

# Contract Resources Terms and Conditions of Supply

## 1 DURATION OF AGREEMENT

This Agreement commences on the Commencement Date and continues until the Completion Date (unless it is terminated earlier under clause 18).

## 2 SUPPLY OF SERVICES

### 2.1 Services

Supplier agrees to supply the Services to the Client at the Site(s).

### 2.2 Responsibilities

The Parties agree to perform the responsibilities allocated to them in Quotation. If there is any change or variation to the Services and/or responsibilities allocated to the Supplier, the Supplier may, upon written notice to the Client, adjust the prices and charges at Supplier's discretion.

### 2.3 Hours for supply

The Services will be delivered by the Supplier during the working hours specified in the Quotation. If no working hours are specified, the Services will be delivered during normal business hours, Monday to Friday 9am -5pm. Any Services carried out at any other times will be subject to prior written agreement of the Parties.

## 3 ORDERS FOR SERVICES

### 3.1 Purchase Orders

Orders for Services will be placed by the Client submitting a Purchase Order to Supplier in a form agreed by the Parties. Each Purchase Order, upon receipt and written acceptance by Supplier, constitutes a separate binding contract between the Client and Supplier for the supply of Services on the terms of this Agreement.

### 3.2 Order Lead Times

The Client must submit a Purchase Order to Supplier as stated in the Quotation and if none stated, then at least 7 days prior to the date on which the Client requires the Service. If the Client requires any Services to be supplied in a shorter period than the relevant order lead time, Supplier will endeavour to meet the Client's requirements but is not obligated to do so.

## 4 PRICE AND PAYMENT

### 4.1 Prices

The Client agrees to pay Supplier the prices and charges (exclusive of GST) specified in Quotation (as varied from time to time in accordance with this Agreement) for the Services ordered by the Client.

### 4.2 Invoices

Unless otherwise specified in the Quotation, the Supplier will invoice the Client at least monthly for Services supplied.

### 4.3 Payment

Invoices submitted by Supplier to the Client must be paid by the Client within 14 days of the date Invoice except where Client disputes an Invoice, in which case:

- (a) the Client shall pay the undisputed part of the relevant Invoice (if any) and dispute the balance; and
- (b) if the resolution of the dispute determines that the Client is to pay an amount to Supplier, the Client will pay that amount as soon as practicable but no later than 5 days after resolution of that dispute.

### 4.4 Late payment

- (a) Subject to clause 4.3, Supplier may suspend supply of Services to the Client for any period in which payment for an invoice submitted by Supplier to the Client is overdue, or if the supply would result in the Client exceeding its agreed credit limit.
- (b) The Client agrees to pay Supplier interest at the rate of 18% pa of any overdue amount for each month (or on a pro-rata basis for each part of a month) until the overdue amount is paid to Supplier within 28 days of the date of an Invoice issued by Supplier to the Client. This clause does not apply to any amounts which are the subject of a bona fide dispute notified by the Client to Supplier prior to the due date for payment while such amounts remain subject to a bona fide dispute.

## 5 GOODS AND SERVICES TAX

### 5.1 Prices do not include GST

The prices and charges specified in this Agreement and Quotation do not include any amount for GST.

### 5.2 Recovery of GST

If a supply by a Party under this Agreement is subject to GST, the recipient of the supply must pay the supplier an additional amount equal to that GST.

### 5.3 Time of payment

The additional amount is payable at the same time as the payment for the supply is payable or is to be provided. However, the additional amount need not be paid until the recipient gives the supplier a Tax Invoice.

### 5.4 Reimbursement

If a Party is entitled to be reimbursed or indemnified under this Agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the Party is entitled to an input tax credit.

## 6 OWNERSHIP AND RISK

### 6.1 Ownership

Ownership of any goods supplied as part of the Services under this Agreement transfers to the Client at earlier of the time specified in the Quotation or upon payment for goods.

### 6.2 Risk

Risk in the goods passes to the Client at the same time as ownership.

## 7 WARRANTIES AND ACCEPTANCE

7.1 Supplier makes no express warranties in respect of the Services and, subject to clause 14.5, excludes all implied warranties, terms or conditions (including those implied by statute) from this Agreement.

