

Purchase Order Terms and Conditions

Interpretation – definitions are at the end of these terms and conditions.

1. Supply of Goods & Services

1.1 The Supplier must supply the Goods and/or provide the Services to WPH in accordance with, and as specified in the Purchase Order.

1.2 The Parties agree that the Supplier's obligations under this clause 1 are material obligations, breach of which entitles WPH to terminate this Agreement immediately under clause 14.1.

2. Conditions as to quality and description of the Goods

2.1 The Goods must match the description (including performance criteria) in this Agreement. If the Supplier gave WPH a sample of the Goods before it entered into this Agreement, the Goods must correspond with the sample in addition to matching the description.

2.2 The Goods must comply with any relevant standard of the Standards Association of Australia and any other standards specified in the Purchase Order.

2.3 The Goods must be fit for the purpose for which Goods of the same kind are commonly supplied and for any other purpose specified in the Purchase Order.

2.4 The Goods must be new and of merchantable quality.

2.5 The Goods must be clearly marked with the identification marks specified in this Agreement. These identification marks must also be shown on drawings and on dispatch and shop lists.

2.6 Any computer software or hardware supplied in connection with the Goods must operate properly and in accordance with any specifications that may be set out in this Agreement.

2.7 The Parties agree that the Supplier's obligations under this clause 2 are material obligations, breach of which entitles WPH to terminate this Agreement immediately under clause 14.1.

3. Conditions as to quality of Services

3.1 The Services must match the description of the Services in this Agreement.

3.2 If the Supplier provided WPH with:

(a) a demonstration of the Services; and or

(b) a result achieved by the Services before WPH entered into this Agreement,

the Services must correspond in quality with the Services that achieved that result.

3.3 The Services must be performed by appropriately qualified and trained personnel.

3.4 The Services must be performed with due care and skill.

3.5 The Services must be fit for the purposes for which those types of Services are commonly bought and for any other purposes specified in the Purchase Order.

3.6 Any items which the Supplier uses or supplies in conjunction with the Services must be of merchantable quality, comply with any applicable standards of the Standards Association of Australia and any other standards specified in this Agreement and be fit for their usual purpose and any purpose specified in the Purchase Order.

3.7 The Parties agree that the Supplier's obligations under this clause 3 are material obligations, breach of which entitles WPH to terminate this Agreement immediately under clause 14.1.

4. Inspection and information

4.1 At any time before the Delivery Date or the Completion Date (as the case may be), the Supplier must (on request of WPH) keep WPH fully informed on all aspects of the delivery of the Goods and/or the performance of any Services.

4.2 The Supplier must provide to WPH at its request:

(a) copies of all Technical Materials relating to the Goods and/or Services;

(b) progress reports setting out, in such detail as WPH requests, the different stages of design, manufacture and testing of the Goods and/or Services; and

(c) a detailed program for the projected supply of the Goods and/or Services.

4.3 At all reasonable times, WPH has the right to:

- (a) inspect, examine and witness tests on the Goods or, the performance of the Goods;
- (b) inspect, examine and witness tests on any Services or their results; and
- (c) carry out site inspections,

at the Supplier's premises and at the premises of any of the Supplier's sub-contractors.

- 4.4 The Supplier agrees to ensure that WPH and its representatives are provided with access to the premises and that all facilities required for WPH and its representatives to inspect, examine and witness the testing of the Goods and/or Services are made available to them.
- 4.5 The Supplier must advise WPH when any part of the Services has been completed and is ready for review, inspection, examination or witnessing of testing.
- 4.6 The Supplier must give WPH and its representatives 10-days' notice of the date the Goods will be ready for delivery, final inspection or for performance tests prior to delivery, so that WPH or its representatives can be present.
- 4.7 If, as a result of WPH's review, inspection, examination, or witnessing of testing, WPH is not satisfied that the Goods and/or any Services will comply in all respects with this Agreement and WPH informs the Supplier in writing of its dissatisfaction, the Supplier agrees (at the Supplier's cost) to take such steps as are necessary to ensure compliance with this Agreement.
- 4.8 Any review, inspection, examination or witnessing of testing that WPH undertakes prior to delivery of the Goods and/or provision of Services does not relieve the Supplier of its responsibilities under this Agreement.
- 4.9 The Supplier is required to make the rights contained in this clause a condition of any sub-contract work.

5. Performance of the Services

5.1 The Supplier must, in performing the Services:

- (a) use best endeavours not to interfere with any of WPH's activities, or the activities of any other person, on the Site;
- (b) be aware of, comply with, and ensure that all Supplier Personnel comply with:
 - (i) all applicable laws regulations and industrial awards and agreements, including all applicable safety, health and environment laws and regulations; and
 - (ii) all safety, health and environment guidelines, rules and procedures provided to the Supplier by WPH or specified in this Agreement;
 - (iii) all WPH's rules and regulations affecting the security, entry and exit control, traffic control and similar matters in and around the Site relating to the delivery of the Goods and performance of any Services; and
 - (iv) all directions and orders given by WPH's representatives; and
- (c) ensure that the area of the Site used by the Supplier is left secure, clean, orderly and fit for immediate use.

