

General Terms and Conditions

1. DEFINITIONS

1.1. In these terms and conditions, unless the context otherwise requires:

Agreement means the agreement between the Company and the Contractor comprising of these Terms, the Purchase Order and any applicable specifications, as may be varied in accordance with these Terms.

Background IP means the Intellectual Property Rights of a party that are in existence at the date of these Terms, or come into existence after the date of these Terms otherwise than in connection with these Terms.

Company means Futura Resources Limited and its subsidiaries.

Completion means the stage in the performance of the Supply when: (i) in respect of Goods, all Goods have been delivered and accepted by the Company; (ii) in respect of Services, the Contractor has completed the performance of the Services in accordance with the Agreement; (iii) all necessary documentation and certification required by the Agreement have been provided to the Company; and (iv) the Contractor has done everything else which the Agreement requires it to do prior to achieving Completion.

Confidential Information means all information and records belonging to the Company or the Contractor in whatever form, and includes:

- (a) information which the Company or the Contractor indicates or has indicated is confidential or which might reasonably be considered confidential by the Company or the Contractor;
- (b) information which by its very nature might reasonably be understood to be confidential relating to or concerning the Company's or Contractor's activities;
- (c) information which is commercially valuable to the Company or the Contractor, including any notes, advices, papers or other communications in connection with the Company's or Contractor's activities provided to or by or prepared for or by the Company's or Contractor's other service providers and advisers, including by other Contractors and contractors and by the Company's or Contractor's lawyers and which are given to, copied, or otherwise in the possession of the Contractor or the Company;
- (d) information which relates to the Company's or Contractor's financial affairs and its dealings with government and government departments and authorities;
- (e) information which relates to any of the Company's or Contractor's contracts with a third party, including contractors, other Contractors and service providers and suppliers or to any arrangements or transactions between the Company or the Contractor and any other local government or state or federal government or authority, department or elected representative;
- (f) information which relates to trade secrets, intellectual property or Intellectual Property Rights;
- (g) information which is found in the Company's or Contractor's manuals or policies and plans;
- (h) information which relates to the Company's or Contractor's activities which are current, proposed, developed or being developed by or on behalf of the Company or Contractor, or for which the Company or Contractor is negotiating the provision of, including quotations, strategies, reports, concepts, plans, designs, drawings and programs;
- (i) all notes and other records prepared by the Company or Contractor or anybody else, based on or incorporating information referred to in sub-clauses (a) to (h) above; and

- (j) all copies of the information, notes and other records referred to in sub-clauses (a) to (h) above,

except for information that:

- (i) is or, after the commencement date, becomes available in the public domain (other than as a result of a breach of this document); or
- (ii) is required to be disclosed by law.

Contractor means any supplier, Contractor or person who undertakes a Contract for labour; to provide materials, to perform a service or do a job.

Created IP means all Intellectual Property Rights (present or future) created, discovered or coming into existence in connection with the provision of the Services (including all Intellectual Property Rights in both anything developed by the Contractor in providing the Services and in the documentation provided by the Company to the Contractor).

Defect means any defect, failure, shrinkage, omission or other fault; or non-conformance with the requirements of the Agreement, and Defective has a similar meaning.

Delivery Point means the delivery point set out in the Purchase Order;

Delivery Date means the date stated in the Purchase Order for the Completion of a Good or Service, as may be varied in accordance with these Terms.

Goods means the goods supplied by the Contractor to the Company, as described in the Purchase Order.

Group means the Related Bodies Corporate of the Company.

Intellectual Property Rights means all industrial and intellectual property rights (including moral rights) whether protectable by statute, at common law or in equity, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers;

Liabilities means damages, claims, losses, liabilities, costs and expenses of any kind.

Loss includes any losses, damages, liabilities, charges and costs (including legal expenses);

Price means the amount payable for the Supply as set out in, or calculated in accordance with, the Purchase Order, as may be agreed between the parties.

Purchase Order means a purchase order issued by the Company to the Contractor in respect of the Supply.

Related Bodies Corporate has the meaning of that term in the *Corporations Act 2001* (Cth).

Services means the services or work described in the Purchase Order (if any) to be performed by the Contractor and any related services, activities, functions or responsibilities not specifically described in the Purchase Order but which are reasonably required for the proper performance and provision of such services or work.

