

CuDECO Limited Standard Terms and Conditions for Supply of Goods

Amended from Australian Standards™ AS4912-2002

Item					
1.	Purchaser CuDECO Limited ABN: 14 000 317 251				
2.	Purchaser's Address Rocklands Mine Site Head Office Corella Park Road Cloncurry, Queensland, Australia, 4824 Level 11, 100 Edward Street, Brisbane, Queensland, Australia, 4000 Phone: 07) 3210 5900 Email: admin@cudeco.com.au				
3.	Supplier ABN:				
4.	Supplier's Address Phone: Email:				
5.	Stated Purpose <i>As stated or in reasonably ascertainable form or contemplated by the Specification</i>				
6.	a) Jurisdiction b) Governing Law Cloncurry in the State of Queensland Queensland				
7.	Currency Payment Address Details Australian Dollars (AUD) Purchaser's Address				
8.	Settlement Terms				
9.	Purchaser Supplied Documents <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 70%; text-align: center; border-bottom: 1px solid black;">Document</th> <th style="width: 30%; text-align: center; border-bottom: 1px solid black;">No of Copies</th> </tr> </thead> <tbody> <tr> <td style="border: none;"></td> <td style="border: none;"></td> </tr> </tbody> </table>	Document	No of Copies		
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11.	Public and Product Liability Insurance a) is Public Liability Insurance required? b) if yes, level of cover required? Yes				
	c) period Public Liability Insurance is required? d) is Product Liability Insurance required? e) if yes, level of cover required? f) period of Product Liability Insurance is required? For the duration of the Contract Yes \$10,000,000 For the duration of the contract and thereafter for 6 years				
12.	Liquidated Damages, rate. 1% per week up to a maximum of ten percent (10%) of the total purchase value of the delayed line item/s only.				
13.	Date for Completion of Acceptance Testing. <i>If nothing stated, 28 days after delivery.</i>				

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14.	Party responsible for unloading the goods.	<i>If nothing stated, the Supplier.</i>
15.	Period for Purchaser's notice that goods are acceptable or are rejected.	<i>If nothing stated, 7 days</i>
16.	Defects Liability Period	24 months after acceptance testing or 30 months after delivery, whatever comes first.
17.	Invoice (Issue date)	First day of each month
18.	Interest rate on overdue payments.	3% per annum
19.	Supplier's default	28 days
20.	<p>The Suppliers Liability is limited as follows:</p> <p>The respective limits apply to the sum of the respective claims and not to each claim.</p> <p>a) For claims in respect of or arising out of death or personal injury:</p> <p>b) For loss of rents, income (other than arising out of death or personal injury) and the opportunity to earn profits and indirect and consequential loss:</p> <p>c) For all other claims whatsoever.</p>	<p>Unlimited</p> <p>\$ _____</p> <p><i>If nothing stated, \$1</i></p> <p>\$ _____</p> <p><i>If nothing stated, the base contract sum</i></p>
21.	The Purchaser's Liability is limited as follows:	The base contract sum

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THE PARTIES AGREE AS FOLLOWS:

1. CONTRACT FORMATION

1.1 Preliminary

These standard terms and conditions for supply of goods apply when the Purchaser issues a Purchase Order to a Supplier after which a contract is formed made up of the Purchase Order, these standard terms and conditions, and any Schedules (including and annexures to any Schedule) (referred to throughout these terms and conditions as the 'Contract').

1.2 Definitions and Interpretation

As per schedule 1.

2. NATURE OF CONTRACT

2.1 Performance and Payment

In accordance with the requirements of the Contract:

- (a) the Supplier shall supply and deliver the goods in quantities ordered during the term by purchase order only; and
- (b) the Purchaser shall accept the goods and pay the Supplier each purchase order value adjusted by any additions or deductions made pursuant to the Contract.

2.2 Purchase Order

The Purchaser shall order the goods by purchase order. Each purchase order shall be given to the Supplier in writing or by electronic data transmission and shall include:

- (a) the goods required;
- (b) the required quantity of those goods;
- (c) the time, date and method for delivery (but which date shall not be before the end of the lead time for those goods)
- (d) and the delivery place.

A purchase order may include directions under clause 17 as to the delivery for each consignment.

2.3 Purchase Order Register

The Supplier shall retain copies of all purchase orders and maintain a register stating in respect of each purchase order:

- (a) the date and time of receipt;
- (b) details of the delivery note; and
- (c) the cumulative total of all goods delivered under each purchase order.

2.4 No Purchase Order

In the event that goods are supplied without a purchase order, the Purchaser is under no obligation to accept the goods or be liable for any costs associated with the goods supply and delivery.

3. CONTRACT DOCUMENTS

3.1 Purchaser-Supplied Documents

The Purchaser shall supply to the Supplier the documents and number of copies thereof, both stated in Item 9. They shall:

- (a) remain the Purchaser's property and be returned to the Purchaser on written demand; and
- (b) not be used, copied nor reproduced for any purpose other than the performance of the Contract.

3.2 Supplier-Supplied Documents

The Supplier shall supply to the Purchaser the documents and number of copies thereof, both stated in Item 10.

If the Supplier submits documents to the Purchaser, then except where the Contract otherwise provides the Purchaser shall not be required to check such documents for errors, omissions, inconsistencies, ambiguities, discrepancies, or compliance with the Contract;

Copies of documents supplied by the Supplier shall be the

Purchaser's property but shall not be used or copied otherwise than for the installation, use, support, repair, maintenance or alteration of the goods.

