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**1. Definitions and Interpretation**

- 1.1 Where a term in this Contract refers to a item provided by the Quote, the term has the meaning provided by the Quote unless context otherwise requires.
- Accepted Quote** means the Client accepting a Quote, including by issuing a purchase order to the Contractor.
- Business day** means a day that is not a Saturday, Sunday or public holiday where the Works are being performed.
- Commencement Date** means the date specified in the Quote (if any), as may be adjusted pursuant to these terms.
- Completion** means when the Works are complete except for minor Defects which do not prevent the use of the Works for their intended purpose.
- Consequential Loss** means any direct or indirect:
- increased cost, delayed revenue, increased overhead or loss of income, profit, business, contract, production, opportunity, use, goodwill, or anticipated savings; or
  - other economic loss,
- whether present or future, fixed or unascertained, actual or contingent.
- Contract** means the agreement comprised of the Quote, the Accepted Quote and these terms and conditions.
- Contractor** means Lennon Engineering & Construction Pty Ltd unless another entity is identified in the Quote.
- Contractor's Design Obligations** means the design of the elements of the Works identified in the Quote (if any).
- Contract Price** means the amount specified in the Quote and any other moneys payable by the Client under this Contract.
- Date for Completion** means the 'Date for Completion' stated in the Quote (or a reasonable time if no time is stated), as may be adjusted pursuant to this Contract.
- Defect** includes a non-conformance or omission but does not include defects, errors, non-conformance or omissions that are minor or cosmetic in nature.
- Defects Liability Period** means the period of six (6) months following the date the Works achieve Completion .
- Direction** includes any Contract, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission rejection, request or requirement by the Client to the Contractor in respect of the Goods or the performance of the Works the subject of the Contract.
- Force Majeure** means any:
- act of God;
  - outbreak of hostilities, riot, civil disturbance or acts of terrorism;
  - the act of any government or authority (including refusal or revocation of any licence or consent) where the said act is not a result of some neglect or default on the part of the relevant party;
  - default of contractors or independent contractors; and
  - any cause or circumstance whatsoever (except financial difficulties or lack of funds) beyond the reasonable control of the relevant party.
- Goods** means any equipment or goods supplied by the Contractor to the Client.
- GST** has the meaning given in *A New Tax System (Goods and Services) Act 1999* (Cth).
- Intellectual Property Rights** means any intellectual or industrial property including without limitation:
- any patent, trade mark or service mark, copyright, design, business name, trade secret or confidential information, including any application for those rights; or
  - any licence or other right to use or grant the use of any of them or to be the registered proprietor or user of any of them.
- Legislative Requirement** includes:
- Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory;
  - codes, standards, certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Works, including the requirements of any authority, and the requirements of any approvals;
  - Australian Standards and any other relevant standards, as amended, replaced or updated from time to time;
  - the Codes of Practice of the State or Territory and other appropriate codes for the construction industry, as amended, replaced or updated from time to time;
  - OHS Legislation; and
  - fees and charges payable in connection with the foregoing.

**OHS Legislation** means the OHS legislation in force as at the date of this Contract in the following Australian jurisdictions, or its equivalent, updated or replacement legislation:

- where the Works are carried out in Queensland, the *Work Health and Safety Act 2011* (Qld) and the *Work Health and Safety Regulation 2011* (Qld); and
- where the Works are carried out in New South Wales (NSW), the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW);
- where the Works are carried out in Victoria, the *Occupational Health and Safety Act 2004* (Vic) and the *Occupational Health and Safety Regulations 2017* (Vic);
- where the Works are carried out in Tasmania the *Work Health and Safety Act 2012* (Tas) and the *Work Health and Safety Regulations 2012* (Tas).

**PPSA** means the *Personal Properties Securities Act 2009* (Cth).

**PPSR** means the Register created by the PPSA.

**Quote** means the Contractor's quote, which these terms and conditions form part of.

**Related Entity** has the meaning provided by the *Corporations Act 2001* (Cth).

**Site** means the location for the delivery of the Goods and any other locations where the Works are performed as set out in the Quote.

**Variation** means a Direction by the Client to the Contractor to:

- increase, decrease or omit any part of the Works;
- change the character or quality of the Works;
- carry out additional Works;
- change the levels, lines, positions or dimensions;
- demolish or remove Work no longer required by the Client;
- change the method, program or timing for performance of the Works;
- a change required by an authority or an approval; or
- a change in a Legislative Requirement which occurs within 14 days of the date of the Quote.

