

1. Interpretations and General Matters

1.1. In these Conditions:

Action means any claim, action, suit, proceeding or demand.

Business Day means a day other than a Saturday, Sunday, public holiday in Queensland, Australia.

Client means EnProCon (QLD) Pty Ltd (ACN 604 587 313)

Conditions means these General Conditions of Contract including any additional Special Conditions.

Company means EnProCon (QLD) Pty Ltd (ACN 604 587 313)

Contract means these Terms and Conditions

Contract IP means all Intellectual Property developed by or on behalf of the Company in connection with providing the Services.

Defect means any aspect of the Services not in accordance with the Contract, or that is damaged, deficient, faulty, inadequate or incomplete in design, performance, workmanship, quality or makeup and Defective has the equivalent meaning.

Discoveries means all works, ideas, concepts, reports, designs, discoveries, inventions (whether patentable or not) and Intellectual Property made by the Supplier or its Personnel, alone or with others, in the course of performing the Services or otherwise arising out of the use of any of the Company's time, materials, resources or facilities including all computer programs, source codes, compilations, flowcharts and software developed or adapted for specific application to or by the Company, and all documents prepared by the Supplier's Personnel in connection with the Services.

Fuel Tax Credit has the meaning given in the Fuel Tax Act 2006 (Cth).

GST has the meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

HSE means health, safety and environment.

Intellectual Property means all industrial and intellectual property rights (including rights to patents, designs, copyright, trademarks, trade names and circuit layouts) conferred under statute, common law, equity or otherwise in any country.

Legislative Requirements means any applicable statutes, regulations, by-laws, orders, awards, proclamations of the Commonwealth, certificates, licences, consents, permits, approvals, codes, standards (including Australian Standards) and requirements of organisations.

Liability means any Action, damages, losses, liabilities, costs or expenses of any kind and includes consequential loss, damage or expense (including but not limited to loss of profit or revenue, loss of market or loss of contracts or damage to commercial reputation).

Loss means any loss, damage, expense, payment or liability, whether direct or indirect, and includes consequential loss, damage or expense (including but not limited to loss of profit or revenue, loss of market or loss of contracts or damage to commercial reputation).

Party means the Company or the Supplier, and a reference to Parties is a reference to both of them.

Personnel means the employees, officers, agents, representatives, consultants, subcontractors (including their employees, officers, agents and representatives) involved either directly or indirectly in

performing the Services, but a reference to the Company's Personnel excludes the Supplier and its Personnel.

Price has the meaning given in clause 10.1.

Project Property means any item, whether of a permanent or temporary nature, including items provided by the Company or the Client, which is, or which may be, incorporated into, purchased, appropriated or intended for the Project whether such item is the property of the Client, the Company, the Supplier or any other party.

Related Body Corporate has the meaning given in the Corporations Act 2001 (Cth).

Scope of Services means the scope of the Services to be performed by the Supplier as outlined in Purchase Order

Security of Payment Act means the Building and Construction Industry Payments Act 2004 (Qld).

Services means the services specified in the Scope of Services and includes all necessary incidental services and any associated goods.

Site means the premises specified in the Purchase Order.

Site Representative means a representative of the owner or operator of the Site, as notified in writing by the Company to the Supplier from time to time.

Special Conditions means the special terms and conditions set out in Schedule 1 - Special Conditions.

Specifications means all codes, standards, drawings and specifications applicable to the Contract, referred to in the Contract documents or otherwise incorporated into the Contract by reference and to be complied with by the Supplier.

Supplier means the person performing the Services and/or providing the Goods, as identified in the Purchase Order Form.

Supplier IP means all Intellectual Property, which the Supplier can demonstrate:

- a) was owned by the Supplier as at the date of the Purchase Order; or
- b) came into existence after the date of the Purchase Order independently of the performance of the Contract and was not paid for by the Company.

2. Contract Documents and Other Information

- 2.1. The Contract contains the entire agreement between the Parties and supersedes any prior communications, negotiations, understandings, representations and documents between the Parties except to the extent reproduced in the Contract.
- 2.2. If at any time in relation to the Services the Supplier provides or refers to any terms or conditions not included in the Contract those terms and conditions shall not form part of or be incorporated into the Contract.
- 2.3. The Supplier agrees that it does not rely on any document or other information other than as expressly included or referred to in the Contract.
- 2.4. Where the Contract refers to all or part of another document not physically included with the Contract then the Supplier shall be deemed to have obtained a copy of that other document or the relevant part thereof from the Company or from the relevant source.

3. The Services

- 3.1. The quantity, quality and description of the Services are as stated in the Scope of Services.

- 3.2. The Supplier must supply the Services in accordance with, and as specified in, the Contract.
- 3.3. The Supplier must supply all equipment and items necessary for the performance of the Services, including but not limited to those items set out in the Scope of Services.
- 3.4. The Company must supply those services and items set out in the Scope of Services.

4. Time for Performance

- 4.1. Time is of the essence in respect of all obligations of the Supplier under the Contract.
- 4.2. The Supplier must supply the Services in accordance with the Delivery Dates, until the expiry of termination of the Contract.
- 4.3. The Supplier must immediately report to the Company any actual or likely delay in supply of the Services and its cause. The Supplier must take all reasonable steps to prevent delay.
- 4.4. If the Parties agree to change the scope of any of the Services, the Price and any change to the Delivery Dates will also be varied as agreed.

