

PURCHASE ORDER STANDARD TERMS AND CONDITIONS

Terms and Conditions for the Supply of Goods and Services under Purchase Order without Formal Agreement

1. Definitions and Interpretation

1.1. Definitions

In these Terms and Conditions:

Affected Party has the meaning given in clause 12(a).

Agreement means the agreement constituted by these Terms and Conditions, the relevant Purchase Order, any other document annexed to the Purchase Order (to the extent one has been issued) and the Policies.

Australian Standard means an Australian standard published by Standards Australia Limited (ACN 087 326 690) or any successor.

Authorisation means any approval, approval, agreement, certificate, authorisation, code of conduct, government policy, consent, exemption, filing, licence, notarisation, permit, registration, waiver, compliance report or environmental consent from any Authority or required under and Law and includes any variation or renewal to any of them.

Authority means any court or any local, state or federal government, statutory or public authority, instrumentality or body or any other person having jurisdiction over the provision of the Goods and/or performance of the Services or the Site.

Personnel means the directors, officers, employees, consultants, advisers, agents, contractors or subcontractors of the Supplier or Genesis, as the context requires, including the persons contracted to or employed by the Supplier in the performance of the Services.

Business Day means a day other than a Saturday, Sunday or a gazetted public holiday in Western Australia.

Claim means any claim, action, suit, demand, proceeding, notice, litigation, investigation or judgment of any nature, whether actual or threatened:

- (a) under, arising out of or in any way in connection with this Agreement;
- (b) arising out of, or in any way connected with the obligations of the Supplier;
- (c) arising under any Law.

Confidential Information means communications between the parties, the terms of this Agreement and any information that directly or indirectly concerns the business, operations, finances or plans of Genesis and/or any Related Body Corporate of Genesis which is disclosed to or acquired by the Supplier and which:

- (a) is by its nature confidential;
- (b) is designated by Genesis as confidential; or
- (c) the Supplier knows or ought to reasonably know is confidential,

but does not include information which:

- (d) is or becomes public knowledge other than by a breach of any obligation of confidentiality (including under this Agreement);
- (e) is in the possession of the Supplier without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the Supplier; or
- (f) has been independently developed or acquired by the Supplier.

Consequential Loss means the following losses, regardless of whether such losses arise in contract (including under this Agreement), in tort (including in negligence), under statute, in equity, by way of indemnity or otherwise and regardless of whether those losses are direct or indirect: loss of revenue or anticipated revenue, loss of profit or anticipated profit, loss of financing or costs in connection with loss of financing or procuring new financing, loss of denial of opportunity (including financial opportunity), loss of contract, loss of access to markets, loss of or damage to goodwill, business reputation, future reputation or publicity, business interruption or fines and penalties payable outside of this Agreement.

Corporations Act means the *Corporations Act 2001* (Cth).

Defect means, in respect of Goods and/or Services (as applicable):

- (a) Goods and/or Services which are not in accordance with the requirements of this Agreement; and
- (b) any error, deficiency, omission, non-conformity, fault, failure, malfunction or irregularity, or anything similar in any Goods and/or Services.

Delivery Date means the date specified as such in the Purchase Order, being the date by which the Supplier is required to provide the Goods and/or perform the Services or where no such date is specified in the Purchase Order, then the date notified to the Supplier by Genesis.

Delivery Point means the location specified as such in the Purchase Order, being the place the Supplier is required to provide the Goods and/or perform the Services or where no such location is specified in the Purchase Order, then the location notified to the Supplier by Genesis.

Duties means any duties to be performed by the Supplier's Personnel in relation to the Supplier's supply of the Goods and Services.

Duties Commencement Date means the date when the Supplier's Personnel commence performance of the Duties, which is taken to be the earlier of:

- (a) the Supplier's Personnel first attending the designated airport for a flight to Site, where the Supplier's Personnel is designated fly in fly out; or
- (b) the Supplier's Personnel first attending Site to commence Genesis inductions for performance of the Duties.

Encumbrance means any security for the payment of money or performance of obligations and includes a mortgage, charge, pledge, lien, trust, title retention, preferential right, easement, restrictive or positive covenant or any other adverse right or interest of any nature.

Event of Default has the meaning given in clause 19.1.

Force Majeure means any event or circumstance beyond the control of the Affected Party which could not reasonably have been foreseen at the time of entering into this Agreement and which could not reasonably have been provided against, prevented or overcome by the Party affected, including any:

- (a) act of God;
- (b) act of the public enemy, war (declared or undeclared) blockade, revolution, riot, insurrection, civil commotion, hostility;
- (c) lightning, fire, storm, flood, earthquake, inclement weather, perils of navigation;
- (d) quarantine restriction or epidemic; and/or
- (e) accident, explosion, breakage,

but does not include any:

- (f) strike, lockout, ban or limitation of work or other industrial disturbance (if the Affected Party is a party to it or would be able to influence a settlement thereof);
- (g) wet weather;
- (h) lack of, or inability to use funds, for any reason;
- (i) breakdown of the Supplier's equipment or the unavailability of required goods, materials or spare parts;
- (j) occurrence which results from the unlawful, wrongful or negligent act or omission of the Affected Party or the failure of the Affected Party to act in a prudent and proper manner and in accordance with Good Operating Practices; and
- (k) event or circumstance where the event of circumstance 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 exercise standard of care and diligence by the Affected Party consistent with that of a reasonable and prudent person undertaking Good Operating Practice in their position or through the due and proper performance by the Party's obligations under this Agreement.

Formal Agreement means a formal agreement (if any) for the provision of goods and/or services entered into by the Parties.

Genesis means Genesis Minerals Limited (ACN 124 772 041) or its relevant wholly-owned subsidiary detailed in a Purchase Order, and includes its successor and permitted assigns.

Good Operating Practice means:

- (a) the exercise of the degree of diligence, competence, prudence and foresight reasonably and ordinarily expected from a reputable, prudent, skilled and experienced professional engaged in providing goods and/or services similar to the Supplier's obligations under this Agreement;
- (b) compliance with Australian Standards, other industry accepted standards and codes applicable to the provision of the Goods and/or performance of the Services and Duties; and
- (c) compliance with applicable Laws.

Goods means the goods detailed in the Purchase Order (if any) which will be provided by the Supplier to Genesis for purchase or hire by Genesis (as the case may be).

Gross Negligence or Wilful Misconduct means any act or omission which was willful or which was done or omitted to be done with reckless disregard for its foreseeable and harmful consequences.

GST has the same meaning as given to that term in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Indemnified Parties means Genesis, Genesis' Personnel, Genesis' Related Bodies Corporate and any Personnel of Genesis' Related Bodies Corporate.

Input Tax Credit has the same meaning as given to that term in the GST Act.

Insolvency Event means the happening of any of the following events in relation to the Supplier:

- (a) the Supplier makes an assignment for the benefit of or enters into any arrangement, scheme or composition with creditors;
- (b) if the Supplier is a company:
 - (i) the Supplier is unable to pay all its debts as and when they become due and payable or has failed to comply with a statutory demand as provided in section 459F of the Corporations Act, or it is deemed to be unable to pay its debts under section 585 of the Corporations Act;
 - (ii) an order is made, or a resolution is passed, or a meeting is convened for the purposes of considering a resolution, for the appointment of a provisional liquidator, a liquidator or an administrator to the Supplier;
 - (iii) an application is made, a resolution is passed or a meeting is called for the purposes of considering a resolution for the Supplier to be wound up;
 - (iv) the appointment of a controller (as defined in section 9 of the Corporations Act) of any of the Supplier's assets;
 - (v) the Supplier proposes to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement; and/or
 - (vi) the Supplier becomes insolvent or under administration, as defined in section 9 of the Corporations Act;
- (c) if the Supplier is an individual, the Supplier becomes bankrupt, admits in writing the inability to pay debts, commits an act of bankruptcy or brings their estate within the operation of any Law relating to bankruptcy;
- (d) an investigation is commenced under the Corporations Act against the Supplier; and/or
- (e) an execution or similar process is made by creditors, debenture holders or trustees or under a general security agreement.

