

PART A: GOODS, SERVICES & RENTAL EQUIPMENT

1. DEFINITIONS

In the Purchase Order, unless the context otherwise requires:

Act means the *Building and Construction Industry (Security of Payment) Act 2021 (WA)* or any similar security of payment legislation applicable to the jurisdiction of the Agreement as determined under clause 2.10.

Anti-Bribery & Corruption Laws includes but is not limited to the *Australian Criminal Code Act 1995*, the *US Foreign Corrupt Practices Act 1977*, the *UK Bribery Act 2010*, any other similar applicable laws (including any applicable Australian State or Territory laws) dealing with bribery and corruption offences.

Agreement means the agreement arising from the issue of the Purchase Order commencing on the date determined under clause 2.2 and which incorporates these Purchase Order Standard Terms including any amendments agreed in writing.

Agreement Price means the aggregate amount payable by the Purchaser, as specified in the Agreement.

AGIG means each of the following entities and any entity which is a Related Body Corporate of:

- (a) Australian Gas Infrastructure Holdings Pty Ltd (ABN 22 120 456 573);
- (b) Multinet Group Holdings Pty Ltd (ABN 83 104 036 937);
- (c) the trustees for the DBNGP Trust and the DBNGP WA Pipeline Trust;
- (d) Australian Gas Networks Limited (ABN 19 078 551 685); and
- (e) any entity which is part of the group known as the Australian Gas Infrastructure Group of companies from time to time.

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the State or Territory where

the Site is located; or, if applicable, has the meaning given in the Act.

Claim means any cost, demand, legal proceedings, claims, actions, fines, penalties, obligation, or liabilities of any nature (including reasonable legal costs on a full indemnity basis), arising under any statute or in equity or at common law or otherwise at law of whatsoever nature.

Confidential Information means any information (including technical information, know-how, Data, inventions, trade secrets, formulae, graphs, designs and other related information) or documentation which relates to a party, its Personnel or Related Bodies Corporate, the Agreement, patterns, drawings, specifications, samples and information relating to the Goods, Services or the Purchaser's premises, property or operations which is not already known by the other party or in the public domain.

Consequential Loss means indirect loss or damage, including loss of profit, loss of use, loss of revenue or loss of opportunity.

Corporations Act means the Corporations Act 2001 (Cth).

Data means:

- (a) bulk customer data;
- (b) bulk Personal Information; and
- (c) data as to quantum of gas delivered (both historical and current load demand) from or to any one or more sites (or their connection points),

relating to or obtained in connection with AGIG's operations.

Defect or Defective means any aspect of the Goods, Rental Equipment, or Services not in accordance with the Agreement, or any damage, inadequacy or fault in design, workmanship, quality, performance, composition or appearance of the Goods, Rental Equipment or Services.

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

Delivery Date means the dates for delivery of Goods or Rental Equipment or completion of Services as set out in the Agreement.

Delivery Point means the location specified in the Agreement.

Employee Claim means any claim in respect of death, injury or occupational disease by a member of the Supplier's Personnel which is caused or contributed to by the Supplier or arises out of or in connection with the Agreement.

Force Majeure means an event which is beyond the reasonable control of the party affected and which could not reasonably have been foreseen at the time of entering into the Agreement and which could not reasonably have been provided against or prevented by the party affected.

Goods means the goods, materials, supplies, plant and the like described in the Agreement and includes the performance of any services which are ancillary to and required for the supply of the Goods.

Governmental Authority means a governmental department, authority, instrumentality or agency having jurisdiction over a relevant matter and includes a replacement of any such governmental department, authority, instrumentality or agency that has jurisdiction over that matter.

GST means the goods and services tax imposed under *A New Tax System (Goods & Services Tax) Act 1999*. Words defined in that Act have the same meaning in the Agreement.

Intellectual Property or IP means any invention, patent or application for a patent, design (registered or unregistered), trademark (registered or unregistered), name, copyright (including future copyright), circuit layout, trade secret, know-how, proprietary information or other right in respect of any data, information, process, work, material or method.

Law means (a) laws, statutes, regulations, by-laws, orders, ordinances, proclamations and

decrees; (b) the terms and conditions of any licence, permit, consent, certificate, authority or approvals; (c) any binding requirement, direction or order of a governmental agency; and (d) judicial, administrative or regulatory decrees, judgments or orders.

LD Cap means 10% of the Agreement Price.

Liquidated Damages has the meaning given in clause 19.2.

Loss means damages, liabilities, costs, expenses (including legal costs), Claims or actions.

Modern Slavery Laws means any law of the Commonwealth of Australia or any State or Territory of Australia, and any other applicable law, pertaining to exploitative practices including slavery, servitude, forced labour, human trafficking, debt bondage, child labour and other slavery-like practices.

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

Notice of Delay means a notice specifying the material facts relating to the cause of the delay known to the Supplier, the mitigating measures taken by the Supplier to avoid any delay and the effect of delay on the Delivery Date.

Personal Information has the meaning given in the Privacy Act 1988 (Cth).

Personal Injury includes personal injury, death or disease.

Personnel means directors, officers, employees, servants, agents and subcontractors and their personnel.

Policies and Procedures means the AGIG Sustainable Procurement Standard and any other policies and procedures provided by the Purchaser to the Supplier from time to time or published on the AGIG supplier website, here: <https://www.agig.com.au/suppliers>

Pollution means any alteration to the environment to its detriment or degradation, including the release, discharge, or emission of any substance, pollutant, waste (liquid, solid or gaseous) of whatsoever nature, or the emissions of noise, odour, or excessive levels of electromagnetic

radiation, or the transmission of electromagnetic radiation.

