

## 1. DEFINITIONS

1.1 In these Terms and Conditions, unless the context indicates otherwise:

**Act of Insolvency** means if:

- (a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the Agreement;
- (b) execution is levied against a party by a creditor;
- (c) a party is an individual person or partnership including a person, and that person:
  - (i) commits an act of bankruptcy;
  - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
  - (iii) is made bankrupt;
  - (iv) makes a proposal for a scheme of arrangement or a composition; or
  - (v) makes a deed or arrangement under Part X of the *Bankruptcy Act 1966* (Cth) or like provision under the law governing the Agreement;
- (d) a party is a corporation and:
  - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
  - (ii) it enters into a deed of company arrangement with creditors;
  - (iii) a controller or administrator is appointed;
  - (iv) an application is made to a court for its winding up and not stayed within 14 days;
  - (v) a winding up order is made in respect of it;
  - (vi) it is resolved by special resolution that it be wound up voluntarily; or
  - (vii) a mortgagee of any of its property takes possession of that property;

or if anything analogous to any of the above events occurs;

agreement between WDRC and the Contractor relating to the Project, which comprises the Purchase Order, these Terms and Conditions, any document listed as a Schedule to these Terms and Conditions and any other document or thing expressly incorporated in the Purchase Order, formed on the basis stipulated at subclause 3.2;

**Approvals** means all licences, permits, consents, determinations and approvals necessary to complete the Project and carry out the Work;

**Business Day** means a day that is not a Saturday, Sunday or a public holiday in Queensland;

**Commencement Date** means the date WDRC requires the Contractor to commence Work as stated in the

Purchase Order or as otherwise required by the Agreement;

**Confidential Information** means any information that is by its nature confidential, which is designated as confidential by WDRC, or which the Contractor knows or ought to know is confidential, including the rates payable or amounts paid by WDRC to the Contractor, any information, object, document, data, programs, techniques, systems, processes or other confidential information (whether as an original or a copy) relating to the affairs, business, finances, WDRC's Contractors, Subcontractor's suppliers, trade secrets or operations that are the property of WDRC, however stored or recorded, that is not in the public domain or generally known to third parties;

**Contract Price** means the total amount WDRC agrees to pay the Contractor in respect of the Work, as set out in the Purchase Order;

**Contractor** means the legal organisation, entity, individual or partnership to whom WDRC directs a Purchase Order;

**Contractor's Employees** means the Contractor's employees, servants, agents, contractors, subcontractors, (including suppliers), consultants or alike and that parties' employees, agents, contractors, subcontractors, consultants or alike;

**Defects Liability Period** means twelve (12) months after the Practical Completion Date;

**Extension of Time** has the meaning given to it at subclause 11.1 of this Agreement.

**Force Majeure event** means any event beyond the reasonable control, and without fault or negligence, of the party claiming Force Majeure event, which by the exercise of reasonable care that party is not able to overcome limited to flood, typhoon or cyclone, earthquake, landslide or other natural disasters, act of war, terrorist incident, fire or explosion or epidemic;

**Goods** means the goods forming part of the Work as prescribed in the Purchase Order;

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time; GST, Supply,

**Legislative Requirements** includes:

- (a) legislative acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth, the State or Territory or local government relevant to the matters the subject of the Contract, the Works or where any part thereof is being carried out;
- (b) certificates, licences, consents, permits, Approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Work;
- (c) fees and charges payable in connection with the aforementioned; and
- (d) Australian Standards and any other standards that are applicable to the Work or materials or equipment the subject of the Work.

**Practical Completion** mean the stage where the Work is completed (except for minor defects), meets all the required Legislative Requirements and is reasonably fit for its use, purpose and for occupation;

**Practical Completion Date** means the date WDRC requires the Contractor to reach Practical Completion as stated in the Purchase Order, or as adjusted in accordance with the terms of the Agreement;

**Project** means the total of the Work identified by WDRC in the Purchase Order;

**Promptly** means as soon as practicable, so that the action must be taken without delay;

**Purchase Order** means an order or request, whether oral or written, made by WDRC to the Contractor, pursuant to clause 3.2(b) of these Terms and Conditions;

**Services** means the services to be carried out by the Contractor forming part of the Work as prescribed by the Purchase Order;

