



Fortescue
The New Force in Iron Ore

Fortescue Metals Group

Goods and Services - Standard Terms and Conditions

100-CO-CP-0007 Rev 7

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1 Definitions

1.1 In the Agreement unless the contrary intention appears:

Agreement means the agreement between the Principal and the Contractor comprised of the Purchase Order, these Goods & Services - Standard Terms and Conditions, the Scope of Work 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);

Background IP means the Intellectual Property Rights of the Contractor or Principal (as applicable) which:

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

Confidential Information means all commercial, technical and other information in any form whatsoever in the possession or knowledge of a Party which is disclosed to the other Party at any time in connection with the Agreement which is confidential in nature, including any information of that sort which is provided verbally to a Party by any Personnel of the other Party;

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

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

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

Defective Goods and/or Services means Goods and/or Services which are not in conformity with the Agreement, or are of inferior quality or workmanship;

Delivery Date means the date the Goods must be delivered or the Services must be completed by the Contractor as specified in the Purchase Order;

Delivery Term means the terms of delivery set out in the Purchase Order;

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 Agreement;

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

Excluded Loss means loss of revenue and profit (other than revenue or profit derived directly from payments for Goods and/or Services under the Agreement); 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 date on which the Goods and/or Services have been delivered and commissioned or the Contractor has demobilised all of its Personnel and Equipment from Site as required under the Agreement (as applicable);

Forced Labour or Slavery means "slavery" and "forced labour" as these terms are defined by the International Labour Organisation (ILO) from time to time, including in any present or future ILO conventions;

Force Majeure means an event which is not within the control of the Party claiming force majeure, and which will directly impact the ability of the Party to perform its obligations under the Agreement, including any act of god, war, revolution, a governmental restraint and industrial-related dispute;

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;

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

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

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

HSES Legislation means all relevant written laws relating to health and safety, including the *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;

Intellectual Property Rights and Intellectual Property 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 Agreement (including without limitation all intellectual property rights developed by the Contractor in providing the Goods and/or Services);

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

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; and
- (b) all licences, qualifications, registrations and other statutory requirements necessary for supply of the Goods and/or performance of Services under the Agreement;

Net Amount means the net amount payable for the Goods and/or Services set out in the Purchase Order;

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

Personnel means:

- (a) in relation to the Principal, any of its employees, agents or representatives; and
- (b) in relation to the Contractor, any of its employees, suppliers, Subcontractors, their subcontractors, agents and representatives involved either directly or indirectly in the provision of the Goods and/or Services;

Principal means Chichester Metals Pty Ltd (ACN 109 264 262) or its Related Body Corporate (as defined in the *Corporations Act 2001* (Cth)) specified on the Purchase Order;

Principal's Property means any plant, equipment, tools, appliances or other property and items that the Principal provides to the Contractor to enable it to perform its obligations under the Agreement;

Principal's Policies and Procedures means those policies and procedures provided by the Principal to the Contractor from time to time which are, or may become applicable to the Site or the Goods and/or Services and includes the policies set out in any schedule attached to the Agreement, and any other policies which the Principal makes available to the Contractor as and when required;

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

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

Registered Mine Manager means 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);

Related Body Corporate has the meaning in the *Corporations Act 2001* (Cth);

Scope of Work means the scope of the Services to be performed or the Goods to be supplied as specified in the Purchase Order;

Site means the Principal's site or other location specified in the Purchase Order;

Subcontractor means any person engaged by the Contractor to perform all or any portion of the Services or supply under the Agreement on behalf of the Contractor, and includes their employees, agents, consultants and invitees;

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.

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

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 12 months after the Expiry Date, unless stated otherwise in the Purchase Order.

2 Nature of Agreement

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 (as applicable);
- (b) in accordance with the Delivery Term (as applicable); and
- (c) in accordance with the terms of this Agreement.

2.2 The Agreement does not confer upon the Contractor any exclusivity in respect of any Goods and/or Services at the Site or otherwise.