5. Industrial Relations

- 5.1. The Supplier shall be responsible for:
 - a) managing its own industrial relations to ensure there is harmony among workers and no delay to supply of the Services;
 - b) resolving all industrial Actions, industrial disputes and industrial matters in relation to its own Personnel;
 - c) consulting and co-operating with the Company and other contractors to the Company in relation to industrial issues; and
 - d) complying with any lawful directions given by the Company or a Site Representative in relation to industrial matters.

6. Inspection and Sampling

- 6.1. The Supplier must conduct all inspections and tests in strict accordance with requirements of the Purchase Order.
- 6.2. The Supplier must ensure that the Company and the Client have the opportunity to inspect, test, and witness any test of the Services wherever they may be located. The Supplier must provide or ensure that its suppliers provide unrestricted access to reasonable facilities necessary for the Company and the Client to carry out such inspections or witness such tests.
- 6.3. The Supplier is not relieved of any of its obligations under the Contract because the Company or the Client has inspected the Services or witnessed any testing prior to the supply of the Services.
- 6.4. The Company must be entitled to reject Services that do not comply with the requirements of the Contract.

7. Technical Material

- 7.1. The Supplier must, without additional cost to the Company, supply all required plans, drawings, specifications, manuals, certificates, instructions, fabrication reports and the like in the form and at the times and in the numbers of copies specified in the Purchase Order or otherwise as reasonably required by the Company.

8. Suspension of Services

- 8.1. The Supplier must suspend the whole or any part of the Services on receipt of notice from the Company to do so.
- 8.2. Upon receipt of notice of suspension, the Supplier must immediately take all possible action to mitigate any costs incurred by it as a result of the suspension.
- 8.3. The suspension shall not vitiate the Contract.
- 8.4. The Company shall pay to the Supplier all reasonable expenses and costs arising from suspension of the Services, unless the suspension

is due directly or indirectly to the breach of the Contract by the Supplier or any act or omission by the Supplier not authorised by the Contract. The Supplier shall have no other entitlement arising out of the suspension, except as set out in this clause 8.4.

- 8.5. The Company shall, when the reason for any suspension no longer exists, give notice to the Supplier to recommence the relevant Services and the Supplier must comply with the notice promptly.

9. Termination

- 9.1. In addition to its rights under clause 15, the Company may terminate all or any part of the Contract at any time for any reason, in its sole and absolute discretion by written notice of termination to the Supplier.
- 9.2. Upon receipt of notice of termination, the Supplier must:
 - a) immediately cease performance of the Services to the extent specified in the termination notice;
 - b) immediately take all possible action to mitigate any costs incurred by it as a result of the termination; and
 - c) provide the Company with a detailed report in the form required by the Company in relation to the Services supplied prior to termination.
- 9.3. In the event of termination by the Company under this clause the Supplier is entitled to:
 - a) payment for Services supplied prior to termination but not already paid for; and
 - b) demobilisation costs.
- 9.4. The maximum compensation payable to the Supplier arising out of the termination of the Contract must not exceed the Price of the relevant Services terminated.
- 9.5. The Supplier is not entitled to the Price or to any other compensation arising out of the termination other than as specified in this clause, including loss of profit or recovery of overheads.

10. Price

- 10.1. The price/rate for the Services is the price stated in the Purchase Order (PO). Unless otherwise agreed and clearly stated in the PO. Remuneration the price stated in that PO excludes GST but includes any other applicable taxes, customs, excise and import duties, tariffs, fees, levies, charges, costs or expenses incurred by the Supplier, including transport, packing and insurance costs.
- 10.2. To the extent that the Company is required to reimburse the Supplier for costs incurred by the Supplier, those costs do not include any amount in respect of GST for which the Supplier is entitled to claim an Input Tax Credit under the GST Act.
- 10.3. To the extent that any Consideration (as defined in the GST Act) payable to the Supplier under the Contract is determined by reference to another amount, the GST exclusive amount of the other amount shall be used.
- 10.4. The Supplier is responsible for all remuneration and benefits for its Personnel (including but not limited to superannuation contributions, annual leave, sick leave, long service leave, overtime, penalty rates, work care levies, group tax, payroll tax, fringe benefits tax, superannuation guarantee charges and other taxes or levies imposed by law, and termination payments), and acknowledges that the Price includes all such remuneration and benefits.
- 10.5. Unless otherwise agreed and clearly stated in in the PO, the Price/Rate is fixed and firm and not subject to adjustment due to currency fluctuation or any other reason.

11. Payment

- 11.1. The Supplier must claim payment for the supply of the Services by submitting invoices to the Company. Each such invoice must be:
 - a) a tax invoice;

