



AGL precedent version 2024.4

Purchase Order Terms and Conditions

Purchase Order Terms and Conditions

1 Work

The Supplier must:

- (a) carry out and complete the Work in accordance with the Agreement; and
- (b) achieve Completion of the Work by the Required Completion Date.

2 Definitions and Interpretation

- (a) The following definitions apply unless the context requires otherwise:

AGL means the AGL Group company set out as the purchaser in the Purchase Order.

AGL Critical Assets means the Critical Infrastructure Assets:

- (a) in respect of which an AGL Group member is a Responsible Entity for, and/or Direct Interest Holder; and
- (b) which are relevant to, or may be impacted by, the Services provided by the Supplier.

AGL Group means AGL and its Related Bodies Corporate.

AGL Representative means the authorised representative of AGL as specified in the Purchase Order.

AGL Supplied Equipment means any plant, special tools, jigs, fixtures, materials and patterns acquired at AGL's expense or supplied by AGL to enable the Supplier to carry out and complete the Work.

AGL Supplier Code of Conduct means the 'Supplier Code of Conduct' published by AGL Energy Limited from time to time on its website, and usually available at: <https://www.agl.com.au/about-agl/who-we-are/our-company/agl-constitution-and-company-policies>.

Agreement has the meaning in clause 3.

AML Law means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and the *Anti-Money Laundering and Counter-Terrorism Financing Rules 2007* (Cth).

Associate means:

- (a) a Related Body Corporate of AGL or the Supplier;
- (b) any contractor, supplier or consultant of AGL or the Supplier (but in relation to AGL, excluding the Supplier); and
- (c) any Personnel of AGL or the Supplier or a person referred to in clause (a) or (b).

Authority means any government or governmental, semi-governmental, quasi-governmental, administrative, fiscal or judicial body, department, commission, authority, statutory authority, local authority, tribunal or agency having jurisdiction in relation to the Work.

Business Day means a day that is not a Saturday, Sunday or public holiday in the capital city of the State or Territory where the Site is located.

Change in Law means a change in an existing Law or the introduction of a new Law other than a change to common law or equity.

Claim means any claim, action, demand, order, notice, declaration or proceedings of any nature whatsoever, whether actual or threatened, including a claim for an extension of the Required Completion Date.

Completion means the stage of Work when:

- (a) the Goods (if any) have been accepted by AGL at the Site (provided AGL will not be required to accept delivery where the Goods contain known Defects or otherwise do not comply with the requirements of the Agreement);
- (b) the Services (if any) have been properly completed in accordance with the Agreement;
- (c) any tests, inspections or commissioning required to have been carried out before Completion have been carried out and passed (with the results provided to AGL);
- (d) AGL has received:
 - (i) copies of any warranties required to be provided to AGL under clause 18;
 - (ii) all other documents and information reasonably required by AGL for the safe and effective use, operation and maintenance of the Goods (if any); and
- (e) any other matter or condition required by the Agreement to be achieved or satisfied prior to Completion has been achieved or satisfied.

Confidential Information means any information in any form that is disclosed or made available by or on behalf of AGL during, or in connection with, the negotiation or performance of the Agreement that is:

- (a) personal information (as defined in the *Privacy Act 1988* (Cth));
- (b) expressly provided or made available on a confidential basis; or
- (c) ought reasonably be expected to have been provided or made available on a confidential basis,

but excluding any information that is in the public domain or otherwise lawfully obtained from a different source in circumstances which do not impose an obligation of confidence.

Conflict of Interest means any obligation or interest (financial or otherwise) which may in any way affect decisions made by the Supplier in connection with this Agreement or create a conflict with the Supplier's obligations under this Agreement or AGL's interests (financial or otherwise).

Critical Infrastructure Assets has the meaning set out in the SOCI Legislation.

Data Security Breach means any actual or potential unauthorised access, modification, use, disclosure, destruction or loss of Confidential Information.

Date of Completion means the date that:

- (a) Completion is achieved, as notified by AGL in writing under clause 7(b)(i) or 8(b)(i) (as applicable); or
- (b) the Date of Completion is deemed to occur pursuant to clause 8(c).

Date of Delivery means the date that the last of the following occurs:

- (a) AGL accepts the Goods at the Site (provided AGL will not be required to accept delivery where the Goods contain known Defects or otherwise do not comply with the Agreement);
- (b) any tests, inspections or commissioning required to have been carried out before Completion have been carried out and passed (with the results provided to AGL);
- (c) AGL has received:

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- (i) copies of any warranties required to be provided to AGL under clause 18; and
- (ii) all other documents and information reasonably required by AGL for the safe and effective use, operation and maintenance of the Goods (if any).

Defect means any defect, error, omission, failure, shrinkage, subsidence, irregularity or other aspect in or of the Goods and/or Services, in each case which does not comply with the Agreement, except to the extent caused by fair wear and tear.

Direct Interest Holder has the meaning set out in the SOCI Legislation.

Dispute means any dispute, difference or disagreement between the parties arising out of, or in connection with, the Agreement or the Work. A reference to a Dispute, where the Dispute is partly resolved, refers to the unresolved part of the Dispute.

Environment includes all aspects of the surroundings of human beings including:

- (a) the physical characteristics of those surroundings such as land, water and atmosphere;
- (b) the biological characteristics of those surroundings such as humans, societies, animals, plants, ecosystems and other forms of life; and
- (c) the aesthetic characteristics of those surroundings such as appearance, sounds, smells and tastes.

Excluded Loss means:

- (a) Loss not arising naturally according to the usual course of things;
- (b) loss of production, use, business or revenue;
- (c) loss of goodwill or damage to reputation; and
- (d) loss of profit or the opportunity to earn profit.

Execution Date means the date that this Agreement is executed by the last party to do so.

Extension Event means any of the following, in each case, except to the extent caused or contributed to by the Supplier, a Supplier Associate or a Defect:

- (a) a Force Majeure Event;
- (b) a negligent act or omission of AGL;
- (c) breach of the Agreement by AGL or an Associate of AGL; or
- (d) a variation to the Purchase Order under clause 5.

Force Majeure Event means the following events or circumstances:

- (a) acts of God, including landslide, cyclones, flood, earthquake, hurricanes, typhoons, lightning and induction caused by lightning, tornadoes, hailstorms, ice or ice storms and tsunamis;
- (b) fire or explosion;
- (c) epidemic or quarantine;
- (d) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, act of terrorism, rebellion, riot, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government Agency;

- (e) ionising radiations or contamination by radioactivity from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel;
- (f) industrial action or dispute which affects the State or Territory where the Site is located or Australia generally and is not directed at the affected party or any of its Associates;
- (g) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (h) accidents in shipping or transportation; or
- (i) closing of any harbour, dock, port or canal, but only where such events or circumstances:
 - (j) are not caused by an act or omission of the affected party or any of its Associates;
 - (k) are beyond the reasonable control of the affected party or its Associates; and
 - (l) could not have been avoided or overcome by the affected party or any of its Associates taking reasonable precautions or steps.

Goods means the goods, materials, plant, equipment, parts, hardware, software and other things which the Supplier is required to supply AGL under the Agreement or in the performance of the Services, as more particularly described in the Purchase Order.

Government Agency means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in Australia.

Government Official means any person employed by, associated with, or acting on behalf of a:

- (a) governmental authority in a State or Federal jurisdiction in Australia; or
- (b) political party (including an official or candidate).

Health, Safety and Environmental Requirements means any of the following related to workplace health and safety, protection of the Environment or hazardous substances:

- (a) Law;
- (b) directions or notices issued by any relevant Government Agency;
- (c) codes of practice, Australian Standards and compliance codes; and
- (d) AGL's policies and procedures applicable to the Site (to be provided to the Supplier in accordance with clause 20.1(d)).

HVNL means:

- (a) the Heavy Vehicle National Law set out in the *Heavy Vehicle National Law Act 2012* (QLD) as adopted by the State or Territory where the Site is located; and
- (b) any regulations associated with the legislation in paragraph (a).

