

Adbri Standard Conditions for the supply of Goods and/or Services

These Standard Conditions apply to the supply of Goods and/or Services by the Contractor to the Principal and form part of all Purchase Orders issued by or on behalf of the Principal to the Contractor for Goods and/or Services unless specifically excluded or varied by the Principal in writing. These Standard Conditions supersede any of the Contractor's terms or conditions. Any order is limited to these Standard Conditions and the Principal objects to any additional or different terms which may be contained in any invoice, acknowledgment or other forms or correspondence.

1 Definitions

1.1 Definitions

In this Agreement:

Agreement means the conditions set out in these Standard Conditions and in the Purchase Order, or otherwise agreed by the parties in writing;

Australian Consumer Law means the Australian Consumer Law being schedule 2 in the *Competition and Consumer Act 2010* (Cth);

Business Day means:

- (a) for receiving a notice under clause 16, a day that is not a Saturday, Sunday or bank holiday in the place where the notice is sent; and
- (b) for all other purposes, a day on which banks are open for business in the capital city of the State or Territory in which the relevant Site is located excluding a Saturday, Sunday or public holiday;

Chain of Responsibility means the Chain of Responsibility as part of the Heavy Vehicle National Law relating to: driver fatigue, including but not limited to driver work and rest hours; vehicle mass and dimension; load securing; speed; dangerous goods; transport activities; and/or any other matters relating to the safe operation of vehicles.

Confidential Information means whether or not in material form, all information relating to the business dealings, contracts, customers, computer operations and marketing, sales and business plans and financial data of the Principal and any Related Body Corporate of the Principal.

Consumer means has the meaning given under the Australian Consumer Law and includes the supply of goods or services to an individual or business costing up to \$100,000 (or any other amount set by the Australian Consumer Law in future) or goods or services costing more than \$100,000, which are normally used for personal, domestic or household purposes but does not include an individual or business who buys:

- (a) A good in trade or commerce:
 - I. For the purpose of re-supply;
 - II. To use them or transform them through processing, production or manufacture;
 - III. To repair or treat other goods or fixtures on land;
- (b) A service in trade or commerce for commercial use.

If the definition of 'Consumer' under the Australian Consumer Law is amended, this definition is amended accordingly.

Contractor means the person named on the Purchase Order as the supplier for the Goods and/or Services to the Principal.

Contractor's Personnel means the agents, employees or sub-contractors of the Contractor;

Defective Goods means Goods that are not in conformity with this Agreement, are defective in design,

performance, workmanship, make up or are the subject of a product recall;

Equipment means the equipment supplied by the Contractor for the purpose of performing the Services;

Fees means the price payable for the Goods and/or Services as specified in the Purchase Order;

Goods means the goods to be provided by the Contractor to the Principal as set out in the Purchase Order;

Government Agency means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

Insolvency Event means:

- (a) a receiver, receiver and manager, trustee, administrator or similar official is appointed, or steps taken for such appointment, over any of the assets or undertaking of the Contractor;
- (b) the Contractor suspends payment of its debts generally;
- (c) the Contractor is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth);
- (d) the Contractor enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) the Contractor ceases or threatens to cease to carry on business;
- (f) steps are taken by anyone entitled to do so to appoint an administrator to the Contractor; or
- (g) an application or order is made for the winding-up or dissolution of the Contractor or a resolution is passed or any steps are taken to pass a resolution for the winding-up or dissolution of the Contractor otherwise than for the purpose of an amalgamation or reconstruction;

Intellectual Property Rights means:

- (a) patents, trademarks, service marks, rights in designs, trade names and copyrights (including future copyright), in each case whether registered or not, and any applications for registration of any of them;
- (b) rights under licences and consents in relation to any of them; and
- (c) all forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world;

KPI means the key performance indicators in the Purchase Order (if any);

Modern Slavery means conduct that would breach of Divisions 270 and 271 of the Commonwealth Criminal Code if it occurred in Australia, human trafficking or the worst forms of child labour;

Modern Slavery Law means the *Modern Slavery Act 2018* (Cth), Divisions 270 and 271 of the Commonwealth Criminal Code and the *Modern Slavery Act 2018* (NSW);