- b) correctly dated;
 - c) refer to the PO;
 - d) list the particular Services supplied; and
 - e) supported by all relevant records to calculate and verify the amount set out in any Supplier invoice.
- 11.2. Compliance by the Supplier with Clause 11.1 is a condition precedent to the Supplier's entitlement to claim the amount stated in an invoice submitted by the Supplier to the Company.
- 11.3. If the Supplier submits an invoice earlier than the time for submission of that invoice set out in PO, the Supplier agrees that the invoice shall not be taken to have been submitted until that time.
- 11.4. The Company must not be liable to pay for the Services until the Services have been supplied in accordance with, and as specified in, the Contract.
- 11.5. If the Company requests, the Supplier must provide the Company with all relevant records to calculate and verify the amount set out in any Supplier invoice.
- 11.6. Subject to clause 11.7, if the invoice is properly drawn and accompanied by the necessary supporting documents, the Company will pay such invoice within the time stated in the Purchase Order.
- 11.7. If the Company disputes any amount claimed in an invoice, it shall make a determination of the amount disputed and the amount payable in respect of the invoice and provide a progress certificate to the Supplier:
- a) identifying the invoice to which the certificate relates;
 - b) stating that determination, including, for each item of the invoice:
 - c) the amount which is not disputed and therefore payable; and
 - d) if applicable, the amount which is disputed and the reason(s) it is disputed, within the time specified in the *Building Industry Fairness (Security of Payment) Act 2017* (Qld).
- 11.8. The Company shall pay any amounts not in dispute in accordance with clause 11.6.
- 11.9. Without limiting clause 11.7, the Company may issue a revised progress certificate at any time correcting any omission or error discovered in any previous progress certificate or modifying any previous progress certificate issued by it, including as a result of the provision of information under clause 11.5.
- 11.10. Within 21 days after the provision of the last of the Services under the Contract, the Supplier must submit a final invoice and endorse it 'Final Invoice'. The Supplier must in the Final Invoice all moneys which the Supplier considers to be due from the Company under or arising out of the Contract or any alleged breach thereof.
- 11.11. After the expiry of the time specified in clause 11.9, any claim which the Supplier could have made against the Company in the Final Invoice and has not been made shall be barred and the Supplier forever releases the Company from any liability it may have had to the Supplier if the claim had been submitted within the period for submitting the Final Invoice
- 11.12. The Company shall assess and, if required, pay the Final Invoice in accordance with clauses 11.6 to 11.8. The progress certificate issued by the Company in respect of the Final Invoice shall be endorsed 'Final Payment Certificate'.
- 11.13. Unless either party, either before the Final Payment Certificate has been issued or not later than 20 Business Days after the issue of the Final Payment Certificate, serves an adjudication application under the Security of Payment Act or a Notice of Dispute under clause 20, the Final Payment Certificate shall be evidence in any proceedings of whatsoever nature and whether under the Contract or otherwise between the parties arising out of the Contract, that the Services have been completed in accordance with the Contract and that any necessary effect has been given to all terms of the Contract which require payment of any amount to the Supplier, except in the case of:
- a) fraud, dishonesty or fraudulent concealment relating to the Services; or
 - b) any accidental or erroneous inclusion or exclusion of any amount in any computation, or any arithmetical error in any computation.
- 11.14. If the Final Payment Certificate shows any amount to be owing from the Supplier to the Company, the Supplier must pay that amount within 14 days of receipt of the Final Payment Certificate.
- 11.15. The Company is not obliged to approve any invoice which is not submitted in accordance with the Contract, and may withhold approval and money due to the Supplier under the Contract if the Services do not comply with the Contract.
- 11.16. No interest shall be payable on any amount due to the Supplier but remaining unpaid after the date upon which it should have been paid.
- 11.17. Without prejudice to any other rights, the Company may deduct from or set off against any monies which may be, or become, payable to the Supplier any costs, expenses or damages which are due from the Supplier to the Company, or which the Company has incurred or reasonably considers it might in the future incur as a consequence of any act or omission of the Supplier, whether under or in connection with the Contract or any other contract between the Company and the Supplier.
- 11.18. Payment by the Company of all or any part of a claim by the Supplier or any other amount to the Supplier is on account only and does not constitute approval of any Services or any other matter or thing in respect of which the payment is made.
- 11.19. The Supplier must:
- a) within 1 Business Day give the Company notice if the Supplier has been required to supply information to a subcontractor in relation to work done in connection with the Contract under section 9A of the Subcontractors' Charges Act 1974 (Qld) (SC Act), together with a copy of the information provided; and
 - b) within 1 Business Day notify the Company if it becomes aware that a subcontractor has claimed or intends to claim a statutory charge under section 10(1) of the SC Act in respect of work done in connection with the Contract;
 - c) indemnify the Company against any claims against, or costs, losses or damages (including lawyers' fees and expenses on a solicitor/client basis) suffered or incurred by Company arising out of or in connection with:
 - i. a notice of claim of charge being served on the Company under section 10(1) of the SC Act;
 - ii. a failure by the Supplier to comply with its obligations under this clause 11.19; or
 - iii. any liens or charges lodged (including under the SC Act) as a consequence of the Supplier's failure to pay, or delay in paying, any of its Personnel, and must use its reasonable endeavours to have such liens or charges removed promptly.
- 11.20. If the Company makes a payment into court or to any Personnel of the Supplier as a result of receiving a notice of claim of charge under the SC Act, for the purposes of calculating any amounts payable to the Supplier, that payment will be treated as though it was made by the Company to the Supplier.

12. Supply of Services

- 12.1. The Supplier must obtain all necessary permits and licenses which must be obtained in Supplier's name and are necessary for Supplier to perform its obligations under the Contract.
- 12.2. The Supplier must, in providing the Services:

- a) not interfere with the Company's activities or the activities of any third party at the Site; and
- b) comply with, and ensure that its Personnel comply with all lawful directions and orders given by or on behalf of the Company or the Client at the Site and all of the Company's and the Client's policies, procedures and management plans.