Intellectual Property means all intellectual property rights existing anywhere in the world, including current and future registered and unregistered rights in respect of any patents, copyright, designs, discoveries, circuit layouts, trademarks, trade secrets, source code, inventions, Confidential Information or other rights whether existing under statute, convention, at common Law, in equity or otherwise.

Law means all applicable present and future laws, including all acts, regulations, ordinances, by-laws, orders, awards, proclamations of the jurisdiction of the State of Western Australia or the Commonwealth of Australia, Authorisations, principles of law or equity, standards, codes and guidelines, and includes any fees, rates, Taxes, levies or other charges payable in connection with any of the things referred to in this definition.

Liability means all liabilities, losses, death, injury, legal action, Claims, damages, outgoings, costs and expenses of whatever description and whether present, unascertained, contingent or prospective, including costs actually payable to its legal representatives (on a full indemnity basis).

Party means Genesis or the Supplier according to the context, and **Parties** means both Genesis and the Supplier.

Plant and Equipment means any plant, equipment, machinery, tools, appliances and other items.

Policies means Genesis policies, procedures and codes of conduct in place from time to time as publicised on the Genesis website or included in the Supplier's Personnel's Genesis inductions before and during performance of the Duties.

Price means the amount payable by Genesis to the Supplier as specified in the relevant Purchase Order (with the Supplier acknowledging and agreeing that, unless accounted for elsewhere in these Terms and Conditions or expressly stated otherwise in the Purchase Order, for any provision of Supplier's Personnel for performance of the Services the Price includes all the overheads and expenses of the Supplier in relation to medical examinations, the costs of any National Police Checking Service clearances provided by the Chamber of Minerals and Energy or similar provider, the costs of Site visit flights and accommodations by the Supplier to conduct safety and procedure audits at Site).

Purchase Order means the purchase order for Goods and/or Services which has been approved and duly executed by an authorised officer of Genesis and issued by Genesis to the Supplier from time to time and to which these Terms and Conditions apply.

Related Body Corporate has the meaning set out in section 50 of the Corporations Act.

Services means the services described in the Purchase Order (if any) which will be performed by the Supplier, including any supply of the Supplier's Personnel for performance of the Duties from the Duties Commencement Date.

Site means the site/premises where the Goods are to be provided and/or Services are to be performed as specified in the Purchase Order or otherwise notified by Genesis to the Supplier.

Supplier means the person, company or entity detailed in the Purchase Order who will provide the Goods and/or Services to Genesis in accordance with the terms of the Agreement.

Supplier's Personnel means either:

- a) individuals who are employed by the Supplier; or
- b) individuals who are not employed by the Supplier but are contracted to the Supplier; and
- c) who are supplied by the Supplier to perform the Duties on a temporary basis from the Duties Commencement Date, for the delivery of the Goods and Services by the Supplier.

Supplier's Plant and Equipment means all plant, equipment, machinery, tools, appliances and other items which are brought on Site for the purposes of the Supplier supplying the Goods and/or performing the Services or which are otherwise required for the proper carrying out and completion of the Supplier's obligations under this Agreement.

Suspension Notice has the meaning given in clause 13(a).

Taxation Authority means any relevant taxation and revenue Authority which has jurisdiction over the provision of the Goods and/or Services.

Taxes means any and all present and future sales, use, personal, property, real property, value added, goods and services, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on our net income) by any Authority, together with any penalties, fines or interest or similar additions, imposed, levied or assessed or otherwise payable.

Tax Invoice has the same meaning as given to that term in the GST Act.

Third Party Claim means any claim, action demand, proceeding or suit of any nature, whether actual or threatened, initiated by a person other than the Supplier, including but not limited to any Claim arising out of, or in connection with:

- (a) loss or destruction of, or injury or damage to, or loss of use of any real or personal property; and/or
- (b) any personal injury to or death of any person.

Variation means a change in any part of the Supplier's obligations to provide Goods and/or Services,

but does not include any change in the Supplier's obligations under this Agreement arising from any:

- (a) reasonable direction made by Genesis regarding the Supplier's performance of its existing obligations under the Agreement;
- (b) change in Law; or
- (c) matters expressed to be at the Supplier's own cost.

Variation Notice has the meaning given in clause 3.4(a).

Warranty Period means, as applicable:

- (a) in respect of any Good, the period of 24 months commencing on and from the date of delivery of the Good;
- (b) in respect of any Service, the period of 12 months commencing on and from the date on which the completion of the performance of the Service occurred; and
- (c) in respect of any Defect, the period of 12 months commencing on and from the date on which the rectification on the Defect was completed.

1.2. Interpretation

In this Agreement:

- (a) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (b) a reference to currency is a reference to Australian currency unless otherwise stated;
- (c) a reference to a person includes a natural person, a company, a partnership, a joint venture, an unincorporated body or association, a trust and the trustee of a trust or other entities recognised by Law;

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- (d) a reference to a gender includes all other genders;
 - (e) a reference to the singular includes the plural and vice versa;
 - (f) the word “**including**” and similar expressions are not, nor are they to be interpreted as, words of limitation;
 - (g) a reference to a clause, part, schedule, annexure or attachment is a reference to a clause, part, schedule, annexure or attachment of or to this Agreement and the schedules, annexures and attachments forms part of this Agreement;
 - (h) a reference to a party is a reference to a party to this Agreement and includes the party’s executors, administrators, successors and permitted assigns;
 - (i) a reference to a document (including this Agreement) includes a variation or replacement of it;
 - (j) a reference to any legislation includes its subordinate legislation and any modification, replacement or re-enactment of either;
 - (k) a reference to any governmental or statutory body includes any body which replaces, succeeds to the relevant powers and functions of, or which serves substantially the same purposes or objects as, such body;
 - (l) if the date on which a thing must be done is not a Business Day, then that thing must be done on the next Business Day; and
 - (m) headings are inserted for convenience only and do not affect the interpretation of this Agreement.

1.3. Order of Precedence

- (a) If there is any inconsistency or ambiguity between the documents comprising this Agreement, the documents will be read in the following order of priority to the extent of any inconsistency or ambiguity:
 - (i) these Terms and Conditions;
 - (ii) the Policies;
 - (iii) the Purchase Order (if any); and
 - (iv) any other attachments to the Purchase Order and any special conditions which are expressly incorporated by reference in the Purchase Order.
- (b) If a Formal Agreement has been entered into by Genesis and the Supplier, the terms of the Formal Agreement will prevail over this Agreement to the extent of any inconsistency or ambiguity between the Formal Agreement and this Agreement.

1.4. Exclusion of Supplier's terms and conditions

To the extent the Supplier or any of the Supplier’s Personnel provide any terms and conditions to Genesis or any of Genesis’ Personnel at any point in time regarding the Goods and/or Services, the Supplier’s terms and conditions will be of no legal effect and are not incorporated into this Agreement.

2. Engagement of Supplier

2.1. General

Genesis appoints the Supplier to provide the Goods and/or perform the Services to Genesis in accordance with this Agreement for the Price on and from the Duties Commencement Date or such earlier date agreed by the Parties.

2.2. Application of Agreement

If any Goods and/or Services are provided to Genesis before a Purchase Order is issued to the Supplier by Genesis, the Supplier acknowledges and agrees that this Agreement binds the Supplier immediately in respect of those Goods and/or Services being provided and/or supplied.