3.3 Confidential Information

The parties shall ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential.

If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else any such confidential matter even after expiry of the term or earlier termination of the Contract.

3.4 Media

The Supplier shall not disclose any information concerning the Contract for distribution through any communications media without the Purchaser's prior written approval (which may be unreasonably withheld). The Supplier shall refer to the Purchaser any enquiries from any media concerning the Contract.

4. WARRANTIES

The Supplier warrants that:

- (a) the goods are acceptable;
- (b) the goods will be fit for their stated purpose in Item 5;
- (c) the goods will comply with and meet the requirements of the Contract, including the Specification;
- (d) the goods will comply with all legislative requirements;
- (e) the goods will be manufactured and constructed from suitable new materials using proper tradesmanlike workmanship unless otherwise agreed in writing by the Purchaser;
- (f) each of its Personnel (including its subcontractors) shall act in a workmanlike, careful, safe and proper manner to supply the Goods in accordance with requirements of the Contract; and
- (g) satisfy all the other requirements of the Contract.

5. ASSIGNMENT

Neither party shall, without the other's prior written approval (including terms) assign the Contract or any payment or any other right, benefit or interest thereunder.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 Warranties

The Supplier warrants that, unless otherwise provided in the Contract, any other design, materials, documents and methods of working, each provided by the Supplier, shall not infringe any intellectual property right.

6.2 Ownership and Licence

Except as otherwise provided in the Contract, ownership of intellectual property rights (other than third party intellectual property rights) associated with the goods and

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any documentation provided by the Supplier pursuant to the Contract is vested and shall vest in the Supplier.

The Supplier grants the Purchaser a worldwide royalty free, nonexclusive, transferable, perpetual licence to use intellectual property rights associated with the goods and any documentation provided pursuant to the Contract for the installation, use, support, repair, maintenance, or alteration of the goods by or on behalf of the Purchaser.

6.3 Sub-Licence

The Purchaser may sublicense any intellectual property rights in respect of which it has been granted a licence by the Supplier pursuant to subclause 6.2.

6.4 Licence Survives Termination

The licence granted by the Supplier under subclause 6.2 shall survive any dispute in relation to the Contract as well as the termination of the Contract for any reason.

6.5 Indemnity

The Supplier indemnifies the Purchaser against any claims against, or damage, expense, loss, or liability suffered or incurred by, the Purchaser arising out of or in connection with:

- (a) the use by the Purchaser of any documents supplied by the Supplier; and
- (b) any actual or alleged infringement of any intellectual property rights associated with the goods or the licence granted to the Purchaser by the Supplier under subclause 6.2.

7. DESIGNATED ITEMS

7.1 The Supplier:

- (a) does not warrant that any designated item identified in writing by the Purchaser:
 - (i) is of merchantable quality or fit for the stated purpose; or
 - (ii) does not infringe any intellectual property right.
- (b) shall, from the manufacturer of each such designated item, obtain for the benefit of the Purchaser:
 - (i) such warranties as are given by the manufacturer in the ordinary course of its business for each such item; and
 - (ii) appropriate licences or permits for use.

7.2 Supplier's Obligations

The Purchaser may, at its expense, require the Supplier to either:

- (a) assign to the Purchaser such rights, if any, as the Supplier has against the manufacturer of any designated item; or
- (b) pursue any reasonable claim against the manufacturer of any designated item.

Except to the extent that the Supplier recovers damages from the manufacturer, the Supplier has no liability to the Purchaser in respect of any such designated item

Upon receipt of a written request from the Purchaser in respect of any such designated item, the Supplier shall notify the Purchaser of the name of the manufacturer, any terms of contract with the manufacturer which purport to limit the manufacturer's liability to the Supplier in respect of the designated item and such other information as the Purchaser reasonably requests.

8. LEGISLATIVE REQUIREMENTS

8.1 Compliance

The Supplier shall satisfy all legislative requirement.

The Supplier, upon finding that a legislative requirement is at variance with the Contract, shall promptly give the Purchaser written notice thereof.

8.2 Changes

If a legislative requirement applicable in the delivery place:

- (a) necessitates a change:
 - (i) to the goods; or
 - (ii) in a fee or charge or payment of a new fee or charge;
- (b) comes into effect prior to the closing of tenders but could not reasonably then have been anticipated by a competent supplier; and
- (c) causes the Supplier to incur more or less cost than otherwise would have been incurred,

The difference shall be assessed by the Purchaser and added to or deducted from the purchase order value or schedule of unit prices, as the case may be.

9. QUALITY ASSURANCE

In respect of the goods, the Purchaser may direct the Supplier to:

- (a) supply particulars of the mode and place of manufacture, the source of supply of materials and other components, the performance capacities and other related information; and
- (b) if the Contract elsewhere provides, arrange reasonable inspection at such place or sources by the Purchaser or persons authorised by the Purchaser.

If the Contract elsewhere requires further quality assurance, the Supplier shall:

- (a) plan, establish and maintain a conforming quality system; and
- (b) ensure that the Purchaser has reasonable access to the quality system of the Supplier and subcontractors so as to enable monitoring and quality auditing.

Any such quality system shall be used only as an aid to achieving compliance with the Contract and to document such compliance. Such system shall not discharge the Supplier's other obligations under the Contract.

