

**PURCHASE ORDER  
GENERAL TERMS AND CONDITIONS  
(GOODS AND SERVICES)**

PARC agrees to purchase the Goods and/or Services from the Supplier and the Supplier agrees to supply the Goods and/or the Services to PARC in accordance with the Contract.

**1. DEFINITIONS**

In these general terms and conditions:

**ABCC** means the Australian Building and Construction Commission referred to in section 29(1) of the BCIIIP Act.

**Anti-corruption Laws** means all laws prohibiting bribery and corruption which, by entering into the Contract, the Supplier agrees to comply with, including:

1.1.1 the Bribery Act 2010 (United Kingdom);

1.1.2 the Foreign Corrupt Practices Act of 1977 (United States); and

1.1.3 relevant prohibitions in the *Criminal Code Act 1995* (Cth) and in state criminal laws (Australia).

**Apportionment Legislation** means any legislation under which an apportionment may be made.

**BCIIIP Act** means the *Building and Construction Industry (Improving Productivity) Act 2016*.

**Building Code** means the *Code for the Tendering and Performance of Building Work 2016*, which is available at <https://www.legislation.gov.au/Details/F2017C00125>.

**Business Days** means any day other than a Saturday, Sunday, public holiday and the period between 27 to 31 (inclusive) of December.

**Claim** means any claim, action, suit, proceeding or demand.

**Commonwealth Funded Building Work** means Building Work in items 1-8 of Schedule 1 of the Building Code.

**Contract** means the Purchase Order, these general terms and conditions and special conditions, if any.

**Corporations Act** means the *Corporations Act 2001*.

**Defect** means any aspect of the Goods or the Services not in accordance with this Contract, or which is damaged, deficient, faulty, inadequate or incomplete in design, performance, workmanship, quality or makeup, and **Defective** has an equivalent meaning.

**Delivery Address** means the address for delivery stated in the Purchase Order or any location otherwise directed by PARC in writing.

**Delivery Date** means the date for delivery of the Goods and performance of the Services stated in the Purchase Order.

**Dispute Notice** means a written notice stating that it is issued under clause 20.

**Exclusion Sanction** has the same meaning as in subsection 3(3) of the Building Code.

**Goods** means the goods (if any) specified in the Contract including, without limitation, manuals, operating instructions, reports and drawings.

**HSE** means health, safety and environment.

**Insolvency Event** means in respect of a person:

1.1.4 a "controller" (as defined in section 9 of the Corporations Act), administrator or similar officer being appointed in respect of that person or any asset of that person;

1.1.5 a liquidator or provisional liquidator being appointed in respect of that person;

1.1.6 an application (not withdrawn or dismissed within 7 days) being made to a court for an order, an order being made, a meeting being convened or a resolution being passed, for the purpose of:

(a) appointing that person referred to in clauses 1.1.4 or 1.1.5 of this definition;

(b) winding up or deregistering that person; or

(c) proposing or implementing a scheme of arrangement, other than a solvent scheme of arrangement, pursuant to Part 5.1 of the Corporations Act;

1.1.7 any application (not withdrawn or dismissed within 7 days) being made to a court for an order,

a meeting is convened, a resolution being passed or any negotiations are commenced, for the purpose of implementing or agreeing:

(a) a moratorium of any debts of that person;

(b) any other assignment, composition or arrangement (formal or informal)

(c) with that person's creditors; or

(d) any similar proceeding or arrangement by which the assets of that person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,

or any agreement or other arrangement of the type referred to in this clause 1.1.7 being ordered, declared or agreed to;

1.1.8 as a result of the operation of section 459F(1) of the Corporations Act, that person being taken to have failed to comply with a statutory demand (as defined in the Corporations Act);

1.1.9 any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process being made, levied or issued against or in relation to any asset of that person;

1.1.10 the Commissioner of Taxation issuing a notice to any creditor of that person under the *Taxation Administration Act 1953* (Cth) requiring that creditor to pay any money owing to that person to the Commissioner in respect of any tax or other amount required to be paid by that person to the Commissioner (whether or not due and payable) or the Commissioner advising that creditor that it intends to issue such a notice;

1.1.11 anything analogous to anything referred to in clauses 1.1.4 to 1.1.10 (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to that person under any law of any jurisdiction; or

1.1.12 that person being, or admitting in writing that it is, or is being declared to be, or is being taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

**IP Rights** means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registrable), rights in relation to registered or unregistered trade marks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights.

**Legislative Requirements** means any applicable statutes, regulations, by-laws, orders, awards, proclamations of the Commonwealth, certificates, licenses, consents, permits, approvals, codes, standards and requirements of organisations.

**Loss** means any loss, damage, expense, payment or liability, whether direct or indirect, and includes consequential loss, damage or expense (including but not limited to loss of profit or revenue, loss of market or loss of contracts or damage to commercial reputation).