Supply means the Goods to be supplied or the Services to be performed and the whole of the work to be executed in accordance with the Agreement (including the provision of any documentation and certification associated with any Good or Service) by the Contractor, as may be varied in accordance with these Terms.

Terms mean these terms and conditions.

1.2. Interpretation

In these Terms, unless context indicates a contrary intention:

(headings) clause headings and the table of contents are inserted for convenience only and do not affect interpretation of these Terms.

(party) a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns.

(including) including and includes (and any other similar expressions) are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind.

(corresponding meanings) a word that is derived from a defined word has a corresponding meaning.

(singular) the singular includes the plural and vice-versa.

(gender) words importing one gender include all other genders.

(rules of construction) neither these Terms nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

(legislation) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.

(time and date) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Brisbane, Australia, even if the obligation is to be performed elsewhere.

(writing) a reference to a notice, consent, request, approval or other communication under these Terms or an agreement between the parties means a written notice, request, consent, approval or agreement.

2. PURCHASE ORDERS

2.1. Terms

These Terms apply to all Purchase Orders issued by the Company and must be read by the Contractor in conjunction with all other documents comprising the Agreement.

2.2. Application of Terms and formation of Agreement

(a) The Contractor's provision of any part of the Supply the subject of the Purchase Order constitutes the Contractor's acceptance, and its agreement to be bound by, the Agreement in respect of the whole of the Supply the subject of the Purchase Order.

(b) A Purchase Order may be issued by the Company to the Contractor electronically, including by email.

2.3. Order of precedence

Unless the parties expressly agree otherwise (including by explicitly amending these Terms in a Purchase Order), these Terms will take precedence over any other document comprising the Agreement to the extent of any ambiguity in or inconsistency.

3. SERVICES

3.1. Standard of Services

The Contractor represents, warrants and undertakes in relation to the performance of the Services that it:

- (a) perform the Services with the skill, care and diligence reasonably expected from a qualified, competent and experienced provider of services of a similar type and complexity as the Services;
- (b) ensure that its personnel are appropriately trained and experienced;
- (c) ensure that the Services and any goods supplied are fit for the purpose for which they are required.
- (d) use parts, material and other goods which are new, of good and merchantable quality and fit for their intended purpose, and which, as a minimum, meet current industry standards;
- (e) has informed itself of the nature of the Services and the materials necessary for the performance of the Services (and the Contractor agrees that it will be solely responsible for those materials);
- (f) has thoroughly inspected the site(s) at which the Services are to be performed; and
- (g) it is reasonable for the Company to rely on the skill and judgment of the Contractor.

3.2. **Records**

The Contractor must maintain accurate records of the Services, including any plans, specifications and other details, dates and hours of work, personnel, materials used and any additional work required. The Company may inspect the records maintained under this clause at any time upon reasonable notice.

3.3. **Time for performance**

- (a) The Contractor must commence and perform the Services:
 - (i) at the site(s) specified in the Purchase Order (if any); and
 - (ii) promptly, and in any event, in accordance with any timetable which has been agreed in writing by the Company for the performance of the Services.
- (b) The Contractor must achieve Completion of the performance of the Services by the Delivery Date(s).

4. **GOODS**

4.1. **Standard of Goods:** The Contractor must ensure that the Goods:

- (a) are new, unencumbered, of merchantable quality and free from defects,
- (b) meet the description and specifications set out in the Purchase Order and offer documents,
- (c) are suitably packed, marked and transported; and
- (d) any services supplied are fit for the purpose for which the Goods or services are required; and

(e) any tools and equipment used on site by the Contractor or its personnel will be in safe working condition, will be compliance checked (if applicable), will comply with all laws and Australian Standards applicable to such tools and equipment, will be kept secure and fully insured, and will be operated by suitably qualified and competent persons, to the satisfaction of the Company.

4.2. **Third party warranties:** The Contractor must obtain all warranties relevant to the Goods from manufacturers or Contractors, including any warranties that are provided by any subcontractor and ensure that the Company has the benefit of those warranties.

4.3. **Records:** The Contractor must maintain accurate records of the Supply, including the dates on which the Goods were supplied, and any services provided. The Company may inspect the records maintained under this clause 4.3 at any time upon reasonable notice.