### 7.2 Acceptance Test

- (a) If the Quotation states that an Acceptance Test will apply, upon completion of the Services or any other time agreed between the Parties in writing, the Client and Supplier shall carry out such Acceptance Test. If the Client does not allow Supplier to complete an Acceptance Test tests within thirty (30) days of the completion dated of the Services or such date otherwise agreed, the Services shall be deemed to have been accepted on the expiry of the such thirty (30) days payments to Supplier (if any) shall be made as if satisfactory acceptance tests had taken place.
- (b) If no Acceptance Test applies, the Client must, within 72 hours of notice of completion from Supplier:
  - i. issue a certificate of acceptance of the Services or part thereof which shall then be deemed to have been finally accepted and taken over by the Client; or
  - ii. provide in writing, detailed reasons why a certificate of acceptance cannot be issued provided that the certificate of acceptance shall not be unreasonably withheld because of minor omissions or deficiencies which are not material. Supplier shall be given the opportunity to make good such omissions and defects at the earliest date practicable.

If the Client does not provide response in accordance with (i) or (ii) within the specified time, then the Services shall be deemed to have been accepted by the Client.

7.3 Unless otherwise agreed, all costs and fees incurred by the Supplier in connection with an Acceptance Test will be the responsibility of the Client.

### 7.4 Claims Period

- (a) The Client must within thirty (30) days of the date of completion of the Services notify the Supplier in writing of any matter or thing the Client alleges are not in accordance with the Agreement.
- (b) Where notice is not received within period specified in (a), the Services shall be deemed to be in accordance with the terms of this Agreement and not claim can be made by the Client thereafter.



#### 7.5 No reliance

The Client acknowledges that it has not relied on any service involving skill or judgment, or on any advice, recommendation, information or assistance provided by Supplier in relation to the supply of the Services.

#### 7.6 Warranty Null and Void

- (a) Supplier reserves the right to make null and void any warranty should the asset on which the Services are performed be modified, altered, damaged or put to any undue stress by the Client or any third Party.
- (b) Services carried out on any asset by anyone other than Supplier and/or its nominated agent without an express written variation from the Supplier shall make any warranty null and void.

### 8 COMPLIANCE WITH LAWS

#### 8.1 Compliance

- (a) The Parties must comply with all legislative and regulatory requirements that apply to the supply of the Services and must ensure that they have, and comply with, all necessary permits and licences that apply to the transportation, storage and use of the goods and performance of the Services.
- (b) Supplier is only required to comply with regulations, permit or licence requirements that are specific to the Site(s) if the Client provides Supplier with written notice of these prior to the Commencement Date. The Client is liable for any costs incurred by Supplier in obtaining a licence or permit required by regulations or laws that apply specifically to the Site(s).

#### 8.2 Change to laws

- (a) If any of Supplier's costs for the supply of the Services increase as a result of:
  - i. Supplier's compliance with the introduction of, or any change (including a change in interpretation) in, any federal, state, local or other law, regulation, order or decree of any kind or as a result of its compliance with any change in the Client's rules, regulations and policies; or
  - ii. any increase to the prices and charges payable by Supplier to a supplier as a result of a supplier's compliance with the introduction of, or any change (including a change in interpretation) in any federal, state, local or other law, regulation, order or decree of any kind,then Supplier may identify this cost increase(s) for the Client and increase the prices and charges for the Services payable under this Agreement in the same proportion as the increase in Supplier's costs.
- (b) An increase in the prices and charges under clause (a) will take effect immediately on and from the date on which Supplier provides the Client with a written notice specifying the new prices and charges.

### 9 SAFETY HEALTH AND ENVIRONMENT

#### 9.1 SHE Policies

Supplier and the Client must perform their obligations under this Agreement in accordance with all agreed, legislative and regulatory safety, health and environment requirements. To enable Supplier to do this, the Client must inform Supplier of any hazards and its safety requirements at the Site(s), provide relevant material data safety sheets, any Site(s) surveillance records and must induct Supplier's employees in all applicable safety procedures (at no cost to Supplier). If required by Supplier, the Client must make its employees available for training in Supplier safety requirements relevant to the performance of the Services.

#### 9.2 Hierarchy of Responsibilities

On Sites where there is multiple provision of Services, the Client must establish and advise in writing a clear hierarchy of responsibilities related to health and safety management between all Parties.

#### 9.3 Suspension

If at any time Supplier forms the reasonable opinion that it would be unsafe to continue performance the Services, Supplier may notify the Client of the unsafe condition and Supplier may suspend supply performance of the Services (or both) until Supplier is of the opinion (in its absolute discretion) that it is safe to re-commence supply.

