



## STANDARD PURCHASE CONDITIONS

### PART A - GENERAL PROVISIONS

#### G.C.1. DEFINITIONS

Unless the context otherwise requires, the following terms have the meanings given when used in the Contract.

**Anglo American's Corporate Policies** means the policies, codes and principles published by Anglo American plc, and such other policies, codes and principles notified by the Company to the Contractor, but does not include the SHE Requirements.

**Anti-Corruption Laws** means:

- (a) Chapter 4, Division 70 of the *Australian Criminal Code Act 1995* (Cth);
- (b) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997 (**OECD Convention**);
- (c) the United Nations Convention against Corruption 2003;
- (d) the Foreign Corrupt Practices Act of 1977 of the United States of America (**FCPA**);
- (e) the Bribery Act 2010 of the United Kingdom (**UK Bribery Act**); and
- (f) any other relevant law which:
  - (i) prohibits the offering of any gift, payment or other benefit to any person or any officer, employee, agent or adviser of such person; or
  - (ii) is broadly equivalent to the FCPA or the UK Bribery Act, is intended to enact the provisions of the OECD Convention, or has as its objective the prevention of corruption,
 and is applicable in the jurisdiction in which the Company or the Contractor are registered or conduct business or in which activities relevant to the Goods, Services or Equipment hire are to be performed.

**Background IP** means the protected intellectual property or industry rights (whether legal or equitable) in a party's procedures, processes, systems, know-how and methodologies which are pre-existing or developed other than in the performance of the Consultancy Services and which are made available to the other party for the purposes of the Contract.

**Business Day** means a calendar day ending at 5.00pm, other than a Saturday, Sunday or public holiday in Queensland, Australia or the location of the Site.

**Company** means the party so named in the Contract.

**Consequential Loss** has the meaning given in G.C.8.3.

**Constructional Plant** means all plant, tools and equipment to be used by the Contractor in the performance of the Services and includes cranes, tools, machinery and temporary buildings.

**Consultancy Services** means services provided by a professional and/or specialist advisor or consultant, including consulting in relation to strategy, management, business, financial matters, information technology, sales, industry specific matters, function specific matters, engineering, investment, public relations, implementation and general consulting.

**Contract** means the Purchase Order, these Standard Purchase Conditions and any other document stated in the Purchase Order to be part of the Contract.

**Contractor** means the party so named in the Contract.

**Contractor's Personnel** means the Contractor's employees, agents and subcontractors, and employees, agents and contractors of the subcontractors.

**Default Rate** means the daily buying rate displayed at or about 10.30am (Sydney time) on the Reuters screen BBSW page for Australian bank bills of a 90 day duration (or if that daily buying rate is no longer published, such other daily rate as the parties may agree) plus two percent.

**Equipment** means the equipment hired to the Company, as specified in the Purchase Order (if any).

**Goods** means the items specified in the Purchase Order (if any).

**Intellectual Property** means all intellectual property rights conferred under statute, common law or equity in any country, including copyright, trademarks, trade secrets, designs, drawings, patents, know-how, secret process and

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other similar proprietary rights, whether or not registered, and any application or right to apply for registration of any of the aforesaid rights.

**Losses** means losses, damages, costs, charges, expenses, penalties, interest and fines, including those arising as a result of claims, demands, actions, proceedings or suits by any person.

**Purchase Order** means the order for Goods, Services and/or Equipment hire issued by the Company to the Contractor.

**Related Body Corporate** has the meaning given in section 9 of the *Corporations Act 2001* (Cth).

**Services** means the services specified in the Purchase Order (if any), and may include Consultancy Services.

**SHE Requirements** means all relevant law and government requirements relating to workplace health and safety and the environment, and the Company's policies with respect to health and safety, the environment and positive stakeholder relationships including the SHMS.

**SHMS** means the Company's safety and health management system for the purposes of the *Coal Mining Safety and Health Act 1999* (Qld).

**Site** means the areas specified in the Purchase Order for the delivery of the Goods or Equipment or the performance of the Services.

## G.C.2. SUPPLY OF GOODS, SERVICES OR EQUIPMENT

The Contractor must supply the Goods, perform the Services and/or hire the Equipment in accordance with the Contract. If any delay in delivering the Goods, performing the Services or delivering or repairing Equipment, occurs or is foreseen, the Contractor must immediately notify the Company of the cause and anticipated length of the delay.

## G.C.3. SAFETY, HEALTH AND ENVIRONMENT

### 3.1 Contractor's obligations and acknowledgments

The Contractor:

- (a) acknowledges the extreme importance that the Company places on:
  - (i) establishing and maintaining high standards in relation to workplace health and safety, the protection of the environment and positive stakeholder relationships; and
  - (ii) compliance with Anglo American's Corporate Policies;
- (b) acknowledges that the Company is committed to eliminating work related injuries and occupational illnesses with a view to achieving the vision of 'Zero Harm';
- (c) must acquaint itself with Anglo American's Corporate Policies and use its reasonable endeavours when performing the Services to:
  - (i) comply with Anglo American's Corporate Policies; or
  - (ii) where full compliance is not immediately practicable, take action to continuously improve compliance with Anglo American's Corporate Policies; and
- (d) must acquaint itself with the SHE Requirements and when on Site, must comply with, and ensure the Contractor's Personnel fully comply with, all SHE Requirements and any direction given by the Company in respect of the SHE Requirements.

### 3.2 Reporting of incidents

The Contractor must:

- (a) report any incident relating to workplace health and safety or the environment or which impacts on stakeholder relationships (which is reportable under the SHE Requirements) to the Company as soon as reasonably possible, and in any event, within a time period that ensures the Company can comply with all relevant laws; and
- (b) provide the Company with reasonable assistance (including access to relevant documents and Contractor's Personnel employees) in investigating any such incident.

