HIRE AND PURCHASE terms

1. Introduction

These hire and purchase terms (**Terms**) will apply (including to all Services and Purchase Orders) from the commencement of the Company’s engagement with the Supplier, which occurs on the earlier of:

#### the issuing of a Purchase Order by the Company;

#### the provision of any of the Services by the Supplier; or

#### the Supplier otherwise indicating the Services will be provided by the Supplier.

The supply of any Services will be deemed to be an acceptance of these Terms and will constitute a binding contract between the Supplier and the Company.

### Where a document provided by the Supplier purports to be made on or subject to terms and conditions other than these Terms, the Supplier agrees that such other terms and conditions are disregarded and form no part of the agreement between the Supplier and the Company unless the Company has expressly agreed otherwise in writing.

### Where there is any inconsistency between these Terms and the Purchase Order, the Purchase Order will prevail to the extent of the inconsistency.

1. Definitions and Interpretation

In these Terms:

**"Approval"**means approvals, certificates, licenses, consents, permits, assessment notices and requirements of organisations having jurisdiction in connection with the Plant/Equipment, Materials or the carrying out of any work in relation to the Services(including the transportation, loading, unloading, delivery of the Plant/Equipment or Materials and operation, maintenance or repair of the Plant/Equipment), including fees and charges payable in connection with such approvals.

**“Assessment Period”** means the period being:

#### where the Security of Payment Legislation applies to the payment claim made by the Supplier, the longest period permitted for the service of a corresponding payment schedule under that Security of Payment Legislation; or

#### if the Security of Payment Legislation does not apply, 15 Business Days.

**"Breakdown"** means, in respect of an item of Plant/Equipment, any circumstances in which such Plant/Equipment is not operating:

#### in accordance with the Purchase Order or these Terms; or

#### otherwise in a manner in which it could reasonably be expected to operate (having regard to the requirements of the Purchase Order and these Terms).

**"Business Day"** means a day that is not:

#### a Saturday or Sunday; or

#### wholly or partly observed as a public holiday throughout the Jurisdiction.

**“Company”** means EnerMech Pty Limited ACN 136 435 062 and or any associated entity.

**“Delivery”** for Materials,has the meaning in clause 7.3.

**“Delivery Date”** means, for Materials:

#### the date or dates set out in the Purchase Order; or

#### if no date is stated in the Purchase Order, as soon as reasonably practicable from receipt of the Purchase Order.

**"Delivery Address"** means the delivery address specified in the Purchase Order, or such other address as may be notified by the Company in writing from time to time.

**"Demobilisation Cost"** means the amount identified as such in the Purchase Order, if applicable.

**"Encumbrance"** means any lease, mortgage, charge, lien, retention of title arrangement or other encumbrance.

**"Entitlement"** includes any claim, right or entitlement for the payment of money (including damages) or any other allowance:

#### under, arising out of, or in connection with, the Purchase Order or these Terms, including any direction of the Company;

#### arising out of, or in connection with, the Services or either party's conduct before the date of the Purchase Order; or

#### otherwise at law or in equity, including:

##### by statute;

##### in tort for negligence or otherwise, including negligent misrepresentation; or

##### for restitution, including on a quantum meruit basis.

**"Estimated Hire Finish Date"** means the date specified in the Purchase Order as the estimated hire finish date, or such other date as may be notified by the Company in writing from time to time.

**“Fee”** is the fee payable by the Company to the Supplier for the Materials as stated in the Purchase Order.

**"Hire Fee"** means the sum of:

#### all Hire Rates;

#### all Standby Rates;

#### all Mobilisation Costs; and

#### all Demobilisation Costs.

**"Hire Rates"** means the rates specified in the Purchase Order.

**"Hire Start Date and Time"** means the date and time specified in the Purchase Order as the hire start date and time, or such other date and time as may be notified by the Company in writing from time to time.

**"Insolvency Event"** means the happening of any of these events in relation to the Supplier:

#### the Supplier informs the Company or creditors generally, in writing or orally, that the Supplier is insolvent or is financially unable to proceed with the Purchase Order or the Services, or any part thereof;

#### where the Supplier is a body corporate:

##### notice is given of a meeting of creditors with a view to the Supplier entering a deed of company arrangement, entering a scheme of arrangement or composition with creditors or placing the corporation under administration;

##### the Supplier enters into a deed of company arrangement, scheme of arrangement or composition with creditors;

##### a receiver, receiver and manager, controller or administrator, liquidator or provisional liquidator is appointed;

##### a winding up order is made in respect of the Supplier;

##### the Supplier resolves by special resolution that it be wound up voluntarily (other than for a members’ voluntary winding-up) or placed under administration;

##### the Supplier is deregistered under the *Corporations Act 2001* (Cth); or

##### the Supplier becomes an externally-administered body corporate under the *Corporations Act 2001* (Cth); or

#### where the Supplier is a natural person:

##### the Supplier authorises a registered trustee or solicitor to call a meeting of his or her creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of his or her creditors or has a sequestration order made under Part X of the *Bankruptcy Act 1966* (Cth);

##### a person holding a security interest in assets of the Supplier enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets;

##### the Supplier has a bankruptcy petition presented against him or her or presents his or her own petition;

##### the Supplier is made bankrupt; or

##### the Supplier commits an act of bankruptcy.

**“Jurisdiction”** means the State or Territory where the Site is located.

**"Law"** includes:

#### any requirement of any statute, rule, regulation, proclamation, order in council, ordinance or by-law whether commonwealth, state, territorial or local (including the Safety Legislation and the Safety Requirements);

#### common law;

#### equity; and

#### Approvals.

**"Market Value"** means, for an item of Plant/Equipment:

#### the estimated amount for which that item of Plant/Equipment should exchange between a willing buyer and seller in an arms length transaction after proper marketing wherein both parties have acted knowledgeably, prudently and without compulsion; or

#### where it is not possible to readily ascertain the amount in paragraph (a), the replacement cost of that Plant/Equipment, less due allowance for depreciation, taking into account the anticipated useful life of that Plant/Equipment and the nature of its usage.

**“Materials”** means the materials and goods specified in the Purchase Order.

**"Mobilisation Cost"** means the amount identified as such in the Purchase Order, if applicable.

**"Period of Hire"** has the meaning given to that term in clause 6.

**"Personal Information"** has the meaning given to that term in the *Privacy Act 1988* (Cth) and includes sensitive information and health information as defined under that Act.

**"Plant/Equipment"** means the plant and/or equipment specified in the Purchase Order.

**"Policies"** means the Company's workplace policies, plans, procedures and practices as amended from time to time including but not limited to personal safety, operational safety, work health and safety, environmental, quality, traffic management and equal opportunity policies and any relevant policies of a Principal, but only to the extent that such policies are not inconsistent with the Company's own policies.

