

(1) **APPLICATION OF TERMS AND CONDITIONS.** These terms and conditions form part of the Works Order governing the rights and obligations of the Supplier and McConnell Dowell and together constitute the entire agreement between the parties in respect of the Works and/or the Goods and this Works Order supersedes all previous agreements, undertakings and communications, whether written or oral, relating to the subject matter of the Works Order. For the avoidance of doubt, this Works Order applies to the performance of the Works and supply of the Goods to the exclusion of any other terms and conditions including any qualification or exclusion made in the Supplier's quotation, and in the event of any inconsistency, ambiguity or discrepancy the General Terms and Conditions of Works Order shall take precedence. The Supplier has solicited this Works Order and unless it gives written notice to McConnell Dowell within 3 business days after receiving this Works Order that it does not completely accept the entire Works Order, it will be deemed to have completely accepted the entire Works Order and thereafter McConnell Dowell will act in reliance on the understanding that the Supplier has completely accepted the entire Works Order. Further and without prejudice to the preceding sentence, any acknowledgement, work, shipment, delivery or execution by the Supplier following the issue of this Works Order shall constitute complete acceptance by the Supplier of the entire Works Order. These terms and conditions will not be construed against McConnell Dowell merely because McConnell Dowell prepared them.

(2) **PRICE.** Unless otherwise expressly provided in the Works Order, the Price is deemed to be inclusive of all labour, plant, materials, equipment, machinery, vehicles, tools, facilities and services, storage, transportation, delivery, loading and unloading, overheads, profit and all ancillary and other works, expenditure, risks, overtime and contingencies, necessary, inherent in or incidental to the performance of the Works and/or the supply of the Goods. McConnell Dowell shall not be responsible for providing anything, other than as expressly stated in the Works Order. Unless otherwise expressly provided in the Works Order, the Price shall be firm and fixed and no adjustment in the Price will be made on account of change in any legislation, Site conditions, increased costs of labour, materials or transport, or fluctuation in rates of exchange or otherwise.

(3) **TIME.** Time is of the essence, so if the Supplier fails to supply Goods or complete the Works by the Completion Date (which date may be extended at the absolute discretion of McConnell Dowell, acting reasonably) or, if no Completion Date or other time is specified, within a reasonable time, supply the Goods and/or complete the Works, McConnell Dowell may terminate this Works Order forthwith without incurring cancellation or any other charges. Alternatively, McConnell Dowell may elect to accept late supply or completion and deduct from the Price the amount or estimated amount of any costs, losses or liabilities reasonably incurred or likely to be incurred as a result of late supply or delivery.

(4) **RISK AND TITLE.** Title in any of the Goods passes to McConnell Dowell upon delivery to or payment by McConnell Dowell, whichever is earlier. Risk in the Goods transfers upon delivery to Site or incorporation into the Works whichever is later but McConnell Dowell may at any time reject and/or return any Works or Goods which are not in accordance with the Works Order. The Supplier undertakes not to create any security interest or lien over any of McConnell Dowell personal property whatsoever (other than security interests granted in favour of the McConnell Dowell).

(5) **TERMS OF PAYMENT.** Subject to the terms of the Works Order, the Supplier may invoice McConnell Dowell for the completed Works and Goods after the Goods are delivered to the Site or other location identified on the Works Order and McConnell Dowell will pay the amount it reasonably considers to be due, less any set off or deduction for any sum due from the Supplier to McConnell Dowell, forty-five (45) days from the end of the month in which a valid tax invoice for the Goods is received from the Supplier by McConnell Dowell, provided that all other terms of the Works Order have been complied with.

(6) **SECURITY.** At the sole discretion of McConnell Dowell, McConnell Dowell may require 10% of each payment up to a maximum of 5% of the Price as adjusted in accordance with the Works Order will be retained as security for performance. Alternatively, if McConnell Dowell agrees, the Supplier may provide 2 bank guarantees of equal value, together totalling 5% of the Price or such other percentage as is specified on page 1 of the Works Order. When McConnell Dowell has confirmed in writing that the works under the Head Contract with McConnell Dowell's Client have been certified as practically complete the amount retained shall be reduced by 50%. The balance of security and/or retention held by McConnell Dowell must be returned no later than 28 Days after the final certificate under the Head Contract with McConnell Dowell's Client has been received by McConnell Dowell. Any security provided by the Supplier pursuant to the Works Order, whether by way of retention monies or other security, shall be available to McConnell Dowell and any security that does not consist of money may be converted into money whenever McConnell Dowell is entitled to payment or reimbursement of monies by the Supplier under or in connection with this Works Order or otherwise than under or in connection with this Works Order.