2.3. Nature of relationship between Parties

- (a) This Agreement does not confer any exclusivity on the Supplier with respect to the provision of the Goods and/or performance of the Services.
- (b) The Supplier is engaged as an independent contractor and nothing constitutes the Supplier or the Supplier’s Personnel as an employee, agent, partner, agent, representative or joint venturer of Genesis, and the Supplier agrees to make no claim to the contrary.
- (c) The Supplier must not, and must procure that its Personnel do not, engage in any negotiations or discussions on behalf of Genesis unless the Supplier has been given prior express written authority to do so from Genesis.
- (d) The Supplier and the Supplier’s Personnel have no authority to incur or make, and the Supplier must ensure that neither it or its Personnel incur or make, any obligation representation or warranty on behalf of Genesis except where the Supplier has been given prior express written authority to do so from Genesis.

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- (e) The Supplier acknowledges and agrees:
 - (i) Genesis may be contracting in its capacity as agent for a Related Body Corporate of Genesis; and
 - (ii) a reference to Genesis in this Agreement includes its directors, officers and employees.
 - (f) The Supplier confirms that any person from or representing the Supplier or who corresponds or liaises with Genesis on the Supplier's behalf is deemed to have authority to act on the Supplier's behalf and is capable of binding the Supplier.

3. Provision of Goods, Services and Personnel

3.1. General obligations

- (a) The Supplier must provide the Goods to and/or perform the Services for Genesis:
 - (i) in accordance with the terms of this Agreement;
 - (ii) using Good Operating Practices;
 - (iii) in compliance with all Laws and any reasonable directions and orders given by Genesis and Genesis' Personnel;
 - (iv) in accordance with any samples (for Goods) and/or demonstrations (for Services), if provided prior to Genesis engaging the Supplier to provide the Goods and/or perform the Services;
 - (v) in accordance with any performance criteria specified in the Purchase Order; and
 - (vi) together with any necessary Supplier's Personnel required from time to time in accordance with written instructions from Genesis.
- (b) The Supplier must only supply Personnel to perform the Duties who:
 - (i) satisfy Genesis' requirements, including pre-employment medical checks (where required, at the Supplier's expense), eligibility to work in Australia, training and competences (as required and specified by Genesis), a current National Police Checking Service clearance provided by the Chamber of Minerals and Energy or similar provider (at the Supplier's expense);
 - (ii) Genesis is satisfied (in its sole discretion) have the appropriate professional or trade qualifications for the job description or classification designated by Genesis for performance of the Duties from time to time;
 - (iii) Genesis is satisfied (in its sole discretion) have been trained in safe work practices, skilled and experienced in the trades and professions, as specified by Genesis, for which they are engaged to perform the Duties, before commencing performance of the Duties;
 - (iv) perform the Duties in a professional manner and with due care and skill;
 - (v) are prepared to comply with the Policies; and
 - (vi) satisfactorily complete Site or other inductions and additional training at the Supplier's expense as required by Genesis for the performance of the Duties, from time to time.
- (c) The Supplier must:
 - (i) immediately remove or have removed from the Site any of its Personnel who cease to be acceptable to Genesis for any reason;
 - (ii) where requested by Genesis, provide alternative Personnel acceptable to Genesis to ensure there is no interruption to the performance of the Duties; and
 - (iii) not, without the prior written consent of Genesis, re-deploy to the Site or to any of Genesis' other sites any of the Supplier's Personnel who have previously been removed from the Site as a result of clause 3.1(c)(i).
- (d) The Supplier must provide all materials, equipment goods and services necessary for the Supplier to provide the Goods and/or perform the Services and Duties under this Agreement.
- (e) The Supplier must (at its own expense unless otherwise agreed in a Purchase Order) obtain and maintain all Authorisations required for the provision of the Goods and/or the performance of the Services and Duties.
- (f) Upon request by Genesis, the Supplier must promptly:
 - (i) provide any information, data, advice and/or reports relating to the status of the provision of Goods and/or performance of Services and Duties; and
 - (ii) return to Genesis any equipment, materials, goods or other property provided by or on behalf of Genesis to the Supplier for the purposes of the Supplier providing the Goods and/or performing the Services and Duties.

3.2. Performance by Supplier

- (a) The Supplier must provide any Goods to Genesis at the Delivery Point on the Delivery Date or as otherwise directed by Genesis.
- (b) The Supplier must pack and transport any Goods to Genesis safely and in accordance with Good Operating Practice to avoid damage in transit or storage.
- (c) Any Goods delivered to Genesis must be marked externally with the Purchase Order number, Delivery Point, and package number (e.g. 1 of 4).
- (d) If the Supplier provides excess Goods and/or performs excess Services then Genesis may, without prejudice or limitation to any of its other rights:
 - (i) return excess quantities of Goods to the Supplier at the Supplier's expense; and/or
 - (ii) refuse to pay for excess Services.

3.3. Cooperation

At all times during the term of this Agreement, the Supplier must:

- (a) liaise, cooperate and confer with any third parties as directed by Genesis;
- (b) carefully coordinate and integrate the provision of the Goods and/or performance of the Services and Duties with other services or works to be performed or provided by or on behalf of Genesis, including any other contractors or consultants employed by third parties;
- (c) perform Services and Duties so as to avoid or minimise interfering with, disrupting or delaying the services or works performed and provided by or on behalf of Genesis or any other of its contractors or consultants or any contractors or consultants of third parties; and
- (d) not solicit or entice away (or attempt to solicit or entice away) any consultant, contractor or employee from Genesis or engage any such person as a consultant, employee or in any other capacity without the prior written consent of Genesis.

3.4. Variations

- (a) Genesis may at any time request a Variation to the provision of Goods and/or performance of Services by written notice to the Supplier (**Variation Notice**).
- (b) Within five Business Days of receiving a Variation Notice, the Supplier must advise Genesis in writing of:
 - (i) any proposed addition or reduction to the Price in carrying out the proposed Variation, including any delay or disruption costs connected with the Variation; and
 - (ii) the proposed impact the Variation will have on the Supplier providing the Goods and/or performing the Services by the Delivery Date.
- (c) Genesis will, as soon as practicable following receipt of the notice from the Supplier under clause 3.4(b), notify the Supplier in writing that it:
 - (i) wishes to proceed with the Variation, in which case the Agreement will be amended by the terms of the Variation agreed by the Parties; or
 - (ii) does not accept the Supplier's proposed change to the Price or Delivery Date due to the proposed Variation.
- (d) If the Parties are unable to agree on the change to the Price or Delivery Date within five Business Days after Genesis notifies the Supplier under clause 3.4(c)(ii), then Genesis may either:
 - (i) notify the Supplier that it does not wish to proceed with the Variation, in which case the terms of this Agreement will remain unaltered; or
 - (ii) refer the matter for resolution under clause 18.

3.5. Site Requirements

- (a) Genesis will give the Supplier access to the Site as and when required to enable the Supplier to provide the Goods and/or perform the Services and duties, at all times subject to and conditional on the Supplier complying with the terms of this Agreement.
- (b) The Supplier must:
 - (i) comply with all Laws and any other directions given by Genesis' Personnel for the provision of the Goods and/or performance of the Services and Duties and the Supplier's access to Site; and
 - (ii) comply with all Site conditions, safety and other Policies generally applied by Genesis to persons attending its premises.

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- (c) All of the Supplier's Personnel who visit the Site must comply with the Genesis site entry requirement. .
 - (d) If the Supplier is required to provide the Goods and/or perform the Services and Duties on Site and requires flights and accommodation to facilitate that then, unless expressly stated otherwise in a Purchase Order, the Supplier will be solely responsible for those expenses.
 - (e) The Supplier acknowledges and agrees the Supplier and its Personnel enter the Site and provide any Goods and/or perform any Services and Duties under this Agreement at the Supplier's own risk.

