

# Australia Business Unit

## Conditions of Contract for Purchase Orders

### ABUE-000-PU-C03-C-00001

These are the terms and conditions referred to in ConocoPhillips Australia's Purchase Orders and which apply to the supply of the Goods set out in the Purchase Order. If any of these terms and conditions are unacceptable to Seller, Seller must not commence performance under the Purchase Order and must promptly communicate Seller's issues with the terms and conditions to Buyer for resolution. If Seller commences such performance without having notified Buyer of any such issues, or if Seller communicates such issues to Buyer but still commences such performance prior to a written resolution of those issues being reached with Buyer, then Seller is deemed to have accepted the Purchase Order with all its terms and conditions and without any different terms or conditions proposed by Seller.

#### Revision Detail

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1. Definitions

In the Contract, except where the context otherwise requires:

<b>Affiliate</b>	means any entity, including any corporation, limited liability company, partnership, or joint venture, controlled by, under common control with, or controlling the entity in relation to which the term <b>"Affiliate"</b> is used, with <b>"control"</b> being defined as owning, directly or indirectly, fifty percent (50%) or more of the assets or the outstanding shares having voting rights, or otherwise having the right, either by contract or otherwise, to control the operation, management, or policy of an entity.
<b>Applicable Laws</b>	means all national, federal, state, provincial, and local laws (including statutes, decrees, edicts, codes, orders, judgments, judicial decisions, rules, ordinances, proclamations, by-laws, regulations, and executive orders of, and the terms of any licenses, leases, rights of way, permits, or authorizations issued by, any local, municipal, national, or other duly constituted governmental authority) that are applicable to the Works, locations at which the Works are performed, and the persons in relation to whom the term is used.
<b>Approved</b>	means approved in writing by Buyer, and <b>"Approval"</b> has a corresponding meaning.
<b>Associated Activity</b>	means any training course, travel, or other activity (other than actual performance of the Works) undertaken by any member of Seller Group in connection with the Works, including activities undertaken: (a) in order for Seller to comply with or better perform its obligations under the Contract; (b) at the discretion of the relevant members of Seller Group; or (c) at the request or suggestion of Buyer.
<b>Associated Documents</b>	means, in relation to the Goods, all records and documents which are required to be delivered under the Contract in connection with the Goods or which Buyer reasonably expects or requires to be delivered in connection with or ancillary or incidental to the Goods, including test results, certificates/certifications, safety data sheets, operating manuals, manufacturer warranties, instructions, plans, and diagrams.
<b>Buyer</b>	means the entity identified as <b>"Buyer"</b> in the Purchase Order.
<b>Buyer Group</b>	means any or all, according to the context, of: (a) Buyer and its Affiliates; (b) Coventurers and their Affiliates; (c) any Disclosed Principal and its Affiliates; (d) the respective agents of any of the entities addressed in (a) through (c) above; all the foregoing being <b>"members of Buyer Group"</b> . In relation to Services, Buyer's other contractors (other than members of Seller Group), and their respective Affiliates and their subcontractors of any tier, who are engaged directly or indirectly to perform work or services and who are present at any location during performance of the Services are also <b>"members of Buyer Group"</b> .
<b>Claims</b>	means any of the following, including any combination thereof: causes of action (in rem or in personam), claims, assertions, demands, allegations, proceedings, suits, losses, liabilities, fines, penalties, costs, damages, judgments, awards, and expenses, including court costs and attorneys' fees, and sums paid by way of settlement and compromise.
<b>Consequential Loss</b>	means any or all of the following, in each case arising out of or occurring in connection with the Contract, or performance of the Works under the Contract:

- (a) loss or deferment of revenue or profit;
- (b) loss of use, loss of production, or business interruption;
- (c) loss of business opportunity or goodwill; and
- (d) to the extent not included in the foregoing, any consequential or indirect losses; whether or not any of the foregoing were (i) a natural result of the breach or matter giving rise to such loss or damages; or (ii) contemplated by the Parties at the time of execution of the Contract as a probable result of such a breach or matter.

If the Contract provides for payment of liquidated damages in specified circumstances, such liquidated damages are never Consequential Loss.

<b>Contract</b>	means the contract for the Works created between Buyer and Seller, comprising the Purchase Order, these Conditions of Contract for Purchase Orders, and any other documents annexed to the Contract or incorporated therein by reference. In the event of any inconsistency between Contract documents, the Purchase Order and these Conditions of Contract for Purchase Orders take precedence unless expressly stated otherwise.
<b>Coventurer</b>	means any entity having an interest in a joint venture, consortium, or other joint association with Buyer or with any Affiliate of Buyer (and being a party to the related joint operating agreement, unit operating agreement, joint venture agreement, shareholders' agreement, production sharing agreement, or other agreement governing operations) in relation to which the Works are being performed; and the successors and assigns of such entity.
<b>Defect</b>	means any error, omission, defect, deficiency, or discrepancy in the Works as compared against the Specifications or any warranty; or any other failure of the Works to comply with the requirements of the Contract.
<b>Defects Liability Period</b>	<p>means, in respect of Goods, the period commencing on the Effective Date and ending on the later of the date which is:</p> <ul style="list-style-type: none"><li>(a) eighteen months from the Delivery Date; or</li><li>(b) twelve months from the date on which the Goods are commissioned;</li></ul> <p>and in respect of all other Works means the period commencing on the Effective Date and ending one year from the date of completion of the Works;</p> <p>in either case unless otherwise specified in the Contract.</p>
<b>Delivery Date</b>	means the date for delivery of the Goods specified in the Purchase Order.
<b>Delivery Point</b>	means the place for delivery of the Goods specified in the Purchase Order.
<b>Disclosed Principal</b>	means any entity identified in the Contract or a Purchase Order as a Disclosed Principal of Buyer. For the avoidance of doubt, an Affiliate or Coventurer may, but need not, be a Disclosed Principal.
<b>Dispute</b>	has the meaning given in Article 25.1.
<b>Effective Date</b>	means the date specified in the Purchase Order, or if no date is specified, the date of the Purchase Order.
<b>Free Issue Materials</b>	means items or materials (if any) to be supplied to a member of Seller Group by or on behalf of a member of Buyer Group.
<b>Goods</b>	means the goods to be supplied by Seller to Buyer, as specified in the Purchase Order.
<b>Incoterms®</b>	means the current trade definitions published by the International Chamber of Commerce.

# Conditions of Contract for Purchase Orders

<b>Indemnify</b>	means defend, indemnify, and hold harmless; and terms such as “ <b>Indemnified</b> ”, “ <b>Indemnifying</b> ”, “ <b>Indemnification</b> ”, “ <b>Indemnity</b> ”, “ <b>Indemnitor</b> ”, and “ <b>Indemnitee</b> ” have appropriately correlative meanings and must be construed accordingly.
<b>Insolvency Event</b>	means any of the following events occurring in relation to Seller or its ultimate parent entity or, if Seller comprises a joint venture, one of the joint venturers: (a) it resolves (or has a petition presented, proceeding commenced, or an order made) that it be wound up; (b) it becomes insolvent or is deemed to be insolvent or unable to pay its debts; (c) it has a receiver, manager, provisional liquidator, official manager, trustee, liquidator, administrator, or any other form of insolvency administrator or external management appointed, or proceedings are commenced to appoint any such person; (d) any form of execution, distress, attachment, or sequestration is issued, exercised, or levied against it or any of its assets or property; (e) it ceases or threatens to cease to carry on business or pay its creditors; (f) it proposes or makes an arrangement, composition, compromise, reorganization, moratorium, assignment, or administration of debt with any of its creditors; (g) it takes any step to reduce its capital without prior Approval; or (h) it seeks or obtains protection from its creditors under any Applicable Law.
<b>Intellectual Property</b>	means any industrial or intellectual property throughout the world, including any patent, copyright, trade or service mark, registered or unregistered trademark, registered design, moral right, or any right in any trade secret, know-how, confidential information, or any other proprietary right or right to registration of such rights, whether protectable by statute, at common law, or in equity.
<b>Legal Fault</b>	means negligence or other tort liability, breach of duty (statutory or otherwise), breach of warranty, breach of contract, strict liability, or any failure to act in accordance with legal or contractual requirements.
<b>Materials</b>	means all materials, plant, machinery, equipment, products, processes, and other things to be supplied by Seller in the performance of the Works.
<b>Party</b>	means a party to the Contract, and “ <b>Parties</b> ” means both of the parties to the Contract.
<b>Personal Injury</b>	means any injury suffered by a natural person, including death, sickness, ill health, disease, mental anguish, and mental distress.
<b>Policies and Procedures</b>	means the policies and procedures of Buyer, or its Affiliates, that are notified to Seller from time to time.
<b>PPSA</b>	means the <i>Personal Property Securities Act 2009</i> (Cth), any regulations under that Act, and any statutory instruments or binding determinations made under any of them.
<b>Proportionate Liability Legislation</b>	means Chapter 2, Part 2 (Proportionate Liability) of the <i>Civil Liability Act 2003 (Qld)</i> , and any provision of any other Applicable Law that has a substantially similar effect to such provision.
<b>Purchase Order</b>	means the order form entitled “Purchase Order” which forms part of the Contract.

# Conditions of Contract for Purchase Orders

<b>Security Interest</b>	(a) in relation to any personal property (as defined in the PPSA), has the same meaning as in the PPSA; and (b) in relation to any other property, means any mortgage, charge, lien, pledge, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, and any other encumbrance, security agreement, or arrangement in favour of any person or any security for the payment of money or performance of obligations.
<b>Seller</b>	means the entity identified as "Seller" in the Purchase Order.
<b>Seller Group</b>	means any or all of: (a) Seller; (b) its Affiliates; (c) Subcontractors and their Affiliates; and (d) the respective agents of any of the entities addressed in (a) through (c) above; all the foregoing being " <b>members of Seller Group</b> ".
<b>Senior Executive</b>	has the meaning given in Article 25.1.
<b>Services</b>	means any services to be performed by Seller in relation to Goods, such as in connection with installation, commissioning, maintenance, or fulfillment of warranty obligations, including when any of the personnel of members of Seller Group are present on Buyer's premises.
<b>Specifications</b>	means the specifications referred to in the Contract and any modification of such specifications directed or approved by Buyer.
<b>Subcontractor</b>	means any company engaged by Seller or another Subcontractor of any tier to perform any part of the Works.
<b>Wilful Misconduct</b>	means a deliberate or reckless act or omission that deviates from a reasonable course of action or from any provision of the Contract and which is committed or omitted with knowledge of or conscious indifference to any potentially harmful consequences, including injury or death to persons, damage or loss to property, and any other type of loss.
<b>Works</b>	means: (a) the works or services described in and to be performed under the Contract; (b) the Goods to be supplied by Seller under the Contract; and (c) any Materials to be provided in connection with performance of the Contract; and includes: (d) the Works as varied by any direction given by Buyer from time to time; (e) all rectifications and reinstatement of anything done to remedy any Defects; and (f) any other matter or thing which Seller is obliged to do or causes to be done or the result or effect which Seller must achieve or cause to be achieved to comply with its obligations under the Contract.