4.4. **Safety Data Sheets:** The Contractor must provide any Safety Data Sheets required by relevant laws.

5. DELIVERY

5.1. **Delivery Point:** The Contractor will deliver the goods to the Company at the delivery point as agreed between the parties and the goods delivered to each Delivery Point must be delivered in good condition and without damage caused by delivery. The Contractor will replace any damaged goods at no additional cost to the Company. The Contractor must obtain written confirmation from the Company that it has accepted the delivery of the Goods.

5.2. **Delivery Documentation:** The Contractor will provide detailed delivery dockets with every delivery, in duplicate. One delivery docket is to be packed with the Goods, the other is to be enclosed and attached to the outside of the consignment. Each delivery docket must contain as a minimum, the following information: the Company's Purchase Order number (if any); description and quantity of Goods; and details of any items on back order.

5.3. **Cooperation with other Contractors:** The Contractor must cooperate with and not unreasonably interfere with work or deliveries by other Contractors and the Company's personnel at the site.

6. RISK AND TITLE

6.1. The Goods remain at the Contractor's risk and title will not pass to the Company until the Goods are delivered to, inspected by, and accepted by, the Company at the relevant Delivery Point.

6.2. If the Company returns a Good to the Contractor pursuant to the Agreement, risk in that Good re-vests in the Contractor from the time of return until, and if, the Company provides its written acceptance of any re-delivery of that Good.

6.3. The Contractor represents, warrants and undertakes in relation to each Good that:

(a) the Good will be free from Defects;

(b) it has the right to sell the Good and upon ownership of the Good passing to the Company under these Terms will not sell or otherwise part with possession, custody or control of the Good and the Good is free from any Security Interest (other than any Security Interest in favour of the Company), charge, mortgage, lien or other encumbrance;

(c) where the Good is supplied by reference to a sample or description, the Good corresponds with the sample and description, in terms of quality and all other respects;

(d) the Good is of merchantable quality;

(e) it has informed itself of the purposes for which the Good is to be acquired by the Company and that the Good is fit for those purposes; and

(f) it is reasonable for the Company to rely on the skill and judgment of the Contractor.

7. DEFECTS

- (a) At any time prior to Completion, and for a period of at least twelve (12) months thereafter (or such longer period as may be agreed between the parties), the Contractor must, at its cost, (upon a written direction by Company and within the time stated in that direction or, if no time is stated, promptly) correct:
- i. any Defect in, or which has arisen from, the Supply (including any Defect in any Good or Service); and
 - ii. any consequential effects of the Defect, including by replacing the relevant Good or re-performing the relevant Services if required by the Company (**Defect Correction Period**).
- (b) Where the Contractor fails to correct a Defect in accordance with clause 7(a) (or its consequential effects), the Company may elect to:
- i. in respect of a Defective Good, return the Good to the Contractor; or
 - ii. in respect of Defective Services, have those Services carried out by itself or a third party (without in any way affecting or relieving any liability or obligation of, or any warranty given by, the Contractor under the Agreement), and the reasonable costs incurred by the Company in doing so (plus the cost of any returned Good) will be a debt immediately due from and payable by the Contractor to the Company.
- (c) Where any Defect in the Supply is corrected in accordance with clause 7(a) after Completion (irrespective of whether that correction was carried out by the Contractor, the Company or a third party), a separate Defect Correction Period of twelve (12) months will apply to the Good, Services or other work so corrected commencing from the completion of the correction of the Defect.
- (d) Instead of requiring the Contractor to correct a Defect in the Supply under clause 7(a), the Company may, in writing, notify the Contractor that the Company elects to accept the relevant Defective Supply, and the Contractor will be required to pay the Company, as a debt immediately due from and payable by the Contractor to the Company, the amount assessed by the Company (acting reasonably) as the resulting decrease in value to the Company of the Supply and any other Loss suffered by the Company due to the Defect.

8. LIQUIDATED DAMAGES

- 8.1. If liquidated damages are specified in the Purchase Order in respect of a Delivery Date and the Contractor fails to achieve Completion by the Delivery Date (except if the Contractor's failure to achieve Completion is due to an act or omission of the Company not permitted by the Agreement, in which case this clause 8 will not apply), then, without prejudice to Company's other rights and remedies, for each day between the Delivery Date and:

- (a) the date the Contractor achieves Completion; or
- (b) the date on which the Company terminates the Agreement, whichever is the earlier,

the Contractor must pay liquidated damages at the rate set out in the Purchase Order to a maximum of thirty percent (30%) of the Price. The parties acknowledge and agree that such liquidated damages are a genuine pre estimate of the minimum Loss that would be incurred by the Company by reason of the Contractor's failure to achieve Completion by the Delivery Date and that such damages are not intended to quantify the full extent of the Company's Losses.

