

TERMS OF SERVICE

D&S Resources Proprietary Limited | ABN 14 607 257 223

Workshop: 11-15 Maxwell Road, Pooraka SA 5095 | City Office: Level 21/91 King William Street, Adelaide SA 5000

Our details ("the Company", "us", "our", "we")	D&S Resources Proprietary Limited ABN 14 607 257 223 Workshop: 11-15 Maxwell Road, Pooraka SA 5095 City Office: Level 21/91 King William Street, Adelaide SA 5000
Supplier details ("the Supplier", "you", "your")	Name(s): _____ Address: _____ Contact number: _____ Email address: _____
Acceptance and signature	<p><i>I acknowledge that I have read, understood and agree to these Terms, and that I have received a copy of these Terms. I warrant that I am authorised to enter into this agreement.</i></p> Signature: _____ Print Name: _____ Date: / /

These Terms of Service (Terms) apply to any Goods and Services you agree to supply to us. By requesting that we provide you with Credit Terms, or by providing us with a Quote, you agree to be bound by these Terms. For the avoidance of doubt, the commencement of Works, acceptance of a Purchase Order, delivery of Goods, or the rendering of any invoice by the Supplier shall each individually constitute unconditional acceptance of these Terms, regardless of whether a signed copy has been returned to the Company.

1. IMPORTANT – Purchase orders

- 1.1 A Purchase Order is the Company’s offer to the Supplier for the Supplier to supply and perform the Works described in the Purchase Order to and for the Company on the terms and conditions set out in the Agreement.
- 1.2 Acceptance of the Purchase Order by the Supplier shall constitute a binding contract between the Company and the Supplier to supply and perform the Works specified in the Purchase Order on the terms and conditions set out in the Agreement.
- 1.3 The Supplier shall not provide Goods or Services to the Company without obtaining a numbered Purchase Order from the Company. The Supplier must ensure that the Purchase Order number is clearly marked on all delivery dockets, bills of lading, packages, invoices and other documents and correspondence relating to the supply of Works.
- 1.4 If the Supplier is unwilling or unable to accept the offer made by the Company in the Purchase Order under the terms and conditions in the Agreement, the Supplier shall immediately contact the Company and advise in writing of any variations it requires to be made for the acceptance or rejection in writing by the Company.
- 1.5 If the Supplier proceeds with the manufacture or supply of the Works without first requesting or receiving the Company’s written acceptance of variations proposed by the Supplier, then the Supplier is deemed to have accepted the terms and conditions of the Purchase Order and the Agreement.

- 1.6 The Company will not be liable for any charges or other costs for work done by the Supplier that is not expressly set out in a Purchase Order issued to the Supplier.

2. Design and Documentation

- 2.1 The Supplier covenants to execute and complete the Contractor's Design & Documentation Obligations described in the Project Brief and Technical Specifications so that the Works, when completed, will:
- (a) be in accordance with the Technical Specifications;
 - (b) perform in accordance with the Performance Conditions;
 - (c) be fit for the purposes for which the Company requires the Works; and
 - (d) comply with all Legislative and other agreed requirements.
- 2.2 The Reference Documentation has been provided by the Company to the Supplier for its information in relation to carrying out the Works. The Supplier acknowledges the contents of the Reference Documentation.

3. Completion of the Works

- 3.1 With effect from the Commencement Date the Supplier shall:
- (a) Execute the Works in accordance with the Completion Schedule through the Personnel;
 - (b) Render the Works to the Company with due diligence and integrity, in a good and workmanlike manner and in accordance with the requirements of all applicable legislation, regulations and codes of practice, Australian Standards and the highest professional and ethical standards; and
 - (c) Keep the Company Representative fully and immediately informed of all matters affecting or likely to affect the Works which may come to the knowledge of the Supplier or the Personnel.

4. Supervision and Personnel

- 4.1 The Supplier shall at all times ensure that the Personnel adhere as a minimum to all the Company occupational health and safety requirements, adhere as a minimum to all the Company environmental requirements and comply with any reasonable requirements of the Company in relation to the performance of the Works.
- 4.2 If the Company is dissatisfied with the performance of Personnel, the Company may require the Supplier to replace that person or persons with some other Personnel of the Supplier who shall be acceptable to the Company within 48 hours of such request.
- 4.3 The Supplier shall provide on Site a competent supervisor who can communicate effectively and who is authorised to receive instructions and directions from the Company. The supervisor must attend all site meetings upon the Company's request.

5. Instructions, Decisions and Approvals

- 5.1 The Company may give instructions to the Supplier in relation to the Works, and the Supplier must comply with those instructions.
- 5.2 The Company must provide any decisions or approvals required under the Agreement within a reasonable time.
- 5.3 D&S Resources may amend these Terms or the Credit Terms where reasonably necessary to protect its legitimate business interests, including to reflect changes in applicable law, regulatory requirements, or material changes in operating costs or supply conditions. D&S Resources will notify the Supplier in writing of any proposed variation at least 28 days prior to the variation taking effect. The Supplier may, within 14 days of receiving such notice, notify D&S Resources in writing that it does not accept the variation, in which case the Agreement will continue on the existing terms for any Works already committed under an existing Purchase Order. For new Purchase Orders issued after the variation takes effect, the varied Terms will apply. This clause does not permit D&S Resources to vary the price or scope of any Works already agreed in an existing Purchase Order without the Supplier's written consent.

