

1. Purchase Orders

- (a) The Principal may, from time to time, issue Purchase Orders to the Contractor for the performance of Works.
- (b) The Contractor must perform the Works requested in each Purchase Order issued under this Contract.

2. Performance of Works

2.1 Performance

The Contractor must perform the Contractor's Activities:

- (a) in accordance with:
 - (i) this Contract;
 - (ii) any Quality Standards;
 - (iii) all relevant Laws and Policies; and
 - (iv) any direction given by the Principal or the Principal's Personnel;
- (b) exercising Best Industry Practice;
- (c) so that the Works, when they achieve Practical Completion:
 - (i) are Fit for the Intended Purpose; and
 - (ii) satisfy any Performance Criteria.

2.2 Warranties as to Quality

The Contractor warrants that both it and its Subcontractors will carry out the Contractor's Activities:

- (a) with suitably qualified and experienced personnel;
- (b) in a good and workmanlike manner; and
- (c) using goods, equipment and material of new and merchantable quality.

2.3 Third party warranties

The Contractor must ensure that (without limiting the obligations of the Contractor) the Principal will have the benefit of any Subcontractor Warranties and any other warranties reasonably required by the Principal.

2.4 Contract Documents

- (a) This Contract will supersede all previous communications and negotiations (whether oral or written) between the Contractor and the Principal in relation to the Works and constitutes the entire terms of the agreement between the parties in relation to the Works.
- (b) If any of the works forming part of the Contractor's Activities are performed by the Contractor prior to the formation of this Contract, those works will be subject to the terms of this Contract.
- (c) The documents comprising this Contract are mutually explanatory. If there is any inconsistency between the documents which form this Contract, then the Contractor must notify the Principal who will give a direction as to the interpretation to be followed.
- (d) The Contractor will have no Entitlement as a consequence of a direction given by the Principal in relation to any ambiguity or discrepancy in or between the documents comprising this Contract, where that direction is consistent with the rules of construction of this Contract.

3. Administration and Programming

3.1 Contractor obligations

The Contractor must:

- (a) keep the Principal informed regarding the state and stages of the performance of the Contractor's Activities; and

- (b) at the times required by this Contract or, as directed by the Principal, attend any meetings or provide any report regarding the state and stage of the performance of the Contractor's Activities.

3.2 Contractor to prepare Contract Program

- (a) The Contractor must, as a condition precedent to commencing any of the Contractor's Activities, submit to the Principal for approval a program for the whole of the Contractor's Activities which is consistent with this Contract (**Contract Program**).
- (b) The Contractor must submit to the Principal, for approval, a revised draft of the Contract Program at such times as required under this Contract, as directed by the Principal or following any change to the timing or performance of the Contractor's Activities.
- (c) If the Principal gives its approval to a revised draft of the Contract Program that draft will become the Contract Program.
- (d) The Contractor must not, without reasonable cause, depart from the Contract Program.
- (e) The approval of a Contract Program will not relieve the Contractor of any obligations under this Contract and the Contract Program will not be considered to form part of this Contract.

4. Assignment and subcontracting

4.1 Assignment and novation

The Contractor must not assign, novate or create a Security Interest over any or all of its rights or obligations under this Contract without the prior written consent of the Principal.

4.2 Subcontracting

- (a) Subject to the remainder of this clause, the Contractor must not subcontract any of the Contractor's Activities without the prior written approval of the Principal (which may be subject to such conditions as the Principal determines). The Principal will be taken to have consented to any Pre-Approved Subcontractors for the purpose of this clause.
- (b) The Contractor will not, by subcontracting any part of the Contractor's Activities, be relieved of any of its obligations to the Principal and will be liable for the acts and omissions of Subcontractors as if they were the acts and omissions of the Contractor.

5. Defective materials and work

- (a) If, at any time during performance of the Contractor's Activities and notwithstanding that Practical Completion has not yet been achieved, the Principal discovers materials or work which is not in accordance with this Contract, the Principal may:
 - (i) reject the material or work (in whole or part) and direct the Contractor to refund any payments made by the Principal in relation to that material or work, or re-perform or make good the material or work; or
 - (ii) accept the material or work and require the Contractor to pay the Principal for any expenses incurred as a result of the material or work (including reducing the Contract Sum to reflect the cost impact of that material or work) not being in accordance with this Contract.
- (b) The Contractor will be liable for the cost of removing from the Site any material or work not in accordance with this Contract.
- (c) If the Contractor fails to comply with a direction given by the Principal under this clause within the time specified by the Principal in the direction or, if none is specified, in the time determined by the Principal, the Principal may have the relevant works carried out by other persons and the cost incurred by the Principal in doing so will be a debt due and payable from the Contractor to the Principal.

(d) The rights under this clause survive termination or expiry of this Contract.

6. Risk and Title

- (a) The Works will be at the risk of the Contractor up to Practical Completion and the Contractor must at its cost make good any damage to the Works which occurs prior to Practical Completion, and provide storage and protection necessary to preserve the Works until Practical Completion.
- (b) Unless expressly provided otherwise in this Contract, title in the Works or parts thereof will pass to the Principal on and from the earlier to occur of incorporation of the Works or parts thereof at the Site or payment for the Works or parts thereof.
- (c) The Contractor warrants that the Principal will receive full unencumbered title in the Works free of any Security Interest.

7. Access to site

- (a) Subject to the Contractor providing all Security, complying with all of its insurance obligations under this Contract and complying with all Site Requirements, the Principal will give the Contractor access to sufficient areas of the Site necessary for the performance of the Contractor's Activities at the time agreed.
- (b) Access to the Site will confer on the Contractor a right to use and control the Site only to the extent necessary to enable the Contractor to carry out the Contractor's Activities.
- (c) The Contractor's Activities must be carried out by the Contractor at the times specified in this Contract or as notified by the Principal.
- (d) A delay by the Principal in giving the Contractor access to the Site or a part of the Site under this clause will not be a breach of this Contract by the Principal, but may create an Entitlement to an Extension of Time and Delay Damages under this Contract.

8. Separate contractors

- (a) The Principal may engage Separate Contractors.
- (b) The Principal must notify the Contractor of:
 - (i) the identity of any Separate Contractor;
 - (ii) the work which the Separate Contractor will be performing on the Site; and
 - (iii) the part of the Site and the times at which the Separate Contractor will be working.
- (c) The Contractor must co-operate with Separate Contractors and co-ordinate the performance of the Contractor's Activities with the performance of the work of Separate Contractors (including providing access to the Works as may be necessary for the Separate Contractors to carry out their work).
- (d) The Contractor will not unnecessarily and without good cause disrupt, hinder or interfere with the work of Separate Contractors.
- (e) Where a conflict or dispute arises in relation to the sequencing or co-ordination of the work of Separate Contractors with the Contractor's Activities, the Principal must direct in what order and at what time the Contractor may perform the Contractor's Activities.
- (f) The Contractor will have no Entitlement as a consequence of Separate Contractors being on the Site or for anything caused or contributed to by a Separate Contractor, other than when:
 - (i) the Principal has given a direction under this clause;
 - (ii) the direction has the effect of causing the Contractor to change the order or time in which the Contractor's Activities are to be performed from an order or time which was previously the subject of an approval by the Principal;
 - (iii) the cause of the direction could not reasonably have been anticipated by an experienced and competent contractor

exercising Best Industry Practice at the time the Principal gave its approval; and

(iv) the Contractor has taken all steps to avoid or minimise the effect of the direction,

in which case, the Contractor will be entitled to an Extension of Time and Delay Damages under this Contract.

9. Variations

9.1 Principal directed Variation

- (a) The Contractor will not vary this Contract except as directed by the Principal.
- (b) The Contractor must implement any Variation directed by way of any Variation Direction.