6. WPH's Site requirements

6.1 The Supplier shall ensure that:

- (a) if so required by WPH, all Supplier Personnel attend WPH's Site induction prior to entering the Site;
- (b) when on Site all Supplier Personnel wear personal protective equipment which is required by WPH to be supplied by the Supplier at its cost;
- (c) any hazardous substances which are to be brought on to or delivered to Site, are first reported to WPH;
- (d) any incident or accident (including near misses) on Site is immediately reported to WPH by means of the appropriate form of notice available on Site or other form of notice as advised by WPH; and
- (e) all Supplier Personnel abide by WPH's safety policies and procedures, and comply with all lawful directions and instructions given by WPH personnel.

7. Plant & equipment

- 7.1 Unless this Agreement provides otherwise, the Supplier agrees to supply, at its own expense, all labour, plant, equipment, tools, appliances or other property and items it requires to fulfil its obligations under this Agreement.
- 7.2 Any plant, equipment, tools, appliances or other property and items that WPH provides to the Supplier to enable it to complete this Agreement remains WPH's property and must only be used for the purposes of fulfilling the Supplier's obligations under this Agreement.
- 7.3 The Supplier must keep WPH's property in good order and condition, subject, in certain specified cases, to fair wear and tear.

7.4 The Supplier is responsible and must compensate WPH for any loss or damage to or waste of the Site or property by the Supplier Personnel.

8. Price

8.1 WPH agrees to pay the Supplier the Price specified in the Purchase Order.

8.2 Unless the Purchase Order provides otherwise, the Price is inclusive of:

- (a) all charges for packaging, packing, insurance and delivery of the Goods in accordance with this Agreement;
- (b) the cost of shipping, transporting, loading and unloading the Goods and the Supplier's plant, equipment, materials, tools and appliances required to perform this Agreement;
- (c) the cost of the Services and any items used or supplied in conjunction with the Services;
- (d) all Taxes other than GST.

8.3 Subject to clause 14.7, the Price may not be increased without WPH's prior written consent. WPH has the right in its absolute sole discretion to refuse to give its consent.

9. Invoicing and payment

9.1 Unless the Purchase Order states that progress payments are to be made, the Supplier must invoice WPH for the Price (determined in accordance with clause 8) upon delivery of the Goods and/or upon completion of the Services.

9.2 Where progress payments are to be made, the Supplier must invoice WPH at the end of each calendar month (or other period specified in this Agreement) for Services performed by the Supplier in that month or that period (as the case may be).

9.3 When submitting its invoice under clause 9.1 the Supplier must provide WPH with all relevant records to enable WPH to calculate and/or verify the amount of the invoice together with the Purchase Order number. If the invoice is not provided in accordance with this clause 9.3, WPH has no obligation to pay the Supplier until the invoice is rectified.

9.4 WPH will pay all invoices rendered to it by the Supplier under clause 9.1 within 30 days of the end of month in which WPH received that invoice, except where WPH:

- (a) exercises its right to retain part of the Price pursuant to this clause 9; or
- (b) disputes the invoice, in which case:
 - (i) WPH will pay the undisputed part of the relevant invoice (if any) and dispute the balance; and
 - (ii) if the resolution of the dispute determines that WPH is to pay an amount to the Supplier, it will pay that amount upon resolution of that dispute.

9.5 WPH may reduce any payment due to the Supplier under these terms by any amount for which the Supplier is liable to WPH, including costs, charges, damages and expenses. This does not limit WPH's right to recover those amounts in other ways.

9.6 Unless otherwise specified, any money payable under this Agreement is to be paid in Australian currency.

9.7 If this Agreement involves the supply of Goods and/or Services on a cost plus basis WPH has the right to conduct an audit of the basis of the Supplier's charges using the Supplier's records. This right continues for 12 months after WPH pays the relevant invoice.

10. Title and risk

10.1 Title to and risk in the Goods does not pass to WPH until:

- (a) WPH takes delivery of the Goods; and
- (b) WPH inspects and accepts the Goods.

10.2 The Supplier warrants that:

- (a) it has complete ownership of the Goods supplied free of any liens, charges and encumbrances and will provide the Goods to WPH on that basis; and
- (b) WPH will be entitled to clear, complete and quiet possession of the Goods.

11. Delivery and/or Completion

11.1 Except where the Agreement provides otherwise, the Supplier is responsible for ensuring that the Goods are properly packed and delivered by the time or times and to the place specified in the Purchase Order.

