

**LENTON MANAGEMENT AND MARKETING PTY LTD**

**STANDARD PURCHASE ORDER TERMS AND CONDITIONS**

These are the terms and conditions referred to in Lenton Management and Marketing Pty Ltd's Purchase Orders and apply to Goods and Services supplied in connection with the Purchase Order unless otherwise noted. If the Seller commences to supply Goods or Services then that is conclusive evidence that these Standard Purchase Order Terms and Conditions have been agreed to.

**1. DEFINITIONS**

In this Contract, except where the context otherwise requires capitalised terms have the following meanings.

<b>Term</b>	<b>Definition</b>
<b>Approvals</b>	means any consent, authorisation, registration, filing, lodgement, notification, agreement, certificate, commission, lease, licence (including, to the extent required, a licence under the <i>Labour Hire Licensing Act 2017</i> (Qld)), permit, approval or exemption from, by or with an Authority to perform the Works.
<b>Associated Documents</b>	means, in relation to the Goods, all records and documents which are required to be delivered under the Contract in connection with the Goods or which the Purchaser reasonably expects or requires to be delivered in connection with or ancillary or incidental to the Goods, including without limitation testing results, certifications, Material Safety Data Sheets (MSDS) operator manuals, manufacturer warranties, instructions, plans, drawings and diagrams.
<b>Authority</b>	means any government department, local government or statutory authority or any other party under a Law which has a right to impose a requirement or whose consent is required in relation to either party's obligations under this Contract.
<b>Business Day</b>	means a day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Brisbane, Australia.
<b>Commencement Date</b>	means the earlier of: (a) the date specified in the Purchase Order; (b) the date that the Seller accepts the Contract; or (c) the date that the Seller commences to supply the Goods or Services.
<b>Contract</b>	means the contract comprising the Purchase Order, these Terms and Conditions and any other documents annexed to or incorporated into the Contract by reference. To the extent of any inconsistency, the Purchase Order and these Terms and Conditions take precedence unless otherwise stated.
<b>Defect</b>	means any error, omission, defect, deficiency or discrepancy in the Works as compared against the Specifications or any warranty, or any other failure of the Works to comply with the requirements of the Contract.
<b>Defects Liability Period</b>	means, in respect of the Works, the period commencing on the Commencement Date and ending on the later of: (a) 24 months from the date the Goods are delivered to the Delivery Point; or (b) 12 months from the date on which the Goods are commissioned, and in respect of all other Works, shall mean the period commencing on the Commencement Date and ending one year from the date of completion of the Works (unless otherwise specified in the Contract in either case).
<b>Delivery Date</b>	means the date for delivery of the Goods specified in the Purchase Order.
<b>Delivery Point</b>	means the place for delivery of the Goods specified in the Purchase Order.
<b>Expiry Date</b>	means the date the Defects Liability Period ends.
<b>Force Majeure</b>	means: (a) acts of God and other natural disasters including earthquakes, floods, fires and cyclonic weather events; (b) acts of terrorism, riots or civil commotion and hostilities at war (whether declared or not) or explosion;

