



See Subsequent Consecutive Pages

1. Interpretation

1.1 Definitions

In this Contract:

Completion means when all of the following have occurred:

- (a) the Works and Equipment are complete except for trivial defects which do not prevent or prejudice the convenient use of the Equipment for their purpose;
- (b) testing and commissioning of the Equipment has been successfully completed in accordance with this Contract;
- (c) the Supplier has delivered to the Principal all documents and information reasonably required by the Principal:
 - (i) evidencing the Principal's ownership of; and
 - (ii) to enable the Principal to operate and maintain,
- (d) Any other requirements stated in the Details Sheet to be satisfied before Completion has been satisfied.

Contract means this Contract as constituted, in order of priority, by the Details Sheet, the Standard Terms and Conditions, the specification provided by the Principal (if any), any annexures, attachments or schedules to these documents, any other documents stated in the Details Sheet and the Supplier's quote if any.

Details Sheet means the specific details of this Contract as set out in the section of this Contract above headed „Details Sheet“.

Principal's Risks mean:

- (a) a negligent act or omission of or breach of this Contract by the Principal;
- (b) a change direction pursuant to Clause 16.1;
- (c) new legislative requirements coming into effect after the Date of Contract which the Supplier could not reasonably have been aware of at the Date of Contract;
- (d) strike, lockout or other labour difficulty at or affecting the Site;
- (e) delay or direction by a municipal, public or statutory authority;
- (f) ionising radiation or contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel; or
- (g) the use of the Equipment by the Principal,

except to the extent arising from an act or omission of the Supplier.

Site means the land and other places to be made available to the Supplier by the Principal for the purposes of this Contract.

Standard Terms and Conditions means the terms and conditions of this Contract set out under the heading "Equipment Supply Agreement – Standard Terms and Conditions".

subcontractor includes any supplier, manufacturer or consultant engaged in connection with the Works or the supply of the Equipment;

Works means:

- (a) the works to be undertaken by the Supplier as stated in the Details Sheet, including in the specification (if any); and
- (b) any other works expressly required or reasonably inferred as required to be provided by the Supplier under this Contract.

1.2 Interpretation

In this Contract:

- (a) terms given meanings in the Details Sheet have those meanings for the purposes of this Contract;
- (b) references to a *person* include any legal entity;
- (c) references to *months* means calendar months and *days* means calendar days;
- (d) singular includes plural and vice versa; and
- (e) warranties, indemnities and licenses capable of applying after termination of this Contract will do so.

2. Nature of Contract

2.1 Performance and Payment

- (a) The Supplier must execute and complete the Works and supply the Equipment in accordance with the requirements of this Contract.
- (b) Subject to the due performance by the Supplier of its obligations under this Contract, the Principal will pay the Supplier the Price in accordance with the Time and Conditions for Payment and in the Currency for Payment.

2.2 Supplier's Acknowledgement

The Supplier will be taken to have investigated and satisfied itself of:

- (a) the adequacy of the documents comprising this Contract;
- (b) the adequacy of any other documents or information provided by or on behalf of the Principal in connection with the Equipment or Works; and
- (c) the Site,

to enable the Supplier to carry out the Works and supply the Equipment and will have no claim for any extension of time, adjustment to the Price or any other claim arising from or in connection with any of the above.

3. Supplier's Obligations

3.1 General Work Obligations

In providing the Works and supplying the Equipment the Supplier will:

- (a) use all reasonable endeavours to protect all people, property and the environment;
- (b) only engage appropriately qualified and skilled labour;
- (c) in respect of the Site:
 - (i) clean up any part of the Site where Works have been undertaken to the Principal's satisfaction before Completion;
 - (ii) ensure the Works and Equipment are properly set out on the Site;
 - (iii) remove from the Site anyone to whom the Principal makes reasonable objection;
 - (iv) carry out work on the Site only during the hours and on the days approved by the Principal;
 - (v) comply with the Principal's reasonable requirements as to access to the Site and work on the Site;
 - (vi) use best endeavours to avoid interference with or disruption to the Principal and its employees, agents and customers;
 - (vii) use best endeavours to avoid interference with and minimise disruption to the Principal's existing operations;
 - (viii) use best endeavours to avoid interference with and minimise disruption to the Principal's existing operations;
- (d) in respect of premises (other than the Site) where the Supplier undertakes any Works (the 'Supplier's premises'):
 - (i) maintain and operate the Supplier's premises in accordance with all laws and legal requirements; and
 - (ii) ensure that the Supplier maintains the legal right to carry out the performance of its obligations under the Contract from the Supplier's premises.