10. SUPPLIER'S INDEMNITY

Insofar as this clause applies to property, it applies to property other than the goods. The Supplier shall indemnify the Purchaser against:

- (a) loss of or damage to the Purchaser's property; and
- (b) claims in respect of personal injury or death or loss of, or damage to, any property,

Arising out of or as a consequence of the Supplier's performance of the Contract, but the indemnity shall be reduced proportionally to the extent that the act or omission of the Purchaser or its consultants, agents or other contractors (not being employed by the Supplier) may have contributed to the injury, death, loss or damage.

This clause shall not apply to:

- (a) the extent that the Supplier's liability is limited by another provision of the Contract; and
- (b) exclude any other right of the Purchaser to be indemnified by the Supplier.

11. INSURANCE

11.1 Insurance of The Goods

The Supplier shall insure the goods for their replacement value against loss or damage, including loss or damage in transit to the delivery place, and if the Contract requires the Supplier to unload the goods, also such unloading.

Insurance cover shall be effected before the commencement of supply or delivery of the goods..

The policy or policies under this subclause shall:

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- (a) be maintained until risk in the goods passes to the Purchaser;
- (b) cover the parties' respective rights, interests and liabilities; and
- (c) if required by the Purchaser, be in the joint names of the parties.

11.2 Public and Product Liability Insurance

If required in Item 11(a), before commencing the performance of the Contract, the Supplier shall effect and maintain public liability insurance for the period stated in Item 11(c).

If required in Item 11(d), before commencing the performance of the Contract, the Supplier shall effect and maintain product liability insurance for the period stated in Item 11(f).

Policies, if required shall:

- (a) cover the:
 - (i) respective rights and interests; and
 - (ii) liabilities to third parties, of the parties and subcontractors from time to time, whenever performing obligations under the Contract;
- (b) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by subclause 11.1) and the death of or injury to any person (other than liability which the law requires to be covered under a workers' compensation insurance policy);
- (c) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in Items 25(b) or (e) as applicable; and
- (d) be with an insurer and otherwise in terms both approved in writing by the Purchaser (which approvals shall not be unreasonably withheld).

11.3 Insurance of Employees

Before commencing performance of the Contract, the Supplier shall insure against statutory and common law liability for death of or injury to persons employed by the Supplier. The insurance cover shall be maintained until expiry of the term or earlier termination of the Contract.

Where permitted by law, the insurance policy or policies shall be extended to provide indemnity for the Purchaser's statutory liability to the Supplier's employees.

The Supplier shall ensure that all subcontractors have similarly insured their employees.

12 Inspection and Provision of Insurance

Policies

12.1 Proof of Insurance

Whenever requested in writing by the Purchaser, the Supplier shall provide satisfactory evidence of any insurance effected and maintained.

Insurance shall not limit liabilities or obligations under other provisions of the Contract.

If after being so requested, the Supplier fails promptly to provide satisfactory evidence of compliance with subclause 11.1, 11.2 or 11.3, then without prejudice to other rights or remedies, the Purchaser may insure and the cost thereof shall become moneys due and payable from the Supplier to the Purchaser. The Purchaser may refuse payment until such evidence is produced by the Supplier.

12.2 Notices From / Or to Insurer

The Supplier shall ensure that each insurance policy under subclause 11.1 or 11.2 contains provisions acceptable to the Purchaser which:

- (a) requires the insurer to inform both parties, whenever the insurer gives a party or a subcontractor a notice in connection with the policy;
- (b) provides that a notice of claim given to the insurer by either party or a subcontractor shall be accepted by the insurer as a notice of claim given by both parties and the subcontractor; and
- (c) requires the insurer, whenever the Supplier fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.

12.3 Notices of Potential Claims

A party shall, as soon as practicable, inform the other party in writing of any occurrence that may give rise to a claim under an insurance policy required by subclause 11.1 or 11.2 and shall keep the other party informed of subsequent developments concerning the claim.

The Supplier shall ensure that subcontractors in respect of their operations similarly inform the parties.

12.4 Cross Liability

Any insurance required to be effected in joint names in accordance with the Contract shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

13. DIRECTIONS

Except where the Contract otherwise provides, the Purchaser may give a direction orally but shall as soon as practicable confirm it in writing. If the Supplier in writing requests the Purchaser to confirm an oral direction, the Supplier shall not be bound to comply with the direction until the Purchaser does so.

14. SUSPENSION

14.1 Purchaser's Suspension

The Purchaser may direct the Supplier to suspend supply or delivery of the whole or part of the goods for such time as the Purchaser thinks fit, if the Purchaser, acting reasonably, is of the opinion that it is necessary:

- (a) because of an act, default or omission of:
 - (i) the Purchaser or its employees, consultants, agents or other contractors (not being employed by the Supplier); or
 - (ii) the Supplier, a subcontractor, or either's employees or agents;
- (b) for the protection or safety of any person or property; or
- (c) to comply with a court order.

14.2 Supplier's Suspension

If the Supplier wishes to suspend supply or delivery of the whole or part of the goods, otherwise than pursuant to subclause 23.7, the Supplier shall obtain the Purchaser's prior written approval.

The Purchaser may approve the suspension and may impose conditions of approval.

14.3 Recommencement

As soon as the Purchaser becomes aware that the reason for any suspension no longer exists, the Purchaser shall direct the Supplier to recommence the suspended supply or delivery as soon as reasonably practicable.

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The Supplier may recommence the supply or delivery suspended pursuant to subclause 14.2 or 23.7 at any time after reasonable notice to the Purchaser.

