

Conditions of Contract for Purchase Orders

CONDITIONS OF CONTRACT FOR PURCHASE ORDERS

These are the terms and conditions referred to in Buyer Purchase Orders and apply to Goods supplied in connection with the Purchase Order unless otherwise noted. If the Seller commences to supply Goods or Services then that is conclusive evidence that these *Conditions of Contract for Purchase Orders* have been agreed to.

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1.0 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In the Contract, except where the context otherwise requires:

Affiliate	means a body corporate, whether registered in Australia or overseas, which at any relevant time is a related body corporate, as defined in section 9 of the Corporations Act.
Approved	means approved in writing by the Buyer and “ Approval ” has a corresponding meaning.
Associated Activity	means any training course, travel or other activity (other than provision of the Works) undertaken by any member of the Seller Group in connection with the Works including activities undertaken: <ul style="list-style-type: none">(a) in order for the Seller to comply with or better perform its obligations under any Contract;(b) at the discretion of the relevant members of the Seller Group; or(c) at the request or suggestion of the Buyer.
Associated Documents	means, in relation to the Goods, all records and documents which are required to be delivered under the Contract in connection with the Goods or which the Buyer reasonably expects or requires to be delivered in connection with or ancillary or incidental to the Goods, including without limitation testing results, certifications, Material Safety Data Sheets (MSDS) operator manuals, manufacturer warranties, instructions, plans and diagrams.
Business Day	means a day on which banks are open for general banking business in Perth, Western Australia.
Buyer	means the buyer specified in the Purchase Order.
Buyer Group	means: <ul style="list-style-type: none">(a) the Buyer;(b) each Coventurer;(c) each Affiliate of the Buyer;(d) any joint venture or disclosed principal on whose behalf the Buyer is entering into the Contract as agent; and(e) the respective directors, officers and employees of all of the above persons (which for the purposes of this definition shall include all personnel engaged directly by the Buyer Group or engaged by the Buyer Group through a personnel services agreement or similar arrangement for casual or ad hoc labour).
Carbon Costs	means any costs of the Seller relating to the provision of the Works which are attributable to a requirement imposed on the Seller or an Affiliate of the Seller by a mandatory carbon pollution reduction scheme, emissions trading scheme, or any similar scheme relating to the reduction or removal of greenhouse gases.
Claim	means any claim, action, investigation, suit, proceeding, demand, judgment, cost, loss (including Consequential Losses), damage, liability, fine, penalty, expense (including legal costs) or obligation of whatever nature whether present, unascertained, contingent or prospective and including any interest thereon.
Consequential Loss	means:

	<ul style="list-style-type: none"> (a) indirect or consequential loss; (b) indirect purely economic loss; (c) loss and/or deferment of any production, revenue, profit or anticipated profit (whether such losses are direct or indirect); (d) loss and/or deferment of any opportunity to derive revenue or profit (whether such losses are direct or indirect); (e) loss and/or deferment of any ability or opportunity to defer, reduce, avoid or recoup any costs (whether such losses are direct or indirect); (f) loss and/or deferment of contract (whether such losses are direct or indirect); and (g) loss of goodwill (whether such loss is direct or indirect).
Contract	means the contract comprising the Purchase Order, these <i>Conditions of Contract for Purchase Orders</i> and any other documents annexed to or incorporated into the Contract by reference. To the extent of any inconsistency, the Purchase Order and these <i>Conditions of Contract for Purchase Orders</i> take precedence unless otherwise stated.
Corporations Act Coventurer	means the <i>Corporations Act 2001</i> (Commonwealth). means any person whilst acting in its capacity as a participant with the Buyer in a joint venture on whose behalf the Works is being performed.
Defect	means any error, omission, defect, deficiency or discrepancy in the Works as compared against the Specifications or any warranty, or any other failure of the Works to comply with the requirements of the Contract.
Defects Liability Period	means, in respect of Goods, the period commencing on the Commencement Date and ending on the later of: <ul style="list-style-type: none"> (a) eighteen months from the Delivery Date; or (b) twelve months from the date on which the Goods are commissioned, and in respect of all other Works, shall mean the period commencing on the Commencement Date and ending one year from the date of completion of the Works, in either case unless otherwise specified in the Contract.
Delivery Date	means the date for delivery of the Goods specified in the Purchase Order.
Delivery Point	means the place for delivery of the Goods specified in the Purchase Order.
Diligence	means the exercise of the degree of skill, expertise, expedition, diligence and foresight which would from time to time be expected of skilled and experienced professional contractors engaged in performing Works of a similar type as that required in the Contract in accordance with best industry practices and professional standards current from time to time and Diligent shall be construed accordingly.
Dispute	means any dispute or difference between the Buyer and the Seller under the Contract or in connection with the subject matter of the Contract.
Free Issue Materials	means items or materials (if any) to be supplied to the Seller by or on behalf of the Buyer.
Goods	means the goods to be supplied by the Seller to the Buyer as specified in the Purchase Order.

INCOTERMS 2000	means the trade definitions published by the International Chamber of Commerce in the year 2000.
Insolvency Event	<p>means any of the following events occurring in relation to the Seller or its ultimate parent entity or, if the Seller comprises a joint venture, one of the joint venturers:</p> <ul style="list-style-type: none"> (a) it resolves, has a petition presented, proceeding commenced on or an order made, that it be wound up; (b) it becomes insolvent or is deemed to be insolvent or unable to pay its debts; (c) it has a receiver, manager, provisional liquidator, official manager, trustee, liquidator, administrator or any other form of insolvency administrator or external management appointed or proceedings are commenced to appoint any such person; (d) any form of execution, distress, attachment or sequestration is issued, exercised or levied against it or any of its assets or property; (e) it ceases or threatens to cease to carry on business or pay its creditors; (f) it proposes or makes an arrangement, composition, compromise, reorganisation, moratorium, assignment or administration of debt with any of its creditors; (g) it takes any step to reduce its capital without the prior Approval of the Buyer; or (h) it seeks or obtains protection from its creditors under any applicable law.
Intellectual Property	any industrial or intellectual property throughout the world, including any patent, copyright, trade or service mark, registered or unregistered trademark, registered design, moral right or any right in any trade secret, know-how, confidential information or any other proprietary right or right to registration of such rights whether protectable by statute, at common law or in equity.
Materials	mean all materials, plant, machinery, equipment, products, processes and other things to be supplied by the Seller in the performance of the Works.
Party	means a party to the Contract.
Policies and Procedures	means the policies and procedures of the Buyer, or its Affiliates, that are notified to the Seller from time to time.
Purchase Order	means the order form entitled "Purchase Order" which forms part of the Contract.
Requirements	<p>Means all applicable laws and includes:</p> <ul style="list-style-type: none"> (a) the laws of the Commonwealth of Australia; (b) Acts and ordinances of any country, state or territory in which the Seller's obligations under the Contract are carried out; and (c) all other laws, regulations, conventions, orders and directions given by or on behalf of any governmental or semi-governmental authority or body which may apply to the Buyer Group's, the Seller Group's or the Seller's obligations under the Contract including anti-corruption laws, employment laws, export and re-export laws and regulations, health, safety and environment laws and competition laws.
Seller addressed.	means the person, firm or company to whom the Purchase Order is addressed.

Seller Group	means: <ul style="list-style-type: none"> (a) the Seller; (b) each subcontractor (of every tier) of the Seller and its Affiliates; (c) each Affiliate of the Seller; (d) each Affiliate of each subcontractor (of every tier) of the Seller and its Affiliates; (e) where the Seller is a joint venture, each of its participants and each of such participants' Affiliates; and (f) the respective directors, officers and employees of all of the above persons (which for the purposes of this definition shall include all personnel engaged directly by the Seller Group or engaged by the Seller Group through a personnel services agreement or similar arrangement for casual or ad hoc labour).
Services	means any services to be performed by the Seller, including without limitation installation, commissioning, maintenance or other services performed in connection with the supply of the Goods including when any of the Seller Group are present on the Buyer's premises.
Specifications	means the specifications referred to in the Contract and any modification of such specifications directed or approved by the Buyer.
Wilful Misconduct	means a deliberate or reckless act or omission that deviates from a reasonable course of action or from any provision of the Purchase Order and which is committed or omitted with knowledge of or conscious indifference to potential injury or death to persons, potential loss or damage to property or other potential harmful consequences.
Works	means: <ul style="list-style-type: none"> (a) the works or services described in and to be performed under the Contract; (b) the Goods to be supplied by the Seller under the Contract; and (c) any Materials to be provided in connection with performance of the Contract; <p>and shall include:</p> <ul style="list-style-type: none"> (d) the Works as varied by any direction given by the Buyer from time to time; (e) all rectifications and reinstatement of anything done to remedy any Defects; and (f) any other matter or thing which the Seller is obliged to do or causes to be done or the result or effect which the Seller must achieve or cause to be achieved to comply with its obligations under the Contract.

