HIRE terms

1. Introduction

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

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

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

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

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

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

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 or the carrying out of any work in relation to the Supply (including the transportation, loading, unloading, delivery of the Plant/Equipment and operation, maintenance or repair of the Plant/Equipment), including fees and charges payable in connection with such approvals.

**“Assessment Period”** means:

#### 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, 10 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 any person who hires Plant/Equipment from the Supplier, including pursuant to a Purchase Order.

**"Delivery Address"** means the delivery address specified in the Purchase Order, or other address notified by the Company and agreed by Supplier in writing.

**"Demobilisation Cost"** means the amount identified as such in the Purchase Order, or if no amount is identified, the Supplier’s reasonable demobilisation costs.

**"Encumbrance"** means any lease, mortgage, charge, lien, security, 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;

#### arising out of, or in connection with, the Supply 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.

**"Hire Finish Date"** means the date specified in the Purchase Order as hire finish date, or such other date as may agreed by the Supplier in writing from time to time, including pursuant to clause 12.

**"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 agreed by the Supplier in writing from time to time.

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

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

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

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

##### the Company 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 Company;

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

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

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

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

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

##### the Company is made bankrupt; or

##### the Company 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.

**"Mobilisation Cost"** means the amount identified as such in the Purchase Order, or if no amount is identified, the Supplier’s reasonable mobilisation costs.

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

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

**"PPS Act"** means the *Personal Property Securities Act 2009* (Cth) and includes:

#### 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.

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

**"Reference Date"** means 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 applies and 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 the 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.

**"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 16(a).

**"Site"** means the site upon which the Plant/Equipment is to be operated in accordance with these Terms, including any site details specified in the Purchase Order.

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

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

**“Supply”** means the provision of Plant/Equipment by the Supplier to the Company as may be detailed 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.

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 Company is responsible for carrying out the activities, paying for the costs and expenses, and satisfying the requirements and obligations, identified in the Purchase Order as being the responsibility of the Company.

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

1. Hire Fee

The Company must pay the Supplier the Hire Fee for the Plant/Equipment in accordance with these Terms and the Purchase Order.

1. Condition of Plant/ Equipment

Assurances as to condition

The Supplier must ensure that the Plant/Equipment:

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

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

#### is free from defects; and

#### as at the Start Date and Time, is in proper working order.

Documentation of condition of Plant/Equipment

The Supplier must, upon request by the Company acting reasonably, produce 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.

1. Site

The Company will give the Supplier sufficient access to the Site to carry out the Supply.

1. Health and Safety

Risk Assessment

The Supplier must ensure that the risks to the health or safety of any persons arising from the use of the Plant/Equipment 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. The Supplier must, at the request of the Company, provide risk assessment documentation to the Company at delivery of the Plant/Equipment to the Delivery Address.

Provision and maintenance of Plant/Equipment

The Supplier must ensure that maintenance of all Plant/Equipment is undertaken prior to the Hire Start Date and Time to enable the Company to use the Plant/Equipment in a manner that is safe and without any risk to health. The Company must ensure that all Plant/Equipment is maintained in a condition that is safe and without risk to any person for the Period of Hire.

Supplier’s provision of information

The Supplier must provide to the Company current information on:

#### the conditions, requirements and recommendations for the safe and proper use and storage of the Plant/Equipment; and

##### the risk to health and safety of all persons from the use of the Plant/Equipment.

Supplier must inform the Company

#### The Supplier must inform the Company of all relevant information which becomes known to the Supplier concerning the safe use, supply, maintenance or storing of the Plant/Equipment. The Supplier must also provide to the Company all information in relation to such Plant/Equipment 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.

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 Hire Finish Date ("**Period of Hire**").

1. Delivery and Collection

On the Hire Start Date and Time, the Supplier must either:

#### deliver the Plant/Equipment to a location at the Delivery Address; or

#### make the Plant/Equipment available to the Company for collection at a location agreed in writing by the Supplier.

Where the Supplier is required to deliver the Plant/Equipment, the Supplier must, unless otherwise specified in a Purchase Order, 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 either:

#### delivered to the Delivery Address in accordance with this clause 7; or

#### collected by the Company.

The Supplier and the Company will, where practicable, jointly inspect the Plant/Equipment and record the details of the inspection.

