

1. Application of Conditions

These conditions ("Trading Terms") govern the rights and obligations of the supplier ("Supplier") of goods and/or works as named on the purchase order ("Purchase Order") and the JWI entity as named on the Purchase Order ("Purchaser"). The Purchase Order, these Trading Terms and the Technical Requirements (as defined below in clause 10) are collectively referred to as the "Contract". No document or statement other than the Contract shall form part of the agreement between the Supplier and the Purchaser unless otherwise agreed in writing by the Purchaser. If there is a conflict between the Trading Terms (as varied with the Purchaser's written agreement) and any other document or statement forming part of the Contract, these Trading Terms (as varied) shall prevail. The acceptance by the Supplier of the Purchase Order or the supply of any goods or performance of any works shall be deemed to be acceptance of the terms of the Contract (including these Trading Terms) and shall constitute a binding contract between the Supplier and the Purchaser. The law of the State or Territory specified in the delivery instructions in the Purchase Order governs this Contract.

2. Electronic Transactions Act

The Electronic Transactions (Queensland) Act 2001 (QLD), the Electronic Transactions Act 2000 (SA), the Electronic Transactions Act 2011 (WA), the Electronic Transactions (Victoria) Act 2000 (VIC), the Electronic Transactions Act 2000 (NSW) or the Electronic Transactions (Northern Territory) Act 2000 (NT) (as applies in the State or Territory specified in the delivery instructions in the Purchase Order) applies to the Contract. The Supplier has consented to the provision of these Trading Terms by means of electronic communication via the Purchaser's website, <http://www.jwic.com.au>.

3. Price and Supply

The unit prices and values indicated on the Purchase Order for the goods and/or work the subject of the Contract ("the Goods" and/or "the Work" as the case may be) include, unless stated otherwise, the cost of delivery to the address stated in the Purchase Order and any insurance, duty, taxes and packing and unloading, inductions mobilization and demobilization, and any other costs and expenses associated with manufacturing, delivering and/or supplying the Goods or the Work.

The Supplier shall only be authorised to supply the Goods and/or the Work upon receipt of a Purchase Order.

The Supplier acknowledges that:

- the Purchaser makes no warranty about the minimum quantities of, or requirements for, the Goods and/or the Work by issue of a Purchase Order; and
- the supply of the Goods and/or the Work is non-exclusive and the Purchaser may engage other suppliers to supply the same.

The parties agree that for the purposes of this Contract, "Work" shall include the following:

- services or work required by the Purchaser and/or
- plant/equipment hire by the Purchaser with or without a Supplier provided operator.

If Work includes the Purchaser hiring any plant/equipment from the Supplier ("Plant/Equipment"), the Plant/Equipment shall remain the property of the Supplier and unless otherwise specified in the Purchase Order, the Supplier is responsible for all maintenance, repair and replacement of parts in respect of the Plant/Equipment to ensure that the Plant/Equipment meets the availability (if any) specified in the Purchase Order. The Supplier must collect such Plant/Equipment from the point where it was delivered at the end of the period of hire, or such other date as advised by the Purchaser in accordance with clause 9.

4. Delays

If the Supplier fails to make deliveries to the address stated in the Purchase Order within the time specified in the Purchase Order, the Purchaser has the option to terminate this Contract or such part or parts thereof in relation to which there has been delay, without incurring cancellation or any other charges.

5. Non-Waiver

Failure of the Purchaser to insist upon strict performance of any of the terms of the Contract shall not be deemed a waiver of any subsequent default of them. The shipping or receiving of any Goods, Work or item under the Contract shall not be deemed a waiver of any rights for any prior failure by the Supplier to comply with any of these Trading Terms.

6. No Assignment

The Contract shall not be assigned by the Supplier in whole or in part without the prior written consent of the Purchaser.

7. Infringement

The Supplier warrants that the Goods and the Work and the sale or use of them will not infringe any patent or any other intellectual property right, and the Supplier covenants that it will defend, at its own cost and expense, every action which may be brought against the Purchaser or those selling or using the Purchaser's product for any alleged infringement of any patent or breach of any other intellectual property right by reason of the sale or use of such Goods or Work and the Supplier agrees to pay all costs, damages, fines and profits recoverable in any such action. The Supplier shall indemnify the Purchaser against any liability to or claim by a third party and any costs or losses incurred by the Purchaser arising out of any alleged infringement of any patent or breach of any other intellectual property right.

8. Compliance

In performing its obligations under this Contract the Supplier agrees to comply with all laws and regulations applying to the Contract, the Goods and the Work and any Policies.

In this clause 8, "Policies" means the Purchaser's workplace policies, plans, procedures and practices as amended from time to time including but not limited to personal safety, operational safety, occupational health and safety, environmental, quality, traffic management, and equal opportunity policies and any relevant policies of a Principal (as that term is defined in clause 10), but only to the extent that such policies are not inconsistent with the Purchaser's own policies

9. Changes

The Purchaser has the right at any time to make changes to the Goods or Work (including but not limited to quantities ordered, specifications and drawings or the period of hire for any Plant/Equipment). If the Purchaser forwards an amended Purchase Order changing the Goods or Work then the Supplier shall be entitled to remuneration for that variation on the basis of the unit prices or values stated on the Purchase Order for the Work that has been completed and/or Goods supplied (as determined by the Purchaser acting reasonably), but no cause of action for breach of contract or other right of action shall arise or be instituted by the Supplier as a result of the amended Purchase Order and the only remedy for the Supplier will be the right to payment of the remuneration referred to in this clause for that part of the Purchase Order that has been completed. If such changes result in an increase or decrease in the time required for performance a reasonable adjustment of the time shall be made by the Purchaser. Any claim by the Supplier for remuneration and/or time adjustment under this clause must be made within two (2) weeks from the date on which the amended Purchase Order is issued by the Purchaser.