14.4 Cost

The Supplier shall bear the cost of suspension pursuant to paragraph (a)(ii) of subclause 14.1 and subclause 14.2. If the Supplier made the protection, safety or court order necessary, the Supplier shall bear the cost of suspension pursuant to paragraph (b) or (c) of subclause 14.1. If the Supplier otherwise incurs more or less cost than otherwise would have been incurred, the difference shall be assessed by the Purchaser and added to or deducted from the purchase order value.

15. Extension of Time (EOT)

15.1 Notice of Delay

A party becoming aware of anything which will probably cause delay to supply or delivery shall promptly give the other party written notice of that cause and the estimated delay.

15.2 Claim

The Supplier shall be entitled to such extension of time for delivery as the Purchaser, acting reasonably, assesses ('EOT'), if:

- (a) the Supplier is or will be delayed in completing delivery by a qualifying cause of delay; and
- (b) the Supplier gives the Purchaser, within 14 days of when the Supplier should reasonably have become aware of that causation occurring, a written claim for an EOT evidencing the facts of causation and of the delay to delivery (including extent).

If further delay results from a qualifying cause of delay evidenced in a claim under paragraph (b) of this subclause, the Supplier shall claim an EOT for such delay by promptly giving the Purchaser a written claim evidencing the facts of that delay.

15.3 Assessment

When both non-qualifying and qualifying causes of delay overlap, the Purchaser shall apportion the resulting delay to the delivery according to the respective causes' contribution.

In assessing each EOT the Purchaser shall disregard questions of whether:

- (a) the goods can nevertheless be delivered without an EOT; or
- (b) the Supplier can accelerate, but shall have regard to what prevention and mitigation of the delay has not been effected by the Supplier.

15.4 Extension of Time

Within 14 days after receiving the Supplier's claim for an EOT, the Purchaser shall give to the Supplier a written direction evidencing the EOT so assessed. If the Purchaser does not do so, there shall be a deemed assessment and direction for an EOT as claimed.

Notwithstanding that the Supplier is not entitled to or has not claimed an EOT, the Purchaser may at any time and from time to time before delivery direct an EOT for performance of obligations hereunder.

15.5 Liquidated Damages

If the goods are not delivered by the date for delivery or are rejected pursuant to subclause 19.1, liquidated damages in Item 12 shall be due and payable to the Purchaser for every day after the date for delivery to and including the earliest of:

- (a) the date of delivery;

- (b) termination of the Contract;
- (c) where the goods have been rejected, upon acceptance; or (d) acquisition of substituted, like goods.

If an EOT is directed after the Supplier has paid or the Purchaser has set off liquidated damages, the Purchaser shall forthwith repay to the Supplier such of those liquidated damages as represent the days the subject of the EOT.

16. TESTING

16.1 Acceptance Testing

The Purchaser may direct that any of the goods be tested before acceptance. Such acceptance testing shall be completed by the date stated in Item 13. The Supplier shall give such assistance and samples and make accessible such goods as may be directed by the Purchaser.

16.2 Who Conducts

Tests shall be conducted as provided elsewhere in the Contract or by the Purchaser or a person (which may include the Supplier) nominated by the Purchaser.

16.3 Notice

The Purchaser or the Supplier (whichever is to conduct the test) shall give reasonable written notice to the other of the date, time and place of the test. If the other does not attend, the test may nevertheless proceed.

16.4 Delay

Without prejudice to any other right, if the Supplier or the Purchaser delays in conducting a test, the other, after giving reasonable written notice of intention to do so, may conduct the test.

16.5 Completion and Results

Results of tests shall be promptly made available by each party to the other.

16.6 Costs

Costs in connection with testing pursuant to this clause shall be borne by the Purchaser except where the Contract otherwise provides or the test reveals the goods have not complied with the Contract (including this clause).

17. DELIVERY

17.1 Packaging and Marking

The Supplier is responsible, at its costs, for packing the Goods.

The Supplier must ensure that the Goods are packaged adequately and safely.

Unless otherwise directed by Buyer, the Goods must be packed in a form consistent with best industry practices and all applicable Laws and safety requirements.

Any Goods contained in packages must be adequately protected from potential damage caused by ingress of dust and moisture or during the normal course of long distance transport or storage in a sub-tropical climate.

The packaging should be designed to facilitate inspection and repacking for on-forwarding and/or storage.

Failure to comply with this clause entitles the Purchaser to reject the Goods and return them to the Supplier, at the Supplier's expense.

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17.2 Date and Place for Delivery

Unless the Purchaser has agreed to independently arrange for the transportation of the Goods to the delivery point, the Supplier, at its expense, shall deliver the goods on the date for delivery to the delivery place. If so requested, the Supplier shall give the Purchaser reasonable advance notice of each delivery.

The party named in Item 14 shall promptly unload the goods at the delivery place. When so unloaded the Purchaser shall take delivery of the goods.

The Purchaser may direct the Supplier to change the date for delivery, the mode of delivery or the delivery place. If the Supplier can reasonably comply with the direction, the Supplier shall do so. If the Supplier cannot reasonably comply, the Supplier shall give the Purchaser written notice of the reasons.

If compliance with any such directions under this clause, except those pursuant to Supplier's default, causes the Supplier to incur more or less cost than otherwise would have been incurred had the Supplier not been given the direction, the difference shall be assessed by the Purchaser and added to or deducted from the purchase order value.

