

GENERAL CONDITIONS

1. Definitions

In this Contract, unless the context otherwise requires, the below terms will have the following meaning:

Applicable Standards	Codes	and	The codes, standards, regulations and requirements expressed in any Law, Authorisation and the Design Documents.
Authority			Means: <ul style="list-style-type: none">▪ any government, any minister or ministry or any governmental, semi-governmental, local-governmental, administrative, fiscal, regulatory or judicial body, tribunal, department, commission, authority, agency, statutory corporation or authority, instrumentality, bureau, board or undertaking under the direct or indirect control of any government;▪ any other person having the right to impose a requirement or whose consent is required under Law in respect of any part of the Works; or▪ any other person, having jurisdiction over the Works or the Contract.
Authorisation			Any consent, authorisation, registration, filing, lodgement, permit, licence, agreement, notarisation, certificate, permission, licence, direction, declaration, authority or exemption issued by any government or any governmental, semi-governmental, regulatory, statutory or similar entity or authority, or any other party under law which has a right to impose a requirement or whose consent is required with respect to the performance of obligations under this Contract.
BIFSOPA			The <i>Building Industry Fairness (Security of Payment) Act 2017</i> .
Business Day			A day that is not a Saturday, Sunday or public holiday in Brisbane, Queensland or the period 22 December to 10 January inclusive.
Calendar Day			Any day during a year including a Business Day.
Certificate of Completion			The certificate stating that the Works have reached Completion.
Change in Law			A change in an existing Law in Australia or a new Law in Australia, which takes effect after the Commencement Date and necessitates a change to the Works.

Completion

That stage in the execution of the Works when, in the opinion of the Contractor:

- the Works comply with the requirements of this Contract except for minor omissions and minor defects;
- the Works are available for immediate use and operation;
- all of the inspections and tests required under this Contract have been satisfactorily completed.

Completion Date

The date on which all Works under the Contract have reached Completion.

Confidential Information

All information which is not in the public domain disclosed to a party by, or on behalf of, the other party, the other party's representative or any related entity of the other party, including this Contract and:

- information, which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of the other party;
- trade secrets or information, which is capable of protection at law or equity as confidential information;
- information from a third party, where the party is advised by the other party, the other party's representative or any related entity of the other party that such information is confidential; and
- information derived or produced, partly or wholly, from the information referred to above, including any calculation, conclusion, summary or computer modelling, whether the information was disclosed:
 - orally, in writing or in electronic or machine readable form;
 - before, on or after the date of this Contract;
 - as a result of discussions between the parties; or
 - by the other party, any of its related entities or third parties.

Contract Documents

The documents listed in item 12 of the Schedule and documents included in the Schedules (if any).

Contract Sum	<p>Where the Contract is based upon a lump sum, the lump sum listed in item 5 of the Schedule.</p> <p>Where the Contract is based upon rates, the sum of products ascertained by multiplying the rates by the corresponding quantities in the Schedule of Rates.</p> <p>In any of the cases above excludes excluding any additions or deductions which may be required to be made under the Contract.</p>
Corporations Act	The <i>Corporations Act 2001</i> (Cth).
Date for Commencement	The date stated in item 6 of the Schedule and if no date is specified, then 7 Days from the date the Contractor notifies the Client the Works will commence, or such other time as agreed to in writing between the Parties.
Date for Completion	The date stated in item 7 of the Schedule as extended pursuant to this Contract.
Defects Liability Period	The period specified in item 8 of the Schedule.
Design Documents	The drawings, specifications and other information required by this Contract and created for the Works.
Good Industry Practice	Currently recognised methods and practice and the exercise of that degree of skill prudence and foresight which could reasonably be expected from experienced and competent contractor operating in Australia under conditions comparable to those applicable at the Site.
GST	GST has the same meaning as in the GST Law.
GST Law	GST Law has the same meaning as 'GST law' in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Industrial Dispute	Any strike, picket line, work ban or other industrial action.
Insolvency Event (in relation to a body corporate)	<p>Any of the following:</p> <ul style="list-style-type: none">▪ An administrator of the body corporate being appointed under the Corporations Act;▪ The body corporate or a subsidiary executing a deed of company arrangement otherwise than for the purpose of an amalgamation or reconstruction;▪ 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;

- The body corporate being insolvent within the meaning of section 95A(2) of the Corporations Act;
- The appointment of a receiver or receiver and manager in respect of the body corporate or any part of its property;
- The making of a winding up order, or the passing of, or attempted passing of, a resolution for winding up, except for the purposes of reconstruction or amalgamation;
- An application being made (which is not dismissed within ten (10) Business Days) for an order, a resolution being passed or proposed, a meeting being convened or any other action being taken to cause anything described above, other than for the purposes of an amalgamation or reconstruction; or
- Anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction.

Insolvency Event (in relation to a person other than a body corporate)

Any of the following:

- The bankruptcy of the person concerned;
- The appointment of an official manager in respect of all or any part of the property of the person concerned;
- The entry by the person concerned 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;
- The person concerned being or stating that he or she is unable to pay his or her debts as and when they fall due;
- An application being made (which is not dismissed within ten (10) Business Days) for an order, a resolution being passed or proposed, a meeting being convened or any other action being taken to cause anything described above; or
- Anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction.