1.2 Interpretation

1.2.1 In the Contract:

- (a) the clause headings and sub-clause headings shall not form part of, and shall not be used in interpretation of, the Contract;
- (b) words in the singular include the plural and words in the plural include the singular, according to the requirements of context;
- (c) words importing a gender include every gender; and

- (d) the Contract is not intended to, and does not, create any partnership, joint venture, agency relationship or other business entity between the Buyer and the Seller.
- 1.2.2 Performance of an obligation of any kind by the Seller must be carried out at the Seller's cost unless the Contract states otherwise.
- 1.2.3 If the Buyer makes any payment or otherwise incurs any liability of any kind in meeting any obligation of the Seller pursuant to the Contract, the cost so incurred becomes a debt then due and owing by the Seller to the Buyer.
- 1.2.4 Where the Contract, expressly or impliedly:
 - (a) allows the Buyer a discretion as to whether or not to do or not to do any act, matter, or thing of any kind, or as to how it may be done; or
 - (b) confers a power of determination, or a right or obligation to form an opinion or the like; that discretion, power, right or obligation may be exercised or performed in the absolute discretion of the Buyer, unless expressly stated otherwise.
- 1.2.5 In the interpretation of a provision of the Contract, a construction adverse to a Party must not be preferred solely on the ground that:
 - (a) that Party was responsible for the preparation of the Contract or that provision; or
 - (b) the Contract or that provision favours the person relying upon that provision.
- 1.2.6 A reference to a Requirement, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, resolutions, ordinances or by-laws amending, consolidating or replacing any of them, and includes any changes to or new Requirement and a reference to a Requirement includes all regulations, proclamations, ordinances and by-laws issued thereunder.
- 1.2.7 In the Contract, “**including**” means “including without limitation” and other forms of the word “include” are to be interpreted similarly.
- 1.2.8 In the Contract, “**indemnify**” means to indemnify, save, defend and hold harmless against all Claims and “**indemnifies**” and “**indemnities**” shall be construed accordingly and where a person indemnifies another person against a Claim which may entitle the indemnifying person to bring a Claim against the indemnified person, then the indemnifying person shall waive and fully release the indemnified person from all such Claims. All indemnities in the Contract survive termination, expiry or completion of the Contract.

2.0 ACCEPTANCE OF PURCHASE ORDER

- 2.1 The Seller in agreeing to supply Goods under this Purchase Order accepts these conditions.

3.0 SERVICES

- 3.1 This Contract is primarily for the supply of Goods. However, the provisions of Annexure A to these Conditions of Contract for Purchase Orders apply to the extent that the Seller provides any Services under the Contract.

4.0 HEALTH, SAFETY, ENVIRONMENT AND REGULATION

- 4.1 The Seller shall perform the Contract in a manner that protects the environment and the safety and health of all personnel and the public and shall comply with all Requirements.

5.0 INVOICING, PAYMENTS & FINANCING

- 5.1 The Buyer must pay the Seller for the Works provided in accordance with the rates and charges set out in the Contract, such rates and fees to remain fixed for the term of the Contract unless otherwise stated in the Contract or agreed between the Parties.
- 5.2 These prices shall include all costs incurred by the Seller in relation to the Goods, including without limitation the cost of manufacture, testing, certification, packaging, handling, storage, transport and all costs incurred in the course of carrying out the requirements of the Contract.

- 5.3 The Seller must deliver to the Buyer an invoice covering the Works provided during the previous calendar month. Invoices shall be submitted in the number and form requested by the Buyer, accompanied by such certification and documentation as the Buyer may require.
- 5.4 Where the Buyer receives an invoice from the Seller that is in compliance with clause 5.3 (“Conforming Invoice”) the Buyer must, unless a dispute is raised under clause 5.5 in respect of the Conforming Invoice prior to payment of the Conforming Invoice, pay the Conforming Invoice and must use reasonable endeavours to so pay within 30 days of receipt of the Conforming Invoice.
- 5.5 If the Buyer disputes any Conforming Invoice (“Disputed Invoice”) in whole or in part, the Buyer must as soon as reasonably practicable thereafter notify the Seller of the dispute.
- 5.6 Where a dispute is raised under clause 5.5, then the Seller must issue a credit note (“Credit Note”) to the Buyer for the disputed portion of the Disputed Invoice (“Disputed Portion”) in the form requested by the Buyer. The Seller must also immediately issue a new invoice in respect of the Disputed Portion (“Disputed Portion Invoice”) in the form requested by the Buyer.
- 5.7 Where the Disputed Invoice had not already been paid by the Buyer prior to a dispute being raised under clause 5.5, then the Buyer must pay the undisputed portion of such Disputed Invoice and must use reasonable endeavours to so pay within 30 days of receipt of both a Credit Note and Disputed Portion Invoice in compliance with clause 5.6.
- 5.8 Where a dispute is raised under clause 5.5, the Buyer and the Seller must discuss the dispute in good faith with the aim of determining the amount that should be paid under the Disputed Portion Invoice (“Determined Amount”).
- 5.9 Where the Determined Amount is determined in accordance with clause 5.8 or clause 25.0:
- 5.9.1 the Seller must promptly issue a credit note to the Buyer in the form required by the Buyer to the extent that the Disputed Portion Invoice is in excess of the Determined Amount; and
 - 5.9.2 the Buyer must pay such amount of the Disputed Portion Invoice that is equal to the Determined Amount and must use reasonable endeavours to do so within 30 days of such determination or, if later, of receipt of the credit note (if any) referred to in clause 5.9(a).
- 5.10 Where the Seller is not satisfied with the timeliness of payment of Conforming Invoices by the Buyer then it must notify the Buyer as such setting out full details of the reasons for its dissatisfaction and as well as full details of the dates on which all relevant Conforming Invoices were issued and the dates and amounts of any payments made by the Buyer under such Conforming Invoices. The Buyer must then meet with the Seller to discuss its dissatisfaction in good faith and the Parties shall use all reasonable endeavours to satisfy the concerns of the Seller.
- 5.11 The Buyer may set-off against payments due to the Seller any amount claimed by any member of the Buyer Group from the Seller.
- 5.12 No payment by the Buyer shall prejudice the Buyer’s right to question or dispute an invoice or pursue or recover any claims against the Seller.
- 5.13 Unless otherwise agreed by the Parties, invoices must be submitted and payable in the currency as set out in the Purchase Order.

6.0 FREE ISSUE MATERIALS

- 6.1 If the Buyer Group provides any Free Issue Materials to the Seller Group, such Free Issue Materials remain the property of the Buyer Group, and the Seller is the bailee. On delivery to the Seller Group the Free Issue Materials shall be and remain at the sole risk of the Seller until Completion or delivery of the Goods to the Buyer, as the case may be.
- 6.0 The Seller shall clearly identify and mark as “The Property of [Buyer’s name as specified on the Purchase Order]”, separately store, protect and maintain in good order and condition and keep comprehensive records of all Free Issue Materials.
- 6.1 The Seller shall use all Free Issue Materials economically and solely for the purpose of the Contract.

- 6.2 Damage to or loss or waste of any Free Issue Materials arising from a failure of the Seller to use diligence shall be made good at the expense of the Seller by use of materials of at least the same quality.
- 6.3 All surplus Free Issue Materials are to be kept separate and reported to the Buyer for instructions regarding return or disposal.