### 10 ACCESS TO THE SITE(S)

#### 10.1 Access for Supplier

The Client must provide free and safe access to all areas of the Site, reasonably required by Supplier, to enable Supplier to perform its obligations under this Agreement.

#### 10.2 Supplier secure area

- (a) Upon request, the Client will set aside a secure part of the Site(s) (in a location proximate to where the Services are to be performed) for the Supplier to take deliveries of materials and to store Supplier's equipment.
- (b) Unless specified otherwise in the Quotation, the Client shall, at its own cost, provide continuous access to Supplier to all necessary telecommunications, electrical power, compressed air, light, water, waste disposal amenities, toilet and other services and facilities (as reasonably required by Supplier) to enable the Supplier to perform the Services.

#### 10.3 Training at the Site(s)

The Client acknowledges and agrees that Supplier may use the Site(s) to provide its employees with additional training. Supplier will provide full supervision of any employees who attend the Site(s) for training purposes and will notify the Client prior to these persons attending the Site(s).

### 11 DESCRIPTIVE DATA

- 11.1 Upon request, the Client must provide to Supplier, free of charge, three (3) copies of all specifications, drawings and other documentation and information specified to be provided by the Client and shall grant Supplier the right to use any Intellectual Property in such items required to perform the Services.
- 11.2 All illustrations, drawings, catalogues, advertisements etc. accompanying the Quotation must be regarded as informative only and are not part of the Agreement unless otherwise stipulated in the Quotation. All weights, measurement, powers, capacities and other particulars specified in these illustrations and drawings etc. are stated in good faith but inaccuracies shall not vitiate the Agreement or form the basis of any claim against Supplier nor justify rejection of the Services.

### 12 PLANT AND EQUIPMENT

#### 12.1 Ownership of Supplier Plant and Equipment

The Client acknowledges and agrees that all items of the Supplier Plant and Equipment (including Plant and Equipment installed or affixed to the Site(s)) remains the property of Supplier and may be removed by Supplier on termination of this Agreement.

#### 12.2 Care of Supplier Plant and Equipment

- (a) The Client may not make any alteration or addition to, nor attach anything to, any of the Supplier Plant and Equipment.
- (b) The Client must not create any security or lien over any of the Supplier Plant and Equipment whatsoever (other than any Security Interests granted in favour of Supplier under this Agreement).
- (c) The Client must not sell, sub-lease or dispose of its interest in, possession, control or use of any of the Supplier Plant and Equipment.

#### 12.3 Removal of Supplier Plant and Equipment on termination

In addition to any other rights Supplier may have, Supplier is entitled to remove all items of Supplier Plant and Equipment from the Site(s) upon termination of this Agreement. If upon removal, any Supplier Plant and Equipment is found to be contaminated, Supplier may charge to the Client a reasonable cleaning fee. Client will provide Supplier with a reasonable period of time to remove this Supplier Plant and Equipment (which may extend beyond the termination of this Agreement). The Client will not deliver any of the Supplier Plant and Equipment to anyone else or allow anyone else to remove any of the Supplier Plant and Equipment.

#### 12.4 Client Plant and Equipment

- (a) The Client shall ensure that all Client Plant and Equipment provided to the Supplier is safe, properly maintained and fit for intended use.
- (b) The Supplier will use reasonable endeavours in handling the Client's Plant and Equipment however takes no responsibility for the storage or maintenance of such whilst in Supplier's custody.
- (c) Except to the extent caused by the Supplier's negligent act, Supplier shall not be responsible for any damage sustained to Client's Plant and Equipment whilst in Supplier's custody.

### 13 INSURANCE

#### 13.1 The Supplier will take out the following insurances in connection with the performance of the Services:

- (a) workers compensation insurance as required by law,





- (b) general public liability and property damage insurance up to \$5 million of cover; and
- (c) motor vehicle insurance covering all vehicles owned or leased by the Supplier and used in the performance of the Services.

All other insurances are the responsibility of the Client.

#### 14 INDEMNITIES AND LIMITATION OF LIABILITY

##### 14.1 Indemnity from Supplier

Supplier indemnifies the Client against any loss, expense, liability or proceeding resulting from:

- (a) damage to the property of a third party; or
- (b) the injury or death of any person authorised to be on the Site(s),

only if, and to the extent that, the loss, expense, liability or proceeding is directly caused by Supplier's breach of this Agreement.