**Modern Slavery Act** or **MSA** means *Modern Slavery Act 2018*.

**Modern Slavery Policy** means the Modern Slavery Policy, which is available at <https://www.PARC.com.au/our-approach/policies>.

**Party** means PARC or the Supplier, and a reference to Parties is a reference to both of them.

**Personnel** means any person, employee, officer, agent, consultant or subcontractor engaged by the Supplier to provide all or any part of the Services on behalf of the Supplier.

**PPSA** means the *Personal Property Security Act 2009*.

**Purchase Order** means the written official confirmation of an order (with a unique system-generated reference number) issued by PARC for the supply of the Goods and/or Services.

**Security of Payment Act** means:

- 1.1.13 if the law governing the Contract is the law of Western Australia, then the *Construction Contracts Act 2004* (WA);
- 1.1.14 if the law governing the Contract is the law of New South Wales, then the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- 1.1.15 if the law governing the Contract is the law of Queensland, then the *Building and Construction Industry Payments Act 2004* (Qld);
- 1.1.16 if the law governing the Contract is the law of Tasmania, then the *Building and Construction Industry Security of Payment Act 2009* (Tas);
- 1.1.17 if the law governing the Contract is the law of the Northern Territory, then the *Construction Contracts (Security of Payments) Act 2004* (NT);
- 1.1.18 if the law governing the Contract is the law of Victoria, then the *Building and Construction Industry Security of Payment Act 2002* (Vic); or
- 1.1.19 if the law governing the Contract is the law of South Australia, then the *Building and Construction Industry Security of Payment Act 2009* (SA),

each as amended from time to time.

**Services** means the services (if any) specified in the Contract, and includes all necessary incidental services.

**Site** means the site stated in the Purchase Order.

**Specification** means all codes, standards, drawings and specifications applicable to the Contract, referred to in the Contract or otherwise incorporated into the Contract by reference and to be complied with by the Supplier.

**Supplier** means the supplier of the Goods and/or Services specified in the Contract.

## 2. CONTRACT

- 2.1 These general terms and conditions will apply whenever PARC issues a Purchase Order.
- 2.2 The Supplier may accept these general terms and conditions by proceeding with the manufacture or supply of the Goods and/or the provision of the Services requested or by otherwise confirming its acceptance.
- 2.3 The Parties agree that any reference to the Supplier's terms or conditions on any quote, invoice or other document, shall not import those terms into the Contract unless PARC expressly agrees otherwise in writing. Where additional Supplier's terms or conditions do apply, the Contract shall prevail in case of any inconsistency.
- 2.4 The Purchase Order and special conditions, if any, prevail in case of any inconsistency with these general terms and conditions.

## 3. THE GOODS AND SERVICES

- 3.1 The Supplier will ensure that the Goods and/or Services supplied by it:
  - 3.1.1 are new, ready for use, free from Defects;
  - 3.1.2 are of merchantable quality and fit for purpose;
  - 3.1.3 comply with all applicable Legislative Requirements and Australian standards at the minimum;
  - 3.1.4 are supplied with a valid manufacturer's or supplier's warranty where the manufacturer or supplier offers such a warranty in respect of the Goods;
  - 3.1.5 are supplied in accordance with any descriptions, specifications and/or timeframe referred to in the Contract or otherwise provided by PARC to the Supplier; and
  - 3.1.6 are supplied to a high standard in accordance

with industry best practice.

## 4. DELAY

- 4.1 The Supplier agrees to deliver or supply all Goods and/or Services and ancillary items on time and that, if the Supplier is delayed, or expects a delay, it will notify PARC as soon as possible. The Supplier will take all reasonable steps to prevent delay, including but not limited to working overtime.

## 5. PACKAGING OF GOODS

- 5.1 The Supplier must:
  - 5.1.1 suitably pack the Goods to avoid damage during loading, transit, delivery, unloading or storage;
  - 5.1.2 pack and transport the Goods in accordance with any applicable regulations and industry codes; and
  - 5.1.3 clearly mark all packages of the Goods for delivery and the delivery documents for the Goods with the Contract number and ensure that the delivery documents accompany the Goods to the Delivery Address.

## 6. DELIVERY

- 6.1 The Supplier must obtain all necessary permits and licenses which must be obtained in Supplier's name and are necessary for Supplier to perform its obligations.
- 6.2 The Supplier must deliver any of the Goods, and/or provide the Services at the Delivery Address by the Delivery Date.
- 6.3 The Supplier must, when delivering the Goods or providing the Services:
  - 6.3.1 not interfere with PARC's activities or the activities of any third party at the Delivery Address; and
  - 6.3.2 comply with, and ensure that its Personnel comply with, all directions and orders given by or on behalf of PARC at the Delivery Address.