11.2 The Supplier must deliver the Goods to WPH by such means as is specified in this Agreement.

- 11.3 If the quantity of Goods delivered is greater than that specified in the Purchase Order, WPH may return any excess quantities to the Supplier at the Supplier's sole risk and expense.
- 11.4 The Supplier must supply a packing list, or delivery docket for each carton or box delivered to WPH. The packing list or delivery docket must be attached to the outside of the package of Goods in a waterproof envelope.
- 11.5 For consignments with a gross dead weight of more than 15 kilograms, the Supplier must clearly mark the Goods with a "Caution Heavy Load" sticker.
- 11.6 If, for reasons not attributable to WPH, the Supplier fails to deliver the Goods to the delivery point on the delivery date specified in the Purchase Order, the Supplier shall pay to WPH such liquidated damages in the amount specified in the Purchase Order commencing from the day following the delivery date. If no liquidated damages are specified in the Purchase Order, WPH will be entitled to its actual damages.

12. Acceptance of the Goods and Services

- 12.1 WPH will not be deemed to have accepted any Goods or Services until it has had a reasonable time to inspect the Goods after delivery and to inspect and test the results of any Services after performance. Payment for the Goods and any Services or the signing of delivery receipts before inspection does not constitute acceptance of the Goods or the Services.
- 12.2 If, during the Warranty Period, WPH finds any Goods to be Defective Goods, it may:
- (a) reject the Defective Goods by making them available for collection by the Supplier; or
 - (b) make good the Defective Goods.
- 12.3 If, during the Warranty Period, WPH finds any Services to be Defective Services, it may:
- (a) reject the Defective Services by notifying the Supplier that it is rejecting them; or
 - (b) make good the Defective Services.
- 12.4 At WPH's option and request, the Supplier agrees to:
- (a) refund to WPH any payments made by WPH in respect of any Defective Goods and any Defective Services that WPH rejects; or
 - (b) make good free of charge any Defective Goods and any Defective Services that WPH rejects; or
 - (c) reimburse WPH for any expenses WPH incurs in making good any Defective Goods and any Defective Services, under clauses 12.2 and 12.3.
- 12.5 WPH's inspection, testing or acceptance of some or all of the Goods or Services does not in any way:
- (a) change or affect the Supplier's obligations under this Agreement; or
 - (b) affect WPH's rights to claim for any damage or loss WPH may suffer because of the Supplier's breach of warranty or failure to fulfil any of its other obligations under this Agreement.
- 12.6 If WPH decides to accept some Goods or some Services from the Supplier which do not comply with the terms of this Agreement, this decision does not bind WPH to accept future shipments of Goods or the future performance of Services which do not comply with the terms of this Agreement. Payment for Goods or work done prior to inspection is not to be construed as an acceptance of defective Goods or Services by WPH.
- 12.7 Any repairs or replacement Goods provided by the Supplier under this clause will be subject to the same warranty as the original Goods, from the date of repair or replacement.
- 12.8 Any Services that are re-performed or made good by the Supplier under this clause will be subject to the same warranty as the original Services, from the date of re-performance or on which the Services were made good.
- 12.9 The remedies provided in this clause do not exclude any other remedies provided by law.

13. Third Party Warranties

- 13.1 Where the Goods or any materials, parts or components of the Goods supplied to WPH are manufactured or supplied by a party or parties other than the Supplier, the Supplier must procure from the parties the best reasonably obtainable warranties in respect of the Goods or such materials, parts or components of the Goods that are manufactured by third parties and shall ensure that WPH has the benefit of those third party warranties.

14. Termination, variation and suspension of the Agreement

- 14.1 Either Party may immediately terminate this Agreement by notice in writing to the other Party if:
- (a) the other Party does not carry out its material obligations under this Agreement;
 - (b) the other Party is otherwise in default under this Agreement and does not remedy such default within seven (7) days of receipt of notice requiring it to do so; or