9.2 Variation Notice

- (a) The Principal may at any time issue a notice to the Contractor proposing a Variation (**Variation Notice**).
- (b) The Contractor will, as soon as practicable and in any event within ten (10) Business Days of receipt of a Variation Notice, provide the Principal with a written notice containing all information that may be reasonably required by the Principal in respect of the effect of the proposed Variation, including any adjustment to the Contract Sum, adjustment to the Date for Completion and practical effects of the proposed Variation on the Contractor's Activities (**Variation Response**).
- (c) The Principal will, within a reasonable time following receipt of a Variation Response, either issue a Variation Direction or notify the Contractor that it does not wish to proceed with the proposed Variation.

9.3 Urgent Variations

If the Principal requires a Variation as a matter of urgency the Principal may direct the Contractor to perform a Variation by a Variation Direction (**Urgent Variation**).

9.4 Contractor Initiated Variation

- (a) If, at any time, the Contractor wishes to propose a Contractor Initiated Variation, then the Contractor may give the Principal a written notice containing all information that may be reasonably required by the Principal in respect of the effect of the Contractor Initiated Variation, including any adjustment to the Contract Sum, adjustment to the Date for Practical Completion and practical effects of the Contractor Initiated Variation on the Contractor's Activities.
- (b) The Principal will, within a reasonable time following receipt of a Contractor Initiated Variation, either issue a Variation Direction or notify the Contractor that it does not wish to proceed with the Contractor Initiated Variation.
- (c) A Contractor Initiated Variation will only be valued as a Variation under this Contract where:
 - (i) it has received a Variation Direction in respect of that Contractor Initiated Variation;
 - (ii) there is no provision of this Contract which provides that the Contractor has no Entitlement in relation to that Contractor Initiated Variation; and
 - (iii) the Contractor Initiated Variation was not directed at the request of, and solely for, the convenience of the Contractor,

in all other circumstances, the Contractor will not have any Entitlement in relation to a Contractor Initiated Variation.

9.5 Valuing of Variations and adjustments to the Contract Sum

The cost of any Variation and any adjustment to the Contract Sum under this Contract will be ascertained as follows:

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- (a) to the extent that the Parties have agreed the amount of the alteration, then the amount so agreed;
- (b) to the extent that this Contract provides for the amount of the alteration, then that amount;
- (c) to the extent that the rates contained in this Contract apply, by applying those rates; and
- (d) to the extent that those provisions do not apply, by arriving at a reasonable amount, having regard to any increase or decrease in the costs that have been or will be incurred by the Contractor, as determined by the Principal.

10. Commencement and completion of Works

- (a) The Contractor must ensure that Practical Completion is achieved by the Date for Practical Completion.
- (b) The Contractor must:
 - (i) proceed with the Contractor's Activities with due expedition and without delay; and
 - (ii) take all steps necessary to minimise and overcome the effect of any delay to the Contractor's Activities.
- (c) The Principal may direct in what order and at what time the various parts of the Contractor's Activities must be carried out. The right of the Principal to give a direction under this clause includes a right to give a direction to accelerate the Contractor's Activities.
- (d) The Contractor must give the Principal at least ten (10) Business Days written notice of the date upon which the Contractor anticipates that Practical Completion will be achieved.
- (e) The Principal must inspect the Works on a date no later than five (5) Business Days after the date nominated by the Contractor as the date on which Practical Completion will be achieved.
- (f) The Contractor may attend any inspection of the Works carried out by the Principal in accordance with this clause.
- (g) Within ten (10) Business Days of the Principal's inspection of the Works in accordance with this clause, the Principal must give the Contractor either a Certificate of Practical Completion stating the date on which Practical Completion was reached (which date must not be earlier than the date of the inspection of the Works) or written reasons for not doing so.
- (h) The Certificate of Practical Completion may include a list of Defects.
- (i) If the Principal declines to give a Certificate of Practical Completion, the Contractor must repeat the process set out in this clause until the Principal gives a Certificate of Practical Completion.
- (j) If the Principal is of the opinion that Practical Completion has been reached, the Principal may issue a Certificate of Practical Completion stating the date on which Practical Completion was reached, even though no request for an inspection of the Works has been made by the Contractor in accordance with this clause.
- (k) If any part of the Contractor's Activities has reached a stage equivalent to that of Practical Completion but another part of the Contractor's Activities has not reached such a stage, the Principal may determine that the respective parts shall be Separable Portions, and advise the Contractor of this decision by written notice.

11. Delay

11.1 Notice of delay

A Party must, on becoming aware of anything which may reasonably cause a delay to the Contractor's Activities, give written notice to the other Party of that delay.

11.2 Entitlement to an Extension of Time

- (a) The Contractor will be Entitled to an Extension of Time when:
 - (i) it has been delayed in reaching Practical Completion by the Date for Practical Completion due to a Qualifying Cause of Delay and this is apparent from an assessment of the critical path of the current revision of the Contract Program;
 - (ii) there is no provision in this Contract to the effect that the Contractor has no Entitlement in relation to that cause of delay; and
 - (iii) the Contractor has given all Notices strictly in accordance with the requirements of this Contract.
- (b) A Qualifying Cause of Delay will give rise to an Entitlement to an Extension of Time only when:
 - (i) the cause was beyond the reasonable control of the Contractor;
 - (ii) the Contractor had not contributed to the cause; and
 - (iii) the Contractor has taken all reasonable steps to mitigate and overcome the effect of the delay.
- (c) Where any Contractor's Activities have been delayed by a Qualifying Cause of Delay and a delay which is not a Qualifying Cause of Delay and these causes overlap for any period of time, the Contractor will not have an Entitlement to an Extension of Time for the overlapping period of delay.

11.3 Claim for an Extension of Time

- (a) The Contractor must, within ten (10) Business Days of it becoming aware that it might be delayed in reaching Practical Completion by the Date for Practical Completion, give the Principal notice of that delay and any other relevant information capable of supporting the Claim for an Extension of Time.
- (b) The Contractor must immediately update or amend any Claim for an Extension of Time upon any change in circumstances affecting that Claim (such notice to be no later than five (5) Business Days after the Contractor becoming aware of the change in circumstance), which must include any other information the Principal reasonably requires.
- (c) The Principal must, within a reasonable time of receiving a Claim for an Extension of Time, determine the period of the Extension of Time (if any) to which the Contractor is entitled (which must be the reasonable period by which the Contractor has actually been delayed in reaching Practical Completion by the Date for Practical Completion by a Qualifying Cause of Delay).
- (d) A delay by the Principal or the failure of the Principal to grant an Extension of Time will not cause the Date for Practical Completion to be set at large, but nothing in this clause will prejudice any pre-existing right of the Contractor to damages.
- (e) The Principal may, at any time and for any reason, by notice to the Contractor, extend the Date for Practical Completion. The Principal is not obliged to exercise its rights under this clause reasonably or in good faith or for the benefit of the Contractor.
- (f) The Contractor acknowledges and agrees that it is not entitled to an Extension of Time for any Qualifying Cause of Delay where the Date for Practical Completion has already been adjusted under this Contract for the same event giving rise to the Qualifying Cause of Delay.

12. Liquidated Damages

12.1 Liquidated Damages

- (a) If the Contractor does not reach Practical Completion by the Date for Practical Completion, then the Contractor must pay liquidated damages to the Principal at the Liquidated Damages Rate for every day from the Date for Practical Completion to and including

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the Date of Practical Completion up to the limit of the Liquidated Damages Cap (if any).

- (b) The Parties acknowledge and agree that the Liquidated Damages Rate:
 - (i) has been the subject of negotiations between the Parties;
 - (ii) is a genuine pre-estimate of the actual loss and damage that would be incurred by the Principal as a result of failing to achieve Practical Completion by the Date for Practical Completion; and
 - (iii) is not intended to be a penalty.
- (c) If the Liquidated Damages Rate is found for any reason to be void, invalid or otherwise inoperative, so as to disentitle the Principal from recovering liquidated damages, then the Principal is entitled to recover damages from the Contractor for such failure under general law, which damages will not be limited to the Liquidated Damages Rate that the Principal would otherwise have been entitled to recover from the Contractor.
- (d) If this Contract does not specify any Liquidated Damages Rate, or if it is stated as "not applicable" "NA" or "nil", then the Principal will be entitled to recover damages for any loss or damage incurred by the Principal as a result of the delay.