## 1.2. Interpretation

### 1.2.1. In the Contract:

- (a) the Article headings do not form part of, and are not to be used in interpretation of, the Contract;
- (b) words in the singular include the plural and words in the plural include the singular, according to the requirements of context;
- (c) words importing a gender include every gender;
- (d) a reference to any Applicable Law includes (i) all statutes, regulations, proclamations,



- resolutions, ordinances, or by-laws amending, consolidating, or replacing such Applicable Law; and (ii) all regulations, proclamations, ordinances, and by-laws issued thereunder;
- (e) the terms “including”, “include”, “such as”, “in particular”, and the like are deemed to be completed by the expression “but not limited to”, and are to be construed without limitation;
  - (f) references to periods of time (such as “day”, “week”, “month”, and “year”) are to periods of time under the Gregorian calendar, such periods following one another consecutively when referred to in their plural form;
  - (g) the term “company” includes any incorporated limited liability company, joint stock company, firm, corporation, individual proprietorship, partnership, or other business concern;
  - (h) the term “person” includes any natural or legal person, such as any individual, company, general or limited partnership, country or state, governmental authority, labour union, organization, estate, or trust; or a joint venture or association (whether or not having separate legal personality) of two or more of the foregoing, whether they are in the same category or in different categories;
  - (i) the term “personnel” in relation to an entity includes such entity’s permanent, part-time, special, seconded, contract, or temporary staff, whether its employees or otherwise, as well as (i) employees of such entity’s Affiliates who are providing services to such entity in relation to the Works; and (ii) individuals engaged to act for such entity in a consultancy or similar role and who work under its direct control;
  - (j) references to “writing” and “written” include any means of reproducing words in a tangible and legible form, excluding items transmitted exclusively in an electronic form (such as facsimiles and emails), even if the recipient may be able to convert such items to a tangible and legible form.
- 1.2.2. The Contract is not intended to, and does not, create any partnership, joint venture, agency relationship, or other business entity between Buyer and Seller.
- 1.2.3. Performance of an obligation of any kind by Seller must be carried out at Seller's cost unless the Contract expressly states otherwise.
- 1.2.4. If Buyer makes any payment or otherwise incurs any liability of any kind in meeting any obligation of Seller pursuant to the Contract, the cost so incurred becomes a debt then due and owing by Seller to Buyer.
- 1.2.5. When the Contract, expressly or impliedly:
- (a) allows Buyer discretion as to whether or not to take or not to take any action, or as to how it may be taken; or
  - (b) confers a power of determination or a right or obligation to form an opinion or the like;
- that discretion, power, right, or obligation may be exercised or performed in the absolute discretion of Buyer, unless expressly stated otherwise.
- 1.2.6. In the interpretation of a provision of the Contract, a construction adverse to a Party must not be preferred solely on the ground that:
- (a) that Party was responsible for the preparation of the Contract or that provision; or
  - (b) the Contract or that provision favours the person relying upon that provision.
- 1.2.7. Any references to Incoterms® or any delivery terms or similar terms in the Contract are solely for the purpose of expressing the duties to be performed by each Party and are not intended, and must not be used, to define or specify the point at which title to Goods or risk of damage or loss to Goods will transfer from one Party to the other.

## 2. ACCEPTANCE OF PURCHASE ORDER

- 2.1. Seller, in agreeing to supply Goods under the Purchase Order, accepts these conditions.

## 3. SERVICES

- 3.1. The Contract is primarily for the supply of Goods. The provisions of Articles 35 through 38, set out in Annexure A hereto, apply to the extent that Seller provides any Services under the Contract.

## 4. HEALTH, SAFETY, AND ENVIRONMENT

- 4.1. Seller must perform the Contract in a manner that protects the environment and the safety and health of all personnel and the public and must comply with all Applicable Laws.

## 5. PRICING, INVOICING, AND PAYMENTS

- 5.1. Buyer will pay Seller for the Works provided in accordance with the prices, rates, and charges set out in the Contract; such prices, rates, and fees to remain fixed for the term of the Contract unless otherwise expressly (i) provided in the Contract or (ii) agreed in writing between the Parties.
- 5.2. The prices set out in the Contract include all costs incurred by Seller in relation to the Goods, including the cost of manufacture, testing, certification, packaging, handling, storage, and transport, and all costs incurred in the course of carrying out the requirements of the Contract.
- 5.3. Unless the Contract expressly provides otherwise, Seller must present to Buyer an invoice covering each delivery of Goods to Buyer. Invoices are to be submitted in the number and form requested by Buyer, accompanied by such certification and documentation as Buyer may require.
- 5.4. When Buyer receives an invoice from Seller conforming to Article 5.3 (each a **"Conforming Invoice"**), Buyer will, unless a dispute is raised under Article 5.5, pay the Conforming Invoice within 30 days of receipt thereof.
- 5.5. If Buyer disputes any Conforming Invoice in whole or in part (each a **"Disputed Invoice"**), Buyer will notify Seller of the dispute as reasonably practicable.
- 5.6. When a dispute is raised under Article 5.5, Seller must issue a credit note (**"Credit Note"**) to Buyer for the disputed portion of the Disputed Invoice (**"Disputed Portion"**) in the form requested by Buyer and at the same time, issue a new invoice in respect of the Disputed Portion (**"Disputed Portion Invoice"**) in the form requested by Buyer.
- 5.7. If a Disputed Invoice has not already been paid by Buyer prior to a dispute being raised under Article 5.5, then Buyer will pay the undisputed portion of such Disputed Invoice within 30 days of receipt of both a Credit Note and Disputed Portion Invoice pursuant to Article 5.6.
- 5.8. When a dispute is raised under Article 5.5, Buyer and Seller must discuss the dispute in good faith with the aim of determining the amount, if any, that should be paid in respect of the Disputed Portion Invoice (**"Determined Amount"**).
- 5.9. When the Determined Amount is determined in accordance with Article 5.8 or Article 25:
- (a) Seller must promptly issue a credit note to Buyer in the form required by Buyer to the extent that the amount of the Disputed Portion Invoice is in excess of the Determined Amount; and
  - (b) Buyer will pay such amount of the Disputed Portion Invoice that is equal to the Determined Amount within 30 days of such determination or, if later, of receipt of the credit note (if required) referred to in Article 5.9(a).

- 5.10. Should Seller not be satisfied with the timeliness of payment of Conforming Invoices by Buyer, it is entitled to notify Buyer of its dissatisfaction, setting out full details of reasons for its dissatisfaction and full details of the dates on which all relevant Conforming Invoices were issued and the dates and amounts of any payments made by Buyer in respect of such Conforming Invoices. Buyer will then meet with Seller to discuss Seller's dissatisfaction in good faith and will thereafter use all reasonable endeavours to address Seller's concerns to the satisfaction of Seller.
- 5.11. Buyer may set off against payments due to Seller any amounts due to Buyer from Seller.
- 5.12. Any payment by Buyer does not prejudice Buyer's right to question or dispute an invoice or pursue or recover any claims against Seller.
- 5.13. Unless otherwise agreed by the Parties, invoices are to be submitted and payable in the currency stated in the Purchase Order.

## 6. FREE ISSUE MATERIALS

- 6.1. If any member of Buyer Group provides any Free Issue Materials to any member of Seller Group, then such Free Issue Materials remain the property of the member of Buyer Group and the Seller agrees to hold the Free Issue Materials as bailee. On delivery to the member of Seller Group the Free Issue Materials are and remain at the sole risk of Seller until:
- (a) where Free Issue Materials are used in the provision of Goods, delivery to Buyer of Goods incorporating the Free Issue Materials;
  - (b) where Free Issue Materials are used in the provision of Services, acceptance by Buyer of Works incorporating the Free Issue Materials; or
  - (c) satisfaction of instructions issued by Buyer under Article 6.5.
- 6.2. Seller must clearly identify and mark as "The Property of [Buyer's name as specified on the Purchase Order]", separately store, protect, and maintain in good order and condition all Free Issue Materials, and keep comprehensive records thereof.
- 6.3. Seller must use all Free Issue Materials economically and solely for the purpose of the Contract.
- 6.4. Damage to or loss or waste of any Free Issue Materials arising from a failure of any of the members of Seller Group to exercise due diligence must be made good at the expense of Seller by use of materials of at least the same quality.
- 6.5. All surplus Free Issue Materials are to be kept separate and reported to Buyer for instructions regarding return or disposal.

## 7. INSPECTION

- 7.1. Buyer and its agents have the right to enter any premises of Seller or Subcontractors to inspect and test as may be necessary to ensure that Goods comply with the Contract. Seller must make this a condition of any subcontracts.
- 7.2. Seller must render all assistance with such inspections and testing, including providing any information which Buyer requires.
- 7.3. Inspections and tests may be made at any time and at any appropriate place, including the plant or yard of Seller or any member of Seller Group, and Seller must assist Buyer in inspecting or testing. Likewise, Seller must on Buyer's request supply test reports, inspection reports, and material certificates in relation to Goods.

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- 7.4. In the event that, as a result of any such inspection or test, Buyer discovers a Defect, then Buyer's costs in carrying out any such inspection or test will be borne by Seller as a debt due and owing to Buyer or else deducted from any money due or which becomes due from Buyer to Seller.
- 7.5. Any inspection or testing by Buyer, or any waiver by Buyer of such inspection or testing, will not relieve Seller from full responsibility for the performance of Seller's obligations under the Contract.
- 7.6. All Goods may be subject to inspection or testing within a reasonable time after arrival at the Delivery Point or final delivery destination. Buyer is entitled to reject any Goods found by such inspection or testing not to conform to the requirements of the Contract.

