

Purchase Order Terms and Conditions

Minor Works

COVERING PAGE

Item				
1.	Principal:	Greater Bendigo City Council ABN 74 149 638 164		
2.	Principal address and contact details:	Address: 15 Hopetoun Street, Bendigo Victoria 3550 Email: procurement@bendigo.vic.gov.au		
3.	Principal Representative (Clause 1.1):	Contact Person nominated in RFQ Document Part 1 Key Information section of the RFQ Document		
4.	Contractor:	As per purchase order issued to the Successful Contractor		
5.	Contractor's address and contact details:	As per purchase order issued to the Successful Contractor		
6.	Contractor's Representative (Clause 14.4):	As notified by the Successful Contractor in RFQ Document Part 4 Response Schedule 1		
7.	Contract Documents (Clause 1.1):	The following documents comprise the Contract between the parties: (a) this Covering Page; (b) the General Contract Conditions; (c) the specification and drawings identified in Part 3 Specification; (d) the Successful Contractor's response to rates and prices set out in the Schedule of Prices in RFQ Document Part 4 Response Schedules; (e) Purchase Order issued to Successful Contractor		
8.	Works (Clause 1.1):	As specifically set out in RFQ Document Part 3 Specification Item A3		
9.	Date for Practical Completion (Clause 1.1):	As specifically set out in RFQ Document Part 3 Specification Item A8		
10.	Contract Sum (Clause 1.1):	Amount as quoted in the purchase order to the Successful Contractor		
11.	Defects Liability Period (Clauses 1.1 and 18.1):	52 weeks		
12.	Site (Clause 1.1):	As specifically set out in RFQ document Part 3 Specification Item A4		
13.	Security (Clause 5.1):	Not used		
14.	Is the Contractor to be appointed as the 'principal contractor' for the purposes of Part 5.1 of the Occupational Health and Safety Regulations 2017 (Vic)? (Clause 10.2):	Yes		
15.	Key Personnel (Clause 1.1):	As notified by the Successful Contractor in RFQ Document Part 4 Response Schedule		
16.	Public liability insurance (Clause 13.1(a)):	The amount of public liability insurance cover in respect of any one occurrence must not be less than \$20million		
17.	Site Working Hours (Clause 15.1):	Day	Start Time	Finish Time
		Weekdays excluding public holidays	7.00am	6.00pm
		Saturdays	8.00am	1.00pm
		Sundays and public holidays no work		
18.	Rate of liquidated damages (Clause 17.1):	Not used		
19.	Time for submission of Payment Claims (Clause 20.1):	25 th day of each month (and if the 25 th is not a Business Day, the Business Day immediately following the 25 th day of the month).		
20.	Period for payment (Clause 20.3):	30 Calendar Days after: (a) the issue of the Payment Schedule/Progress Claim; and (b) receipt of a tax invoice from the Contractor, whichever is later.		
21.	Goods for which the Contractor is entitled to claim payment prior to their incorporation into the Works (Clause 20.6)	None		
22.	Authorised Nominating Authority (Clause 22):	<ul style="list-style-type: none"> ▪ The Resolution Institute (Victorian Chapter); ▪ Rialto Adjudications Pty Ltd; ▪ RICS Dispute Resolution Service. 		

GENERAL CONTRACT CONDITIONS

1. Definitions and Interpretation

1.1 In the Contract:

'**Associate**' means an officer, employee, agent, contractor, subcontractor, licensee, consultant, subconsultant, invitee, client or adviser of the Principal or the Contractor (as the case may be) but does not include the Principal or the Contractor;

'**Australian Privacy Principles**' has the meaning given in the *Privacy Act 1988* (Cth);

'**Authorised Nominating Authority**' means the authorised nominating authorities stated in Item 22;

'**Business Days**' has the meaning given to it in the SOP Act;

'**Calendar Days**' means every consecutive calendar day including any public holidays, Saturdays and Sundays, unless Business Days are expressly specified. If the performance of any action or obligation falls on a Calendar Day which is not a Business Day, time is extended until the next Business Day.

'**Claim**' includes any action, claim, demand or proceeding, including for the payment of money or any other relief or remedy, and whether arising in contract, tort (including negligence), restitution, under statute or otherwise at law or in equity;

'**Commencement Date**' means the date as set out in RFQ Document Item A7;

'**Competent Contractor**' means a qualified, competent, professional contractor experienced in performing works of a similar nature and complexity to the Works;

'**Confidential Information**' means all information and materials, in any form concerning the Principal, the Works, the Contract or which the Principal indicates to be confidential, but does not include information in the public domain (other than due to a breach of confidentiality by any person);

'**Contract**' means the agreement between the parties constituted by the Contract Documents;

'**Contract Documents**' means the documents stated in Item 7;

'**Contract Sum**' means the amount to be paid by the Principal to the Contractor as specified in Item 10 but excluding any additions or deductions which may be required to be made by the Contractor;

'**Contractor's Representative**' means the Contractor's representative stated in Item 6;

'**Covering Page**' means the page to which these General Contract Conditions are attached;

'**Date for Practical Completion**' means the date or the expiry of the period for Practical Completion being calculated by the Principal as set out in Item 9;

'**Date of Practical Completion**' means the date referred to in the Certificate of Practical Completion as issued by the Principal;

'**Defects Liability Period**' means the period set out in Item 11;

'**Discrepancy**' includes any error, omission, ambiguity, inconsistency or discrepancy;

'**Final Certificate**' means the notice issued by the Principal to the Contractor stating that the requirements of the Defects Liability Period, including the rectification of any defects notified during the Defects Liability Period (if any), have been satisfied.

