

Terms and Conditions

Orontide Provided Goods and Services

1. INTERPRETATION

1.1 In these Standard Terms and Conditions:

“Applicable Statutes” means the Competition and Consumer Act (Cth) 2010 (as amended) and other legislation of the Commonwealth, States and Territories in force from time to time that impose conditions and warranties or confer other rights and remedies upon consumers and by law cannot be excluded, restricted or modified.

“Buyer” means the person, firm, association or corporation (including statutory corporation) to whom the Services are supplied, performed or provided.

“Collateral” means all the Grantor’s present and after-acquired property. It includes anything in respect of which the Grantor has at any time a sufficient right, interest or power to grant a security interest.

“Contract” is comprised of the following documents:

- (a) the Quotation;
- (b) these Standard Terms and Conditions;
- (c) the relevant Work Order; and
- (d) any Variation Order.

“Contract Price” means the price quoted by the Seller for the Services as set out in the Quotation. Where necessary it includes the price of additional works or variations that the Seller may agree to undertake and all other payments to be made by the Buyer to the Seller under the Contract.

“Grantor” has the same meaning as provided for in the Personal Property Securities Act 2009

“Date of Commencement” means the time specified in the Quotation.

“GST” means the Goods and Services Tax as defined in “A New Tax System (Goods and Services Tax) Act 1999”.

“Month” means calendar month.

“Place of Delivery” means the location identified in this Quotation.

“PPSA” means the Personal Property Securities Act 2009.

“Personal Property Securities Register” means the Register as defined section 147 of the PPSA.

“Practical Completion” means when the Services (including the delivery of goods) are complete as determined by the Seller in its absolute and sole discretion and notified by the Seller to the Buyer in accordance with clause 19.

“Quotation” means the Quotation to the Buyer set out on the face hereof or in the accompanying documents and which are incorporated by reference in these Standard Terms and Conditions.

“Seller” means the legal entity referred to in the Buyer’s Work Order, which at all times will be limited to one of the following entities: Orontide Group Limited (ABN 40 115 288 492); Orontide Madco Pty Ltd (ABN 91 009 393 355) trading as Orontide Engineering Services; Orontide Wovodich Pty Ltd (ABN 82 127 228 880) trading as Orontide Engineering Services South West; Orontide Robil Pty Ltd (ABN 68 077 441 368) trading as Orontide Engineering Services Pilbara; and Orontide Alphablast Pty Ltd (ABN 61 122 186 967) trading as Orontide Industrial

Services, each of which has its registered office at 54 Sparks Road Henderson Western Australia.

“Site” means the location where the Services are to be carried out being the location identified in the Quotation.

“Site Access” means the uninterrupted access to the Site and includes scaffolding, personal and material access for carrying out of the Services.

“Sellers Packaging” means the packing cases, drums, vessels and other containers in which the skids and pallets on which any goods are supplied by the Sellers to the Buyer.

“Variation Order” means any order, agreement, request and instruction issued in writing by the Buyer to the Seller in addition to the original Quotation indicating a variation to the original Quotation and which the Buyer requires the Seller to perform.

“Services” means the services to be performed by the Seller as described in the Quotation and on which the Quotation is calculated. It includes all works to be performed, all goods and materials to be supplied, and all services to be provided by the Seller as set out in the Quotation.

“Work Order” means a written authorisation issued by the Buyer to the Seller authorising the Seller to commence the Services.

1.2 Headings are not to be used in interpreting these Conditions.

1.3 A reference to:

- (a) one gender includes all genders;
- (b) a person includes bodies corporate and vice versa; and
- (c) an agreement or legislative or other instrument, code or standard includes a reference to it as amended at any time.

1.4 In the event of any inconsistency between the various documents making up the Contract, the following parts shall apply in order of precedence:

- (a) The Quotation
- (b) These Standard Terms and Conditions
- (c) The Work Order
- (d) Any Variation Order

1.5 No variation of any of the Contract shall have any force or effect unless expressly agreed to in writing by an authorised signatory on behalf of the Seller.