<b>Term</b>	<b>Definition</b>
	<p>(c) events which prevent the transportation of the Purchaser's coal by rail or by sea;</p> <p>(d) ionising radiation, contamination by radioactivity from any nuclear fuel or from any nuclear waste, not caused by the Seller;</p> <p>(e) industrial action of a statewide or nationwide application and which is not limited to the Seller or its employees, agents or subcontractors, the occurrence or effects of which could not reasonably have been prevented by the party seeking to rely on the occurrence of such an event and which is not caused by any fault, act or omission of the party seeking to rely on the occurrence of such an event, but Force Majeure does not include:</p> <p>(f) industrial action, as that term is defined by section 19 of the <i>Fair Work Act 2009</i> (Cth), in relation to the Purchaser or Seller or any of the Seller's personnel engaged in the Works affecting only the Site;</p> <p>(g) breakdown of, or loss of or damage to, plant, machinery or equipment not resulting from an event described in paragraphs (a) or (b); or</p> <p>(h) inclement weather which is not part of an event described in paragraph (a).</p>
<b>Goods</b>	means the goods to be supplied by the Seller to the Purchaser as specified in the Purchase Order.
<b>Law</b>	means the law in force in the place at which the Works are to be carried out, including any requirement of an Authority and any acts, statutes, regulations, proclamations, local laws, present or future and whether state, federal or otherwise.
<b>Lenton Joint Venture</b>	means an unincorporated joint venture between the Lenton Joint Venture Participants.
<b>Lenton Joint Venture Participants</b>	means New Lenton Coal Pty Ltd ACN 095 390 079 (90%) and MPC Lenton Pty Ltd ACN 149 618 904 (10%).
<b>Materials</b>	means all materials, plant, machinery, equipment, products, processes and other things to be supplied by the Seller in the performance of the Works.
<b>Personal Information</b>	has the meaning given in the <i>Privacy Act 1988</i> (Cth) and includes information which is collected, used, disclosed, stored or handled by a party for the purposes of this Contract.
<b>Privacy Law</b>	means all Laws, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to Personal Information.
<b>Purchase Order</b>	means the order form entitled "Purchase Order" which forms part of the Contract.
<b>Purchaser</b>	means the purchaser specified in the Purchase Order.
<b>Seller</b>	means the person, firm or company to whom the Purchase Order is addressed.
<b>Services</b>	means any services to be performed by the Seller as specified in the Purchase Order, including without limitation installation, commissioning, maintenance or other services performed in connection with the supply of the Goods.
<b>Site</b>	means the areas where the Delivery Point is located or where the Works are performed.
<b>Site Senior Executive or SSE Works</b>	<p>has the meaning given in the <i>Coal Mining Safety and Health Act 1999</i> (Qld).</p> <p>means:</p> <p>(a) the works or Services described in and to be performed under the Contract;</p> <p>(b) the Goods to be supplied by the Seller under the Contract; and</p> <p>(c) any Materials to be provided in connection with performance of the Contract,</p> <p>and shall include:</p> <p>(d) the Works as varied by any written direction given by the Purchaser from time to time;</p> <p>(e) all rectifications and reinstatement of anything done to remedy any Defects; and</p> <p>(f) any other matter or thing which the Seller is obliged to do or causes to be done or the result or effect which the Seller must achieve or cause to be achieved to comply with its obligations under the Contract.</p>

## **2. INTERPRETATION**

In this Contract, unless the context indicates a contrary intention:

- (a) clause headings are inserted for ease of reference only and do not form part of and are not to be used in the interpretation of this Contract;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing one gender include the other genders;
- (d) a reference to a person shall be construed as a reference to an individual, firm, body corporate or other entity (whether incorporated or not) or where a position is nominated, the individual occupying that position;
- (e) except to the extent that the contrary intention appears, any word or expression that is given a defined meaning in the Contract has that meaning and if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (f) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally, provided however the parties acknowledge and agree that any obligation or liability by or in favour of the Lenton Joint Venture shall bind or benefit the participants in the joint venture severally (and not jointly nor jointly and severally) according to the percentage interest each participant holds in the joint venture from time to time;
- (i) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (j) a reference to a document (including this Contract) is to that document as varied, novated, ratified or replaced from time to time;
- (k) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Contract, and a reference to this Contract includes all schedules, exhibits, attachments and annexures to it;
- (l) "includes" in any form is not a word of limitation;
- (m) a reference to "\$" or "dollar" is to Australian currency; and
- (n) if the date on or by which any act must be done under this Contract is not a Business Day, the act must be done on or by the next Business Day.

## **3. ACCEPTANCE OF PURCHASE ORDER**

- (a) The Seller in agreeing to perform the Works specified in the Purchase Order accepts these conditions.
- (b) This Contract contains the entire agreement between the parties and no regard shall be had to prior dealings. Unless specifically agreed and evidenced in writing, any terms and conditions that may have been attached or embodied in the Seller's bid, offer, quote or estimate are deemed to have been withdrawn in favour of this Contract.
- (c) This Contract includes the supply, protection, painting, packing, marking and delivery (as specified) of the whole of the Goods described in the Purchase Order and detailed in the specifications and/or drawings (if any). The Seller must complete the Works in accordance with the provisions of the Purchase Order and this Contract.

## **4. TERM**

This Contract commences on the Commencement Date and expires on the Expiry Date.