'**General Contract Conditions**' means this document and any Attachments thereto;

'**Information Only Documents**' means the documents provided by the Principal as part of the quote, tender or negotiation process (if any) for the Contract (excluding the Contract Documents);

'**Goods**' means any items of plant or material which the Contractor is obliged to supply, or supply and install, pursuant to the Contract Documents;

'**IPPs**' means the 'Information Privacy Principles' set out in Schedule 1 to the PDP Act together with any 'applicable code of practice' as defined in that Act;

'**Item**' means an item in the Covering Page;

'**Key Personnel**' means those persons set out in Item 15 (if any) or replaced in accordance with Clause 14.6(c);

'**Latent Conditions**' means physical conditions on the Site and its near surrounds, including artificial things but excluding weather conditions, which differ materially and substantially from those physical conditions which should reasonably have been anticipated by an experienced and Competent Contractor at the time of the Contractor's tender if the Contractor had inspected:

- all written information made available by the principal to the Contractor for the purpose of tendering;
- all information influencing the risk allocation in the Contractor's tender and reasonably obtainable by the making of reasonable enquires, and
- the site and its near surrounds;

For example soft ground or rock, or items buried in the past such as building debris, substantial rubbish, mine shafts, etc.

'**Legal Requirements**' means:

- (a) all laws (including statutes, regulations, the common law, codes and standards) relevant to the Works; and
- (b) the requirements of all authorities and persons having jurisdiction over or in respect of any part of the Site or the Works;

'**Loss**' includes any cost, loss, liability, action, damage or expense, howsoever arising;

'**Notice of Delay**' means a written notice of a possible delay which includes details of the possible delay and the cause;

'**OH&S Laws**' means all relevant Legal Requirements concerning the health, safety and welfare of people;

'**Payment Claim**' means a claim for payment by the Contractor which includes a tax invoice and sets out:

- (a) details of that part of the Works carried out to which the claim relates;
- (b) details of any Variations included in the claim;
- (c) the amount claimed by the Contractor and the basis for calculation of that amount; and
- (d) any information required by the SOP Act;

'**Payment Schedule/Progress Claim**' means a statement of the Principal's opinion of the moneys due from the Principal to the Contractor or from the Contractor to the Principal (as the case may be) including the reasons for any difference;

'**PDP Act**' means the Privacy and Data Protection Act 2014 (Vic);

'**Personal Information**' has the meaning given in the *Privacy Act 1988* (Cth);

'**PPS Act**' means the Personal Property Securities Act 2009 (Cth);

'**Practical Completion**' means that stage in the carrying out of the Works when:

- (a) the Works are complete in accordance with the Contract except for minor omissions and minor defects;
- (b) those tests which are required by the Contract to be carried out and passed before the Works reach Practical Completion have been carried out and passed; and
- (c) documents and other information required under the Contract or which, in the opinion of the Principal, are required for the use, operation and maintenance of the Works have been supplied;

'**Principal's Policies and Procedures**' includes all policies, plans, manuals, guidelines, instructions and other requirements of the Principal as published on the Principal's website or otherwise provided to the Contractor from time to time which are, or may become applicable to the Site or the Works; and

'**Principal Representative**' means the Principal's representative stated in Item 3 or any replacement notified in accordance with Clause 14;

'**Privacy Laws**' means any Legal Requirement which relates to the privacy of information about individuals and with which the Contractor must comply, including the *Privacy Act 1988* (Cth), the Australian Privacy Principles and any applicable code of practice;

'**Provisional Sum**' means the amount described in Item 10 as a 'Provisional Sum' which is incorporated into or deducted from the Contract Sum pursuant to clause 3.2;

'**Purchase Order**' means the Purchase Order to which these conditions apply;

'RFQ Document' means the Request for Quotation document issued by the Principal to contractors during the quotation phase;

'Schedule of Rates' means the schedule of rates and prices (if any) identified in RFQ Document Part 4 Response Schedule;

'Security' means two unconditional undertakings in the form, and from a financial institution, both approved by the Principal for the amount or amounts set out in Item 13 (or where the Security is additional Security for Goods, means Security in accordance with Clause 20.6(e));

'Site' means the site or sites described in Item 12;

'Site Working Hours' means the days and hours for carrying out the Works set out in Item 17;

'SOP Act' means the Building and Construction Security of Payment Act 2002 (Vic);

'State' means the State or Territory of Australia in which the Site is situated;

'Successful Contractor' means the Contractor who is issued with the purchase order by the Principal, to confirm acceptance of quotation to proceed with the Works;

'Variation' means a variation to the Works including an increase, addition, decrease, omission or change to the scope of the Works;

'Variation' has the meaning given in Clause 19.1;

'Works' means the work described or referred to in Item 8 to be carried out and completed in accordance with the Contract Documents, including Variations directed by the Principal in accordance with the Contract; and

'Works Commencement Date' has the meaning given in Clause 15.2.

