

Purchase Order Terms and Conditions

1. DEFINITIONS & INTERPRETATION

1.1 Definitions

In this Purchase Order, unless the context otherwise requires:

AGI Group means AGI Development Group Nominees Pty Limited as trustee of the AGI Development Group Trust (ABN 40 942 585 956), AGI Development Group Pty Limited (ABN 31 153 396 911), AGI Operations Pty Ltd (ABN 76 166 900 170), AGI Ashburton Pty Limited (ABN 68 169 157 242), AGI Tubridgi Pty Limited (ABN 46 611 027 948), AGI Fortescue River Pty Ltd (ABN 57 166 900 090) and any of their respective Related Bodies Corporate.

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.

Capped Liquidated Damages Amount means an amount of money equal to 10% of the Purchase Order Price.

Commencement Date has the meaning given in clause 2.1.

Corporations Act means the *Corporations Act 2001* (Cth).

Dangerous Goods has the meaning given to it in the *Dangerous Goods Safety Act 2004* (WA).

DBNGP corridor has the meaning given to it in the *Dampier to Bunbury Pipeline Act 1997* (WA).

DBNGP Group means DBNGP (WA) Nominees Pty Ltd as trustee of the DBNGP WA Pipeline Trust (ABN 54 871 588 515) and any Related Body Corporate.

Default Notice has the meaning given in clause 12.1.

Defect means any aspect of the Goods or Services not in accordance with this Purchase Order, or any damage, inadequacy or fault in design, workmanship, quality, performance, composition or appearance of the Goods or Services.

Defects Rectification Period means the period of 24 months from the date of delivery of the Goods or the period of 12 months on which a Service was last performed.

Delivery Date means the dates for delivery of the Goods or the dates for completion of the Services (and as the context requires) as set out in the Purchase Order.

Delivery Point has the meaning given in clause 4.2(a).

Goods means the goods, materials, supplies, plant and the like described in the Purchase Order to be purchased by the Purchaser and includes the performance of any services

Purchase Order Terms and Conditions

which are ancillary to and required for, or are to be provided in connection with, the supply of the Goods.

GST has the meaning given in clause 9(a).

Law means any present and future obligations arising under (a) laws, statutes, regulations, by-laws, orders, ordinances, proclamations and decrees; (b) the terms and conditions of any licence, permit, consent, certificate, authority or approvals; (c) any binding requirement, direction or order of a Governmental agency; and (d) judicial, administrative or regulatory decrees, judgments or orders.

Liabilities means damages, losses, costs, expenses (including legal costs), claims or actions.

Liquidated Damages Amount means an amount of money equal to a percentage of the Purchase Order Price as set out in the Purchase Order for every week or part thereof following the Delivery Date and until such date that the Vendor does deliver the Goods or completes the Services or if there is no percentage identified as the Liquidated Damages Amount then an amount of money equal to 2% of the Purchase Order Price for every week or part thereof following the Delivery Date set out in the Purchase Order and until such date that the Vendor does deliver the Goods or complete the Services.

Notice has the meaning given in clause 24.

Pipelines means any gas transmission pipelines and associated infrastructure located in Western Australia owned or operated by any member of the DBNGP Group or the AGI Group, including any expansions of such pipelines and infrastructure.

Pipeline Licences means such pipeline licences granted under the *Petroleum Pipelines Act 1969 (WA)* in respect to the Pipelines.

Purchase Order means the documents detailing the Purchasers requirements to be supplied by the Vendor, including these terms and conditions.

Purchase Order Price means the Purchase Order Price, as specified in the Purchase Order.

Purchaser has the meaning given in the Purchase Order.

Purchaser's Personnel means any director, officer, employee or agent of the Purchaser.

Purchaser's Representative means the Purchaser's representative or any other person authorised by the Purchaser to carry out functions under this Purchase Order.

Related Body Corporate has the meaning given in the Corporations Act.

Safety Case means the document approved under the Pipeline Licences that regulates health and safety matters on the Pipelines.

Purchase Order Terms and Conditions

Schedule means a document in hard copy or electronic form that evidences, in a logical sequence, all of the activities that have to be undertaken, and the time by and within which those activities have to be undertaken, such that the Vendor complies with clause 26(a).

Services means any work or services described in the Purchase Order and includes the performance of any work or services and the provision of all materials and equipment which are ancillary to and required for, or are to be provided in connection with, the supply of the Services.

Site means any area of land which is regulated by the:

- (a) *Dampier to Bunbury Pipeline Act 1997 (WA)*; or
- (b) Pipeline Licences,

and includes all compressor stations, the DBNGP corridor (as applicable to any Pipelines), all of the Pipelines' associated infrastructure and any areas of land in connection with the Pipelines.

Site Policies and Procedures means all of the Purchaser's policies, procedures and directions that are of general application at the Site in relation to matters concerning safety, drugs and alcohol, health, security and the environment, including but not limited to:

- (a) DBP **Zero Harm** Principles;
- (b) DBP HSE policy;
- (c) DBP Fitness for Work policy;
- (d) DBP Driving Safety Procedure;
- (e) DBP Vehicle Speed and Safety Monitoring System Procedure;
- (f) DBP Hazard Event Reporting and Investigation Procedure; and
- (g) the Safety Case.

Special Conditions means the Special Conditions detailed in the Purchase Order.

Specifications means the Specifications detailed in the Purchase Order.

Vendor has the meaning given in the Purchase Order.

Vendor's Personnel means a subcontractor of the Vendor or any director, officer, employee or agent of the Vendor or its subcontractors.

1.2 Interpretation

In this Purchase Order, unless the context otherwise requires:

- (a) reference to any legislation or a licence granted under legislation includes any amendment or substitution and all subordinate legislation, and regulations issued thereunder;
- (b) the singular includes the plural and vice versa;

Purchase Order Terms and Conditions

- (c) a reference to an individual includes a corporation and vice versa;
- (d) a reference to a party includes its successors and permitted assigns;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) a reference to the supply of the Goods includes a reference to the sale or manufacture of the Goods;
- (g) nothing in this Purchase Order is to be interpreted against a party solely on the ground that the party put forward this Purchase Order or any part of it;
- (h) a reference to dollars and \$ is to Australian currency;
- (i) a reference to the Delivery Dates means those dates as may be adjusted under clause 13;
- (j) where two or more corporations are named as Vendor, the obligations on their part will bind and be observed and performed by them jointly and each of them severally; and
- (k) any specific reference to or listing of items following the words "including", "for example", "such as" or similar expressions is without limitation and does not exclude application to other terms, whether or not in the same class, category or genus as any specified or listed items.

2. PURCHASE ORDER

2.1 Formation

The Purchase Order is formed on the earlier of the date of the:

- (a) acceptance of the Purchase Order by the Vendor; or
- (b) provision, supply or delivery of any of the Goods or Services by the Vendor, (the **Commencement Date**).

2.2 Performance of Purchase Order

- (a) The Purchaser is relying on the Vendor's skill and expertise for the supply of the Goods and the performance of the Services and the Vendor shall supply the Goods and perform the Services in accordance with this Purchase Order.
- (b) Notwithstanding anything to the contrary in this Purchase Order, this Purchase Order is not exclusive and the Purchaser may source goods the same or similar to the Goods and services the same or similar to the Services from third parties.

