

SCHEDULE 1 – PRODUCTS

The following Products are available to the Distributor, including but not limited to:

Item No	Description
1	METSLURRY manufactured Slurry Pump Products
2	Non METSLURRY Manufactured Slurry Pump Products eg: Valves, Steel or Rubber Lined Pipe, Slurry Mining Hose and other 3 rd party equipment. Please enquire directly for further information regarding 3 rd Party equipment.
3	Pump Repairs and Engineering Services. These services are provided on a case by case basis, please enquire for further information.
*Unit pricing is subject to change without notice.	

SCHEDULE 2 – CONDITIONS OF SALE

Following are the Conditions of Sale (Australia) as at the Commencement Date.

DEFINITIONS

In these Conditions of Sale:

“we” or “us” means Metslurry Engineering Pty Ltd (ABN 20 615 346 720) and having a place of business at 59 Kurnall Road, Welshpool, Western Australia 6106;

“you” means the person who is party to the Contract with us;

“Australian Consumer Law” means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

“Bespoke Goods” means Goods which are either (i) Standard Goods which are to be modified, customized or refurbished in accordance with an applicable Specification; or (ii) Goods which are to be designed and/or manufactured in accordance with an agreed Specification.

“Business Day” means, in respect of any notice to be served under or in connection with the Contract, any day (other than a Saturday or a Sunday) on which banks in Western Australia are open for business;

“Contract” means the contract for the supply by us of the Goods and/or Services to you (as varied from time to time), constituted by the parts described in the clause 2;

“Customer Inputs” means any inventions, documents, images, photographs, drawings, specifications, schematics, models, data, test results, computer software, prototypes and materials provided, created or disclosed by you to us in connection with the Contract;

“Intellectual Property Rights” means all intellectual property rights including rights in relation to patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade names, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, semiconductor or circuit layout rights, database rights, moral rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“Goods” means the goods (or any part of them) set out in the Order;

“GST” means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply;

“GST Law” has the same meaning as in the GST Act;

“GST Act” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

“Order” means our written confirmation of your order for the Goods and Services, which is usually called “Order Acknowledgment” and refers to these Conditions of Sale;

“Place of Delivery” the place to which the Goods are to be delivered, as specified in the Order or as subsequently agreed by the parties in writing;

“Price” means the price for the Goods and/or Services in question;

“Services” means the installation and/or commissioning services (if any) to be supplied under the Contract, as set out in the Order;

“Standard Goods” means Goods which are sold by sample or description and are not Bespoke Goods; and

“Specification” means, in respect of any Goods, any specification for such

Goods referred to in the Order or otherwise agreed in writing by the parties.

1. INTERPRETATION

In these Conditions of Sale:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) by the “**parties**”, we mean you and us and a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) the masculine gender shall import the feminine and the singular shall import the plural and, in both cases, vice versa;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (e) a reference to **writing or written** includes faxes and emails;
- (f) a reference to an obligation upon a party having done or omitted to some act or thing shall be deemed to include a reference to an obligation upon a third party doing or omitted to do such act or thing on that party’s behalf; and
- (g) a reference to \$ is to Australian currency unless denominated otherwise

2. BASIS OF CONTRACT

2.1. The Contract is constituted by:

- (a) the Order;
- (b) these Conditions of Sale;
- (c) any applicable Specification;
- (d) any other documents referred to in the Order; and
- (e) your acceptance of the Order in accordance with condition 3.3.

2.2. For the purposes of interpretation, the constituent parts of the Contract shall rank in the order above, with the Order being of the highest rank, these Conditions of Sale being of the second highest rank and so on. In the event of any ambiguity or conflict between any term or condition of any of the constituent parts of the Contract, those of the higher-ranking part shall prevail over those of the lower ranking part.

2.3. These Conditions of Sale apply to the Contract to the exclusion of any other terms that you may seek, or may already have sought, to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Any purchase order previously issued by you merely constituted an invitation by you to us to offer to supply the Goods and Services. It does not form part of the Contract and no contract shall come into force until we have issued the Order. You are responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.4. Any photographs, diagrams, drawings, images and illustrations contained in our catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

3. EFFECT OF ORDER

3.2. We shall only be bound by an order if it is issued on our standard Order form and signed by one of our duly authorised representatives.

