

## Contract Conditions for Goods

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## **PARTIES**

**SOUTH AUSTRALIAN WATER CORPORATION** of 250 Victoria Square, Adelaide, South Australia, 5000

## **And**

**[Insert Contractor's Name and ACN]** of **[Insert Contractor's address]**

## **IT IS AGREED**

### **1. Intent**

This Agreement establishes a purchasing arrangement for the Goods listed in Annexure A.

### **2. Definitions**

- 2.1 "Acceptance Date" means the date the Goods are accepted by the Principal;
- 2.2 "Agreement" means this agreement between the parties as described in clause 3.12;
- 2.3 "Business Day" means any day that is not a Saturday or Sunday or a public holiday in South Australia;
- 2.4 "Commencement Date" means the date specified in Annexure A when the supply of Goods and Services begins;
- 2.5 "Completion Date" means the date specified in Annexure A
- 2.6 "Compliance Tests" means tests performed on the Goods to ensure they comply with the Contractor's warranties in clause 13;
- 2.7 "Compliance Test Period" means the period specified in the Purchase Order beginning from the Delivery Date (or if no period is specified, fourteen (14) calendar days from the Delivery Date).
- 2.8 "Complying Goods" are Goods that comply with the Contractor's Warranties in clause **Error! Reference source not found.**
- 2.9 "Confidential Information" means information which is identified either as confidential information (if disclosed by the Principal) or proprietary information (if disclosed by the Contractor), but does not include this Agreement;

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- 2.10 “**Conflict of Interest**” means any interest or duty which conflicts or potentially conflicts with the obligations, liabilities or rights of either party as written in this Agreement;
- 2.11 “**Contractor**” means the Contractor named in Annexure A
- 2.12 “**Contractor’s Representative**” means the person identified in Annexure A;
- 2.13 “**Deliverables**” means the reports and any data or other material specified in Appendix B, required to be delivered throughout the performance of the Services;
- 2.14 “**Delivery**” means the delivery of the Goods to the Delivery Point;
- 2.15 “**Delivery Date**” means the date specified in the Purchase Order for delivery of the Goods;
- 2.16 “**Delivery Point**” means any one of the locations described in Annexure A as specified in the Purchase Order, where the Goods and/or Services will be delivered;
- 2.17 “**Document**” means any embodiment of any text or image however recorded;
- 2.18 “**Event of Default**” occurs if the Contractor:
- 2.18.1 has a Insolvency Event;
  - 2.18.2 has a Conflict of Interest;
  - 2.18.3 does not provide sufficient Personnel to meet its obligations;
  - 2.18.4 does not comply with the insurance requirements;
  - 2.18.5 assigns any of its rights or obligations, except as allowed by this Agreement;
  - 2.18.6 does not comply with any notice given by the Principal under this Agreement;
  - 2.18.7 is subject to a change of ownership;
  - 2.18.8 does not comply with any Law;
  - 2.18.9 is in breach of this Agreement and fails to rectify the breach within 30 days of being notified of the breach by the Principal; or
  - 2.18.10 becomes the subject of a takeover;
- 2.19 “**Goods**” means the goods specified in Appendix B;
- 2.20 “**GST**” means the tax imposed by the GST Law;
- 2.21 “**GST Law**” has the meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- 2.22 “**Insolvency Event**” means:
- If the Contractor is a body corporate:
- 2.22.1 If the contractor is a body corporate:
    - (a) an administrator is appointed to the Contractor;

- (b) the Contractor resolves to be wound up;
- (c) a court order is made that the Contractor be wound up (for insolvency or otherwise);
- (d) the Contractor ceases business;
- (e) a receiver or manager is appointed to the Contractor;
- (f) a liquidator or provisional liquidator of the Contractor is appointed;
- (g) the Contractor enters into an arrangement with its creditors; or
- (h) the Contractor is unable to pay its debts when they are due;

2.22.2 If the Contractor is a natural person:

- (a) the Contractor has committed an act of bankruptcy as contemplated by the Bankruptcy Act 1966 (Cth);
- (b) the Contractor is unable to pay his or her debts as and when they become due and payable;
- (c) the court has made a sequestration order against the Contractor's estate;
- (d) a creditors' petition has been presented against the Contractor;
- (e) the Contractor has presented to the official receiver a declaration of intention to present a debtor's petition;
- (f) the Contractor becomes a bankrupt;
- (g) a meeting of creditors of the Contractor is convened; or
- (h) Contractor lodges with his or her trustee a proposal to his or her creditors for a composition in satisfaction of his or her debts or a scheme of arrangement of his or her affairs;

2.22.3 If the if the Contractor is trading as a partnership, the occurrence of any of the events described in clause 2.23.2 in relation to any of the partners of the partnership.