**Site** means the place or location for delivery and performance of the Work as set out in each Purchase Order or as otherwise notified by WDRC to the Contractor at its discretion;

**Taxable Supply, Registered and Tax Invoice** have the same meaning as in the GST Act; Health and Safety Plan means a plan prepared by the Contractor describing the systems the Contractor has in place for managing health and safety in carrying out the Work, and complying with all applicable WH&S Requirements; Latent Condition means any physical condition on, at or below the Site, or area surrounding the Site, which differs materially from the physical conditions which could reasonably have been expected by a prudent Contractor at the time the Agreement was formed on the basis stipulated at subclause 3.2;

**Taxes** includes any and all sales, use, personal, property, real property, value added, consumption, stamp, documentary, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever, together with any penalties, fines or interest or similar additions, imposed, levied or assessed by any government, governmental, semi-governmental or other relevant authority or otherwise payable on or in respect of the Goods and Service but excludes GST;

**Terms and Conditions** means these Purchase Order – Terms and Conditions;

the **Parties** means both WDRC and the Contractor; Variation has the meaning prescribed at clause 12 of these Terms and Conditions;

**WDRC** means Western Downs Regional Council ABN 91 232 587 651;

**Work** means the Goods, Services and/or construction work WDRC requires the Contractor to carry out and perform as set out in the Purchase Order, including any goods, services and/or work incidental thereto;

**WH&S Act** means the *Work, Health & Safety Act 2011* (Qld), as amended from time to time and any of its applicable regulations;

**WH&S Regulation** means the *Work Health & Safety Regulations 2011* (Qld), as amended from time to time and any of its regulations or applicable codes of practice;

**WH&S Requirements** means all legislative requirements relating to work, health and safety applicable to and in Queensland;

2. INTERPRETATION

- 2.1 In these terms:
- (a) heading and explanatory notes contained in the Agreement are for convenience and will not affect interpretation;
  - (b) words importing the singular include the plural and vice versa;
  - (c) words importing a gender include every gender;
  - (d) references to a person include an individual, firm or a body corporate or unincorporated, and includes that person's successors, permitted substitutes and permitted assigns;
  - (e) if the time for giving any notice, making any payment or doing any other act required or permitted by the Agreement falls on a day that is not a Business Day, then the time for giving the notice, making the payment or doing the other act will be deemed to be due the next Business Day.

3. THE AGREEMENT

- 3.1 The parties acknowledge and agree that the terms of the Agreement:
- (a) will be governed by and construed in accordance with the laws in force in the state of Queensland;
  - (b) are set out in the Agreement and will not be altered, varied, suspended, deleted or affected by reference to any prior representations, conditions or agreement, whether written or verbal; and
  - (c) are set out in the Agreement and will not be altered, varied, suspended, deleted or affected unless agreed in writing by both parties.
- 3.2 The parties acknowledge and agree that an agreement will be formed where:
- (a) the Contractor provides WDRC with a written quotation, tender or offer for work (the Quote);
  - (b) WDRC creates a purchase order in response to the Quote (such purchase order may clarify, vary, qualify or amend the Quote) (Purchase Order); and
  - (c) the Contractor accepts the Purchase Order.
- 3.3 Upon acceptance of the Purchase Order by the Contractor in accordance with subclause 3.2(c), the Agreement is formed and subject to clause 3.5, any discrepancy or ambiguity in or between any document comprising the Agreement is to be resolved by adopting the following order of precedence:
- (a) the Purchase Order;
  - (b) these Terms and Conditions;
  - (c) any Schedules to these Terms and Conditions; and
  - (d) any other document or thing expressly incorporated in the Purchase Order.

- 3.4 If either party finds any discrepancy or ambiguity in the Agreement that party must notify the other party in writing. The parties agree to consult with each other Promptly in an attempt to resolve the discrepancy or ambiguity.
- 3.5 In the event of any inconsistency between the document comprising the Agreement with respect to quality, quantity or specification, the parties agree that it will be deemed that the Agreement requires the higher quality, greater quantity or higher specification as determined at the sole discretion of WDRC.
- 3.6 WDRC is not obliged to request Work or issue any Purchase Order to the Contractor and WDRC makes no representation or guarantee as to volume of goods or services to be obtained by the Contractor, save for those set out in a Purchase Order that subsequently form part of the Agreement.
- 3.7 WDRC is not liable to the Contractor for any costs, fees, payment or loss whether at law, in equity or otherwise, for which a valid Purchase Order has not been issued by WDRC.
- 3.8 The Contractor acknowledges and agrees that no conditions sought to be imposed by it, either verbally or in writing, will apply or be enforceable unless it specifically forms part of the Agreement, a Variation or has been agreed in writing by both parties.