##### 14.2 Excluded losses

To the extent the law permits and notwithstanding any other term of this Agreement, each Party excludes all liability whatsoever to the other for indirect or consequential loss or damage of any kind, loss of business revenue, loss of profits, failure to realise expected profits or savings, overhead costs, loss of reputation and goodwill, loss of value in any intellectual property, damages for business interruption, damages or liquidated sums payable pursuant to other agreements or for lost opportunities (including opportunities to enter into or complete arrangements with third parties) and commercial or economic loss of any kind arising in contract, tort (including negligence) under any statute or otherwise arising out of or in any way connected with this Agreement.

##### 14.3 Cap on liability

Supplier's total liability for loss or damage of any kind however caused, in contract, tort, under any statute or otherwise (including negligence) that is not excluded by clause 14.2, is limited for any and all claims in aggregate to the value of the Services provided up to the date on which the loss or damage arises.

##### 14.4 Scope of exclusions and limitations

- (a) Clauses 14.2 and 14.3 apply to any act of Supplier which gives rise to loss or damage, even if the act was not authorised, or not capable of being authorised, by the Client;
- (b) To avoid any doubt, clause 14.2 applies to the indemnity in clause 14.1;
- (c) To avoid any doubt, references to loss and damage in clauses 14.2, 14.3 and 14.6 are to all types of loss and damage including:
  - i. loss or damage that arose, or would arise naturally, from a breach, termination or repudiation of this Agreement (regardless of who, when, how or why it was repudiated, breached or terminated and whether or not any breaches involved were fundamental or otherwise);
  - ii. loss or damage in the minds, or in the contemplation of the minds, of the Parties whether at the time that they entered into this Agreement or at any other time; and
  - iii. loss or damage not covered by clauses (c)i) or (c)ii).

##### 14.5 Non-excludable terms

Where any Act of Parliament implies in this Agreement any term, and that Act voids or prohibits provisions under a contract which exclude or modify the operation of such term, the term is taken to be included in this Agreement. However, Supplier's liability for breach of such term will, if permitted by law, be limited to one of the following remedies:

- (a) In the event that the value of the supply of the Services is greater than \$40,001, at the Supplier's discretion, the Supplier will either:
  - (i) resupply the Services; or
  - (ii) pay the cost of resupplying the Services;or
- (b) In the event that the value of the supply of the Services is less than \$40,000:
  - (i) For major failures of that Service:
    - (A) cancellation of the Service; and
    - (B) a refund for the unused portion, or compensation for, the reduced value of the Service; or
  - (ii) For failures that are not major:
    - (A) the resupply of the Services within a reasonable time; or

- (B) cancellation of the Service; and
  - (C) a refund for the unused portion, or compensation for, the reduced value of the Service;
- plus any other reasonably foreseeable loss or damage from the failure in Service.

##### 14.6 Reduction in liability

Supplier's liability to the Client for loss or damage of any kind in contract, tort, under any statute or otherwise (including negligence), whether claimed under an indemnity in this Agreement or otherwise, arising from or relating to this Agreement or its subject matter, is reduced to the extent that the Client or a third party causes or contributes to the loss or damage.

##### 14.7 Indemnity by the Client

The Client indemnifies Supplier against any loss, expense, liability or proceeding resulting from:

- (a) damage to the property of Supplier or a third party; or
  - (b) the injury or death of any person authorised to be on the Site(s),
- only if, and to the extent that, the loss, expense, liability or proceeding is directly caused by the Client's negligence or breach of this Agreement.

#### 15 CONFIDENTIALITY AND INTELLECTUAL PROPERTY

##### 15.1 No disclosure of Confidential Information

During the term of this Agreement and for a period of five (5) years after its termination, Confidential Information received by one Party from the other may not be disclosed by the recipient to any other person except:

- (a) to the recipient's employees, professional advisers and agents solely for the purpose of the performance of this Agreement or to make or defend any claim under this Agreement;
- (b) with the consent of the discloser;
- (c) if required by law or the rules of a recognised stock exchange.

##### 15.2 Information in the public domain

The provisions of clause 15.1 do not apply to information which:

- (a) the recipient can show by written evidence was known to it prior to being obtained from the discloser and was not subject to obligations of confidentiality to the discloser or a third party;
- (b) is or becomes public knowledge through no action of the recipient; or
- (c) is disclosed to the recipient by a third party with a legal right to do so.