13. Warranties

13.1. The Supplier represents and warrants that:

- a) the Services will be supplied in an efficient manner in accordance with all Legislative Requirements all lawful directions of the Company and all of the Company's and the Client's policies, procedures and management plans;
- b) the Services strictly comply with the scope of Services and the requirements of the Contract;
- c) the Services are free from all Defects;
- d) the Supplier will, and ensure its Personnel will, exercise the standards of diligence, due care and skill normally exercised by a prudent and similarly qualified and competent supplier supplying equivalent services;
- e) the Services are fit for the purpose for which services of the same kind are commonly supplied and for any other purpose described in the Purchase Order;
- f) all Personnel are appropriately qualified, competent and skilled to perform the relevant part of the Services in respect of which they are engaged; and
- g) any equipment used on-Site by the Supplier will be in a safe working condition and comply with all Legislative Requirements and be operated by suitably qualified and competent Personnel.

13.2. The Supplier must immediately rectify or replace at the Company's option and at Supplier's sole cost any Defective Services discovered within 15 months after supply or 12 months after the Services are first used or enter into the service for which they are purchased, whichever occurs first.

13.3. If the Company reasonably considers that it is necessary to immediately rectify or replace Defective Services then the Company is not obliged to give the Supplier an opportunity to rectify or replace such Services before the Company does so or causes a third party to do so. The Supplier must reimburse the Company for the full cost of such replacement or rectification.

13.4. The Supplier's obligation to replace or rectify Defective Services is cumulative of other remedies available to the Company.

13.5. The Supplier must ensure that the Company has the full benefit of any manufacturer's warranties that may be applicable to the Services and the Supplier must pursue any manufacturer's warranties on the Company's behalf if the Company requests.

13.6. If the Supplier has replaced or rectified Defective Services, the rectified or replacement Services must be subject to the same warranty period as the original Services, from the date of rectification or replacement.

13.7. If the Company elects to accept Defective Services, such election does not bind the Company to accept any other Defective Services and does not affect any of the Company's other rights under the Contract in respect of those Replacement Services.

13.8. The Company may assign any or all of the above warranties to any of its clients or related companies and the Supplier consents to such assignment.

14. Liability and Indemnity

14.1. Sickness, Disease, Injury or Death Of Personnel

- a) The Company must indemnify and hold harmless the Supplier against any and all Loss and Actions in respect of injury or

sickness, disease or death of any of the Company's Personnel arising out of or in connection with the Contract from any cause whatsoever including but not limited to the negligence or breach of duty (whether statutory or otherwise) of the Supplier and its Personnel.

- b) The Supplier must indemnify and hold harmless the Company and the Client against any and all Loss and Actions in respect of injury or sickness, disease or death of any of the Supplier's Personnel arising out of or in connection with the Contract from any cause whatsoever including but not limited to the negligence or breach of duty (whether statutory or otherwise) of the Company and its Personnel.

14.2. Physical Property

- a) Subject to clauses 14.3 and 14.4, the Company shall be liable for, indemnify and hold harmless the Supplier against, any and all Loss and Actions in respect of:

- i. physical loss of or damage to property (including but not limited to facilities and motor vehicles, but excluding Project Property) owned, supplied, hired, chartered or borrowed under other agreements by the Company; or
- ii. the removal, destruction, lighting or marking of any debris of such physical property,

arising out of or in connection with the Contract from any cause whatsoever including but not limited to the negligence or breach of duty (whether statutory or otherwise) of the Supplier but excluding the intentional, conscious or reckless disregard of any provision of the Contract by an employee of the Supplier in a senior executive management position.

- b) The Supplier shall be liable for, indemnify and hold harmless the Client and the Company against, any and all Loss and Actions in respect of:

- i. physical loss of or damage to property (including but not limited to the works, the Site, any existing infrastructure on the Site, motor vehicles, equipment or materials) owned, supplied, hired, chartered or borrowed under other agreements by the Supplier; or
- ii. the removal, destruction, lighting or marking of any debris of such physical property,

arising out of or in connection with the Contract from any cause whatsoever including but not limited to the negligence or breach of duty (whether statutory or otherwise) of the Client or the Company.

14.3. Project Property While Under Construction

- a) Notwithstanding the provisions of clause 14.2, in respect of Project Property which is under construction, the Supplier shall be liable for, indemnify and hold harmless the Company and the Client against, any and all Loss and Actions in respect of:

- i. physical loss of or damage to the Project Property whilst within the care, custody or control of the Supplier or its Personnel arising from any cause whatsoever including but not limited to the negligence or breach of duty (whether statutory or otherwise) of the Company or the Client; and
- ii. physical loss of or damage to the Project Property not within the care, custody or control of the Supplier provided that such loss or damage arises from any Defect caused by the Supplier including the intentional, conscious or reckless disregard of any provision of the Contract by an employee of the Supplier in a senior executive management position,

arising out of or in connection with the Contract.

14.4. Project Property in Operations Phase

- a) Notwithstanding the provisions of clause 14.2, in respect of Project Property which has been handed over to the Client and has commenced operations, the Supplier shall be liable for, indemnify and hold the Company and the Client harmless against any and all Loss and Actions in respect of:
 - i. physical loss of or damage to Project Property whilst it is within the care, custody or control of the Supplier, arising from any cause whatsoever including but not limited to the negligence or breach of duty (whether statutory or otherwise) of the Company or the Client; and
 - ii. physical loss of or damage to Project Property not within the care, custody or control of the Supplier to the extent that such loss or damage is caused by the Supplier or any of its Personnel.
- b) Except where the loss or damage arises from any Defect caused by the Supplier, or the intentional, conscious or reckless disregard of any provision of the Contract by an employee of the Supplier in a senior executive management position, the indemnity provided under clause 14.4a) shall be limited to the amount of the insurance deductible payable under the Company's relevant policy of insurance in respect of the loss or damage, for each and every Loss or Action (or series of Losses or Actions arising from the same physical loss of or damage).