Purchase Order means the document issued by a procurement system confirming the details of the Goods and/or Services and any Rental Equipment requested by the Purchaser, including, pricing and delivery requirements.

Purchaser means the entity subject of a Purchase Order which may be any member of AGIG.

Purchaser Group means the Purchaser, its Purchaser Invitees, its and their respective Related Bodies Corporate and the foregoing's respective agents, representatives, directors, officers, contractors and employees (including agency personnel).

Purchaser Invitee means any person who is not the Purchaser or the foregoing's Related Body Corporate, agent, representative, director, officer, or employee (including agency personnel), but whose presence at the Site is by invitation of one of the foregoing (including representatives of Governmental Authorities and regulatory bodies).

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

Rental Equipment means the equipment and items described in the Agreement for lease to the Purchaser.

Rental Period means the period of time starting on the Delivery Date and ending on the earlier of the date that either the Supplier collects the Rental Equipment or the Purchaser returns the Rental Equipment.

Sanctions Laws includes laws concerning the import, export or re-export of goods, services, or technology and economic or trade sanctions or restrictive measures, including such laws or measures enacted, administered, imposed, or enforced by Australia, the European Union, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), the U.S. Department of State or the United Nations Security Council.

Services means any work or services described in the Agreement to be performed by the Supplier.

Site means the lands, waters and other places where the Goods or Rental Equipment are to be provided or the Services are to be performed.

Subcontractor means a person or company of any tier engaged to supply goods or services directly or indirectly to the Supplier for the purpose of the Services or to execute a portion of the Services.

Supplier has the meaning given in the Agreement.

Supplier Equipment means all tools and equipment that Supplier supplies or is required to supply for the performance of the Goods, Services or Rental Equipment in accordance with the Agreement whether owned, leased or hired.

Supplier's Personnel means the Supplier's directors, officers, employees, agents and contractors.

Tax Invoice has the meaning as defined in *A New Tax System (Goods & Services Tax) Act 1999*.

2. GENERAL

2.1 The Agreement consists of the following documents (and to the extent of inconsistency, will be interpreted in the following order of precedence):

- (a) the Purchase Order;
- (b) any amendments to these Purchase Order Standard Terms agreed in writing;
- (c) these Purchase Order Standard Terms; and
- (d) any documents referenced in the Purchase Order.

2.2 The Agreement commences on the earlier of the date that the Supplier accepts the Agreement or commences supply or delivery of any of the Goods, Services or Rental Equipment under the Agreement.

2.3 The Agreement is not exclusive, and the Purchaser is not required to procure a minimum quantity of Goods, Services or Rental Equipment from the Supplier. The

Purchaser may contract for the same or similar Goods, Services or Rental Equipment with other parties.

2.4 The Supplier's terms and conditions or any other terms and conditions provided by or referred to by the Supplier on any documentation are of no force and effect.

2.5 Any variation to the Agreement must be agreed in writing by both parties.

2.6 Neither party may make any public announcements in any way relating to the Agreement without the other party's prior written consent (not to be unreasonably withheld).

2.7 The Supplier is an independent contractor. Nothing in the Agreement creates a relationship of joint venture, trust, employment, agency or partnership. The Supplier must not hold itself out as an agent of the Purchaser.

2.8 Any formal notice given or made under these terms or conditions must be given by an authorised representative, in writing, and is taken to be given when delivered to the address or email address notified by the intended recipient from time to time.

2.9 The Agreement contains the entire agreement between the parties.

2.10 The Agreement will be governed by the Laws of the State or Territory of Australia where the Site is located. The parties

submit to the non-exclusive jurisdiction of the courts of that State or Territory.

2.11 Clauses 10, 11, 12, 13, 15, 16 and 23 survive termination or expiration of the Agreement.

3. SUPPLY OF GOODS AND SERVICES

3.1 The Supplier will supply the Goods and/or Services or Rental Equipment in compliance with the Agreement.

3.2 The Supplier will complete the Services or deliver the Goods or Rental Equipment to the Delivery Point on or before the Delivery Date.

3.3 The Supplier and Supplier's Personnel must:

- (a) comply, and ensure the Goods, Services and Rental Equipment (as applicable) comply, with all Laws and Australian Standards applicable to the Goods, Services or Rental Equipment.
- (b) comply with all Policies and Procedures and any of the Purchaser's applicable Site-specific policies, inductions, medical or drug and alcohol testing requirements (as notified by the Purchaser from time to time);
- (c) at its expense, obtain and hold all licences, permits, endorsements and other certificates which may be required to perform its obligations under the Agreement;
- (d) pay all fees, deposits and taxes (other than GST);
- (e) ensure that Australian suppliers or subcontractors are given full, fair and reasonable opportunity to supply goods or services that comprise part of or all of the

Goods, Rental Equipment and Services;

Goods, Rental Equipment or Services.

- (f) perform in a safe manner and in a way that does not prejudice safe work practices, safety and care of property and not impede work being performed by the Purchaser's Personnel; and
- (g) act with due care, skill and diligence expected of a skilled and experienced professional contractor providing similar services.

3.5 The Supplier must ensure that the Purchaser has the full benefit of all manufacturer's warranties that may be applicable.