1.6 The words “include” and “including” are to be construed without limitation.

1.7 The invalidity of any provision of these Standard Terms and Conditions shall not affect the validity of any other provision except to the extent made necessary by the invalidity.

2. CONTRACT PRICE

2.1 The Contract Price is calculated by reference to costs current as at the date of the Quotation. Unless otherwise stated, the Contract Price is subject to variation to make proper allowance for any fluctuation or variation in the cost of the Services including variations in the rate of exchange and costs of labour, overhead and administration, charges, taxes, materials and transport.

2.2 The Contract Price is exclusive of:

- (a) the Goods and Services Tax (GST), and

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- (b) import duties, levies or other taxes or impositions (whether State or Federal) relating to the Services and whether imposed prior to or subsequent to the Contract.
- 2.3 The Quotation relates to and is based upon the information, specifications and scope of the Services as provided by the Buyer to the Seller at the time of quotation and:
- (a) no additions to the Services shall be undertaken or be required to be undertaken by the Seller unless the Buyer issues a valid Variation Order for such additional Services which is accepted by the Seller
- (b) nothing in this Clause 2.3 shall be taken as giving to the Buyer a right:
- (i) to require any variation to the Services or to impose an obligation upon the Seller to perform such variations to the Services, or
- (ii) reduce the Services or the participation of the Seller in the performance of the Services.
- 2.4 The Contract Price is calculated on the basis that all materials and other goods required as part of the performance of the Services by the Seller can be delivered to and stored on the Site as and when required by the Seller.
- 2.5 Any off-site storage charges will be to the account of the Buyer and shall be deemed to form part of the Contract Price.
- 2.6 The Buyer shall keep and preserve all materials and other goods delivered to the Site by the Seller and secure and protect them from theft, interference, vandalism or other damage by any person. The Buyer shall secure them against climatic or other conditions that may prevail from time to time and that may cause or contribute to damage to or destruction of any such materials or goods.
- 3. VALIDITY**
- 3.1 The Quotation shall remain valid for a period of thirty days from the date thereof or as otherwise specified in the quotation. Nothing contained in this Clause 3 shall be taken as limiting or restricting the right of the Seller to withdraw or revoke the Quotation at any time prior to the expiration of that Period.
- 3.2 Any order, receipt or form given by the Buyer to the Seller pursuant to the Quotation shall not amount to an acceptance of the Quotation if such order, receipt or form or any conditions attaching thereto alters, amends or otherwise varies the Quotation or these Standard Terms and Conditions.
- 4. COMMENCEMENT OF WORK**
- 4.1 The Seller shall commence work only upon the receipt of a written Work Order issued by the Buyer.
- 5. SITE ACCESS**
- 5.1 Where the Site is not at the Seller's premises, the Buyer shall allow the Seller reasonable Site Access to comply with its obligations under the Contract. The Seller acknowledges it will not have sole possession of any part of the Site and will, at its cost, accommodate and coordinate its Services with work carried out by others retained by any person to carry out work on or near the Site.
- 5.2 In the event that any other person makes a claim against the Seller arising out of any failure by the Buyer to comply with its obligations in relation to providing reasonable Site Access the Buyer shall indemnify the Seller against any liability on such claim including costs and expenses of investigating, negotiating or defending it.
- 5.3 The Seller shall comply with all security arrangements applying to the Site.
- 6. CONTINUITY OF WORK**
- 6.1 The Contract Price is calculated on the basis that:
- (a) the Services can commence on the date specified in the Quotation;
- (b) the Services can be carried out and completed in one continuous operation during ordinary working hours;
- (c) the Seller has clear, unrestricted and uninterrupted Site Access free of all interference and obstructions; and
- (d) neither the Services nor the Seller's performance of the Services will be delayed or hindered by any works or materials or equipment to be supplied and or installed by other contractors engaged by the Buyer in relation to on the Site.
- 6.2 Notwithstanding the provisions of sub-clause 6.1 hereof, where the continuity of the Services is hindered, interrupted or interfered with because of the Buyer's or its subsidiaries, employees, agents, contractors and subcontractors:
- (a) failure to supply any service that is required for the performance of the Services; or
- (b) restricts or interrupts access; or
- (c) failure to provide continuous work due to or arising from any act, default or omission on the Buyer's part; the Buyer shall reimburse the Seller for all losses, costs and expenses incurred by reason of such events. Such reimbursement shall include but not be limited to the costs of stand-by, move off, re-establishment, restricted access, lack of continuity, uneconomical working or loss of profit caused thereby.
- 6.3 The program or sequence of works to be carried out as detailed in the Quotation or an agreed program of work shall be binding on the Seller and the Buyer and any alterations thereto must be agreed to by the Seller in writing.
- 7. DELAYS AND SUSPENSIONS**
- 7.1 The Seller may delay the commencement of or suspend the Services or may delay or suspend the delivery of materials or goods and any other Services if such delay is occasioned by reason of an event beyond the reasonable control of the Seller. Such events shall include: Acts of God, fire, accident, war, strikes, lockouts, breakdown, Government priority orders, transport delays or lack of transport or any other circumstance or occurrence within the ordinary and accepted meaning of the term "force majeure".
- 7.2 Events causing or contributing to a shortage of labour, fuel, materials or other goods or preventing or delaying the manufacture or dispatch of goods or the carrying out of the Services shall not render the Seller liable for any costs or additional charges incurred thereby. In the event of delay or suspension of the Services by reason of such causes or