3.2 Standard of Works and Equipment

- (a) The Supplier warrants that the Works and Equipment:
 - (i) are of good and merchantable quality and are fit for the Principal's purposes as described in or reasonably inferred from this Contract;
 - (ii) are provided with all due skill and care;
 - (iii) are free from defective workmanship or materials;
 - (iv) meet all legal requirements; and
 - (v) comply with this Contract, including the Principal's specifications and Performance Requirements.
- (b) The Supplier agrees that:
 - (i) the Supplier will obtain in connection with the Equipment and the Works, warranties:
 - (A) from subcontractors; and
 - (B) on terms,
 set out in this Contract or otherwise as are reasonably obtainable by the Supplier ("Warranties");
 - (ii) the Warranties will include the Principal as a named beneficiary; and
 - (iii) the Supplier gives to the Principal a warranty on the same terms as each of the Warranties (whether or not the Warranties are actually obtained from subcontractors in accordance with this clause).
- (c) The Supplier agrees that a warranty from any subcontractor will not limit, restrict or affect in any way the obligations (including the warranties or liabilities) of the Supplier under or in connection with this Contract (including as to the rectification of defects).

3.3 Nominated Materials

- Unless expressly provided otherwise, where the Contract or any direction by the Principal nominates or describes (by a proprietary or brand name, model number or other specific means) any material or component to be used in connection with the Works or the Equipment then:
- (a) such nomination or description will in no way limit, relieve or exclude any of the Supplier's obligations or liabilities under this Contract; and
 - (b) the Supplier will obtain the prior consent of the Principal to any change to or deviation from such nomination or description.

4. Site

4.1 Access

- (a) The Principal will give the Supplier non-exclusive access to the Site reasonably necessary to allow the performance by the Supplier of its obligations under this Contract.
- (b) The Principal may refuse to allow access to the Site until the Supplier has:
 - (i) provided to the Principal evidence that the Supplier holds all insurance required to be held by it under this Contract; and
 - (ii) completed whatever reasonable Site induction the Principal may require.

4.2 Supplier personnel

- (a) Supplier personnel (including subcontractors) must be approved by the Principal prior to working on any Site.
- (b) All Supplier personnel must participate in Site induction prior to commencing work at a Site and must comply with the requirements outlined in the induction.
- (c) Supplier personnel will be reviewed by the Principal as part of its safety program to ensure that all Supplier personnel are complying with the Principal's food safety program requirements.
- (d) The Supplier acknowledges that the Sites are used for food production and will ensure that it (and its personnel) will comply with the Principal's food safety

requirements in all areas of the Sites (including areas where food is not prepared).

(e) The Supplier agrees to notify the Principal of any potential food safety hazards at a Site identified by it or its personnel.

4.3 Separate Contractors

The Supplier must co-operate and co-ordinate its Works with works being carried out by any other contractors carrying out works on the Site.

5. Inspection, Testing and Commissioning

5.1 Inspection

(a) At any time, the Principal may inspect the Works and Equipment at a place where the Works are being undertaken or the Equipment is located, including the Site, the Supplier's premises and the premises of the Supplier's subcontractors or consultants.

(b) If, as a result of an inspection, the Principal is not satisfied that the Works or the Equipment conform with the requirements of the Contract, the Principal will notify the Supplier in writing accordingly and the Supplier must take such steps as are necessary to ensure that the Works or the Equipment comply with the requirements of the Contract.

5.2 Testing

(a) The Supplier will, as part of the Works, carry out and satisfy the Testing and Commissioning Requirements the Principal's specification or otherwise required by the Contract and participate in testing and commissioning the Equipment as reasonably required by the Principal.