Indemnified Party means each and any of:

- (a) AGL and AGL's Related Bodies Corporate;
- (b) any director, officer, employee, agent or representative of a person referred to in paragraph (a); and

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- (c) the licensees and assignees of a person referred to in paragraph (a) or (b).

Insolvency Event means, in relation to a person, that:

- (a) the person is (or states that it is) insolvent (as defined in the *Corporations Act*);
- (b) the person has a Controller (as defined in the *Corporations Act*) appointed to any part of its property;
- (c) the person is in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration or being wound up or has had a receiver appointed to any part of its property;
- (d) the person is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved (other than to undertake a reconstruction or amalgamation while solvent);
- (e) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), a resolution passed, a proposal put forward, or any other action taken, in each case in relation to that person, which is preparatory to or could result in any of the circumstances detailed in any of paragraphs (a), (b), (c) or (d) of this definition;
- (f) the person is taken (under section 459(F)(l) of the *Corporations Act*) not to have complied with a statutory demand;
- (g) the person is the subject of an event described in section 459(2)(b) or section 585 of the *Corporations Act* (or it makes a statement from which another person deduces it is so subject);
- (h) the person is otherwise unable to pay its debts when they fall due; or
- (i) something having a substantially similar effect to any of the circumstances detailed in any of paragraphs (a) to (h) of this definition occurs.

Intellectual Property Rights means all current and future intellectual and industrial property rights and interests throughout the world, whether or not registered, registrable or patentable, including trademarks, designs, patents, inventions, plant breeder's rights, copyright and analogous rights, circuit layout rights, Confidential Information, trade secrets, know-how and the right to apply for registration of, or any application for, such rights, but excludes Moral Rights.

Ipso Facto Exception means any applicable stay on, or prevention of, the exercise of contractual rights provided for under sections 415D(1) (Stay on enforcing rights merely because of a proceeding under this Part etc.), 434J(1) (Stay on enforcing rights merely because of the appointment of a managing controller of a corporation's property etc), 451E(1) (Stay on enforcing rights merely because the company is under administration etc) or 454N (Stay on enforcing rights merely because the company is under restructuring etc) of the *Corporations Act* or under any legislation with a similar purpose which gives rise to a stay on, or prevention of, the exercise of contractual rights.

Law means:

- (a) statutes, regulations, by-laws, ordinances and subordinate legislation;

- (b) approvals, authorisations, consents, exceptions, licences, permits, determinations, certificates or registrations and the like of or from any Government Agency, including any renewal or variation;

- (c) common law and equity;
- (d) requirements of Government Agencies; and
- (e) guidelines of the Commonwealth, State and local governments and Government Agencies with which the Supplier is legally required to comply.

Loss means any liability, cost, expense, loss or damage. In relation to a Claim, Loss includes amounts payable on the Claim (whether or not the Claim is successful) and legal and other professional costs and disbursements on a full indemnity basis.

Modern Slavery Laws means the *Modern Slavery Act 2018* (Cth), Divisions 270 and 271 of the *Criminal Code 1995* (Cth), and any other analogous anti-Modern Slavery laws or regulations in force in Australia.

Moral Rights means any moral rights arising under Part IX of the *Copyright Act 1968* (Cth) or any rights of a similar nature which may exist, or may come to exist, anywhere in the world.

Notice means each communication given under or in connection with the Agreement (including any notice, direction, consent, approval, request, demand or otherwise).

Personnel means officers, employees, agents, contractors and consultants engaged by the party (but does not include the other party) and, in the case of the Supplier, includes its Subcontractors and any employee of those Subcontractors.

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

Price means the price specified in the Purchase Order, which shall be inclusive of all delivery costs, packaging, duties and taxes (excluding GST).

Privacy Requirements means the *Privacy Act 1988* (Cth), the Australian Privacy Principles under that Act, the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth), Part 6 of the *Telecommunications Act 1997* (Cth) and any other law, regulation or industry code, guideline, rule, requirement, policy, order or direction of any regulator or governmental body, as amended from time to time, in relation to privacy, data protection, health records, surveillance, data security, direct marketing or the handling of personal information, and any reasonable direction, in relation to those matters, from AGL.

Purchase Order means the purchase order issued by AGL to the Supplier incorporating these Terms and Conditions.

Related Bodies Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Required Completion Date means the date for Completion of the Work set out in the Purchase Order, as adjusted in accordance with the Agreement.

Responsible Entity has the meaning set out in the SOCI Legislation.

Security Measures includes all reasonable physical security, logical access security, network security, communications security and personnel security measures that are reasonable for a prudent, skilled and diligent contractor to perform in accordance with good industry practice and includes the AGL security policy and such other policies relating to these types

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of security measures as notified by AGL from time to time.

Services means the services described in the Purchase Order, and includes all services necessary for, or incidental to, the proper and professional performance of such services.

Site means the site or sites described in the Purchase Order as the place for the delivery of the Goods, pick up and delivery of the AGL Supplied Equipment, the performance of the Services (as applicable), and any site made available by AGL to the Supplier from time to time for the purpose of carrying out the Work set out in the Purchase Order.

Site Assets means any facilities, machinery, equipment, generating units or other assets located at the Site.

Site Conditions means

- (a) weather, wind, climate, air quality, noise transmission and other atmospheric conditions and characteristics;
- (b) topography, water, erosion and other ground surface conditions and characteristics;
- (c) rock, soil, ground water and other geotechnical, geological and sub-surface conditions and characteristics;
- (d) flora, fauna and other biological and ecological conditions and characteristics;
- (e) buildings, roads, services and other man-made structures; and
- (f) the occupation and use of land (including the Site).

Site Requirements means any Site requirements (including any health, safety and environmental policies and procedures applicable to the Site notified to the Supplier by AGL.

SOCI Legislation means the *Security of Critical Infrastructure Act 2018* (Cth) and any subordinate legislation, as may be amended from time to time.

Subcontractors means the subcontractors, suppliers and consultants (of any tier) engaged by or on behalf of the Supplier to undertake Work.

Supplier means the party to whom the Purchase Order is addressed as specified in the Purchase Order.

Terms and Conditions means these terms and conditions.

Warranty Period means a period of twelve (12) months (or such other period as may be agreed by the parties), commencing on the Date of Completion.

Wilful Misconduct means any intentional conduct, act or omission other than the exercise of a contractual right under this Agreement or other legal right, that is undertaken or omitted to be undertaken having had regard to, or with conscious or reckless indifference to, any damage, Loss, injury or other harmful or detrimental consequences arising from such conduct, act or omission.

Work means the supply of the Goods, the performance of the Services and the carrying out of any other work required to be carried out by the Supplier under the Agreement.

- (b) In this Agreement, unless the context requires otherwise:
- (i) headings and bold type are for convenience only and do not affect the interpretation of this Agreement;

- (ii) the singular includes the plural, the plural includes the singular and words of any gender include all genders;
 - (iii) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
 - (iv) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government or governmental department, agency or other body, as well as an individual;
 - (v) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause, party, schedule, attachment or exhibit of or to this Agreement;
 - (vi) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
 - (vii) a reference to a document includes all amendments, supplements, replacements or novations to or of that document;
 - (viii) a reference to a party to a document includes that party's successors and permitted assignees;
 - (ix) a promise on the part of 2 or more persons binds them jointly and severally;
 - (x) a reference to the Supplier performing any act or providing anything at its cost means the Supplier will not be entitled to any additional compensation for such act or thing and the cost will be deemed to be included in the Price;
 - (xi) a reference to an agreement other than this Agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
 - (xii) a reference to '\$', 'AUD' or dollars is to Australian dollars, unless stated otherwise;
 - (xiii) a reference to a 'day', 'month' and 'year' is a reference to a calendar day, month and year (respectively) and a reference to time is to local time where the Site is located; and
 - (xiv) a reference to a body (including an institute, association or authority, but excluding a party to this Agreement), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions.
- (c) Specifying anything in this Agreement after the words 'include' or 'for example' or similar expressions does not limit what else is included.
- (d) Where the day on or by which any payment under this Agreement is to be made is not a Business Day, that payment must be made on or by the next Business Day.
- (e) No provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision.