(7) **EXAMINATION OF THE SITE.** The Supplier warrants that it has examined the Site, and has fully satisfied itself of:

- all the conditions at, under, over or in the vicinity of the Site, the climatic conditions in the locality of the Site, the nature of and access to the Site;
- how performance of the Works or supply of the Goods may be affected by prior, concurrent or subsequent work carried out by others;
- the nature, quality, extent and amount of labour, plant, materials, equipment, machinery, vehicles, tools, facilities and services required, and all other matters which might in any way affect the supply of the Goods or performance of the Works.

The Supplier hereby acknowledges it has not and shall not rely on any information given, or statement made to it, by McConnell Dowell in respect of the condition or future condition of the Site unless such statement is included in the Works Order.

(8) **OCCUPATIONAL HEALTH AND SAFETY.** The Supplier must place the highest importance and priority on safety, occupational health and protection of the environment during the performance of the Works Order. The Supplier must maintain strict discipline and good order among its workers and the workers of its sub-contractors and Suppliers (together the "Workers"). Further, the Supplier shall ensure that its employees, agents and Subcontractors and Suppliers comply with McConnell Dowell Safety Rules and any other work directions issued by McConnell Dowell from time to time including but not limited to attending, participating in and giving effect to, any workshops or other formal activities conducted by, or on behalf of, McConnell Dowell or McConnell Dowell's Client, in respect to health, safety or the environment. McConnell Dowell is entitled to require the Supplier to remove any Workers who are incompetent, unreliable, unfit or have misbehaved or contravened any rules or directions and the Supplier shall forthwith replace any Workers removed with suitable Workers approved by McConnell Dowell. If the Supplier is an individual, McConnell Dowell shall be entitled to terminate the Works Order in the event the Supplier is incompetent, unreliable, unfit or has misbehaved or contravened any law or any of McConnell Dowell's or McConnell Dowell's Client's rules or regulations (access is available on request). The Supplier must, prior to beginning any work on the Site, submit to McConnell Dowell for review a

detailed Safety Management Plan setting out the Supplier's proposed procedures for ensuring that work on Site is conducted safely and the Supplier must comply with its Safety Management Plan. Any approval, acceptance, review or agreement by McConnell Dowell of the Supplier's Safety Management Plan shall not diminish the Supplier's obligations or liabilities under this clause, nor relieve the Supplier of the responsibility to comply with the Works Order or the law.

So far as reasonably practicable, the Supplier shall prevent any hazardous, unsafe, unhealthy or environmentally unsound condition or activity (Prohibited Activity) from taking place. If the Supplier becomes aware of any Prohibited Activity, it must promptly take all reasonably practicable steps (including engaging a competent person) to abate or eliminate that Prohibited Activity. Where any Prohibited Activity occurs, McConnell Dowell may serve a notice on the Supplier requiring the Supplier to stop work and to take whatever steps are necessary to abate or eliminate such condition or activity within the time stipulated in the notice. If the Supplier does not comply with such notice, McConnell Dowell may itself or by its contractors or agents do the same at the cost of the Supplier. Further, the Supplier must not do or permit to be done any act or thing which may become a nuisance to, or gives cause for complaint by, the occupiers or users of neighbouring premises or sites. The Supplier undertakes to take all precautions and provide all protection necessary to prevent damage, injury or loss to:

- McConnell Dowell, its personnel, and all other occupiers and users of the Site; and
- all buildings, structures, fittings, excavations, fixtures, equipment, materials, amenities and other property at the Site and adjacent to or in the vicinity of the Site including trees, shrubs, lawns, pavements, footpaths, roadways and utilities.

The Supplier shall be liable for all costs and expense incurred by McConnell Dowell to make good any damage caused by the Supplier, its employees, agents or Sub-Suppliers to the Site or any other property. The Supplier shall at all times keep the Site clean and shall clear away and remove all surplus materials, rubbish and work of any kind resulting from the Supplier's performance of its obligations under the Purchaser Order. Within seven Days after the Completion Date or by such other date as McConnell Dowell may direct, the Supplier shall remove all of its personnel, plant and equipment and surplus materials from the Site, and shall leave all areas of and adjacent to the Site clean and tidy. For the avoidance of doubt and notwithstanding anything else contained in this Works Order, the Supplier has control of, and ultimate responsibility for, the health and safety of the Supplier's employees, and the health and safety of others who may be affected by the activities of the Supplier in performing the Works and supplying the Goods, and nothing in this Works Order relieves the Supplier of this obligation. Compliance by the Supplier with the requirements of this clause shall be at the Supplier's cost.

