

PURCHASE ORDER TERMS AND CONDITIONS



1 Definitions

1.1 In the Contract unless the contrary intention appears:

Company means:

- (a) Boab Metals Limited (ACN 107 159 713);
- (b) Sorby Management Pty Ltd (ACN 145 292 486), a wholly owned subsidiary of Boab Metals Limited; or
- (c) its Related Body Corporate,
as specified on the Purchase Order;

Company's Background IP means the Company's Intellectual Property Rights which:

- (a) are in existence at the date of the Purchase Order; or
- (b) come into existence after the date of the Purchase Order otherwise than in connection with the Contract,

which the Company makes available, contributes, brings to, or uses in connection with the Contract;

Company's Policies and Procedures means:

- (a) the Company's policies and procedures provided by the Company to the Contractor from time to time which are, or may become applicable to the Site or the Goods and / or Services; and
- (b) the policies and procedures (if any) set out or referred to in any schedule attached to the Contract;

Company's Premises means the land or premises on or in which the Company's Property is situated prior to it being provided to the Contractor;

Company's Property means any plant, equipment, tools, appliances, materials, drawings, data, specifications or other property and items that the Company provides to the Contractor to enable it to perform its obligations under the Contract;

Company's Representative means the person appointed by the Company to act on its behalf in relation to the Contract as notified to the Contractor;

Competent Contractor means a contractor that exercises the degree of skill, quality, care, diligence and prudence that would reasonably be expected of a competent, expert and experienced contractor undertaking work, tasks, services, functions, responsibilities and obligations required for the provision of goods and / or services of a similar nature to the Goods and / or Services contemplated under the Contract;

Confidential Information means all information (whether of a commercial, scientific, engineering, industrial, mining, technical, business, financial nature or otherwise) communicated in whatever form, in relation to:

- (a) the terms and contents of the Contract;
- (b) information relating to the business or operations of the Company;
- (c) information relating to the customers, clients, employees, subcontractors of a Party or other persons doing business with that Party;
- (d) information disclosed by or on behalf of the Company to the Contractor at any time or learnt by the Contractor in carrying out the Services, including all Company supplied information and Company's Background IP and Project IP;
- (e) all information and documents designated or marked as confidential or proprietary and disclosed by or on behalf of the Company to the Contractor;

(f) information which the Contractor ought to know is confidential; and

(g) information which is by its nature confidential;

Conflict of Interest means a conflict of interest between the Company or its Personnel, and the Contractor or its Personnel, whether that conflict of interest is perceived or actual;

Contract means the agreement between the Company and the Contractor comprised of the Purchase Order, these Purchase Order Terms and Conditions and all other documents annexed to this document or specifically incorporated by reference (which in the event of any inconsistency, are to be construed in this order);

Contractor means the person, firm or company named in the Purchase Order as the supplier of Goods and / or Services;

Contractor Insurances means each of the insurances the Contractor is required to effect and maintain in accordance with clause 20.1 of the Contract;

Contractor's Background IP means the Contractor or its Personnel's Intellectual Property Rights, which:

- (a) are in existence at the date of the Purchase Order; or
- (b) come into existence after the date of the Purchase Order otherwise than in connection with the Contract;

Contractor's Representative means the person appointed by the Contractor to act on its behalf in relation to the Contract as notified to the Company;

Contract Price means the net amount payable in Australian Dollars for the Goods and / or Services set out in the Purchase Order;

Day means a calendar day.

Defective Goods and / or Services means Goods and / or Services which are not in accordance with the Contract, or are not to the quality or workmanship expected of a Competent Contractor;

Delivery Date means (where relevant) the date the Goods must be delivered, and the Services must be completed by the Contractor as specified in the Purchase Order or Scope of Work, or, if no such date is specified, the date following a reasonable period of time from the date of the Purchase Order, having regard to the nature of the Goods and / or Services and the Intended Purpose;

Employee Claim means any claim in respect of any death, injury or occupational disease of any Personnel of the Contractor which is caused or contributed to by the Contractor or arises out of or in connection with the Contract;

Equipment means the equipment, mobile plant, tools, appliances and other property supplied by the Contractor for the purpose of supplying the Goods and / or performing the Services, and includes any Hired Equipment;

Excluded Loss means loss of revenue and profit (other than revenue or profit derived directly from payments for Goods and / or Services under the Contract), loss or denial of opportunity, loss of access to markets, loss of goodwill, loss of business reputation, increased overhead costs and all other loss which is indirect, remote or unforeseeable loss;

Expiry Date means the later of:

- (a) the date on which all of the Goods have been delivered and, if applicable, commissioned, and the Services have been provided; or
- (b) the date the Contractor has demobilised all of its Personnel and Equipment from Site as required under the Contract (as

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applicable);

Financiers means at any time those persons who, at such time, have provided, or have commitments to provide, any financing facilities to the Company or any one or more of its Related Bodies Corporate for any purpose (including, without limitation, bonds, notes or other capital market issues, loans, guarantees, letters of credit and hedging facilities) and any assignee, transferee, agent, trustee or other representative at such time of any such person or persons;

Force Majeure means any one, or combination, of the following events or circumstances:

- (a) a cyclone, hurricane or typhoon named in accordance with the procedures determined and approved by the "World Meteorological Organisation's Tropical Cyclone Committees" and the effects of rain-bearing depression into which any such named cyclone may weaken;
- (b) earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster;
- (c) civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities;
- (d) fire caused by any of the events referred to in paragraphs (a), (b) or (c);
- (e) ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination;
- (f) declaration of a State of Emergency by a Government Authority,

but excludes any such event or circumstance, or its consequences, to the extent:

- (g) it was caused by a breach of the Contract by the affected Party or the act or omission of the affected Party or its Personnel;
- (h) it was within the reasonable control of the affected Party or its Personnel; or
- (i) where the affected Party is the Contractor:
 - (i) it was caused by any breakdown of the Equipment or any Defective Goods and / or Services; or
 - (ii) it could have been protected against, prevented or overcome by the Contractor had it acted as would ordinarily be expected of a Competent Contractor;

Good Industry Practice means the practices, methods and acts engaged in or approved by a person which, in the conduct of its undertaking, exercises that degree of due diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced persons, and in respect of the Contractor, performance as would ordinarily be expected of a Competent Contractor;

Goods and / or Services means all goods to be supplied and / or services to be performed by the Contractor in accordance with the Contract including:

- (a) all goods and / or services set out in any applicable Purchase Order;
- (b) the provision of any Hired Equipment;
- (c) other services, functions, responsibilities and obligations that the Contract provides that the Contractor has or will perform; and
- (d) all responsibilities and functions not specifically described in the Contract but which are incidental to, or otherwise necessary for the Contractor to provide the Goods and / or

Services under the Contract;

Government Authority means a national, state, regional, local, territorial or municipal government, ministry, governmental department or legislative, judicial or administrative body having jurisdiction over the Parties, the Goods and / or Services or the Site;

GST Law means has the meaning given in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Hired Equipment has the meaning set out in clause 8 of the Contract;

