

General Conditions effective 13th July 2007

1 Tender

- 1.1 The Tender should be read in conjunction with the General Conditions.
- 1.2 Unless otherwise stated in the Tender, the Tender is valid for 60 Business Days after the date of the Tender and is deemed to be withdrawn by THE COMPANY after this time, unless it has been accepted by the Principal.
- 1.3 THE COMPANY may withdraw the Tender at any time prior to its acceptance by the Principal.
- 1.4 If the Principal accepts the Tender, the Tender and the General Conditions together form the Contract.
- 1.5 In the event of any discrepancy or inconsistency between the Tender and the General Conditions, the Tender will prevail.

2 Provision of Services

- 2.1 THE COMPANY will provide the Services in accordance with the Contract.
- 2.2 The Principal will pay THE COMPANY for the Services in accordance with the Price.

3 Warranties by THE COMPANY

- 3.1 THE COMPANY warrants that:
 - (1) it has the skill and expertise necessary to provide the Services;
 - (2) it will use good quality materials and provide the Services in a good workmanlike manner and in accordance with standard industry practices and all applicable laws;
 - (3) it will provide the Services in accordance with the timing agreed with the Principal;
 - (4) it is validly existing under the laws of its place of incorporation;
 - (5) it is empowered to enter into this Contract and to do all things that will be required by this Contract; and
 - (6) all things have been done or will be done as may be necessary to render this Contract legally enforceable in accordance with its terms and fully valid and binding on it.
- 3.2 All statutory or implied conditions and warranties given by THE COMPANY are excluded to the extent permitted by law, such that the only warranties given by THE COMPANY under this Contract are the warranties referred to in clause 3.1 and the conditions and warranties which cannot legally be excluded.
- 3.3 To the extent permitted by law, THE COMPANY's liability under the warranties and conditions referred to in clause 3.2 is limited to, at THE COMPANY's option:
 - (1) supplying the Services again; or
 - (2) paying the cost of having the Services supplied again.
- 3.4 If all or any part of the Services to be provided by THE COMPANY under this Contract fail to conform in a material respect with the specifications in the Scope of Work then:
 - (1) THE COMPANY is not liable unless the Principal notifies THE COMPANY of the failure within 12 months after the completion of the Services; and
 - (2) the liability of THE COMPANY is in any case limited as set out in the clause 3.3, and THE COMPANY is not liable for any consequential damage.

4 Warranties by Principal

- 4.1 The Principal warrants:
 - (1) it is validly existing under the laws of its place of incorporation;
 - (2) it is empowered to enter into this Contract and to do all things that will be required by this Contract;
 - (3) all things have been done or will be done as may be necessary to render this Contract legally enforceable in accordance with its terms and fully valid and binding on it; and
 - (4) it will provide THE COMPANY with all information required by THE COMPANY in providing the Services.

5 Insurance provided by Principal

- 5.1 During the term of this Contract, the Principal will effect, and thereafter maintain throughout the term, an insurance policy or policies covering:
 - (1) the Principal's facilities and equipment;
 - (2) THE COMPANY's equipment whilst in transit from THE COMPANY's office to the site where the Services will be provided and thereafter at all times when THE COMPANY's equipment is on that site;
 - (3) public liability insurance for an amount of not less than \$10,000,000 in respect of any one accident or series of accidents arising out of one event; and

- (4) workers' compensation insurance in respect of persons employed or engaged by the Principal or deemed to be so employed or engaged,
in the names of the Principal, THE COMPANY and THE COMPANY's subcontractors for their respective rights and interests.

6 Insurance provided by THE COMPANY

During the term of this Contract, THE COMPANY will effect, and thereafter maintain throughout the term, an insurance policy or policies covering:

- (1) public liability insurance for an amount of not less than \$10,000,000 in respect of any one accident or series of accidents arising out of one event; and
- (2) workers' compensation insurance in respect of persons employed or engaged by THE COMPANY or deemed to be so employed or engaged.

7 Payment of Price

7.1 The Principal must pay THE COMPANY for the Services in accordance with the Price.

7.2 Unless otherwise agreed in writing between THE COMPANY and the Principal, the procedures set out in clauses 7.3 to 7.5 will apply to the payment of the Price by the Principal.