- 8.2. In addition to any liquidated damages specified in the Purchase Order or if 'no', 'NIL', '\$0' or 'N/A' in respect of liquidated damages is specified in the Purchase Order, or if the liquidated damages provided for in the Purchase Order are found to be void or unenforceable for any reason, the parties agree that the Company may claim unliquidated damages at law from the Contractor in relation to the Contractor's failure to achieve Completion by the Delivery Date.

9. COMPLIANCE WITH LAWS

- 9.1. **Permits and authorisations:** At all times during the term of the Agreement, the Contractor and all relevant Contractor personnel must hold such permits, licences, authorisations and accreditations as may be required for the Contractor to perform its obligations under these Terms in compliance with all relevant laws; and at all times during the term, the Contractor and all relevant Contractor personnel must hold such permits, licences, authorisations and accreditations as may be required for the Contractor to perform its obligations under these Terms in compliance with all relevant laws.

- 9.2. **Supply to comply:** In performing its obligations, the Contractor must comply at all times with:

- (a) the conditions of any permits, licences, authorisations and accreditations held by the Contractor in accordance with clause 9;
- (b) all laws applicable to the Supply, including modern slavery and heavy vehicle chain of responsibility legislation;
- (c) the Company's site policies and rules; and
- (d) any Australian Standards applicable to the Supply.

10. DIRECTIONS

- 10.1. The Company may give reasonable directions to the Contractor to deliver the Goods in a particular manner or at a particular time. The Contractor must make all reasonable efforts to comply with any such directions provided that the Contractor will be fairly compensated in the event that it incurs significant additional cost or delay as a consequence.
- 10.2. The Company may give reasonable directions to the Contractor to provide the services in a particular manner, at a particular time, or to suspend all or part of the services. The Contractor must do everything possible to minimise any cost or expense consequent upon any suspension. The Contractor must make all reasonable efforts to comply with any such direction provided that the contractor will be fairly compensated in the event that it incurs significant additional cost or delay as a consequence.

11. COOPERATION AND RESPONSIBILITIES FOR THE SITE

- 11.1. **Cooperation:** The Contractor must co-operate with and not unreasonably interfere with work by other contractors and the Company's personnel.

- 11.2. **Responsibility for the site.** Without limiting any other obligation of the Contractor under these Terms, the Contractor shall:

- (a) in respect of any Services and any parts of the site occupied by it for the purposes of these Terms provide and maintain temporary guards, warning signs and fences, and erect appropriate notices and signs to a standard required by law and otherwise as approved by the Company;
- (b) and in respect of the site generally: use its best endeavours to protect all persons, vehicles and property at or in the vicinity of the site; and familiarise itself and its personnel with the Principal's risk management system, safety and health management system and other systems and policies applicable to the site and develop a system to ensure full compliance therewith.

When or where any direct damage or injury is caused to public or private property by or on account of any act, omission or misconduct on the part of the Contractor or its personnel in the execution of the Services, such property shall be restored by the Contractor at its expense.

12. **SUBCONTRACTORS**

The Contractor must not engage any subcontractor to perform any part of the services without the Company's prior approval (which may be conditional). Approval by the Company of any subcontractor and/or of any subcontract does not release the Contractor from any of its obligations under these Terms.

13. **REMOVAL OF PERSONNEL FROM SITE**

The Company's representative may direct the Contractor to remove from the site any person employed in connection with the Services who, in the reasonable opinion of the Company's representative, is guilty of misconduct, is incompetent or negligent or who works in an unsafe manner.

14. **CONTRACTOR'S EQUIPMENT**

14.1. **Plant and equipment supplied by Contractor:** The Contractor must supply all plant and equipment and other incidental items and materials required for the performance of the Services.