Intellectual Property Rights	Rights conferred by statute, common law or equity in or in relation to copyright, trade marks, designs, patents, circuit layouts, inventions, and other results in the industrial, commercial, scientific, literary or artistic fields including all moral rights in respect thereof. These rights include: <ul style="list-style-type: none">▪ all rights in all applications to register these rights;▪ all renewals and extensions of these rights; and▪ all rights in the nature of these rights.
Interest Rate	The amount specified in item 17 of the Schedule
Latent Conditions	Conditions on the Site or its surroundings which differ from the conditions which were actually anticipated by the Contractor at the time that the Contractor executed this Contract, including, but not limited to hard rock, or unidentified services and/or utilities, or defective or inappropriate framing, and/or other supporting structures.
Law	Each of the following: <ul style="list-style-type: none">▪ Commonwealth law, the law of the state or territory in which the Project is located and local government legislation including regulations and by-laws;▪ Common law; and▪ Authority requirements.
Materials	The materials, supplies, spare parts, fuel, water, oil, electricity, chemicals and other materials used in the performance of the Works.
Non-Conforming Product	Building A non-conforming building product, as that term is defined in section 74AB of the QBCC Act.
Personnel	An officer, employee, agent, any sub-contractor or professional adviser of a party (or of any Related Company).
Principal	If the Client is not the owner of the Site, the party the Client is contracted by.
Programme	The programme (if any) required by clause 11.2 if specified in item 11 of the Schedule.
Project	The project the subject of this Contract.
QBCC	Queensland Building and Construction Commission.
QBCC Act	<i>Queensland Building and Construction Commission Act 1991</i> (Qld)
Qualifying Cause of Delay	Those matters listed in item 11 of the Schedule.
Related Company	Any related body corporate as defined in the <i>Corporations Act 2001</i> (Cth).

Schedule of Rates	The schedule specified in item 5 of the Schedule which means any schedule included in the Contract which, in respect of any section or item of work to be carried out, shows the rate or respective rates of payment for the execution of that work.
Scope of Work	The scope of work specified in item 3 of the Schedule.
Security Interest	Has the meaning given to that term in the <i>Personal Property Securities Act 2009</i> (Cth).
Site	The area for the carrying out of the Works, as identified in item 4 of the Schedule.
Tax Invoice	An invoice, which complies with the GST Law relating to the production and form of tax invoices for GST purposes.
Variation	Any increase or decrease in the Works, any omission from the Works, any change in the character or quality of the Works or any additional work in accordance with this Contract.
Works	All of the goods to be supplied and services to be performed by the Contractor under this Contract, including the supply of goods and services set out in the Scope of Work and any Variations thereto.

2. Interpretation

2.1. In this Contract, unless the context otherwise requires:

- (a) A reference to including, includes or include must be read as if it is followed by “(without limitation)”;
- (b) A reference to this Contract includes all schedules, exhibits and annexures to this Contract;
- (c) A reference to a party is to a party to this Contract;
- (d) Where an expression is defined, any other part of speech or grammatical form of that expression has a corresponding meaning;
- (e) The singular includes the plural and vice-versa;
- (f) A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinated legislation issued under, that legislation or legislative provision;
- (g) A reference to any party includes that party’s executors, administrators, substitutes, successors and permitted assignees and novatees;
- (h) A reference to \$, AUD or dollar is to the lawful currency of Australia;
- (i) Headings, tables of contents and indexes are for convenience only and do not form part of this Contract or affect its interpretation; and
- (j) Notes do not form part of the Contract and may not be used in its interpretation.

2.2. 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.

- 2.3. In the interpretation of this Contract, no rule of contract interpretation applies to the disadvantage of one party on the basis that it put forward this Contract or any part of it.
- 2.4. Any obligation to act in good faith or to use best endeavours does not require a party to act contrary to its own commercial considerations in so doing.
- 2.5. The rights, powers and remedies provided in this Contract are cumulative with, and not exclusive of, the rights, powers or remedies provided by law independently of this Contract.
- 2.6. Nothing in this Contract constitutes a joint venture, agency, partnership or other fiduciary relationship between the Client and the Contractor.
- 2.7. Each party acknowledges that it has no authority to bind the other party.
- 2.8. At all times during the provision of the Works, the Contractor is deemed to be an independent Contractor and not an employee or agent of the Client.
- 2.9. If the Client is comprised of more than one (1) person:
 - (a) The obligations of those persons as the Client under this Contract are joint and several; and
 - (b) The Contractor may proceed against any or all of them in respect of the Client's obligations in the sole discretion of the Contractor. For clarity, the Contractor is not obliged to make any claim against all the persons or entities comprising the Client.
- 2.10. If the Client discovers any discrepancy, inconsistency or ambiguity within or between the documents comprising this Contract, the Client must give the Contractor written notice of it. The Contractor must (upon receiving such notice or otherwise on becoming aware of a discrepancy, inconsistency or ambiguity) direct the Client as to the interpretation and construction to be followed. If the direction causes the Contractor to incur more costs than the Contractor would have otherwise incurred, the Contractor may claim those costs from the Client. Subject to compliance with clause 15 of this Contract, the Contractor shall also be entitled to an extension of time for carrying out the Works (including reaching Completion).
- 2.11. Each party warrants that it has the power to execute, deliver and perform its obligations under this Contract and all necessary corporate and other action has been taken to authorise that execution, delivery and performance.
- 2.12. The Contractor may assign, novate or grant a Security Interest over any of its rights or interests in this Contract without the consent of the Client and the Client agrees to take all steps as may be reasonably required by the Contractor to effect any such assignment, novation or grant.
- 2.13. The Client must not assign any of its rights or interests in this Contract, nor grant a Security Interest over such rights or interests, without the prior written consent of the Contractor (such consent not to be unreasonably withheld).
- 2.14. This Contract applies to the performance of the Works whether supplied or provided before, on or after the date of this Contract.
- 2.15. Each party must not, and must ensure that its Personnel do not, without the prior approval of the other party, either during the performance of its obligations under this Contract or after termination of this Contract, disclose or give to any person any Confidential Information.