##### 15.3 Employee, agents and contractors

The Parties must inform their employees, agents and contractors of the provisions of clause 15.1 and must ensure that those persons comply with that clause to the same extent that the Parties are required to comply with it.

##### 15.4 Intellectual Property

- (a) The Client acknowledges and agrees that Supplier is the sole and exclusive owner of the Intellectual Property in the Services and the rights attached to that Intellectual Property.
- (b) The Client agrees that it will not disclose any details of, or information relating to, the Intellectual Property at any time during or after the term of this Agreement.
- (c) The Client further agrees that nothing in this Agreement grants to the Client any right, title or interest in or to any of the Intellectual Property in the Services.
- (d) The Client undertakes that it will not claim (whether during the term of this Agreement or thereafter) to have acquired any right, title or interest to the Intellectual Property in the Services by virtue of the rights granted to the Client by this Agreement.
- (e) The Client must ensure that its employees, agents and contractors comply with clauses (a) to (d) to the same extent that the Client is required to comply with them.

#### 16 EMPLOYEES

##### 16.1 Employees of the other Party

Except where otherwise agreed in writing, each Party agrees that they must not, and must ensure that their employees and Related Companies do not, during the term of this Agreement and for a period of 3 months after the termination of this Agreement, directly or indirectly:

- (a) employ or engage any employee of the other Party involved in the performance of this Agreement; or





- (b) solicit, induce or encourage any employee of the other Party involved in the performance of this Agreement to leave the employment of the other Party.

#### 16.2 Injunctive Relief

The Parties acknowledge that damages may not be a sufficient remedy for any breach of this clause 16 and agree that each Party is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any such breach or threatened breach in addition to any other remedies available at law or equity.

### 17 EXTENSION OF TIME

17.1 An extension of time will be granted to the Supplier where a delay is caused by any of the following events;

- (a) any act, omission, default or breach by the Client, its personnel or contractors;
- (b) an order to suspend the Services under clause 19 except where the suspension is caused by or required due to an act, omission, breach or default by the Supplier or its personnel;
- (c) a change in law under 8.2; or
- (d) a Force Majeure Event under clause 20.

17.2 The Supplier will, as soon as reasonably practicable, give the Client notice of all incidents, circumstances or events outlined at 17.1 or any other occurrence likely to affect the progress of the Services which might reasonably be expected to result in a delay to the Supplier achieving completion of the Services.

17.3 Where the Supplier has been granted an extension of time for a delay under this clause 17 and has necessarily incurred extra costs as a direct consequence of the delay, the Supplier is entitled to recover costs as set out in clause 18.3.

### 18 CANCELTION AND SUSPENSION

18.1 The Client may cancel or omit any part of the Service by giving the Supplier no less than 14 days written notice.

18.2 If Client cancels, or omits any part of, the Services, the Client shall pay to the Supplier:

- (a) the cost reasonably incurred by the Supplier; and
- (b) 15% of the value of the Services cancelled or omitted.

The Supplier's calculation of the amount payable under (a) and (b) will be final and conclusive.

18.3 If the Client suspends the Services, the Client shall pay the Supplier all reasonable costs incurred during the period of suspension, and the Supplier may increase the prices and charges to take into account any increase in the Supplier's costs as a result of such suspension.

### 19 TERMINATION

#### 19.1 Right to terminate

A Party has the right to terminate this Agreement by notice in writing to the other Party if:

- (a) the other Party is Insolvent;
- (b) the other Party commits any breach of this Agreement and:
  - i. the breach is material and not capable of being remedied; or
  - ii. the breach is capable of being remedied and the other Party fails to remedy the breach within 30 days of being notified in writing of the breach by the Party seeking to terminate.

#### 19.2 Notice

A notice given under this clause 19 must specify the event or events in relation to which the notice is given.

#### 19.3 Survival after termination

Clauses 14, 15, 17, 19.3, 19.4 and 23 survive the termination of this Agreement.

### 20 FORCE MAJEURE

#### 20.1 Suspension of obligations

Despite any other provision of this Agreement, if a Party is unable to safely and lawfully perform or is delayed in performing an obligation under this Agreement (other than an obligation to pay money) due to a Force Majeure Event, or if a Force Majeure Event renders such performance more expensive:

- (a) that obligation is suspended but only to the extent and for so long as performance is affected by the Force Majeure Event and the time for performing that obligation is extended by the duration of the Force Majeure Event; and

- (b) the affected Party will not be responsible for any loss or expense suffered or incurred by any other Party as a result of, and to the extent that, the affected Party's performance of its obligations is affected because of the Force Majeure Event.