4. TESTING AND INSPECTION

- 3.4 The Supplier warrants that:
- (a) the Goods, Rental Equipment or Services will be suitable in all respects for their intended purposes, equal in all respect to the descriptions, demonstrations, samples, patterns and specifications supplied, and will be new and free of Defects;
 - (b) it has good title to supply the Goods and Rental Equipment to the Purchaser, and it will hold the Purchaser free and harmless against any liens, attachments or other claims to the Goods or Rental Equipment or arising out of the Agreement;
 - (c) the Goods and Rental Equipment and performance of the Services will comply with all relevant Laws, Australian Standards and good safety practices;
 - (d) it and its' Personnel are suitably skilled, trained, qualified and competent to supply the Goods and Rental Equipment and perform the Services and will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person supplying comparable

4.1 The Purchaser, or Purchaser's Representative, may at any time (on reasonable notice to the Supplier) inspect, test or witness tests on all or any part of the Goods, Rental Equipment or Services, or of any materials used in manufacturing of Goods, Rental Equipment or performance of Services.

4.2 The Supplier must provide sufficient, safe and proper facilities for any inspection, testing or witnessing of any testing carried out in accordance with clause 4.1.

4.3 The Supplier will advise the Purchaser a minimum of 24 hours before the time of any testing or commissioning in relation to the Goods, Rental Equipment or Services and will adhere to proper industry practices and manufacturers' recommendations in respect of that testing or commissioning, including providing opportunity for the Purchaser to attend.

4.4 Inspection, testing or attendance by the Purchaser is not deemed acceptance of any Goods, Services or Rental Equipment and does not relieve the Supplier of any of its responsibilities or obligations under the Agreement.

5. GOODS

5.1 Title to, and property in, the Goods will pass to the Purchaser on the earlier of

payment or delivery of those Goods to the Delivery Point.

- 5.2 Where any part payment is made by the Purchaser title to and property in the partly completed Goods will pass to the Purchaser at the time of part payment.
- 5.3 Risk in the Goods remains with the Supplier until delivery to the Purchaser, in accordance with the Agreement.
- 5.4 Unless otherwise specified in the Agreement, all Goods shall be delivered free of charge to the Delivery Point and the Supplier will be responsible for all customs imports and exports clearances in respect of the materials, goods, tools, equipment and supplies required to fulfil the Agreement.
- 5.5 The Goods must be appropriately marked and identified as the property of the Purchaser and the Supplier is responsible for all costs associated with delivery (including but not limited to on-loading, off-loading, handling, any customs, excise or import duties and other freight charges).
- 5.6 Two copies of a delivery note quoting the Purchase Order number and/or Agreement number and part numbers (if any) of the Goods must be sent with each delivery. The Supplier must enclose one copy with the Goods and attach the second copy in an envelope on the outside of the Goods' crate or package.
- 5.7 Goods shall be adequately cased, crated or otherwise packed, using packaging materials and pallets supplied by the Supplier free of charge, to ensure safe

arrival, having regard to road and climatic conditions.

- 5.8 Packages and loose items shall be clearly marked in accordance with the Agreement and shall indicate gross weight.
- 5.9 Dangerous Goods delivered to the Purchaser shall be clearly marked with all appropriate information.
- 5.10 The Supplier must ensure that all Dangerous Goods are transported in accordance with the provisions of the *Dangerous Goods Safety Act 2004 (WA)* (or other applicable legislation in the relevant State or Territory), applicable regulations and the then current Australian Code for the Transport of Dangerous Goods by Road or Rail or any equivalent replacement code.

6. DEFECTS

- 6.1 If, during the Defects Rectification Period, the Purchaser considers that any part of the Goods, Rental Equipment or Services are Defective, the Purchaser may reject the Goods, Rental Equipment or Services with the Defect and notify the Supplier of the Defect, in which case the Supplier must, after consultation with the Purchaser, replace or remediate the Goods, Rental Equipment or reperform the Services at the Suppliers' cost and within the later of 14 days or the timeframe considered reasonable by the Purchaser. The period of time provided to the Supplier to complete the replacement, remediation or reperformance must be reasonable, having regard to the nature of the Defect and the features and circumstances of the Goods, Rental Equipment or Services.
- 6.2 Acceptance by the Purchaser of any Defective Goods, Rental Equipment, or Services does not operate as a waiver of the Purchaser's rights under this clause 6 or prevent the Purchaser from

subsequently enforcing any right under this clause 6.

- 6.3 Where the Supplier has corrected any Defect under this clause, those Goods, Rental Equipment or Services will be subject to the Defects Rectification Period, re-commencing from the date that the Supplier corrected the Defect.
- 6.4 If the Supplier has not corrected the Defect in accordance with the timeframe specified in clause 6.1, the Purchaser may engage another contractor to have the Defect remedied by alternative means and may recover any reasonably incurred direct costs of doing so from the Supplier.

7. HEALTH, SAFETY AND ENVIRONMENT

- 7.1 The Supplier is responsible for the management and control of health, safety and environmental issues related to the Agreement and must provide the Goods, Rental Equipment and perform the Services in accordance with clause 3.3, any reasonable directions of the Purchaser and all applicable Laws.
- 7.2 The Supplier must ensure that its employees and Subcontractors are fit for work and competent to provide the Goods, Rental Equipment or perform the Services.
- 7.3 The Supplier must notify the Purchaser of any incidents that occur in connection with the Goods, Rental Equipment or Services as soon as practicable and cooperate with the Purchaser in a timely manner in relation to any incident report required by the Purchaser or request under clause 7.4.
- 7.4 The Purchaser may request at any time the Supplier to supply health and safety information associated with the

performance of the Goods, Rental Equipment or Services.