2.23 "**Installation Date**" means the date specified in the Purchase Order for the installation of the Goods;

2.24 "**Intellectual Property Rights**" means all intellectual property rights, including:

2.24.1 patents, patents, plant breeders' rights, copyright, rights in circuit layouts, registered designs, trade marks, know-how and any right to have Confidential Information kept confidential; and

2.24.2 any application or right to apply for registration of any of the rights referred to in subclause 2.25.1,

But for the avoidance of doubt excludes moral rights and performers' rights;

- 2.25 “**Laws**” means all Acts of Parliament of the Commonwealth of Australia and of the State of South Australia, and the requirements of all ordinances, regulations, by-laws, orders, and proclamations;
- 2.26 “**Performance Criteria**” means the performance criteria for the Goods as specified in Annexure 2;
- 2.27 “**Personnel**” means any subcontractors, employees, agents and any other person employed or engaged by the Contractor to perform this Agreement, and includes the Contractor’s Representative;
- 2.28 “**Principal’s Representative**” means the person identified in Annexure A;
- 2.29 “**Prices**” means the prices set out in or determined in accordance with Annexure A;
- 2.30 “**Purchase Order**” means a Document incorporating all the information required to complete the order;
- 2.31 “**Replacement Period**” means the period of time specified in Annexure A from the date of the Non Compliance Notice (or if no period is specified then fourteen (14) calendar days from the date of the Non Compliance Notice);
- 2.32 “**Representative**” means either of the persons nominated as the Contractor’s Representative and the Principal’s Representative in Annexure A;
- 2.33 “**Services**” means the services specified in Annexure A that are incidental to the Goods and includes the Deliverables;
- 2.34 “**Specification**” means the specifications for the Goods in Appendix B;
- 2.35 “**Tax Invoice**” has the meaning attributed in the GST Law.
- 2.36 “**Warranty Period**” means the period set in Schedule K.

### 3. Interpretation

In this Agreement,

- 3.1 A reference to any legislation includes:
- 3.1.1 all legislation, regulations, proclamations, ordinances, by-laws and instruments issued under that legislation; and
- 3.1.2 any modification, consolidation, amendment, re-enactment or substitution of that legislation;
- 3.2 Any word importing:
- 3.2.1 the singular includes the plural;
- 3.2.2 the plural includes the singular; and
- 3.2.3 a gender includes every other gender.
- 3.3 Words referring to individuals include corporations, unincorporated associations, partnerships, trusts and joint ventures;
- 3.4 A reference to a party includes that party’s administrators, successors and permitted assigns;

- 3.5 Any act due on a weekend or a public holiday may be done the next Business Day;
- 3.6 Where a word or phrase is given a defined meaning, then any other grammatical form of that word or phrase has the same meaning;
- 3.7 A reference to two or more persons means all of them together;
- 3.8 The words “clause” or “schedule” refer to this Agreement;
- 3.9 A reference to a clause number includes its sub-clauses;
- 3.10 The word “or” is not exclusive;
- 3.11 Clause headings are for reference only and do not form part of this Agreement;
- 3.12 This Agreement between the parties comprises these standard terms and conditions and all the documents comprised in, and incorporated by reference to, the Annexures. If any of the documents comprising this Agreement are inconsistent, they shall take priority in the following order:
  - 3.12.1 the special conditions (if any);
  - 3.12.2 these standard terms and conditions (excluding the schedules); and
  - 3.12.3 the schedules.
  - 3.12.4 Annexure A.

#### **4. Term**

- 4.1 This Agreement starts on the Commencement Date and ends on the Completion Date unless terminated earlier (“**Term**”).
- 4.2 The Principal may extend the Term for the period specified in Annexure A by giving written notice to the Contractor within the period specified in Annexure A.