10. Warranty

Notwithstanding the Purchaser's acceptance or right of inspection and/or other terms of the Contract, the Supplier warrants that the Goods, the Work, the materials, workmanship and all other items furnished under the Contract are free from any encumbrances, free from any defects (including in design), fully comply with any specifications and drawings supplied or referenced in the Purchase Order ("Technical Requirements") and, where not so specified or referenced, are suitable and fit for the use intended and comply with all requirements of law. The Purchaser relies on this warranty by the Supplier in purchasing the Goods, Work and items covered by the Contract. The Supplier must obtain and provide for the benefit of the Purchaser and the person who engaged the Purchaser ("the Principal") the guarantees and warranties, or other product conformance documentation as may be required under the Contract or as are advised by the Purchaser.

11. Inspection and Testing

The Purchaser, its insurers and the Principal shall be entitled to inspect and test the Goods or Work during manufacture, whether on the Supplier's premises or the premises of any subcontractor, and the Supplier shall attend the inspection and provide any requested assistance to those conducting the inspection and testing. Such inspection and testing shall not release the Supplier from any obligation of the Supplier under the Contract.

Without limiting the Supplier's obligations under this clause, if requested by the Purchaser, the Supplier must:

- provide regular reports on the progress of the manufacture or procurement for supply of the Goods in a form approved by the Purchaser;
- provide all certificates of analysis and documents relating to the identity and quality of the Goods to an authorised representative of the Purchaser; and
- permit the Purchaser or its agents to audit the quality system of the Supplier.

The Supplier must maintain its records relating to the Purchase Order and the supply of the Goods and/or the Work for a period that is consistent with good industry practice and make these records available for inspection by the Purchaser when and where reasonably required by the Purchaser.

12. Rejection

The Purchaser may at any time, whether before or after delivery, reject any Goods or Work found to be inferior or defective or damaged or not in accordance with the Contract and without limiting the liability of the Supplier, the Purchaser may require, at its option:

- (i) a refund of payment by the Supplier within seven (7) days; or
- (ii) replacement of the Goods or resupply of the Work.

Risk in the rejected Goods immediately re-vests in the Supplier once the Purchaser has notified the Supplier of its rejection. The Supplier is liable for all loss or expenses incurred by the Purchaser due to the rejection of the Goods or Work. This condition shall apply notwithstanding that the Goods or Work have been inspected or tested or that the Purchaser has paid for the Goods or Work.

13. Cancellation & Termination

13.1 Cancellation

The Purchaser may by notice in writing to the Supplier cancel the Contract in whole or in part if the Supplier:

- (i) fails to complete supply of the Goods or Work by the date and time specified in the Purchase Order;
- (ii) fails to replace defective Goods or Work in accordance with the Contract;
- (iii) breaches any provision contained in the Contract; or
- (iv) becomes insolvent or subject to any kind of external administration, files or has filed against it a petition in bankruptcy, or makes an assignment for the benefit of creditors.

Upon such cancellation the Purchaser may cease payment, recover from the Supplier all monies paid for undelivered Goods or uncompleted Work and purchase similar goods or work from an alternative supplier. The Supplier must indemnify the Purchaser for any additional cost it may incur in doing so.

13.2 Termination for Convenience

The Purchaser may terminate this Contract at any time for its own convenience upon written notice to the Supplier. The Purchaser will pay to the Supplier any direct costs reasonably incurred by the Supplier prior to such termination. The Supplier shall have no entitlement to any further claim against the Purchaser in respect of any cost, expense, damage or liability of any other nature incurred by the Supplier as a result of or in connection with such termination.

14. Delivery of Goods

The Supplier must ensure that:

- the Goods are suitably packaged and weather sealed to provide maximum protection to the Goods in handling and storage;
- all Goods containing oil, fuel or other flammable additives are drained of those additives (and tagged accordingly) prior to delivery and made safe for transporting; and
- prior to commencement on site all plant and equipment that requires servicing in accordance with manufacturers recommendations and / or statutory requirements is compliant with such requirements and supplied full of diesel and oils.
- In accordance with the Western Australian Chain of Responsibility (CoR) legislation, the Purchaser requires the Supplier to ensure any delivery / transport associated with this Purchase Order shall be completed in accordance with all relevant laws and regulations.

Delivery shall occur when the Goods have been delivered in good condition and in accordance with the Technical Requirements at the delivery address or location stated in the Purchase Order and acknowledgement of receipt of the Goods has been given by the Purchaser's representative.

The Supplier shall provide all operating and maintenance manuals for the Goods at the time of delivery.

All the Goods shall remain at the Supplier's risk until delivery is effected. Title to the Goods passes to the Purchaser on delivery unless payment has been made prior to delivery, in which case title to the Goods passes upon payment.

15. Work

If any Work is to be performed by the Supplier, the Supplier must ensure that such Work is:

- executed and completed in a proper and workmanlike manner with due skill, care and diligence, having regard to the nature of the Work;
- carried out by personnel (including any Supplier provided operator for any Plant/Equipment) who are suitably qualified, skilled and experienced and, where required, have the necessary accreditations; and
- executed in a timely manner consistent with the Purchaser's operating and other requirements (including but not limited to the Technical Requirements).

If any Work is to be performed at the Purchaser's or Principal's premises ("**Site**"), then the Supplier must comply with all applicable laws and requirements and/or directions of the Purchaser in the performance of the Work, including but not limited to providing to the Purchaser for the Purchaser's approval prior to attendance on Site either a Job Safety Environmental Analysis ("JSEA") or a Safe Work Method Statement ("SWMS") and such other plan as the Purchaser or the Principal may require.