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events the Seller shall request in writing and the Buyer shall approve a proper extensions of time for completion of the Services.

8. ADDITIONAL SERVICES

8.1 In the event that the Seller is required to undertake additional work not provided for in the Quotation all costs, expenses and profits including but not limited to supervision of labour on site, site establishment and hiring charges, materials, storage costs and costs generally incurred as part of the performance of the Services by it shall be paid by the Buyer to the Seller and shall be deemed to form part of the Contract Price.

9. PAYMENT

9.1 The Buyer shall pay the Seller within 30 days of presentation to the Buyer of a tax invoice for Services completed.

9.2 Where the Services are to be performed by the Seller over a period of time that exceed one month, the Seller shall submit a progress claim to the Buyer each month for Services performed by the Seller in that month including materials and other goods delivered to the site or to storage and storage charges.

9.3 In addition to the payment of the Contract Price, if GST is payable in respect of the supply of any Services, the Buyer must also pay to the Seller the amount of GST payable in respect of those Services.

9.4 The Buyer shall pay each invoice in full within the period specified in clause 9.1 hereof.

9.5 The Buyer shall pay all invoices issued by the Seller in respect of variations or additions to the Services.

9.6 The inclusion of items which are the subject of a bona fide dispute or difference between the Buyer and the Seller in an invoice shall not permit the Buyer to refuse or to delay making payment for those items which are not subject to dispute.

9.7 In the event that the Buyer fails or refuses to pay an invoice within thirty days of its date and without limiting the rights of the Seller as provided in this Clause 9 and elsewhere, interest shall accrue on the moneys unpaid. Interest is payable at the rate equivalent to the Bankwest Reference Rate plus 2 per cent. The interest is payable from the day after the due date and is calculated from and including that date to and including the date of payment in full of the outstanding amount including the interest accrued thereon.

9.8 The Buyer shall not deduct any sum from any invoice on account of any set-off or counter-claim without the prior consent in writing of the Seller.

9.9 The Buyer shall not deduct any sum to be held by it as retention moneys from any invoice without the prior consent in writing of the Seller.

9.10 If any GST is payable by the Buyer in respect of any indemnity under this Contract that indemnity payment will be increased by an amount equal to the GST payable by the Buyer.

