

ARA Mechanical

Standard Terms and Conditions of Purchase

1. Supply of Goods and/or Services

- 1.1 In consideration of payment of the Price by the Company, the Supplier must supply to the Company the Goods and/or perform the Services requested by the Company in accordance with the Purchase Order issued by the Company. Together, the Purchase Order (or other document captured by clause 1.3) and these Terms form the Agreement between the Supplier and Company.
- 1.2 To the extent the Supplier's own terms and conditions are supplied with the Goods and/or Services (including as printed on consignment notes or other documents such as tax invoices), those terms and conditions will be of no legal effect and will not constitute part of the Agreement unless otherwise expressly agreed to in writing by the duly authorised representative of the Company.
- 1.3 For the avoidance of doubt, in the event no formal Purchase Order is raised by the Company to the Supplier, all references to "Purchase Order" in these Terms shall be taken to refer to any form of communication from a duly authorised representative of the Company to the Supplier seeking to procure the supply of Goods and/or performance of Services from the Supplier, and such supply shall be governed by these Terms and considered to form part of the Agreement notwithstanding the absence of a formal Purchase Order.
- 1.4 Where the Purchase Order relates to Goods and/or Services the subject of an existing contract between the Supplier and the Company, the terms of that contract apply to the extent of any inconsistency with these Terms which shall prevail in the event of an inconsistency.
- 1.5 The Supplier must, in supplying the Goods or performing the Services:
- not unduly interfere with the Company's activities or the activities of any other person at the Delivery Address;
 - be aware of, comply with and ensure that the Supplier's employees, agents, and contractors are aware of and comply with:
 - all applicable Laws;
 - all site standards, rules, and procedures, to the extent that they are applicable to the supply of the Goods or the performance of the Services by the Supplier; and
 - all lawful directions and orders given by the Company's representative or any person authorised by Law to give directions to the Supplier;
 - ensure that the Supplier's employees, agents, and contractors entering the Company's premises or attending the Delivery Address perform the supply in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and are of such character as to not prejudice:
 - safe working practices;
 - safety and care of property; and
 - continuity of work;
 - provide all such information and assistance as the Company reasonably requires in connection with any statutory or HSEC investigation in connection with the supply of the Goods or the performance of the Services;
- (e) on request by the Company, provide to the Company and its employees, agents and consultants, any information and assistance required to identify, evaluate, implement, and report on any matter required by Law, including:
- producing written reports;
 - recommending efficiency opportunities;
 - collecting data; and
 - monitoring or metering,
- in respect of anything used, produced, or created in connection with the performance of the Supplier's obligations under this Agreement; and
- (f) on request by the Company, provide to the Company and its employees, agents and consultants, evidence of service performance to relevant quality standards, including but not limited to:
- inspection test checklists;
 - inspection test plans; or
 - any other reports directed or generally required by the Company.

2. Delivery of Goods

- 2.1 The Supplier must deliver the Goods to the Delivery Address.
- 2.2 The Supplier must ensure that the Goods are suitably packed to avoid damage in transit or in storage. Where applicable, Goods must be supplied with appropriate technical information, manufacturer instructions and safety labelling as required by law.
- 2.3 Packages must be accompanied by a delivery note specifying the Purchase Order number, item number, destination, contents, quality, and date.

3. Time for Performance

- 3.1 The Supplier must complete the delivery of the Goods to the Delivery Address or complete the performance of the Services at the address or location directed by the Company, by the Date for Completion.
- 3.2 In the absence of a Date for Completion, time shall be strictly of the essence in relation to performance of the Purchase Order by the Supplier.
- 3.3 The Supplier indemnifies the Company in respect of any and all loss or damage sustained by reason of the Supplier's delay in supplying the Goods and/or performing the Services by the Date for Completion, or, in the absence of such, within a reasonable period that could be expected for such supply.