12.2 Delay Damages

- (a) If an Extension of Time is granted to the Contractor for a Compensable Cause, then the Principal must pay the Contractor its reasonable additional costs incurred as a result of the delay caused by the Qualifying Cause of Delay.
- (b) The Contractor acknowledges and agrees that it is not entitled to any additional costs for a Compensable Cause where the Contract Sum has already been adjusted under this Contract for the same event giving rise to the Compensable Cause.

13. Suspension of the Contractor's Activities

- (a) The Contractor must not suspend the progress of the Contractor's Activities or any part of it except where directed to do so by the Principal or allowed by Law.
- (b) The Principal may direct the Contractor to suspend the progress of the Contractor's Activities or any part of it for such time or times as the Principal may think fit.
- (c) The Principal may give the Contractor a direction to recommence work that was the subject of a direction to suspend.
- (d) A direction to suspend all or part of the Contractor's Activities will trigger an Entitlement to an Extension of Time and an alteration to the Contract Sum unless the reason for the suspension was caused or contributed to by an act, omission or default of the Contractor or the Contractor's Personnel.

14. Contract Sum

14.1 The Contract Sum

- (a) Subject to the provisions of this Contract, the Principal shall pay the Contract Sum to the Contractor:
 - (i) for work for which the Principal accepted a lump sum, the lump sum; and
 - (ii) for work for which the Principal accepted rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of work actually carried out under this Contract by the rate accepted by the Principal for the section or item,
 adjusted by any additions or deductions made pursuant to this Contract.
- (b) Unless this Contract expressly provides otherwise, no schedule of rates shall form part of this Contract and the Contractor will not

have any Entitlement to any adjustment to the Contract Sum or other Claim whatsoever in connection with the schedule of rates (including any Error, omission, discrepancy or ambiguity).

14.2 Adjustments to the Contract Sum

- (a) The Contract Sum will only be adjusted under this Contract where:
 - (i) this Contract expressly provides for an adjustment of the Contract Sum; and
 - (ii) where the Contractor has complied with any relevant preconditions in respect of the Entitlement for an adjustment of the Contract Sum.
- (b) Where the Contractor wishes to make a Claim for an adjustment to the Contract Sum, the Contractor must give the Principal written notice within twenty (20) Business Days of becoming aware of such a right arising as a precondition to any Entitlement to an adjustment of the Contract Sum under this Contract.

15. Payment

15.1 Payment Claim

- (a) The Contractor must, at the end of each calendar month, submit a payment claim detailing the amount claimed for the Contractor's Activities performed, any additions or deductions made to the Contract Sum, amounts paid by the Principal in relation to any previous payment claim, any amount claimed by any of the Subcontractors which is the subject of a dispute between the Contractor and that Subcontractor and details of the dispute, and any other information reasonably requested by the Principal (a **Payment Claim**).
- (b) Unless expressly provided otherwise, where a Payment Claim includes claim for any payment for plant, material or equipment which has not been delivered to the Site, the Principal will not be required to make payment for such plant, material or equipment.
- (c) If the Contractor submits a Payment Claim earlier than as provided by this clause, then that Payment Claim will be deemed to have been submitted on the relevant date for submission of that Payment Claim in accordance with this clause.

15.2 Payment Assessment

- (a) The Principal must, within ten (10) Business Days of the date on which the Payment Claim was received, issue to the Contractor an assessment which sets out:
 - (i) the relevant Payment Claim to which it relates;
 - (ii) the amount payable to the Contractor in respect of the Contractor's Activities; and
 - (iii) where the amount assessed by the Principal as being payable is different to the amount claimed by the Contractor in the Payment Claim, the reasons for the difference, (a **Payment Certificate**).
- (b) The Principal may, at any time, issue a Payment Certificate (including for the purposes of correcting any Error in any previous Payment Certificate) and irrespective of whether the Contractor has submitted a Payment Claim.

15.3 Payment

- (a) The Contractor must, within two (2) Business Days of receipt of a Payment Certificate (or, if no Payment Certificate is issued by the Principal, within two (2) Business Days of the expiry of the time provided for in the Schedule for Payment for the Principal to have issued a Payment Certificate) submit to the Principal a Valid Tax Invoice for each amount certified as being due for payment in the Payment Certificate (or if no Payment Certificate is provided, the amount due for payment in the Payment Claim).

- (b) The Principal must pay the Contractor the amount certified as being due for payment in the relevant Payment Certificate or Payment Claim (as applicable) within 62 days of the end of the month in which the Valid Tax Invoice is submitted.
- (c) Payment is payment on account only and is not evidence of the value of work, an admission of liability or an admission that the work is in accordance with this Contract.
- (d) Where an amount is certified as being due for payment to the Principal by the Contractor in a Payment Certificate, the Contractor must pay the Principal the amount certified within twenty (20) Business Days after receipt of the Payment Certificate.

15.4 Preconditions to an entitlement to submit a Payment Claim

- (a) The Contractor must, as a precondition to any entitlement to submit a Payment Claim or receive payment in respect of any Payment Claim:
 - (i) have effected and maintained all Insurance Policies as required by the Contract;
 - (ii) submit to the Principal, with each Payment Claim, a program comparing the actual progress of the Contractor's Activities with the most up to date Contract Program; and
 - (iii) provide to the Principal:
 - (A) all Security required by this Contract; and
 - (B) the Contract Program.

16. Deductions and Set-off

- (a) Any amounts Claimed from the Contractor to the Principal under this Contract may be deducted by the Principal from:
 - (i) any monies which may become payable to the Contractor by the Principal; and
 - (ii) any Security held by the Principal.
- (b) This clause does not affect the right of the Principal to recover the debt or any balance after exercising any rights under this clause by any other means available under this Contract or at Law.
- (c) In addition to any other right the Principal may have, the Principal may set-off from any amount payable to the Contractor or retain from Security which is required under this Contract to be returned, an amount sufficient to cover any outstanding Claim alleged by the Principal against the Contractor under or in connection with this Contract (whether or not that Claim has at that time been liquidated).
- (d) The Contractor acknowledges and agrees that the Principal may withhold any moneys it is required by Law to withhold, including foreign resident withholding tax provisions unless the Contractor can demonstrate its exemption from that Law.

17. Taxes and GST

- (a) Unless expressly provided otherwise, the Contractor is responsible for, and will pay, all Taxes incurred or imposed in connection with the Contractor's Activities and they are deemed to be included in the Contract Sum.
- (b) The recipient of a taxable supply will only be required to pay an amount of GST to the party making the taxable supply if and when the party making the taxable supply provides a valid tax invoice to the recipient of a taxable supply.
- (c) If there is an adjustment to a taxable supply made under this Contract, then the party making the taxable supply will provide an adjustment note to the recipient of the taxable supply.

18. Security

18.1 Provision of Security

If required by this Contract, the Contractor must, at the time required under this Contract, give the Principal two Performance Bonds from a financial institution approved by the Principal, as security for the due and proper performance of the Contractor's Activities.

18.2 Replacement of Security

- (a) If this Contract requires Security to be in place after the period the relevant Security is due to expire, then the Contractor must, no later than thirty (30) Business Days prior to the expiry date of the relevant Security, replace the Security with new Security that complies with the requirements of this Contract.
- (b) The Principal may, at its discretion, agree to the substitution of the then current form of the Security with another form of security. To the extent that another form of security is provided, the Principal shall promptly release and return the then current form of the Security.