Purchase Order Terms and Conditions

3. SUPPLY OF GOODS AND SERVICES

3.1 Supply under Purchase Order

In consideration of the payment of the Purchase Order Price by the Purchaser, the Vendor agrees to supply the Goods to, and perform the Services for, the Purchaser in accordance with, and as specified in, this Purchase Order.

3.2 Vendor's Obligations

The Vendor must, in supplying the Goods or performing the Services:

- (a) obtain the permission of the Purchaser's Representative before:
 - (i) entering the Site;
 - (ii) performing work at the Site outside normal working hours; or
 - (iii) performing excavation on any part of the Site.
- (b) comply with and observe, and ensure that the Vendor's Personnel comply with and observe:
 - (i) all Laws and Australian Standards in any way affecting or applicable to the Goods or Services including, without limitation, requirements relating to:
 - (A) the health and safety of the Vendor's Personnel, the Purchaser's Personnel and any other persons on or near the Site;
 - (B) environment;
 - (C) security;
 - (D) quality; and
 - (E) industrial relations;
 - (ii) all Site Policies and Procedures, to the extent that the Site Policies and Procedures are applicable to the supply of the Goods or the performance of the Services;
 - (iii) all lawful directions and orders given by the Purchaser's Representative or Purchaser's Personnel or any person authorised by Law to give directions to the Vendor;
 - (iv) the Specifications; and
 - (v) the Special Conditions.
- (c) comply with and observe all restrictions and limitations on the right to enter and leave the Site;
- (d) at its expense, obtain and hold all licences, permits, endorsements and other certificates which may be required to perform the Purchase Order;

Purchase Order Terms and Conditions

- (e) pay all fees, deposits and taxes required to perform the Purchase Order;
- (f) ensure that Australian suppliers are given full, fair and reasonable opportunity to supply goods or services that comprise part of or all of the Goods and Services delivered under this Purchase Order; and
- (g) permit the performance of, and otherwise not impede the execution of, work by the Purchaser's Personnel or any other person at the Delivery Point or the Site.

3.3 Specific Obligations of the Vendor's Personnel

The Vendor must procure that the Vendor's Personnel, in supplying the Goods or performing the Services:

- (a) where the Vendor's Personnel will supply Goods or perform Services on Site in excess of 24 hours duration in aggregate:
 - (i) complete the Purchaser approved Site induction to the satisfaction of Purchaser;
 - (ii) complete a pre-employment medical (or the provision of a medical certificate evidencing such a medical which is no more than 12 months old) to the satisfaction of Purchaser; and
 - (iii) provide written evidence of a drug and alcohol test, to the satisfaction of Purchaser, that was undertaken within the 28 day period prior to the proposed access to Site;
- (b) where the Vendor's Personnel will supply Goods or perform Services on Site of less than 24 hours duration in aggregate:
 - (i) complete a Site specific induction to be facilitated by the Purchaser or one of its nominated consultants; and
 - (ii) shall be escorted at all times by a Purchaser's Representative or an individual engaged by the Vendor who has completed the Purchaser approved Site induction referred to at clause 3.3(a)(i);
- (c) otherwise supply the Goods or perform the Services in accordance with this Purchase Order, in a safe manner and in a way that does not prejudice safe work practices, safety and care of property and continuity of work at the Site.

3.4 Independent Contractor

- (a) The Vendor is engaged as an independent contractor and nothing in this Purchase Order will be deemed to constitute the Vendor or any of the Vendor's Personnel as an agent or employee of the Purchaser.

Purchase Order Terms and Conditions

- (b) Neither the Vendor nor any of the Vendor's Personnel is entitled to any benefits which would ordinarily accrue to any employee of the Purchaser by virtue of their status as an employee of the Purchaser.
- (c) The Vendor will have no authority to incur and shall not incur any obligation on the part of the Purchaser in connection with this Purchase Order.

3.5 Vendor's equipment

The Vendor will ensure that all of the Vendor's materials and equipment provided as part of, or used in the supply or performance of, the Goods or the Services:

- (a) are in good and safe working order;
- (b) are suitable for use in connection with the Goods and Services; and
- (c) will be operated by suitably qualified and competent persons, to the satisfaction of the Purchaser.

3.6 Site Access

- (a) Subject to the Vendor at all times complying with clauses 3.2 and 3.3, the Purchaser grants the Vendor and the Vendor's Personnel access to the Site necessary to supply the Goods or perform the Service.
- (b) The Vendor does not have exclusive possession of any part of the Site but only such use and control as the Purchaser considers necessary to enable the Vendor to supply the Goods or perform the Services.
- (c) Should a dispute arising over interface issues at Site arise, the Purchaser will resolve any dispute and its decision will be final.

3.7 Inspection by Purchaser

- (a) Any person duly authorised by the Purchaser has the right at any reasonable time (including during manufacture) and with reasonable notice to the Vendor to:
 - (i) inspect and witness tests on all or any part of the Goods and materials used in their manufacture; and
 - (ii) carry out reasonable inspection and testing to ensure that the Services are in compliance with this Purchase Order.
- (b) The Vendor shall provide sufficient, safe and proper facilities to facilitate any inspection, testing or witnessing of any testing carried out in accordance with clause 3.7(a).
- (c) The Vendor shall ensure its subcontractors provide the rights to the Purchaser set out in clause 3.7(a).

Purchase Order Terms and Conditions

- (d) Inspection under clause 3.7(a) will not be deemed as acceptance of any Goods or relieve the Vendor of any of its responsibilities or liabilities under this Purchase Order.

4. GOODS

4.1 The Goods

- (a) The Vendor is responsible for delivery of the Goods, including all costs associated with delivery, to the Purchaser's premises or such other location specified in the Purchase Order.
- (b) The Goods must be equal in all respect to the descriptions, samples, patterns and specifications supplied (including the Specifications) and, to the extent not inconsistent with such descriptions, samples, patterns and specifications, must be new, free from defects and faulty design, suitable for the intended purpose, of the best quality and workmanship and conforming to any applicable Australian Standards.
- (c) The Vendor must ensure that the Purchaser has the full benefit of all manufacturer's warranties that may be applicable to the Goods and must claim against any manufacturer's warranties on behalf of the Purchaser if the Purchaser so requests.

4.2 Title and Risk in Goods

- (a) Title to, and property in, the Goods will pass to the Purchaser upon payment or delivery of those Goods at the place specified for delivery of those Goods in the Purchase Order (the **Delivery Point**), whichever occurs first and the Goods must be appropriately marked and identified as the property of the Purchaser.
- (b) Where any part payment for Goods is made by the Purchaser prior to delivery:
 - (i) title to and property in the partly completed Goods, and any materials and parts to be used in their manufacture or supply and then on hand, will pass to the Purchaser at the time of part payment; and
 - (ii) the Purchaser may require the Vendor to provide security, to the Purchaser's reasonable satisfaction, in the amount of the part payment, with such security being released on supply of the completed Goods.
- (c) Risk in the Goods remains with the Vendor until delivery to the Purchaser in accordance with the Purchase Order.
- (d) Without limiting clause 4.2, the Vendor waives any liens it may have over the Goods which are supplied to the Purchaser pursuant to the Purchase Order, and the Vendor will obtain a similar waiver from any of the Vendor's Personnel.