While on the Site, the Owner shall use MCD's Plant Management System (Upvise) for the provision of prestart inspections, periodic inspections and the recording of service and maintenance carried out while the Owner's Plant is on Site.

(9) **VARIATIONS.** The Supplier may not vary the Works to be performed or the Goods to be supplied except upon McConnell Dowell written direction. McConnell Dowell may at any time direct variations, including omissions to the Goods or the Works, and the Supplier shall promptly comply with such direction. The Supplier will be entitled to its reasonable, direct costs of complying with a direction, unless and to the extent, the variation was directed due to (wholly or in part) an act or omission of the Supplier or its personnel. No variation shall vitiate the Works Order.

The Supplier may at any time before the Completion Date submit a request in writing to McConnell Dowell for a variation, supported by full particulars of the impact (if any) of the requested variation on the Completion Date and price. McConnell Dowell must respond in writing to the Supplier's variation request within a reasonable time by either:

- declining the request, with reasons; or
- directing a variation.

Where the Supplier receives a written direction, which is not stated to be a variation but which the Supplier believes to be a variation, the Supplier must forthwith advise McConnell Dowell in writing of any time or cost consequences of the direction before complying with it. The Supplier shall have no claim and no entitlement to payment of any amount consequent on a direction from McConnell Dowell if the Supplier has not so advised McConnell Dowell and awaited McConnell Dowell's further direction, before commencing any work required by that direction. Where work is omitted, McConnell Dowell may, without any liability to the Supplier, perform this work itself, or have the work carried out by others. Subject to the requirements of this clause 9, the value of variations shall be determined as follows:

- The schedule of rates or other method upon which the original Price was based (including any Bills of Quantity), shall be used to determine the valuation of extra work or supply of goods of a similar character, executed under similar conditions.
- Where extra work cannot properly be measured and valued using the rates or prices in the Works Order, McConnell Dowell may direct that the work be done:
 - at day work rates or the prices prevailing when such work is carried out; (in each case, to be reasonably determined by McConnell Dowell); or
 - at the reasonable extra cost to the Supplier of its materials, transport and labour for the work concerned, plus a reasonable percentage which percentage shall be deemed to compensate adequately the Supplier in respect of all costs of (but not limited to) ordinary plant, tools, existing scaffolding, jigs or temporary works, supervision, overheads and profit,

provided that as a condition precedent to payment based on time-related rates, written records specifying the time daily spent upon the extra work (and if required by McConnell Dowell, the Workmen's names), and any additional use of plant, equipment or materials employed, shall be delivered for verification to McConnell Dowell not later than one working day following that in which work has been executed. The Supplier shall not be entitled to rely on any records which were not provided to McConnell Dowell in accordance with this clause 9 unless McConnell Dowell has subsequently acknowledged and accepted those records in writing.

- The prices in any schedule of rates or other method upon which the original Price was based, shall determine the valuation of items omitted. Any deductions shall not include an amount for anticipated lost profit and overheads.

(10) **SUPPLIER'S WARRANTIES.** The Supplier warrants to the Purchaser that all Works and Goods will:

- (save where otherwise expressly stated in the Works Order) be the best of their described kinds;
- be in exact conformity with any relevant Specifications, Vendor Data, sample or other contractual description;
- be new, complete, in full working order and free from defects, errors and omissions in design, materials and workmanship;
- be performed in a good and workmanlike manner using all skill and care;