6. Completion Schedule

- 6.1 In relation to all obligations of the Supplier under the Agreement, time is of the essence.
- 6.2 The Supplier shall provide the Works in accordance with the Project Schedule and shall ensure that the Works are completed so that the Company will be in a position to issue the Certificate of Practical Completion by the Completion Date.

- 6.3 The Supplier acknowledges that it has taken into consideration and made allowance for all relevant factors, including delays and hindrances incidental to the provision of the Works, and it fully understands that failure to complete the Works to practical completion by the Completion Date could result in material loss and damage to the Company.
- 6.4 The Supplier must notify the Company in writing as soon as it becomes aware of any delay or likely delay in performing the Works, including the cause and estimated impact on the Completion Date.
- 6.5 Any changes to the scope, cost, or timeline of the Works must be formally requested in writing by the Supplier or the Company. Such requests require written approval from both parties before implementation. The Supplier will provide an estimate of any associated impact on costs, timelines, or resource requirements within 5 Business Days of receiving a change request from the Company.
- 6.6 Where the Supplier is entitled to an extension of time under the Extension of Time clause, the Company must grant such extension. The Company may otherwise grant extensions of time at its discretion.

7. Extension Of Time

- 7.1 If the Supplier is or will be delayed in completing the nominated portions of the Works by the dates described in the Completion Schedule by one or more of the causes described in clause 7.2 and the Supplier provides, within 5 days after the cause first arises, a written claim for an extension of time, the Supplier shall be entitled to an extension of time to the effected date.
- 7.2 The permitted causes are any material act, default or omission by the Company under the terms of the Agreement, an agreed variation to the Works, and suspension of the Works pursuant to clause 8, but shall not include:
- (a) a strike, boycott or industrial disruption restricted solely to the Personnel or sub-contractor's employees, servants or agents;
 - (b) breakdown of any Supplier's Equipment supplied or used by the Supplier or its sub-contractor, unless caused by a factor beyond the reasonable control of the Supplier; or
 - (c) difficulty in completing the Works due to contractual commitments (existing or prospective) made by the Supplier with third parties which limit the ability of the Supplier to carry out the Works.

8. Suspension of the Works

- 8.1 The Company may, at any time and for any reason, suspend the performance of the Works by giving written notice to the Supplier.
- 8.2 If the Company suspends the Works, the Supplier must:
- (a) immediately cease performing the Works;
 - (b) take all reasonable steps to mitigate any costs incurred as a result of the suspension; and
 - (c) resume performing the Works when notified by the Company.
- 8.3 The Supplier is not entitled to any additional payment as a result of a suspension under this clause, but the Completion Schedule will be extended by the period of the suspension.
- 8.4 In the event that the Works are suspended under this clause for a cumulative period exceeding 12 weeks in any 12-month period, the Supplier shall be entitled to terminate the Agreement by written notice to the Company and shall be entitled to payment for all Works completed up to the date of suspension, together with reasonable documented costs incurred as a direct result of the suspension (excluding anticipated profit on incomplete works). This right does not limit the Supplier's right to seek relief under applicable security of payment legislation.

9. Force Majeure

- 9.1 Except in relation to a pre-existing obligation to make any payments for Works already provided under the Agreement, the parties should be relieved from liability under the Agreement to the extent that owing to Force Majeure they have been unable to or have failed to comply with their respective obligations under the Agreement during the continuance of any inability so caused.
- 9.2 In the event of any Force Majeure occurrence a party seeking relief under this clause 9 shall as soon as practically possible notify each other party of the event of Force Majeure and provide all relevant information as is available pertaining to such event. The affected party shall use its best endeavours to overcome or remedy such Force Majeure event as soon as possible.

10. Commissioning, Testing and Training

- 10.1 The Supplier shall commission and test the Works where required in accordance with the Project Brief, Technical Specifications and Performance Conditions.
- 10.2 All Works delivered or performed by the Supplier shall be subject to acceptance testing by the Company in accordance with the Technical Specifications and Performance Conditions. Any Works tendered, offered or delivered which, in the opinion of the Company do not comply with the Agreement, or are not acceptable to the Company, may be rejected by notice in writing to the Supplier.
- 10.3 In respect of any Works rejected by the Company pursuant to clause 10.2 the Supplier must, at the election of the Company, either:
 - (a) remove the Works, (by and at the Supplier's expense and as soon as practicable after notice is given of their rejection). If the rejected Works are not removed within that time, the Company may either return them to the Supplier at the Supplier's expense in all respects, or store them at the Supplier's expense in all respects. The Company will not be liable for any damage to or loss of the Works whilst they are in transit to the Supplier, or whilst they are in storage; or
 - (b) make modifications to the Works and submit the Works to further commissioning and testing. The Supplier must continue to modify the Works and submit the Works to further commissioning and testing until the results of the commissioning and testing comply with the Technical Specifications and are satisfactory to the Company.

