

Terms and Conditions of Purchase Order

1 Performance

- 1.1 The Contractor must perform the Contractor's Activities for the Client to and/or at the Delivery Site in accordance with the Order, the Policies and the directions of the Authorised Representative, for the Fee.
- 1.2 The Contractor is taken to have carefully examined all documents and other information furnished by the Client relating to the performance of the Contractor's Activities and to have fully satisfied itself of all conditions, risks, contingencies and other circumstances which might affect the performance of the Contractor's Activities, including conditions at the Delivery Site, and to have made due allowance for these in the Fee.
- 1.3 The Contractor must not subcontract any part of the Contractor's Activities without the prior written approval of the Client, which consent shall not be unreasonably withheld.
- 1.4 No signature by the Client or any of its representatives on a docket or other document of the Contractor, and notwithstanding any terms and conditions thereon, shall be taken as a waiver or an admission that the Contractor's Activities comply with the Order (whether as to quality or quantity or otherwise).

2 Inspection

- 2.1 The Client may at any time enter the premises where the Contractor's Activities are being performed to inspect, examine or test the Contractor's Activities. The Contractor must procure access for the Client for such purpose. No inspection, examination or testing of the Contractor's Activities by the Client relieves the Contractor of its obligations under the Order.
- 2.2 If following any inspection, examination or testing of the Contractor's Activities the Client anticipates or suspects that the Contractor's Activities may be defective or otherwise in breach of the Order, the Client may give the Contractor a notice requiring the defect or breach to be remedied within the reasonable time identified in the notice and the Contractor must comply with that notice.
- 2.3 If the Contractor does not remedy a defect in the Contractor's Activities or other breach of the Order within the time identified in a notice, the Client may immediately terminate the Order by giving notice to the Contractor.
- 2.4 The Contractor must ensure that the Contractor's Activities are performed in accordance with the Order, all laws and any quality assurance requirements prescribed in the Order. Where no quality assurance requirements are specified, the Contractor's Activities must comply with the best standards applicable to goods and/or services of that type.

3 Goods and Services Tax

- 3.1 Unless expressly stated otherwise in the Order, the Fee does not include GST. The Client is not required to pay the GST component of the Fee until the Client receives a tax invoice from the Contractor in respect of the taxable supply.
- 3.2 If an adjustment event occurs, the Contractor must issue an adjustment note and a payment must be made as between the parties to reflect the adjusted amount of the GST on the taxable supply.
- 3.3 The GST payable on a taxable supply must be paid in Australian dollars regardless of whether the Fee is paid in Australian dollars or any other currency. If the Fee is payable in a currency other than Australian dollars:
- for the purposes of calculating the GST payable, the Fee will be converted into Australian dollars, using the daily exchange rate as published on the Reserve Bank of Australia's website on the date prior to or the date that a tax invoice for the taxable supply is issued, in accordance with the Australian Taxation Office Guidelines; and
 - the relevant tax invoice must specify the exchange rate used and the date of conversion, the GST payable in Australian dollars and the account details into which the GST payable must be paid.

4 Fee

- 4.1 The Fee is fixed and will not be subject to adjustment for rise and fall, exchange rate variations or any other reason, except as provided in the Order.
- 4.2 If the Contractor's Services include the supply and delivery of Goods, the Contractor may give the Client a valid tax invoice for the performed Contractor's Activities (**Invoice**) once the Goods have been delivered to the Delivery Site. Otherwise, once Contractor's Activities are performed under the Order, the Contractor may give the Client an Invoice for the performed Contractor's Activities. An Invoice must include:
- a reference to the Order, including the line item numbers on the order and the Order number;
 - a detailed description of the delivered Goods or performed Services, including the date of delivery and/or period of Services in respect of which the Invoice relates and the relevant quantity;
 - an individual reference number for the Client to quote with remittance of payment; and
 - the Fee relating to the Goods and/or Services, broken down to reflect the Fee components of the Order.

If the Client requests, the Contractor must provide the Client with all relevant records to calculate and verify the amount set out in any Invoice.