- e) be of high quality and fit for its intended purpose, whether implied or otherwise, including that they will function and operate satisfactorily in the environmental and climatic conditions to which they are to be exposed (including altitude and operational conditions such as exposure to dust, atmospheric corrosion, corrosive chemicals and fluids and rough handling); and
- f) comply with all statutory requirements, codes, standards and regulations of the countries in which the Goods or Works are to be manufactured, installed executed, packaged, packed, delivered, sold, used or operated.
- (11) **INSURANCE.** The Supplier shall at its own expense, keep in force during the entire period of performance of the Works Order, the following insurances:
 - a) unless otherwise agreed, comprehensive public and products liability insurance for an aggregate amount not less than AUD\$10million (or equivalent), to cover bodily injury or death and damage to property in respect of claims by third parties (with no limit on the number of claims during the period of insurance) with a combined single limit of liability to a value acceptable to McConnell Dowell per occurrence;
 - b) (AUST ONLY) - worker's compensation insurance in accordance with the provisions of any applicable laws and employer's liability insurance at general law providing coverage to cover all workmen from time to time engaged by it;
 - c) (where a motor vehicle is used in providing the Goods) statutory Third-Party insurance covering Supplier's motor vehicles;
 - d) if requested, Professional Indemnity Insurance for an aggregate amount of AUD \$10 million (or equivalent) (or another amount as required by McConnell Dowell); and
 - e) transit insurance.

The Supplier must provide to McConnell Dowell a certificate of currency confirming insurance cover in accordance with this Works Order prior to commencement on site.

(12) MCCONNELL DOWELL SAFETY RULES

The Supplier, its employees and secondary Suppliers shall comply with McConnell Dowell's project health and safety requirements (copy is available on request) as amended from time to time and with all applicable legislative requirements whilst on site or carrying out the Works.

All personnel brought to site by the Supplier, including employees, secondary Suppliers and secondary Supplier employees, who are to perform works associated with the Works Order, must hold a current Construction Industry Induction White Card (AUST ONLY). All personnel who do not hold a current card will not be permitted to work on the site.

Personnel who are unable to communicate in English will not be permitted to work alone in any area of the site and they must be accompanied on site at all times by a person who is able to receive and respond to directions given in English, and effectively communicate them to the non-English speaking personnel.

Any of McConnell Dowell's employees are empowered to direct those who are not complying with safety obligations to cease work. Should the Supplier, and/or any of its employees or secondary suppliers ignore any directions, McConnell Dowell's representative will have authority to have the Supplier, and/or any of its employees or secondary suppliers removed from the site. Any additional costs incurred by McConnell Dowell as a result of this action will become a cost owing to McConnell Dowell by the Supplier.

Any breaches by the Supplier, or any of its employees or secondary suppliers, of a direction given under this clause will constitute a breach under clause 17.

(12A) DRUG AND ALCOHOL TESTING

The Supplier, its employees and secondary suppliers shall comply with McConnell Dowell policies and procedures and also comply with applicable bylaws of government and other public authority and/or the Building Code (AUST ONLY) requirements for fitness for work, alcohol and drug testing.

(13) **INDEMNITY.** The Supplier hereby indemnifies and keeps indemnified McConnell Dowell from and against all claims, liabilities, loss, damages, costs, expenses (including legal expenses on an indemnity basis), fines and penalties awarded against or paid, suffered or incurred by McConnell Dowell as a result of:

- a) loss of or damage to the property of any person, and any existing property in upon or adjacent to the Site;
- b) claims by any person, including WorkCover (AUST ONLY) in respect of personal injury or death of any person;
- c) any breach of contract or negligent or wilful, act or omission of the Supplier, its employees, agents or subcontractors; or
- d) infringement of any intellectual property rights of any third party, arising out of the supply of the Goods or performance of the Works or otherwise in connection with the Works Order provided always that the Supplier will not be liable for any such claims, liabilities, loss, damages, costs and expenses to the extent that they are caused or contributed to by the negligent act or omission, or breach of contract by McConnell Dowell.

Notwithstanding that McConnell Dowell is entitled (but is not obliged), without incurring any obligation of cost or other liability to the Supplier, to exercise general oversight and supervision of the work of the Supplier, the indemnities given under this clause 13 shall not be defeated or reduced in any way by reason of any failure on the part of McConnell Dowell to supervise or control the work of the Supplier and it is hereby acknowledged that to the extent not constrained by law, McConnell Dowell is under no obligation whatsoever to supervise or control the work of the Supplier under the terms of this Works Order even where (without limitation) McConnell Dowell is the 'principal contractor' responsible for management and control of the Site for the purposes of the Head Contract.

(14) **DEFECTS.** The defects liability period shall apply to the Works and shall commence on completion of the Works. The date of expiry of the defects liability period shall be the same date of expiry of the defects liability period under the main contract between McConnell Dowell and the Client. The Supplier shall carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of the Works as is reasonably possible.