7.0 INSPECTION

- 7.1 The Buyer and its agents have the right to enter any premises of Seller or its sub-contractors to inspect and test as may be necessary to ensure that Goods comply with the Contract. The Seller shall make this a condition of any sub-contracts.
- 7.2 The Seller is required to render all assistance with such inspections and testing, including providing any information which Buyer requires.
- 7.3 Inspections and tests may be made at any time and at any appropriate place including the plant or yard of the Seller or any member of the Seller Group, and the Seller must assist the Buyer in inspecting or testing. Likewise, the Seller must on the Buyer's request supply test and/or inspection reports and material certificates.
- 7.4 In the event that, as a result of such inspection and/or test, the Buyer discovers a Defect or that the Seller is not in compliance with its obligations under the Contract in any way then the Buyer's costs in carrying out such inspection and/or test shall be borne by the Seller as a debt due and owing to the Buyer or else deducted from any money due or which becomes due to the Seller Group by the Buyer Group.
- 7.5 Any inspection or testing by the Buyer, or any waiver by Buyer of such inspection or testing, will not relieve the Seller from full responsibility for the performance of its obligations under the Contract.
- 7.6 All Goods may be subject to inspection or testing within a reasonable time after arrival at the Delivery Point or final delivery destination.

8.0 LIFTING GUIDELINES

- 8.1 The Goods, the Goods' packaging and Seller's transportation, handling and lifting equipment must be designed, rated and tested to comply with the Buyer's Lifting Guidelines Parts 1, 2 and 3 as applicable. Where the equipment does not fully conform, the Buyer may remedy the fault at the Seller's cost. Such costs will include actual cost of rectification.

9.0 TITLE

- 9.1 Title to all or any portion of the Works and any Materials that are not to be returned to the Seller shall pass to the Buyer upon the earlier of:
- (a) identification of such Work or Materials to the Contract;
 - (b) any payment by or on behalf of the Buyer for such Work or Materials;
 - (c) tender of such Work and Materials to the applicable transportation provider for delivery to the Buyer; and
 - (d) incorporation of such Materials or Work into the Buyer Group's property, such Materials or Work arriving at the Buyer Group's premises or, in the case of Work being performed at a fabrication facility that is not on the Buyer Group's premises, upon incorporation of such Materials or Work into such fabricated portion.
- 9.2 The Seller shall clearly identify such Materials and other Work as the property of the Buyer by visibly marked or tagging in a manner reasonably acceptable to the Buyer, and the Seller shall, to the extent possible, segregate such Materials and other Work from other materials, work, goods and equipment owned by the Seller or other third parties. The Buyer shall have the right, at the Buyer's option, to inspect and verify that said Materials and other Work have been properly identified as the Buyer's property and segregated as required by the Buyer.

10.0 RISK IN THE GOODS

- 10.1 Risk in the Goods will be with the Seller until the delivery of the Goods to the Buyer at the Delivery Point.
- 10.2 The Seller shall make good any damage to the Goods while the Seller has risk in the Goods.

11.0 DUE DATE FOR DELIVERY

- 11.1 Time is of the essence for delivery of the Goods to the Delivery Point.
- 11.2 The Seller must deliver the Goods to the Buyer at the Delivery Point on or before the Delivery Date.
- 11.3 Immediately upon the Seller despatching the Goods, the Seller must notify the Buyer of the time of despatch, the Purchase Order number, the type and quantity of Goods despatched and the expected date and time of delivery.
- 11.4 Should it become apparent to the Seller that the Delivery Date will not be met, the Seller must immediately notify the Buyer of the revised date for delivery of the Goods. Additional costs incurred by the Buyer in expediting the Goods as a result of the Seller's delay may be offset at the option of the Buyer against monies due to the Seller Group by the Buyer Group.

12.0 MANNER OF DELIVERY

- 12.1 The Goods shall be delivered to the Delivery Point in such manner as is required under the Contract or if no such manner is specified, in such manner as the Buyer may require.
- 12.2 All Associated Documents shall be delivered with the Goods or in such other manner required under the Contract, or upon earlier termination of the Contract. Delivery will not be complete until all Associated Documents have been received and approved by the Buyer. The Seller must ensure that all Associated Documents are correct, valid and in good order.
- 12.3 All Goods supplied under the Contract must comply with the requirements of the Buyer Group's standard specifications for dangerous goods (where applicable) and forwarding, packaging, marking and storage of equipment and materials as may be notified to the Seller from time to time. Without limitation, all shipments of hazardous substances and/or dangerous goods must be accompanied by a current (issued within last 5 years) Material Safety Data Sheet compliant with NOHSC:2011(2003), and be packaged and labelled in compliance with Australian Code for the Transport of Dangerous Goods by Road and Rail and relevant Australian Commonwealth, State and Territory legislation.
- 12.4 The Seller indemnifies the Buyer against any loss or damage to the Goods suffered prior to their delivery at the Delivery Point.
- 12.5 Acceptance of the Goods does not constitute acknowledgment by the Buyer as to the condition of the Goods or of compliance of the Goods to the Contract.

13.0 COSTS ASSOCIATED WITH DELIVERY

- 13.1 The Seller is responsible for and must pay all costs and expenses associated with the Goods including transportation, freight, packaging, handling and storage of the Goods until delivery at the Delivery Point.

14.0 PACKAGING AND PROTECTION

- 14.1 The Seller is responsible for all appropriate and customary packaging of the Goods prior to dispatch.
- 14.2 All packaging and packaging waste products must be kept to a safe minimum and where practicable shall be reusable, recyclable, or suitable for environmentally safe disposal to landfill or incinerator. For practical waste handling reasons, the use of loose polystyrene beads as a package medium is prohibited.

- 14.3 All packages shall be clearly and legibly marked with the Goods material number (where applicable), the Purchase Order number, line number, delivery point and any other identification markings that may be requested by the Buyer in the Purchase Order.
- 14.4 The Buyer may return, at the Seller's cost, any Goods damaged in transit if the damage could reasonably have been avoided by appropriate packaging.

15.0 GOODS WARRANTIES

- 15.1 The Seller warrants that it has good and marketable title to the Goods and that the Goods are free from any encumbrances or liens.
- 15.2 The Seller warrants as follows in relation to the Goods and each part of the Goods that they must:
- (a) be manufactured to the highest standard of care, skill and Diligence that would normally be expected of a reputable and competent organisation providing goods similar to the Goods;
 - (b) be fit for their usual purpose and any purpose specified in the Contract;
 - (c) be free of defects in materials, workmanship and design;
 - (d) comply with all relevant Requirements and with best industry practices;
 - (e) be in good working order and condition;
 - (f) have a life expectancy commensurate with what would be expected of similar goods provided for similar purposes by a competent and reputable supplier or contractor;
 - (g) be manufactured strictly in accordance with any manufacturing drawings, specifications or description supplied to the Seller by the Buyer; and
 - (h) be new unless expressly stated otherwise in the Contract.
- 15.3 The delivery of a warranty or guarantee from any third party vendor, manufacturer or supplier shall be in addition to the warranties given by the Seller under the Contract, and shall not relieve the Seller from responsibility for its warranties under the Contract.
- 15.4 The Seller must assign to the Buyer the warranty or guarantee of any vendor, manufacturer or supplier of any Materials or Goods as well as any warranty of subcontractors, consultants or the specialised services of others, and the Seller will cooperate and assist the Buyer in the Buyer's enforcement of those warranties or guarantees.
- 15.5 The warranties in this clause are in addition to any warranties specified elsewhere in the Contract.

16.0 DEFECTS

16.1 Remediation of Defects

- 16.0.1 The Seller represents, warrants and guarantees that the Works will be free of Defects within the Defects Liability Period, will conform to the Specifications and that the Works will be capable of operation for the purpose specified in the Contract or, where none is specified, their usual purpose.
- 16.0.2 If the Seller discovers or is aware of any Defect then the Seller must promptly notify the Buyer of the Defect.
- 16.0.3 Upon request by the Buyer, the Seller must investigate the cause of any Defect and provide a report to the Buyer on the results of such investigation as soon as reasonably practicable thereafter.
- 16.0.4 Where a Defect occurs, the Seller must take such steps as are necessary to ensure that a defect similar to the Defect will not occur again.