- 4.3 The Client must pay the Contractor the amount determined by the Client as the appropriate proportion of the Fee for the performed Contractor's Activities (having regard to the provisions of the Order and the proportion of the total Contractor's Activities performed) within 20 Business Days of receipt of the Contractor's Invoice. If the Client proposes to pay an amount

less than that claimed in the Invoice, then the Client must respond to the Contractor's claim for payment within 15 Business Days of receipt of the Contractor's Invoice by issuing to the Contractor a payment schedule identifying the amount (if any) which the Client believes to be then payable, and which the Client proposes to pay to the Contractor and the reasons why it is less than the amount claimed. The Contractor must then provide an adjustment notice or revised valid tax invoice.

All Invoices must be itemised and be in a form which clearly indicates any GST component already paid by the Contractor for which the Client may claim an input credit.

The Fee includes all taxes, levies and fees (excluding GST) which are payable in relation to the performance of the Contractor's Activities. For the avoidance of doubt, the Contractor must pay all such taxes, levies and fees.

The Contractor's Activities and Fee include all activities associated with the packaging and transport of the Goods, including loading and unloading at the Delivery Site.

The Contractor's Activities and the Fee cannot be varied for any reason except with the agreement of both parties.

The Client may, by reasonable notice to the Contractor by an Authorised Representative, vary the quantity, quality or description of the Contractor's Activities, the Delivery Date or any other aspect of the performance of the Contractor's Activities. The Fee will be adjusted for such variation, by a reasonable amount determined by the Client acting reasonably.

The Client may deduct from any amount owing to the Contractor, including any part payment of the Fee, any amount which the Client acting reasonably determines is or may become payable by the Contractor to the Client including amounts by way of damages for breach.

The Client may pay the Fee by electronic funds transfer, or cash payment or in any other manner agreed in writing by the parties.

All payments by the Client will be on account only and will not be an admission that the Contractor's Activities comply with the Order.

Time

The Contractor must deliver the Goods to the Delivery Site by the Delivery Date or commence the Services by the Commencement Date.

The Client is not obliged to accept early performance of the Contractor's Activities including delivery of the Goods or Services prior to the Delivery Date or Commencement Date.

The Contractor must notify the Client immediately upon the Contractor becoming aware or having reasonable grounds to believe that it will not be able to:

- deliver the Goods to the Delivery Site by the Delivery Date; or
- complete the Services by the Commencement Date, or in the time otherwise required by the Order.

The Delivery Date or Commencement Date may be extended:

- where the Contractor is delayed in the performance of the Contractor's Activities by an act, omission or default of the Client (or its Personnel); or
- for the Client's sole convenience, provided that the Client has given reasonable prior notice to the Contractor.

The period of an extension to the Delivery Date or Commencement Date will be determined by the Client in its sole discretion, acting reasonably.

Risk title and Indemnity

The Contractor must comply with all the Client's safety requirements relating to the Contractor's Activities at the Delivery Site. If required by the Client, any person entering the Delivery Site must undergo a site induction at the Contractor's cost.

Risk in Goods passes to the Client when the Goods are delivered to the Delivery Site and accepted by the Client. The Contractor must ensure that the Goods are suitably packed to avoid damage in transit or storage.

Title in Goods passes to the Client on the earlier of risk passing to the Client and payment of the Fee.

The Contractor indemnifies the Client against any action, claim or proceeding brought or threatened to be brought against the Client (including all costs and expenses which the Client may suffer or incur in disputing any such action, claim or proceeding) and any direct or indirect liability, cost, damage, liability or expense, , and whether or not foreseeable, suffered or incurred by the Client, including any injury to any person or damage to any property, in respect of, in relation to or in connection with a breach of the Order by the Contractor, the performance of the Contractor's Activities and any activity directly or indirectly associated with the performance of the Contractor's Activities, and any negligent act or failure to act by the Contractor or its Personnel.