The Supplier must, and must ensure that its personnel, perform the Work in a manner so as to avoid environmental harm, pollution or contamination of or outside the Site ("**Environmental Obligation**"). The Supplier must make good any such environmental harm, pollution or contamination and indemnify the Purchaser against any liability to or claim by a third party and any costs or losses incurred by the Purchaser arising out of any failure by the Supplier to comply with its Environment Obligation.

16. Insurance

(a) Unless the Purchaser confirms in writing to the Supplier that a specified insurance is not required, before supplying the Goods and/or the Work the Supplier must procure and maintain the following insurances at its own expense, and ensure that the Supplier's subcontractors procure its own insurance policies for its respective obligations, from the date of the Purchase Order until the acceptance of the Goods and/or the Work, or for the period as otherwise required by the Purchaser:

- Motor Vehicle Insurance Supplier and all Supplier's subcontractors, each to procure its own insurance policy, for their respective liability for property damage or personal injury (including third party damage and/or injury) to a minimum limit of \$20,000,000 for any one occurrence and unlimited as to the number of occurrences in respect of all vehicles owned, operated, leased, hired or controlled by the Supplier or its employees (or any person engaged by the Supplier including subcontractors) which are used (or to be used) on any road at any time in connection with the Contract and including any liability under any relevant statutory requirements;
- Plant and Equipment Insurance of not less than market value of any plant and equipment for liability in respect of damage to all plant and equipment of the Supplier or its employees (or any person engaged by the Supplier including subcontractors) used, owned or supplied under the Contract, including liability cover for property damage and death or bodily injury. Where the Supplier is attending Site, the insurance must include a Principal's indemnity extension in favour of the Principal and the Purchaser; and include a cross liability clause and include a waiver of subrogation in favour of the Principal and the Purchaser;
- Workers' Compensation Insurance of not less than \$20,000,000, for any one occurrence and unlimited as to the number of occurrences for any liability arising out of death of or injury (including occupational disease) to persons employed (or deemed to be employed) by the Supplier and including liability under any applicable workers compensation legislation and at common law. The insurance must include a Principal's indemnity extension for

legislative and common law benefits in favour of the Principal and the Purchaser and include a waiver of subrogation in favour of the Principal and the Purchaser;

iv. Public and Products Liability Insurance Supplier and all Supplier's subcontractors, each to procure its own insurance policy, which must include coverage in respect of the Purchaser's and Principal's vicarious liability of \$20,000,000 for any one occurrence (and in the aggregate with respect to products liability) covering liability to third parties for loss or damage to property (including any indirect or consequential loss) and death of or injury to any person. The insurance must include a Principal's indemnity extension in favour of the Principal and the Purchaser; and include a cross liability clause and include a waiver of subrogation in favour of the Principal and the Purchaser;

v. Professional Indemnity Insurance Supplier and all Supplier's subcontractors that carry out professional work in respect of the supply of the Goods and or Services will maintain or procure professional indemnity insurance of \$5,000,000 covering liability arising from an act, error or omission of the Supplier or its employees (or any person engaged by the Supplier including subcontractors) in relation to the performance of the Contract and maintained for a period of 7 years after completion of the supply.

(collectively, the "Supplier Insurances").

(b) In respect of the Supplier Insurances, the Supplier shall:

- ensure the Supplier Insurances' amounts or time periods are appropriate to the Goods and/or the Work and on terms acceptable to the Purchaser (acting reasonably);
- ensure all policies, where not precluded by law, indemnify the Purchaser and the Principal for any liability arising out of the acts or omissions of the Supplier or its personnel;
- ensure all policies, where not precluded by law, waive any express or implied rights of subrogation against the Purchaser; and
- before commencing the supply of the Goods and or Works and otherwise at the request of the Purchaser, the Supplier must give to the Purchaser a certified copy of the certificate of currency for each Supplier's Insurance, which must be satisfactory to the Purchaser in all respects.

If the Supplier fails to effect and maintain any of the insurances required by this clause, the Purchaser may at its sole option take out and maintain such insurances and the cost of the Purchaser doing so will be a debt due and payable by the Supplier to the Purchaser, or treat the Supplier's failure to insure as a breach under clause 13.1.

17. Terms of Payment

In this clause 17, "**business day**" has the same meaning as defined in the relevant Security of Payment Law of the State specified in the delivery instructions applicable in the Purchase Order. The Supplier may issue a claim for payment on the last day (or a day otherwise agreed) of each calendar month in a form acceptable to the Purchaser.

Within 10 business days of receipt of a valid payment claim (or where the delivery instructions specify a place of delivery in South Australia, within 15 business days), the Purchaser will issue to the Supplier a payment schedule setting out the amount payable by the Purchaser to the Supplier (subject to set off of any moneys due from the Supplier to the Purchaser). If the amount in the payment schedule is different to the amount in the payment claim, the Purchaser will provide reasons for the difference.

Within 3 business days of receiving the payment schedule the Supplier must provide the Purchaser with a tax invoice for the amount stated in the payment schedule.

If the Purchaser fails to respond to a payment claim, the whole of the amount claimed shall be deemed to be disputed.

The Purchaser may issue a payment schedule at any time whether or not the Supplier makes (or is entitled to make) a payment claim. The Purchaser may, in any payment schedule, correct any error in a previous payment schedule. Failure to set out in a payment schedule an amount which the Purchaser is entitled to retain, deduct, withhold or set-off does not prejudice the Purchaser's right to subsequently exercise a right to retain, deduct, withhold or set-off any amount in a later payment schedule or otherwise. The Purchaser may deduct or set off from any money payable by the Purchaser to the Supplier under, or in connection with, this Agreement any debt or other moneys due, or which the Purchaser claims to be due, to the Purchaser from the Supplier whether under, or in connection with, this Agreement, any other agreement or otherwise.