During the defects liability period, McConnell Dowell may give the Supplier a direction to rectify a defect which:

- a) shall identify the defect and the date for completion of its rectification; and
- b) may state the date for commencement of the rectification and whether there shall be a separate defects liability period therefor (not exceeding 12 months, commencing at 4.00pm on the date the rectification is completed and governed by this clause).

If the rectification is not commenced or completed by the stated dates, McConnell Dowell may have the rectification carried out by others but without prejudice to any other rights and remedies McConnell Dowell may have. The cost thereby incurred shall be deducted from any payment due to the Supplier, including from retentions or security held.

Defect means a defect, deficiency, fault, shrinkage, non-conformance or omission in or from the Works including any aspect of the Works which is not in accordance with the requirements of the Works Order.

For the purposes of this clause 14, the word 'cost' shall be deemed to include the estimated cost of doing the required work and the word 'incurred' shall be deemed to mean 'incurred' or 'to be incurred'

(15) **SUSPENSION.** McConnell Dowell shall be entitled at any time to suspend wholly or in part performance of the Works or supply of the Goods by giving notice in writing to the Supplier. Upon receipt of such a notice, the Supplier must immediately cease to incur expenses in respect of Works Order or the part of it of performance has been suspended. The Supplier must take all steps to mitigate the costs of such suspension and must immediately resume performance of the Works Order upon notice in writing from McConnell Dowell to the Supplier to do so. The Completion Date may be extended by the period of the delay that McConnell Dowell acting reasonably considers that, notwithstanding due diligence and the taking of all reasonable steps in mitigation by the Supplier, is the unavoidable result of the suspension by McConnell Dowell. The Supplier shall not be entitled to any additional payment or any adjustment to the Price arising from any such suspension unless such suspension was caused by the negligence or wilful misconduct of McConnell Dowell, in which case the Supplier shall be entitled to be reimbursed its reasonable costs directly attributable to the suspension. It is a condition precedent to an extension of time under this Clause that Supplier shall within 14 Days of the date of a notice to resume performance, notify McConnell Dowell in writing of any claim for extension of time and/or costs, together with full particulars and supporting documentation. If such written claim is not made in accordance with this Clause 15, the Supplier shall have no entitlement to any extension of time or cost and is barred from making any such claims.

(16) **TERMINATION FOR CONVENIENCE.** McConnell Dowell shall be entitled, at any time prior to the date when the Works under the Works Order and any variations are complete and/or all Goods have been supplied to terminate forthwith the Works Order in respect of all or any part of the Goods or the Works by giving notice in writing to the Supplier. Upon receipt of a notice under this clause 16, the Supplier must immediately cease to incur expenses in respect of the Works Order or the part thereof which has been terminated. The Supplier shall take all steps to mitigate costs of such termination and McConnell Dowell's sole liability will be to pay to the Supplier the unpaid value of the Goods delivered to McConnell Dowell and of Work performed to the date of the notice. On payment by McConnell Dowell for any Goods, any property in any Goods that has not already passed to McConnell Dowell, shall then pass to McConnell Dowell. The Supplier shall not be entitled to any payment for any Goods unless they are in all respects in accordance with the Works Order and the Supplier can demonstrate that they are in a position to pass good title to McConnell Dowell. The Supplier shall not be entitled to any loss of profit or any other compensation whatsoever in respect of termination of the whole or part of the Works Order under this clause 16.

(17) **TERMINATION FOR DEFAULT.** McConnell Dowell shall be entitled to terminate the Works Order forthwith by giving notice to the Supplier at any time if:

- a) the Supplier ceases, or threatens to cease, to carry on business; or becomes bankrupt or makes a composition or arrangement with its creditors; or having a proposal in respect of its company for a voluntary arrangement for having a composition of debts or scheme of arrangement approved by the court; or having an application made in respect of its company to the court for the appointment of an administrator; or having a winding up order made (except for the purposes of amalgamation or reconstruction) or a resolution for voluntary winding up passed; or having a provisional liquidator, receiver or manager of its business or undertaking duly appointed; or having an administrative receiver appointed; or having possession taken, by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge, or McConnell Dowell reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly (in any of the events aforesaid, the Supplier shall be deemed to be in breach of the Works Order); or
- b) the Supplier commits a breach of any of its obligations under the Works Order.