Insurance

Prior to the Contractor performing any work pursuant to the Order, the Contractor must effect (or cause to be effected) and thereafter maintain (or cause to be maintained) the following insurances for amounts not less than and deductibles not more than those specified:

- Motor Vehicle insurance:
 - in respect of third party property damage and death or injury to persons for all plant, equipment and motor vehicles to be used in connection with the Contractor's Activities;
 - with a limit of indemnity in respect of third party property damage of \$20,000,000 any one claim and unlimited in the aggregate;

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- (iii) for compulsory third party insurance covering death or injury to persons, as required by applicable law; and
 - (iv) with a maximum deductible of \$50,000 in respect of third party property damage cover.
 - (b) Public and product liability insurance of \$20,000,000;
 - (c) Plant and Equipment insurance:
 - (i) in respect of all plant, equipment and supplies, including any temporary work and materials not for incorporation into any work to be handed over to the Client by the Contractor, used or to be used by the Contractor in connection with the Contractor's Activities;
 - (ii) for a sum equivalent to the full replacement value of all such plant, equipment and supplies; and
 - (iii) with a maximum deductible of \$100,000.
 - (d) Employers liability and workers compensation insurance against any liability for death of, or injury to persons employed (or deemed to be employed) by the Contractor in the performance of Contractor's Activities whether under statute or common law. Where permitted by law, the Contractor must procure an extension to the policy to indemnify the Client as principal for the Client's liability under statute and at common law to person's engaged by the Contractor.
 - (e) Where directed by the Client in writing, professional Indemnity insurance, with a level of cover not less than \$5,000,000.
- 7.2 The Contractor must maintain, or cause to be maintained, the insurances referred to in **clause 7.1** until the date of completion of the Contractor's Activities, except in respect of professional indemnity insurance which must be maintained for 7 years after completion of the Contractor's Activities.
- 7.3 The Contractor must, if requested by the Client, furnish to the Client certificates of currency evidencing the effecting and maintaining of the insurances required by **clause 7.1**;
- 7.4 If the Contractor fails to provide to the Client certificates of currency as required by **clause 7.3**, the Client may effect and maintain the relevant insurances and pay the premium. The costs incurred by the Client in connection with taking such action will be recoverable from the Contractor as a debt due and payable from the Contractor to the Client.
- 7.5 The insurances required by **clause 7.1** must be effected and maintained with insurance companies having a financial performance rating of at least A- by A M Best or a financial strength rating of at least A by Standard and Poors or such other insurers as are approved by the Client in writing.
- 7.6 In respect of the insurances required by **clause 7.1**, the Contractor must:
- (a) not do or permit, or omit to do, anything which prejudices any such insurance; and
 - (b) rectify anything which might, if not rectified, prejudice any such insurance; and
 - (c) fully and promptly disclose all material information to the insurers relating to the insurances where failure to do so may prejudice or invalidate an insurance; and
 - (d) comply at all times with the terms of each insurance.
- 8 Rejection of Contractor's Activities**
- 8.1 Within a reasonable time after the performance of the Contractor's Activities the Client may reject any Contractor's Activities which do not meet the requirements of the Order.
- 8.2 If the Client rejects any Contractor's Activities under this **clause 8**, the Contractor must repay on demand the Client all amounts paid by the Client for the rejected Contractor's Activities.
- 9 Warranties and intellectual property**
- 9.1 The Contractor warrants, at the date of the Order and at the time the Contractor's Activities are performed, that:
- (a) the Contractor's Activities will be performed in accordance with:
 - (i) their descriptions in the Order (as varied under **clause 4.8**);
 - (ii) any relevant patterns or specifications;
 - (iii) any other warranties or guarantees contained in the Order;
 - (iv) all applicable Australian standards; and
 - (v) all laws, including the provisions of any legislation applicable to the Contractor's Activities;
 - (b) it has the necessary skills, resources and experience to successfully, effectively and efficiently perform the Contractor's Activities in accordance with the Order; and
 - (c) it has all intellectual property rights (including any patents, trade marks and copyright) necessary to perform the Contractor's Activities in accordance with the Order, and that the performance of the Contractor's Activities will not infringe any intellectual property rights.
- 9.2 The warranties in **clause 9.1** are in addition to any warranties which are or may be implied under any legislation applicable to the Contractor's Activities.
- 9.3 The Contractor indemnifies the Client against any loss, cost, damage or expense incurred by the Client as a consequence of or in connection with any claim by a third party that it has a right to any intellectual property right in the Contractor's Activities.