14.2. **Fit for purpose and compliance with laws:** All of the Contractor's equipment must comply with the requirements of this Agreement, the requirements of all relevant laws, the policies and requirements of the Company, applicable codes of practice and standards, and be properly licensed. The Company will inspect the Contractor's equipment brought to site and may reject any item of the Contractor's equipment which it considers unsuitable for the purpose for which the Contractor proposes to use it.

14.3. **Contractor's responsibilities in relation to Contractor's equipment:** The Contractor must ensure that the Contractor's equipment is suitable for the Services and maintained to a high standard to ensure safe operation and to avoid unnecessary disruption to the Services.

15. **PRICE AND PAYMENT**

15.1. **Price:** Subject to the proper performance by the Contractor of its obligations under the Agreement, the Company will pay the Contractor the Price in accordance with these Terms. Unless otherwise stated, the Price includes all of the Contractor's costs, including all packaging, marking, handling, freight, delivery, testing, certification and insurance costs and travel and subsistence expenses, associated with the Supply.

15.2. **Invoice:** The Contractor will provide the Company with a monthly tax invoice for the Services/Goods performed/delivered during the relevant calendar month, setting out particulars of the Services provided/goods and calculations by which the invoice was calculated.

15.3. **Payment:** The Company will pay the Contractor within thirty days of receipt of invoice.

15.4. **Partial Supply:** If the Contractor is unable to deliver or perform a part of the Supply in accordance with the Purchase Order, the Company may accept the partial performance or delivery of the Supply, and the Price will be adjusted to reflect the reduction in the delivery or performance of the Supply (as assessed by the Company, acting reasonably). Notwithstanding the foregoing, these Terms will continue to apply to the Supply delivered or performed.

15.5. **Disputed amounts:** If the Company disputes the whole or any portion of the amount claimed in an invoice submitted by the Contractor, the Company shall pay that portion of the amount stated in the invoice which is not in dispute and the Company shall notify the Contractor in writing of the reasons for disputing the invoice.

15.6. **Effect of payment:** The making of any payment to the Contractor shall not be taken or construed as proof or admission of the Services/Goods or any part thereof having been performed to the satisfaction of the Company but shall be taken to be payment on account.

15.7. **Taxes:** Except as otherwise provided in these Terms, the Contractor shall pay any and all taxes, duties, excises, assessments and other government charges in connection with the performance of the Services/Goods.

16. GST

16.1. The Price includes all Taxes, other than GST. The Company is not liable to pay or reimburse the Contractor in respect of the Taxes (other than GST) and the Contractor shall indemnify and keep indemnified the Company (and the indemnities if such indemnities shall be defined or otherwise referred to herein) from and against any liability for Taxes (other than GST).

16.2. The Company shall not be liable to the Contractor for any sum which would otherwise be payable to the Contractor but which the Company has withheld from payment or paid to the person or authority entitled thereto in accordance with any applicable law. For the purposes of this clause, the production of any notice of payment, receipt or any duplicate thereof shall be conclusive proof of such payment as between the Company and the Contractor.

16.3. Except under this clause, the consideration for a Supply made under or in connection with this Agreement does not include GST.

16.4. If a Supply made under or in connection with the Agreement is a Taxable Supply, then at or before the time the consideration for the Supply is payable:

- (a) the Recipient must pay the Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under the Agreement for that Supply); and
- (b) the Supplier must give the Recipient a Tax Invoice for the Supply.

16.5. If either party has the right under the Agreement to be reimbursed or indemnified by another party for a cost incurred in connection with this document, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).

16.6. In this clause, the terms "Input Tax Credit", "Joint Venture Operator", "Recipient", "Representative Member", "Supplier", "Supply" and "Taxable Supply" have the meanings given to them in the GST Act.

17. INSURANCE

17.1. **Required insurance:** The Contractor must, at its own cost, obtain and maintain the following insurances for the term:

- (a) Public liability insurance for not less than \$20,000,000;
- (b) Worker's compensation insurance; Comprehensive motor vehicle insurance covering all mechanically propelled vehicles used at any time in connection with the Services for not less than \$10,000,000; and
- (c) Compulsory third party motor vehicle insurance; and If indicated in the Purchase Order, professional indemnity insurance for an amount of \$5,000,000.

- 17.2. **Evidence of insurance:** The Contractor shall before commencing the Services/deliveries lodge with the Company certificates of currency to evidence the existence of the policies required to be arranged by the Contractor and its subcontractors in respect of such insurance and shall provide updated certificates of currency during the term.

