

## Standard Terms and Conditions

### 1. DEFINITIONS

In the Agreement:

**Agreement** means these Standard Terms and Conditions, the Purchase Order, and any exhibit or attachment stated to be part of this agreement.

**Applicable Standards** means any codes, Authorisation, Law, guidelines and policies that are applicable or otherwise relate to the Services and/or Goods, and includes COR Laws, Safety Legislation, environmental, health, safety and security regulations and policies at the Site and the Company's health, safety and environmental management system.

**Authorisation** means any consent, authorisation, registration, filing, lodgement, permit, licence, agreement, notarisation, certificate, permission, licence, direction, declaration, authority or exemption issued by any government or any governmental, semi-governmental, regulatory, statutory or similar entity or authority, or any other party under law which has a right to impose a requirement or whose consent is required with respect to the Contractor's performance of its obligations under this Agreement.

**Business Day** means a calendar day ending at 5.00pm (Brisbane time), other than a Saturday, Sunday or bank holiday or public holiday in Brisbane, Australia.

**Commencement Date** has the meaning given to that term in the Purchase Order.

**Company IP** includes all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purposes of or in connection with the performance of the Services under this Agreement.

**Company Material** means all materials, documents, equipment, machinery, information, Company IP and data (however stored) owned by the Company, or which the Company otherwise has the right to use, provided by or on behalf of the Company to the Contractor before, on or after the Commencement Date for the purpose of or in connection with the Contractor supplying the Goods or Services.

**Company** means Ingaug Energy Pty Ltd ACN 164 429 190.

**Completion Date** means the earlier of:

- (a) the date that the Services have been finally completed and/ or the whole of the Goods are delivered in accordance with this Agreement (as applicable);
- (b) where the Agreement provides for the provision of Services for a fixed term, the Date for Completion; or
- (c) when the Agreement is terminated.

**Confidential Information** means all information (whether of a scientific, engineering, industrial, mining, technical, business or financial nature or otherwise) and records of a party, in whatever form, and includes Company Material and Contract Materials, but does not include information that:

- (a) at the Commencement Date is publicly available;
- (b) subsequent to the Commencement Date becomes publicly available without breach of this Agreement;
- (c) is obtained by a party from a third party without breach by that third party of any obligation of confidence concerning that information;
- (d) was already in a party's possession (as evidenced by written records) when provided by or on behalf of the other party; or

- (e) a party can prove beyond reasonable doubt has been developed independently by an employee or Contractor of the party who has not had access to any Confidential Information.

**Consequential Loss** means any loss of business or production and loss of actual or anticipated profit or revenue.

**Contract Material** means all material created by the Contractor and/ or the Personnel while performing the Services and/ or providing the Goods, including the Company IP, but excludes the Contractor Material.

**Contractor IP** means the Contractor's Intellectual Property Rights which are in existence at the Commencement Date or come into existence after the Commencement Date other than for the purposes of, or in connection with, the provision of the Services under this Agreement.

**Contractor Material** means all documents, equipment, information, Contractor IP and data (however stored) that is owned by the Contractor (or which the Contractor otherwise has the right to use) prior to the commencement of the Services or acquires independently of this Agreement and that is provided by the Contractor to the Company for the purposes of this Agreement and performing the Services and/ or providing the Goods.

**COR Laws** means laws relating to fatigue management, speed and mass, dimension and load restraint compliance requirements generally referred to as "Chain of Responsibility" laws or "Heavy Vehicle" laws;

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

**Date for Completion** means the date or period referred to in the Purchase Order for completion of the Services (if any).

**Defect** means any error, deficiency, omission, non-conformity, fault, failure, malfunction, irregularity or other defect in the Services and /or Goods, or any aspect of the Services and/ or Goods which is not in accordance with the requirements of this Agreement.

**Delivery Date** means the date that the Goods are delivered to the Delivery Place and the Company takes effective control of the Goods.

**Delivery Place** means the place for delivery of the Goods set out in the Purchase Order or such other place as agreed by the parties and specified in a Scope of Work.

**Event of Default** means, in respect of a party, any of the following:

- (a) the party becomes Insolvent;
- (b) the party commits a material breach of its obligations under this Agreement which is capable of being remedied, and does not remedy the breach within 14 days of the party receiving notice in writing from the other party specifying the breach and requiring the breach to be remedied;
- (c) the party commits a material breach of its obligations under this Agreement which is not capable of being remedied; or
- (d) any other event described as an event of default in this Agreement.

**Fees** means the fees and expenses payable for the performance of the Services as determined in accordance with the Purchase Order.

**Good Industry Practice** means the performance of services and provision of Goods in accordance with all of the following:

- (a) in a commercial, prudent and sound and workmanlike manner;
- (b) diligence, due care and skill;
- (c) suitable and appropriate methods and practices;
- (d) any Applicable Standards;

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- (e) proper qualification and adequate experience with a degree of skill, care and diligence that may reasonably be expected of a person, suitably qualified and experienced, in the performance of services similar to the Services;
- (f) in a manner that could reasonably be expected to enable the Company to discharge its duties under Applicable Standards; and
- (g) do not act in any manner that could be reasonably expected to disrupt or adversely affect the Company's business reputation, interests or goodwill; and
- (h) consistent with best practice and in a manner deemed proficient by those with special knowledge, training, and experience in performing services similar to the Services.

**Goods** means the goods specified in the Purchase Order and/or any goods that are incidental to the provision of the provision of the Services (if any).

**GST** has the meaning given to that term in the GST Law.

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

**Insolvent** means, in respect of a party, that it:

- (a) is (or states that it is) insolvent (as that term is defined in the Corporations Act);
- (b) has a controller (as that term is defined in the Corporations Act) appointed to any part of its property;
- (c) is in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up or has had a receiver or a receiver and manager appointed to any part of its property;
- (d) is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other party to this Agreement);
- (e) is taken (under section 459(F)(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) is the subject of an event described in section 459(C)(2) or section 585 of the Corporations Act (or it makes a statement from which the other party to this Agreement reasonably deduces it is so subject); or
- (g) is otherwise unable to pay its debts when they fall due.