**Works** means the work performed by the Contractor as required to complete the work and the supply of the Goods specified in the Quote.

1.2 In this Contract:

- headings are inserted for convenience only and do not affect the interpretation of this Contract
- the singular includes the plural and the plural includes the singular;
- a gender includes all other genders; and
- no rule of interpretation shall apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.

**2. Contract**

- The Contract constitutes the entire agreement between the parties in respect of the Works and the Contract supersedes all previous contracts, undertakings and communications, whether written or oral, relating to the subject matter of the Contract.
- The Contract may be varied only by written instrument executed by both parties.
- The Contract may be executed in counterparts and all of those counterparts taken together constitute one and the same instrument.
- Except as provided at law or in equity or elsewhere in the Contract, none of the terms of the Contract shall be varied, waived, discharged or released, except with the prior written consent of the parties.
- The Client will pay the Contractor all amounts calculated in accordance with this Contract.
- Both parties warrant and agree that:
  - they have the right, power and authority to enter into and perform their respective obligations in accordance with this Contract;
  - all corporate and other necessary action has been taken by each of them to authorise the signing and performance of this Contract;
  - the obligations under taken by it and set out in this Contract are enforceable against it prior to the commencement of Works, the Contractor reserves the right to cancel any Works if there are unforeseen circumstances that prevent the Contractor from fulfilling that work. The Contractor will make those reasons known to the Client at the time of cancelling;
  - where the Client comprises more than one entity, all entities (including trusts and trustees) are joint and severally liable for the acts and omissions of the Client.
- The Client warrants that the Client's Representative:
  - has the authority to issue directions on behalf of the Client and to bind the Client;
  - will be available throughout the duration of the Works and the Contract;