- 2.16. This Contract constitutes the entire agreement between the parties in respect of its subject matter and supersedes all prior agreements, representations, warranties, promises, statements, negotiations and letters in respect of its subject matter.
- 2.17. If the whole or any part of a provision of this Contract is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Contract has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Contract or is contrary to public policy.
- 2.18. This Contract can only be amended, supplemented, replaced or novated by another document signed by the parties.
- 2.19. A right may only be waived in writing, signed by the party giving the waiver.
- 2.20. The law of this Contract is the law in force is as set out in item 18 of the Schedule and the parties submit to the jurisdiction of the courts of that State or Territory.
- 2.21. In the event of any inconsistency:
- (a) The Scope of Work;
 - (b) Special Conditions (if any);
 - (c) These General Conditions;
 - (d) Scope of Work;
 - (e) Drawings and specifications;
- have priority in that order.

3. Contractor's Obligations

- 3.1. The Contractor must carry out and complete the Works and perform its other obligations under this Contract:
- (a) In accordance with the terms of this Contract;
 - (b) In accordance with all applicable Laws;
 - (c) In accordance with the requirements of all Authorities having jurisdiction in Queensland;
 - (d) In accordance with all reasonable directions which the Client gives the Contractor;
 - (e) With the highest degree of skill and care that may be expected of a contractor who is appropriately qualified and experienced in carrying out works in the nature of the Works.
- 3.2. Unless otherwise specified, the Contractor will use materials which are new, good and suitable for the purpose for which they are to be used, and in accordance with all Applicable Codes and Standards.
- 3.3. The Contractor agrees to:
- (a) Be responsible for all activities directly or indirectly related to the performance of the Works at the Site;
 - (b) Construct and/or install any product/materials in accordance with Good Industry Practice, installation guidelines or advices, including any engineering or assembly guidelines;

- (c) Keep the Works clean and tidy as they proceed and on Completion remove all plant, equipment, materials and the like, provide own rubbish storage and removal facilities and leave the Site clean and tidy for immediate use or occupation;
- (d) Protect the Works until Completion of the Works;
- (e) Promptly notify the Client if the Contractor becomes aware of any occurrence or incident which will have a material impact on the Contractor's performance of its obligations under this Contract.

3.4. The Contractor is responsible for the care of the whole of the Works from the Date for Commencement of the Works to the Completion Date.

4. Obligations of the Client

4.1. Without limiting any other provision of this contract, the Client must:

- (a) Provide the Contractor with all the reasonably necessary documentation as required;
- (b) Provide the Contractor with all necessary Authorisations;
- (c) Provide the Contractor with Design Documents (if any);
- (d) Provide the Contractor with access to the Site;
- (e) Promptly notify the Contractor if the Client becomes aware of any occurrence or incident which will have a material impact on the Contractor's performance of its obligations under this Contract.

4.2. The Client must comply with its obligations at Law relating to occupational health and safety.

5. Compliance with Authorisations and Laws

5.1. Unless otherwise agreed in writing, the Client must obtain the Authorisations relevant to the performance of, or necessary to perform, the Works.

5.2. The Client must provide the Contractor with copies of the Authorisations prior to commencement of the Works. The Contractor may not commence performance of the Works until the Client has complied with this requirement.

6. Access to the Site

6.1. The Client will, on the Date for Commencement (or such other date as the Client notifies to the Contractor), grant the Contractor sufficient use of the Site as is necessary to enable the Contractor to carry out and complete the Works in accordance with this Contract.

6.2. The Contractor will have access to the Site within the times and days stated in item 10 of the Schedule or those times and days that are agreed in writing between the parties.

6.3. If any party other than the Contractor has access to the Site (**Accessing Party**), during the times and days stated in item 10 of the Schedule, or during those times and days that are agreed in writing between the parties in accordance with clause 6.2 of this Contract, such access shall be at the sole risk of the Accessing Party, and the Client shall indemnify the Contractor against any claim, action, damage, loss, costs (including legal costs on a solicitor and own client basis), charge, expense, penalty, fine, or payment which the Contractor suffers, incurs, is liable for, or becomes liable for, which is in any way caused or contributed to by the Accessing Party accessing

the Site. The indemnity shall not be reduced even if the Contractor or any of the Contractor's officers, employees, agents, or servants, in any way, caused or contributed to the claim, action, damage, loss, costs, charge, expense, penalty, fine, or payment. The Contractor shall not be required to expend any funds before it is entitled to claim the indemnity referred to in this clause.