Unless otherwise specified, the Purchaser shall pay the Supplier the amount stated in the payment schedule within the period stated below for the relevant State or Territory specified in the delivery instructions in the Purchase Order:

- Northern Territory, no later than fifty (50) days from the date of a valid payment claim;
- Western Australia, no later than forty two (42) days from the date of a valid payment claim;
- New South Wales, no later than fifteen (15) business days where the Supplier is the Purchaser's head contractor, or thirty (30) business days where the Supplier is the Purchaser's subcontractor; from the date of a valid payment claim; or
- Queensland, no later than fifteen (15) business days from the date of a valid payment claim,

provided that all other terms of the Contract have been observed.

Unless agreed otherwise, payment shall be made by electronic funds transfer to the Supplier's account.

In respect of any Plant/Equipment, the Purchaser shall determine (acting reasonably), the times for which various working rates, standby rates and/or operator rates (as the case may be) are applicable.

18. GST

Unless this Contract provides otherwise, and subject to this clause, any consideration that may be provided for under the Contract is exclusive of GST. If a party makes a taxable supply in connection with this Contract for a consideration which represents its value, then the recipient of the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply subject to the provision to the recipient of a valid tax invoice.

19. Price Variation

Unless stated in the body of the Purchase Order the cost of the Goods or Works shall be fixed and not subject to escalation.

20. Health And Safety

Without limiting the Supplier's obligations under clause 8, the Supplier must carry out its obligations under the Contract safely and so as to protect persons and property. The Supplier shall ensure that in carrying out its obligations under the Contract, the Supplier and its employees and subcontractors comply with:

- any legislation covering work health and safety, mining safety, petroleum and gas safety, environment protection and dangerous goods safety that is applicable to the Goods and/or the Work;
- regulations made under that legislation; and
- any directions on safety or notices issued by any relevant authority or any code of practice or compliance code or industry standard appropriate or relevant to the Goods and/or the Work.

The Supplier shall indemnify the Purchaser against any liability to or claim by a third party and any costs or losses incurred by the Purchaser arising out of the Supplier's breach of this clause 20.

21. Building Code

If any Building and Construction Code applies to the Contract the Supplier shall comply with all obligations under the applicable Building and Construction Code and the obligations set out in Schedule 1 hereto.

22. Proportionate Liability

- (a) In this clause 22, "Apportionment Legislation" means:
- (i) the Proportionate Liability Act 2005 (NT);
 - (ii) Chapter 2, Part 2 of the *Civil Liability Act 2003* (Qld);
 - (iii) Part 3 of the Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA) and section 72 of the Development Act 1993 (SA);
 - (iv) Part IVAA of the *Wrongs Act 1958* (Vic);
 - (v) Part 4 of the *Civil Liability Act 2002* (NSW); and
 - (vi) Part 1F of the *Civil Liability Act 2002* (WA).
- (b) The parties agree that to the extent permitted by law, the operation of the Apportionment Legislation is excluded in relation to all and any rights, obligations and liabilities arising out of or in connection with this Contract or the Goods and/or the Work whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or on the basis of quantum meruit, quasi contract or of any other principle of law or equity.
- (c) The Supplier further agrees to include the following terms in each subcontract it enters into in relation to any part of the Goods and/or the Work:
- (i) to the extent permitted by law, the operation of the Apportionment Legislation shall be excluded in relation to all rights, obligations and liabilities arising out of or in connection with each subcontract or the work of the subcontractor whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or on the basis of quantum meruit, quasi contract or of any other principle of law or equity; and
 - (ii) the subcontractor warrants in favour of the Purchaser that the subcontractor will not seek to rely upon any of the provisions of the Apportionment Legislation in any proceedings taken by the Purchaser against the Supplier or the subcontractor arising out of or in connection with the work of the subcontractor required to be executed by it under the subcontract.
- (d) To the extent permitted by law, the Supplier indemnifies the Purchaser against the difference (if any) between:
- (i) the amount of any loss, damage, cost and expense suffered or incurred by the Purchaser for which, but for the Apportionment Legislation, the Purchaser would otherwise have been entitled to recover from the Supplier; and
 - (ii) the liability to the Purchaser of the Supplier as determined by any court under the Apportionment Legislation.

23. Severability

If any provision in this Contract is unenforceable, illegal or void or makes this Contract or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Contract remains in force.

24. Security of Payment

- (a) In clauses 24(b), 24(c) and 24(d), "Security of Payment Law" means the *Construction Contracts Act 2004* (WA), the *Building and Construction Industry Payments Act 2004* (QLD), the *Construction Contracts (Security of Payments) Act 2004* (NT), the *Building and Construction Industry Security of Payment Act 1999*

(NSW) or the *Building and Construction Industry Security of Payment Act 2009* (SA) (as applies in the State or Territory specified in the delivery instructions in the Purchase Order) and "Appointor" means (in Western Australia and Northern Territory) the prescribed appointor and (in New South Wales and South Australia) the authorised nominating authority and (in Queensland) the Adjudication Registry (each as defined in the Security of Payment Law as applies in the State or Territory specified in the delivery instructions in the Purchase Order).

- (b) The parties agree that for the purposes of any adjudication in Victoria under the Security of Payment Law in relation to this Contract or the Work, the Appointor shall be one of the following:
- (i) the Resolution Institute;
 - (ii) Building Adjudication Victoria Inc; or
 - (iii) Rialto Adjudications Pty Ltd.
- (c) The parties agree that for the purposes of any adjudication in South Australia, New South Wales, Western Australia or the Northern Territory under the Security of Payment Law in relation to this Contract or the Work, the Appointor shall be the Resolution Institute.
- (d) The parties agree that for the purposes of any adjudication in Queensland under the Security of Payment Law in relation to this Contract or the Work, the Appointor shall be the Adjudication Registry.