- c) will promptly and reasonably respond to requests by the Contractor and notices from the Contractor; and
- d) may only be replaced with the Contractor's consent.
- 3. Deposit**
- 3.1 The Client must pay the Deposit at the time of entering this Contract.
- 3.2 Payment of the Deposit in full to the Contractor is a condition precedent to the Contractor being required to carry out any obligation pursuant to this Contract.
- 4. Client warranties**
- 4.1 The Client warrants that:
- a) it has carefully examined all documents and other information furnished by the Contractor relating to the performance of the Works and to have fully satisfied itself of all conditions, risks, contingencies and other circumstances which might affect the performance of the Works including conditions at the Site;
- b) all documents provided by the Client to the Contractor in respect of this Contract, including the Drawings and Specifications, and the Works are accurate, correct and complete;
- c) the Client has made the Contractor aware of all material affecting the Site, including contamination, geotechnical conditions and access constraints; and
- d) it has obtained all approvals required by any Legislative Requirement required to carry out the Work, except for approvals which the Quote identifies the Contractor is responsible for.
- 4.2 The Client is responsible for all errors, ambiguities, omissions and discrepancies in the documents and information the Client is responsible for pursuant to clause 4.1 above and there shall be a deemed Variation for any additional work or cost required to address such matters.
- 5. Contractor's warranties**
- 5.1 The Contractor warrants that:
- a) the Works will be performed in accordance with all Legislative Requirements;
- b) the Works will be carried out in a proper and tradesmanlike manner;
- c) unless otherwise agreed, the Goods and materials supplied by the Contractor will comply with the requirements of this Contract.
- 5.2 The parties acknowledge and agree that the Contractor may engage a builder or head contractor to carry out the Works and that the Contractor is not a licensed builder or contractor in its own right.
- 5.3 The Contractor will to the extent available at law, provide the Client with the benefit of any warranties from third parties in respect of the Goods supplied pursuant to this Contract. The Contractor shall have no other obligation or liability to the Client in respect of the Goods (including any Defect in the Goods) following Completion.
- 5.4 The Client may request the Contractor to investigate and identify if there is any Defect in the Goods. In such case the Client agrees to pay the Contractor's costs of carrying out such investigation and repair (including but not limited to travel, labour, accommodation, parts and materials).
- 6. Contractor's Design**
- 6.1 The Client is exclusively responsible for the design of the Works (including specifying the Goods), except to the extent the Quote provides the Contractor is to carry out 'Contractor's Design Obligations'.
- 6.2 In respect of the Contractor's Design Obligations:
- a) the parties acknowledge and agree that the Contractor will engage a subcontractor or consultant (as selected by the Contractor) to carry out the Contractor's Design Obligations and the costs incurred by the Contractor forms part of the Contract Price;
- b) the Contractor's Design Obligations are to be carried out with reasonable care, skill and diligence for a designer providing a design of that type;
- c) the Contractor shall provide the Client with a copy of the design documents prior to carrying out the Works detailed in those designs. The Client shall then either approve those design documents in writing or notify the Contractor of the respects in which the design documents do not comply with the Contract; and
- d) once approved, the Client may only change the design documents by directing a Variation.
- 7. Site Access**
- 7.1 The Client must provide the Contractor with unimpeded and uninterrupted access to the Site to enable the Works to be carried out.
- 7.2 The Client is responsible for obtaining any necessary approvals or consents from neighbours or adjoining owners to the Site required for the Works to be carried out.
- 7.3 If the Client fails to grant the Contractor unimpeded and uninterrupted access to the Site as required by clause 7.1 any costs incurred by the Contractor as a result of the failure to provide access, shall be a deemed Variation.
- 7.4 The Client and its invitees may access the Site after notifying the Contractor's Representative. The Client and its invitees must comply with the Contractor's directions in respect of safety in accessing the Works and must not damage or interfere with the Works in accessing the Site.
- 8. Latent Conditions**
- 8.1 Latent conditions (**Latent Conditions**) are physical conditions on, above, below or about the Site, including contamination, which differ materially from the physical conditions which should reasonably have been anticipated by a competent contractor at the time of execution of the Contract if the Contractor had:
- a) examined all information provided by the Client (which is to include geotechnical reports and contamination investigations) to the Contractor for the purpose of tendering; and
- b) reviewed the Site for things above the surface of the Site.
- 8.2 The Contractor, upon becoming aware of a Latent Condition while carrying out the Works, shall promptly, and where possible before the Latent Condition is further disturbed, give the Client written notice of the general nature thereof.
- 8.3 After giving the notice under clause 8.2, the Contractor shall, as soon as practicable, give the Client a written statement of:
- a) the Latent Condition encountered and the respects in which it differs materially;
- b) the additional work, resources, time and cost which the Contractor estimates to be necessary to deal with the Latent Condition; and
- c) other details reasonably required by the Client's Representative.
- d) following which it shall be a deemed Variation, and priced in accordance with clause 18.4 of this Contract.
- 9. Accommodation and Transportation**
- 9.1 If specified in the Quote, the Client is responsible for:
- a) the cost of any accommodation of the Contractor's employees, agents, consultants or subcontractors; and
- b) the cost of any transportation of the Contractor's employees, agents, consultants or subcontractors.
- 10. Commencement and Completion**
- 10.1 Clauses 10.2 and 10.3 apply if the Quote specifies a Commencement Date and Completion Date.
- 10.2 Subject to the Contractor being granted access to the Site in accordance with clause 7, the Contractor will commence the Works on the Commencement Date.
- 10.3 The Contractor will complete the Works by the Date for Completion.
- 10.4 Upon achieving Completion, the Contractor must notify the Client that it considers Completion has been achieved and the date it considers Completion was achieved. Upon receiving such notice the Client must inspect the Works and within five (5) Business Days either issue a notice confirming Completion has been achieved, or detail reasons why Completion has not been achieved. If the Client issues a notice advising that Completion has not been achieved, the Contractor must attend to those items and then issue a further notice advising Completion has been achieved, in which case the parties must again comply with this clause.
- 10.5 Unless another rate is agreed by signed and written agreement prior to Quote acceptance, in the event Completion is not achieved by the Date for Completion, the Contractor shall pay the Client liquidated damages in the amount of \$1.00 per day for each day between the Date for Completion and the date Completion is achieved or this Contract comes to an end (whichever is the earlier). Such liquidated damages are the Client's exclusive remedy for delay.
- 11. Extensions of Time**
- 11.1 This clause 11 applies if the Quote specifies a Date for Completion.
- 11.2 The Contractor is entitled to an extension of time for carrying out the Works, and to the Date for Completion, as reasonably decided by the Contractor if:
- a) the Works are delayed by a cause beyond the Contractor's reasonable control (for the avoidance of doubt, this includes a Variation, inclement weather, delays by the Client and by third parties); and