- 1.2 The Contract comprises the entire understanding between the parties and no regard will be had to any prior dealings. Any terms that may have been attached or embodied in the Contractor's tender (if any) or other correspondence are deemed to have been withdrawn in favour of the terms stated in the Contract.
- 1.3 The Contract comes into effect and operates from the date the Successful Contractor is notified.
- 1.4 The obligations, warranties and representations of the Contractor under the Contract apply to any part of the Works carried out by the Contractor prior to the date the Successful Contractor is notified.
- 1.5 In the interpretation of the Contract, no rule of construction applies to the disadvantage of the Principal on the basis that the Principal prepared or put forward the Contract or any part of it.
- 1.6 The Contract is governed by and is to be construed in accordance with the laws of the State and the parties irrevocably submit to the non-exclusive jurisdictions of the courts of the State.
- 1.7 Any provision of this Contract that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 1.8 If it is not possible to read down a provision as required by Clause 1.7, the part or all of the provision that is unlawful or unenforceable will be severed from this Contract and the remaining provisions continue in force.
- 1.9 Without limiting any other way in which documents or notices may be given by a party to the other party under this Contract, a notice or document may be given by electronic delivery to the email address stated in Item 2 and Item 5 or to a substitute email address advised by one party to other from time to time as an address at which notices may be given.
- 1.10 All obligations to indemnify under the Contract survive termination or expiration and completion of the Contract.
- 1.11 Nothing contained or implied in this Contract is intended to create a partnership between the parties, or except as otherwise provided in this Contract, establish any party as an agent, employee or representative of the other party.
- 1.12 The Contractor shall not represent or hold itself out to any third party that it acts as agent, employee or partner of the Principal or has power or authority to directly or indirectly bind the Principal.
- 1.13 A party does not waive a right simply because it failed to exercise the right, delays exercising the right or only exercises part of the right.
- 1.14 A waiver of one breach of a term of this Contract does not operate as a waiver of another breach of the same term or any other term.
- 1.15 No addition to or modification of any provisions of this Contract shall be binding upon the parties unless in writing and signed by the parties.
- 1.16 Unless otherwise expressly stated, the Principal or its Principal Representative may exercise a right or power under or arising out of this Contract in its absolute discretion.
- 1.17 This Contract may be executed in counterparts, all of which taken together constitute one document.
- 1.18 If the Contractor consists of two or more parties, this Agreement and any Works Contract binds each of them severally and jointly.

2. Contractor's primary obligations and acknowledgments

- 2.1 The Contractor must:
 - (a) carry out and complete its obligations under the Contract:
 - (i) in accordance with the Contract Documents;
 - (ii) in a proper and workmanlike manner;
 - (iii) with the professional skill, care and diligence that would be expected of a Competent Contractor;
 - (iv) using suitably qualified and experienced persons and subcontractors; and
 - (v) so as to achieve Practical Completion by the Date for Practical Completion;
 - (b) comply with all directions given by the Principal;
 - (c) comply with all Legal Requirements and the Principal's Policies and Procedures;
 - (d) ensure that upon Practical Completion the Works comply with all Legal Requirements;
 - (e) obtain all approvals required under any Legal Requirement for the performance of the Works or otherwise required by the Contract Documents to be obtained by the Contractor;
 - (f) meet with the Principal and any other persons nominated by the Principal regarding the performance of the Works at the places and at the times directed by the Principal;
 - (g) bring to the meetings referred to in Clause 2.1(f) the persons and materials required by the Principal;
 - (h) not be a party to any act or thing prejudicial to the goodwill, reputation or overall public image of the Principal; and
 - (i) take out, keep current and produce to the Principal on request, evidence of any relevant authorisation, permit or licence (including permission to use software) required by a Legal Requirement to do the Works.
 - (j) do all things necessary and necessarily incidental to the carrying out of its obligations under the Contract.
- 2.2 The Contractor acknowledges and agrees that:
 - (a) it has, and by entering into the Contract is deemed to have:
 - (i) fully informed itself of the scope and requirements of the Works;
 - (ii) thoroughly examined and carefully checked the Contract Documents and satisfied itself that they are suitable, appropriate and adequate for the performance of the Works; and
 - (iii) satisfied itself that the Contract Sum and Date for Practical Completion makes due allowance for the performance by the Contractor of its obligations arising out of or in connection with the Contract; and
 - (b) its obligations and liabilities remain unaffected despite any review, comment on or acceptance of the Works by the Principal.
- 2.3 The Contractor must install any Goods in accordance with the requirements of the Contract and must ensure that those Goods are:
 - (a) new, unless expressly stated otherwise in the Contract;
 - (b) suitable, appropriate, adequate and fit for the purpose for which the Works are required, as stated in or reasonably able to be inferred from the Contract Documents; and
 - (c) of merchantable quality and free from defects.

3. Principal's primary obligation

- 3.1 Subject to the Contract, the Principal must pay the Contractor the Contract Sum, as adjusted by any additions or deductions made under the Contract.
- 3.2 A Provisional Sum included in the Contract Sum shall not be payable by the Principal except to the extent that Works or items to which the Provisional Sum relates are carried out or supplied by the Contractor at the written direction of the Principal.

4. Schedule of Rates

The parties acknowledge and agree that the Schedule of Rates (if any) will only be used for the purposes of valuing Variations and, at the sole discretion of the Principal, assessing Payment Claims. The Contractor is not entitled to make any Claim against the Principal arising out of or in connection with a Schedule of Rates.