- 16.0.5 If the Buyer discovers any Defect (whether pursuant to clause 16.1.2 or otherwise) that exists or existed within the Defects Liability Period, then at any time without prejudice to any other rights or remedies that the Buyer has or may have in relation to the Defect the Buyer: (i) may by notice require and the Seller must promptly remedy each Defect to the Buyer's satisfaction without cost to the Buyer and without causing damage to any other property or materials and avoiding and minimising disruption to the Buyer's ongoing operations; and (ii) will be entitled to perform the work itself or to cause it to be performed by third parties and the Buyer shall be entitled to recover from the Seller all costs and expenses associated with the remedial work as a debt due and owing or to deduct the same from any money due or which becomes due to the Seller Group by the Buyer Group.
- 16.0.6 Nothing in this clause is intended or shall be construed to relieve any manufacturer or supplier from any obligation or warranty which run in favour of the Seller, the Buyer or third parties.
- 16.0.7 The Seller's warranty under this clause does not extend to any defect or failure occurring in the Works to the extent that such defect or failure is due to:
- (a) improper use of the Works by the Buyer;
 - (b) an event of Force Majeure;
 - (c) normal wear and tear; or
 - (d) defective materials supplied by the Buyer.
- 16.0.8 If it is necessary for the Seller to carry out remedial work under this clause, the Seller must do so at such times as the Buyer reasonably requires and in a manner which causes as little inconvenience as possible to the Buyer Group and other contractors of the Buyer Group.
- 16.0.9 The Seller must remedy each Defect as required under this clause at any location nominated by the Buyer including at any offshore site. Unless otherwise agreed by the Parties or where the Defective Work was, or under the Contract was to be, carried out at such offshore site, if such remedial work is to be performed at an offshore site, all transportation from the Buyer's nominated onshore embarkation point to the offshore site and all accommodation and messing at the offshore site shall be provided by the Buyer at the Buyer's expense.

16.1 Rejection

- 16.1.1 The Buyer may reject all or any part of the Works that are not in accordance with the Contract or contain a Defect by written notice delivered to the Seller without prejudice to any other rights or remedies the Buyer has or may have in relation to such matter.
- 16.1.2 Notwithstanding:
- (a) anything to the contrary in the Contract; or
 - (b) the failure or otherwise of the Buyer to reject the Works in accordance with clause 16.2.1, the Buyer shall not be liable to pay the Seller for any Works which are not in accordance with the Contract and the Buyer shall be entitled to recover any amounts already paid to the Seller in respect of such Works as a debt due and owing or deduct the same from any money due or which becomes due to the Seller Group by the Buyer Group.

17.0 GST

- 17.1 Any reference in this clause to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- 17.2 Unless expressly included, the consideration for any supply made under or in connection with the Contract does not include an amount on account of GST in respect of the supply ("GST Exclusive Consideration") except as provided under this clause.
- 17.3 Any amount referred to in the Contract (other than an amount referred to in clause 17.8) which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- 17.4 To the extent that GST is payable in respect of any supply made by a party ("Supplier") under or in connection with the Contract, the consideration to be provided under the Contract for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST

Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.

17.5 The recipient must pay the additional amount payable under clause 17.4 to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.

The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under clause 17.4 or at such other time as the parties agree.

17.6 Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with the Contract the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 17.5, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.

17.7 If one of the Parties is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with the Contract, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 17.4.

18.0 COMPLIANCE WITH LAWS

18.0 Compliance with Requirements

18.0.1 The Seller must, and must procure that each member of Seller Group shall, comply with all Requirements and not do or fail to do anything which would cause any member of the Buyer Group to be in breach of a Requirement. The Seller must indemnify each of the Buyer Group against any Claim arising out of any failure by any member of the Seller Group to comply with this clause.

18.0.2 The Seller must, and must procure that each member of the Seller Group shall, comply with all applicable environmental laws and regulations, including those pertaining to the use, application and/or handling of pesticides, plant regulators, defoliant and/or desiccants, and, without limitation to any other indemnity contained in this Agreement, the Seller must indemnify each of the Buyer Group against any Claim arising out of any failure by any member of the Seller Group to comply with this clause. The Seller must remove any debris or material related to its equipment, tools or other items which the Seller Group brings onto Buyer Group sites or property.

18.0.3 The Seller must give all notices, make all applications and pay all fees, Carbon Costs and expenses, including increased or new fees, Carbon Costs and expenses, necessary to ensure compliance with the Requirements.

18.1 Tax

18.1.1 The Seller shall be solely liable, unless specifically stated elsewhere in the Contract, for payment of all taxes, licence and permit fees, import and export duty, harbour dues and pilotage fees, income, profit, payroll, fringe benefit, franchise and personal property taxes, duties and other similar imposts and all penalties or interest thereon.

18.1.2 The Seller must indemnify and keep indemnified the Buyer Group from and against all liability for payment of all of the taxes, assessments and contributions, dues, costs and fees referred to in clause 18.2.1 and all liability arising in respect of the non-payment of them whether arising from the performance of the Works or under any contract or arrangement with any member of the Seller Group.

18.2 Withholding Tax

18.2.1 The Buyer shall not be liable to the Seller and the Seller shall have no claim against the Buyer in respect of any sum which would otherwise be payable to the Seller under the Contract:

- (a) which the Buyer has withheld from payment in accordance with any applicable income tax or other law, until the Buyer is released from, or relieved from all liability pursuant to the relevant law in respect of the amount so withheld and is lawfully entitled to pay the sum to the Seller; or

- (b) which the Buyer has paid in accordance with the provisions of any applicable income tax or other law to the person, or authority legally entitled to accept payment.

19.0 TERMINATION FOR CONVENIENCE

- 19.1 At any time for any reason or no reason at all, whether or not the Seller is in default, the Buyer may terminate by written notice the whole or any part of the Works or the Contract.
- 19.2 Upon receipt of a notice under this clause, the Seller must immediately:
 - (a) cease the part or the whole of the Works;
 - (b) protect property in the possession of the Seller in which the Buyer has or may acquire an interest
 - (c) comply with any directions by the Buyer; and
 - (d) use its best endeavours to mitigate any loss or damage that it may suffer as a result of the termination
- 19.3 Subject to the Buyer's rights under or in connection with the Contract, including the rights to withhold or set-off payment and recovery of damages, the Buyer must pay the Seller:
 - 19.3.1 the outstanding and unpaid portion of the Contract Sum earned by the Seller up to the date of termination and which shall be established by the measured progress;
 - 19.3.2 the cost of Materials reasonably ordered by the Seller prior to the date of termination for the Works, which the Seller is legally liable to accept (subject to exercise of any termination rights by the Seller if the Buyer so directs), but only if the materials become the property of the Buyer upon payment;
 - 19.3.3 the reasonable costs of complying with any directions given by the Buyer's Representative upon, or subsequent to, termination,

and the Buyer shall not otherwise be liable to the Seller for any cost, loss, expense, lost profit or damage incurred by the Seller as a consequence of, or in connection with the Contract, the work under the Contract or a termination under this clause.
- 19.4 The Seller acknowledges that the provision of the Works is a competitive business and that Buyer may terminate the Contract under this clause 19.0 without considering the impact of such termination on the Seller.
- 19.5 Without prejudice to any other rights of the Buyer, the Buyer may, following termination of a Contract (including under this clause 19.0), perform the Works itself or procure a third party to perform the Works for reward in the place of the Seller.

20.0 TERMINATION FOR DEFAULT

- 20.1 The Buyer reserves the right to terminate the Contract by notice to the Seller if:
 - (a) the Seller experiences an Insolvency Event; or
 - (b) the Seller defaults in the performance of any of its obligations under the Contract.
- 20.2 In the event of termination under this clause, the Buyer shall, subject to the Buyer's right of set-off, pay the Seller amounts which have properly become due at the date of termination. The Buyer shall be under no further liability arising from termination.
- 20.3 The Buyer may deduct the costs which it incurs as a consequence of a default from amounts payable to the Seller.
- 20.4 If the sum payable to the Seller under the Contract is less than the aggregate of any deductions made under this clause, the amount of the difference will become a debt due and payable by the Seller to the Buyer.
- 20.5 Termination of the Contract shall be without prejudice to any rights or remedies that the Buyer may have arising from termination.

21.0 SURVIVAL OF OBLIGATIONS

- 21.1 The provisions in respect of confidentiality, insurance, audit rights, taxes and duties, conflict resolution, intellectual property, indemnities and governing law contained in the Contract shall survive the termination, expiry or completion of the Contract.
- 21.2 Termination of the Contract shall be without prejudice to any rights or remedies that the Parties may have arising prior to or in connection with such termination or the event that lead to such termination and any provisions necessary to give effect to such termination.