- b) the Contractor gives the Client written notice claiming the extension of time within a reasonable time of the Contractor becoming aware of the cause of delay.
- 11.3 For every day the subject of an extension of time for a delay caused by a Variation or by the Client or a matter for which the Client is responsible, the Client shall pay the Contractor any costs, loss or expense that the Contractor incurs by reason of the delay.
- 12. Delivery of Goods**
- 12.1 This clause 12 applies if the Contract includes the supply of Goods.
- 12.2 The Contractor will make all reasonable efforts to have the Goods delivered to the Client or its designated agent as agreed between the parties, but the Contractor shall not be liable for:
- any failure to deliver or delay in delivery for any reason;
  - any damage or loss due to unloading;
  - packaging; or
  - except to the extent that such damage was caused by the negligent act or omission of the Contractor, damage to property caused upon entering premises to deliver the Goods.
- 12.3 Any costs incurred by the Contractor due to any failure by the Client to accept the Goods at time of delivery will be reimbursed by the Client to the Contractor.
- 12.4 Except as required by law, the Contractor will be under no obligation to accept Goods returned for any reason.
- 12.5 Risk in the Goods passes to the Client upon delivery (including all risks associated with unloading) or upon title in the Goods passing to the Client, whichever is the earlier.
- 13. Unfixed Items**
- 13.1 The Client is liable for any unfixed items (including unfixed Goods or plant and materials) upon those items being delivered to the Site.
- 13.2 The Contractor is entitled to payment for unfixed items (including unfixed Goods, plant and materials) and is also entitled to payment of any deposit the Contractor has had to pay in respect of Goods which are yet to be supplied.
- 14. Subcontracting**
- 14.1 The Contractor may enter into subcontracts for the performance of any of its obligations under this Contract.
- 14.2 The Contractor does not require the consent of the Client to subcontract.
- 15. Intellectual Property Rights**
- 15.1 The Contractor remains the owner or licensee (as the case may be) of all Intellectual Property Rights in the Works and the things developed by or on behalf of the Contractor to carry out the Works.
- 15.2 The Client must provide the Contractor with an irrevocable royalty-free licence to use any documents, designs or software provided by or on behalf of the Client in respect of the Works or the Site.
- 15.3 The Contractor grants to the Client a non-exclusive, non-transferable, royalty-free licence to use the Intellectual Property Rights associated with the Works and any documentation provided pursuant to the Contract to construct, maintain and repair the Works, but not for any other purpose.
- 16. Contract Price and Payment**
- 16.1 The Contract Price is to be calculated from the Quote, as may be adjusted pursuant to this Contract.
- 16.2 The Contractor is entitled to issue payment claims (in the form of a tax invoice) to the Client for all amounts payable under this Contract at the following times:
- on the last day of each month;
  - upon Completion;
  - upon this Contract coming to an end; and
  - upon the expiration of any Defects Liability Period.
- 16.3 The Client must pay any payment claim issued by the Contractor without setoff or deduction within 14 days from the date it receives the payment claim.
- 16.4 If the Client fails to make any payment to the Contractor by the due date the Contractor may, without prejudice to any other rights:
- charge interest at a rate of 15% per annum on the outstanding sum; and
  - suspend the performance of all or part of the Contractor's obligations under this Contract, at the Client's expense.
- 16.5 The Client shall indemnify the Contractor for, and pay upon demand, all costs and expenses incurred by the Contractor in recovering any moneys owed to the Contractor by the Client under this Contract (including but not limited to legal costs on a solicitor client basis).
- 16.6 The Client is not entitled to apply any set off, counter claim, backcharge, retentions or deductions from any tax invoice or any amount payable by the Client under this Contract unless approved in writing by the Contractor.
- 17. GST**
- 17.1 Unless stated otherwise, all amounts stated in this Contract exclude GST.
- 17.2 Where under the Contract a party is obliged to pay the other party an amount which excludes GST, the party will pay the total of the amount and any GST incurred by the other party in respect of the taxable supply in respect of which GST is payable.
- 17.3 The Contractor warrants that it is registered for GST and will remain registered for GST.
- 17.4 GST and other terms used in this clause have the meaning used in the GST Law.
- 18. Variations**
- 18.1 The Contractor must only vary the Works if directed by the Client or where a Variation is required to complete the Works in accordance with this Contract.
- 18.2 The Client may request a Variation in writing, in which case the Contractor must, as soon as is reasonable, either:
- agree to carry out the Variation by giving the Client a notice that states the effect the Variation will have on the work including whether any approval will be required for the Variation, the estimated cost of the Variation and the estimated impact on the Date for Completion. Such agreement may be provided after carrying out the Variation; or
  - refuse to carry out the Variation with reasons for such refusal.
- 18.3 The Contractor may issue a notice to the Client requesting a Variation. The notice must describe the Variation, the reasons for requesting it, the estimated cost of the Variation and the effect on the Date for Completion. The Client must then (acting reasonably) either approve or reject the Variation in writing, with reasons in the case of a rejection. Except where urgent Works are required, the Client must approve the requested Variation before the Works the subject of the Variation are performed.
- 18.4 The Variation shall be priced (and the Contract Price adjusted) by (in order of precedence):
- prior agreement;
  - if a rate is provided for in the Quote, that rate; and
  - the reasonable cost of carrying out the Variation, that amount plus a margin of 20% (except in the case of omissions), unless another rate has been agreed in writing.
- 19. Insurances**
- 19.1 Before commencing the Works the Contractor shall take out and maintain during the currency of the Contract the following policies of insurance and, if requested by the Client, provide the Client with evidence that it holds the following policies of insurance:
- for public liability, including liability arising from death, personal injury or loss of or damage to property, for an amount of not less than \$20 million in respect of any single occurrence;
  - for workers' compensation insurance or employer's liability insurance as required by law; and
  - for motor vehicle third party insurance and motor vehicle third party property damage insurance for an amount not less than \$5 million in respect of any single occurrence.
- 20. Risk in the Works and Force Majeure**
- 20.1 Risk in the Site, including damage to the Site by third parties, shall remain with the Client at all times.
- 20.2 Subject to the excepted risks at clause 20.3 below, risk in the Works shall rest in the Contractor between the date the Contractor commences physical work at the Site and the earlier of the date Completion is achieved, the Contract is terminated or the Client uses the Works.
- 20.3 The Client at all times bears the risk of claims, loss, damage and expense arising from:
- any negligent act or omission of the Client or its officers, employees, agents or contractors (not being employed by the Contractor);
  - any risk excepted elsewhere in the Contract;
  - war, invasion, acts of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation;
  - radiation;
  - use or occupation of the Site or the Works by the Client or its officers, employees, agents or contractors;
  - defects in the Drawings and Specifications, documents or information provided by (or on behalf of) the Client to the Contractor; or