Purchase Order Terms and Conditions

4.3 Delivery and Packaging

- (a) The Vendor must deliver the Goods to the Delivery Point on or before the Delivery Date.
- (b) Unless otherwise specified in this Purchase Order, all Goods shall be delivered free of charge to the Delivery Point.
- (c) The Vendor will be accountable for any additional freight charges arising from the Vendor's failure to follow shipping instructions, or any premium freight charges necessary to meet the Delivery Date, and any such additional costs incurred by the Purchaser will be a debt immediately due and payable to the Purchaser.
- (d) Two copies of a delivery note quoting the Purchase Order number and part numbers (if any) of the Goods must be sent with each delivery. The Vendor must enclose one copy with the Goods and attach the second copy in an envelope on the outside of the Goods' crate or package.
- (e) Goods shall be adequately cased, crated or otherwise packed, using packaging materials and pallets supplied by the Vendor free of charge, to ensure safe arrival, having regard to road and climatic conditions.
- (f) Packages and loose items shall be clearly marked in accordance with this Purchase Order and shall indicate gross weight.

4.4 Dangerous Goods

- (a) Dangerous Goods delivered to the Purchaser shall be clearly marked with all appropriate information.
- (b) The Vendor shall ensure that all Dangerous Goods are transported in accordance with the provisions of the *Dangerous Goods Safety Act 2004 (WA)*, applicable regulations and the then current Australian Code for the Transport of Dangerous Goods by Road or Rail or any equivalent replacement code.

5. SERVICES

5.1 The Services

- (a) The Services performed by the Vendor must match the description of the Services in this Purchase Order.
- (b) If the Vendor provided the Purchaser with a demonstration of the Services or showed the Purchaser a result achieved by the Services before the Purchaser issued this Purchase Order, the Services must correspond in nature and quality with the Services demonstrated or the Services which achieved that result.

Purchase Order Terms and Conditions

- (c) The Services must be fit for the purposes set out in, or which an experienced professional contractor would reasonably infer from, this Purchase Order.
- (d) The Services must be performed by the Vendor:
 - (i) with due care, skill and diligence expected of a skilled and experienced professional contractor providing services of the kind described in this Purchase Order; and
 - (ii) in accordance with any applicable standards and good safety practices.

5.2 Term

The Vendor will perform the Services on and from the date or within the period set out in this Purchase Order, unless the Services are terminated earlier in accordance with this Purchase Order.

6. COMMISSIONING

The Vendor will advise the Purchaser a minimum of 24 hours before the time of any testing or commissioning in relation to the Goods or Services and will adhere to proper industry practices and manufacturers' recommendations in respect of that testing or commissioning.

7. DEFECTS

7.1 Defects Remediation Period

- (a) If, during the Defects Rectification Period, the Purchaser considers that any part of the Goods or Services are Defective (other than a Defect caused by the Purchaser's negligence), the Purchaser may, at its election:
 - (i) reject the Goods with the Defect and return them to the Vendor, in which case the Vendor must replace or remediate the Goods free of charge and as soon as practicable; or
 - (ii) reject the Services with the Defect, in which case the Vendor must re-perform the Services free of charge and as soon as practicable.
- (b) The acceptance of any Goods or Services by the Purchaser with a Defect does not operate as a waiver of the Purchaser's rights under this clause 7.1 or prevent the Purchaser from subsequently enforcing any right under this clause 7.1.
- (c) Where the Vendor has corrected any Defect under this clause 7.1, those Goods or Services will be subject to the same Defects Rectification Period as applicable to the original Goods or Services, commencing from the date that the Vendor corrected the Defect.

Purchase Order Terms and Conditions

7.2 Engagement of contractor to remediate

Where, during the Defects Rectification Period, the Vendor has not corrected the Defects within 14 days of receiving notice of each Defect from the Purchaser or such other period as the Purchaser may require (having regard to the nature and effect of the Defect), the Purchaser may engage another contractor to correct the Defect, in which case the Vendor must reimburse the Purchaser for all expenses incurred and the Purchaser may deduct such amounts from any sum that may be payable to the Vendor under the Purchase Order.

8. PAYMENT

8.1 Payment

- (a) Unless the Purchase Order specifies otherwise, on delivery of the Goods or completion of the Services, the Vendor must provide to the Purchaser an invoice for the Purchase Order Price which includes the information set out in clause 8.1(c).
- (b) If the Purchase Order Price is to be paid in instalments, the Vendor shall invoice the Purchaser on a monthly basis according to the Goods delivered during that month or Services performed in that month and the unit rates specified in the Purchase Order.
- (c) Any invoice issued under this clause 8.1 must:
 - (i) show the relevant Purchase Order number and latest revision number;
 - (ii) show the Delivery Point (as applicable);
 - (iii) be addressed to the Purchaser at Level 22, 140 St Georges Terrace, Perth, Western Australia 6000;
 - (iv) show the item number (as set out in the Purchase Order), a detailed description of the Goods delivered or Services performed and the relevant quantity of the Goods or Services;
 - (v) show the price payable and the calculations supporting that price based on the items in the Purchase Order; and
 - (vi) be substantiated with such supporting documentation as the Purchaser may reasonably require.
- (d) Subject to clause 8.1(e) and any other provision of this Purchase Order which expressly provides otherwise, the Purchaser must pay an invoice validly issued by the Vendor within 30 days from the end of the calendar month during which the invoice was received.

Purchase Order Terms and Conditions

- (e) If the Purchaser disputes all or part of an invoice, the Purchaser may withhold payment for the disputed item until settlement of the dispute. The Purchaser must pay any undisputed portion of the invoice in accordance with clause 8.1(d).

8.2 Purchase Order Price Inclusive

The Purchase Order Price will be inclusive of:

- (a) all sales tax, duty, excise and other taxes and charges applicable to the Purchase Order; and
- (b) all the Vendor's costs, including overheads, materials and supplies, consumables, mobilisation and demobilisation, transportation and accommodation of employees and transportation and storage of equipment, materials and supplies, wages, salaries, overtime, bonuses, premiums, employee benefits, allowances, holiday pay, superannuation, insurance, social security benefits, payroll taxes, premiums for insurance, payroll costs, and any other contributions and benefits imposed by any applicable Law or agreement,

and the Vendor will be responsible for paying all such amounts and will indemnify the Purchaser in respect of and such amounts incurred by the Purchaser.

8.3 No Rise and Fall

Without limiting clauses 8.2 and 8.5, the Purchase Order Price and any unit rates specified in the Purchase Order are not subject to rise and fall in costs.

8.4 Set-Off

Any moneys which become due and payable to the Purchaser by the Vendor or for which the Vendor becomes indebted to the Purchaser may be deducted from any moneys that may then or may thereafter become due or payable to the Vendor under this Purchase Order.

8.5 Import Duty and Other Taxes and Charges

- (a) The Purchase Order Price includes all import duties and the Vendor shall comply with any reasonable direction given by the Purchaser such that the Purchaser can obtain relevant tariff concession orders covering items imported into Australia for incorporation in the Goods (provided such imports are dutiable). The Vendor also authorises the Purchaser to process such applications in the name of the Vendor and to provide any relevant information including the file reference number designated by the Purchaser with each tariff concession application. The Purchaser is entitled to retain any amount recovered from the tariff concession application.
- (b) If any Tax or charge (including GST and import duties) is provided for in the Purchase Order Price and the amount of that Tax or charge actually incurred by

Purchase Order Terms and Conditions

the Vendor is less than the amount provided for, that difference will be a debt immediately due and payable to the Purchaser and the Purchase Order Price will be deemed to be adjusted accordingly.