- 7.5 The Supplier will maintain in a safe, sound, good and efficient condition all equipment used in the supply of the Goods, Rental Equipment or Services.
- 7.6 The Supplier must fulfil the requirements of the Agreement in a manner that will prevent or minimise Pollution and damage to the environment at the Site and ensure that no Pollution emanates from equipment used in the supply of the Goods, Rental Equipment or Services in any manner not permitted under any Law. If any Pollution emanates from the Site, or from equipment used in the supply of the Goods, Rental Equipment or Services, then the Supplier must immediately comply with the directions of the Purchaser and applicable Law with regard to cleaning it up and preventing further Pollution.

8. EMPLOYEE AND INDUSTRIAL RELATIONS

The Supplier is responsible for managing its employee and industrial relations with, or in relation to, its personnel (including the employees of its Subcontractors at every tier) and must do so using a high standard of skill, care and diligence. The Supplier must not hinder or adversely affect the employee and industrial relations of the Purchaser or any other employer at the Site.

9. PAYMENT & GST

- 9.1 Unless otherwise stated in the Agreement, all amounts payable under the Agreement are expressed on a GST exclusive basis. If GST is payable in relation to a Taxable Supply, the amount payable for that

Taxable Supply will be the amount specified in the Agreement plus GST.

- 9.2 On delivery of the Goods or Rental Equipment or completion of the Services, the Supplier must provide to the Purchaser a Tax Invoice for the Agreement Price which includes: the Purchase Order number and/or Agreement number; a description of the Goods, Rental Equipment and/or Services supplied, Delivery Date and the Delivery Point and if Services are charged by time, the itemized time spent by Supplier's Personnel; and any other details reasonably required by the Purchaser. No expenses or travel time are to be claimed in the Tax Invoice unless reimbursement of expenses is expressly agreed in the Agreement. If applicable, the Tax Invoice must state that it is an invoice issued pursuant to the Act.

- 9.3 Subject to clause 9.4, the Purchaser will pay the Supplier the Agreement Price within 20 Business Days of the date of the invoice. The Agreement Price is not subject to adjustment or escalation and is inclusive of all taxes (other than GST) and all Supplier costs including (without limitation) overheads, materials, mobilisation or demobilisation, transportation, storage, packaging, premiums of insurance.

- 9.4 If the Purchaser disputes all or part of a Tax Invoice, the Purchaser:
- (a) must provide the Supplier with a written notice setting out detail of the reasons for the dispute within 10 Business Days of receipt of the Tax Invoice; and
 - (b) may withhold payment for the disputed portion of the Tax Invoice until settlement of the dispute.

- 9.5 The parties will use best endeavours to resolve any dispute by meeting between senior representatives of each party (with authority to settle the dispute), such

meeting to be held within 20 Business Days of notification of the dispute from the Purchaser to the Vendor.

- 9.6 If the Act is applicable to this Agreement, the parties will resolve the dispute in accordance with the Act and appoint the Australian Disputes Centre as prescribed adjudicator.
- 9.7 The Purchaser may invoice the Supplier or deduct or set-off from any amount otherwise due to the Supplier under clause 9.3 any costs, charges, damages, liquidated sums, expenses and other moneys which are payable by or to be reimbursed by the Supplier, or which the Purchaser reasonably believes is due and payable under or in connection with the Agreement.

10. INSURANCE

- 10.1 The Supplier must effect and maintain the following insurance policies in relation to the provision of the Goods, Rental Equipment or Services, for the minimum amounts specified:
- (a) Worker's Compensation insurance cover for all Employee Claims, including any compulsory statutory workers' compensation benefits and common law liability (any common law or statutory industrial diseases), as required by Law in all relevant legal jurisdictions applicable to the Supplier and their Personnel;
 - (b) Public and Products Liability insurance covering liability for loss of or damage to property and death of or injury to any person (other than liability required to be insured under workers compensation insurance) in an amount of not less than \$20,000,000 in respect of each and every claim (except for Products Liability which must be

- \$20,000,000 in the aggregate).
This policy must provide for liability arising out of the use of unregistered vehicles and must be extended to indemnify Purchaser to the extent of its vicarious liability arising out of the acts or omissions of the Supplier or the Supplier's Personnel;
- (c) if professional services, advice or design are provided under the Agreement, Professional Indemnity Insurance covering liability arising from any act, error or omission arising out of or in connection with the professional activities and duties under the Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate, to be maintained for a minimum of 2 years after the expiry or termination of the Agreement;
 - (d) If motor vehicles will be used in connection of providing the Services under the Agreement, motor vehicle insurance covering all vehicles, plant and equipment (whether owned, hired or leased) for loss or damage of not less than the market value and third party liability of not less than \$20,000,000 in respect of each and every claim;
 - (e) where applicable, Marine Cargo insurance for the transportation of the Goods and/or Rental Equipment, for a full replacement amount;
 - (f) Insurance covering the Supplier's own property, Goods, materials owned, hired, leased or used by the Supplier; and
 - (g) any additional insurance required by any applicable Law.

- 10.2 The Supplier must provide certificates of currency for all required insurances on request.
- 10.3 The Supplier's Product and Public Liability insurances must note the interest of the Purchaser as principal under this Agreement, contain a waiver of subrogation in favour of the Purchaser and are primary to and without right of contribution from any insurance of self insurance that the Purchaser may have.
- 10.4 The Supplier must ensure that its Subcontractors have the benefit of or maintain insurances similar to those set out in this clause.