4. Title and Risk in Goods

- 4.1 Risk in the Goods shall pass to the Company when the Goods are delivered to the Delivery Address.
- 4.2 Title in Goods shall pass to the Company upon earlier of payment of the Price by the Company or delivery to the Delivery Address.
- 4.3 Notwithstanding that title in the Goods has or has not passed to the Company, the Company and the Supplier agree:

- (a) a partial payment of the Goods gives rise to a Security Interest in the Goods; and
- (b) the Company may register a Security Interest under the PPSA in respect of the Goods to be supplied and the Supplier agrees to do all things reasonably required to assist the Company to effect such registration.
- 4.4 Neither party may disclose information of the kind referred to in section 275(1) of the PPSA and this clause constitutes a **confidentiality agreement** within the meaning of section 275(6) of the PPSA. Each party waives any right it may have, or save for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of information of the kind referred to in section 275(1) of the PPSA.
- 5. Price**
- 5.1 The Company must pay the Supplier the Price for the Goods and/or Services as set out in the Purchase Order or subsequent tax invoice. In the event of any inconsistency, the parties shall concur as to the Price payable with regard to prior correspondence, standard industry practice, and the Supplier's then current pricing for such Goods or Services.
- 5.2 The Price is inclusive of all costs incurred by the Supplier in the supply of the Goods and/or performance of the Services including all charges for packing, insurance and delivery of the Goods and the cost of any items used or supplied in the performance of the Services.
- 5.3 The Price cannot be varied unless mutually agreed by the parties in writing.
- 5.4 The Price is inclusive of all taxes and duties, except GST.
- 6. GST**
- 6.1 If GST is imposed on any supply made by the Supplier under or in connection with this Purchase Order, the Supplier may recover from the Company, in addition to the Price, an amount equal to the GST payable in respect of that Supply.
- 6.2 The Supplier must first provide the Company with a valid tax invoice before the Company will pay the GST amount to the Supplier.
- 7. Invoicing/Payment**
- 7.1 Upon delivery of the Goods, or, on or after the 25th day of the month in which Services are performed, the Supplier must provide to the Company a valid tax invoice for the Goods delivered, or Services performed in that given month, and that tax invoice must include the information set out in clause 7.2.
- 7.2 The Supplier's tax invoice must include the following details:
- the Supplier's ABN;
 - a reference to the Purchase Order (or other correspondence, as is applicable);
 - a detailed description of the delivered Goods and/or performed Services, including the date of delivery and/or period of Services in respect of which the invoice relates and the relevant quantity (as applicable);
 - an individual payment reference number for the Company to quote with remittance of payment;
 - the Price relating to the Goods and/or Services, broken down to reflect the same Price components on the Purchase Order;
 - the amount of any applicable GST; and
- where the tax invoice is for Services performed, the tax invoice must be accompanied by a statement regarding worker's compensation, payroll tax, and remuneration, in the format as generally required and available from the New South Wales, State Insurance Regulatory Authority, accessible via this link: https://www.sira.nsw.gov.au/resources-library/workers-compensation-resources/forms/employers-and-claims/subcontractors_statement_5483.pdf, or, where Services are provided outside of New South Wales, in a form equivalent to the above, as approved by the applicable state or territory's appropriate regulatory authorities.
- 7.3 The Company will pay all tax invoices that comply with clause 7.2 within sixty (60) days from the end of the month in which the Supplier's invoice is received, except where the Company disputes the tax invoice, in which case:
- the Company may withhold payment of the disputed amount pending resolution of the dispute; and
 - if the resolution of the dispute determines that the Company must pay an amount to the Supplier, the Company must pay that amount upon resolution of that dispute.
- 7.4 The Company may reduce any payment due to the Supplier under this Agreement by any amount which the Supplier must pay the Company, including costs, charges, damages and expenses and any debts owed by the Supplier to the Company on any account whatsoever. This does not limit the Company's right to recover those amounts in other ways.
- 8. Quality of Goods and Services**
- 8.1 The Goods and/or Services must match the description referred to in the Purchase Order, or if there is none, as advertised in the Supplier's catalogues, brochures or per the Supplier's website.
- 8.2 Where the Supplier is contracted to provide Services, in performing those Services the Supplier:
- must ensure the terms of the Agreement are adhered to and complied with;
 - must exercise the level of professional skill, care, efficiency and diligence that would be expected of a service provider similarly qualified and experienced in providing the same or similar services, or comparable services;
 - must ensure the requirements or directions reasonably provided by the Company from time to time are complied with; and
 - warrants that the Services are fit for their intended purpose and all other purposes that could reasonably be expected to arise from such Services.
- 8.3 Where the Supplier is contracted to supply Goods, the Supplier:
- must ensure the terms of the Agreement are adhered to and complied with;
 - must ensure the requirements or directions reasonably provided by the Company from time to time are complied with;
 - shall, subject to clause 8.3(d), bear the risk of Goods until such time the Company has inspected, tested and accepted the Goods;
 - must allow the Company a reasonable opportunity to inspect and test the Goods, and where those Goods do not meet the requirements of this Agreement (as notified to the Supplier by the Company), arrange for the Goods to be removed at no cost to the Company, and thereafter re-supply the Goods, or, at the election of the Supplier, refund any monies paid in respect of such Goods (or withdraw any tax invoice in supply of such);