11. Material Certification and Testing Documentation

- 11.1 The Supplier shall provide all relevant material certificates with each delivery of Goods as required by D&S Resources, confirming compliance with applicable laws, regulations, and recognised industry standards, including but not limited to relevant Australian Standards (e.g. AS/NZS 1163, AS/NZS 3678), as applicable to the nature of the supply. These certificates must include traceability, material composition, and relevant mechanical properties, and be issued by an appropriately accredited body.
- 11.2 Where applicable, the Supplier shall provide Safety Data Sheets (SDS) in accordance with Schedule 7 of the Work Health and Safety Regulations 2011 (Cth). SDS must be in English and must conform to the format and content required by applicable WHS laws and guidelines.
- 11.3 If specified by D&S Resources in the Purchase Order, or required by applicable law, standard, or project specification, the Supplier shall also provide additional testing and inspection documentation, including but not limited to non-destructive testing (NDT), load testing, welder qualification records, or other relevant compliance documents. Such documentation must be issued by a NATA-accredited or otherwise appropriately certified body.
- 11.4 All documentation under this clause must be provided in electronic format, in English, and must be submitted at the time of delivery or uploaded to any system nominated by D&S Resources.
- 11.5 The Supplier acknowledges that the timely provision of accurate and complete documentation is a material condition of the supply. Failure to comply with these requirements may result in rejection of Goods, delayed or withheld payment, or the exercise of any other remedies available to D&S Resources under these Terms or at law.

12. Certificate of Practical Completion

- 12.1 The Supplier must notify the Company when it considers that the Works have reached Practical Completion.
- 12.2 The Company must, within 5 Business Days of receiving the Supplier's notice, inspect the Works and either:
 - (a) issue a Certificate of Practical Completion to the Supplier; or
 - (b) notify the Supplier of the reasons why the Works have not reached Practical Completion.

13. Ownership & Risk

- 13.1 Title to goods or materials supplied as part of the contract passes to D&S Resources upon delivery to the site or upon payment, whichever occurs first.
- 13.2 Risk in the Works/goods remains with the Supplier until practical completion, at which point it transfers to D&S Resources.
- 13.3 Until such time as title and risk transfer to D&S Resources, the Supplier shall bear full responsibility for any loss or damage to the goods.

14. The Site

- 14.1 The Company shall give the Supplier sufficient possession of the Site to enable the Supplier to provide the Works under the Agreement, provided that possession of part of the Site shall confer on the Supplier a right only to such use and control of the Site as is necessary to enable the Supplier to execute the Works under the Agreement.
- 14.2 Others may have access to the Site and the Supplier shall co-operate and afford all reasonable facilities for any other contractors and their workmen engaged by the Company.
- 14.3 The Supplier shall comply with all requirements in the Technical Specifications relating to the use of the Site and with all directions of the Company.

15. Protection of Works, Property and People

- 15.1 The Supplier shall:
- (a) provide all equipment necessary for the protection and security of the Supplier's Equipment, other property, people and the environment, and provide and maintain a working environment that is safe and without risk to health;
 - (b) repair at their own cost, any damage caused by the Supplier, its employees, agents or subcontractors to the Supplier's Equipment or other property, the environment or people; and
 - (c) prevent nuisance and unreasonable disturbance to other persons, the Company and its employees, agents and contractors.
- 15.2 From the Commencement Date until the Date of Practical Completion, the Supplier shall be responsible for the care of the Supplier's Equipment, plant and tools used on the Site.

16. Occupational Health and Safety

- 16.1 The Supplier shall ensure that the Personnel observe and adhere to the Health, Safety and Environment Policy, State OHS&W legislation, the Company's Site safety rules as well as the Supplier's occupational health and safety requirements.
- 16.2 The Supplier shall supply the Personnel with adequate and appropriate protective clothing and safety equipment meeting the requirements of the Site HSE rules which shall include but not be limited to safety helmets, ear muffs or other suitable hearing protection, eye protection, safety shoes or boots and overalls or long sleeve shirt and long pants. The Supplier shall ensure that the Personnel wear or use supplied protection and equipment on all relevant occasions as indicated by notices, instructions, State legislation, the Company Site Safety Rules or dictated by good sense.
- 16.3 The Supplier shall promptly notify all appropriate authorities and provide all required statutory reports required by State legislation of any accidents causing injury to its Personnel. The Supplier shall provide copies of such reports to the Company.
- 16.4 For the purposes of all applicable occupational health, safety and welfare legislation, it is hereby agreed by the Parties that the Supplier and any person or persons employed or engaged by the Personnel shall in all respects be under the control and direction of the Supplier and not the Company and the Supplier shall be responsible for complying at all times with the provisions of the legislation and the Company Site Safety Rules in relation to the Personnel.

17. Preservation of the Environment

The Supplier shall ensure that the Personnel provide the Works in an efficient and safe manner and shall pay appropriate regard to the protection of the environment by taking all reasonable precautions to prevent pollution, damage, or injury to air, soil, water, animal or plant life and property, or any nuisance which may arise as a consequence of the provision of the Works by the Supplier.

18. Assignment and Sub-Contracting

- 18.1 The Supplier shall not assign any rights or duties under the Agreement or sub-contract the whole or any part of the Works without the Company's prior written consent. Any approval given to the Supplier by the Company to engage subcontractors to provide any part of the Works shall not relieve the Supplier from any of the Supplier's liabilities or obligations under the Agreement.

- 18.2 The Company may at any time assign all or part of its rights and obligations under the Agreement to a third party without the prior consent of the Supplier. Any such assignment is subject to the condition that the assignee assumes all obligations of the Company under the Agreement from the date of assignment, and the Supplier is notified in writing of the assignment within 7 days of it taking effect.