- 6.4 The Accessing Party shall observe and comply with any directions given to the Accessing Party by the Contractor, including, but not limited to, any direction to leave the Site.

7. Subcontracting

- 7.1 The Contractor may subcontract the performance of any part of the Works.

8. Client's Design

- 8.1 The Client warrants to the Contractor that the Design Documents are suitable, appropriate and adequate for the purpose for the type of works to be provided.
- 8.2 The Contractor will carry out and complete the Work in accordance with the Design Documents (if any).
- 8.3 The Client acknowledges the representation and warranty referred to in clause 13.2(b) of this Contract and that the Contractor has relied upon that representation and warranty in deciding to enter into the Contract with the Client.

9. Provision of Materials

- 9.1 All Materials provided by the Contractor must:
- (a) Be free from all defects;
 - (b) Be of current manufacture, appropriate grade and suitable capacity;
 - (c) Comply with all Laws and Applicable Codes and Standards as are relevant to the supply, use and ownership of such Supplies;
 - (d) Comply with any specifications or requirements provided by the Client.
- 9.2 Ownership of any Materials provided by the Contractor passes to the Client upon payment for the Materials by the Client or incorporation of the Materials into the Works (whichever occurs later).
- 9.3 To the extent any action or transaction under this Contract creates a Security Interest of the Contractor for the purposes of the Personal Property Securities Act 2009 (Cth) (PPSA), the Client shall do anything requested of it by the Contractor to enable the Contractor to register such interest, will provide all reasonable assistance to enable such registration and to ensure the Contractor's Security Interest is perfected and otherwise enforceable under the PPSA, with first priority (where possible). The Client agrees that if Chapter 4 of the PPSA applies to the enforcement of any such Security Interest, to the maximum extent permitted by law, sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132(3), 132(4), 134(1), 135, 142 and 143 of the PPSA, will not apply to the enforcement of that Security Interest and the Client waives its right to receive any notice under the PPSA so far as is permitted at law.
- 9.4 If this Contract requires the Contractor to provide any Material which the Contractor considers to be a Non-Conforming Building Product, the parties agree that the Contractor may substitute another Material which the Contractor considers will not be a Non-Conforming Building Product. If this causes the Contractor to incur more costs than the Contractor would have otherwise incurred, the Contractor may claim those

costs from the Client . Subject to compliance with clause 15 of this Contract, the Contractor shall also be entitled to an extension of time for carrying out the Works (including reaching Completion).

- 9.5 If the Client specifies (whether in a Contract Document or otherwise) the use of a Material, or provides a particular Material for use by the Contractor, the Contractor shall not be required to provide any warranty as to the Material or as to its use. If the Material is (in the Contractor's sole opinion), unsuitable, the parties agree that the Contractor may (in the Contractor's sole discretion and without being obliged to) substitute another Material which the Contractor considers will be more suitable. If this causes the Contractor to incur more costs than the Contractor would have otherwise incurred, the Contractor may claim those costs from the Client. Subject to compliance with clause 15 of this Contract, the Contractor shall also be entitled to an extension of time for carrying out the Works (including reaching Completion).

10. Programme

- 10.1. This clause only applies if a programme is nominated in the Schedule.
- 10.2. The Contractor must provide a Programme to the Client. The Programme must show:
- (a) The sequencing of activities; and
 - (b) The anticipated date for Completion of each section of the Works and the entirety of the Works.
- 10.3. The Contractor will carry out the Works in accordance with the Programme.

11. Variation to the Works

- 11.1. The Client may request a Variation to the Works.
- 11.2. The Contractor is under no obligation to carry out the Variation until such time as the Client and/or its representative on Site provides written acknowledgement of the Variation.
- 11.3. The Contractor must advise the Client of the cost (including all time related costs, if any) or cost saving of carrying out the Variation, and the effect on the program (if any) and on the Date for Completion.
- 11.4. The Contractor will, acting reasonably, determine the cost of the Variation and the Contractor will be entitled to be paid the cost as determined. The Contractor shall determine the cost of the variation using the following order of precedence:
- (a) prior agreement;
 - (b) applicable rates or prices in the Contract;
 - (c) reasonable rates or prices, which shall include a reasonable amount for profit and overheads (such amount to be determined by the Contractor).
- 11.5. The Contract Sum will be adjusted to reflect the cost or cost saving of any Variation determined in accordance with this clause.
- 11.6. Despite any other provision of the Contract, if the Client at any time gives the Contractor a direction which involves a variation (other than a direction which the Client expressly acknowledges in writing involves a variation) the Contractor must notify the Client of:
- (a) the fact that the direction involves a variation; and

- (b) the Contractor's estimate of the additional work necessary to give effect to the variation (including additional time and cost),

within 5 Business Days after receipt by the Contractor of the direction and the variation will be assessed under clause 11.

