

WaterNSW Purchase Order Terms and Conditions

General Conditions of Contract for the Supply of Goods, Services and/or Works (General Conditions of Contract)

1 Contractor's Activities

The Contractor agrees to provide the Contractor's Activities to WaterNSW and WaterNSW agrees to pay for the Contractor's Activities in accordance with the terms of the Contract.

2 Contract Documents

The Contract between WaterNSW and the Contractor comprises:

- (a) the Special Conditions;
- (b) the Purchase Order (other than the Special Conditions); and
- (c) these General Conditions of Contract, including Schedule 1 (Provisions relating to Works).

If there is any ambiguity or inconsistency between the documents comprising the Contract, the document appearing higher in the list will have precedence to the extent of the ambiguity or inconsistency.

3 Existing Contracts and Standing Offers

Subject to the terms of the Purchase Order and any Special Conditions, if the Purchase Order is issued under the terms of an existing contract or a standing offer, the terms of that existing contract or standing offer will apply and these General Conditions of Contract (other than this clause 3) will have no effect.

4 Goods

The Contractor must supply the Goods to WaterNSW at the Delivery Location on or before the relevant Delivery Date and in accordance with any special instructions for the delivery of the Goods specified in the Purchase Order. The Contractor must promptly notify WaterNSW if the Contractor becomes aware that it will be unable to supply all or parts of the Goods by the relevant Delivery Date and advise WaterNSW as to when it will be able to do so.

5 Services

- (a) The Contractor must provide the Services to WaterNSW:
 - (i) for the period (including for any term specified in the Purchase Order), at the times and locations (as applicable), and in accordance with any requirements for the provision of the Services as specified in the Purchase Order;
 - (ii) using appropriately qualified, skilled and experienced personnel;
 - (iii) to the satisfaction of WaterNSW;
 - (iv) in accordance with any other requirements specified in the Contract; and
 - (v) to a standard of quality not less than Good Industry Practice for services of the same type as those Services and, without limiting clause 5(a), in a timely manner.
- (b) The Contractor must promptly notify WaterNSW if the Contractor or any of its officers, employees, agents or subcontractors becomes aware that the Contractor will be unable to provide all or part of the Services in accordance with the requirements of this clause 5.

6 Works

Schedule 1 (Provisions relating to Works) applies if the Contractor is required to construct any Works under the Contract.

7 Warranty

The Contractor warrants that:

- (a) the Goods are new, free from deficiencies in design, manufacture and workmanship and are fit for the purposes set out in, or reasonably ascertainable from, the Contract, or as otherwise notified by WaterNSW to the Contractor;
- (b) in providing the Services, it will use workmanship of a standard consistent with Good Industry Practice for work of a similar nature to the provision of the Services and which is fit for the purposes set out in, or reasonably ascertainable from, the Contract; and
- (c) any design documentation it prepares will be fit for its intended purpose.

8 Acceptance and replacement Contractor's Activities

- (a) This clause 8 does not apply to Works.
- (b) WaterNSW may accept or reject the relevant Contractor's Activities within 14 days after delivery of the Goods to the Delivery Location, or completion of the Services (as applicable). If WaterNSW does not notify the Contractor of acceptance or rejection within the 14 day period, WaterNSW will be taken to have accepted the Contractor's Activities on the expiry of the 14 day period.
- (c) WaterNSW may reject the Contractor's Activities where they do not comply with the requirements of the Contract including any acceptance tests.
- (d) If WaterNSW rejects the Contractor's Activities, or if the Contractor's Activities do not otherwise comply with the Contract, WaterNSW may require the Contractor to provide, at the Contractor's cost, replacement Goods or Services which comply with the requirements of the Contract or to take any other action to rectify any aspect of the Contractor's Activities, as directed by WaterNSW.
- (e) At WaterNSW' request, the Contractor must promptly remove any relevant Goods from WaterNSW' premises at its cost.
- (f) Any acceptance or deemed acceptance of the Contractor's Activities will not constitute approval by WaterNSW of the Contractor's performance of its contractual obligations or be taken as an admission or evidence that the Contractor's Activities comply with the Contract.

9 Extension of time and liquidated damages

- (a) If the Contractor:
 - (i) is delayed in supplying the Goods or completing the Works or Services by the Delivery Date by a cause beyond the reasonable control of the Contractor (other than any delay arising out of or in connection with an act or omission of, or breach of the Contract by, the Contractor); and
 - (ii) has given a written notice to WaterNSW within 3 business days of the start of the delay setting out details of the delay, its causes and the number of days extension claimed,the Delivery Date will be extended by a reasonable period as determined by WaterNSW.

- (b) WaterNSW may also unilaterally extend the Delivery Date in its absolute discretion at any time and from time to time by written notice to the Contractor.
- (c) If the Contractor fails to deliver the Goods or complete the Works or Services by the Delivery Date, the Contractor must pay liquidated damages at a rate of 0.5% of the Contract Price for every day or part thereof after the Delivery Date until the actual date of delivery of the Goods or completion of the Services, capped at 10% of the Contract Price.
- (d) The amount payable under this clause 9:
 - (i) will be a debt due from the Contractor to WaterNSW;
 - (ii) subject to clause 24(a)(vii), is WaterNSW' sole and exclusive remedy for any failure by the Contractor to deliver the Goods or complete the Works or Services by the relevant Delivery Date; and
 - (iii) is an agreed genuine pre-estimate of WaterNSW' damages if delivery of the Goods or completion of the Works or Services does not occur by the Delivery Date.
- (e) If the liquidated damages under this clause 9 are found to be a penalty or void or unenforceable for any reason (whether in whole or in part), then the Contractor will be liable to pay unliquidated damages at law.