3.3. The Order constitutes an offer by us to sell the Goods and/or Services to you subject to these Conditions of Sale. You are deemed to have accepted the offer by conduct if you proceed with the purchase of the Goods and/or Services specified in the Order. Accordingly, your acceptance of the Order shall establish a contract for the sale and purchase of the Goods on these Conditions. Any counteroffer made by you to purchase the Goods on other conditions shall only be validly accepted if such acceptance is in writing and signed by one of our a duly authorised representatives.

3.4. By signing and returning the acknowledgement copy of the Order form or by any other conduct consistent with your acceptance of the Order under law (including, without limitation, continuing to instruct us in connection with delivery of the Goods or performance of the Services), you will be deemed to have accepted the Order on these Conditions of Sale.

4. STATUS OF QUOTATIONS AND PRICES

4.2. Unless otherwise specifically stated, our quotations are merely quotations and do not constitute an offer capable of acceptance. Furthermore, unless otherwise specifically stated, any prices we quote:

- (a) are only effective for the particular transaction contemplated by the relevant quotation and, accordingly, subsequent changes to, among other things, the quantity, quality or specification of goods to be supplied, the scope of services to be performed, the identity of the purchaser or the delivery location may alter the price;
- (b) are, subject to our rights to increase the price in certain circumstances (see section entitled “Price” below), only valid for 30 days (inclusive);
- (c) exclude GST and all other taxes, duties and levies that may be applicable to the supply of the goods or services in question;
- (d) exclude the costs of delivery; and
- (e) are, in the case of itemised quotations for the supply of goods, for a single item only (not pairs or batches).

4.3. We reserve the right to withdraw our tender submission and quotations, without any liability to you or any other person, any time prior to becoming party to a legally binding contract for the supply of the relevant goods and/or services.

4.4. We may elect, in our absolute discretion, to charge a minimum order charge of \$140 (exc. GST) in respect of Orders for Goods of less than \$140 (exc. GST).

5. SUPPLY

5.1. In consideration for you paying the price for the Goods and Services, we shall supply the Goods and Services to you in accordance with the Contract.

5.2. In respect of Bespoke Goods, we reserve the right to amend the Specification or, in the case of Standard Goods, the specification of the Goods, if required by any applicable statutory or regulatory requirements. If this happens, we will inform you without undue delay and, in any event, prior to dispatch of such Goods.

6. CANCELLATION OF ORDERS

6.1. Once the Contract is in force, your order for the Goods and Services cannot be cancelled, in whole or in part, without our express consent. We reserve the right to withhold such consent for any reason.

7. DELIVERY

7.1. Unless otherwise stated in the Order, all Goods shall be delivered to you EXW ("ex-works") in accordance with the INCOTERMS, published by the International Chamber of Commerce 2010 Edition, and you shall be responsible for (at your own expense) collecting the Goods from our premises within 14 days of us notifying you that they are ready for collection. If you fail to do so, we shall be entitled to charge you for storing the Goods pending collection, in accordance with our published list of charges then in force. We shall be deemed to have delivered the Goods upon placing them into your custody or that of your servants.

7.2. Where the Order states that we are to deliver the Goods to some other location, we shall deliver the Goods to the Place of Delivery. The price of delivery shall be as stated in the Order or as otherwise agreed between us in writing.

7.3. We reserve the right to withhold any delivery if you become subject to any insolvency proceedings or if we have reasonable grounds to form the opinion that your credit worthiness or credit standing have deteriorated to a material extent.

7.4. Although we always strive to ensure deliveries are made on time, any dates or timescales quoted for delivery are to be treated as estimates only and are not binding.

8. TITLE, RISK AND PPSA

8.1. You shall not obtain valid title to, or ownership of, any Goods until you have paid for the Goods in full. Until that time, we shall retain title and ownership to the Goods.