HSES Legislation means all relevant written laws relating to health and safety, including the *Work Health and Safety Act 2020* (WA), *Mines Safety and Inspection Act 1994* (WA), the *Occupational Safety and Health Act 1984* (WA) and any other applicable Legislation relating to health and safety on the Site, and all relevant health and safety regulations, codes of practice of safety standards made pursuant to those Acts or any other Legislation dealing with workplace health and safety that may apply from time to time;

Insolvency and Insolvent has the meaning given to it in the *Corporations Act 2001* (Cth);

Intellectual Property Rights means all copyright and analogous rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets), know-how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields;

Intended Purpose means the intended purpose of the Goods and / or Services as stated in the Contract or as could be reasonably inferred from the Contract by a Competent Contractor;

Legislation means:

- (a) any Act of Parliament in any Australian jurisdiction (including the Commonwealth) for the time being in force and all proclamations, regulations, by-laws, orders, notices, rules of court, town planning schemes, resolutions or other instruments made under any or by the authority of any such Act of Parliament or written law and having legislative effect, as amended, re-enacted or replaced, and includes any subordinate legislation issued under it; and
- (b) all licences, qualifications, registrations and other statutory requirements necessary for supply of the Goods and / or performance of Services under the Contract,

and **Legislative** has the corresponding meaning;

Modern Slavery has the meaning given in the *Modern Slavery Act 2018* (Cth);

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth);

Party means the Contractor or the Company and **Parties** means both of them;

Personnel means:

- (a) in relation to the Company, any of the Company's or its Related Bodies Corporates' employees, contractors, agents, consultants or representatives; and
- (b) in relation to the Contractor, any of the Contractor's or Subcontractors' or either of their Related Bodies Corporates' employees, contractors, agents, consultants or representatives;

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PPS Law means:

- (a) the PPSA;
- (b) any regulations made at any time under the PPSA; and
- (c) any amendment to any of the above;

PPSA means the *Personal Property and Securities Act 2009* (Cth);

Project IP means all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with, the provision of any Goods and / or Services or the Contract;

Purchase Order means the document entitled 'Purchase Order' issued by the Company to the Contractor for the supply of Goods and / or Services in accordance with the Contract and includes any schedules attached to the relevant Purchase Order;

Related Body Corporate means any related body corporate as defined in the *Corporations Act 2001* (Cth);

Sanction means any economic or financial sanction, trade embargo or similar measures imposed, enacted, administered or enforced from time to time by a Sanctions Authority;

Sanctioned Country means any country or territory which is subject to the target of comprehensive, country-wide or territory-wide Sanctions;

Sanctioned Person means any person or entity which is:

- (a) listed on, or is owned or controlled directly or indirectly (as such terms are used in the Sanction or in any guidance in relation to the Sanction) by a person or entity listed on, a Sanctions List;
- (b) located in, incorporated under the law of, or acting on behalf of a person located in or organised under the laws of a Sanctioned Country; or
- (c) otherwise a target of a Sanction;

Sanctions Authority means each of the following:

- (a) the United States of America;
- (b) the United Nations;
- (c) the European Union and any present or future member state thereof;
- (d) the United Kingdom;
- (e) Australia; and
- (f) the respective governmental and official institutions or agencies of any of the foregoing including the Office of Foreign Assets Control (OFAC) by the United States' Department of the Treasury, the United States' Department of State, the Security Council of the United Nations, Her Majesty's Treasury by the Government of the United Kingdom, the Ministry for the Economy and Finance (Directorate-General of the Treasury) of France and the Australian Sanctions Office by Australia's Department of Foreign Affairs and Trade;

Sanctions List means any of the lists of specifically designated nationals or designated persons or entities (or equivalent) held, issued or maintained by any Sanctions Authority, each as amended, supplemented or substituted from time to time;

Scope of Work means the scope of the Services to be performed and / or the Goods to be supplied as specified in the Purchase Order including documents annexed to the Purchase Order or incorporated in the Purchase Order by reference;

Site means the Company's site or as otherwise specified on the Purchase Order or in the Scope of Work;

Site Manager means, in respect of:

- (a) a Site which is a 'mine' as that term is defined in the Mines Safety and Inspection Act 1994 (WA), the person appointed from time to time as the registered mine manager at the Site for the purposes of section 33 of the Mines Safety and Inspection Act 1994 (WA); or
- (b) any other Site, any person appointed by the Company from time to time as the manager of the Site;

Subcontract means any permitted contract or other arrangement between the Contractor and any Subcontractor in relation to the performance of the Contractor's obligations under the Contract;

Subcontractor means any person engaged by the Contractor to perform any portion of the Services or supply any part of the Goods, and includes their employees, agents, consultants and invitees;

Tax Invoice has the same meaning as in the GST Law;

Term means the period from the date of the Purchase Order until the Expiry Date (unless extended by the agreement of the Parties);

Third Party Claim means any claim in respect of:

- (a) loss or destruction of, or injury or damage to, or loss of use of any real or personal property; and / or
- (b) any personal injury to or death of any person arising out of, or caused by, any act or omission, or the supply or non-supply of the Goods and / or Services, by the Contractor or its Personnel;

Variation means any addition, reduction or change to the Scope of Work;

Variation Proposal means a written proposal provided by the Contractor addressing the particulars of any Variation; and

Warranty Period means the period commencing on the first date of delivery of Goods or performance of Services under the Contract, ending:

- (a) 12 months; or
- (b) such other period stated in the Purchase Order, after the Expiry Date.

2 Nature of Contract

- 2.1 The Contractor agrees to diligently commence the supply of the Goods and / or performance of the Services from the date of the Purchase Order to ensure it supplies the Goods to the Site and / or completes the Services:
 - (a) by the Delivery Date; and
 - (b) in accordance with the terms of the Contract.
- 2.2 The Contract does not confer upon the Contractor any exclusivity in respect of the supply of any Goods and / or Services at the Site or otherwise.
- 2.3 The Contractor agrees to notify the Company if it finds any errors, omissions or inconsistencies in information provided by the Company. Except as prescribed by Legislation, the Company gives no warranty of accuracy, sufficiency or otherwise in relation to information provided to the Contractor and disclaims all responsibility for such information.
- 2.4 Where Goods and / or Services are provided pursuant to a contract which is already in effect between the Company and the Contractor, the terms of that contract continue to apply and the terms of the Contract do not apply.
- 2.5 Any terms and conditions created or supplied by the Contractor (including as printed on consignment notes or other documents), in

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respect of the Goods and / or Services, will be of no legal effect and will not constitute part of the Contract (even if any representative of the Company signs those terms and conditions or annexes the terms and conditions to this Purchase Order).