#### 4. THE CONTRACTOR'S OBLIGATIONS

- 4.1 The Contractor must carry out the Work and perform all of its obligations in accordance with these Terms and Conditions and the Agreement, and for the Contract Price.
- 4.2 The Contractor must commence the Work on the Commencement Date.
- 4.3 The Contractor must bring the Work to Practical Completion by the Practical Completion Date.
- 4.4 The Contractor acknowledges that the Contract Price:
- (a) is inclusive of all Taxes (excluding GST);
  - (b) includes all costs, expenses, fees and charges incurred by the Contractor in performing all of its obligations under the Agreement;
  - (c) includes all items of the Work (including the supply of any labour, materials and other items necessary or incidental to the Work);
  - (d) includes the Contractor's profit, attendance, preliminaries, supervision and on-site and off-site overheads in connection with the performance of all of its obligations under the Agreement;
  - (e) will not be subject to rise and fall;
  - (f) will not be subject to any adjustment in respect of Site allowances or because of fluctuations in charges in the costs of labour, materials or otherwise;
  - (g) includes for minor items not expressly mentioned in the Purchase Order but which are necessary for the proper execution and completion of the Work;
  - (h) makes allowance for slight variations in dimensions shown on drawings which may be caused by unavoidable inequalities in the size of materials; and/or

- (i) will not be subject to any other adjustment for any reason except to the extent expressly provided by the Agreement.

#### 4.5 The Contractor agrees and warrants to WDRC that the Contractor:

- (a) at all times will be suitably qualified and experienced;
- (b) will exercise due skill, care and diligence in the carrying out, and completion of, the Work;
- (c) will satisfy all Legislative Requirements in performing its obligations under the Agreement and in carrying out the Work;
- (d) will take all measures necessary to protect people and property, including the Work, avoid unnecessary interference with passage of people and vehicles, prevent nuisance, unreasonably noise and disturbance in carrying out the Work and in completing the Project (and if the Contractor damages any property, it will provide temporary protection for, and repair it at its cost);
- (e) will be responsible for the care of the whole of the Work under the Agreement and if loss or damage occurs the Contractor will at its cost rectify such loss or damage except to the extent that the negligence of WDRC or its personnel caused or contributed to that loss or damage;
- (f) will at all times comply with the WH&S Act, WH&S Regulations and any applicable WH&S Requirements;
- (g) will at all times hold the required licences required to undertake the Work;
- (h) has informed itself of the nature of the Work and the materials necessary for performance of the Work, the means of access to and the facilities for delivery at the Site and that all things considered it can complete the Work to the required standard by the Practical Completion Date and for the Contract Price; and
- (i) will indemnify WDRC from and against any and all claims, demands, suits, liabilities, causes of action, losses, expenses, damages or penalties, including without limitation court costs and reasonable legal costs (on the indemnity basis) (**Claims**) to the extent such Claims arose from, resulted from or were caused by any negligent act or omission by the Contractor or the Contractor's Employees except to the extent that the negligence of WDRC or its personnel caused or contributed to that claim, demand, suit, liability, cause of action, loss, expense, damage or penalty;.

#### 4.6 The Contractor agrees and warrants to WDRC that the Contractor will ensure the Work:

- (a) will meet all Legislative Requirements;
- (b) will be carried out in accordance with any specification, plan, description provided or reference given in or attached to the Purchase Order that forms part of the Agreement; and
- (c) all materials and/or Goods supplied or used by it for use in the Work will:
  - (i) be as prescribed by the Purchase Order;

- (ii) be good and suitable for the purpose for which they are to be used;
- (iii) be fit for the purpose described in or reasonably inferred from this Agreement exercising industry practice;
- (iv) comply with all applicable Legislative Requirements;
- (v) unless otherwise stated in the Agreement, will be new; and
- (vi) be owned by the Contractor and unencumbered.