2.3 The Contractor agrees to notify the Principal if it finds any errors, omissions or inconsistencies in information provided by the Principal. Except as prescribed by Legislation, the Principal gives no warranty of accuracy, sufficiency or otherwise in relation to information provided to the Contractor and disclaims all responsibility for such information.

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 Agreement;
 - (ii) be supplied in accordance with Good Industry Practice; and
 - (iii) comply with all applicable Legislation;
- (b) all Goods supplied will be:
 - (i) of merchantable quality and fit for the purpose set out in the Agreement;
 - (ii) manufactured strictly in accordance with any manufacturing drawings, Scope of Work or descriptions supplied to the Contractor by the Principal; and
 - (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 Principal; and
- (c) all Equipment used by the Contractor in the supply of the Goods and/or Services will be maintained in safe working condition, complies with all Legislation applicable to such Equipment, and is maintained and operated by suitably qualified and competent Personnel.

3.2 These warranties remain unaffected notwithstanding any information which the Principal provides to the Contractor.

4 Site Access and Safety

- 4.1 The Principal grants to the Contractor a non-exclusive and non-assignable licence to access the Site during the Term to perform its obligations under the Agreement.
- 4.2 The Contractor must obtain all applicable permits, licences, exemptions, consents and approvals required for the Contractor to perform the Goods and/or Services.
- 4.3 The Contractor must, and must ensure its Personnel, in supplying the Goods and/or Services:
 - (a) perform in a safe manner and use best endeavours to achieve zero classified injuries;
 - (b) not interfere with the Principal'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 Principal's Policies and Procedures (to the extent they are applicable to the Agreement); and
 - (iii) directions given by the Principal's Representative and the Registered Mine Manager.
- 4.4 Without limiting the Contractor's other obligations under the Agreement, the Contractor must notify the Principal's Representative and the Registered Mine Manager as soon as practicable but in any event within 12 hours 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 Services under the Agreement.
- 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 services similar to the Goods and/or Services.
- 5.3 No Contractor's Personnel may commence work on Site unless she/he has attended the induction courses required by the Principal to be attended by all persons engaged at the Site.
- 5.4 The Principal will provide accommodation and messing facilities at no cost to the Contractor for its Personnel engaged in the supply of the Goods and/or Services at the Site.
- 5.5 To the extent permitted by Legislation, during the Term and extending for a period of 6 months after the Expiry Date, the Principal's Personnel are not to be engaged or offered employment by the Contractor, without prior written approval of the Principal.

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 Agreement are at all times regulated by an agreement made under the *Fair Work Act 2009* (Cth).
- 6.3 The Principal may, at any time in its absolute discretion, request 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 any way in the provision of the Goods and/or Services notwithstanding any provision in any other contract. If requested by the Principal, the Contractor must replace the person with a person of suitable ability, experience and qualifications within a reasonable time period specified by the Principal.

7 Equipment

- 7.1 The Contractor agrees to supply the Equipment at its own risk and expense and to maintain such on Site and in safe, operable, good working condition throughout the Term.
- 7.2 The Principal may reject any item of the Equipment which it determines is unsuitable for the purposes of the Agreement. If any Equipment is so rejected then it must be either repaired or replaced to the reasonable satisfaction of the Principal within 2 days after notification by the Principal. The Contractor must provide all spare parts and consumable items for the Equipment.
- 7.3 The Contractor agrees the Principal's Property may only be used for the purposes of fulfilling the Contractor's obligations under the Agreement, and the Contractor is liable to the Principal for any loss or damage to the Principal's Property by the Contractor's Personnel.

8 Inspection and Reporting

- 8.1 The Contractor must keep the Principal's Representative fully informed of all aspects of the provision of the Goods and/or Services.
- 8.2 Subject only to providing reasonable notice, at any time during the supply of the Goods and/or Services the Principal 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.
- 8.3 If, as a result of any review, inspection, examination, or witnessing of testing, the Principal is not satisfied that the Goods and/or Services will comply in all respects with the Agreement, the Principal may exercise its rights to terminate under clause 16.3.