### 3.3 Breach of contract

Any material failure by the Contractor or any Contractor's Personnel to comply with a SHE Requirement, or any failure to comply with a SHE Requirement which has or could have material consequences, constitutes a material breach of the Contract and notwithstanding G.C.13.2 and without limiting any other right or remedy available to the Company, the Company may in the event of such failure do one or more of the following:

- (a) immediately direct the removal of any person from the Site;

- (b) immediately suspend the performance of the Services or supply of the Goods at the Contractor's expense until the failure has been remedied; or
- (c) either immediately or at any time following suspension under G.C.3.3(b), terminate the Contract by serving written notice on the Contractor.

The Contractor is not entitled to any compensation in relation to an action required by, or a direction under, G.C.3.3(a), or a suspension or termination under G.C.3.3.

### **3.4 Objection to personnel**

The Company may direct the Contractor to promptly procure the removal from the Site and replacement of any Contractor's Personnel, who, in the opinion of the Company, is not properly performing their duties, is incompetent, unqualified or negligent or is responsible for a violation of a SHE Requirement or any other applicable policy or procedure on-Site. For the avoidance of doubt, the Contractor is not entitled to any compensation as a result of a direction under this G.C.3.4.

### **G.C.4. ASSIGNMENT AND SUBCONTRACTING**

The Contractor must not subcontract, assign, novate, transfer, delegate or otherwise deal with the Contract or any right, obligation, duty or responsibility under it except with the prior written consent of the Company.

### **G.C.5. LAWS AND REGULATIONS**

#### **5.1 General**

The Contractor must comply with all laws and government requirements affecting or applicable to the Goods or their supply, the performance of the Services, or the hire of the Equipment, and subject to G.C.5.3 must pay any fees, charges, levies and taxes imposed by a government entity in relation to the Goods, Services or hire of the Equipment.

#### **5.2 Labour hire licence**

Without limiting G.C.5.1, the Contractor:

- (a) warrants that it holds the licences required (if any) under the *Labour Hire Licensing Act 2017* (Qld) to carry out the Services; and
- (b) must provide to the Company details of the licence, including its numbers and expiry date, on request from the Company.

#### **5.3 Long service leave and safety fees**

Any portable long service leave levy or workplace health and safety fee imposed in connection with the supply of the Goods, performance of the Services or hire of the Equipment must, unless otherwise specified in the Purchase Order or agreed in writing by the parties, be paid by the Contractor and is deemed to be included in the price payable for the Goods, Services or Equipment hire (subject to G.C.11).

### **G.C.6. PRECEDENCE OF DOCUMENTS**

If there is any discrepancy, inconsistency or ambiguity between a Purchase Order and these Standard Purchase Conditions, the Purchase Order shall prevail. The Purchase Order and these Standard Purchase Conditions shall have precedence over any other documents forming part of the Contract.

### **G.C.7. INTELLECTUAL PROPERTY RIGHTS**

The Contractor warrants that the intellectual property rights of a third party will not be infringed by the supply of the Goods or Equipment under the Contract, the use of those Goods or Equipment by the Company or the performance of the Services by the Contractor.

### **G.C.8. INDEMNITY**

#### **8.1 Indemnity by the Contractor**

The Contractor must indemnify the Company against all Losses arising in connection with:

- (a) any damage to the Site, the Goods or any property whether located on the Site or otherwise;
- (b) death or injury to any person whether located on the Site or otherwise;
- (c) a breach by the Contractor or Contractor's Personnel of any law in the course of, or caused by, the performance of its obligations under the Contract; and
- (d) the breach by the Contractor of an obligation under the Contract or a warranty contained in G.C.7, G.C.9.2, G.C.10.9, G.C.18.2, G.C.23, G.C.27 or G.C.36,

if the Losses arise in connection with any act, error or omission of the Contractor or Contractor's Personnel.

## 8.2 Extent and duration of indemnity

The indemnity given by the Contractor under G.C.8.1 is a continuing obligation, separate and independent from the other obligations of the Contractor and survives the termination of the Contract.

## 8.3 Exclusion of Consequential Loss

Notwithstanding any other provision of the Contract, a party (**First Party**) will not be liable to the other party (**Second Party**):

- (a) for loss of revenue, loss of business, loss of profits, loss of third party contracts or loss of anticipated savings, whether arising in contract (including under any indemnity), tort (including in negligence or for breach of statutory duty) or otherwise; or
- (b) to the extent not covered by paragraph (a), for loss or damage which does not flow naturally from a breach of the Contract (including under any indemnity), from negligence or breach of statutory duty or from any other act or omission of the First Party, its employees, agents or contractors,

(**Consequential Loss**) except Consequential Loss:

- (c) incurred as a result of the fraud or wilful, reckless or deliberate breach of the Contract by the First Party, its employees, agents or contractors; or
- (d) forming part of a claim by the Second Party for contribution or indemnity from the First Party in respect of claims by third parties for personal injury, death or property damage.

## G.C.9. PAYMENT

### 9.1 Payment by the Company

Subject to the Goods delivered, Services performed or Equipment hired complying with the Contract, the Company must pay the Contractor's invoice by the date that is 60 days after the end of the month in which the Company receives the invoice. The time for payment is calculated from the date that an acceptable invoice is received by the Company. Without limiting G.C.25.3 or G.C.29, payment is payment on account only and is not evidence that the Goods, Services or Equipment have been delivered, performed or hired satisfactorily.

### 9.2 Warranty

When submitting an invoice, the Contractor warrants to the Company that it is a resident of Australia for Australian tax purposes.

### 9.3 Default Interest

Notwithstanding any other remedy available to a party under the Contract or at law, if a party fails to pay an amount owing to the other party on the due date for payment, that party is liable to the other party for interest at the Default Rate, from the due date for payment until the date payment is made.