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

**"PPS Law"** means:

#### the PPS Act;

#### any regulations made at any time under the PPS Act;

#### any amendment to any of the above, made at any time; and

#### any amendment made at any time to any other legislation as a consequence of the PPS Law.

**"Principal"** means the person that the Company contracts with under a head contract in respect of the Project.

**"Project"** means the project in respect of which the Services are being provided.

**“Proportionate Liability”** means where the Jurisdiction is:

#### New South Wales – Part 4 of the *Civil Liability Act 2002* (NSW);

#### Victoria – Part IVAA of the *Wrongs Act 1958* (Vic);

#### Queensland – Chapter 2, Part 2 of the *Civil Liability Act 2003* (Qld);

#### Western Australia – Part 1F of the *Civil Liability Act 2002* (WA);

#### South Australia – Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act* 2001 (SA);

#### Tasmania – Part 9A of the *Civil Liability Act 2002* (Tas);

#### the Australian Capital Territory – Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT) and Part 9 of the *Building Act 2004* (ACT); and

#### theNorthern Territory – the *Proportionate Liability Act 2005* (NT).

**“Purchase Order”** means a purchase order issued by the Company to the Supplier for the provision of Services.

**"Reference Date"** means:

#### Delivery; and

#### the 25th of each month after the commencement of the Period of Hire up until the last day of the Period of Hire, or if the Security of Payment Legislation mandates an earlier date, that date shall apply.

**"Safety Legislation"** means:

#### any legislation covering work health and safety, mining safety, petroleum and gas safety, environment protection or dangerous goods safety that is applicable to the location and circumstances of the supply, the Materials and/or operation of the Plant/Equipment;

#### regulations made under that legislation;

#### any directions on safety or notices issued by any relevant authority;

#### any code of practice or compliance code or industry standard appropriate or relevant to the works undertaken by the Supplier; and

#### without limiting the generality of the above, where the Jurisdiction is in:

##### New South Wales – *Work Health and Safety Act 2011* (NSW);

##### Victoria – *Occupational Health and Safety Act 2004* (Vic);

##### Queensland – *Work Health and Safety Act 2011* (Qld);

##### Western Australia – *Work Health and Safety Act 2020* (WA);

##### South Australia – *Work Health and Safety Act 2012* (SA);

##### Tasmania – *Work Health and Safety Act 2012* (Tas);

##### the Australian Capital Territory – *Work Health and Safety Act 2011* (ACT); or

##### the Northern Territory – *Work Health and Safety (National Uniform Legislation) Act 2011* (NT),

##### and includes any regulations of the relevant Acts.

**"Safety Requirements"** means any direction, instruction, request or requirement relevant or necessary for compliance by the Company or the Supplier with Safety Legislation or otherwise in respect of safety at the Site, and including any such matter of which the Supplier has been informed by the Company orally or in writing.

**"Security of Payment Legislation"** means where the Jurisdiction is:

#### the Australian Capital Territory - the *Building and Construction Industry (Security of Payment) Act 2009* (ACT);

#### New South Wales – the *Building and Construction Industry Security of Payment Act 1999* (NSW);

#### the Northern Territory – the *Construction Contracts (Security of Payments) Act 2004* (NT);

#### Queensland – the *Building Industry Fairness (Security of Payment) Act 2017* (Qld);

#### South Australia – the *Building and Construction Industry Security of Payment Act 2009* (SA);

#### Tasmania – the *Building and Construction Industry Security of Payment Act 2009* (Tas);

#### Victoria – the *Building and Construction Industry Security of Payment Act 2002* (Vic); and

#### Western Australia – the *Building and Construction Industry (Security of Payment) Act 2021* (WA).

**"Security Interest"** has the meaning given to that term in clause 26(a).

**“Services”** means the provision of Materials or Plant/Equipment by the Supplier to the Company as may be detailed in a Purchase Order.

**"Site"** means the site upon which the Materials are to be delivered, or the Plant/Equipment is to be operated (as applicable), in accordance with these Terms, including any site details specified in the Purchase Order.

**"SMU"** means the service meter unit on each item of the Plant/Equipment.

**"SMU Hours"** are, in respect of a particular item of Plant/Equipment, the engine hours properly recorded by the SMU on that item of Plant/Equipment.

**"Standby Rate"** means the relevant rate identified as such in the Purchase Order, if applicable.

**“Supplier”** means any person who provides Materials or Plant/Equipment to the Company, including pursuant to a Purchase Order.

**"Suspension"** has the meaning given to that term in clause 5.8.

**"Technical Requirements"** means the specifications and/or drawings supplied or referred to by the Company in respect of the Plant/Equipment, as more particularly described in a Purchase Order.

Unless the context otherwise requires:

#### including and similar expressions are not words of limitation;

#### a reference to a statute, regulation, code or other law or a provision of any of them includes any amendment or replacement of it, and another regulation or other statutory instrument made under it, or made under it as amended or replaced;

#### if any day on or by which a person must do something under these Terms is not a Business Day, then the person must do it on or by the next Business Day; and

#### a reference to ‘month’ means calendar month and ‘day’ means calendar day.

Unless these Terms or a Purchase Order expressly provide otherwise, any and all of the Supplier's obligations are to be discharged by the Supplier at its own cost and expense.

No rule of construction applies to the disadvantage of a party on the basis that the party put forward these Terms or any part.

Any provision of these Terms which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and such illegality, voidness or unenforceability will not invalidate any other provision of these Terms.

Capitalised terms have the meanings given in clause 1 of these Terms.

Notwithstanding any other provision of these Terms, the Supplier is responsible for carrying out the activities and work, paying for the costs and expenses, and satisfying the requirements and obligations, identified in the Purchase Order as being the responsibility of the Supplier.

The Company may either itself or by a third party, carry out an obligation under these Terms which the Supplier has failed to perform, or which the Company determines is required to be performed due to an act, omission or default of the Supplier or its employees, agents or subcontractors. The costs incurred by the Company in doing so will be a debt due from the Supplier to the Company.

1. Hire Fee and Fee

The Company must pay the Supplier the Hire Fee and Fee for the Plant/Equipment and Materials, as applicable, in accordance with these Terms.

The Supplier agrees that the Hire Fee and the Fee comprise the full consideration for the Services and the Supplier's performance of its obligations under the Purchase Order and these Terms, including:

#### the cost of delivery of the Plant/Equipment to, and collection from, the Delivery Address;

#### unloading, erecting or assembling and maintaining the Plant/Equipment (as applicable);

#### the cost, for transportation of the Materials to the Site and the unloading of the Materials at the Site; and

#### all amounts due in respect of insurance, duties, taxes and packing costs and any other costs and expenses associated with manufacturing, maintaining, delivering and/or supplying the Services and the Plant/Equipment.