4. Representations and warranties

Without limiting any other warranty or obligation under this Agreement, the Supplier represents and warrants to Genesis:

- (a) the Supplier and its Personnel have all expertise and resources to perform its obligations under this Agreement;
- (b) all records and information supplied by the Supplier and its Personnel are true and correct and may be relied on by Genesis;
- (c) the Goods and/or Services supplied or performed by the Supplier and its Personnel will comply with all relevant national and international standards and Laws;
- (d) any Goods supplied by the Supplier and its Personnel will:
 - (i) be in good working order and condition and acceptable in appearance and finish;
 - (ii) be free from Defects;
 - (iii) be fit for purpose and use intended by Genesis;
 - (iv) be safe and durable and have a life expectancy commensurate with what would be expected of similar goods provided for similar purposes by a competent and reputable supplier or contractor;
 - (v) be new and of the best quality and workmanship unless expressly stated otherwise in the relevant Purchase Order;
 - (vi) be free from all Encumbrances or charges in favour of a third party at the time of sale and/or delivery to Genesis; and
 - (vii) upon delivery to Genesis, entitle Genesis to clear, complete and quiet possession of the Goods.
- (e) any Services and Duties performed by the Supplier and its Personnel will be performed:
 - (i) promptly and with due care, skill and diligence;
 - (ii) in accordance with Good Operating Practice; and
 - (iii) in a manner so that the Services and any product resulting from the Services will be fit for their intended purpose and of a nature, quality, state or condition which are required by Genesis; and
- (f) in providing the Goods and/or performing the Services neither Genesis, the Supplier or any of their Personnel will infringe the Intellectual Property of any third party.

5. Personnel

- (a) The Supplier must ensure its Personnel are appropriately qualified, competent, skilled and experienced in the provision of the Goods and/or performance of the Services and Duties as required of the Supplier under this Agreement.
- (b) The Supplier must not subcontract, assign or otherwise transfer the whole of or any part of the Supplier's obligations under this Agreement without Genesis' prior written consent.
- (c) The Supplier acknowledges and agrees:
 - (i) the Supplier is liable to Genesis for all acts, omissions and defaults of the Supplier's Personnel as if they were the acts, omissions and defaults of the Supplier, including any parties who the Supplier subcontracts its obligations to in accordance with clause 5(b);
 - (ii) the Supplier's obligations and liabilities under this Agreement are not reduced or otherwise affected in any way by any contractor or subcontractor of the Supplier providing the Goods and/or Services and the Supplier is responsible for carrying out and completing all obligations under this Agreement;
 - (iii) the Supplier is solely responsible for the following in respect of any of the Supplier's Personnel:
 - (A) all remuneration and benefits including all employee entitlements, superannuation, accommodation, penalty rates;
 - (B) workers compensation premiums or levies, group tax, payroll tax, fringe benefits tax, superannuation guarantee charges and other imposts or levies imposed by Law; and

(C) any payment upon termination of engagement of the Supplier's Personnel.

(d) Where the Supplier's Personnel are employees of the Supplier, the Supplier acknowledges that the Supplier has common law and statutory duties to ensure the safety of its employees. The Supplier acknowledges that regularly undertaking site inspections at Site will assist the Supplier in demonstrating a discharge of these duties.

6. Payment

6.1. Price

(a) Where the relevant Purchase Order:

- (i) specifies how and when payment becomes due, then Genesis will pay the Price to the Supplier for the Goods and/or Services in accordance with the relevant Purchase Order; or
- (ii) does not specify how and when payment becomes due, then on completion of the Supplier providing the Goods to and/or performing the Services for Genesis in accordance with this Agreement, Genesis will pay the Price to the Supplier in one lump sum payment.

(b) The Price includes all costs and expenses incurred by the Supplier in relation to the provision of the Goods and/or provision of the Services, including all Taxes.

6.2. Invoice

(a) The Supplier must submit an invoice to Genesis to support any claim for payment of the Price.

(b) A Purchase Order is the only authority the Supplier may use for claiming payment of the Price.

(c) The invoice or payment form (as may be notified from time to time) must be in a form acceptable to Genesis and otherwise contain the following information:

- (i) the relevant Purchase Order number;
- (ii) a brief description of the Goods and/or Services supplied and performed;
- (iii) the period in which the supply of Goods and/or performance of Services occurred;
- (iv) any further information stipulated in any applicable Law, or reasonably required by Genesis, so that the invoice is a Tax Invoice and to enable Genesis to receive the benefit of any Input Tax Credit; and
- (v) such other verification documentation as may be requested by Genesis.

6.3. Payment

(a) Genesis will, subject to clause 6.3(b), pay the relevant part of the Price on the last day of the month after the month in which an invoice for that part of the Price is received in accordance with clause 6.2.

(b) If Genesis disputes any amount claimed by the Supplier in an invoice is due and payable:

- (i) Genesis will notify the Supplier in writing, specifying the reasons for the dispute;
- (ii) Genesis will pay any undisputed portion of the invoice as required by clause 6.3(a) but may otherwise withhold payment of the disputed portion of the invoice;
- (iii) the Parties agree to resolve the dispute in accordance with clause 18; and
- (iv) to the extent required, Genesis will pay the disputed portion of the invoice pursuant to the resolution of the dispute.

(c) The Supplier acknowledges taxation and prescribed payments under Law may require Genesis to pay part of the Price to a Taxation Authority to the credit of the Supplier, unless the Supplier, at the time of submitting invoices provides Genesis with written evidence of exemptions from such payment obligations.

(d) If the Supplier is entitled under a Purchase Order to any payment for Goods which are not yet on Site, the Supplier will not be entitled to such payment unless the Supplier demonstrates to Genesis with reasonable evidence that:

- (i) the Goods have been marked as Genesis' property in accordance with Genesis' written instructions; and
- (ii) any appropriate security, as required by Genesis, has been provided by the Supplier.

(e) Genesis may in its sole discretion deduct from any payment or moneys due or becoming due to the Supplier all costs, charges, damages, liquidated sums, expenses and other moneys which are payable by or to be reimbursed by the Supplier or its Personnel to Genesis under any provision of this Agreement.

7. Defects

7.1. Error

The Supplier must correct any errors or omissions in the provision of Goods and/or performance of Services from time to time, at the Supplier's own cost.

7.2. Obligations

- (a) The Supplier must rectify, at the Supplier's own cost, all Defects discovered by Genesis during the Warranty Period.
- (b) The Supplier must carry out any rectification of Defects:
 - (i) in accordance with the terms of this Agreement and any directions given by Genesis;
 - (ii) in accordance with Good Operating Practice; and
 - (iii) in a manner which causes as little inconvenience as is reasonably possible to Genesis.

8. Title and Risk in Goods

8.1. Title

In respect of a Good, at the earlier of:

- (a) delivery of the Good to the Delivery Point; or
- (b) payment by Genesis of the Price for the Good,

the Supplier transfers to Genesis legal and beneficial ownership of and title to the Good free from any Encumbrances, Third Party Claims or third party rights or interests.

8.2. Risk

Risk in any Good passes from the Supplier to Genesis when the Supplier delivers the Good to the Delivery Point and the Good is accepted by Genesis. The Supplier must allow Genesis a reasonable time to inspect any Good after delivery before acceptance of that Good is given by Genesis.

8.3. Waiver

The Supplier waives any lien or any other right, title or interest it may have for any materials or equipment which are incorporated into, or form the whole or part of, the provision of Goods and/or performance of Services. The Supplier undertakes in favour of Genesis to:

- (a) obtain a similar waiver from any relevant Personnel; and
- (b) include a similar provision in all contracts with any Personnel and suppliers who supply any goods, services, materials and/or equipment to the Supplier for the purposes of this Agreement.