- (e) warrants that the Goods (including the workmanship and methods used by the Supplier to produce the Goods) are of a kind suitable for the Goods' intended purpose and any other purpose that could reasonably be attributed to Goods of that kind, and that the Goods are free of defects; and
 - (f) must provide appropriate warranties in relation to the Goods and otherwise pass on to the Company (and not jeopardise) any third party warranties which apply to the Goods.
- 8.4 If the Supplier gave the Company a sample of the Goods or a demonstration of the Services, the Goods and/or Services must be of the same nature and quality as the same or demonstration given.
- 8.5 The Goods and/or Services must be fit for the purpose for which the goods and/or services of the same kind are commonly supplied or bought and for any other purpose the Company expressly specifies in the Purchase Order.
- 8.6 Goods must be of acceptable quality, safe and free from defects, acceptable in appearance and finish, must do all things that the Goods are ordinarily used for, and unless otherwise specified in a Purchase Order, the Goods must be new and unused.

9. Warranty Period

- 9.1 If, during the Warranty Period, any of the Goods or Services are found to be Defective, the Company may, at its discretion:
- (a) return the Defective Goods to the Supplier;
 - (b) reject the Defective Services;
 - (c) repair or make good the Defective Goods; or
 - (d) re-perform or make good the Defective Services.
- 9.2 The Supplier must, as appropriate in the circumstances:
- (a) repair or replace the Defective Goods;
 - (b) re-perform or make good the Defective Services;
 - (c) reimburse the Company for any direct expenses incurred in the Company repairing, re-performing, or making good (as the case may be) any Defective Goods or Services, whether at the Company's discretion or where the Supplier declines or fails in its obligations to do so; or
 - (d) if the Defective Goods or Services were incapable of remedy, reimburse the Company for the full value of the Defective Goods and/or Services.
- 9.3 The provisions relating to any Warranty Period or Defective Goods and/or Services specified under this Agreement shall be in addition to (and without limiting) any conditions or warranty expressed or implied by statute or common law or otherwise, and such statutory (or common law), and where any legislation (or common law) implies in the Agreement any condition, term, guarantee or warranty ("Mandatory Warranty"), including, without limitation, warranties in respect of quality, fitness for purpose and so forth, those Mandatory Warranties shall be deemed to be included in the Agreement and shall operate for the duration specified by Law, regardless of whether that duration exceeds the Warranty Period defined in these Terms.

10. Confidentiality

- 10.1 Each party must not, and must ensure that its subcontractors do not, divulge to third parties any information relating to the Goods and/or Services (including Intellectual Property), the other party, or the supply to the Company by the Supplier, unless and until such information is within the public domain (other than by a

breach of this clause) or following the giving of express written consent by the relevant party.