18. INDEMNITIES

The Contractor is liable for and indemnifies (and will keep indemnified) the Company and its officers, directors, agents and employees in respect of any Claims made against or Losses sustained, incurred or suffered by any of them as a result of any:

- (a) Defect, inherent or otherwise, in the Supply or any part of the Supply, including but not limited to the re-performance or replacement of any Defective Supply (to the extent the Defect has not been caused by the Company);
- (b) Claim that the receipt, possession or use of any part of the Supply by the Company infringes the Intellectual Property Rights, or other rights, of any person;
- (c) breach of the Agreement or law by the Contractor or any of its personnel, subcontractors or suppliers; and
- (d) personal injury, death, disease or illness (including mental illness) of any person or loss of, or damage to, or loss of use of, any property of any person to the extent caused by the Contractor or any of its personnel, subcontractors or suppliers.

19. GENERAL WARRANTIES, NON-RELIANCE AND INFORMATION

The Contractor represents, warrants and undertakes to the Company that:

- (a) in carrying out the Supply and performing its other obligations under the Agreement:
 - i. it will at all times be suitably qualified and experienced, and will exercise due skill, care and diligence;
 - ii. it has obtained and will maintain all necessary consents, licences, permits, approvals and authorisations (other than those which the Company is expressly required to obtain under the Agreement);
 - iii. will ensure all Contractor personnel, subcontractors and suppliers, and each of their personnel, who provide the Services (either in part or in full) are of sound character; and
 - iv. it will at all times comply with all applicable Laws; and
- (b) at the time of entering into the Agreement:
 - i. it is a GST registered entity, and will remain a GST registered entity for the duration of the Agreement;
 - ii. no litigation, arbitration, criminal or administrative proceedings are current, pending or (to its knowledge) threatened which if adversely determined would have a material adverse effect on its ability to perform its obligations under the Agreement; and
 - iii. to the best of its knowledge, it does not have a conflict of interest, and no conflict of interest is likely to arise in the performance of the Agreement.
- (c) The Contractor must immediately notify the Company if it becomes aware, at any time, of the existence or possibility of a conflict of interest.

- (d) The Contractor warrants that it has entered into the Agreement without relying on any representation by the Company or any other person, and the Contractor agrees to make its own enquiries and investigations to confirm the accuracy of any company data and may not rely on any company data (unless it expressly forms part of the Agreement).
- (e) The Contractor must treat all information received or obtained by the Contractor in connection with the Agreement relating to the business and affairs of the Company as Confidential Information and must keep the same strictly confidential and not disclose it to any person without the prior written consent of the Company, other than to the Contractor's officers, directors and employees and professional advisers on a strict "need-to-know" basis or as may be required by applicable law.
- (f) Notwithstanding any other provision in the Agreement, any company data or other property (tangible or intangible) provided by the Company to the Contractor remains (as between the Company and the Contractor) the property of the Company and must be returned to the Company (or in the case of company data and at the Company's election, destroyed or erased) immediately upon the Company's request.
- (g) The Contractor must not disclose, including in its advertising, referral or publicity material, the existence of the Agreement or the terms of its relationship with the Company or use the Company's name, brand or trademarks for publicity or reference purposes without the prior written consent of the Company.

20. TERMINATION

- 20.1. The Company may terminate these Terms at any time at its sole discretion by providing 30 days' notice in writing to the other party.
- 20.2. Termination of these Terms does not affect any accrued rights or remedies of either party.
- 20.3. The Contractor is not entitled to any compensation or damages on termination of these Terms.
- 20.4. The Contractor must hand over to the Company all goods or materials used or produced by the Contractor, and any keys and property of the Company in the Contractor's possession, custody or control when required by the Company.

21. EXCLUSION OF CONSEQUENTIAL LOSS

Notwithstanding anything in these Terms (express or implied), in no circumstances whatsoever (including negligence) is a party entitled to recover from the other party any damages for business interruption or loss of actual or anticipated revenue, income or profits or any indirect, consequential, contingent or penal damages whatsoever arising out of, or in respect of, this contract, with the exception of damages covered under a policy of insurance held by the other party, for which that party's liability shall be limited to the cover available under such insurance policy. Each party releases the other party from, and indemnifies them and shall keep them indemnified from, any such liability.