- 11.7 The Contractor shall be entitled to claim its costs of complying with this clause. Subject to compliance with clause 15 of this Contract, the Contractor shall also be entitled to an extension of time for carrying out the Works (including reaching Completion).

12. Latent Conditions

- 12.1. If during the execution of the Works, the Contractor becomes aware of a Latent Condition, the Contractor shall give notice to the Client of the Latent Condition within a reasonable time of becoming so aware and where possible, before the Latent Condition is disturbed.

- 12.2. If a Latent Condition causes the Contractor to—

- (a) carry out additional work;
- (b) use additional Materials; or
- (c) incur extra cost,

the Contract Sum shall be adjusted in accordance with a valuation made under Clause 11.4.

13. Warranties

- 13.1. The Contractor represents and warrants that:

- (a) It and its Personnel have the qualifications, skill, experience, resources, commitment, licences, and expertise to carry out and complete the Works and perform its other obligations under this Contract in accordance with the terms and conditions of this Contract, and that it is experienced in carrying out works in the nature of the Works; and
- (b) The Works will be performed to a standard no less than Good Industry Practice.

- 13.2. The Client represents and warrants that:

- (a) It holds all required Authorisations that are necessary or desirable in relation to the Work;
- (b) The use of the Design Documents by the Contractor does not, and will not, infringe any Intellectual Property of any third party.

- 13.3. Each Party represents and warrants that:

- (a) It is not Insolvent; and
- (b) It is not entering into this Contract as trustee of any trust or settlement unless otherwise disclosed herein.

- 13.4. The Client acknowledges that it has not relied, and will not rely, on any representation, statement or promise made by or on behalf of the Contractor in deciding to enter into this Contract or to exercise any right or perform any obligation under it.

14. Occupational Health, Safety and Environment

- 14.1. The Contractor must ensure that it and its Personnel involved in performing the Works and in relation to the performance of the Works shall:
- (a) Comply with all relevant industrial safety criteria, legislative and regulatory safety requirements and all Laws;
 - (b) Have in place an occupational health and safety policy that meets the Law;
 - (c) Provide a safe system of work for its Personnel (including a health and safety plan and safe work method statements);
 - (d) Carry out all necessary health and safety inspections and risk assessments;
 - (e) Adhere to the health and safety plan for the Works being performed;
 - (f) Ensure that intoxicants, illegal drugs, firearms, ammunition, explosives, children, animals and any unauthorised visitors do not enter, and are banned from the Site;
 - (g) Ensure there is an adequate level of supervision of its Personnel.
- 14.2. Each party must immediately notify the other party if and when it becomes aware of any actual, threatened or likely breach of an occupational health and safety Law, or:
- (a) Any situation which its Personnel may be exposed to risks to their health or safety in relation to the performance of the Works;
 - (b) Any accidents or injuries whilst performing the Works; and
 - (c) Any incidents that might cause injury to any of its Personnel or subcontractors whilst performing the Works.
- 14.3. The Client is solely liable for, and indemnifies the Contractor, its Related Companies, and their personnel against all liabilities and claims, however described, arising out of or connected with any breach of occupational health and safety Law, or in circumstances where the Client has breached any term of this Contract in relation to occupational health and safety.
- 14.4. Without limiting any other rights of the Contractor, any breach of the requirements of this clause may result, at the discretion of the Contractor, with the Contractor exercising its rights pursuant to clause 24.

15. Time

- 15.1. The Contractor must commence carrying out the Works on the Date for Commencement, and complete the Works on or before the Date for Completion.
- 15.2. The Contractor may carry out the Works during the Days of work and Hours of work set out in item 10 of the Schedule, and at any other time permitted by Law.
- 15.3. Any request by the Client to carry out Work outside of the Days of work and Hours of work set out in item 10 of the Schedule may result in a claim by the Contractor in accordance with Clause 11.
- 15.4. The Contractor must provide notice to the Client if the Contractor is likely to be delayed in carrying out the Works.
- 15.5. The Contractor is entitled to an extension of time for carrying out the Works (including reaching Completion) if:
- (a) the Contractor is or will be delayed in completing the works by the Date for

Completion due to a Qualifying Cause of Delay; and

- (b) the Contractor gives the Client, a written claim for an extension of time evidencing the facts of causation and of the delay to the Works (including extent) and any other information reasonably required by the Client.
- 15.6. Within 5 Business Days after receiving the Contractor's claim for an extension of time, the Client shall give to the Contractor a written direction evidencing the extension of time. If the Client does not do so, there shall be a deemed assessment and direction for an extension of time as claimed.
- 15.7. The Contractor is entitled to claim stand down rates in respect of any delay the subject of an approved extension of time at the rates identified in item 15 of the Schedule.

16. Suspension

- 16.1. The Contractor may, at any time, and from time to time, suspend performance of the Works or any part of it, by written notice to the Client.
- 16.2. The Contractor is entitled to reimbursement of any costs arising from the suspension.
- 16.3. The Contractor is entitled to an extension to the Date for Completion and/or the date for performance of the affected obligation following a suspension under this clause.
- 16.4. The Contractor must, when the reason for any suspension no longer exists, give the Client written notice that it will recommence the performance of the Works or the relevant part of it and the Client must ensure that it provides access.
- 16.5. A suspension under this clause does not vitiate the Contract.