## G.C.10. WITHHOLDING TAX

### 10.1 Company's right to withhold

Notwithstanding any other provision to the contrary, if the Company considers it necessary to satisfy its obligations under the *Taxation Administration Act 1953* (Cth) (**Act**) or the *Taxation Administration Regulations 2017* (Cth) (**Regulations**), the Company may:

- (a) withhold an amount from a payment made to the Contractor; and
- (b) pay the withheld amount directly to the Commissioner of Taxation (**Commissioner**).

### 10.2 Types of withholding payments

Without limitation, the withholding taxes that the Company may have an obligation to withhold from a payment made to the Contractor include:

- (a) 47% of any payment for a supply by the Contractor made in the course or furtherance of an enterprise carried on in Australia by the Contractor, where the Contractor does not quote its ABN on the invoice for the supply or on other documentation relating to the supply;
- (b) 5% of any payment to a foreign entity if the Services fall within the description of certain activities specified in the Regulations; or
- (c) from any other payments to the Contractor or received for the Contractor of a kind set out in the Act or the Regulations from time to time, the rate set out in the Act or the Regulations from time to time.

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The Company and the Contractor acknowledge that these rates are subject to change and are subject to any relevant Tax Treaty.

### 10.3 Deemed payment to Contractor

If the amount withheld in accordance with this G.C.10 is paid by the Company to the Commissioner, it is deemed to have been paid to the Contractor on the date on which the remainder of the payment to which it relates was paid to the Contractor.

### 10.4 No claim against Company

The Contractor agrees and acknowledges that it has no claim against the Company for any amounts withheld and paid to the Commissioner in accordance with this G.C.10.

### 10.5 Amounts not withheld

If the Company does not withhold an amount under this G.C.10 which it is required to withhold pursuant to the Act and the Regulations, the Contractor agrees to pay that amount to the Company, upon request by the Company.

### 10.6 No increase for the amount withheld

The Contractor agrees that the Company will not be required to increase the payment to the Contractor by the amount withheld by the Company under this G.C.10.

### 10.7 Withholding tax exemptions and variations

The Company agrees to provide all reasonable assistance to the Contractor to establish its entitlement to any exemption available from a withholding tax or any variation of the amount of a withholding tax.

### 10.8 Failure to withhold

If the Company fails to withhold an amount as required by the Act or the Regulations any penalty or interest paid by the Company for failing to withhold may be recovered from the Contractor, but only if the failure to withhold arose as a consequence of a breach of a warranty or because the Contractor did not provide information or assistance requested by the Company, or provided incorrect information, with respect to a withholding tax matter.

### 10.9 Agency warranty

The Contractor warrants to the Company that it has entered the Contract on its own behalf and not as agent for any other person, unless otherwise specified in the Contract.

### 10.10 Definitions

For the purposes of this G.C.10:

- (a) **ABN** means Australian Business Number, and has the same meaning as in section 41 of *A New Tax System (Australian Business Number) Act 1999* (Cth);
- (b) **foreign entity** means an entity covered by subsection 12-315(2) of Schedule 1 to the *Taxation Administration Act 1953* (Cth);
- (c) **in the course or furtherance of an enterprise carried on in Australia** has the same meaning as in section 12-190 of Schedule 1 to the *Taxation Administration Act 1953* (Cth); and
- (d) **Tax Treaty** means an agreement within the meaning of the *International Tax Agreements Act 1953* (Cth), or an international tax agreement within the meaning of section 995-1 of the *Income Tax Assessment Act 1997* (Cth).

In determining whether the Contractor is a foreign entity, or carries on an enterprise in Australia, the Company may have regard to the Contractor's warranty in G.C.9.2. The Contractor must supply such evidence as the Company reasonably requires to support that warranty.

## G.C.11. GST

### 11.1 Interpretation

In this G.C.11, words or expressions have the same meaning as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) unless the context makes it clear that a different meaning is intended.

### 11.2 GST exclusive amounts

All amounts used in this Contract, including amounts and variables in formulas, are exclusive of GST, unless it is clearly stated that they are intended to be GST inclusive.

### 11.3 GST gross up

If a party makes a supply under or in connection with the Contract in respect of which GST is payable, the consideration for the supply but for the application of this G.C.11 (**GST exclusive consideration**) is increased by

an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

#### **11.4 Reimbursements**

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit to which the other party is entitled for the loss, cost or expense and then increased in accordance with G.C.11.3. That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be paid, that its entitlement is otherwise.

#### **11.5 Tax invoices**

Notwithstanding any other provision of the Contract, the recipient of a taxable supply made under or in connection with the Contract need not make a payment until the supplier has given the recipient a tax invoice for the supply to which the payment relates. The supplier must give the recipient an adjustment note for an adjustment arising from an adjustment event relating to a taxable supply made under or in connection with the Contract within seven days after the date the supplier becomes aware of the adjustment event.

#### **11.6 GST group**

If a party is a member of a GST group, references to GST which the party must pay, and to input tax credits to which the party is entitled, include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.

#### **11.7 Indemnities**

If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay and indemnify the payee against the amount of that GST.

### **G.C.12. RIGHT OF SET OFF**

#### **12.1 Company's rights**

The Company may at any time, deduct from any amount due or becoming due to the Contractor under the Contract to meet:

- (a) all debts and amounts due from the Contractor to the Company whether under or in connection with the Contract or otherwise; and
- (b) the amount of any claims or liens that the Company has reasonable grounds for believing may be made against the Contractor under or in connection with the Contract.

#### **12.2 Notice of amount deducted**

The Company must notify the Contractor in writing of any amounts deducted under G.C.12.1 and the basis for the deduction, at the time that the deducted amount would otherwise be due to the Contractor.