3 Representations and warranties

- 3.1 The Contractor represents and warrants that:
- (a) the Goods and / or Services will:
 - (i) match the description and specification in the Contract;
 - (ii) be supplied in accordance with Good Industry Practice;
 - (iii) fit for their Intended Purpose; and
 - (iv) comply with all applicable Legislation;
 - (b) all Goods supplied will be:
 - (i) of merchantable quality;
 - (ii) manufactured strictly in accordance with any manufacturing drawings, Scope of Work or descriptions supplied to the Contractor by the Company;
 - (iii) free from any encumbrance, lien, mortgage, security or charge in favour of a third party or any other third-party interest, from the time of delivery to the Company; and
 - (iv) all Equipment used by the Contractor in the supply of the Goods and / or Services will be maintained in safe working condition, will comply with all Legislation applicable to such Equipment, and be maintained and operated by suitably qualified and competent Personnel.
- 3.2 These warranties remain unaffected notwithstanding any information which the Company provides to the Contractor.
- 3.3 The Contractor is deemed to have:
- (a) satisfied itself as to the nature and extent of the risks assumed by it under the Contract; and
 - (b) gathered all information necessary to perform its obligations under the Contract.
- ## 4 Site access and safety
- 4.1 The Company grants to the Contractor a non-exclusive and non-assignable licence to access the Site during the Term to perform its obligations under the Contract.
- 4.2 The Contractor must obtain all applicable permits, licences, exemptions, consents and approvals required for the Contractor to supply the Goods and / or perform the Services.
- 4.3 The Contractor must, and must ensure its Personnel:
- (a) carry out the Services in a safe manner and use best endeavours to achieve zero classified injuries;
 - (b) not interfere with the Company's activities or the activities of any other person at the Site;
 - (c) be aware of and comply with, and ensure that its Personnel are aware of and comply with, all:
 - (i) applicable Legislation (including HSES Legislation);
 - (ii) the Company's Policies and Procedures (to the extent they are applicable to the Contract); and
 - (iii) directions given by the Company's Representative and the Site Manager.
- 4.4 Without limiting the Contractor's other obligations under the

Contract, the Contractor must notify the Company's Representative and the Site Manager as soon as practicable, but in any event pursuant to the Company's Policies and Procedures, of any accident, injury, loss or damage which occurs at the Site.

5 Contractor's Personnel

- 5.1 The Contractor must engage all personnel necessary for the supply of the Goods and / or provision of the Services under the Contract.
- 5.2 The Contractor must employ or cause to be employed only personnel that are careful, skilled and experienced to the degree ordinarily expected of personnel engaged in the supply of goods and / or performance of services similar to the Goods and / or Services, acting in accordance with Good Industry Practice.
- 5.3 No Contractor's Personnel may commence work on Site unless she/he has attended, at the Contractor's expense, the induction courses required by the Company to be attended by all persons engaged at the Site.
- 5.4 The Contractor will provide flights, overland transport, accommodation and messing for its Personnel engaged in the supply of the Goods and / or Services at the Site, unless stated otherwise in the Purchase Order.
- 5.5 To the extent permitted by Legislation, during the Term and extending for a period of 6 months after the Expiry Date, the Company's Personnel are not to be engaged or offered employment by the Contractor, without the prior written approval of the Company.

6 Industrial relations

- 6.1 The Contractor is responsible for conducting its industrial and employee relations with its Personnel in a manner conducive to preventing any delay or disruption in the provision of the Goods and / or Services, including by taking all prudent steps to maintain harmonious and productive relations with its Personnel.
- 6.2 The Contractor must ensure that the terms and conditions of employment of all of its Personnel engaged in the supply of Goods and / or Services under the Contract are at all times regulated by an agreement that complies with the *Fair Work Act 2009*(Cth).
- 6.3 The Company may, at any time in its absolute discretion, direct the Contractor to withdraw any of its Personnel from providing any part of the Goods and / or Services and the Contractor must promptly arrange for the person to cease being involved in anyway in the provision of the Goods and / or Services notwithstanding any provision in any other contract. If so directed by the Company, the Contractor must replace the person with a person of suitable ability, experience and qualifications within a time period specified by the Company.

7 Equipment

- 7.1 The Contractor agrees to supply the Equipment at its own risk and expense and to maintain such Equipment on Site and in a safe, operable, good working condition throughout the Term.
- 7.2 The Company may reject any item of Equipment which it determines is unsafe or unsuitable for the purposes of the Contract. If any Equipment is so rejected then it must be either repaired or replaced to the satisfaction of the Company within a time period specified by the Company in writing. The Contractor must provide all spare parts and consumable items for the Equipment.
- 7.3 The Contractor agrees the Company's Property may only be used for the purposes of fulfilling the Contractor's obligations under the Contract, and the Contractor is liable to the Company for any loss or damage to the Company's Property by the Contractor's Personnel.
- 7.4 The Contractor must not remove the Company's Property from the Company's Premises without the Company's prior written consent.
- 7.5 Subject to clause 7.4, if the Contractor removes any Company's

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Property from the Company's Premises, then it must:

- (a) ensure that the Company's Property is serviced and maintained in good working order, repair and condition (fair wear and tear excepted) and is capable of being used for the purpose which it was intended; and
- (b) return the Company's Property to the Company's Premises promptly after it is no longer required by it to fulfil its obligations under the Contract or the Contract is terminated under clause 17..

8 Equipment hire

- 8.1 This clause 8 only applies if, pursuant to the Scope of Work, the Company requires the Contractor to lease items of equipment to the Company on Site (**Hired Equipment**).
- 8.2 The Contractor will lease the Hired Equipment to the Company for the duration set out in the Scope of Work.
- 8.3 Unless otherwise directed by the Company, the Contractor must perform all maintenance of the Hired Equipment at its own cost and risk to ensure that the Hired Equipment is in good operating condition at all times.
- 8.4 The Contractor warrants that:
 - (a) it has the necessary rights, title and interest in all Hired Equipment to enable it to lease the Hired Equipment to the Company on the terms of the Contract;
 - (b) it has insured the Hired Equipment for its full value and such insurance covers the Company and its Personnel operating the Hired Equipment;
 - (c) the Hired Equipment is in good, proper and safe working order and complies with all Legislation; and
 - (d) the Hired Equipment has been properly maintained by the Contractor and has all necessary guards and safety equipment fitted.
- 8.5 Any Personnel provided by the Contractor to operate Hired Equipment must be suitably qualified and trained, and formally inducted to work at the Site in accordance with clause 5.3.
- 8.6 Unless the Hired Equipment is being operated by or at the direction of the Contractor or its Personnel (including any commissioning of the Hired Equipment), the Company will be responsible for loss or damage which it causes to the Hired Equipment from the later of its delivery to the Site or its commissioning, until the Hired Equipment is returned to the Contractor at its relevant return point, as nominated in the Scope of Work. If no return point is nominated in the Scope of Work, the relevant return point shall be the area on Site where the Contractor first provided the Hire Equipment to the Company.
- 8.7 At the Company's request, the Contractor must conduct any commissioning of the Hired Equipment or supervise the Company's commissioning of the Hired Equipment, to the Company's satisfaction.

9 Inspection and reporting

- 9.1 The Contractor must keep the Company's Representative fully informed of all aspects of the provision of the Goods and / or Services.
- 9.2 Subject only to providing reasonable notice, at any time during the supply of the Goods and / or Services the Company may inspect, examine, review and witness tests on the Goods and / or Services or their results at the Site, the Contractor's premises or at the premises of a Subcontractor.
- 9.3 If, as a result of any review, inspection, examination, or witnessing of testing, the Company is not satisfied that the Goods and / or Services will comply in all respects with the Contract, the Company may exercise its rights to terminate under clause 17.3.