1. Condition of mATERIALS AND Plant/ Equipment

Supplier’s general warranties

#### The Supplier must perform the Services:

#### in accordance with all directions of the Company;

#### with due expedition and without delay;

#### so as to achieve Delivery of the Materials by the Delivery Date; and

#### so as to provide the Plant/Equipment for the Period of Hire.

Assurances and warranties as to condition

The Supplier must ensure that, and warrants that, the Plant/Equipment:

#### accords with the manufacturer’s specifications and other requirements;

#### is in good repair and working order and is in a safe and serviceable condition;

#### is fit and suitable for:

##### the purpose for which plant or equipment of the same or similar nature to the Plant/Equipment are commonly used;

##### any other purpose notified to the Supplier by the Company; and

##### any other purpose stated in, or reasonably inferable from, the Purchase Order;

#### is suitably registered and licensed for operation, including in accordance with Law;

#### is free from any Encumbrance;

#### is free from any defects in design, materials and workmanship;

#### has been maintained in proper working order and (except as otherwise expressly provided for in the Purchase Order) will be maintained by the Supplier in proper working order during the Period of Hire;

#### fully complies with the Technical Requirements and the other requirements of these Terms; and

#### complies with all Laws.

The Supplier must ensure that, and warrants that, the Materials:

#### match the description in the Purchase Order and accord with the manufacturer’s specifications and other requirements;

#### where applicable, correspond with any sample which the Supplier provided to, or shown to, the Company;

#### are fit for purpose;

#### are new (unless expressly stated otherwise), of merchantable quality, and free from any defects in design, materials and workmanship;

#### are free from any Encumbrance; and

#### comply with all Laws.

Reliance upon warranties

The Supplier acknowledges and agrees that the Company has procured the Services from the Supplier in reliance on the warranties provided by the Supplier in these Terms (including in clauses 3.1 and 3.2).

Documentation of condition of Plant/Equipment

The Supplier must produce on demand by the Company appropriate documentation to confirm that the Plant/Equipment has been inspected within the past 12 months by a competent person and is in a safe, serviceable condition, and complies with all relevant Law and all relevant Australian Standards.

Supplier not relieved of obligations

No review, inspection, examination, check, acceptance or approval by the Company of, or failure by the Company to review, inspect, examine, check, accept or approve, the Materials or the Plant/Equipment (whether under clause 7, this clause 3 or otherwise) will:

#### limit or otherwise affect the rights and entitlements of the Company;

#### give rise to any Entitlement of the Supplier; or

#### limit or otherwise affect the Supplier's liabilities and obligations arising out of, or in connection with, these Terms.

No escalation

The parties acknowledge and agree that the Hire Rates and Fee are not subject to price escalation or other adjustment (including for rise and fall in costs).

1. Site

The Company will give the Supplier sufficient access to the Site to carry out the Services (to the extent the Company has the legal right to do so). The Supplier acknowledges that its access to the Site or areas may be restricted, limited for any period of time, non-continuous or obstructed by other work or activities. The Supplier acknowledges and agrees that it has no Entitlement in respect of any such restriction, limitation, non-continuity or obstruction.

The Supplier must cooperate and coordinate with the Company, the Principal, other contractors, other subcontractors of the Company and any others involved in the Project or other work on the Site and avoid interfering with or disturbing other work on Site, and comply with any direction by the Company given for the purposes of coordination or cooperation.

To the extent that the Supplier is present on the Site, whether for delivery or collection of the Plant/Equipment or Materials, the Supplier must keep the Site clean and tidy and remove any of its rubbish from the Site.

The Company may at any time and for any reason direct the removal from the Site of any employee of the Supplier or its agents, subcontractors or suppliers.

1. Health and Safety

General Obligations

The Supplier must carry out the Services safely and so as to protect persons and property. The Supplier must ensure that in carrying out the Services, the Supplier and its employees, agents and subcontractors comply with the relevant Safety Legislation and Safety Requirements.

The Supplier:

#### warrants that it is familiar with, and has the capability and resources to comply with, all relevant Safety Legislation and Safety Requirements;

#### must comply with all relevant Safety Legislation and Safety Requirements; and

#### without limiting paragraph (b), perform and fulfil all relevant functions and duties:

##### of an employer, supplier of plant or person conducting a business or undertaking under all relevant Safety Legislation; and

##### of, or applicable in respect of, any other role referred to in Safety Legislation that is applicable to the Supplier and the Services.

#### The Supplier must (and must ensure that its employees, agents and subcontractors engaged by it to perform works on its behalf) at all times identify risks to the health and safety of any person (including the Supplier's employers, agents and subcontractors, their respective employees, agents and subcontractors, the Company's employees, agents and subcontractors, members of the public and anyone else accessing the Site) and exercise all necessary precautions to ensure such persons are not exposed to risks to their health or safety from the conduct of the Supplier.

Risk Assessment

Without limiting the Supplier’s other obligations under these Terms, the Supplier must ensure that the risks to the health or safety of any persons arising from the use of the Plant/Equipment and Materials, as applicable, have been identified and relevant control measures have been put in place, so far as is reasonably practicable, in order to eliminate or minimise the risks associated with the use of the Plant/Equipment or Materials. The Supplier must provide risk assessment documentation to the Company prior to delivery of the Plant/Equipment or the Materials (if applicable) to the Delivery Address.

Consultation, co-operation and co-ordination

The Supplier must (so far as is reasonably practicable) consult, co-operate and co-ordinate its activities with the Company and other persons engaged in or associated with the use of the Plant/Equipment or Materials, in order to:

#### ensure optimal health and safety risk management; and

#### enable the Company and other relevant parties to comply with their respective obligations under all relevant Safety Legislation.

Provision and maintenance of Plant/Equipment

The Supplier must ensure that maintenance of all Plant/Equipment is undertaken to enable the Company and other parties to use the Plant/Equipment in a manner that is safe and without any risk to health. The Supplier must ensure that all Plant/Equipment is maintained in a condition that is safe and without risk to any person.

The Company may from time to time request the Supplier to provide relevant documentation to evidence that:

#### the Plant/Equipment has been maintained in accordance with the manufacturer’s specifications and other requirements; and

#### the Plant/Equipment has been registered, licenced and otherwise approved in accordance with Law.

Supplier’s provision of information

The Supplier must:

#### provide to the Company current information on:

##### the conditions, requirements and recommendations for the safe use of the Plant/Equipment or Materials; and

##### the risk to health and safety of all persons from the use of the Plant/Equipment or Materials;

#### supply those persons using or exposed to such Plant/Equipment or Materials with adequate health and safety information concerning the Plant/Equipment or Materials (including the information referred to in clause 5.5(a)); and

#### without limiting the above, advise the Company and any person referred to in clause 5.5(b) of any conditions, requirements or recommendations for the safe and proper use and storage of the Plant/Equipment or Materials.