### 8. LIFTING GUIDELINES

- 8.1. The Goods, the Goods' packaging, and Seller's transportation, handling, and lifting equipment must be designed, rated, and tested to comply with Buyer's *Lifting Guidelines Parts 1, 2, and 3* as applicable. If the equipment does not fully conform, Buyer may remedy the nonconformance at Seller's cost. Such costs will include actual cost of rectification.

### 9. TITLE

- 9.1. Title to all or any portion of the Works and any Materials that are not to be returned to Seller passes to Buyer upon the earlier of:
- (a) identification of such Works or Materials to the Contract;
  - (b) any payment by or on behalf of Buyer for such Works or Materials;
  - (c) tender of such Works or Materials to the applicable transportation provider for delivery to Buyer; and
  - (d) incorporation of such Materials or Works into property of the applicable member of Buyer Group; such Materials or Works arriving at the premises of the applicable member of Buyer Group; or, in the case of Works being performed at a fabrication facility that is not on the premises of a member of Buyer Group, upon incorporation of such Materials or Works into such fabricated portion.
- 9.2. Seller must clearly identify such Materials and other Works as the property of Buyer by visibly marking or tagging them in a manner reasonably acceptable to Buyer, and Seller must, to the extent possible, segregate such Materials and other Works from other materials, work, goods, and equipment owned by Seller or third parties. Buyer has the right, at Buyer's option, to inspect and verify that said Materials and other Works have been properly identified as Buyer's property and segregated as required by Buyer.
- 9.3. Transfer of title is without prejudice to Buyer's right to reject defective or nonconforming Goods pursuant to Article 7.6 or any other right or obligation of either Party provided in the applicable Purchase Order. Title to Goods rejected by Buyer pursuant to Article 7.6 will revert to Seller.
- 9.4. Seller acknowledges and agrees that, upon legal title to and ownership of any Goods and all other constituents of the Works passing to Buyer, any Security Interests in favour of Seller in respect of those Goods and other constituents will be irrevocably and unconditionally released and Seller will promptly (at Seller's cost) execute and deliver all further documents (in form and substance satisfactory to Buyer) to evidence that release. If Seller's Security Interest in those Goods is registered on the Register (as defined in the PPSA) and those Goods comprise:
- (a) all of the property the subject of that registration, Seller must discharge that registration; or
  - (b) only a part of the property the subject of that registration and the collateral class specified in that registration is able to be amended to specifically exclude those Goods, Seller must register a financing change statement in respect of the registration to reflect that exclusion;

in each case as soon as is reasonably practicable and in any event no later than ten (10) days after title to those Goods has passed to Buyer in accordance with the terms of the Contract. For these purposes,

“collateral” and “financing change statement”, and “registration” have the meaning given to them in the PPSA.

### 10. RISK IN THE GOODS

- 10.1. Risk in Goods will be with Seller until the delivery of the Goods to Buyer at the Delivery Point and acceptance by the Buyer. Upon such delivery and acceptance, Buyer will assume risk in the Goods, subject to (i) the obligations in Article 16; (ii) Seller retaining the risk of loss of or damage to defective or nonconforming Goods rejected by Buyer pursuant to Article 7.6; and (iii) where Annexure A applies, the risk allocations in Article 35.3.2.
- 10.2. Seller must make good at its own cost any damage to Goods occurring while Seller has risk in the Goods.

### 11. DUE DATE FOR DELIVERY

- 11.1. Time is of the essence for delivery of the Goods to the Delivery Point.
- 11.2. Seller must deliver the Goods to Buyer at the Delivery Point on or before the Delivery Date.
- 11.3. Immediately upon Seller dispatching the Goods, Seller must notify Buyer of the time of dispatch, the Purchase Order number, the type and quantity of Goods dispatched, and the expected date and time of delivery.
- 11.4. It is an essential condition of the Contract that the Delivery Date is met. Seller must continuously monitor the progress of the Works and keep Buyer updated on the planned and actual progress. Seller must promptly provide such information as Buyer may require for monitoring and verifying the progress of the Works. Seller must not give priority to work for its other clients to the detriment of the Works.
- 11.5. Should the Works fall behind the agreed time schedule, Seller must promptly provide a recovery plan to Buyer, setting out the measures that Seller intends to take to bring the Works back on schedule and meet the Delivery Date. If Seller cannot substantiate to Buyer’s reasonable satisfaction that the measures proposed by Seller will achieve the required schedule recovery, Buyer is entitled, without prejudice to any of its other rights, to require Seller to take such further measures stipulated by Buyer to assure such schedule recovery, or to minimize delay. Seller must undertake all schedule recovery measures, whether proposed by Seller or stipulated by Buyer, at its own expense. Buyer also has the right to expedite performance of the Works itself.

### 12. MANNER OF DELIVERY

- 12.1. The Goods must be delivered to the Delivery Point in such manner as is required under the Contract or, if no such manner is specified, in such manner as Buyer may require. Seller must notify Buyer in advance of any planned delivery of Goods.
- 12.2. All Associated Documents must be delivered with the Goods or in such other manner required under the Contract, or upon earlier termination of the Contract. Delivery will not be complete until all Associated Documents have been received and confirmed as acceptable by Buyer. Seller must ensure that all Associated Documents are correct, valid, and in good order.
- 12.3. All Goods supplied under the Contract must comply with the requirements of Buyer’s standard specifications for dangerous goods (where applicable) and for forwarding, packaging, marking, and storage of equipment and materials as may be notified to Seller from time to time. Without limitation, all shipments of hazardous substances or dangerous goods must be accompanied by a current (issued within last 5 years) safety data sheet compliant with the *National Code of Practice for the Preparation of Material Safety Data Sheets* [NOHSC:2011(2003)], and be packaged and labelled in compliance with the *Australian Code for the Transport of Dangerous Goods by Road & Rail*, and Applicable Laws.

## Conditions of Contract for Purchase Orders

- 12.4. Seller must Indemnify Buyer against any loss or damage to Goods suffered prior to their delivery at the Delivery Point.
- 12.5. Acceptance of delivery of Goods does not constitute acknowledgment by Buyer as to the condition of the Goods or of compliance of the Goods to the Contract.

### **13. COSTS ASSOCIATED WITH DELIVERY**

- 13.1. Seller is responsible for and must pay all costs and expenses associated with the Goods, including transportation, freight, packaging, handling, and storage of the Goods, until delivery of the Goods at the Delivery Point.

### **14. PACKAGING AND PROTECTION**

- 14.1. Seller is responsible for all appropriate and customary packaging of the Goods prior to dispatch.
- 14.2. All packaging and packaging waste products must be kept to a safe minimum and where practicable must be reusable, recyclable, or suitable for environmentally safe disposal to landfill or incinerator. For practical waste handling reasons, the use of loose polystyrene beads as a package medium is prohibited.
- 14.3. All packages must be clearly and legibly marked with the Goods material number (where applicable), the Purchase Order number, line number, delivery point, and any other identification markings that may be requested by Buyer in the Purchase Order. Goods must also comply with the requirements in Article 12.3, including in relation to the packaging and labelling of dangerous goods and hazardous substances.
- 14.4. Buyer may reject and return, at Seller's cost, any Goods damaged in onward transit after delivery thereof if the damage could reasonably have been avoided by appropriate packaging.

### **15. GOODS WARRANTIES**

- 15.1. Seller warrants that it has good and marketable title to the Goods and that the Goods are free from any Security Interest or other encumbrance or lien.
- 15.2. Seller warrants as follows in relation to the Goods and each part of the Goods, that they must:
  - (a) be manufactured to the highest standard of care, skill, and diligence that would normally be expected of a reputable and competent organization providing goods similar to the Goods;
  - (b) be fit for their usual purpose and any purpose specified in the Contract;
  - (c) be free of defects in materials, workmanship, and design;
  - (d) comply with all Applicable Laws and with best industry practices;
  - (e) be in good working order and condition;
  - (f) have a life expectancy commensurate with what would be expected of similar goods provided for similar purposes by a competent and reputable supplier or contractor;
  - (g) be manufactured strictly in accordance with any manufacturing drawings, specifications, or description supplied to Seller by Buyer; and
  - (h) be new unless expressly stated otherwise in the Contract.
- 15.3. The delivery of a warranty or guarantee from any third party vendor, manufacturer, or supplier is in addition to the warranties given by Seller under the Contract, and does not relieve Seller from responsibility for its warranties under the Contract.
- 15.4. Seller must assign to Buyer the warranty or guarantee of any vendor, manufacturer, or supplier of any Materials or Goods as well as any warranty of Subcontractors, consultants, or the specialized services of

others, and Seller must cooperate and assist Buyer in Buyer's enforcement of those warranties or guarantees.

- 15.5. The warranties in this Article 15 are in addition to any warranties specified elsewhere in the Contract.

## 16. DEFECTS

### 16.1. Remediation of Defects

- 16.1.1. Seller represents, warrants, and guarantees that the Works (i) will be free of Defects throughout the Defects Liability Period; (ii) will conform to the Specifications; and (iii) will be capable of operation for the purpose specified in the Contract or, where none is specified, their usual purpose.
- 16.1.2. If Seller discovers or is aware of any Defect then Seller must promptly notify Buyer of the Defect.
- 16.1.3. Upon request by Buyer, Seller must investigate the cause of any Defect and provide a report to Buyer on the results of such investigation as soon as reasonably practicable thereafter.
- 16.1.4. When a Defect occurs, Seller must take such steps as are necessary to ensure that a defect similar to the Defect will not occur again, including taking pre-emptive remedial action with respect to Goods not yet discovered to have a Defect but similar to Goods found to have a Defect.
- 16.1.5. If Buyer discovers any Defect (whether pursuant to Article 16.1.2 or otherwise) that exists or existed within the Defects Liability Period (including any deterioration or damage due to patent or latent defect in any Goods or any part thereof), then, at any time without prejudice to any other rights or remedies that Buyer has or may have in relation to the Defect:
- (a) Buyer may by notice require and Seller must promptly remedy each Defect to Buyer's satisfaction without cost to Buyer and without causing damage to any other property or materials and avoiding and minimizing disruption to Buyer's ongoing operations; and
  - (b) if (i) Seller does not or cannot remedy each Defect in accordance with Article 16.1.5(a); or (ii) in Buyer's reasonable opinion, it is necessary for health, safety, environmental or scheduling reasons; Buyer will be entitled to perform the remedial work itself or to cause it to be performed by third parties and Buyer is entitled to recover from Seller all costs and expenses associated with the remedial work as a debt due and owing or to deduct the same from any money due or which becomes due from Buyer to Seller.
- 16.1.6. Nothing in this Article 16.1 is intended or to be construed to relieve any manufacturer or supplier from any obligation or warranty in favour of Seller, Buyer, or third parties.
- 16.1.7. Seller's warranty under this Article 16.1 does not extend to any defect or failure occurring in the Works to the extent that such defect or failure is due to:
- (a) improper use of the Works by Buyer or its contractors of any tier;
  - (b) normal wear and tear; or
  - (c) defective materials supplied by Buyer.
- 16.1.8. If it is necessary for Seller to carry out remedial work under this Article 16.1, Seller must do so at such times as Buyer reasonably requires and in a manner which causes as little inconvenience as possible to the members of Buyer Group and their other contractors.
- 16.1.9. Seller must remedy each Defect as required under this Article 16.1 at any location nominated by Buyer, including at any offshore site. Unless otherwise agreed by the Parties or where the defective Works were, or under the Contract were to be, carried out at such offshore site, if such remedial work is to be performed at an offshore site, all transportation from Buyer's nominated onshore embarkation point to the offshore site and all accommodation and messing at the offshore site will be provided by Buyer at Buyer's expense.