18.3 Return of Security

- (a) The Principal must, subject to any rights of recourse to Security which the Principal has had or may have, return to the Contractor one Performance Bond within ten (10) Business Days of issue of the Certificate of Practical Completion.
- (b) The Principal must, subject to any rights of recourse to Security which the Principal has had or may have, return to the Contractor the remaining Security within ten (10) Business Days of issue of the Final Certificate.

18.4 Recourse to Security

- (a) The Principal may, at any time, have recourse to any Security where:
 - (i) the Principal has a bona fide Claim against the Contractor;
 - (ii) the Contractor is in default under the Contract;
 - (iii) the Principal is entitled to payment of money by the Contractor or reimbursement of any money paid by the Principal under or in connection with the Contract; or
 - (iv) the Contractor has suffered an Insolvency Event.
- (b) The Contractor acknowledges that the Principal will not hold any proceeds of Security on trust.
- (c) The Principal must pay the Contractor simple interest on any amount drawn down from Security to the extent that the Principal was not entitled to make a call on that Security under this Contract. Such payment (along with the repayment of the amount that was not entitled to be drawn) will be the Contractor's sole remedy in relation to the amount that was not entitled to be drawn.
- (d) The Contractor agrees that:
 - (i) the Principal has a right to convert any Security into money at any time without reference to the Contractor;
 - (ii) in the event of such conversion, the amounts payable by the Principal under this clause are an adequate remedy for the Contractor; and
 - (iii) the Contractor has no entitlement to obtain an injunction preventing the Principal from converting any Security or otherwise restraining the issuer of any Security from paying the Principal under any Security.

19. Defects Liability Period

- (a) The Defects Liability Period will commence on the Date of Practical Completion.

- (b) If there is any Separable Portion, then the Defects Liability Period for each Separable Portion will continue until expiry of the Defects Liability Period in respect of the last Separable Portion.
- (c) At any time up to ten (10) Business Days after each expiry of each Defects Liability Period, the Principal may direct the Contractor to rectify a Defect.
- (d) The Contractor must comply with any direction issued by the Principal to rectify a Defect within the time and at the times stated in the direction or, if no time is stated, promptly.
- (e) Any direction may provide, in respect of the rectification of a Defect, that there is to be a new Defects Liability Period for the Defect rectified, commencing on the date the rectification work is completed and continuing until the expiry of the period of the Defects Liability Period.
- (f) If the Contractor fails to comply with a direction to rectify a Defect, or where the rectification work is required urgently, the Principal may have the work performed by others and the cost to the Principal of having the work performed will be a debt due and payable from the Contractor to the Principal.

Works or other matter nor will it prejudice any Claim by the Principal against the Contractor under general law.

20. Final Certificate

- (a) Within ten (10) Business Days after the last to occur of:
 - (i) the expiry of the last Defects Liability Period; and
 - (ii) the date that the Contractor has completed all of its obligations under this Contract,

the Contractor must provide the Principal with a final payment claim which includes details of all moneys which the Contractor considers to be due to it from the Principal (**Final Payment Claim**).
- (b) A Final Payment Claim must contain all information and supporting evidence required in relation to a Payment Claim under this Contract.
- (c) Ten (10) Business Days after:
 - (i) the Principal receives the Final Payment Claim; or
 - (ii) if no Final Payment Claim is received, the date for lodgement of the Final Payment Claim,

the Principal will issue to the Contractor a Final Certificate evidencing the moneys finally due and payable between the Contractor and the Principal on any account whatsoever in connection with the subject matter of this Contract.
- (d) The Contractor must, within two (2) Business Days of receipt of the Final Certificate, deliver to the Principal a Tax Invoice for the amount certified as being due for payment in the Final Certificate.
- (e) The Principal will pay the Contractor the amount due for payment in the Final Certificate within sixty-two (62) days of the end of the month in which the Final Certificate was issued.
- (f) If a Party disagrees with anything contained in the Final Certificate it must provide full particulars of those matters to the other Party within ten (10) Business Days of the issue of the Final Certificate.
- (g) Except for the amounts payable under a Final Certificate, and any amount which is agreed or decided in accordance with the dispute resolution process under this Contract to be owing, the Principal will not be liable to the Contractor for, and the Contractor will have no Entitlement to any sum on any Claim (whether already made at the date of issue of the Final Certificate or not) after the issue of the Final Certificate and may, prior to making any payment in relation to amounts certified under a Payment Certificate, require the Contractor to execute a deed of release on terms satisfactory to the Principal.
- (h) The issue of a certificate under this Contract (including the Final Certificate) will not constitute approval or acceptance of any of the

21. Care of Works

- (a) Except as expressly provided otherwise, the Contractor will be responsible for care of:
 - (i) the whole of the Works (including the Contractor's Activities) from and including the Commencement Date to midnight on the Date of Practical Completion, at which time responsibility for the care of the Works will pass to the Principal; and
 - (ii) any work or items remaining on Site or brought onto the Site by the Contractor for the purpose of performing its obligations under the Defects Liability Periods.
- (b) If loss or damage, other than that caused by an Excepted Risk, occurs to the Works or any part thereof during the period of the Contractor's care, the Contractor must, at its cost, rectify such loss or damage.

22. Releases and indemnities

22.1 Releases

- (a) The Contractor releases the Indemnified Parties from any Liability to the Contractor, or any person claiming through or on behalf of the Contractor, in respect of:
 - (i) physical loss of, or damage to, any real or personal property;
 - (ii) personal injury to, illness or death of, persons; or
 - (iii) financial loss or expense,

arising out of or in connection with the performance of the Contractor's Activities.
- (b) The Contractor's release under this clause does not apply to the extent that the Liability is caused or contributed to by an Indemnified Party.

22.2 Liability and indemnity

- (a) The Contractor is liable for and will indemnify and keep indemnified the Indemnified Parties against any Liability arising out of or in connection with any:
 - (i) breach by the Contractor or the Contractor's Personnel of this Agreement (including any warranty);
 - (ii) negligent, reckless or wilful act or omission of the Contractor or the Contractor's Personnel;
 - (iii) act or omission of Contractor or its Personnel causing property damage or personal injury, illness or death to any person;
 - (iv) breach of Law by the Contractor or the Contractor's Personnel; and
 - (v) any Claim that the Works, any part of the Contractor's Activities, anything the Contractor may do or not do in connection with the Contractor's Activities, or the Principal's use of the Works infringes or allegedly infringes the Intellectual Property Rights of any person.
- (b) The Contractor's Liability under this clause will be reduced proportionally to the extent that the Liability is caused or contributed to by the Indemnified Party.
- (c) Each Indemnified Party holds for its own benefit and for the benefit of its Related Bodies Corporate and their respective Personnel, each indemnity and release given by the Contractor under this Contract and each right under this Contract and the Contractor agrees that every such indemnity, release and right extends to cover the Related Bodies Corporate and their respective Personnel of each Indemnified Party (excluding the Contractor and its Personnel).

- (d) Each indemnity in this Contract is a continuing obligation separate and independent from the Contractor's other obligations and survives termination of this Contract.
- (e) It is not necessary for an Indemnified Party to incur expense or make payment before enforcing a right of indemnity conferred by this Contract.

access the Principal's computer system, the Contractor must first procure execution by that person of a deed setting out that person's obligations in respect of confidentiality and compliance with any policies.

- (c) The obligations under this clause survive termination of this Contract.