- g) Force Majeure.  
 20.4 The Contractor will not be liable to the Client for any loss or damage suffered by the Client as a direct result of the Contractor (or its employees, officers, agents or subcontractors) to the extent the Contractor is unable to perform the Contract in the way agreed by reason of Force Majeure.

## 21. Cancellation

- 21.1 Prior to the commencement of the physical Works on the Site, the Contractor may by written notice cancel this Contract and neither party shall have any Claim against the other, if there are circumstances which will adversely impact or prevent the Contractor from carrying out its obligations under this Contract.

## 22. Defects Liability Period

- 22.1 Clause 5.3 shall apply to any Defects in the Goods. This clause 22 does not apply to Defects in the Goods.  
 22.2 Subject to clause 22.3, during the Defects Liability Period, the Contractor will (at its cost) rectify any Defect in the Works notified by the Client in writing to the Contractor, including any damage resulting from the Defect within a reasonable time of receiving such notice (having regard to the nature of the Defect and the location of the Site) and the Contractor having an opportunity to confirm that the notified defect is in fact a Defect.  
 22.3 Until such time that the Contractor agrees that there is a Defect in the Works, the Client will be responsible for all investigative works and other expenses (including but not limited to travel, labour, accommodation, parts and materials) incurred by the Contractor in investigating whether or not the notified defect is in fact a Defect for which the Contractor is responsible.  
 22.4 The Contractor shall carry out the rectification at times and in the manner determined by the Contractor and in a good tradesmanlike manner.  
 22.5 The Contractor shall have no liability to the Client for any Defect if the Contractor is not provided with an opportunity to inspect and rectify the Defect in accordance with this clause.  
 22.6 The Contractor shall have no liability for any Defect in the Works or for any breach of Contract after the expiration of the Defects Liability Period.