11. INDEMNITY AND LIABILITY

- 11.1 The Supplier indemnifies the Purchaser Group from and against all Claims made or Loss suffered in connection with the supply of the Goods, Services or Rental Equipment or in relation to the Agreement arising from or in connection with:
 - (a) any loss or damage to the Purchaser's property, whether within or outside the Site;
 - (b) illness, injury to or death of any person;
 - (c) the loss or damage of any third party property;
 - (d) any breach by the Supplier or Supplier's Personnel of applicable Laws; and
 - (e) a breach by the Supplier or Supplier Personnel of the Agreement.
- 11.2 The Supplier's obligation to indemnify the Purchaser under clause 11.1 is reduced to the extent that the indemnified event is caused, or contributed to, by a negligent

- act or omission of the Purchaser or Purchaser Personnel.
- 11.3 Subject to clauses 11.4 and 11.5, and to the maximum extent permitted by Law, a party's overall liability to the other party under or arising out of or in connection with the Agreement is capped at the higher of the Agreement Price and the cost to re-perform the Services or replace the Goods or Rental Equipment.
- 11.4 Subject to clause 11.5 neither party shall be in any way liable to the other party for Consequential Loss, whether arising out of or in connection with the Agreement, under statute, in negligence, under indemnity or other basis in Law.
- 11.5 The limitations in clauses 11.3 and 11.4 do not apply to:
- (a) Liquidated Damages payable by the Supplier;
 - (b) Supplier's liability for Loss caused or contributed to by the Supplier or the Supplier's Personnel that is:
 - (i) covered by a policy of insurance under which the Supplier is an insured and which it is required to effect under this Agreement; or
 - (ii) which, but for an act or omission of the Supplier (including in respect of its disclosure obligations to any insurer), would have been covered by a policy of insurance which the Supplier is required to effect under this Agreement; and
 - (c) a party's liability for:
 - (i) sickness, death or personal injury;
 - (ii) damage to any third party tangible property;
 - (iii) breach of any applicable Law,
 - (iv) acts or omissions amounting to wilful misconduct, fraud, gross negligence, wilful default or repudiation or deliberate misrepresentation;
 - (v) breach of Law (including penalties arising from such breach);
 - (vi) Loss arising from or in connection with a Claim which by Law, the Supplier cannot contract out of; or
 - (vii) Loss arising from or in connection with a breach of clause 12.2 (Confidentiality), clause 13 (FIRB Compliance), clause 14 (Business Ethics), clause 15 (Privacy and Data Security), and clause 16.4 (third party IP warranty).

12. RECORDS AND CONFIDENTIALITY

12.1 Records

- (a) The Supplier will maintain, and ensure its subcontractors maintain, full, accurate and up-to-date records in connection with the Goods, Rental Equipment and Services and all related transactions for at least 2 years (or such other period required by Law). The Purchaser will be entitled to inspect and copy such records upon reasonable notice for the purposes of ensuring the Supplier's compliance with the Agreement.
- (b) The Purchaser may, upon reasonable notice to the Supplier, conduct audits of the records kept by the Supplier under the Agreement, including the right to inspect and copy such records to

ensure compliance with the Agreement.

- (c) The Supplier must create and maintain written records of all information reasonably requested by the Purchaser relating to greenhouse gas emissions, energy production; and energy consumption from, or as a result of, the operations or activities carried out by the Supplier and its Personnel under the Agreement.
- (d) The Supplier will provide the Purchaser with any information reasonably requested by the Purchaser in relation to the provision of the Goods, Rental Equipment or Services.

12.2 Confidential Information

- (a) Subject to clause 12.2(b), the parties must not disclose Confidential Information to any third party or use or reproduce it other than for purposes directly associated with fulfilment of the Agreement.
- (b) A party may disclose Confidential Information as required for compliance with Law; to its Personnel to the extent necessary for the proper performance of the Agreement and operation of their business; to obtain advice or insurance in relation to the Agreement; or with the consent of the other party.
- (c) The parties must protect the Confidential Information and, on completion, termination or expiration of the Agreement, the Supplier must return or destroy the Purchaser's Confidential Information on request, other than Confidential Information that is (i) stored in routine backup systems and not readily accessible; or (ii)

required to be kept by the Supplier to comply with laws or internal governance policies.

13. FIRB COMPLIANCE

13.1 The Supplier acknowledges that the Purchaser is subject to conditions imposed under section 74(4) of the Foreign Acquisitions and Takeovers Act 1975 (Cth) and undertakes to ensure, within its power and control, that all Data:

- (a) is stored only within Australia;
- (b) is accessible and maintained only from within Australia; and
- (c) will not be taken outside of Australia,

except in circumstances where it is:

- (d) required to comply with any law of the Commonwealth of Australia or any of its States and Territories; or
- (e) aggregated (with removal of Personal Information) before being accessed for any corporate and financial reporting purposes.

13.2 The Supplier will notify the Purchaser as soon as possible of any circumstances which cause the Supplier to rely on the exceptions in clauses 13.1(d) or (e).

14. BUSINESS ETHICS

14.1 In the performance of its obligations under the Agreement, the Supplier must, and must ensure that each of its subcontractors, comply with the Policies and Procedures and all applicable Modern Slavery Laws and have policies and procedures to ensure such compliance.

14.2 The Supplier represents and warrants that neither the Supplier nor any of its officers,

employees or other persons associated with it:

- (a) has been convicted of any offence involving Modern Slavery; and
- (b) is not the subject of and has not been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with Modern Slavery.