7.3 Monthly Claims

- (1) THE COMPANY will claim payment each month by submitting an invoice in respect of the Services provided in the previous month within 7 days of the end of that month (**Monthly Claim**).
- (2) Each Monthly Claim must be given in writing to the Principal's representative and must include details of the Services provided.

7.4 Progress certificates

- (1) The Principal's representative will, within 14 days of receiving a Monthly Claim from THE COMPANY:
 - (a) if the Principal agrees with the amount claimed by THE COMPANY, issue a progress certificate for that amount; or
 - (b) if the Principal disagrees with the amount claimed by THE COMPANY, issue a progress certificate for the amount the Principal agrees to pay and set out the reasons why amounts have been withheld or deducted.
- (2) Upon the issue of a progress certificate under clause 7.4(1), the Principal must immediately pay the amount specified as being due to THE COMPANY.
- (3) The Principal's representative and THE COMPANY's representative will meet, as necessary, to clarify and resolve any issues arising in respect of certification and payment of a Monthly Claim.

7.5 Final payment claim and final certificate

- (1) Within 7 days after the completion of the Services, THE COMPANY will give the Principal's representative a written final payment claim endorsed 'Final Payment Claim' being a Monthly Claim together with all other claims whatsoever in connection with the subject matter of this Contract (**Final Payment Claim**).
- (2) Within 7 days of receiving the Final Payment Claim from THE COMPANY, the Principal's representative will issue to THE COMPANY a final certificate evidencing the moneys finally due and payable between THE COMPANY and the Principal on any account whatsoever in connection with the subject matter of this Contract (**Final Certificate**).
- (3) Following receipt of the Final Certificate, or if the Principal's representative does not issue the Final Certificate within the requisite 7 days, at any time after such 7 day period, THE COMPANY will issue to the Principal its tax invoice in the amount stated in the Final Certificate or, if no Final Certificate was issued within the requisite 7 days, the amount stated in the Final Payment Claim. If this produces a negative balance there will be no requirement to issue a tax invoice.
- (4) The Principal will, within 7 days of receipt by the Principal of THE COMPANY's tax invoice, or within 7 days after the Final Payment Claim was due, pay to THE COMPANY the balance of the Final Certificate. If the balance of the Final Certificate is negative, THE COMPANY will pay that balance to the Principal within 14 days of receiving written notice thereof.
- (5) The Final Certificate will be conclusive evidence of accord and satisfaction, and in discharge of each party's obligations in connection with the subject matter of this Contract, except for:
 - (a) fraud or dishonesty relating to the Services or any part thereof or to any matter dealt with in the Final Certificate;
 - (b) any accidental or erroneous inclusion or exclusion of any work or figures in any computation or an arithmetical error in any computation; and
 - (c) unresolved issues the subject of any Notice of Dispute pursuant to clause 15.1.

7.6 Interest

Interest at the rate which is 2% above the base rate from time to time of the Reserve Bank will be due and payable on any amount that is not paid by the Principal to THE COMPANY when due for payment.

8 Force majeure

8.1 If a party (**Affected Party**):

- (1) is prevented from or delayed in performing an obligation under this Contract (other than to pay money) by a Prescribed Event;
- (2) as soon as possible after the Prescribed Event occurs, notifies the other party of full particulars of:

- (a) the Prescribed Event;
 - (b) the effect of the Prescribed Event on performance of the Affected Party's obligations;
 - (c) the anticipated period of delay; and
 - (d) the action (if any) the Affected Party intends to take to mitigate or remove the effect and delay; and
- (3) promptly and diligently acts to mitigate or remove the Prescribed Event and its effect,
- then:
- (4) the obligation is suspended during, but for no longer than, the period the Prescribed Event continues and such further period as is reasonable in the circumstances; and
 - (5) if the Affected Party is prevented from or delayed in performing the obligation by the Prescribed Event for at least 28 days, any party may by notice to the other party terminate this Contract.
- 8.2 The party which is not the Affected Party must use reasonable endeavours to remove or mitigate the Prescribed Event and its effects.
- 8.3 Nothing in clause 8.1(3) or clause 8.2 obliges a party to settle any strike, lockout, ban, limitation of work or other industrial disturbance.
- 9 Intellectual property rights**
- 9.1 The Principal warrants that to the best of its knowledge and belief the design, materials and documents provided by it for the purposes of this Contract will not infringe any intellectual property right.
- 9.2 THE COMPANY warrants that to the best of its knowledge and belief any design, materials, documents and methods of working provided, or used, by it for the purposes of this Contract will not infringe any intellectual property right.
- 9.3 Ownership of any intellectual property right in anything prepared by THE COMPANY or those for whom THE COMPANY is responsible in connection with the Services vests absolutely in THE COMPANY immediately upon creation, unless otherwise agreed with THE COMPANY in writing.
- 10 Limitation of liability**
- 10.1 Notwithstanding any other provision of this Contract, the Principal will have no claim against THE COMPANY for any moneys in the nature of damages or compensation for loss of actual or anticipated profits or any consequential, special, contingent or penal damages or compensation whatsoever as a consequence of a breach, or the termination, of this Contract.
- 11 Relationship**
- 11.1 Neither this Contract nor any activity under it:
- (1) constitutes a partnership or other relationship under which a party may be liable for an act or omission of the other party;
 - (2) permits profit sharing;
 - (3) authorises a party to pledge the credit of the other party;
 - (4) impairs the individual status of a party; or
 - (5) creates a trust,
- in each case, unless expressly provided in this Contract.
- 12 Assignment and subcontracting**
- 12.1 Neither party will, without the other's prior written approval, assign this Contract or any payment or any other right, benefit or interest under it.
- 12.2 THE COMPANY may subcontract all or any part of the Services. THE COMPANY will give the Principal written particulars of the Services to be subcontracted and the name and address of the proposed subcontractor. THE COMPANY will give the Principal's representative other information which the Principal's representative reasonably requests in respect of any subcontractor or subcontract.
- 12.3 The subcontracting of the Services will not relieve THE COMPANY from any liability or obligation under this Contract.
- 13 Confidentiality**
- 13.1 The parties acknowledge that this Contract and all information supplied to or obtained by them in respect of this Contract and the provision of the Services, other than information which is publicly available other than through a breach of this Contract, is confidential (**Confidential Information**).
- 13.2 Each party must not, and must not permit any of its employees or subcontractors to, disclose any Confidential Information to any person, other than its professional advisers or as required by law, without the prior written consent of the party to whom the Confidential Information relates.
- 13.3 This clause 13 remains in force after all other obligations under this Contract have expired.
- 14 Default and termination**
- 14.1 A party may terminate this Contract at any time by written notice to the other party (**Defaulting Party**) if any of the following apply:
- (1) the Defaulting Party fails to carry out any provision of this Contract, the failure is capable of remedy and the Defaulting Party does not remedy that failure within 7 days after written notice to the Defaulting Party requiring it to be remedied;
 - (2) the Defaulting Party fails to carry out any material provision of this Contract and the failure is not capable of remedy;

- (3) the Defaulting Party is subject to an Insolvency Event;
 - (4) any other event occurs or circumstance arises which, in the reasonable opinion of the other party, is likely materially and adversely to affect the ability of the Defaulting Party to perform all or any of its obligations under or otherwise to comply with the terms of this Contract; and
 - (5) a warranty given by the Defaulting Party in this Contract is materially incorrect.
- 14.2 On termination of this Contract under clause 14.1 each party retains its rights against the other party in respect of any past breach, in addition to any other rights, powers or remedies provided by law, except in relation to an event referred to in clause 14.1(5), where the only remedy available to the Principal in the event that THE COMPANY is the Defaulting Party is that referred to in clause 3.3.