9 Defective Goods and/or Services

- 9.1 If upon inspection or testing during the Term and until the end of the Warranty Period, the Principal 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 Defective Services; or
 - (c) make good the Defective Goods and/or Services itself; and
 and the Contractor must:

- (d) refund to the Principal any payments made by the Principal in respect of any Defective Goods and/or Services that the Principal rejects;
- (e) make good free of charge any Defective Goods and/or Services as per the Principal's request; or
- (f) reimburse the Principal for any expenses the Principal incurs in making good any Defective Goods and/or Services itself.

9.2 The remedies provided in this clause do not exclude any other remedies provided by law.

10 Fees

- 10.1 In consideration for the supply of the Goods and/or Services, the Principal will pay the Contractor the Net Amount.
- 10.2 The rates set out in the Agreement will be the sole consideration payable to the Contractor under the Agreement, and are deemed to include all risks, liabilities and obligations expressed or implied in the Agreement or incurred in the course of the supply of the Goods and/or Services.
- 10.3 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 Agreement.

11 Invoicing and Payment

- 11.1 The Contractor must submit a Tax Invoice to the Principal at the end of each calendar month for the Goods and/or Services supplied in that month.
- 11.2 The Tax Invoice must set out particulars of all Goods and/or Services supplied by the Contractor and the amount payable by the Principal under the Agreement in respect of those Goods and/or Services, and how the amount of the Tax Invoice was calculated.
- 11.3 Subject to clause 12, the Principal will pay all Tax Invoices submitted by the Contractor within 30 days after the end of the month in which the Tax Invoice was received (or such other period required by Legislation).

12 Withholding Fees

- 12.1 The Principal may deduct from any money due or becoming due to the Contractor under the Agreement, including but not limited to:
 - (a) all debts, damages, costs, expenses or any other moneys due from the Contractor or its Subcontractors to the Principal under or by virtue of any provision of the Agreement, the supply or non-supply of the Goods and/or Services, or the Contractor's presence on the Site; and
 - (b) all costs, losses, charges, damages, liquidated sums and expenses which the Principal 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 Principal.

13 Representatives

- 13.1 Unless expressly provided otherwise, all directions or any permission given on behalf of the Principal to the Contractor will be given by the Principal's Representative (or the Principal's Representative's delegate notified to the Contractor).
- 13.2 The Contractor must comply, and ensure its Personnel comply, with the directions of the Principal's Representative and Registered Mine 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 Registered Mine Manager's duty to enforce, the Registered Mine Manager's decision will be final and any directions he may give must be obeyed in the manner directed.
- 13.3 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.

14 Extension of Time

- 14.1 The Contractor must immediately give the Principal 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.
- 14.2 Within 14 days after the date of the notice issued under clause 14.1, the Contractor must give a further notice to the Principal which must include all material details of the event and mitigating actions taken by the Contractor.
- 14.3 The Principal 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 other act or omission of the Principal's Representative, the Principal or its Personnel, but excluding acts or omissions authorised or permitted under the Agreement and which are done or omitted in accordance with the Agreement.

14.4 If the Principal grants the Contractor an extension of time to the Delivery Date under clause 14.3(b) only, the Principal will reimburse the Contractor for its costs actually, reasonably and properly incurred as a direct consequence of the delay (evidenced on an open book basis).

14.5 The Principal may, in its absolute discretion at any time by written notice to the Contractor, unilaterally extend the Delivery Date. The Principal is not required to exercise its discretion under this clause for the benefit of the Contractor.

15 Acceleration

15.1 If in the reasonable opinion of the Principal, the Goods and/or Services will not be supplied by the Delivery Date, the Principal may direct the Contractor to increase its Personnel, Equipment, number of shifts or to take other action. The Contractor may claim all 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.

16 Default and Termination

16.1 If at any time a Party becomes Insolvent, the other Party may terminate the Agreement with immediate effect by giving written notice.