(b) If the Works or Equipment fails to pass any test, the Principal may, at the Supplier's cost, require the Supplier to perform the test again, carry out the test itself or engage others to carry out the test on the Principal's behalf. Page 2 of 4

(c) The Principal may request additional tests at any time prior to Completion. The Supplier will provide such assistance and samples and make accessible such part of the Works or Equipment for such additional testing as may be required and, if so directed, must carry out the additional test at the Principal's cost unless that test shows that Equipment is not in accordance with the requirements of the Contract.

5.3 Notice of Tests

Before conducting a test under the Contract, the party conducting the test must give reasonable notice to the other party of the time, date and place of the test. If the other party does not attend, the test may still proceed.

5.4 Results of Tests

Results of tests will promptly be made available by the party conducting the test to the other party.

6. Legal Requirements

6.1 Compliance

The Supplier will ensure that:

- (a) the Equipment and Works comply with all laws and regulations;
- (b) the Supplier will carry out the Works, supply the Equipment and carry out its obligations under this Contract in accordance with all laws;
- (c) the Supplier will provide all such assistance reasonably requested by the Principal which is needed for the Principal to obtain any applicable approvals, permits or consents to operate, install or use the Equipment at the Site; and
- (d) except to the extent expressly provided by this Contract, the Supplier will pay all fees, taxes and other charges relating to the Works and Equipment incurred or imposed prior to the Transfer Date or relating to carrying out the Works, supplying the Equipment or carrying out its obligations under this Contract prior to the Transfer Date.

7. Title to Equipment

The Supplier:

- (a) agrees that full unencumbered title to the Equipment (or that part of the Equipment then in existence) will pass to the Principal upon the Principal making any payment on account of the Equipment, other than any deposit or similar amount payable by the Principal on or about the Date of the Contract, and
- (b) warrants to the Principal that full unencumbered title to the Equipment (or that part of the Equipment then in existence) will pass to the Principal in accordance with this Contract.

The Supplier indemnifies the Principal against any claims, losses, damages, costs, expenses or other liabilities arising from or contributed to by full unencumbered title to the Equipment (or that part of the Equipment then in existence) not being given to the Principal in accordance with this Contract.

8. Time for Commencement and Completion

8.1 Execution of Works

The Supplier must:

- (a) proceed with completion of the Works expeditiously;
- (b) ensure that each Milestone is achieved by the relevant Date for Milestone Achievement; and
- (c) achieve Completion by the Date for Completion.

8.2 Completion Notice

- (a) The Supplier may notify the Principal when it considers that the requirements for Completion have been achieved.
- (b) The Principal will notify the Supplier in writing when it considers that the requirements for Completion have been achieved and state the Completion Date.

8.3 Late Milestones

If the Supplier does not achieve a Milestone (including Completion) by the relevant Date for Milestone Achievement as required by Clause 8.1(b) and Clause 8.1(c), the Supplier will pay the Principal liquidated damages at the Liquidated Damages Rate for Delay for every week or part thereof after the Date for Milestone Achievement until the earlier of Milestone Achievement being achieved or this Contract being terminated.

8.4 Delays

If:

- (a) the Supplier is unavoidably delayed in achieving Completion (or any Milestone) by a cause beyond the Supplier's control; and
- (b) the cause of delay was not known to, or expected by, the Supplier at the Date of Contract; and
- (c) the Supplier (including subcontractors and employees) has not contributed to the delay and has used all endeavours to minimise the delay; and
- (d) the Supplier has notified the Principal in writing of the existence of the cause of delay as soon as reasonably possible after the Supplier has become aware of it and promptly after the cause of delay ends notifies the Principal of the length of the period of delay for which the Supplier claims an extension, the Principal will by notice in writing to the Supplier, allow the Supplier a reasonable extension to the Date for Completion or Date for Milestone Completion, as the case may require, within a reasonable period after the Supplier's claim is received.

The Supplier acknowledges that a failure by the Principal to extend the Date for Completion or any Date for Milestone Completion will not set time at large and parties shall upon mutual agreement extend the Date for Completion or any Date for Milestone Completion at any time for any reason.