## **5. WORKPLACE HEALTH AND SAFETY AND COMPLIANCE WITH LAWS**

- (a) The Seller shall perform the Contract in a manner that protects the environment and the safety and health of all personnel and the public and shall comply with all Laws and Approvals. The Seller must immediately notify the Purchaser in writing if any matter or any conduct occurs which does or may constitute a breach of any Approval.
- (b) The Seller must not do or fail to do anything which would cause the Purchaser to be in breach of any Laws or Approvals.
- (c) In the event that the Seller (including any of its officers, employees, agents, contractors or subcontractors) attends any of the Purchaser's coal mine sites, the Seller must comply with all directions of the Site Senior Executive and must report any incident relating to workplace health and safety or the environment to the Purchaser as soon as reasonably possible.

## **6. INVOICING AND PAYMENT**

- (a) The Purchaser must pay the Seller for the Works provided in accordance with the rates and charges set out in the Contract, such rates and fees to remain fixed for the term of the Contract unless otherwise stated in the Contract or agreed between the parties.

- (b) These prices shall include all costs incurred by the Seller in relation to the Goods, including without limitation the cost of manufacture, testing, certification, packaging, handling, storage, transport and all costs incurred in the course of carrying out the requirements of the Contract.
- (c) The Seller must deliver to the Purchaser an invoice covering the Works provided during the previous calendar month. Invoices shall be submitted in the number and form requested by the Purchaser, accompanied by such certification and documentation as the Purchaser may require, including provision of purchase order number details.
- (d) The Purchaser must, unless a dispute is raised under clause 23 in respect of an invoice prior to payment of the invoice, pay the invoice within 30 days of end of month.
- (e) If the Purchaser disputes any invoice in whole or in part, the Purchaser must as soon as reasonably practicable thereafter notify the Seller of the dispute. The Purchaser will not pay a disputed invoice (whether in whole or in part) until the dispute is resolved.
- (f) The Purchaser may set-off against payments due to the Seller any amount claimed by the Purchaser (or any of its related bodies corporate) from the Seller.
- (g) No payment by the Purchaser shall prejudice the Purchaser's right to question or dispute an invoice or pursue or recover any claims against the Seller.
- (h) The Seller must pay any fees, charges, levies and taxes imposed by Authorities in connection with the Goods and the rates and charges set out in this Contract are deemed to include all such fees, charges, levies and taxes.

## **7. INSPECTION AND TESTING**

- (a) The Purchaser and its agents have the right to enter any premises of Seller or its sub-contractors to inspect and test to ensure the Goods comply with the Contract. Inspections and tests may be made at any time (on reasonable prior notice from the Purchaser to the Seller).
- (b) The Seller must render all assistance with such inspections and testing, including providing any information which Purchaser requires such as test and inspection reports and material certificates.
- (c) Any inspection or testing by the Purchaser, or any waiver by Purchaser of such inspection or testing, will not relieve the Seller from full responsibility for the performance of its obligations under the Contract.
- (d) All Goods may be subject to inspection or testing within a reasonable time after arrival at the Delivery Point or final delivery destination.

## **8. TITLE AND RISK**

- (a) Title to the Goods passes to the Purchaser upon the earlier of payment for the Goods and delivery of the Goods to the Site, provided that the Seller bears the risk of loss or damage to the Goods until they are delivered to the Site.
- (b) The Seller shall clearly identify such Materials and other Work as the property of the Purchaser by visibly marked or tagging in a manner reasonably acceptable to the Purchaser, and the Seller shall, to the extent possible, segregate such Materials and other Work from other materials, work, goods and equipment owned by the Seller or other third parties.
- (c) Risk in the Goods will be with the Seller until the delivery of the Goods to the Purchaser at the Delivery Point. The Seller shall make good any damage to the Goods while the Seller has risk in the Goods.