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Evidence of Agreement

This agreement consists of the following documents:

- (a) the Purchase Order;
 - (b) these Terms and Conditions; and
 - (c) any document incorporated by reference into these Terms and Conditions,
- (together the **Agreement**).

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4 Conflict of documents

- (a) If there is any conflict or inconsistency between the documents constituting the Agreement, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in clause 3.
- (b) In the event of any ambiguity, conflict or inconsistency between the provisions of the documents comprising the Agreement, AGL must (acting reasonably) determine the interpretation that is the most consistent with the parties' intentions as ascertainable from the Agreement.

5 Purchase Order Variation

- (a) AGL may vary the Required Completion Date to a later date or time by giving no less than 7 Business Days' notice to the Supplier, acting reasonably having regard to the nature of the Works.
- (b) AGL may vary the Site specified in the Purchase Order by giving no less than 7 Business Days' notice to the Supplier, acting reasonably having regard to the nature of the Works.
- (c) Where a variation occurs under clauses 5(a) or 5(b), the Price will be adjusted by:
 - (i) an amount agreed by AGL and the Supplier; or
 - (ii) an amount proposed by the Supplier having regard to any increase or decrease in the costs that have been (or will be) incurred by the Supplier as a direct result of the variation, but excluding any indirect or consequential costs, losses, expenses or damages that may be suffered or incurred as a result of the variation, subject to the Supplier providing AGL with information relevant to costs which the Supplier claims to have incurred (or will incur) that demonstrates to AGL's reasonable satisfaction that the cost variation is reasonable and unavoidable.
- (d) Except as provided by clauses 5(a) and 5(b), any variation to the Purchase Order must be agreed in writing by the parties.
- (e) Nothing in this clause 5 will prevent or restrict AGL from claiming damages for delay from the Supplier.

6 Transport and delivery of Goods

The Supplier must:

- (a) transport the Goods at the Supplier's risk and cost to and from (as applicable) the Site;
- (b) fully comply with the HVNL, including, without limitation, driver fatigue and proper load securing;
- (c) deliver the Goods in suitable packaging to protect the Goods during transportation and in accordance with any packing requirements notified to the Supplier by AGL at least [5] Business Days before the date for delivery, or as agreed between the Supplier and AGL;
- (d) deliver the Goods in accordance with any reasonable requirements notified to the Supplier by AGL at least 5 Business Days before the date for delivery, or as agreed between the Supplier and AGL;
- (e) unless otherwise notified by AGL, ensure that, where the Goods are to be delivered on a pallet, the pallet is a standard pallet that conforms to the requirements of ISO 6780. For large or bulky items that cannot be delivered on a single standard pallet, the Supplier must schedule a delivery date and time with AGL and the Goods must be packed with timbers and the like that allow delivery to be unloaded with a crane;
- (f) unless otherwise notified by AGL, unload the Goods at the Site;
- (g) provide a copy of all engineering, material safety data sheets and other data set out in the Purchase Order,

- together with any specifications, manuals and other documents relating to the relevant Goods for the purpose of using, operating, maintaining, repairing, upgrading or selling the relevant Goods;
- (h) deliver the Goods on or prior to the date(s) for delivery specified in the Purchase Order or, where no dates are specified, on or prior to the dates notified by AGL at least 5 Business Days before the day for delivery, or as agreed between the Supplier and AGL;
- (i) deliver the Goods at the time(s) for delivery specified in the Purchase Order or, where no times for delivery are specified by AGL, deliver the Goods to and/or from the Site on a Business Day between the hours of 8am and 3pm on or prior to the dates specified in accordance with clause 6(h) above or otherwise at such times notified by AGL (acting reasonably) at least 5 Business Days before the day for delivery, or as agreed between the Supplier and AGL; and
- (j) upon delivery of the Goods, provide a delivery docket, advice note, service slip or similar document which refers to the Purchase Order number, describes the contents of the delivery package and states the date of dispatch and the mass of each item.

7 Acceptance and Rejection of Goods

- (a) Unless otherwise notified by AGL, the Supplier must give AGL 10 Business Days' notice (or such other period as AGL and the Supplier agree) before delivering the Goods to the Site.
- (b) AGL may, within 7 Business Days after delivery to the Site, inspect the delivery and give Notice to the Supplier that:
 - (i) AGL accepts the Goods at the Site; or
 - (ii) otherwise, a list of any Goods that are missing, damaged or contain Defects. Without limiting clause 14, the Supplier must promptly supply or replace (as applicable) any missing, damaged or defective Goods.
- (c) If AGL issues a Notice to the Supplier under clause 7(b)(ii), AGL must allow the Supplier to inspect the Goods within 5 Business Days of receipt of the Notice.
- (d) If the Goods do not comply with the Agreement, the Supplier must comply with the requirement in the Notice.
- (e) If, on inspection of the Goods, the Supplier considers that the Goods do comply with the Agreement, the matter will be resolved pursuant to clause 32.

8 Completion

- (a) If the Work includes Services, the Supplier must notify AGL in writing when the Supplier believes Completion has been achieved.
- (b) AGL shall within 5 Business Days after receipt of a notice under clause 8(a), inspect the Work and give to the Supplier:
 - (i) if Completion has been achieved, written notice confirming the date of Completion; or
 - (ii) otherwise, a list of outstanding Work and Defects which must be carried out or rectified to achieve Completion, in which case clause 8(a) and (b) will reapply.
- (c) If AGL fails to provide notification within the time required by clause 8(b), the Supplier will be deemed to have achieved Completion.
- (d) If the Work does not include Services, the Date of Completion shall be deemed to be the Date of Delivery.

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9 Delays

- (a) The Supplier must take all reasonable steps and precautions to prevent and minimise the risk of any delays to the Work.
- (b) If the Supplier becomes aware that it will be unable to Complete the Work by the Required Completion Date (as applicable), the Supplier must give Notice to AGL of such delay within 5 Business Days of the date the Supplier first becomes aware, or should reasonably have become aware, that the delay has commenced or will occur. The Notice must contain details of the date on which the Supplier expects to be able to Complete the Work.
- (c) Subject to clause 9(d) if there is a delay to the Work, AGL may:
 - (i) acting reasonably (having regard to the nature of the Works and the nature of the delay) agree to an extension of the Required Completion Date, or propose an alternative Required Completion Date for the Supplier's agreement; or
 - (ii) acting reasonably (having regard to the nature of the Works and the nature of the delay), where there is no agreement under (i), and where the delay is a substantial breach of the Agreement, issue a notice to the Supplier under clause 15(a).
- (d) If Completion of the Work has been delayed by an Extension Event, the Completion Date will be extended by the number of days by which the Work has been delayed by that Extension Event. '
- (e) Any dispute about the number of days by which the Work has been delayed by an Extension Event will be resolved pursuant to clause 32.

10 Property and Title

- (a) The Supplier warrants that it has unencumbered title in and ownership of the Goods, free of any liens, charges and encumbrances and will Deliver the Goods to AGL on that basis.
- (b) Ownership and unencumbered title to the Goods will transfer to AGL upon the date of payment for the Goods.
- (c) The Supplier must, if requested by AGL, promptly take any action and provide any information reasonably required for AGL to:
 - (i) ensure that any security interest (as defined in the PPSA), or AGL's rights in relation to any security interest, are effective, enforceable against the Supplier and third parties and perfected with the contemplated priority; or
 - (ii) exercise or enforce its rights in relation to any security interest.
- (d) To the extent that a security interest (as defined in the PPSA) is created under the Agreement, the following applies:
 - (i) The Supplier waives any right it may have at any time, including under sections 144 and 157 of the PPSA, to receive a copy of a verification statement or other notice contemplated in the PPSA.
 - (ii) The Supplier waives its right to receive anything from AGL under section 275 of the PPSA, and shall not make any request of AGL under that section.
 - (iii) No party shall disclose any information of the kind mentioned in section 275(1) of the PPSA.
 - (iv) Each party contracts out of each provision of the PPSA which section 115 permits, except sections 117, 118, 123, 126, 128, 129, 134(1)

and 135. However, each of those sections is contracted out of to the extent that a provision in it would be contrary to or limit an express or implied right on the part of AGL provided for in the Agreement.