5. Security

- 5.1 The Contractor must provide the Security to the Principal within 5 Business Days after the date the Successful Contractor is notified and in any event prior to commencement of the Works on the Site.
- 5.2 The Principal may have recourse to the Security to satisfy any:
- (a) debt or other moneys (including liquidated damages) due from the Contractor to the Principal; or
 - (b) other Loss which the Principal has suffered or incurred, or asserts that it may suffer or incur, arising in connection with the Contract, and whether or not either the liability or the amount is disputed.
- 5.3 Subject to Clause 5.2, the Principal will release 50% of the Security then held by the Principal within 10 Business Days of the Date of Practical Completion and release the balance upon the issuing of the Final Certificate. If the Contractor has provided additional Security for any Goods under Clause 20.6(e), the Principal will release that additional Security in accordance with Clause 20.9.
- 5.4 The Contractor will not take any steps to injunct or otherwise restrain any financial institution from paying the Principal under the Security or the Principal from exercising its rights in respect of the Security.

6. Information Only Documents

The Contractor:

- (a) acknowledges and agrees that the Information Only Documents do not form part of the Contract; and
- (b) is not entitled to make any Claim against the Principal arising out of or in connection with any Discrepancy in or between any one or more of the Information Only Documents or any failure by the Principal to provide any other information.

7. Discrepancies

- 7.1 If either party identifies any Discrepancy in or between any one or more of the Contract Documents, then that party must notify the other party. On becoming aware of a Discrepancy, the Principal will direct the Contractor as to how the Discrepancy is to be resolved. In so directing, the Principal:
- (a) may apply the following order of precedence:
 - (i) the higher or greater requirement, level, standard or quality shall prevail;
 - (ii) to the extent paragraph (i) does not resolve the Discrepancy, figured dimensions shall prevail over scaled dimensions;
 - (iii) to the extent neither paragraphs (i) nor (ii) resolve the discrepancy, the documents shall be constructed according to the order of precedence of the Contract Documents listed in Item 7; and
 - (b) shall, if it considers that the Discrepancy cannot be resolved according to the rules of interpretation set out in Clause 7.1(a), give the Contractor a direction expressly stated to be a direction under this Clause 7.1(b) resolving the Discrepancy.
- 7.2 If the Principal gives a direction expressly stated to be a direction under Clause 7.1(b) and:
- (a) the Discrepancy the subject of the direction could not have been identified by a Competent Contractor prior to the date the Successful Contractor is notified; and
 - (b) compliance with the direction causes the Contractor to incur more or less cost,
- the difference shall be valued under Clause 19.4 and added to or deducted from the Contract Sum. The Contractor is not otherwise entitled to make any Claim against the Principal arising out of or in connection with any directions under this Clause 7 or the resolution of any Discrepancy.

8. Confidentiality and privacy

- 8.1 Except as required by law, the Contractor must, and must procure that its Associates, keep confidential and not disclose to any third party the Confidential Information without the prior written consent of the Principal.
- 8.2 Upon the earlier of the expiration of the Defects Liability Period or termination of the Contract under Clause 25, the Contractor must deliver to the Principal all materials in its possession comprising the Confidential Information.
- 8.3 The Contractor:
- (a) is bound by, and must procure its Associates are bound by, the IPPs with respect to any act done or practice engaged in by it or its Associates for the purposes of the Contract in the same way and to the same extent as the Principal would have been bound by the IPPs in respect of that act or practice had it been directly done or engaged in by the Principal;
 - (b) must not, and must procure its Associates do not, cause the Principal to be in breach of its obligations under the PDP Act; and
 - (c) must comply with all procedures for the enforcement of the IPPs set out in the PDP Act (including complying with any compliance or other notices given by, or requirements of, the Commissioner for Privacy and Data Protection appointed under the PDP Act and producing documents).
- 8.4 The Contractor must:
- (a) in respect of Personal Information held in connection with the Contract and whether received from the Principal or otherwise:
 - (i) comply, and procure that its Associates comply, with the Privacy Laws; and
 - (ii) immediately notify the Principal if it becomes aware of a breach of Clause 8.3(a) (i) or of any investigation by the Office of the Australian Information Commissioner; and
 - (b) if the Principal gives notice to the Contractor that it proposes to audit, either directly or through its auditors, the Contractor's information handling practices, provide all reasonable assistance to the person conducting that audit.

9. Subcontractors and dealings with Contract

- 9.1 The Contractor:
- (a) must not assign or transfer the Contract or any payment or any other right, under the Contract without the prior written approval by the Principal;
 - (b) may only subcontract a part of the Works with the prior written approval of the Principal (which approval may be conditional); and
 - (c) remains fully responsible for, and will not be relieved from, any liability for the Works notwithstanding that the Contractor has subcontracted the carrying out of any part of the Works.
- 9.2 To the full extent permitted by law the Contractor:
- (a) is entirely responsible for any failure to take reasonable care on the part of any of its Associates; and
 - (b) without limiting the general nature of Clauses 9.1 and 9.2(a), must indemnify and keep indemnified the Principal on demand from and against any Loss suffered or incurred by the Principal arising out of or in connection with the operation of Part IVAA of the *Wrongs Act 1958* (Vic) including any Loss arising out of an apportionment in accordance with Part IVAA of the *Wrongs Act 1958* (Vic) of any Claim by the Principal against the Contractor.