In the Purchaser is transporting the goods to the delivery point, subject to the Supplier's obligations under clause 17.1;

- (a) the Supplier must make the goods available for transportation by the Purchaser;
- (b) the Supplier must provide transportation and loading/unloading instructions for the safe transportation of the Goods;
- (c) transportation of the Goods by the Purchaser under this clause will not constitute acceptance by the Purchaser of the Goods.

17.3 Delivery Note

The Supplier shall include a delivery note with each consignment of the goods to the Purchaser.

Each such delivery note shall be in writing and shall state in respect of the goods supplied:

- (a) date of consignment;
- (b) description and quantity of goods delivered;
- (c) delivery place;
- (d) date for delivery;
- (e) the purchase order ordering the goods so consigned; and
- (f) any variance (with reasons) from the purchase order and the Contract.

18. RISK IN AND OWNERSHIP OF THE GOODS

18.1 Risk in The Goods

Subject to acceptance or rejection under clause 19, risk in the goods will immediately pass from the Supplier to the Purchaser upon delivery to the delivery point.

18.2 Ownership of The Goods

Ownership of, and unencumbered title in, the goods shall pass to the Purchaser upon the payment of the purchase order value.

19. ACCEPTANCE OR REJECTION OF GOODS

19.1 Notification

Within the period stated in Item 15 after:

- (a) the later of:

- (i) delivery; or
- (ii) if applicable, completion of acceptance testing, or date for completion of acceptance testing stated in Item 13, whichever first occurs;
- (iii) or the Purchaser shall give a written notice to the Supplier that the goods are acceptable or they are rejected.

If the Purchaser fails to so notify the Supplier, acceptance shall be deemed to have been notified upon the expiration of the period stated in Item 15.

19.2 Details of Notification

If notice of acceptance of the goods is given pursuant to subclause 19.1, the notice shall state the minor defects, if any, to be rectified by the Supplier.

If notice of rejection of goods is given pursuant to subclause 19.1, the notice:

- (a) shall state the reasons for the rejection; and may either:
 - (i) direct the Supplier to replace the Goods under subclause 19.3; or
 - (ii) notify the Supplier that the Purchaser elects to accept the goods and claim damages.

19.3 Supplier to Replace Goods

Within 14 days after receipt of a direction under subclause 19.2(b)(i), the Supplier, at its sole cost, shall recover the goods and thereafter shall replace the goods.

20. DEFECTS LIABILITY

The defects liability period stated in Item 16 for each item of the goods shall commence on that item's date of acceptance at 4:00 p.m.

The Supplier shall carry out rectification at times and in a manner causing as little inconvenience to the users of the goods as is reasonably possible.

As soon as possible after acceptance, the Supplier shall rectify all defects existing at the date of acceptance.

During the defects liability period, the Purchaser may give the Supplier a direction to rectify a defect which:

- (a) shall identify the defect and the reasonable date for completion of its rectification; and
- (b) may state a date for commencement of the rectification and whether there shall be a separate defects liability period therefor (not exceeding that in Item 16, commencing at 4:00 pm on the date the rectification is completed and governed by this clause).

If the rectification is not commenced or completed by the stated dates, the Purchaser may have the rectification carried out by others but without prejudice to any other rights and remedies the Purchaser may have. The cost thereby incurred shall be moneys due and payable to the Purchaser.

21. VARIATIONS

21.1 Directing Variations

The Supplier shall not vary the goods except as directed in writing. The Purchaser may direct the Supplier to vary the quantity of the goods stated in Purchase Order provided such variation is of an extent contemplated by, and capable of being carried out under, the provisions of the Contract.

21.2 Proposed Variations

The Purchaser may give the Supplier written notice of a proposed variation.

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The Supplier shall as soon as practicable after receiving such notice, notify the Purchaser whether the proposed variation can be effected, together with, if it can be effected, the Supplier's estimate of the:

- (a) effect on delivery (including the date for delivery); and
- (b) cost (including all time-related costs, if any) of the proposed variation.

The Purchaser may direct the Supplier to give a detailed quotation for the proposed variation supported by evidence of cost. The Supplier's costs for each compliance with this subclause shall be assessed by the Purchaser as moneys due to the Supplier.

21.3 Variations for Convenience of Supplier

If the Supplier requests the Purchaser to direct a variation for the convenience of the Supplier, the Purchaser may do so. The direction shall be written and may be conditional. Unless the direction provides otherwise, the Supplier shall be entitled to neither extra time nor extra money.

21.4 Pricing

The Purchaser shall, as soon as possible, price each variation using the following order of precedence:

- (a) prior agreement;
- (b) rates or prices in a schedule of unit prices, to the extent that it is reasonable to use them; and
- (c) reasonable rates or prices, which shall include a reasonable amount for profit and overheads, and any deductions shall include a reasonable amount for profit but not overheads.

22. PAYMENT

22.1 Invoices and Time for Payment

At the time stated in Item 17, the Supplier shall render to the Purchaser an invoice for moneys then due to the Supplier pursuant to the Contract. Each invoice shall include details of the goods supplied and delivered and may include details of other moneys then due to the Supplier pursuant to the provisions of the Contract. An early invoice shall be deemed to have been received on the date for rendering that invoice.

Within 14 days after receiving an invoice under this subclause, the Purchaser shall pay to the Supplier the amount then due to the Supplier pursuant to the Contract.

With such payment, the Purchaser shall issue a statement to the Supplier setting out the calculations employed to arrive at the amount and, if the amount is more or less than the amount invoiced by the Supplier, the reasons for the difference.