- (c) the other Party becomes insolvent or enters receivership or administration.
- 14.2 WPH may vary or terminate this Agreement or part of this Agreement at any time upon not less than 21 days' written notice to the Supplier.
- 14.3 When the Supplier receives a notice of variation from WPH, it must:
- (a) vary this Agreement in accordance with WPH's notice; and
- (b) send WPH a Written Claim prepared in accordance with clause 14.5 with an adjusted Price for this Agreement within 30 days of the effective date of variation.
- 14.4 When the Supplier receives a notice of termination from WPH, the Supplier must:
- (a) stop work to the extent required by the notice;
- (b) take such action as necessary or as WPH directs, for the transfer, protection and preservation of WPH's property;
- (c) use its best endeavours to minimise the cost of termination to WPH; and
- (d) where the notice is given under clause 14.2, send WPH a Written Claim prepared in accordance with clause 14.6 with an adjusted Price for this Agreement within 30 days of the effective date of termination.
- 14.5 The Supplier's Written Claim under clause 14.3(b) must:
- (a) set out all costs incurred to date in relation to the Agreement;
- (b) set out all costs and cost savings that result from the variation of this Agreement; and
- (c) where the Agreement has been terminated, not specify an adjusted Price that is greater than the Price specified in this Agreement.
- 14.6 The Supplier's Written Claim under clause 14.4(d) must include only:
- (a) the Price for Services provided to WPH prior to the effective date of termination and not included in any previous payment by WPH;
- (b) the cost of materials reasonably ordered by the Supplier for the purpose of providing the Services, which the Supplier is legally liable to accept and cannot otherwise utilise, but only if the materials become the property of WPH upon payment;
- (c) costs reasonably incurred by the Supplier in the expectation of providing the Services for the Term, and not included in any previous payment by WPH;
- (d) reasonable costs of demobilisation; and
- (e) the reasonable costs of complying with any directions given by WPH upon, or subsequent to, termination.
- 14.7 WPH has the right to audit the Supplier's Written Claim.
- 14.8 If:
- (a) WPH is satisfied that the adjusted Price specified in the Supplier's Written Claim has been prepared in accordance with this clause 12 and is equitable; and
- (b) the termination or variation of this Agreement is not a result of any default or action on the Supplier's part, or on the part of the Supplier Personnel (including, without limitation, any of the events specified in clauses 12.1), then
- (c) in the case of a variation of this Agreement, the adjusted Price will apply to this Agreement; and
- (d) in the case of a termination of this Agreement, the Supplier may invoice WPH for the amount of the Written Claim, which invoice shall be payable subject to and in accordance with clause 9.
- 14.9 Any expiration or termination of this Agreement does not affect:
- (a) any rights of the Parties which may have accrued before the date of termination; and
- (b) the rights and obligations of the Parties under clauses 17, 19 and 20 which survive termination of this Agreement.
- 14.10 WPH has the right, at any time and for any reason, to suspend this Agreement or any part of this Agreement by giving the Supplier notice.
- 14.11 When the Supplier receives a notice of suspension from WPH, it must suspend this Agreement until such time as WPH directs that the Agreement is no longer suspended. At such time, the Supplier must promptly recommence the performance of its obligations under this Agreement.

- 14.12 Where the termination or suspension of this Agreement is not a result of any default or action on the Supplier's part, or on the part of the Supplier Personnel, WPH will reimburse the Supplier for the verified additional demobilisation costs the Supplier incurred as a direct consequence of the termination or suspension.
- 14.13 Notwithstanding in other provision in this Agreement, WPH will not be liable to the Supplier for any anticipated profit or unperformed work.
- 15. Independent contractor**
- 15.1 Both parties acknowledge that the Supplier is WPH's contractor and not WPH's employee or agent.
- 15.2 The Supplier must ensure that each of its sub-contractors acknowledges in each sub-contract that the sub-contractor is the Supplier's contractor and not its employee or agent.
- 16. Insurance**
- 16.1 The Supplier must take out and maintain during the period of this Agreement:
- (a) insurance for the Goods up to the time they are delivered and installed (if required) for an amount not less than their replacement value;
 - (b) a comprehensive public and products liability policy to cover all sums which the Supplier may become legally liable to pay as compensation consequent upon:
 - (i) death of, or bodily injury (including disease or illness) to, any person; and
 - (ii) loss of, or damage to, property, happening anywhere in Australia arising out of or in connection with this Agreement. The limit of liability provided by this policy for each and every event must be not less than \$20 million.
 - (c) insurance in respect of all claims and liabilities arising, whether at common law or under statute relating to workers compensation or employer's liability, from any accident or injury to any person employed by the Supplier in connection with the Goods or Services and the Supplier must ensure that all sub-contractors are similarly insured in respect of their employees. This insurance must be in compliance with the laws of the relevant jurisdiction in which the Services are to be carried out;
 - (d) a policy of insurance against any and all liability, loss of and damage to any plant, equipment, tools, appliances or other property owned, rented or hired by the Supplier and used in relation to this Agreement;
 - (e) professional indemnity insurance with a limit of liability of not less than \$5 million for each and every occurrence or such other amount as specified in the Purchase Order in respect of the performance of Services in connection with this Agreement;
 - (f) comprehensive motor vehicle third party liability insurance for any vehicle owned or used by the Supplier. The limit of liability under the third party property section of the policy must be not less than \$20 million for each and every occurrence; and
 - (g) other insurances required by law or reasonably required by WPH.
- 16.2 The Supplier must ensure that the policies of insurance noted in clauses 16.1(b) and 16.1(c) shall include a principles indemnity extension and waiver of subrogation in favour of WPH.
- 16.3 Unless agreed otherwise by WPH, any sub-contract must require the sub-contractor to effect and maintain insurance required to be taken out by the Supplier under this Agreement including workers compensation, public liability, and motor vehicle third party liability insurance. The Supplier must not permit any sub-contractor to enter upon the Site or continue to provide any Goods or Services, unless it remains insured.
- 16.4 The Supplier must notify WPH immediately of any cancellation of a relevant insurance policy and of any change to the policy which affects WPH's interests.
- 16.5 If any event occurs which may give rise to a claim involving WPH under any policy of insurance to be taken out by the Supplier under this clause then the Supplier must:
- (a) notify WPH within 14 days of that event; and
 - (b) ensure that WPH is kept fully informed of any subsequent actions and developments concerning the relevant claim.
- 16.6 At WPH's request, the Supplier must produce certificates of insurance evidencing that it is maintaining the insurances required by this clause.
- 16.7 The Supplier's obligations to insure under this clause are material obligations of this Agreement. Without limiting WPH's rights at law in equity or otherwise under this Agreement, any failure by the Supplier to comply with a provision of this clause entitles WPH to terminate this Agreement and to have the right to set off against any sum payable to the Supplier all costs and expenses WPH incurs in taking out and maintaining a policy of insurance which the Supplier has failed to take out as required under this clause.