10. TERMINATION

10.1 Without prejudice to any rights of the Seller and notwithstanding any delay or previous waiver by the Seller of its rights under the contract, the Seller may forthwith terminate the Contract upon the happening of either of the following events:

- (a) where after the expiration of seven days of the date of service on the Buyer of a notice specifying a default in the observance or performance of any of its obligations under the Contract (including default in making any payment) and that default remains un-remedied; and
- (b) where the Buyer goes into liquidation (other than for the purposes of a bona fide reconstruction or amalgamation), administration, official management or any other distress or execution is levied on or Receiver is appointed over any of the assets of the Buyer or the Buyer enters into a scheme of arrangement or composition or assignment for the benefit of its creditors.

10.2 In the event that the Seller terminates the Contract pursuant to Clause 10.1:

- (a) the Buyer shall pay to the Seller all amounts due to the Seller under the Contract to the date of termination;
- (b) the Seller shall not be liable to the Buyer for any loss or damage suffered by the Buyer or any other person as result of or arising out of such termination; and
- (c) the Seller shall be free to dismantle and remove all plant, equipment or structures of the Seller located on the Site without interference, obstruction or disruption by the Buyer or any person on behalf of the Buyer.

11. COMPLETION AND DELIVERY DATES

11.1 Delivery dates given by the Seller to the Buyer in relation to the Services or any goods to be supplied are non-binding estimates only. The Seller shall use all reasonable endeavours to supply the Services and any goods to be supplied by any completion or delivery date that may be specified in the Contract. Nothing in the Contract shall render the Seller liable to the Buyer or any other person for any loss (whether consequential or direct) incurred by the Buyer or that other person as a result of, whether directly or indirectly, or contributed to by:

- (a) a late delivery of any goods and/or the Services;
- (b) non-delivery of any goods and/or the Services; and
- (c) errors on the part of the Seller in supplying the goods and/or Services including the supply of goods and Services other than those stipulated herein or the supply of a quantity of goods from that stipulated herein.

12. SELLER'S LIABILITY

12.1 The warranty and any term contained in this Clause 12 is in addition to all statutory rights and remedies available to a consumer under the provisions of the Applicable Statutes. Unless expressly stated otherwise and as permitted by law, nothing herein contained shall be taken as purporting to exclude, restrict or modify the application of any provision of the Applicable Statutes or the exercise of a right conferred thereunder.

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12.2 Subject to clause 12.2(b), where:

- (a) any goods manufactured by the Seller are defective and:
 - (i) such defect is caused directly by or has arisen out of the standard of materials or workmanship used in the manufacture of the goods; and
 - (ii) where the defect becomes apparent or occurs within the period of twelve months from the date on which Practical Completion has been achieved as notified by the Seller to the Buyer in accordance with clause 19;
 - (iii) the goods have been maintained by the Buyer using reasonable skill and care and in accordance with applicable industry standards and codes

the Buyer shall as soon as practicable give the Seller written details thereof and provide the Seller with the opportunity to inspect the defect. If upon such inspection the Seller is satisfied that it is responsible for the defect and communicates this to the Buyer, the Buyer may direct the Seller to either replace the goods or repair the goods. If the Seller does not carry out such replacement or repair within a reasonable time-frame after receiving this direction, the Buyer may elect to engage another contractor for this purpose and the reasonable cost of such works will be to the account of the Seller.

Subject to the Seller's exclusive right to carry out rectification works provided for herein, in any case or repair or replacement provided, the liability of the Seller shall be limited to the extent permitted by the Applicable Statutes to any one of the following:

- A. the cost of replacing the goods,
- B. the cost of repairing the goods, or
- C. the cost of acquiring equivalent goods.