9. Intellectual Property

- (a) The Supplier grants to Genesis a perpetual, irrevocable, transferable, sub-licensable, royalty free, worldwide licence to use any Intellectual Property which Genesis requires in order to lawfully use the Goods.
- (b) All Intellectual Property created by the Supplier (either by itself or jointly with any third party), in provision of the Goods and/or performance of the Services or otherwise pursuant or incidental to this Agreement will be owned by Genesis.

10. Conditions specific to Hire Goods

10.1. General

This clause 10 only applies in respect of the supply of Goods by the Supplier for hire by Genesis and otherwise has no effect.

10.2. Delivery and return of hire Goods

- (a) As soon as practicable following delivery of the Goods (which will occur at the Delivery Point unless otherwise agreed by Genesis in writing), Genesis will inspect and record the condition of the Goods. Genesis will provide a copy of this record to the Supplier upon request at the time of delivery.
- (b) Prior to the Goods being returned to the Supplier at conclusion of the applicable hire period, the condition of the Goods will be jointly inspected by an authorised representative of each Party and recorded in writing and with photos as appropriate.
- (c) Genesis agrees to return the Goods to the Supplier in the same clean condition and good working order it was in when Genesis received the Goods, ordinary fair wear and tear and reasonable use accepted.

10.3. Maintenance

Unless expressly stated otherwise in the relevant Purchase Order, the Supplier must provide and conduct the following maintenance services to ensure the Goods are available for use and operation by Genesis at all times during the relevant hire period and in accordance with this Agreement:

- (a) all recommended maintenance procedures set out in the technical manuals and operating instructions for the Goods;
- (b) all service and repair activities, including scheduled periodic services, minor and major repairs, mutually agreed accident damage repairs and mutually approved modifications;
- (c) supply and maintenance of all necessary spare parts, materials, lubricants and consumables (other than petroleum fuels); and
- (d) any maintenance requirements imposed by Law.

The Supplier acknowledges and agrees that its compensation for undertaking those maintenance services are (unless expressly stated otherwise in the Purchase Order) incorporated in the Price.

10.4. Representations and warranties about hire Goods

The Supplier represents and warrants to Genesis that, for any hire of Goods, the Supplier has provided to Genesis all information and prudent safety and operational signage relating to:

- (a) the operating instructions for the Goods;
- (b) any dangers associated with the use or incorrect use of the Goods;
- (c) any applicable manufacturer's specifications; and
- (d) any procedures necessary to ensure that workers properly using the Goods are not exposed to uncontrolled hazards.

10.5. Risk in hire Goods

Risk in any Goods provided for hire by the Supplier to Genesis will pass as follows:

- (a) risk in the Goods passes from the Supplier to Genesis when the Goods are delivered and unloaded at the Delivery Point and accepted by Genesis (provided the Supplier has allowed Genesis a reasonable time to inspect any Goods after delivery before acceptance of that Goods are given by Genesis) or otherwise upon collection by Genesis in circumstances where the Goods are not delivered to the Delivery Point; and
- (b) risk in the Goods passes back from Genesis to the Supplier upon the earlier to occur of:
 - (i) the Goods being returned by Genesis to the Supplier or its Personnel; or
 - (ii) Genesis notifying the Supplier that the Goods are ready to be collected from a secure location under Genesis' control.

11. Delay

- (a) If there is delay in the Supplier providing any Goods and/or performing any Services and such delay is not provided for by this Agreement or otherwise agreed to in writing by Genesis, then Genesis may in its discretion withhold payment of the Price until the Goods are provided and/or Services are performed in compliance with this Agreement.
- (b) Genesis is entitled to claim damages or other appropriate remedies at Law against the Supplier if the provision of Goods and/or performance of Services occurs after the Delivery Date and such delay is not provided for by this Agreement or otherwise agreed to in writing by Genesis.

12. Force Majeure

- (a) If a Party is prevented from carrying out the whole or any part of its obligations under this Agreement as a direct result of any Force Majeure, that Party (**Affected Party**) must immediately give to the other Party, written notice containing full particulars of the Force Majeure event including:
 - (i) the nature of the Force Majeure;
 - (ii) date of the first occurrence of the Force Majeure;
 - (iii) the effect the Force Majeure event will have on the Affected Party's ability to perform its obligations under this Agreement; and
 - (iv) the expected duration of the Force Majeure.
- (b) If the Affected Party is prevented from performing its obligations under this Agreement then, subject to the Affected Party complying on an ongoing basis with clause 12(e), performance of the Affected Party's obligations under this Agreement will be suspended to the extent performance is prevented by that Force Majeure event from the date the written notice is given under clause 12(a) to the other Party and until cessation of the Force Majeure event.

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- (c) The Affected Party must notify the other Party in writing as soon as practicable and in any event within one Business Day of the Force Majeure event ceasing to prevent the Affected Party from performing its obligations under this Agreement, in which case the Affected Party must immediately resume its obligations which were suspended as a result of the Force Majeure event.
 - (d) If the Affected Party's obligations are suspended under clause 12(b) during that period of suspension:
 - (i) the Affected Party's non-performance or delay in performance resulting from the Force Majeure event will not be deemed to be a breach of this Agreement; and
 - (ii) each Party will bear its own costs.
 - (e) On and from the date the Affected Party is aware of the Force Majeure event, the Affected Party must use all reasonable diligence to mitigate and minimise the cause of and the effect of the Force Majeure event on the Affected Party's ability to perform its obligations under this Agreement (including investigating any reasonable and practicable workarounds) and must do all reasonable things to remedy the situation and resume its performance under this Agreement as soon as possible.
 - (f) The Supplier is not entitled to:
 - (i) additional payment for any of its obligations which are suspended under clause 12(b); and
 - (ii) an adjustment to the Price,due to a Force Majeure event.
 - (g) The time in which the Goods and/or Services must be provided by the Supplier under this Agreement will be extended for the period of time from the date the Affected Party issues a notice to the other Party providing details of the Force Majeure event and the date the Force Majeure event ceases.

13. Suspension

- (a) Genesis may at any time by notice in writing to the Supplier (**Suspension Notice**) direct the Supplier to suspend the provision of the Goods and/or performance of the Services or any part thereof for any time and for any purpose as Genesis thinks fit.
- (b) Upon receipt of a Suspension Notice, the Supplier must immediately suspend provision of the Goods and/or performance of the Services as required in the Suspension Notice or otherwise directed by Genesis.
- (c) The Supplier must comply with any direction by Genesis to recommence provision of the Goods and/or performance of the Services as soon as is reasonably practicable.
- (d) The Supplier must do all things reasonably necessary to reduce any cost or expense incurred by the Supplier as a result of the suspension in provision of the Goods and/or performance of the Services.
- (e) Genesis will pay the Supplier's unavoidable fixed direct costs which have been reasonably and actually incurred by the Supplier (as determined by Genesis) during a period of suspension under this clause 13 and which are incurred due to the suspension provided that:
 - (i) the Supplier does all things reasonably necessary to reduce or mitigate any cost or expense as a result of the suspension; and
 - (ii) the reason for suspension was not caused or contributed to by any act, omission or default of the Supplier or the Supplier's Personnel.
- (f) If Genesis issues a Suspension Notice and each of the following conditions are met:
 - (i) the reason for the suspension was caused by Genesis; and
 - (ii) the suspension was not attributable to any act, omission or default of the Supplier or the Supplier's Personnel,then the date by which the Supplier must provide the Goods and/or perform the Services will be extended for the same period of time as the provision of the Goods and/or performance of the Services is suspended by Genesis.