## 5. WDRC OBLIGATIONS

- 5.1 WDRC will pay the Contractor the Contract Price as set out in the Purchase Order.
- 5.2 WDRC will Promptly:
- (a) give the Contractor all directions reasonably required by the Contractor and within a time which does not cause any delay to the Contractor in carrying out its obligations under the Agreement; and
  - (b) provide the Contractor all information reasonably required for the correct and timely execution of the Project.
- 5.3 WDRC warrants that the Site satisfactorily supports work within the general scope of the Work.

## 6. THE SITE, GOODS AND SERVICES

- 6.1 WDRC will provide the Contractor with sufficient access to the Site to allow it to perform the Work.
- 6.2 The Contractor acknowledges that WDRC may have other entities or people carrying out work on the Site concurrently with its performance of the Work and the Contractor will coordinate the Work with those concurrent entities, people and their work.
- 6.3 The Contractor will at all reasonable times give WDRC (and to any person authorised by WDRC) access to the Site, the Work and/or the Project and will provide every reasonable facility necessary for the supervision, examination and/or testing of any Work carried out or Goods or Services supplied pursuant to the Agreement at the Site or at any place where such work is being carried out or such Goods or Services are being prepared or stored.
- 6.4 At any time prior to the making of a final payment by WDRC, WDRC may direct that any part of the Work, Goods and/or Services be tested (including measured and/or examined). The Contractor will provide such assistance and samples and make accessible such part of the Work as may be required. On completion of the tests, the Contractor will make good the Work so that it fully complies with the Agreement.
- 6.5 Risk in the Goods remains with the Contractor and does not pass to WDRC until the Goods are delivered to the Site, inspected and accepted by WDRC upon Practical Completion. Signing or acknowledgement of receipt of Goods does not constitute acceptance of the Goods by WDRC.
- 6.6 WDRC will be deemed to have inspected and accepted the Goods when WDRC puts the Goods to their ordinary

and intended use, or when the Work has reached Practical Completion whichever occurs later.

## 7. ASSIGNMENT AND SUBCONTRACTING

- 7.1 The Contractor agrees that it will not, without the prior written approval by WDRC (including terms), assign the Agreement or any payment or any other right, benefit or interest thereunder.
- 7.2 WDRC may assign or novate this Agreement or assign a right under this Agreement:
- (a) with the prior written approval of the Contractor, which approval shall not be unreasonably withheld; or
  - (b) to a government agency or any owner of any of the Site, by notice to the Contractor.
- 7.3 The Contractor may subcontract part of the Work with the written approval from WDRC (which will not be unreasonably withheld).
- 7.4 Despite subclause 7.3 or anything to the contrary in the Agreement, the Contractor remains vicariously liable to WDRC for the acts, defaults and omissions of any of its subcontractors and the Contractor's Employees as if they were the acts, defaults or omissions of the Contractor.
- 7.5 Subcontracting the Work will not relieve the Contractor from any liability or obligation under the Agreement.

## 8. INSURANCE AND INDEMNITIES

- 8.1 The Contractor must effect and maintain the following insurance cover for the duration of the Agreement and Work:
- (a) to an amount not less than \$10,000,000.00 per occurrence, for public and product liability insurance in respect of third party personal injury or property damage;
  - (b) in respect of employees, WorkCover and any other similar insurance required pursuant to Legislative Requirements;
  - (c) in respect of motor vehicles, plant and equipment, any required statutory insurance including compulsory third party insurance where required; and
  - (d) to an amount not less than the value of the Work, in respect of claims for breach of professional duty, professional indemnity insurance.
- 8.2 The Contractor is liable for and must indemnify WDRC against any liability, loss, claim or proceeding in respect of any injury, loss or damage whatsoever to any real or personal property insofar as such injury loss or damage arises out of or in the course of or by reason of the execution of the Work and is due to the negligent act, omission or default of the Contractor, the Contractor's Employees or the Contractor's consultants, servants, agents and/or subcontractor's or that subcontractor's servants or agents. However, the Contractor's liability to indemnify WDRC will be reduced proportionately to the extent that a negligent act, omission or default of WDRC may have contributed to such injury, loss or damage.
- 8.3 The Contractor is liable for and must indemnify WDRC against any Claims whatsoever arising under any Legislative Requirement or at common law in respect of personal injury to or death of any person arising out of or

in the course of or caused by the execution of the Work if due to (or attributed by) the negligent act, omission or default of the Contractor, the Contractor's Employees or the Contractor's consultants, servants, agents and/or subcontractor's or that subcontractor's servants or agents. However, the Contractor's liability to indemnify WDRC will be reduced proportionately to the extent that a negligent act, omission or default of WDRC may have contributed to the personal injury or death.