22. INTELLECTUAL PROPERTY RIGHTS IN SERVICES

22.1. Background IP

- (e) The parties acknowledge that each party remains the owner of its Background IP and that nothing in these Terms prevents, limits or restricts a party's subsequent use or exploitation of its Background IP.
- (f) The Contractor grants to the Company a non-exclusive, transferable, royalty free, irrevocable and perpetual licence to use its Background IP in connection with the business of the Group to the extent such use is necessary to use the Services.

- (g) The Company may sub-licence the Company's rights to use the Contractor's Background IP to any member of the Group provided such use is in connection with the business of the Group.
- 22.2. **Created IP:** The Contractor agrees that all Created IP will be vested in the Company and will be the Company's property as and when created and the Contractor assigns and must ensure that all of its personnel assign all of their respective rights, title and interest in and to the Created IP (whether created before, on or after the date of signing these Terms) to the Company.
- 22.3. **Contractor warranty:** The Contractor warrants that it has the right to grant to the Company the licence under clause 22.1; and that it has the right to assign all Created IP to the Company in accordance with clause 22.2.
- 22.4. **General Contractor obligations:** The Contractor agrees to:
- (a) disclose to the Company all Created IP as and when it is created;
 - (b) ensure that any subcontract the Contractor enters into in relation to these Terms contains an assignment by the Subcontractor to the Company of all Intellectual Property Rights in any Created IP created by the Subcontractor for the purposes of this Contract;
 - (c) notify the Company as soon as the Contractor becomes aware of any suspected, threatened or actual infringement or unauthorised use of any Intellectual Property Rights in the Created IP and to provide all reasonable assistance in relation to that infringement; and
 - (d) provide all reasonable assistance the Company may request to protect, perfect enforce, defend or assert its interests in and right to use and exploit the Terms.

23. THIRD PARTY INTELLECTUAL PROPERTY RIGHTS

- 23.1. **Third party Intellectual Property Rights:** The Contractor warrants that to the extent that it uses or proposes to use the Intellectual Property Rights of any third party in the provision of the Services, or to the extent the Company will use or might propose to use the Intellectual Property Rights of any third party in the use and enjoyment of the Services, it has obtained, or will obtain at no further cost to the Principal, from the relevant third party all necessary licences and consents to use, or assignments of, such Intellectual Property Rights.
- 23.2. **Procurement of Intellectual Property Rights:** If the Company is prevented from operating or using the Services or any part of the Services as a result of any claim in relation to an infringement of Intellectual Property Rights, the Contractor must (at its cost) take all reasonable steps to procure for the Company the right to utilise the Services for the purpose for which it was intended.

24. CONFIDENTIALITY

- 24.1. **Confidentiality undertaking:** The Contractor undertakes, except where required by legislation, that it shall treat all Confidential Information as private and confidential. The Contractor undertakes that it shall not use Confidential Information for any purpose save the performance of the Services.
- 24.2. **Exceptions:** Clause 24.1 does not apply to: information after it becomes generally available to the public (other than as a result of the breach of this clause 24 or any other obligations of confidence imposed on the Contractor); or the disclosure of information in order to comply with any applicable Law or legally binding order of any court, government instrumentality or recognised stock exchange, provided that prior to such disclosure the Contractor gives notice to the Company with full particulars of the proposed disclosure.

- 24.3. **Security of confidential information:** The Contractor shall establish and maintain adequate security measures to protect the Confidential Information from unauthorised use or disclosure and keep the Confidential Information under effective control at all times. The Contractor shall ensure that its personnel who are to perform the Services strictly comply with the obligations under this clause 24 in relation to the Confidential Information. Further, the Contractor shall ensure that none of its personnel do anything which, if done by the Contractor, would be inconsistent with the Contractor's obligations in relation to the Confidential Information. The Contractor shall immediately notify the Company if it becomes aware of any loss of Confidential Information or any unauthorised disclosure or use of Confidential Information. Unless otherwise stated, any advice or report and its contents prepared by the Contractor is confidential and may not be publicly disclosed or published in any manner (except as required by law) unless the Contractor has given its prior written consent to the form and context of the public disclosure or publication and to the identity of the person(s) to whom it is to be disclosed or published.
- 24.4. **Acknowledgement and indemnity:** The Contractor acknowledges that: the Confidential Information will include information that is secret and highly confidential to the Principal, its related bodies corporate and its personnel (Indemnified Parties); disclosure of the Confidential Information in breach of the Contractor's obligations in relation to the Confidential Information could cause considerable commercial and financial detriment to the Indemnified Parties; and damages may be inadequate compensation for breach and, subject to a court's discretion, the Indemnified Parties may restrain by injunction or similar remedy any conduct or threatened conduct which is or will be a breach of the Contractor's obligations in relation to the Confidential Information. The Contractor shall be liable for and indemnify the Indemnified Parties in relation to any claim that the Indemnified Parties is liable for in respect of any breach of this clause 24.
- 24.5. **Duration of restrictions:** The restrictions contained herein shall continue to apply for a period of five years after the date of termination or expiry of the Agreement.