Notifiable Event means a breach of Modern Slavery Law by the Contractor, any of the Contractor's Personnel or a supply chain participant in connection with this Agreement;

Principal means

Adbri Cement NSW Pty Ltd (ABN 29 075 095 822);

Adbri Cement NT Ltd (ABN 22 009 593 515);

Adbri Concrete and Quarries Northern NSW Pty Ltd (ABN 61 001 738 709);

Adbri Concrete and Quarries NT Pty Ltd (ABN 11 096 310 824);

Adbri Concrete and Quarries SA Pty Ltd (ABN 26 007 726 909);

Adbri Cement Kooragang Pty Ltd (ABN 67 603 062 497)

Adbri Masonry Pty Ltd (ABN 31 009 687 521);

Adbri Quarries Sydney Pty Ltd (ABN 79 002 325 144);

Adelaide Brighton Cement Limited (ABN 96 007 870 199);

Adelaide Brighton Management Ltd (ABN 82 008 144 214);

Adelaide Industrial Sands Pty Ltd (ABN 57 149 470 137);

Building Products Supplies Pty Limited (ABN 95 006 150 036);

Clinton Sands Pty Ltd (ABN 89 627 081 921);

Cockburn Cement Limited (ABN 50 008 673 470);

E.B. Mawson & Sons Proprietary Limited (ABN 14 004 519 617);

Hy-Tec Industries Pty Ltd (ABN 90 070 100 702);

Hy-Tec Industries (Queensland) Pty Ltd (ABN 54 102 801 061);

Hy-Tec Industries (Victoria) Pty Ltd (ABN 43 096 310 520);

Independent Cement and Lime Pty Limited (ABN 49 005 829 550);

Premix Concrete S.A. Pty Ltd (ABN 41 008 284 688);

Seelander Quarries Pty Ltd (ABN 26 607 791 515);

Steel Cement Pty Ltd (ABN 46 007 194 818);

Swan Materials Pty Ltd (ABN 40 626 554 407);

Vue Australia Pty Ltd (ABN 69 161 145 946) or

as set out in the Purchase Order;

Purchase Order means any purchase order (whether in electronic or written form) issued by or on behalf of the Principal to the Contractor for the supply of Goods and/or Services by the Contractor and each schedule and document accompanying the Purchase Order;

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth);

Reports means the reports to be provided by the Contractor to the Principal in accordance with clause 4.5 of these Standard Conditions;

Services means the services to be performed by the Contractor, as set out in the Purchase Order, and any services necessarily incidental to them;

Site means the Principal's site as specified in the Purchase Order;

Site Procedures means the site policies and procedures of the Principal as amended from time to time in accordance with clause 5 that are provided to the Contractor or publicly available at www.adbri.com.au, including the Code of Conduct, safety health and environment policy, and any Site specific policies and procedures;

Small Business has the meaning given under the Australian Consumer Law and includes a small business Contractor that employs 100 or fewer persons, or has an annual turnover of less than \$10 million. If the definition of 'Small Business' under the Australian Consumer Law is amended, this definition is amended accordingly.

Standard Conditions means the conditions set out in this document, as amended from time to time;

Term means the period for supplying the Goods and/or Services specified in the Purchase Order, or where this is not specified, commences from the date of the Purchase Order and continues until the supply of Goods and/or Services is completed, unless terminated earlier under these Standard Conditions; and

Working Hours means the normal working hours at the relevant Site.

1.2 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

1.3 Inconsistency

If there is any inconsistency between these Standard Conditions and the Purchase Order the conditions in the Purchase Order will prevail to the extent of the inconsistency.

2 Authority and acceptance

- (a) The Principal will not be bound by any Purchase Order unless it is issued by or on behalf of the Principal.
- (b) The Contractor must give the Principal written notice of acceptance of the Purchase Order within 7 days. If the Contractor does not provide notice to the Principal, the supply of the Goods and/or Services by the Contractor will constitute acceptance by the Contractor of the Purchase Order.
- (c) The Principal will have no liability to pay for any Goods and/or Services not set out in an issued Purchase Order.

3 Appointment and Term

The Principal may (but has no obligation to) engage the Contractor to supply the Goods and/or Services for the Term, unless terminated earlier, in accordance with the conditions contained in this Agreement.