**Insurance Amount** means, in respect of any particular type of insurance in clause 13, the amounts specified opposite that insurance type in the Purchase Order.

**Intellectual Property Rights** means all copyright and analogous rights, Moral Rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), designs (whether or not registrable), confidential information (including trade secrets and know-how), circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields and all rights to register, rights in applications for the registration of and rights to extend or renew the registration of any of the foregoing.

**Land Access Requirements** means any contractual requirement applying in respect of the Company's, or any of the Company's contractors or its Related Persons', access to the Site.

**Law** means any legislation, common law, standards, regulations, principles of law or equity (as amended from time

to time and regardless of whether existing as at the Commencement Date or not).

**Loss** includes any loss, cost, expense, damage or liability (including any fine or penalty) whether direct, indirect or consequential, present or future, fixed or unascertained, actual or contingent and whether arising under Agreement (including any breach of this Agreement), in equity (including breach of an equitable duty, breach of confidentiality or breach of fiduciary duty), under statute (including breach of statutory duty) (to the maximum extent possible), in tort (including for negligence or negligent misrepresentation) or otherwise (including in restitution).

**Material** means any raw, manufactured or fabricated material, goods, appliance, apparatus, vessel, machine, equipment, plant, apparatus, vessels, computer hardware or software, software interfaces, help files or other things at the Site that are:

- (a) supplied or intended to be supplied to the Company by, or on behalf of, the Contractor or any of its Subcontractors;
- (b) created by the Contractor or a Subcontractor in the performance of the Services; or
- (c) otherwise entrusted to the Contractor by, or on behalf of, the Company for the performance of the Services.

**Moral Rights** means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968 (Cth)*, and rights of a similar nature anywhere in the world whether existing before, on or after the Commencement Date.

**Personnel** means officers, employees, agents and Subcontractors of the Contractor (or the Contractor's Related Body Corporates), and includes employees or agents of those Subcontractors engaged to perform any part of the Services and/ or deliver the Goods.

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

**Related Person** means:

- (a) in relation to the Company, the Company's Related Body Corporates and the officers, employees, agents of both the Company and the Company's Related Bodies Corporates; or
- (b) in relation to the Contractor, the Personnel and Related Bodies Corporate of the Contractor.

**Safety Legislation** means all health, safety and security related Law that is in, any way, related to the provision of the Goods or Services.

**Scope of Work** means the initial scope of work as contained in the Purchase Order and any subsequent scope of work requesting the provision of Services and/ or Goods.

**Services** means the services specified in the Purchase Order and the Scope of Work (if any) that are to be performed by the Contractor in accordance with clause 3, and any incidental work that can be reasonably inferred as necessary or appropriate to properly perform those activities.

**Site** means the area the subject of the tenements and/ or such other area as specified for the performance of the Services as notified to the Contractor from time to time.

Standard Terms and **Conditions** means these terms and conditions.

**Statutory Officer** means any site safety and health representative, site senior executive or supervisor for the Site.

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**Subcontractor** is a person engaged by the Contractor in accordance with clause 8 to perform part of the Services.

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

**Taxes** includes GST, VAT or other similar tax, documentary, business, occupation, excise, income, corporation, profits, gains, gross receipts, stamp duty, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever, together with any penalties, fines or interest or similar additions, imposed, levied or assessed by any government, governmental, semi-governmental or other relevant authority or otherwise payable on or in respect of the performance of the Services.

**Term** means the period commencing on the Commencement Date and ending on the Completion Date.

## 2. AGREEMENT

2.1 The following documents together comprise the Agreement:

- (a) the Purchase Order;
- (b) these Standard Terms and Conditions.

2.2 Any Purchase Order shall remain valid for acceptance by the Contractor for fourteen (14) days after the date of the quotation.

2.3 The actual or implied acceptance by the Contractor (which may be given verbally, in writing, by commencing performance or otherwise) is conclusive evidence that the Contractor has accepted these Standard Terms and Conditions as applying to the provision of the Goods and/ or the Services. Upon such acceptance of any Purchase Order, a separate contract is formed comprising the documents referred to in clause 2.1.

2.4 If there is any ambiguity, inconsistency or conflict between the provisions of any of the documents referred to in clause 2.1 then unless otherwise stated, the documents take precedence in the above order except to the extent that any provision of the Standard Terms and Conditions imposes upon the Contractor a higher standard, quality, level of service or quantum than another provision of the Agreement, in which case the higher standard, quality, level of service or quantum will apply.

## 3. GENERAL OBLIGATIONS OF THE CONTRACTOR

3.1 The Contractor is responsible for performing all activity that is necessary to perform the Services and/ or deliver the Goods to the Delivery Place in accordance with, and so as to achieve the objectives of, the Scope of Work (if any) by the Date for Completion (if any).

3.2 Without prejudice to any other provision of this Agreement, in performing the Services and/ or providing the Goods, the Contractor must:

- (a) perform the Services and/or deliver the Goods expeditiously, without delay and consistent with Good Industry Practice and completed by the Date for Completion (if any) or other such date the parties may agree in writing;
- (b) have in place and maintain a safe system of work and obtain and comply with all Applicable Standards and Authorisations relating to the performance of its obligations under this Agreement, and ensure that it does not cause the Company to be in breach of any Applicable Standards or Authorisations;
- (c) attend such meetings at such times as the Company or any Statutory Officer, may reasonably require from time to time;
- (d) comply with any reasonable and lawful instruction or direction of the Company, or any Statutory Officer, relating to the performance of its obligations under this Agreement; and

(e) to the extent applicable at law, acknowledges that it is a primary duty holder under the COR Laws with responsibility for developing chain or responsibility systems and has the capability and resources to comply with COR Laws.