17. Intellectual Property

- 17.1. As between the Contractor and the Client, the Contractor owns all right, title and interest to any current or future Intellectual Property Rights in the Contractor Design Documents or the Works and the Client owns all right, title and interest to any current or future Intellectual Property Rights in the Design Documents.
- 17.2. The Client assigns to the Contractor any:
- (a) Right, title and interest it may have in the Design Documents; and
 - (b) Intellectual Property Rights it may have in the Design Documents or the Works.
- 17.3. To the extent permitted by Law, upon payment of the full Contract Sum (and not before), the Client grants to the Contractor an irrevocable licence to use:
- (a) Any Design Documents created as part of the Works; and
 - (b) To the extent that any assignment under the sub-clause above is ineffective, any Intellectual Property Rights it may have in the Design Documents or the Works.
- 17.4. Such licence also:
- (a) Will include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, the Works and the copying of the documents for such purposes; and
 - (b) May be sub-licensed by the Contractor, and by any sub-licensee of the Contractor, in its discretion.
- 17.5. The Client warrants that any design, materials, documents and methods of working,

each provided by the Client, will not infringe any Intellectual Property Rights of any third party and the Client indemnifies the Contractor against such respective infringements and for any losses or damages (including legal costs on an indemnity basis) sustained following such infringements or any allegations of same by any person.

17.6. Waiver of Moral Rights

To the extent permitted by law, the Client:

- (a) Waives all the Moral Rights of the Client (if any) in or in respect of the Design Documents and/or the Works; and
- (b) Consents to the use, treatment, alteration, removal, destruction or attribution of the Design Documents and/or the Works as deemed appropriate by the Contractor and its successors, assignees and licensees and any persons who are authorised by the Contractor or its successors, assignees and respective licensees to do acts comprised in the copyright of work and other material used in the Design Documents and/or the Works which would otherwise be deemed an infringement of Moral Rights.

18. Completion of the Works

- 18.1. When the Contractor considers that the Works have reached Completion, the Contractor will notify the Client that the Works have reached Completion, and a joint inspection of the Works will be carried out by the parties.
- 18.2. Within five (5) Business Days after that joint inspection, the Client will issue to the Contractor a notice of matters and things reasonably required to be done for the Works to be brought to Completion ("Remedial Notice"). The Client shall act reasonably in issuing a Remedial Notice.
- 18.3. If the Client fails to issue a Remedial Notice within five (5) Business Days of the joint inspection, or fails to attend a joint inspection, the written notice given by the Contractor in accordance with clause 18.1 of this Contract shall be deemed to be the Certificate of Completion.
- 18.4. If the Client issues to the Contractor a Remedial Notice, the Contractor must, at the Contractor's cost, comply with such of same as the Contractor (in its sole opinion) considers reasonable .
- 18.5. Once the Contractor has complied with clause 18.4 of this Contract, the Contractor will notify the Client that the Works have reached Completion and the written notice given by the Contractor in accordance with clause 18.4 of this Contract shall be deemed to be the Certificate of Completion.
- 18.6. The issue of a Certificate of Completion to the Contractor by the Client constitutes approval by the Client of all Works done under this Contract and shall be conclusive evidence that the Contractor has completed the Works strictly in accordance with the terms of this Contract.

19. Defects

- 19.1. The Defects Liability Period begins at 4pm on the Completion Date, unless otherwise specified in the Schedule.
- 19.2. During the Defects Liability Period, the Client may direct the Contractor to rectify any defects in the Works of which the Client becomes aware. The Contractor must rectify any defect in the Works within a reasonable time of the Client's direction.
- 19.3. The Contractor must ensure that, in carrying out rectification work, it causes as little

inconvenience as is reasonably possible to other persons working on or using the Site or the Works.

20. Prices and Payment

- 20.1. The Client must pay the Contractor the Contract Sum in accordance with this clause.
- 20.2. The Contractor may make a claim for payment in the form of a Tax Invoice from the Reference Date listed in Item 13 of the Schedule.
- 20.3. In relation to a Tax Invoice served in accordance with clause 20.2 of this Contract, by the date listed in item 14 of the Schedule, the Client must either:
- (a) If the amount/s set out in the Tax Invoice are undisputed by the Client, pay (without set off or deduction) the full amount/s set out in the Tax Invoice to the Contractor; or
 - (b) If the amount/s set out in the Tax Invoice are undisputed by the Client:
 - (i) Give the Contractor a written schedule which:
 - A Identifies the Tax Invoice to which the written schedule relates;
 - B Identifies what amount/s set out in the Tax Invoice are disputed by the Client, and which amount/s set out in the Tax Invoice are undisputed by the Client;
 - C In relation to any amount/s set out in the Tax Invoice are disputed by the Client, gives detailed reasons setting out why those amount/s set out in the Tax Invoice are disputed by the Client; and
 - (ii) Pay (without set off or deduction) the disputed amount/s set out in the Tax Invoice into the trust account of BrisLaw Pty Ltd pending resolution of the dispute relating to those amount/s; and
 - (iii) Pay (without set off or deduction) the undisputed amount/s set out in the Tax Invoice to the Contractor.
- 20.4. If the Client does not provide a written schedule in accordance clause 20.3(b) of this Contract, the Client must comply with clause 20.3(a) and the Client must pay (without set off or deduction) the full amount/s set out in the Tax Invoice to the Contractor.
- 20.5. All costs incurred by the Contractor in recovering, or attempting to recover any which the Contractor claims to be owed by the Client, shall be paid by the Client to the Contactor upon an indemnity basis.
- 20.6. If any money due to the Contractor remains unpaid after the due date for payment, then the Client must, following a written request by the Contractor for payment of interest, pay to the Contractor Interest at the Interest Rate on the unpaid amount from, the due date for payment until the date that payment is made.
- 20.5 The Contract Sum (and the components which, when take together constitute the Contract Sum) shall be subject to rise, but not fall, and the Contract Sum shall be adjusted to reflect the Contractor's the increase in the Contractor's direct and indirect costs of carrying out the Works, or the effects of an event, in Contractor's sole opinion, have unreasonably increased the Contractor's (direct and indirect) costs associated