At the end of the Period of Hire:

#### the Company will either:

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

##### procure the transit of the Plant/Equipment to a location agreed in writing by the Supplier.

#### the Supplier and the Company will, where practicable, jointly inspect the Plant/Equipment and record the details of the inspection.

1. Compliance

The Supplier must comply with and satisfy all relevant Law, and, unless otherwise specified in a Purchase Order or these Terms, apply for, obtain and maintain, all Approvals necessary for the Supply (including the transportation, loading, unloading, delivery, operation, maintenance or repair of the Plant/Equipment).

The Company shall:

#### use the Plant/Equipment in accordance with these Terms, the Purchase Order and for the purposes for which it was designed;

#### comply with all of the manufacturer’s requirements, Approvals, any relevant Law and directions of the Supplier as to use and storage of the Plant/Equipment; and

#### unless the Company obtains prior written consent of the Supplier, the Company will not alter, modify of attach anything to the Plant/Equipment.

1. Intellectual Property

The Supplier grants the Company a royalty free, irrevocable licence to use the Supplier’s intellectual property rights existing at the date of the Purchase Order to the extent necessary for the Company to make full use of the Plant/Equipment for all purposes in connection with the Supply.

1. COMPANY’s Responsibility For Plant/Equipment

The Plant/Equipment will at all times remain the property of the Supplier. The Company must not register any Encumbrance or cause any Encumbrance to be registered on any Plant/Equipment supplied by the Supplier pursuant to any Purchase Order or otherwise.

The Company is responsible for maintenance, repair or 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 during the Period of Hire unless otherwise specified in the Purchase Order as being the responsibility of the Supplier.

The Company is responsible for, and bears the risk of, any loss of or damage to the Plant/Equipment (including in respect of theft and damage) on and from the Hire Start Date and Time. The Supplier accepts no responsibility for loss or damage to the Plant/Equipment and the Company releases the Supplier from, and will have no Entitlement against the Supplier, arising out of, or in connection with such loss or damage. The Company shall continue to pay the Hire Fee in accordance with these Terms notwithstanding such loss or damage.

If any damage to Plant/Equipment is caused by the Company or its employees, subcontractors or agents, the Company must, at its own cost, remedy the damage to the satisfaction of the Supplier. If the Company fails to remedy damage to Plant/Equipment, the Supplier may perform those obligations itself, or through others, and all costs and expenses incurred by the Supplier in performing those obligations will be a debt due and owing from the Company to the Supplier.

The Company indemnifies the Supplier against any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities arising out of or in connection with the Company’s use of the Plant/Equipment.

1. Insurances

## Insurance other than for Plant/Equipment

The Company must at all times have in place:

#### public liability insurance (in the amount not less than $20,000,000) in the name of the Company, noting the interests of the Supplier and any other person as required by the Supplier, to cover them for their respective rights and interests and covering their liabilities to third parties and the Company’s liability to the Supplier 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 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. 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).

## 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 Company must 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 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.

## Proof of Insurance

The Company must, before commencement of the Supply, and when otherwise requested by the Supplier, provide to the Supplier evidence (satisfactory to the Supplier) 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 Supplier, the policy of insurance).

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

1. 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.

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.

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.

1. Hire Rates and Costs of PLANT/EQUIPMENT

Mobilisation and Demobilisation Cost

The parties acknowledge and agree that the:

#### Mobilisation Cost will be payable by the Company in respect of each delivery and unloading of Plant/Equipment at the Delivery Address; and

#### Demobilisation Cost will be payable by the Company in respect of each removal of Plant/Equipment from the Delivery Address.

Breakdowns

The Supplier must as soon as reasonably practicable, and in any event within 24 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 within 48 hours following the Breakdown, the Company shall only be liable to pay the Standby Rate on account of the Hire Fee in respect of the period 48 hours after the breakdown, or any day thereafter, until the day that the Plant/Equipment is restored to good working condition.

1. Payment

The Supplier may claim:

#### the Hire Fee applicable to, or payable for:

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

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

#### in the case of the first payment claim and any payment claim immediately following a change referred to in clause 12, the Mobilisation Cost;

#### in the case of the final payment claim and any payment claim immediately following a change referred to in clause 12, 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.

The Supplier may submit claims for payment of the Supply on each Reference Date.

##### Following receipt of a claim for payment, 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 Company’s determination of the moneys due from the Company to the Supplier which the Company proposes to pay.