#### **5. Contract Administration**

- 5.1 Each Representative has authority to:
  - 5.1.1 exercise all of the powers and functions of his or her party under this Agreement other than the power to amend this Agreement;
  - 5.1.2 bind his or her party in relation to any matter arising out of or in connection with this Agreement; and
  - 5.1.3 if indicated, amend the Annexures to this Agreement (after the amendment has been agreed by both Representatives).
- 5.2 The Contractor must comply with all reasonable instructions given by the Principal’s Representative.
- 5.3 Either party may change its Representative, by giving written notice to the other.

#### **6. Purchase Orders**

- 6.1 The Principal may purchase Goods under this Agreement by issuing a Purchase Order to the Contractor.
- 6.2 Purchase Orders must be in writing, be approved by the Principal.
- 6.3 The Contractor must supply Goods ordered by the Principal in accordance with the terms of this Agreement.

## **7. Non-Exclusivity**

- 7.1 This Agreement is entered into on a non-exclusive basis.
- 7.2 The Principal may purchase other goods or services similar to the from other providers.

## **8. Supply of Goods**

The Contractor must:

- 8.1 sell unencumbered Goods;
- 8.2 deliver the Goods to the Delivery Point on or before the Delivery Date;
- 8.3 comply with any reasonable delivery instructions;
- 8.4 provide test evidence for the Goods if required; and
- 8.5 install the Goods on or before the Installation Date if specified in Annexure A.

## **9. Deliverables**

- 9.1 If the Contractor is to provide Deliverables then the details of the Deliverables (if any) set out in Annexure A including the delivery dates and the form and content requirements, must be complied with by the Contractor.
- 9.2 Title in the Deliverables will vest in the Principal on their delivery to the Principal.

## **10. No Minimum Purchase**

The Principal is under no obligation to purchase a minimum quantity of Goods from the Contractor during the Term.

## **11. Ownership and Risk in the Goods**

- 11.1 Ownership of the Goods passes to the Principal upon acceptance, in accordance with clause 12.
- 11.2 Risk in the Goods passes to the Principal when the Goods are delivered to the Delivery Point.

## **12. Acceptance of the Goods**

- 12.1 During the Compliance Test period the Principal may perform Compliance Tests.
- 12.2 If the Goods fall a Compliance Test:

- 12.2.1 the Principal must provide written notice of the non compliance ("**Non Compliance Notice**"); and
- 12.2.2 the Contractor must provide (and install if applicable) replacement Complying Goods within the Replacement Period.
- 12.3 If the Contractor provides replacement Goods, the Principal may perform Compliance Tests on the replacement Goods in accordance with clause 11.1 and clause 11.2 applies.
- 12.4 The Principal must accept the Goods when satisfied that the Goods are Complying Goods. On acceptance, the Principal must provide the Contractor with a written acceptance notice that includes the Acceptance Date.
- 12.5 The Principal will be taken to have accepted the Goods supplied if the Principal does not issue a Non Compliance Notice within three (3) months from the Delivery Date or the Installation Date (whichever is later).
- 12.6 If the Goods fail the Compliance Tests and the Contractor does not provide replacement Complying Goods pursuant to clause **Error! Reference source not found.** the Principal may terminate this Agreement, and the Contractor must remove the Goods from the Delivery Point. If the Contractor does not remove the Goods, the Principal may (but is not obliged to):
  - 12.6.1 Fix the Goods itself or contract with any other person to fix the Non Complying Goods so that they become Complying Goods and the Contractor must reimburse the Principal for all costs incurred in fixing the Goods;
  - 12.6.2 return the Goods to the Contractor (at the Contractor's cost);
  - 12.6.3 move the Non Complying Goods to a storage place (at the Contractor's cost); and
  - 12.6.4 dispose of the Goods at the Principal's discretion.

### **13. Warranty Period**

- 13.1 The Warranty Period is as stated in Schedule K, and starts on the Acceptance Date.
- 13.2 If, in the Principal's reasonable opinion, the Goods fail to comply with any of the Contractor's Warranties in clause 13 during the Warranty Period, the Principal may perform a Compliance Test at the Contractor's cost.
- 13.3 If the Goods fail any such Compliance Test:
  - 13.3.1 the the Principal must provide a Non Compliance Notice; and
  - 13.3.2 the Contractor must provide (and install if applicable) replacement Complying Goods within the Replacement Period.
- 13.4 If the Contractor provides replacement Goods, the Principal may perform Compliance Tests on the replacement Goods in accordance with clause 11.