- 8.4 The Contractor must effect work insurance, noting WDRC as having relevant interest in the policy (wherever possible). The work insurance and policy must at all times cover the whole of the Work including any associated temporary works for which the Contractor is responsible whether on or adjacent to the Site, in storage, off-site or in transit within Australia to or from the Site, and be in respect of loss, destruction or damage of or to the Work for the full reinstatement and replacement cost. The sum insured must take into account, but not limited to:
- (a) The full amount of the Contract Price; plus
  - (b) an additional 10% of the Contract Price.

## 9. WORK HEALTH AND SAFETY

- 9.1 Without limiting the Contractor's obligations under the Agreement, the Contractor acknowledges and agrees that:
- (a) WDRC is hereby deemed to have appointed the Contractor to be principal contractor for the Work pursuant to the WHS Regulation;
  - (b) the Contractor is hereby deemed to have accepted the appointment;
  - (c) the Contractor, in respect of the Work, becomes responsible for the performance of the principal contractor's functions under the WH&S Regulation and WH&S Act, including the payment of any fees or charges necessary to comply with the requirements of the WH&S Regulation and WH&S Act and the requirements of applicable WH&S Requirements; and
  - (d) nothing in the Agreement, or otherwise done by WDRC limits or otherwise affects the Contractor's responsibilities under clause 9 or 4 of the Agreement.
- 9.2 The Contractor acknowledges and agrees that it will:
- (a) prepare a Health and Safety Plan;
  - (b) submit the Health and Safety Plan to WDRC prior to commencing the Work or upon written request from WDRC, and that WDRC may at its sole discretion either accept or reject the Health and Safety Plan;
  - (c) re-do and re-submit the Health and Safety Plan in circumstances where WDRC rejects it, until WDRC accepts the Health and Safety Plan;
  - (d) comply with all applicable Legislative Requirements, including the WH&S Regulation and WH&S Act and any applicable codes of practice;
  - (e) comply with any direction given by WDRC at any time relating to workplace health and safety; and
  - (f) take any reasonable action necessary to ensure the health and safety of the Contractor's

Employees, subcontractors and their employees and/or any other person who may be affected by the Contractor's actions whilst undertaking the Work.

## 10. LATENT CONDITIONS

- 10.1 If the Contractor encounters any Latent Condition, then the Contractor must immediately, and in any event within 5 Business Days, notify WDRC in writing of the Latent Condition and the Contractor's estimate of the work required to overcome the Latent Condition and the Contractor's estimate of the cost to overcome the Latent Condition.
- 10.2 Subject to subclause 10.1, the Principal must direct the Contractor as to what action must be taken to overcome the Latent Condition.
- 10.3 If a Latent Condition causes the Contractor to incur extra costs then such extra costs must be valued as a Variation by WDRC.
- 10.4 If a Latent Condition causes delay to the Project, the Contractor is entitled to an Extension of Time as assessed by WDRC.

## 11. DELAYS AND EXTENSION OF TIME CLAIMS

- 11.1 If the progress of the Work is delayed as a result of:
- (a) any act, default or omission of WDRC or its consultants, agents or other contractors (not being employed by the Contractor) in breach of the Agreement;
  - (b) a Variation to the Work;
  - (c) a Latent Condition;
  - (d) inclement weather or any condition arising as a result of inclement weather; or
  - (e) state or nationwide industrial conditions occurring before the Practical Completion Date,
- the Contractor may claim a reasonable extension of time to the Practical Completion Date, equal to the period of the delay.
- 11.2 It is a condition precedent to the Contractor's eligibility for an Extension of Time that it forward to WDRC a written notice specifying the cause and likely period of the delay, within 5 Business Days of the delay commencing.
- 11.3 WDRC may grant such an Extension of Time to the Practical Completion Date as it deems reasonable, within 28 days of receipt of the claim pursuant to clause 11.2.
- 11.4 WDRC may (at any time in its sole and unfettered discretion and solely for WDRC's benefit) by notice in writing to the Contractor grant an Extension of Time to the Practical Completion Date even if the Contractor has not requested an Extension of Time.
- 11.5 If the Work does not reach Practical Completion by the Practical Completion Date, the Contractor must pay or allow to WDRC by way of liquidated damages a sum as stated in the Purchase Order for each day that the Work is delayed until Practical Completion is reached.