- 9.4 The Contractor grants to the Client a royalty free, perpetual and irrevocable licence to use all intellectual property rights in the Contractor's Activities and any other works which the Client may perform in relation to the Contractor's Activities in the future. The licence will remain vested in the Client despite the termination of the Order and the Client may assign or sublicense the rights granted by the licence without the consent of the Contractor.
- 10 Defective Contractor's Activities**
- 10.1 If at any time during the period of 12 months from the completion of the Contractor's Activities the Client discovers that the Contractor's Activities do not comply with the Order (including any warranty given under **clause 9.1**), the Client may (without limiting any other right available to it):
- (a) rectify or re-perform the Contractor's Activities or have the Contractor's Activities rectified or re-performed and the cost, loss, damage and expense suffered or incurred by the Client will be a debt due and payable from the Contractor to the Client; or
 - (b) give the Contractor a notice requiring it to, at its cost and within the reasonable time prescribed in the notice, re-perform the Contractor's Activities.
- 10.2 The Contractor must comply with any notice under **clause 10.1(b)**.
- 11 Modern Slavery**
- 11.1 The Contractor acknowledges that the Client has an obligation to comply with Modern Slavery Laws, and represents and warrants to the Client that, at the date of entering into the Order, the Contractor:
- (a) has no knowledge of any Modern Slavery Offence currently occurring within its organisation or supply chain; and
 - (b) takes and must continue to take reasonable steps to identify the risk of, and prevent the occurrence of, Modern Slavery Offences within its organisation or supply chains.
- 11.2 Without limiting **clause 11.1**, the Contractor represents and warrants to the Client that in relation to any Services or Goods procured from, or subcontracted or outsourced to, third parties for the provision of the Contractor's Activities under the Order, the Contractor has taken, or will, prior to procuring, subcontracting or outsourcing any such equipment, service or goods from or to a third party, take, and must continue throughout the term of the Order to take all reasonable steps to confirm that such third party is not engaging in Modern Slavery Offences.
- 11.3 The Contractor must notify the Client in writing as soon as practicable and no later than 10 Business Days after becoming aware of any Modern Slavery Offence (or of any charges laid or orders made in relation to a Modern Slavery Offence) within its organisation or supply chain.
- 11.4 If requested by the Client, the Contractor must, subject to any existing confidentiality requirements and any relevant law, take all reasonable steps to provide the Client with any information, reports or documents in relation to any Modern Slavery Offence or any risk of a Modern Slavery Offence within the Contractor's organisation or supply chain, including if required the completion of a self-assessment questionnaire.
- 12 Confidentiality**
- The Contractor must treat the Order and any information provided by the Client or on its behalf, as confidential and must not disclose the Order or such information, the existence of the Order, the information contained in it or its subject matter to any third party (except as may be required to perform its obligations under the Order, by law, a Court order or the rules of any securities exchange) or use it for advertisement, display or publication without the prior written consent of the Client.
- 13 Drawings and tools**
- All tools, patterns, materials, drawings, specifications and other data provided by the Client to the Contractor in connection with the Order:
- (a) remain the property of the Client (except that the Contractor is responsible for making good any damage done to them while they are in the possession of the Contractor);
 - (b) must be used only for the purpose of the Order;
 - (c) must not be passed to or divulged to any third party except with the express written consent of the Client;
 - (d) must not be reproduced except to the extent necessary and incidental to complete the Order; and
 - (e) must be returned, together with any reproductions, to the Client, or destroyed or permanently deleted, on completion of the Order.
- 14 Contractor to provide equipment and facilities**
- 14.1 The Contractor will be responsible at its own expense for providing and maintaining all equipment and facilities used or necessary for providing the Contractor's Activities.
- 14.2 Without limiting the Contractor's obligation in **clause 14.1**, the Contractor must ensure that all equipment and facilities used by the Contractor or any person engaged or employed or acting for the Contractor are used and maintained in compliance with all applicable laws, including, but not limited to the Client's safety requirements.
- 15 Industrial Relations**
- 15.1 The Contractor must, and must ensure that its subcontractors, comply with all applicable Industrial Legislation.
- 15.2 The Contractor:
- (a) must assume sole responsibility for, and manage, all Industrial Action and Industrial Relations Issues in relation to the Contractor's obligations under the Order;
 - (b) must keep the Client regularly informed of any Industrial Relations Issues or Industrial Action which will, or is likely to, affect the performance of the Contractor's obligations under the Order;
 - (c) must immediately notify the Client of:

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- (i) any Industrial Relations Issues or Industrial Action which causes the Contractor or a subcontractor engaged by the Contractor to suspend or cease carrying out all or any part of the Contractor's obligations under the Order;
 - (ii) what action or measures (including settlement) the Contractor has taken or proposes to take to overcome, or minimise the effects of, such Industrial Relations Issues or Industrial Action; and
 - (iii) any request by a trade union to access the Delivery Site.
- 16 Suspension and termination**
- 16.1 Any parties' rights to terminate the Order under the terms of the Order are in addition to their rights of termination under statute or at common law.
- 16.2 The Client may suspend all or part of the performance of the Contractor's Activities at any time for any period by reasonable notice to the Contractor. The Contractor must comply with such a notice and must recommence performance of the Contractor's Activities when required by notice from the Client. The Contractor will not be entitled to any additional payment arising as a result of any such suspension.
- 16.3 The Client may terminate the Order at any time by giving at least 5 Business Days' notice in writing to the Contractor. Subject to any rights of set off or deduction which the Client may have, on termination of the Order the Client's only obligation will be to pay the Contractor for Contractor's Activities which have been performed in accordance with the Order prior to the date of termination.
- 17 Dispute resolution**
- 17.1 Subject to **clause 17.2**, any dispute arising in relation to the Order (**Dispute**) must be determined in accordance with the **clause 17**.
- 17.2 **Clause 17.1** does not prevent either party from applying to the Supreme Court of Western Australia for urgent injunctive relief in relation to the Order.
- 17.3 If a party alleges a Dispute has arisen it must give notice of that fact to the other party (**Dispute Notice**).
- 17.4 Within 10 Business Days of service of a Dispute Notice, the Client's representative and a senior representative of the Contractor must meet and, confidentially and in good faith, attempt to resolve the Dispute. If the Dispute is not resolved within 10 Business Days of the last date for the meeting of representatives under this clause, the matter will be and is hereby referred to arbitration.
- 17.5 The seat of the arbitration will be Perth, Western Australia and the arbitration is to take place in Perth before a single arbitrator. The arbitrator will be nominated by ACICA, upon the application of either party. The arbitration will be conducted in accordance with:
- (a) the ACICA Arbitration Rules (as amended from time to time); or
 - (b) if one or more parties are nationals of and habitually resident in, incorporated in, or where the central management and control is exercised in, different countries as between the parties, then the UNCITRAL Arbitration Rules will apply and the appointing authority will be ACICA.
- 17.6 To the extent permitted by law, the parties agree that:
- (a) the powers conferred and restrictions imposed on a court by Part 1F of the *Civil Liability Act 2002 (WA)* are not conferred or imposed on the arbitrators appointed under the **clause 17**; and
 - (b) any such arbitrators will have no power to make an order or award in respect of a Dispute by applying or considering the provisions of Part 1F of the *Civil Liability Act 2002 (WA)* (or any equivalent statutory provisions in any other state or territory) which might, in the absence of the **clause 17.6**, have applied to any Dispute referred to arbitration.
- 18 Assignment**
- 18.1 The Contractor must not assign or deal with the Contractor's interest under the Order without the prior written consent of the Client, which consent shall not be unreasonably be withheld. Any purported dealing by the Contractor in breach of this **clause 18.1** is of no effect. The Client may assign or deal with its interest under the Order to any related entity (as defined under the *Corporations Act 2001*) at any time by notice in writing to the Contractor. The Client may assign or deal with its interest under the Order to any third party, provided it has obtained the prior written consent of the Contractor (such consent not to be unreasonably withheld, delayed or conditioned).
- 18.2 The Client may grant or create any mortgage, pledge, lien, charge, assignment, hypothecation, security interest, title retention, preferential right or trust arrangement or any other security agreement or arrangement over the Order and any rights under the Order.
- 19 Liability**
- 19.1 Subject to **clause 19.2** a party will not be liable to the other party in respect of any Consequential Loss which may be suffered or incurred by the other party in connection with the Order whether arising by way of indemnity, for breach of contract, in tort (including negligence), under statute, in equity or otherwise.
- 19.2 The exclusion of liability described in **clause 19.1** does not extend to liability for Consequential Loss in respect of:
- (a) death or injury to persons or damage to real or personal property;
 - (b) conduct which is so grossly careless that it amounts to a reckless disregard for the harmful, foreseeable and avoidable consequences which may result from it;
 - (c) breach of any law by the Contractor, or the Goods and/or Services not complying with any applicable law;
 - (d) breach of **clause 12** by the Contractor;
 - (e) any liability of the Contractor to the extent that the Contractor is indemnified for the liability under any policy of insurance required to be maintained, or effected and maintained by the Contractor under the Order, or would have been indemnified but for the inclusion of **clause 19.1** or the failure by the Contractor to comply with its insurance obligations under the Order or the terms of any such policy of insurance or to diligently pursue a claim;
 - (f) liability arising from fraudulent or criminal acts or omissions of the liable party or any of its employees, agents or subcontractors;
 - (g) liability for wilful misconduct in breach of contract which has substantial harmful consequences for the other party (including an intentional unlawful abandonment of the Order);
 - (h) liability for insurance deductibles borne by the Contractor;
 - (i) liability for any fine, penalty, sanction or compensation imposed by any law; or
 - (j) liability which, by law, a party cannot contract out of or limit.
- 19.3 Subject to **clause 19.4** each party's maximum aggregate liability to the other party under or in any way connected to the Order, whether arising by way of an indemnity, for breach of contract, in tort (including negligence) under statute, in equity or otherwise, is limited to an amount equal to 150% of the Fees.
- 19.4 The limitation of liability set out in **clause 19.3** does not apply to or limit any liability in respect of:
- (a) death or injury to persons or damage to real or personal property;
 - (b) conduct which is so grossly careless that it amounts to a reckless disregard for the harmful, foreseeable and avoidable consequences which may result from it;
 - (c) a breach of any law by the Contractor, or the Goods and/or Services not complying with any applicable law;
 - (d) breach of **clause 12** by the Contractor;
 - (e) liability of the Contractor to the extent the Contractor is indemnified for the liability under any policy of insurance required to be maintained, or effected and maintained by the Contractor under the Order, or would have been indemnified but for the inclusion of **clause 19.3** or the failure by the Contractor to comply with its insurance obligations under the Order or the terms of any such policy of insurance or to diligently pursue a claim;
 - (f) liability arising from fraudulent or criminal acts or omissions of the liable party or any of its employees, agents or subcontractors;
 - (g) liability for wilful misconduct in breach of contract which has substantial harmful consequences for the other party (including an intentional unlawful abandonment of the Order);
 - (h) liability for insurance deductibles borne by the Contractor;
 - (i) liability for any fine, penalty, sanction or compensation imposed by any law; or
 - (j) liability which, by law, a party cannot contract out of or limit.
- 20 General**
- 20.1 Where the Order allows the Client a discretion as to whether to do or not to do any act, matter or thing of any kind, or confers on the Client a power of determination or right of opinion, approval or the like, that discretion, power or right is absolute, unless the Order states otherwise, and the Client is not obliged to give its reasons.
- 20.2 No waiver by the Client of a breach of the Order by the Contractor constitutes a waiver for any subsequent or continuing breach by the Contractor.
- 20.3 If any of the provisions of the Order are held by a court of competent jurisdiction to be invalid or otherwise unenforceable that provision may be severed from the Order and the remainder of the Order will continue to be effective and valid notwithstanding such severance.
- 20.4 Except as expressly stated otherwise in the Order, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under the Order.
- 20.5 The Order may only be varied or replaced with the agreement of both parties.
- 20.6 A single or partial exercise or waiver by a party of a right relating to the Order does not prevent any other exercise of that right or the exercise of any other right. A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- 20.7 Except as expressly stated otherwise in the Order, the rights of a party under the Order are cumulative and are in addition to any other rights of that party.
- 20.8 Each party must promptly do whatever the other party reasonably requires of it to give effect to the Order and to perform its obligations under it.
- 20.9 The Order is governed by and is to be construed in accordance with the laws applicable in Western Australia. Subject to **clauses 17.1 to 17.5**, each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