14.5. Third Parties

- a) Subject to any other express provisions of the Contract to the contrary, the Supplier shall be liable for, indemnify and hold harmless the Company and the Client against, any and all Loss and Actions by third parties (which shall not include the Company, the Client or Personnel of either of them), in respect of injury, sickness, disease or death of any third party and loss of or damage to physical third party property arising out of or in connection with the Contract whether or not arising out of the negligence or breach of duty (statutory or contractual or otherwise) of the Company or the Client and must at its own cost, on the Company's or the Client's request, defend the Company or the Client in any proceedings involving the same.
- b) This indemnity shall not exceed the amount specified in the Particulars per occurrence or series of occurrences arising from the one event. Above this amount per occurrence or series of occurrences arising from the one event, liability of the parties shall be governed by law.

14.6. Pollution From Supplier's Property

- a) The Supplier shall indemnify and hold harmless the Company and the Client against any and all Loss and Actions, in respect of any spills, leaks or discharge of fuels, lubricants, garbage, sewage and other materials in the Supplier's or its Personnel's possession and/or control causing injury or death to persons, loss or damage to property or pollution or contamination of the land arising out of or in connection with the Contract, except that the Company shall indemnify and hold harmless the Supplier to the extent that such pollutants or waste matter have been deposited on the express written instruction of the Company.

14.7. Mitigation of Losses

- a) Where an indemnity is given by a Party, the indemnified Party will use all reasonable endeavours to mitigate the loss suffered by it which forms the basis of the Loss of Action.

14.8. Claims Procedure

a) Notice

If either Party becomes aware of any matter that may give rise to a Loss or Action against the other under the indemnities in the Contract, the Party must give notice of that fact as soon as reasonably practicable to the Party giving the indemnity (Indemnifying Party).

b) Investigation by Indemnifying Party

- i. Without prejudice to the validity of the Loss or Action or alleged Loss or Action in question, a Party seeking to rely on an indemnity (Claiming Party) must allow the Indemnifying Party (at its own cost) and its technical and professional advisers to investigate the matter or circumstance alleged to give rise to such Loss or Action and whether and to what extent any amount is payable in respect of such Loss or Action.
- ii. The Claiming Party must give, and must procure that its relevant Personnel give (subject to their being paid all reasonable costs and expenses), all such information and assistance, including access to the Claiming Party's premises and Personnel, and the right to examine and copy or photograph any equipment, accounts, documents and records, as the Indemnifying Party or its technical or professional advisers may reasonably request.
- iii. This clause shall not entitle the Indemnifying Party, its technical or professional advisers to information which is or would be legally privileged and the Claiming Party shall not be obliged to provide any commercially sensitive data unless such information is essential to determine the Loss or Action.

c) Third Party Claims

If the Loss or Action in question is a result of or in connection with a Loss or Action by or liability to a third party then:

- i. the Claiming Party must consult with the Indemnifying Party and must fully investigate the Loss or Action;
- ii. the Claiming Party must give and must procure that its Personnel give, subject to their being paid all reasonable costs and expenses, all information and assistance (including access to premises and Personnel and the right to copy, photograph or photocopy, any assets, accounts, documents or records) reasonably required by the Indemnifying Party and its advisers to investigate the Loss or Action;
- iii. no admission of liability shall be made by or on behalf of the Claiming Party or any of its Personnel and the Loss or Action shall not be compromised, disposed of or settled without the consent of the Indemnifying Party (such consent not to be unreasonably withheld or delayed);
- iv. the Claiming Party must take such action as the Indemnifying Party may reasonably request to avoid, dispute, resist, compromise or defend the Loss or Action or to transfer conduct of the Loss or Action to the Indemnifying Party; and
- v. notwithstanding anything to the contrary, the Indemnifying Party shall only indemnify the Claiming Party for the costs reasonably incurred by the Claiming Party or any of its Personnel in taking such action provided that the Indemnifying Party is consulted as to the proposed course of action and the professional advisers to be used, before such costs are incurred, and is thereafter provided with regular progress reports and updates of costs incurred.

- d) Damage and Accident Report
- i. The Supplier must immediately report to the Company and, if such report is given orally, confirm in writing to the Company within one (1) day:
- A all loss or damage to any equipment or property of the Company, the Client or third parties;
 - B all accidents, injuries or death of any person(s);
 - C all reportable incidents under Legislative Requirements,
- and the Supplier must in such report or as soon as reasonably practicable thereafter notify the Company of the cause or causes, nature and extent of such loss, damage, accident, injury, death or incident and of the steps that the Supplier has or will be taking to deal with them in accordance with the Contract; and
- ii. In addition, the Supplier must permit the Company to participate in any investigation into any of the above and must (in any event) provide the Company with a full report of the investigation's findings, together with any follow-up or additional reports.

14.9. Extent of Indemnities And Limitations

- a) In the Contract, all indemnities and exclusions, limitations and allocations of liability must:
- i. be effective in contract, negligence or other tort, statute and at law; and
 - ii. survive expiry or termination of the Contract.