9. Risk and Reinstatement

9.1 Care of the Works

Except in respect of the matters referred to in paragraphs (a), (f) and (g) of the definition of Principal's Risks in clause 1.1, the Supplier:

- (a) will assume responsibility for the care of or bear the risk of loss or damage to the Works and Equipment, at all times up to the Transfer Date; and
- (b) will, at its own cost, as soon as practicable replace or reinstate any of the Works and Equipment lost or damaged up to the Transfer Date.

9.2 Public Liability

(a) The Supplier indemnifies the Principal (including its employees and agents) against any loss or liability arising from or in connection with:

- (i) loss of or damage to any property (including property of the Principal);
- (ii) injury to or death of any person, or
- (iii) damage to or destruction of the environment, arising from or in connection with:

(iv) the provision of the Works or the Equipment; or Page 2 of 4

(v) the negligent or willful act or omission of the Supplier or its agents, subcontractors or consultants.

(b) To the extent permitted by law and notwithstanding any other provision in this Contract, a party shall not be liable for any indirect or consequential loss, cost or damage (including without limitation, any loss of business or revenue, loss of profit, loss of opportunity or loss of goodwill) incurred by the other party or any of its related bodies corporate arising out of any breach of this Contract by the first party.

(c) The Suppliers liability in clause 9.2 shall be reduced proportionally to the extent that any act or omission of the Principal has directly contributed to the loss or liability.

(d) The Suppliers liability to indemnify the Principal under this Contract (whether for breach of contract, under an indemnity, for tort including negligence, for strict liability, for breach of statutory duty or any other legal basis), shall be limited to the total contract value except where such liability is covered by insurance required under Clause 10.1 as maintained by the Supplier, the Supplier's liability shall be limited to the extent of any proceeds advanced, paid or available under an applicable insurance policy taken out by the Supplier, provided that:

- (i) The insurance claim relates to this Contract;
- (ii) The Supplier shall be liable for the full amount of any applicable deductible or excess (howsoever termed in the relevant policy) applying to claims made under any insurance policy required under the Contract;
- (iii) Subject to sub-paragraph (iv), the Supplier shall diligently prosecute all available claims under any insurance policy required under this Contract;
- (iv) If the Supplier determines not to make a claim under the relevant insurance policy, the limitation on the Supplier's liability to indemnify the Principal under this clause shall not apply; and
- (v) If any one or more insurance policies taken out by the Supplier would have responded to a claim but for the acts or omissions of the Supplier, the limitation on the Supplier's liability to indemnify the Principal under this clause shall not apply.

10. Insurance

10.1 Extent of Cover

(a) The Supplier must effect on terms and with insurers satisfactory to the Principal (acting reasonably) the Insurances.

(b) Upon request, the Supplier will provide the Principal with evidence that the Insurances are in force and that the premiums have been paid.
 (c) If the Supplier is not able to provide such proof, the Principal may, within 7 days of giving written notice to the Supplier of its intention to do so, take out and maintain at the Supplier's cost and expense, that Insurance.

11. Assignment and Subcontracting

11.1 Assignment and Subcontracting

The Supplier will not:

- (a) assign, encumber or otherwise deal with its rights or obligations; or
 - (b) subcontract its obligations,
- under this Contract without the prior written consent of the Principal.

The Principal's consent to subcontract may be conditional upon:

- (c) the Principal approving the subcontractor; and
- (d) the subcontract providing that the subcontractor may not assign or subcontract without the consent in writing of the Principal.

11.2 Responsibility for Subcontractors

The Supplier is responsible for acts and omissions of subcontractors and matters within the control of subcontractors are deemed to be within the control of the Supplier.

11.3 Novation by the Principal

The Supplier agrees that the Principal may at any time novate this Contract once the Supplier has given consent, such consent not to be unreasonably withheld, to any entity engaged by the Principal to undertake any part of the project in connection with which the Equipment is to be used, in which case, the Supplier will enter into such deed as the Principal reasonably requires to give effect to such novation.

12. Defective Works

The Supplier must promptly rectify any defect in the Works and Equipment which the Supplier:

- (a) becomes aware of before Completion;
- (b) is notified of by the Principal before expiry of the Defects Liability Period (commencing from Completion, or for Works rectified after Completion, commencing from rectification).

The Supplier must rectify the defect within the time notified in writing by the Principal failing which the Principal may have the defect rectified at the Supplier's cost and expense.