## 7. INSPECTION AND SAMPLING

- 7.1 The Supplier must conduct all inspections and tests in strict accordance with requirements of the Contract.
- 7.2 The Supplier must ensure that PARC and any person nominated by PARC have the opportunity to inspect, test, and witness any test of the Goods and/or Services wherever they may be located. If required, the Supplier will provide or ensure that its suppliers provide unrestricted access to reasonable facilities necessary for PARC to carry out such inspections or witness such tests.
- 7.3 Inspection of the Goods and/or Services or any testing prior to delivery of the Goods or supply of the Services will not affect the obligations of the Supplier.
- 7.4 PARC may reject any of the Goods or the Services that do not comply with the Specification, the requirements of the Contract or any sample provided to PARC.
- 7.5 Where available or applicable, the Supplier shall provide samples to PARC at its cost.

## 8. TECHNICAL MATERIAL

- 8.1 The Supplier must, without additional cost to PARC, supply all required plans, drawings, specifications, manuals, certificates, instructions, fabrication reports and the like in the form and at the times and in the numbers of copies specified in the Contract or otherwise as reasonably required by PARC.

## 9. PRICE

- 9.1 The price for the Goods and/or Services is the price stated in the Contract. Unless otherwise agreed and clearly stated in the Contract, the price stated in the Contract excludes GST but includes any other applicable taxes, customs, excise and import duties, tariffs, fees, levies, charges, costs or expenses incurred by the Supplier, including transport, packing and insurance costs.
- 9.2 Unless otherwise agreed and clearly stated in the Contract, the price is fixed and firm and not subject to adjustment due to currency fluctuation or any other reason.

## 10. PAYMENT

- 10.1 The Supplier must claim payment for the supply of the Goods and/or Services by submitting invoices which must:
  - 10.1.1 be a tax invoice;
  - 10.1.2 be correctly dated;
  - 10.1.3 refer to the relevant Purchase Order;

- 10.1.4 list the particular Goods and/or Services supplied;
- 10.1.5 be supported by relevant records to enable PARC to calculate and verify the amount stated in any Supplier invoice; and
- 10.1.6 if stated as a requirement in the Contract, be accompanied by a statutory declaration in the form set out in the Contract.
- 10.2 It is a condition precedent to the Supplier's entitlement to payment that:
- 10.2.1 the Supplier complies with the requirements in clauses 10.1, 11.2 and 16.1; and
- 10.2.2 all claims under, or in relation to, the Contract are made within 30 days after the supply of the Goods and/or Services.
- 10.3 The Supplier agrees that claims for payment or otherwise submitted after this period shall not be considered and that payment right in relation to such claims will be deemed to have been waived by the Supplier.
- 10.4 The Supplier must only claim payment for the supply made in the period to which the invoice relates. The Supplier may resubmit a payment claim if the reason for rejection relates to the quantity of the Goods and/or Services provided and the Supplier has since then adjusted the quantity as required under the Contract.
- 10.5 Payments shall be made within 30 Business Days from the end of the month in which a payment claim is made. All invoices are deemed to be submitted on the last day of the respective month.
- 10.6 PARC shall not be liable to pay for the Goods and/or Services until the Goods and/or Services have been supplied in accordance with the Contract and invoices submitted before then shall be void of effect.
- 10.7 PARC may at any time require that the Supplier provides additional records to calculate and verify the amount stated in any Supplier's invoice. PARC's payment obligation shall be suspended pending the receipt of the required information.
- 10.8 If PARC disputes any amount claimed in an invoice, PARC shall make a determination of the amount payable within 14 days from the receipt of the Supplier's payment claim and inform the Supplier of the reasons why its payment claim has (wholly or partially) been rejected. Undisputed amounts shall be paid in accordance with clause 10.5.
- 10.9 If the Supplier receives partial or no payment upon submission of a payment claim without having been informed as per clause 10.8, the Supplier may request in writing that PARC provides reasons within 14 days, failing which, the Supplier may issue a Dispute Notice.