- 16.1.10. If Goods have to be transferred from their in-service location to premises of any of the members of Seller Group for the rectification or repair to be carried out, and returned to such location, Seller must, at its own cost: (i) arrange for all required transportation of the Goods; and (ii) handle all applicable formalities with regard to temporary exportation, temporary importation, re-exportation and re-importation of the Goods, including all required customs clearances. Seller is liable for, and must Indemnify each of the members of Buyer Group from and against, any Claims for physical damage to or loss of Goods in relation to performance of such rectification or repair elsewhere than at the in-service location of the Goods.

### 16.2. Rejection

- 16.2.1. Buyer may reject by written notice delivered to Seller all or any part of the Works that are not in accordance with the Contract or contain a Defect, without prejudice to any other rights or remedies Buyer has or may have in relation to such matter.
- 16.2.2. Notwithstanding:
- (a) anything to the contrary in the Contract; or
  - (b) the failure or otherwise of Buyer to reject the Works in accordance with Article 16.2.1;
- Buyer is not liable to pay Seller for any Works which are not in accordance with the Contract and Buyer is entitled to recover any amounts already paid to Seller in respect of such Works as a debt due and owing or deduct the same from any money due or which becomes due to Seller by any of the members of Buyer Group.

## 17. GST

- 17.1. Any reference in this Article 17 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- 17.2. Unless expressly included, the consideration for any supply made under or in connection with the Contract does not include an amount on account of GST in respect of the supply ("**GST-Exclusive Consideration**"), except as provided in this Article 17.
- 17.3. Any amount referred to in the Contract (other than an amount referred to in Article 17.8) which is relevant in determining a payment to be made by one of the Parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST-exclusive basis.
- 17.4. To the extent that GST is payable in respect of any supply made by a Party ("**Supplier**") under or in connection with the Contract, the consideration to be provided under the Contract for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST-Exclusive Consideration (or its GST-exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- 17.5. The recipient of the taxable supply must pay the additional amount payable under Article 17.4 to the Supplier at the same time as the GST-Exclusive Consideration is otherwise required to be paid.
- 17.6. The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under Article 17.4 or at such other time as the Parties may agree.
- 17.7. Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with the Contract, the Supplier must determine the net GST in relation to the supply (taking into account any adjustment), and if the net GST differs from the amount previously paid under Article 17.5, the amount of the difference must be paid by, refunded to, or credited to the recipient, as applicable.
- 17.8. If one of the Parties is entitled to be reimbursed or Indemnified for a loss, cost, expense, or outgoing incurred in connection with the Contract, then the amount of the reimbursement or Indemnity payment



must first be reduced by an amount equal to any input tax credit to which the Party being reimbursed or Indemnified is entitled in relation to that loss, cost, expense, or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with Article 17.4.

### 18. APPLICABLE LAWS; TAXES

#### 18.1. Compliance

- 18.1.1. Seller must, and must procure that each other member of Seller Group shall, comply with all Applicable Laws and not do or fail to do anything which would cause any member of Buyer Group to be in breach of any Applicable Laws. Seller must Indemnify each of the members of Buyer Group against any Claim arising out of any failure by any of the members of Seller Group to comply with this Article.
- 18.1.2. Seller must, and must procure that each other member of Seller Group shall, comply with all Applicable Laws with respect to environmental protection, including those pertaining to the use, application and handling of pesticides, plant regulators, defoliants, and desiccants, and, without limitation to any other Indemnity contained in the Contract, Seller must Indemnify each of the members of Buyer Group against any Claim arising out of any failure by any of the members of Seller Group to comply with this Article. Seller must remove any debris or material related to its equipment, tools, or other items which any member of Seller Group brings onto sites or property of any of the members of Buyer Group.
- 18.1.3. Seller must give all notices, make all applications, and pay all fees and expenses, including increased or new fees and expenses, necessary to ensure compliance with all Applicable Laws.

#### 18.2. Taxes

- 18.2.1. Seller is solely liable, unless specifically stated elsewhere in the Contract, for payment of all taxes, licence and permit fees, import and export duty, harbour dues and pilotage fees, income, profit, payroll, fringe benefit, franchise, and personal property taxes, duties, and other similar imposts and all penalties or interest thereon.
- 18.2.2. Seller must Indemnify and keep Indemnified the members of Buyer Group from and against all Claims with respect to the taxes and other items referred to in Article 18.2.1 and the non-payment of them, whether arising from the performance of the Works or under any contract or arrangement with any member of Seller Group.
- 18.2.3. The benefit of any fuel tax credits, fuel rebates or other similar credits to which Seller is or becomes entitled in respect of any fuel used in the course of performing Seller's obligations, must be passed on to Buyer (if not already factored into amounts payable by Buyer) by a reduction in amounts otherwise payable by Buyer under this Agreement.

#### 18.3. Withholding Tax

- 18.3.1. Buyer is not liable to Seller, and Seller has no Claim against Buyer, in respect of any sum which would otherwise be payable to Seller under the Contract:
  - (a) which Buyer has withheld from payment in accordance with any Applicable Laws, including in respect of income taxes, until Buyer is released from or relieved from all potential liability pursuant to Applicable Laws in respect of the amount so withheld and is lawfully entitled to pay the sum to Seller; or
  - (b) which Buyer has paid in accordance with the provisions of any Applicable Laws to the governmental authority or other person legally entitled to accept payment.

### 19. TERMINATION FOR CONVENIENCE

- 19.1. At any time Buyer may, acting reasonably and in order to protect its legitimate interests, and whether or not Seller is in default, terminate the whole or any part of the Works or the Contract by written notice.

- 19.2. Upon receipt of a notice pursuant to Article 19.1, Seller must immediately:
- (a) cease the part or the whole of the Works;
  - (b) protect property in the possession of Seller in which Buyer has or may acquire an interest;
  - (c) comply with any directions by Buyer; and
  - (d) use its best endeavours to mitigate any loss or damage that it may suffer as a result of the termination.
- 19.3. Subject to Buyer's rights under or in connection with the Contract, including the rights to withhold or set off payment and recovery of damages, Buyer must pay Seller:
- (a) the outstanding and unpaid portion of the Contract price earned by Seller up to the date of termination and which shall be established by the measured progress;
  - (b) the cost of Materials reasonably ordered by Seller prior to the date of termination for the Works, which Seller is legally liable to accept (subject to exercise of any termination rights by Seller if Buyer so directs), but only if the Materials become the property of Buyer upon payment;
  - (c) the reasonable costs of complying with any directions given by Buyer's representative upon, or subsequent to, termination;
- and Buyer is not otherwise liable to Seller for any cost, loss, expense, lost profit, or damage incurred by Seller as a consequence of, or in connection with the Contract, the work under the Contract, or a termination under this Article 19.
- 19.4. Seller acknowledges that the provision of the Works is a competitive business and that Buyer may terminate the Contract under this Article 19 without considering the impact of such termination on Seller.
- 19.5. Without prejudice to any other rights of Buyer, Buyer may, following termination of the Contract (including under this Article 19), perform the Works itself or procure a third party to perform the Works for reward in the place of Seller.

## 20. TERMINATION FOR DEFAULT

- 20.1. Without limiting Buyer's rights under any other Article of the Contract, Buyer may terminate the Contract by notice to Seller if:
- (a) Seller experiences an Insolvency Event; or
  - (b) Seller defaults in the performance of any essential condition of this Contract (and Seller acknowledges that, without limitation, Articles 11.2 and 29 are essential conditions); or
  - (c) Seller materially defaults in the performance of any other obligation under the Contract, and fails to remedy such default within any reasonable period allowed by Buyer for such remedy and in any event within ten (10) days of written notice from Buyer.
- 20.2. Without limiting Seller's rights under any other Article of the Contract, Seller may terminate the Contract by notice to Buyer if:
- (a) Buyer experiences an Insolvency Event; or
  - (b) Buyer materially defaults in the performance of any obligation under the Contract, and fails to remedy such default within any reasonable period allowed by Seller for such remedy and in any event within ten (10) days of written notice from Seller; provided that the Seller may not issue such a notice or terminate the Contract for any default in respect of payment of invoices unless the Seller has first complied with clause 5.
- 20.3. In the event of termination under this Article 20, Buyer must, subject to Buyer's right of set-off, pay Seller amounts which have properly become due at the date of termination, provided that this obligation only applies to such incomplete Works that Buyer is reasonably able to have others complete on its behalf.

- 20.4. In the event of termination under Article 20.1, Buyer is under no further liability arising from termination except as specified in Article 20.3. Buyer may deduct the costs which it incurs as a consequence of Seller's default from amounts payable to Seller, no payment being due to Seller until such costs have been ascertained. If the sum payable to Seller under the Contract is less than the aggregate of any deductions made under this Article 20.4, the amount of the difference will become a debt due and payable by Seller to Buyer.

## **21. SURVIVAL OF OBLIGATIONS**

- 21.1. The provisions in respect of confidentiality, insurance, audit rights, taxes and duties, conflict resolution, intellectual property, indemnities, and governing law contained in the Contract survive the termination, expiry, or completion of the Contract.
- 21.2. Termination of the Contract is without prejudice to any rights or remedies that the Parties may have arising prior to or in connection with such termination or the event that led to such termination and any provisions necessary to give effect to such termination.