## 23. Notices

- 23.1 A notice will be deemed to have been given and received:  
 a) if hand delivered, on the date of actual receipt;  
 b) if posted by pre-paid mail, three (3) days after posting; or  
 c) if sent by email, once sent unless:  
 i. the sender receives notice that the email transmission has been unsuccessful or could not be delivered;  
 ii. an out of office reply email states that the recipient is unavailable; or  
 iii. the email is sent on a day which is not a Business Day, it shall be deemed to have been received on the next Business Day.

## 24. Work, Health and Safety

- 24.1 In carrying out the Works, the Contractor and its agents and employees must observe all relevant OHS Legislation.  
 24.2 The Contractor must, whenever carrying out the Works, ensure that:  
 a) all Legislative Requirements relating to safety are complied with; and  
 b) the Works are carried out using an appropriate safety management system.  
 24.3 The Client consents to the Contractor either:  
 a) being appointed the 'principal contractor' pursuant to the relevant OHS Legislation in respect of the Works on behalf of the Client; or  
 b) acting as the Client's agent to appoint a licenced builder as the 'principal contractor' pursuant to the relevant OHS Legislation in respect of the Works on behalf of the Client.

## 25. Limitation of Liability

- 25.1 To the extent permitted by law:  
 a) the parties exclude any provision contained in any proportionate liability legislation to the extent that such provisions are inconsistent with the provisions of this Contract;  
 b) the Client releases the Contractor from any Claim for consequential loss arising out of the Works, this Contract or the subject matter of this Contract; and  
 c) the Contractor's liability to the Client for any Claim of any nature arising out of the Works, this Contract or the subject matter of this Contract shall be limited to the Contract Price.  
 25.2 This clause will survive the termination of the Contract.

## 26. Default and termination

- 26.1 If a party is in substantial breach of the Contract, the other party may issue a show cause notice to that party which:  
 a) describes the substantial breach;  
 b) states that it is a show cause notice pursuant to this clause;  
 c) specifies a period (which must not be less than five (5) Business Days) for the other party to provide a written response to the show cause notice and to either remedy the breach or to show cause as to why the Contract should not be terminated.  
 26.2 Substantial breaches include, but are not limited to:  
 a) failing to:  
 i. provide evidence of insurance; or  
 ii. comply with a warranty provided by the Contract;  
 b) wrongful suspension of the Works;  
 c) knowingly providing documentary evidence containing an untrue statement;  
 d) failing to make payment in full in accordance with the Contract;  
 e) causing damage to the Goods which is not minor in nature;  
 f) failing to comply with any workplace health and safety obligations, including but not limited to the OHS Legislation; and  
 g) failing to pay an amount within the time required by the Contract.  
 26.3 If a party receiving a show cause notice fails to remedy the breach or show cause within the time specified in the show cause notice, then the party issuing the show cause notice may immediately terminate the Contract by written notice.  
 26.4 If the Contract is terminated pursuant to this clause, the Contractor may immediately recover the Goods, without prior notice to the Client.

## 27. Suspension

- 27.1 In addition to any rights of suspension at law, either party may suspend the carrying out the whole or any part of the Works, by notice to the other, if that party is of the opinion that such suspension is necessary:  
 a) subject to a notice being given in accordance with clause 26.1 because of the default of:  
 i. the other party; or  
 ii. the owner or occupier of a Site on which the Works are to be performed;  
 b) for the protection or safety of any person, the Works or property; or  
 c) to comply with a court order.  
 27.2 Upon receipt of a notice of suspension, the Contractor may:  
 a) direct the Client to cease operating or otherwise dealing with the Works; and/or  
 b) immediately access the Site and operate or otherwise deal with the Works as the Contractor sees fit (including removing the Goods from the Site).  
 27.3 As soon as the party responsible for suspending the Works becomes aware that the reasons for any suspension no longer exists, that party shall advise the other of the cessation of the suspension and the Contractor shall recommence the suspended Works as soon as reasonably practicable.  
 27.4 The Client shall pay the Contractor's costs of suspension unless the suspension was as a result of the Contractor's breach of the Contract.