10 Defective Goods and / or Services

- 10.1 If upon inspection or testing during the Term and until the end of the Warranty Period, the Company identifies Defective Goods and / or Services, it may at its election:
 - (a) reject the Defective Goods and / or Services by notifying the Contractor that it is rejecting them;
 - (b) direct the Contractor to make good the Defective Goods and / or Services; or
 - (c) make good the Defective Goods and / or Services itself; and the Contractor must:
 - (i) refund to the Company any payments made by the Company in respect of any Defective Goods and / or Services that the Company rejects;
 - (ii) make good, free of charge, any Defective Goods and / or Services as per the Company's request; or
 - (iii) reimburse the Company for any expenses the Company incurs in making good any Defective Goods and / or Services itself.
- 10.2 The remedies provided in this clause do not exclude any other remedies provided by law.
- 10.3 If the Contractor identifies Defective Goods and / or Services, or carries out a product or safety recall or equivalent process in respect of any Goods, it must promptly notify the Company's Representative in writing.

11 Fees

- 11.1 In consideration for the supply of the Goods and / or Services, the Company will pay the Contractor the Contract Price.
- 11.2 The rates set out in the Contract will be the sole consideration payable to the Contractor under the Contract, and are deemed to include all risks, liabilities and obligations expressed or implied in the Contract or incurred in the course of the supply of the Goods and / or Services.
- 11.3 The Contractor will pay all costs, taxes, expenses and liabilities incurred by the Contractor in the course of the supply of Goods and / or Services under the Contract.

12 Invoicing and payment

- 12.1 The Contractor must submit a Tax Invoice to the Company at the end of each calendar month for the Goods and / or Services supplied in that month.
- 12.2 The Tax Invoice must set out particulars of all Goods and / or Services supplied by the Contractor and the amount payable by the Company under the Contract in respect of those Goods and / or Services, and how the amount of the Tax Invoice was calculated.
- 12.3 Subject to clause 13, the Company will pay all Tax Invoices submitted by the Contractor by the end of the month following the month in which the Tax Invoice was received (or such other period required by Legislation).

13 Withholding fees

- 13.1 The Company may deduct from any money due or becoming due to the Contractor under the Contract any money due from the Contractor to the Company, including but not limited to:
 - (a) all debts, damages, costs, expenses or any other moneys due from the Contractor or its Subcontractors to the Company under or by virtue of any provision of the Contract, the supply or non-supply of the Goods and / or Services, or the Contractor's presence on the Site;
 - (b) any amount the Company reasonably considers is due from the Contractor to the Company; and

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- (c) all costs, losses, charges, damages, liquidated sums and expenses which the Company may have paid or incurred and which, or for which, the Contractor or its Personnel is or are liable to bear, pay or make reimbursement to the Company.

14 Representatives

- 14.1 Unless expressly provided otherwise, all directions or any permission given on behalf of the Company to the Contractor will be given by the Company's Representative (or the Company's Representative's delegate notified to the Contractor).
- 14.2 The Contractor must comply, and ensure its Personnel comply, with the directions of the Company's Representative and Site Manager in relation to the Contractor providing the Goods and / or Services at the Site. In any matter pertaining to the safety of persons or property or the proper compliance with any Legislation which it is the Site Manager's duty to enforce, the Site Manager's decision will be final and any directions they may give must be obeyed in the manner directed.
- 14.3 The Contractor's Representative will represent and act for the Contractor at all times during the Term. The Contractor is bound by the actions of the Contractor's Representative. Matters within the knowledge of the Contractor's Representative are deemed to be within the knowledge of the Contractor.

15 Extension of time

- 15.1 The Contractor must immediately give the Company written notice of all incidents, circumstances or events of any nature affecting or likely to affect the Contractor's ability to deliver the Goods and / or perform the Services by the Delivery Date.
- 15.2 Within 14 Days after the date of the notice issued under clause 15.1, the Contractor must give a further notice to the Company which must include all material details of the event and mitigating actions taken by the Contractor.
- 15.3 The Company may grant an extension of time to the Delivery Date if the supply of the Goods and / or Services has been delayed by:
 - (a) Force Majeure; or
 - (b) any act or omission of the Company's Representative, the Company or its Personnel, but excluding acts or omissions authorised or permitted under the Contract and which are done or omitted in accordance with the Contract.
- 15.4 If the Company grants the Contractor an extension of time to the Delivery Date under clause 15.3(b) only, the Company will reimburse the Contractor for its costs actually and reasonably incurred as a direct consequence of the delay (evidenced on an open book basis).
- 15.5 The Company may, in its absolute discretion at any time by written notice to the Contractor, unilaterally extend the Delivery Date. The Company is not required to exercise its discretion under this clause for the benefit of the Contractor.

16 Acceleration

- 16.1 If, in the opinion of the Company, the Goods and / or Services will not be supplied by the Delivery Date, the Company may direct the Contractor to increase its manning levels, Equipment, number of shifts or to take other action. The Contractor may claim all actually, and reasonably incurred costs as a result of the direction unless the direction was issued as a consequence of an act or omission of the Contractor.

17 Default and termination

- 17.1 Subject to clause 40, if at any time a Party becomes Insolvent, the other Party may terminate the Contract with immediate effect by giving written notice.
- 17.2 The Company may, at any time, terminate the Contract in whole or in part without cause at its absolute discretion by giving the

Contractor written notice.

- 17.3 The Company may terminate the Contract in whole or in part and with immediate effect, by notice to the Contractor, if:
 - (a) the Contractor does not remedy, or provide an acceptable plan to remedy, any identified instances of Modern Slavery within the time frame specified by the Company;
 - (b) the Contractor is in breach of clause 31 of the Contract;
 - (c) the Company determines that the Contract violates any applicable Sanctions;
 - (d) the Contractor or any of its Personnel commits an act of gross negligence, wilful misconduct, fraud or dishonesty in respect of any matter in connection with the Contract;
 - (e) the Contractor is in breach of any provision of the Contract and the Company determines that the breach is not capable of remedy;
 - (f) the Contractor is in breach of any provision of the Contract which is capable of remedy and fails to remedy that breach at its own expense and to the satisfaction of the Company within 14 Days after receipt of a notice from the Company specifying the breach; and
 - (g) the Company is expressly entitled to exercise a right of termination under any other provision of the Contract.
- 17.4 The Contractor may terminate the Contract upon 30 Days' written notice to the Company if the Company has not paid the undisputed portion of a Contractor's Tax Invoice for a period of 60 Days or longer after the Tax Invoice became due under clause 12.3.
- 17.5 Without prejudice to any other rights of the Company under the Contract, in the event of termination under clause 17.2 only, the Company will pay to the Contractor:
 - (a) the Contract Price for Goods and / or Services provided to the Company prior to the effective date of termination and not included in any previous payment by the Company;
 - (b) the cost of materials reasonably ordered by the Contractor for the purpose of providing the Goods and / or Services prior to the date of termination, which the Contractor is legally liable to accept and cannot otherwise utilise, but only if the materials become the property of the Company upon payment;
 - (c) reasonable and substantiated costs of demobilisation; and
 - (d) necessary and reasonable costs incurred as a result of complying with any directions given by the Company upon, or subsequent to, termination.
- 17.6 On the expiration or earlier termination of the Contract, the Contractor must:
 - (a) cease supply of the Goods and / or performance of the Services;
 - (b) take such action as necessary or as the Company directs, for the transfer, protection and preservation of the Company's Property;
 - (c) use its best endeavours to mitigate and minimise the cost of termination to the Company;
 - (d) immediately cease using all items of applicable Company's Property, Company's Background IP and Project IP; and
 - (e) within 14 Days after termination or expiration, return to the Company (or if requested, erase and / or destroy) all copies in any form of the Company's Background IP and Project IP in the possession or control of the Contractor and / or its Personnel.