## **22. SUSPENSION**

- 22.1. Seller must not suspend the whole or any part of the Works without a written direction from Buyer. In particular, Seller must not cease or suspend or threaten to cease or suspend the whole or any part of the Works for convenience or on the basis that it is not making sufficient profit under the Contract or that it can make more profit working elsewhere. Seller must ensure that each member of Seller Group complies with this Article and Seller must Indemnify the members of Buyer Group against any Claim which arises from a breach of this Article by any of the members of Seller Group.
- 22.2. Buyer may, acting reasonably and in order to protect its legitimate interests, direct Seller to suspend the progress of the whole or part of the Contract for a reasonable time and on reasonable conditions. If Seller disagrees with the time or conditions directed by Buyer, Seller may raise a Dispute under clause 25.
- 22.3. If suspension is due to Seller's breach of the Contract, Seller will bear all costs arising from the suspension, and has no entitlement to adjustment of the Delivery Date. If suspension is due to Buyer's breach of the Contract, Buyer will bear all costs arising from the suspension.

## **23. AUDIT**

- 23.1. Seller must, and must ensure that each other member of Seller Group shall:
- (a) maintain a true and correct set of records pertaining to all activities relating to its performance of the Works and all transactions related thereto;
  - (b) retain all such records for a period of not less than four (4) years after final payment for the Works; provided however there will be no obligation to continue to maintain records that have been audited and determined to be fully accurate by Buyer;
  - (c) permit any representatives authorized by Buyer to audit, at any reasonable time or times and with reasonable notice during the term of the Contract and during the four (4) year period after final payment for the Works and all transactions related thereto, any and all records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data pertaining to the Contract, or any other data deemed, in the sole opinion of Buyer, necessary for the conduct of Buyer's business during such audits;
  - (d) provide any and all information and documents relevant to the Works to Buyer upon request, save where such information or documents are confidential and commercially sensitive and are not subject to any requirement of disclosure under Applicable Laws; and
  - (e) co-operate fully with Buyer and Buyer's authorized representatives during the audits performed hereunder, including furnishing copies of all requested documents. Buyer also has the right to also

obtain statements from officers, directors, and personnel of the members of Seller Group in the course of such audits.

- 23.2. Seller must maintain a complete log of all Works performed and must provide Buyer with reports containing all information as required by Buyer from time to time.

## 24. CHANGE MANAGEMENT

- 24.1. Seller must formally notify Buyer of any manufacturing or supplier changes and/or administrative part number changes in the Goods and provide a brief explanation of the nature of the change.

## 25. RESOLUTION OF DISPUTES

- 25.1. In respect of any dispute or difference between Buyer and Seller under or in connection with the Contract ("**Dispute**"):
- (a) The Party claiming that a Dispute has arisen is to give to the other written notice identifying the matters that are the subject of the Dispute.
  - (b) If the Dispute is not resolved within fourteen (14) days of the service of a notice of Dispute, the matter will be referred to a senior executive of each Party who has authority to settle the Dispute (each a "**Senior Executive**").
  - (c) If the Senior Executives are not able to resolve the Dispute within thirty (30) days after the expiry of the 14-day period under Article 25.1(b), then the Senior Executives may agree an alternative dispute resolution method (for example, mediation or expert determination).
  - (d) If the Dispute is not resolved after compliance with the foregoing provisions of this Article 25.1, the Parties may by mutual agreement refer the Dispute to arbitration (in a forum and according to rules both to be mutually agreed) or, in the absence of such agreement, either Party may commence legal proceedings.
- 25.2. Notwithstanding the provisions of this Article 25, if the Works have not been completed, at all times Seller must proceed with expedition to continue to perform the Works and in so doing must comply with all instructions of Buyer pending resolution of the Dispute.
- 25.3. Notwithstanding the provisions of this Article 25, neither Party is to be prevented or restrained from applying to a court of competent jurisdiction to seek urgent interlocutory relief. The Parties must, as soon as is practicable and in conjunction with the urgent court application, comply with the procedure in Article 25.1.

## 26. PATENT INFRINGEMENT AND INTELLECTUAL PROPERTY

- 26.1. Seller must not, and must ensure that other members of Seller Group shall not, violate or infringe the intellectual property rights of any other person in performance of the Works. Seller must Indemnify the members of Buyer Group from and against all Claims of whatsoever kind asserted by or arising in favour of any person or entity for or as a result of infringement, misappropriation, or misuse of any Intellectual Property rights, based on or related to Seller Group's use or application of any Materials, equipment, article of manufacture, machine, computer software, composition of matter, or process or based on Buyer Group's use or application of any Materials, equipment, article of manufacture, machine, computer software, composition of matter, or process (which is supplied or provided by Seller Group to Buyer Group) for its intended purpose or in reliance on advice or instruction from any member of Seller Group or else is attributable to Seller Group in connection with the Works. Should Seller be prevented from performing under the Contract by reason of legal proceedings based upon such claim of infringement, Buyer will be relieved of its obligations to make payment for the Works not performed or for items of equipment, machinery, or any Materials affected by such proceedings.

- 26.2. All payments for royalties, patent rights, copyright, or in respect of any Intellectual Property and fees due or payable for, or in connection with any matter or thing, used or required to be used in the performance of the Contract or to be supplied under the Contract whether payable in one sum or by instalments or otherwise, must be included or deemed to be included by Seller in the rates and prices payable under the Contract and must be paid by Seller to those persons to whom they may be due and payable.
- 26.3. Buyer has the right to use, alter, and copy all Works and Associated Documents provided by Seller under the Contract, in any reasonable manner as may assist Buyer to conduct its business. Such permitted use includes the copying and publication of the Associated Documents for the purpose of education and training of Buyer's personnel and contractors of every tier.

## **27. ASSIGNMENT**

- 27.1. Seller must not subcontract or assign its rights, interests, obligations, or liabilities under the Contract without prior Approval. When subcontracting has been Approved, Supplier must not reassign work from the Approved Subcontractor to another person without prior Approval. Reasonable utilization by Seller of personnel engaged directly by members of Seller Group or engaged by members of Seller Group through a personnel services agreement or similar arrangement for casual or ad hoc labour is not considered as subcontracts that require Approval.
- 27.2. Any such subcontract or assignment without prior Approval is voidable at Buyer's election and, if so elected, of no force and effect.
- 27.3. Seller must ensure that the provisions of each subcontract Approved pursuant to Article 27.1 are consistent with the terms of the Contract and that Buyer's rights in the Contract are not limited by any provision in or omitted from any subcontract.
- 27.4. Buyer may assign or novate all or part of its rights, interest, obligations, or liabilities under the Contract at any time to (i) an Affiliate registered in Australia or whose principal place of business is in Australia or (ii) a Coventurer, without having to obtain the consent of Seller, and Seller must execute any documentation required to give effect to such assignment or novation when directed to do so.
- 27.5. The Contract inures to and is binding upon the respective successors and permitted assigns of the Parties.

## **28. LIENS & CLAIMS**

- 28.1. Seller must Indemnify the members of Buyer Group against Claims for:
- (a) any debt alleged to be due from Seller to any Subcontractor or other person, or from any Subcontractor to any person; and
  - (b) any lien and other encumbrance against the property of any of the members of Buyer Group in connection with any such debt.
- 28.2. Seller must on behalf of the members of Buyer Group, and in their names, defend at its own expense any Claims referred to in Article 28.1. Each applicable member of Buyer Group has the right, at its discretion, to select or approve the counsel to be engaged by Seller to defend such member; and to participate in the defence (at Seller's cost in respect of any Claim referred to in Article 28.1(b)).
- 28.3. Notwithstanding anything to the contrary in the Contract, Buyer may, upon notice to Seller, withhold from payments due to Seller such sums as are reasonable to cover Claims relating to liens and other encumbrances against the property of any of the members of Buyer Group on account of debts or Claims alleged to be due from any member of Seller Group to any person, including Subcontractors. Buyer may make reasonable settlements of such Claims.

## 28.4. PPSA Security Interests

- 28.4.1. A reference in this Article 28 to a lien, an encumbrance, or both must be read and interpreted as including a reference to a Security Interest.
- 28.4.2. Seller must not grant a Security Interest in the Contract or the Purchase Order, in whole or in part, or in any interest or benefit therein, without prior Approval.
- 28.4.3. If Buyer determines that the Contract or the Purchase Order (or a transaction related to the Contract or the Purchase Order) contains a Security Interest granted by Seller in favour of Buyer, Seller must promptly do anything (including executing any new document) which Buyer reasonably requires for the purposes of:
- (a) ensuring that the Security Interest is enforceable, perfected (including, where possible, by control in addition to registration), and otherwise effective; or
  - (b) enabling Buyer to apply for registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by Buyer; or
  - (c) enabling Buyer to exercise any rights or powers in connection with the Security Interest.
- 28.4.4. To the extent permitted by law, and in respect of each Security Interest arising in favour of Buyer under or in connection with the Contract or the Purchase Order:
- (a) Buyer need not comply with sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 142, and 143 of the PPSA (to the extent, if any, mentioned in section 115(1) of the PPSA);
  - (b) Seller waives its rights to receive any information under section 275 of the PPSA and must not make any request under that section; and
  - (c) Seller irrevocably and unconditionally waives its right to receive any notice of any verification statement in respect of any financing statement or any financing change statement which relates to the Contract or the Purchase Order.

For these purposes, “financing change statement”, “financing statement”, “registration”, and “verification statement” have the meaning given to them in the PPSA.