If the Supplier does not render an invoice, the Purchaser may nevertheless make payment to the Supplier pursuant to this subclause.

22.2 Effect of Payment

Payment of moneys under subclause 22.1 shall not be evidence that the subject goods comply with the Contract.

22.3 Interest

Interest in Item 18 shall be due and payable after the date of default in payment.

22.4 Other Moneys Due

The Purchaser may elect that moneys due and owing otherwise than in connection with the subject matter of the Contract also be due to the Purchaser pursuant to the Contract.

22.5 Set-Off

The Purchaser may, without limiting any other right which it may have under this Contract, or at law, deduct from any amount owing to the Supplier any amount which:

- (a) The Purchaser may have paid on behalf of, or which is to be reimbursed by, the Supplier, or
- (b) Is otherwise due and owing, or which the Purchaser claims to be due and owing, whether under this Contract, or any other contract or agreement or otherwise by the Supplier to the Purchaser.

and if those money are insufficient, the Purchaser may have recourse to security under this Contract.

23. DEFAULT OR INSOLVENCY

23.1 Preservation of Other Rights

If a party breaches (including repudiates) the Contract, nothing in this clause shall prejudice the right of the other party to recover damages or exercise any other right or remedy.

23.2 Supplier's Default

If the Supplier commits a substantial breach of the Contract, the Purchaser may, by hand or registered post, give the Supplier a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:
 - (i) provide evidence of insurance;
 - (ii) comply with subclause 19;
 - (iii) use the materials or standards of work required by the Contract; or
 - (iv) pass unencumbered title in the goods;
- (b) wrongful suspension; and
- (c) departure from the requirements of a purchase order for the period stated in Item 19 without reasonable cause or the Purchaser's approval.

23.3 Purchaser's Notice to Show Cause

A notice under subclause 23.2

shall state:

- (a) that it is a notice under clause 23 of these General Conditions;
- (b) the alleged substantial breach;
- (c) that the Supplier is required to show cause in writing why the Purchaser should not exercise a right referred to in subclause 23.4;
- (d) the date and time by which the Supplier must show cause (which shall not be less than 7 clear days after the notice is received by the Supplier); and
- (e) the place at which cause must be shown.

23.4 Purchaser's Rights

If the Supplier fails to show reasonable cause by the stated date and time, the Purchaser may by written notice to the Supplier terminate the Contract.

23.5 Purchaser's Default

If the Purchaser commits a substantial breach of the Contract, the Supplier may, by hand or by registered post, give the Purchaser a written notice to show cause.

Substantial breaches include, but are not limited to, failing to:

- (a) provide security; and
- (b) make a payment due and payable pursuant to the Contract.

23.6 Supplier's Notice to Show Cause

A notice under subclause 23.5 shall state:

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- (a) that it is a notice under clause 23 of these General Conditions;
 - (b) the alleged substantial breach;
 - (c) that the Purchaser is required to show cause in writing why the Supplier should not exercise a right referred to in subclause 23.7;
 - (d) the date and time by which the Purchaser must show cause (which shall not be less than 7 clear days after the notice is received by the Purchaser); and
 - (e) the place at which cause must be shown.
- (vii) a mortgagee of any of its property takes possession of that property,
- then, where the other party is:
- (a) the Purchaser, the Purchaser may, without giving a notice to show cause, exercise the right under subclause 23.4 or
 - (b) the Supplier, the Supplier may, without giving a notice to show cause, exercise the right under subclause 23.7.

The rights and remedies given by this subclause are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no breach of contract.

23.7 Supplier's Rights

If the Purchaser fails to show reasonable cause by the stated date and time, the Supplier may, by written notice to the Purchaser, suspend the whole or any part of the performance of the Contract. The Supplier shall remove the suspension if the Purchaser remedies the breach.

The Supplier may, by written notice to the Purchaser, terminate the Contract, if within 28 days of the date of suspension under this subclause the Purchaser fails:

- (a) to remedy the breach; or
- (b) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the Supplier.

The Supplier shall be entitled to damages reasonably incurred by reason of the suspension.

23.8 Termination

If the Contract is terminated pursuant to subclause 23.4 or 23.7, the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the Contract had the defaulting party repudiated the Contract and the other party elected to treat the Contract as at an end and recover damages.

23.9 Insolvency

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 Contract;
- (b) execution is levied against a party by a creditor;
- (c) a party is an individual person or a partnership including an individual person, and if 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) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cw/ith) or like provision under the law governing the Contract; or
- (d) in relation to a party being a corporation:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering deed of company arrangement;
 - (ii) it enters 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 resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or

24. TERMINATION FOR CONVENIENCE

Without prejudice to any of the Purchaser's other rights or entitlements or powers under this Contract, the Principal may at any time for its sole convenience, and for any reason, by written notice to the Supplier terminate this Contract effective from the time stated in the notice or if no such time is stated, at the time the notice is given to the Supplier.

If the Contract is terminated under this clause the Purchaser may procure the goods similar to the goods from any other person.

If the Contract is terminated under this clause:

- (a) the Purchaser shall assess the value of the work performed under the Contract to the date of frustration, evidencing the amount which would have been payable had the Contract not been frustrated and had the Supplier been entitled to and rendered an invoice on the date of frustration;
- (b) the Purchaser shall pay the Supplier:
 - (i) the amount due to the Supplier evidenced by all unpaid invoices as assessed by the Purchaser under subclause 22.1;
 - (ii) the cost of goods reasonably ordered by the Supplier which the Supplier is liable to accept, but only if they will become the Purchaser's property upon payment; and
 - (iii) the costs reasonably incurred by the Supplier in expectation of completing the Contract and not included in any other payment; and
- (c) each party shall promptly release and return all security provided by the other.