14. Indemnities

14.1. Supplier indemnities

- (a) Except to the extent caused by a negligent act of an Indemnified Party, the Supplier is liable for and indemnifies and keeps indemnified the Indemnified Parties against any and all Liabilities caused or contributed to by the negligence, wrongful act or omission or breach of this Agreement by the Supplier or the Supplier's Personnel.
- (b) Without limiting clause 14.1(a), the Supplier is liable for and indemnifies and keeps indemnified the Indemnified Parties against any and all Liabilities which the Indemnified Parties suffer or incur due to:
 - (i) an alleged or actual breach of any third party's Intellectual Property in contravention of clause 4(f); and/or

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- (ii) any business interruption (including loss of production or loss of use) arising due to any Genesis Indemnified Party being required to, or otherwise reasonably believing there is or was a need to, temporarily suspend or permanently cease using or taking advantage of any Goods and/or Services due to an alleged or actual breach of any third party's Intellectual Property in contravention of clause 4(f).
 - (c) The indemnities under this clause 14.1 are continuing obligations and survive termination of this Agreement.
 - (d) It will not be necessary for an Indemnified Party to incur any expense or Liability or to make any payment before enforcing an indemnity under this clause 14.1.

14.2. Limitation of Liability

- (a) Notwithstanding any other provision of this Agreement but at all times subject to clause 14.2(b), the Supplier on the one hand and the Indemnified Parties on the other hand will not be liable for any Consequential Loss of any kind suffered or incurred by the other Party.
- (b) The limitation of Liability in clause 14.2(a) does not apply to any Liability:
 - (i) to which the indemnity in clause 14.1(b) applies; and
 - (ii) to the extent it arises from Gross Negligence or Wilful Misconduct or from fraud.

14.3. Failure to perform

If the Supplier fails to comply with any of its obligations under this Agreement, Genesis may, in its sole discretion, perform or have a third party perform the Supplier's obligations and the costs incurred by Genesis in performing or having a third party perform the Supplier's obligations will be a debt due from the Supplier to Genesis.

15. Industrial Relations

- (a) The Supplier must maintain good industrial relations with its Personnel.
- (b) The Supplier is responsible for the conduct of all proceedings, conferences, negotiations, and dealings regarding industrial matters brought against the Supplier by any of its Personnel.
- (c) The Supplier must keep Genesis fully and promptly informed in writing of all industrial matters concerning its Personnel where they affect or could reasonably be expected to potentially affect Genesis, the Site or the ability for the Supplier to provide Goods and/or perform Services or Duties.
- (d) The Supplier must strictly comply with all requirements relating to wages and working conditions prescribed in all relevant awards and industrial instruments for any of its Personnel who provide Goods and/or perform Services or Duties under or in connection with this Agreement.
- (e) The Supplier must keep Genesis immediately and fully informed in writing of any dispute with its Personnel or any demand for wages or conditions in excess of or outside the scope of current and applicable industrial awards or registered industrial agreements.
- (f) The Supplier must, as and when requested by Genesis, attend meetings for the purpose of discussing industrial matters relevant to this Agreement.
- (g) In the event of an actual or threatened industrial dispute, ban, limitation of work or denial of facilities or services involving the Supplier's Personnel, the Supplier must:
 - (i) keep Genesis fully and promptly informed in writing on an ongoing basis throughout the course of the relevant events;
 - (ii) endeavour to resolve the dispute in the shortest practical time; and
 - (iii) take all practical action to ensure that the Duties being performed at the Site by the Supplier's Personnel continues whilst the appropriate steps are taken to resolve the dispute.

16. GST

- (a) Unless otherwise specified in the relevant Purchase Order, the Price does not include any amount for GST.
- (b) If provision of the Goods and/or Services is subject to GST, Genesis must, subject to clause 16(c), pay the Supplier an amount in addition to the Price equal to the GST payable for that supply.
- (c) The recovery of any GST is subject to the Supplier providing a Tax Invoice to Genesis to support the claim for payment of GST.
- (d) The Tax Invoice must be in a form acceptable to Genesis and must contain all information stipulated in any applicable GST legislation or by Genesis and in order for Genesis to receive the benefit of any Input Tax Credit.

17. Insurance

17.1. Insurance Required

At all times during the Supplier's performance of its obligations under this Agreement, the Supplier must comply with all applicable Laws and in doing so bears the sole responsibility for determining the requirements of those Laws relating to insurance. Without limiting the preceding sentence the Supplier must, at its own expense, procure and maintain or cause to be procured and maintained the following minimum insurances:

- (a) (Where the Supplier is required to enter Site) workers' compensation (including occupational disease where required by Law) and employer's indemnity insurance which complies with the relevant Laws covering all claims and liabilities under any statute and where common law claims are allowed outside of the statutory scheme, for employer's Liability at common Law, for not less than the amount required by the relevant State or Territory Legislation for each occurrence, for the death of or injury to:
 - (i) any person employed by the Supplier in connection with this Agreement; and
 - (ii) any person who is a worker of the Supplier or any of its subcontractors in connection with this Agreement and who may be deemed under statute to be a worker of the Supplier;
- (b) (Where the Supplier is required to enter Site) public Liability insurance written on an occurrence basis with a limit of indemnity of not less than \$20 million for each and every occurrence which covers the Liability of the Supplier and any of the Supplier's Personnel in respect of:
 - (i) loss of, damage to, or loss of use of, any real or personal property (including that of any Indemnified Party); and
 - (ii) the bodily injury of, disease or illness (including mental illness) to, or death or, any person,

arising out of the performance of this Agreement including the performance of the Services and/or Duties by the Supplier and the Supplier's Personnel who are employees of the Supplier.

This insurance must also extend to cover Liability for:

- (i) any Plant and Equipment of Genesis in the care, custody or control of the Supplier, except to the extent such Plant and Equipment is otherwise insured against the risk or loss or damage under other insurances required to be effected pursuant to this Agreement;
 - (ii) underground operations, if applicable;
 - (iii) the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with this Agreement; and
 - (iv) registered vehicles used as a tool of trade in the performance of the Services or Duties;
- (c) (Where Genesis purchases or hires any Goods from the Supplier) product Liability insurance written on an occurrence basis with a limit of indemnity of not less than \$20 million for each and every occurrence and no less than \$20 million in the aggregate during any one 12-month period of insurance which covers the Liability of the Supplier and any of the Supplier's Personnel in respect of:
 - (i) loss of, damage to, or loss of use of, any real or personal property (including that of any Indemnified Party); and
 - (ii) the bodily injury of, disease or illness (including mental illness) to, or death or, any person, arising out of the performance of this Agreement (including the performance of the Services or Duties) by the Supplier.

This insurance must also extend to cover Liability for:

- (iii) underground operations, if applicable;
 - (iv) the use of unregistered motor vehicles or unregistered mobile Plant and Equipment used in connection with this Agreement; and
 - (v) registered vehicles used as a tool of trade in the performance of the Services or Duties;
- (d) (Where the Supplier is required to bring motor vehicles to Site) motor vehicle insurance, covering all mechanically propelled vehicles that are registered, or capable of being registered, for road use and owned or leased by the Supplier, and are at any time used in connection with this Agreement, including:
 - (i) insurance that is compulsory under applicable Laws governing the use of motor vehicles and Liability for personal injury or death; and
 - (ii) Liability insurance for third party property damage with a sum insurance of not less than \$20 million per occurrence;
 - (e) (Where the provision of Goods and/or performance of Services include professional services in relation to which professional indemnity insurance is commonly taken out) professional indemnity insurance of not less than \$5 million for each claim and in the aggregate for all claims arising in the same insurance period, covering the Liability of the Supplier for any professional services provided by the Supplier and the Supplier's Personnel under this Agreement; and
 - (f) (Where the Supplier is bringing its own Plant and Equipment to Site) all risks property insurance covering the Supplier's Plant and Equipment against the risks of loss, damage or destruction for no less than its market value.