- 16.2 The Principal may, at any time, terminate the Agreement in whole or in part without cause at its absolute discretion by giving the Contractor written notice.
- 16.3 The Principal may terminate the Agreement in whole or in part and with immediate effect, by notice to the Contractor, if:
- (a) 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 Agreement;
 - (b) the Contractor is in breach of any provision of this Agreement and the Principal reasonably determines that the breach is not capable of remedy;
 - (c) the Contractor is in breach of any provision of the Agreement which is capable of remedy and fails to remedy that breach at its own expense and to the reasonable satisfaction of the Principal within 14 days after receipt of a notice from the Principal specifying the breach; and
 - (d) the Principal is expressly entitled to exercise a right of termination under any other provision of the Agreement.
- 16.4 Without prejudice to any other rights of the Principal under the Agreement, in the event of termination under clause 16.2 only, the Principal will pay to the Contractor:
- (a) the Net Amount for Goods and/or Services provided to the Principal prior to the effective date of termination and not included in any previous payment by the Principal;
 - (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 Principal upon payment;
 - (c) reasonable and substantiated costs of demobilisation; and
 - (d) reasonable costs of complying with any directions given by the Principal upon, or subsequent to, termination.
- 16.5 On the expiration or earlier termination of the Agreement, the Contractor must:
- (a) cease supply of the Goods and/or performance of the Services;
 - (b) take such action as necessary or as the Principal directs, for the transfer, protection and preservation of the Principal's Property;
 - (c) do its best to minimise the cost of termination to the Principal;
 - (d) immediately cease using all items of applicable Principal's Property and Intellectual Property; and
 - (e) within 14 days after termination or expiration, return to the Principal (or if requested, erase and/or destroy) all copies in any form of the applicable Intellectual Property in the possession or control of the Contractor and/or its Personnel.
- 17 Variation to the Scope of Work**
- 17.1 The Principal may by written notice direct a Variation and the Contractor must perform and be bound by such Variation. The Principal is not obliged to request a Variation Proposal in accordance with this clause.
- 17.2 The Principal may request that the Contractor prepare a Variation Proposal in accordance with this clause. The Contractor must as soon as practical (but no later than 7 days) after receiving such request, submit the Variation Proposal to the Principal addressing the effect on and value of the proposed Variation.
- 17.3 The Contractor may initiate and submit a Variation Proposal to the Principal. Following receipt of a Variation Proposal under this clause, the Principal may either:
- (a) direct the Contractor to perform the Variation in accordance with the Variation Proposal; or
 - (b) advise that it does not wish to proceed with the Variation.
- 17.4 If under clause 17.3 the Principal directs the Contractor to perform a Variation, the Principal will reimburse the Contractor for its costs actually, reasonably and properly incurred as a result of the Variation.
- 18 Suspension**
- 18.1 The Principal has the right, at any time and for any reason, to suspend the Agreement or any part of the Agreement immediately. When the Contractor receives a notice of suspension from the Principal, it must suspend the performance of its obligations until such time as the Principal directs that the Agreement is no longer suspended.
- 19 Insurance**
- 19.1 The Contractor must, before commencing the supply of Goods and/or Services, effect and maintain the following insurances:
- (a) **Workers Compensation insurance.** The Contractor must insure its liability against all Employees Claims and the insurance must:
 - (i) comply with all statutory requirements including providing any compulsory statutory workers' compensation benefits;
 - (ii) provide common law liability as required by law in Western Australia;
 - (iii) provide a waiver of subrogation in favour of the Principal and the Participants, and their Related Bodies Corporate; and
 - (iv) extend to include industrial diseases, common law supplied on an "A" and "B" class mine under the applicable Legislation.
 - (b) **Public and Product Liability insurance.** The Contractor must insure against all Third Party Claims and the insurance must:
 - (i) provide cover for general and public liability to a limit not less \$20,000,000.00 in respect of any one occurrence arising out of the same source or original cause and unlimited as to the number of claims; and
 - (ii) include an indemnity and waiver in respect of any vicarious liability of the Principal.