## **9. DELIVERY**

- (a) Time is of the essence for delivery of the Goods to the Delivery Point. The Seller must deliver the Goods to the Purchaser at the Delivery Point on or before the Delivery Date.
- (b) Immediately upon the Seller despatching the Goods, the Seller must notify the Purchaser of the time of despatch, the Purchase Order number, the type and quantity of Goods despatched and the expected date and time of delivery.
- (c) Should it become apparent to the Seller that the Delivery Date will not be met, the Seller must immediately notify the Purchaser of the revised date for delivery of the Goods and the Purchaser has the right to do any or all of the following (at its option):
  - (i) cancel the whole or part of this Contract;
  - (ii) make other arrangements necessary or appropriate (in its discretion) and any additional costs incurred by the Purchaser as a result of the Seller's delay shall be reimbursed to the Purchaser by the Seller, or may be offset at the option of the Purchaser against monies due to the Seller by the Purchaser.
- (d) The Goods shall be delivered to the Delivery Point in such manner as is required under the Contract or if no such manner is specified, in such manner as the Purchaser may require.
- (e) All Associated Documents shall be delivered with the Goods or in such other manner required under the Contract, or upon earlier termination of the Contract. Delivery will not be complete until all Associated Documents have been received and approved by the Purchaser. The Seller must ensure that all Associated Documents are correct, valid and in good order.

- (f) All Goods supplied under the Contract must comply with the requirements of the Purchaser's standard specifications for dangerous goods (where applicable) and forwarding, packaging, marking and storage of equipment and materials as may be notified to the Seller from time to time.
- (g) The Seller indemnifies the Purchaser against any loss or damage to the Goods suffered prior to their delivery at the Delivery Point.
- (h) Neither payment for nor inspection of the Goods under this Contract constitutes acceptance of Goods that do not comply with the Contract or affect the ability of the Purchaser to subsequently reject the Goods under this Contract.
- (i) The Seller is responsible for and must pay all costs and expenses associated with the Goods including transportation, freight, packaging, handling and storage of the Goods until delivery at the Delivery Point.
- (j) The Seller may be requested to supply drawings, designs and technical data for approval and/or record purposes and acceptance of such by the Purchaser will not be deemed to constitute approval or confirmation of the Goods by the Purchaser.

**10. PACKAGING AND PROTECTION**

- (a) The Seller must protect the Goods from loss or damage arising from any cause, and ensure that the Goods are appropriately packed, handled and transported to the Site to prevent damage or shrinkage while in transit or storage. The Seller must ensure that delivery documents accompany the Goods to the Site and bear the Purchase Order number.
- (b) The Purchaser may return, at the Seller's cost, any Goods damaged in transit if the damage could reasonably have been avoided by appropriate packaging.

**11. GOODS WARRANTIES**

- (a) The Seller expressly acknowledges and warrants that the Purchaser entered into the Contract in reliance upon the skill and judgment of the Seller as an experienced and safe designer, manufacturer, fabricator, supplier, transporter, installer, erector, constructor, tester, repairer and commissioner (to the extent that the Works includes those activities) of work the size, nature and standard of the Works and the Seller's ability to carry out the Works in accordance with its tender or quote.
- (b) The Seller warrants that it has good and marketable title to the Goods and that the Goods are free from any encumbrances or liens.
- (c) The Seller warrants as follows in relation to the Goods and each part of the Goods that they must:
  - (i) be manufactured to the highest standard of care, skill and diligence that would normally be expected of a reputable and competent organisation providing goods similar to the Goods;
  - (ii) be fit for their usual purpose and any purpose specified in the Contract;
  - (iii) be free of defects in materials, workmanship and design;
  - (iv) comply with all relevant Australian Standards, Laws and Approvals and with best industry practices;
  - (v) be in good working order and condition;
  - (vi) have a life expectancy commensurate with what would be expected of similar goods provided for similar purposes by a competent and reputable supplier or contractor;
  - (vii) be manufactured strictly in accordance with any manufacturing drawings, specifications or description supplied to the Seller by the Purchaser; and
  - (viii) be new unless expressly stated otherwise in the Contract.
- (d) The delivery of a warranty or guarantee from any third party vendor, manufacturer or supplier shall be in addition to the warranties given by the Seller under the Contract, and shall not relieve the Seller from responsibility for its warranties under the Contract.
- (e) The Seller must assign to the Purchaser the warranty or guarantee of any vendor, manufacturer or supplier of any Materials or Goods as well as any warranty of subcontractors, consultants or the specialised services of others, and the Seller will cooperate and assist the Purchaser in the Purchaser's enforcement of those warranties or guarantees.
- (f) The warranties in this clause are in addition to any warranties specified elsewhere in the Contract.
- (g) In respect of any integrated machine (with the exception of light vehicles) which exceeds >85dB (A) SPL, the Seller agrees to:
  - (i) for new mobile plant – provide the sound power level (SPL) data for machine and testing standard;
  - (ii) for used mobile plant – provide sound power level SPL data tested to Australian Standard AS 2012.1 – 1990 for the configuration of the Mobile Plant as delivered by the Seller to Purchaser;