### **14. Contractor's Warranties**

- 14.1 The Contractor warrants that the Goods:
  - 14.1.1 are new are new (unless otherwise specified);

- 14.1.2 conform with the Specifications;
  - 14.1.3 conform with the Contractor's technical specifications;
  - 14.1.4 meet the Performance Criteria in Appendix B;
  - 14.1.5 are free from defects in materials, manufacture, and workmanship;
  - 14.1.6 conform to any legally applicable standards;
  - 14.1.7 are of merchantable quality;
  - 14.1.8 are installed correctly (if the Contractor is responsible for installation);
  - 14.1.9 are fit for their intended purpose.
- 14.2 The Contractor warrants the Services (if any) will:
- 14.2.1 be provided in full,, with due care and skill;
  - 14.2.2 be performed by the Contractor and/or its Personnel; and
  - 14.2.3 be performed by the Specification.

## 15. Prices

- 15.1 The Prices apply to the provision of the Goods and Services, except the extent otherwise provided in this Agreement.
- 15.2 Subject to clause 16, the Prices include all taxes, duties or government charges imposed or levied in Australia or overseas in connection with this Agreement.
- 15.3 The Prices include all costs of compliance with the Contractor's obligations under this Agreement. No other costs or expenses are payable by the Principal.

## 16. GST

- 16.1 The Contractor represents that:
  - 16.1.1 it is registered under the A New Tax System (Australian Business Number) Act 1999 (Cth), and that the ABN shown in Schedule A is the Contractor's ABN; and
  - 16.1.2 it is registered under the GST Law.
- 16.2 If the Prices in Schedule G are expressed as being GST exclusive and the supply for which payment is claimed is a Taxable Supply then, in addition to any amount payable by the Principal by reference to the Prices (the "**base consideration**"), the Principal must pay to the Contractor, an additional amount of consideration ("**GST consideration**") for the Taxable Supply calculated by multiplying the GST Rate by the base consideration. The GST consideration is payable at the same time and subject to the same conditions as the base consideration. In this Agreement, "**Taxable Supply**", and "**GST Rate**" have the meaning attributed to it in the GST Law.

## 17. Payment Arrangements

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- 17.1 The Contractor is entitled to invoice the Principal for payment in respect of a Good, only on a monthly basis, when the Good or Service has been provided.
- 17.2 The Principal does not have to pay a Contractor's invoice unless the invoice is properly rendered. An invoice is properly rendered if it:
- 17.2.1 is issued in respect of Goods for which the Contractor is entitled to invoice under this Agreement;
  - 17.2.2 reflects the correct price for the Goods under this Agreement;
  - 17.2.3 is a valid Tax Invoice within the meaning of the GST Law;
  - 17.2.4 complies with any other requirements stipulated in Annexure A; and
  - 17.2.5 references the applicable Contract or Purchase Order.

## **18. Conflicts of Interest**

- 18.1 The Contractor warrants to the Principal that neither it, nor any of its Personnel, have a Conflict of Interest under this Agreement.
- 18.2 If the Contractor becomes aware that it or any of its Personnel do have or will have a Conflict of Interest, then the Contractor shall immediately inform the Principal, in writing, with full details of the Conflict of Interest.
- 18.3 The Contractor shall comply with all reasonable directions of the Principal requiring it to resolve or otherwise deal with any Conflict of Interest.
- 18.4 The provision of this clause will operate without prejudice to any other rights which the Principal may have arising out, or in respect of, the existence of any Conflict of Interest or potential Conflict of Interest.

## **19. Indemnity**

- 19.1 The Contractor indemnifies, and undertakes to keep indemnified, the Principal from and against any costs, losses, damages, expenses (including legal expenses), liabilities or their outgoings of whatever kind suffered or incurred by the Principal arising out of or in respect of:
- 19.1.1 any negligence, wrongful act or omission or breach of duty by the Contractor or any of its Personnel;
  - 19.1.2 any Event of Default or breach by the Contractor of any of the provisions of this Agreement; or
  - 19.1.3 any claim that the provision of the Goods by the Contractor infringes the Intellectual Property Rights of any person.
- 19.2 This clause will survive termination of the Agreement.

## **20. Insurance**

- 20.1 The Contractor must effect and maintain all insurance policies set out in Annexure 2.