15 Dispute resolution

- 15.1 If a dispute arises in connection with this Contract, a party to the dispute must give to the other party or parties to the dispute notice specifying the dispute and requiring its resolution under this clause 15 (**Notice of Dispute**).
- 15.2 A Manager or a senior manager of each party must confer within 3 days after the Notice of Dispute is given to try to resolve the dispute.
- 15.3 If the dispute is not resolved within 7 days after the Notice of Dispute is given to the other party or parties, the dispute is by this clause referred to arbitration. The arbitration must be conducted in Perth, Western Australia, or such other place as agreed to in writing by the parties to the dispute, by a single arbitrator.
- 15.4 If the parties have not agreed upon the arbitrator within 7 days after the period referred to in clause 15.3, the arbitrator is the person appointed by the Chair of the Western Australian Chapter of the Institute of Arbitrators and Mediators Australia (**Principal Appointer**) or the Principal Appointor's nominee, acting on the request of any party to the dispute.
- 15.5 After accepting the appointment and during the arbitration the arbitrator may:
- (1) require the parties to lodge security or further security towards the arbitrator's fees and expenses; and
 - (2) apply any security towards those fees and expenses,
- but the arbitrator may not direct a party to the dispute to provide security for the costs of the arbitration to be incurred by any other party.
- 15.6 Despite anything in this clause 15, a party at any time may commence court proceedings in relation to any dispute or claim arising under or in connection with this Contract where that party seeks urgent interlocutory relief.
- 15.7 This clause 15 applies even where the Contract is otherwise void or voidable.

16 Goods and services tax – general

- 16.1 In this clause:
- (1) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (**GST Act**) or any replacement or other relevant legislation and regulations;
 - (2) words used in this clause which have a particular meaning in the **GST law** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
 - (3) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member; and
 - (4) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.
- 16.2 Unless GST is expressly included, the consideration expressed to be payable under any other clause of this Contract for any supply made under or in connection with this Contract does not include GST.
- 16.3 To the extent that any supply made under or in connection with this Contract is a taxable supply, the GST exclusive consideration otherwise payable for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply, and is payable at the same time.
- 16.4 Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this Contract.
- 16.5 If a payment to a party under this Contract is a payment by way of reimbursement or indemnity and is calculated by reference to the GST inclusive amount of a loss, cost or expense incurred by that party, then the payment is to be reduced by the amount of any input tax credit to which that party is entitled in respect of that loss, cost or expense before any adjustment is made for GST pursuant to clause 16.3.
- 17 **Further assurance**
- 17.1 Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Contract.

18 Entire understanding

- 18.1 This Contract:
- (1) is the entire Contract and understanding between the parties on everything connected with the subject matter of this Contract; and
 - (2) supersedes any prior contract or understanding on anything connected with that subject matter.
- 19 Variation**
- 19.1 An amendment or variation to this Contract is not effective unless it is in writing and signed by the parties.
- 20 Waiver**
- 20.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 20.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 20.3 A waiver is not effective unless it is in writing.
- 20.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- 21 Notices**
- 21.1 A notice or other communication connected with this Contract (**Notice**) has no legal effect unless it is in writing.
- 21.2 In addition to any other method of service provided by law, the Notice may be:
- (1) sent by prepaid post to the address of the addressee set out in this Contract or subsequently notified;
 - (2) sent by facsimile to the facsimile number of the addressee;
 - (3) sent by electronic mail to the electronic mail address of the addressee; or
 - (4) delivered at the address of the addressee set out in this Contract or subsequently notified.
- 21.3 If the Notice is sent or delivered in a manner provided by clause 21.2 it must be treated as given to and received by the party to which it is addressed:
- (1) if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;
 - (2) if sent by facsimile or electronic mail before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
 - (3) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- 21.4 Despite clause 21.3(2):
- (1) a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice;
 - (2) an electronic mail message is not treated as given or received if the sender's computer reports that the message has not been delivered; and
 - (3) a facsimile or electronic mail message is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 3 hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.
- 21.5 A Notice sent or delivered in a manner provided by clause 21.2 must be treated as validly given to and received by the party to which it is addressed even if:
- (1) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent;
 - (2) the Notice is returned unclaimed; or
 - (3) in the case of a Notice sent by electronic mail, the electronic mail message is not delivered or opened (unless the sender's computer reports that it has not been delivered).
- 21.6 A party may change its address for service, facsimile number or electronic mail address by giving Notice of that change to each other party.
- 21.7 If the party to which a Notice is intended to be given consists of more than 1 person then the Notice must be treated as given to that party if given to any of those persons.
- 22 Governing law and jurisdiction**
- 22.1 The law of Western Australia governs this Contract.
- 22.2 The parties submit to the non-exclusive jurisdiction of the courts of Western Australia and of the Commonwealth of Australia.
- 23 Definitions and interpretation**
- 23.1 Definitions
- In this Contract:
- (1) **Affected Party** has the meaning given in clause 8.1;
 - (2) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
 - (3) **Confidential Information** has the meaning given in clause 13.1;