 - (c) **Motor Vehicle insurance.** The Contractor must ensure that all motor vehicles used or brought onto the Site are kept licensed in accordance with any Legislation and insured against Third Party Claims under a comprehensive motor vehicle third party liability policy. The limit of liability must be not less than \$20,000,000.00 for any one occurrence and unlimited as to the number of occurrences;
 - (d) **Professional Indemnity insurance.** Where the Services include professional services as nominated in the Agreement, the Contractor must take out professional indemnity insurance in respect of the supply of the Services to cover for liability to a limit of not less than \$10,000,000.00 in relation to any one claim;
 - (e) **Contractor's Equipment insurance.** The Contractor must insure all items of the Contractor's Equipment that the Contractor brings onto Site for an amount of not less than its full replacement value (unless otherwise insured) to the satisfaction of the Principal; and
 - (f) any other insurances required by Legislation or regarded as Good Industry Practice.
- 19.2 The Contractor must provide evidence of the currency of insurance to the Principal at any time upon request.
- 19.3 The Contractor must ensure any Subcontractor engaged by the Contractor in relation to the Goods and/or Services effects and maintains the insurances nominated in this clause 19.
- 19.4 If the Contractor fails to effect or maintain any of the insurances, or have any Subcontractor effect or maintain any insurances, as specified in this clause, then the Principal may at the Contractor's cost:
- (a) effect and maintain that insurance;
 - (b) pay the necessary premiums; and
 - (c) recover from the Contractor the amount paid by the Principal under this clause.
- 20 Title and Risk**
- 20.1 Title in any Goods passes to the Principal when the Principal pays for the relevant Goods or when such Goods are applied in the course of provision of the Services, whichever is the first to occur.
- 20.2 To the extent permitted by law, the Contractor enters onto the Site and supplies the Goods and/or Services under the Agreement at its own risk. Risk in any Goods remains with the Contractor until delivery to the Principal.
- 21 Liability and Indemnities**
- 21.1 The Contractor is liable for and must hold harmless and indemnify on demand the Principal and its Personnel 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 Personnel under or in connection with the provision of the Goods and/or Services or this Agreement, whether or not the acts or omissions are in tort (including negligence), breach of contract or otherwise regarding the Agreement, except to the extent that the loss is caused by the negligence, acts or omissions of the Principal or its Personnel.
- 21.2 Notwithstanding anything in the Agreement to the contrary but subject to clause 21.3, neither Party will be liable to the other for any Excluded Loss.
- 21.3 The exclusion of liability in clause 21.2 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, dishonesty, wilful misconduct or misrepresentation of the Contractor and/or any of its Personnel;
 - (e) any penalty imposed for breach of Legislation in connection with the supply of the Goods and/or Services by the Contractor;
 - (f) for breach of clause 22 or 23; or
 - (g) any loss arising from an occurrence which should be covered by a policy of insurance in the name of the Contractor required under the Agreement.
- 22 Intellectual Property**
- 22.1 Each of the Parties grants the other a non-exclusive, royalty free licence to use its Background IP to the extent necessary to enable it to perform its obligations under the Agreement.
- 22.2 The Contractor acknowledges and agrees that all Intellectual Property created in connection with the Agreement will vest in the Principal, and the Contractor hereby assigns all rights, title and interest in and to the Intellectual Property to the Principal.
- 22.3 The Contractor must not disclose, reproduce or otherwise deal with the Intellectual Property, or allow any other person to do the same, for any purpose other than to provide Goods and/or Services under the Agreement.
- 22.4 The Contractor warrants that:
- (a) it owns the Background IP and that the use of the Background IP does not and will not infringe any Intellectual Property Rights of third parties;
 - (b) the provision of the Goods and/or Services does not and will not infringe the Intellectual Property Rights of any third party;
 - (c) it will, at no further cost to the Principal, 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;
 - (d) the Intellectual Property created in connection with this Agreement does not and will not infringe any Intellectual Property Rights; and
 - (e) the Contractor has the right to assign all Intellectual Property to the Principal in accordance with clause 22.2.