- 20.2 The insurance policies set out in Schedule F must:
- 20.2.1 If required as indicated in Schedule F, note the interest of the Principal; and
  - 20.2.2 be with insurers satisfactory to the Principal.
- 20.3 The policies referred to in Schedule F must be in the name of the Contractor and must cover the Contractor and all subcontractors for their respective rights, interests and liabilities.
- 20.4 Before supplying Goods under this Agreement, the Contractor must provide the Principal with insurance certificates of currency for the insurances required under this clause. At any time during the Term, the Principal may require the Contractor to provide proof that the policies of insurance have been maintained.
- 20.5 The Principal, in specifying levels of insurance in this Agreement accepts no liability for the completeness of their listing, the adequacy of the sum insured, limit of liability, scope of coverage, conditions or exclusions of those insurances in respect to how they may or may not respond to any loss, damage or liability.
- 20.6 The Contractor acknowledges and agrees that it is the Contractor's responsibility to assess and consider the risks and scope of insurances required under this Agreement.

## 21. Confidential Information

- 21.1 Subject to this Agreement, the party ("**receiving party**") to whom Confidential Information is disclosed by another party ("**disclosing party**") must not disclose Confidential Information to any person without first obtaining the disclosing party's written consent.
- 21.2 There will be no breach of the obligations of the receiving party under this Agreement if the Confidential Information is legally required to be disclosed or the circumstances of its disclosure are permitted by this Agreement.
- 21.3 The receiving party may disclose Confidential Information to its officers, employees, and agents ("**Authorised Persons**") if:
- 21.3.1 the Authorised Person needs to know the Confidential Information for the performance of his or her duties under this Agreement;
  - 21.3.2 the receiving party first notifies the proposed disclosure to the disclosing party; and
  - 21.3.3 the receiving party first makes the Authorised Person aware of the confidential nature of the Confidential Information and requires the employee to treat it confidentially.
- 21.4 Despite anything else in this Agreement, it is a condition to any permitted disclosure that the receiving party must notify the disclosing party promptly if the receiving party becomes aware of any unauthorised disclosure by a third party. The receiving party must give the disclosing party all assistance reasonably required by that party in connection with any proceedings which it may institute against any persons for the disclosure.
- 21.5 The receiving party indemnifies the disclosing party against any loss or damage which the disclosing party may suffer or for which the disclosing party may become liable as a result of:
- 21.5.1 any disclosure or use of Confidential Information in breach of this Agreement by the receiving party; or

- 21.5.2 any unauthorised disclosure or use by an Authorised Person of Confidential Information.
- 21.6 The Contractor acknowledges that the Principal may disclose Confidential Information:
- 21.6.1 to Parliament, the Governor, Cabinet or a Parliamentary or Cabinet committee or subcommittee;
- 21.6.2 where required by Law to do so;
- 21.6.3 to any agency, authority, instrumentality, Minister or Officer of the Crown in right of the State of South Australia to whom it is customary for the Principal to disclose information such as the Confidential Information (whether or not the Principal is legally obliged to do so); or
- 21.6.4 for the purposes of prosecuting or defending any legal proceedings.

## 22. Disclosure of Agreement

The Principal may disclose this Agreement or information in relation to this Agreement in either printed or electronic form and either generally to the public or to a particular person as a result of a specific request.

## 23. Force Majeure

- 23.1 Force Majeure means an event or circumstance which prevents a party from complying with any of its obligations under this Agreement and which that party:
- 23.1.1 did not cause;
- 23.1.2 cannot control or influence; and
- 23.1.3 cannot prevent or avoid through prudent management processes, policies and precautions, including the use of alternative resources, the procuring of services from another source and work around plans.
- 23.2 The affected party must notify the other party if the Force Majeure is preventing it from complying with any of its obligations as soon as it becomes aware of the Force Majeure.
- 23.3 The affected party's rights and obligations will be suspended to the extent and for so long as the performance of the affected party's rights and obligations are prevented or delayed by the Force Majeure.
- 20.4 The affected party must keep the other party informed of the continuation and expected duration of the Force Majeure and of measures taken to comply with this clause.
- 23.5 The affected party must recommence performance of its obligation as soon as possible without delay after the Force Majeure has ceased to exist.