### **G.C.13. DEFAULT BY CONTRACTOR**

#### **13.1 Insolvency**

If the Contractor becomes insolvent or bankrupt, the Company may terminate the Contract immediately by written notice to the Contractor or the person in whom the Contract is vested.

#### **13.2 Event of default**

If the Contractor fails to perform or comply with any of its obligations under the Contract (a **Contractor Default**) then the Company may serve a notice on the Contractor specifying the Contractor Default, the time within which the Contractor Default is to be remedied and requiring the Contractor to remedy it.

#### **13.3 Failure to remedy**

If, within the time specified in a notice served under G.C.13.2, the Contractor fails to remedy the Contractor Default to the satisfaction of the Company, then the Company may terminate the Contract by written notice, without prejudice to its other rights.

#### **13.4 Contractor's obligations on termination**

On receiving a notice under G.C.13.1 or G.C.13.3, the Contractor must take any action relating to the termination of the Contract reasonably required by the Company.

### **G.C.14. ANTI-CORRUPTION**

#### **14.1 Receipt of benefits**

A director, employee or agent of the Contractor must not:

- (a) give or receive any commission, fee, rebate, gift or entertainment of significant value from; or
- (b) enter into any business agreement with,

any director, employee or agent of the Company other than as a representative of the Company or in the ordinary and proper course of business between any of those parties.

#### 14.2 Compliance with Anti-Corruption requirements

The Contractor must not undertake any activity that may constitute a breach of any provision of the Anti-Corruption Laws.

#### 14.3 Conflict of interest

The Contractor represents that at the date of this Contract, there is no relationship between it and the Company, between any of the Contractor's directors or employees and the Company or between the Contractor and a director or employee of the Company that gives rise to an actual or potential conflict of interest.

The Contractor must immediately notify the Company upon becoming aware that any such relationship exists. The Contractor must take reasonable steps to eliminate or overcome the conflict of interest without in any way adversely affecting its continued performance of its obligations under the Contract.

### G.C.15. ANTI-SLAVERY

#### 15.1 Definitions

For the purposes of this G.C.15:

**Anti-Slavery Laws** means:

- (a) Division 270 and 271 of the *Criminal Code Act 1995* (Cth);
- (b) the *Modern Slavery Act 2018* (Cth);
- (c) the Modern Slavery Act 2015 of the United Kingdom; and
- (d) any other relevant law which has as its objective the prohibition of exploitation of workers, human trafficking, slavery, slavery-like behaviour, servitude, forced labour, child labour, debt bondage or deceptive recruiting for labour or services (or similar), or requires reporting or any other action in relation to the risks of those activities, and is applicable in the jurisdiction in which the Company and the Contractor are registered or conduct business or in which activities relevant to the Services are to be performed.

#### 15.2 Compliance with anti-slavery requirements

- (a) The Contractor must when performing its obligations under the Contract, comply with:
  - (i) all applicable Anti-Slavery Laws; and
  - (ii) Anglo American's Corporate Policies relating to anti-slavery.
- (b) The Contractor must ensure any subcontracts include obligations on the relevant subcontractors that are equivalent to the obligations in G.C.15.2(a), G.C.15.3 and G.C.15.6.

#### 15.3 Contractor to provide assistance to the Company

The Contractor must (at the Contractor's cost) provide all reasonable assistance including the provision of information, access to documents and the Contractor's employees and subcontractors as the Company may require from time to time, including to investigate any actual, alleged or reasonably suspected breaches by the Contractor or its employees of any Anti-Slavery Laws.

#### 15.4 Provision of information regarding slavery

From the Date of the Agreement, the Contractor must immediately notify and provide full particulars to the Company upon becoming aware:

- (a) that it has breached G.C.15.2;
- (b) of any conduct which may give rise to a breach of G.C.15.2 by the Contractor; or
- (c) that it has been found guilty by a court of, or have admitted guilt or accepted liability in relation to, a contravention of any Anti-Slavery Laws.

#### 15.5 Response to breaches

If the Contractor gives a notice under G.C.15.4, or the Company otherwise becomes aware or has a reasonable suspicion of any breach of G.C.15.2, G.C.15.3, G.C.15.4 or G.C.15.5 or any conduct which may rise to a breach of any of those provisions (**Anti-slavery breach**), the Company may request the Contractor to:

- (a) prepare, document and implement a corrective action plan to address any failure by the Contractor to comply with G.C.15.2, G.C.15.3, G.C.15.4 or G.C.15.5, or to mitigate the risk, damage or potential damage arising from the Anti-slavery breach; and

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- (b) confirm to the Company in writing that such measures have been implemented.

#### 15.6 Termination by Company

If the Contractor:

- (a) is found guilty by a court of, or admits guilt or accepts liability in relation to, a contravention of any Anti-Slavery Laws; or
- (b) breaches G.C.15.2, G.C.15.3, G.C.15.4 or G.C.15.5,

then (without limitation to any other right or remedy available to the Company under the Contract or otherwise at law) the Company may:

- (c) propose to the Contractor any revised terms under which the Company is prepared to continue the performance of the Contract and, if those terms are not agreed by the parties within the time specified in the Company's proposal, terminate this Contract by giving 10 days notice in writing to the Contractor; or
- (d) terminate the Contract by giving 10 days notice in writing to the Contractor.

#### 15.7 Consequences of termination

Where the Company exercises its rights under G.C.15.5 or G.C.15.6:

- (a) it will not be liable for any Losses suffered by the Contractor or its employees and subcontractors; and
- (b) the Contractor hereby provides a release and indemnity to the Company in respect of any Losses incurred by the Company,

as a result of or in connection with the exercise of the rights by the Company.