with carrying out the Works but only if the Contractor gives the Client a written identifying:

- (a) Why the Contractor says that the event, or the effects of the event, have unreasonably increased the Contractor's (direct and indirect) costs associated with carrying out the Works;
- (b) Which component of the Contract Sum is to be adjusted and the amount by which it is to be adjusted; and
- (c) The amount by which the Contract Sum is to be adjusted.

20.8 The Client agrees that in order to secure payment of all monies for which the Client may become liable the Client changes as beneficial owner all of the Client's freehold and leasehold interest in land (including land acquired in the future) to the Contractor and consents that the Contractor shall have a caveatable interest over such land.

21. Taxes

21.1. Unless otherwise expressly provided in this Contract, the Contractor must pay all taxes including payroll tax, levies, duties and assessments due in connection with its obligations to perform the Works in accordance with this Contract.

21.2. If any supply made under this Contract is, or becomes, subject to GST, the party to whom the supply is made ("Recipient") must pay to the party making the supply ("Provider"), as consideration, in addition to any consideration payable or to be provided elsewhere in this Contract, subject to issuing a Tax Invoice, an additional amount on account of GST, such amount to be calculated by multiplying the consideration by the applicable rate of GST.

21.3. Any amount in respect of GST payable must be paid by the Recipient to the Provider at the same time as the consideration to which it relates is paid.

21.4. If any party is required to reimburse or indemnify the other party for a cost, expense or liability ("Cost") incurred by the other party, the amount of that Cost for the purpose of this Contract is the amount of the Cost incurred less the amount of any credit or refund of GST to which the party incurring the Cost is entitled to claim in respect of the Cost.

22. Insurance

22.1. The Contractor must, before commencing the Works, effect the following insurances:

- (a) Public and products liability insurance, for not less than the amount specified in item 16 of the Schedule for a single occurrence (and with respect to products liability also for all occurrences during the policy period) and which extends to cover the Contractor and the Client for liability to any third party arising out of or in connection with the performance of this Contract;
- (b) Worker's compensation insurance as required by law.

23. Default and Termination

23.1. If the Client commits a breach of this Contract, the Contractor may give a notice requiring the Client to rectify the breach. Such notice must specify:

- (a) The breach; and
- (b) A time by which the Client in breach must rectify the breach (this time must be at least five (5) Business Days after the date of the notice).

- 23.2. If the Client fails to rectify the breach within the time specified in the notice, the Contractor may terminate this Contract by notice to the Client.
- 23.3. Either party may immediately terminate this Contract by notice to the other party if a party becomes subject to an Insolvency Event.
- 23.4. If this Contract is terminated under the above sub-clause, the Contractor may, after ceasing the provision of the Works, submit a tax invoice, claiming the value of all Works supplied up to the date of the expiration of notice and the cost of all Works (including all materials, plant and equipment) ordered for the performance of its obligations under this Contract, to the extent the Contractor cannot cancel such orders, provided that on payment by the Client, the unencumbered title to any goods forming the Works and materials passes to the Client.
- 23.5. The Client must pay the Contractor the amount stated in the tax invoice provided within the time stated in Item 14 of the Schedule.

24. Termination for Convenience

- 24.1. The Contractor may terminate this Contract for any reason by notice to the Client.
- 24.2. Following the expiry of any period before the termination takes effect, the Client shall pay to the Contractor:
- (a) Any amount due to the Contractor which is then unpaid;
 - (b) The amount determined under this Contract for the Works carried out to the termination date; and
 - (c) The cost of materials reasonably ordered by the Contractor for the Works which the Contractor cannot return or which order cannot be cancelled, but only if the materials become the property of the Client upon payment.
- 24.3. Without limiting the above, the provisions relating to Confidential Information, intellectual property, media releases announcements, return of information, the audit rights of the Contractor, indemnity and governing law and jurisdiction survive termination of this Contract until each of those obligations have been completely discharged.