- (iii) for fixed plant – provide sound power level SPL data tested to Australian Standard AS 1217.7 – 1985; and
- (iv) in each case, participate in a validation measurement within thirty (30) days from the date the machine is commissioned on Site.

## 12. DEFECTS

- (a) The Seller represents, warrants and guarantees that the Works will be free of Defects within the Defects Liability Period, will conform to the Specifications and that the Works will be capable of operation for the purpose specified in the Contract or, where none is specified, their usual purpose.
- (b) If the Seller discovers or is aware of any Defect then the Seller must promptly notify the Purchaser of the Defect.
- (c) Upon request by the Purchaser, the Seller must investigate the cause of any Defect and provide a report to the Purchaser on the results of such investigation as soon as reasonably practicable thereafter.
- (d) Where a Defect occurs, the Seller must take such steps as are necessary to ensure that a defect similar to the Defect will not occur again.
- (e) If the Purchaser discovers any Defect (whether pursuant to clause 12(b) or otherwise) that exists or existed within the Defects Liability Period, then at any time without prejudice to any other rights or remedies that the Purchaser has or may have in relation to the Defect the Purchaser:
  - (i) may by notice require and the Seller must promptly remedy each Defect to the Purchaser's satisfaction without cost to the Purchaser and without causing damage to any other property or materials and avoiding and minimising disruption to the Purchaser's ongoing operations; and
  - (ii) will be entitled to perform the work itself or to cause it to be performed by third parties and the Purchaser shall be entitled to recover from the Seller all costs and expenses associated with the remedial work as a debt due and owing or to deduct the same from any money due or which becomes due to the Seller by the Purchaser.
- (f) Nothing in this clause is intended or shall be construed to relieve any manufacturer or supplier from any obligation or warranty which run in favour of the Seller, the Purchaser or third parties.
- (g) The Seller's warranty under this clause does not extend to any defect or failure occurring in the Works to the extent that such defect or failure is due to:
  - (i) improper use of the Works by the Purchaser;
  - (ii) an event of Force Majeure;
  - (iii) normal wear and tear; or
  - (iv) defective materials supplied by the Purchaser.
- (h) The Seller must remedy each Defect as required under this clause at any location nominated by the Purchaser.
- (i) The Purchaser may reject all or any part of the Works that are not in accordance with the Contract or contain a Defect by written notice delivered to the Seller without prejudice to any other rights or remedies the Purchaser has or may have in relation to such matter.
- (j) Notwithstanding:
  - (i) anything to the contrary in the Contract; or
  - (ii) the failure or otherwise of the Purchaser to reject the Works in accordance with clause 12(i),
 the Purchaser shall not be liable to pay the Seller for any Works which are not in accordance with the Contract and the Purchaser shall be entitled to recover any amounts already paid to the Seller in respect of such Works as a debt due and owing or deduct the same from any money due or which becomes due to the Seller by the Purchaser.

## 13. SERVICES

To the extent that the Seller performs any Services as part of the Works:

- (a) the Seller warrants that the Services will be performed in a proper and workmanlike manner and with diligence;
- (b) the Seller must supply all labour, tools, equipment and materials necessary to complete the Services;
- (c) the Seller must only engage personnel who are careful, skilled, safe, experienced and competent in their respective disciplines;
- (d) the Seller must use its best endeavours not to impede or interfere with other work or operations conducted at the Purchaser's premises; and
- (e) the Seller must comply with all policies and procedures as notified to the Seller and comply with the reasonable directions of the Purchaser while on the Purchaser's premises.