#### G.C.16. CONFIDENTIALITY AND PRIVACY

- (a) A party must not, without the prior written consent of the other party disclose confidential information:
  - (i) relating to the Goods, Services or hire of Equipment or a party's business or operations; or
  - (ii) provided by one party to the other,or use such information for purposes unrelated to this Contract, unless disclosure is required by an applicable law, stock exchange listing rule or taxation authority.
- (b) In performing the Contract, the Contractor must comply with:
  - (i) applicable law, codes, guidelines and directives; and
  - (ii) the Company's notified policies and reasonable requirements, relating to privacy, personal information and data management.

#### G.C.17. NOTICES

A notice under the Contract must be in writing, in English and addressed to the receiving party, and will be deemed to have been received:

- (a) if posted, on the 4th day after posting;
- (b) if delivered personally, upon delivery; or
- (c) if sent by email:
  - (i) on a Business Day, on dispatch of the transmission; or
  - (ii) on a day other than a Business Day, on the next Business Day,unless the sender's server indicates a malfunction or error in transmission or the recipient immediately notifies the sender of an incomplete transmission.

#### G.C.18. TRADE AND ECONOMIC SANCTIONS

##### 18.1 Definitions

For the purposes of this G.C.18:

**Sanction** means:



- (a) the 'Specially Designated Nationals and Blocked Persons' list maintained by the United States Department of the Treasury or any similar or equivalent list maintained, amended and imposed by any Sanction Authority;
- (b) any program that prohibits or restricts:
  - (i) trade with or investment in, or the transfer of property or assets to or from, a specified country, including its government, government subdivisions, agencies and other entities under the control or acting on behalf of government; or
  - (ii) engaging in transactions that relate to investing in or the provision of advice or assistance in relation to, a specified country, maintained, amended and imposed by any Sanction Authority; and
- (c) any other similar sanctions, regulations, statutes, prohibitions and official embargo measures that relate to the enforcement of economic and trade sanctions which are maintained, amended and imposed by any Sanction Authority.

**Sanction Authority** means the United Nations, the European Union, Her Majesty's Treasury in the United Kingdom, the United States Department of Treasury's Office of Foreign Assets Control, the Commonwealth of Australia, Switzerland, South Africa, Canada or any replacement or other regulatory body enforcing economic and trade sanctions legislation in such countries or by any state, supranational or international government organisation.

**Sanctioned Person** means any person, being an individual, corporation, company, association, government or other entity who:

- (a) is the subject or target of a Sanction or in respect of which a Sanction has been imposed or targeted; or
- (b) is owned, operated or controlled by any person who is the subject or target of a Sanction or in respect of which a Sanction has been imposed or is targeted.

## 18.2 Warranty

As at the date of the Contract, the Contractor warrants that:

- (a) to the best of its knowledge, information and belief neither it, nor any of its employees, agents, contractors or Related Bodies Corporate (including the employees, agents and contractors of such Related Bodies Corporate) (together the **Contractor's Group**) is a Sanctioned Person; and
- (b) it has provided all information of which it is aware, that the Company reasonably requires in order for the Company to:
  - (i) manage the risk of Sanctions being imposed on the Company; and
  - (ii) comply with laws or regulations applying in the jurisdictions in which the Goods or Services are supplied or the Equipment hired, the parties are located or in any other country.

## 18.3 Provision of information regarding status

From the date of the Contract, the Contractor must:

- (a) immediately notify the Company upon becoming aware that any member of the Contractor's Group, has:
  - (i) become or is reasonably likely to become a Sanctioned Person; or
  - (ii) violated any Sanction; and
- (b) provide all information that the Company reasonably requires from time to time in order for the Company to:
  - (i) determine whether any member of the Contractor's Group has become or is reasonably likely to become a Sanctioned Person;
  - (ii) comply with any request by a regulatory authority that oversees Sanctions;
  - (iii) manage the risk of Sanctions being imposed on the Company; and
  - (iv) comply with laws or regulations applying in the jurisdictions in which the Goods or Services are supplied or the Equipment hired, the parties are located or in any other country.

## 18.4 Suspension by Company

If the Company suspects that any member of the Contractor's Group, has become or is reasonably likely to become a Sanctioned Person then (without limitation to any other right or remedy available to the Company), the Company may:

- (a) suspend performance of; or

(b) withhold any payment due and owing under,

the Contract.

### 18.5 Termination by Company

If, during the term of the Contract, the Company:

(a) is notified by any Sanction Authority or the Contractor that any member of the Contractor's Group has or is reasonably likely to become a Sanctioned Person; or

(b) has reasonable cause to believe that any member of the Contractor's Group is a Sanctioned Person,

then (without limitation to any other right or remedy available to the Company) the Company may terminate the Contract with immediate effect.

### 18.6 Consequences of termination or suspension

Where the Company exercises its rights under G.C.18.3(b)(iv) or G.C.18.5:

(a) it will not be liable for any loss suffered by any member of the Contractor's Group; and

(b) the Contractor hereby provides a release and indemnity to the Company in respect of any loss incurred by the Company,

as a result of or in connection with the exercise of the rights by the Company.

### 18.7 Continuing supply obligations

The parties acknowledge and agree that where:

(a) the Company has made payment for all or any part of the Goods, Services or Equipment hired under the Contract; and

(b) the Contractor is prevented from receiving or accessing (or is otherwise not permitted to receive or access) that payment due to or as a result of any member of the Contractor's Group being or becoming a Sanctioned Person,

that payment is taken to have been validly made by the Company and received by the Contractor for the purposes of the Contract, and the Contractor:

(c) is not relieved of its obligation to supply the Goods or Services or hire the Equipment (or any part of them);

(d) must continue to supply the Goods or Services or hire the Equipment (or any part of them) in accordance with the Contract; and

(e) will not be entitled to recover from the Company any loss or expense incurred by any member of the Contractor's Group in complying with its obligations under this G.C.18.7.