In the case of a default referred to in Clause 17(b), other than a default in respect to health and safety, in which case McConnell Dowell may terminate the Works Order forthwith on written notice, McConnell Dowell may give the Supplier a notice advising of the breach allowing the Supplier not less than 7 Days in which to remedy the breach or otherwise show good cause why McConnell Dowell should not exercise a right referred to in clause 17A.

(17A) If the Supplier fails to show reasonable cause within the stated period, McConnell Dowell at its sole discretion may by written notice to the Supplier:

- (a) terminate the Works Order; or
- (b) take out of the Supplier's hands the whole or part of the Works remaining to be completed under the Works Order and suspend payment. If this clause 17A(b) is triggered, clauses 17C and 17D will apply.

(17B) Upon termination pursuant to clause 17(b), the Supplier shall be liable for all damages, loss, costs and expense which may be suffered or incurred by McConnell Dowell as a result of the termination and shall indemnify McConnell Dowell against all liabilities, damages, costs and other compensation suffered, incurred, awarded against or paid by McConnell Dowell in connection with, such termination. McConnell Dowell's only liability to the Supplier on termination under this clause 17, subject to McConnell Dowell's right of set-off, shall be to make payment of (or allow as credit) the Price of all Goods delivered and Work executed in accordance with the Works Order and any other amounts due to the Supplier in accordance with the terms of this Purchase Order.

(17C) If McConnell Dowell elects to trigger clause 17A(b) then McConnell Dowell shall arrange for the completion of the Work taken out of the Supplier's hands and may:

- (a) use Goods, materials, equipment and other things intended for the purpose of the Works Order;
- (b) without payment of compensation to the Supplier;
 - (i) take possession of, and use such of the construction plant and other things on or in the vicinity of the site as were used by the Supplier; and
 - (ii) contract with such of the Supplier's Sub-Suppliers and consultants, as are reasonably required by McConnell Dowell to facilitate completion of the Work under the Works Order; and
- (c) enter into an agreement with another Supplier to complete the Work on reasonable terms.

(17D) When Work taken out of the Supplier's hands has been completed, McConnell Dowell shall assess the cost thereby incurred and shall certify as moneys due and payable to McConnell Dowell the difference between that cost (showing the calculations therefore) and the amount which would otherwise have been paid to the Supplier if the Work had been completed by the Supplier.

If the Supplier is indebted to McConnell Dowell, McConnell Dowell may retain any items taken under clause (17C) until the debt is satisfied. If after reasonable notice, the Supplier fails to pay the debt, McConnell Dowell may sell any items taken under clause (17C) and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the Supplier.

(17E) Nothing in this clause 17 derogates from either party's right to terminate the Works Order at common law.

(18) **ASSIGNMENT** or Subletting. The Supplier shall not assign or sub-let the performance of the Works Order (or any part thereof) without the prior consent in writing of McConnell Dowell. The Supplier shall at all times be responsible to McConnell Dowell for the acts or omissions of any assignee or Subcontractor or Supplier. When requested, an unpriced copy of the Supplier's contracts with an approved subcontractor or Supplier shall be furnished to McConnell Dowell promptly after receipt of McConnell Dowell's consent. The Supplier accepts that McConnell Dowell may freely assign or novate all its rights and obligations under the Works Order at any time upon written notice to the Supplier. The Supplier hereby irrevocably consents to any such assignment or novation in the form required by McConnell Dowell and to the release of McConnell Dowell upon any such assignment or novation, of all further obligations under the Works Order and agrees to execute any instrument or other document to give effect to any such assignment or novation and release.

(19) **APPROVAL NOT TO RELIEVE SUPPLIER OF LIABILITY.** No approval or consent of McConnell Dowell shall relieve the Supplier of any liability arising out of or in any way connected with the performance of its obligations under the Works Order. Except as provided at law or in equity or elsewhere in the Works Order, none of the terms of the Works Order shall be varied, waived, discharged or released except with the written consent of the parties, which shall not be continuing unless expressed to do so and further shall not constitute a waiver, discharge or release of any other term.

(20) **CONFIDENTIALITY AND MEDIA.** In this Clause, "Confidential Information" shall mean that information:

- a) disclosed to or obtained by the Supplier at any time prior to the issue of the Works Order, or in connection with or during the course of performance of the Works or the supply of Goods and which relates to McConnell Dowell's past, present or future business and activities, or those of McConnell Dowell's Client; and
- b) all items prepared for or submitted to McConnell Dowell for the purposes of performance of the Works Order, including any Vendor Data or other Specification, drafts and associated materials and works carried out under the Works Order.