19. Insurance

- 19.1 Subject to any additional insurance requirements set out in the Purchase Order, the Supplier shall, for the term hereof and with a major insurance company carrying on general insurance business in Australia, effect and maintain current the following insurances:
- (a) Workers Compensation and employer's common law liability insurance covering liability to employees of the Supplier under the laws of their place of employment and any other place where any such employees may be required to render any of the Works. The Supplier shall obtain any extension of these insurances to indemnify the Company for the Company's statutory liability for persons employed by the Supplier;
 - (b) Third Party Public Liability insurance covering liability to any third party for death or bodily injury (including illness) and loss of and/or damage to property arising out of anything done or omitted to be done by the Supplier for a liability of not less than \$20,000,000 in respect of any one incident. Third party public liability insurance must be in the joint names of the Supplier and the Company;
 - (c) Motor Vehicle Compulsory Third Party Bodily Injury insurance as required by law for all vehicles being the responsibility of or the property of the Supplier and used in the performance of or in connection with the Works together with Third Party Property Damage insurance covering all such vehicles for a liability of not less than \$10,000,000 in respect of any one incident; and
 - (d) Insurance for the Works and the Supplier's Equipment.
- 19.2 The Supplier shall at least 7 days prior to providing any Works pursuant to the Agreement, deposit with the Company copies of certificates of currency of such policies of insurance described in clauses 19.1(a), 19.1(b) and 19.1(c) and for any renewal of such policies of insurance under clause 19.1(d).
- 19.3 Insurances shall be effected by the Supplier and such insurances shall include the Supplier and the Company as co-insureds.
- 19.4 If the Supplier subcontracts any part of the Works to be performed under the Agreement, the Supplier shall ensure that each of its subcontractors effects and maintains during the currency of the Agreement insurances of the type referred to in clause 19.1 and complies with the provisions of clauses 19.2, 19.3 and 19.5.
- 19.5 The Supplier will notify the Company as soon as may be practicably possible in writing and in any event within 7 days, of all accidents or Claims which might arise out of or in the course of the performance of the Works performed under the Agreement.
- 19.6 Insurance effected by the Company shall not relieve the Supplier of any obligations under the Agreement.

20. Intellectual Property

- 20.1 The Supplier grants (or shall procure the grant of) an unlimited, perpetual and irrevocable licence to the Company to maintain and use all Intellectual Property forming part of or incorporated into the Works, including, but not limited to, the Intellectual Property in any design or documentation relating to the Works.
- 20.2 The Supplier hereby assigns (and agrees to assign or procure the assignment of) all Intellectual Property in any designs or customisations commissioned by the Company in respect of the Works.

21. Payments

- 21.1 The Company shall pay to the Supplier, within 30 days EOM from which the Company receives an invoice from the Supplier, the Rates in accordance with the Payment Schedule upon completion, in accordance with the terms of the Agreement and to the satisfaction of the Company, in accordance with the Technical Specifications and Performance Conditions.
- 21.2 The price set out in the Rates and Payment Schedule is all-inclusive and is the total amount payable by the Company under the Agreement and (without limiting) includes all taxes, duties, charges, levies and fees payable on or in respect of the Works. The Company shall not be liable for additional costs or charges or an increase in price unless accepted by it in writing prior to the specified delivery date of the Goods or prior to the specified commencement date of any Services involving such increased cost or charges or price. The price specified in the Rates and Payment Schedule shall include packaging and delivery charges.

- 21.3 The making of a payment by the Company pursuant to this clause 21 will not constitute approval of any work or any other matter, nor shall it prejudice any claim by the Company. Payment of monies shall be on account only. Payment shall not be evidence of the value of the work carried out.
- 21.4 If the Company so requests within 30 days of receipt of the invoice, the Supplier shall submit to the Company such further information reasonably necessary to substantiate the invoice or any part thereof.
- 21.5 If the Company disputes any invoice, in whole or in part, the Company shall promptly notify the Supplier of the dispute and shall pay only the undisputed portion. The Company and the Supplier shall endeavour to settle at the earliest possible date any amount in dispute and any required adjustment shall be made promptly following the date of such settlement.
- 21.6 Should the Company and the Supplier resolve a dispute concerning an invoice within 30 days of the notification of the dispute under clause 21.5, the Company shall pay the unpaid portion within 30 days of the resolution of the dispute.

22. Progress Claims

22.1 Right to Progress Claims

Where the Goods and Services are supplied progressively, in stages, or by reference to milestones (including but not limited to design phases, fabrication stages, deliverables, or separable portions of work), D&S Resources is entitled to submit progress claims for payment for any part of the Goods and Services that has been completed or partially completed.

22.2 Basis of Progress Claims

Progress claims may be made:

- in accordance with any milestone breakdown, schedule, or staging set out in the Proposal, Quote, or Project Schedule; or
- where no express milestone schedule exists, by reference to the reasonable value of the Goods and Services performed up to the date of the claim.

22.3 Evidence of Completion

Each progress claim may be accompanied by reasonable supporting information, including descriptions of work completed, delivery records, timesheets, inspection records, or other evidence of progress. Failure by the Customer to request further information within a reasonable time does not invalidate the progress claim.