## G.C.19. MISCELLANEOUS PROVISIONS

### 19.1 Status of provisions

If Goods have been specified in the Purchase Order, Part B applies to this Contract. If Services have been specified in the Purchase Order, Part C applies to this Contract. If Equipment hire has been specified in the Purchase Order, Part D applies to this Contract.

### 19.2 Interpretation

In the Contract unless the contrary intention appears:

(a) headings are for ease of reference only and do not affect the meaning of the Contract;

(b) the singular includes the plural and vice versa;

(c) words importing a gender include other genders;

(d) the words '*include*' and '*including*' are to be construed without limitation;

(e) other grammatical forms of defined words or expressions have corresponding meanings;

(f) a reference to:

- (i) a clause, schedule or appendix is a reference to a clause, schedule or appendix to the Contract and a reference to the Contract includes any schedules and appendices;
  - (ii) any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State legislation, as applicable;
  - (iii) a document or agreement includes a reference to that document or agreement as novated, altered or replaced from time to time;
  - (iv) 'A\$', '\$A', 'AUD', 'dollar' or '\$' is a reference to Australian currency;
  - (v) a person includes any individual, firm, body corporate, partnership, unincorporated association, government, state or agency of a state, joint venture or Authority;
  - (vi) a party includes its executors, administrators, successors and permitted assigns;
  - (vii) a day means a period of 24 consecutive hours from midnight;
  - (viii) a week means 7 consecutive days commencing and ending at midnight on Sunday; and
  - (ix) a month means a calendar month;
- (g) where a party is more than one person the Contract binds all of them separately and each of them together;
- (h) if the due date for anything to be done under the Contract falls on a day that is not a Business Day, then it must be done on the next Business Day; and
- (i) any reference in the Contract to a number preceded by the words '*Sourcing No.*', is included only to identify the Contractor within the Company's supplier management systems and does not comprise part of the Contractor's name or other formal identifiers (such as a registration or company number).

### 19.3 Governing law

The Contract is governed by and must be construed and enforced in accordance with the laws of Queensland, Australia and the parties unconditionally submit to the exclusive jurisdiction of the courts of Queensland, Australia (and courts of appeal from them).

### 19.4 Entire agreement

The Contract contains the entire agreement between the parties and supersedes all prior arrangements, letters of intent, memorandums of understanding, purchase orders, representations and documents (if any) relating to the Goods, Services, or Equipment (including any terms and conditions proposed or delivered to the Company by the Contractor) or the Contract.

### 19.5 Non-waiver

A waiver of any provision of or right under the Contract shall not constitute a waiver of any other provision or right.

### 19.6 Survival of provisions

All provisions of the Contract which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of the Contract will survive the rescission, termination or expiration of the Contract.

## PART B - PROVISIONS APPLYING TO GOODS

### G.C.20. INSURANCE FOR THE GOODS

The Contractor must insure the Goods for the period when they are in transit to the Site against all loss or damage arising from any insurable cause, for a limit of not less than the full replacement cost of those Goods.

### G.C.21. PROTECTION

The Contractor must protect the Goods from loss or damage arising from any cause, and ensure that the Goods are appropriately packed, handled and transported to the Site to prevent damage or shrinkage while in transit or storage. The Contractor must ensure that delivery documents accompany the Goods to the Site and bear the Purchase Order number.

### G.C.22. PASSING OF TITLE AND RISK

#### 22.1 Clear title

The Contractor warrants that title in the Goods, when it passes to the Company under G.C.22.2 will be free and clear of any and all liens, restrictions, reservations, security interests and encumbrances.

#### 22.2 Passing of title and risk

Title to the Goods passes to the Company upon the earlier of payment for the Goods and delivery of the Goods to the Site, provided that the Contractor bears the risk of loss or damage to the Goods until they are delivered to the Site.

**G.C.23. QUALITY OF WORKMANSHIP****23.1 Contractor's warranty**

The Contractor warrants that the Goods will:

- (a) comply with all the requirements of the Contract, relevant laws, government requirements and any applicable codes or standards;
- (b) be of merchantable quality and fit for their intended purpose; and
- (c) be free from all defects and imperfections affecting performance.

**23.2 Defects liability period**

The Contractor must, at its expense, rectify any defect discovered within 12 months of the Goods being used by the Company or 18 months from the date of delivery of the Goods, whichever is earlier.

**23.3 Failure to rectify**

If the Contractor fails to rectify a defect within a reasonable time after receiving notice of the defect, the Company may, without prejudice to its other rights, rectify the defect and the costs incurred in doing so will be a debt due from the Contractor to the Company.

**G.C.24. INSPECTION**

The Company must at all times, on giving reasonable notice, have access to the Contractor's premises and those of its subcontractors for the purpose of inspecting work in progress on the Goods.

**G.C.25. ACCEPTANCE****25.1 Notification of acceptance**

Within 5 Business Days of delivery of the Goods to the Site, the Company may notify the Contractor whether the Goods are accepted or rejected, and if the Company fails to do so, the Goods will be deemed accepted.

**25.2 Notice of rejection**

If the Goods are rejected, the Company's notice of rejection must state the reasons for the rejection and may either:

- (a) require the Contractor to remove the Goods and refund to the Company any amount paid in relation to the Goods;
- (b) direct the Contractor to replace or rectify the Goods; or
- (c) notify the Contractor that the Company elects to accept the Goods and claim damages for the Contractor's failure to comply with the Contract.

If the Contractor is directed to replace or rectify the Goods, the Contractor must notify the Company when the replacement or rectification is completed and G.C.25.1 will apply.

**25.3 No acceptance**

Neither payment for Goods nor inspection of Goods under G.C.24 constitutes acceptance of Goods that do not comply with the Contract or affects the ability of the Company to subsequently reject the Goods under this G.C.25.