13. Design

(a) Except to the extent the Details Sheet states the Principal is responsible for design, the Supplier will complete the design, specification and documentation of the Equipment and the Works so that the Equipment and the Works comply with this Contract and are fit for the Principal's purposes stated in or inferred from this Contract.

(b) The Supplier is fully liable for the design of the Equipment and Works despite the Principal providing any preliminary or other design in respect of the Equipment or the Works.

14. Approvals

The Supplier agrees that:

- (a) the Principal's comment or failure to comment upon, review or non-review of or rejection or non-rejection of any documents, the Works or the Equipment;
- (b) any payment by the Principal;
- (c) acceptance of delivery of the Works or Equipment; or
- (d) the issue of a notice of Completion,

will not relieve the Supplier from any of its obligations or liabilities under this Contract.

15. Intellectual Property

(a) The Supplier warrants that unless otherwise provided in this Contract:

- (i) the Supplier owns the copyright in any documents provided by the Supplier; and
- (ii) any materials, documents and methods of working provided by the Supplier will not infringe any Page 3 of 4

patent, registered design, trade mark or name, copyright or other protected right.

(b) The Supplier will indemnify the Principal and will hold it harmless from and against any action, suit, proceeding, claim or demand, in respect of all liability, costs or expenses arising directly or indirectly from or incurred as a result of any infringement or alleged infringement of any patent, registered design, trade mark or name, copyright or other protected rights in the design, operating documents or Equipment.

(c) The Supplier grants to the Principal an irrevocable, perpetual, transferable, royalty-free licence to use all intellectual property rights (including any patent, registered design, trademark or name, copyright or other protected right) associated with the design, operating documents, Works, the Equipment and any other materials or documents provided by the Supplier for the completion, installation, use, maintenance, upgrading or alteration of the Works and Equipment from the date those intellectual property rights are created or used in connection with this Contract.

(d) The licence granted to the Principal under this clause survives the termination of this Contract for any reason.

16. Changes in Price

16.1 Changes in Principal's Requirements

(a) The Principal may for any reason (including its convenience or a Principal's fails to remedy the breach within 7 days after being required in writing to do so);

(i) The Principal may terminate this Contract by immediate notice in writing to the Supplier if the Works or the Equipment fail to either pass or achieve any Testing or Commissioning Requirements or are defective or damaged such that the Principal reasonably considers that it is substantially deprived of the benefit of the whole or a major part of the Works or the Equipment; or

Without limiting any other rights of the Principal (including to recover damages), if the Principal terminates this contract in accordance with the paragraph above, then the Principal may direct the Supplier to:

(ii) deliver to the Principal any of the Equipment which has become the property of the Principal under the Contract;

(iii) also deliver to the Principal any Equipment (which has not become the property of the Principal) and any materials ordered by the Supplier to undertake the Works or supply the Equipment, subject to the Principal paying the reasonable costs of the material or the fair market value of the Equipment (to the extent the Principal has not already paid for them under the Contract); and

(iv) assign or novate in favour of the Principal (to the extent required by the Principal) any subcontracts (including, without limitation, for the provision of any materials) or rights under any subcontracts entered into or obtained by the Supplier in connection with undertaking the works or supplying the Equipment.

16.2 Additional Costs and Expenses

If the Supplier incurs additional costs or expenses as a result of a Principal's Risk, the Supplier may claim those costs and expenses from the Principal.

17. Representatives

17.1 Principal's Representative

The Supplier will deal with the Principal's Representative, as the Principal's agent, under this Contract. The Principal will notify the Supplier of any change of the Principal's Representative.

17.2 Supplier's Representative

The Principal will deal with the Supplier's Representative, as the Supplier's agent, under this Contract. The Supplier may not replace the Supplier's Representative without the Principal's consent.

18. Confidentiality

18.1 Confidentiality

Subject to Clause 18.2:

(a) a party must not disclose any unpublished information or documents supplied by the other party in connection with this Contract which are not in the public domain; and

(b) the Supplier must not use any information, data, drawings, specifications or other documents supplied by the Principal in connection with this Contract for any purpose other than carrying out the Works, supplying the Equipment or carrying out its obligations under this Contract.