#### 20.2 Minimising effects of Force Majeure

- (a) A Party affected by a Force Majeure Event must take all reasonable steps to avoid, remove or limit the effects of the Force Majeure Event on its performance of the suspended obligations as quickly as possible.
- (b) Clause (a) does not require a Party to settle any strike or other labour difficulty on terms contrary to its wishes.

### 21 TRADE SANCTIONS

(a) Where Supplier forms a reasonable belief that the existence of a Trade Sanction or a proposed or foreshadowed implementation of a Trade Sanction or the withdrawal or alteration of an Approval would have the effect that Supplier or any of its Related Companies would breach a Trade Sanction if Supplier were to perform an obligation under this Agreement, then:

- (i) performance of that obligation is suspended but only to the extent and for so long as performance continues to be affected by the Trade Sanction or until a replacement or modified approval has been granted to Supplier; and
- (ii) Supplier will not be responsible for any loss or expense suffered or incurred by any other Party as a result of, and to the extent that, Supplier's performance of its obligations is affected by the Trade Sanction.

(b) Supplier must take all reasonable steps to avoid, remove or limit the effects of the Trade Sanction on its performance of the suspended obligations as quickly as possible, including seeking necessary Approvals where a process for obtaining such Approvals is available except that Supplier will not be required to agree to conditions for the granting of Approvals which in its reasonable opinion are unduly onerous nor will Supplier be required to take other steps or remedial measures which lead to the incursion of additional cost or which in Supplier's reasonable opinion, raise safety, security or reputational concerns.

(c) The Client agrees to take reasonable steps to assist Supplier in obtaining the Approvals including the provision of information and/or documents that are required in connection with the grant of any Approval.

### 22 PERSONAL PROPERTY SECURITIES

#### 22.1 Security Interests in Plant and Equipment

If possession or control of any item of Plant and Equipment passes to the Client as a consequence of performance of this Agreement, then the Client acknowledges and agrees that:

- (a) this Agreement constitutes a "Security Agreement" for the purposes of the PPSA;
- (b) under this Agreement, Supplier has a Security Interest in the Supplier Plant and Equipment and any other Confidential Information which is the Personal Property of Supplier that Supplier provides to the Client under this Agreement and any proceeds of such Plant and Equipment, Personal Property;
- (c) these Security Interests are "purchase money security interests" under the PPSA;
- (d) the Client agrees to do anything reasonably required by Supplier to enable Supplier to register these Security Interests with the priority Supplier requires, and to maintain these registrations; and
- (e) Supplier's Security Interests in the relevant Personal Property attach when the Client obtains possession of that Personal Property and the Parties confirm that they have not agreed that any Security Interest in the Personal Property attaches at any later time.

#### 22.2 Registration and enforcement of Security Interests

Supplier may, at the Client's cost, take any steps as Supplier may require to:

- (a) prepare, lodge or register any Financing Statement or Financing Change Statement (each as defined in the PPSA) in relation to any Security Interests that are granted to Supplier under this Agreement;
- (b) maintain those registrations; and
- (c) enforce any Security Interests granted to Supplier under this Agreement.







### 22.3 Notices and disclosure under the PPSA

- (a) Each Party agrees that neither of them will disclose to an "interested person" (as defined in section 275(9) of the PPSA) or any other person any information of the kind described in section 275(1) of the PPSA.
- (b) The Client agrees that Supplier does not need to give the Client any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.

### 22.4 Enforcement of Security Interests

If Chapter 4 of the PPSA would otherwise apply to the enforcement of this Agreement, the Client agrees the following provisions of the PPSA will not apply to this Agreement:

- (a) section 95 (notice of removal of accession), to the extent that it requires Supplier to give a notice to the Client;
- (b) subsection 121(4) (enforcement of liquid assets – notice to grantor);
- (c) section 125 (obligation to dispose of or retain collateral);
- (d) section 128 (secured party may dispose of collateral);
- (e) section 129 (disposal by purchase);
- (f) section 130 (notice of disposal), to the extent that it requires Supplier to give a notice to the Client;
- (g) subsection 132(3)(d) (contents of statement of account after disposal);
- (h) subsection 132(4) (statement of account if no disposal);
- (i) section 134(1) (retention of collateral);
- (j) section 135 (notice of retention);
- (k) section 142 (redemption of collateral); and
- (l) section 143 (reinstatement of security agreement).