17.2. Endorsements

The Supplier must ensure:

- (a) the insurance referred to in clause 17.1(a) is endorsed (except where precluded by Law) to include a principal's indemnity extension and waiver of subrogation in favour of Genesis for act benefits and common Law, indemnifying Genesis against any Liability which it may incur in respect of the Suppliers' Personnel and others individuals that are deemed as workers, arising by virtue of the applicable worker's compensation legislation or under the common Law;
- (b) the insurances referred to in clauses 17.1(b), (c) and (d) each to include a principal's indemnity extension.

17.3. Currency

The Supplier must ensure each insurance referred to in:

- (c) clauses 17.1(a), (b), (c), (d) and (f) is in force from the commencement of this Agreement and is maintained until the end of the end of this Agreement; and
- (d) clause 17.1(e) is in force from the commencement of this Agreement and is maintained for at least three years after the later of:
 - (i) the end of this Agreement; or
 - (ii) the date upon which the Supplier completes the performance of the Services and Duties in accordance with this Agreement.

17.4. Insurers

The Supplier must ensure (and, where relevant, procure that its subcontractors ensure) the insurances required to be taken out under this clause 17 are:

- (a) effected with reputable insurers with a financial security rating of A- or APRA approved insurer; and
- (b) on terms (including deductible levels) in line with prudent risk management practices and Good Operating Practice given the nature of the business of the Supplier.

17.5. Subcontractors

The Supplier must ensure its subcontractors (including any Supplier's Personnel who are not employees of the Supplier) are insured as required by this clause 17.

17.6. Proof of insurances

- (a) The Supplier must, on or prior to the commencement of this Agreement and otherwise promptly when requested by Genesis, satisfy Genesis that each contract of insurance it is required to procure under this clause 17 is current by providing to Genesis cover notes, certificates of currency from the Supplier's broker or insurer, policy wordings (except for statutory policies), renewal certificates, proof or premium payment or other evidence reasonably required by Genesis.
- (b) Notwithstanding anything to the contrary in this Agreement, Genesis:
 - (i) has the right to refuse the Supplier (and any of the Supplier's Personnel) entry to Site; and
 - (ii) is not obliged to pay and may withhold payment (without any interest accruing) of, any amount owed by it to the Supplier under this Agreement,unless and until Genesis is satisfied this clause 17 has been complied with by the Supplier.
- (c) Nothing in this clause 17.6 may be raised as a defence to any claim by the Supplier against Genesis.

17.7. Prejudicing Insurance

The Supplier must ensure, for any insurance policy required to be maintained under this clause 17, it:

- (a) does not do or omit to do or, insofar as possible, permit or suffer to be done, any act or omission which may cause the insurance policy to be prejudiced, vitiated, rendered void or voidable;
- (b) reinstates an insurance policy if it lapses;
- (c) does not cancel or materially vary the insurance policy in a manner adverse to its obligations under this Agreement or allow an insurance policy to lapse without the prior written consent of Genesis;
- (d) immediately notifies Genesis of any event which may result in an insurance policy lapsing or being cancelled; and

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- (e) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect the insurance policy or the payment of all or any benefits under the insurance policy.

17.8. No Insurance

If the Supplier or its subcontractors fail to procure and maintain insurance policies in accordance with this clause 17, Genesis may, without limiting its rights under this Agreement and with no obligation to do so:

- (a) procure and maintain any such insurance and deduct the cost of doing so (which will be a debt due and immediately payable from the Supplier to Genesis) from any payments to be made to the Supplier by Genesis (under this Agreement or any other Agreement); or
- (b) refuse to make any further payments due from time to time to the Supplier (under this Agreement or any other agreement between the Parties and/or their Related Bodies Corporate) until the insurance policies and receipt for the payment of premiums are made available for inspection by Genesis and Genesis is satisfied the Supplier is in compliance with this clause 17.

17.9. Claim

- (a) Whenever a claim is made under any of the policies of insurance referred to in this clause 17, the Supplier is liable for any excess or deductible payable as a consequence.
- (b) The Supplier must inform Genesis in writing immediately it becomes aware of any actual, threatened or likely claims:
 - (i) under the insurance referred to in clause 17.1(e); and
 - (ii) (where materially relevant to Genesis) under any of the insurances referred to in clauses 17.1(a), (b), (c), (d) and (f),except for claims which Genesis may have against the Supplier, and in each case the Supplier must:
 - (iii) provide accompanying full details of the circumstances of such incident; and
 - (iv) where relevant, provide all such assistance to Genesis as may be required for the preparation and negotiation of insurance claims.
- (c) The Supplier's insurance policies will be the first in time to respond to any claims, where insurance is duplicated between the insurance policies of the Supplier and Genesis.

17.10. Supplier's acknowledgement

The Supplier expressly acknowledges and agrees:

- (a) the requirements of this clause 17 are fundamental requirements of this Agreement, and
- (b) maintenance by the Supplier of all required insurances under this clause 17 will not in any way limit the responsibilities, obligations and liabilities of the Supplier under any other provision of this Agreement.

18. Dispute Resolution

18.1. General

- (a) In the event of any dispute between the Parties concerning or arising out of this Agreement, the Parties must (subject to clause 18.3) meet to attempt to resolve the dispute prior to the commencement of any legal proceeding in respect of that dispute.
- (b) The Party initiating the dispute must give notice setting out the nature of the dispute and available dates to meet to resolve the dispute.
- (c) Either Party may commence legal proceedings in relation to the dispute if:
 - (i) the Parties fail to resolve the dispute within 30 days of the first meeting referred to in clause 18.1(a);
 - (ii) the Parties fail to agree on a meeting within 14 days of receipt of the dispute notice given under clause 18.1(b); or
 - (iii) a Party fails to attend a scheduled meeting.

18.2. Continuity of obligations

- (a) Despite the existence of a dispute, the Parties must continue to perform their obligations under this Agreement unless Genesis, by notice to the Supplier, suspends the Parties' obligations pending the outcome of the dispute.
- (b) The Supplier is not entitled to any adjustment to the Price by reason of suspension of the Supplier's obligations under clause 18.2(a).

18.3. Injunctive or Urgent Relief

Nothing in this clause 18 prejudices either Party's right to institute proceedings to seek injunctive or urgent declaratory relief for a dispute or any other matter arising under this Agreement.

19. Termination

19.1. Events of Default

An **Event of Default** will occur if:

- (a) the Supplier or its Personnel do not comply with any of the Supplier's material obligations under this Agreement and that default:
 - (i) continues for seven days after notice from Genesis to the Supplier has been provided requiring the default to be remedied; or
 - (ii) cannot be remedied;
- (b) the Supplier or any of its Personnel commits an act of Gross Negligence or Wilful Misconduct, fraud or dishonesty for any matter undertaken or required to be undertaken under this Agreement;
- (c) the Supplier or the Supplier's Personnel act in a manner which Genesis considers to be substantially prejudicial or harmful to Genesis or which is unsafe; and/or
- (d) an Insolvency Event occurs with respect to the Supplier.

19.2. Termination due to Event of Default

If an Event of Default occurs, Genesis may (without prejudice to any of its rights under or in connection with this Agreement or at Law) terminate the Agreement with immediate effect (or on a later date specified by Genesis) at any time after the Event of Default by giving written notice to the Supplier.

19.3. Termination due to Force Majeure

Without prejudice to any of its rights under this Agreement or at Law, Genesis may terminate this Agreement with immediate effect (or on a later date specified by Genesis) by giving written notice to the Supplier if an obligation of the Supplier under this Agreement has been suspended due to a Force Majeure event for more than 14 consecutive days.