## 28. Disputes

- 28.1 In the event of a dispute of difference in respect of this Contract or the subject matter of this Contract arising, a party must issue the other with a notice of dispute setting out the general nature of the dispute.  
 28.2 Before commencing any proceedings (except for urgent or interlocutory proceedings), the parties must meet within 14 days of receiving a notice of dispute to discuss the dispute on a without prejudice basis with a view to either resolving the dispute or agreeing on methods to resolve the dispute.

## 29. Title and PPSA

- 29.1 The Contractor owns the Goods and the rights of the Client to use the Goods is as bailee only pursuant to the terms of this Contract, and the Client shall not do anything inconsistent with the Contractor's right of ownership or in any way deal with the Goods except as provided by the Contract.  
 29.2 The Contractor is irrevocably entitled to at any time, and from time to time before the return of the Goods to the Contractor, to enter any of the Client's premises, vehicle or vessels to inspect or to recover and retake possession of the Goods and otherwise in relation to the Goods exercise any of its rights conferred by common law, contract or statute in any way. If the Goods are held by a third party then the Client shall obtain the consent of that third party so that the Contractor may exercise its rights under this

- clause and shall indemnify the Contractor and its agents for any liability arising from the exercise of those rights.
- 29.3 The Contractor's rights set out in the Contract where applicable constitute the grant of a purchase money security interest (**PMSI**) by the Client in favour of the Contractor for the purposes of the PPSA.
- 29.4 The Client must immediately, if requested by the Contractor sign any documents, provide all necessary information and do anything else required by the Contractor to ensure that the Contractor's PMSI is a perfected security interest under the PPSA.
- 29.5 The Client will not enter into any security contract that permits any other person to have or to register any security interests in respect of the Goods or any proceeds from the sale of the Goods until the Contractor has perfected its PMSI under the PPSA.
- 29.6 In this clause collateral, financing statement, financing change statement, security contract, and security interest has the meaning given to it by the PPSA.
- 29.7 Upon assenting to the Contract in writing the Client acknowledges and agrees that the Contract constitutes a security contract for the purposes of the PPSA and creates a security interest in all Goods or collateral being a monetary obligation of the Client to the Contractor for Goods that have previously been supplied and that will be supplied in the future by the Contractor to the Client.
- 29.8 The Client undertakes to:
- a) promptly sign any further documents or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to:
    - i. register a financing statement or financing change statement in relation to a security interest on the PPSR;
    - ii. register any other document required to be registered by the PPSA; or
    - iii. correct a defect in a statement referred to in this sub-clause;
  - b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Goods so charged;
  - c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;
  - d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or collateral in favour of a third party without the prior written consent of the Contractor; and
  - e) immediately advise the Contractor of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 29.9 The Contractor and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security contract created by the Contract.
- 29.10 The Client waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 29.11 The Client waives its rights as a grantor or a debtor under sections 142 and 143 of the PPSA.
- 29.12 Unless otherwise agreed to in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 29.13 The Client must unconditionally ratify any actions taken by the Contractor under clauses 29.8 to 29.12.
- 29.14 Subject to any express provisions to the contrary nothing in the Contract is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 30. Confidentiality

- 30.1 Any information supplied by the Contractor to the Client and identified as confidential shall not be disclosed to any third party without the prior written consent of the Contractor, except where such disclosure is required by law or is for the purpose of obtaining legal advice. The Client shall take all necessary precautions to ensure that such information is not passed on to a third party either directly or indirectly. The obligation under this clause shall be a continuing obligation and shall survive the expiration or termination of the Contract.
- 30.2 At the request of the Contractor, the Client shall return to the Contractor all documents containing confidential information, all copies of, extracts from or notes on confidential information held by it, its employees, agents or consultants.

### 31. Relationship of the parties

- 31.1 The Client acknowledges that:
- a) the Contract does not create any relationship of employment, partnership or joint venture;

- b) it is not entitled to any employee benefits or entitlements; and
  - c) it has no authority to act as the Contractor's agent or on the Contractor's behalf.
- 31.2 Where the Client is the trustee of a trust, a promise, agreement, representation or warranty binds the trustee and the trust jointly and severally.

### 32. Assignment

Neither party may assign, novate, mortgage or otherwise deal with the Contract or any entitlement under the Contract without the other's prior written approval (which shall not be unreasonably withheld).

### 33. Governing Law

These Terms of Trading shall be subject to and construed in accordance with the laws of the State where the Site is located and the parties hereby submit to the exclusive jurisdiction of the courts in the State where the Site is located.