Supplier must inform the Company

#### The Supplier must inform the Company of all relevant information which becomes known to the Supplier (or its agents, employees and subcontractors) concerning the safe use, supply, maintenance or storing of the Plant/Equipment or Materials. The Supplier must also provide to the Company all information in relation to such Plant/Equipment or Materials that the Supplier is required by Safety Legislation to provide, including by immediately reporting to the Company any notifiable or reportable incidents however defined under the Safety Legislation.

Supplier must provide safety information for Plant/Equipment

Without limiting the other provisions of this clause 5, the Supplier must, immediately upon request by the Company, provide the Company with access to all safety related information, including:

#### relevant licenses, certifications, authorisations and approvals;

#### work method statements in respect of the supply of Plant/Equipment;

#### job safety analyses in respect of the supply of Plant/Equipment;

#### plant risk assessments;

#### induction and training records; and

#### incident records and reports.

Suspension for Health and Safety breach

Without limiting clauses 23 and 24, if the Supplier breaches any of its obligations under this clause 5 the Company may direct the Supplier to suspend the whole or part of the Services (“**Suspension**”). The costs incurred by the Company arising out of or in connection with the Suspension (including the cost to the Company of procuring replacement plant/equipment or materials in place of the Plant/Equipment or Materials which were provided or to be provided by the Supplier) will be a debt due from the Supplier to the Company.

1. Period of Hire

The Supplier agrees to hire the Plant/Equipment to the Company on and from the Hire Start Date and Time until the date and time notified by the Company ("**Period of Hire**"). When the Supplier is notified by the Company that the Plant/Equipment is no longer required, the Supplier must promptly collect the Plant/Equipment from the Delivery Address in accordance with the Company's written directions. The Supplier acknowledges and agrees that the Estimated Hire Finish Date is an estimate only, and the Company does not make or give, and has not made or given, any warranty, guarantee or representation the term of the Period of Hire.

1. Delivery and Collection

## Plant/Equipment

On the Hire Start Date and Time, the Supplier must deliver the Plant/Equipment to a location at the Delivery Address. The Supplier must, unless otherwise agreed by the Company in writing, procure:

#### the transit of the Plant/Equipment to and from the Delivery Address; and

#### the loading and off-loading of the Plant/Equipment at the Delivery Address.

Delivery will be deemed to have occurred when:

#### the Plant/Equipment has been delivered to the Delivery Address in accordance with this clause 7;

#### the Plant/Equipment is operational; and

#### the Company has accepted or approved the Plant/Equipment.

Upon delivery of the Plant/Equipment at the Delivery Address, the Supplier and the Company will jointly inspect the Plant/Equipment and record the details of the inspection.

At the end of the Period of Hire:

#### the Company will make the Plant/Equipment available to the Supplier at the Delivery Address, or other location agreed in writing;

#### the Supplier and the Company will jointly inspect the Plant/Equipment and record the details of the inspection; and

#### the Supplier must collect the Plant/Equipment at the Delivery Address, or other location agreed in writing, and otherwise remove the Plant/Equipment from the Delivery Address or that other location.

## Packaging and labelling of Materials

The Supplier must pack and label the Materials:

#### to ensure that they are not damaged during delivery and storage at the Site;

#### in accordance with any requirements in the Purchase Order and these Terms; and

#### in accordance with any directions of the Company and otherwise in accordance with all applicable Laws.

The Company will give the Supplier sufficient access to the Site to enable the Supplier to deliver the Materials.

The Supplier must comply with directions given by any person with authority relating to the Site.

## Materials

The Supplier must deliver the Materials to the Delivery Address on or by the Delivery Date. Unless otherwise agreed, the Supplier may deliver the Materials in multiple deliveries.

Unless stated otherwise in the Purchase Order, the Supplier must give the Company 5 Business Days’ prior written notice of the time and date when the Materials are expected to be delivered. The Company may inspect, examine and witness all aspects of the Delivery.

Delivery of the Materials will occur when:

#### the Supplier has done one of the following:

##### safely removed the Materials off its transporters and deposited the Materials at the part of the Site designated by the Company; or

##### delivered the Materials to the Site for unloading by the Company, or

#####  made the Materials available for collection from the Supplier’s premises by or on behalf of the Company;

(b) the Company has inspected the Materials; and

(c) the Company has acknowledged, in writing, its receipt of the Materials.

The Supplier must allow the Company a reasonable time (which shall be at least 5 Business Days) to inspect the Materials before any Delivery shall be taken to have occurred. Payment for the Materials or the signing of delivery receipts before inspection does not constitute acceptance of the Materials.

Any terms or conditions included in a delivery docket provided by the Supplier or its personnel and signed by or on behalf of the Company at Delivery will have no application to either these Terms or the Company or amend any conditions of these Terms.

## Delay and Alternative Materials

If any Materials become unavailable or cannot be delivered by the Delivery Date, the Supplier must notify the Company in writing the Materials which:

#### are unavailable and shall provide a list of comparable materials to the Materials which are available to be delivered by the Delivery Date, together with the cost of the comparable materials (**Alternative Materials**); and/or

#### cannot be delivered by the Delivery Date, including the expected date of delivery (**New** **Delivery Date**).

Upon receiving notice under this clause 7.4, the Company may, without prejudice to any rights the Company may have under these Terms:

#### accept the New Delivery Date;

#### elect to receive the Alternative Materials in lieu of the Materials; or

#### direct that the Materials be omitted from the Purchase Order.

If the Company elects to receive Alternative Materials, or directs that the Materials be omitted, then the Fee shall be increased or decreased taking into account the value of the Materials and/or the Alternative Materials.

Any costs incurred by the Company in connection with any delay in the Delivery of the Materials will be a debt due from the Supplier to the Company.

1. Rejection

The Company may at any time whether before or after delivery reject any Materials or Plant/Equipment found to be inferior, defective, damaged or otherwise not in accordance with the Purchase Order (including the Technical Requirements). If there is any such finding of inferiority, defect, damage or non-compliance, without limiting the liability of the Supplier, the Company may direct, in its absolute discretion:

#### a refund of payment made by the Company to the Supplier to date in respect of the rejected Materials or Plant/Equipment within 5 Business Days of such demand; or

#### a replacement of the Materials or Plant/Equipment within 2 Business Days of such demand,

and the Supplier must comply with such direction. Any cost incurred by the Company in connection with any such inferiority, defect, damage or non-compliance will be a debt due from the Supplier to the Company.