This clause 20 shall not apply to Confidential Information that:

- (i) is or becomes publicly available without breach of the Works Order or other legal obligations by the Supplier; or
- (ii) is released for disclosure with the prior written consent of McConnell Dowell.

The Supplier undertakes not to divulge or communicate to any person, firm or company any Confidential Information without the prior written consent of McConnell Dowell except to employees, agents or subcontractors or Suppliers who are engaged in the performance of the Works Order and (if requested by McConnell Dowell) have signed a Confidentiality Undertaking having the same effect as the provisions contained in this Clause, and then only to the extent necessary for the performance of the Works Order. The Supplier shall take all reasonable precautions in dealing with any Confidential Information so as to prevent any unauthorised person from having access to such Confidential Information. If so required by McConnell Dowell, the Supplier shall simultaneously with delivery of the Goods or handing over of the Works, at its own expense, deliver up to McConnell Dowell all documents, papers and property containing any Confidential Information which may be in the possession or under the control of the Supplier, its employees, agents or Sub-Suppliers. The Supplier shall not disclose the existence of the Works Order or mention McConnell Dowell name or that of McConnell Dowell's Client, in any publicity release or announcement or publicity material or other similar communication without McConnell Dowell prior written consent. The provisions of this Clause shall survive the termination or expiry of this Works Order for any reason.

(20A) The Supplier shall not disclose any information concerning the project for distribution through any communications media without McConnell Dowell's prior written approval. The Supplier shall refer to McConnell Dowell any enquiries from any media concerning the project.

(21) **LIEN.** The Supplier hereby waives any and all rights of lien or security interest against any of the Goods or any work of which the Goods form part or the Site (or part thereof) to the fullest extent consistent with the law. In the event an employee of the Supplier, or a subcontractor, Supplier or any of their employees institutes action to place a lien on the Site (or part thereof), the Supplier will take whatever action is necessary to avoid the lien being registered or to have the lien removed forthwith (as the case may be), and shall indemnify McConnell Dowell against costs, losses or damages whatsoever, that McConnell Dowell may suffer as a result of the registration or proposed registration, of such lien including in respect of any action McConnell Dowell may take to have a lien removed.

(22) **WAIVER** A failure by McConnell Dowell to enforce or exercise any rights conferred upon it under the Works Order or at law shall not be deemed to be a waiver of any such rights (unless made in writing by McConnell Dowell) or operate so as to bar the exercise or enforcement thereof at any subsequent time or times. No waiver in respect of any breach of the Supplier shall operate as a waiver in respect of any subsequent breach.

(23) **CUMULATIVE RIGHTS.** The rights and remedies hereby conferred shall be cumulative and in addition to any and all other rights and remedies now or hereafter existing at law or in equity.

(24) **SURVIVAL OF TERMS.** The termination or cessation otherwise of the Works Order howsoever caused shall be without prejudice to any obligations or rights of either party which have accrued prior to such termination or cessation and shall not affect any provision of the Works Order which is expressly or by implication provided to come into effect on or to continue in effect after such termination or cessation including but not limited to all indemnities given in this Works Order.

(25) **PROPERTY FURNISHED BY MCCONNELL DOWELL.** Any tools, tooling, drawings, plans, papers, documents, tape, diskettes, materials and other property furnished by McConnell Dowell for use by the Supplier shall be identified and shall remain the property of McConnell Dowell and shall be used by the Supplier only for the purpose of the performance of the Works Order. The Supplier shall ensure that any such property is clearly marked and identified as McConnell Dowell property, and kept separate from other property of the Supplier or any third party and properly stored and protected. All property aforesaid shall be delivered to McConnell Dowell forthwith upon McConnell Dowell request to a destination specified by McConnell Dowell, in their original condition except for normal wear and tear.

(26) **INDEPENDENT CONTRACTOR.** For the purposes of the Works Order, the Supplier is an independent contractor and not an agent or employee of McConnell Dowell.