- 10.2 Each party shall indemnify the other and keep the other party indemnified from and against all liabilities, losses, damages, actions, suits, proceedings, claims, costs (including legal costs) and expenses arising from any breach of this clause 10 by the indemnifying party whatsoever.

11. Intellectual Property

- 11.1 The specifications, drawings, technical instructions, or any other documentation whatsoever issued to the Supplier by the Company during tendering or at the time of establishing this Agreement will remain the exclusive property of the Company and are to be kept strictly confidential.
- 11.2 The Supplier warrants that:
- (a) the Goods supplied and/or Services performed by the Supplier and the licence granted by it to the Company do not infringe any intellectual property rights of any third party; and
 - (b) the Goods supplied and/or Services performed are not subject to any intellectual property rights of any third party that in any way restrict the rights of the Company or its clients to use or sell the same.
- 11.3 The Supplier agrees that title in all (present and future) intellectual property created, discovered, or coming into existence as a result of, for the purposes of or in connection with the supply of the Goods and/or performance of the Services under the Purchase Order (other than any improvements, modifications, or additions to any pre-existing Supplier intellectual property) shall vest exclusively in the Company upon its creation (**Company IP**).
- 11.4 The Company acknowledges that the Supplier remains the owner of all intellectual property created, discovered, or coming into existence other than as a result of, for the purposes of or in connection with the supply of the Goods and/or performance of the Services under the Purchase Order (**Supplier IP**).
- 11.5 The Supplier grants the Company a non-exclusive, royalty free licence to use all Supplier IP to the extent necessary to enable the Company to exercise its rights in the Company IP under the Purchase Order and to otherwise obtain the full benefit and use of all Goods supplied and/or Services performed.

12. Indemnity

The Supplier will indemnify the Company, its related corporate entities, directors, officers, employees, agents, consultants, and contractors, and keep the Company indemnified from and against all liabilities, losses, damages, actions, suits, proceedings, claims, costs, and expenses arising from or in connection with:

- (a) injury to (including illness or disability), or death, of any persons;
- (b) loss or destruction of, damage to, or loss of use of any property; or
- (c) claims brought by any third party; caused or contributed to by:
- (d) the act or omission of the Supplier or its directors, officers, employees, agents, or contractors or by any breach of this Agreement by the Supplier (including any breach of a warranty); or
- (e) Defective Goods and/or Services,

except to the extent caused or contributed to by the wilful default or unlawful or negligent act or omission of the Company.

13. Force Majeure

- 13.1 A party will not be liable for any delay or failure to perform any of its obligations under the Purchase Order (other than an obligation to pay money) if as soon as possible after the beginning of the Force Majeure event affecting the ability of the affected party to perform any of its obligations under the Purchase Order, the affected party gives notice to the other party in accordance with clause 13.3.
- 13.2 The Agreement will suspend in the event of Force Majeure for the period of the Force Majeure, provided that each parties' respective obligations contained in this clause 13 are complied with.
- 13.3 A notice given under clause 13.1 must:
- specify the obligations the party cannot perform;
 - fully describe the Force Majeure event;
 - estimate the time during which the Force Majeure will continue; and
 - specify the measures proposed to be adopted to remedy or abate the Force Majeure.
- 13.4 Any amendment to the Date for Completion is the Supplier's sole remedy for any delays resulting from Force Majeure where the Supplier is the affected party, and the Supplier is otherwise not entitled to any increase in the Price or any damages, costs, or expenses in connection with the Force Majeure.
- 13.5 Notwithstanding this clause 13, should an event of Force Majeure result in a delay of thirty (30) consecutive days or more concerning the delivery of Goods or performance of Services, the Company shall be entitled to withdraw and terminate the affected Purchase Order, by seven (7) days' written notice to the Supplier.