## 23 DISPUTES PROCEDURE

### 23.1 Notification

Either Party may provide written notice to the other of any dispute arising in relation to this Agreement. This notice must contain particulars of the alleged dispute.

### 23.2 Negotiations between Representatives

Within 3 days of receiving a notification of dispute under clause 23.1, the Representatives of the Parties are to meet together and use their reasonable endeavours to settle the dispute.

### 23.3 Negotiations between Senior Managers

If after a period of 3 days, the Representatives have been unable to resolve the dispute, the dispute will be referred to a senior manager of each Party who shall use their reasonable endeavours to settle the dispute.

### 23.4 Mediation

If after a period of 3 days, the senior managers have been unable to resolve the dispute, either of them may by notice in writing refer the dispute to a mediation administered by the Institute of Arbitrators and Mediators Australia ("Institute") in accordance with the Institute's Rules for the Conduct of Commercial Mediations ("Mediation Rules"). If the Parties are not able to agree on a mediator, then the mediator is to be appointed by the Institute in accordance with the Mediation Rules.

### 23.5 Legal proceedings

If mediation pursuant to clause 23.4 fails to resolve the dispute within 14 days of mediation commencing, then each Party is free to commence legal proceedings to resolve the dispute.

### 23.6 Interlocutory relief

Nothing in this clause 23 prevents either Party from obtaining interlocutory relief from an appropriate court if it is reasonable necessary to do so to protect the interests of a Party.

## 24 NOTICES

### 24.1 Address

Any notice provided under this Agreement must be in writing and given by facsimile, email or delivered to the address of each Party specified in the Quotation (or such other address notified in writing to the other Party).

### 24.2 Delivery

Any such notice:

- (a) which is posted, shall be deemed to be served three days after posting; or

- (b) which is sent by facsimile, shall be deemed to be served upon generation of a transmission report by the sender's facsimile machine confirming the complete and error-free transmission to the correct facsimile number for the recipient;
- (c) which is sent by email, shall be deemed to be received at the time shown in a delivery confirmation report generated by the sender's email system.

## 25 GENERAL

### 25.1 Relationship of the Parties

The Parties are independent contracting Parties and nothing in this Agreement makes either Party the agent or representative of the other for any purpose whatsoever.

### 25.2 Waiver

The non-exercise of or delay in exercising any power or right of a Party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the Party to be bound by the waiver.

### 25.3 Amendment

This Agreement may only be amended by written agreement signed by authorised representatives of each party.

### 25.4 Governing Law

This Agreement is governed by the law in force in the State of New South Wales and the Parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

### 25.5 Severability

If the whole or any part of a provision of this Agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this agreement or is contrary to public policy.

### 25.6 Entire Agreement

This Agreement constitutes the entire agreement of the Parties about its subject matter and supersedes all previous agreements, arrangements, understandings and negotiations on that subject matter. The Client's standard terms and conditions of purchase are excluded.

### 25.7 Subcontracting

Supplier may engage a subcontractor to perform any of the Services.

### 25.8 Assignment

A Party may not assign or otherwise deal with its rights under this Agreement without the consent of the other Party which consent must not be unreasonably withheld.

### 25.9 Counterparts

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

## 26 INTERPRETATION

### 26.1 Definitions

These meanings apply unless the contrary intention appears:

**Acceptance Test** means the tests (if any) that has specified in the Quotation, and if no such test is specified, as otherwise reasonably determine by the Supplier.

**Agreement** means the terms set out in this document together with its Quotations.

**Approval** means an applicable licence, permit or other form of governmental or regulatory approval.

**Commencement Date** means the Commencement Date specified in the Quotation.

**Completion Date** means the Completion Date specified in the Quotation.

**Confidential Information** means:

- (a) the Services and the design, structure or any other detail regarding the Services;
- (b) the terms of this Agreement (including the prices and charges); and
- (c) any other information exchanged between the Parties which is identified as being confidential.

**Controller** has a meaning given to it in the Corporations Act.

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





**Client** means the person or business specified as the Client in the Quotation.

**Client's Representative** means the person specified to be the Client Representative in the Quotation or such other person the Client notifies Supplier in writing.