## 29. BUSINESS ETHICS

- 29.1. Seller must not, and must ensure that each other member of Seller Group and its and each such member’s officers, directors, and personnel shall not, directly or indirectly, (i) pay salaries, commissions, or fees, or make payments or rebates to any of the members of Buyer Group or their respective officers, directors, or personnel; (ii) favour any of the members of Buyer Group or their respective officers, directors, or personnel with gifts or entertainment of significant cost or value, or with services or goods sold at less than full market value; (iii) enter into business arrangements with any of the members of Buyer Group or their respective officers, directors, or personnel, unless any such person is properly and duly acting in its capacity as a representative of Buyer Group or of the applicable member thereof; or (iv) engage in any behaviour or encourage any action that is contrary to human trafficking or modern slavery legislation. Seller must comply, and must ensure each member of Seller Group shall comply, with the principles of the ConocoPhillips Code of Business Ethics and Conduct, available from Buyer on request or at <http://static.conocophillips.com/files/resources/codeofethics.htm>.
- 29.2. Seller must not, and must ensure that each other member of Seller Group and its and each such member’s officers, directors, and personnel shall not, offer, pay, arrange for a third party to pay, or agree to pay any payment, gift, or other thing of value of any nature to any officials, employees, or agents of any government; any department, agency, or instrumentality of any government; any political party; any candidate for political office; or any other person, including a legislative, administrative, or judicial office (including any person exercising a public function for a public agency, a public enterprise, or a public international organization) where such payment, gift, or other consideration would violate Applicable Laws or the principles set forth in the Convention for Combating Bribery of Foreign Public Officials in International



Business Transactions, signed in Paris on December 17, 1997 (and without limitation, must not perform any act which would constitute "bribery of a foreign official" as defined in Article 1(3) of such Convention), the United States Foreign Corrupt Practices Act ("FCPA"), the United Kingdom Bribery Act, or other anti-bribery or anti-corruption legislation applicable to either Party.

- 29.3. Notwithstanding that the FCPA and certain other applicable anti-bribery or anti-corruption legislation may permit, in limited circumstances, payments called "facilitating payments" (i.e., small payments made in order to expedite or secure the performance by a governmental authority of routine actions of a non-discretionary nature, which a person is otherwise entitled by law to receive), Seller must not, and must ensure that its officers, directors, and personnel, and the other members of Seller Group and their respective officers, directors, and personnel shall not, make any "facilitating payments" in connection with the Works or the Contract.
- 29.4. If Buyer reasonably believes that Seller or any member of Seller Group has engaged, directly or indirectly, in improper conduct in breach of this Article 29, Buyer may, at its sole discretion, direct Seller to suspend any further performance by Seller in accordance with the terms in Article 22.2, withhold further payment to Seller, and/or terminate the Contract in accordance with the terms in Article 20 with immediate effect.
- 29.5. Seller must ensure that each member of Seller Group complies with this Article 29 and Seller must Indemnify the members of Buyer Group against any Claim which arises from a breach of this Article 29 by any of the members of Seller Group or their respective officers, directors, or personnel.

### **30. EXPORT CONTROL COMPLIANCE**

- 30.1. Seller must comply (and must ensure that its officers, directors, and personnel, and the other members of Seller Group and their respective officers, directors, and personnel shall comply) with all Applicable Laws relating to control of exports and re-exports, and to sanctions, including those of Australia and the United States. Notwithstanding anything to the contrary in this Article 30, neither Buyer nor Seller shall be required to meet its obligations under the Contract in a way that violates Applicable Laws.
- 30.2. Seller is responsible for obtaining any authorization required under any Applicable Laws relating to export and re-export control (including those of Australia and the United States), including licences required for the transfer of any regulated technology to nationals of certain countries. Seller must, in a timely manner, identify in writing to Buyer those items, technology, and software or services for which an export authorization is required and whether any licence or authorization exceptions apply, and provide export classification and licensing information necessary for export documents, including the appropriate Export Control Classification Number, licence numbers, copies of licences, and any other information requested by Buyer to ensure or evidence compliance with Applicable Laws in respect of export and re-export control and sanctions.
- 30.3. In connection with the Contract, Seller must not (i) engage with any person that is listed on any Australian government, United States government, or other applicable government list of prohibited or denied parties or organized under the laws of, operating under the flag of, performing services in, or resident in any country against which Australia or the United States has imposed comprehensive economic sanctions; or (ii) obtain any items, technology, software, or services originating from any country against which Australia, the United States, or other applicable government has imposed comprehensive import sanctions or restrictions. In the event that Seller acts as the agent of Buyer in connection with any procurement of goods, technology, or services or the management of contractors or suppliers engaged by Buyer, Seller must verify and ensure that the contractors or suppliers managed or contracted for by Seller do not perform any act prohibited by items (i) and (ii) above in connection with the Contract.
- 30.4. Seller must Indemnify the members of Buyer Group against any Claims that may arise as a result of Seller's breach of this Article 30.
- 30.5. Buyer confirms that no item, technology, or software received from Seller is intended to be shipped, either directly or indirectly, to any country or person, or for any end-use, that is prohibited under Applicable Laws

relating to export control. Buyer must Indemnify Seller from and against any Claims that may arise as a result of Buyer's breach of its obligations under this Article 30.5.

### 31. BUYER AS AGENT

- 31.1. If Buyer enters into the Contract in its capacity as agent on behalf of any Disclosed Principal as set out in the Contract or as otherwise notified to Seller by Buyer:
- (a) Seller must nevertheless deal only with Buyer in relation to the Contract;
  - (b) Seller acknowledges that the interests of the Disclosed Principals may change from time to time without notice to Seller;
  - (c) The rights and remedies under the Contract may be exercised by Buyer for itself and for and on behalf of the Disclosed Principals;
  - (d) Seller's duties and obligations under the Contract are deemed to take effect for the benefit of Buyer and each of the Disclosed Principals, and Buyer is authorized to enforce those duties and obligations on its own and the Disclosed Principals' behalf; and
  - (e) Seller may only enforce its rights and remedies in and under the Contract against Buyer (i) with respect to Buyer's own interest; and (ii) as agent severally for each of the Disclosed Principals.
- 31.2. Seller must not without prior Approval communicate in any way directly or indirectly with any Disclosed Principal or Coventurer or any governmental or semi-governmental authority or body in respect of any matter or thing relating directly or indirectly to the Contract (except to the extent required by any Applicable Laws).

### 32. BAILEE

- 32.1. Anything Buyer delivers into Seller's possession, custody, or control is not Seller's property. As between Buyer and Seller, such items are Buyer's property and Seller is the bailee. This remains the position even if Seller does work on the items or incorporates Buyer's items into the Works.

### 33. CONFIDENTIALITY

- 33.1. Seller must treat as confidential and must not, without Buyer's prior written consent, divulge to any third party, or, except to the extent necessary for performance under the Contract, make any use of any proprietary business or technical information owned or supplied by any of the members of Buyer Group or any representatives of Buyer and disclosed to or discovered by Seller in connection with the Contract or performance of the Works or Services, including any of the following: business plans, forecasts, contracting procedures, maintenance records, procedures, methods and technical information related to proprietary processes or products, cost information, marketing or business-related information, asset details, and strategic plans (collectively "**Confidential Information**").
- 33.2. Seller may only disclose Confidential Information to (i) other members of Seller Group who need, and (ii) to its and their respective officers, directors, and personnel who need, the Confidential Information for performance of the Works and who are bound by confidentiality and limited use obligations no less stringent than those in this Article 33. Seller is responsible for ensuring compliance with this Article 33 by all members of Seller Group and their respective officers, directors, and personnel who will receive, or who might in performance of the Works or Services discover or be exposed to, any Confidential Information.
- 33.3. Seller must ensure that no member of Seller Group releases or allows the release of any information to the press, any news disseminating agency, or communications media, except as required by law, concerning the details of the Works, or the terms of the Contract, without in each instance securing prior Approval. Seller must obtain prior Approval to the text of any publicity that Seller proposes to issue in connection with the Contract.



- 33.4. Except to the extent necessary for the supply of Goods or performance of the Works, Seller must not divulge to any third party any details of the nature of its business with Buyer.

### **34. GENERAL**

- 34.1. Should Seller comprise two or more persons, each of them is jointly and severally liable for due fulfillment of all of Seller's duties, obligations, and responsibilities under the Contract.
- 34.2. Seller is liable for all acts, errors, and omissions of the members of Seller Group.
- 34.3. The Contract must be construed and interpreted in accordance with the laws of Queensland, Australia and each Party irrevocably submits to the exclusive jurisdiction of the courts of Queensland.
- 34.4. The *Sale of Goods Act 1896* (Qld) does not apply to the Contract.
- 34.5. Service of any notice is deemed to be duly effected if sent to Seller's place of business stated in the Purchase Order.
- 34.6. The Contract comprises the entire agreement of the Parties and supersedes all previous communications, representations, and agreements with respect to the subject matter of the Contract, except to the extent that Buyer relies on representations made by Seller as to Seller's ability to perform the Works, the costs of performing the Works, and the way in which Seller shall perform the Works.
- 34.7. Seller acknowledges that it has not relied on any representations (other than those expressly specified in the Contract) by the members of Buyer Group or any person representing them to induce it to enter into the Contract.
- 34.8. If any provision of the Contract is invalid, illegal, or unenforceable in any respect in any jurisdiction then in that jurisdiction the provision remains enforceable to the extent that it is not invalid, illegal, or unenforceable, whether it is in severable terms or not, unless enforcement of the provision in accordance with this Article would materially affect the nature or effect of the Party's obligations under the Contract. The remaining provisions of the Contract are not affected or impaired thereby in any way, unless incapable of being operable in the absence of such invalid, illegal, or unenforceable provision.
- 34.9. Seller expressly acknowledges and warrants that Buyer entered into the Contract in reliance upon the skill and judgment of Seller as an experienced and safe designer, manufacturer, fabricator, supplier, transporter, installer, erector, constructor, tester, repairer, and commissioner (to the extent that the Works includes those activities) of work the size, nature, and standard of the Works, and Seller's ability to carry out the Works in accordance with its tender.
- 34.10. No waiver by either Party of any default by the other Party is to be construed as a waiver of any future defaults.
- 34.11. No variation of the Contract is valid unless it is set out in writing and signed by duly authorized representatives of the Parties.

## Annexure A

This Annexure A applies to the extent provided in Article 3.1:

### 35. RISK STRUCTURE

#### 35.1. Workers Compensation Liabilities

- 35.1.1. To the extent permitted by Applicable Laws, Seller shall Indemnify each of the members of Buyer Group against the payment of any compensation under the *Workers Compensation and Rehabilitation Act 2003* (Qld) or under any other workers' compensation scheme when the event giving rise to such compensation arises in connection with the Works and relates to Personal Injury of officers, directors, or personnel of any of the members of Seller Group.
- 35.1.2. To the extent permitted by Applicable Laws, Buyer shall Indemnify each of the members of Seller Group against the payment of any compensation under the *Workers Compensation and Rehabilitation Act 2003* (Qld) or under any other workers compensation scheme where the event giving rise to such compensation arises in connection with the Services and relates to Personal Injury of any of the members of Buyer Group.