However the Seller will not have any obligations under this clause 12.2(a) if the defect in the goods is caused by or has arisen in the following circumstances:

- (i) improper adjustment, calibration or operation by the Buyer;
- (ii) the use of accessories including consumables, hardware, or software which were not manufactured, or approved in writing by, the Seller;
- (iii) any contamination or leakages caused or induced by the Buyer;
- (iv) any modifications of the goods which were not authorised in writing by the Seller;
- (v) any misuse of the goods by the Buyer or anyone for whom the Buyer has legal responsibility (including a minor);
- (vi) any use or operation of the goods outside of the physical, electrical or environmental specifications of the goods;
- (vii) inadequate or incorrect site preparation; or
- (viii) inadequate or improper maintenance of the goods.

(b) any of the goods which are the subject of this agreement are acquired by the Seller from a third party then the Seller shall not be liable for any defect or non-compliance with specifications of the goods so acquired. The Buyer acknowledges that it shall have no other right or claim against the Seller in respect of such goods.

(c) the Services are defective (other than goods to be manufactured, supplied or installed as part of the Services) and such defect becomes apparent or occurs within the period of twelve months from the date on which Practical Completion has been achieved as notified by the Seller to the Buyer in accordance with clause 19, the Buyer shall as soon as practicable give the Seller written details thereof and provide the Seller with the opportunity to inspect the defect. If upon such inspection the Seller is satisfied that it is responsible for the defect and communicates this to the Buyer, the Buyer may direct the Seller to rectify the defect. If the Seller does not carry out such rectification within a reasonable time-frame after receiving this direction, the Buyer may elect to engage another contractor for this purpose and the reasonable cost of such works will be to the account of the Seller. Subject to the Seller's exclusive right to carry out rectification works provided for herein, in any case of such rectification, the liability of the Seller shall be limited to the extent permitted by the Applicable Statutes to any one of the following:

- (i) the rectification of any defective work,
- (ii) the cost of the rectification of any defective work, or
- (iii) reimbursement to the Buyer of that part of the Contract Price paid by the Buyer to the Seller relating and applying directly to the defective work only.

12.3 Subject to any liability provisions contained in the Applicable Statutes that cannot by law be excluded, restricted or modified, and the terms of this Clause 12, further conditions, warranties and guarantees as to description, quality, suitability or fitness of any goods supplied or as to design, performance, assembly, installation, materials of any goods are hereby expressly excluded.

12.4 The Seller shall not be liable for consequential loss or damage of any kind including:

- (a) loss or damage resulting from an inability to use the Site or any part thereof,
- (b) loss by reason of plant or Site shutdown, non-operation or increased expense of operation, service, or interruption,
- (c) loss of production, claims of customers, other persons with whom the Buyer has contracted,