17. Liability and indemnities

- 17.1 The Supplier acknowledges that if it enters the Site, it does so at its own risk. The Supplier must ensure that the Supplier Personnel are also aware that they enter the Site at their own risk.
- 17.2 The Supplier will be liable for, and will indemnify WPH and keep WPH indemnified from and against, and will release WPH from any claim in relation to, any liability and/or any loss or damage of any kind whatsoever arising directly or indirectly from:
- (a) any breach of any warranty or any of the other terms and conditions of the Agreement by the Supplier;
 - (b) the illness, injury or death of any of the Supplier Personnel arising out of or in connection with this Agreement;
 - (c) any loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by:
 - (i) the Goods and the performance of any Services by the Supplier; and/or
 - (ii) the entry onto, and the activities undertaken on and in, the Site by the Supplier and/or the Supplier Personnel.
 - (d) any negligence or wilful act or omission by the Supplier and/or any of the Supplier Personnel in connection with this Agreement;
 - (e) any claim made against WPH by any of the Supplier Personnel in respect of any relevant legislation concerning income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal;
 - (f) any penalty imposed for breach of an applicable law in connection with the performance of the Services by the Supplier;
 - (g) loss or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by the Supplier and used in relation to this Agreement; and
 - (h) any claim that the Goods, anything the Supplier does in supplying WPH with the Goods or providing WPH with any Services, or WPH's use of the Goods or the results of the Services infringes or allegedly infringes the intellectual property rights of any person;

except to the extent that any liability, loss or damage is solely and directly caused by WPH's judicially determined wilful misconduct or negligence or that of WPH's employees, agents, contractors and sub-contractors (other than the Supplier).

- 17.3 Every exemption, limitation, defence, immunity or other benefit contained in this Agreement to which WPH is entitled will also be held by WPH to the benefit of, and will extend to protect, each of WPH's employees, agents, contractors and sub-contractors (excluding the Supplier and the Supplier Personnel).
- 17.4 Each indemnity in this Agreement is a continuing obligation separate and independent from the Supplier's other obligations and survives termination of this Agreement.
- 17.5 It is not necessary for WPH to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.
- 17.6 If WPH enters this Agreement as agent for and on behalf of joint venture partners, the liability of each of those joint venture partners under this Agreement is several and not joint, nor joint and several.

18. Compliance with laws

- 18.1 The Supplier must comply in all respects with all applicable laws in discharging its obligations under this Agreement.
- 18.2 If any addition or alteration is required to be made to the Goods in order to comply with applicable laws then the Supplier shall promptly acquire and install such addition or make such alteration upon becoming aware of the requirement.

19. Intellectual property

- 19.1 WPH acknowledges that the Supplier remains the owner of all Background IP.
- 19.2 The Supplier gives WPH a non-exclusive, transferable, royalty free licence to use all Background IP to the extent necessary to enable WPH to exercise rights in the Project IP.
- 19.3 The Supplier acknowledges and agrees that all Project IP shall be vested in WPH and shall be WPH's property as and when created and the Supplier hereby assign all rights, title and interest in and to the Project IP to WPH (including but not limited to the Project IP created prior to or after the date of this Agreement).
- 19.4 WPH gives the Supplier a non-exclusive, non-transferable, revocable licence to reproduce and use the Project IP as necessary for the purpose of completing this Agreement. WPH has the right to revoke this licence at any time by notice in writing to the Supplier.
- 19.5 The Supplier must not disclose, reproduce or otherwise deal with the Project IP, or allow any other person to do the same, for any purpose other than to complete this Agreement.