10 Suspension

WaterNSW may direct the Contractor to suspend and, after a suspension has been instructed, to re-commence the carrying out of all or a part of the Contractor's Activities under the Contract. Any suspension under this clause will be effective on and from the date specified in the WaterNSW' direction.

11 WaterNSW access

If reasonably requested by WaterNSW, the Contractor must permit WaterNSW and its nominees timely and sufficient access to the Contractor's premises, records or accounts relevant to the Contract to:

- (a) undertake quality audits and quality surveillance (as defined in AS/NZ ISO 9000 current at the date the Purchase Order is issued) of the Contractor's quality system and/or the production processes related to the Contractor's Activities; and
- (b) monitor the Contractor's work health and safety and environmental compliance in connection with the provision of the Contractor's Activities and its compliance with this Contract generally.

12 Security and safety

- (a) If WaterNSW provides the Contractor with access to any place, area or facility, the Contractor must comply with any security and safety requirements notified to the Contractor by WaterNSW or of which the Contractor ought to be aware and ensure that its officers, employees, agents and subcontractors are aware of and comply with requirements.
- (b) The Contractor must:
 - (i) comply with, and must ensure that all subcontractors comply with, the applicable WHS Legislation when performing work under the Contract in Australia; and
 - (ii) so far as is reasonably practicable, consult, co-operate and co-ordinate activities with WaterNSW and any other person (including any Other Contractor) who, concurrently with the Contractor, has a work health and safety duty under the WHS Legislation in relation to the same matter.

- (c) The Contractor must ensure, so far as is reasonably practicable, that the Contractor's Activities are without risk to the health and safety of persons who may in any way be affected by the Contractor's Activities.
- (d) If a Notifiable Incident occurs at WaterNSW' premises or involves WaterNSW' personnel in connection with work carried out under the Contract, the Contractor must immediately report the incident to WaterNSW, promptly provide WaterNSW with copies of any notices or other documentation provided to or issued by the relevant government regulator in relation to the Notifiable Incident, and provide WaterNSW with such other information as may be required by WaterNSW to facilitate the notification to or investigation of the Notifiable Incident in accordance with the WHS Legislation.

13 The Environment

The Contractor must ensure that in carrying out the Contractor's Activities it does not pollute, contaminate or otherwise damage the environment.

14 Approvals and compliance with law

- (a) The Contractor must obtain and comply with any Approvals necessary for the provision of the Contractor's Activities or the use, operation or maintenance of the Works and arrange any necessary customs entry for any Goods.
- (b) The Contractor must comply with and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in the State, Territory or other jurisdictions in which any part of the Contractor's Activities are to be carried out, the Code of Conduct and any other WaterNSW policies, standards and guidelines relevant or applicable to the Contract notified to the Contractor by WaterNSW, or of which the Contractor ought to be aware, including those polices codes and standards available at <https://www.waternsw.com.au/>.

15 Work Health and Safety

- (a) Without limiting the Contractor's obligations under any other provision of the Contract, the Contractor must comply, and must ensure that its subcontractors and any other person engaged by the Contractor for the purposes of the Contract comply, with the WHS Legislation including:
 - (i) any obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter; and
 - (ii) if requested by WaterNSW or required by WHS Legislation, demonstrate compliance with the WHS Legislation, including providing evidence of any Approvals, prescribed qualifications or experience, or any other information relevant to work health and safety matters.
- (b) In performing its obligations under the Contract the Contractor must:
 - (i) exercise a duty of utmost good faith to WaterNSW in carrying out the Contractor's Activities to enable WaterNSW to discharge WaterNSW' duties under the WHS Legislation; and
 - (ii) ensure that in performing the Contractor's Activities, it does not do anything or fail to do anything that would cause WaterNSW to be in breach of the WHS Legislation.

16 Title and risk

- (a) Title to the Goods transfers to WaterNSW upon the earlier of payment or delivery to the Delivery Location, and, at the time of the earlier of payment or delivery to the Delivery Location, the Goods must be free of any security interest.
- (b) The Contractor bears the risk of:
 - (i) any loss or damage to the Goods until they are delivered to the Delivery Location in accordance with this Contract;
 - (ii) where the Services involve the refurbishment, overhaul or repair of, or any other work in relation to, any parts, plant, equipment or goods owned by WaterNSW, any loss or damage to such parts, plant, equipment or goods while they are in the care, custody or control of the Contractor; and
 - (iii) at any time after the Goods are delivered or Services or Works are completed in accordance with this Contract, any loss of or damage to the Goods, the Works or the Deliverables arising from any act or omission of the Contractor (including during the Defects Liability Period) or from an event which occurred prior to delivery.