- (4) **Contract** has the meaning given in clause 1.4;
- (5) **Defaulting Party** has the meaning given in clause 14.1;
- (6) **Final Certificate** has the meaning given in clause 7.5(2);
- (7) **Final Payment Claim** has the meaning given in clause 7.5(1);
- (8) **General Conditions** means this document;
- (9) **GST** has the meaning given in clause 16.1(1);
- (10) **GST Act** has the meaning given in clause 16.1(1);
- (11) **GST law** has the meaning given in clause 16.1(2);
- (12) **Insolvency Event** means in relation to a body corporate:
- (a) an administrator of the body corporate being appointed under the *Corporations Act 2001* (Cth);
 - (b) the body corporate or a subsidiary executing a deed of company arrangement otherwise than for the purpose of an amalgamation or reconstruction;
 - (c) the entry by the body corporate into a scheme of arrangement or a composition with, or assignment for the benefit of, all or any class of its creditors, or a moratorium involving any of them, otherwise than for the purpose of an amalgamation or reconstruction;
 - (d) the body corporate being insolvent within the meaning of section 95A(2) of the *Corporations Act 2001* (Cth);
 - (e) the body corporate being or stating that it is unable to pay its debts when they fall due;
 - (f) the appointment of a receiver or receiver and manager in respect of the body corporate or any part of its property;
 - (g) the making of a winding up order, or the passing of a resolution for winding up, in respect of the body corporate except for the purposes of reconstruction or amalgamation; or
 - (h) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction,
- and, in relation to a person other than a body corporate, means an event that is equivalent, under bankruptcy or other similar law, to any of the above;
- (13) **Monthly Claim** has the meaning given in clause 7.3(1);
- (14) **Notice** has the meaning given in clause 21.1;
- (15) **Notice of Dispute** has the meaning given in clause 15.1;
- (16) **THE COMPANY** means THE COMPANY Pty Ltd ACN 008 946 969;
- (17) **Prescribed Event** means any of the following events:
- (a) act of God;
 - (b) war, terrorism, riot, insurrection, vandalism or sabotage;
 - (c) strike, lockout, ban, limitation of work or other industrial disturbance; or
 - (d) law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular application,
- which:
- (e) is unforeseen by the Affected Party;
 - (f) is beyond the control of the Affected Party; and
 - (g) occurs without the fault or negligence of the Affected Party;
- (18) **Price** means the price for the Services set out in the Tender;
- (19) **Principal** means the person that THE COMPANY will provide the Services to;
- (20) **Principal Appointer** has the meaning given in clause 15.4;
- (21) **Services** means the services provided by THE COMPANY to the Principal pursuant to the Scope of Work;
- (22) **Scope of Work** means the scope of work set out in the Tender; and
- (23) **Tender** means the tender provided by THE COMPANY, as may be amended by THE COMPANY, to the Principal in respect of the Services.

23.2 Interpretation

- (1) Reference to:
- (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate;
 - (d) a party includes the party's executors, administrators, successors and permitted assigns;
 - (e) a statute, regulation, code or other law or a provision of any of them includes:
 - (i) any amendment or replacement of it; and

- (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
- (f) dollars is to Australian dollars, unless otherwise stated.
- (2) "Including" and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this Contract or affect its interpretation.
- (5) A provision of this Contract must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Contract or the inclusion of the provision in the Contract.
- (6) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

23.3 **Parties**

- (1) If a party consists of more than 1 person, this Contract binds each of them separately and any 2 or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (3) A party which is a trustee is bound both personally and in its capacity as a trustee.