- 19.6 The Supplier warrants that:
- (a) it owns the Intellectual Property Rights in the Background IP and that the use of the Background IP does not and will not infringe any rights of third parties (including, without limitation, any Intellectual Property Rights);
 - (b) the supply of Goods and/or provision of Services does not and will not infringe the rights (including, but not limited to, Intellectual Property Rights) of any third party;
 - (c) it will, at no further cost to WPH, procure all licences and consents to use any Intellectual Property Rights of a third party which are necessary to provide the Services;
 - (d) the Project IP does not and will not infringe any rights of third parties (including without limitation any Intellectual Property Rights); and
 - (e) it has the right to assign all Project IP to WPH in accordance with clause 19.3.
- 19.7 The Supplier agrees that any sub-contract it enters into in relation to this Agreement will contain a condition that the sub-contractor agrees to assign to WPH all Intellectual Property Rights in any Project IP created by it for the purposes of this Agreement.
- 19.8 The Supplier agrees to notify WPH as soon as it becomes aware of any suspected, threatened or actual infringement of any Intellectual Property Rights in the Project IP and to provide all reasonable assistance in defending against such infringement
- 19.9 The Supplier agrees to provide all reasonable assistance WPH may request to protect the Intellectual Property Rights in the Project IP.
- 19.10 The obligations in this clause continue after this Agreement is terminated.

20. Confidential information

- 20.1 The Supplier agrees that it will hold all Confidential Information in confidence and will not (except in the proper course of its duties under this Agreement or as required by law or by the other Party) disclose to any person any Confidential Information.
- 20.2 Nothing in this Agreement prohibits disclosure of information which:
- (a) is in the public domain;
 - (b) after disclosure to the Supplier becomes part of the public domain otherwise than as a result of the wrongful act of the Supplier;
 - (c) is received from a third party provided that it was not acquired directly or indirectly by that third party from the Supplier; or
 - (d) is required to be disclosed by law or any government or governmental body, authority or agency having authority over the Supplier.
- 20.3 The obligations under this clause 20 survive termination of this Agreement.
- 20.4 The terms of this Agreement may be disclosed to:
- (a) any legal, financial and other adviser of a Party;
 - (b) the auditor of a Party; or
 - (c) a bona fide prospective purchaser of a Party or the business of that Party,
- provided that such bona fide prospective purchaser agrees to keep the terms of this Agreement confidential in accordance with clause 20.

21. Taxes

- 21.1 Unless this Agreement provides otherwise, 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 Supplier's account. The Supplier will be responsible for the payment of those Taxes and will provide documentary evidence of the payment of those Taxes if made on WPH's behalf.
- 21.2 Without limiting clause 21.1, the Supplier will be solely liable for income tax imposed on it in respect of income derived by it in the provision of the Goods and/or performance of the Services.
- 21.3 If GST has application to any supply made by the Supplier under or in connection with this Agreement, the Supplier may, in addition to the consideration payable or to be provided for the supply, subject to issuing a Tax Invoice, recover from WPH an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable or to be provided by us for the supply by the prevailing GST rate.
- 21.4 If any change in the GST law is accompanied by or undertaken in connection with a reduction in or abolition of any then existing Taxes (including, without limitation, the allowance to any person of a rebate, credit, grant or any other amount referable to a Tax), the consideration (excluding any GST) payable by WPH will be reduced by the same amount as the Supplier's actual total costs are reduced as a consequence of a reduction in or abolition of Taxes, whether directly by way of a reduction in or abolition of Taxes paid or payable by the Supplier to its third party suppliers or to any government, or indirectly

by way of reduction in the prices (excluding any GST) charged by third party suppliers to the Supplier or the allowance to the Supplier or any other person of a rebate, credit, grant or any other amount referable to a Tax (whether such Tax has been paid or is payable by the Supplier or any other person).

- 21.5 If it is determined on reasonable grounds that the amount of GST paid or payable by the Supplier on any supply made under or in connection with this agreement differs for any reason from the amount of GST recovered or recoverable from WPH then the amount of GST recovered or recoverable from WPH shall be adjusted accordingly.
- 21.6 Where the amount of GST recovered or recoverable from WPH is adjusted pursuant to clause 21.5 and this gives rise to an Adjustment from an Adjustment Event the Supplier must provide an Adjustment Note to WPH.
- 21.7 All amounts payable by WPH to the Supplier by way of reimbursement of an amount paid or payable by the Supplier to any other person, or calculated on the basis of amounts incurred or to be incurred by the Supplier, shall be calculated on the basis of such amounts paid or payable by the Supplier, or costs incurred or to be incurred by the Supplier, excluding any applicable amount in respect of GST incurred by the Supplier to the extent to which the Supplier is entitled to an input tax credit in respect of such GST or amount.