8.2. In the event that you fail to pay in full for any Goods by the due date for payment, we reserve the right to require you to deliver up the Goods and/or to retake possession of such Goods and you hereby authorise us and our representatives, servants, agents and employees to, (except in case of emergency) having given reasonable notice to you and at reasonable hours, enter upon any premises owned or occupied by you at which such Goods are located or stored for the purpose of retaking possession.

8.3. In the event that, prior to paying for the Goods, you sell them to a third party or incorporate them into other goods by means of some manufacturing or construction process, you shall hold in trust for us such part of the proceeds of sale of the Goods (or that part of the goods into which the Goods have become incorporated) as relates to the unpaid price for the Goods.

8.4. In the case of Goods to be delivered ex-works from our premises, risk in the Goods shall pass to you upon you or your servants taking custody of the Goods. In all other cases, risk in the Goods shall pass to you upon delivery at the Place of Delivery.

8.5. All scrap and unused material becomes our property.

8.6. Terms used in clauses 8.6 – 8.8 that are defined in the Personal Property Securities Act 2009 (Cth) (PPSA) have the same meaning as in the PPSA where the context permits. You acknowledge and agree that in each case we have a purchase money security interest attaching to the Goods to secure the payment of the Price.

8.7. By taking delivery of Goods you agree that a security agreement covers the Goods as set out in these provisions. You must, if requested by us, effect (including by registration) a continuing security interest in our favour in any Goods that are disposed of by you on credit terms, to better protect our security interests. For these purposes, "registration" includes responding to any amendment demand and preparing and filing any financing change statement.

8.8. The following provisions of the PPSA do not apply – section 95 (notice of removal of accession, to the extent that it otherwise requires us

to give a notice to you), section 130 (notice of disposal, to the extent that it otherwise requires the us to give a notice to you), section 132(3)(d) (statement of account), section 132(4) (statement of account if no disposal), section 135(1)(a) (notice of retention, to the extent that it otherwise requires us to give notice to you), and section 143 (reinstatement). You waive your right under section 157 PPSA to receive a notice in relation to any registration event in connection with any collateral that is commercial property.

9. SUPPLY OF SERVICES

- 9.1. Any Services we perform under the Contract shall be performed with reasonable skill and care by persons who have sufficient skills, knowledge, experience and qualifications to perform them.
- 9.2. Any dates or timescales quoted by us for provisions of the Services are indicative only and are not legally binding.
- 9.3. Where any part of the Services are to be performed at any location other than our own premises, you will procure that we and our servants are granted access to the relevant location at the appointed time, or if there is no appointed time, during normal business hours at the relevant location, provided we have given reasonable prior notice of arrival. If the performance of the Services at any such location requires us or our servants to have access to and make use of basic utilities and amenities, such as electricity, water or gas supplies or telecommunications line, you will use reasonable endeavours to procure that we are granted all such permits, licenses, consents and authorisations as we may require in order to have access and use, free of charge.

10. PRICE

- 10.1. The Price shall be the price set out in the Order or, in the absence of being set out in the Order, in our written quotation, or in the absence of a quotation, in our published price list in force at the date of acceptance of your Order.
- 10.2. Unless otherwise explicitly stated, the Price excludes GST and all other taxes, duties and levies that may be applicable to the supply of the goods or services in question. To the extent that any such taxes, duties or levies are applicable to the transaction, you shall be liable to pay them in addition to the Price.
- 10.3. The Price is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which you shall also be liable for. Pallets supplied by us will be invoiced at a minimum value of \$20 each. Where exchange or return occurs, a credit will be issued.
- 10.4. An extra charge will be made for returnable containers and special shipping devices (such as oil barriers, tarpaulins, and shaft clamps) where they are consigned to you. A refund will be made if returned in good condition to the factory, or other points designated by us, within 90 days from the date of original shipment (charges prepaid).
- 10.5. We may, by giving notice to you at any time before delivery, increase the Price to reflect any increase in the cost of the Goods and/or Services that is due to:
 - (a) any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by you to change the delivery date(s), quantities or types of Goods ordered, the Specification for any Bespoke Goods or the scope or nature of the Services; or
 - (c) any delay caused by your instructions or your failure to give us adequate or accurate information or instructions.