3.3 Without prejudice to clause 3.2, if the Company notifies the Contractor that any Personnel are unacceptable for any reason, the Contractor must immediately cease using that Personnel in the provision of the Services.

## 4. SITE ACCESS

4.1 The Company shall provide the Contractor with such access to the Site as is reasonably necessary for the Contractor to perform its obligations pursuant to this Agreement.

4.2 The Contractor acknowledges and agrees that, except to the extent expressly stated otherwise in this Agreement:

- (a) it is not entitled to exclusive access to the Site or Delivery Place during the performance of its obligations under this Agreement;
- (b) access to the Site will confer on the Contractor a right only to use and control as is necessary to enable the Contractor to deliver the Goods and perform the Services; and
- (c) the Contractor must not obstruct the Company or any of its Personnel from accessing the Goods or any place where the Goods are being prepared or stored or Services are being performed.

4.3 Without limiting any other clause, when accessing the Site the Contractor must, and must ensure that each of its Personnel accessing the Site:

- (a) comply with all Applicable Standards and any Land Access Requirements and all directions from the Company, or a Statutory Officer regarding compliance with Applicable Standards or Land Access Requirements;
- (b) access the Site only at the points of entry and exit and via the routes which the Company directs the Contractor to use from time to time;
- (c) co-operate fully and do all things necessary to enable the Company and its Personnel to fulfil their respective obligations under the Applicable Standards including:
  - (1) ensuring that it is familiar with the relevant parts of the Company's health and safety management system; and
  - (2) if requested, before commencing the Services at the Site, undertaking an assessment of the risks associated with performance of the Services and providing a written safe work method statement(s) for performance of the Services (including a copy of the assessment of risks);
- (d) co-operate fully:
  - (1) in any safety or health related reviews, inspections or audits carried out by or on behalf of the Company or otherwise when directed by the Company to do so; and
  - (2) in any accident or incident investigation carried out by or on behalf of the Company, including by providing the Company with access to relevant documents and persons and by providing the Company with a copy of any incident investigation reports carried out by or on behalf of the Contractor or that are otherwise in the possession or control of the Contractor;

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- (e) act in accordance with the terms of any applicable cultural heritage management plan (as may be notified to the Contractor from time to time) when accessing the Site;
  - (f) promptly report any item on the Site or its surrounds which may be of an archaeological, heritage or native title nature (including but not limited to human remains) to the Company in writing;
  - (g) keep the Site clean, tidy and free of contamination during the performance of the Services, including the prevention and management of spills and removal of its own rubbish, or rubbish that it is responsible for, from the Site; and
  - (h) immediately report any accident, incident or breach of this clause 4.3 to the Company in writing.
- 4.4 Without limiting any other clause, the Contractor acknowledges and agrees that it has investigated, or has had the opportunity to investigate, and satisfied itself as to the:
- (a) adequacy and suitability of the Site for the purpose of performing its obligations in accordance with this Agreement and all other risks and contingencies associated with the Site (including the location of the Delivery Place); and
  - (b) condition of the roads to the Delivery Place, including access to the Delivery Place and any other conditions affecting transportation, disposal, handling and storage of the Goods.
- 4.5 The Contractor shall indemnify and keep indemnified the Company and its Related Persons against all claims, demands, actions, charges, Losses, penalties or fines arising from or in connection with any breach by the Contractor of its obligations under clause 4.3.
- 4.6 Without prejudice to clause 5, the Contractor must ensure that all Personnel are properly qualified and adequately experienced to perform the duties allocated to them.
- ### 5. DELIVERY, RISK AND QUALITY OF GOODS
- 5.1 If providing Goods, the Contractor must give the Company five (5) Business Days prior notice in writing of the estimated Delivery Date for any part of the Goods (**Delivery Notice**);
- 5.2 Unless expressly provided otherwise in the Scope of Work, the Fees include all of the cost and expenses incurred in the Contractor delivering the Goods to the Delivery Place.
- 5.3 The Contractor must keep the Goods free and clear of all liens and other encumbrances.
- 5.4 The Goods must:
- (a) be new and conform in terms of quality, quantity, specification and description of the Goods provided for in this Agreement and the Scope of Work, and with any samples of the Goods inspected by the Company; and
  - (b) be of merchantable quality and fit for their intended purpose and free from defect in materials and workmanship.
- 5.5 All warranties implied at law apply to the Goods, in addition to any express warranty, manufacturer's warranty, service guarantee or guarantee of performance. In the event of any inconsistency between any implied warranty or express warranty or guarantee, the relevant position that best protects the Company's interest, in the opinion of the Company, prevails.
- 5.6 The Contractor warrants and undertakes to the Company that:
- (a) it has the benefit of all manufacturers warranties in respect of the Goods;
  - (b) it will not do anything which would void or prejudice any manufacturer's warranty in respect of the Goods; and
  - (c) it will obtain an assignment of any manufacturer's warranties to the Company in the form of a deed executed by the relevant manufacturer in favour of the Company or its nominee, pursuant to which the relevant manufacturer must warrant that the relevant Goods will be free of defects.
- 5.7 The Contractor must supply with the Goods any technical or other data or information required for the satisfactory use, maintenance, repair, installation or operation of the Goods.
- 5.8 All rights, title and ownership in each part of the Goods passes to the Company upon the earlier of delivery of that part of the Goods to the Delivery Place, or payment by the Company in relation to that part of the Goods.
- 5.9 Risk in each part of the Goods passes to the Company upon the later of delivery of that part of the Goods to the Delivery Place or acceptance of that part of the Goods by the Company.
- 5.10 The Contractor is responsible:
- (a) from and including the Commencement Date until 4:00 pm on the Delivery Date, for the care of the Goods and all items in the course of transportation to or delivery at the Delivery Place; and
  - (a) after 4:00 pm on the Delivery Date, for the care of any defective Goods until completion of the Contractor's obligations pursuant to clause 6 and clause 7.
- 5.11 If loss or damage occurs to the Goods during the period for which the Contractor is responsible for the care of the Goods, the Contractor must, at the Contractor's cost, promptly rectify such loss or damage so that the Goods comply in every respect with this Agreement.
- 5.12 If the Contractor fails to rectify loss or damage to the Goods pursuant to clause 5.11, then the Company may, in its absolute discretion, remedy the loss or damage at the sole risk and expense of the Contractor and the cost of remedying the loss or damage will be a debt due and payable immediately from the Contractor to the Company, or elect to terminate this Agreement pursuant to clause 5.11.
- ### 6. DEFECTIVE GOODS
- 6.1 If the Company discovers any Goods (or any part of the Goods) which are not in accordance with this Agreement, the Company may direct the Contractor to rectify any defective or nonconforming Goods (or part of the Goods).
- 6.2 If the Contractor becomes aware that any Goods (or any part of the Goods) are not in accordance with this Agreement or may be Defective, the Contractor must notify the Company in writing of such Goods (or part of the Goods):
- (a) as soon as practically possible; and
  - (b) if the Defect becomes apparent while the Contractor is performing the Services, before removal or replacement of the defective Goods (or part of the Goods) except where such Goods (or part of the Goods) should be removed earlier for the safety or protection of any person.
- 6.3 The Contractor must:
- (a) promptly remove, replace or correct any Defective or nonconforming Goods (or part of the Goods); or
  - (b) where relevant, not deliver any Defective or nonconforming Goods (or part of the Goods) to the Delivery Place,