19.4. Termination for Convenience

- (a) Genesis may at any time for its sole convenience terminate this Agreement by giving at least five days' prior written notice to the Supplier, in which case this Agreement will terminate on the date and time stated in the notice of termination.
- (b) If Genesis terminates this Agreement under clause 19.4(a), Genesis must pay to the Supplier the actual costs payable to the Supplier under this Agreement up until the date of termination provided that:
 - (i) the Supplier has taken all reasonable steps to minimise those costs and expenses; and
 - (ii) where any materials, goods, information or other items are ordered that cannot be cancelled, the Supplier ensures that Genesis receives delivery of and title to those materials, goods, information or items free from any Encumbrances or Third Party Claims.
- (c) Genesis will (acting reasonably) determine the amount payable by it under clause 19.4(b). The Supplier must promptly provide Genesis with whatever reasonable documentation Genesis requires in order for Genesis to determine the amount payable by it under clause 19.4(b).
- (d) If any termination of this Agreement by Genesis other than under this clause 19.4 is held to be wrongful or unable to occur on the grounds Genesis alleged, then the termination will instead be deemed to have been made in accordance with this clause 19.4 and clause 14.2 will apply.

19.5. Accrued rights

The expiration or earlier termination of this Agreement does not affect the rights Genesis has in relation to a breach of this Agreement by the Supplier before the expiration or termination.

19.6. Provisions surviving termination

Subject to any applicable Law to the contrary, clauses 1, 2, 4, 7, 9, 10.4, 10.5, 10.6, 14, 16, 17, 18, 19.5, 20, 21, 22, 23, 24, 25, 26, 28 and 29 of these Terms and Conditions survive termination of this Agreement and will continue in full force and effect.

20. Confidential Information

The Supplier must:

- (a) not, and must ensure its Personnel do not, without Genesis' prior written consent, directly or indirectly disclose any Confidential Information to any person or use the Confidential Information in whole or in part, except in fulfilling its obligations under this Agreement;
- (b) not copy or otherwise reproduce any documents containing Confidential Information, except as necessary in fulfilling its obligations under this Agreement;

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- (c) on termination of this Agreement, or on demand by Genesis, return or (at the election of Genesis) destroy (and certify the destruction of) all documents containing any Confidential Information, including any documents created by the Supplier which contain Confidential Information;
 - (d) use its best endeavours to protect the confidentiality of the Confidential Information as if it were the Supplier's own confidential information; and
 - (e) comply with all reasonable requests by Genesis regarding the protection of the Confidential Information.

21. Privacy

- (a) Each Party must abide by:
 - (i) the National Privacy Principles contained in the *Privacy Act 1988* (Cth); and
 - (ii) the other Party's privacy policy (to the extent applicable), which each Party must provide to the other Party upon written request.
- (b) Either Party may collect personal information about the other Party as is reasonably necessary to assist it in the performance of its obligations under this Agreement.
- (c) Neither Party will disclose personal information about the other Party to any third party except in the ordinary administration of its business or with the prior written consent of the other Party.

22. Notices

- (a) All notices and other documents given pursuant to this Agreement must be in writing and may be given by email, personal delivery or prepaid post to the Party to whom the notice is addressed as set out in the Purchase Order or such other address as it may have notified in writing to the other Party.
- (b) A notice or other document sent by email is deemed to be successfully received by the recipient:
 - (i) unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient; and
 - (ii) at the time of sending, or if the email is not sent before 5pm AWST on a Business Day, at the start of the next Business Day.
- (c) A notice of other document delivered personally will be deemed to be successfully received on the day of delivery if a Business Day, otherwise on the next following Business Day.
- (d) A notice or other document delivered by prepaid post will be deemed to be successfully received on the third Business Day after posting.
- (e) If a Purchase Order is issued by email, the Purchase Order is deemed to be successfully received by the Supplier:
 - (i) unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient; and
 - (ii) at the time of sending, or if the email is not sent before 5pm on a Business Day, at the start of the next Business Day.

23. Waiver

- (a) A waiver or consent under this Agreement is not effective unless it is in writing.
- (b) Any failure by a Party to exercise any right under this Agreement does not operate as a waiver and the single or partial exercise of any right by that Party does not preclude any other or further exercise of that or any other right by that Party.
- (c) The acceptance of provision of any Goods and/or Services or an attempt by Genesis to mitigate its loss is not a waiver of a preceding breach by the Supplier of its obligations under this Agreement or a surrender by operation of Law.

24. Governing law

The Agreement is governed by and is to be construed according to the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia.

25. Severability

Any provision of this Agreement which is unenforceable, illegal or void in any jurisdiction is to be read down so as to be valid and enforceable in the jurisdiction or, if it cannot be read down, then the provision is severed from this Agreement, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

26. No representation or reliance

As at the time of entry this Agreement, each Party acknowledges and confirms:

- (a) its entry into this Agreement is not the result of any fraud, duress, coercion, pressure or undue influence exercised by or on behalf of any person, and it is entering into this Agreement freely and voluntarily;

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- (b) it has had an opportunity to take competent, independent legal advice from legal advisors of its choosing, in relation to the claims and matters the subject of this Agreement and as to the legal and practical effects of this Agreement; and
 - (c) it does not enter into this Agreement in reliance on any representation or other inducement by or on behalf of any other Party, except for representations or inducements expressly set out in this Agreement.

27. Further Assurance

From time to time at the request of Genesis, the Supplier must promptly do and execute or cause to be done or executed all such acts, deeds and assurances whatsoever reasonably necessary for ensuring full and proper compliance with or performance of the terms of this Agreement.

28. Variation

This Agreement may not be changed or modified in any way after its execution except in writing signed by both Parties.

29. Entire Agreement

This Agreement is the entire agreement between the Parties and supersedes all prior agreements, arrangements and understandings (written or verbal) in relation to this subject matter.

30. Counterparts

This Agreement or any Purchase Order may be executed in any number of counterparts, all of which taken together constitute one and the same instrument. The counterparts may be exchanged electronically by scanning the entire duly executed counterpart and emailing it to the other Party.

31. Electronic exchange and signing

31.1. Electronic Exchange

- (a) Each Party consents to the exchange of counterparts of this Agreement and any Purchase Order by delivery by email, or such other electronic means as may be agreed in writing.
- (b) The Parties agree that for the purposes of effecting a binding exchange of counterparts of this Agreement or a Purchase Order, if a Party or its solicitor delivers an executed counterpart of this Agreement or Purchase Order by email or other electronic means (as may be agreed in writing) to the other Party or its solicitors, the exchange of signed counterparts by electronic delivery will be deemed and treated to be an effective delivery of an original executed counterpart and for all purposes as being valid and binding on the Parties despite any other provision of this Agreement or any Law relating to the valid exchange of counterparts.

31.2. Electronic Signing

- (a) For the purposes of this clause 31.2, "**Electronic Signature**" means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a Party with the intent to sign such record, including e-mail electronic signatures.
- (b) It is acknowledged and agreed by the Parties that Electronic Signatures, where digital or encrypted of the Parties in this Agreement or a specific Purchase Order, are intended to authenticate the writing in this Agreement or the specific Purchase Order and indicate a Party's intention to be bound by this Agreement (including the specific Purchase Order) in the same manner and with the same force and effect as execution by a non-electronic signature.

31.3. Electronic execution

The Parties give all necessary consents under the *Electronic Transactions Act 1999* (Cth) or any equivalent legislation in Western Australia or any other applicable jurisdiction for:

- (a) the execution or exchange of all documents comprising this Agreement;
- (b) the delivery of any notice under this Agreement; and
- (c) any requirement for anything under this Agreement to be done in writing,

to be done or satisfied by electronic means.