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18 Variation to the Scope of Work

- 18.1 A Variation must be agreed to in writing by the Parties in order for it to be valid and legally binding.
- 18.2 The Company may request that the Contractor prepare a Variation Proposal in accordance with this clause. The Contractor must as soon as practicable (but no later than 7 Days) after receiving such request, submit the Variation Proposal to the Company addressing the effect on the supply of the Goods and / or performance of the Services and the value of the proposed Variation.
- 18.3 The Contractor may initiate and submit a Variation Proposal to the Company.
- 18.4 Following receipt of a Variation Proposal under this clause, the Company may either:
- (a) direct the Contractor to perform the Variation in accordance with the Variation Proposal and the value in the Variation Proposal will be added to or deducted from the Contract Price; or
 - (b) advise the Contractor that it does not accept the value in the Variation Proposal, and direct the Contractor to perform the Variation to be valued in accordance with clause 18.5; or
 - (c) advise the Contractor that it does not wish to proceed with the Variation.
- 18.5 If under clause 18.4(b), the Company directs the Contractor to perform a Variation, the Contractor's costs actually and reasonably incurred or saved as a result of the Variation (evidenced on an open book basis) will be added to or deducted from the Contract Price.

19 Suspension

- 19.1 The Company has the right, at any time and for any reason, to suspend the Contract or any part of the Contract immediately. When the Contractor receives a notice of suspension from the Company, it must suspend the performance of its obligations until such time as the Company directs that the Contract is no longer suspended.
- 19.2 Either Party may terminate the Contract upon 30 Days' written notice to the other Party if the Company suspends the Contract for a period of 90 consecutive Days or longer.

20 Insurance

- 20.1 The Contractor is required, at its cost, to effect and maintain throughout the Term, each of the insurances described in clause 20.1(a) to (g) (**Contractor Insurances**) in relation to risks or occurrences arising, or which may arise, out of the performance of the Contract.

(a) Public and Product Liability Insurance

- (i) Insurance covering all liabilities in respect of any injury to, or death of, any person not being a person who at the time of the occurrence is engaged in or upon the service of the Contractor under a contract of service or apprenticeship, or any loss, damage or destruction to property not belonging to nor in the care, custody or control of the insured, however caused. Such insurance must provide cover to an amount of not less than AUD20,000,000 for each and every claim.
- (ii) The insurance outlined in Clause 20.1(a)(i) must, unless prohibited by law, be endorsed to:
 - A. insure the Company and their Personnel for their respective rights and interests arising out of the performance of the Contract;
 - B. include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has

been issued to each such party;

- C. waive all express or implied rights of subrogation against the Company and their Personnel arising out of the performance of the Contract;
- D. extend to cover liability for:
 - (1) goods in the physical and legal control of the Contractor for an amount not less than the value of the "goods";
 - (2) underground operations, if applicable;
 - (3) the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with this Contract;
 - (4) registered vehicles used as a tool of trade in the performance of the Services;
 - (5) for the use of unmanned aerial vehicles (commonly known as drones) (Drones) used in connection with this Contract; and
- E. include a clause that provides that a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

(b) Workers' Compensation and Employer's Liability Insurances

- (i) Workers' compensation (including industrial disease) and employers' liability insurances covering all Liabilities, whether arising under statute, common law or civil law, in relation to the death of, or injury to, any employee or worker of the Contractor or any person deemed to be an employee or worker of the Contractor.
- (ii) The insurance outlined in Clause 20.1(b)(i) must, unless prohibited by law, be endorsed to:
 - A. indemnify the Company against any liability which it may incur to the Contractor's employees or workers, arising by virtue of the applicable workers' compensation statute or regulations or at common law;
 - B. extend to include employees or workers underground if any of the work under the Contract is to be performed underground; and
 - C. provide cover in respect of each and every claim for an amount not less than the minimum statutory requirements.
- (iii) The insurance outlined in Clause 20.1(b)(i) must, unless prohibited by law, waive all express or implied rights of subrogation against the Company and their Personnel.
- (iv) The insurance outlined in Clause 20.1(b)(i) must provide cover to an amount of not less than AUD50,000,000 for each and every claim with a state of connection of Western Australia, or such other amount as required by the relevant Legislation or regulations applicable in the relevant state of connection.

(c) Contractor's Plant and Equipment

If the performance of the Contract requires the Contractor to use or provide for use Equipment that will be used at the Site in connection with the Contract, the Contractor must maintain or require the owner of such Equipment (except where the owner of such Equipment is the Company) to

maintain insurance covering all loss and damage to that Equipment, for its replacement value. The insurance must, unless prohibited by law, waive all express or implied rights of subrogation against the Company and its directors, officers and employees.

(d) **Goods in Transit (Marine Transit / Marine Cargo)**

If the performance of the Contract requires the Contractor to transport Goods to or from the Site, unless otherwise advised by the Company in writing, the Contractor will maintain insurance covering loss of or damage to the Goods during transit for its replacement value, regardless of whether the Company has paid for those Goods. Such insurance must note the Company as parties insured under the policy.

(e) **Motor Vehicle / Automobile Third Party Liability Insurance**

(i) If the performance of the Contract requires the Contractor or its Personnel to use or provide for use motor vehicles, the Contractor must maintain or require the owners of such motor vehicles to maintain insurance covering all mechanically propelled motor vehicles that are registered, or capable of being registered, including:

- A. material damage for an amount not less than the relevant motor vehicle's market value;
- B. insurance that is compulsory under applicable Legislation governing the use of motor vehicles and liability for personal injury or death;
- C. liability insurance for third party property damage with a sum insured of not less than AUD35,000,000 for each and every claim.

(ii) The insurance outlined in Clause 20.1(e)(i) must, unless prohibited by law, be endorsed to:

- A. insure the Company and their Personnel for their respective rights and interests arising out of the performance of the Contract;
- B. include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
- C. waive all express or implied rights of subrogation against the Company and their Personnel arising out of the performance of the Contract; and
- D. include a clause that provides a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

(f) **Professional Indemnity Insurance**

If the performance of the Contract includes or is related to the provision of professional advice or services, the Contractor must effect and maintain throughout the Term and for a period of not less than 6 years after termination of the Contract or completion of the Contractor's obligations under the Contract, professional indemnity insurance in respect of any negligent acts, errors or omissions in the Services provided by the Contractor under the Contract. Such insurance must provide cover to an amount of not less than AUD5,000,000 for each and every claim.