22. Assignment & sub-contracting

- 22.1 The Supplier may not assign or sub-contract its rights and/or obligations under this Agreement without WPH's prior written consent.
- 22.2 WPH has the right to assign any or all of its obligations or rights under this Agreement at any time to any third party that is financially capable of meeting WPH's obligations under this Agreement.
- 22.3 Sub-contracting does not relieve the Supplier from any liability or obligation under this Agreement. The Supplier remains liable to WPH for the acts and omissions of any Supplier, as if they were the Supplier's acts or omissions.

23. Dispute resolution

- 23.1 In this clause 23:
- Act** means the Commercial Arbitration Act (WA);
- Arbitrator** means a single arbitrator appointed pursuant to this clause;
- Award** means an interim or final award by the Arbitrator;
- President** means the president for the time being of the Law Society of Western Australia.
- 23.2 In the event of any dispute or difference between the Parties as to any issue arising under this Agreement that dispute or difference, if unresolved within 7 days after notice in writing of the dispute or difference has been given by a Party to the other Party, shall be referred to an Arbitrator in accordance with the Act.
- 23.3 The Arbitrator shall be a person agreed between the Parties. In default of agreement as to the Arbitrator within 7 days after nomination in writing by any Party the Arbitrator shall be a person appointed by the President.
- 23.4 The arbitration shall be conducted in accordance with the following provisions:
- (a) the arbitration hearing shall be convened and concluded within 30 days after the date of the Arbitrator's appointment;
 - (b) the time permitted for the arbitration hearing shall not exceed 2 days (from 10am to 1pm and 1pm to 4pm on each day) with the presentation of each Party's case not to exceed a rateable proportion of the hearing time without the written agreement of the other Party;
 - (c) the Arbitrator shall deliver an Award with written reasons not later than on the day following the arbitration hearing;
 - (d) forthwith after delivery of the Award the Arbitrator shall determine the liability of the Parties, on to the other, for the costs of the arbitration including the Arbitrator's costs;
 - (e) the arbitration will be conducted according to applicable laws; and
 - (f) no variation to these terms will be permitted except with the written agreement of the parties.
- 23.5 Notwithstanding the existence of a dispute or difference between the Parties and subject to section 44 of the Act:
- (a) the Supplier must continue to supply the Goods and/or Services without delay pursuant to the Agreement; and
 - (b) both Parties must perform their other obligations under this Agreement.

- 23.6 This clause 23 shall not affect the right of a party to seek urgent injunctive relief from a court of competent jurisdiction.

24. Notices

- 24.1 Any notice, approval, consent or other communication in relation to this Agreement must:

- (a) be in writing;
- (b) be marked for the attention of:
 - (i) in the case of a notice to WPH, WPH's Representative; and
 - (ii) in the case of a notice to the Supplier, the Supplier's Representative, and
- (c) be left at or sent by:
 - (i) prepaid ordinary post to the last notified address of the Party; or
 - (ii) facsimile to the last notified facsimile number of the Party; or
 - (iii) email to the last notified address of the Party.

24.2 If posted in Australia, a letter is taken to be received on the second business day after posting.

24.3 If posted overseas, a letter is taken to be received on the seventh business day after posting.

24.4 A facsimile is taken to be received immediately unless the sending party's machine indicates a malfunction in transmission.

24.5 An email is taken to be received immediately unless the sending party receives an email indicating the email was not received by the receiving party.

25. These terms are exclusive

25.1 The Supplier accepts the Purchase Order and agrees to be bound by the terms in this Agreement by executing the Purchase Order, or by delivering any Goods or by starting performance of Services under this Agreement.

25.2 The Purchase Order, when bearing an order number and duly signed on WPH's behalf, is the only form which WPH will recognise as authority for charging Goods and/or Services to its account and supersedes all previous communications and negotiations in relation to the Goods and/or Services.

25.3 Except as may be specifically provided in this Agreement, any terms and conditions contained in or relating to any other documents, including any of the Supplier's documents, in respect of the Goods and/or Services are excluded.

26. Other matters

26.1 Any of WPH's rights under these terms can only be waived by it in writing.

26.2 These terms may not be varied except in writing signed by both Parties.

26.3 WPH may exercise a right, remedy or power in any way it considers appropriate.

26.4 If WPH does not exercise a right, remedy or power at any time, this does not mean that WPH cannot exercise it later.

26.5 To the extent of any inconsistency between the Purchase Order, these General Conditions and any other terms and conditions as may be set out in any attachment to the Purchase Order or referred to in the Purchase Order, then (subject to clause 26.6) the terms and conditions as set out in the Purchase Order prevail to the extent of any such inconsistency, then any terms and conditions in any attachment or reference and then these General Conditions.