9. GST

- (a) In this clause 9:
- (i) the terms **GST**, **Taxable Supply** and **Input Tax Credits** have the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
 - (ii) **Tax Adjustment Amount** means the amount by which the liabilities incurred by the Vendor in making a Taxable Supply is reduced or increased as a result of a Tax Adjustment Event occurring. The amount of any Input Tax Credits to which the Vendor is entitled to will be taken into account in quantifying the liabilities incurred for the purposes of this clause 9;
 - (iii) **Tax Adjustment Event** means any change in the liability of the Vendor to Taxes, or entitlements to claim a rebate, refund or credit in respect of Taxes, occurring as a result of government taxation measures connected to the introduction of a GST; and
 - (iv) **Taxes** means accommodation taxes, financial institutions duty, debits tax, sales taxes, excise duties, stamp duties and customs duties.
- (b) Unless otherwise stated, all amounts payable under this Purchase Order are expressed on a GST exclusive basis. If GST is payable in relation to a Taxable Supply, the amount payable for that Taxable Supply will be the amount specified in this Purchase Order plus GST.
- (c) Without prejudice to clause 9(b), the following principles will apply in calculating any amount payable for the purposes of this Purchase Order:
- (i) if the amount payable is calculated by reference to any costs, expenses or other liability incurred by a party (**Payee**), the relevant amount is the actual amount incurred by the Payee less the amount of any Input Tax Credit the Payee is entitled to claim in respect of that liability. The Payee will be assumed to be entitled to claim full Input Tax Credits unless it demonstrates that its entitlement is otherwise prior to the date on which the payment must be made;
 - (ii) if the amount payable is a reimbursement or indemnification of a loss determined by reference to revenue earned, the amount must be the revenue which would have been earned net of GST;

Purchase Order Terms and Conditions

- (iii) if the amount payable arises from a revenue sharing arrangement or an obligation to pay a specified percentage of revenue, the amount payable shall be calculated by reference to the relevant revenue net of GST; and
 - (iv) if an amount payable is to be adjusted to take into account CPI movements, the adjustment shall be calculated by reference to that amount net of GST.
- (d) The parties will:
 - (i) calculate and notify each other in writing of any Tax Adjustment Amount in respect of the Purchase Order Price at least 5 Business Days before any payment of the Purchase Order Price is due; and
 - (ii) adjust the Purchase Order Price by the Tax Adjustment Amount.
- (e) The parties will provide each other with all documentation required to claim any Input Tax Credit, set off, rebate or refund for or in relation to any GST included in any payment made under this Purchase Order. The Vendor must provide such documentation with each invoice provided in accordance with clause 8.1.
- (f) This clause 9 will continue to apply after expiration or termination of this Purchase Order.

10. RISK, INDEMNITY AND WARRANTIES

10.1 Risk and Protection

- (a) The Vendor and the Vendor's Personnel enter the Site at their own risk and the Vendor releases the Purchaser and the Purchaser's Personnel from Liability for any injuries of the Vendor or the Vendor's Personnel when on or near the Site.
- (b) The Vendor will take all reasonable precautions against and will be liable for loss of or damage to any plant, equipment, machinery, tools, materials or other property of the Purchaser or its agents or contractors or under its control or used or required to be used in the provision of the Goods or Services.

10.2 Indemnity

- (a) The Vendor will be liable for and will indemnify and keep indemnified the Purchaser, its directors, related bodies corporate, officers, employees, consultants, agents and other contractors and any third party from and against all Liabilities arising out of, incidental to, or in connection with:
 - (i) any performance, non-performance or breach by the Vendor of its obligations under the Purchase Order; or

Purchase Order Terms and Conditions

- (ii) any act or omission by the Vendor or any of the Vendor's Personnel including in the supply of Goods or performance of the Services or resulting from the presence of the Vendor or any of the Vendor's Personnel on or in the vicinity of the Site.
- (b) Without limitation, clause 10.2(a) applies to Liabilities in respect of:
 - (i) any injury to or death of any person; or
 - (ii) any damage to or destruction of any real or personal property (including, without limitation, the property of the indemnitees) and any consequential loss arising from such damage or destruction.

10.3 Exclusion of Consequential Loss

- (a) Except for liquidated damages or other amounts that become payable under the express terms of this Purchase Order, and subject to clause 10.3(b), no party will be liable to any other party for any indirect or consequential loss or damage, including loss of profit, loss of use, loss of revenue or loss of opportunity (**Consequential Loss**).
- (b) Where the Purchaser requires the Vendor to take out and maintain Professional Indemnity Insurance where performing the Services in accordance with clause 11.3, the exclusion of Consequential Loss in clause 10.3(a) does not apply and the Vendor is liable for any Consequential Loss limited to the amount of the Professional Indemnity Insurance taken out and maintained by the Vendor.

10.4 Limitation of Liability

The limitation of liability (if any) applies as set out in the Purchase Order.

10.5 Warranties and Guarantees

- (a) The Vendor warrants:
 - (i) the Goods and the Services will be suitable in all respects for the intended purposes;
 - (ii) the Goods will be supplied and the Services will be performed in strict compliance with, and in accordance with the standards set out in, the Purchase Order (including the Specifications and Special Conditions);
 - (iii) the Goods and the Services will be free of Defects;
 - (iv) it has good title to supply the Goods to the Purchaser, and it will hold the Purchaser free and harmless against any liens, attachments or other claims to the Goods or arising out of this Purchase Order;
 - (v) without limiting clause 3.2(b)(i), that the design, construction, and quality of the Goods and performance of the Services shall comply in all respects

Purchase Order Terms and Conditions

with all relevant requirements of all Laws and any other generally binding instrument which apply to the manufacture and subsequent operation of the Goods and performance of the Services, including all applicable regulations, rulings, orders and standards in regard to health or safety;

(vi) it and the Vendor's Personnel:

(A) are suitably skilled, trained, qualified and competent to supply the Goods and perform the Services; and

(B) will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the supply of comparable goods to the Goods and in the performance of comparable services to the Services.

(b) The Vendor will obtain and assign any warranties received from third party vendors to the Purchaser and will assist the Purchaser in securing performance of those warranties.

(c) Where the Vendor obtains a warranty not specified in this Purchase Order or where a warranty obtained by the Vendor extends beyond the Defects Rectification Period, the Vendor must ensure that the Purchaser has the benefit of that warranty.

10.6 Survival

This clause 10 will survive the termination of this Purchase Order.

11. INSURANCE

11.1 Worker's Compensation

The Vendor will insure against all Liabilities (whether arising at common law or under any statute relating to worker's compensation or employer's liability) resulting from any accident or injury (including death) to any Vendor's Personnel employed by the Vendor on or in connection with this Purchase Order.

11.2 Public and Product Liability

The Vendor will take out and maintain Public and Product Liability insurance for a minimum amount of \$10,000,000 in respect of any one occurrence.

11.3 Professional Indemnity Insurance

The Vendor will, where performing the Services and as reasonably required by the Purchaser, take out and maintain Professional Indemnity Insurance for a minimum amount of \$5,000,000 in respect of any one occurrence for the Term and for a further period of 5 years after the expiry or termination of this Purchase Order.