- 14.3 The Supplier represents and warrants that it has not violated and will not violate, in connection with the Agreement, any Anti-Bribery & Corruption Law.
- 14.4 The Supplier represents and warrants that it will comply with all applicable Sanctions Laws in connection with the Agreement.
- 14.5 The Supplier must notify the Purchaser as soon as it becomes aware of any actual or suspected Modern Slavery in a supply chain which has a connection with the Agreement, or any conduct or alleged conduct amounting to a breach of any Anti-Bribery & Corruption Law or Sanctions Law.

15. PRIVACY AND DATA SECURITY

- 15.1 The Supplier must comply, with the Privacy Act 1988 (Cth) and any other applicable laws and codes dealing with privacy or obligations in relation to any Personal Information collected, used, disclosed and stored in relation to the Agreement.
- 15.2 The Supplier must implement and maintain appropriate technical and organisational measures to secure Purchaser's Confidential Information and Personal Information.
- 15.3 The Supplier must promptly report to the Purchaser any unauthorised access, disclosure, loss or destruction of

Confidential Information or Personal Information, or any data security breach of systems used in relation to the Agreement that may impact security of the Purchaser's Confidential information or Personal Information. The Supplier must mitigate, to the extent possible, impacts of such disclosure or access and must cooperate with the Purchaser in providing any notices to individuals or investigations into the incident.

16. INTELLECTUAL PROPERTY

- 16.1 To the extent that any IP is created by the Supplier or the Supplier's Personnel in the performance of Services (including in documentation relating to the Services), rights in the IP will vest in the Purchaser.
- 16.2 To the extent that the supply of the Goods, Rental Equipment or Services uses or incorporates IP of the Supplier or the Supplier's Personnel, the Supplier grants the Purchaser a complete, permanent, assignable, non-exclusive, royalty-free licence to use such IP for the purposes of the Purchaser's full use and enjoyment of (including the right to modify) the Goods, Rental Equipment or Services supplied.
- 16.3 To the extent that a person has Moral Rights in IP vesting in the IP owned by the Purchaser under clause 16.1 or licenced by the Purchaser under clause 16.2, the Supplier must obtain at no cost to the Purchaser, all necessary licences, consents or waivers from that person to use, adapt, modify or reproduce the IP, sufficient to ensure that the Purchaser does not infringe Moral Rights when it uses the IP under and in accordance with this Agreement.
- 16.4 The Supplier warrants that to the extent that it uses or proposes to use Intellectual Property of any third party in the supply of the Goods, Rental Equipment or performance of the Services, it has

obtained, or will obtain, from the relevant third party all necessary rights or licences to use, or assignments of, such Intellectual Property; and that it will not breach any of the rights, licences or assignments.

17. TERM AND TERMINATION

17.1 The Supplier must provide the Goods or Rental Equipment or commence the Services on the date or within the period specified in the Agreement and continue to perform the Services for the period specified in or determined in accordance with the Agreement.

17.2 The Purchaser may for any reason and at any time in its absolute discretion, terminate the Agreement for convenience upon written notice to the Supplier of not less than 10 Business Days. In the event of termination under this clause, the Supplier will be entitled to payment as set out in the Agreement for the part of the Goods, Rental Equipment or Services performed in accordance with the Agreement up to the date of termination (the "Payment for Work Performed"), together with any such other payments and fees as may be set out in the Agreement or, in the absence of any such provision, such direct costs which are reasonably and unavoidably incurred by the Supplier as a direct result of such termination and which are not allowed for in the Payment for Work Performed.

17.3 Termination for Breach

- (a) The Purchaser may terminate the Agreement immediately by written notice if:
 - (i) the Purchaser notifies the Supplier that the Supplier is in breach of the Agreement and the Supplier fails to remedy the breach within 10 Business Days;

- (ii) the Supplier is in breach of clauses 12, 13, 14 or 15;
- (iii) the Supplier is unable to pay its debts when they are due or is, or may become, insolvent, or otherwise ceases its business; or
- (iv) the Supplier or its Personnel, in the Purchaser's reasonable opinion, would endanger health and safety if they were to continue performing the obligations under the Agreement.

- (b) The Supplier may terminate the Agreement immediately by written notice if:
 - (i) The Purchaser fails to pay an amount validly due and owing under the Agreement and has failed to make the payment due within 10 Business Days of notification from the Supplier of the breach; or
 - (ii) the Purchaser is unable to pay its debts when they are due or is, or may become, insolvent, or otherwise ceases its business.

17.4 If the Agreement is terminated, the Supplier must:

- (a) cease supply of the Goods or Rental Equipment and performance of the Services in accordance with and to the extent specified in the relevant notice;
- (b) immediately take all possible action to mitigate any Loss incurred by it as a result of such termination; and
- (c) take any other action reasonably required by the Purchaser in relation to the termination.

17.5 If the Agreement is terminated under clause 17.3, the Purchaser will pay the

Supplier for Goods or Rental Equipment delivered (and in respect of Goods for which title has passed) or Services provided up to the date of termination in accordance with the Agreement but is entitled to set off any Loss the Purchaser may have against the Supplier arising from the breach from such payment.

- 17.6 Neither party will be liable to the other party for any Consequential Loss in respect of or associated with termination under clause 17.3.
- 17.7 Termination of the Agreement does not affect the parties' accrued rights or remedies.