26.6 The terms and conditions set out in clause 17 prevail over any inconsistent terms and conditions in this Agreement wherever they may be contained.

26.7 The Supplier must obtain at its own expense any necessary Licences or permits and comply with applicable laws in supplying the Goods and/or the Services to WPH.

26.8 WPH's rights, remedies and powers under this Agreement are in addition to any rights, remedies and powers provided by law.

27. Governing law

27.1 This Agreement is governed by the laws of Western Australia and where applicable the laws of the Commonwealth of Australia. However, the Supplier and WPH agree that the United Nations Convention on Contracts for the International Sale of Goods (adopted at Vienna on 10 April 1980) does not apply in any respect to this Agreement.

27.2 Both Parties agree to submit to the non-exclusive jurisdiction of the courts of Western Australia and, if applicable, the Commonwealth of Australia and the courts of appeal from them.

28. Interpretation

28.1 In this Agreement unless the contrary intention appears:

- (a) a reference to this Agreement or another instrument includes any variation or replacement of either of them;
- (b) the singular includes the plural and vice versa;

- (c) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
- (e) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (f) a reference to an annexure, attachment or schedule is a reference to an annexure, attachment or schedule to this Agreement, and a reference to this agreement includes an annexure, attachment or schedule;
- (g) a reference to a clause is a reference to a clause in this Agreement;
- (h) a reference to a third person or a third party is a reference to a person who is not a party to this Agreement;
- (i) a reference to "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency; and
- (j) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.

28.2 Headings are inserted for convenience and do not affect interpretation of this Agreement.

29. Definitions

In this Agreement unless the contrary intention appears:

Adjustment has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Adjustment Event has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Adjustment Note has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Agreement means this agreement as constituted by the Purchase Order, these General Conditions and any other documents attached to the Purchase Order or referred to in the Purchase Order, including any relevant current agreement between the Parties.

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

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

Company's Representative means the person noted as WPH's Representative in the Purchase Order.

Completion Date means the date specified for Completion of the Services as set out in the Purchase Order.

Confidential Information means all information which is not in the public domain and which is reasonably regarded by WPH as confidential relating in any way to WPH which the Supplier is or becomes aware of in the course of providing the Goods and/or Services, regardless of whether acquire or developed by WPH, the Supplier or a third party.

Defective Goods means goods which are not in conformity with this Agreement or are defective in design, performance, workmanship or makeup.

Defective Services means services or the results of any services which are not in conformity with this Agreement, are of inferior quality or workmanship or are otherwise unsatisfactory.

Delivery Date means the date specified for delivery of the Goods as set out in the Purchase Order.

General Conditions means these Purchase Order Terms and Conditions.

Goods means the goods specified in the Purchase Order (including any part of the goods specified).

GST has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Intellectual Property Rights includes without limitation the protected rights attaching to inventions, patents, registered designs, trademarks, copyright, circuit layouts and confidential information.

Licences means all licences, qualifications, registrations and other statutory requirements necessary for performance of services and supply of goods under this Agreement.

Purchase Order means the service or purchase order issued to the Supplier which incorporates these General Conditions.

Party means the Supplier or WPH.

Parties means the Supplier and WPH.

Price means the price specified in the Purchase Order or the rates for supply of Goods and performance of the Services (as the case may be).

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 supply of Goods or provision of Services or this Agreement (including without limitation all Intellectual Property Rights developed by the Supplier in supplying the Goods and/or providing the Services and any Intellectual Property Rights in the Technical Materials provided by WPH to the Supplier).

Services means the services specified in this Agreement (including any part of the specified services and the results of the specified services).

Site means those premises owned or operated by WPH as specified in the Purchase Order.

Supplier means the person named in the Purchase Order as the supplier of the Goods and/or Services.

Supplier Personnel means all employees, agents, contractors and sub-contractors of the Supplier.

Supplier's Representative means the person noted as the Supplier's contact in the Purchase Order.

Taxes means any and all present and future sales, use, personal, property, real property, value added, goods and services, GST, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on WPH's net income) by any government, governmental, semi-governmental or other relevant authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable.

Tax Invoice has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (C'th).

Technical Materials includes plans, designs, drawings, engineering information, data, specifications, reports, accounts and any other material specified in this Agreement.

Warranty Period means the period of:

- (a) 24 months from the date of delivery or 12 months from the date of installation or initial use of the Goods, whichever is the sooner (in the case of the Goods); or
- (b) 12 months from the date on which the Service is performed (in the case of the Services).

WPH means Western Plant Hire (WA) Pty Ltd.

Written Claim means a written claim given by the Supplier in accordance with clauses 14.3(b) or 14.4(d), and 14.5.