(27) **DISPUTE RESOLUTION.** In the event that any dispute, controversy or difference of any kind whatsoever arising out of or in connection with the Works Order (including the validity or enforceability of the Works Order or any part thereof) or the carrying out of the Works Order, shall arise, either Party may notify the other in writing that a dispute has arisen and giving full details of the dispute. Within 14 Days of the date of notification of a dispute, Senior Executives of McConnell

Dowell and the Supplier shall confer in good faith and attempt to settle the dispute amicably or agree a method for settlement. If the parties are unable to resolve the dispute by negotiation or agree a method of settlement, within 30 Days of notification of the dispute, the dispute may be referred by either party to arbitration by a single arbitrator to be appointed by agreement or (failing agreement within 14 Days after receipt of notification by one party to the other of the intended reference) by a single arbitrator to be appointed by the Resolution Institute or Law Society on the written request of either party. The place of arbitration shall be the nearest Capital City to the Site. The decision of the arbitrator shall be final and binding upon McConnell Dowell and the Supplier. The parties expressly and irrevocably agree, that any statutory proportionate liability regimes that may otherwise apply, are, to the maximum extent permitted, hereby excluded from operation in respect to any dispute, claim, action or matter whatsoever arising in connection with the Works Order. Despite the existence of a claim or dispute, the parties must continue to perform their respective obligations under this Works Order. All documents, correspondence, drawings and data relating to the Works Order or any dispute are to be in the English language.

(28) **CODE COMPLIANCE (AUST ONLY)**

Where any applicable State Code applies to McConnell Dowell with respect to the performance of the Works or the supply of Goods, by entering into this agreement, the Supplier agrees that the applicable State Code model clauses (if any) are incorporated into these General Terms and Conditions.

(29) **APPLICABLE LAW.** The Supplier and McConnell Dowell agree to comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable.

(30) **RELEASE.** On the date of receipt by the Supplier of the final payment made by McConnell Dowell under clause 5 of these General Terms and Conditions (the "Date"), the Supplier agrees to irrevocably release and discharge and indemnify McConnell Dowell and McConnell Dowell's Client and each of their respective officers, employees and agents from and against all Claims, which the Supplier has or may have had against McConnell Dowell or McConnell Dowell's Client on the Date with the exception of:

- (a) any claim for the release and/or payment of the balance of the security and/or retention, and
- (b) any Claim (including without limitation a claim for the whole or part of any shortfall between the amount of the Supplier's final payment claim under clause 5 and the amount of the final payment assessed by McConnell Dowell) notified to McConnell Dowell in writing within 7 Days after the Date.

(31) **INTERPRETATION.** In the Works Order –

'Claim' or 'Claims' means all claims, liens, judgements, penalties, awards, remedies, debts, liabilities, damages, demands, costs (including legal costs), losses, expenses or causes of action of whatever nature, including without limitation, those under any injunction or made or enjoyed by dependants, heirs, claimants, executors, administrators, successors, survivors or assigns, whether under the Works Order or otherwise at law or in equity (including under statute, in tort (including negligence), quantum meruit, unjust enrichment or restitution).

'Completion Date' means the date stated on the Works Order for the completion or delivery of the Works.

'Day' means calendar day.

'McConnell Dowell' means the entity stated on the Works Order and may also be referred to as 'Main Contractor' or Contractor or 'Builder'.

'McConnell Dowell's Client' means the entity McConnell Dowell Head Contracts with for the Project and may also be referred to as 'Principal'.

'State Code' means (where applicable) the *Western Australia Building and Construction Industry Code of Conduct* (as amended), the *New South Wales Government's Code of Practice for the Building and Construction Industry* (as amended) or the *Queensland Code of Practice for the Building and Construction Industry* (as amended).

'Site' means the Site as defined in the Head Contract with McConnell Dowell's Client.

'Supplier' means the person bound to execute the work under the Works Order and may also be referred to as 'Subcontractor'.

'Works Order' means the agreement between the Supplier and McConnell Dowell and may also be referred to as 'Contract' or 'Subcontract'.

'Works' or 'Goods' means the works and any materials or other goods that are the subject of the Works Order.

(32) **MARKETING -** McConnell Dowell reserves the right to co-brand the Supplier's equipment that is used on or in relation to the Works. Equipment includes but is not limited to plant, vehicles, employees' uniforms, PPE, barriers, site accommodation, fencing and hoarding. McConnell Dowell will provide branding material as required which may include magnetic logos, embroidery, decals or paint.

(33) **Modern Slavery** The Supplier must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Goods and/or Services. If at any time the Supplier becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of the Contract, the Supplier must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.