in accordance with a direction from the Company under this

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- clause 6.
- 6.4 Notwithstanding that the Company has not given a direction under this clause 6, the Contractor must promptly remove, replace or correct any Goods (or part of the Goods) that are not in accordance with this Agreement.
- 6.5 If:
- (a) the Contractor fails to promptly comply with clause 6.3; or
  - (b) the Company considers it necessary to urgently rectify the defective or non conforming Goods or Services in order to prevent risk to persons or property,
- the Company may (itself or via its Personnel) rectify the defective or non conforming Goods or Services and/or remove, replace or store defective Goods and the Contractor is liable for all of the Company's costs, expenses and Loss incurred in doing so.
- 6.6 A further Defects Liability Period will apply to any rectification of defective or non conforming Goods or Services commencing on the date such rectification is completed.
- 6.7 The Company may carry out inspections of, and witness tests on, the Goods at all reasonable times.
- 6.8 The Contractor acknowledges that:
- (a) in inspecting the Goods, the Company owes no duty to the Contractor to review the Goods for errors, omissions or compliance with the requirements of this Agreement if it does so inspect; and
  - (b) no inspection of the Goods or review of the Goods by the Company will in any way reduce, limit or otherwise affect the Contractor's obligations, or the Company's rights against the Contractor, whether under this Agreement or otherwise according to Applicable Standards;
- 6.9 The obligations of the Contractor in relation to the quality and suitability of the Goods are not in any way limited or reduced by the carrying out of any tests under this clause 6.
- 6.10 Use of the Goods by the Company or anyone else prior to or following delivery will not by itself constitute delivery of the Goods and will not relieve the Contractor from:
- (a) any obligation to complete or make good any Defect; or
  - (b) full responsibility and liability for the performance of its obligations under this Agreement.
- ### 7. DEFECTS LIABILITY
- 7.1 In respect of each Scope of Work, the Defects Liability Period commences on the Delivery Date and expires upon the later of:
- (a) 24 months after the Delivery Date; or
  - (b) rectification to the satisfaction of the Company of all:
    - (1) Defects existing at delivery; and
    - (2) Defects notified by the Company to the Contractor pursuant to this Agreement.
- 7.2 As soon as possible after the Delivery Date and no later than the date which is three (3) months after the period referred to in clause 7.1 (**Defects Liability Period**), the Contractor must rectify any Defects existing at the Delivery Date.
- 7.3 At any time during the Defects Liability Period, if the Company discovers or believes there is a Defect (whether existing at the Delivery Date or which becomes apparent before the expiration of the Defects Liability Period), the Company may direct the Contractor in writing:
- (a) to promptly rectify the Defect; or
  - (b) that the Company will accept the work, or any part of it, despite the Defect.
- 7.4 The direction provided under clause 7.3:
- (a) must identify the Defect; and
  - (b) if clause 7.1(b)(1) applies, may state:
    - (1) a reasonable date by which the Contractor must complete the rectification work; and
    - (2) a reasonable date by which the rectification work must commence; and
  - (c) if clause 7.3(b) applies, may state the amount determined by the Company that represents the cost of rectifying the Defect, which will be a debt due and payable immediately from the Contractor to the Company.
- 7.5 The Company may at any time during the Defects Liability Period determine and notify the Contractor of any remedial, protective, repair or other work urgently required to prevent Loss to any part of the Goods or any other property or personal injury or death, as a result of or in relation to a Defect.
- 7.6 If the Contractor receives a notice pursuant to clause 7.5, the Contractor must immediately commence and diligently perform all rectification work identified in that notice.
- 7.7 In respect of all rectification work performed by the Contractor pursuant to clause 7.3, a separate Defects Liability Period in respect of that rectification work will:
- (a) commence on the date that rectification work is completed; and
  - (b) expire upon the later of:
    - (1) the applicable date referred to in clause 7.1;
    - (2) 12 months after the date referred to in clause 7.7(a).
- 7.8 If it is necessary for the Contractor to carry out rectification work under this Agreement, the Contractor must do so as soon as possible and at times directed by the Company.
- 7.9 If the Contractor fails to remedy any Defect existing at the Delivery Date, the subject of a direction pursuant to this clause 7, then the Company may, in its absolute discretion, by notice in writing to the Contractor:
- (a) treat the matter as an event of default; or
  - (b) remedy the Defect, or any part of it, at the sole risk and expense of the Contractor and the cost of correcting the Defect will be a debt due and payable immediately from the Contractor to the Company; or
  - (c) elect to accept the Defect, or any part of it, without prejudice to any other rights that the Company may have against the Contractor in respect of the Defect.
- ### 8. SUBCONTRACTING
- 8.1 The Contractor may not, without the prior written approval of the Company, subcontract the performance of any part, or the whole of, its obligations under this Agreement.
- 8.2 Where the Company has approved the Contractor subcontracting all or part of the Contractor's obligations under this Agreement:
- (a) the Contractor's responsibilities or obligations under this Agreement will not be lessened or otherwise affected in any way;