11. PAYMENT TERMS

- 11.1. Unless the Order specifies otherwise, you must pay in full for Goods prior to dispatch or collection (as the case may be) and for Services prior to them being performed.
- 11.2. Any expenses incurred by us in recovery of debts are to be met by you. This will not apply to the extent that we are to blame for non-payment of an account.
- 11.3. Any sums to be paid by you under the Contract must be paid without any deduction or withholding and you shall not be entitled to assert any credit, set-off or counterclaim against us in order to justify withholding payment of any such amount in whole or in part. We may at any time, without limiting any other rights or remedies we may have, set off any amount you owe us against any amount we owe you, under the Contract or any other.
- 11.4. Without prejudice to our other remedies under the contract, we shall be entitled to charge interest at the rate of 8% above the prevailing National Australia Bank Business Lending Base Rate on all overdue sums which you owe us from the due date to the actual date of payment.

12. INTELLECTUAL PROPERTY

- 12.1. You hereby acknowledge that nothing in the Contract shall be deemed to transfer and Intellectual Property Rights in any Goods or Services

to you or to create any license in your favour in respect of any Intellectual Property Rights owned and/or licensed by us. We shall own the Intellectual Property Rights in any documents, information, reports, formulae, materials, manuals inventions, diagrams, schematics, drawings, specifications, test results, data, software, images, artwork, photographs, blueprints and things that we create, conceive of, provide or disclose in connection with the Contract.

- 12.2. You shall defend, hold harmless and indemnify us (on demand) against all losses, damages, costs, claims, expenses (including legal expenses) and liabilities incurred by us, or for which we may become liable, in connection with any allegation, suit, demand, action or legal proceeding made against us for actual or alleged infringement of the Intellectual Property Rights of any third party arising out of or in connection with our use of any Customer Inputs.
- 12.3. You hereby grant us an irrevocable, royalty-free, sub-licensable, transferable worldwide license to do all such acts and things as we may reasonably require to do in respect of any Customer Inputs and any of your Intellectual Property Rights for the purpose of enabling us to comply with our obligations under the Contract. To the extent that the Intellectual Property Rights in any Customer Inputs are owned by any third party, you shall procure (at your own expense) that such third party grants us such a license in respect of such Customer Inputs.

13. GOODS WARRANTY

- 13.1. We hereby warrant that if, within a period of 18 months from the date of delivery or 12 months from the date of commissioning whichever is sooner (the "**Warranty Period**"), any Goods (other than Goods excluded from the scope of this warranty, as identified below) are found:

- (a) to be materially defective in materials or workmanship; and/or
- (b) not to conform with their description in all material respects and any applicable Specification,

then we will, at our option, either repair such Goods so as to make them non-defective or conformant (as the case may be) or replace them with non-defective or conformant Goods.

- 13.2. Our obligations under this warranty, and any warranties provided by law, are (to the extent permitted by law) conditional upon:
 - (a) you notifying us of the defect or non-conformity within 7 days of becoming aware of same and, in any event, within the Warranty Period or, in the case of a non-conformity which would have been apparent to any reasonably skilled person carrying out a visual inspection of the Goods upon delivery, within 30 days of delivery;
 - (b) you providing us with a reasonable opportunity to perform all appropriate tests on allegedly defective or non-conformant Goods; and
 - (c) if we request that you do so, you returning the allegedly defective or non-conformant Goods to one of our designated service centres within 14 days of our request.
- 13.3. If, at our request, you return Goods which are alleged to be defective or non-conformant to one of our service centres, we shall reimburse you in respect of all packing and transportation costs reasonably and properly incurred by you after we have determined that the Goods are in fact defective or non-conformant.
- 13.4. Any defective or non-conformant Goods which we replace will become our property upon delivery of the replacement Goods, which will be delivered to your site free of charge.
- 13.5. If we choose to repair defective or non-conformant Goods, we may elect to do so either at one of our designated service centres or in situ. If we elect to repair such Goods in situ, we shall arrange a repair appointment with you and you shall procure that we and our servants are granted access to the location at which such Goods are situated at the appointed time. You acknowledge that several repair appointments may be required to implement a successful repair.
- 13.6. The warranty above shall apply to replacement Goods and repaired Goods just as it applied to the defective or non-conformant Goods that were replaced or repaired except that the Warranty Period shall expire on the later of (i) six months from the date of delivery of the replacement Goods or from the date of repair (as the case may be) and (ii) the date that the original Warranty Period on the defective Goods which were replaced or repaired (as the case may be) would have expired.