25. Confidentiality

- 25.1. The Parties must not, and must ensure that their respective Personnel do not, without the prior written approval of the other Party, either during the provision of the Works or after the expiry or earlier termination of this Contract, disclose or give to any third party any Confidential Information or the terms of this Contract, except as:
- (a) Required by statutes and regulations, or the stock exchange listing rules applying to a party (or any Related Company); or
 - (b) Necessary to obtain professional or financial advice or assistance from a third party (provided such third party is under an obligation to keep the relevant information confidential and secure).
- 25.2. The Contractor may store or provide to third parties personal and confidential information, including to overseas recipients who are not bound to observe the Privacy Act 1988 or similar. The Client acknowledges that it consents to the Contractor doing so and releases, discharges and holds the Contractor indemnified against or in respect of any claims, actions or liability arising from the storage of or provision to third parties of personal and confidential information together with any costs on an indemnity basis arising therefrom.

26. Consequential Loss, Limitation, and Indemnity

- 26.1. Notwithstanding any other provision of the Contract, the Contractor will not be liable to the Client, or any other party beneficially entitled under or pursuant to the Contract (including under any indemnity), for any Consequential Loss. Consequential Loss means any financial, economic or consequential loss (whether direct or indirect) including, but not limited to:
- (a) loss of actual or anticipated profits or revenue;
 - (b) loss of opportunity or productivity;
 - (c) increased capital or financing;
 - (d) increased operational costs;
 - (e) increased costs of borrowing; or
 - (f) exemplary or punitive damage,
 - (g) whether caused by or in relation to breach of contract (including any indemnity), warranty, tort, product liability or strict liability, but does not include losses related to any:
 - (i) liability to any third party;
 - (ii) claim in respect of personal injury or death.
- 26.2 The Contractor's liability to the Client whether such liability is based in contract (including, but not limited to, the Contract), in tort (including for negligence), in equity, in restitution (including for quantum meruit and quantum valebant), in debt, or under statute, shall never exceed 5% of the Contract Sum.
- 26.3 Without limiting any other clause of the Contract, the Client is liable for and agrees to indemnify the Contractor against any claim, action, damage, loss, costs (including legal costs on a solicitor and own client basis), charge, expense, penalty, fine, or payment which the Contractor suffers, incurs, is liable for, or becomes liable for, which is in any way caused or contributed to by any action of, or omission by, the Client or any of the Contractor's officers, employees, agents, servants, subcontractors or consultants. The above indemnity shall apply (and shall not be reduced or limited) even if the Contractor, or any of the Contractor's officers, employees, agents, or servants, in any way, caused or contributed to the claim, action, damage, loss, costs, charge, expense, penalty, fine, or payment. The Contractor shall not be required to expend any funds before it is entitled to claim the indemnity referred to in this clause.

27. Dispute Resolution

- 27.1. If a difference or dispute (together called a 'dispute') between the parties arises in connection with the subject matter of the Contract, including a dispute concerning:
- (a) a direction from the Client; or
 - (b) a claim:
 - (i) in tort;
 - (ii) under statute;
 - (iii) for restitution based on unjust enrichment or other quantum meruit; or
 - (iv) for rectification or frustration,

or like claim available under the law governing the Contract, then either party shall give the other a written notice of dispute adequately identifying and providing details of the dispute.

- 27.2. Notwithstanding the existence of a dispute, the parties shall continue to perform the Contract.
- 27.3. Within five (5) business days after receiving a notice of dispute, the parties shall meet at least once to resolve the dispute. At this meeting each party shall be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.
- 27.4. If the dispute is not resolved by the parties pursuant to clause 27.3, either party may refer to the matter to arbitration. If, within 14 days of the matter being referred to arbitration, the parties cannot agree upon an arbitrator/s, the arbitrators shall be appointed by the President of the Queensland Chapter of Resolution Institute. The seat of arbitration shall be Brisbane, in the State of Queensland. The Arbitration shall be conducted in accordance with the "Resolution Institute Arbitration Rules 2020" (or such Rules Resolution Institute might adopt from time to time to replace the "Resolution Institute Arbitration Rules 2020").
- 27.5. The Client shall provide security for the Contractor's costs in relation to any arbitration which may be commenced (whether by the Client or the Contractor) under clause 27.4 of this Contract.
- 27.6. Noting in this clause shall prevent a party from instituting to enforce a right to payment under the Contract or to seek injunctive or urgent declaratory relief.

28. Notices

- 28.1. Any notice, demand, consent or other communication to be given under this Contract must be given in writing to the recipient at the Address listed in the Schedule.
- 28.2. Any notice, demand, consent or other communication to be given under this Contract shall be deemed duly given if given in writing and:
- (a) If delivered by hand, when given to a representative of the party at the address of the party;
 - (b) If sent by pre-paid post, on the 3rd day following the date of postage;
 - (c) If given by facsimile, on production of a transmission report by the machine from which the fax was sent which indicates that the facsimile was sent in its entirety to the recipient's fax number, unless the recipient informs the sender that the transmission is illegible or incomplete within four (4) hours of it being transmitted; and
 - (d) If sent by email, at the time shown in the delivery confirmation report generated by the sender's email system (unless an answerback code is received by the sender which indicates the email transmission has not been successful).

29. Special Conditions

- 29.1. The special conditions, if any, set out in Schedule 1 to this Contract form part of this Contract.

SCHEDULE 1

SPECIAL CONDITIONS

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