17 Payment

- (a) The Contractor may:
 - (i) submit an invoice for the Contract Price following acceptance of the Contractor's Activities in accordance with clause 8; or
 - (ii) if the Purchase Order provides for the payment of the Contract Price by way of instalments or milestone payments, submit an invoice for the relevant instalment or milestone payment at the times set out in the Purchase Order.
- (b) Subject to compliance with clause 18, and any Special Conditions, WaterNSW must pay the Contractor:
 - (i) within 30 days after receipt of a correctly rendered invoice submitted in accordance with clause 17(a)(i); or
 - (ii) within 15 days after receipt of a correctly rendered invoice for the relevant instalment or milestone payment submitted in accordance with clause 17(a)(ii) (to the extent WaterNSW considers that the Contractor's Activities have been completed in accordance with the Contract); or
 - (iii) within 15 business days if the SOP Act applies to the Contract.
- (c) Where an invoice is provided prior to the date referred to in 17(a)(i) or 17(a)(ii) (as applicable), it will be deemed to have been received on the date of delivery of those Goods.

18 Invoice

- (a) The Contractor must submit a correctly rendered invoice to WaterNSW. An invoice is correctly rendered if:
 - (i) it is correctly addressed and calculated in accordance with the Contract;
 - (ii) WaterNSW has not rejected the Contractor's Activities under clause 8;
 - (iii) it is for an amount which does not exceed the Contract Price or (where applicable) the relevant instalment or milestone payment;
 - (iv) it includes the Purchase Order number;

- (v) it is a valid tax invoice in accordance with the GST Act; and
- (vi) it attaches a signed "Subcontractor's Statement" in the form set out at: <https://www.revenue.nsw.gov.au/help-centre/resources-library/opt011.pdf>.

- (b) The Contractor must promptly provide to WaterNSW such supporting documentation and other evidence reasonably required by WaterNSW to substantiate performance of the Contract by the Contractor or payment of the Contract Price by WaterNSW, including satisfactory evidence that the Contractor is registered for GST.

19 SOP Act

- (a) This clause applies if the SOP Act applies to the Contract.
- (b) For the purposes of section 17(3) of the SOP Act, the Contractor irrevocably chooses the Resolution Institute as the "authorised nominating authority" (as that term is defined in the SOP Act) for any adjudication application it may make under the SOP Act in respect of the subject matter of the Contract.
- (c) When an adjudication occurs under the SOP Act, and WaterNSW has paid an adjudicated amount to the Contractor:
 - (i) the amount will be taken into account by WaterNSW in issuing a payment statement under clause 17; and
 - (ii) if it is subsequently determined pursuant to the Contract that the Contractor was not entitled under the Contract to payment of some or all of the adjudicated amount that was paid by WaterNSW ("overpayment"), the overpayment will be a debt due and payable by the Contractor to WaterNSW which the Contractor must pay WaterNSW upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.
- (d) Without limiting clause 27, WaterNSW may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on WaterNSW pursuant to Division 2A of the SOP Act.
- (e) If WaterNSW withholds from money otherwise due to the Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on WaterNSW pursuant to Division 2A of the SOP Act, then:
 - (i) WaterNSW may lead and rely upon Division 2A of the SOP Act as a defence to any claim for the money by the Contractor from WaterNSW; and
 - (ii) the period during which WaterNSW retains money due to the Contractor pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:
 - A. any period for which money owed by WaterNSW to the Contractor has been unpaid; and
 - B. the date by which payment of money owed by WaterNSW to the Contractor must be made.
- (f) The Contractor agrees not to commence proceedings to recover any amount withheld by WaterNSW pursuant to a payment withholding request served on

WaterNSW in accordance with Division 2A of the SOP Act.

- (g) Any amount paid by WaterNSW pursuant to section 26C of the SOP Act will be a debt due from the Contractor to WaterNSW.
- (h) If WaterNSW withholds money pursuant to a payment withholding request served on WaterNSW pursuant to Division 2A of the SOP Act and the Contractor:
 - (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
 - (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then the Contractor must so notify WaterNSW within 5 days of the occurrence of the event in sub-paragraph 19(h)(i) or 19(h)(ii) (as applicable) by providing to WaterNSW a statement in writing in the form of a statutory declaration together with such other evidence as WaterNSW may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

20 Price basis

The Contract Price is firm and is inclusive of all taxes (other than GST), duties (including any customs duty) and government charges imposed or levied in Australia or overseas. The Contract Price includes the cost of any packaging, marking, handling, freight and delivery, insurance and any other applicable costs and charges, and costs of compliance with all other statutory, award or other legal or contractual requirements.

21 GST

- (a) Unless otherwise stated all monetary amounts in this Contract are exclusive of GST.
- (b) WaterNSW will pay to the Contractor an amount equal to any GST payable on any taxable supply made under or in connection with the Contract.
- (c) The Contractor warrants that it is registered for GST under the GST Act and will immediately notify WaterNSW if it ceases to be registered or ceases to satisfy any of the requirements of any determination or ruling made by the Australian Taxation Office under the GST Act.

22 Intellectual property

- (a) Each party will retain its Pre-existing IPR and nothing in the Contract assigns or transfers the Pre-existing IPR of one party to another. Neither party may assert or bring any claim for ownership of any or all of the other party's Pre-existing IPR.
- (b) The Contractor grants to WaterNSW a non-exclusive, irrevocable, perpetual, transferable, royalty-free licence to use, reproduce, make adaptations of, modify or incorporate into other work (and sub-licence any other third party to do so) all existing and future Intellectual Property Rights comprised in or subsisting in the Contractor's Pre-existing IPR to:
 - (i) allow WaterNSW the full benefit and enjoyment of the Goods, the Works, the Services, the Deliverables and Contractor's Activities;
 - (ii) use the Contractor's Pre-existing IPR:
 - A. to procure, undertake or perform any works, activities, goods or services in connection with any further upgrade or refurbishment of the Goods, the Works or Services, or any plant, equipment,

infrastructure or systems owned, operated or maintained by WaterNSW;

- B. to install, operate, maintain and monitor the Goods, the Works or Services or any plant, equipment, infrastructure or systems owned, operated or maintained by WaterNSW; and
- C. to integrate the Goods, Works or Services with any other plant, equipment, infrastructure or systems owned, operated or maintained by WaterNSW; and
- (iii) disclose the Contractor's Pre-existing IPR on a confidential basis to third parties for the purposes of a tender process for any procurement in connection with the matters set out in clause 22(b).