Exceptions

- 13.7. To the fullest extent permitted by law, we shall not have any liability to you in respect of a warranty under these Conditions of Sale, or any other warranty at law, where:
 - (a) the defect arises as a result of fair wear and tear, wilful damage by or negligence of anyone other than us or our servants, or abnormal storage or working conditions;
 - (b) the defect arises because you failed to follow our oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (in the absence of such instructions) good trade practice regarding the same;
 - (c) the defect results from the Goods having been in any way tampered with or altered by anyone other than one of our own employees or authorised representatives, unless with our permission;

- (d) the defect arises as a result of damage caused in the course of loading, unloading or transportation of the Goods except where such damage is caused by our acts or omissions or that of our servants; or
- (e) the defect results from the incorporation of, or failure of, parts in the Goods that were not supplied by us.

13.8. Goods manufactured and/or supplied to us by third parties are excluded from the coverage of the warranty above unless we have affixed our branding to them. However, the manufacturer of such goods may give you the benefit of its own warranty.

No Performance Guarantee

13.9. You hereby acknowledge and agree that, because the performance of a pump on site will be influenced by many factors which are beyond our control, we do not warrant or guarantee that Goods supplied by us will be capable of any particular standard of performance. Any information in our published sales, marketing and technical literature, or made orally or writing, by our sales representatives which relate to the performance of any Goods are made in good faith and believed to be accurate in the context of the operating conditions within our own testing facilities but are only to be considered as indicative (i.e. non-binding) as regards the performance of any Goods in any other conditions.

14. LIMITATION OF LIABILITY

14.1. We acknowledge that, in some circumstances, you will have rights under the Australian Consumer Law or other laws which cannot be excluded, modified or restricted. These rights may relate to conditions, warranties, undertakings and guarantees which apply in relation to the Goods or Services. Nothing in these Conditions of Sale (including this limitation of liability clause) excludes, modifies or restricts these rights.

14.2. Nothing in these terms and conditions shall be construed or interpreted as an attempt to exclude or limit our liability for death or personal injury or any other liability that cannot be limited or excluded by law.

14.3. Without prejudice to the foregoing, we shall not have any liability for indirect, special or consequential losses or any of the following losses, regardless of whether same may be classified as direct or indirect losses: loss of profit; loss of revenue, loss of use; loss of goodwill or reputation; loss of anticipated savings and loss of production.

14.4. Without prejudice to the foregoing, our entire liability under or in connection with the Contract (whether under contract, in tort, under statute or otherwise) shall be limited to the aggregate Price paid by you in respect of all Goods and Services supplied under it.

14.5. Nothing in the Contract shall be construed as releasing you from any duty you have at law to mitigate your losses.

14.6. All conditions, warranties, terms, undertakings, representations and obligations, whether expressed or implied, and whether arising under statute, common law, equity, custom, trade usage or otherwise (including without limitation, any implied condition, warranty, term or representation as to the correspondence of the Goods with any description or as to merchantable quality, fitness for any purpose or safety of the Goods, or operating performance where such performance is conditional on empirical factors or on the whole installation or on the individual or overall operation or on the skills of an operator), whether made known or not and our liability (if any) to compensate or indemnify any person or persons in respect of the foregoing, are expressly excluded or limited to the fullest extent permitted by law.

15. RETURNS POLICY

15.1. While we generally endeavour to accept returns of Goods in order to offer you the best service, we do so entirely at our own discretion. Generally, we only accept Standard Goods for return with our prior agreement and only if the Goods and their packaging are in original condition, and free from damage and blemishes. We generally cannot accept returns of Bespoke Goods.