(g) any other insurances required by Legislation or regarded as Good Industry Practice.

20.2 If the Contractor Insurances are subject to the application of any

self-insured retention, excess or deductible, the amount of the self-insured retention, excess or deductible must be declared to the Company. The Company reserves the right to require the Contractor to reduce the amount of any self-insured retention, excess or deductible where such amount is considered by the Company as being unreasonable in the circumstances of the Contract.

20.3 The Contractor Insurances must be underwritten by an insurer approved by the Australian Prudential Regulation Authority and with a financial security rating of A- or better by Standard & Poor's or the equivalent rating with another recognised rating agency (unless otherwise approved by the Company) and on terms and conditions consistent with prudent risk management practice.

20.4 No provision contained in this clause 20 will limit the Contractor's liability in relation to the indemnities in the Contract.

20.5 Before performing any of the Services, and each time the policies are renewed or varied, the Contractor must provide the Company with an insurance certificate of currency or such other evidence as the Company may reasonably require that the Contractor and its Subcontractors are insured in accordance with the Contract.

20.6 In the event that the Contractor fails to, or fails to ensure that its Subcontractors, effect or keep in force any of the insurances required pursuant to the Contract, the Company may do one or more of the following:

- (a) effect and maintain such insurances and deduct the costs of such insurances from any moneys due to the Contractor;
- (b) refuse the Contractor and its Personnel access to all or any part of the Site; and / or
- (c) treat the failure to insure as a default under the Contract.

20.7 All Contractor Insurances must not be varied to the detriment of the Company or their Personnel, cancelled or allowed to lapse unless the Contractor has received a written consent from the Company.

20.8 The Contractor must ensure that its Subcontractors have the benefit of or effect and maintain insurances similar to the Contractor Insurances required to be effected by the Contractor.

20.9 The Contractor will be responsible for the payment of any excess or deductible relating to the insurances effected by the Contractor and the Contractor will not be entitled to recover from the Company any excess or deductible so paid by the Contractor.

20.10 The Contractor will be responsible for the payment of any excess or deductible relating to the insurances effected by the Contractor where the Company makes a claim under such policy, to the extent that the Company determines that the Contractor or any of its Personnel were responsible for the loss or damage.

20.11 This clause 20 will survive the expiry or earlier termination of the Contract.

21 Title and risk

21.1 Title in any Goods passes to the Company on the earlier of when the Company pays for the relevant Goods or when such Goods are delivered to the Site.

21.2 To the extent permitted by law, the Contractor enters onto the Site and supplies the Goods and / or Services under the Contract at its own risk. Risk in any Goods remains with the Contractor until delivery to the Company.

22 Liability and indemnities

22.1 The Contractor is liable for and must hold harmless and indemnify on demand the Company, its Personnel, and its Related Bodies Corporate, from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, defects and costs and expenses of any nature, including legal fees and expenses, arising in any manner out of or in any way in connection with the acts or omissions of the Contractor or its

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- Personnel under or in connection with the provision of the Goods and / or Services or the Contract (including the infringement of any third party's Intellectual Property Rights), whether or not the acts or omissions are in tort (including negligence), breach of contract or otherwise regarding the Contract, except to the extent that the loss is caused by the negligence, acts or omissions of the Company or its Personnel.
- 22.2 Notwithstanding anything in the Contract to the contrary but subject to clause 22.3, neither Party will be liable to the other for any Excluded Loss.
- 22.3 The exclusion of liability in clause 22.2 does not apply in relation to liability of the Contractor:
- (a) in respect of the injury or death of any person;
 - (b) in respect of any Third Party Claims;
 - (c) in respect of any Employee Claims;
 - (d) for any act or omission of fraud, criminal act, dishonesty, wilful misconduct or misrepresentation of the Contractor and / or any of its Personnel;
 - (e) for any penalty imposed for breach of Legislation or licence in connection with the supply of the Goods and / or Services by the Contractor;
 - (f) for breach of clauses 23, 24, 30, 31.1 or 31.2;
 - (g) for any loss arising from an occurrence which should be covered by a policy of insurance in the name of the Contractor required under the Contract; or
 - (h) which, by law, the Contractor cannot contract out of.

23 Intellectual property

- 23.1 The Company acknowledges that the Contractor remains the owner of the Contractor's Background IP.
- 23.2 The Contractor acknowledges that the Company remains the owner of the Company's Background IP.
- 23.3 The Contractor grants to the Company a perpetual, irrevocable, non-exclusive and royalty free licence for the Company and the Company's Personnel to use, adapt, modify and copy the Contractor's Background IP to the extent necessary to:
- (a) complete the installation of, maintain, operate, make improvements to, repair and alter the Goods; and
 - (b) exercise the Company's rights with respect to the Project IP.
- 23.4 The Company may assign or grant a sub-licence of the licence granted to it under clause 23.3.
- 23.5 The Contractor acknowledges and agrees that all Project IP is vested in the Company and is the Company's property as and when created and the Contractor hereby assigns all rights, title and interest in and to the Project IP to the Company.
- 23.6 The Company grants to the Contractor a non-exclusive, non-transferable, revocable and royalty free licence to use the Company's Background IP and Project IP for the sole purpose of providing the Goods and / or Services.
- 23.7 The Contractor must not disclose, reproduce or otherwise deal with the Project IP or Company's Background IP, or allow any other person to do the same, for any purpose other than to provide the Goods and / or Services.
- 23.8 The Contractor agrees that any Subcontract it enters into in relation to the Contract must contain a condition that the Subcontractor agrees to assign to the Company:
- (a) use of any Contractor's Background IP as stipulated in clause 23.3; and
 - (b) all Intellectual Property Rights in any Project IP created by it

for the purposes of the Contract.

23.9 The Contractor agrees to:

- (a) notify the Company as soon as it becomes aware of any suspected, threatened or actual infringement of any Intellectual Property Rights in the Project IP or the Company's Background IP;
- (b) provide all assistance the Company may request to protect the Intellectual Property Rights in the Project IP or the Company's Background IP; and
- (c) provide all assistance in defending or prosecuting (as the case may be) any such infringement.

23.10 To the extent that any person has Moral Rights in the Contractor's Background IP or the Project IP, the Contractor must obtain or procure all consents or waivers from the individual creator necessary to ensure that the Company may do or authorise any acts or omissions consistent with:

- (a) the licence granted in relation to the Contractor's Background IP under clause 23.3; and
- (b) the Company's ownership of the Project IP under clause 23.5,

without infringing any Moral Rights.

23.11 The Contractor warrants that:

- (a) it owns the Intellectual Property Rights in the Contractor's Background IP and that the use of the Contractor's Background IP does not and will not infringe any rights of third parties (including, without limitation, any Intellectual Property Rights);
- (b) the provision of the Goods and / or Services or the use of the Goods (incorporated with the Company's Property, or otherwise) by or on behalf of the Company does not and will not infringe the rights (including Intellectual Property Rights) of any third party;
- (c) it will, at no further cost to the Company, procure all licences and consents to use any Intellectual Property Rights of a third party which are necessary to provide the Goods and / or Services or enable the Goods (incorporated with the Company's Property, or otherwise) to be used by or on behalf of the Company;
- (d) the Project IP does not and will not infringe any rights of third parties (including, without limitation any Intellectual Property Rights); and
- (e) the Contractor has the right to assign all Project IP to the Company in accordance with clause 23.5.