#### 14. GST

- (a) For the purpose of this clause, unless the context otherwise requires:
  - (i) **"GST Act"** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
  - (ii) where any other term is used in this clause which is defined in the GST Act it shall have the meaning given to that term in the GST Act.
- (b) Except under this clause, the consideration for a Supply made under or in connection with this Contract does not include GST.
- (c) If a Supply made under or in connection with this Contract is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:
  - i. the Recipient must pay the entity making the Supply (**Supplier**) an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this Contract for that Supply; and
  - ii. the Supplier must give the Recipient a Tax Invoice for the Supply.
- (d) For clarity, the GST payable under clause 14(c) is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the Supplier is liable, however caused.
- (e) If either party has the right under this Contract to be reimbursed or indemnified by another party for a cost incurred in connection with this Contract, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- (f) Where a Tax Invoice is given by the Supplier, the Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.
- (g) Where a Supply made under or in connection with this Contract is a Progressive or Periodic Supply, clause 14(c) applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

#### 15. VARIATIONS

No terms or conditions contained in any letter, quotation, tender or other communication or document of the Seller shall vary this Contract unless agreed by the Purchaser in writing.

#### 16. CHANGE MANAGEMENT

The Seller shall notify the Purchaser of any manufacturing or supplier changes and/or administrative part number changes in the Goods and provide a brief explanation of the nature of the change.

#### 17. INDEMNITY

- (a) The Seller must indemnify the Purchaser against all losses, damages, costs, charges, expenses and penalties arising in connection with:
  - (i) any damage to the Site, the Goods or any property whether located on the Site or otherwise;
  - (ii) death or injury to any person whether located on the Site or otherwise;
  - (iii) a breach by the Seller of any Law in the course of, or caused by, the performance of its obligations under the Contract; and
  - (iv) the breach by the Seller of an obligation or warranty under the Contract, if the losses, damages, costs, charges, expenses and penalties arise in connection with any act, error or omission of the Seller.
- (b) Notwithstanding any other provision of the Contract, a party (**First Party**) will not be liable to the other party (**Second Party**) for loss of revenue, loss of business, loss of profits, loss of third party contracts or loss of anticipated savings, whether arising in contract (including under any indemnity), tort (including in negligence or for breach of statutory duty) or otherwise (**Consequential Loss**) except:
  - (i) Consequential Loss incurred as a result of the fraud or wilful, reckless or deliberate breach of the Contract by the First Party, its employees, agents or contractors; or
  - (ii) where the rate of any liquidated damages payable by the First Party under the Contract has been calculated by taking into account Consequential Loss.

#### 18. INSURANCE

- (a) The Seller agrees to maintain insurance of the types and with limits of liability not less than those set out below at its expense during the term of the Contract from independent reputable insurers reasonably acceptable to the Purchaser covering items, risks and operations required to fulfil the Contract:
  - (i) insurance for the Goods for the period when they are in transit to the Site against all loss or damage arising from any insurable cause, for a limit of not less than their full replacement cost;

- (ii) public liability insurance for a limit of not less than \$20 million in respect of loss or damage that may occur to any physical property, or death or bodily injury to any person that arises out of or in connection with the performance of the Works;
  - (iii) if relevant, third party motor vehicle liability insurance against liability for death or bodily injury to any person or damage to the Site or property located on the Site, for each of the Seller's vehicles that enter the Site during the performance of the Works;
  - (iv) if required by the Purchaser (acting in its discretion), professional indemnity insurance to the value of at least \$250,000 per claim, and the Seller must if requested by the Purchaser increase its professional indemnity insurance to any amount specified by the Purchaser up to \$5 million per claim; and
  - (v) any other insurance required by Law, including workers' compensation insurance in relation to its employees.
- (b) In addition to an increase under clause 18(a)(iv), the Purchaser may, depending on the value or perceived risk of the Works, request that the Seller increase its insurance limits.
  - (c) Upon the Purchaser's request, the Seller must provide to the Purchaser certificates of insurance demonstrating that the Seller has obtained the insurance coverage set out above and containing a statement that the said insurance will not be materially changed or cancelled without at least 30 days prior written notice to the Purchaser. Neither review nor failure to review such certificates shall constitute approval thereto or be deemed to waive or diminish the Purchaser's rights under the Contract.
  - (d) Neither failure to comply nor full compliance with the insurance provisions of the Contract shall limit or relieve the Seller from its liability and/or indemnity obligations in the Contract. If the Seller fails or refuses to comply with the obligations prescribed in this clause 18, the Purchaser, without prejudice to any other rights or remedies available to it under the Contract or at law, may (a) treat the Contract as having been repudiated by the Seller; or (b) procure the required insurances and deduct the cost thereof from any amounts due hereunder or otherwise recover such amounts from the Seller.
  - (e) The Seller represents and warrants to the Purchaser that it has fully disclosed its indemnity and insurance obligations under the Contract to its insurers prior to entering into the Contract.
  - (f) The Seller must ensure that each subcontractor shall maintain insurance which is required under any applicable laws or regulations, together with such other insurances of types and amounts necessary to cover risks inherent in the work of that subcontractor, as well as any other insurance that the Seller may deem necessary.