22.0 SUSPENSION

- 22.1 The Seller must not suspend the whole or any part of the Works without a written direction from the Buyer. In particular, the Seller must not cease or suspend or threaten to cease or suspend the whole or any part of the Works for convenience or on the basis that it is not making sufficient profit under the Contract or that it can make more profit working elsewhere. The Seller must ensure that each member of the Seller Group complies with this clause and the Seller indemnifies the Buyer Group against any Claim which arises from a breach of this clause by any member of the Seller Group.
- 22.2 If the Buyer considers that suspension of the whole or part of the Contract is necessary for any reason, the Buyer may direct the Seller to suspend the progress of the whole or part of the Contract for such reasonable time and under such reasonable conditions as the Buyer determines.

23.0 AUDIT

- 23.1 The Seller must, and must ensure that the Seller Group:
- (a) maintains a true and correct set of records pertaining to all activities relating to its performance of the Works and all transactions related thereto;
 - (b) retains all such records for a period of not less than four (4) years after final payment for the Works; provided however there shall be no obligation to continue to maintain records that have been audited and determined to be fully accurate by the Buyer;
 - (c) permits any representative or representatives of Coventurers authorised by the Buyer to audit any and all such records at any reasonable time or times and with reasonable notice during the term of the Contract and during the four (4) year period after final payment for the Works and all transactions related thereto;
 - (d) affords the Buyer and its representatives access to all records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data pertaining to the Contract, or any other data deemed, in the sole opinion of the Buyer, necessary for the conduct of the Buyer's business during such audits;
 - (e) co-operates fully with the Buyer during the audits performed hereunder, including furnishing the Buyer with copies of all requested documents. Buyer shall have the right to also obtain statements from the members of Seller Group in the course of such audits; and
 - (f) provides any and all information and documents relevant to the Works to the Buyer upon request, save where such information or documents are confidential and commercially sensitive and are not subject to any requirement of disclosure under Requirements.
- 23.2 The Seller must maintain a complete log of all Works performed and must provide the Buyer with reports containing all information as required by the Buyer from time to time.

24.0 CHANGE MANAGEMENT

- 24.1 The Seller shall formally advise the Buyer of any manufacturing or supplier changes and/or administrative part number changes in the Goods and provide a brief explanation of the nature of the change.

25.0 RESOLUTION OF DISPUTES

25.0 Notice of Dispute

25.1.1 In the event of any Dispute, either Party must give to the other written notice adequately identifying the matters that are the subject of the Dispute.

25.1 Parties to Confer

25.1.1 Within 14 days of the service of a notice of Dispute, the Parties must confer at least once to attempt to resolve the Dispute and failing resolution of the Dispute to explore alternative methods of resolving the Dispute. At any such conference each Party must be represented by a person having authority to agree to a resolution of the Dispute.

25.2 Escalation

25.2.1 If the Dispute has not been resolved within 20 days of the first meeting under clause 25.2.1 the matter shall be referred to a senior executive of each Party who shall have been delegated the authority to settle the Dispute ("Senior Executives"). The Parties must promptly prepare and exchange memoranda stating full particulars of the Dispute and their positions, summarizing the negotiations which have taken place, and attaching relevant documents ("Position Memoranda"). The Senior Executives will meet for negotiations within 14 days of the end of the 20 day period specified in this clause at an agreed time.

25.2.2 If the Senior Executives do not resolve the Dispute, then the Senior Executives may agree an alternative dispute resolution method (for example, mediation or expert determination).

25.2.3 If the Dispute is not resolved after compliance with this clause 25.0 then the Parties may by mutual agreement refer the Dispute to arbitration or, in the absence of such agreement, either party may commence legal proceedings.

25.3 Proceeding With The Works

25.3.1 Notwithstanding this clause 25.0, if the Works have not been completed, at all times (subject as otherwise may be provided for in the Contract) the Seller must proceed with expedition to continue to perform the Works and in so doing shall comply with all instructions of the Buyer pending resolution of the Dispute.

25.4 Urgent Court Application

25.4.1 Notwithstanding the provisions of this clause 25.0 neither Party shall be prevented or restrained from applying to a Court of competent jurisdiction to seek urgent relief. The Parties must as soon as is practicable and in conjunction with the urgent court application, comply with the procedure in clauses 25.1 to 25.3.

26.0 PATENT INFRINGEMENT AND INTELLECTUAL PROPERTY

26.0 The Seller indemnifies the Buyer Group from and against all Claims of whatsoever kind asserted by or arising in favor of any person or entity for or as a result of infringement, misappropriation or misuse of any Intellectual Property rights, based on or related to the Seller Group's use or application of any Material, equipment, article of manufacture, machine, computer software, composition of matter, or process or based on the Buyer Group's use or application of any Material, equipment, article of manufacture, machine, computer software, composition of matter, or process (which is supplied or provided by the Seller Group to the Buyer Group) for its intended purpose or in reliance on advice or instruction from any member of the Seller Group or else is attributable to the Seller Group in connection with the Works. Should the Seller be prevented from performing under the Contract by reason of legal proceedings based upon such claim of infringement, the Buyer shall be relieved of its obligations to make payment for the Works not performed or for items of equipment, machinery or any Materials.

26.1 All payments for royalties, patent rights, copyright or in respect of any Intellectual Property and fees due or payable for, or in connection with any matter or thing, used or required to be used in the performance of the Contract or to be supplied under the Contract whether payable in one sum or by instalments or otherwise, must be included or deemed to be included by the Seller in the rates and prices payable under the Contract and must be paid by the Seller to those persons to whom they may be due and payable.

26.2 The Seller must ensure that, and warrants that, it has obtained from all authors and holders of moral rights in any part of the Works consent effective under all applicable law to the following ~~acts and/or omissions by the Buyer Group and its successors and assigns, and that such consent~~

is a genuine consent that has not been induced by duress or a false or misleading statement:

- (a) reproducing, publishing, adapting or communicating the Works to the public without attributing their authorship or otherwise identifying the author of the Works as, or attributing the authorship of the Works to, a person other than the author; and
- (b) subjecting the Works to derogatory treatment, that is namely, a material distortion, mutilation or material alteration or the doing of anything else to the Works including adapting, reproducing, adding, deleting, editing or modifying in such a way as may be contrary to the author's moral right of integrity of authorship.

26.3 The Buyer shall have the right to use, alter and copy all Works and Associated Documents provided by the Seller under the Contract, in any reasonable manner as may assist the Buyer to conduct its business. Such permitted use shall include the copying and publication of the Associated Documents for the purpose of education and training of the Buyer's employees and contractors of every tier.

27.0 ASSIGNMENT

27.1 The Seller must not subcontract or assign its rights, interests, obligations or liabilities under the Contract without the prior Approval of the Buyer. Reasonable utilisation by the Seller of personnel engaged directly by the Seller Group or engaged by the Seller Group through a personnel services agreement or similar arrangement for casual or ad hoc labour shall not be considered as subcontracts that require Approval.

27.2 Any such subcontract or assignment without the prior Approval of the Buyer shall be voidable at the Buyer's election and, if so elected, of no force and effect. The Contract shall inure to and be binding upon the respective successors and permitted assigns of the parties hereto.

27.3 The Seller must ensure that the provisions of each subcontract Approved by the Buyer under are consistent with the terms of the Contract and ensure that the Buyer's rights in the Contract are not limited by any clause in any subcontract.

27.4 The Buyer may assign or novate all or part of its rights, interest, obligations or liabilities under the Contract at any time to an Affiliate registered in Australia or whose principal place of business is in Australia or a Coventurer, without having to obtain the consent of the Seller and the Seller must execute any documentation required to give effect to such assignment or novation when directed to do so.

28.0 LIENS & CLAIMS

28.1 The Seller indemnifies the Buyer Group against all liens and other encumbrances against the Buyer Group's property on account of debts or claims alleged to be due from any member of the Seller Group to any person, including subcontractors, and on behalf of the Buyer Group, and in their names, must defend at its own expense any claim or litigation in connection therewith.

28.2 Notwithstanding anything to the contrary in the Contract, the Buyer may, upon notice to the Seller, withhold from payments due to the Seller such sums as are reasonable to cover probable lienable and non-lienable claims made against the Buyer Group or their property or the Seller or its subcontractors by third persons. The Buyer may make reasonable settlements of such claims.

28.3 Notwithstanding anything to the contrary in the Contract, the Seller indemnifies the Buyer Group against all Claims for:

- (a) any debt alleged to be due from the Seller to any subcontractor or other person, or from any of its subcontractors to any person; and
- (b) any lien or other encumbrance against the Buyer Group's property in connection with any such debt.