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- 20.10 The Order may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.
- 20.11 The Order is not intended to create a partnership, joint venture or agency relationship between the parties.
- 20.12 The Order supersedes all other communications and negotiations (whether oral or written) between the Contractor and the Client in relation to the Contractor's Activities and constitutes the entire agreement between the Contractor and the Client in respect of the Contractor's Activities.

21 Interpretation

21.1 In these Terms:

ACICA means the Australian Centre for International Commercial Arbitration Limited (ACN 006 404 664).

Authorised Representative means the individuals nominated by the Company as its representatives for the purposes of the Order from time to time.

Business Days means a day other than a Saturday, Sunday or public holiday in Perth, Western Australia.

Client means HanRoy Iron Ore Projects Pty Ltd ACN 661 341 975.

Commencement Date means the date identified as such on the Purchase Order or as otherwise as determined by the Client.

Consequential Loss means any:

- (a) loss of profit;
- (b) loss of revenue;
- (c) loss of use;
- (d) loss of production; or
- (e) loss of opportunity.

Contractor means the person described as such in the Purchase Order.

Contractor's Activities means the supply and delivery of the Goods and/or the performance of the Services, as applicable.

Delivery Date means the date identified as such in the Purchase Order.

Delivery Site means the shipping address specified in the Purchase Order or if there is no shipping address identified therein, the shipping address nominated by the Client.

Fee is:

- (a) where the Purchase Order states that the Fee is based on a lump sum or lump sums, that lump sum or the aggregate of the lump sums;
- (b) where the Purchase Order states that the Fee is based on rates, the sum ascertained by multiplying those rates by the quantities properly supplied in accordance with the Order;
- (c) where the Purchase Order states that the Fee is based on a lump sum or lump sums and rates, the aggregate of the lump sum or lump sums and the sum ascertained by multiplying the rates by the quantities properly supplied in accordance with the Order; or
- (d) where none of (a), (b) or (c) applies, the net amount stated in the Purchase Order.

Goods means the good described or referred to in the Order, if any.

Industrial Action means industrial action of any description including any action of the following kinds:

- (a) the performance of work by any person employed or engaged by the Contractor or the Contractor's agents or subcontractors in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of work;
- (b) a ban, limitation or restriction on the performance of work by any person employed or engaged by the Contractor or the Contractor's agents or subcontractors, or on the acceptance of or offering for work by such a person;
- (c) a failure or refusal by any person employed or engaged by the Contractor or the Contractor's agents or subcontractors to attend for work or to perform any work; or
- (d) picketing or protest which interferes with the performance of the Contractor's obligations under the Order, or hinders the mobilisation of personnel, equipment or supplies required for the Contractor's obligations under the Order.