18. ASSIGNMENT AND SUBCONTRACTING

- 18.1 The Supplier may not assign or subcontract any of its rights and obligations under the Agreement without the prior written consent of the Purchaser.
- 18.2 Notwithstanding any approval to assign or subcontract given by the Purchaser, the Supplier is liable for actions, defaults and omissions of its Subcontractors or those of the employees and agents of its Subcontractors as fully as if they were the acts, defaults or omissions of the Supplier and remains subject to all duties and obligations in accordance with the Agreement.
- 18.3 The parties agree that Part 1F of the Civil Liability Act 2002 (WA) (or equivalent legislation in each applicable jurisdiction) is expressly excluded from operation with respect to any dispute, claim, action or any matter brought by the Purchaser against the Supplier arising in connection with negligent provision of Services or defective

supply of Goods or Rental Equipment under the Agreement.

19. LIQUIDATED DAMAGES

- 19.1 The Supplier must deliver the Goods or Rental Equipment or perform the Services by the Delivery Date, or the revised date if an extension is granted under clause 20.
- 19.2 If the cumulative value of the Purchase Order is equal to or above \$200,000.00 Liquidated Damages will be set at an amount that reflects the loss likely to be suffered by the Purchaser due to Supplier delay. Unless otherwise agreed, the Liquidated Damages amount is 2% of the Agreement Price per week up to a total cap of 10% of the Agreement Price.
- 19.3 If the Supplier fails to comply with clause 19.1, the Supplier is liable for and must pay the Purchaser Liquidated Damages up to the LD Cap.
- 19.4 Liquidated Damages will accrue until the Supplier delivers the Goods or Rental Equipment or performs the Services or the LD Cap is reached. If the LDs Cap is reached, the Purchaser may terminate the Agreement for breach under clause 17.3(a)(i).
- 19.5 The parties acknowledge that the Liquidated Damages will be a pre-estimate of the Purchaser's loss due to delay and is intended to compensate the Purchaser for such delay. It does not affect any other rights the Purchaser may have arising from the Supplier's breach of clause 19.1 or any other terms of the Agreement.
- 19.6 Any Liquidated Damages amount payable is immediately due and payable upon demand to the Purchaser or may be offset

by the Purchaser against any amounts owed to the Supplier.

20. EXTENSIONS OF TIME

- 20.1 Time is of the essence however the Supplier will be entitled to an extension of the Delivery Date:
- (a) if the delay is solely due to acts or omissions of the Purchaser and the Supplier advises the Purchaser that such acts or omissions will cause it delay within 5 days of becoming aware of the relevant circumstance; or
 - (b) on written instruction from the Purchaser to extend the Delivery Date.

The Supplier may be entitled to claim its reasonable verifiable additional costs incurred that directly arise due to the extension of the Delivery Date where the Delivery Date is extended under this clause 20.1, provided such claim is made by the Supplier within 14 days of the grant of the extension of the Delivery Date by the Purchaser. Such claim is to be assessed as a Variation under clause 22.

- 20.2 If the Supplier is delayed, or likely to be delayed, for any reason other than the circumstances contemplated in clause 20.1 or an event of Force Majeure, the Supplier:
- (a) must provide the Purchaser a Notice of Delay within 7 days of becoming aware of the delay or likely delay; and
 - (b) will not be entitled to an extension to the Delivery Date or any claim for costs.

21. FORCE MAJEURE

- 21.1 If and to the extent that either party is unable, wholly or in part, by reason of Force Majeure to carry out any obligation

under the Agreement, it shall promptly give notice to the other party specifying the event of Force Majeure and the likely duration of its inability to perform.

- 21.2 If a notice is provided in accordance with clause 21.1, a party's obligation will, to the extent necessary, be suspended so long as the Force Majeure continues.
- 21.3 Neither party will be liable to the other for any costs or losses associated with an event of Force Majeure.

22. VARIATIONS

- 22.1 The Purchaser may at any time issue written instructions requiring additions, changes, deletion or alterations in the Goods or Rental Equipment to be delivered, or the Services to be performed or the timing of their delivery ("**Change**"). The Supplier must advise the Purchaser whether or not it can comply with the Change within 2 Business Days of receiving the Change request. Provided the Supplier can comply, and subject to this clause 22, the Agreement Price will be adjusted by an amount that is, in the opinion of the Purchaser, the reasonable net increase or decrease in the Agreement Price.
- 22.2 Within 7 days after advising the Purchaser that it can comply with the Change, the Supplier will provide the Purchaser with a detailed estimate of the reasonable net increases or decreases in the Agreement Price and any changes to the Delivery Date arising out of the Purchaser's instructions given under clause 22.1.
- 22.3 The Purchaser will provide notice to the Supplier within 14 days of the net increase or decrease to the Agreement Price. If the Supplier disputes the Purchaser's determination of the Agreement Price, it will notify the Purchaser in writing within 20 Business Days of receipt of the

Purchaser's notice. A failure to raise a dispute within this period will constitute acceptance of the Purchaser's determination and the Supplier releases the Purchaser from all Loss other than the amount referred to in the Purchaser's notice.

- 22.4 Where the Supplier has advised that it can comply with the Change, the Supplier will continue to perform the Services or provide the Goods or Rental Equipment, including any such additions, changes, deletions, or alterations, despite any failure to agree upon the increase or decrease in the Agreement Price unless otherwise directed by the Purchaser.
- 22.5 Where the Supplier has advised that it is unable to comply with the Change, the Supplier will continue to perform the Services or provide the Goods or Rental Equipment as originally agreed unless otherwise directed by the Purchaser.
- 22.6 Changes or variations to the Agreement which are not agreed in writing will be of no effect.