10. Occupational health and safety

- 10.1 The Contractor is responsible for all aspects of health and safety in the carrying out of the Works and must:

- (a) comply with and procure that its Associates comply with all OH&S Laws;
 - (b) implement and maintain a system of obtaining and updating information on all OH&S Laws;
 - (c) in carrying out the Works, eliminate risks to health and safety so far as is reasonably practicable and if it is not reasonably practicable to eliminate risks to health and safety, then reduce those risks as far as is reasonably practicable; and
 - (d) without limiting the Contractor's obligations arising out of the Contract or at law, notify the Principal immediately (and in any event within 12 hours of such matter arising) of any health or safety matters or incidents arising out of or in connection with the Contract; and
 - (e) where the Contractor has notified the Principal of matter described in Clause 10.1(d), if required by the Principal to do, the Contractor must within 2 Business Days of such request provide a written report to the Principal detailing the health or safety matter or incident, including results of the investigations into its cause and any recommendations or strategies to prevent a recurrence.
- 10.2 If stated in Item 14 that the Contractor is to be appointed 'principal contractor', then:
- (a) the Principal appoints the Contractor to be, and the Contractor accepts its appointment as, 'principal contractor' for all of the Works carried out at the Site;
 - (b) the Contractor will perform and satisfy all of the functions, duties and obligations of 'principal contractor' under the OH&S Laws; and
 - (c) the Contractor is authorised by the Principal to manage and control the Site to the extent necessary to ensure that the Contractor complies with the OH&S Laws and performs and satisfies all of the functions, duties and obligations of 'principal contractor' under the OH&S Laws.
- 10.3 If requested by the Principal to do so, the Contractor must within 5 Business Days of such request provide the Principal with documentation demonstrating compliance with the requirements set out in this Clause 10.

11. Care of the Works, people and property

- 11.1 The Contractor is responsible for the care of the Works from the date the Works under Contract commence until 5:00pm on the Date of Practical Completion.
- 11.2 The Contractor must protect people and property in the performance of the Works and prevent nuisance and unreasonable noise.

12. Damage to persons, property and the Works

- 12.1 The Contractor must indemnify and keep indemnified the Principal on demand from and against all Claims against, or Loss or suffered or incurred by, the Principal arising out of or in connection with:
- (a) the loss of or damage to any property (whether property of the Principal or any other person); and
 - (b) the death or personal injury of any person, arising out of or in connection with the carrying out of the Works.
- 12.2 The Contractor must, at its own expense, promptly make good any loss or damage to the Works:
- (a) during the period described in Clause 11.1; and
 - (b) caused by the Contractor or its Associates.
- 12.3 The Contractor must, as directed by the Principal, promptly make good any loss or damage to the Works:
- (a) during the period described in Clause 11.1; and
 - (b) caused partially by the Contractor or its Associates.
- To the extent the loss or damage was not caused by the Contractor or its Associates, the Contractor will be entitled to have its reasonable costs incurred in making good that loss or damage valued under Clause 19.4 and added to the Contract Sum.

13. Insurance

- 13.1 Before commencing the Works, the Contractor must effect and maintain the following insurance policies for the duration of the Works:
- (a) a public liability insurance policy which covers:
 - (i) in respect of any one occurrence must not be less than \$20million.
 - (ii) the Principal, the Contractor and its subcontractors employed in the Works for their respective rights and interests and their liability to third parties; and
 - (iii) the Contractor's liability to the Principal and Principal's liability to the Contractor for loss of or damage to property and the death of or injury to any person;
 - (b) a motor vehicle insurance policy which includes full comprehensive cover; and
 - (c) workers compensation insurance to cover liability arising out of death of or injury to persons employed by the Contractor, including liability at statute and at common law.
- 13.2 The Contractor must ensure that each of its subcontractors are similarly insured.
- 13.3 Each policy must be taken out with a licensed insurer and be in terms approved by the Principal (acting reasonably). Before commencing the Works, on each subsequent anniversary of the Contract and whenever requested by the Principal, the Contractor must produce evidence to the satisfaction and approval of the Principal that it has satisfied all of its insurance obligations under the Contract. Insurance does not limit the Contractor's liability under the Contract or otherwise.

14. Representatives and key personnel

- 14.1 The Principal has appointed the Principal Representative.
- 14.2 The Principal Representative may give directions and carry out all of the Principal's powers or functions under the Contract as agent of the Principal.
- 14.3 The Principal may replace the Principal Representative at any time and notify the Contractor in writing of that appointment.
- 14.4 One of the Contractor's Key Personnel must be in attendance on Site at all times during the carrying out of the Works at the Site.
- 14.5 The Contractor must not deal with or comply with the directions of any person other than the Principal Representative.
- 14.6 The Contractor must:
- (a) employ the Key Personnel to perform those roles and duties specified in Item 15 (if any);
 - (b) subject to Clause 14.6(c), not replace the Key Personnel without the Principal's prior written approval; and
 - (c) if any of the Key Personnel dies, becomes seriously ill or resigns, replace them with persons approved by the Principal who are at least of equivalent experience, ability and expertise.

15. The Site and Latent Conditions

- 15.1 The Contractor must carry out the Works during the Site Working Hours or as otherwise agreed between the parties in writing from time to time.
- 15.2 Subject to the Contractor having complied with Clauses 5 and 13, the Principal shall provide the Contractor non-exclusive access to the Site or a sufficient part of the Site to enable the Contractor to commence the Works, except in the event Alternative C in Item 9 applies, the Principal will provide the Contractor with a written notice specifying a date upon which works are to commence (**Works Commencement Date**).
- 15.3 The Contractor upon becoming aware of a Latent Condition while carrying out the Works, shall promptly, and where possible before the Latent Condition is disturbed, give the Principal's Representative written notice (**Latent Condition Notice**) specifying:
- The Latent Condition encountered and the respects in which it differs materially from the expected conditions of the Site;
 - The additional work, resources, time and cost which the Contractor estimates to be necessary to deal with the Latent Condition, and
 - Other details reasonably required by the Principal's Representative.
- 15.4 Within 5 Business Days of service of the Latent Condition Notice the parties will meet to discuss and agree in good faith on a Variation to address the Latent Condition. The parties agree that the Variation will have no regard to additional costs incurred by the Contractor more than 28 days prior to the service of the Latent Condition Notice.