23.12 The Contractor's obligations set out in this clause 23 survive the suspension, termination, expiry or completion of the Contract. If the Contractor sells any of the Contractor's Background IP or any enhancement to the Contractor's Background IP then the Contractor must ensure that these obligations bind each successor in title to the Contractor's Intellectual Property Rights, so far as is relevant to, or required by, the Contract.

24 Confidentiality

24.1 The Contractor acknowledges:

- (a) the Confidential Information is valuable to the Company and has commercial value;
- (b) the Company will suffer loss if the Contractor discloses, or permits the disclosure of, any of the Confidential Information in contravention of the Contract; and
- (c) that the Confidential Information remains the property of the Company at all times and the Contractor and the Contractor's Personnel do not have any proprietary or other

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interest in the Confidential Information.

24.2 The Contractor must, subject to the terms of the Contract, at all times:

- (a) keep the Confidential Information secret and preserve its confidential nature;
- (b) not use Confidential Information for any purpose other than the purpose of supplying the Goods and / or performing the Services;
- (c) not reverse engineer, decompile or disassemble any Confidential Information; and
- (d) only copy or reproduce Confidential Information for the purpose of supplying the Goods and / or performing the Services, or with the written consent of the Company.

24.3 The Contractor must not disclose any Confidential Information to any person except:

- (a) with the prior written approval of the Company, which consent may be withheld in its discretion;
- (b) to its Personnel, its Related Body Corporate and their Personnel but only to the extent necessary for the supply of the Goods and / or performance of the Services;
- (c) to its legal advisors, financial advisors or legal advisors of its financial advisors;
- (d) if it is required to do so by Legislation, a Government Authority or by a stock exchange; or
- (e) to any third party but only to the extent necessary for the supply of the Goods and / or performance of the Services.

24.4 The Contractor must ensure that any of its Personnel or any third party receiving Confidential Information under this clause 24 from the Contractor does not disclose that information. The Contractor is, and remains, liable for any breaches of confidentiality by the Contractor's Personnel.

24.5 If the Contractor becomes aware of any unauthorised access to, use or disclosure of Confidential Information, or any suspected or possible breach of the Contract, the Contractor must do the following:

- (a) immediately notify the Company in writing giving details of the suspected or possible breach;
- (b) do everything necessary to remedy the unauthorised access to, use or disclosure of the Confidential Information, or to prevent the suspected or possible breach of the confidentiality provisions in the Contract;
- (c) comply with all lawful written Directions from the Company in relation to the actual, suspected or possible breach of the Contract; and
- (d) give the Company all assistance required in connection with proceedings which the Company may institute against any person for breach of confidence or otherwise.

24.6 The Company may disclose the Contract, the Contract Price and all information relating to the Contract without the consent of the Contractor to:

- (a) any professional advisors of the Company including to its legal advisors or financial advisors;
- (b) the professional advisors of the Company's financial advisors;
- (c) the Company's Financiers, potential Financiers and any advisors to the Company's Financiers or potential Financiers;
- (d) the auditor of the Company; or

(e) a bona fide prospective purchaser of the Company or the business of the Company provided that such bona fide prospective purchaser agrees to keep the terms of the Contract confidential in accordance with this clause 24.

25 Conflict of interest

25.1 The Contractor must, and must ensure its Personnel, declare any Conflict of Interest prior to entering into any agreements with the Company, and in any event as soon as a Conflict of Interest comes to the attention of the Contractor.

26 Taxes

26.1 If GST has application to any supply made by the Contractor under or in connection with the Contract, the Contractor may, in addition to the consideration payable or to be provided for the supply, subject to issuing a Tax Invoice, recover from the Company an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable or to be provided by the Company for the Supply by the prevailing GST rate.

26.2 Should any taxes (other than GST) be levied on, in respect of, or in relation to, the Goods and / or Services these will be to the Contractor's account. The Contractor will be responsible for the payment of those taxes and will provide documentary evidence of the payment of those taxes if made on the Company's behalf.

27 Assignment and subcontracting

27.1 The Contractor must not assign or subcontract any part or the whole of its obligations under the Contract except with the prior written consent of the Company (which must not be unreasonably withheld).

28 Force Majeure

28.1 If a Party is prevented from carrying out the whole or any part of its material obligations under the Contract by reason of Force Majeure, that Party must immediately give written notice to the other Party. The affected Party must keep the other Party informed of any changes in the circumstances causing the Force Majeure.

28.2 The obligations of the affected Party, so far as they are materially affected by Force Majeure, will be suspended for the period that the Force Majeure persists and the affected Party will not be in default under the Contract. The affected Party must use its best endeavours to remedy or mitigate the effect of any Force Majeure and comply with its obligations under the Contract.

28.3 Where the affected Party is the Contractor, the Company is not liable or obliged to provide any financial relief to the Contractor as a result of a Force Majeure.

28.4 Notwithstanding any provision of the Contract, if the Force Majeure causes the suspension of the Contractor's obligations for a continuous period of 3 months or a cumulative period of 6 months in any 12 month period, either Party may terminate the Contract by written notice to the other Party.

29 Modern Slavery

29.1 The Company works to comply with the requirements of the *Modern Slavery Act 2018* (Cth) and expects the same of its contractors.

29.2 The Contractor warrants that:

- (a) it investigates the risk of Modern Slavery within its operations, and those of its supply chain;
- (b) it assesses and addresses risks regarding Modern Slavery, including implementing appropriate due diligence and remediation programs;
- (c) it will notify the Company as soon as possible of any confirmed instances of Modern Slavery and the actions undertaken by the Contractor to remedy the issue;

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- (d) it has all the necessary processes, procedures, investigations and compliance systems in place to undertake the actions in clauses 29.2(a) to 29.2(c);
 - (e) upon request, the Contractor will provide evidence to the satisfaction of the Company which validates the Contractor's compliance with this clause;
 - (f) upon request, the Contractor will permit the Company's Personnel or its nominated representatives to undertake verification activities to validate the Contractor's compliance with this clause, including access to the Contractor's premises and records as required; and
 - (g) it will include a clause similar to this clause 29.2 in all contracts it enters into with its suppliers and Subcontractors.
- 29.3 In the event that the Contractor does not remedy, or provide an acceptable plan to remedy, any identified instances of Modern Slavery within the time frame specified by the Company, the Company reserves the right to terminate the Contract in accordance with clause 17.3(a).