22.4 Deemed Payment Claim (SOPA)

If the Supplier is entitled to make a payment claim under the Act, the Supplier's Tax Invoice is deemed to be a payment claim for the purposes of the Act. Each invoice issued as a payment claim under the Act must:

- (a) identify the construction work or related goods and services to which the progress payment relates;
- (b) state the amount claimed; and
- (c) expressly state that it is a payment claim made under the Building and Construction Industry Security of Payment Act 2009 (SA). Failure to include the statement in (c) will mean the statutory entitlements under the Act do not arise in relation to that invoice.

22.5 Payment Obligations

The Customer must pay each progress claim in accordance with the Trading Terms, irrespective of:

- whether the entire scope of the Goods and Services has been completed; or
- whether subsequent stages or deliverables remain outstanding.

22.6 No Conditional Payment

Payment of a progress claim is not conditional upon:

- completion of the entire Works;
- final delivery;
- acceptance of all Goods and Services; or

- payment by any third party to the Customer.

22.7 Undisputed Portion Payable

If the Customer disputes any part of a progress claim, the undisputed portion must be paid in full within the applicable payment period. Any dispute must be notified in writing and dealt with in accordance with these Terms and applicable security of payment legislation.

22.8 Suspension Rights

Without limiting any other rights, D&S Resources may suspend further supply of Goods and Services if a progress claim is not paid when due, in accordance with its statutory and contractual rights.

23. Payment Claims for Construction and Fabrication Work

- 23.1 The Supplier must submit a Payment Claim to the Company at the end of each month for Works performed during that month.
- 23.2 A Payment Claim must:
- (a) be in the form of a Tax Invoice;
 - (b) identify the Works to which the Payment Claim relates;
 - (c) state the amount claimed; and
 - (d) be accompanied by such documentation as the Company may reasonably require.
- 23.3 The Company must, within 10 Business Days of receiving a Payment Claim, provide the Supplier with a Payment Certificate stating the amount the Company proposes to pay and the reasons for any difference between that amount and the amount claimed.
- 23.4 If the Supplier disputes the amount stated in a Payment Certificate, it must notify the Company in writing within 7 Business Days of receiving the Payment Certificate.
- 23.5 If the parties cannot resolve the dispute within 5 Business Days of the Supplier's notice, either party may refer the dispute to adjudication under the Act.

24. Final Payment for Construction and Fabrication Works

- 24.1 The final payment will be made once all contract obligations have been fulfilled to the satisfaction of D&S Resources, including:
- (a) The full and satisfactory delivery of goods and services;
 - (b) Submission of all required documents, including warranties and as-built drawings, which have been reviewed and approved by D&S Resources;
 - (c) Resolution of any outstanding claims or disputes; and
 - (d) Issuance of a Final Payment Certificate by D&S Resources, confirming that all obligations under the contract have been met and that no further claims or rectifications are pending.
- 24.2 D&S Resources reserves the right to withhold the Final Payment Certificate and corresponding payment until all conditions have been met to its satisfaction. The Supplier may only submit the final invoice after receiving the Final Payment Certificate from D&S Resources.
- 24.3 If there is a dispute over the amount payable under a Payment Claim, both parties must attempt to resolve the dispute within 10 Business Days.
- 24.4 If the dispute cannot be resolved, the matter will be referred to adjudication or other agreed-upon dispute resolution procedures.
- 24.5 D&S Resources may charge interest at RBA cash rate + 5% p.a., calculated daily on any undisputed amounts that remain unpaid beyond the agreed payment terms.
- 24.6 Without limiting any other rights, D&S Resources may deduct or set-off from payments due to the Supplier any amounts the Supplier owes to D&S Resources, including for damages, claims, or other contract breaches.

25. Personal Property and Securities Act 2009 (PPSA) (Cth)

- 25.1 In this clause defined terms have the same meaning as given to them in the PPSA.

- 25.2 The Supplier acknowledges that the Agreement constitutes a security agreement for the purposes of the PPSA and creates a security interest in all Goods supplied by the Supplier to the Company.
- 25.3 The Company must, at the Supplier's request, do all things necessary to enable the Supplier to register its security interest on the PPSR.
- 25.4 The Company waives its right to receive a verification statement under section 157 of the PPSA.
- 25.5 To the extent permitted by law, the parties agree that the following provisions of the PPSA do not apply to the enforcement of the security interest created by the Agreement:
- (a) section 95 (notice of removal of accession);
 - (b) section 121(4) (enforcement of liquid assets);
 - (c) section 125 (obligation to dispose of or retain collateral);
 - (d) section 130 (notice of disposal);
 - (e) section 132(3)(d) (contents of statement of account after disposal);
 - (f) section 132(4) (statement of account if no disposal);
 - (g) section 135 (notice of retention);
 - (h) section 142 (redemption of collateral); and
 - (i) section 143 (reinstatement of security agreement).
- 25.6 The Company must not, without the Supplier's prior written consent, create any other security interest in the Goods.