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- (b) the Contractor shall be responsible and liable for the acts or omissions of each Subcontractor, and each of its employees and agents; and
  - (c) any act or omission of a Subcontractor that would have amounted to a breach of this Agreement had that Subcontractor been a party will be deemed to be a breach of this Agreement by the Contractor.
- 8.3 Notwithstanding any other clause, the Contractor must ensure that any Subcontractor complies with all of the Contractor's obligations under this Agreement.

### 9. COMPANY MATERIALS

- 9.1 The Company Materials will be made available for collection by the Contractor at the times and places specified in the Agreement or as otherwise agreed by the parties.
- 9.2 The Contractor must:
- (a) return and unload any unused Company Materials to the Company or as the Company directs;
  - (b) prior to use, inspect and, if necessary, test the Company Materials in order to satisfy itself that they are satisfactory for the Contractor's purposes and, once incorporated into the Goods or installed/commissioned pursuant to the Services, will comply with the Agreement in all respects and their intended use; and
  - (c) keep records containing reasonable details of the Company Materials and such other details required by the Company from time to time.
- 9.3 Risk in Company Materials passes to the Contractor upon loading and only passes back to the Company if and when returned to the Company and unloaded as required by the Agreement.
- 9.4 The Company accepts no liability for the Company Materials and makes no representation or warranty in respect of the Company Materials.
- 9.5 Company Materials will, upon incorporation into Goods, form part of the Goods for the purposes of the Agreement.
- 9.6 If the Contractor is in possession of the Company Materials at any time, the Contractor agrees that it will:
- (a) re deliver possession of the Company Materials to the Company as required by the Agreement and, in any event, prior to the date that is two (2) years after the Contractor last obtained possession;
  - (b) not grant or permit to subsist a security interest or any other interest in the Company Materials (whether that interest arises by operation of law or otherwise); and
  - (c) not sell, lease, give up possession, deal with or dispose of the Company Materials in any way not expressly permitted by the Agreement.
- 9.7 The Contractor must promptly report to the Company, in writing, details of any accident that occurs in relation to the Contractor or the Contractor's Personnel or the Company's Personnel whilst the Contractor is performing the Services at one of the Sites.

### 10. VARIATIONS

- 10.1 The Contractor must not deviate from the requirements of this Agreement except as directed in writing by the Company.
- 10.2 The Company may, at any time during the Term, give the Contractor a written direction to alter, amend, omit, add to or otherwise vary the Services and/ or Goods to be provided (**Variation**).

- 10.3 If a Variation provides for the omission of the whole or part of the Services and/ or Goods, the Contractor acknowledges and agrees that the Company may itself, or by engaging another contractor, carry out the whole or part of the omitted Services and/ or Goods, and that such an omission will not constitute a repudiation of the Agreement.
- 10.4 The Contractor must comply with the Variation provided that the Contractor will not be required to perform services or deliver goods in violation of Applicable Standards or Authorisations or otherwise outside the general scope of the Services and/ or Goods.
- 10.5 Unless the Company and the Contractor agree to the cost of a Variation, the cost of a Variation must be determined by the Company having regard to the rates and prices included in the Purchase Order (if any). If the rates and prices included in the Purchase Order are not, in the Company's reasonable opinion, applicable, then the cost of the Variation will be determined by the Company using reasonable rates that are applicable to the Goods and/ or Services, having regard to their nature, complexity and the comparative costs in the market at that time for engaging another service provider to provide services substantially similar to those required by the Variation.
- 10.6 If the Contractor is of the opinion that a direction from the Company is a Variation entitling the Contractor to additional cost, the Contractor must, as a condition precedent to its entitlement to any additional cost, give the Company written notice that it considers the direction to amount to a Variation within seven (7) days of receiving such direction from the Company.

### 11. WARRANTIES

- 11.1 The Company and the Contractor each represent and warrant to the other that as at the date of this Agreement:
- (a) it is a company duly registered and validly existing under the laws of Australia;
  - (b) it has the capacity and corporate power to enter into and perform its obligations under this Agreement and to carry out the transaction contemplated by this Agreement;
  - (c) it has taken all necessary corporate action to authorise the entry into and performance of this Agreement;
  - (d) this Agreement is valid and binding upon it; and
  - (e) the execution and performance by it of this Agreement will not violate in any respect any provision of any other document, Agreement or other arrangement binding upon it or its assets.
- 11.2 The Contractor represents and warrants to the Company that:
- (a) it has the requisite skill, competence, resources, commitment and experienced and qualified Personnel necessary to perform all of the Contractor's obligations under this Agreement;
  - (b) the Company's acquisition or use of the Contractor Material or Contract Material will not infringe any Intellectual Property Rights of any third party;
  - (c) it holds, and will continue to hold throughout the Term, each Authorisation that is necessary or desirable, from time to time, to:
    - (1) enable the Contractor to properly perform the Services;
    - (2) ensure that this Agreement is legal, valid, binding and admissible in evidence; and
    - (3) enable it to properly carry on its business,