25. Audit

The Purchaser may require the Supplier, at its cost, to conduct or participate in an audit of its compliance with its obligations under this Contract from time to time. Such audit may be conducted by the Supplier, the Purchaser or a third party as directed by the Purchaser. Where the audit identifies any non-compliance (as determined by the Purchaser acting reasonably), the Supplier must remedy the non-compliance at its cost within a reasonable period unless otherwise directed by the Purchaser.

26. Dispute Resolution Procedure

In the event of a dispute arising between the parties as to this Contract it must be resolved in accordance with the following procedure:

26.1 Notice

Either party may give the other a written notice of dispute adequately identifying and providing details of the dispute or difference.

26.2 Senior Executives Meeting

Within 14 days (or such other time as may be agreed in writing by the parties) of submission of the notice under clause 26.1, Senior Executives of both parties (with authority to resolve the dispute) must meet and endeavour to resolve the dispute in good faith.

26.3. Adjudication under Security of Payment Law

Notwithstanding clauses 26.2 and 26.4, where the Supplier disputes any part of a payment schedule issued by the Purchaser in relation to this Contract, the Supplier may, where it is otherwise entitled to do so under the Security of Payment Law, refer the payment dispute to adjudication in accordance with the Security of Payment Law.

26.4. Litigation

If the parties are unable to resolve the dispute or difference within 14 days following the date of the meeting determined in accordance with clause 26.2, either party may commence litigation in respect of the dispute or difference.

27. Privacy

The Supplier must in respect of Personal Information held in connection with the Subcontract, whether received from the Purchaser or otherwise:

- (a) Comply with the Privacy Laws;
- (b) Immediately notify the Purchaser where it becomes aware of:
 - (i) A breach of paragraph (s) by the Subcontractor; or
 - (ii) Any investigation by the Office of the Australian Information Commissioner; and
- (c) Indemnify the Purchaser against any Liability or Losses suffered or incurred by the Purchaser arising out of or in connection with a breach of paragraph (a) by the Supplier.
 - (i) If the Purchaser gives notice to the Supplier that it proposes to audit, either directly or through its auditors, the Suppliers information handling practices, the Supplier must provide all reasonable assistance to the party conducting such an audit.
 - (ii) This clause 27 shall survive the termination or expiry of the Contract.

28. Notices

Subject to clause 28(b), any notice, demand, consent or other communication given or made under this Contract which is in writing:

- (a) must either be delivered to the intended recipient:
 - (i) by prepaid post or by hand, to the address set out in the Purchase Order or such other address last notified by the intended recipient to the sender; or
 - (ii) by email:
 1. with a subject heading of the email containing the name of the notice that is being given in the following format: "[name of project] Purchase

- Order - [name of notice]" - so that the nature of the email is readily identifiable by the recipient; and
2. to the email address set out in on the Purchase Order or such other email address last notified by the intended recipient to the sender; and
- (ii) will be taken to be duly given or made:
1. in the case of delivery in person, when delivered;
 2. in the case of delivery by post by:
 - (a) regular prepaid post or registered post, 6 business days after the date of posting;
 - (b) priority prepaid post or priority registered post, 4 business days after the date on which the notice was posted; and
 - (c) using express post, 2 business days after posting; and
 3. in the case of sending via email, immediately upon the email being sent, unless the sender receives an automatically generated notification from the recipient, or the recipient's email system, that the notice or relevant email has not been delivered or received or that the delivery of the notice or relevant email has been delayed ('bounce back notification'), in which case the notice is not taken to have been effected, but if the email (other than where the sender receives a bounce back notification from the recipient or the recipient's email system) is received after 4.00 pm on any day, or on a day that is not a business day, it will (unless it is a payment schedule or any notice issued by the Purchaser under the Security of Payment Law) be taken to have been duly given or made at the commencement of business on the next business day in that place.
- (b) Notices to be given or served by the Supplier under, or in connection with, clause 17 or the Security of Payment Law must not be served via email.

SCHEDULE 1

The Supplier shall ensure that its acts or omissions do not cause the Purchaser to contravene any of its obligations under the applicable Building and Construction Code.

Compliance with any Building and Construction Code shall not relieve the Supplier from responsibility to provide the Goods and/or the Work in accordance with the Contract or from liability for any breach of the Contract.

In this Schedule 1, "**Building and Construction Code**" means any code of practice or equivalent relating to the conditions of providing building and construction services to the State or Federal Government (including any applicable Implementation Guidelines under the relevant code) including but not limited to:

- Code for the Tendering and Performance of Building Work 2016;
- New South Wales Code of Practice for Procurement: Building and Construction;
- Victorian Code of Practice for the Building and Construction Industry;
- Queensland Code of Practice for the Building and Construction Industry;
- Western Australia Building and Construction Industry Code of Conduct 2016 ("BCI Code");
- Code of Practice for the South Australian Construction Industry; and
- Northern Territory Procurement Code.

NSW Code of Practice

Where the State or Territory specified in the delivery instructions in the Purchaser Order is New South Wales the following applies:

For minor works and very small contracts (\$25,000 or less)

The NSW Government's Code of Practice for Procurement: Building and Construction Industry (NSW Code) and the NSW Government's Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction Industry (NSW Guidelines) may apply to the works. By accepting to perform the works, the Supplier warrants that it is not precluded from entering the Contract and accepting the works and agrees that it will be taken to have read and understood, and that it will comply with, the NSW Code and NSW Guidelines.