##### The Company must pay to the Supplier, the amount specified in the payment schedule as due by:

#### where the Security of Payment Legislation applies, the due date specified in the relevant Security of Payment; or

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

##### If the Company does not issue a payment schedule, the Company must pay to the Supplier the full amount claimed in the payment claim by the due date specified in the preceding paragraph.

##### Interest payable on any overdue amounts under these Terms will be at a rate of 18% per annum.

1. Default of the COMPANY

The following are acts of default by the Company for the purposes of this clause 15:

#### the Company breaches any term, condition or warranty of or in these Terms, including failing to pay any amount provided for in these Terms when such amount is due; or

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

If an act of default occurs, the Supplier may, by written notice to the Company, terminate the Supply.

If the Supplier has exercised its right to terminate the Supply:

#### the Supplier will not be obliged to provide any further Supply to the Company;

#### the Supplier shall be entitled to:

##### the Hire Fee to the date the Plant/Equipment is returned to the Supplier:

##### Demobilisation Costs; and

##### any other amount incurred by the Supplier as a result of the termination, including any loss of profit; and

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

If the Company breaches (including repudiates) these Terms, nothing in this clause 15 will prejudice the right of the Supplier to recover damages or exercise any other right or remedy.

1. Personal Property Securities Act

#### The interpretation of this clause, meaning of terms and use of references in this clause in relation to security or Security Interests, shall be consistent with the interpretation, terms, meanings and use of references under the PPS Act, and for the purposes of the PPS Act.

#### In all cases, the Supplier retains all title and possession of Plant/Equipment supplied by the Supplier in connection with a Purchase Order and pursuant to these Terms.

#### The Company acknowledges and agrees that:

##### the Supplier is a Secured Party in relation to the Plant/Equipment, and may register its interest on the Register established under the PPS Act as a Security Interest or a Purchase Money Security Interest, at the discretion of the Supplier;

##### the Supplier may, by notice to the Company, require the Company to take all steps that the Supplier considers necessary or desirable to ensure its Security Interest in the Plant/Equipment is enforceable and to perfect or better secure the position of the Supplier under these Terms as a first ranking security;

##### the Company must comply with a notice from the Supplier under this provision at the cost of the Company;

##### the Company must promptly inform the Supplier of any change to information that it provides to the Supplier under this clause;

##### the Supplier is not required to give any notice or provide reports of any documents under the PPS Act (including notice of a verification statement) unless the notice is required by law and cannot be excluded; and

##### to the extent permitted by law the Company waives its rights pursuant to sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, and 133 of the PPS Act, and those sections will not apply to the enforcement of any Security Interest.

#### 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 16(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 16(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 Company becomes, or ought reasonably to have become, aware of any Entitlement arising out of, or in connection with, these Terms or the Purchase Order, the Company must give to the Supplier a prescribed notice under clause 17(b) or a notice of dispute under clause 18.

#### The prescribed notice is a written notice expressly specifying that the Company 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 17(a) and 17(b), the Company must give to the Supplier 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 Company fails to comply with this clause 17 (including the timing and content requirements), then to the extent permitted by Law, the Supplier will not be liable on any claim by the Company and the Company will have no Entitlement and releases the Supplier from, and will be absolutely barred from making any claim against the Supplier, arising out of, or in connection with the direction or fact, matter or circumstance as the case may be.

1. Dispute Resolution Procedure

Notice of dispute

If a dispute between the Supplier and the Company arises out of or in connection with the Supply, 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 executives of the Supplier and the Company 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 18.2(a), then either party may request that the dispute is referred to an expert for determination in accordance with clause 18.3.

Expert Determination

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

#### the conclusion of the meeting in clause 18.3; or

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

If the expert nominated by the Supplier does not accept the appointment, the Supplier 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; and

#### 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 Company must continue to perform its obligations.

Urgent interlocutory relief

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

1. GST

## Definitions

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

All capitalised terms in this clause 19 not otherwise defined have the same meaning as defined in the GST Act.

## GST exclusive

The consideration for the Supply 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 18, 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 Company must not subcontract, or allow a subcontractor to subcontract, its obligations under these Terms without the prior written approval of the Supplier. Notwithstanding any approval by the Supplier to subcontract, the Company will be liable to the Supplier for the acts, defaults and omissions of its subcontractors as if they were those of the Company.

1. Non-Waiver

Any waiver or relaxation by the Supplier partly or wholly of any provision of, or right relating to, these Terms is valid only if in writing and signed by the Supplier. 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.