1. Compliance

The Supplier must comply with:

#### all Laws;

#### the Policies; and

#### directions of the Company.

#### Without limiting the above, the Supplier must comply with and satisfy all relevant Law, and otherwise apply for, obtain and maintain, all Approvals necessary for the Services (including the transportation, loading, unloading, delivery, operation, maintenance or repair of the Plant/Equipment or Materials).

1. Intellectual Property

The Supplier:

#### warrants that the Materials and Plant/Equipment, and the Company's use of the Materials and Plant/Equipment, will not infringe any intellectual property rights or moral rights;

#### grants the Company a royalty free, irrevocable, transferable licence, including a right to sublicense, to use the Supplier’s intellectual property rights existing at the date of the Purchase Order to the extent necessary for the Company and the Principal to make full use of the Materials for all purposes; and

#### must indemnify the Company against any damage, expense, loss or liability suffered or incurred by the Company arising out of, or in connection with, any breach of clause 10(a).

1. Supplier’s Responsibility For Plant/Equipment

The Plant/Equipment will at all times remain the property of the Supplier.

The Company is responsible for maintenance, repair or replacement of parts of the Plant/Equipment only to the extent expressly specified in the Purchase Order as being the responsibility of the Company. In all other respects, the Supplier is responsible for all maintenance, repair and replacement of parts of the Plant/Equipment, including routine maintenance, all oiling, greasing and other care and maintenance of the Plant/Equipment or repairs required to ensure its satisfactory performance or for any other purpose.

Except to the extent the Company is responsible for maintenance and repair of the Plant/Equipment, the Supplier is responsible for, and bears the risk of, any loss of or damage to the Plant/Equipment (including in respect of theft, and damage, except to the extent caused or contributed to by a negligent act of the Company, its employees, agents and subcontractors) and the Company accepts no responsibility for loss or damage to the Plant/Equipment and the Supplier releases the Company from, and will have no Entitlement against the Company, arising out of, or in connection with such loss or damage.

1. Damage to Person or Property

The Supplier must take all necessary steps to prevent damage to any property, and to prevent harm or nuisance to any persons, on or near the Site. If any damage is caused by the Supplier or its employees, subcontractors or agents, the Supplier must, at its own cost, remedy the damage to the satisfaction of the Company.

If the Supplier fails to comply with its obligations in this clause 12, the Company may perform those obligations itself, or through others, and all costs and expenses incurred by the Company in performing those obligations will be a debt due and owing from the Supplier to the Company.

The Supplier must indemnify the Company against any damage, expense, loss or liability suffered or incurred by the Company arising out of, or in connection with:

#### any loss of or damage to any real or personal property; and

#### any claim or proceeding in respect of personal injury to or death of any person,

arising out of, or in connection with, the Plant/Equipment, Materials or any act or omission of the Supplier or its employees, subcontractors or agents in connection with the Plant/Equipment or Materials, but the Supplier's liability to indemnify the Company under this clause 12 will be reduced proportionately to the extent that a negligent act or omission of the Company contributed to the loss, damage, delay, injury or death.

1. Insurances other than for Plant/Equipment

Without limiting clause 14, the Supplier must at all times whilst providing the Services have in place:

#### public liability insurance (in the amount not less than $20,000,000) in the names of the Supplier, noting the interests of the Company and any other person as required by the Company, to cover them for their respective rights and interests and covering their liabilities to third parties and the Supplier's liability to the Company for loss of or damage to property (including any indirect or consequential loss) and death of or injury to any person; and

#### workers compensation or employee liability insurance as required by Law, providing cover against statutory and common law liability for death of or injury to persons employed by the Supplier, and where permitted by Law, extended to provide indemnity for the Company's and the Principal’s statutory and common law liability to the Supplier's employees (including a waiver of subrogation to the Supplier's employees).

#### The Supplier must maintain each such policy for the duration of the Period of Hire or to Delivery, whichever is the later. Any public liability insurance policy that the Supplier is required by these Terms to have in place must contain cross-liability and waiver of subrogation provisions (including a provision that a failure by any insured to observe and fulfil the terms of the policy (including because of any non-disclosure, breach of any duty or act or omission) shall not prejudice the right of any other insured to claim under the insurance).

1. Registration and Insurance Of Plant/Equipment

The Supplier must ensure that, at all times during the Period of Hire, the Plant/Equipment is registered as required by Law and that registered Plant/Equipment is insured as required by Law.

The Supplier acknowledges that the Company has effected, or will effect, insurance to cover:

#### loss or damage to any Plant/Equipment (on the basis of the Market Value of such Plant/Equipment) which:

##### has a Market Value of more than $20,000 but less than $2.5 million; and

##### is provided by the Supplier under a Purchase Order; and

#### where the Purchase Order provides that the Company is responsible for effecting Plant/Equipment insurance in addition to that in paragraph (a), loss or damage to any Plant/Equipment (on the basis of the Market Value of such Plant/Equipment) not referred to in paragraph (a).

The Supplier acknowledges that the insurance effected by the Company as referred to above is subject to the exclusions, conditions and excesses noted on the relevant policies. The Supplier must satisfy itself of the nature and extent of those insurance policies, including the extent to which the Market Value of the relevant Plant/Equipment is less than the Supplier's presumed value of that Plant/Equipment. The Company will not be liable to the Supplier for, and the Supplier will have no Entitlement arising out of or in connection with, the adequacy or suitability of, or the level of cover provided by, the insurance effected by the Company as referred to above (including because the Market Value of the relevant Plant/Equipment is less than the Supplier's presumed value of that Plant/Equipment).

#### The Supplier must effect and maintain comprehensive insurance cover (on terms and with an insurer acceptable to the Company) for:

#### loss or damage to any Plant/Equipment that is not covered by (or adequately covered by) the insurance effected by the Company as referred to above (including because the Market Value of the relevant Plant/Equipment is less than the Supplier's presumed value of that Plant/Equipment); and

#### notwithstanding clause 13 or any insurance effected by the Company as referred to above, the Supplier's liability for any injury or damage to third party property at any times when the Plant/Equipment is under the care or control of the Supplier,

#### in the amount not less than $20,000,000.

#### The Supplier must maintain such insurance for the duration of the Period of Hire.

#### The Supplier must:

#### no later than 24 hours prior to the Hire Start Date and Time, provide the Company with a written notice separately identifying Plant/Equipment with a Market Value of $20,000 or more, and identifying the Market Value of such Plant/Equipment; and

#### indemnify the Company against any damage, expense, loss or liability suffered or incurred by the Company arising out of, or in connection with, a failure by the Supplier to provide the notification referred to above (including where such failure results in the Company failing to effect insurance to cover loss or damage to any Plant/Equipment which should have been the subject of such notification).