30 Bribery and corruption

- 30.1 The Contractor must not, and must procure that its Personnel do not:
- (a) pay or accept any commissions or fees, or make or accept any payments or rebates to or from any employee or officer of the Company or its Related Bodies Corporate, or favour any of those persons with gifts or entertainment of unusual or substantial value, or enter into any business arrangements with any of those persons, that would result in a detriment to the Company or is contrary to fair dealing; and
 - (b) provide or offer to provide a benefit (which is not legitimately due) to a public official (including a foreign public official) in order to retain or obtain a business advantage.
- 30.2 The Contractor must, and must ensure that its Personnel, immediately report to the Company any offer, payment, rebate or other benefit, or any receipt of any payment, benefit or rebate of the kind referred to in clause 30.1.

31 Sanctions

- 31.1 The Contractor hereby warrants and represents that the Contractor and all of its Personnel, Related Bodies Corporate, Subcontractors and suppliers:
- (a) are not a Sanctioned Person;
 - (b) are not violating any Sanctions applicable to it; and
 - (c) are not engaging with a Sanctioned Person.
- 31.2 If the Contractor:
- (a) provides incorrect information in connection with the Sanctions;
 - (b) breaches any provision of the Contract relating to Sanctions; or
 - (c) its Personnel, its Related Body Corporate, or any of its suppliers or Subcontractors becomes a Sanctioned Person,
- it must immediately give notice to the Company and the Company may:
- (d) immediately terminate the Contract and any or all Purchase Orders under clause 17.3(b); and
 - (e) claim compensation from the Contractor for any damages or losses which it suffers.
- 31.3 Without limiting any remedy to which the Company might otherwise be entitled, the Company may terminate the Contract if it determines that the Contract violates any applicable Sanction.

32 Dispute resolution

- 32.1 If an issue or dispute arises in connection with the Contract, the Parties agree, prior to the initiation of any legal proceedings, to use their reasonable endeavours to reach a resolution of the dispute.
- 32.2 If the dispute has not been resolved within 30 Days after the Parties first convene to resolve the dispute, either Party may commence legal proceedings in connection with that dispute in any Western Australian court of competent jurisdiction.
- 32.3 Despite the existence of a dispute, the Contractor must continue without delay to perform its obligations under the Contract.
- 32.4 Nothing in this clause prevents either Party from applying to a court for urgent injunctive relief.

33 Notices

- 33.1 Any notice, approval, consent or other communication in relation to the Contract must:
- (a) be in writing and signed by the Party sending it (or on that Party's behalf);
 - (b) be marked for the attention of:
 - (i) in the case of a notice to the Company, the Company's Representative;
 - (ii) in the case of a notice to the Contractor, the Contractor's Representative; and
 - (iii) be left at or sent by prepaid ordinary post to the last notified address of the Party, or sent by email to the last notified email address of the Party.
- 33.2 A notice, approval, consent or other communication is taken to be received by the addressee:
- (a) upon actual receipt when hand delivered;
 - (b) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the Party sending the email; or
 - (c) in the case of posting, three business days after posting to an address within Australia and on the fifth business day after the date of posting by airmail to an address outside of Australia.

34 Coordinate datum compliance

- 34.1 To the extent that the use of coordinate datum is applicable to the supply of Goods and / or Services, the Contractor must reference the applicable coordinate datum in its reports, deliverables and metadata. For clarity, and by way of example only, such reference may be in the form "Datum GDA1994, Projection MGA zone50", "Datum GDA2020 Projection MGA zone 50", "Datum GDA1994 LatLong", or "Datum GDA2020 LatLong".

35 Personal property and security

- 35.1 Unless the context otherwise requires, terms and phrases defined in the PPSA have the same meaning in this clause 35.
- 35.2 The Contractor must not assign all or any of its rights under the Contract, or create or allow any security interest under the PPS Law to subsist over the Contract, without the prior written approval of the Company.
- 35.3 The Company is not obliged to give the Contractor notice under the PPS Law (including notice of a verification statement) unless the Company is required by the PPS Law to provide the notice.
- 35.4 Neither the Company nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA and the Contractor will not authorise, and must ensure that its Personnel do not authorise, the disclosure of such information.
- 35.5 Clause 35.4 does not prevent disclosure where such disclosure is

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required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

35.6 Whenever the Company reasonably requests, the Contractor must promptly take all steps under or in relation to the PPS Law which would be prudent for a contractor in the position of the Contractor to take in connection with the supply of Goods and / or carrying out of the Services.

35.7 Where there is a security interest (as defined in the PPSA) under the Contract:

(a) to the extent permitted, all provisions of the PPSA listed in sections 115(1) or 115(7) of the PPSA except sections 117, 134(1) and 135 are excluded in full and will not apply to that security interest and any other provision of the PPSA notified to the grantor of the security interest by the secured party after the Execution Date; and

(b) the Contractor waives its right to receive from the Company any notice required under section 157 of the PPSA or the provisions of the PPSA referred to in section 144 of the PPSA.

35.8 This does not affect any rights a person has or would have other than by reason of the PPSA.

36 Survival

36.1 Clauses 3, 10, 20, 22, 23, 24, 30, 31, 33, 34 and 35 survive the expiry or earlier termination of the Contract.

37 Contract terms

37.1 The terms and conditions of the Contract may not be varied, unless agreed upon by both Parties and documented in writing.

38 Waiver

38.1 Waiver of any right arising from a breach of the Contract must be in writing and executed by the Party granting the waiver. Failure by the Company to exercise a right, remedy or power at any time will not be construed in any way to affect the enforceability of that right, remedy or power in any other instance, or the enforceability of the Contract as a whole.

39 Governing law and jurisdiction

39.1 The Parties accept the laws of the State of Western Australia as the governing law of the Contract submit to the exclusive jurisdiction of the Courts of the State of Western Australia.

40 Ipsa Facto Amendments

(a) For the purpose of this clause 40, Ipsa Facto Amendments means:

(i) the amendments to the Corporations Act 2001 (Cth) set out in Part 2 of the Treasury Laws Amendment (2017 Enterprise Incentives No.2) Act 2017 (Cth); and

(ii) any regulations, declarations or legislative instruments, prescribed, made or declared pursuant to sections 415D, 434J or 451E of the *Corporations Act 2001* (Cth).

(b) Clause 17.1 is subject to the Ipsa Facto Amendments to the extent that they apply to the Contract. In the event the Ipsa Facto Amendments apply, the Company may withhold or deny any advance payment or other form of credit the Contractor would otherwise be entitled to.

41 Entire Contract

41.1 The Contract as amended or varied from time to time represents the entire agreement between the Parties and supersedes all prior arrangements whether written or oral in relation to the Services.

42 Relationship between the Parties

42.1 The Company and the Contractor are independent contracting

parties and nothing in the Contract will make either Party an agent or legal representative of the other for any purpose whatsoever. Nor does the Contract grant either Party any authority to assume or to create an obligation on behalf or in the name of the other Party.

42.2 The Company is not responsible to the Contractor or any of its Personnel for any payments in respect of any employment related expenses including wages, annual leave, sick leave, long service leave, superannuation, workers' compensation, accidents, sickness, or life insurance.

43 Severability

43.1 If any provision of the Contract is or becomes voidable, invalid, illegal or unenforceable in any jurisdiction, that will not affect or impair the validity, legality or enforceability of the remainder of the Contract in that jurisdiction and the Contract shall be read and construed and take effect for all purposes as if that provision were not contained in the Contract.