Purchase Order Terms and Conditions

11.4 Motor Vehicle Insurance

The Vendor shall take out a policy of comprehensive motor vehicle insurance and motor vehicle third party liability insurance (for a minimum liability of \$10,000,000) to cover all motor vehicles, mechanical propelled machines and other mobile plant used at the Site.

11.5 Merchandise, Transport and Plant Insurance

The Vendor will take out and maintain insurance in respect of the Goods, including the transportation of the Goods, of an amount adequate to cover the cost of replacing the Goods until such time as risk passes in accordance with clause 4.2. The Vendor shall also insure its own constructional plant and equipment used in the supply of the Goods and Services for its full insurable value.

11.6 Insurance Required by Law

In addition to the insurance policies required to be taken out and maintained by the Vendor under this clause 11, the Vendor will take out and maintain any additional insurance required by any applicable Law.

11.7 Approval of Insurers and Terms of Policies

- (a) Insurance under this clause 11 must be taken out and maintained by the Vendor at its own cost and before the commencement of the performance of any obligations under this Purchase Order in terms approved by, and with insurers approved by, the Purchaser (in each case the Purchaser's approval will not be unreasonably withheld).
- (b) The Vendor will, before access to the Site is granted by the Purchaser or at such other times as the Purchaser may request, provide copies of all insurance policies and certificates of currency in respect of the insurances required to be taken out by the Vendor.
- (c) The Vendor will immediately provide to the Purchaser a copy of any communication relevant to this Purchase Order that the Vendor receives from an insurer of a policy referred to under this clause 11.

11.8 Civil Liability Act 2002

The parties agree that Part 1F of the *Civil Liability Act 2002 (WA)* is expressly excluded from application to this Purchase Order pursuant to section 4A of that Act.

11.9 Terms Required in Policies

Without limitation to the rights of the Purchaser under clause 11.7, the insurance required under this clause 11 must:

Purchase Order Terms and Conditions

- (a) except in relation to the worker's compensation or employer's liability insurance policies referred to at clause 11.1:
 - (i) be endorsed to include the Purchaser, its related bodies corporate, their directors, officers, employees, contractors and agents as additional insured to the extent of liabilities assumed by the Vendor under this Purchase Order; and
 - (ii) provide a waiver by the insurer of all express or implied rights of subrogation against the Purchaser, its related bodies corporate, their directors, officers, employees, contractors and agents.
- (b) provide that a notice of the occurrence of an event out of which the particular insured giving the notice alleges he has suffered or could suffer loss or damage or incur a liability will be accepted by the insurer as a notice of the occurrence given by all the insureds.

12. TERMINATION

12.1 Termination for Default

- (a) If the Vendor breaches any term of the Purchase Order, including the Vendor's warranties, the Purchaser may serve a notice of default (**Default Notice**) on the Vendor.
- (b) The Default Notice will require that the breach, if capable of remedy, be remedied within three days or such additional period determined by the Purchaser in its discretion or state that the breach is incapable of remedy.
- (c) If the breach specified in the Default Notice is not remedied within the period specified in the Default Notice or is incapable of remedy, then the Purchaser may, by further notice to the Vendor (or, if the breach is incapable of remedy, in the Default Notice), terminate the Purchase Order or any specified part of it with effect from the date of that notice or such later specified date.
- (d) Without limiting any other provision of the Purchase Order, if the Vendor:
 - (i) fails to supply all or part of the Goods or Services by the applicable date set out in the Purchase Order; or
 - (ii) supplies all or part of the Goods or Services of an inferior quality,the Purchaser may purchase goods or services in substitution for the relevant Goods or Services from a third party supplier and charge the Vendor the difference (if any) between the cost of such goods and the applicable Purchase Order Price and such amount (together with any amount charged by the Vendor for the relevant Goods) will be a debt immediately due and payable to the Purchaser.

Purchase Order Terms and Conditions

12.2 Termination by Notice

- (a) In addition to the Purchaser's rights under clause 12.1, the Purchaser may at any time, in its absolute discretion, terminate this Purchase Order or any specified part of it by giving the Vendor at least seven days' prior notice to that effect.
 - (b) If clause 12.2(a) applies, as full compensation the Purchaser shall pay the Vendor (to the extent it has not already):
 - (i) the Purchase Order Price for the Goods supplied and Services performed in accordance with the Purchase Order up to the time of termination; and
 - (ii) in respect of Goods which have not been delivered but which are due for delivery under this Purchase Order within one month of the effective date of the termination:
 - (A) the Vendor's actual direct out-of-pocket costs attributable to the Goods up to the effective date of termination; and
 - (B) any amounts that the Vendor is legally obliged to pay to a sub-contractor in respect of those Goods,
- to the extent that the sum of the amounts in clauses 12.2(b)(ii)(A) and 12.2(b)(ii)(B) does not exceed the amount that would have been payable for such Goods by the Purchaser to the Vendor had they been delivered in accordance with the Purchase Order.

12.3 On termination

- (a) If the Purchase Order is terminated by operation of clause 12.1 or 12.2, the Vendor will:
 - (i) cease supply of the Goods and performance of the Services in accordance with, but only to the extent specified in, the relevant notice;
 - (ii) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination;
 - (iii) immediately take all possible action to ensure the safety of all Goods and the Vendor's Personnel; and
 - (iv) take any other action reasonably required by the Purchaser in relation to the termination.
- (b) Notwithstanding the terms of any Default Notice, no action taken by the Purchaser under this clause 12 will prejudice the existence of any rights and remedies under the Purchase Order which the Purchaser may have as a result of any breach by the Vendor.
- (c) On payment under clause 12.2(b), title to, and property in, any incomplete Goods will pass to the Purchaser.

Purchase Order Terms and Conditions

- (d) Except to the extent provided for in this clause 12, the Purchaser will not be liable to the Vendor for any compensation or damages, including damages for loss of profit or any consequential, special, or other damages, in respect of or associated with termination under this clause 12.

13. TIME

- (a) Subject to clauses 13(b) to 13(f), the Vendor will be entitled to an extension of time to the Delivery Date if the cause of the delay necessitating the extension of time is any one or combination of:
 - (i) an act or omission of the:
 - (A) Purchaser;
 - (B) Purchaser's Personnel (not being the Vendor); or
 - (C) Purchaser's Representative; or
 - (ii) a written instruction of the Purchaser or the Purchaser's Representative under clause 23.
- (b) Where Vendor considers that it may be entitled to an extension of time to the Delivery Date because of one or a combination of the matters referred to in clause 13(a) the Vendor will:
 - (i) use its best endeavours to overcome the cause of the delay such that an extension of time to the Delivery Date is not necessary including:
 - (A) re-organising the work relating to the Goods and Services; and
 - (B) using any available float in the Schedule.
 - (ii) in addition to any other notice requirement under this Purchase Order and within seven days of the earlier of the date that the cause of the delay necessitating the extension of time first arises or the date that the Vendor should have been aware of that cause the Vendor will notify the Purchaser in writing and provide:
 - (A) the material facts relating to the cause of the delay known to the Vendor;
 - (B) a copy of the Schedule in hard copy and electronic form evidencing that the critical path has been, or will be, affected;
 - (C) the measures being taken by the Vendor to avoid the need to extend the Delivery Date; and
 - (D) the effect on the Delivery Date,
(the **Delay Notice**).