- 15.5 Notwithstanding clause 15.4 the Principal reserves the right to rectify the Latent Condition outside of the scope of the Works at its cost provided that doing so does not materially impact the Contractor's rights and obligations under this Contract.
- 15.6 If the Contractor, for the purpose of carrying out the Works, requires access to any property adjoining or in the vicinity of the Site, the Contractor will obtain, at its cost, all necessary consents and approvals from the owner of such property or any other relevant person or authority prior to accessing such property.
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- 16. Extensions of Time**
- 16.1 The Contractor must give the Principal a Notice of Delay within 5 Business Days after the date on which it became aware, or a Competent Contractor would have become aware (whichever is the earlier) of anything that may delay the carrying out of the Works.
- 16.2 If the Contractor:
- (a) is or will be delayed in carrying out the Works by a:
- (i) breach of the Contract by the Principal;
- (ii) Variation the subject of a Variation Notice; or
- (iii) an act or omission of the Principal or an employee, consultant or agent of the Principal, other than acts or omissions that are authorised by, and done or omitted to be done (as the case may be) in accordance with the Contract; and
- (b) has:
- (i) provided a Notice of Delay to the Principal in accordance with Clause 16.1; and
- (ii) satisfied the Principal that the Contractor has or will be actually delayed in a manner that will delay the Contractor in achieving Practical Completion,
- then the Principal will extend the Date for Practical Completion by a period equivalent to the extent of the delay, as determined by the Principal (acting reasonably).
- 16.3 In assessing the period of delay under Clause 16.2, the Principal may take into account the extent to which the Contractor has failed to take the reasonable steps that would have been taken by a Competent Contractor to mitigate the consequences of the delay.
- 16.4 The Principal may, for any reason and in its absolute discretion, at any time extend the Date for Practical Completion.
- 16.5 The Contractor will not be entitled to make, and releases the Principal from, any Claim against the Principal arising out of or in connection with any delay or prolongation other than as expressly provided for in this Clause 16.
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- 17. Liquidated damages**
- 17.1 If the Contractor fails to reach Practical Completion by the Date for Practical Completion, the Contractor will be immediately indebted to the Principal for liquidated damages at the rate stated in Item 18 for every day after the Date for Practical Completion to and including the Date of Practical Completion or the date that the Contract is terminated, whichever first occurs.
- 17.2 The Contractor agrees that the rate of liquidated damages constitutes a genuine pre-estimate of the loss the Principal will suffer if the Contractor fails to achieve Practical Completion by the Date for Practical Completion.
- 17.3 If this Clause 17 (or any part) is found for any reason to be void, voidable, unenforceable or otherwise inoperative, then the Principal will be entitled to recover damages from the Contractor under general law for any failure of the Contractor to achieve Practical Completion by the Date for Practical Completion.
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- 18. Defects Liability Period**
- 18.1 The Defects Liability Period commences on the Date of Practical Completion.
- 18.2 During the Defects Liability Period, the Principal may give the Contractor a direction to rectify a defect. If rectification is not commenced or completed by the date stated in such direction (acting reasonably), the Principal may have the rectification carried out by others. All costs and expenses incurred by the Principal in having those rectification works carried out will be a debt immediately due and payable by the Contractor to the Principal.
- 18.3 The Contractor must carry out rectification of defects at times and in a manner causing as little inconvenience to the occupants or users of the Works as is reasonably possible.
- 18.4 Upon the conclusion of the Defects Liability Period as defined in Item 11, the Principal will issue a Final Certificate.
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- 19. Variations**
- 19.1 The Principal may at any time before the Date of Practical Completion direct the Contractor to carry out a Variation by written notice (**Variation Notice**). The Contractor must not carry out a Variation other than pursuant to a Variation Notice. Variations the subject of a Variation Notice will be valued in accordance with Clause 19.4.
- 19.2 No Variation, including an omission of any part of the Works, will invalidate or constitute a repudiation of the Contract. The Principal may perform or procure another person to perform any part of the Works deleted or omitted by a Variation Notice.
- 19.3 The Contractor is not entitled to make any Claim arising out of or in connection with a new or any change in any Legal Requirement.
- 19.4 Where the Contract provides that a valuation is to be made under this Clause 19.4, the Contract Sum will be increased or decreased (as the case may be) by the amount determined by the Principal using the following order of precedence:
- (a) prior agreement; and
- (b) rates or prices in the Schedule of Rates (if any) to the extent the Principal considers that it is reasonable to use them.
- 19.5 For the purposes of a valuation under Clause 19.4, if requested by the Principal to do so, the Contractor must within 5 Business Days of such request, provide the Principal with documentation evidencing the costs or expenses incurred by the Contractor in performing the Variation.
- 19.6 The Principal may direct the Contractor to execute a deed varying the terms of this Contract to reflect a Variation.
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- 20. Payment**
- 20.1 The Contractor may only submit Payment Claims at the times for submission of Payment Claims stated in Item 19.
- 20.2 The Principal may, within 10 Business Days after receiving a Payment Claim, issue to the Contractor a Payment Schedule/Progress Claim.
- 20.3 Subject to Clause 20.5, the Principal must pay the Contractor or the Contractor must pay the Principal (as the case may be) the amount set out in the Payment Schedule/Progress Claim (or if the Principal does not issue a Payment Schedule/Progress Claim within time, the amount set out in the Payment Claim) within the time stated in Item 20. Neither the issue of a Payment Schedule/Progress Claim nor a payment by the Principal will be evidence that the Works have been carried out in accordance with the Contract or an admission of liability and payment is on account only.
- 20.4 The Contractor must ensure that its employees and subcontractors have been paid all amounts due and payable to them as at the time a Payment Claim is submitted. The Principal may at any time and from time to time by written notice require the Contractor to provide, within 5 Business Days of receipt of the Principal's notice, a signed statutory declaration evidencing such payments and compliance by the Contractor with its obligations under this Clause 20.4. Failure by the Contractor to comply with this Clause 20.4 or providing a statutory declaration which contains a statement that is untrue, will constitute a breach of the Contract by the Contractor.
- 20.5 Without limiting its rights at law or in equity, the Principal may deduct, withhold or set off from money due to the Contractor any money owing from the Contractor to the Principal whether arising out of or in connection with the Contract or otherwise and, if that is insufficient, have recourse to Security.
- 20.6 The Contractor will not be entitled to include in a Payment Claim payment for any Goods intended for incorporation in the Works but not incorporated, and the Principal will not be obliged to make payment for such Goods, unless the relevant Goods are listed in Item 21 and the Contractor establishes to the satisfaction of the Principal that:
- (a) the Goods have reasonably but not prematurely been delivered to the Site;
- (b) ownership of the Goods will pass to the Principal upon the making of the payment claimed;
- (c) the Goods are properly stored, labelled the property of the Principal and adequately protected;