For works valued over \$25,000

- (a) NSW Code and NSW Guidelines

In addition to terms defined in this Contract, terms used in this Schedule 1 have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (NSW Guidelines) (as published by the NSW Treasury July 2013). The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

- (b) Primary Obligation

- (i) The Supplier must at all times comply with, and meet any obligations imposed by, the NSW Government's Code of Practice for the Building and Construction Industry (NSW Code) and NSW Guidelines.
- (ii) The Supplier must notify the CCU and the Client Agency of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (iii) Where the Supplier engages a subcontractor or consultant, the Supplier must ensure that the contract imposes on the subcontractor or consultant equivalent obligations to those in this Schedule 1 (under the heading NSW Code and NSW Guidelines), including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (iv) The Supplier must not appoint or engage another party in relation to the Project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

- (c) Access and information

- (i) The Supplier must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its subcontractors, consultants and related entities.
- (ii) The Supplier must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - a) enter and have access to sites and premises controlled by the Supplier, including but not limited to the project site;
 - b) inspect any work, material, machinery, appliance, article or facility;
 - c) access information and documents;
 - d) inspect and copy any record relevant to the project;
 - e) have access to personnel; and
 - f) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the Supplier, its subcontractors, consultants and related entities.

- (iii) The Supplier, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

- (d) Sanctions

- (i) The Supplier warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.

- (ii) If the Supplier does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.

- (iii) Where a sanction is imposed:

- a) it is without prejudice to any rights that would otherwise accrue to the parties; and
- b) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - i) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
 - ii) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Supplier, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

- (e) Compliance

- (i) The Supplier bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Supplier is not entitled to make a claim for reimbursement or an extension of time from the Client Agency or the State of NSW for such costs.
- (ii) Compliance with the NSW Code and NSW Guidelines does not relieve the Supplier from responsibility to perform the works and any other obligation under the Contract, or from liability for any defect in the works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (iii) Where a change in the Contract or works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the Supplier must immediately notify the Client Agency (or nominee) of the change, or likely change and specify:
 - a) the circumstances of the proposed change;
 - b) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
 - c) what steps the Supplier proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Work Health and Safety Management Plan); and the Client Agency will direct the Supplier as to the course it must adopt within 10 Business Days of receiving notice.

Victorian Code of Practice

Where the State or Territory specified in the delivery instructions in the Purchaser Order is Victoria the following applies:

For minor works and very small contracts (\$25,000 or less)

The Victorian Government's Code of Practice for the Building and Construction Industry (Victorian Code) and the Victorian Government's Implementation Guidelines to the Victorian Code of Practice for the Building and Construction Industry as amended from time to time (Victorian Guidelines) apply to the works. By accepting to perform the works, the Supplier warrants that it is not precluded from accepting the works and agrees that it will be deemed to have read and understood, and that it will comply with, the Victorian Code and Victorian Guidelines.

Contracts over \$25,000

- (a) Victorian Code and Victorian Guidelines

In addition to terms defined in this Contract, terms used in this Schedule 1 (under the heading Victorian Code and Victorian Guidelines), have the same meaning as is attributed to them in the Victorian Government's Implementation Guidelines to the Victorian Code of Practice for the Building and Construction Industry (Victorian Guidelines) (as published by the Department of Treasury and Finance, April 2012). The Victorian Code and Victorian Guidelines are available at www.dtf.vic.gov.au.

- (b) Primary Obligation

- (i) The Supplier must comply with, and meet any obligations imposed by, the Victorian Government's Code of Practice for the Building and Construction Industry (Victorian Code) and Victorian Guidelines.
- (ii) The Supplier must notify the CCCU (or nominee) and the Client Agency of any alleged breaches of the Victorian Code and Victorian Guidelines and of voluntary remedial action taken, within 24 hours of becoming aware of the alleged breach.
- (iii) Where the Supplier is authorised to engage a subcontractor or consultant, and it does so, the Supplier must ensure that any secondary contract imposes on the subcontractor or consultant equivalent obligations to those in this Schedule 1 (under the heading Victorian Code and Victorian Guidelines), including that the subcontractor or consultant must comply with, and meet any obligations imposed by, the Victorian Code and the Victorian Guidelines.
- (iv) The Supplier must not appoint or engage another party in relation to the Project where that appointment or engagement would breach a sanction imposed on the other party in relation to the Victorian Code or Victorian Guidelines.

- (c) Access and information

- (i) The Supplier must maintain adequate records of compliance with the Victorian Code and Victorian Guidelines by it, its subcontractors, consultants and related entities.
- (ii) The Supplier must allow, and take reasonable steps to facilitate, Victorian Government authorised personnel (including personnel of the CCCU) to:
 - a) enter and have access to sites and premises controlled by the Supplier, including the Site;
 - b) inspect any work, material, machinery, appliance, article or facility;

- c) access information and documents;
- d) inspect and copy any record relevant to the Project;
- e) have access to personnel; and
- f) interview any person.

as is necessary for the authorised personnel to monitor and investigate compliance with the Victorian Code and Victorian Guidelines, by the Supplier, its subcontractors, consultants and related entities.

- (iii) The Supplier, and its related entities, must agree to, and comply with, a request from Victorian Government authorised personnel (including personnel of the CCCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

(d) Sanctions

- (i) The Supplier warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the Victorian Code or Victorian Guidelines that would have precluded it from tendering for work to which the Victorian Code and Victorian Guidelines apply.

- (ii) If the Supplier does not comply with, or fails to meet any obligation imposed by, the Victorian Code or Victorian Guidelines, a sanction may be imposed against it in connection with the Victorian Code or Victorian Guidelines.