- (c) WaterNSW grants to the Contractor a non-exclusive licence to use WaterNSW' Pre-existing IPR solely for the purpose of carrying out the Contractor's Activities.
- (d) Subject to the above, title in, and ownership of all Intellectual Property Rights associated with the Deliverables vests on its creation in WaterNSW. The Contractor agrees to execute all documents and do all acts and things required by WaterNSW to give effect to this clause.
- (e) The Contractor warrants that it has all Intellectual Property Rights and moral rights necessary to provide the Contractor's Activities to WaterNSW and licences those rights to WaterNSW to allow WaterNSW to have the full benefit of the Contractor's Activities. The Contractor also warrants that the provision of the Contractor's Activities in accordance with the Contract will not infringe any third party's Intellectual Property Rights or moral rights.
- (f) The Contractor indemnifies WaterNSW against any claims against, or costs, losses or damages suffered or incurred by, WaterNSW, arising out of, or in any way in connection with, any actual or alleged infringement of any Intellectual Property Rights in or associated with the Contractor's Activities.

23 Defects

- (a) Notwithstanding acceptance of the Contractor's Activities by WaterNSW in accordance with clause 8 and the Works reaching Completion, the Contractor must remedy at its cost any Defects in the Contractor's Activities, the Goods or the Works notified by WaterNSW to the Contractor at any time within the Defects Liability Period.
- (b) The Contractor will be responsible for any costs of removing the Goods and supplying repaired or replacement Goods to WaterNSW together with any associated or incidental costs. If the Contractor does not remedy the Defect, WaterNSW may remedy the Defect and the costs incurred by WaterNSW in remedying the Defect will be a debt due from the Contractor to WaterNSW.

24 Termination

- (a) WaterNSW may terminate the Contract if:
 - (i) the Contractor does not provide, or notifies WaterNSW that it will be unable to provide, all of the Contractor's Activities for the period (including for any term specified in the Purchase Order), at the times and/or locations (including to the Delivery Location or by the Delivery Date) as applicable, and in accordance with any requirements for the

- provision of the Contractor's Activities as specified in the Purchase Order;
- (ii) WaterNSW rejects any of the Contractor's Activities in accordance with clause 8;
- (iii) the Contractor breaches the Contract and the breach is not capable of remedy;
- (iv) the Contractor does not remedy a breach of the Contract which is capable of remedy within the period specified by WaterNSW in a notice of default issued by WaterNSW to the Contractor requiring the Contractor to remedy the breach;
- (v) the Contractor becomes bankrupt or insolvent;
- (vi) the Contractor breaches any of its obligations under clause 12;
- (vii) the Contractor:
 - A. is, or would but for the cap on liability in clause 9 have been, liable to WaterNSW under clause 9 for an amount exceeding 10% of the Contract Price; and
 - B. has not delivered the Goods or completed the Works or Services; or
- (viii) the Contractor:
 - A. is, or would but for clause 29 have been, liable to WaterNSW for an amount greater than the Contract Price; and
 - B. has not completed the Contractor's Activities.

25 Termination for convenience

- (a) Without prejudice to any of WaterNSW' other rights, WaterNSW may:
 - (i) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate the Contract effective from the time stated in WaterNSW' notice or if no such time is stated, at the time the notice is given to the Contractor; and
 - (ii) thereafter, at its absolute discretion, complete the uncompleted part of the Contractor's Activities either itself or by engaging another contractor; and
- (b) if WaterNSW terminates the Contract under clause 25(a), the Contractor:
 - (i) will be entitled to payment of the following amounts as determined by WaterNSW:
 - A. for work carried out prior to the date of termination, the amount which would have been payable if the Contract had not been terminated and the Contractor submitted a payment claim for the Contract value of work carried out prior to the date of termination, provided that ownership of all goods and materials included in the value of work will vest in WaterNSW, free of any security interest, upon payment;
 - B. the cost of goods or materials reasonably ordered by the Contractor for the Goods, the Works and Services for which the Contractor is legally bound to pay provided that:
 - 1) the value of the goods or materials is not included in any previous payment by WaterNSW or the amount payable under sub-paragraph A; and

- 2) ownership in the goods and materials will vest in WaterNSW, free of any security interest, upon payment; and
 - C. the reasonable direct costs incurred by the Contractor (excluding profit but including an amount for overheads) as a direct result of the termination,
- but in no case will the total amount payable to the Contractor under the Contract (including under this clause 25(b)) be more than the Contract Price; and
- (ii) must:
 - A. take all steps possible to mitigate the costs referred to in clause 25(b)(i); and
 - B. immediately:
 - 1) deliver to the Delivery Location all items in which ownership has passed to WaterNSW under the Contract; and
 - 2) hand over to WaterNSW all copies of documents provided by WaterNSW under the Contract, and all Deliverables (including any services and test documentation) prepared by the Contractor prior to the date of termination (whether complete or not).