14. Breach and Termination

- 14.1 The Company may terminate this Agreement:
- in its absolute discretion by giving the Supplier seven (7) days' written notice; or
 - in the event the Supplier is in material default of any of the terms of this Agreement for any reason (including insolvency), by written notice with immediate effect where the default:
 - is not capable of remedy; or
 - is capable of remedy but the Supplier fails to remedy such default, within fourteen (14) days of a written notice from the Company (or such other time as the Company may agree at its absolute discretion, which time shall not be less than fourteen (14) days).
- 14.2 In the event that the Company terminates this Agreement, then subject to any other rights of the Company under this Agreement, the Company must:
- pay for the Goods delivered or Services provided by the Supplier in accordance with any Purchase Order prior to the date of termination;
 - reimburse the Supplier for the cost of materials the Supplier reasonably ordered prior to the date of notice of termination for the purpose of providing the Goods and/or performing the Services and which the Supplier is legally liable to accept and cannot otherwise utilise, but only when those materials are delivered to the Delivery Address and become the Company's property upon payment;

- any other costs that the Supplier actually and reasonably incurred prior to the date of notice of the termination in the expectation of providing the Goods and/or performing the Services, and which costs were not included in any previous payment by the Company,
- and the Supplier, shall not otherwise be entitled to any compensation whether by way of damages, profit, loss or expense, including without limitation anticipated profits, incurred as a result of a termination of this Agreement under this clause.

- 14.3 Notwithstanding the above, if the Company terminates this Agreement pursuant to clause 14.1(b), the provisions of clause 14.2(b) and (c) shall not apply.

15. Insurances

- 15.1 The Supplier must effect and maintain the following insurances:
- public and products liability insurance for at least \$20,000,000.00 for any one event and unlimited in the aggregate and products liability insurance for at least \$10,000,000.00 for any one event and in the aggregate, which shall contain a principal's indemnity extension in favour of the Company for liability to any third party arising out of the performance of this Agreement by the Supplier;
 - where the Purchase Order provides for the provision of professional services, professional indemnity insurance for at least \$10,000,000.00 for any one claim and \$20,000,000 in the annual in the aggregate, and such insurance shall be maintained for a minimum period of seven (7) years post completion of the work or termination of the Agreement, whichever shall first occur;
 - workers' compensation insurance as required by Law, which, if permitted by law, shall contain a principal's indemnity extension for both statutory liability and common law liability in favour of the Company and its respective officers and employees, and shall further contain a waiver of subrogation in favour of the Company and its respective officers and employees;
 - The Supplier must ensure that, at all times, the Supplier's motor vehicle and/or industrial plant and equipment is insured to provide cover:
 - against loss or damage for replacement value; and
 - for at least \$30,000,000 for loss or damage to property and death or injury to any person, and should contain a waiver of subrogation in favour of the Company; and
 - any other insurances required by Law.
- 15.2 When requested by the Company, the Supplier must promptly provide copies of certificates of currency of the above insurances.
- 15.3 The required insurances shall be required to be maintained for the duration of the Agreement or any other period that is designated in these Terms. The Company may at any time seek proof of the currency of such insurances and that insurance premiums have been paid.
- 15.4 Each insurer should be an Australian Prudential Regulation Authority insurer with a Standard and Poor's (or equivalent) rating of A- or greater.

16. Limitation of Liability

- 16.1 Despite any other provision of these Terms, but subject to clauses 16.2 and 16.3, and to the maximum extent permitted by Law, the Company's overall liability:

- (a) under, or arising out of, or in connection with this Agreement;
 - (b) otherwise at law or in equity, including:
 - (i) by statute, to the extent permitted by law; or
 - (ii) in tort for negligence or otherwise;
 - (c) on any other basis whatsoever,
- shall not exceed the full value of the contract Price.
- 16.2 Notwithstanding any clause to the contrary, but subject always to clause 16.3, neither party shall be in any way liable to the other party, including by way of indemnity, for Consequential Loss.
- 16.3 The Supplier's limitation of liability referred to in clause 16.2 does not apply to liability incurred by the Supplier in respect of:
- (a) loss or damage caused or contributed to by the Supplier, its directors, employees, or sub-contractors 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 under which the Supplier is an insured which it is required to effect under this Agreement,
 - (b) loss arising from the death of or personal injury to any person, or loss or damage to any property, caused or contributed to by the Supplier, its directors, employees or subcontractors;
 - (c) loss arising from any criminal acts, wilful misconduct or fraud by the Supplier, its directors, employees or subcontractors or by any person for whose acts or omissions the Supplier is vicariously liable;
 - (d) loss arising from conduct of the Supplier which is repudiatory of the Agreement as a whole;
 - (e) loss arising from liability which, by law, the Supplier cannot contract out of; or
 - (f) loss arising from a breach of confidentiality or intellectual property by the Supplier.