## 24. Remedies

- 24.1 Any claim the Principal may have against the Contractor may be set off against monies owed to the Contractor under this Agreement.

24.2 The rights and remedies provided under the Agreement are cumulative and not exclusive of any remedies provided by law or any other right or remedy.

## 25. Termination

25.1 The Principal shall be entitled to terminate this Agreement upon fourteen (14) calendar days written notice in the event that an Event of Default occurs.

25.2 Subject to clause 12, the Principal may terminate this Agreement if the Contractor fails to supply Complying Goods, and may recover from the Contractor the amount of all direct damage and loss suffered by the Principal resulting from such failure.

25.3 The Principal may terminate this Agreement if the Contractor fails to comply with a notice under clause 9.2.

22.4 The Principal may terminate this Agreement for convenience upon twenty-eight (28) days written notice.

## 26. Effect of Expiry or Termination of this Agreement

26.1 If the Principal terminates this Agreement, or if the Term of this Agreement expires, the Principal must pay the Contractor for Goods Goods (if any) that have been ordered, and supplied by the Contractor up to the date of expiry or termination.

26.2 If the Principal terminates this Agreement for convenience:

26.2.1 the Principal must pay the Contractor pursuant to clause 26.1;

26.2.2 the Principal must elect at the time of termination whether it requires the Goods on order to be supplied, or to cancel the order;

26.2.3 if the Principal elects to have Goods on order to be supplied such Goods on order at the time of termination must be supplied by the Contractor in accordance with the provisions of this Agreement and the Principal must pay for them; and

26.2.4 if the Principal elects to cancel orders for Goods standing at the time of termination, the Principal must pay the Contractor reasonable compensation for costs incurred in relation to the cancelled orders.

26.3 Subject to clause 26.2.3, the Contractor has no obligation to respond to an order for any Goods under this Agreement after the Principal has issued a notice of termination.

26.4 Any termination of this Agreement by the Principal is without prejudice to any rights, remedies or actions that the Principal may have against the Contractor that may have arisen to the date of termination.

## 27. Compliance with Laws and Policies

27.1 The Contractor must comply with the requirement of all Laws.

27.2 The Contractor undertakes to comply with all South Australian Government policies of which the Principal informs the Contractor which relate to the performance of the Contractor's obligations under this Agreement.

- 27.3 The parties submit themselves to the exclusive jurisdiction of the Courts having jurisdiction in South Australia.
- 27.4 Any proceedings brought in a Federal Court must be instituted in the Adelaide registry of that court.
- 27.5 The parties undertake not to apply to transfer any proceedings to a registry of the Federal Court located in another State or Territory, or to the courts of another State or Territory.

## 28. Resolution of Disputes

- 28.1 Either party may, in a case of genuine urgency, seek immediate interlocutory relief or an interim remedy.
- 28.2 Subject to clause 25.1 neither party may commence legal proceedings without attempting to resolve the dispute as follows:
- 28.2.1 Each party must submit the dispute to one of its senior officers who has not previously been involved in the dispute ("**Negotiators**") within seven (7) days of the dispute arising.
- 28.2.2 The Negotiators must meet as soon as possible to resolve the dispute.
- 28.2.3 If the Negotiators cannot resolve the dispute within fourteen (14) days of its reference to them, each Negotiator must prepare a written summary of his or her attempts to resolve the dispute and immediately refer that summary:
- a) in the case of the Principal to the person nominated in Annexure A;
- b) in the case of the Contractor to the person nominated in Annexure A;
- ("the **Executive Negotiators**").
- 28.2.4 The Executive Negotiators must meet as soon as possible to resolve the dispute, but in any case within seven (7) days of its reference to them. Each party must authorise and inform its Executive Negotiator sufficiently so that he or she can undertake that meeting without detailed reference to another person.
- 28.3 Notwithstanding the existence of a dispute each party must continue to perform its obligations under this Agreement.
- 28.4 This clause survives any expiry or termination of this Agreement.

## 29. Publicity

The Contractor must not make any public announcement or media release in respect of any aspect of this Agreement or the Goods or Services without the prior written approval by the Principal.

## 30. Counterparts

This Agreement may be executed on one or more counterparts, and each signed copy will be considered as the same Agreement.

## 31. Entire Agreement

This Agreement:

- 31.1 incorporates the annexure,s appendices and any attached schedules;
- 31.2 contains the entire agreement between the parties with respect to its subject matter; and
- 31.3 supersedes any prior agreement, understanding or representation of the parties on the subject matter.