22.3 Limit on Liability

- (a) Neither Party will be liable to the other Party for any Claims or Liability in respect of any Consequential Loss suffered or incurred as a result of any breach, act or omission by the Party (whether in negligence or otherwise) (**Consequential Loss Exclusion**).
- (b) To the extent permitted by Law, Contractor's Liability under this Agreement is limited to the Liability Cap.
- (c) The Liability Cap and the Consequential Loss Exclusion do not limit Contractor's Liability to the extent that the Claim or Liability:
 - (i) is recoverable under an insurance policy required by the Contract, or would have been recoverable by such insurance policy had the Contractor complied with its obligations under this Contract or the insurance policy;
 - (ii) arises as a result of fraud, wilful act or omission or criminal conduct by Contractor or its Personnel;
 - (iii) is the result of Contractor's abandonment (whether wholly or substantially) of the Contractor's Activities;
 - (iv) arises as a result of a breach of Law by Contractor or its Personnel;
 - (v) arises as a result of any claims for infringement of the Intellectual Property Rights of any person or breach of confidentiality; or
 - (vi) is in connection with any property or injury to, illness or death of any person.
- (d) Notwithstanding anything else in this Agreement, the maximum aggregate Liability of Principal to Contractor for all Claims and Liabilities arising under or in connection with this Agreement, any Purchase Order or in connection with the Goods and Services is limited to payment of the aggregate Price paid or payable in respect of all Purchase Orders issued.

25. Disputes

- (a) Any dispute, disagreement or Claim relating to this Contract (**Dispute**) will be dealt with in accordance with this clause.
- (b) Notwithstanding the existence of a Dispute, each Party must continue to perform its obligations under this Contract. The existence of a Dispute will not prejudice either Party's rights to terminate this Contract for any reason.
- (c) The Party claiming the Dispute will give notice of the Dispute to the other Party which will include all facts on which the Party relies in relation to that Dispute (**Dispute Notice**).
- (d) Within five (5) Business Days after service of a Dispute Notice, a representative of the Principal and the Contractor will meet at least once to attempt, using their reasonable endeavours, to resolve the Dispute in good faith.
- (e) If the Dispute has not been resolved within fifteen (15) Business Days after the service of the Dispute Notice, a member of the senior management of each of the Principal and the Contractor (or their respective nominees) with authority to settle the Dispute will meet within twenty (20) Business Days after the service of the Dispute Notice to attempt to resolve the Dispute in good faith or to mutually agree on an alternative dispute resolution process to be taken by the parties in relation to the Dispute.
- (f) If, within fifteen (15) Business Days after the first meeting of the senior management, the Dispute has not been resolved or an alternate dispute resolution process has not been agreed, then the matter may be referred to court proceedings.
- (g) A Party may not start court proceedings in relation to a Dispute until it has complied with the procedures in this clause, unless it commences legal proceedings to preserve any rights it may have.
- (h) Nothing in this clause prevents a Party seeking urgent injunctive or interlocutory relief.

23. Insurance obligations

23.1 Insurances to be effected by the Contractor

The Contractor must, before commencing any Contractor's Activities, effect and maintain each Insurance Policy with a Reputable Insurer.

23.2 Evidence of insurance

Before commencing the Contractor's Activities, and at other times requested by the Principal, the Contractor must give the Principal, in respect of each Insurance Policy, the original or a certified copy of renewal certificates or certificates of currency issued by the insurer.

23.3 Contractor's Liability

Nothing in this clause limits the Contractor's Liability or responsibility under any other provision of this Contract.

24. Confidentiality and media releases

- (a) Subject to this clause, and to the extent necessary to perform the Contractor's Activities, the Contractor must ensure that:
 - (i) all Confidential Information is kept confidential; and
 - (ii) its Personnel and its Subcontractors maintain in confidence all Confidential Information.
- (b) If any Subcontractor or employee of the Contractor must, incidentally to the performance of any of the Contractor's Activities,

26. Default and termination

26.1 Preservation of other rights

Nothing in this clause shall prejudice the Principal's right to recover damages at Law or exercise any other right or remedy.

26.2 Breach Notice

- (a) If the Contractor is in breach of this Contract and that breach is capable of remedy, then the Principal may issue a Breach Notice to the Contractor.
- (b) The Contractor must submit to the Principal for its approval a draft remedy plan to remedy, cure or redress the breach the subject of the Breach Notice or to overcome its consequences so that:
 - (i) there ceases to be any continuing detrimental effect of that breach; and
 - (ii) the Principal is in the position it would have been had the relevant breach not occurred,
 which must include details of the timing of each step required to remedy, cure or redress the breach.
- (c) The Principal will, within a reasonable time following receipt of any draft remedy plan submitted by the Contractor in accordance with this clause, advise the Contractor whether the draft remedy plan has been approved or rejected and, if rejected, the notice must include reasons why the draft remedy plan was rejected.

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- (d) If the Principal rejects the draft remedy plan, then the Contractor must promptly amend the draft remedy plan (taking into account the reasons provided by the Principal) and resubmit the draft remedy plan to the Principal for approval.
- (e) The Contractor must proceed to remedy the breach in strict accordance with any remedy plan approved by the Principal in accordance with this clause.

26.3 Termination for breach

The Principal may terminate this Contract immediately on written notice to the Contractor:

- (a) if the Contractor is in breach of this Contract and:
 - (i) the Contractor has failed to remedy the breach in accordance with the terms of the relevant Breach Notice; or
 - (ii) the breach is not capable of remedy,
- (b) if the Contractor grants a Security Interest, assigns or novates this Contract other than in accordance with the terms of the Contract;
- (c) on any other grounds specified in this Contract giving rise to a right of termination; or
- (d) the Contractor commits an Insolvency Event.

26.4 Termination by the Principal for convenience

Without prejudice to any of the Principal's other rights and powers under this Contract, the Principal may, at any time and for any reason within its sole discretion, upon ten (10) Business Days written notice to the Contractor, terminate this Contract.

26.5 Contractor's obligation on termination

The Contractor must, on receipt of any notice terminating this Contract, cease the Contractor's Activities and endeavour to mitigate any expense or losses that it or any Subcontractor may incur or has incurred in relation to its obligations under this Contract.

26.6 Amount payable on termination

- (a) If this Contract is terminated by the Principal (other than for the Principal's convenience), then the Principal's sole liability to the Contractor will be payment of the Contract Sum for any Contractor's Activities performed up to the date of termination.
- (b) If this Contract is terminated by the Principal for the Principal's convenience, then the Principal must pay the Contractor the total of:
 - (i) for any Contractor's Activities performed prior to the date of termination, the amount which would have been payable if this Contract had not been terminated and the Contractor had made a payment claim on the date of termination, but only to the extent that the Works becomes the property of the Principal upon payment; and
 - (ii) subject to the obligation of the Contractor to mitigate its costs and expenses, the cost of plant, materials or equipment reasonably ordered by the Contractor for the Works, which the Contractor is liable to accept, but only if the plant, material or equipment become the property of the Principal upon payment,

up to a maximum amount of the balance of the Contract Sum unpaid at the date of termination and other amounts payable pursuant to this Contract at the date of termination.
- (c) The amounts to which the Contractor is entitled under this clause will be in full satisfaction and compensation of the Contractor in relation to the termination and the Contractor will have no other Entitlement as a consequence of that termination or in relation to the performance of the Contractor's Activities to the date of termination.

27. Notices

27.1 Form of Notice

- (a) Any notice, demand, approval, consent, request or other communication in relation to this Contract (**Notice**) will:
 - (i) be in writing;
 - (ii) be in English;
 - (iii) be marked for the attention of the Principal or Contractor (as applicable); and
 - (iv) be given at the recipient's address (as specified in the Purchase Order or as notified from time to time) by being:
 - (A) hand delivered;
 - (B) sent by email;
 - (C) sent by prepaid mail within Australia; or
 - (D) sent by prepaid Express Post International (or overseas equivalent) airmail if the sender and the recipient are in different countries.
- (b) Any Notice in relation to the default, breach or termination of this Contract may only be hand delivered, sent by prepaid mail or Express Post International.

27.2 Time for giving Notices

- (a) Notices must be given within the time specified in this Contract.
- (b) If the Contractor fails to give a Notice that contains all of the information required by this Contract within the time specified in this Contract, the Contractor will have no Entitlement in relation to the matters to which that Notice related.