**PART C - PROVISIONS APPLYING TO SERVICES****G.C.26. INSURANCE**

The Contractor must maintain:

- (a) workers' compensation insurance in relation to its employees;
- (b) public liability insurance for a limit of not less than \$20 million from an independent reputable insurer in respect of loss or damage that may occur to any physical property, or death or bodily injury to any person that arises out of or in connection with the performance of the Services;
- (c) third party motor vehicle liability insurance against liability for death or bodily injury to any person or damage to the Site or property located on the Site, for each of its vehicles that enter the Site during the performance of the Services;
- (d) insurance for its Constructional Plant during its transit to the Site and throughout the period that the Constructional Plant is on or near the Site against all loss or damage arising from any insurable cause and for a limit of not less than the market value (including delivery to Site) of the Constructional Plant; and

- (e) where the Services are Consultancy Services, professional indemnity insurance with a limit of not less than \$10 million from an independent reputable insurer from the date of commencement of the Services until the date that is 6 years after completion of the Services.

**G.C.27. QUALITY OF WORKMANSHIP**

The Contractor warrants that:

- (a) it will at all times be suitably qualified and experienced to perform the Services; and
- (b) the Services will be performed in accordance with:
  - (i) best practice standards of diligence, skill, care and efficiency to be expected of a competent contractor performing services of a similar nature to the Services; and
  - (ii) all the requirements of the Contract, relevant laws, government requirements and any applicable codes or standards.

**G.C.28. INSPECTION**

The Company must at all times, on giving reasonable notice, have access to the places where the Services are being performed for the purpose of inspecting Constructional Plant and work in progress.

**G.C.29. NO ACCEPTANCE**

Neither payment for Services nor an inspection under G.C.28 constitutes acceptance of Services that do not comply with the Contract.

**G.C.30. CONSUMABLES**

If the Company provides consumables for use by the Contractor in the performance of the Services, including electricity, gas or water, then:

- (a) the consumables must only be used by the Contractor for the Services and must not be on-sold or wasted;
- (b) the Company does not make any representations about the quality or fitness for purpose of the consumables;
- (c) risk in the consumables passes from the Company at the time that they are delivered to the Contractor;
- (d) all conditions and warranties implied by legislation are excluded to the extent permitted; and
- (e) the Company must use its best endeavours to supply consumables in a timely manner provided that the Company is not liable for any failure to ensure continuity of supply of those consumables.

**G.C.31. CONSTRUCTIONAL PLANT****31.1 Contractor's obligations**

Except as otherwise provided, the Contractor must:

- (a) supply all Constructional Plant necessary for the performance of the Services in accordance with the Contract;
- (b) notify the Company at least 24 hours before any fixed or mobile plant or equipment is used on-Site;
- (c) if requested to do so by the Company, certify that all Constructional Plant to be used on-Site complies with all laws and government requirements;
- (d) ensure that each item of Constructional Plant is fitted with an inspector's tag or uniquely identified by a stamp or an engine, chassis or serial number;
- (e) not remove any Constructional Plant from the Site without the prior written consent of the Company; and
- (f) on completion of the Services, remove the Constructional Plant from the Site.

**31.2 Inspections of Constructional Plant**

Immediately prior to bringing any Constructional Plant on Site, the Contractor must have the Constructional Plant inspected and certified as complying with all laws and government requirements by an inspector nominated by the Company.

Notwithstanding the above, the Company may:

- (a) inspect any Constructional Plant located on-Site from time to time during the performance of the Services; and
- (b) prohibit the use of any Constructional Plant that the Company considers does not meet relevant laws and government requirements, and the Contractor:
  - (i) must bear the costs associated with the removal and replacement of that Constructional Plant; and
  - (ii) is not entitled to compensation as a result of that prohibition, removal or replacement.

### **G.C.32. INTELLECTUAL PROPERTY**

#### **32.1 Application of clause**

This G.C.32 applies to Services that are Consultancy Services.

#### **32.2 Documents relating to the Consultancy Services**

Subject to each party retaining title to its Background IP, title to, copyright in and other Intellectual Property rights in any documents or other property created by the Contractor for or in connection with the Services (**Contractor's Documents**) vests in the Company on creation and the Company grants the Contractor an irrevocable licence to use the Contractor's Documents in connection with the performance of the Services.

The Contractor grants or shall procure the granting to the Company and its Related Bodies Corporate of a royalty-free and irrevocable licence to use the Contractor's Background IP in connection with the Services and the Company and its Related Bodies Corporate may sub-licence use of the Contractor's Background IP in connection with the Services without the consent of the Contractor.

#### **32.3 Moral Rights**

The Contractor warrants that Contractor's Personnel have provided consents and waivers, to the fullest extent possible under the laws of any applicable jurisdiction, in relation to their Moral Rights, sufficient to ensure the Company unimpeded use of any documents or other property licensed or assigned to the Company under the Contract, and must do all things requested by the Company, including signing or procuring the signature of particular forms, to give full effect to this warranty.

#### **32.4 Royalties**

The Contractor must pay all royalties, fees and amounts payable in connection with any process, work, material, matter, thing or method used or supplied in the performance of the Services and all such royalties, fees and amounts payable are deemed to be included in the price for the Services.

## **PART D - PROVISIONS APPLYING TO EQUIPMENT HIRE**

### **G.C.33. INSURANCE**

The Contractor must maintain:

- (a) insurance for the Equipment for the period when it is in transit to the Site against all loss or damage arising from any insurable cause, for a limit of not less than the full replacement cost of that Equipment;
- (b) workers' compensation insurance in relation to its employees; and
- (c) third party motor vehicle liability insurance against liability for death or bodily injury to any person or damage to the Site or property located on the Site, for each of its vehicles that enter the Site during the performance of the Contractor's obligations under the Contract.