18.2 Permitted disclosure

A party may disclose any confidential information or documents:

- (a) in enforcing this Contract or in a proceeding arising out of or in connection with this Contract or to the extent that disclosure is regarded by that party as necessary to protect its interests;
- (b) if required under a binding order of a government agency or under a procedure for discovery in any proceedings;
- (c) if required under any law or any administrative guideline, directive, request or policy whether or not having the force of law and, if not having the force of law, the observance of which is in accordance with the practice of responsible bankers or financial institutions similarly situated;
- (d) as required or permitted by this Contract;
- (e) to its legal advisers and its consultants; or
- (f) with the prior written consent of the other party.

18.3 Continuation of Confidentiality

The parties' obligations under this clause apply after completion or termination of this Contract for any reason.

19. Dispute Resolution

(a) Subject to paragraph (c), if there is a dispute between the parties arising out of or in accordance with this Contract, the parties agree to meet and attempt to resolve the dispute through negotiation.

(b) Subject to paragraph (c), neither party shall commence any legal proceedings against the other party in respect of a dispute unless, following written notice by one respect of the subject matter of the dispute from any court having jurisdiction. party to the other of the existence of the dispute, the party has made good faith attempts to resolve the dispute by negotiation with the other party and the dispute has not been resolved within 30 days of receipt of the notice.

(c) No provision of this clause 19 will deny a party the right to seek urgent interlocutory relief in respect of the subject matter of the dispute from any court having jurisdiction.

20. Termination

Without prejudice to either Party's general law rights to terminate this Contract for breach by the defaulting Party:

(a) A Party may terminate this Contract by immediate notice in writing to the other Party if that other Party informs anyone it is insolvent or becomes subject to any official management, receivership, liquidation, voluntary administration, winding-up or other external administration;

(b) A Party may terminate this Contract by immediate notice in writing to the other Party if that other Party commits a material breach of this Contract (unless the breach is capable of remedy, in which case if the defaulting Party Page 4 of 4

21. GST

(a) The parties acknowledge that unless otherwise expressly provided by this Contract all amounts stated in this Contract are GST exclusive. If GST is payable in relation to a Taxable Supply the amount payable for that Taxable Supply shall be the amount specified in this Contract plus GST.

(b) If an amount payable under this Contract is calculated by reference to or otherwise relates to a cost expense or other liability (*Liability*) incurred by a party (*Payee*), then the Liability shall be reduced by the amount of any Input Tax Credit to which the Payee is entitled in respect of that Liability. The Payee will be assumed to be entitled to a full Input Tax Credit unless it demonstrates that its entitlement is otherwise prior to the date on which the payment must be made.

(c) If GST is payable on a Taxable Supply made by one party (*Supplier*) to another party (*Recipient*) then the Supplier shall provide the Recipient with a Tax Invoice before the Recipient is required to pay any amount to the Supplier in respect of the Taxable Supply, and in any case, before the end of each month.

(d) If any payment provided under this Contract is calculated by reference to or relates to a price, value, sales, revenue or similar amount (Revenue), then the Revenue used to calculate the payment must be exclusive of GST.

(e) In this clause the terms *GST*, *Taxable Supply*, *Tax Invoice* and *Input Tax Credit* have the meaning given in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

22. General

22.1 Applicable Law

The Contract will be governed by and construed with reference to the Law of the Contract.

22.2 Communication

All communication, notices or directions must be in the Contract Language.

22.3 Payments Not Acceptance

Payments by the Principal will not evidence the Principal's acceptance of any Works or Equipment.

22.4 Dispute

The parties will continue to perform their respective obligations under this Contract despite any dispute.

22.5 Set Off

The Principal may set off from any payment claimed by the Supplier, any amount claimed by the Principal from the Supplier under this Contract.

22.6 Entire Contract

This Contract is the entire agreement between the parties and supersedes any earlier agreements, communications or correspondence.

22.7 Counterparts

This Contract may be executed in any number of counterparts, each of which is to be deemed an original, but all of which together constitute a single instrument. A party may enter into this Contract by executing any counterpart. This Contract may be executed on the basis of an exchange of copies by email and execution of this Contract by such means is to be a valid and sufficient execution.