11 Risk

- (a) The risk of any loss or damage to the Goods remains with the Supplier until the Date of Completion.
- (b) Without limiting clause 13(b), the Supplier is responsible for the care of any part taken out of the Site Assets by or on behalf of the Supplier in the performance of the Work, from the time the part is taken out until:
 - (i) the part is reinstalled in the relevant Site Assets; or
 - (ii) where reinstallation is not required, the part is handed over to AGL at the Site.
- (c) The Supplier must secure, protect and maintain in good condition the things that it is responsible for the care of under the Agreement.

12 Testing

- (a) The Supplier must perform (at its own cost) such tests as may be reasonably required under the Agreement or as required under any relevant standards or industry codes to confirm the quality, suitability or conformity of the Work and to ensure the Work is without Defects.
- (b) The Supplier must allow AGL (and any person authorised by AGL) to observe and inspect the Work at the Site.

13 AGL Supplied Equipment

- (a) All AGL Supplied Equipment will be the property of AGL and must not be used without AGL's authority.
- (b) The Supplier bears the risk of any loss or damage to the AGL Supplied Equipment during the period that the AGL Supplied Equipment is in the Supplier's care. The Supplier must ensure that the AGL Supplied Equipment is adequately insured for the period of time that the AGL Supplied Equipment is in the Supplier's care.
- (c) The Supplier must:
 - (i) confirm in writing the receipt of AGL Supplied Equipment and the completeness of such AGL Supplied Equipment;
 - (ii) transport the AGL Supplied Equipment at the Supplier's risk and cost to and from (as applicable) the Site, and fully comply with the HVNL, including, without limitation, driver fatigue and proper load securing;
 - (iii) ensure that AGL Supplied Equipment is handled and stored in a manner that will prevent deterioration or damage;
 - (iv) report any defects to AGL Supplied Equipment of which it becomes aware of whilst the AGL Supplied Equipment is in the Supplier's care;
 - (v) not carry out any repairs to AGL Supplied Equipment without prior authorisation from AGL;
 - (vi) pick up and/or deliver the AGL Supplied Equipment on or prior to the dates for pick up and/or delivery specified in the Purchase Order or, where no dates are specified, on or prior to the dates notified by AGL (acting reasonably) on at least [5] Business Days' prior notice, or as agreed between the Supplier and AGL;
 - (vii) pick up and/or deliver the AGL Supplied Equipment at the time for pick up and/or

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delivery specified in the Purchase Order or, where no times for pick up and/or delivery are specified, pick up and/or deliver the AGL Supplied Equipment to and/or from the Site on a Business Day between the hours of 8am and 3pm on or prior to the dates specified in accordance with clause 6(h) above or otherwise at such times notified by AGL (acting reasonably) on at least 5 Business Days' prior notice, or as agreed between the Supplier and AGL;

- (viii) return AGL Supplied Equipment after it has been appropriately packaged for transport and storage and in accordance with any packing requirements notified to the Supplier by AGL on at least 5 Business Days' prior notice, or as agreed between the Supplier and AGL;
- (ix) upon delivery of the AGL Supplied Equipment provide a delivery docket, advice note, service slip or similar document which refers to the Purchase Order number, describes the contents of the delivery package and states the date of dispatch and the mass of each item; and
- (x) permit AGL to inspect all or any of AGL Supplied Equipment at a mutually convenient time.

14 Defects

- (a) AGL may during the performance of Work and during the Warranty Period, direct the Supplier in writing to rectify a Defect in the Work (or any part thereof).
- (b) Where AGL provides a written direction to the Supplier under clause 14(a), the Supplier must rectify the Defect or re-perform the relevant Services (and replace and reinstall the relevant Goods) and any consequential damage to the Work by a reasonable date proposed by AGL and agreed to by the Supplier or, in absence of a specified or agreed date, within a reasonable time.
- (c) If the Supplier does not rectify the Defect or re-perform the relevant Services (and replace and reinstall the relevant Goods) that contain the Defect within the time required under clause 14(b), AGL may, after giving the Supplier at least 7 Business Days prior written notice, have the Defect rectified (or have the Goods replaced) by others and recover the cost of doing so as a debt due and payable from the Supplier.
- (d) If any Defects are rectified during a Warranty Period pursuant to this clause 14, the Warranty Period will be extended by 12 months.
- (e) Any dispute about whether a Defect exists in the Goods will be resolved pursuant to clause 32.

15 Termination

- (a) Either party may terminate the Agreement or any part of it if:
 - (i) the other party commits a substantial breach of the Agreement and, following receipt of a Notice from non-defaulting, fails to remedy the breach within a reasonable period of time as specified in the Notice; or
 - (ii) subject to clause 15(d) the other party becomes insolvent or subject to any official management, receivership, liquidation, voluntary administration, winding-up or other external administration.
- (b) AGL may terminate the Agreement for convenience within 2 Business Days of the Purchase Order Date, provided that AGL will reimburse the Supplier for any unavoidable costs already reasonably incurred by the Supplier.

- (c) Either Party may, by giving written notice, immediately terminate this Agreement if an Insolvency Event occurs in relation to the other Party.
- (d) The parties acknowledge that a termination right in clause 15(a)(ii), 15(a)(ii) shall be exercised in compliance with any Ipso Facto Exception, if applicable.

16 Rights and Obligations on termination

- (a) If the Supplier terminates the Agreement in accordance with clause 15(a), or if AGL terminates the Agreement in accordance with clause 15(b), AGL must pay to the Supplier:
 - (i) any outstanding amount which would have been payable under the Agreement for Work undertaken (including any Goods delivered to, and accepted by, AGL) before the termination date if the Supplier had submitted an invoice under clause 19 on the termination date; and
 - (ii) any other cost or expense which in the circumstances was reasonably and necessarily incurred by the Supplier as a direct result of the termination (excluding any costs incurred by the Supplier as a result of redundancies or terminations relating to the Supplier's workforce).
- (b) The Supplier must take all reasonable steps to mitigate the amounts referred to in clause 16(a)(ii).
- (c) Upon termination of the Agreement, the Supplier must promptly:
 - (i) cease the performance of the Agreement;
 - (ii) give AGL a copy of any designs, specifications, manuals, records and other documents relating to the Work in the possession or control of the Supplier and reasonably requested by AGL for the purpose of completing Work or operating, maintaining, repairing, upgrading, altering, selling or financing Work; and
 - (iii) return any of AGL's property which is in the Supplier's possession or control to AGL;
 - (iv) except to the extent required to ensure the Site is secure and safe, remove any temporary works, plant or equipment relating to Work from the Site and demobilise from the Site; and
 - (v) otherwise comply with AGL's reasonable directions in relation to the termination.

17 Warranties

- (a) The Supplier warrants that:
 - (i) the Work will comply with the requirements of the Agreement (including the Purchase Order);
 - (ii) the Work will be carried out using parts, materials and Goods which will be new, suitable and of good and merchantable quality and will be free from all Defects;
 - (iii) the Goods and Services are and will be fit for the purpose(s) for which they are supplied;
 - (iv) the Work will be carried out using a professional standard of skill, care and diligence and all personnel employed by the Supplier to carry out the Work are fully trained, competent and possess the necessary skills and required licences expected of a qualified, professional Supplier experienced in performing similar works or services;
 - (v) any computer software included in the Work is free of computer viruses; and

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- (vi) the Work will comply with all Laws and the requirements of any Authorities.
- (b) The Supplier acknowledges that AGL is relying on the Supplier's expertise, skill and judgment in performing the Work.
- (c) Nothing in this clause or this Agreement limits or excludes any rights which AGL may have under Schedule 2 of the *Competition and Consumer Act 2010* (Cth) in connection with the Work.