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and it is complying with, and will continue to comply with, any conditions to which any of the Authorisations are subject;

- (d) it is not Insolvent and nothing has occurred which would deem it to be Insolvent;
  - (e) unless expressly stated in this Agreement, it does not enter into this Agreement as agent or as trustee of any trust and if it enters into this Agreement in its capacity of trustee, it does so in both its personal capacity and in its capacity as trustee of the trust and is entitled to an unlimited right of indemnity in respect of the assets of the trust for those obligations;
  - (f) the Goods will comply with this Agreement, any relevant standards and any other directions, drawings, specifications, samples or other requirements of the Company;
  - (g) the Goods are and will be:
    - (1) new, unless expressly stated to the contrary in this Agreement;
    - (2) free from liens, charges and encumbrances;
    - (3) the property of the Contractor;
    - (4) fit for their intended purpose;
    - (5) of merchantable quality;
    - (6) free from Defects;
    - (7) of high quality and to a standard required by the Company, or if no standard is specified, of a standard consistent with best industry standards; and
    - (8) in compliance with Applicable Standards and warranties implied by law; and
  - (h) it will perform the Services in accordance with Good Industry Practice.
- 11.3 The Contractor acknowledges that the Company has executed this Agreement in reliance on the representations and warranties made by the Contractor in this clause 11.
- 11.4 Except for the representations and warranties set out in clause 11.1, the Contractor acknowledges that it has not relied and will not rely on any representation, statement or promise made by or on behalf of the Company in deciding to enter into this Agreement or to exercise any right or perform any obligation under it.

## 12. LIABILITIES AND INDEMNITIES

- 12.1 Subject to clause 12.2, the Contractor must indemnify the Company (for itself and as agent for each of its Related Persons) against, and must pay the Company (and its Related Persons) on demand, the amount of any claims, damages, expenses (including legal costs on a full indemnity basis), Loss or liabilities which the Company (or its Related Persons) suffers or incurs, in respect of:
- (a) loss of, or damage to, or loss of use of, any real or personal property, or the personal injury, disease or illness (including mental illness) to, or death of, any person, arising out of the Contractor's or its Personnel's performance of the Contractor's obligations under this Agreement;
  - (b) a breach by the Contractor of this Agreement;
  - (c) to the extent permitted by law, Losses or liabilities under or resulting from any work health and safety laws or environmental laws or infringement of any Intellectual Property Rights; or

- (d) an unlawful or negligent act or omission or the wilful misconduct of the Contractor or its Personnel.

- 12.2 The indemnity in clause 12.1 does not apply to the extent that any claims, damages, expenses, Losses or liabilities are directly caused by:
- (a) a negligent act or negligent omission of the Company or any of its Related Persons; or
  - (b) a breach by the Company of this Agreement.
- 12.3 The indemnity contained in clause 12.1 does not in any way limit or affect any other rights that the Company may have arising out of any default by the Contractor in the performance of its obligations under this Agreement and survives termination, completion or expiry of this Agreement.
- 12.4 Except as provided in clause 12.5, no party will be liable to the other party for any Consequential Loss suffered or incurred by the other party arising out of or in connection with this Agreement.
- 12.5 The Contractor will be liable to the Company for Consequential Loss suffered or incurred by the Company arising out of or in connection with the provision of the Services or the delivery of the Goods without limit or exclusion to the extent that:
- (a) liability for such Consequential Loss results from a breach of any Applicable Standard or Authorisation; or
  - (b) such Consequential Loss is caused by the wilful misconduct, fraud or gross negligence of the Contractor or any of the Personnel.
- 12.6 The cost of, and incidental to, the rectification of any Defects in the Services and/ or Goods or loss or damage caused by such Defects is not a Consequential Loss and the parties agree that such costs, loss or damage are recoverable by the Company from the Contractor.

## 13. INSURANCE

- 13.1 The Contractor must prior to the commencement of Services or delivery of Goods, effect and maintain during the Term, or cause to be effected and maintained, insurance that has a limit of indemnity for each and every occurrence of not less than the Insurance Amount:
- (a) public liability insurance, where applicable, to cover the Contractor against all third party risks, including liability for any death, damage, illness, injury of any person or property for any incident occurring during the course of, or in connection with, the Services performed under this Agreement;
  - (b) comprehensive motor vehicle insurance policy in respect of all vehicles operated, leased, hired or controlled by the Contractor or any Personnel during the performance of the Services;
  - (c) workers compensation insurance for any injury, damage, expense, Loss or liability suffered or incurred by any person engaged, including Subcontractors, in performing the Services and/ or providing the Goods;
  - (d) property insurance and/ or construction insurance covering loss of, or damage to, all Materials or other things on Site used by the Contractor in the performance of the Services, including Materials undergoing installation or maintenance as part of the performance of the Services; and
  - (e) professional indemnity insurance, where applicable, which covers liability of the Contractor and Personnel arising from a breach of a duty owed in a professional capacity, whether owed in contract or otherwise, by any

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act or omission of the Contractor or of any Personnel in relation to the performance of this Agreement.