23. RESOLVING DISPUTES

- 23.1 If a dispute arises under or in connection with the Agreement (other than a dispute regarding an invoice, which is dealt with under clause 9.4), the parties agree to use reasonable efforts to resolve the dispute before starting formal proceedings.
- 23.2 If the dispute is not resolved within 30 days of initial discussions, either party may escalate the matter to formal proceedings.
- 23.3 Despite any dispute, both parties must, where practicable, continue to perform their obligations under the Agreement.
- 23.4 Nothing in this clause prevents either party from applying to a court for urgent

injunctive relief or limits either party's rights under the Act, if applicable.

PART B: RENTAL CONDITIONS

24. APPLICATION OF THIS PART

- 24.1 To the extent that the Agreement is for the supply of Rental Equipment on a dry hire basis, whether in conjunction with the supply of Goods or Services or otherwise, the conditions of this Part B apply in addition to clauses 1 to 5, 9 to 19, 21 to 23 of Part A of these terms and any other terms and conditions of the Agreement.

24.2 BASIC ARRANGEMENT

The Supplier will lease the Rental Equipment to the Purchaser, and the Purchaser will pay rent to the Supplier for the Rental Equipment, in accordance with the terms of the Agreement.

24.3 THE RENTAL EQUIPMENT

The Supplier is responsible for the delivery and all costs associated with the delivery of the Rental Equipment to the Purchaser's premises on the Delivery Date.

The Supplier is responsible for the installation of the Rental Equipment, where applicable.

The Rental Equipment must be of the best quality and workmanship, free from faulty design and defects, suitable for the purpose intended and conform to the Agreement requirements and any applicable international or Australian standards.

The Supplier must furnish all operating manuals and instructions for the Rental Equipment on the Delivery Date, or by any

other time specified in the Agreement, or as otherwise agreed upon in writing (whichever is earlier).

24.4 RETENTION OF OWNERSHIP

The Supplier retains title to the Rental Equipment. The Supplier allows the Purchaser to possess and use the Rental Equipment during the Rental Period without interruption.

24.5 MAINTENANCE AND REPAIR

The Supplier shall be responsible for performing all routine and non-routine maintenance of the Rental Equipment during the Rental Period, at its own cost, to ensure that the Rental Equipment remains in good and operable condition.

The Supplier shall perform all necessary repairs and maintenance at its own cost and risk to ensure that the Rental Equipment is kept in good operating condition throughout the Rental Period.

24.6 DAMAGE

The Purchaser will endeavour to protect the Rental Equipment against loss or damage. However, the Purchaser will not be responsible for accidental loss of or damage to the Rental Equipment, and the Supplier will indemnify the Purchaser against any claims for such loss or damage except to the extent that the loss or damage is caused or contributed to by the Purchaser.

24.7 INSURANCE

The Purchaser's insurance will cover the Rental Equipment for full replacement value.

24.8 DEFECTS IN RENTAL EQUIPMENT

During the Rental Period, the Purchaser will notify the Supplier of any defect in the

Rental Equipment as soon as practicable after becoming aware of such Defect.

The Supplier must, at its own expense, do all things necessary to remedy the Defect and must reimburse the Purchaser for any costs incurred in connection with the Defect, including the cost of the Purchaser remedying the Defect if the Supplier does not do so within a reasonable period following notice of the Defect from the Purchaser.

If a Defect cannot be remedied, the Supplier must make replacement Rental Equipment available for lease to the Purchaser in accordance with the terms of the Agreement.

24.9 RENT

The Purchaser will pay rent for the Rental Equipment to the Supplier monthly in arrears unless a different payment arrangement is specified in the Agreement.

The rent is a fixed sum and is not subject to any rise and fall.

24.10 DURATION OF RENTAL

The rental will continue for the Rental Period specified in the Agreement. If the Purchaser continues to retain possession of the Rental Equipment, with the Supplier's consent, beyond the Rental Period specified in the Agreement, the Purchaser shall be deemed to lease the Rental Equipment on a week to week basis on the same terms as the Agreement, including any changes necessary to make the terms appropriate for a monthly tenancy.

24.11 NO ENCUMBRANCES

The Purchaser must procure that no Rental Equipment is sold or otherwise disposed of, possession of any Rental Equipment is not shared with or provided to, and no sub-rental, licence, or sub-

licence affecting any Rental Equipment is granted to, any person other than a Related Body Corporate of the Purchaser, and no encumbrance is created over any Rental Equipment, without the consent of the Supplier.

24.12 QUIET ENJOYMENT

If the Purchaser pays the rent for the Rental Equipment and duly and punctually complies with all provisions of the Agreement, the Purchaser may peaceably possess and enjoy the Rental Equipment during the Rental Period without any interruption or disturbance from the Supplier or any person lawfully claiming through the Supplier.

24.13 TERMINATION

Unless stated otherwise, the Rental Equipment will, subject to fair wear and tear, be collected by the Supplier at its cost at the end of the Rental Period. The Supplier may recover from the Purchaser all rent due and owing under the Agreement at the date of termination.

24.14 WARRANTIES

The Supplier warrants that:

- (a) it has unencumbered title to the Rental Equipment and the Purchaser's use of Rental Equipment will not infringe the rights of any third party;
- (b) Rental Equipment will comply with all relevant Laws, Australian Standards, and good safety practice; and
- (c) Rental Equipment will be in good, safe working order, free from Defects, fit for purpose and will comply with the specification or description in the Agreement.