### **G.C.34. PROTECTION**

The Company must protect the Equipment from loss or damage arising from any cause, other than a breakdown, defect or malfunction of the Equipment or an act or omission of the Contractor or Contractor's Personnel.

The Contractor must ensure that the Equipment is appropriately packed, handled and transported to the Site to prevent damage while in transit and must provide all handling devices required for handling the Equipment when in transit.

### **G.C.35. PASSING OF TITLE AND RISK**

The parties acknowledge and agree that:

- (a) the Contractor retains full title to the Equipment notwithstanding the delivery of the Equipment to, and the possession and use of the Equipment by, the Company; and
- (b) the Company will be a bailee of the Equipment only, subject to the terms and conditions of the Contract.

**G.C.36. QUALITY OF WORKMANSHIP**

The Contractor warrants that on delivery, the Equipment will:

- (a) comply with all the requirements of the Contract, relevant laws, government requirements and any applicable codes or standards;
- (b) be fit for its intended purpose; and
- (c) be free from all defects and imperfections affecting performance.

**G.C.37. INSPECTION****37.1 Equipment condition inspection**

On delivery of the Equipment to the Site, a representative of each of the Company and the Contractor must jointly inspect and, if necessary, test the Equipment.

**37.2 Notice of rejection**

If the Equipment is not accepted by the Company after the joint inspection, the Company may either require the Contractor to replace the rejected Equipment or direct the Contractor to repair the Equipment.

**37.3 Equipment Condition Report**

Within 5 Business Days of the Company's acceptance of the Equipment, the Contractor must provide to the Company a report reflecting the agreed condition of the Equipment including a genuine indication of the state of the Equipment (including existing defects) and details of all servicing requirements, attachments, accessories, tools and supporting manuals and documentation for the Equipment.

**G.C.38. MAINTENANCE AND REPAIR****38.1 Contractor's Maintenance Obligations**

The Company must advise the Contractor of any defect in or damage to the Equipment and the Contractor must:

- (a) repair the defective or damaged Equipment;
- (b) supply to the Company an appropriate replacement for the Equipment while it is being repaired, if requested to do so; and
- (c) if necessary, transport the Equipment from the Site to the Contractor's premises for repairs and re-deliver the repaired or replacement Equipment.

**38.2 Emergency Repairs**

If emergency repairs to the Equipment are required and the Contractor fails to undertake the required repairs within a reasonable time of being requested to do so by the Company, the Company may carry out the emergency repairs to the Equipment without invalidating any warranty given by the Contractor.

**38.3 Cost of repair**

The Contractor is liable for all costs associated with repair of defective or damaged Equipment (including costs incurred by the Company under G.C.38.2) unless the defect or damage is the direct result of the negligent or deliberate misuse or care of the Equipment by the Company, its employees, agents or contractors.

**G.C.39. PERSONAL PROPERTY SECURITIES****39.1 Definitions**

For the purpose of G.C.39.1:

**Perfected** has the same meaning as in the PPSA and Perfect, Perfecting and Perfection have corresponding meanings.

**PPSA** means the *Personal Property Securities Act 2009* (Cth), any regulations made at any time under the PPSA, or any amendment to the PPSA or those regulations, made at any time, as the context requires.

**PPS Law** means the PPSA, any provision of the PPSA or any amendment made at any time to the *Corporations Act 2001* (Cth) or any other legislation as a consequence of the PPSA.

**Security Interest** has the meaning given to it in the PPSA.

**39.2 Company to Co-operate**

If the Contractor determines that this Contract creates or contains a Security Interest for the purposes of the PPS Law, the Company must provide reasonable co-operation and assistance requested by the Contractor that is reasonably required to:

- (a) ensure that the Contractor's Security Interest is enforceable against third parties, Perfected or otherwise effective; or
- (b) enable the Contractor to apply for any registration, complete any financing statement or give any notification, in connection with the Security Interest so that the Contractor has the priority required by it; or
- (c) enable the Contractor to exercise its lawful rights in connection with the Security Interest in accordance with the terms of this Contract (in which respect the Contractor must ensure and must ensure that any enforcing party appointed by it complies with any applicable SHE Requirements when seeking to exercise the Contractor's rights under the Security Interest on the Site).

The Company must bear its own costs incurred in complying with this G.C.39.1.

### 39.3 Chapter 4 and additional rights

The Contractor and the Company agree that, to the extent permitted by law and in respect of each Security Interest created or provided for under this Contract:

- (a) the Contractor and the Company contract out of:
  - (i) the Company's obligation to:
    - (A) dispose of or retain Secured Property under section 125 of the PPSA; and
    - (B) include details of amounts paid to other secured parties in a statement of account under section 132(3)(d) of the PPSA;
  - (ii) sections 95, 96, 142 and 143 of the PPSA;
- (b) the Contractor and the Company contract out of the Contractor's rights to (and the Contractor waives its rights to):
  - (i) receive notice of the removal of an Accession under section 95 of the PPSA;
  - (ii) receive notice of any action of the Company to enforce any Security Interest in liquid assets under section 121(4) of the PPSA;
  - (iii) receive notice of the Company's proposal to dispose of Secured Property under section 130 of the PPSA;
  - (iv) receive a statement of account under section 132(4) of the PPSA; and
  - (v) any other provision of the PPSA notified to the Grantor by the Secured Party after the date of this document; and
- (c) the Contractor and the Company contract out of the application of Part 4.3 of the PPSA (other than sections 126, 128, 129(1), 133 and 134(1)) if that Part would apply.

### 39.4 Confidentiality

The Company and the Contractor agree that the Company and the Contractor will not disclose any of the information set out in section 275(1) of the PPSA in relation to this Contract or any security interest created under this agreement to any person (except that the Company may do so where required due to the operation of section 275(7) of the PPSA or in accordance with this Contract).