17. Dispute Resolution

- 17.1 The parties agree that all disputes relating to or arising out of this Agreement must be resolved in accordance with this clause 17.
- 17.2 If a dispute arises then either party may give notice to the other party that must:
- (a) be in writing;
 - (b) state that it is a notice under this clause 17.2; and
 - (c) be accompanied by reasonable particulars of the dispute.
- 17.3 If a notice is given under clause 17.2, then a senior management representative or equivalent of each of the parties (who must be capable of binding each party) must meet within five (5) Business Days of receipt of the notice under clause 17.2 (or such other time as the parties may agree) and use reasonable endeavours acting in good faith to resolve the dispute.
- 17.4 If the dispute is not resolved by the senior management representatives within the period referred to in clause 17.3, the dispute must be referred to mediation.
- 17.5 If a dispute is not resolved at mediation, either party may commence proceedings for the resolution of the dispute. The parties shall be barred from commencing proceedings where the mediation requirement in clause 17.4 is not complied with, except

where the dispute in question concerns non-payment of monies owing.

- 17.6 Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Agreement.

18. Health and Safety

- 18.1 The Supplier must take all reasonable precautions to prevent injury (including illness or death) to any person, or damage to any property, while preparing for, performing, or completing the supply of Goods or performance Services (including where the Goods are re-supplied or made good, or Services are re-performed or made good due to defects or a warranty breach).
- 18.2 The Supplier must prepare and provide to the Company any work health and safety, environmental management, and risk management plans that the Company reasonably requests the Supplier to provide, or which the Supplier is otherwise required to prepare and provide by law.
- 18.3 The Supplier shall be responsible for all industrial relations in respect of its employees, subcontractors and agents and must ensure that such persons are professional, courteous and well behaved when supplying Goods and/or performing any Services.
- 18.4 All applicable health and safety legislation, rules, regulations, codes, standards and like instruments must be strictly complied with by the Supplier in addition to any other health and safety requirements dictated by the Company from time to time.

19. Compliance with Laws

The parties must at all times comply with all applicable laws relating to anti-bribery, improper payments, anti-money laundering, and modern slavery, including but not limited to the *Criminal Code Act 1995* (Cth), the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), the *Anti-Money Laundering and Counter-Terrorism Financing Rules 2007* (Cth), and the *Modern Slavery Act 2018* (Cth).

20. Survival

Clauses 8, 9, 10, 12, 14, 15, 16, 17, 18 and 19 survive the termination of the Agreement.

21. Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws in force in New South Wales, Australia, and the parties submit to the exclusive jurisdiction of the courts of New South Wales, Australia.

22. Definitions

Agreement means this agreement, comprising:

- (a) the Purchase Order or any other document captured by clause 1.3;
- (b) these Standard Terms and Conditions of Purchase; and
- (c) any attachments or annexures specifically referred to in the Purchase Order (or any document captured by clause 1.3).

Company means ARA Mechanical Services Pty Ltd ABN 37 122 466 693, its subsidiaries, related corporate entities and affiliates, or the party otherwise named in any Purchase Order.

Consequential Loss means (without limitation):

- (a) exemplary, punitive, aggravated or nominal damages;
- (b) loss of opportunity;
- (c) loss of revenue, profit, or anticipated profit;
- (d) loss of contract;

- (e) loss of goodwill;
- (f) loss arising from business interruption; and
- (g) any loss that is not within the reasonable contemplation of the Supplier and Company at the time of formation of the Agreement as the probable result of a breach of the Agreement or any relevant matter, whether present or future, fixed or ascertained, actual or contingent.