The amount to which the Contractor is entitled under this clause will be a limitation upon WaterNSW' liability to the Contractor arising out of, or in any way in connection with, the termination of the Contract.

This clause will survive the termination of the Contract by WaterNSW under clause 25(a).

26 Insurance

- (a) The Contractor must procure and maintain:
 - (i) workers compensation insurance or registrations as required by law;
 - (ii) if the Contractor's Activities involve any professional services (including design), professional indemnity insurance for an amount of \$5 million per claim and in the annual aggregate (which insurance must be maintained by the Contractor for a period of not less than six years following the end of the Defects Liability Period);
 - (iii) products liability insurance for an amount of \$20 million per claim and in the annual aggregate;
 - (iv) public liability insurance for an amount of \$20 million per occurrence;
 - (v) if the Contractor's Activities involve the completion of any Works, works insurance for at least the value of the Contract Price plus 20%; and
 - (vi) motor vehicle insurance for an amount of \$20 million in respect of property damage and third party bodily injury (other than as provided for by any compulsory statutory insurance scheme or accident compensation scheme).
- (b) Nothing in the Contract limits, constrains or restricts the Contractor from procuring and maintaining such other insurances and on such terms and conditions as a prudent supplier, providing goods and services similar

to the Deliverables, the Goods, the Works and the Services, would procure and maintain.

- (c) The Contractor must use reasonable endeavours to ensure that the insurances required under this clause 26 extend the benefit of cover to WaterNSW as an insured in respect of its liability for the acts or omissions of the Contractor or its subcontractors. The Contractor must provide evidence of insurance (which may be by way of a certificate of currency) on request by WaterNSW.
- (d) The Contractor must notify WaterNSW as soon as practicable in the event that a claim is made against an insurance policy required to be effected under the Contract that materially impacts the Contractor's ability to perform the Contractor's Activities or to comply with any of its obligations under the Contract, including its obligations under this clause 26.

27 Set off

If the Contractor owes any debt to WaterNSW in connection with the Contract, WaterNSW may deduct the amount of the debt from payment of the Contract Price.

28 Indemnity

The Contractor indemnifies WaterNSW against:

- (a) any loss of or damage to property;
- (b) any liability to or claims by a third party in respect of loss of or damage to property; and
- (c) any liability to or claims by persons in respect of injury to or death of persons,

caused by, or arising out of, or in any way in connection with, the Contractor's Activities, provided that the Contractor's responsibility to indemnify WaterNSW will be reduced to the extent that an act or omission of WaterNSW contributed to the loss, damage, injury or death.

29 Limitation of liability

- (a) Subject to clause 29(b) but notwithstanding any other provision of the Contract:
 - (i) neither party will be liable to the other for Consequential Loss; and
 - (ii) the liability of the Contractor to WaterNSW arising out of the Contractor's performance of the Contract will be limited in aggregate to an amount equal to the Contract Price.
- (b) The limitation in clause 29(a) does not apply to liability of the Contractor for:
 - (i) liability under clause 28;
 - (ii) breach of privacy obligations;
 - (iii) breach of the Contractor's obligations under clause 12 or clause 35;
 - (iv) fraud, unlawful (not including breach of contract) or illegal acts;
 - (v) liability under clause 9;
 - (vi) liability under clause 22; or
 - (vii) any liability for which the Contractor is (or will be) entitled to be indemnified under an insurance policy required to be effected under the Contract, or for which the Contractor would have been entitled to be indemnified under an insurance policy required to be effected under the Contract but for a failure by the Contractor to comply with its obligations under clause 26 (up to the amounts specified for the relevant insurance policy under clause).
- (c) The liability of WaterNSW to the Contractor in contract, tort (including negligence) or otherwise under the Contract will be limited in aggregate to an amount equal to the Contract Price, plus any other amounts

payable by WaterNSW to the Contractor under the Contract.

- (d) The limitation in clause 29(c) does not apply to liability of WaterNSW for:
 - (i) fraud, unlawful (not including breach of contract) or illegal acts; or
 - (ii) liability that cannot be limited at law.

30 Prior Works

- (a) The parties acknowledge and agree that all of the terms and conditions of the Contract will apply to any works, services, goods or things executed, supplied or performed by the Contractor in connection with the subject-matter of the Contract or the Contractor's Activities:
 - (i) as if those works, services, goods or things were Contractor's Activities; and
 - (ii) even if such works, services, goods or things were executed, supplied or performed by the Contractor prior to the date of the Contract.
- (b) Any payment made to the Contractor by WaterNSW under or in connection with the subject-matter of the Contract or the Contractor's Activities prior to the date of the Contract will be treated as a payment under the Contract and will fully discharge WaterNSW's obligation to pay the Contract Price in respect of the relevant works, services, goods or things executed, supplied or performed by the Contractor.