27.3 No waiver of required details

The requirement to give a Notice including all of the detail required by this Contract cannot be waived by the Principal.

28. Occupational health & safety

28.1 Contractor's OHS Obligations

- (a) The Parties acknowledge and agree that:
 - (i) during the performance of the Contractor's Activities, the Contractor must:
 - (A) comply with; and
 - (B) ensure that all persons for whom it is responsible (including Subcontractors) comply with, all OHS Laws; and
 - (ii) the Contractor must comply with any direction of the Principal given following a perceived breach of an OHS Law at the Site.
- (b) The Contractor must immediately notify the Principal of:
 - (i) any breach or potential breach by the Contractor or its Personnel of the OHS Laws; or
 - (ii) any notice or direction received by the Contractor or its Personnel under or in connection with the OHS Laws (including by providing a copy of the notice or direction to the Principal).
- (c) If the Contractor fails to comply with an obligation under this clause, the Principal may perform, or have performed, the obligation on the Contractor's behalf and recover from the Contractor the costs and expenses incurred as a debt due and payable.
- (d) In the event that the Principal discovers an unsafe practice or a breach of OHS Laws or this Contract then in addition to any other rights under this Contract, the Principal may immediately suspend

the work associated with the unsafe practice or breach. The suspension will not be lifted until the work area is made safe, the unsafe practice removed or the breach rectified.

(e) it will pay to the Principal an amount equal to any Indemnified Party Loss suffered by any Indemnified Party (subject to any limitations of liability under this Agreement).

29. Specific Legislative Requirements

29.1 Authorised Nominating Authority

In the event that the Contractor makes an adjudication application under the Security of Payment Legislation, the Contractor must make such application to the Authorised Nominating Authority.

29.2 Privacy Act

The parties acknowledge and agree to comply with their obligations to each other under the *Privacy Act 1988* (Cth).

29.3 PPSA

- (a) If the Principal determines that this Contract (or a transaction in connection with it) is or contains a Security Interest, the Contractor agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) as the Principal may reasonably require for the purposes of:
 - (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective and ranks ahead of other Security Interests;
 - (ii) enabling the Principal to apply for, and obtain, any registration or providing any notification in accordance with the PPSA; and
 - (iii) enabling the Principal to exercise any right in connection with the Security Interest or the property the subject of the Security Interest.
- (b) The Contractor waives each right to receive any notice from the Principal under the PPSA (including notice of a verification statement) that can be waived.
- (c) At any time when title to or ownership of any plant, goods or materials is passed to the Principal, the Contractor must ensure that title or ownership is passed free of any Security Interest of the Contractor or any other person. Neither the Principal nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA and the Contractor will not authorise, and will ensure that no other party authorises, the disclosure of such information. However this does not prevent disclosure where required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

29.4 Proportionate Liability

To the extent permitted by Law, the operation of a Proportionate Liability Scheme is excluded in relation to all and any rights, obligations and liabilities under this Contract whether arising in contract, tort, equity, strict liability statute or otherwise.

29.5 Related Companies

The Contractor acknowledges and agrees that:

- (a) the Principal enters into this Contract on its own behalf and on trust for each Related Company;
- (b) the Principal's Related Companies may make use of the Works and are entitled to receive the benefit of the Contractor's other obligations under this Contract.
- (c) the Indemnified Parties (other than Principal) will have no Liability under this Contract to the Contractor;
- (d) a breach of this Contract may result in loss or damage being suffered by the Indemnified Parties (**Indemnified Party Loss**); and

29.6 Principal holds for the benefit of each Indemnified Party

Each party to this Contract acknowledges and agrees that the Principal and each Related Company holds each exception, limitation, defence, immunity or other benefit contained in this Contract on behalf of and for the benefit of each Indemnified Party.

30. General

30.1 Relationship of Parties

- (a) Nothing in this Contract creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the Parties.
- (b) Neither Party has the authority to bind the other Party by any representation, declaration or admission, or to make any contract or commitment on behalf of the other Party or to pledge the other Party's credit.

30.2 Governing Law

- (a) This Contract is governed by the Laws of the State or Territory in which the Site is located.
- (b) The Parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State or Territory in which the Site is located and any court competent to determine appeals from those courts with respect to any proceedings which may be brought arising out of or in connection with this Contract.

30.3 Variation of agreement

This Contract may only be varied or replaced by a document duly executed by the Parties.

30.4 Waiver

A right created by this Contract cannot be waived except in writing signed by the Party entitled to that right. Delay by a Party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a Party of a right operate as a subsequent waiver of the same right or of any other right of that Party.

30.5 Further assurances

Each Party will promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this Contract.

30.6 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Contract without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

30.7 Preservation of existing rights

The expiration or termination of this Contract does not affect any right that has accrued to a Party before the expiration or termination date.

30.8 No merger

Any right or obligation of any Party that is expressed to operate or have effect on or after the completion, expiration or termination of this Contract for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

30.9 Counterparts

This Contract may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

30.10 Legal costs and expenses

Each Party will pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Contract.

30.11 Exclusion of the United Nations Convention on Contracts for the International Sale of Goods

All of the terms of the United Nations Convention on Contracts for the International Sale of Goods (adopted in Vienna, Austria on 10 April 1980) are expressly excluded from this Contract.

31. Definitions

In this Contract the following terms have the following meanings:

Authority means all persons and any government, government body, semi-government, local government, authority, administrative or judicial body, public authority, statutory corporation or instrumentality that has jurisdiction over the Contractor's Activities or the Site.

Authorised Nominating Authority means:

- (a) Institute of Arbitrators and Mediators Australia;
- (b) Rialto Adjudicators;
- (c) RICS Oceania.

Best Industry Practice means exercising the degree of skill, care, diligence, efficiency, prudence and foresight which would be expected from a skilled and competent contractor experienced in providing works and services commensurate to the type, size, value and complexity of the Contractor's Activities.

Breach Notice means a Notice issued by the Principal:

- (a) specifying details of a breach of the Contract; and
- (b) requiring the Contractor to remedy that breach within twenty (20) Business Days of the Notice, or such other reasonable time as the Principal may determine.

Business Day means any day other than a Saturday, Sunday or public holiday in the jurisdiction in which the Site is located.

Certificate of Practical Completion means a certificate indicating that Practical Completion of the Works has been achieved in accordance with this Contract.

Claim means any claim, action, demand, suit or proceeding of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at Law under or in connection with this Contract.

Commencement Date means the date for the commencement of the Contractor's Activities, more particularly referred to in the Purchase Order.

Compensable Cause means paragraph (a) to (c) of the definition of Qualifying Cause of Delay.

Confidential Information means any information in any form which:

- (a) is, by its nature, confidential or non-public;
 - (b) is marked or designated or confirmed by a Party as confidential or proprietary at the time of its disclosure; or
 - (c) a Party knows or ought to know is confidential,
- but excludes:
- (d) information that is in or enters the public domain through no fault of either Party;
 - (e) information that was made available to a Party by a person (other than the other Party) who, as far as that Party knows, has or then had the unrestricted legal right to do so;
 - (f) information that is required to be disclosed by Law, any Authority or the rules of a recognised securities exchange;

- (g) information that is disclosed to the Party's professional advisers to obtain professional advice; or
- (h) disclosure of the information to a Related Body Corporate or the Party, provided that the Related Body Corporate is subject to an obligation of confidence no less onerous than that owed under this Contract.

Consequential Loss means any loss of opportunity, profit, anticipated profit, business, business opportunities or revenue or any failure to realise anticipated savings.

Consequential Loss Exclusion has the meaning given to that term in clause 22.4.

Construction Plant & Equipment Insurance means a policy of insurance providing cover in respect of loss or damage to equipment (other than motor vehicles) owned or leased by the Contractor for its market value at the time that loss or damage occurs, which is to be maintained until expiry of the Defects Liability Period.