(iii) Where a sanction is imposed:

- a) it is without prejudice to any rights that would otherwise accrue to the parties; and
- b) the State of Victoria (through its agencies, Ministers and the CCCU) is entitled to:
 - i) record and disclose details of non-compliance with the Victorian Code or Victorian Guidelines and the sanction; and
 - ii) take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the Supplier, or its related entities, in respect of work to which the Victorian Code and Victorian Guidelines apply.

(e) Compliance

- (i) The Supplier bears the cost of ensuring its compliance with the Victorian Code and Victorian Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the Victorian Guidelines. The Supplier is not entitled to make a claim for reimbursement or an extension of time from the Client Agency or the State of Victoria for such costs.

- (ii) Compliance with the Victorian Code and Victorian Guidelines does not relieve the Supplier from responsibility to perform the works and any other obligation under the Contract, or from liability for any defect in the works or from any other legal liability, whether or not arising from its compliance with the Victorian Code and Victorian Guidelines.

- (iii) Where a change in the Contract or works is proposed, and that change would, or would be likely to, affect compliance with the Victorian Code and Victorian Guidelines, the Supplier must immediately notify the Client Agency (or nominee) of the change, or likely change and specify:

- a) the circumstances of the proposed change;
- b) the extent to which compliance with the Victorian Code and Victorian Guidelines will, or is likely to be, affected by the change; and
- c) what steps the Supplier proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Health and Safety Management Plan),

and the Client Agency will direct the Supplier as to the course it must adopt within 5 Business Days of receiving notice.

Queensland Code of Practice

Where the State or Territory specified in the delivery instructions in the Purchaser Order is Queensland the following applies:

For works valued over \$2 million

(a) Queensland Code

In addition to terms defined in this Contract, terms used in this Schedule 1 (under the heading Queensland Code), have the same meaning as is attributed to them in the Queensland Code of Practice for the Building and Construction Industry (Queensland Code). The Queensland Code is available at <https://www.oir.qld.gov.au/industrial-relations/building-and-construction-code-practice-2000>.

(b) Primary Obligation

- (i) The Supplier must comply with, and meet any obligations imposed by, the Queensland Code.
- (ii) The Supplier must notify the Client Agency of any alleged breaches of the Queensland Code and of voluntary remedial action taken, within 24 hours of becoming aware of the alleged breach.
- (iii) Where the Supplier is authorised to engage a subcontractor or consultant, and it does so, the Supplier must ensure that any secondary contract imposes on the subcontractor or consultant equivalent obligations to those in this Schedule 1 (under the heading Queensland Code), including that the subcontractor or consultant must comply with, and meet any obligations imposed by, the Queensland Code. The Supplier must not appoint or engage another party in relation to the Project where that appointment or engagement would breach a sanction imposed on the other party in relation to the Queensland Code.

(c) Access and information

- (i) The Supplier must maintain adequate records of compliance with the Queensland Code by it, its subcontractors, consultants and related entities.
- (ii) The Supplier must allow, and take reasonable steps to facilitate, Queensland Government authorised personnel to:

- a) enter and have access to sites and premises controlled by the Supplier, including the Site;
- b) inspect any work, material, machinery, appliance, article or facility;
- c) access information and documents;
- d) inspect and copy any record relevant to the project;
- e) have access to personnel;
- f) interview any person

as is necessary for the authorised personnel to monitor and investigate compliance with the Queensland Code, by the Supplier, its subcontractors, consultants and related entities.

- (iii) The Supplier, and its related entities, must agree to, and comply with, a request from Queensland Government authorised personnel for the production of specified documents by a certain date, whether in person, by post or electronic means.

(d) Sanctions

- (i) The Supplier warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the Queensland Code that would have precluded it from tendering for work to which the Queensland Code apply.

- (ii) If the Supplier does not comply with, or fails to meet any obligation imposed by, the Queensland Code, a sanction may be imposed against it in connection with the Queensland Code.

(iii) Where a sanction is imposed:

- a) it is without prejudice to any rights that would otherwise accrue to the parties;
- b) the State of Queensland (through its agencies and Ministers) is entitled to:
 - record and disclose details of non-compliance with the Queensland Code and the sanction;
 - take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the Supplier, or its related entities, in respect of work to which the Queensland Code applies.

(e) Compliance

- (i) The Supplier bears the cost of ensuring its compliance with the Queensland Code. The Supplier is not entitled to make a claim for reimbursement or an extension of time from the Client Agency or the State of Queensland for such costs.

- (ii) Compliance with the Queensland Code does not relieve the Supplier from responsibility to perform the works and any other obligation under the Contract, or from liability for any defect in the works or from any other legal liability, whether or not arising from its compliance with the Queensland Code.

- (iii) Where a change in the Contract or works is proposed, and that change would, or would be likely to, affect compliance with the Queensland Code, the Supplier must immediately notify the Client Agency (or nominee) of the change, or likely change and specify:

- a) the circumstances of the proposed change;
- b) the extent to which compliance with the Queensland Code will, or is likely to be, affected by the change;
- c) what steps the Supplier proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a workplace health and safety management plan)

and the Client Agency will direct the Supplier as to the course it must adopt within 5 Business Days of receiving notice.

Building Code (CTH)

(a) Interpretation

- (b) Except to the extent otherwise expressly provided in clause 1, in this section of Schedule 1:

- (i) terms used have the meanings given to them in the Building Code; and
- (ii) other than in clause (c)(iii)(E) in this section of Schedule 1, 'building work' means 'building work' (as defined in the Building Code) forming part of the Goods or the Work.