- 10.10 Notwithstanding any other provisions of this clause 10, PARC may issue a revised payment certificate at any time correcting any omission or error discovered in any previous payment made or modifying any previous payment certificate issued by it, including as a result of the provision of information under clause 10.7.
- 10.11 No interest shall be payable on any amount due to the Supplier but remaining unpaid after the date upon which it should have been paid.
- 10.12 Without prejudice to any other rights, PARC may deduct from or set off against any monies which may be, or become, payable to the Supplier any costs, expenses or damages which are due from the Supplier to PARC, or which PARC has incurred or reasonably considers it might in the future incur as a consequence of any act or omission of the Supplier, whether under or in connection with the Contract or otherwise.
- 10.13 Payment by PARC of all or any part of a claim by the Supplier or any other amount to the Supplier is on account only and does not constitute approval of any Goods and/or Services or any other matter or thing in respect of which the payment is made.
- 11. TITLE AND RISK**
- 11.1 Risk in the Goods passes to PARC upon delivery to the Delivery Address.
- 11.2 Property in the Goods passes to PARC upon the earlier of payment or delivery to the Delivery Address.
- 12. WARRANTIES**
- 12.1 The Supplier represents and warrants that:
- 12.1.1 the Goods and/or Services will be supplied in an efficient manner in accordance with all applicable laws, regulations, codes and standards;
- 12.1.2 the Goods and/or Services strictly comply with the Specifications;
- 12.1.3 the Goods and/or Services are free from all Defects;
- 12.1.4 the Supplier will, and will ensure its Personnel will, exercise the standards of diligence, due care and skill normally exercised by a prudent and similarly qualified and competent supplier supplying equivalent goods and services;
- 12.1.5 the Goods and/or Services are fit for the purpose for which goods and services of the same kind are commonly supplied and for any other purpose described in the Contract;
- 12.1.6 all Personnel are appropriately qualified, competent and skilled to perform the relevant part of the Services in respect of which they are engaged;
- 12.1.7 any equipment used on Site by the Supplier will be in a safe working condition and comply with all Legislative Requirements and be operated by suitably qualified and competent Personnel;
- 12.1.8 all the Goods match the description of the Goods in the Contract;
- 12.1.9 if the Supplier gave PARC a sample of the Goods before PARC issued the Contract, all the Goods correspond with the sample;
- 12.1.10 all the Goods are of new and merchantable quality; and
- 12.1.11 all the Goods are completely owned by the Supplier and will be supplied to PARC free of any interests, liens, charges or encumbrances and no interest shall be registered under the PPSA.
- 12.2 The Supplier must immediately rectify or replace at PARC's option and at Supplier's sole cost any Defective Goods or Services discovered within 15 months after supply or 12 months after the Goods or the Services are first used or enter into the service for which they are purchased, whichever occurs first.
- 12.3 If PARC reasonably considers that it is necessary to rectify or replace Defective Goods or Services then PARC, if time permits, shall give the Supplier an opportunity to rectify or replace such Goods or Services before PARC does so or causes a third party to do so. The Supplier must reimburse PARC for the full cost of such replacement or rectification.
- 12.4 The Supplier's obligation to replace or rectify Defective Goods and/or Services is cumulative of other remedies available to PARC.
- 12.5 The Supplier must ensure that PARC has the full benefit of any manufacturer's warranties that may be applicable to the Goods or the Services and the Supplier must pursue any manufacturer's warranties on PARC's behalf if PARC so requests.
- 12.6 If the Supplier has replaced or rectified Defective Goods or Services, the rectified or replacement Goods or Services must be subject to the same warranty period as the original Goods or Services, from the date of rectification or replacement.
- 12.7 If PARC elects to accept Defective Goods or Services on one occasion, such election does not bind PARC to accept any other Defective Goods or Services and does not affect any of PARC's other rights under the Contract in respect of those Defective Goods or Services.
- 12.8 PARC may assign any or all of the above warranties to any of its clients or related companies and the Supplier consents to such assignment.
- 12.9 The Supplier shall, unless otherwise stated in the Purchase Order:

- 12.9.1 maintain a quality system in compliance with ISO 9001:2015 or comply with PARC's quality management system; and
- 12.9.2 provide PARC and any person nominated by PARC with access to the quality system of the Supplier to enable monitoring and quality auditing.

**13. LIABILITY AND INDEMNITY**

- 13.1 The Supplier must indemnify PARC and its personnel from and against:
  - 13.1.1 any loss or damage to its property, whether within or outside the Site;
  - 13.1.2 any Claim or Loss suffered or incurred by it in connection with:
    - (a) illness, injury to, or death of any person;
    - (b) the loss or damage of any third-party property; or
    - (c) violation of any applicable Legislative Requirements; or
    - (d) any breach by the Supplier or its Personnel of any of the Supplier's obligations (including any warranty), in each case, in connection with the performance the Contract.
- 13.2 Notwithstanding anything to the contrary, the Supplier's liability to indemnify PARC under the Contract shall not apply to the extent that the Claim or Loss was caused by the sole negligence of PARC.
- 13.3 The rights and obligations under clauses 12 and 13 survive termination of the Contract.
- 13.4 PARC is not liable for any consequential or indirect loss.

**14. CANCELLATION**

- 14.1 In addition to its rights under clause 15, PARC may cancel all or any part of a Purchase Order at any time for any reason, in its sole and absolute discretion by written notice of cancellation to the Supplier.
- 14.2 Upon receipt of notice of cancellation, the Supplier must:
  - 14.2.1 immediately cease performance of the Services to the extent specified in the cancellation notice;
  - 14.2.2 immediately take steps to cease the procurement, manufacture or delivery of the Goods to the extent specified in the cancellation notice;
  - 14.2.3 immediately take all possible action to mitigate any costs incurred by it as a result of the cancellation; and
  - 14.2.4 provide PARC with a detailed report in the form required by PARC in relation to the Goods and the Services supplied prior to cancellation.
- 14.3 In the event of cancellation by PARC under this clause:
  - 14.3.1 the Supplier is entitled to payment for the Services supplied and the Goods delivered to PARC prior to cancellation but not already paid for;
  - 14.3.2 if the Goods have been shipped, but not delivered, at the time of cancellation PARC may either:
    - (a) accept the Goods when delivered, and pay the price for them; or
    - (b) return the Goods to the Supplier at PARC's expense;
  - 14.3.3 if the Goods have been procured, manufactured or fabricated in accordance with the Specification (but not shipped) at the time of cancellation, PARC shall pay costs reasonably incurred by the Supplier prior to the date of the cancellation which is directly attributable to the placing of the Contract and which the Supplier is not able to recoup in some other way;
  - 14.3.4 the Supplier is not entitled to the price of the Goods or the Services or to any compensation for that cancellation other than as specified in clauses 14.3.1 to 14.3.3; and
  - 14.3.5 the maximum compensation payable under clauses 14.3.1 to 14.3.3 arising out of the cancellation will not exceed the price of the

relevant the Goods or the Services cancelled.

**15. DEFAULT AND TERMINATION**

- 15.1 PARC may (by written notice to the Supplier) terminate the contract formed by the Contract or reduce the scope of the Goods and/or Services to be provided thereunder:
  - 15.1.1 where:
    - (a) the Supplier is in breach of any of the general terms and conditions of the Contract;
    - (b) the Supplier is unable to pay its debts when they fall due;
    - (c) an Insolvency Event occurs in relation to the Supplier;
    - (d) the Supplier ceases or threatens to cease to carry on business;
    - (e) in respect of clause 10.1.6, the Supplier knowingly provides a statutory declaration containing an untrue statement; or
  - 15.1.2 for its convenience, in which case PARC's liability to the Supplier shall be limited to payment of the price for the Goods and the Services supplied prior to such termination.
- 15.2 Termination of the Contract does not affect or prejudice any rights of PARC which have accrued prior to the termination. PARC's exercise of its rights under this clause does not affect or limit its ability to exercise any other rights under the Contract, at law or in equity.

**16. INSURANCE**

- 16.1 The Supplier must prior to commencing the supply of the Goods and/ or Services and for as long as it has obligations outstanding in connection with the supply of the Goods or the Services effect and maintain:
  - 16.1.1 all insurances specified in the Contract or otherwise requested by PARC in writing;
  - 16.1.2 such insurances with a reputable insurer having a Standard & Poor's, Moody's, AM Best or equivalent ratings agency's long-term issuer credit rating of A minus or better, or otherwise as approved by PARC in writing; and
  - 16.1.3 all necessary insurance cover for all risks arising out of the performance of its obligations under the Contract.
- 16.2 The Supplier must provide evidence satisfactory to PARC of such insurance to PARC as a condition precedent to the Supplier being entitled to:
  - 16.2.1 access the Site or Delivery Address;
  - 16.2.2 make a claim for payment or received payment for the supply of the Goods or the Services.
- 16.3 If the Supplier does not comply with its obligations under clause 16.2 PARC may effect and maintain the relevant insurance and pay the premiums and the amount of such payment shall be a debt due and payable by the Supplier to PARC.
- 16.4 The Supplier must notify PARC immediately if any incident occurs that is likely to give rise to a claim under any policy of insurance effected by the Supplier under the Contract and must keep PARC fully informed of all subsequent developments regarding such claim.
- 16.5 In the event that any insurance policy of PARC responds to a claim in respect of losses or damages for which the Supplier is responsible, the Supplier will be responsible for paying the deductible or excess payable under PARC's insurance policy.
- 16.6 The Supplier must ensure that its subcontractors effects and maintains the insurances as required by this clause 16 (including as to amounts of the insurance, type of insurances and endorsements), having regard to the nature of services or work to be performed by them, as if they were the Supplier.

**17. PERSONNEL**

- 17.1 PARC may object to any Personnel who, in PARC's reasonable opinion, do not have the appropriate qualifications, competency or skill to perform the relevant part of the Services in respect of which they are engaged, or who engage in misconduct.

**18. SITE**

- 18.1 To the extent the Supplier or Personnel are required to be on or in the vicinity of the Site, the Supplier must:
- 18.1.1 comply, and ensure its Personnel comply, with all Legislative Requirements and all policies, standards, rules and procedures of PARC or to be produced by the Supplier and approved by PARC in force from time to time, including in relation to HSE;
  - 18.1.2 submit and amend any HSE management plan(s) as reasonably required by PARC; attend all induction courses as reasonably required by PARC;
  - 18.1.3 permit PARC to have access to the Supplier's premises, documentation, data and Personnel as necessary to enable PARC to verify, monitor and audit the Supplier's compliance with this clause 18;
  - 18.1.5 give PARC not less than 7 days prior written notice before commencing the Services on the Site.