Contract means the agreement between the Principal and the Contractor to perform the Contractor's Activities more particularly described in:

- (a) any Purchase Order issued under these Terms and Conditions;
- (b) these Terms and Conditions; and
- (c) any Schedules.

Contract Program means the program submitted by the Contractor in accordance with this Contract (as revised in accordance with this Contract).

Contract Sum means the amount payable by the Principal for the performance of the Contractor's Activities, more particularly referred to in the Purchase Order (as adjusted in accordance with this Contract).

Contract Works Insurance means a policy of insurance for the full reinstatement value of the Works and providing cover in respect of physical loss, destruction of or damage to the Works or any part of the Contractor's Activities including:

- (a) the Contractor's construction plant and equipment while it is in the care of the Contractor; and
- (b) the personal effects or any other property of the Contractor or its Personnel, unless such effects or property is to be incorporated in the Works,

which is to be maintained until the end of the Defects Liability Period.

Contractor means the person required to carry out the Contractor's Activities, more particularly referred to in the Purchase Order.

Contractor Initiated Variation means a Variation proposed for or on behalf of the Contractor.

Contractor's Activities means all works and obligations that the Contractor is required to satisfy under this Contract, and includes Variations, remedial work and any other work reasonably necessary for or inferred from the work expressly referred to in this Contract.

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

Date for Practical Completion means the date the Works are to achieve Practical Completion, more particularly referred to in the Purchase Order (as adjusted in accordance with this Contract).

Date of Practical Completion means the date the Works or Separable Portion reaches Practical Completion (as applicable) identified in the Certificate of Practical Completion.

Defect means any Error, defect, damage, shrinkage, expansion or fault, or any aspect of the Works not in accordance with the requirements of this Contract.

Defects Liability Period means a 12 month period (as adjusted in accordance with this Contract).

Delay Damages means any damages payable under clause 12.2.

Dispute has the meaning given to that term in clause 25.

Dispute Notice has the meaning given to that term in clause 25.

Entitlement means an entitlement of the Contractor to:

- (a) an Extension of Time;
- (b) a declaration to the effect that time is at large;
- (c) an adjustment to the Contract Sum; or
- (d) recover any loss, cost, damage or expense of any kind arising:
 - (i) under the Contract; or
 - (ii) out of or in connection with the performance of the Contractor's Activities (including a claim for *quantum meruit*).

Error means any error, omission, ambiguity, inadequacy or inefficiency.

Excepted Risks means:

- (a) any negligent act or omission of the Principal or the Principal's Personnel (other than the Contractor or the Contractor's Personnel);
- (b) any risk specifically excepted elsewhere in the Contract;
- (c) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Authority (except where the confiscation arises as a consequence of an act of the Contractor);
- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or its Personnel; and
- (e) use or occupation of any part of the Works by the Principal or its Personnel (other than the Contractor or the Contractor's Personnel).

Extension of Time means an extension to the Date for Practical Completion.

Final Certificate means the certificate issued under clause 20.

Final Payment Claim has the meaning given to that term in clause 20.

Fit for the Intended Purpose means that the Works are fit for their intended purpose, function, requirement or use as specified in, or reasonably inferred from, this Contract.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Indemnified Parties means the Principal, the Principal's Personnel, any Related Body Corporate of the Principal and their respective Personnel and an **Indemnified Party** means any of the Indemnified Parties.

Insolvency Event in relation to an entity, means:

- (a) a receiver, receiver and manager, administrator, trustee or similar official being appointed over any of the assets or undertaking of the entity;
- (b) the entity suspending payment of its debts generally;
- (c) the entity being or becoming unable to pay its debts when they are due or is unable to pay its debts within the meaning of the Corporations Act;
- (d) the entity entering into or resolving to enter into any arrangement, understanding or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) an application or order being made for the winding up or dissolution of, or the appointment of a provisional liquidator to, the entity or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the entity otherwise

than for the purpose of an amalgamation or reconstruction which has the prior consent of all of the members of the entity; or

- (f) an administrator being appointed in accordance with the Corporations Act,

and, in relation to an individual, means the individual being or becoming insolvent or committing an act of bankruptcy as those terms are used in the *Bankruptcy Act 1966* (Cth).

Insurance Policy means:

- (a) Contract Works Insurance;
- (b) Construction Plant & Equipment Insurance;
- (c) Public Liability Insurance;
- (d) Professional Indemnity Insurance (if the Contractor has design obligations under this Contract);
- (e) Workers' Compensation Insurance; and
- (f) Motor Vehicle Insurance.

Law means:

- (a) all Legislative Requirements;
- (b) any Licences; and
- (c) those principles of common law and equity established by decision of the courts.

Legislative Requirements means all present and future Acts of Parliament of the Commonwealth of Australia, or of any State or Territory of Australia, regulations, codes, ordinances, local laws, by-laws, rules and requirements of all Authorities.

Liability means any debt, obligation, Claim, action, cost (including legal costs on an indemnity basis, deductibles or increased premiums), expense, loss (whether direct or indirect), damage, losses, compensation, charge or liability of any kind (including fines or penalties), whether it is:

- (a) actual, prospective or contingent; or
- (b) currently ascertainable or not,

whether incurred or payable under this Contract or otherwise at Law.

Liability Cap means the greater of:

- (a) 200% of the Contract Sum; or
- (b) \$1,000,000.

Licence means all licences, qualifications, registrations and other statutory requirements necessary for the performance of the Contractor's Activities and includes, as relevant, the Environmental Protection Licence.

Liquidated Damages Rate means the daily rate payable by the Contractor for failing to achieve Practical Completion by the Date for Practical Completion, more particularly referred to in the Purchase Order.

Liquidated Damages Cap means the aggregate amount of liquidated damages payable by the Contractor, more particularly referred to in the Purchase Order.

Motor Vehicle Insurance means a policy of comprehensive motor vehicle insurance covering third party property damage, or any injury to or death of any person, arising from or in relation to any plant or vehicles (registered or unregistered) in connection with this Contract, which is to be maintained until the end of the Defects Liability Period.

Notice has the meaning given in clause 27.

OHS Laws means:

- (a) whichever of the following acts that applies at the Site:
 - (i) Work Health and Safety Act 2011 (NSW);
 - (ii) Work Health and Safety Act 2011 (Qld); or

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- (iii) Occupational Health and Safety Act 2004 (Vic); and
- (b) any associated legislation or other legislative requirement dealing with health, safety or protection of workers on building sites in the jurisdiction where the Site is located.

Party means a party to this Contract and **Parties** has a corresponding meaning.

Payment Certificate has the meaning given to that term in clause 15.2.

Payment Claim has the meaning given to that term in clause 15.1.

Performance Bond means a bond or bank guarantee which is unconditional, irrevocable and payable on demand, for an amount specified in this Contract, in a form approved by the Principal.

Performance Criteria means any performance criteria set out in this Contract.

Personnel means in relation to a Party, any of its past or present officers, employees, agents, representatives, contractors and consultants of that Party (other than where they are also a Party to this Contract).

Policy means:

- (a) the Principal's Anti-Bribery & Corruption Policy;
- (b) Site Requirements; and
- (c) any other rules, plans, standards, policies and procedures of the Principal or the BlueScope Group as communicated or made available to the Contractor from time to time.

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

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

- (a) the Contractor has completed all of the Works (except for minor omissions or minor defects which do not prevent the Works from being reasonably capable of use for its intended purpose);
- (b) the satisfaction of all Tests which are required by this Contract to be carried out and passed before, or as a condition to, Practical Completion;
- (c) manuals for the operation of the Works have been provided to the Principal; and
- (d) documents and other information which, in the opinion of the Principal, are essential for the use, operation and maintenance of the Works have been supplied.

Pre-Approved Subcontractor means any entity which the Principal has provided its approval to be a Subcontractor for the purposes of this Contract (irrespective of whether that consent was given prior to the date of this Contract).