25. NOTIFICATION OF CLAIMS

25.1 Communication of Claims

The prescribed notice is a written notice of the general basis and quantum of the claim. As soon as practicable after a party becomes aware of any claim in connection with the subject matter of the Contract, that party shall give to the other party the prescribed notice or a notice of dispute under subclause 26.1.

This subclause and subclause 25.3 shall not apply to any claim, including a claim for payment, the communication of which is required by another provision of the Contract.

25.2 Liability for Failure to Communicate

The failure of a party to comply with the provisions of subclause 25.1 or to communicate a claim in accordance with the relevant provision of the Contract shall, inter alia, entitle the other party to damages for breach of the Contract but shall neither bar nor invalidate the claim.

25.3 Unresolved Claims

If within 28 days of giving prescribed notice the claim has not been resolved, the prescribed notice shall be deemed to be a notice of dispute under subclause 26.1.

26. DISPUTE RESOLUTION

26.1 Notice of Dispute

If a difference or dispute (together called a 'dispute') between the parties arises in connection with the subject matter of the Contract, including a dispute concerning a claim:

- (a) in tort;
- (b) under statute;
- (c) for restitution based on unjust enrichment or other quantum meruit; or
- (d) for rectification or frustration, or like claim available under the law governing the Contract, then either party shall, by hand or by registered post, give the other a written notice of dispute adequately identifying and providing details of the dispute.

Notwithstanding the existence of a dispute, the parties shall, subject to clauses 23 and 24 and subclause 26.4, continue to perform the Contract.

26.2 Conference

Within 14 days after receiving a notice of dispute, the parties shall confer at least once to resolve the dispute or to agree on methods of doing so. At every such conference each party shall be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

If the dispute has not been resolved within 28 days of service of the notice of dispute, that dispute shall be and is hereby referred to mediation to be conducted in accordance with the Australian Commercial Disputes Centre (ACDC) Guidelines, and to a mediator agreed by the parties, or if the parties do not agree on a mediator, a mediator nominated by the then President of the Bar (Barrister) Association of Queensland). Each party will bear its own costs of such mediation.

26.3 Litigation

Subject to clause 26.4, a party must not commence court proceedings unless it has complied with clauses 26.1 and 26.2.

26.4 Summary Relief

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief.

27. GENERAL LIMITATION OF LIABILITY

27.1 Limitation of Liability

Subject to subclause 27.2, the total liability of each party arising in connection with the subject matter of the Contract, including a claim:

- (a) in tort;
- (b) under statute; or (c) for rectification or frustration, or like claim available under the law governing the Contract, is limited to the amounts stated in Item 20 or 21, as the case may be. This limitation shall continue to apply notwithstanding fundamental breach, breach of a fundamental term, rescission, repudiation or termination for any reason or frustration, whether unintentional or by operation of law.

27.2 Exclusion of Limitation of Liability

The limitation of liability under subclause 27.1 shall not apply to:

- (a) liability to pay the base contract sum as adjusted pursuant to the Contract;
- (b) liability for infringement of intellectual property rights;

- (c) the extent that liability is otherwise limited by another provision of the Contract;
- (d) liability of the Supplier under clause 10 or 15.5;
- (e) liability to obtain and maintain insurance under clause 11;
- (f) any liability that, but for subclause 27.1, is or should be recoverable under a policy of insurance required to be maintained under clause 11; and
- (g) liability out of which by law the party liable cannot contract.

Amounts payable in respect of subclauses 27.2(a) to (g) inclusive shall not be included in the limitation of liability under subclause 27.1.

28. WAIVER OF CONDITIONS

Except as provided at law or in equity or elsewhere in the Contract, none of the provisions of the Contract shall be varied, waived, discharged or released, except with the prior written consent of the parties.

29. GOODS AND SERVICES TAX

29.1 Interpretation

Words or expressions used in this clause 29 which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this clause.

29.2 Consideration is GST Exclusive

Any consideration to be paid or provided for a supply made under or in connection with this Contract, unless specifically described in this Contract as 'GST inclusive', does not include an amount on account of GST.

29.3 Gross up Consideration

Despite any other provision in this Contract, if a party (for the purposes of this clause 29 only, 'Supplier') makes a supply under or in connection with this Contract on which GST is imposed (not being a supply the consideration for which is specifically described in this Contract as 'GST inclusive'):

- (a) the consideration payable or to be provided for that supply under this Contract but for the application of this clause ('GST exclusive consideration') is increased by, and the recipient of the supply ('Recipient') must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

29.4 Reimbursements (new down)

If a payment to a party under this Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

29.5 Tax Invoices

The Recipient need not make a payment for a taxable supply made under or in connection with this Contract in respect of a taxable supply until the Supplier has given the Recipient a tax invoice for the supply to which the payment relates.

30. GENERAL

30.1 Costs

The Supplier shall bear its own legal, accounting and other costs, charges and expenses of and incidental to this Contract.

30.2 Amendment

This Contract may not be amended or varied unless such amendment or variation is reduced to writing and signed by the parties.