Industrial Legislation means industrial legislation of the Commonwealth of Australia or State of Western Australia, including, but not limited to, the *Fair Work Act 2009* (Cth), the *Industrial Relations Act 1979* (WA), the *Long Service Leave Act 1958* (WA), the *Minimum Conditions of Employment Act 1993* (WA), and any regulations made thereunder, or any legislation passed in replacement or substitution.

Industrial Relations Issues means any issues arising out of or pertaining to the relationship between:

- (a) the Contractor, and the Contractor's or the Client's employees, agents or subcontractors;
- (b) any persons employed or engaged by the Contractor or the Contractor's agents or subcontractors;
- (c) an industrial association (as that term is defined in section 12 of the *Fair Work Act 2009* (Cth)) and the persons referred to in paragraph (a) or (b);
- (d) an officer, employee or agent of an industrial association and the persons referred to in paragraph (a) or (b); or
- (e) any representatives of the persons in paragraph (b).

Invoice has the meaning in **clause 4.2**.

Modern Slavery Laws means the *Modern Slavery Act 2018* (Cth), the *Modern Slavery Act 2018* (NSW), the *Modern Slavery Act 2015* (UK) and any relevant regulations or ancillary legislation published in respect of the above or any similar modern slavery legislation in another jurisdiction of which the Client is required to comply.

Modern Slavery Offence means:

- (f) any offence set out in section 1 or section 2 of the *Modern Slavery Act 2015* (UK);
- (g) any conduct which would constitute 'modern slavery' under the *Modern Slavery Act 2018* (Cth); and
- (h) any other conduct or practices which amount to an offence under any of the Modern Slavery Laws.

Order means the contract between the parties comprising:

- (a) the Purchase Order;
- (b) these Terms; and
- (c) particulars of the Fees, Services and Goods described in any quotation or proposal referred to in the Purchase Order.

In the event of any inconsistency between the documents comprising the Order that inconsistency will be resolved in accordance with the order of documents set out in this definition, with the Purchase Order having the highest order of precedence. In resolving any such inconsistency, the document higher on the list shall prevail only to the extent of that inconsistency.

Personnel means in respect of a person, the person's officers, employees, secondees, agents and contractors (including, in the case of the Contractor, its subcontractors and its subcontractors' Personnel but, excluding, in relation to the Client, the Contractor and its Personnel and vice versa).

Policies means all policies and procedures of the Client advised or made available to the Contractor from time to time.

Purchase Order means the purchase order issued by the Client to which these Terms is annexed or which is expressed to be subject to these Terms.

Reputable Insurer means an insurance company having a financial performance rating of at least A- by A M Best or a financial strength rating of at least A by Standard and Poors.

Services includes all services described or referred to in the Order, if any, and all other things which can reasonably be inferred from the description of the services in the Order.

Terms means these terms and conditions.

21.2 In the Order, unless the context requires otherwise:

- (a) a word in the Order that has a capitalised first letter has the meaning given to it by these Terms;
- (b) the singular includes the plural and vice versa;
- (c) headings are for reference only and do not affect the interpretation of the Order;
- (d) a reference to any legislation includes a reference to any proclamation, order, amendments or modification made under that legislation;
- (e) where two or more persons are named as the Contractor, then the obligations on their part will bind and be observed and performed by them jointly and severally;
- (f) "include", "includes" and "including" means "includes without limitation";
- (g) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or benefits from it;
- (h) a reference to:
 - (i) a person includes that person's legal personal representatives, successors, assigns;
 - (ii) time is to local time in Perth, Western Australia;
 - (iii) "\$" or "dollars" is a reference to Australian currency unless otherwise agreed; and
 - (iv) a clause is a reference to a clause of these Terms;
- (i) if the date on or by which any act must be done under the Order is not a Business Day, the act must be done on or by the next Business Day;
- (j) where time is calculated by reference to a day or event, that day or the day of that event is excluded;
- (k) a notice or other communication means a notice or communication in writing in the English language, addressed to the postal addresses of the recipient party;
- (l) a term that is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning in the Order.