15.2. We reserve the right to charge you a minimum handling charge of 15% of the price of the Goods, or \$50, whichever is greater.

16. DEFAULT

16.1. You will be in default if any of the following occurs:

- (a) you are in breach of the Contract or of any other contract that we may have with you and, in the case of a breach capable of remedy, you fail to remedy same to our reasonable satisfaction within 7 days of being requested to do so;
- (b) we have not received payment for any Goods by the due date of payment;
- (c) you suspend, threaten to suspend, cease or threaten to cease to carry on all or substantially the whole of your business;
- (d) you suspend, or threaten to suspend, payment of your debts, or are unable to pay your debts as they fall due or you admit your inability to pay your debts, or you are deemed by the law of any applicable jurisdiction to be unable to pay your debts;
- (e) you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or you make a proposal for or you enter into any compromise or arrangement with your creditors, other than where these events take place for the sole purpose of a scheme whereby you will undergo a solvent amalgamation with one or more other companies or you will undergo a solvent reconstruction;

- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with you being wound up, other than for the sole purpose of a scheme whereby you will undergo a solvent amalgamation with one or more other companies or you will undergo a solvent reconstruction;
 - (g) an application is made to court, or an order is made, for the appointment of an administrator over you or if a notice of intention to appoint an administrator over you is given or if an administrator is appointed over you;
 - (h) a person becomes entitled to appoint a receiver over you or your assets or a receiver is appointed over you or your assets; or
 - (i) any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which you are subject that has an effect equivalent or similar to any of the events mentioned in (e) to (h) above.
- 16.2. If you default, or we reasonably believe that you are about to default and we notify you accordingly, without limiting any other rights or remedies available to us, we may:
- (a) cancel or suspend all further deliveries under the Contract and/or under any other contract between us and you;
 - (b) treat the Contract and any other contract we may have with you as having been repudiated by you and terminate the Contract and/or such other contracts immediately upon giving you notice;
 - (c) exercise our right (explained above) to retake possession of any Goods which are in your possession but to which title has not passed to you;
 - (d) without notice to you, withdraw or vary any credit facilities we have provided to you; and/or
 - (e) without notice to you, make all monies owing by you to us under the Contract and/or any other contract we have with you immediately due and payable.

17. ENTIRE AGREEMENT

The Contract constitutes the whole agreement and understanding between us and you and supersedes any previous arrangement, understanding or agreement between us and you relating to the subject matter of the Contract. You acknowledge that, in entering into the Contract, you have not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in the Contract. You agree that all liability for and remedies in respect of any representations are excluded except as expressly provided in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.

18. FORCE MAJEURE

We shall not be liable for any failure or delay in performing our obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "Force Majeure Event" means any event beyond our reasonable control, which by its nature could not have been foreseen by us, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving our own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of our suppliers or subcontractors.

19. NOTICES

Any notice which is required to be given to a party under or in connection with the Contract shall be in writing, addressed to that party at its address specified in the Order, its principal place of business or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or email. A notice or other communication shall be deemed to have been received:

- (a) if delivered personally, when left at the appropriate address;
- (b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the fifth Business Day after posting;
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed;
- (d) if sent by fax or email, 48 hours after successful transmission.

The provisions of this clause 19 shall not apply to the service of any proceedings or other documents in any legal action.

20. NO WAIVER

No failure or delay by us in exercising any right, power or privilege to which we are entitled shall operate as a waiver nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise. The terms of the Contract and obligations and acknowledgments hereunder may only be waived or modified by us by an agreement in writing between the parties hereto.

21. SEVERANCE

In the event of any part of the Contract becoming void or unenforceable, then that part shall be severed from the Contract and the remaining terms and conditions hereof shall remain in full force and effect.

22. APPLICABLE LAW

The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of the State of Western Australia, Australia. The parties irrevocably agree to submit to the non-exclusive jurisdiction of the Courts of Western Australia and any court which may hear appeals therefrom.

23. SURVIVAL

Clauses 8, 12, 14, and any other clauses of the Contract which, by their nature, should survive termination, shall survive the termination or expiration of the Contract.

Version 1.0

Last updated: 10 March 2021