18 Third Party Warranties

Unless otherwise notified by AGL, the Supplier shall ensure that AGL has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Supplier must, at its own cost, obtain any manufacturer's warranties on AGL's behalf if AGL so requests).

19 Payments

19.1 Payment Claims

- (a) The Supplier must submit a written payment claim to AGL in accordance with the payment terms set out in the Purchase Order or, if the Purchase Order does not specify payment terms, no later than the 20th day of each month for Work completed in the previous month (**Invoice**). The payment claim shall set out:
 - (i) the portion of the Price claimed for Work completed by the Supplier during the period to which the payment claim relates; and
 - (ii) any other amount which the Supplier claims became payable to it under the Agreement during the period to which the payment claim relates.
- (b) The Supplier must not submit more than one payment claim for any period to which an Invoice relates.
- (c) The Supplier must submit a tax invoice for the amount claimed by the Supplier with each payment claim, and must promptly provide any further information and assistance reasonably requested by AGL for the purposes of assessing a payment claim.

19.2 Payment Schedule

- (a) Within 10 Business Days after receipt of a payment claim in compliance with clause 19.1, AGL must assess the payment claim and, if AGL believes the amount payable to the Supplier is different to the amount claimed in the payment claim, issue a payment schedule to the Supplier.
- (b) The payment schedule must identify the payment claim to which it relates and set out:
 - (i) the amount claimed which AGL proposes to pay; and
 - (ii) the reasons for any difference (including, if applicable, the reasons for withholding or setting off any amount).
- (c) The Supplier must, within 3 Business Days after receipt of a payment schedule, give AGL a revised tax invoice for the amount which the payment schedule states is payable to the Supplier.
- (d) Any dispute about the amount payable to the Supplier, will be resolved pursuant to clause 32.

19.3 AGL to pay

- (a) Subject to clause 19.5(a), AGL must pay to the Supplier:
 - (i) where no payment schedule is issued under clause 19.2, the amount claimed by the Supplier in a payment claim; or
 - (ii) where a payment schedule is issued under clause 19.2, the amount stated as payable to the Supplier in the payment schedule,within:

- (iii) the time period for payment nominated in the Purchase Order; or
- (iv) if the Purchase Order does not specify a time for payment, within:
 - (A) 32 days after the end of the month in which AGL receives the Invoice;
 - (B) if the Supplier is a small business with less than 100 employees, 30 days after AGL receives the relevant payment claim under clause 19 of this Agreement; or
 - (C) where the governing law is NSW, within 15 Business Days after AGL receives a compliant payment claim under clause 19 of this Agreement.

- (b) Payment by AGL under this clause 19 is payment on account only. A payment schedule and payment does not, of itself, affect AGL's right to dispute whether an amount was payable under the Agreement or whether any Goods comply with the Agreement.

19.4 Interest on overdue payments

Interest on overdue amounts shall accrue at a rate equal to the sum of 2 percentage points above the Commonwealth Bank of Australia corporate overdraft reference rate per annum, from (but excluding) the due date until (and including) the date the overdue amount is paid.

19.5 Set off

- (a) AGL may deduct from amounts due and payable from AGL to the Supplier under or in connection with the Agreement, any amounts due and payable from the Supplier to AGL in connection with the Agreement.
- (b) Any dispute about the set-off amounts will be resolved pursuant to clause 32.

19.6 GST

- (a) Any reference in this clause 19.6 to terms defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Any amount referred to in the Agreement which is relevant in determining a payment to be made by one of the parties to another is exclusive of GST unless indicated otherwise.
- (c) If GST is imposed on a supply made under or in connection with the Agreement then the consideration provided for that supply is increased by the rate at which that GST is imposed. The additional consideration is, subject to the supplier providing the recipient with a tax invoice as required by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), payable at the same time and in the same manner as the consideration to which it relates.
- (d) If a party refunds to another party any amount on which GST has been paid, that party must also refund an amount in respect of any GST paid in respect of that amount.
- (e) If one of the parties to the Agreement is entitled to be reimbursed for an expense or outgoing incurred in connection with the Agreement, then the amount of the reimbursement will be net of any input tax credits which may be claimed by the party being reimbursed in relation to that expense or outgoing.
- (f) Each party must have an ABN and be registered for GST.

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20 Protection of people, property and environment

20.1 Health, Safety and Environmental Requirements

- (a) The Supplier must comply with (and ensure the Supplier's Associates comply with):
 - (i) all Health, Safety and Environmental Requirements; and
 - (ii) any directions given by AGL which are necessary for AGL to comply with the Health, Safety and Environmental Requirements applicable to AGL.
- (b) The Supplier must immediately report to AGL all incidents involving injury to any person, harm to the environment or damage to property that occur while performing the Work. The Supplier must provide written notification to AGL of any such incident with 1 Business Day.
- (c) The Supplier must not, and must ensure that the Supplier's Associates do not, contaminate or pollute the Site or Environment surrounding it.
- (d) The Supplier must comply with any policies and procedures provided by AGL and that relate to the Site, workplace health and safety, protection of the Environment and hazardous substances.

20.2 Access and negotiation

- (a) The Supplier must comply with, and ensure that the Supplier's Associates comply with, the access requirements and lawful directions of AGL and the person in control of the Site, including in relation to induction, coordination and security. Without limiting the foregoing, the Supplier must, in performing the Agreement, take all measures reasonably necessary to:
 - (i) coordinate the Work with operations and other activities at the Site; and
 - (ii) minimise unnecessary interference to the passage of people and vehicles.
- (b) AGL makes no representation and gives no warranty in relation to the Site Conditions, or the adequacy or suitability of the Site Conditions, for the performance of the Supplier's obligations under the Agreement. The Supplier warrants and represents that it has allowed for any impacts the Site Conditions could have on the performance of its obligations under the Agreement and is not entitled to make any Claim arising out of or in connection with the Site Conditions, except to the extent caused by the Wilful Misconduct or negligence of AGL. The Supplier may, at the time of accepting the Purchase Order by notice to AGL, specify Site Conditions that are to be excluded for the purposes of this clause, subject to AGL acknowledging acceptance of those exclusions in writing.

21 Compliance with Supplier Code of Conduct

- (a) AGL has adopted the AGL Supplier Code of Conduct intended to promote sustainable, environmentally sound and responsible supply chain practices for suppliers of goods or services to AGL. The Supplier must familiarise itself with the AGL Supplier Code of Conduct and comply with the following additional obligations relevant to that code:
 - (i) at any time during the Supplier's performance of the Agreement, AGL may issue a questionnaire to the Supplier seeking information about the Supplier's approach to business and performance of the Agreement so that AGL can assess the Supplier's

performance compared to the AGL Supplier Code of Conduct;

- (ii) if AGL issues a questionnaire, the Supplier:
 - (A) must promptly respond in full to that questionnaire (and in any event, within 7 days); and
 - (B) warrants that all statements made in the response will be true and correct, and that it will notify AGL in writing should there be any future change to the Supplier's business such that a response requires amendment;
- (iii) if AGL identifies any actual or suspected non-compliance with the AGL Supplier Code of Conduct, it may issue a notice to the Supplier, and require that the Supplier provides a corrective action plan to AGL within the time specified in the notice. AGL may accept or reject that corrective action plan acting reasonably at its discretion; and
- (iv) if the Supplier:
 - (A) does not issue and implement a corrective action plan to the reasonable satisfaction of AGL; or
 - (B) repeatedly fails to comply with a corrective action plan that has been accepted by AGL,

then, notwithstanding any other provision of the Agreement, AGL may terminate the Agreement by providing 7 days' notice in writing (in which case the Agreement shall be deemed to have been terminated for Supplier default).