15. Default and Termination

- 15.1. The Contract may be terminated by the Company immediately at any time for any reason, in the Company's sole and absolute discretion, on giving written notice of termination to the Supplier if the Supplier:
- a) fails to remedy any breach of its obligations under the Contract within 7 days after receiving written notice from the Company requiring it to do so;
 - b) is unable to pay its debts when they fall due;
 - c) ceases to hold any licence, qualification, approval, authority or consent required to supply the Services;
 - d) threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvent administration;
 - e) enters into any negotiations for any arrangement or composition with its creditors;
 - f) being a company, goes into liquidation, whether voluntary or compulsory, or has a receiver or receiver and manager or administrator appointed, or an application is made for the Company to be wound up;
 - g) being an individual, has a trustee in bankruptcy appointed;
 - h) ceases or threatens to cease to carry on business; or
 - i) assigns or subcontracts the Contract or any part of the Supplier's obligations under the Contract without the prior written consent of the Company, in which case the Company's liability to the Supplier must be limited to payment of the Price for Services supplied prior to such termination.
- 15.2. Termination of the Contract does not affect or prejudice any rights of the Company which have accrued prior to the termination. The Company's exercise of its rights under this clause does not affect or limit its ability to exercise any other rights under the Contract, at law or in equity.
- 15.3. If the Company repudiates the Contract and the Supplier terminates the Contract, the Supplier shall be entitled to claim contract damages

and shall not be entitled to claim compensation assessed on a quantum meruit basis.

16. Insurance

- 16.1. The Supplier must for as long as it has obligations outstanding in connection with the supply of the Services, effect and maintain:
- a) Workers Compensation: according to statutory obligations; and
 - b) Public Liability: \$10M any one event and in the aggregate; and
 - c) Motor Vehicle Insurance: \$20M any one event and in the aggregate
- 16.2. Each policy of insurance effected by the Supplier in accordance with this clause must:
- a) name the Company and the Client as insured parties;
 - b) include a cross-liability clause providing that where there is more than one insured and a claim is made, all insuring agreements must operate as if there were a separate insurance for each insured;
 - c) waive all express or implied rights of subrogation against the Company and the Client and their directors, officers and employees;
 - d) include a clause that provides that non-disclosure, misrepresentation or a breach of a conditional term by one insured does not adversely affect the cover provided to any other insured; and
 - e) include a clause providing that the Company or the Client (as the case may be) shall be the loss payee on any claims made by the Company or the Client under the policy.
- 16.3. The Supplier must notify the Company immediately if any incident occurs that is likely to give rise to a claim under any policy of insurance effected under this clause, or if any claim is made.
- 16.4. The Supplier must first claim on any insurance policy it is required to effect under the Contract before making a claim against the Company in respect of a loss that would otherwise be covered by any insurance policy.
- 16.5. If the Company notifies the Supplier that the Company has effected any policy of insurance that covers the Supplier, the Supplier must comply with the terms of that policy of insurance. The Supplier must, upon request, provide to the Company evidence satisfactory to the Company of such insurance to the Company. Compliance by the Supplier with this clause is a condition precedent to the Supplier being entitled to:
- a) access to the Site;
 - b) make a claim for payment for the supply of the Services; or
 - c) payment for the supply of the Services.

17. Personnel

- 17.1. The Supplier must ensure that all Personnel:
- a) are experienced, competent and fit to provide the Services, including submitting to drug and alcohol testing as required by the Company or the Client;
 - b) have undergone and passed any background checks required by the Company (including providing evidence to the Company's reasonable satisfaction);
 - c) hold all necessary qualifications, licences and permits to perform the Services;
 - d) comply with all of the Company's and the Client's directors, policies, procedures and management plans.
- 17.2. The Company may object to any Personnel who, in the Company's reasonable opinion, does not have the appropriate qualifications, competency or skill to perform the relevant part of the Services in respect of which they are engaged, who engages in misconduct, or is

incompetent, unsuitable or negligent. The Supplier must remove and immediately replace such Personnel with a suitable replacement upon being directed to do so by the Company. The Personnel removed must not subsequently be employed on the Site or in activities connected with the Services without the approval of the Company.

18. Site

18.1. This clause 18 applies to the extent the Supplier or Personnel are required to be on or in the vicinity of the Site.

18.2. The Supplier must:

- a) comply, and ensure its Personnel complies, with all Legislative Requirements, the conditions of any exploration or mining tenements relevant to the Site, and all approvals, policies, standards, rules and procedures in force from time to time, including in relation to HSE;
- b) comply, and ensure its Personnel comply, with all lawful directions by the Company, the Client and any Site Representative;
- c) submit and amend any HSE management plan(s) as reasonably required by the Company;
- d) attend all induction courses as reasonably required by the Company;
- e) maintain true and accurate records including computer print-outs, personnel books, correspondence, instructions, plans, drawings, receipts, time sheets, invoices and memoranda in relation to the Services during the performance of the Services and for a period of at least 5 years after the expiry or termination of the Contract; and
- f) permit the Company to have access to the Supplier's premises, documentation, data and Personnel as necessary to enable the Company to verify, monitor and audit the Supplier's compliance with this clause 18.

18.3. The Supplier acknowledges that it must not have exclusive possession of any part of the Site and must only be granted access to the Site to the extent necessary for the performance of the Services. The Supplier must cooperate with other contractors and persons on the Site and coordinate its work with them.

19. Intellectual Property

19.1. The Supplier warrants that any design, equipment, methods of working and documentation including but not limited to specifications, drawings, reports and publications used or produced by the Supplier in connection with the Services shall not infringe any Intellectual Property.