Principal means the Party procuring the performance of the Contractor's Activities, more particularly referred to in the Purchase Order.

Principal Group means all or any of the Principal, its wholly owned subsidiaries and any Related Body Corporate.

Professional Indemnity Insurance means a policy of insurance providing cover in respect of liability arising from an act or omission by the Contractor or its Personnel, whether owed in contract or otherwise, in relation to the performance of the Contractor's professional activities and duties in relation to the Works, with a limit of cover of not less than \$10,000,000 for each and every claim, which is to be maintained until six years after the expiry of the Defects Liability Period.

Proportionate Liability Scheme means:

- (a) Part 4 of the *Civil Liability Act 2002* (NSW);
- (b) Part 2 of the *Civil Liability Act 2003* (QLD); and
- (c) Part (IV)AA of the *Wrongs Act 1958* (Vic).

Public Liability Insurance means a policy of insurance, written on an occurrence basis, covering all liability in respect of:

- (a) loss of, or damage to, property (other than the Works);
- (b) equipment, materials or construction aids (of the Contractor and its Personnel); and
- (c) the death or personal injury (including disease or illness) of any person,

in connection with this Contract, the Works or the performance of the Contractor's Activities with a limit of cover of not less than \$20,000,000 for any one occurrence and unlimited in the number of occurrences during the period of insurance, which is to be maintained until the expiry of the Defects Liability Period.

Purchase Order means a document so identified, from the Principal to the Contractor requiring the performance of the Works.

Qualifying Cause of Delay means:

- (a) any act or omission of the Principal or any employee, consultant or agent of the Principal (not otherwise permitted or contemplated by this Contract);
- (b) a Variation;
- (c) a direction to suspend the Contractor's Activities (other than to the extent such direction arises as a result of an act or admission by the Contractor or its Personnel); and
- (d) any other cause which is expressly stated in this Contract giving rise to an Entitlement to an Extension of Time on the part of the Contractor.

Quality Standards means all standards, codes, specifications and requirements to be complied with pursuant to this Contract or by Law.

Related Body Corporate has the meaning given to that term in the Corporations Act.

Related Company means:

- (a) a Related Body Corporate of the Principal; and
- (b) any joint venture, whether incorporated or not, in relation to which the Principal or a Related Body Corporate of the Principal, has the ability to influence the business decisions of that joint venture and which the Principal notifies Contractor is to receive the Works.

Reputable Insurer means an insurance company with a credit rating of at least A- by Standard & Poor's (Australia) Pty Limited or equivalent credit rating.

Schedule means a schedule to these Terms and Conditions.

Security means a Performance Bond or Performance Bonds.

Security Interest means:

- (a) a 'security interest' as that term is defined by the PPSA; and
- (b) any mortgage, pledge, hypothecation, encumbrance, lien or charge or any security or preferential interest or arrangement of any kind or any other right or arrangement with any creditors to have its claims satisfied prior to other creditors with or from the proceeds of any assets.

Security of Payment Legislation means whichever of the following Acts that applies in the jurisdiction in which the Site is located:

- (a) *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (b) *Building and Construction Industry Payments Act 2004* (Qld); and
- (c) *Building and Construction Industry Security of Payment Act 2002* (Vic).

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Separable Portion means a portion of the Works so described in this Contract as a Separable Portion or which the Principal has determined will be a Separable Portion in accordance with this Contract.

Separate Contractor means a contractor, other than the Contractor, engaged by the Principal or a Related Body Corporate of the Principal to perform works or services on the Site concurrently with the execution by the Contractor of the Contractor's Activities (including any works omitted from the Contractor's Activities as a Variation).

Site means the area where the Works are to be performed, more particularly referred to in the Purchase Order.

Site Requirements means the requirements relating to working on and around the Site.

Specification means the documents describing the Works, more particularly referred to in the Purchase Order.

Subcontractor means any contractor or subcontractor (including consultants and suppliers) engaged by the Contractor and those contractors or subcontractor's employees, officers, agents, consultants and contractors.

Subcontractor Warranty means any warranty given by a Subcontractor in relation to works or services performed by them or materials provided by them in respect of any part or the whole of the Contractor's Activities.

Tax means any and all present and future sales, use, personal, property, real property, value added, goods and services, GST, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on the Principal's net income) by any Authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable.

Tax Invoice means an invoice which complies with the GST Act in relation to the production and form of tax invoices for GST purposes.

Tests includes examinations, measurements, trials and tests of all or any part of the Works including all examinations, measurements, trials and tests which are described in this Contract.

Terms and Conditions means these terms and conditions.

Urgent Variation has the meaning given to that term in clause 9.3.

Variation means:

- (a) additional work or services;
- (b) a change in the character of quality of the Works;
- (c) a change to the scope of the Works;
- (d) an increase or decrease in the scope of the Works; or
- (e) an omission from the scope of the Works,

but does not include any work to overcome a breach of this Contract or any act or omission by the Contractor.

Variation Direction means a notice from the Principal directing the Contractor to perform a Variation (which may include any matters contained in the relevant Variation Response or Contractor Initiated Variation proposal (as applicable) that are not agreed between the Parties).

Variation Notice has the meaning given to that term in clause 9.2(a).

Variation Response has the meaning given to that term in clause 9.2(b).

Workers. Compensation Insurance means a policy of insurance providing cover in respect of all liability (including at common law) for death of, or injury (including illness) to, persons employed by or deemed to be employed by the Contractor:

- (a) in a form prescribed or approved under or issued in pursuance of any workers' compensation legislation applicable to the Contractor; and
- (b) where permitted by Law, extended to indemnify the Principal for the Principal's statutory liability to persons employed by the Contractor

which is to be maintained until expiry of the Defects Liability Period.

Works means the whole of the work to be carried out and completed in accordance with this Contract, including any Variation provided for by this Contract, which is required to be handed over to the Principal (including without limitation any plant and material to be supplied by the Contractor, and to become the property of the Principal, whether or not intended to be fixed to the Site),

31.2 Interpretation

In this Contract, unless expressly provided otherwise:

- (a) a reference to this Contract, or another instrument, Licence, Policy, code or standard means this Contract, that other instrument, Licence, Policy, code or standard and includes any variation, supplement, assignment, novation, substitution or replacement of any of them;
- (b) the singular includes a reference to the plural and vice versa;
- (c) includes or including means includes or including without limitation;
- (d) a reference to a person includes a natural person, firm, partnership, body corporate, unincorporated association, Authority, the Crown or any other organisation or legal entity;
- (e) a reference to a natural person includes a reference to the person's executors, administrators, successors, substitutes (including, persons taking by novation) and assigns;
- (f) a reference to a corporation includes its successors and permitted assigns;
- (g) a reference to a body or Authority which ceases to exist is a reference to either a body or Authority that the Parties agree to substitute for the named body or Authority or, failing agreement, to a body or Authority having substantially the same objects as the named body or Authority;
- (h) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (i) a reference to a time is to that time at the Site;
- (j) a requirement to do anything includes a requirement to cause or procure that thing to be done and a requirement not to do anything includes a requirement to prevent that thing being done;
- (k) a word that is derived from a defined word has a corresponding meaning;
- (l) any reference to a right or discretion on the part of the Principal means the Principal may exercise that right or discretion in its sole and absolute discretion;
- (m) any terms used in this Contract (unless the context otherwise requires) which are defined in the GST Act are taken to have the meaning as defined in the GST Act;
- (n) a reference to \$, AUD or dollar is to the lawful currency of the Commonwealth of Australia;
- (o) a reference to a court is to an Australian court;
- (p) headings and the table of contents are inserted for convenience only and do not affect interpretation of the Contract; and
- (q) a reference to "supplier" "contractor" or "service provider" or any similar derivative of such terms in any document comprising this Contract will be taken to mean the Contractor.