23 Confidential Information

23.1 Each Party must ensure that all Confidential Information is kept confidential and is not disclosed directly or indirectly to a third party without prior written approval of the other Party, unless the Confidential Information:

- (a) was in the Party's possession prior to the date of the Purchase Order (other than any information that was provided directly or indirectly by the other Party or which is the subject of a confidentiality obligation between the Parties);
- (b) becomes generally available to the public or is in the public domain through no fault of the Party;
- (c) is required to be produced by order of a court or under the requirements of any Legislation or stock exchange listing rule, provided that in those circumstances, the Party must notify the other Party as soon as reasonably practicable to enable the other Party to take steps as it considers necessary to resist production, pending which the Party must take all reasonable steps to resist (or where that is not practicable, to minimise) any production of Confidential Information, subject to the prior written approval of the other Party; or
- (d) was obtained from a third party without an obligation of confidentiality.

24 Conflict of Interest

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

25 Taxes

25.1 If GST has application to any supply made by the Contractor under or in connection with the Agreement, 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 Principal 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 Principal for the supply by the prevailing GST rate.

25.2 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 Principal's behalf.

26 Assignment and Subcontracting

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

27 Force Majeure

27.1 If a Party is prevented from carrying out the whole or any part of its obligations under the Agreement 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.

27.2 The obligations of the affected Party, so far as they are 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 Agreement. 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 Agreement.

27.3 Notwithstanding any provision of the Agreement, 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 Agreement by written notice to the other Party.

28 Forced Labour or Slavery

28.1 The Contractor warrants that:

- (a) it has thoroughly investigated its labour practices, and those of its Personnel, to ensure that there is no Forced Labour or Slavery used anywhere in the Contractor's business or by any of its Personnel;
- (b) it has put in place all necessary processes, procedures, investigations and compliance systems to ensure that the warranties made in this clause will continue to be the case at all times; and
- (c) it has taken, and will take in the future, all necessary actions and investigations to validate the warranties made in this clause.

29 Bribery and Corruption

29.1 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 Principal 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 Principal 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.

29.2 The Contractor must, and must ensure that its Personnel, immediately report to the Principal any offer, payment, rebate or other benefit, or any receipt of any payment, benefit or rebate of the kind referred to in clause 29.1.

30 Dispute Resolution

30.1 If an issue or dispute arises in connection with the Agreement, the Parties agree, prior to the initiation of any legal proceedings, to use their best efforts in good faith to reach a reasonable and equitable resolution of the dispute.

30.2 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.

30.3 Despite the existence of a dispute, the Contractor must continue without delay to perform its obligations under the Agreement.

30.4 Nothing in this clause prevents either Party from applying to a court for urgent injunctive relief.

31 Notices

31.1 Any notice, approval, consent or other communication in relation to the Agreement 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 Principal, the Principal'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.

31.2 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.

32 Other Matters

32.1 **Survival** – Clauses 3, 9, 21, 22, 23 and 32 survive the expiry or earlier termination of the Agreement.

32.2 **Agreement terms** – The terms and conditions of the Agreement may not be varied, unless agreed upon by both Parties and documented in writing.

32.3 **Waiver** – Waiver of any right arising from a breach of the Agreement must be in writing and executed by the Party granting the waiver. Failure by the Principal 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 Agreement as a whole.

32.4 **Governing law and jurisdiction** – The Parties accept the laws of the State of Western Australia as the governing law of the Agreement submit to the exclusive jurisdiction of the Courts of the State of Western Australia.

32.5 **Counterparts** – This Agreement may be executed in counterparts. All counterparts of the Agreement, taken together, constitute one instrument.

32.6 **Entire Agreement** – The Agreement 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.

32.7 Relationship between the Parties –

- (a) The Principal and the Contractor are independent contracting parties and nothing in the Agreement will make either Party an agent or legal representative of the other for any purpose whatsoever. Nor does the Agreement grant either Party any authority to assume or to create an obligation on behalf or in the name of the other Party.
- (b) The Principal 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 lift insurance.