18.2 The Supplier acknowledges that it will not have exclusive possession of any part of the Site and will only be granted access to the Site to the extent necessary for the performance of the Services. The Supplier must cooperate and coordinate its performance of the Contract with PARC, other contractors and persons on the Site.

**19. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

- 19.1 The Supplier warrants that any design, equipment, methods of working and documentation including but not limited to specifications, drawings, reports and publications used or produced by the Supplier in connection with the Goods and/or Services do not infringe any IP Right.
- 19.2 PARC acknowledges that ownership of all IP Rights used or created under the Contract or in the provision of the Services is retained by the Supplier. The Supplier grants to PARC a non-exclusive, transferable, royalty free, irrevocable and perpetual licence (including a right to sublicense) to use such IP Rights for the purpose of PARC having the benefit of the Goods and/or Services.
- 19.3 The Supplier indemnifies PARC for all loss and expense incurred as a result of a breach of this clause.
- 19.4 The Supplier acknowledges that the terms of the Contract are confidential and agrees not to disclose any information regarding the Contract, its existence or its terms to any third party (including by making any media release) without the express written permission of PARC.
- 19.5 This clause 19 shall survive the cancellation, termination or repudiation of the Contract for any reason.

**20. DISPUTE RESOLUTION**

- 20.1 If any dispute arises out of or in connection with the Contract ("**Dispute**"), a Party may not commence any court proceedings unless clauses 20.2 to 20.9 have been complied with, except where the Party seeks urgent interlocutory relief, declaratory relief or equitable relief.
- 20.2 A Party must give written notice to the other Party setting out the details of the Dispute ("**Notice of Dispute**") and this clause 20 will apply to the Dispute.
- 20.3 Where a Dispute relates to a direction of PARC, the Notice of Dispute must be given within 5 Business Days from the date of the Dispute arising in respect of the direction issued by PARC, or otherwise the disputes or differences are barred.
- 20.4 PARC's representative and Supplier's representative ("**Representatives**") must meet to discuss and attempt to resolve the Dispute between the Parties within 10 Business Days from the date of the Notice of Dispute upon receipt by the other Party, or such longer period as may be agreed between the Representatives from time to time ("**First Meeting**").
- 20.5 If the Representatives do not resolve the Dispute within 10 Business Days from the First Meeting, they shall refer the Dispute to the senior executive officers of PARC and the Supplier ("**Senior Executives**") for resolution by submitting a written notice to the other Party (as appropriate). The Senior Executives must meet and confer

within 5 Business Days after receipt of the written notice and use their best endeavours to resolve the Dispute, which conferral shall be confidential and on a 'without prejudice' basis.

- 20.6 If the Dispute remains unresolved for 25 Business Days of the First Meeting, the Senior Executives must within a further 5 Business Days seek to agree the process for resolving the Dispute through the means of alternative dispute resolution ("**ADR**"), other than litigation.
- 20.7 Any ADR (including arbitration, mediation and expert determination) will be kept confidential and without prejudice between PARC and the Supplier.
- 20.8 The Parties may be legally represented in any ADR. Each Party will bear the costs and expenses of all legal representatives, witnesses and employees retained by it, except if a Dispute is determined or otherwise involves court proceedings, in which case the court may determine otherwise.
- 20.9 During the dispute resolution process, the Parties must continue to perform their obligations under the Contract.
- 20.10 Subject to clause 20.1, the Supplier agrees that it will not initiate any legal or administrative proceeding, and without limiting other rights or remedies of PARC, PARC will be entitled to plead this clause as a bar to any such proceeding
- 20.11 Either PARC or the Supplier may commence litigation if the Parties fail to resolve the Dispute through the ADR process.
- 20.12 This clause 20 shall survive the cancellation, termination or repudiation of the Contract for any reason.

**21. SECURITY OF PAYMENT**

- 21.1 The Parties agree that for the purposes of any adjudication under any Security of Payment Act in relation to the Contract or the Goods and/or Services:
- 21.1.1 the prescribed appointor shall be the Chairperson from time to time of the Chapter of Institute of Arbitrators and Mediators Australia in the State in which the Goods and/or Services are supplied, or if the Goods and/or Services are supplied in Queensland then the Registrar appointed under the *Building and Construction Industry Payment Act 2004* (Qld);
  - 21.1.2 the amount stated in a progress certificate given by PARC under clause 10.8 is the amount of the 'progress payment' calculated in accordance with the terms of the Contract to which the Supplier is entitled; and
  - 21.1.3 the date under clause 10.1 on which the Supplier must claim payment is the 'reference date'.