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- (d) costs of money, loss of capital or revenue (including but not limited to loss of profits or business opportunity or payment of liquidated sums or damages under any other agreement);
- (e) special, incidental, consequential or indirect loss or damage whether of a similar or dissimilar kind of any nature whether based in contract, tort (including negligence) strict liability, statutory liability or any other principle of law;
- arising out of or relating to, whether directly or indirectly, the Services, the performance thereof or the manufacture, supply or use of any goods and any Services forming part thereof.
- 12.5 Unless expressly agreed in writing, the Seller will not accept and will be under no obligation or liability to accept any responsibility for liquidated damages or any other pre-estimate of loss that may be nominated by the Buyer.
- 12.6 Nothing in this Clause 12 shall be taken as obviating the requirement on the part of the Buyer to take out and maintain such policies of insurance as may be within the contemplation of Clause 13.
- 12.7 The warranties given by the Seller in this Clause 12 shall only apply to the extent that any insurance moneys recoverable under any of the policies of insurance within the contemplation of Clause 13 are insufficient to meet and satisfy the terms and limits of such warranties.
- 12.8 Unless expressly provided for in the Quotation:
- (a) there shall be no maintenance period in respect of the Services
- (b) damage or interference to any part of the Services performed by the Seller and paid for as provided in these Standard Terms and Conditions shall be at the risk of the Buyer both prior to and after the Date of Completion.
- 12.9 Every exemption, limitation of liability, defence and immunity of whatever nature available to the Seller or to which the Seller is entitled hereunder shall also extend to protect its servants, agents, contractors or subcontractors acting in relation to or performing some part of the Services. For the purposes of this Clause 12 the Seller shall be deemed to act as agent on behalf of all persons who are its servants, agents, contractors or subcontractors from time to time in relation to the performance or the Services. All such persons shall to that extent be deemed to be parties to the Contract and these Standard Terms and Conditions.
- 12.10 Notwithstanding any provision to the Contrary, to the maximum extent permitted by law, the aggregate liability of the Seller for loss or damage in contract (including but not limited to any damages that relate to a delay in performance), tort (including but not limited to negligence), in equity, product liability, under statute (to the extent that it is possible to limit or exclude such liability), or otherwise at law to the Buyer, or any other party arising under or in connection with or for breach of the Contract and whether arising in connection with one or more events is limited to the value of the Work Order or the proceeds the Seller is able to recover through its insurance cover, whichever is the lesser.
- 12.11 Notwithstanding any other provision of this Contract and to the maximum extent permitted by law, all obligations and liabilities of the Seller under this Contract shall cease and expire upon twelve (12) months having passed after the date on which Practical Completion is achieved in accordance with clause 19.
- 13. THE SELLER'S INSURANCE**
- 13.1 The Seller has provided for insurance against workers' compensation and associated common law claims for and in respect of its employees and any other person who may be deemed to "Worker" for the purposes of the Workers' Compensation Acts in each State and Territory.
- 13.2 The Seller has insured its plant and motor vehicles comprehensively (including third party cover) and has insured against public risk for claims arising out of the performance of the Services by the Seller not exceeding \$20,000,000. The Buyer shall take insurance cover for all risks in excess of or not covered or protected by the policies of insurance of the Seller as stipulated in Clause 13. This shall include consequential loss (including loss of profits), damage to or loss of work in progress or complete work from any cause whatsoever and however arising. The Buyer agrees to indemnify and keep the Seller indemnified in respect of all such risks and claims or demands made arising therefrom.
- 14. PASSING OF PROPERTY IN THE GOODS AND SERVICES**
- 14.1 Ownership of goods manufactured, supplied or installed by the Seller comprising the Services shall remain in the Seller absolutely until paid for in full.
- 14.2 Upon the Buyer taking possession of the goods the Buyer shall:
- (a) hold the goods and each part, item or component thereof as bailee for the Seller until paid in full;
- (b) store the goods and each part, item or component thereof within the Buyer's premises separate from the goods of the Buyer or any other person so as to be clearly identifiable as being the property of the Seller at all times; and
- (c) keep all goods within or upon the Seller's Packaging until actual use and incorporation or re-supply by the Buyer.
- 14.3 In the event that the Buyer re-supplies any of the goods before payment in full any such re-supply by the Buyer shall be as agent for the Seller and for the account of the Seller. The Buyer shall, if required by the Seller, maintain a separate bank account and deposit into that account the gross proceeds of the re-supply of the goods. For the purposes of this Clause 14.3 "re-supply" shall include a reference to:
- (a) a supply of the goods to a third party in an altered form or condition, and
- (b) supply of the goods to another person in which goods the Seller's goods have been incorporated by the Buyer.
- 14.4 The Buyer shall assign absolutely and irrevocably from the Date of Delivery of the goods to the Buyer, all rights to the

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gross proceeds of a sale by the Buyer of any of the Buyer's products in which the Seller's goods are used or incorporated. The assignment of such gross proceeds of sale shall be limited to the extent that the Seller's invoice therefore remains unpaid. The Buyer shall, if required by the Seller, maintain a separate bank account and deposit into that account only the gross proceeds of sales by the Buyer's products referred to in this Clause 14.4.