25. **KNOWLEDGE TRANSFER**

If requested by the Company, the Contractor must provide the following assistance to the Company on the termination or expiry of this contract: transferring or providing access to all information stored by whatever means held by the Contractor or under the control of the Contractor in connection with this contract; and making contractor personnel available for discussion with the Company as may be required. The time, length and subject of these discussions will be at the sole discretion of the Company, provided that any matter discussed is not considered to reveal any 'commercial in confidence' information of the Contractor. Usual Contractor fees will apply.

26. **PRIVACY AND DATA PROTECTION**

Each party agrees to comply with their obligations under the *Privacy Act 1988* (Cth) in respect of personal information obtained by or disclosed to them under these Terms.

27. **DISPUTE RESOLUTION**

The parties acknowledge their expectation that any dispute, difference or claim arising out of or relating to this agreement will be settled by discussion and negotiation between the parties' representatives or senior management.

28. **NO EXCLUSIVITY**

Entering into the Agreement with the Company does not:

- (a) give the Contractor the right to be the sole deliverer or supplier of any Goods or Services to the Company;
- (b) oblige the Company to acquire any particular quantity of any goods or services from the Contractor; or

- (c) prevent the Company from obtaining goods, services or other work that are the same as, or similar to, the Goods or Services from other suppliers.

29. PERSONAL PROPERTY SECURITIES ACT

- (a) The Contractor acknowledges and agrees that the Agreement:
 - i. constitutes a 'Security Agreement' for the purposes of the PPSA; and
 - ii. creates a Security Interest of the Company in the Goods and all things produced for or in connection with the performance of the Services.
- (b) the Company may, by notice to the Contractor, require it to take all steps or do any other thing that the Company considers necessary or desirable to ensure that the Agreement or any Security Interest arising hereunder, is enforceable against the Contractor or any third party or to protect, perfect, record or better secure, or obtain or preserve the priority of, the security position of the Company under the Agreement. The Contractor must comply with the requirements of such a notice within the time stated in the notice at the Contractor's cost.
- (c) The Contractor waives any rights to receive a verification statement. To the extent that Chapter 4 of the PPSA would otherwise apply to enforcement by the Company of any Security Interest in collateral, the parties agree that, to the extent the PPSA allows, sections 125, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply.

30. GENERAL

- 30.1. **Time is of the essence:** Time is of the essence in this contract, and the Contractor must comply strictly with the date indicated on the purchase order for performance of the services.
- 30.2. **Entire understanding:** The Agreement comprises the entire agreement of the parties and supersedes all prior agreements, negotiations and understandings between the parties, whether oral or written.
- 30.3. **Contractor assignment:** The Contractor must not assign, charge or encumber these Terms or any part thereof or any benefit, moneys, or interest under the Agreement without the Company's prior written consent.
- 30.4. **Independent Contractor:** The relationship between the Company and the Contractor is a relationship of Company and independent contractor and nothing contained in the Agreement shall be construed so as to create a relationship of employment, agency or partnership between the Company and the Contractor, or between the Company and any of the Contractor's personnel.
- 30.5. **Governing law:** The Agreement is governed by and construed in accordance with the laws of the state of Queensland and each party submits unconditionally to the nonexclusive jurisdiction of the courts of state of Queensland.
- 30.6. **Variations:** Any variation to the documents comprising the Agreement, including these Terms, the Purchase Order or any Specifications, must be in writing and signed by the parties.