## 19. SUSPENSION

- (a) The Seller must not suspend the whole or any part of the Works without a written direction from the Purchaser.
- (b) The Purchaser may direct the Seller to suspend the progress of the whole or part of the Contract for any reason and for such reasonable time and under such reasonable conditions as the Purchaser determines, and the Purchaser must comply with any such directions issued by the Seller and take all reasonable steps to mitigate the costs and delays resulting from the suspension.
- (c) The Seller is not entitled to claim any costs or standby rates as a result of a suspension under this clause, unless otherwise agreed in writing with the Purchaser.

## 20. FORCE MAJEURE

- (a) If a party (**Affected Party**) is precluded from complying with its obligations (except its payment obligations) (**Affected Obligations**) under the Contract due to an event of Force Majeure, that party's obligation to perform the Affected Obligations is suspended for the duration of the actual delay arising out of the event of Force Majeure (and the obligations of the other party that are dependent on the Affected Obligations will be suspended until the Affected Party resumes performance of the Affected Obligations), provided that the Affected Party gives prompt notice to the other party of the event of Force Majeure (including to the extent practicable, specifying the length of delay that will result from the event of Force Majeure).
- (b) The parties must use their reasonable endeavours to remove or relieve any event of Force Majeure and to minimise the delay caused by any event of Force Majeure.
- (c) If an event of Force Majeure continues to affect the performance of the Works for a continuous period of 180 days, the Affected Party may terminate the Contract by serving written notice on the Other Party and:
  - (i) subject to the Purchaser paying the Seller all amounts due and payable for the Works which have been performed at the date of termination, the Seller must transfer to the Purchaser the Works or parts of the Works (including any Associated Documents) existing as at the date of termination; and
  - (ii) payment under paragraph (i) will be the Seller's sole entitlement with respect to losses arising from such termination.

## **21. TERMINATION**

- (a) At any time for any reason or no reason at all, whether or not the Seller is in default, the Purchaser may terminate by written notice the whole or any part of the Works or the Contract.
- (b) Upon receipt of a notice under this clause, the Seller must immediately:
  - (i) cease the part or the whole of the Works;
  - (ii) protect property in the possession of the Seller in which the Purchaser has or may acquire an interest;
  - (iii) transfer to the Purchaser the Works or parts of the Works (including any Associated Documents) existing as at the date of termination;
  - (iv) comply with any directions by the Purchaser; and
  - (v) use its best endeavours to mitigate any loss or damage that it may suffer as a result of the termination.
- (c) Subject to the Purchaser's rights under or in connection with the Contract, including the rights to withhold or set-off payment and recovery of damages, the Purchaser must pay the Seller:
  - (i) the outstanding and unpaid portion of the Contract Sum earned by the Seller up to the date of termination and which shall be established by the measured progress;
  - (ii) the cost of Materials reasonably ordered by the Seller prior to the date of termination for the Works, which the Seller is legally liable to accept (subject to exercise of any termination rights by the Seller if the Purchaser so directs), but only if the materials become the property of the Purchaser upon payment; and
  - (iii) the reasonable costs of complying with any directions given by the Purchaser upon, or subsequent to, termination,and the Purchaser shall not otherwise be liable to the Seller for any cost, loss, expense, lost profit or damage incurred by the Seller as a consequence of, or in connection with the Contract, the work under the Contract or a termination under this clause.
- (d) The Seller acknowledges that the provision of the Works is a competitive business and that the Purchaser may terminate the Contract under this clause 21 without considering the impact of such termination on the Seller.
- (e) Without prejudice to any other rights of the Purchaser, the Purchaser may, following termination of a Contract (including under this clause 21), perform the Works itself or procure a third party to perform the Works for reward in the place of the Seller.