**Client Plant and Equipment** means the items of plant and equipment that the Client owns (or leases) and provides to the Supplier free of charge for use in the supply of services under this Agreement on the Site(s).

**Quotation** means the final proposal issued by the Supplier setting out the Services.

**Force Majeure Event** means any event or cause beyond the reasonable control of the relevant Party including:

- (a) any act of God, lightning strike, earthquake, explosion, flood, drought, storm, mud slide or meteor;
- (b) the existence, implementation, alteration or repeal of any regulation, law, order or decree (including a Trade Sanction) of any government or competent statutory authority (or any change in the interpretation of such regulation, law, order or decree, including a Trade Sanction) or the withdrawal, alteration or cancellation of any Approval;
- (c) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority;
- (d) a blockage of port, civil commotion, war (declared or undeclared), invasion, outbreak of hostilities, military usurped power; governmental prohibition on export, or like state of emergency;
- (e) act of public enemy, sabotage, malicious damage, terrorism or civil unrest or security conditions;
- (f) labour disturbances, work stoppage, lockout, blockade or strike (Supplier not having any obligation to settle such dispute);
- (g) inability to source or transport the equipment or goods by normal means.

**GST** has the same meaning as in the GST Law.

**GST Law** has the meaning given to that term in A New Tax System (Goods & Services Tax) Act 1999 (Cwlth) and any other act or regulation relating to the imposition or administration of GST.

**Insolvent:** A Party is insolvent if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it has had a Controller appointed or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other Parties to this agreement);
- (d) an application or order has been made, resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another Party to this agreement reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

**Intellectual Property** means any intellectual or industrial property right anywhere in the world including any patent, patent application, utility model, copyright (including copyright in manuals, databases, promotional material and other materials), registered design and other similar design rights, rights in integrated circuit chip topography and other similar rights and any other rights which may subsist anywhere in the world in inventions, and other manufacturing processes, technical and other information of Supplier.

**"Party"** means either the Client or the Supplier, and **"Parties"** means the Client and the Supplier.

**Personal Property** has the same meaning as in the PPSA.

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

**Purchase Order** means a purchase order in the form agreed between the Parties.

**Receiver** includes a receiver or receiver and manager.

**Related Companies** has the same meaning as related bodies corporate has in the Corporations Act.

**Representative** means the Client's Representative or Supplier's Representative.

**Site(s)** means the site(s) specified in the Quotation.

**Supplier** means Contract Resources Pty Limited (ABN 63 113 182 504), or any Related Company as specified in the Quotation.

**Supplier's Representative** means the person specified to be Supplier's Representative in the Quotation or such other person Supplier notifies the Client in writing.

**Supplier Plant and Equipment** means the items of plant and equipment that Supplier owns (or leases) and uses in the supply of services under this Agreement on the Site(s).

**Security Interest** has the same meaning as in the PPSA.

**Services** means the scope of works specified in the Quotation.

**Tax Invoice** has the same meaning as in the GST Law.

**Trade Sanction** means a republic, federal, state, local or other law, regulation, order or decree of any kind which prohibits or restricts or imposes a sanction, embargo, prohibition or penalty in relation to the supply, sale, possession, use, handling, storage, transport, import or export of any product or any component of a product or the provision of a service (each, a **"Dealing"**) by or to any person, organisation or entity or which requires the obtaining of an Approval before a person, organisation or entity may proceed with such Dealing.

## 26.2 Reference to certain general terms

In this Agreement unless the contrary intention appears:

- (a) **(variation or replacement)** a reference to this Agreement or another instrument includes any variation or replacement of either of them;
- (b) **(reference to statutes)** a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) **(singular includes plural)** the singular includes the plural and vice versa;
- (d) **(person)** the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (e) **(reference to including)** "including" and similar expressions are not words of limitation;
- (f) **(calculation of time)** 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 to that day;
- (g) **(reference to a day)** a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (h) **(amount of money)** a reference to an amount of money is a reference to the amount in the lawful currency of Australia; and
- (i) **(payment of money)** where a day specified by this Agreement for the payment of money falls on a Saturday, Sunday or a day appointed as a public holiday for the whole day, the day so specified will be taken to be the preceding business day in the place of the Client's office set out in the Quotation.

## 26.3 Headings

Headings are inserted for convenience and do not affect the interpretation of this Agreement.