31 Variations

- (a) WaterNSW may instruct the Contractor to carry out a Variation by:
 - (i) a written direction entitled "Variation Order"; or
 - (ii) an oral instruction confirmed by a written direction entitled "Variation Order",

(Variation Order).
- (b) The Contract Price will be adjusted for all Variations which have been the subject of a Variation Order issued by WaterNSW under clause 31(a) by:
 - (i) an amount determined by WaterNSW using any rates or prices which appear in the Contract to the extent they are applicable to, or it is reasonable to use them for valuing, the Variation; or
 - (ii) to the extent clause 31(b)(i) does not apply, a reasonable amount to be agreed between the parties or, failing agreement, determined by WaterNSW.
- (c) If a Variation the subject of a direction by WaterNSW omits or deletes any part of the Contractor's Activities, WaterNSW may thereafter carry out this omitted or deleted work or activities either itself or by engaging an Other Contractor.
- (d) If a direction by WaterNSW, other than a Variation Order under clause 31(a), constitutes or involves a Variation, the Contractor must, if it wishes to make a claim for an extension of time or payment of money against WaterNSW arising out of, or in connection with, the direction:
 - (i) within 5 business days of receiving the direction and before commencing work on the subject matter of the direction, give notice to WaterNSW:
 - A. that it considers the direction constitutes or involves a Variation; and
 - B. including a written claim in respect of the Variation (including the facts relied upon in support of the claim and details

of the amount claimed and how it has been calculated); and

- (ii) continue to carry out the Contractor's Activities in accordance with the Contract and all directions of WaterNSW, including any direction in respect of which notice has been given under paragraph 31(d)(i).
- (e) If the Contractor fails to comply with 31(d), WaterNSW will not be liable (to the extent it is possible to exclude such liability) upon any claim by the Contractor arising out of or in any way in connection with the relevant direction to which 31(d) applies.

32 Notices

Any notice or communication under the Contract will be effective if it is in writing, signed and delivered to WaterNSW or the Contractor as the case may be, at the address or email set out in the Purchase Order.

33 Assignment

The Contractor must not assign any of its rights under the Contract without the prior written consent of WaterNSW.

34 Subcontracting

Subcontracting the whole or part of the Contractor's obligations under the Contract will not relieve the Contractor from any of its obligations under the Contract. Upon request the Contractor must make available to WaterNSW the details of all subcontractors engaged to provide the Contractor's Activities under the Contract. The Contractor acknowledges that WaterNSW may be required to disclose such information.

35 Confidentiality

The Contractor shall not disclose any Confidential Information of WaterNSW to any third party without the prior written consent of WaterNSW. The Contractor will not be in breach of this clause in circumstances where it is required by law to disclose any Confidential Information.

36 Public disclosure

The Contractor acknowledges and agrees that disclosure by WaterNSW of all or any part of the Contract may be required:

- (a) in accordance with the Government Information (Public Access) Act 2009 (NSW); and
- (b) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability,

and the Contractor must use all reasonable endeavours to assist WaterNSW in meeting its disclosure obligations under this clause 36.

37 Auditing

The Contractor acknowledges and agrees that:

- (a) WaterNSW (or any other person nominated by WaterNSW) may carry out regular audits on the Contractor's compliance with its obligations under the Contract; and
- (b) the Contractor must provide reasonable access to any premises where the Contractor's Activities are being undertaken to enable WaterNSW or its nominees to carry out any such audit and must co-operate with and provide all assistance requested by WaterNSW or its nominees when carrying out any such audit, including providing access to all relevant facilities, documentation, records and personnel (including those of subcontractors).

38 Conflict of interest

The Contractor warrants that, as at the date of the Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract by itself or by any of its officers, employees, agents or subcontractors.

The Contractor shall notify WaterNSW in writing promptly if such a conflict of interest arises, or appears likely to arise.

39 Modern Slavery

- (a) In this clause 39:
 - (i) "Modern Slavery" has the meaning given to it in the Modern Slavery Act 2018 (Cth) and includes any form of slavery, servitude, debt bondage, deceptive recruitment practices, or forced labour to exploit children or other persons; and
 - (ii) "Modern Slavery Laws" means the Modern Slavery Act 2018 (Cth) and any other applicable legislation addressing similar subject matter.
- (b) The Contractor warrants that it:
 - (i) complies with and will continue to comply with all applicable Modern Slavery Laws;
 - (ii) has thoroughly investigated its labour practices, and those of its subcontractors in respect of any Modern Slavery used anywhere in its or its subcontractors' operations or supply chain (to the extent reasonably possible);
 - (iii) has put in place all necessary processes, procedures, investigations and compliance systems to ensure that it can provide the warranties under this clause at all relevant times; and
 - (iv) has taken, and will take in the future, all necessary actions and investigations to validate the warranties provided under this clause.
- (c) If the Contractor is a 'reporting entity' for the purposes of any state or federal Modern Slavery Laws, including the Modern Slavery Act 2018 (Cth), it must provide WaterNSW with a copy of any report it is required to prepare under that legislation at WaterNSW' request.

40 Governing law

The laws of New South Wales apply to the Contract.

41 Entire Agreement

The Contract represents the parties' entire agreement in relation to the subject matter and supersedes all tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.

42 Amendments

The Contract can only be amended by written agreement between the parties.

43 Definitions

In the Contract:

Approval means any licence (including export licence), accreditation, permit, registration, consent, approval (including regulatory approval), determination, certificate, administrative decision, permission or other requirement of any government authority (howsoever described) having any jurisdiction in connection with the Contractor's Activities or under any applicable law, which must be obtained or satisfied to carry out the Contractor's Activities.

Code of Conduct means WaterNSW' Code of Conduct which is available at

https://www.waternsw.com.au/_data/assets/pdf_file/0007/134674/Code-of-Conduct-WaterNSW.pdf, or upon request from WaterNSW, as updated from time to time.