28.4 The Buyer may elect to participate in the defence of any claim or litigation at the Seller's expense.

29.0 BUSINESS ETHICS

29.1 The Seller shall not, and shall ensure that each member of the Seller Group shall not, directly or indirectly, (i) pay salaries, commissions or fees, or make payments or rebates to any member of the Buyer Group; (ii) favour members of the Buyer Group with gifts or entertainment of significant cost or value, or with services or goods sold at less than full market value; or (iii) enter into business arrangements with members of the Buyer Group, unless such members of the Buyer

Group are acting as representatives of the Buyer Group. Seller shall, and shall ensure each member of the Seller Group shall, comply with the Santos Code of Business Ethics and Conduct.

- 29.2 The Seller shall not, and shall ensure that each member of the Seller Group shall not, offer, pay, arrange for a third party to pay, or agree to pay any payment, gift or other thing of value of any nature to any officials, employees or agents of any government, any department, agency or instrumentality of any government, any political party, or any candidate for political office or other person or entity, including a legislative, administrative or judicial office (including any person exercising a public function for a public agency, a public enterprise or a public international organisation) where such payment, gift or other consideration would violate applicable laws and regulations or the principles set forth in the *Convention for Combating Bribery of Foreign Public Officials in International Business Transactions*, signed in Paris on December 17, 1997 (and without limitation, shall not perform any act which would constitute “bribery of a foreign official” as defined in Article 1(3) of such Convention), or the United States Foreign Corrupt Practices Act, or other anti-corruption legislation applicable to any party to a Contract.
- 29.3 If the Buyer reasonably believes that the Seller or any member of the Seller Group has or will engage in improper conduct in breach of this clause 29.0, the Buyer may, at its sole discretion, suspend any further performance by the Seller in accordance with the terms in clause 22.2 and withhold further payment to the Seller or terminate a Contract in accordance with the terms in clause 20.0 with immediate effect.
- 29.4 The Seller must ensure that each member of the Seller Group complies with this clause and the Seller indemnifies the Buyer Group against any Claim which arises from a breach of this clause by any member of the Seller Group.

30.0 EXPORT CONTROL COMPLIANCE

- 30.1 The Seller agrees to comply, and shall ensure that each member of the Seller Group complies, with all applicable export and re-export control laws and regulations, including Australian export and re-export control laws and regulations, the *Export Administration Regulations* (“**EAR**”) maintained by the U.S. Department of Commerce, trade and economic sanctions regulations maintained by the U.S. Treasury Department’s Office of Foreign Assets Control (“**OFAC**”), and the *International Traffic in Arms Regulations* (“**ITAR**”) maintained by the U.S. Department of State. Notwithstanding anything to the contrary in this clause 30.0, neither the Buyer nor the Seller shall be required to meet its obligations under the Contract in a way that violates any U.S. or Australian laws or regulations.
- 30.2 The Seller is responsible for obtaining any authorisation required under any applicable export and re-export control laws and regulations (including under Australian laws and regulations, EAR, OFAC regulations or ITAR), including licences required for the transfer of any regulated technology to nationals of certain countries. The Seller will, in a timely manner, identify in writing to the Buyer, those items, technology, and software or services for which an export authorisation is required and whether any licence or authorisation exceptions apply and provide export classification and licensing information necessary for export documents, including the appropriate Export Control Classification Number from the Commerce Control List, licence numbers and copies of licences and any other information requested by Buyer to ensure or evidence compliance with applicable export and re-export control laws.
- 30.3 In connection with the Contract, the Seller will not (i) engage with any person or entity that is listed on any U.S. government, Australian Government, or other applicable government list of prohibited or denied parties or organised under the laws of, operating under the flag of, performing services in, or resident in any country against which the United States or Australia has imposed comprehensive economic sanctions; or (ii) obtain any items, technology, software or services originating from any country against which the United States, Australia or other applicable government has imposed comprehensive import sanctions or restrictions. In the event that the Seller acts as the agent of the Buyer in connection with any procurement of goods, technology or services or the management of contractors or suppliers engaged by the Buyer, the Seller shall verify and ensure that the contractors or suppliers managed or contracted for by the Seller do not perform any act prohibited by items (i) and (ii) above in connection with the Contract.
- 30.4 The Seller agrees to indemnify the Buyer Group against any Claims that may arise as a result of Seller’s breach of this clause 30.0.
- 30.5 The Buyer agrees that no item, technology, or software received from the Seller is intended to be

shipped, either directly or indirectly, to any country, company or person or for any end-use that is prohibited under any applicable export control regulations. The Buyer agrees to indemnify the Seller from and against any Claims that may arise as a result of the Buyer's breach of its obligations under this clause 30.5.

31.0 BUYER AS AGENT

- 31.1 If the Buyer enters into the Contract in its capacity as agent on behalf of Coventurers or any disclosed principal as set out in the Purchase Order or as otherwise notified to the Seller by the Buyer:
- (a) the Seller must nevertheless deal only with the Buyer in relation to the Contract;
 - (b) (in the event that the Buyer enters into the Contract in its capacity as agent on behalf of Coventurers) the interests of the Coventurers may change from time to time without notice to the Seller;
 - (c) the rights and remedies under the Contract may be exercised by the Buyer for and on behalf of the Coventurers;
 - (d) the Seller's duties and obligations under the Contract are deemed to take effect for the benefit of each of the Coventurers and the Buyer is authorised to enforce those duties and obligations on its and the Coventurers' behalf; and
 - (e) the Seller may only enforce the rights and remedies in and under the Contract against the Buyer as agent severally for each of the Coventurers.
- 31.2 The Seller must not without the Buyer's prior Approval communicate in any way directly or indirectly with any Coventurer or any governmental or semi-governmental authority or body in respect of any matter or thing relating directly or indirectly to the Contract (except to the extent required by any Requirement).

32.0 BAILEE

- 32.1 Anything the Buyer delivers into the Seller's possession, custody or control is not the Seller's property. As between the Buyer and the Seller, such goods are the Buyer's property and the Seller is the bailee. This remains the position even if the Seller does Work on the items or incorporates the Buyer's items into the Works.

33.0 CONFIDENTIALITY

- 33.1 The Seller must ensure that no member of the Seller Group releases or allows the release of any information to the press, any news disseminating agency or communications media, except as required by law concerning the details of the Works, or the terms of the Contract, without in each instance securing the prior Approval of the Buyer. The Seller must obtain the prior Approval of the Buyer Group to the text of any publicity that the Seller proposes to issue in connection with the Contract.
- 33.2 Except to the extent necessary for the supply of Goods or performance of the Works, the Seller must not divulge to any third party any details of the nature of its business with the Buyer.

34.0 GENERAL

- 34.1 Where the Seller comprises two or more persons, each of them shall be jointly and severally liable for all of the Seller's obligations and liabilities under the Contract.
- 34.2 The Seller shall be liable for all acts, errors and omissions of the Seller Group.
- 34.3 The Contract shall be construed and interpreted in accordance with the laws of Western Australia and each party irrevocably submits to the exclusive jurisdiction of the courts of Western Australia.
- 34.4 The Sale of Goods Act (WA) 1895 does not apply to the Contract.
- 34.5 Service of any notice shall be deemed to be effected if sent to the Seller's place of business stated in the Purchase Order.
- 34.6 The Contract comprises the entire agreement of the Parties and supersedes all previous communications, representations and agreements with respect to the subject matter of the Contract except to the extent that the Buyer relies on representations made by the Seller as to the Seller's ability to perform the Works, the costs of performing the Works and the way in which

- the Seller shall perform the Works.
- 34.7** The Seller acknowledges that it has not relied on any representations (other than those expressly specified in the Contract) by the Buyer Group or any person representing them to induce it to enter into the Contract.
- 34.8** If any provision of the Contract is invalid, illegal or unenforceable in any respect in any jurisdiction then in that jurisdiction the provision remains enforceable to the extent that it is not invalid, illegal or unenforceable, whether it is in severable terms or not, unless enforcement of the provision in accordance with this clause would materially affect the nature or effect of the Party's obligations under the Contract. The remaining provisions of the Contract are not affected or impaired thereby in any way unless incapable of being operable in the absence of such invalid, illegal or unenforceable provisions.
- 34.9** The Seller expressly acknowledges and warrants that the Buyer entered into the Contract in reliance upon the skill and judgment of the Seller as an experienced and safe designer, manufacturer, fabricator, supplier, transporter, installer, erector, constructor, tester, repairer and commissioner (to the extent that the Works includes those activities) of work the size, nature and standard of the Works and the Seller's ability to carry out the Works in accordance with its tender.
- 34.10** No waiver by either Party of any default by the other Party shall be construed as a waiver of any future defaults.
- 34.11** No variation of the Contract shall be valid unless it is in writing and signed by or on behalf of duly authorised representatives of the Parties.