22 Compliance

- (a) The Work must comply with, and the Supplier must ensure that its employees, suppliers and agents are aware of and comply with, all relevant Laws as well as any applicable provisions of Standards Australia publications, relevant codes of practice and AGL policies including AGL's Site Requirements. The Supplier must provide evidence of compliance with this clause upon request from AGL.
- (b) If the Supplier does not comply with clause 22(a), AGL may:
 - (i) require the Supplier, the Supplier's personnel, and/or any other person to leave the Site immediately; and
 - (ii) require the Supplier and/or any of its personnel to remove any material or substance from the Site at the Supplier's cost.
- (c) Where clause 22(b) applies, the Supplier must, at its cost, ensure such request is immediately complied with and take all possible action to ensure the safety of all personnel on the Site.
- (d) The Supplier must promptly give AGL any information reasonably required by AGL to comply with its obligations at Law.

23 Intellectual Property

- (a) As between AGL and the Supplier, all Intellectual Property Rights subsisting in the Goods, the Services or any other thing provided by the Supplier under the Agreement remain the property of the Supplier.
- (b) The Supplier grants to AGL a non-exclusive, worldwide, royalty free, sub-licensable, transferable, perpetual, irrevocable licence to exploit and exercise all rights in, including to develop and modify such Intellectual Property Rights to complete the Work (if the Work has not been completed) and use, operate, maintain, repair, upgrade or sell or finance the Work.

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- (c) The Supplier warrants to AGL that the Supplier's performance of the Agreement and the Goods and Services will not infringe the Intellectual Property Rights of a third party, and that the Supplier is entitled to license the Intellectual Property Rights subsisting in the Goods and Services to AGL in accordance with clause 23(b).
- (d) The Supplier indemnifies the Indemnified Parties from and against any Claim that:
 - (i) the Supplier's performance of the Agreement;
 - (ii) the Goods, the Services and other things provided by the Supplier under the Agreement; or
 - (iii) the use or exercise of Intellectual Property Rights in accordance with the licence granted under clause 23(b),infringes the Intellectual Property Rights or Moral Rights of a third party.

24 Confidentiality and Data Security

- (a) The Supplier must keep all Confidential Information confidential and not divulge the existence or particulars of such Confidential Information, other than to persons or bodies engaged in performing the Work, without AGL's written consent.
- (b) If the Supplier collects or obtains any Confidential Information from AGL in the course of carrying out the Work, the Supplier must:
 - (i) only use that Confidential Information for the purpose for which it was collected or provided;
 - (ii) have in place adequate Security Measures to protect the Confidential Information against Data Security Breaches;
 - (iii) in relation to any personal information (as defined in the *Privacy Act 1988* (Cth)) provided or otherwise made available by AGL, comply with the Privacy Requirements as though they are binding on the Supplier; and
 - (iv) promptly return any Confidential Information to AGL upon termination of the Agreement or when otherwise notified to do so by AGL.
- (c) The Supplier must, at AGL's request, provide evidence of its compliance with clause 24(b) and must:
 - (i) implement any additional Security Measures reasonably requested by AGL from time to time; and
 - (ii) comply with all reasonable requests of AGL concerning that Confidential Information.
- (d) The Supplier must, if it becomes aware of a Data Security Breach, or an actual or attempted circumvention of any of the Supplier's Security Measures:
 - (i) notify AGL immediately; and
 - (ii) comply with all reasonable requests of AGL concerning that Data Security Breach or circumvention.
- (e) The Supplier must not divulge the existence of the Agreement or the Work, without AGL's written consent.
- (f) The Supplier will not breach this clause 24 if it discloses Confidential Information in compliance with any applicable law or legally binding order of any court, Government Agency or recognised stock exchange, provided that prior to such disclosure the Supplier gives notice to AGL with full particulars of the proposed disclose.

25 Compliance with SOCI Legislation

- (a) The Supplier acknowledges and agrees that:
 - (i) AGL, or another member of the AGL Group, is the Responsible Entity for, and/or a Direct Interest Holder in, the AGL Critical Assets (as may be notified to the Supplier from time to time); and
 - (ii) the AGL Group is subject to obligations under the SOCI Legislation.
- (b) Without limiting any obligation in this Agreement, the Supplier must:
 - (i) comply, and must ensure that its personnel comply, with the SOCI Legislation to the extent that it applies to the Supplier or its Personnel (as applicable) in relation to the AGL Critical Assets;
 - (ii) comply with all reasonable directions of AGL and provide, within the timeframes and in the form or format requested by AGL, all reasonable support, cooperation or assistance (including the provision of any information or documents) requested by AGL, to enable or assist the AGL Group to:
 - (A) comply with its obligations and requirements under the SOCI Legislation; or
 - (B) exercise, perform or otherwise discharge its rights, powers, functions or obligations under the SOCI Legislation.
 - (iii) immediately notify AGL if the Supplier receives any notices, directions or requests under the SOCI Legislation, or is otherwise contacted directly by an Authority under the SOCI Legislation, in relation to an AGL Critical Asset;
 - (iv) not correspond, communicate or otherwise engage with any Authority in relation to the AGL Critical Assets, including in response to any contact from a governmental authority as contemplated in clause 25(b)(iii) without obtaining AGL's prior written consent;
 - (v) promptly notify AGL if the Supplier becomes aware that any information previously provided to AGL in accordance with this clause is or has become incorrect or incomplete and provide such information as is required to ensure its correctness or completeness (as applicable);
 - (vi) not engage in any act or omission that would result in the AGL Group breaching the SOCI Legislation; and
 - (vii) ensure that its Personnel comply with the obligations imposed on the Contractor under this Schedule.

26 Conflict of Interest

- (a) The Supplier warrants that:
 - (i) subject to clause 26(b), as at the Execution Date, it does not have, and none of the Supplier's Associates have, a Conflict of Interest; and
 - (ii) if, during the term of this Agreement, the Supplier becomes aware of an actual or possible Conflict of Interest that has not been notified to AGL, it will immediately notify AGL of that actual or possible Conflict of Interest.
- (b) Clause 26(a) does not apply to the extent that the Supplier has notified AGL in writing of that Conflict of Interest prior to execution of this Agreement by AGL.

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- (c) If, during the term of this Agreement, the Supplier notifies AGL of, or AGL otherwise becomes aware of, an actual or possible Conflict of Interest:
 - (i) AGL may by written notice to the Supplier permit the Supplier to perform or continue to perform the Supplier's obligations under this Agreement, notwithstanding the actual or possible Conflict of Interest; or
 - (ii) AGL and the Supplier may agree for the Supplier to undertake measures to avoid or mitigate the actual or possible Conflict of Interest (both acting reasonably).
- (d) Where the Supplier fails to diligently undertake any measures agreed under clause 26(c)(ii) this failure will be treated as a substantial breach of this Agreement and AGL may by written notice to the Supplier terminate this Agreement.

27 Insurance

27.1 Insurance Policies

- (a) The Supplier must effect and maintain the insurance policies annexed to these Terms and Conditions or otherwise approved by AGL.
- (b) The Supplier must, within 10 Business Days after the Execution Date and any request from AGL, provide AGL with copies of the certificates of currency for the insurance policies that it is required to effect and maintain in accordance with clause 27.1. The certificates of currency must contain sufficient information to verify that the insurance complies with this clause 27 and the insurance specifications annexed to these Terms and Conditions.

27.2 Required insurers

Each insurance policy required must be effected and maintained with an insurer which has a minimum Standard & Poor's long term credit rating of A- or equivalent rating with another rating agency.

28 Indemnity

- (a) Subject to clause 28(b), the Supplier must indemnify each Indemnified Party from and against any Claim or Loss brought against, suffered or incurred by an Indemnified Party arising out of:
 - (i) a breach by the Supplier of clause 20, including any fines or penalties to the extent permitted by law; and
 - (ii) the Supplier's breach of clause 24; and
 - (iii) any:
 - (A) damage to, or loss or destruction of, any property (including the Goods and AGL Supplied Equipment whilst the Supplier is responsible for the care of them under clause 11(a) and 13(b) respectively); and
 - (B) injury to, or death or disease of, any person,
to the extent arising out of the negligence of, or a breach of the Agreement by, the Supplier.
- (b) The Supplier's liability to indemnify each Indemnified Party under clause 28(a) will be proportionately reduced to the extent that:
 - (i) an act or omission of an Indemnified Party caused or contributed to the Claim or Loss; or
 - (ii) the Indemnified Party failed to take reasonable steps to mitigate the Claim or Loss.