30.3 Reading Down and Severance

The provisions of this Contract shall be so construed as not to infringe any law which is for the time being applicable to this Contract or the transactions contemplated by this Contract.

If a provision of this Contract is void or voidable by any party or unenforceable or illegal but would not be void or voidable or unenforceable or illegal as aforesaid if it were read down and it is capable of being read down, it shall be read down accordingly.

If notwithstanding this subclause 30.3 a provision of this Contract is still void or voidable or unenforceable or illegal:

if the provision would not be void or voidable or unenforceable or illegal if a word or words were severed that word or those words (as the case may be) are hereby severed; and

in any other case, the whole provision is hereby severed; and the remainder of this Contract shall remain in full force and effect.

30.4 Further Assurances

Each party shall exercise all such powers as are available to it, do all such acts, matters and things and sign, execute and deliver all such documents and instruments as may be necessary or reasonably required to give full force and effect to the provisions of this Contract.

30.5 Denial of Partnership

Nothing in this Contract shall be construed as creating the relationship of partnership or purchaser and agent between the parties. No party may pledge or purport to pledge the credit of another party or make or purport to make any representations, warranties or undertakings for another party.

30.6 Entire Agreement

To the extent permitted by law, in relation to its subject matter, this Contract:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

30.7 Jurisdiction

Each party irrevocably:

- (a) submits to the exclusive jurisdiction of the courts of the jurisdiction of Cloncurry and the state of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this Contract; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in

the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within paragraph

30.8 Service of Notices

A notice (and other documents) shall be deemed to have been given and received:

- (a) if addressed or delivered to the relevant address in the Contract or last communicated in writing to the person giving the notice; and
- (b) on the earliest date of:
 - (i) actual receipt;
 - (ii) confirmation of correct electronic transmission; or
 - (iii) 3 days after posting.

31. Schedule 1 – Definitions and Interpretation

In the Contract, except where the context otherwise requires:

acceptable means:

- (a) the goods are substantially in accordance with the requirements of the Contract except for minor defects which do not:
 - (i) prevent the goods from being reasonably capable of being used for the stated purpose in Item 5 elsewhere stated in the Contract; or
 - (ii) if no such purpose is stated, adversely affect the normal use of the goods;
- (b) where the Contract so requires, the
- (c) goods satisfy acceptance testing; and manuals, documents and other information required under the Contract have been supplied;

acceptance means:

- (a) notification under subclause 19.1 by the Purchaser that the goods are acceptable;

base contract sum means:

- (a) the sum of the products ascertained by multiplying the quantities of goods by the corresponding unit prices, excluding any additions or deductions which may be required to be made under the Contract;

compensable cause means:

- (a) any act, default or omission of the Purchaser or its consultants, agents or other contractors (not being employed by the Supplier);

Contract

- (a) has the meaning in clause 1;

date for delivery means:

- (a) that stated in a purchase order in accordance with subclause 2.2, but if any EOT for delivery is directed by the Purchaser or allowed in any arbitration or litigation, it means the date resulting therefrom;

defects

- (a) has the meaning in clause 20 and includes omissions;

defects liability period

- (a) has the meaning in clause 20;

deliver (and delivered)

- (a) have the meaning in clause 17;

delivery

- (a) has the meaning in clause 17;

delivery note

- (a) has the meaning in subclause 17.3;

delivery place

- (a) is that stated in the purchase order;

designated item

- (a) has the meaning in clause 7;

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direction

- (a) includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, **rejection, request or requirement**;

dispute

- (a) has the meaning in clause 26;

EOT (from 'extension of time')

- (a) has the meaning in subclause 15.2;

goods

- (a) means those items as described on the Purchase Order;

intellectual property right means:

- (a) any patent, registered design, trademark or name, copyright or other protected right;

legislative requirements includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction stated in Item 6(a);
(b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the performance of the Contract; and
(c) fees and charges payable in connection with the foregoing;

purchase order

- (a) has the meaning in subclause 2.2

purchase order value means:

- (a) the sum of the products ascertained by multiplying the quantity of goods ordered in a purchase order by the corresponding unit price;

Purchaser means:

- (a) the person stated in Item 1;

qualifying cause of delay means:

- (a) any act, default or omission of the Purchaser, its consultants, agents or other contractors (not being employed by the Supplier); or
(b) other than:
(i) a breach or omission by the Supplier; and
(ii) industrial conditions or inclement weather occurring after the date for delivery;

schedule of unit prices means:

- (a) any schedule included in the Contract which, in respect of the goods, shows the unit prices and which may also include lump sums, other sums, quantities and prices;

Supplier means:

- (a) the person bound to supply and deliver the goods;

term means:

- (a) the term of the Contract specified in Item 8;

test

- (a) has the meaning in clause 16 and includes examine and measure;

variation

- (a) has the meaning in clause 21;

and like words have a corresponding meaning.

In the Contract:

- (a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
(b) time for doing any act or thing under this Contract shall, if it ends on a Saturday, Sunday or Statutory or Public Holiday, be deemed to end on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday in Cloncurry, Queensland;

- (c) clause headings and subclause headings shall not form part of, nor be used in the interpretation of, the Contract;

- (d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;

- (e) communications between the Purchaser and the Supplier shall be in the English language;

- (f) measurements of physical quantities shall be in legal units of measurements of the jurisdiction in Item 6(b);

- (g) unless otherwise provided, prices are in the currency in Item 7(a) and payments shall be made in that currency at the place in Item 7(b)