#### 35.2. Indemnities Relating to People

- 35.2.1. Seller shall Indemnify each of the members of Buyer Group from and against any and all Claims (save for those Claims addressed in Article 35.1.1) arising out of or related in any way to Personal Injury of:
- (a) any officers, directors, or personnel of any of the members of Seller Group; and
  - (b) any other individuals to the extent the Personal Injury is caused by or contributed to by any of the members of Seller Group or their respective officers, directors, or personnel;
- occurring in connection with performance of the Services, regardless of the identity of the claimant, including such officers, directors, personnel, or third parties themselves and their respective representatives, agents, heirs, beneficiaries, assigns, and family members.
- 35.2.2. Buyer shall Indemnify each of the members of Seller Group from and against any and all Claims (save for those Claims addressed in Article 35.1.2) arising out of or related in any way to Personal Injury of:
- (a) any officers, directors, or personnel of any of the members of Buyer Group; and
  - (b) any other individuals to the extent that the Personal Injury is caused by or contributed to by any of the members of Buyer Group or their respective officers, directors, or personnel;
- occurring in connection with performance of the Works, regardless of the identity of the claimant, including such officers, directors, personnel, or third parties themselves and their respective representatives, agents, heirs, beneficiaries, assigns, and family members.

#### 35.3. Indemnities Relating to Property

- 35.3.1. Seller hereby releases each of the members of Buyer Group from and waives, and shall Indemnify each of the members of Buyer Group from and against, any and all Claims and rights against any of the members of Buyer Group arising out of or related in any way to physical damage to or loss of property, including environmental contamination of such property:
- (a) owned, hired, or supplied by any of the members of Seller Group; and
  - (b) of any persons other than the members of Seller Group and Buyer Group and their respective officers, directors, and personnel to the extent the loss or damage is caused by or contributed to by any of the members of Seller Group or their respective officers, directors, or personnel;
- occurring in connection with performance of the Services.

- 35.3.2. Seller shall be liable for and shall Indemnify Buyer and Buyer's Affiliates, Coventurers and Disclosed Principals from and against any and all Claims arising out of or related in any way to physical damage to or loss of any property of Buyer or Buyer's Affiliates, Coventurers or Disclosed Principals, including environmental contamination of such property, to the extent such damage or loss results from or arises out of the Legal Fault of any of the members of Seller Group or their respective officers, directors, or personnel. Provided, however, that:
- (a) Seller's maximum liability for such damage or loss shall not exceed One Million United States Dollars (US\$1,000,000) per occurrence; and, subject to Seller fulfilling such Indemnification obligation, Buyer shall Indemnify the members of Seller Group from and against Claims in respect of such damage or loss to the extent they exceed One Million United States Dollars (US\$1,000,000) per occurrence; and, notwithstanding the foregoing,
  - (b) This Article 35.3.2 shall not limit any liability of Seller pursuant to Article 16.
- 35.3.3. Except as provided in Article 35.3.2 and Article 16, Buyer releases each of the members of Seller Group from and waives, and shall Indemnify each of the members of Seller Group from and against, any and all Claims and rights against any of the members of Seller Group arising out of or related in any way to physical damage to or loss of property, including environmental contamination of such property:
- (a) owned by any of the members of Buyer Group; and
  - (b) of any persons other than the members of Buyer Group and Seller Group and their respective officers, directors, and personnel to the extent the loss or damage is caused by or contributed to by any of the members of Buyer Group or their respective officers, directors, or personnel;
- occurring in connection with performance of the Services.

### 35.4. **Pollution**

- 35.4.1. Except as provided in Articles 35.1.2, 35.2.2, and 35.3.3, Seller shall Indemnify each of the members of Buyer Group from and against any and all Claims arising out of or attributable to pollution or contamination (including control, containment, clean-up, and removal thereof) to the extent that (i) the polluting or contaminating material is discharged, escapes, or emanates from any property of Buyer or Buyer's Affiliates, Coventurers or Disclosed Principals and (ii) such discharge, escape, or emanation arises out of or results from the Legal Fault of any of the members of Seller Group or any of their respective officers, directors, or personnel. Provided, however, that Seller's maximum liability for such Claims shall not exceed Five Million United States Dollars (US\$5,000,000) per occurrence; and, subject to Seller fulfilling such Indemnification obligation, Buyer shall Indemnify the members of Seller Group from and against such Claims to the extent they exceed Five Million United States Dollars (US\$5,000,000) per occurrence.
- 35.4.2. In addition to the obligations under Article 35.4.1, except as provided in Articles 35.1.2, 35.2.2, and 35.3.3, Seller shall Indemnify each of the members of Buyer Group from and against any and all Claims arising out of or attributable to pollution or contamination (including control, containment, clean-up, and removal thereof) occurring in connection with performance of the Works under the Contract, including under any Purchase Order, to the extent that the polluting or contaminating material is discharged, escapes, or emanates from property of any of the members of Seller Group.
- 35.4.3. Initiation of clean-up operations by either Party shall not be construed as an admission or assumption of liability by such Party.
- 35.4.4. It is the express intent of the Parties that in the event the application of Articles 35.4.1 and 35.4.2 to prosecutions, fines, penalties, or other actions maintained or imposed by any governmental authority is determined to be void or unenforceable, such provisions and the obligations therein shall nevertheless apply to all other Claims.

### 35.5. **Consequential Loss**

- 35.5.1. The members of Seller Group shall not be liable to any of the members of Buyer Group for, and Buyer shall Indemnify each of the members of Seller Group from and against, any Consequential Loss suffered by any of the members of Buyer Group resulting from or arising out of or occurring in connection with performance of the Services.
- 35.5.2. The members of Buyer Group shall not be liable to any of the members of Seller Group for, and Seller shall Indemnify each of the members of Buyer Group from and against, any Consequential Loss suffered by any of the members of Seller Group resulting from or arising out of or occurring in connection with performance of the Services.
- 35.5.3. The foregoing provisions of this Article 35.5 shall not apply to any of the following, which shall not be construed as Consequential Loss: (i) a Party's obligation to provide its Indemnitees with a legal defence in connection with that Party's indemnification obligations set forth in the Contract; (ii) a Party's obligation, pursuant to its Indemnification obligations set forth in the Contract, to pay or reimburse judgments or settlements to persons other than the other Party; and (iii) damages for breach of the obligations in Article 33.

### 35.6. **Insurances**

- 35.6.1. The obligations under this Article 35 are: (i) independent of and in addition to any other provisions of this Agreement, including the requirements of Article 36; and (ii) shall not be prejudiced, reduced or limited by any insurance coverage that Seller is required to maintain pursuant to Article 36, by operation of law or otherwise, or by any insurance that Seller actually maintains. Additionally, any enforcement or failure to enforce any of the obligations related to insurance shall not prejudice, reduce, or limit the obligations contained in this Article 35.

### 35.7. **Subcontracting**

- 35.7.1. In the event Seller subcontracts any of the Services, such subcontracts shall contain Indemnification and Consequential Loss and waiver of subrogation provisions equivalent to those set forth in this Article 35, elsewhere in this Agreement, and in Article 36, whereby the Subcontractors undertake the same obligations and duties for the benefit of the members of Buyer Group as does Seller. With regard to any subcontract not containing such equivalent provisions, the personnel and property of the Subcontractor shall be deemed, for purposes of this Article 35 and Article 36, to be the personnel and property of Seller. Additionally, in the event subcontracts contain Indemnification and waiver of subrogation provisions in favour of or for the benefit of the members of Buyer Group, Seller shall take such steps as may be requested by Buyer to enforce such provisions on behalf of the members of Buyer Group.

### 35.8. **Proportionate Liability Legislation**

- 35.8.1. To the extent permitted by Applicable Laws, the provisions of the Proportionate Liability Legislation are excluded, and will not limit or otherwise affect the operation of the express provisions with respect to the rights, obligations, and liabilities of the Parties under the Contract.

### 35.9. **Wilful Misconduct**

- 35.9.1. The Indemnities, releases, and exclusions or limitations of liability contained in the Contract shall not apply for the benefit of a member of Seller Group to the extent any Claim is attributable to the Wilful Misconduct of such member or any of its officers, directors, or personnel.
- 35.9.2. The Indemnities, releases, and exclusions or limitations of liability contained in the Contract shall not apply for the benefit of a member of Buyer Group to the extent any Claim is attributable to the Wilful Misconduct of such member or any of its officers, directors, or personnel.

## 35.10. Application of Indemnities, Exclusions and Limitations of Liability

- 35.10.1. Seller's obligations under, and Indemnities in favour of Seller in, this Article 35 are not intended to and shall not reduce, terminate, supersede, or otherwise affect (nor be construed as inconsistent with) Seller's responsibilities, duties, and obligations pursuant to other provisions of this Agreement, expressly including its obligations set out in Article 16.
- 35.10.2. Except as expressly provided otherwise in this Article 35 or Article 16, any Indemnification, release, or waiver granted in this Article 35 shall apply and be enforceable:
- (a) with respect to any loss, damage, Personal Injury, pollution, or Consequential Loss which actually or allegedly occurs or is caused during or results from or arises out of the performance of the Services (whether directly or indirectly in relation thereto), or which occurs at any place related to the Services where officers, directors, personnel, or property of any of the members of Buyer Group or of any of the members of Seller Group are located by reason of the performance of any Services;
  - (b) even if the loss, damage, Personal Injury, pollution, or Consequential Loss that is the subject of such Indemnification, release, or waiver actually or allegedly is caused by or results from negligence, breach of duty (statutory or otherwise), breach of contract, or strict liability of the Indemnitee; and
  - (c) regardless of whether a Claim is based upon (i) common law, civil law, maritime law, or statute; (ii) contractual obligations between the Indemnitee and another person; (iii) operation of Applicable Laws requiring the Indemnitee to make a contribution in respect of a Claim by another person; or (iv) any other theory of legal liability.
- 35.10.3. For all purposes including Section 68 of the *Property Law Act 2023* (Qld):
- (a) Buyer intends to confer a benefit on each of the members of Seller Group and their respective officers, directors, and personnel in each Indemnity, release, and exclusion or limitation of liability given by Buyer in favour of the members of Seller Group in the Contract and Seller holds the benefit of each of those Indemnities, releases, and exclusions or limitations of liability on trust for the benefit of each of the members of Seller Group and their respective officers, directors, and personnel; and
  - (b) Seller intends to confer a benefit on each of the members of Buyer Group and their respective officers, directors, and personnel in each Indemnity, release, and exclusion or limitation of liability given by Seller in favour of the members of Buyer Group in the Contract and Buyer holds the benefit of each of those Indemnities, releases, and exclusions or limitations of liability on trust for the benefit of each of the members of Buyer Group and their respective officers, directors, and personnel.