Purchase Order Terms and Conditions

- (c) If the Vendor does not provide the Delay Notice to the Purchaser in accordance with clause 13(b)(ii) then the:
 - (i) Vendor's entitlement to an extension of time to the Delivery Date is extinguished and those dates shall not be extended;
 - (ii) Vendor will deliver the Goods and perform the Services by the Delivery Date; and
 - (iii) Purchaser is not liable to the Vendor for any Liabilities arising out of or in connection with any goods or services that the Vendor may have to provide to deliver the Goods or perform the Services by the Delivery Date and the Vendor releases Purchaser from such Liabilities.
- (d) Provided that the:
 - (i) cause of the delay that necessitates the extension to the Delivery Date is one or a combination of the matters referred to at clause 13(a);
 - (ii) cause of the delay that necessitates the extension to the Delivery Date has affected the critical path of the Schedule; and
 - (iii) Purchaser has provided the Delay Notice to the Purchaser,the Purchaser shall within fourteen days receipt of the Delay Notice extend the Delivery Date by an amount which in the Purchaser's opinion is reasonable given the effect of the delay.
- (e) In granting the extension to the Delivery Date under clause 13(d) the Purchaser:
 - (i) is obligated to grant an extension only to the extent that the Vendor has complied with clause 13(b)(i) but has not managed to overcome the need to extend the Delivery Date; and
 - (ii) may consider information other than that referred to in the Delay Notice.
- (f) Nothing in this Purchase Order entitles the Vendor to an extension of time to the Delivery Date where:
 - (i) one or any combination of the matters referred to in clause 13(a) occurs concurrently with any other fact or any combination of facts that cause or contribute to the need to extend the Delivery Date; or
 - (ii) any other fact or combination of facts other than those matters referred to at clause 13(a) cause or contribute to the need to extend the Delivery Date.
- (g) The Purchaser may
 - (i) without any obligation to do so; and
 - (ii) on any terms that it considers fit,

Purchase Order Terms and Conditions

- extend the Delivery Date including the grant of an extension of time in relation to a cause of delay that has been extinguished under clause 13(c).
- (h) When, in the opinion of the Purchaser, any fact or combination of facts including a written instruction of the Purchaser or the Purchaser's Representative under clause 23 has, or will, have the effect of reducing the time required for the Vendor to comply with its obligations under the Purchase Order the Purchaser may amend the Delivery Date by an amount that, in its opinion, is reasonable and the Vendor will deliver the Goods by those dates.
 - (i) If the Purchaser intends to exercise its powers under clause 13(h) then it shall give written instruction to the Vendor directing that the Vendor, within seven days receipt of that written notice, provide in writing to the Purchaser:
 - (A) the material facts relating to the reduction in time known to the Vendor;
 - (B) evidence in hard copy and electronic form of how the critical path of the Schedule will be affected; and
 - (C) the extent of the reduction in time.
 - (j) To the extent that the information referred to at clause 13(i)(A) to 13(i)(C) is provided by the Vendor to the Purchaser within seven days receipt of a written instruction from the Purchaser then the Purchaser shall consider that information as part of information that it considers prior to amending the Delivery Date but otherwise is not obligated to obtain information from the Vendor before exercising its powers under clause 13(h).
 - (k) Nothing in this clause 13 prevents the Vendor for claiming for the reasonable net cost of complying with clause 23 other than those Liabilities that may be incurred by the Vendor and released under clause 13(c)(iii).
 - (l) Any time for delivery specified in this Purchase Order is of the essence.
 - (m) The Liquidated Damages Amount and any Liability arising under clause 26(g) will, upon demand, be a debt immediately due and payable to the Purchaser.

14. ASSIGNMENT AND SUBCONTRACTING

- (a) The Purchaser may assign its rights under this Purchase Order and shall notify the Vendor of any such assignment, upon which the Purchaser will be released from its obligations under this Purchase Order provided the assignee has undertaken in favour of the Vendor to comply with those obligations.
- (b) The Vendor may not assign or subcontract any of its rights and obligations under this Purchase Order without the prior written consent of the Purchaser.

Purchase Order Terms and Conditions

- (c) The Vendor shall procure that any permitted assignee or subcontractor is bound by this Purchase Order insofar as it can apply to them.
- (d) Any approval to assign or subcontract all or part of the supply of Goods or performance of the Services will not discharge the Vendor from any liability under this Purchase Order and the Vendor will remain subject to all duties and obligations provided for by this Purchase Order in respect of the part of the supply of Goods or performance of the Services so assigned or contracted out or affected by the assignee's or subcontractor's work.

15. INFORMATION

15.1 Vendor Information

The Vendor will provide the Purchaser with any information reasonably requested by the Purchaser in relation to the provision of the Goods or Services.

15.2 Confidential Information

- (a) For the purposes of this clause, the term **Confidential Information** means any information or documentation which relates to the Purchaser or any of its customers, the business or affairs of the Purchaser or any of its customers, this Purchase Order (including the terms and conditions (including price) of this Purchase Order) or the Purchaser's Personnel, including all patterns, drawings, specifications, samples and information relating to the Goods, Services or the Purchaser's premises, property or operations, and which:
 - (i) is disclosed to the Vendor or the Vendor's Personnel by or on behalf of the Purchaser;
 - (ii) is generated by the Vendor or the Vendor's Personnel in supply of the Goods or performance of the Services; or
 - (iii) otherwise comes to the knowledge of the Vendor or the Vendor's Personnel, whether by being communicated to or created, ascertained, discovered or derived by the Vendor or on its behalf or otherwise.
- (b) The Vendor undertakes and agrees:
 - (i) to hold in strict confidence all Confidential Information and not to disclose or permit or cause the Confidential Information to be disclosed to any person other than any of the Vendor's Personnel to the extent those persons require the Confidential Information for the purposes of supplying the Goods; and
 - (ii) not to make use of the Confidential Information (including, without limitation, duplicating, reproducing, distributing, disseminating or directly or

Purchase Order Terms and Conditions

indirectly deriving information from the Confidential Information), except and solely to the extent necessary in supplying the Goods or performing the Services,

unless the Vendor has obtained prior written consent of the Purchaser to do so (which consent may be withheld by the Purchaser in its discretion or given on such terms as it sees fit).

- (c) Clause 15.2(b)(i) does not apply to:
 - (i) information after it becomes generally available to the public other than as a result of the breach of this clause 15 or any other obligations of confidence imposed on the Vendor; or
 - (ii) the disclosure of information to comply with any applicable Law or legally binding order of any Court or as is necessary in relation to any proceedings before a court, tribunal, governmental agency or stock exchange, provided that the Vendor promptly gives notice to the Purchaser with full particulars of the proposed use or disclosure.
- (d) Where the Vendor discloses any Confidential Information under the provisions of this clause 15, the Vendor must:
 - (i) do so on terms no less onerous from the perspective of the recipient than the terms of this clause 15; and
 - (ii) ensure that the recipient does not disclose or use the information except in circumstances permitted by the provisions of this clause 15.
- (e) The obligations in this clause 15 are in addition to and do not diminish the obligations of the Vendor in respect of secret and confidential information at common law or under any statute or trade or professional custom or use, and will survive the termination of this Purchase Order.
- (f) Immediately on supply of all of the Goods and completion of the Services or the termination of this Purchase Order (whichever first occurs) the Vendor will deliver to the Purchaser all Confidential Information (in whatever form) in the custody, possession or control of the Vendor or any of its Vendor's Personnel.
- (g) The Vendor agrees to replace free of charge any Confidential Information which may be lost, damaged or destroyed whilst in its care.
- (h) The Purchaser retains all property and copyright in relation to the Confidential Information.