## **32. Variation of Agreement**

This Agreement may be amended or modified by the parties, but changes will not be binding upon the parties unless they are in writing and signed by each party or its representative authorised for that purpose.

## **33. Waiver**

A party's:

- 33.1 failure to exercise, or delay in exercising, a power or right does not operate as a waiver of that power or right;
- 33.2 waiver or exercise of a power or right does not preclude its future exercise or the exercise of any other power or right; and
- 30.3 waiver of any power or right will not be effective unless it is in writing and signed by the Representative of the party waiving its rights.

## **34. Severance**

- 34.1 Each word, phrase, sentence, paragraph and clause of this Agreement is severable.
- 34.2 If a court determines that a part of this Agreement is unenforceable, invalid, illegal or void that court may sever that part.
- 34.3 Severance of any part of this Agreement will not affect any other part of this Agreement.

## **35. Reading Down**

Where a word, phrase, sentence, paragraph or other clause or provision of this Agreement would otherwise be unenforceable, illegal or void the effect of that provision shall so far as possible, be limited and read down so that it is not unenforceable, illegal or void.

## **36. Costs**

Except as otherwise provided by this Agreement, each party is responsible for its own costs and risks in relation to the negotiation and preparation of this Agreement and all things to be done under this Agreement.

## **37. Notices**

Any notice or Purchase Order relating to this Agreement must be:

- 37.1 in writing or by email;
- 37.2 signed by the Representative of the sender or directly from their email address; and
- 37.3 given to the other party:
  - 37.3.1 by hand delivery;
  - 37.3.2 by prepaid mail; or
  - 37.3.3 by facsimile or email transmission.
- 37.4 For the purposes of delivery of notices:
  - 37.4.1 mail must be sent to the address of the recipient party set out in Annexure A; and
  - 37.4.2 facsimile or email messages must be marked for the attention of the person specified in Annexure A (under the heading "Notices").
- 37.5 If a Party changes its contact details, then it must provide written notice to the other party within five (5) Business Days.
- 37.6 A notice sent for the purposes of this clause will be considered received:
  - 37.6.1 if delivered before 5.00 pm on a Business Day, otherwise on the next Business Day;
  - 37.6.2 if sent by pre-paid mail, on the third Business Day after posting; or
  - 37.6.3 if transmitted by facsimile before 5.00 pm on a Business Day and a complete transmission report is received on the day of transmission, otherwise on the next Business Day, provided that:
    - a) if the recipient receives by facsimile transmission a notice that is illegible, the recipient must notify the sender immediately and the sender must continue to retransmit the notice until the recipient confirms that it has received a legible notice; and
    - b) if transmitted by email before 5.00 pm on a Business Day and the Sender receives a message-opened response, otherwise on the next Business Day, subject always to the Sender receiving a message-opened response.

### **38. No Assignment**

The Contractor must not assign, encumber or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Principal.

### **39. Auditor-General**

Nothing in this Agreement derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987 (SA)*.

#### **40. Relationship**

- 40.1 Nothing in this Agreement constitutes any relationship of employer and employee or partnership between the parties.
- 40.2 No party has any authority to bind the other party in any manner without the prior consent of the other party.

#### **41. Occupational Health and Safety**

- 41.1 Before commencing work under the Contract and during the performance of the Services, the Contractor shall take appropriate steps to identify and manage risks and hazards associated with the Services including protecting property and providing Personnel with appropriate instructions, training and supervision to ensure their safety and the safety of others at all times. The right of the Principal's Representative to inspect and direct the Contractor to either make safe the working conditions or implement safety procedures or audits shall not absolve the Contractor of the Contractor's responsibility to ensure the working conditions are safe and all the operations are in accordance with the Occupational Health, Safety and Welfare Act 1986 (SA) and Regulations contained there under. The Contractor will be required to be inducted if engaged on an SA Water site.
- 41.2 The Contractor must notify the Principal promptly of any accident, injury, property or environmental damage that occurs during the carrying out of the Services. All lost time incidents shall be immediately notified to the Principal. The Contractor must and within 3 days of any such incident provide a report giving complete details of the incident, including results of investigations into its cause, and any recommendations or strategies for prevention in the future.
- 41.3 If during the performance of the Services the Principal informs the Contractor that it is the opinion of the Principal that the Contractor is:
- 41.3.1 not conducting the Services in compliance with the Contractor's, health and safety management procedures, relevant legislation; or
  - 41.3.2 conducting the Services in such a way as to endanger the health and safety of SA Water Employees, Contractor Personnel, plant, equipment or materials;

the Contractor shall remedy that breach of health and safety promptly. The Principal may direct the Contractor to suspend the Services until such time as the Contractor satisfies the Principal that the Services will be resumed in conformity with applicable health and safety provisions.