## 35.11. Conduct of Claims

- 35.11.1. When a person ("**Indemnified Person**") has the benefit of an Indemnity in respect of any Claim pursuant to the Contract, the Indemnified Person must give written notice to the Party giving the Indemnity ("**Indemnifying Party**") of the nature and, to the extent reasonably known at the time, quantum of the Claim as soon as reasonably practicable after the commencement of the circumstances giving rise to the Claim. No such Claim shall be settled without the approval of the Indemnifying Party. After it has been notified of any such Claim, the Indemnifying Party shall assume the defence thereof, at its sole expense.
- 35.11.2. The Indemnified Person must provide reasonable information and documentation relating to such Claim to the Indemnifying Party on a continuing basis.
- 35.11.3. Upon service of a notice by the Indemnified Person, the Indemnifying Party must defend any Claim on behalf of the Indemnified Person and the Indemnified Person must, at the Indemnifying Party's cost, do all things reasonably necessary to assist the Indemnifying Party to defend, settle, or mitigate such Claim. Each applicable member of Buyer Group shall have the right, at its discretion, to select or approve the counsel to be engaged by Seller to defend such member. Without prejudicing its right to the defence obligations set out in this Article

35.11.3, an Indemnified Person may participate, at its own expense, in its defence conducted by the Indemnifying Party.

35.11.4. Except when a Claim by an Indemnified Person, or the quantum of any such Claim, is the subject of a bona fide dispute by the Indemnifying Party, the Indemnifying Party must pay the Indemnified Person in respect of the Claim within 30 days of a demand for payment of the Claim.

35.11.5. When a Claim by an Indemnified Person is the subject of a bona fide dispute by the Indemnifying Party, the Indemnifying Party must pay to the Indemnified Person the undisputed amount within 30 days of a demand for payment of the Claim and the remainder within 30 days of the resolution of the dispute.

35.11.6. An Indemnified Person must do all things reasonably necessary to mitigate any Claim.

### 35.12. **Seller Group Claims**

35.12.1. Seller must inform each of the members of Seller Group of the Indemnities under the Contract and ensure that each member of Seller Group does not make any Claim against any of the members of Buyer Group when Seller has Indemnified the members of Buyer Group against such Claim.

### 35.13. **Enforceability of Provisions**

35.13.1. If any provision contained in this Article 35 in favour of a Party is determined by a court or other authority of competent jurisdiction to be void or unenforceable, in whole or in part, or is adjusted in accordance with other provisions of this Contract or by a court or other authority of competent jurisdiction, the similar provision in favour of the other Party shall be rendered void or unenforceable or shall be adjusted to the same degree.

### 35.14. **Associated Activities**

35.14.1. The Parties agree that the provisions of this Article 35 apply to any Associated Activities as though such activities formed part of the Services, irrespective of the location of the Associated Activity or whether the Associated Activity is controlled or provided by a Party or a third party.

## 36. **INSURANCE**

### 36.1. **Insurance Requirements**

36.1.1. Seller shall maintain insurance of the types and with limits of liability not less than those set out below at its expense during the term of the Contract from insurers reasonably acceptable to Buyer covering items, risks and operations required to fulfill the Contract:

- (a) Insurance that the Seller is obliged by Applicable Laws to carry that covers all of Seller's personnel performing work under the Contract, including coverage under applicable maritime law.
- (b) Employer's Liability Insurance, including coverage for marine operations (if applicable), with a limit not less than One Million United States Dollars (US\$1,000,000) any one occurrence or the statutory requirement, whichever amount is greater.
- (c) Commercial General Liability Insurance, including contractual liability coverage, with a limit not less than Five Million United States Dollars (US\$5,000,000) any one occurrence. Such insurance shall include sudden and accidental pollution liability coverage.
- (d) Automobile Liability Insurance with a combined bodily injury and property damage limit not less than One Million United States Dollars (US\$1,000,000) any one occurrence or the statutory requirement, whichever amount is greater, for all vehicles (whether owned, leased, or howsoever otherwise obtained) used in performance of Services.



- (e) If the Seller provides professional services under the Contract, Professional Indemnity Insurance, including contractual liability coverage, with a limit not less than Five Million United States Dollars (US\$5,000,000) any one occurrence.
- (f) If aircraft are used in connection with the Contract, Aircraft Liability Insurance, including Passenger Liability insurance with a combined single limit for bodily injury and property damage not less than Ten Million United States Dollars (US\$10,000,000) (or the equivalent in the Contract Currency) any one occurrence and a limit not less than Three Million United States Dollars (US\$3,000,000) (or the equivalent in the Contract Currency) any one passenger.
- (g) If marine vessels are used in connection with the Contract, Protection and Indemnity insurance equal to the "agreed" value of each vessel or Ten Million United States Dollars (US\$10,000,000) (or the equivalent in the Contract Currency) any one occurrence, whichever is greater. This insurance (when required) must include coverage for the crew. If such insurance contains an "as owner" clause or other language purporting to limit coverage to liability of an insured "as owner of the vessel," such limitation of coverage must not apply to the Buyer Group in their capacities as additional insureds or protective co-assureds under the policy.
- (h) If marine vessels are used in connection with the Contract, Hull and Machinery Insurance in an amount equal to the "agreed" value of each vessel.
- (i) Such other insurance in the types and amounts (i) required by Applicable Laws; and (ii) to cover the risks retained by Seller that are associated with its performance of the Contract.

### 36.2. **Primary Insurance**

- 36.2.1. All insurance coverage required of Seller pursuant to Article 36.1 shall be primary, with regard to the obligations and liabilities assumed by Seller under the Contract, to any insurance coverage available to any of the members of Buyer Group. The minimum requirements stated in Article 36.1 are not intended to indicate the amounts and types of insurance that Seller needs or may ultimately need. Seller shall be liable for all deductibles in relation to such insurance coverage.

### 36.3. **Waiver of Subrogation and Additional Insured**

- 36.3.1. The policies under Articles 36.1.1(c) through 36.1.1(e) shall show Buyer Group as additional insureds (coverage inclusive of defence costs) to the extent of the risks and liabilities assumed by Seller (including those with regard to other members of Seller Group) under the Contract, irrespective of minimum limits and amounts stated for insurance required of Seller in Article 36.1, and shall contain a provision that any breach by Seller or any of the other members of Seller Group of any warranty, covenant, or representation in any of the policies shall not prejudice any claim by the additional insureds.
- 36.3.2. All insurance policies obtained by any of the members of Seller Group in relation to the Contract must contain a waiver of subrogation, when legally permitted, in favour of Buyer, the other members of Buyer Group, and Buyer's and such other members' respective officers, directors and personnel, to the extent of the risks and liabilities assumed by Seller under the Contract.

### 36.4. **Certificates of Insurance and Policies**

- 36.4.1. None of the insurance required of Seller by this Article 36 shall be materially changed or cancelled without written notice thereof to Buyer at least thirty (30) days in advance. All coverages must be set out in appropriate policy documents that conform to the requirements of the Contract.
- 36.4.2. Upon request of Buyer, Seller shall furnish to Buyer certificates of insurance demonstrating that Seller has obtained the insurance coverages set out in Article 36.1 and fulfilled the requirements of Article 36.3. Each certificate shall expressly contain a statement that the

notice of material change or cancellation addressed in Article 36.4.1 shall be provided to Seller; and Seller shall immediately give the written notice to Buyer required by Article 36.4.1. Neither Buyer's review nor its failure to review such certificates shall constitute approval thereof or be deemed to waive or diminish Seller's obligations or Buyer's rights under the Contract.

- 36.4.3. In the event of an accident or loss having the potential to result in a claim under Seller's insurance policies that are required by Article 36.3.1 to show Buyer Group as additional insureds, Seller, at Buyer's request, shall make sufficient policy information available as reasonably required by Buyer to enable applicable members of Buyer Group to file a claim against Seller's applicable policies. This obligation shall survive the termination or expiration of the Contract.

### 36.5. **Failure to Comply**

- 36.5.1. Neither failure to comply nor full compliance with the insurance provisions of the Contract shall limit or relieve Seller from Seller's liability and Indemnity obligations in the Contract. If Seller fails or refuses to comply with the obligations prescribed in this Article 36: (i) Seller shall be liable for and Indemnify Buyer Group from and against any Claim that would have been covered by the insurance required by Article 36.1 and from costs incurred by Buyer and any of the other members of Buyer Group in enforcing such Indemnity; and (ii) Buyer, without prejudice to any other rights or remedies available to it under the Contract or at law, may: (a) treat the Contract as having been repudiated by Seller; or (b) procure the required insurances and deduct the cost thereof from any amounts due under the Contract or otherwise recover such amounts from Seller.

### 36.6. **Subcontracting**

- 36.6.1. Seller must ensure that each Subcontractor shall maintain insurance which is required under Applicable Laws, together with other insurance of types and amounts that Seller may deem necessary.

## 37. **SERVICES**

- 37.1. All Services must be performed in a proper and workmanlike manner and with diligence.
- 37.2. Seller must supply all labour, tools, equipment, and materials necessary to perform and complete the Services.
- 37.3. Seller must only assign to the Services personnel who are careful, skilled, safe, experienced, and competent in their respective disciplines.
- 37.4. Seller must use its best endeavours not to impede or interfere with other work or operations conducted at premises of any of the members of Buyer Group.
- 37.5. The members of Seller Group and their respective personnel must comply with all Policies and Procedures as notified to Seller and comply with the reasonable directions of members of Buyer Group while on such members' premises.

## 38. **LEGAL RELATIONSHIP**

- 38.1. The relationship of Seller to Buyer is that of independent contractor.
- 38.2. Neither Seller nor any other member of Seller Group is an employee, agent, or partner of any member of Buyer Group.
- 38.3. To the extent permitted by any Applicable Laws, Seller shall Indemnify the members of Buyer Group against any Claim (i) by any member of Seller Group that such member is an employee, agent, or partner of any member of Buyer Group, whether deemed or otherwise; or (ii) by any of the respective personnel of the members of Seller Group that any of such personnel is an employee of any member of Buyer Group, whether deemed or otherwise.