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### 14. PAYMENT AND TAXES

- 14.1 Subject to the Contractor having performed its obligations under this Agreement and the Contractor issuing a Tax Invoice, the Company must pay the Contractor the Fees to the Contractor's nominated account (or such other account as notified in writing from time to time) in accordance with this clause 0.
- 14.2 The Contractor accepts payment of the Fees in accordance with this Agreement as constituting full payment for the performance of all of its obligations under this Agreement, but payment pursuant to clause 14.1 does not constitute acceptance by the Company that Goods or Services comply with this Agreement
- 14.3 On the last day of each month during the Term (**Applicable Date**) (except in the case of the last Tax Invoice which shall be provided on the Completion Date), the Contractor must submit to the Company a Tax Invoice for payment of the portion of the Fees payable in respect of the preceding month. The Tax Invoice must be submitted in accordance with the requirements of this clause 0. A Tax Invoice issued earlier than the Applicable Date for the relevant month shall be deemed to have been submitted on the Applicable Date.
- 14.4 Within 30 days of the Company receiving a Tax Invoice, the Company must pay the Contractor the amount of the Tax Invoice, except where the Company:
- (a) exercises the Company's right to retain part of the Fees in accordance with clause 14.8; or
  - (b) disputes the Tax Invoice, in which case:
    - (1) the Company must pay the undisputed part of the relevant Tax Invoice (if any) and dispute the balance; and
    - (2) if the resolution of the dispute determines that the Company is to pay an amount to the Contractor, the Company must pay that amount within 30 days upon resolution of the dispute.
  - (c) The payment of any money by the Company to the Contractor under this Agreement must be made to the Contractor's nominated account (or such other account as notified in writing from time to time). Payment will be deemed to have been made when received into the Contractor's nominated account. All banking charges, fees and costs in connection with any payment to the Contractor shall be borne by the Contractor.
  - (d) Payment is made on account only and does not constitute acceptance by the Company that Goods or Services comply with this Agreement.
- 14.5 Each Tax Invoice submitted to the Company by the Contractor:
- (a) must contain sufficient detail to allow the Company to reconcile the Fees to be paid for the relevant period, including details of:
    - (1) if the Contractor is being remunerated on an hourly rate, the number of hours spent by the Contractor in performing the Services and/ or providing the Goods and the identity of the Personnel involved in performing the Services and/ or providing the Goods;
    - (2) the Services performed by the Contractor or its Personnel in the relevant period;
    - (3) the quantity of Goods supplied and the unit price of the Goods; and
    - (4) details and supporting documentation for all expenses for which the Contractor is seeking reimbursement; and
  - (b) must be in the form of a Tax Invoice.
- 14.6 The Contractor must keep proper records of the time taken in performing the Services and/ or providing the Goods and provide the Company and its advisers with access to, and copies of, all relevant records required to carry out an audit of the Fees paid by the Company as requested from time to time.
- 14.7 The Company may audit the Contractor's records to determine if the Fees have been correctly calculated.
- 14.8 The Company may at any time deduct from any amount due or becoming due to the Contractor under this Agreement:
- (a) all debts and amounts due from the Contractor to the Company whether under or in connection with this Agreement or otherwise; and
  - (b) all costs, charges, damages and expenses that the Company may have paid or incurred that the Contractor is liable to bear, pay or reimburse to the Company under this Agreement.
- 14.9 The Company must notify the Contractor in writing of any amounts deducted under clause 14.8 and the basis for the deduction, at the time that the deducted amount would otherwise be due to the Contractor.
- 14.10 If the Contractor fails to perform any obligation in accordance with this Agreement, then, without prejudice to any other right or remedy that the Company may have under this Agreement or at Law, the Company may, after giving the Contractor five (5) Business Days prior written notice specifying the amount proposed to be withheld, withhold payment of any amounts due to the Contractor until the failure has been remedied.
- 14.11 Without limiting clause 14.10, the Company may deduct from, and set off against, any amount due or becoming due to the Contractor under this Agreement, an amount equal to any Loss incurred or reasonably likely to be incurred by the Company in connection with:
- (a) the Contractor's failure to comply with this Agreement; and
  - (b) the Contractor's failure to perform the obligation and/ or rectify the failure.
- 14.12 The rights under this clause 14 shall survive for a period of 12 months after the Company pays the relevant Tax Invoice.

### 15. INTELLECTUAL PROPERTY & CONFIDENTIALITY

- 15.1 The Contractor acknowledges that the Company owns all rights, title and interest in, or is otherwise entitled to use, the Company Material and Contract Material.
- 15.2 The Company grants to the Contractor, a non-exclusive, royalty-free licence for the duration of the Term to exercise all rights in the Company Material solely for the purposes of performing the Services and/ or providing the Goods.
- 15.3 The Contractor acknowledges and agrees:
- (a) that it will only use or copy the Contract Material and the Company Material for the purpose of performing the Services and/ or providing the Goods and no other purpose, unless it has obtained the Company's prior written consent;
  - (b) that it will use the Contract Material and the Company Material only in accordance with conditions attaching to the use of that material as advised to the Contractor by the Company;
  - (c) that it will be responsible for the safekeeping and maintenance of all Contract Material created, and Company Material provided to it, under this Agreement; and