**22. ANTI-SLAVERY**

- 22.1 The Supplier undertakes, warrants and represents that:
- 22.1.1 neither the Supplier nor any of its Personnel has:
    - (a) committed an offence under the MSA (an "**MSA Offence**"); or
    - (b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the MSA; or
    - (c) is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the MSA;
  - 22.1.2 it shall comply with the MSA and the Modern Slavery Policy;
  - 22.1.3 it shall notify PARC immediately in writing if it becomes aware or has reason to believe that it, or any of its Personnel have breached or potentially breached any of Supplier's obligations under this clause. Such notice will set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations under the MSA; and
  - 22.1.4 it shall provide all reasonable assistance (including the provision of information and access to documents and the Supplier's Personnel as PARC may require) to PARC to

- enable PARC to comply with its obligations under the MSA.
- 22.2 Any breach of clause 22.1 by the Supplier shall be deemed a material breach of the Contract and shall entitle PARC to terminate the Contract with immediate effect.
- 23. CONFLICT OF INTEREST**
- 23.1 The Supplier must, and must ensure its Personnel, declare any conflict of interest between PARC or its Personnel, and the Supplier or its Personnel, whether that conflict of interest is perceived or actual, prior to entering into any agreements with PARC, and in any event as soon as a conflict of interest comes to the attention of the Supplier.
- 24. ANTI-CORRUPTION OBLIGATIONS**
- 24.1 The Supplier represents, warrants and agrees that neither the Supplier, any of its related entities nor the Supplier's Personnel authorised, offered, promised or gave or will authorise, offer, promise or give anything of value to:
- 24.1.1 any:
- (a) individual who is employed by or acting on behalf of an authority, government, government-controlled entity or public international organization;
  - (b) political party, party official or candidate;
  - (c) individual who holds or performs the duties of an appointment, office or position created by custom or convention; or
  - (d) individual who holds himself out to be the authorised intermediary of any person specified in paragraphs (a), (b) or (c) above (each, a "**Government Official**"), in order to influence official action relating to either, or both, PARC or the Contract;
- 24.1.2 any person (whether or not a Government Official) to influence that person to act in breach of a duty of good faith, impartiality or trust ("acting improperly") in relation to either, or both, PARC or the Contract, to reward the person for acting improperly or in circumstances where the recipient would be acting improperly by receiving the thing of value; or
- 24.1.3 any other person while knowing, or while he or she ought reasonably to have known, that all or any portion of the money or other thing of value that was authorised, offered, promised or given or will be offered, promised or given to:
- (a) a Government Official in order to influence or reward official action relating to either, or both, PARC or the Contract; or
  - (b) any person in order to influence or reward such person for acting improperly.
- 24.2 PARC may terminate the Contract for default, if the Supplier breaches this clause 24 or any applicable Anti-corruption Laws in performing its obligations under the Contract.
- 25. SUPPLIER AS A TRUSTEE**
- 25.1 If applicable, the Supplier as a trustee of a trust, in relation to the Contract:
- 25.1.1 is liable both personally, and in its capacity as trustee of that trust;
- 25.1.2 must not assign, transfer, mortgage, charge, release, waive, encumber or compromise its right of indemnity out of the assets of that trust, but retain and apply such indemnity only towards meeting its obligations under the Contract;
- 25.1.3 must not retire, resign nor by act or omission effect or facilitate a change to its status as the sole trustee of that trust without the prior written consent of PARC; and
- 25.1.4 represents and warrants that:
- (a) it enters into the Contract as trustee of the trust and in its own right;
  - (b) the trust has been duly established and currently exists;
  - (c) it is the duly appointed, current and only trustee of that trust;
  - (d) as trustee it has the power and authority in its own right and as trustee of that trust to enter into and perform its obligations under the Contract;
  - (e) it has an unqualified right of indemnity out of the assets of that trust in respect of its obligations;
  - (f) there is no conflict of interest by the trustee entering into the Contract;
  - (g) no breach of the relevant trust deed exists or would arise;
  - (h) no beneficiary under that trust is presently entitled to the distribution of any of the capital of the trust;
  - (i) no resolution has been passed or direction been given by the beneficiaries for the winding up or termination of that trust or distribution of the property of that trust; and
  - (j) it is not aware of any revocation of its obligations to act as trustee.
- 26. GOODS AND SERVICES TAX (GST)**
- 26.1 For the purpose of this clause:
- 26.1.1 the following definitions apply:
- (a) **GST Law** means A New Tax System (Goods and Services) Act 1999 (Cth);
  - (b) **Recipient** means the Party to which the relevant supply is made; and
  - (c) **Supplier** means the Party making the relevant supply; and
- 26.1.2 unless the context otherwise requires, words or expressions used in this clause 26 which are defined in the GST Law have the same meaning in this clause.
- 26.2 The Supplier shall be registered for GST in accordance with the GST Law.
- 26.3 If the Supplier makes a supply under or in connection with the Contract on which GST is payable (not being a supply the consideration for which is specifically described in the Contract as inclusive of GST), then:
- 26.3.1 the consideration payable for that supply under the Contract but for the application of this clause (the "**GST exclusive consideration**") is increased by, and the Recipient of the supply must also pay to the Supplier, an amount equal to the GST payable on the supply (the "**GST Amount**"); and
- 26.3.2 the GST Amount 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, subject to the Supplier giving the Recipient a tax invoice in respect of that taxable supply.
- 26.4 If a payment to a Party under the 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, or the representative member of a GST group of which that Party is a member, is entitled for that loss, cost or expense.
- 26.5 If a payment is calculated by reference to, or as a specified percentage of, another amount or revenue stream, that payment shall be calculated by reference to, or as a specified percentage of, the amount or revenue stream exclusive of GST.
- 26.6 If an adjustment event arises in respect of a supply made under or in connection with the Contract, then:
- 26.6.1 the Supplier must issue an adjustment note to the Recipient within 7 days of the adjustment event occurring or otherwise as soon as it becomes aware of the adjustment event, outlining the revised amount of GST payable in