29 Excluded Loss

- (a) Despite any other provision of the Agreement but subject to clause 29(b), each party will have no liability to the other party arising out of or in connection with the Agreement (however arising, including for negligence) for Excluded Loss.
- (b) A party's liability for Excluded Loss in respect of the following is not excluded by clause 29(a):
 - (i) injury to, or illness or death of, any person or damage to, or loss or destruction of, any property (including liability for a third party's Loss under the indemnity in clause 28);
 - (ii) infringement of a third party's Intellectual Property Rights or Moral Rights, or obligations relating to confidentiality; or
 - (iii) liability for Loss under the indemnity in clause 28;
 - (iv) fraud, criminal offence or Wilful Misconduct of either Party or either Party's Associate.

30 Aggregate Liability

- (a) Despite any other provision of this Agreement, but subject to clause 30(b), the aggregate liability of each party to the other party arising out of or in connection with this Agreement, whether in contract, in tort (including negligence), in equity, by operation of law or otherwise is limited to the amount of the total value of the Purchase Order.
- (b) The Supplier's liability in relation to the following is not limited by clause 30(a), and is not counted towards the limit of liability under clause 30(a):
 - (i) injury to, or illness or death of, any person or damage to, or loss or destruction of, any property caused by an act or omission of the Supplier or any Supplier Associate;
 - (ii) liability for a third party's Loss under the indemnity in clause 28;
 - (iii) infringement of a third party's Intellectual Property Rights or Moral Rights caused by an act or omission of the Supplier or any Supplier Associate, or the Supplier's breach of an obligation under this Agreement relating to confidentiality;
 - (iv) to the extent that the Supplier:
 - (A) recovers insurance proceeds in respect of that liability from an insurance policy required to be taken out under this Agreement; or
 - (B) would have recovered insurance proceeds in respect of that liability from an insurance policy required to be taken out under this Agreement if it had complied with this Agreement and the terms of the relevant insurance policy and taken all reasonable

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- steps to recover such proceeds,
- provided that this clause 30(b)(iv) is not intended to increase the limits of insurance required under this Agreement;
- (v) the Supplier wholly or substantially abandons the Work; or
- (vi) fraud, criminal offence or Wilful Misconduct of the Supplier or a Supplier's Associate.
- (c) AGL's liability in relation to the following is not limited by, and is not counted towards the limit of liability under clause 30:
- (i) injury to, or illness or death of, any person or damage to, or loss or destruction of, any property caused by an act or omission of AGL or any AGL Associate;
- (ii) infringement of a third party's Intellectual Property Rights or Moral Rights caused by any act or omission of AGL or any AGL Associate;
- (iii) fraud, criminal offence or Wilful Misconduct of AGL or any AGL Associate; or
- (iv) any liability for AGL to pay any undisputed amount on account of Fees which are due and payable under this Agreement.
- (d) When determining the insurance proceeds that would have been recovered for the purposes of clause 30(b)(iv), the limits of liability under clause 30(a) will not be taken into account.
- (e) Liability to which a limit under clause 30(a) applies is counted towards the limit when paid or otherwise satisfied by the relevant party.

31 Modern Slavery, Anti-Bribery and Anti-Money Laundering

31.1 Modern Slavery Law

- (a) The Supplier must:
- (i) comply with Modern Slavery Laws; and
- (ii) not do anything that would put AGL in breach of Modern Slavery Laws.
- (b) The Supplier must notify AGL in writing as soon as practical after it becomes aware of any actual or potential breach of this clause 31.1. Such notice must set out full details of the circumstances concerning the actual or potential breach of this clause 31.1.
- (c) The Supplier must provide AGL with all information reasonably requested by AGL in connection with the Supplier's compliance with this clause 31.1.

31.2 Anti-Bribery

- (a) The Supplier agrees that it has not and will not, directly or indirectly, offer, promise, authorise, solicit, pay, or give anything of value (including money) to:
- (i) influence any acts, decisions, or omissions made by any Government Official to obtain or retain business or secure an improper business advantage;
- (ii) induce any individual to act improperly in violation of his or her duty; or

- (iii) induce any Government Official, or any other individual, to use his or her influence with a government, instrumentality, or private entity to commit an improper act or to obtain or retain business.
- (b) The Supplier must notify AGL in writing as soon as practical after it becomes aware of any actual or potential breach of this clause 31.2. Such notice must set out full details of the circumstances concerning the actual or potential breach of this clause 31.2.
- (c) The Supplier must provide AGL with all information reasonably requested by AGL in connection with the Supplier's compliance with this clause 31.2.

31.3 Anti-Money Laundering

- (a) The Supplier must comply at all times with AML Law.
- (b) The Supplier must notify AGL in writing as soon as practical after it becomes aware of any actual or potential breach of this clause 31.3. Such notice must set out full details of the circumstances concerning the actual or potential breach of this clause 31.3.
- (c) The Supplier must provide AGL with all information reasonably requested by AGL in connection with the Supplier's compliance with this clause 31.3.

32 Dispute Resolution

- (a) If a Dispute arises then either party may issue a formal written notice to the other party expressly stating that it is a notice under this clause and setting out reasonable particulars of the Dispute (**Dispute Notice**).
- (b) Each party must ensure that a senior representative with authority to resolve the Dispute confers with the other party's senior representative in person, by phone or video conference within 10 Business Days after the date of receipt of the Dispute Notice (or such later date as the parties agree in writing) and, acting in good faith, seek to resolve the Dispute.
- (c) If a Dispute is not wholly resolved within 30 Business Days after the date of receipt of the Dispute Notice (or such later date as the parties agree in writing), either party may commence legal proceedings. Subject to clause 32(e), a party must not commence legal proceedings in relation to a Dispute unless that party has used reasonable endeavours to comply with the procedure for resolving the Dispute under this clause.
- (d) The parties must continue to perform their obligations under this Agreement despite the existence of any Dispute and without limiting either party's rights to terminate this Agreement.
- (e) Nothing in this clause 32 limits either party's right to commence legal proceedings to seek urgent injunctive or urgent declaratory relief.

33 Amendment

Any amendment of the Agreement must be in writing and signed by the parties.

34 Assignment

- (a) The Supplier must not assign, novate or otherwise transfer its rights or liabilities under the Agreement without the prior written consent of AGL. Such consent will not be unreasonably withheld.
- (b) AGL must not assign, novate or otherwise transfer its rights or liabilities under the Agreement unless AGL is satisfied (acting reasonably) that the third party is financially capable of complying and intends to comply with this Agreement, and AGL has provided the Supplier at least 30 days' written notice and the Supplier has not objected to the assignment, novation or transfer (acting reasonably) within that period.
- (c) AGL otherwise must not assign, novate or otherwise transfer its rights or liabilities under the Agreement

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(other than to a Related Body Corporate) without the prior written consent of the Supplier. Such consent will not be unreasonably withheld.

35 Waiver

A failure to exercise or a delay in exercising any right, power or remedy under the Agreement does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

36 Entire Agreement

- (a) The Agreement contains the entire agreement between AGL and the Supplier with respect to its subject matter and supersedes all prior communications and negotiations between AGL and the Supplier in this regard, unless those communications expressly form part of the Agreement.
- (b) No terms or conditions submitted by the Supplier that are in addition to, different from or inconsistent with those contained herein or in the Purchase Order, including, without limitation, the Supplier's printed terms and conditions, and any terms and conditions contained in any Supplier's quotation, invoice, order acknowledgment, confirmation, acceptance, bill of lading or other instrument shall be binding upon either party unless specifically and expressly agreed to in writing signed by a duly authorised representative of AGL.