26. Termination

- 26.1 The Company may, by written notice to the Supplier, immediately terminate the Agreement if:
- (a) the Supplier has any execution levied against it, becomes insolvent, enters into, or attempts to enter into, any composition or arrangement with creditors, has an order made, or a resolution passed (or attempted to be passed) for the winding up of the Supplier, (other than for the purposes of amalgamation or reconstruction), or has a receiver and manager or official representative appointed of the whole or any part of its property or undertaking;
 - (b) the performance of the Personnel is in the reasonable opinion of the Company Representative unsatisfactory to the Company (and the Supplier has no replacement Personnel acceptable to the Company) by reason of an unreliable or unprofessional approach to the performance of the Works, insobriety, personal illness or incapacity, or personal misconduct;
 - (c) the Supplier's Equipment does not meet the specifications or performance requirements that one would normally expect from equipment of that type due to inadequate or deficient repairs, maintenance, equipment design or construction;
 - (d) any other act, matter, thing or circumstance renders the Supplier unavailable to render, or incapable of rendering, the Works;
 - (e) the Supplier or the Personnel fail to comply with or breach any of the terms of the Health, Safety and Environment Policy and or Site HSE rules and the breach is not remedied within 7 days of receiving written notice from the Company that it is required to do so; or
 - (f) the Supplier breaches any of the terms or conditions hereof and does not remedy the breach within 14 days of receiving written notice from the Company that it is required to do so.
- 26.2 The Company may terminate the Agreement at any time and without being required to assign any reason for such termination by giving to the Supplier 14 days written notice in advance of its election to terminate.
- 26.3 In the event of termination under clause 26.1 the Company may elect to return the Goods to the Supplier in which case the Supplier will immediately repay all Rates paid to it by the Company.
- 26.4 If Goods to be supplied under the Agreement are of standard stock of the Supplier, then the Company may terminate the Agreement upon written notice to the Supplier, so far as it relates to any unshipped or undelivered portion of Goods without further obligation hereunder, except payment (subject to the other terms hereof) for the Goods shipped or delivered prior to termination.
- 26.5 If the Agreement requires Goods to be manufactured to the Company's specification or requires the Supplier to install or fit Goods, then at any time prior to completion of the work to be performed in fulfillment of the Agreement, the Company may terminate the Agreement upon written notice to the Supplier, and upon receipt of such notice

the Supplier shall stop all work, except as may be otherwise directed by the Company. Upon termination under this clause 26.5, the Company shall pay to the Supplier an amount equal to the completed pro-rata amount of the contract price.

- 26.6 The amount described in clause 26.5 is agreed by both parties and shall reflect the amount completed or committed at the date of termination, provided that at such date the Supplier is not in breach of any of these terms or conditions, and provided further that such amount shall not exceed the total contract price nor provide for any amount for anticipated profit for performance not rendered or for any amount for consequential loss or damage.

27. Dispute Resolution

- 27.1 If a dispute arises between the parties out of or in connection with the Agreement (including any dispute as to the existence, validity, or termination of the Agreement) (Dispute), a party must not commence any court proceedings (other than for urgent interlocutory relief) unless it has first complied with this clause.
- 27.2 A party claiming a Dispute has arisen must give written notice to the other party specifying the nature of the Dispute (Dispute Notice).
- 27.3 Within 10 Business Days of receiving a Dispute Notice, the parties must meet (in person or by telephone or video conference) and attempt in good faith to resolve the Dispute (Good Faith Negotiation Period).
- 27.4 If the Dispute is not resolved within the Good Faith Negotiation Period, either party may refer the Dispute to mediation administered by the Law Society of South Australia or the Australian Disputes Centre, with a mediator appointed by agreement between the parties or, failing agreement within 5 Business Days, appointed by the President of the Law Society of South Australia. The costs of mediation shall be borne equally by the parties unless the mediator otherwise directs.
- 27.5 If the Dispute remains unresolved within 20 Business Days of the appointment of the mediator (or such longer period as the parties may agree), either party may commence court proceedings in the Courts of South Australia.
- 27.6 Nothing in this clause prevents a party from seeking urgent interlocutory or injunctive relief from a court where that party reasonably considers it necessary to protect its rights.
- 27.7 This clause does not apply to any payment dispute that is subject to the Building and Construction Industry Security of Payment Act 2009 (SA), which is governed by the applicable provisions of that Act.

28. Warranties

- 28.1 The Supplier hereby warrants and represents to the Company at the time of accepting each Purchase Order, that:
- (a) It is well able and qualified to render the Works to the Company;
 - (b) The Works shall be rendered carefully, skillfully, diligently and efficiently, to the standard required by the Company and in accordance with the Technical Specifications to achieve the performance requirements set out in the Project Brief;
 - (c) All Goods shall be of merchantable quality, shall be manufactured and delivered strictly in accordance with any drawings, specifications and other instructions of the Company given for the purpose of the Agreement, shall be free from defects in design, materials and workmanship, do not and will not infringe the Intellectual Property of any third party, shall comply with the requirements of any relevant statutes, regulations or legally applicable standards, shall be new on delivery to the Company and shall be in accordance with and shall perform in accordance with the Supplier's technical specifications. The Supplier acknowledges that the Company is relying on the Supplier's skill and judgment that the Goods are appropriate for the purpose required by the Company;
 - (d) All Services shall be performed in accordance with the Agreement and the Technical Specifications, shall be of merchantable quality, do not and will not infringe the Intellectual Property of any third party and shall comply with the requirements of any relevant statutes, regulations or legally applicable standards; and
 - (e) The Personnel are duly qualified, and are, and shall remain, sufficiently qualified, careful, skilful, diligent and efficient to enable the Works to be efficiently performed by the Supplier,
in each case in accordance with the Agreement.