#### The Supplier is responsible for the payment of all excesses payable in respect of any insurance referred to in clauses 13 and 14 (including any excess payable under insurance effected by the Company under this clause 14, but only to the extent such excess is payable in respect of a claim under such insurance in respect of Plant/Equipment).

1. Proof of Insurance

The Supplier must, before commencement of the Services, and when otherwise requested by the Company, provide to the Company evidence (satisfactory to the Company) that any insurance cover required by these Terms has been effected and is current (including copies of the certificate of currency, and, if required by the Company, the policy of insurance).

If the Supplier fails to produce evidence in accordance with the first paragraph of this clause 15 to the satisfaction and approval of the Company, the Company may effect and maintain the insurance and pay the premiums. The amount paid will be a debt due from the Supplier to the Company.

1. Changes

## Changes to Plant/Equipment

The Company may at any time by notice in writing propose changes to the quantities or type of the Plant/Equipment or the Period of Hire including by issuing to the Supplier a revised or amended purchase order and proposed additional or amended Technical Requirements.

The Supplier must promptly (and in any event within 10 Business Days) following receipt of any such proposal from the Company, notify the Company whether it consents to the relevant proposal and the changes set out in the relevant proposal, which shall not be unreasonably withheld.

If the Supplier fails to respond to a Company's proposal within 10 Business Days following receipt of such proposal, the Supplier will be deemed to have notified the Company that it does not consent to the proposal and the changes.

If the Supplier consents to the relevant proposal and the changes:

#### The provision of the Plant/Equipment will be deemed to be amended as set out in the relevant proposal; and

#### the Supplier will be entitled to any reasonable additional Mobilisation Costs and Demobilisation Costs arising in respect of any additional Plant/Equipment required as part of the relevant proposal.

The Supplier's only Entitlement arising out of or in connection with any changes in accordance with this clause 16 will be the Entitlements which are given effect to by the relevant amendment and, subject to such Entitlements, the Supplier releases the Company from, and will be absolutely barred from making any claim against the Company, arising out of, or in connection with any changes referred to in this clause 16.

## Variations to Materials

The Company may, by written notice to the Supplier at any time, including after the Delivery Date, direct the Supplier to:

#### amend, increase, decrease or omit any part of the Materials;

#### change the quality, character or extend of the Materials; or

#### provide additional materials.

No variation directed by the Company will invalidate these Terms. If the Company directs a variation omitting all or any part of the Supply, the Company will not be in breach if it thereafter either supplies the omitted Materials itself or employs or engages a third party to do it.

Subject to the Company providing the Supplier with a written direction to vary the Materials under this clause 16.2, the Fee will be adjusted by the amount equal to the value of the varied Materials which will be calculated as follows:

#### by agreement; or

#### if no agreement can be reached, by applying reasonable market rates.

1. Hire Rates and Costs of PLANT/EQUIPMENT

Mobilisation Cost

The parties acknowledge and agree that the Mobilisation Cost will, subject to clause 17.3, be payable by the Company (in accordance with clauses 20 and 21) in respect of each delivery and unloading of Plant/Equipment at the Delivery Address.

Demobilisation Cost

The parties acknowledge and agree that the Demobilisation Cost will, subject to clause 17.3, be payable by the Company (in accordance with clauses 20 and 21) in respect of each final removal of Plant/Equipment from the Delivery Address, including the removal of all rubbish and any items belonging to the Supplier.

Breakdowns

The Supplier must immediately, and in any event within 2 hours, respond to any report or notification of a Breakdown.

If, following a Breakdown, the relevant Plant/Equipment is not available in good working condition by 0700hrs on the day following the Breakdown, notwithstanding any other provision of these Terms, the Company will not be liable to pay any amount on account of the Hire Fee (or any other amount that would otherwise have been payable to the Supplier) in respect of the day on which the Breakdown occurred, or any day thereafter, until the day following that during which the relevant Plant/Equipment is restored to good working condition and the condition otherwise required by these Terms.

If any Breakdown continues for a period of 2 days or more, the Company may (in its absolute discretion, and without limiting or otherwise affecting the Company's other entitlements under these Terms):

#### direct the Supplier to supply Plant/Equipment to replace the Plant/Equipment in respect of which the Breakdown has occurred (in which case the Supplier must do so at its cost, and without any entitlement to any Mobilisation Costs or Demobilisation Cost); or

#### procure from a third party the supply of another item of plant or equipment equivalent to, or substantially equivalent to, the item of Plant/Equipment in respect of which the Breakdown has occurred, in which case the costs incurred by the Company in doing so (including any operating or hire costs payable by the Company to the relevant third party) will be a debt due from the Supplier to the Company.

1. Availability of plant/equipment

Where applicable, the Supplier must ensure that the Plant/Equipment is in full operating condition and available for use on or in relation to the Company’s works for the minimum hours per day, week and/or month as specified in the Purchase Order.

If the item of Plant/Equipment has not been available for at least 90% of the minimum hours per day, week and/or month (as applicable) over any one-month period, the Company may:

#### request the item of Plant/Equipment to be replaced by the Supplier, in which case the Supplier must do so promptly at no extra charge to the Company;

#### pay the Hire Fee calculated based on worked SMU Hours only, if appliable, regardless of any stated minimum hours; and

#### exercise any rights under clause 24.

1. TITLE AND RISK IN MATERIALS

Risk in the Materials does not pass to the Company until:

#### the Company takes Delivery of the Materials; and

#### the Company accepts the Materials.

Title in the Goods passes to the Company upon the earlier of Delivery or payment of the Materials.

1. Progress Claims and Payment

The Supplier may claim (in accordance with clause 21):

#### the Fee (to the extent applicable), adjusted for any additions or deductions under these Terms;

#### the Hire Fee (in each case, to the extent applicable) applicable to, or payable for:

##### in respect of the first payment claim under clause 21, the period since the Hire Start Date and Time; and

##### in all other instances, the period since the previous payment claim,

##### in each case adjusted for any additions or deductions under these Terms;

#### in the case of the first payment claim and any payment claim immediately following a change referred to in clause 16.1 only, the Mobilisation Cost;

#### in the case of the final payment claim and any payment claim immediately following a change referred to in clause 16.1 only, the Demobilisation Cost; and

#### any other amounts which are payable by the Company to the Supplier under these Terms or the Purchase Order,

#### in accordance with these Terms.

1. Payment

The Supplier must submit claims for payment of the amounts referred to in clause 20 (in a form approved by the Company) on each Reference Date.