- (d) the Contractor has obtained and is maintaining fire and theft insurance over the relevant Goods in a form and for an amount satisfactory to the Principal;
 - (e) the Contractor has provided additional Security in an amount equal to the payment claimed for the relevant Goods and in the form and from a financial institution both approved by the Principal; and
 - (f) where the Goods are to be imported into Australia, the Contractor has:
 - (i) given the Principal a clean on-board bill of lading or its equivalent, drawn or endorsed to the order of the Principal and, where appropriate, a custom's invoice for the Goods; and
 - (ii) obtained and is maintaining a transit insurance policy for the shipment or carriage of the relevant Goods in a form and for an amount satisfactory to the Principal.
- 20.7 Should the Contractor include in a Payment Claim an amount in breach of Clause 20.6, then the relevant Payment Claim will be deemed not to include, and the Principal will not be obliged to assess, that amount.
- 20.8 Upon payment to the Contractor of the amount claimed, the Goods the subject of the claim will be, and the Contractor will procure that they are, the unencumbered property of the Principal free of any lien or charge.

21. Goods and Services Tax

- 21.1 In this Clause 21 words that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning as given in that Act.
- 21.2 Except as otherwise provided by this Clause 21, all consideration payable under the Contract in relation to any supply is exclusive of GST.
- 21.3 If GST is payable in respect of any supply made by a contractor under the Contract, subject to Clause 21.5, the recipient will pay to the contractor an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under the Contract.
- 21.4 If this Contract requires a party to pay, reimburse or contribute to an expense, loss or outgoing suffered or incurred by another party, the amount which the first party must pay, reimburse or contribute is the sum of:
- (a) the amount of the payment, reimbursement or contribution less any input tax credits in respect of the payment, reimbursement or contribution to which the other party is entitled; and
 - (b) if the payment, reimbursement or contribution is subject to GST, an amount equal to that GST.
- 21.5 The contractor must provide a tax invoice to the recipient before the contractor will be entitled to payment of the GST payable under Clause 21.3.
- 21.6 If an adjustment event occurs in relation to a taxable supply under this Contract:
- (a) the contractor must provide an adjustment note to the recipient within 7 Calendar Days of becoming aware of the adjustment; and
 - (b) any payment necessary to give effect to the adjustment must be made within 7 Calendar Days after the date of receipt of the adjustment note.
- 21.7 The Contractor warrants to the Principal that it is registered for GST. The Contractor shall notify the Principal if it ceases to be registered for GST.

22. Security of Payment

- 22.1 If the Contractor is entitled to make an adjudication application under the SOP Act, the Contractor must make such adjudication application to one of the Authorised Nominating Authorities.
- 22.2 The Contractor must indemnify and keep indemnified the Principal on demand from and against all Loss suffered or incurred by the Principal arising out of or in connection with a suspension by a subcontractor under the SOP Act for works which form part of the Works.

23. PPS Act

- 23.1 The Contractor:
- (a) must do everything the Principal considers reasonably necessary to ensure that any 'security interest' as defined in s 12 of the PPS Act arising under the Contract in favour of the Principal is able to be registered, is enforceable, perfected or otherwise effective and has the highest priority possible under the PPS Act;
 - (b) agrees that ss 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act will not apply to the enforcement of any such security interest;
 - (c) agrees to not register a financing change statement without the prior written consent of the Principal and agrees not to disclose information of the kind referred to in s 275(1) of the PPS Act; and
 - (d) waives any rights it may have had but for this Clause 23.1 under ss 157(1) and 275(7)(c) of the PPS Act.