29. Competition and Consumer Act 2010 (Cth)

- 29.1 The provisions of the Competition and Consumer Act 2010 (Cth) (as amended from time to time) shall form part of the Agreement as if the same were set out in full herein with the effect that they would have if "the Company" was substituted for "consumer" (as applicable).

30. Indemnity and Liability

- 30.1 The Supplier hereby indemnifies and agrees to keep indemnified the Company against any Claim which may be made against the Company or any loss, damage, cost or expense including economic or consequential losses, suffered by the Company directly or indirectly in respect of:
- (a) any claim or suit for alleged infringement of rights in any Intellectual Property;
 - (b) the failure of the Works to conform to or fulfill any term or condition of the Agreement;
 - (c) any property where the loss or damage is caused by or results from the negligence or fault of the Supplier or the Personnel;
 - (d) loss of or damage to any property owned, hired or supplied by the Supplier, or the Personnel including the Supplier's Equipment;
 - (e) any damage to the environment where the loss or damage is caused by or results from the negligence or fault of the Supplier or the Personnel;
 - (f) the Supplier's performance or non-performance (including the performance or non-performance of any of the Supplier's employees, contractors or agents) of the Agreement, including claims for personal injuries, death and property loss or damage and the claims or liens of workmen or suppliers of goods, except where such injury, death, damage or loss arises solely from the willful misconduct of the Company or the Company's employees or agents;
 - (g) the failure by the Supplier to comply with the terms of the Agreement including the failure of the Works to meet all of the requirements prescribed in the Agreement;
 - (h) any third-party action, suit, claim, or demand in relation to personal injury or death, including psychological or psychiatric injury, loss of or damage to property, or economic, consequential, or other financial loss arising from the supply, use, or possession of the Products or Works, except to the extent such losses result solely from the willful misconduct of the Company; and
 - (i) any breach of applicable environmental laws or regulations by the Supplier or its Personnel, including any failure to take reasonable precautions to prevent pollution, contamination, or environmental harm during the provision of the Works.
- 30.2 Unless expressly provided otherwise:
- (a) each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this document;
 - (b) it is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this document; and
 - (c) the making of a claim by a party under an indemnity contained in this document in respect of a particular event does not preclude that party from subsequently making further claims under that indemnity in respect of any further loss arising out of the same or related events, even after the termination or expiration of this Agreement.
- 30.3 The Supplier agrees to rectify any defect or omission in the provision of the Works in accordance with the provisions relating to defects liability in the Project Brief and Technical Specifications. Such work must be carried out in a proper and workmanlike manner to the satisfaction of the Company and otherwise in accordance with the terms of the Agreement.

31. Taxes

- 31.1 Unless otherwise stated, all amounts payable under the Agreement are exclusive of GST.
- 31.2 If GST is payable on a supply made under the Agreement, the recipient of the supply must pay the supplier an additional amount equal to the GST payable.
- 31.3 The Supplier must provide the Company with a Tax Invoice for any supply made under the Agreement.

- 31.4 If the Supplier does not provide the Company with its ABN, the Company may withhold from any payment to the Supplier an amount equal to the rate prescribed by the Australian Taxation Office from time to time in accordance with the PAYG withholding provisions of the Income Tax Assessment Act 1997 (Cth) and the Taxation Administration Act 1953 (Cth).

32. Privacy and naming

- 32.1 The Supplier must comply with the Privacy Act 1988 (Cth) in relation to any Personal Information collected, used or disclosed in connection with the Agreement.
- 32.2 The Supplier must not use the Company's name or logo in any advertising or promotional material without the Company's prior written consent.

33. Nature of our relationship

You will supply the Goods and Services as an independent contractor and neither us nor any of our personnel will (unless otherwise agreed by us) be or be deemed to be in partnership or in a joint venture relationship with you, or your employee, servant or agent.

34. Waiver

- 34.1 Any waiver or forbearance by us in regard to the performance of these Terms operates only if in writing and applies only to the specified instance, and does not affect the existence and continued applicability of these Terms.
- 34.2 No failure or delay on our part in exercising any right, power or privilege under these Terms (and no course of dealing between or among any of the parties) operates as a waiver of any such right, power or privilege.
- 34.3 No waiver of any default on our part on any one occasion constitutes a waiver of any subsequent or other default. No single or partial exercise or any such right, power or privilege precludes the further or full exercise of such right, power or privilege.

35. Invalid provisions

If any provision of these Terms is held to be illegal, invalid or unenforceable, these Terms must be considered divisible and inoperative as to such provision to the extent it is illegal, invalid or unenforceable. In all other respects these Terms remains in full force and effect.

36. Costs

You will bear your own costs in reviewing, executing and performing these Terms.

37. Notices

- 37.1 All notices must be in writing and must be given by any one of the following means by:
- (a) Delivering it to the address of the party specified in these Terms on a Business Day during normal business hours;
 - (b) Sending it to the address of the party by pre-paid post; or
 - (c) Sending it by email transmission to the email address of the party.
- 37.2 A notice is given and received:
- (a) If given in accordance with clause 37.1(a) – on the next Business Day after the delivery in the place of delivery;
 - (b) If given in accordance with clause 37.1(b) – 5 Business Days after the day of posting in the place of delivery;
 - (c) If given in accordance with clause 37.1(c) – upon receipt of electronic confirmation of delivery of the message.

38. Entire agreement

- 38.1 The Agreement constitutes the sole and entire understanding with respect to the subject matter of the Agreement and supersedes all prior discussions, proposals, representations and understandings, written or oral.