## 12. VARIATIONS

- 12.1 WDRC may direct the Contractor to carry out a variation to the Work by directing the Contractor to increase, decrease

or omit work from the Work, or alter the line, level, quality or nature of the Work (**Variation**). No Variation will vitiate the Agreement and any Variation directed by WDRC must be made in writing to the Contractor (**Variation Direction**).

- 12.2 If the Contractor is of the opinion that it cannot carry out the Variation, the Contractor may provide notice to the Council within 5 Business Days of the date the direction is given.
- 12.3 Council must consider the reasons given by the Contractor in the notice considered in subclause 12.2 and, acting reasonably, either:
- (a) direct the Contractor to carry out all or part of the Variation as directed; or
  - (b) withdraw the Variation.
- 12.4 The Contractor will not vary the Work except as directed in a Variation Direction.
- 12.5 A Variation Direction is a condition precedent to compensation for work associated with a Variation by the Contractor.
- 12.6 Prior to directing a Variation, WDRC may obtain from the Contractor:
- (a) a detailed breakdown of the price for which the Contractor will carry out the proposed Variation;
  - (b) the effect (if any) of the proposed Variation on the Work; and
  - (c) the effect (if any) of the proposed Variation on the Practical Completion Date.

### 13. TERMS OF PAYMENT

- 13.1 The Contractor will claim payment as specified in the Purchase Order or upon reaching Practical Completion of the Work, by issuing to WDRC a relevant Tax Invoice that includes all Taxes.
- 13.2 WDRC will, within 30 days after receiving such a Tax Invoice, pay the amount:
- (a) in full (if no part of the Tax Invoice is disputed); or
  - (b) in-part (that part of the Tax Invoice that is undisputed).
- 13.3 Any dispute in relation to a Tax Invoice or part-payment thereof will be resolved in accordance with clause 15 of these Terms and Conditions.
- 13.4 Payment of money by WDRC to the Contractor will not be evidence that the Work or Project has been carried out and/or completed satisfactorily. Any payment other than clearly stipulated as final payment will be payment on account only.

### 14. DEFECTS LIABILITY

- 14.1 Where a defect in the Work occurs during the Defects Liability Period or within the Contractor's warranty period (whichever is latest), the Contractor must rectify all such defects within the time specified by WDRC in a direction given under this subclause 14.1 (or, if no time is specified, after the expiry of seven days from the date on which the Contractor receives the direction) and at its own expense to such a standard as to comply with the requirements set out in the Agreement.
- 14.2 If the Contractor fails to comply with subclause 14.1, WDRC may have the required rectification work carried

out by other contractors and the reasonable cost of such rectification work will be a debt due and payable to WDRC by the Contractor.

### 15. DISPUTE RESOLUTION

- 15.1 If either of the Parties have a difference or dispute in connection with, or arising out of the Agreement, that party must give the other party a written notice of dispute adequately identifying and providing details of the dispute.
- 15.2 Once a notice of dispute has been provided in accordance with clause 15.1, the parties must convene a 'without prejudice dispute resolution' conference in an attempt to resolve the dispute.
- 15.3 If the 'without prejudice resolution' conference is unsuccessful, then the dispute may be referred to the QBCC Dispute Resolution processes and fully exhausted before taking the dispute to QCAT or a court.
- 15.4 In spite of anything else in these terms and conditions and the Agreement, the WDRC, will not, in any event be liable to the Contractor for any claim for alternative accommodation, disruption, inconvenience, removal/storage of furniture, loss of opportunity, revenue, profit or anticipated profit whether arising in contract, negligence or otherwise.