37 Status of Supplier

- (a) The Supplier is at all times an independent contractor and will not act as, or be regarded as, an agent or employee of AGL, and the Supplier and its personnel will not be entitled to any benefits which would ordinarily accrue to any employee of AGL by virtue of their status as an employee.
- (b) Where the Supplier comprises more than one person they will be bound jointly and severally and by executing the Agreement accept joint and several liability for any loss or damage that may be suffered or occasioned and any sum that may be or may become payable to AGL under the Agreement.

38 Status of Subcontractor

As between the Supplier and AGL, a Subcontractor will be considered an agent and employee of the Supplier. For the purposes of the Agreement, the acts and omissions of each Subcontractor and its personnel will be deemed to be the acts and omissions of the Supplier.

39 Audits

The Supplier must, if requested by AGL (acting reasonably), allow AGL or a person nominated by AGL to audit the Supplier's compliance with clauses 20, 21 and 24.

40 Enforceability

On the Execution Date, each party warrants that:

- (a) it is a company duly incorporated and validly existing under the law of its place of incorporation;
- (b) its obligations under this Agreement are valid and binding and are enforceable against it in accordance with their terms, subject to any necessary stamping and registration, the availability of equitable remedies and laws relating to the enforcement of creditor's rights; and
- (c) unless otherwise indicated in this Agreement, it enters into this Agreement in its own right and not as trustee of any trust or as an agent on behalf of any other person.

41 Asbestos and other prohibited substances

- (a) Without limiting the operation of any other clause of these Terms and Conditions, the Supplier warrants that:
 - (i) all Goods supplied to AGL and all material used for packing and shipping the Goods (including, without limitation, temporary or replacement fittings such as transport gaskets, packaging and strapping or protective materials) will be free from asbestos and any materials containing asbestos and will be free from any other substance which is prohibited under any applicable Laws; and
 - (ii) the Supplier has applied, and will at all times continue to apply due diligence and surveillance in its design, material specification, material selection and manufacture, and in respect of its suppliers and Subcontractors, ensure asbestos or any material containing asbestos or any other prohibited substance has not been incorporated into the Goods or any material used for packing and shipping the Goods.
- (b) If AGL believes, on reasonable grounds, that any Goods supplied by the Supplier under this Agreement contain asbestos, AGL may direct the Supplier to, at the Supplier's cost, submit the Goods for testing for asbestos with a laboratory that has National Association of Testing Authorities Australia (NATA) accreditation for Australia Standard 4964 Method for the qualitative identification of asbestos in bulk samples or equivalent international accreditation (Asbestos Testing).
- (c) If, as a result of the Asbestos Testing, any Goods have been identified as containing asbestos, AGL may, at its absolute discretion:
 - (i) notify the Supplier that AGL rejects the Goods and the Supplier must promptly supply or replace the defective Goods; or
 - (ii) require the Supplier to remove the asbestos containing material from the Goods, at the Supplier's expense, and provide a written clearance report to AGL from a licensed asbestos assessor (to be approved by AGL) confirming that all asbestos containing material has been successfully removed from the Goods and that the Goods are free from any asbestos containing material. The Supplier agrees that no fee, costs, damages or other claim will be payable to the Supplier by AGL for any work done to remove any asbestos containing material.

42 Governing Law and Jurisdiction

The Agreement is governed by the laws of the Site. In relation to it and related non contractual matters each party irrevocably submits to the exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

43 Change in Law

Unless otherwise specified in this Agreement or agreed in writing by AGL, the Supplier is not entitled to payment in addition to the Fees in relation to a Change in Law.

44 Severance

If any provision of the Agreement becomes illegal, invalid, unenforceable, or void, then the legality, validity and enforceability of the remainder of the Agreement will not be effected (unless it is incapable of being operable in the absence of such provision).

Purchase Order Terms and Conditions

45 AGL Group

- (a) The Supplier:
 - (i) will perform its obligations under the Agreement for the benefit of AGL and the AGL Group; and
 - (ii) agrees that each member of the AGL Group may make use of the Work.
- (b) The parties agree that AGL holds the benefit of each indemnity specified in the Agreement for itself and on trust for each member of the AGL Group and may enforce the benefits of the indemnities and the limits on liability on their behalf.
- (c) AGL, as the contracting party to the Agreement, will be responsible for enforcing the Agreement, including bringing any claim, for and on behalf of any member of the AGL Group.
- (d) AGL acknowledges and agrees that any breach of the Agreement and any act or omission of any other AGL Group member in connection with the Agreement in relation to the Supplier will be taken to be a breach, act or omission (as applicable) of AGL under the Agreement.
- (e) AGL must ensure that any claim that another member of the AGL Group may have against the Supplier in connection with the Agreement is brought by AGL itself. In the event that another AGL Group member brings a claim in connection with the Agreement directly against the Supplier (**AGL Member Claim**), AGL indemnifies the Supplier in respect of the costs (if any) that the Supplier pays in respect of that AGL Member Claim that are in addition to the costs that the Supplier otherwise would have paid had the claim been brought by AGL itself.
- (f) The Supplier must ensure that any claim that the Supplier may have against any AGL Group member in connection with the Agreement is brought against AGL itself. In the event that the Supplier brings a claim in connection with the Agreement directly against another AGL Group member (**Supplier Claim**), the Supplier indemnifies AGL in respect of the costs (if any) that AGL pays in respect of that Supplier Claim that are in addition to the costs that AGL otherwise would have paid had the claim been brought against AGL itself.

46 Survival

Without limiting any other provision of the Agreement:

- (a) clauses 4, 13, 14, 17, 18, 23, 24, 28, 30, 31, 34, 35, 36, 38, 42, 45, and this clause 46; and
- (b) any obligations which are expressed to or, by their nature, survive the expiry or termination of this Agreement,

shall survive the expiry or termination of this Agreement and are enforceable at any time at law or in equity.

Purchase Order Terms and Conditions

Annexure 1 – Insurance Details

1 Contract Work insurance

Insured property: The Goods whilst at the Site, or in transit or storage on land within Australia.

Amount: Full replacement value of the insured property, including a reasonable amount for demolition, removal, disposal and transportation.

Additional named insured: AGL.

Period required: Before commencement of the Work until the Supplier ceases to be responsible for the care of the Goods in accordance with the Agreement.

2 Marine transit insurance

Insured property: The Goods during transportation by all modes of transport.

Amount: The value of insured property being transported and cost of transportation and insurance, plus 10%.

Period required: Before commencement of the Work until the Supplier ceases to be responsible for the care of the Goods in accordance with the Agreement.

3 Public and products liability insurance

Cover: Legal liability of the Supplier and the Supplier Associates to AGL and third parties for loss of or damage to property, death or injury (except to the extent covered under workers' compensation insurance) arising out of the Work.

Amount: For public liability, AUD 20,000,000 per occurrence and unlimited in the aggregate. For products liability, AUD 20,000,000 per occurrence and in the annual aggregate.

Noted interest: AGL in respect of the Work.

Period required: Before commencement of the Work until three years after the end of the Warranty Period.

4 Comprehensive motor vehicle insurance

Cover: All motor vehicles, trailers and mobile plant used in the Work in relation to loss of or damage to property, death or injury.

Amount: For death or injury, as required by Law. For loss of or damage to property, AUD 20,000,000 per occurrence and unlimited in the aggregate.

Period required: Before commencement of the Work until the end of the Warranty Period.

5 Workers compensation insurance

Cover: Liability for death of or injury to those carrying out the Work (including occupations disease) as required by Law.

Period required: Before commencement of the Work until the end of the Warranty Period.

6 Professional indemnity insurance

Cover: Liability of the Supplier to AGL and third parties in relation to a breach of professional duty arising out of or in connection with the Work.

Amount: AUD 10,000,000 per claim and in the aggregate during the annual insurance term.

Period required: Before commencement of the Work until 6 years after the Supplier ceases carrying out the Work.