Each claim for payment must:

#### be given in writing to the Company;

#### identify the Materials and/or Plant/Equipment in respect of which payment is claimed;

#### identify the amount claimed and details of how this has been calculated; and

#### contain any other information or documents as the Company may reasonably require.

##### Following receipt of a claim for payment under this clause 21, the Company may, within the Assessment Period following receipt of the Supplier's claim for payment, issue to the Supplier a payment schedule setting out:

#### the payment claim to which it relates;

#### any amount which the Company is entitled to retain, deduct, withhold or set-off under these Terms or otherwise;

#### the Company's determination of:

##### the moneys due from the Company to the Supplier which the Company proposes to pay; and

##### if the Company determines that no moneys are due from the Company to the Supplier, the moneys due from the Supplier to the Company; and

#### if the amount referred to in clause 21(g)(i) is less than the amount claimed by the Supplier, the reasons for the difference and, if it is less because of the withholding, retention, deduction or setting-off of payment for any reason, the reasons for withholding, retaining, deducting or setting-off payment.

If:

#### the Company issues a payment schedule determining an amount as payable by:

##### the Company to the Supplier, the Company must pay to the Supplier, the amount specified in the payment schedule as due by the due date specified in the relevant Security of Payment Legislation; or

##### the Supplier to the Company, the Supplier must pay the Company the amount assessed within 5 Business Days of the issue of the payment schedule; or

#### the Company does not issue a payment schedule, the Company must pay to the Supplier the amount claimed by the due date specified in the relevant Security of Payment Legislation.

Neither a claim for payment, the issue of a payment schedule nor a payment of moneys will be an admission of liability or evidence that the Supplier has carried out its obligations or provided the Services in accordance with these Terms. Payment will be payment on account only.

Where the Supplier fails to give a claim for payment, the Company may nevertheless issue a payment schedule.

Failure to set out in a payment schedule an amount which the Company is entitled to retain, deduct, withhold or set-off does not prejudice the Company’s right to subsequently exercise a right to retain, deduct, withhold or set-off any amount in a later payment schedule or otherwise. The Company may correct any error or omission in a payment schedule in a subsequent payment schedule.

The Company may deduct, withhold or set off from any money payable (or which may be payable or which would, but for this paragraph, be payable) by the Company to the Supplier under, or in connection with, these Terms or the Purchase Order any debt or other moneys due, or which the Company claims to be due, to the Company from the Supplier whether under, or in connection with, these Terms or the Purchase Order, any other agreement between the Company and the Supplier, or on any other legal or equitable basis or otherwise.

1. Quality Assurance

The Supplier must establish and maintain a quality assurance system that complies with:

#### the quality assurance system known as AS/NZS ISO 9001:2000 Quality Systems; and

#### the requirements of these Terms.

1. Suspension Under Head Contract

Where the works are suspended under any head contract in respect of the Project between the Company and the Principal, the Company may immediately suspend the hire of the Plant/Equipment or supply of any Material.

If the suspension under the head contract is not a result of any act or omission of the Supplier or any of its employees, agents or subcontractors and is not as a result of weather conditions, the Company will pay the Supplier the relevant Standby Rate for the Plant/Equipment for the minimum hours set out in the Purchase Order, if any, for the period of the suspension.

The Supplier acknowledges and agrees that the remedy set out in this clause is its sole and exclusive remedy in respect of a suspension arising out of or in connection with a suspension under the head contract.

1. Default of the Supplier

The following are acts of default by the Supplier for the purposes of this clause 24:

#### the Supplier breaches any term, condition or warranty of or in these Terms; or

#### an Insolvency Event occurs, or the Supplier advises the Company that it is unable to pay its debts or part of them as they fall due.

If an act of default under clause 24(a) occurs, the Company may, by written notice to the Supplier, do either of the following:

#### terminate the Services; or

#### take all or any part of the Services out of the hands of the Supplier.

If the Company has exercised its rights under clause 24(c) or 24(d) to terminate the Services or take any Services out of the hands of the Supplier:

#### the Company may do all things necessary to ensure the proper performance of the Supplier's obligations under these Terms and the Purchase Order;

#### the Company will not be obliged to make any further payment to the Supplier;

#### the Company may recover as a debt due from the Supplier, at its election (in its absolute discretion), either the actual or anticipated cost suffered or incurred, or anticipated to be suffered or incurred, by the Company (including amounts paid or allowed to the Supplier and any liquidated or other damages payable by the Company to the Principal and any other damage, expense, loss or liability suffered or incurred, or anticipated to be suffered or incurred, by the Company) as a result of the relevant act of default, less the amount which would otherwise have been paid to the Supplier if the relevant act of default had not occurred and the Supplier had carried out its obligations in accordance with these Terms and the Purchase Order; and

#### in addition to the Company's remedies and rights and the Supplier's liabilities as set out above, the Company will have other remedies and rights, and the Supplier will have any other liabilities as they would respectively have at Law had the Supplier committed an act of repudiation and the Company elected to accept that repudiation and recover damages.

If the Supplier breaches (including repudiates) these Terms, nothing in this clause 24 will prejudice the right of the Company to recover damages or exercise any other right or remedy.

1. Termination For Convenience

The Company may terminate the Services by written notice to the Supplier at any time for any reason (including where the head contract is terminated) and may in its absolute discretion then either itself or by engaging others carry out any of the Supplier's obligations which remain to be performed. Subject to and without limiting any other rights of the Company, if the Company terminates under this clause 25, the Company must pay the Supplier:

#### that part of the Hire Fee payable in respect of the period before the date of termination (and which remains unpaid), being the amount which would have been payable on account of the Hire Fee if the Services had not been terminated and the Supplier had made a claim for payment under clause 21 on the date of termination; and

#### for the Materials, provided the Materials become the property of the Company upon payment,

#### The Supplier's entitlement to payment under this clause 25 is its sole entitlement in connection with the Company's exercise of its rights under this clause 25.

1. Personal Property Securities Act

#### The Supplier acknowledges that if these Terms and the transactions contemplated by it, operate as, or give rise to, a security interest for the purposes of the PPS Law ("**Security Interest**"), the Supplier must do anything (including amending these Terms or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Company considers necessary under, or as a result of, the PPS Law for the purposes of:

##### ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under the PPS Law;

##### enabling the Company to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or

##### enabling the Company to exercise rights in connection with the Security Interest and these Terms.

#### If Chapter 4 of the PPS Act applies to the enforcement of the Security Interest, the Supplier agrees the following provisions of the PPS Act will not apply to the enforcement of the Security Interest: sections 95 (to the extent that it requires the Company to give a notice to the Supplier), 96, 121(4), 125, 130 (to the extent that it requires the Company to give a notice to the Supplier), 132(3)(d), 132(4), 135, 142 and 143.