Annexure A

In the event that clause 3.0 applies, the following clauses shall apply:

35.0 INDEMNITIES

35.1 Indemnities Relating to Workers Compensation liabilities

35.1.1 To the extent permitted by law, the Seller indemnifies each of the Buyer Group against the payment of any compensation under the Workers Compensation and Injury Management Act 1981 (WA) or under any other workers compensation scheme where the event giving rise to such compensation arises in connection with the Works and relates to the personal injury, illness or death of:

- (a) any member of the Seller Group; and
- (b) any third party to the extent the injury, illness or death is caused by or contributed to by the Seller Group.

35.1.2 To the extent permitted by law, the Buyer indemnifies each of the Seller Group against the payment of any compensation under the Workers Compensation and Injury Management Act 1981 (WA) or under any other workers compensation scheme where the event giving rise to such compensation arises in connection with the Works and relates to the personal injury, illness or death of:

- (a) any member of the Buyer Group; and
- (b) any third party to the extent the injury, illness or death is caused by or contributed to by the Buyer Group.

35.2 Indemnities Relating to People

35.2.1 The Seller indemnifies each of the Buyer Group against any Claims (save for those Claims which are expressed to be the subject of clause 35.1.1), however arising and whosoever is the claimant, which Claim arises in connection with the Works and relates to personal injury, illness or death of:

- (a) any member of the Seller Group; and
- (b) any third party to the extent the injury, illness or death is caused by or contributed to by the Seller Group.

35.2.2 The Buyer indemnifies each of the Seller Group against any Claims (save for those Claims which are expressed to be the subject of clause 35.1.2), however arising and whosoever is the claimant, which Claim arises in connection with the Works and relates to personal injury, illness or death of:

- (a) any member of the Buyer Group; and
- (b) any third party to the extent that the injury, illness or death is caused by or contributed to by the Buyer Group.

35.3 Indemnities Relating to Property

35.3.1 The Seller indemnifies each of the Buyer Group against any Claims, however arising and whosoever is the claimant, which Claim arises in connection with the Works and relates to loss of or damage to or environmental contamination of:

- (a) any property owned, hired or supplied by the Seller Group; and
- (b) any third party property to the extent the loss or damage is caused by or contributed to by the Seller Group.

35.3.2 The Seller indemnifies the Buyer against any Claims, save to the extent that a Claim is for Consequential Loss, however arising and whosoever is the claimant which Claim arises in connection with the Works and relates to loss of or damage to or environmental contamination of any property owned by the Buyer up to U.S.D 1,000,000 per occurrence, to the extent such loss or damage results from the failure to properly perform any of its obligations under the Contract or

the failure to exercise care (whether the obligation to exercise care arises in contract, tort, under any statute of any relevant jurisdiction or under any other principle of law whatsoever) by any member of Seller Group.

- 35.3.3 The Buyer indemnifies each of the Seller Group against any Claims however arising and whosoever is the claimant, which Claim, arises in connection with the Works and relates to any loss of or damage to or environmental contamination of:
- (a) any property owned by the Buyer (save for the Works) above U.S.D 1,000,000 per occurrence;
 - (b) any property owned by the Buyer (save for the Works) to the extent that the Claim is for Consequential Loss; and
 - (c) (b) any third party property to the extent the loss or damage is caused by or contributed to by the Buyer Group.

35.4 Pollution

- 35.4.1 Subject to clause 35.3.3, the Seller indemnifies each of the Buyer Group against any Claims, however arising and whosoever is the claimant, which Claim, (including clean up costs) results from the discharge or escape of any pollutant or waste material from any property owned, hired or supplied by the Seller Group or any property that forms part of the Works arising in connection with the Works.
- 35.4.2 Subject to clause 35.3.1, the Buyer indemnifies each of the Seller Group against any Claims, however arising and whosoever is the claimant, which Claim (including clean up costs) results from the discharge or escape of any pollutant or waste material from any property owned by the Buyer Group (except for any property that forms part of the Works), arising in connection with the Works.

35.5 Mutual Indemnity

- 35.5.1 Save to the extent covered by other specific indemnities set out in the Contract, the Seller indemnifies each of the Buyer Group from any Claim for any Consequential Loss, whatsoever suffered by any member of the Seller Group and arising in connection with the Contract and/or the Works, whether or not caused in whole or in part by the default, the failure to exercise care, breach of statute or breach of any duty (whether the obligation to exercise care or the duty (as applicable) arises in contract, tort, under any statute of any relevant jurisdiction or under any other principle of law whatsoever) by any member of the Buyer Group.
- 35.5.2 Save to the extent covered by other specific indemnities set out in the Contract, the Buyer indemnifies each of the Seller Group from any Claim for any Consequential Loss whatsoever suffered by the Buyer and arising in connection with the Contract and/or the Works, whether or not caused in whole or in part by the default, the failure to exercise care, breach of statute or breach of any duty (whether the obligation to exercise care or the duty (as applicable) arises in contract, tort, under any statute of any relevant jurisdiction or under any other principle of law whatsoever) by any member of the Seller Group.

35.6 Insurances

- 35.6.1 No indemnity in this clause 35.0 is waived by approval or acceptance of any insurance policy.
- 35.6.2 Given that the Seller is providing certain insurances, the Seller's indemnities in this clause 35.0 apply to the full extent of the loss and damage suffered by the Buyer Group and in respect of any shortfall in proceeds of insurance, deductibles or withholding under any insurance policy and any amount recovered from any member of the Buyer Group by an insurer of any member of the Seller Group or any other party under any right whatsoever.

35.7 Civil Liability Act

- 35.7.1 The provisions of Part 1F (Proportionate Liability) of the Civil Liability Act 2002 (WA) are excluded.

35.8 Exclusions

- 35.8.1 The indemnities, exclusions or limitations on liability contained in the Contract (except the indemnity contained in clause 35.5) shall not apply for the benefit of the Seller Group to the extent any Claim is attributable to the Wilful Misconduct of the Seller Group.

- 35.8.2 The indemnities, exclusions or limitations on liability contained in the Contract (except the indemnity contained in clause 35.5) shall not apply for the benefit of the Buyer to the extent any Claim is attributable to the Wilful Misconduct of the Buyer.
- 35.8.3 The indemnities contained in the Contract shall not include an obligation to pay awards or assessments of punitive or exemplary damages rendered against the Indemnified Party.

35.9 Application of Indemnities, Exclusions and Limitations of Liability

- 35.9.1 Save as expressly provided otherwise, in all other cases indemnities given by one Party to the other and exclusions or limitations on liability contained in the Contract shall apply regardless of the claimant and irrespective of cause and regardless of any negligence (sole, joint, concurrent or contributory), breach of duty (statutory or otherwise), strict liability or other fault of the indemnified party and include all damage, loss, cost, charge or expense including legal costs in accordance with any written agreement as to legal costs or, if no agreement, on whichever is the higher of a full indemnity basis or solicitor and own client basis and including any costs incurred in enforcement of the indemnity.
- 35.9.2 For all purposes including Section 11 of the Property Law Act 1969 (WA):
- (a) the Seller intends to confer a benefit on each member of the Buyer Group in each indemnity, exclusion or limitation on liability given by the Seller in favour of the Buyer Group in the Contract and the Buyer holds the benefit of each of those indemnities, exclusions or limitations on liability on trust for the benefit of each member of the Buyer Group; and
 - (b) the Buyer intends to confer a benefit on each member of the Seller Group in each indemnity, exclusion or limitation on liability given by the Buyer in favour of the Seller Group in the Contract and the Seller holds the benefit of each of those indemnities, exclusions or limitations on liability on trust for the benefit of each member of the Seller Group.