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- (d) that it will be responsible for the safekeeping and maintenance of all the Company's Confidential Information and Intellectual Property Rights.
- 15.4 The Contractor grants to the Company a perpetual, irrevocable, worldwide, non-exclusive, royalty-free licence (including the right to sub-licence to third persons and Related Persons) to use, reproduce, modify, adapt and otherwise exercise all Intellectual Property Rights in the Contractor Material to the extent necessary for the Company and its Related Persons to be able to fully use, reproduce, modify, adapt and otherwise exercise all Intellectual Property Rights in the Contract Material and obtain the benefit of the Services.
- 15.5 The Contractor must obtain, at the Contractor's cost, all third party assignments, licences, consents and waivers, including waivers of Moral Rights, and do anything reasonably required by the Company, to give effect to this Agreement and to enable the Company to exercise its Intellectual Property Rights under clause 15.4 and in the Contract Material.
- 15.6 The Contractor acknowledges that all right, title and interest in the Contract Material automatically vests in the Company on its creation. To the extent that any rights in the Contract Material do not vest in the Company on creation, the Contractor assigns all right, title and interest in the Contract Material to the Company. The Contractor must sign all documents and do anything else reasonably necessary to give effect to this clause 15 when requested by the Company.
- 15.7 The Contractor warrants to the Company that its, and each of its suppliers' and Related Persons', use of the Contract Material and the Contractor Material does not breach any other person's Intellectual Property Rights.
- 15.8 The Contractor indemnifies the Company against all claims, damages, expenses (including legal costs on a full indemnity basis), Losses or liabilities, including, any direct liability, loss or expense resulting from a claim by a third party against the Company that the Contract Material or the Contractor Material or any material provided by the Contractor to the Company under this Agreement infringes the Intellectual Property Rights of the third party.
- 15.9 If requested by the Company, the Contractor must ask all its Related Persons who perform and author work under this Agreement to give consent to the Company to any act or omission which may infringe their Moral Rights, as authors, including rights of attribution and integrity, in respect of original work created during performance of this Agreement.
- 15.10 The Contractor must not, and must ensure that its Related Persons do not, without the prior written approval of the Company, either during the Term of this Agreement or for a period of 2 years following its termination, disclose or give to any third party any Confidential Information, Company Material or Contract Material except:
- (a) as required by law; or
  - (b) as necessary to obtain professional or financial advice or assistance from a third party (provided such third party is under an obligation to keep the relevant information confidential and secure).
- 15.11 Within 10 Business Days of a request by the Company or within 10 Business Days of the termination or expiry of this Agreement, the Contractor must return to the Company or destroy all copies and extracts of the Confidential Information, Company Material and Contract Material, and notify the Company in writing to confirm the destruction or return of the Confidential Information.

## 16. TERM AND TERMINATION

- 16.1 This Agreement shall commence on the date that a Purchaser Order is accepted by the Contractor and shall continue in full force and effect for the duration of the Term.
- 16.2 The Company may:
- (a) terminate this Agreement for its convenience, for any reason and in its sole discretion, by giving the Contractor 7 days written notice of termination; and
  - (b) engage another contractor to perform any part of the Services or deliver any part of the Goods in respect of which this Agreement is terminated.
- 16.3 Either party may terminate this Agreement by providing 14 days' notice in writing to the other party given at any time if an Event of Default in respect of the other party has occurred and remains subsisting.
- 16.4 If this Agreement is terminated by the Company:
- (a) under clause 16.2, then subject to the Company's right to set-off and rights to withhold amounts owing to the Contractor, the Company shall pay the Contractor, as the Contractor's sole remedy in relation to the termination, the amount due to the Contractor for any Services performed, as evidenced by all unpaid Tax Invoices; and
  - (b) under clause 16.3, the Company's remedies, rights and liabilities will be the same as they would have been under the law governing this Agreement had the Contractor repudiated this Agreement and the Company elected to treat this Agreement as at an end and recover damages.
- 16.5 On receiving a notice under clause 16.2 or 16.3, the Contractor must immediately cease carrying out the Services and take any other action reasonably directed by the Company.

## 17. GENERAL

- 17.1 Unless expressly stated otherwise, time is of the essence in respect of the Contractor's obligations under the Contract.
- 17.2 This Agreement constitutes the entire agreement between the parties in respect of its subject matter and supersedes all prior agreements, memorandum of understandings, proposals, representations, warranties, promises, statements, negotiations and correspondence in respect of its subject matter whether oral or written.
- 17.3 The Contractor acknowledges:
- (a) that it has no authority to bind the Company. The Contractor and its Personnel must not hold themselves out as an agent of the Company in its dealings with third parties or purport to incur any obligation, or make any promise, agreement or undertaking, warranty or representation for or on behalf of the Company.
  - (b) it is engaged by the Company as an independent contractor and nothing in this Agreement is to be treated as creating the relationship of employer and employee, agency arrangement, partnership, joint venture or fiduciary relationship between the Contractor and the Company.
- 17.4 The Company may assign or novate all, or any part of this Agreement at any time, in its absolute discretion and the Contractor irrevocably appoints the Company as its attorney to execute any document or take any step necessary to effect any assignment or novation on the Contractor's behalf.
- 17.5 The Contractor must not assign the Contractor's rights or novate the Contractor's rights and/or obligations under this Agreement without the prior written consent of the Company (which may be granted or refused in the Company's reasonable

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and sole discretion).

- 17.6 If a provision of this Agreement is held by a court to be illegal, void or unenforceable, that provision will be severed from this Agreement to the extent and in the manner that best gives effect to the remaining provisions.
- 17.7 Notwithstanding any other clause of this Agreement, clauses 4.3(d),4.5,5.12,6,7,12,14,15.8,15.10,15.11,16 and this clause 17.7, and all other provisions which expressly or by implication from their nature are intended to survive termination, survive termination of this Agreement.
- 17.8 This Agreement may be executed in counterparts, each of which will be deemed an original, and which together will be deemed to constitute one and the same instrument. A party who has executed a counterpart of this Agreement may exchange that counterpart with the other party by electronically mailing a PDF copy of the counterpart executed by it to the other party and, on request, that party will promptly deliver by hand or post an original executed counterpart exchanged by electronic mail.
- 17.9 The governing law of this Agreement is the law of the State of Queensland, Australia. The parties submit to the non-exclusive jurisdiction of the courts of the State of Queensland and all courts competent to hear appeals from those courts.
- 17.10 A provision of this Agreement or a right created under this Agreement may not be varied or waived except in writing signed by the party granting the waiver, or varied in writing signed by both of the parties.
- 17.11 Each party shall do all things necessary to give effect to this Agreement.
- 17.12 The Company holds the benefit of each indemnity, promise, warranty, obligation and undertaking in this Agreement that benefits it or any Related Person on its own behalf and on trust for each of those persons.