19.2. The Supplier acknowledges and agrees that:

- a) nothing in the Contract grants it any Intellectual Property or other rights in Discoveries;
- b) Intellectual Property in all Contract IP vests exclusively in the Company or the Client (as directed by the Company);
- c) Intellectual Property in all Discoveries arising as a result of the provision of the Services or otherwise will vest exclusively in the Company or the Client (as directed by the Company); and
- d) the Supplier will execute and ensure that all Personnel execute all documents that are necessary or desirable to ensure that all Discoveries and Intellectual Property rights in them become and remain vested in the Company or the Client (as directed by the Company).

19.3. The Company grants to the Supplier a non-exclusive, non-transferable, revocable, royalty-free licence to use the Discoveries and the Intellectual Property in them during the term of the Contract solely as reasonably required to perform the Services.

19.4. The Supplier grants to the Company and the Client a perpetual, irrevocable, non-exclusive, worldwide, transferable, royalty-free licence to exercise the Supplier IP as necessary for the Company to enjoy the benefit of the Services for the purposes of the Company's business and the business of the Related Bodies Corporate of the Company and any other parties nominated by the Company. This licence includes the right to sublicense any Supplier IP to:

- a) any Related Body Corporate of the Company or assignee of assets of the Company or any Related Body Corporate of the Company;
- b) any third parties engaged by the Company or any Related Body Corporate of the Company, for the purpose of providing services to the Company to any Related Body Corporate of the Company; or
- c) the Client and any third party to whom the Company or any Related Body Corporate of the Company provides services from time to time.

19.5. The Supplier must:

- a) promptly disclose all Discoveries to the Company;
- b) ensure that any subcontract that the Supplier enters into in relation to the Contract contains (as directed by the Company) an assignment by the subcontractor to the Company or the Client (or to the Supplier, so as to permit the Supplier to assign to the Company or the Client) of all Contract IP created by the subcontractor;
- c) provide, and ensure its Personnel provide, all reasonable assistance the Company may request to protect, perfect, enforce, defend or assert its interests and right to use and exploit the Contract IP (including assisting the Company to take action against persons infringing the Contract IP); and
- d) upon request from the Company, obtain from each of its Personnel an irrevocable and unconditional consent, in favour of the Company, its customers, successors and assigns (which is legally enforceable by the Company) for the Company to perform any act or do anything which, but for that consent, would infringe the moral rights of that Personnel.

19.6. The Supplier indemnifies the Company for all loss and expense incurred as a result of a breach of this clause.

20. Disputes

20.1. Any dispute, controversy or claim (Dispute) arising out of, connected with or relating to the Contract or the breach, termination or claimed invalidity of the Contract, whether based on contract, tort, statute, regulation or otherwise, will be dealt with in accordance with this clause 21.

20.2. First, the party claiming the Dispute must:

- a) give a Notice of Dispute to the other party setting out the nature of the Dispute; and
- b) seek to convene a meeting of representatives of the parties within 5 Business Days of the Notice of Dispute being provided to discuss the Dispute within the aim of resolving it.

20.3. If the Dispute is not resolved by discussion at such meeting of the representatives of the parties, representatives of the parties' senior management must, by the earlier of 5 Business Days of the meeting referred to in clause 20.2.b) or 10 Business Days after the relevant Notice of Dispute was given, meet and attempt to resolve the Dispute.

20.4. If the Dispute is not resolved by negotiations between the parties' senior management, within 10 Business Days of the meeting referred to in clause 20.3 or 20 Business Days after the relevant Notice of Dispute was given (whichever is earlier), either party may litigate the Dispute.

- 20.5. This clause 20 does not prevent either party from seeking urgent declaratory or interlocutory relief from a court of competent jurisdiction, where in that party's reasonable opinion, that action is necessary to protect that party's interests.
- 20.6. Pending the determination of any Dispute, the parties must continue to perform their respective obligations under the Contract.

21. Security of Payment Legislation

- 21.1. The parties agree that for the purposes of any adjudication under any Security of Payment Act in relation to the Contract or the Services:
- the prescribed appointor shall be the Registrar appointed under the Building and Construction Industry Payment Act 2004 (Qld);
 - the amount set out in a progress certificate given by the Company under clause 11.7 is the amount of the 'progress payment' calculated in accordance with the terms of the Contract to which the Supplier is entitled;
 - the date under clause 11.1 on which the Supplier must claim payment is the 'reference date'; and
 - if the Contract is terminated for any reason, the Supplier shall not accrue a 'reference date' on or following the date of termination.

22. Apportionment Legislation

- 22.1. For the purposes of this clause:
- "Apportionment Legislation" means Chapter 2 Part 2 of the Civil Liability Act 2003 (Qld); and
 - "apportionment" includes an apportionment of liability for damages, a limit on the amount of damages that may be awarded against a party, or a determination of or judgment for the proportion of any damages that should be borne by a party.
- 22.2. The Parties agree that, to the extent not prohibited by law, the Supplier indemnifies the Company against any claim, demand, loss, expense or liability whatsoever arising out of or in connection with the Contract which is caused or contributed to by any Personnel of the Supplier and for which the Supplier would have been liable to the Company but for, or which the Company is not able to recover from the Supplier because of, any apportionment under any Apportionment Legislation.
- 22.3. The Supplier must include a provision in any subcontracts into which it enters in connection with the Services that is the equivalent of this clause 22.