## **22. DEFAULT**

- (a) If the Seller breaches or fails to carry out any of its obligations under this Contract, the Purchaser may give notice thereof in writing to the Seller requiring the Seller to remedy the breach within 5 Business Days (or such other period as the Purchaser in its sole discretion considers reasonable). If the Seller fails to remedy the breach within the time stipulated in the notice, the Purchaser may in its sole discretion:
  - (i) purchase the Goods elsewhere or have the Work carried out by another contractor or supplier at the Seller's expense; or
  - (ii) terminate the Contract.
- (b) Clauses 21(b) and (c) apply to termination by the Purchaser under this clause 22.

## **23. DISPUTE RESOLUTION**

- (a) If a dispute between the parties arises in connection with this Contract, then either party may give the other party a written notice of the dispute in accordance with this clause 23, adequately identifying and providing details of the dispute.
- (b) Notwithstanding the existence of a dispute in relation to any matter other than the exercise of a right to terminate this Contract, the parties must continue to perform the Contract unless permitted to suspend performance under this Contract.
- (c) Within 10 Business Days after service of a notice of dispute, the parties must confer at least once to resolve the dispute. Each party must be represented by a person having authority to agree such resolution. All conferences under this clause 23(c) must be conducted in good faith and without prejudice.
- (d) If the dispute has not been resolved within 20 Business Days of service of the notice of dispute, either party may commence legal proceedings or, if agreed in writing by the parties, commence alternative dispute resolution proceedings.

## **24. INTELLECTUAL PROPERTY**

- (a) The Seller grants to the Purchaser at no cost a non-transferable non-exclusive, royalty-free licence to use, copy, reproduce or adapt for its own purposes (including conducting training courses for its own employees and for other persons) any of the materials (including the Associated Documents) provided by it to the Purchaser in respect of the Works.
- (b) The Seller warrants that the intellectual property rights of a third party will not be infringed by the supply of the Goods or Materials under the Contract, the use of those Goods by the

Purchaser or the performance of the Works by the Seller and the Seller indemnifies the Purchaser from and against all claims arising from a breach of this clause.

- (c) The Seller must pay all royalties, fees and amounts payable in connection with any process, work, material, matter, thing or method used or supplied in connection with the Works and all such royalties, fees and amounts payable are deemed to be included in the rates and prices payable under the Contract.

**25. CONFIDENTIALITY AND PRIVACY**

- (a) The Seller must not, without the Purchaser's consent, disclose or make public to any person, any information acquired or produced in connection with the Works, unless disclosure is required by Law, stock exchange listing rule or taxation Authority.
- (b) The Seller must:
  - (i) immediately notify the Purchaser if the Seller becomes aware of any 'eligible data breach' as such term is defined in the Privacy Law, and provide all information requested by the Purchaser in relation to the 'eligible data breach';
  - (ii) ensure that the relevant persons, including third parties, have been informed of, and have given their consent to, any use, processing, and disclosure of Personal Information as is reasonably contemplated by this Contract or reasonably notified by the Purchaser (including the potential for the Purchaser to disclose Personal Information to any of its third party consultants or advisors) to the extent such informed consent is required under the Privacy Law; and
  - (iii) comply with any other applicable Laws in relation to any data disclosed to it by the Purchaser.

**26. ASSIGNMENT AND SUBCONTRACTING**

The Seller shall not transfer, assign, novate or subcontract this Contract or any part of the Works without the written consent of the Purchaser.

**27. GENERAL**

- (a) This Contract shall be governed by and construed in accordance with the law of the State of Queensland.
- (b) Service of any notice shall be deemed to be effected if sent to the Seller's place of business stated in the Purchase Order.
- (c) A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Contract expressly states otherwise. If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.
- (d) If any provision contained in this Contract is void, illegal or unenforceable, that provision is severable from the Contract and the remainder of the Contract has full force and effect.
- (e) Clauses 14 (GST), 18 (Insurance), 23 (Dispute Resolution), 24 (Intellectual Property), 25 (Confidentiality and Privacy), 27 (General) and all indemnities contained in this Contract survive termination, expiry or completion of this Contract.