Date for Completion means the date specified on the Purchase Order by which the Goods are to be delivered to the Delivery Address or the Services are to be completed.

Defective (or **defects** in Goods or Services) means Goods and/or Services (or any aspect of them) which are:

- (a) not in accordance with the Purchase Order or which do not comply with the requirements and warranties set out in these Terms of the Agreement generally; or
- (b) do not meet the minimum Australian Standards, Building Code(s) and/or quality standards applicable to such Goods or Services (including as required by the Company or any third party intended as the 'end user' or recipient of Goods or Services; or
- (c) are damaged, deficient, faulty, inadequate or incomplete, not fit for purpose, unsafe, or not of acceptable quality.

Delivery Address means the place for delivery specified on the Purchase Order.

Force Majeure means any event or circumstance (or combination of events and circumstances) which:

- (a) is beyond the control of the party affected by that event or circumstance or both which could not reasonably have been foreseen at the time of entering into this Agreement and which could not reasonably have been prevented or foreseen by the affected party, and includes (without limitation); an act of God, war declared or undeclared, blockage, revolution, riot, insurrection, civil commotion, sabotage, lightning, fire, earthquake, storm or flood on the site, plague, explosion, governmental or governmental agency restraint, expropriation, prohibition, intervention or embargo; and
- (b) causes delay in or prevents the performance by the affected party of any of its obligations under the Agreement; and
- (c) cannot be prevented, overcome, or remedied by the exercise by the affected party of a standard of care and diligence consistent with that of a prudent and competent company,

including a strike or industrial dispute which:

- (d) has national or state-wide application and is not confined to the Supplier's workforce;
- (e) affects the execution of the Services at the site; and
- (f) lasts for more than seven (7) consecutive days, but does not include,
- (g) other industrial-related disputes including strikes, lockouts, industrial difficulties, labour difficulties, work bans, blockades or picketing;
- (h) wet or otherwise inclement weather;
- (i) lack of or inability to use funds for any reason;

- (j) any occurrence which results from the wrongful omission of the affected party or the failure by the affected party to act in a prudent and proper manner and in accordance with good and accepted industry practices;
- (k) any failure by the affected party to reach agreement with any third party necessary to enable the affected party to perform its obligations under this Agreement;
- (l) an event or circumstances, where the event or circumstances or its effects on the affected party or the resulting inability of the affected party to perform its obligations could have been prevented, overcome, or remedied by the exercised by the affected party of the standard of care and diligence consistent with that of a reasonable and prudent operator; or
- (m) the breakdown of any plant or equipment.

Goods means the goods, if any, described in any Purchase Order.

GST has the same meaning given to that term under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

HSEC means health, safety, environment, and community.

Law means:

- (a) any Commonwealth, State and local government legislation, including regulations, by-laws, orders, awards and proclamations;
- (b) common law and equity;
- (c) authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals); and
- (d) guidelines of authorities with which the Supplier is legally required to comply.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Price means the price set out in the Purchase Order which is exclusive of GST but is inclusive of all other costs and charges.

Purchase Order means the purchase order for Goods and/or Services issued by the Company to the Supplier from time to time containing, amongst other things, a description of the Goods and/or Services.

Security Interest has the meaning given to it in the PPSA.

Services means the services, if any, described in any Purchase Order.

Supplier means the party identified as such in the Purchase Order.

Terms means these Standard Terms and Conditions of Purchase.

Warranty Period means the period of twenty-four (24) months commencing on the date of delivery of the Goods or from the date on which a Service is performed. Where a Mandatory Warranty applies, the period of such Mandatory Warranty shall be for the duration prescribed by Law for that Mandatory Warranty, and the Mandatory Warranty period shall commence from the date specified in such Law where the Law dictates a commencement date other than the date on which Services are performed or Goods are delivered (i.e., 6 years from the date an Occupancy Certificate is granted).