Completion means the stage when:

- (a) the Works are complete except for minor Defects which do not prevent the Works from being reasonably capable of being used for their intended purpose; and

(b) the Contractor has done everything which the Contract requires it to do prior to Completion.

Confidential Information means any information provided by WaterNSW to the Contractor or which comes into the possession of the Contractor in connection with the Contractor's Activities or the Contract which WaterNSW has identified as confidential or the Contractor ought reasonably to know is confidential.

Consequential Loss means any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production (whether the loss is direct or indirect).

Contract has the meaning given in clause 2.

Contract Price means the contract price specified in the Purchase Order, as varied from time to time in accordance with clause 31.

Contractor means the contractor or supplier specified in the Purchase Order.

Contractor's Activities means all things or tasks which the Contractor is, or may be, required to do to comply with its Contract obligations and includes the supply of the Goods and/or Services and the design and construction of Works (as applicable).

Defect means any aspect of the Contractor's Activities, the Works, the Services or the Goods, or any part thereof, which is not in accordance with the requirements of the Contract.

Defects Liability Period means the period commencing on acceptance of the Contractor's Activities by WaterNSW and continuing for:

- (a) 120 days; or
- (b) the period of the Contractor's or manufacturer's standard warranty applicable to the Contractor's Activities; or
- (c) such other period set out in this Contract, whichever is the longest.

Deliverables means all items, materials, documentation (including any plans, drawings, manuals and specifications), software and products produced, created or developed for WaterNSW by or on behalf of the Contractor as part of providing the Goods, the Works, the Services or the Contractor's Activities for the purposes of, or in anticipation of, this Contract, irrespective of whether they are produced, created or developed prior to the date of this Contract (but excluding the Goods).

Delivery Date means the date or dates for provision of the Goods or completion of the Works (as applicable), as specified in the Purchase Order, as extended under clause 9.

Delivery Location means the location or locations for the provision of the Goods, as specified in the Purchase Order.

Good Industry Practice means practices which optimise safety, efficiency, durability and performance, and minimise environmental impacts, consistent with recognised standards, methods, and laws, as would be used by skilled and experienced contractors for works or services similar to the Contractor's Activities.

Goods means the goods specified in the Purchase Order (if any) to be provided by the Contractor.

GST has the meaning given in the GST Act.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Intellectual Property Rights means any patent, registered design, trademark or name, copyright or other protected intellectual property right.

Notifiable Incident has the meaning given in the WHS Legislation.

Other Contractor means any supplier, contractor, consultant, artist, tradesperson or other person engaged to do work other than the Contractor and its subcontractors.

Pre-existing IPR of any party means any Intellectual Property Rights belonging to the party which are:

- (a) pre-existing as at the date of this Contract, but does not include any Intellectual Property Rights developed by the Contractor or any of its officers, employees, agents or subcontractors for the purposes of, or in anticipation of, carrying out the Contractor's Activities; or
- (b) brought into existence other than as a result of the performance of its obligations under this Contract, and used by a party in performing its obligations under this Contract.

Purchase Order means the purchase order attached to these General Conditions of Contract and any attachments to the Purchase Order (including any statement of work or services).

Services means the services specified in the Purchase Order (if any).

SOP Act means the Building and Construction Industry Security of Payment Act 1999 (NSW).

Special Conditions means any terms and conditions other than these General Conditions of Contract which are attached to the Purchase Order.

Variation means any change to the Contractor's Activities including any addition, increase, decrease, omission, deletion or removal to or from the Contractor's Activities.

Variation Order has the meaning given in clause 31(a).

WaterNSW means Water NSW ABN 21 147 934 787, of Level 14, 169 Macquarie Street, Parramatta NSW 2150.

WHS Legislation means the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulations 2017 (NSW).

Works means the physical works to be carried out and completed under the Contract and handed over to WaterNSW (if any), as described in the Purchase Order.

Schedule 1 Provisions relating to Works

1 Definitions

In this Schedule 1:

Site means any land made available by WaterNSW to the Contractor to carry out the Contractor's Activities, if any.

Site Conditions means all conditions and characteristics of the Site and its surrounds (including below ground conditions, all natural and artificial things, asbestos, contamination, and other environmentally hazardous substances, concrete cracking and spalling, facilities, utilities and services on and within the surface and, if the Site includes a building, on and within the building (including those things obscured behind walls, ceilings and beneath the floor)), or on or about the Site including:

- (a) the location and adequacy of existing services, including all pipes, valves, ducts, cables, switchboards and other plant and equipment;
- (b) the adequacy and position of all load bearing and support structures; and
- (c) any existing services, plant, equipment or structures which require temporary or permanent removal or relocation in order to carry out the Contractor's Activities.

WHS Management Plan means the work health and safety plan to be prepared by the Contractor under clause 6 of this Schedule 1, which must:

- (a) set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities from a work health and safety perspective;
- (b) describe how the Contractor proposes to ensure the Contractor's Activities are performed consistently with WHS Legislation; and
- (c) comply with the specific requirements of Part 6.4 of the Work Health and Safety Regulation 2017 (NSW) in relation to the matters that a WHS management plan must include.