14.5 Notwithstanding the foregoing provisions of this Clause 14, risk or loss or damage to any of the goods shall pass to the Buyer upon delivery to the Buyer.

14.6 The Buyer irrevocably grants the Seller a general lien and pledge over any and all goods belonging to the Buyer that are in the Seller's possession to secure payment of any amounts due and payable under this Contract.

15. SPECIFICATIONS

15.1 Where the Services including any goods are subject to prescribed specifications they shall conform as to quality and description with the particular specification stated in the Buyer's Work Order. If a standard of performance is specified the goods shall be capable of such performance if the purpose for which the goods are required is indicated in the Work Order either expressly or by implication then the goods shall be fit for that purpose.

15.2 Where the goods are acquired by the Buyer from a third party in pursuance of this agreement then the Seller shall not be liable for any defect or non-compliance with specifications of the goods so acquired. The Buyer acknowledges that it shall have no other right or claim against the Seller in respect of such goods.

16. TESTING

16.1 Where the goods are required to comply with detailed specifications the Seller may test them for compliance strictly in accordance with the technical specifications prescribed by the Buyer. The Buyer shall be entitled to attend such tests and the Seller will notify the Buyer of them if so required to do by the Buyer. If as a result of any test carried out in accordance with all necessary requirements and the goods do not comply with the specifications or are unlikely on completion of manufacture so to comply the Seller shall take such steps as may be necessary to ensure compliance.

17. COPYRIGHT AND USE OF DOCUMENTS

17.1 Copyright in all drawings, reports, specifications, bills of quantities, calculations, software, models, source code and object code and other documents provided or produced by the Seller in connection with the Services shall remain vested in the Seller.

17.2 The Buyer shall have a licence to use the documents referred to in Clause 17.1 for the purpose of the Services; however, the Buyer shall not use nor make copies of such documents in connection with any work other than work comprised in the Services unless express approval is given in advance by the Seller.

17.3 The Seller may with the consent of the Buyer publish, either alone or in conjunction with others, articles, photographs and other illustrations relating to the project.

17.4 If during the course of providing the Services the Seller;
(a) develops, discovers, or first reduces to practice a concept, product or process which is capable of being patented, then such concept, product or process shall be and remain the property of the Seller and the Buyer shall not use, infringe or otherwise appropriate the same without first obtaining the written consent of the Seller.

(b) discovers, develops or first reduces to practice a concept, product or process capable of being patented, then the Buyer shall be entitled to a royalty free licence to use the same during the life of the works comprising the Project.

17.5 The Buyer shall ensure, to the extent reasonably possible, that the Seller's input into the Project is duly recognised in any publicity material generated by the Buyer in respect of the Project.

18. ASSIGNMENT

18.1 The Seller is entitled to assign, novate or otherwise transfer its rights or obligations under the Contract, fully or partly to any affiliates or third parties and is not required to obtain the Buyer's consent in order to do so.

18.2 The Buyer shall not, without the consent in writing of the Seller, assign or transfer the Contract or part thereof to any other person or entity.

19. PRACTICAL COMPLETION

19.1 Practical Completion shall be afforded to each identifiable section of the Services progressively throughout the performance of the Services. The Sellers shall notify the Buyer in writing of the Practical Completion of each section of the Services or the whole of the Services (as the case may be). Unless the Buyer notifies the Seller of its refusal to accept such date as the date of Practical Completion within twenty one days of the date of the notice given by the Seller, the Buyer shall be deemed to have accepted such date as the date of Practical Completion and to have taken over that section of the Services (as the case may be) on that date.

20. JURISDICTION

20.1 This Contract shall be construed and have effect in accordance with the laws of Western Australia.

21. PERMITS

21.1 The Buyer shall obtain and ensure compliance with all authorisations, permits and consents necessary to permit the lawful and uninterrupted performance of the Services by the Seller on the Site. The Seller shall not be liable to the Buyer or to any other person for any loss or damage suffered by or arising out of a failure on the part of the Buyer to obtain and ensure compliance with all such authorisations, permits and consents and the Buyer shall indemnify the Seller accordingly.