### 16. TERMINATION

- 16.1 If any substantial loss or damage affecting the Work occurs, except for loss or damage caused by WDRC or its personnel, then WDRC may, by written notice to the Contractor, terminate the Agreement effective immediately. If a Force Majeure event occurs, prohibiting the Contractor from carrying out the Work for a continuing (unbroken) period of 30 Business Days or more, either party may terminate the Agreement and neither party will be liable to the other party in respect of such a termination.
- 16.2 If the Contractor:
- (a) commits a substantial breach of the Agreement which is not capable of remedy;
  - (b) suspends the Project or Work before reaching Practical Completion without reasonable cause;
  - (c) causes WDRC to reasonably believe that the Contractor is unable or unwilling to complete the Project or carry out the Work; and/or
  - (d) commits an Act of Insolvency,
- then WDRC may, without prejudice to any other right or remedy, by written notice to the Contractor, terminate the Agreement effective immediately.
- 16.3 If the Contractor commits a substantial breach of the Agreement which is capable of remedy in the reasonable opinion of WDRC, then WDRC may by written notice issue a show cause notice to the Contractor, requiring that it remedy the relevant default within a specified, reasonable period of time. If the Contractor fails to remedy the relevant default within the specified, reasonable period of time, WDRC may terminate the Agreement effective immediately at that point.
- 16.4 If WDRC terminates the Agreement based on subclauses 16.2 or 16.3, WDRC's rights and remedies will be the same as they would have been under the law governing the Agreement had the Contractor repudiated



the Agreement and WDRC elected to treat the Agreement as at an end and recover damages.

16.5 If WDRC:

- (a) commits a substantial breach of the Agreement;  
or
- (b) commits an Act of Insolvency,

the Contractor may by written notice issue a show cause notice to WDRC, requiring it to remedy the breach within a reasonable period of time, being no less than 10 Business Days. If WDRC fails to remedy the relevant default within the specified time, the Contractor may terminate the Agreement effective immediately at that point.

decisions, advice and actions properly consider the human rights set out in the *Human Rights Act 2019* (Qld) and respect the human rights of others. The Contractor is expected to actively encourage a workplace atmosphere that is free from discrimination, harassment and unfair treatment and protects human rights in accordance with the *Human Rights Act 2019* (Qld). More information regarding the Human Rights Act is available at [www.qhrc.qld.gov.au](http://www.qhrc.qld.gov.au).

## 17. SERVICE OF NOTICES

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17.1 Unless otherwise stated in the Agreement, any written notice, or other document required to be given to the other party is deemed to have been given and received:

- (a) by hand to the person to whom it is required to be given at that time, on delivery;
- (b) by pre-paid post or registered post to the address of the person to whom it is required to be given as stated in the Purchase Order, or the date of receipt or, in the case of registered post two (2) clear Business Days after posting, whichever is earlier; or
- (c) by email to the email address (if any) stated in the Purchase Order, on that Business Day.

## 18. MISCELLANEOUS

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- 18.1 The Parties agree to keep each other's Confidential Information confidential and to only disclose that information to the extent required to perform the Agreement, in connection with legal proceedings or as may be required at law.
- 18.2 The Contractor agrees it will pay all royalties and expenses, and be liable for all claims, in respect of the use of patent rights, trade marks or other protected intellectual property rights, for or in connection with any Goods or Services supplied under the Agreement, and will indemnify WDRC against all claims which may arise as a result of the use of these.
- 18.3 Copyright in any of the design documents, plans, specifications and/or designs vests in WDRC and WDRC grants to the Contractor a licence to use them for the purpose of the Agreement. WDRC warrants and provides an indemnity to the Contractor that any document, plans, specification and/or design provided by it does not infringe any intellectual property rights. The Contractor warrants and provides an indemnity to WDRC that any document, plans, specification and/or design provided by it does not infringe any intellectual property rights.
- 18.4 WDRC may need to collect personal information from the Contractor. WDRC will not disclose personal information about the Contractor to any external parties unless such disclosure is required by law, is authorised by you or by law and/or it has consent from the Contractor.
- 18.5 WDRC as a public entity has human rights obligations under the *Human Rights Act 2019* (Qld). The Contractor may therefore be considered a 'functional public entity' if engaged to perform functions of a public nature on behalf of WDRC. As such the Contractor must ensure that their