2 Completion

- (a) The Contractor must:
 - (i) achieve Completion by the Delivery Date; and
 - (ii) promptly notify WaterNSW if the Contractor becomes aware that it will be unable to complete the Works by the Delivery Date.
- (b) Within 10 business days of a request by the Contractor for the issue of a notice of Completion, WaterNSW must, if it is satisfied that Completion has been achieved, issue a notice to the Contractor either:
 - (i) stating the date that WaterNSW determines Completion of the Works was achieved and listing any minor Defects; or
 - (ii) stating that WaterNSW determines that Completion has not been achieved and giving reasons, in which case this clause 2 will re-apply.
- (c) The Contractor must rectify any minor Defects listed in a notice of Completion issued by WaterNSW under this clause 2 within the time specified in the notice.
- (d) Upon the issue of a notice of Completion the Contractor must hand over the Works to WaterNSW and correct all Defects listed in the notice.
- (e) The issue of a notice of Completion will not constitute approval by WaterNSW of the Contractor's performance of its contractual obligations in respect of the Works or be taken as an admission or evidence that the Works comply with the Contract.

3 Title and risk of Works

The Contractor bears the risk of any loss or damage to the Works until they have reached Completion.

4 Warranty relating to Works

The Contractor warrants that upon achieving Completion, to the extent they are designed by the Contractor, the Works will be fit for their intended purpose.

5 Site conditions and access

- (a) The Contractor is not entitled to make, and WaterNSW will not be liable upon, any claim for an increase in the Contract Price or for payment of money arising out of or in connection with the existence of any Site Conditions.
- (b) WaterNSW:
 - (i) is not obliged to:
 - A. provide the Contractor with sole access to the Site; or
 - B. carry out any work or provide any facilities to the Contractor (other than as stated in the Contract) which may be necessary to enable the Contractor to obtain adequate access to carry out the Contractor's Activities; and
 - (ii) may engage Other Contractors to work upon or in the vicinity of the Site at the same time as the Contractor.
- (c) In carrying out the Contractor's Activities, the Contractor must:
 - (i) minimise disruption or inconvenience to:
 - A. WaterNSW, occupiers, tenants and potential tenants of the Site in their occupation or use of, or attendance upon, any part of the Site; and
 - B. others having a right of access to the Site;
 - (ii) at all reasonable times give WaterNSW and any person authorised by WaterNSW access to the Works, the Site or any areas outside of the Site where Contractor's Activities are being carried out; and
 - (iii) provide WaterNSW and any person authorised by WaterNSW with every reasonable facility necessary for the supervision, examination and testing of the Contractor's Activities.

6 Work health and safety

- (a) In this clause 6, the terms "construction work", "principal contractor" and "workplace" have the same meanings assigned to those terms under the WHS Legislation.
- (b) Unless WaterNSW notifies the Contractor in writing that the Contractor will not be the principal contractor:
 - (i) WaterNSW authorises the Contractor to have management and control of each workplace at which construction work is to be carried out and to discharge the duties of a principal contractor, under the WHS Legislation;
 - (ii) the Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation; and
 - (iii) the Contractor's engagement and authorisation as principal contractor will continue:
 - A. until acceptance of the Contractor's Activities by WaterNSW;

- B. where the Contractor is constructing Works, until the Works have reached Completion; and
 - C. while any rectification work that is "construction work" is carried out during the Defects Liability Period, unless sooner revoked by WaterNSW terminating the Contract pursuant to any provision of the Contract or according to law.
- (c) Where the Contractor is not engaged as the principal contractor, the Contractor must comply with the reasonable directions of the principal contractor in relation to any construction work forming part of the Contractor's Activities.
 - (d) As a condition precedent to WaterNSW' obligation under the Contract to provide the Contractor with access to, or possession of the Site, the Contractor must prepare and submit a WHS Management Plan to WaterNSW for approval (such approval not to be unreasonably withheld).
 - (e) No comment upon nor any review, acceptance or approval of the WHS Management Plan by WaterNSW will affect any warranty or guarantee given by the Contractor or relieve the Contractor of any of its liabilities or obligations under the Contract.
 - (f) To the extent not prohibited by law, the Contractor indemnifies WaterNSW against any claims against, or loss suffered or incurred by, WaterNSW arising out of or in connection with the failure of the Contractor to discharge the duties imposed on a principal contractor under the WHS Legislation (if the Contractor has been engaged as principal contractor) or otherwise comply with this clause 6.

7 Co-operation with Other Contractors

The Contractor must:

- (a) permit Other Contractors to carry out their work;
- (b) fully co-operate with Other Contractors; and
- (c) carry out the Contractor's Activities so as to avoid interfering with, disrupting or delaying the work of Other Contractors.

8 Cleaning up

In carrying out the Contractor's Activities, the Contractor must:

- (a) keep the Site clean and tidy and free of refuse; and
- (b) as a condition precedent to acceptance of the Contractor's Activities by WaterNSW and the Works achieving Completion, remove all rubbish, materials and plant, equipment and work from the part of the Site relevant to the Contractor's Activities.

9 Testing

The Contractor must carry out all tests required by the Contract or directed by WaterNSW.

10 Long Service Levy

Without limiting clause 14 of the General Conditions of Contract, where the Contractor's Activities require the Contractor to carry out any Works, before commencing the Contractor's Activities, the Contractor must:

- (a) pay to the Building and Construction Industry Long Service Payments Corporation or the Corporation's agent the amount of the long service levy payable in respect of the building and/or construction work under the Building and Construction Industry Long Service Payments Act 1986 (NSW); and
- (b) produce to WaterNSW the documentary evidence of payment of the levy.