#### The Supplier:

##### acknowledges that the Security Interests created under these Terms relate to collateral and all proceeds in respect of that collateral (until the Company is paid in full for the collateral);

##### acknowledges that to the maximum extent permitted by Law, it waives any right to receive a verification statement under the PPS Law in respect of the Security Interest; and

##### undertakes it will not register a financing change statement without the prior written consent of the Company.

#### The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the PPS Act and that this clause 26(d) constitutes a confidentiality agreement within the meaning of the PPS Law.

#### The Supplier agrees to waive any right it may have, or but for this clause 26(e) may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

1. Notification of Claims

#### Within 10 Business Days after the Supplier becomes, or ought reasonably to have become, aware of any Entitlement arising out of, or in connection with, these Terms or the Purchase Order (other than a claim for payment under clause 21), the Supplier must give to the Company a prescribed notice under clause 27(b) or a notice of dispute under clause 30.

#### The prescribed notice is a written notice expressly specifying that the Supplier proposes to make a claim, and the direction or other fact, matter or circumstance on which the claim is based.

#### Within 5 Business Days after giving the prescribed notice in accordance with clauses 27(a) and 27(b), the Supplier must give to the Company a written claim which must include full particulars of the direction or other fact, matter or circumstance on which the claim is based, the legal basis of the claim (including by reference to specific terms of these Terms), the facts relied upon in support of the claim, and details of any amount of money claimed and how it has been calculated.

#### If the Supplier fails to comply with this clause 27 (including the timing and content requirements), then to the extent permitted by Law, the Company will not be liable on any claim by the Supplier and the Supplier will have no Entitlement and releases the Company from, and will be absolutely barred from making any claim against the Company, arising out of, or in connection with the direction or fact, matter or circumstance as the case may be.

1. Privacy

The Supplier must in respect of Personal Information obtained in respect of the Services comply with any Law which relates to the privacy of information about individuals and with which the Supplier must comply, including the Australian Privacy Principles under the *Privacy Act 1988* (Cth), any applicable code of practice and any applicable State or Territory privacy legislation.

The Supplier must ensure that for a period of 7 years following the later of the date on which all of the Materials have been supplied, or the end of the Period of Hire, its employees, subcontractors and employees of its subcontractors:

#### immediately inform the Supplier and the Company in writing of any personal injury or illness that occurs or is suffered on Site or otherwise in connection with the supply of the Materials and undergo a medical examination by a medical practitioner of the Company's choosing if and when required by the Company in connection with such injury or illness; and

#### immediately provide to the Supplier and the Company any medical records or reports the worker has obtained or which are otherwise requested by the Company relating to an injury or illness referred to in paragraph (a) together with written consents to the relevant medical practitioner providing the record or report.

If the Company provides to the Supplier a collection statement in any form which may be required by the Australian Privacy Principles under the *Privacy Act 1988* (Cth), any other Law or the Company from time to time, the Supplier must ensure that such collection statement is provided to the relevant employee in connection with the collection of any personal (including sensitive) information as required by this clause 28. The Supplier will have no Entitlement against the Company arising out of, or in connection with, compliance with this clause 28.

1. Proportionate Liability

The parties agree that, to the extent permitted by law, the operation of Proportionate Liability is excluded in relation to all and any rights of the Supplier, and all and any obligations and liabilities of the Company, under these Terms whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort (including negligence) or otherwise at law or in equity.

1. Dispute Resolution Procedure

Notice of dispute

If a dispute between the Company and Supplier arises out of or in connection with the Services, then either party may serve the other with a notice of dispute in writing, specifying:

#### the particularised assertion of fact giving rise to the entitlement (including reference to relevant provision(s) in these Terms);

#### the legal basis and cause of action;

#### the relief the party seeks; and

#### the calculation of any amounts of money or extensions of time claimed,

#### (**Notice of Dispute**).

Dispute resolution process

Any dispute between the Supplier and the Company must be referred:

#### initially for resolution by senior executions of the Company and the Supplier who must use their best endeavours to resolve the dispute within 10 Business Days of the giving of Notice of Dispute by a party; and

#### if the dispute is not resolved in accordance with clause 30.2(a), then either party may request that the dispute is referred to an expert for determination in accordance with clause 30.3

Expert Determination

The expert shall be nominated by the Company in its sole and absolute discretion within the later of 10 Business Days after:

#### the conclusion of the meeting in clause 30.3; or

#### 10 Business Days of the giving of the Notice of Dispute has elapsed.

If the expert nominated by the Company does not accept the appointment, the Company shall in its sole and absolute discretion nominate another expert.

The expert will determine its own procedure for the expert determination, but in making a determination the expert shall:

#### act as an expert and not as an arbitrator;

#### give due weight to any written submissions or representations made by a disputing party within any reasonable time limit prescribed by the expert;

#### give written reasons for his or her decisions.

The parties agree:

#### in the absence of any manifest error, the decision of the expert on disputes up to a maximum value of $100,000 will be final and binding upon the parties and not subject to review; and

#### for disputes in excess of $100,000 and in the absence of any manifest error, the decision of the expert will be final and binding on the parties and not subject to review, if neither of the parties has taken any steps to enforce a right or remedy by instituting proceedings relating to the dispute within 28 days of the written decision of the expert.

Except where the parties otherwise agree in writing each bears its own costs and the cost and expense of the expert determination equally.

Continued performance required

#### Despite the existence of a dispute, the Supplier must continue to perform its obligations.

Urgent interlocutory relief

#### A party may commence court proceedings relating to any dispute in connection with the Services at any time where that party seeks urgent interlocutory relief.

1. GST

## Definitions

In this clause ‘Supplier’ means the entity providing the Services.

All capitalised terms in this clause 31 not otherwise defined have the same meaning as defined in the GST Act.

## GST exclusive

The consideration for the Services does not include GST.

## Taxable Supply

If a Supply made under or in connection with this document is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:

#### the Recipient must pay the Supplier an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this document for that Supply; and

#### the Supplier must give the Recipient a Tax Invoice for the Supply.

1. APPLICABLE LAW

These Terms are governed by, and construed in accordance with, the laws of the Jurisdiction and, subject to clause 30, the parties irrevocably submit to the non-exclusive jurisdiction of the courts of that jurisdiction (and courts entitled to hear appeals from those courts).

1. Subcontracting

#### The Supplier must not subcontract, or allow a subcontractor to subcontract, any part of the Services or its obligations under these Terms without the prior written approval of the Company. Notwithstanding any approval by the Company to subcontract, the Supplier will be liable to the Company for the acts, defaults and omissions of its subcontractors as if they were those of the Supplier.

1. Non-Waiver

Any waiver or relaxation by the Company partly or wholly of any provision of, or right relating to, these Terms is valid only if in writing and signed by the Company. Any such waiver or relaxation is restricted to its written terms and unless expressly stated otherwise applies to a particular occasion only, is not continuing and does not constitute a waiver or relaxation of any other provision or right.