22. GOODS AND SERVICES TAX

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- 22.1 The Buyer must pay to the Seller in respect of the supply or deemed supply of Goods and Services or any other act, matter or thing by which the Seller delivers under or in connection with this Contract (Supply).
- 22.2 The Buyer must pay the Seller in respect of a Supply the amount which is necessary to ensure that the Seller receives a net amount (after payment of GST imposed in respect of that Supply) that is equal to the full amount it would have received under this Contract had that GST not been imposed.
- 22.3 Any price or other consideration in this Contract does not include GST unless it is expressly included.
- 22.4 The Seller must provide the Buyer a tax invoice or other document, or other information or things, as required by law.
- 22.5 This clause takes precedence over any other term of this Contract to the extent of any inconsistency.
- 23. SELLER'S PACKAGING**
- 23.1 The Seller shall retain full ownership of all Packaging absolutely and the Buyer shall retain actual possession of all Packaging delivered to it by the Seller until collection by the Seller.
- 24. PPSA PROVISIONS**
- 24.1 This agreement is a security agreement.
- 24.2 The interest of the Seller in the Collateral and all proceeds from the sale of the Collateral by the Buyer to a third party is a security interest.
- 24.3 The Buyer consents to the Seller registering its security interest on the Personal Property Securities Register and agrees to provide all assistance reasonable required by the seller to facilitate registration.
- 24.4 Until such time as title in the goods has passed to the Buyer as contemplated by clause 14.1 the Buyer agrees not to in any way assign, charge, lease or otherwise deal with the goods in such a manner as to create, a security interest over, the goods in favour of the Buyer or any third party. The parties agree that this clause will not prohibit the Buyer from selling the goods in the ordinary course of business.
- 24.5 The Buyer waives its rights to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by that Act and cannot be excluded.
- 24.6 The Seller and Buyer agree that this agreement and all related information and document(s) are confidential (Confidential Information) and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by this agreement or required by law. The Seller and Buyer agree that the seller will not disclose the Confidential Information pursuant to a request under section 275(1) of the PPSA.
- 24.7 Unless the goods are used predominantly for personal, domestic or household purposes, the Seller and the Buyer agree each of the following requirements or rights under the PPSA do not apply to the enforcement of the seller's security interest in the goods or of this agreement:
- (a) any requirement for the Seller to give the Buyer a notice of removal of accession;
 - (b) any requirement for the Seller to give the Buyer a notice of the Seller's proposed disposal of the goods;
 - (c) any requirement for the Seller to include in a statement of account, after disposal of the goods, the details of any amounts paid to other secured parties;
 - (d) any requirement for the seller to give the buyer a statement of account if the seller does not dispose of the goods;
 - (e) any right the buyer has to redeem the goods before the seller exercises a right of disposal;
 - (f) any right the buyer has to reinstate this agreement before the seller exercises a right of disposal of the goods.
- 24.8 Expressions defined in the PPSA have the same meaning when used in this agreement.
- 25. DISPUTE RESOLUTION**
- 25.1 If a dispute arises between the Buyer and the Seller, the following procedure applies:
- (a) A party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause.
 - (b) A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this paragraph.
 - (c) A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this paragraph.
- 25.2 If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within 20 Business Days (or other period as agreed).
- 25.3 Unless otherwise agreed by the parties, any dispute that cannot be settled by negotiation between the parties or their representatives, the parties expressly agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation which operate at the time the matter is referred to ACDC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into these Standard Terms and Conditions. This paragraph survives termination of these Standard Terms and Conditions.
- 25.4 Notwithstanding the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these Standard Terms and Conditions.
- 25.5 The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making

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of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.