Contractor, or any entity in its supply chain, has engaged in Modern Slavery.
- (b) The Contractor acknowledges that the Company has corporate reporting requirements with regard to Modern Slavery and, at the reasonable request of the Company, the Contractor will confirm in writing that it has complied with its undertakings under clause 23.6(a) and will provide any information reasonably requested by the Company in support of such compliance.
- (c) Upon becoming aware of any actual, reasonably suspected or anticipated breach of this clause 23.6, the Contractor must immediately provide written notice of the breach, giving full details of such breach, to the Company.
- (d) Breach of any part of this clause 23.6 is grounds for termination in accordance with clause 18.2.

23.7 Proportionate liability

Each party agrees that the Proportionate Liability Legislation, to the extent that the same may be lawfully excluded, is excluded from operation with respect to any Dispute or action brought by one party against the other party arising out of or in connection with:

- (a) this Contract; and
- (b) any of the Contractor's Subcontractors or the Subcontractors' personnel.

23.8 Relationship of the parties

The relationship between the Company and the Contractor under this Contract is a relationship of "principal and independent contractor" and nothing in this Contract will be construed so as to create a relationship of employment, agency or partnership between the parties or imposes any fiduciary duties on a party in relation to the other party. The Contractor does not have any authority to contract with third parties on behalf of the Company or to otherwise bind the Company without the Company's prior written agreement.

23.9 Joint and several liability of Contractor

Where the Contractor comprises two or more persons, each of them is jointly and severally liable for all of the Contractor's liabilities and obligations under this Contract.

23.10 Severability

Any term of this Contract that is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable and the validity or enforceability of the remainder of this Contract is not affected.

23.11 Counterparts

This Contract may be executed in counterparts, and all executed counterparts constitute one document.

23.12 Amendment

No amendment of this Contract is effective unless that amendment is made in writing and signed by or on behalf of each party.

23.13 Waiver

No waiver of a right or remedy under this Contract is effective unless it is in writing and signed by the party granting it. A waiver of a right or remedy under this Contract is only effective in the specific instance and for the specific purpose for which it is granted. A single or partial exercise of a right or remedy under this Contract 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 Contract does not operate as a waiver or prevent further exercise of that or of any other right or remedy.

23.14 Cumulative rights

Except as expressly provided in this Contract, the rights of a party under this Contract are in addition to and do not exclude or limit any other rights or remedies provided by law.

23.15 Further assurances

Except as expressly provided in this Contract, each party must, at its own expense, do all things reasonably necessary to give full effect to this Contract and the matters contemplated by it, including executing or ensuring the execution of documents and ensuring that relevant third parties (including, in the case of the Contractor, the Contractor's Personnel) do all things reasonably necessary to give full effect to this Contract and the matters contemplated by it.

23.16 Notices

- (a) Unless otherwise specifically provided in this Contract, any notices under this Contract must be:
- (i) in writing;
 - (ii) delivered by hand, email or by mail to:
 - (A) the Company's Representative at the address stated in the Purchase Order;
 - (B) the Contractor's Representative at the address stated in Purchase Order; or
 - (C) as a party may notify to the other from time to time in writing; and
 - (iii) marked with the title stating that it is a notice under this Contract.
- (b) All such notices so addressed will be deemed duly given:
- (i) upon delivery, if delivered by courier or by hand (against receipt);
 - (ii) three Business Days after posting, or 10 Business Days if posted from overseas, if sent by certified or registered mail, return receipt requested; or
 - (iii) in the case of an email, on the date of its dispatch, unless it is sent after 5pm ACST in which case it is deemed to have been received at 9am ACST on the next Business Day, or unless the sender receives an automated message that the email has not been delivered.

23.17 Electronic signing

A party may sign this Contract electronically and bind itself accordingly. In addition, if the intention is to print the Contract out after all parties that are signing electronically have done so, such that where a party prints it out, the first print-out by that party after all signatories who are signing have done so will also be an executed original counterpart of this Contract. Each signatory confirms that their signature appearing in the document, including any such print-out, is their personal signature authenticating it.