- respect of that supply (the “**Corrected GST Amount**”);
- 26.6.2 if the Corrected GST Amount is less than the previously attributed GST Amount, the Supplier shall refund the difference to the Recipient within 15 days of the adjustment note being issued by the Supplier; and
- 26.6.3 if the Corrected GST Amount is greater than the previously attributed GST Amount, the Recipient shall pay the difference to the Supplier within 15 days of the adjustment note being issued by the Supplier.
- 26.7 This clause 26 will continue to apply after expiration or termination of the Contract.
- 27. BUILDING CODE**
- 27.1 This clause 27 will apply, if the Supplier is carrying out any Commonwealth Funded Building Work.
- 27.2 The Supplier must ensure that it and its subcontractors:
- 27.2.1 comply with the Building Code;
- 27.2.2 will not engage anyone (or will not itself) subject to an Exclusion Sanction; and
- 27.2.3 notify PARC and the ABCC of any breach or suspected breach of the Building Code as soon as practicable but no later than 2 Business Days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.
- 27.3 The Supplier acknowledges that compliance with the Building Code does not relieve the Supplier from responsibility to perform the Contract, or from liability for any Defect in the Goods and/or Services arising from compliance with the Building Code.
- 27.4 The Supplier shall ensure all its sub-subcontract contains clauses in substantively the same with this clause 27 in relation to the Building Code.
- 28. GENERAL**
- 28.1 **Entire agreement:** The Contract comprises the entire agreement between the Parties in respect of its subject matter and supersedes all prior agreements, quotation requests, understandings, representations, warranties, promises, statements, negotiations, letters and documents in respect of its subject matter. Any terms that may have been attached or embodied in the Supplier’s tender or offer or other correspondence (including quote forms and Contracts) whether before, at or after the acceptance of the Contract are not applicable.
- 28.2 **Severance:** If any provision of the Contract is determined to be void by any court then that determination does not affect any other provision of the Contract.
- 28.3 **Waiver:** PARC’s failure or delay to exercise a power or right does not operate as a waiver of that power or right. No waiver by PARC of any breach of a provision of the Contract is a waiver of any subsequent breach of that provision or any other provision. A waiver is not effective unless it is in writing, signed by PARC.
- 28.4 **Variations:** An amendment or variation to the Contract is not effective unless it is in writing and signed by PARC prior to the supply of additional or varied Goods and/or Services.
- 28.5 **Assignment:** The Supplier must not assign the Contract or any part of the Supplier’s obligations under the Contract without the prior written consent of PARC, which must not be unreasonably withheld.
- 28.6 **Novation:** If required by PARC, the Supplier shall when directed by PARC and without being entitled to compensation, promptly execute a deed of novation in a form acceptable to PARC for the novation of:
- 28.6.1 any subcontract for the supply of any part of the Goods and/or Services to PARC or its nominee; or
- 28.6.2 the Contract to PARC’s client or its nominee.
- 28.7 **Subcontracting:** The Supplier must not subcontract all or any of its obligations under the Contract without the prior written consent of PARC, which must not be unreasonably withheld.
- 28.8 **Exclusion and apportionment:** The operation of, to the extent not prohibited by law, Apportionment Legislation is excluded. The Supplier indemnifies PARC against any claim, cost, expense or liability whatsoever arising out of or in connection with the Contract which are caused or contributed to by the Supplier’s Personnel and for which the Supplier would have been liable to PARC but for, or which PARC is not able to recover from the Supplier because of, any apportionment under any Apportionment Legislation.
- 28.9 **Supplier capacity:** If requested by PARC at any time, the Supplier must provide a deed of guarantee and indemnity from its parent company to PARC, in the form specified in the Contract or otherwise acceptable by PARC.
- 28.10 **Privacy requirements:** In providing the Goods and/or Services, the Supplier agrees to comply with, and to ensure that Personnel comply with, PARC’s policy and all applicable privacy laws.
- 28.11 **Governing Law:** The Contract is governed by, and is to be interpreted in accordance with the laws in force in the State or Territory in which the Goods and/or Services are supplied and the Parties submit exclusively to the jurisdiction of the courts in that State or Territory.