24. Suspension

- 24.1 The Principal may suspend the carrying out of the Works or part of the Works by issuing a written notice to the Contractor. The Contractor must immediately comply with such notice and suspend the progress of the whole or part of the Works for the period of time stated in the notice, or if no time is stated, for the period of time directed by the Principal.
- 24.2 The Contractor must recommence the Works in accordance with any further written notice issued by the Principal to the Contractor.
- 24.3 If the suspension is due to an act, default or omission by the Contractor or its Associates, the Contractor is not entitled to make and releases the Principal from any Claim arising out of or in connection with the suspension. If and to the extent the suspension is for any other reason, the Principal will pay to the Contractor its reasonable direct costs necessarily and reasonably incurred by the Contractor as a result of the suspension, as assessed by the Principal under Clause 19.4.
- 24.4 If the Principal becomes aware that a subcontractor is entitled to suspend work forming part of the Works under the Security of Payment Act, the Principal:
- (a) may pay the subcontractor the amount owing to it in respect of that work (in which event the amount so paid shall be a debt immediately due and payable by the Contractor to the Principal); and
 - (b) shall notify the Contractor prior to making the payment referred to in Clause 24.4(b).

25. Termination

- 25.1 In the event that the Contractor:
- (a) fails to remedy a default within 5 Business Days from the date of being notified of the default by the Principal;
 - (b) is insolvent, has an administrator, receiver, receiver and manager, provisional liquidator, liquidator or controller appointed to it, enters into a scheme of arrangement with its creditors, is wound up or is bankrupt; or
 - (c) abandons the Works,
- the Principal may terminate the Contract by giving written notice to the Contractor.
- 25.2 Upon termination under Clause 25.1:
- (a) subject to Clause 20.5, the Principal will only be liable to the Contractor for those amounts which were due and payable under the Contract as at the date of termination; and
 - (b) the Contractor will be liable to the Principal for any Loss that the Principal has incurred or is likely to incur arising out of or in connection with the termination as a debt due and payable from the Contractor to the Principal.
- 25.3 The Contract may be terminated:
- (a) at any time by the mutual written agreement of the parties; or
 - (b) by the Principal at any time and for any reason (regardless of default) by giving the Contractor 10 Business Days prior written notice under this Clause 25.3.

- 25.4 Within 20 Business Days after the end of the month in which the Contract is terminated under Clause 25.3(b) the Principal will pay the Contractor an amount being so much of the Contract Sum as is due to the Contractor for the Works carried out by it under the Contract up to the date of termination, less any amounts that the Principal is entitled to deduct, withhold or set off arising out of the Contract or otherwise.
- 25.5 An amount payable to the Contractor under Clause 25.4 constitutes the Contractor's sole and exclusive entitlement to compensation in the event of termination under Clause 25.3(b) and other than that amount the Contractor will not be entitled to make and forever releases and discharges the Principal from any Claim in respect of such termination.
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26. Dispute resolution

- 26.1 If a dispute or difference between the parties arises in connection with the Contract, then either party may deliver by hand or send by registered post to the other party, a written notice of dispute identifying and providing details of the dispute.
- 26.2 Within 10 Business Days of receipt of a notice of dispute, the parties will together confer at least once to attempt to resolve the dispute.
- 26.3 If the dispute has not been resolved within 20 Business Days of receipt of a notice of dispute, either party may by notice in writing delivered by hand or sent by registered post to the other party, refer that dispute to mediation.
- 26.4 Mediation will be:
- (a) effected by a mediator agreed by the parties and failing agreement, a mediator nominated by the President of the Law Institute of Victoria; and
 - (b) conducted in accordance with the Resolution Institute Mediation Rules 2016.
- 26.5 If the dispute has not been resolved within 40 Business Days after the dispute has been referred to mediation under Clause 26.3, either party may by notice in writing delivered by hand or sent by registered post to the other party, refer that dispute to litigation.
- 26.6 Nothing in this Clause 26 will prejudice the right of a party to seek urgent injunctive or declaratory relief of any matter arising out of this Contract.
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27. Notices

- 27.1 A notice or other communication required or permitted to be delivered to a party must be in writing and subject to Clause 26 may be delivered:
- (a) personally on the party;
 - (b) by leaving it at the party's address for service (including at its registered office, if the party is a company);
 - (c) by posting it by prepaid post addressed to that party at the party's address for service; or
 - (d) by electronic mail to the party's email address for service.
- 27.2 The particulars of the Principal and the Contractor for service as at the date the Successful Contractor is notified are set out in Item 2 and Item 5. Either party may change its address or email address by giving notice to the other party.
- 27.3 A notice or other communication is deemed delivered:
- (a) if delivered personally or left at the person's address, upon delivery;
 - (b) if posted within Australia to an Australian address, 6 Business Days after posting and in any other case, 10 Business Days after posting;
 - (c) if served by email, subject to Clause 27.3(d), at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient; and
 - (d) if received after 5.00pm in the place it is received or on a day which is not a Business Day in the place it is received, at 9.00am on the next Business Day.
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28. Meetings and reporting

- 28.1 The Contractor must:
- (a) meet with the Principal and any other persons nominated by the Principal regarding the performance of the Works at the places and at the times directed by the Principal; and
 - (b) bring to the meetings referred to in Clause 28.1(a) the persons and materials required by the Principal.
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29. Acceptance

- 29.1 If written acceptance of these conditions of this Purchase Order is not communicated by the Contractor to the Principal the supply or commencement of the Works shall constitute acceptance by the Contractor.