#### **42. Fire Season**

- 42.1 The Contractor is to ensure that all its Personnel comply with the Fire and Emergency Services Act 2005 (SA) and Regulations and take into consideration the South Australian Country Fire Service Fire Danger Ratings framework.
- 42.2 The Contractor will also need to take into consideration the Principal's policy in response to the South Australian Country Fire Service Fire Danger Ratings framework that precludes the Principal's employees from working outside of the predetermined Bushfire Safer Precincts for SA or Safer Settlements for SA on a day that has been declared to have a catastrophic fire danger rating.

## 43. Imported Goods

### 43.1 Customs Import Duty Concessions

The Principal may make applications for Customs import duty concessions on goods, or parts thereof that are imported into Australia for the purposes of fulfilling this contract. In the event that the Principal makes application for any import duty concessions, the Contractor shall supply all documentation and do all that is reasonably necessary to assist the Principal achieve relevant Customs duty concessions. The Principal will have the sole benefit of any Customs duty concession granted in respect to these goods. The benefit will be passed to the Principal as follows:

- (a) The Principal will obtain the necessary legal concessional instrument/s to allow duty free entry of imported goods or a Customs duty refund for goods already imported.
- (b) The Principal will make the legal concessional instruments available for use by the Contractor. The Principal shall obtain financial benefit of Customs duty savings by way of a contract adjustment for an amount equal to the Customs duty amount specified in the Customs Duties & Payments Schedule, less the reasonable costs incurred by the Contractor in obtaining relevant Customs duty refunds if applicable.
- (c) The Superintendent shall include an adjustment for Customs duty refund or where Customs duty has not been paid the balance of any monies outstanding as specified in the Customs Duties & Payments Schedule, in any payment certificate issued pursuant to clause 42.1 or any Final Certificate issued pursuant to clause 42.8 or any Certificate issued pursuant to clause 44.6 of the General conditions of contract.
- (d) Where moneys due to the Contractor under contract are insufficient to cover relevant Customs duty refunds for Customs duty already paid on imported goods or the balance of any monies outstanding as specified in the Customs Duties & Payments Schedule where Customs duty has not been paid, the Principal may, subject to Clause 5.6 and in accordance with Clause 42.9, have recourse to retention moneys and if necessary to security under Contract with any deficiency then remaining a debt due and payable to the Principal by the Contractor. The Contractor, in agreement with the Principal, may make payment to the Principal in accordance with the adjustment certified by the Superintendent.

The Superintendent shall include a reasonable allowance for costs incurred by the Contractor in obtaining the Customs duty refund/s.

### 43.2 Customs Duty Adjustments

If there is any difference between the rates of customs duty included in the Contract and those calculated for the imported goods as landed, then the Contract Price of those imported goods shall be adjusted accordingly, submit to the following provisions:

The amount of price adjustment shall be the difference in customs duty payable due to the change in the customs duty rates.

The customs duty applying for the imported goods as landed shall be calculated using those rates current on the date(s) of landing of the goods.

Custom duty adjustments shall only apply to those goods included in the Schedule of Imported Goods. All other goods shall be deemed to be not subject to adjustment for changes in customs duty rates.

The Contractor shall, on request, submit to the Superintendent's Representative, shipping documents, or other approved evidence for the goods listed on the Schedule of Imported goods, to

substantiate the amount applicable to customs duty adjustment. If the Contractor fails to produce such evidence within one month (or such longer period as may be approved by the Superintendent's Representative) of being requested to do so, the Superintendent's Representative may deduct from the Contract Price the amount for customs duty as listed in the Schedule of Imported Goods of those items not substantiated, or the Superintendent's Representative may determine at his own discretion what adjustment shall be made to the Contract Price for changes in customs duty rate.