35.10 Conduct of Claims

- 35.10.1 Where a party ("**Indemnified Party**") has the benefit of an indemnity under the Contract, the Indemnified Party must give written notice to the party giving the indemnity ("**Indemnifying Party**") of the nature and, to the extent reasonably known at the time, quantum of the claim as soon as reasonably practicable after the commencement of the circumstances giving rise to the Claim.
- 35.10.2 The Indemnified Party must provide reasonable information and documentation relating to such Claim to the Indemnifying Party on a continuing basis.
- 35.10.3 Upon service of a notice by the Indemnified Party, the Indemnifying Party must defend any Claim on behalf of the Indemnified Party and the Indemnified Party must, at the Indemnifying Party's cost, do all things necessary to assist the Indemnifying Party to defend, settle, or mitigate such Claim.
- 35.10.4 Except where the Claim or the quantum of the Claim is the subject of a bona fide dispute, the Indemnifying Party must pay the Indemnified Party in respect of the Claim within 30 days of a demand for payment of the Claim.
- 35.10.5 Where a Claim is disputed, the Indemnifying Party must pay to the Indemnified Party the undisputed amount within 30 days of a demand for payment of the Claim and the remainder within 30 days of the resolution of the dispute.
- 35.10.6 The Indemnified Party must do all things reasonably necessary to mitigate any Claim.

35.11 Seller Group Claims

- 35.11.1 The Seller must inform each member of the Seller Group of the indemnities under the Contract and ensure that each member of the Seller Group does not Claim against any member of the Buyer Group where the Seller has indemnified the Buyer Group against that Claim.

35.12 Enforceability of Provisions

- 35.12.1 The indemnities in the Contract are given to the extent permitted by law, and to the extent that an indemnity is void, unenforceable or not permitted under law then the relevant indemnity shall remain in force in accordance with clause 34.8.
- 35.12.2 If any provision of an indemnity in this clause 35.0 in favour of a Party is determined to be void or unenforceable to any extent, in whole or in part, the similar provision in favour of the other Party shall be rendered void or unenforceable or shall be adjusted to the same extent where the same

circumstances apply.

35.13 Associated Activities

35.13.1 The Parties agree that the provisions of this clause 35.0 apply to any Associated Activities as though such activities formed part of the Works, irrespective of the location of the Associated Activity or whether the Associated Activity is controlled or provided by a Party or a third party.

36.0 INSURANCE

36.1 Insurance Requirements

36.1.1 The Seller agrees to maintain insurance of the types and with limits of liability not less than those set out below at its expense during the term of the Contract from insurers reasonably acceptable to the Buyer covering items, risks and operations required to fulfill the Contract:

- (a) Insurance that the Seller is obliged by law to carry that covers all of the Seller's personnel performing work under the Contract including coverage under applicable maritime law.
- (b) Employer's Liability Insurance, including coverage for marine operations if applicable, with a limit of U.S.D 1,000,000 (or the equivalent in the Contract Currency) any one occurrence or the Requirement, whichever is greater.
- (c) Commercial General Liability Insurance, including contractual liability coverage, with a limit of U.S.D 1,000,000 (or the equivalent in the Contract Currency) any one occurrence. Such insurance must include sudden and accidental pollution liability coverage.
- (d) Automobile Liability Insurance with a combined bodily injury and property damage limit of U.S.D 1,000,000 (or the equivalent in the Contract Currency) any one occurrence or the Requirement, whichever is greater, for all owned and leased vehicles.
- (e) If aircraft are used in connection with the Contract, Aircraft Liability Insurance, including Passenger Liability insurance with a combined single limit for bodily injury and property damage of U.S.D 10,000,000 (or the equivalent in the Contract Currency) any one occurrence and a limit of U.S.D 3,000,000 (or the equivalent in the Contract Currency) any one passenger.
- (f) If marine vessels are used in connection with the Contract, Protection and Indemnity insurance equal to the "agreed" value of each vessel or U.S.D 10,000,000 (or the equivalent in the Contract Currency) any one occurrence, whichever is greater. This insurance (when required) must include coverage for the crew. If such insurance contains an "as owner" clause or other language purporting to limit coverage to liability of an insured "as owner of the vessel," such limitation of coverage must not apply to the Buyer Group in their capacities as additional insureds or protective co-assureds under the policy.
- (g) If marine vessels are used in connection with the Contract, Hull and Machinery Insurance in an amount equal to the "agreed" value of each vessel.
- (h) Such other insurance in the types and amounts required by Requirements.

36.2 Marine Insurance

36.2.1 The policies under clauses 36.1.1(f) and 36.1.1(g) above shall, separately or in combination, include coverage for collision liability, removal of debris of any vessel or property whether compulsory or voluntary, contractual liability, towing liability and admiralty benefits in an amount not less than U.S.D 10,000,000 (or the equivalent in the Contract Currency) any one occurrence or the "agreed" value of the vessel, whichever is greater, and have appropriate navigational limits.

36.3 Primary Insurance

36.4 All insurance required above shall be primary to any insurance coverage available to the Buyer and each of its Affiliates and Coventurers. The above-stated minimum requirements are not intended to indicate the amounts and types of insurance that the Seller needs or may ultimately need. **Waiver of Subrogation and Additional Insured**

36.4.1 The policies under clauses 36.1.1(c) through 36.1.1(h) above must be endorsed to show the Buyer and each of its Affiliates, Coventurers and any disclosed principal on whose behalf the Buyer is entering into this Contract as agent as additional insureds.

- 36.4.2 All insurance policies obtained by the Seller Group under the Contract must contain a waiver of subrogation in favour of the Buyer Group to the extent of the liabilities assumed by the Seller under the Contract. The policies provided for under this clause 36.4 must contain a provision that any breach by the Seller Group of any warranty, covenant, or representation in any of the policies shall not prejudice any claim by the additional insureds.

36.5 Certificates of Insurance and Policies

- 36.5.1 Upon the Buyer's request, the Seller must furnish to the Buyer certificates of insurance demonstrating that the Seller Group has obtained the insurance coverage set out above and containing a statement that the said insurance will not be materially changed or cancelled without at least 30 days prior written notice to the Buyer. All coverages must be written on forms reasonably acceptable to the Buyer. Neither review nor failure to review such certificates shall constitute approval thereto or be deemed to waive or diminish the Buyer's rights under the Contract. In the event of an accident or loss potentially resulting in an insurance claim by the Buyer in its capacity as an additional insured, the Seller, at the Buyer's request, must provide the Buyer with certified copies of its insurance policies for which the Buyer is shown as an additional insured or otherwise make the policy information available as reasonably required by the Buyer. This obligation shall survive the termination of the Contract.

36.6 Failure to Comply

- 36.6.1 Neither failure to comply nor full compliance with the insurance provisions of the Contract shall limit or relieve the Seller from its liability and/or indemnity obligations in the Contract. If the Seller fails or refuses to comply with the obligations prescribed in this clause 36.0, the Buyer, without prejudice to any other rights or remedies available to it under the Contract or at law, may (a) treat the Contract as having been repudiated by the Seller or (b) procure the required insurances and deduct the cost thereof from any amounts due hereunder or otherwise recover such amounts from the Seller.
- 36.6.2 The Seller represents and warrants to the Buyer that it has fully disclosed its indemnity and insurance obligations under the Contract to its insurers prior to entering into the Contract.

36.7 Subcontracting

- 36.7.1 The Seller must ensure that each subcontractor shall maintain insurance which is required under any applicable laws or regulations, together with such other insurances of types and amounts necessary to cover risks inherent in the work of that subcontractor, as well as any other insurance that the Seller may deem necessary.

37.0 SERVICES

- 37.1 All Services must be performed in a proper and workmanlike manner and with Diligence.
- 37.2 The Seller must supply all labour, tools, equipment and materials necessary to complete the Services.
- 37.3 The Seller must only engage personnel who are careful, skilled, safe, experienced and competent in their respective disciplines.
- 37.4 The Seller must use its best endeavours not to impede or interfere with other work or operations conducted at the Buyer's premises.
- 37.5 The Seller Group must comply with all Policies and Procedures as notified to the Seller and comply with the reasonable directions of the Buyer while on the Buyer's premises.

38.0 LEGAL RELATIONSHIP

- 38.1 The relationship of the Seller to the Buyer is that of independent contractor.
- 38.2 Neither the Seller nor any member of the Seller Group are employees, agents or partners of any member of the Buyer Group.
- 38.3 To the extent permitted by any applicable law, the Seller indemnifies the Buyer Group against any Claim by any member of the Seller Group that such member is, or connected to such member being, an employee, agent or partner of any member of the Buyer Group whether deemed or otherwise.