(c) General (all projects)

- (i) By entering into the Contract, the Supplier is deemed to have read and agreed to comply with all of the obligations, requirements and restrictions that apply to a code covered entity set out or referred to in the Code for the Tendering and Performance of Building Work 2016 ("Building Code"), as if the Supplier was a code covered entity under the Building Code. Copies of the Building Code are available at <https://www.abcc.gov.au/building-code/building-code-2016>.
- (ii) Without limiting clause (b)(i), the Supplier:

- (A) must respond to any requests for information made by the Purchaser concerning matters relating to the Building Code;
- (B) must, in relation to building work, report actual or threatened industrial action that is not protected action by employees of the Purchaser to the Purchaser as soon as practicable, but no later than 24 hours, after becoming aware of the threat or action;
- (C) must, to the extent reasonably practicable, take steps to prevent or bring an end to industrial action that is not protected action taken by the employees of the Purchaser;

- (D) must, in relation to building work, report any request or demand by a building association, whether made directly or indirectly, that the Supplier or secondary supplier engage in conduct that appears to be for the purposes of a secondary boycott within the meaning of the *Competition and Consumer Act 2010* (Cth) to the Purchaser as soon as practicable, but no later than 24 hours, after the request or demand is made;
- (E) must comply with the Purchaser's approach to managing drug and alcohol issues in the workplace to help ensure that no person attending the Site to perform building work does so under the influence of alcohol or drugs listed in Schedule 4 of the Building Code;
- (F) must notify the Purchaser of a breach, or a suspected breach, of the Building Code as soon as practicable, but no later than 2 working days after becoming aware of the breach or suspected breach and advise the Purchaser of the steps proposed to be taken to rectify the breach;
- (G) where a notification under clause (b)(ii)(F) is made in relation to a breach of this section of Schedule 1, must notify the Purchaser of the steps taken to rectify the breach within 10 days of providing the notification; and
- (H) comply with, and ensure all secondary suppliers comply with, the WRMP applicable in respect of the Goods or the Work (if any).
- (iii) The Supplier acknowledges the powers and functions of the ABC Commissioner and the ABCC under the *Building and Construction Industry (Improving Productivity Act) 2016* (Cth) and the Building Code and must ensure that it and its secondary suppliers comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including requests for entry under section 72 of the *Building and Construction Industry (Improving Productivity Act) 2016* (Cth), requests to interview any person under section 74 of the *Building and Construction Industry (Improving Productivity Act) 2016* (Cth), requests to produce records or documents under sections 74 and 77 of the *Building and Construction Industry (Improving Productivity Act) 2016* (Cth) and requests for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- (d) Commonwealth Funded Projects
- (i) This clause (c) applies unless otherwise notified by the Purchaser.
- (ii) Without limiting clause (b), the Supplier must:
- (A) comply with, and must ensure that each of its related entities, comply with the Building Code in respect of building work; and
- (B) report actual or threatened industrial action (whether protected industrial action under section 8 of the *Building and Construction Industry (Improving Productivity Act) 2016* (Cth) or industrial action that is not protected) by employees of the Purchaser to the Purchaser as soon as practicable, but no later than 24 hours, after becoming aware of the threat or action;
- (iii) The Supplier must ensure that it and its secondary suppliers:
- (A) are not covered by an enterprise agreement that does not meet the requirements of section 11 of the Building Code;
- (B) are not subject to an exclusion sanction;
- (C) have not had an adverse decision, direction or order made by a court or tribunal for a breach of the *Building and Construction Industry (Improving Productivity Act) 2016* (Cth), a designated building law, work health and safety law or competition and consumer law and failed to comply with the decision, direction or order;
- (D) will only use products in relation to the Contract and the Goods or the Work that comply with the relevant Australian standards published by, or on behalf of, Standards Australia; and
- (E) unless approved otherwise by the ABC Commissioner, are not excluded from performing building work funded by a state or territory government.
- (iv) The Supplier must:
- (A) without limiting and notwithstanding clause (c)(ii)(A), ensure that remedial action is taken to rectify any behaviour on the part of it and its secondary suppliers that is non-compliant with the Building Code;
- (B) advise the Purchaser every six months during the performance of its obligations under this Contract whether:
1. it has in the preceding 6 months or since it last advised the Purchaser (whichever is earliest), had an adverse decision, direction or order of a court or tribunal made against it for a breach of a designated building law, work health and safety law or the *Migration Act 1958* (Cth);
 2. it or its related entities have in the preceding 6 months or since it last advised the Purchaser (whichever is earliest) been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) to a building contractor or building industry participant; or
3. owed any unsatisfied judgment debts to a building contractor or building industry participant; and
- (C) must only enter into an agreement with a secondary supplier in relation to the Goods and/or the Work, as the case may be, where:
1. the secondary supplier has submitted to the Purchaser a declaration of compliance, including the further information outlined in Attachment A to the declaration of compliance, in substantively the same form as the model declaration of compliance applicable to suppliers and secondary suppliers in relation to the Building Code; and
 2. the agreement with the secondary supplier contains clauses in substantively the same form as this clause of Schedule 1 titled "Building Code (CTH)".
- (v) Compliance with the Building Code shall not relieve the Supplier from responsibility to perform its obligations under the Contract, or from liability for any defect in the Goods or the Work arising from compliance with the Building Code.

Building and Construction Industry Code (WA)

Where the State or Territory specified in the delivery instructions in the Purchaser Order is Western Australia the following applies:

In this clause "Building Industry Participants" means a building industry participant as defined in the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

- (a) The Supplier must comply with the Western Australia Building and Construction Industry Code of Conduct 2016 ("BCI Code"). Copies of the BCI Code are available at <https://www.commerce.wa.gov.au/publications/wa-building-and-construction-industry-code-conduct-2016>.
- (b) The Supplier must take all reasonable steps to ensure that, in supplying Goods and performing Work, its subcontractors and Building Industry Participants also comply with each obligation under the BCI Code.
- (c) Compliance with the BCI Code shall not limit or otherwise affect the Supplier's obligations and liabilities arising under or in connection with the Contract.