23. General

- 23.1. **Survival:** The rights and obligations under clauses 13, 14, 16, 19, 20, 21 and 22 survive termination or completion of the Contract.
- 23.2. **Severance:** If any provision of the Contract is determined to be void by any court, then that determination does not affect any other provision of the Contract, which otherwise remains in full force and effect.
- 23.3. **Waiver:** Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power, or remedy under any law or under the Contract by a Party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any law or under the Contract. A waiver given by a Party under the Contract is only effective and binding on that Party if it is given or confirmed in writing by that Party. No course of dealings between the Parties removes the requirement under this clause that a waiver must be in writing to be effective and binding upon the Parties. No waiver of a breach of a term of the Contract operates as a waiver of any other breach of that term or of a breach

of any other term of the Contract. Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power, or remedy under any law or under the Contract by the Company does not preclude, or operate as an estoppel of any form of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any law or under the Contract.

- 23.4. **Confidentiality:** The Supplier must keep confidential the Contract, its terms and any other information disclosed to the Supplier by the Company or any Site Representative in connection with the Contract. The Supplier must ensure that its Personnel comply with this clause 23.4, including by entering into separate confidentiality undertakings if required by the Company. The Supplier must not make any public announcements regarding or refer to the Contract or the Project in any marketing or other material without the prior written approval of the Company. This clause 23.4 survives the termination or expiry of the Contract for any reason.
- 23.5. **Variations:** An amendment or variation to the Contract is not effective unless it is in writing and signed by the Parties.
- 23.6. **Assignment and Novation:** The Supplier must not assign or novate the Contract or any part of the Supplier's obligations under the Contract. The Company may assign or novate the Contract to the Client without requiring the Supplier's consent, and the Supplier must do all things necessary to effect that assignment or novation.
- 23.7. **Subcontracting:** The Supplier must not subcontract all or any of its obligations under the Contract without the prior written consent of the Company, which may be conditional. The acts and omissions of any subcontractors are deemed to be the acts and omissions of the Supplier, for which the Supplier remains responsible under the Contract.
- 23.8. **Non-merger:** The warranties, undertakings and indemnities in the Contract will continue in full force and effect until the respective rights and obligations of the Parties have been fully performed and satisfied.
- 23.9. **Further Assurance:** Each Party must do all things and execute all further documents necessary to give full effect to the Contract and the transactions provided for by the Contract.
- 23.10. **Governing Law:** The Contract is governed by, and is to be interpreted in accordance with, the laws in force in Queensland.
- 23.11. **Execution by Counterparts:** The Contract may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same Contract.

Schedule 1 - Special Conditions

SC 1. Health, Safety, Security and Environment:

- a) Without limiting any other provision, the Supplier shall comply, and shall ensure that its Personnel comply, with:
 - i. all directions of the Company in relation to health, safety, security and the environment;
 - ii. all Legislative Requirements in relation to health, safety, security and the environment; and
 - iii. any directions or notices from any government authority in relation to health, safety, security and the environment.
- b) The Supplier must:
 - i. carry out the Supply in a manner that ensures that the Company is able to comply with all of the Company's obligations under Legislative Requirements in relation to health, safety, security and the environment;
 - ii. if and when requested by the Company or the Client, ensure that the Supplier's Personnel attend meetings to discuss health and safety requirements;
 - iii. if requested by the Company, provide a representative to attend and take part in the Site workplace health and safety committee;
 - iv. immediately notify the Company if any of its Personnel witnesses or becomes aware of any actual or potential risk relating to the Site, and provide the Company with all of the details the Company reasonably requires;
 - v. make available for inspection by the Company and the Client at any time all records maintained by the Supplier in relation to health, safety and environmental matters connected with the Subcontract;
 - vi. provide the Company with a copy of any notice or other communication received by the Supplier from any person or body concerning health, safety and environmental matters connected with the Subcontract;
 - vii. ensure that the Supplier's health, safety, security and environment policy is compatible with all Legislative Requirements and other Site policies and procedures applicable to the Subcontract. If there is any conflict, the Supplier shall submit the differences for resolution by the Company prior to commencement of the Subcontract;
 - viii. ensure that its Personnel are properly supervised and adequately informed about and observe the all policies, procedures, Legislative Requirements and Site rules and regulations in force from time to time in relation to health, safety, and the environment;
 - ix. introduce and adhere to any safety or security emergency procedures directed by the Company; and
 - x. indemnify and keep indemnified the Company against any Loss or Action which the Company may suffer or incur as a result of the Supplier's failure to comply with its obligations under this SC 1.1 or any Legislative Requirement applicable to health, safety, security or the environment.

SC 2. Quality Management:

Without limiting any other provision of the Subcontract, the Supplier must:

- a) provide the Company with a quality management plan for the Company's review and approval; and

- b) comply, and ensure its Personnel comply, with the Company's quality management plan as notified from time to time, at the Company's direction.

SC 3. Records and Audit

- c) The Supplier must prepare and maintain full records relating to the performance of the Subcontract.
- d) The Company or its authorised representative shall be granted full access to examine and take copies of all records kept by the Supplier.
- e) The Supplier must ensure that all records kept by the Supplier are preserved in their original form and made available for inspection, without charge, for a period of 8 years after the termination or expiry of the Subcontract.
- f) If any examination of the records by the Company shows that any overpayment has been made to the Supplier, through no fault of the Company, the Supplier must repay the overpayment with interest at 6% per annum.