15.3 Publicity

Without limiting clause 15.2, the Vendor must not in any way or manner advertise, publish or otherwise make public any reference mentioning the Purchaser or the fact that the

Purchase Order Terms and Conditions

Vendor will furnish or has furnished Goods or Services to the Purchaser without first obtaining the written consent of the Purchaser, including the Purchaser's written approval of the material requested to be published. The Vendor will use its best efforts to ensure that its employees, officers, agents, representatives, subcontractors, vendors and suppliers abide by this restriction.

15.4 Vendor Information reportable under NGER Act

- (a) To enable the Purchaser to satisfy its reporting requirements under the *National Greenhouse and Energy Reporting Act 2007* (Cth), the Vendor must create and maintain, on a monthly basis, written records of all information reasonably requested by the Purchaser in respect of each financial year of the Term relating to:
- (i) greenhouse gas emissions;
 - (ii) energy production; and
 - (iii) energy consumption
- from or as a result of the operation of any activities carried out by Vendor and its agents, contractors and related bodies corporate under this Purchase Order.
- (b) The Vendor must provide to the Purchaser copies of all written records created and maintained by Vendor under clause 15.4(a) in accordance with the following schedule:
- (i) by 31 January of each year of the term of this Purchase Order in respect of the months of October, November and December of the preceding year;
 - (ii) by 30 April of each year of the term of this Purchase Order in respect of the months of January, February and March of that year;
 - (iii) by 31 July of each year of the term of this Purchase Order in respect of the months of April, May and June of that year; and
 - (iv) by 31 October of each year of the term of this Purchase Order in respect of the months of July, August and September of that year;
- (c) All written records provided to the Purchaser pursuant to clause 15.4(b) must be in the form advised by the Purchaser from time to time.

16. PATENTS

The Vendor will pay all royalties and fees on patented articles processes and registered designs in respect of the Goods and Services. The Vendor warrants that supply or use of the Goods and Services does not and will not infringe any patent, copyright, trademark or trade secret of any country related to the Goods or Services and will indemnify the

Purchase Order Terms and Conditions

Purchaser and its successors in title from all actions, demands, damages or claims (including legal costs) arising from or incurred by reason of any such infringement.

17. INTELLECTUAL PROPERTY IN GOODS AND SERVICES

- (a) To the extent that any intellectual property is created by the Vendor or the Vendor's Personnel in the supply of the Goods or the performance of the Services, property in the intellectual property will vest in the Purchaser.
- (b) To the extent that the supply of the Goods or Services or the Purchaser's ongoing enjoyment or use of the Goods or the product of the Services, uses or incorporates any pre-existing intellectual property of the Vendor or the Vendor's Personnel, the Vendor acknowledges and agrees that the Purchaser will have a complete, permanent, assignable, non-exclusive royalty-free licence to use such intellectual property.
- (c) The Vendor hereby waives to the fullest extent of the Law all moral rights or similar rights in any intellectual property created by the Vendor or the Vendor's Personnel in supplying the Goods or performing the Services, or in any of the Vendor's pre-existing intellectual property used or incorporated in supplying the Goods or performing the Services and will procure that the Vendor's Personnel do the same.
- (d) The Vendor acknowledges and agrees that all documentation created by the Vendor or the Vendor's Personnel in supplying the Goods or performing the Services will be the property of the Purchaser, and the Vendor will deliver such documentation to the Purchaser upon the Purchaser's request or on termination of the Purchase Order, whichever is earlier.
- (e) This clause survives termination of this Purchase Order.
- (f) Without limiting clause 10.5, the Vendor warrants that to the extent that it uses or proposes to use the intellectual property of any third party in the supply of the Goods or performance of the Services:
 - (i) it has obtained, or will obtain, from the relevant third party all necessary licences to use, or assignments of, such intellectual property; and
 - (ii) that it will not breach any of the licences or assignments referred to in clause 17(f)(i).

18. FORCE MAJEURE

18.1 Definition

Force Majeure means an event or cause beyond the reasonable control of the party claiming force majeure, including:

Purchase Order Terms and Conditions

- (a) act of God, storm, flood, fire;
- (b) strike, lockout or other labour difficulty (but excluding those involving the Vendor's employees which are not National or State-wide disputes); and
- (c) war, terrorism, sabotage, civil commotion,

which is beyond the reasonable control of the party affected and which could not reasonably have been foreseen at the time of entering into this Purchase Order and which could not reasonably have been provided against or prevented by the party affected.

18.2 Force Majeure

- (a) If either party is unable, wholly or in part, by reason of Force Majeure to carry out any obligation under this Purchase Order, it shall promptly give notice to the other party specifying the event of Force Majeure and the likely duration of its inability to perform.
- (b) If a notice is provided in accordance with clause 18.2(a), a party's obligation will, to the extent necessary, be suspended so long as the Force Majeure continues.
- (c) The Purchaser may, without being liable for any compensation, obtain goods or services from a third party in replacement for the Goods or Services in the event of Force Majeure preventing the Vendor from supplying the Goods or performing the Services in accordance with this Purchase Order and, to the extent that it does so, the quantities set out in the Purchase Order will be taken to be adjusted accordingly.
- (d) Neither party will be liable to the other for any costs or losses associated with an event of Force Majeure.

19. INDUSTRIAL RELATIONS

19.1 Vendor Responsible for Industrial Relations

So far as is permitted by relevant Law:

- (a) the Vendor will be responsible for industrial relations matters in respect of the Vendor's Personnel; and
- (b) the Vendor must comply with, and will ensure the Vendor's Personnel comply with, all relevant legislation, industrial agreements, enterprise agreements, workplace agreements, federal and state awards, determinations or decisions in relation to the Vendor's Personnel.

19.2 Claims and Disputes

- (a) The Vendor will immediately forward in writing to the Purchaser full details of claims in connection with the supply of Goods or performance of Services received

Purchase Order Terms and Conditions

by it from employees or subcontractors working under an industrial award and relating to renegotiation or renewal of any industrial agreement.

- (b) The Vendor must keep the Purchaser fully informed of the progress of any claims referred to in clause 19.2(a), any dispute with any union, or of any demand in respect of terms of employment.

19.3 Rates and Wages

So far as is permitted by relevant Law, the Vendor must not, and must ensure that its employees or subcontractors do not, offer to or enter into any agreement whatsoever with any of their respective employees, or any union, under which they agree to pay or do anything not required by any legislation, industrial agreement or federal or state award, determination or decision without obtaining the prior endorsement of the Purchaser.

19.4 Purchaser's Directive

So far as is permitted by relevant Law, the Vendor must observe the provisions of any industrial relations directive or advice that the Purchaser may issue to the Vendor.

20. RECORDS AND AUDITS

20.1 Records

- (a) The Vendor will maintain, and ensure its subcontractors maintain, full and correct records and records of accounts in connection with the Goods and Services and all related transactions.
- (b) The Purchaser may request, and upon request the Vendor must provide, other information relating to the supply of the Goods or performance of the Services.
- (c) The Vendor and its subcontractors must retain the records referred to in clause 20.1(a) for a period of not less than 24 months or the period required according to Law, whichever is greater, after the date of the last supply of the Goods or performance of the Services.
- (d) The Vendor must ensure that its and its subcontractors' records comply with the requirements of AS1885 and Section D of AS2885.3.