39. Legal effect

The parties intend the provisions of these Terms to be legally binding and enforceable against us.

40. Execution in counterparts

These Terms may be executed in two or more counterparts and execution by each of the parties of any one of such counterparts constitutes due execution of these Terms.

41. Applicable law and jurisdiction

- 41.1 These Terms are governed by and construed in accordance with the laws of the State of South Australia.
- 41.2 The parties irrevocably submit to the non-exclusive jurisdiction of the Courts of the State of South Australia in respect of any claim, dispute or difference arising out of or in connection with these Terms.

42. Interpretation

- 42.1 In these Terms unless the context indicates a contrary intention:
- (a) The singular includes the plural and conversely;
 - (b) A gender includes all genders;
 - (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
 - (e) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or annexure to, these Terms;
 - (f) A reference to an agreement or document (including these Terms) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by these Terms or that other agreement or document;
 - (g) A reference to a party to these Terms or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
 - (h) A reference to 'us' or 'you' includes a reference to our or your employees, servants and/or agents, as the context permits or requires;
 - (i) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
 - (j) A reference to conduct includes, an omission, statement or undertaking, whether or not in writing;
 - (k) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing;
 - (l) A reference to dollars and \$ is to Australian currency;
 - (m) A reference to a month is to a calendar month (or part thereof);
 - (n) A reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
 - (o) The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;
 - (p) References to agree, approve or consent are references to agreement, approval or consent (as the case may be) in writing; and
 - (q) Nothing in the Agreement is to be interpreted against a party solely on the ground that the party put forward the Agreement or any part of it.

43. Dictionary

In these Terms the following expressions have the meanings assigned to them respectively unless those meanings are repugnant to the context or subject matter:

Agreement means these Terms, the Purchase Order and any schedules and annexures to the Purchase Order;

Business Day means a weekday (excluding a public holiday) in the State; In relation to clauses referring to SOPA, "Business Day" means a day other than a Saturday, Sunday, public holiday, a day between 27 and 31 December (inclusive), or any day on which there is a statewide shutdown of the building and construction industry, as defined in the Building and Construction Industry Security of Payment Act 2009 (SA);

Certificate of Practical Completion means the certificate of practical completion issued by the Company and in accordance with the Technical Specifications;

Claim means any claim, action, proceeding, demand, prosecution, judgement, damage, loss, cost, expense, fine, penalty or liability whatever incurred or suffered by or brought or made or recovered against a person and however arising (whether presently ascertained future or contingent);

Commencement Date means the date on which the Supplier is to commence the Works, as set out in the Completion Schedule;

Completion Date means the date specified in the Completion Schedule as being the date for the issue of the Certificate of Practical Completion in relation to the Works;

Completion Schedule means the schedule setting out the key delivery dates and milestones in the Purchase Order;

Company Representative means the person nominated to represent the Company under the Agreement;

Confidential Information means any information coming to a party by virtue of being a party to the Agreement, except so far as that information is then in the public domain other than as a result of a breach by the party of these Agreement;

Data Protection and Confidentiality means the obligation of each party to maintain appropriate confidentiality of any personal or commercially sensitive information exchanged during the term of these Agreement;

Date of Practical Completion means the date that the Company issues the Certificate of Practical Completion;

EOM means End of Month;

Force Majeure means a circumstance beyond the reasonable control of the parties that result in a party being unable to observe or perform on time an obligation under these Terms. Such circumstances include but are not be limited to: a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and c) strikes;

Goods means the goods referred to in the Project Brief and the Technical Specifications to be provided and/or installed by the Supplier;

Health, Safety and Environment Policy means the Company health, safety and environment policy;

Intellectual Property means all industrial and intellectual property rights including, without limitation, any copyright, patents, trademarks, service marks, design rights or eligible layout rights (whether registered or not), rights to apply for registration of any of these rights, innovations, drawings, discoveries, inventions, improvements, trade secrets, technical data, formulae, computer programs, data bases, logos, domain names, business and trade names, Confidential Information, know-how and advertising material;

State means the state nominated in our Purchase Order;

Payment Schedule means the payment schedule set out in the Purchase Order;

Personnel means such persons as the Supplier may from time to time employ in connection with the Works and who shall be qualified to provide the Works required by the Company;

Performance Conditions means the performance conditions set out in the Purchase Order;

Project Brief means the description of the components of the project set out in the Purchase Order;

Purchase Order means a purchase order in writing issued to the Supplier by the Company;

Reference Documentation means the documentation set out in (attached to or accompanying) the Purchase Order;

Services means the services referred to in the Project Brief and the Technical Specifications to be performed by the Supplier;

Site means the Site referred to in the Project Brief;

Supplier's Design & Documentation Obligation means all tasks necessary to design, specify and document the Works;

Supplier's Equipment means all equipment, tools and materials that are used by the Supplier (or any of its employees or contractors) in the provision of the Works;

Supplier's Representative means the person nominated to represent the Supplier under the Agreement;

Terms means these terms;

Technical Specifications means the specifications relating to the provision of the Works set out in the Purchase Order; and

Works means the delivery and performance of the Goods and Services comprised in the Project Brief by the Supplier using the Personnel and Supplier's Equipment in accordance with the Technical Specifications and the Agreement.

END OF TERMS