20.2 Audits

- (a) The Purchaser may, upon reasonable notice to the Vendor, conduct audits of the records kept by the Vendor under this Purchase Order.
- (b) The Vendor must comply and fully co-operate with any audits conducted by the Purchaser under this Purchase Order.

Purchase Order Terms and Conditions

21. COMMISSIONS

The Vendor must not give or receive any commission, fee, rebate or gift or entertainment of significant cost or value in connection with the Goods or Services or enter into any business arrangement with any of the Purchaser's Personnel without the Purchaser's prior written approval.

22. CLAIMS & DISPUTE RESOLUTION

- (a) If a dispute arises under this Purchase Order, either Party may provide written notice of a dispute to the other party.
- (b) Such a dispute will be resolved in accordance with the following:
 - (i) within 2 Business Days of the receipt of the notice, senior management representatives of the Vendor and the Purchaser shall meet with the intent of resolving the dispute; and
 - (ii) if the dispute is not resolved within 4 Business Days of the receipt of the notice, or such additional agreed period, the parties may seek a non-binding independent opinion to assist in achieving the resolution of the dispute.
- (c) Without limiting clause 12.2, if the dispute is not resolved within 7 Business Days of receipt of the notice, or such additional agreed period, the Purchaser may terminate this Purchase Order in accordance with clause 12.2 and may appoint a replacement contractor to supply the Goods or goods in replacement for the Goods or to perform the Services or services in replacement for the Services.
- (d) This clause will not derogate from the right of either party to refer the matter to litigation.
- (e) If the Purchaser does not exercise its right to terminate under clause 22(c) then the parties shall continue to perform their obligations under the Purchase Order notwithstanding the existence of a dispute.

23. VARIATIONS

- (a) The Purchaser or the Purchaser's Representative may at any time and from time to time issue written instructions requiring additions, changes, deletion or alterations in the Goods to be delivered or the Services to be performed or the timing of their delivery. The Vendor will immediately proceed in compliance with the instructions, in which case, and subject to this clause 23, the Purchase Order Price will be adjusted by an amount that is, in the opinion of the Purchaser, the reasonable net increase or decrease in the Purchase Order Price.

Purchase Order Terms and Conditions

- (b) Within 7 days after receipt of the instructions, the Vendor will:
 - (i) furnish to the Purchaser a statement in detail of its estimate of the reasonable net increases or decreases in the Purchase Order Price from its compliance with the Purchaser's instructions;
 - (ii) where the Purchaser's instructions:
 - (A) may extend the Delivery Date; or
 - (B) requires the Vendor to claim any cost or expense such that the Delivery Date can be maintained,the Purchaser will also comply with clause 13.
- (c) If the Vendor does not furnish the statement referred to in clause 23(b)(i) within the prescribed time there will be deemed to be no increase or decrease in the cost of the Goods or Services and the Vendor releases the Purchaser from all Liabilities arising out of or in connection with the written instruction.
- (d) Subject to clause 13, if the Vendor provides the statement referred to in clause 23(b)(i) within the prescribed time the Purchaser, within 14 days of receipt of the statement, will provide notice to the Vendor of, in its reasonable opinion and with consideration of the statement submitted and such information as the Purchaser considers relevant, the net increase or decrease to the Purchase Order Price. If the Vendor disputes the Purchaser's determination of the Purchase Order Price, it will notify the Purchaser in writing within 10 days after receipt of the Purchaser's notice. A failure to raise a dispute within this period will constitute acceptance of the Purchaser's determination and the Vendor releases the Purchaser from all Liabilities other than the amount referred to in the determination.
- (e) The Vendor will continue to perform the work, including any such additions, changes, deletions or alterations, despite any failure to agree upon the increase or decrease in the Purchase Order Price unless otherwise directed by the Purchaser.
- (f) Changes or variations to the Purchase Order which are not in writing will be of no effect.

24. NOTICES

Any notice, demand, consent or other communication (a **Notice**) given or made under this Purchase Order:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) will be taken to be duly given or made when delivered, received or left at the below address;

Purchase Order Terms and Conditions

- (c) will be delivered to the intended recipient by hand or by prepaid post or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender.

PURCHASER:	Refer to the Purchase Order for Purchaser's details.
VENDOR	Refer to the Purchase Order for Vendor's details.

25. MISCELLANEOUS

25.1 Entire Agreement

- (a) The Purchase Order contains the entire agreement between the parties concerning its subject matter and supersedes all prior communication and negotiations between the parties.
- (b) No conditions endorsed on, referred to, delivered with or contained in the Vendor's quotation, specification, acknowledgement, acceptance or similar document will form part of the Purchase Order unless the parties otherwise expressly agree in writing.

25.2 Governing Law

The Purchase Order will be governed by and construed according to the Laws applicable in Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of that State.

25.3 Severance

Any provision of this Purchase Order that is prohibited or unenforceable in any jurisdiction is ineffective in that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of this Purchase Order nor affect validity or enforceability in another jurisdiction.

25.4 No Waiver

No waiver of a breach of any provision of the Purchase Order will constitute a waiver of any succeeding or other breach of this Purchase Order or any other agreement between the Purchaser and the Vendor.

26. LIQUIDATED DAMAGES

- (a) The Vendor must manufacture and deliver the Goods or perform the Services in accordance with the provisions of the Purchase Order on or before the Delivery Date.

Purchase Order Terms and Conditions

- (b) If the Vendor does not comply with clause 26(a) then the Vendor is liable for and must pay to the Purchaser the Liquidated Damages Amount.
- (c) The Liquidated Damages Amount will accrue under clause 26(b) until the earlier of:
 - (i) the Purchase Order is terminated by the Purchaser under clause 12;
 - (ii) the Vendor complies with clause 26(a), with the exception of the Delivery Date; or
 - (iii) the accrued Liquidated Damages Amount is equal to the Capped Liquidated Damages Amount.
- (d) If, after the Vendor has paid or the Purchaser has deducted the Liquidated Damages Amount, the Delivery Dates are extended under clause 13 such that some or all of the Liquidated Damages Amount is no longer payable, the Purchaser will immediately repay to the Vendor any Liquidated Damages Amount paid or deducted in respect of the period up to and including the extended Delivery Dates.
- (e) Re-payment to the Vendor of part or all of the Liquidated Damages Amount previously deducted does not relieve the Vendor from its obligation to provide the Goods or perform the Services in accordance with the provisions of the Purchase Order.
- (f) The parties acknowledge that the Liquidated Damages Amount is intended to compensate the Purchaser for Liabilities of the Purchaser that may arise in the event that clause 26(a) is not complied with but does not prejudice the existence of any other rights and remedies which the Purchaser may have as a result of the breach by the Vendor of clause 26(a) or any other term of this Purchase Order, including the right to:
 - (i) terminate the Purchase Order under clause 12; and
 - (ii) recover the amounts referred to at clause 12.1(d).
- (g) If for any reason the entitlement of the Purchaser to the Liquidated Damages Amount is unenforceable in part or in whole then, to the extent of its enforceability, the Vendor will be liable to the Purchaser for all Liabilities arising out of or in connection with the Vendor not complying with clause 26(a).
- (h) The aggregate liability of the Vendor to the Purchaser under clauses 26(b) and 26(g) is limited to an amount equal to Capped Liquidated Damages Amount.