4 Supply of Goods and/or Services

4.1 Supply of the Goods and Services

The Contractor must ensure that:

- (a) all Goods meet the description, specifications and quality standards set out in the applicable Purchase Order, are new, of merchantable quality, made of good materials and workmanship, and free from defects;
- (b) all Goods are fit for the purpose for which goods of the same kind are commonly supplied and any purpose which the Principal makes known to the Contractor, and are accompanied by any necessary instructions, technical documents, operating and service manuals and applicable warranties;
- (c) it performs the Services in a timely manner with a standard of care, skill, diligence, prudence and foresight that would reasonably be expected of an expert and experienced provider of services similar to the Services, and, where the Contractor is not a Small Business, to the Principal's reasonable satisfaction;
- (d) it performs its obligations in accordance with:
 - (1) this Agreement and all reasonable directions of the Principal;
 - (2) all applicable laws, rules, regulations and industry and safety standards;
 - (3) all policies and procedures of the Principal from time to time, including but not limited to the safety health and environment policy, policies relating to the Chain of Responsibility and any Site Procedures; and
 - (4) to the minimum standard required by any KPI;
- (e) all necessary permits and approvals are obtained to undertake all duties and obligations under this Agreement;
- (f) it takes all necessary steps to ensure that it is fully informed of and complies with the Site Procedures;

- (g) it provides all necessary equipment, materials and labour that may be required to supply the Goods and/or Services;
- (h) it uses reasonable endeavours to ensure that the Goods or Services that it provides are not the product of Modern Slavery; and
- (i) it requires its suppliers to ensure that the Goods or Services that it provides are not the product of Modern Slavery.

4.2 Additional Requirements for the supply of Goods

- (a) Goods must be packed and marked in accordance with the Principal's reasonable instructions and any statutory requirements. All Goods must be clearly labelled with printed, legible labels. All Goods must be accompanied by packing slips describing the Goods.
- (b) The Contractor must deliver the Goods in the quantity, at the time and to the Site delivery point specified by the Principal in the Purchase Order or in accordance with any reasonable instructions notified by the Principal. The Contractor must ensure that the Goods are protected against all damage and deterioration during transportation.
- (c) Subject to clause 4.7 of these Standard Conditions, title to and risk in the Goods passes to the Principal when the Principal has taken delivery of the Goods at the Site delivery point. The Contractor must not register a security interest in the Goods under the *Personal Property Securities Act 2009* unless agreed in writing signed by the Principal.

4.3 Contractor's Personnel

- (a) The Contractor must ensure that the Contractor's Personnel engaged in the supply of the Goods and/or Services:
 - (1) are competent and professional with qualifications and experience appropriate to ensure full and proper performance of the supply of the Goods and/or Services in accordance with this Agreement;
 - (2) comply with the provisions of all applicable statutes, rules, regulations and industry and safety standards; and
 - (3) perform their duties with care, skill and diligence;
 and if such Personnel are required to access the Site:
 - (4) have undertaken the Principal's safety induction programme before performing the Services;
 - (5) maintain good housekeeping and ensure that the Site is kept tidy, clean and clear; and
 - (6) carry proper identification when on the Site.
- (b) If the Principal gives notice to the Contractor that a member of the Contractor's Personnel is unacceptable to the Principal in its sole discretion, the Contractor must take immediate steps to remove the person and provide an alternative person acceptable to the Principal.

4.4 Contractor's Equipment

- (a) The Contractor must take all reasonable steps to ensure that the Contractor's Personnel operate all Equipment according to the manufacturer's specifications and in compliance with any relevant laws.
- (b) The Contractor must ensure that all Equipment:
 - (1) is properly manufactured, of merchantable quality and fit for the purpose for which it is intended;
 - (2) is of such safety as the Principal is entitled by law to expect;

- (3) complies with all relevant laws and Australian industry and safety standards; and
- (4) is inspected and tested to ascertain it is safe and fit for purpose before use at the Site and appropriate records are kept of the inspection and testing.
- (c) The Contractor must ensure that all vehicles and Equipment used or supplied by the Contractor in connection with the supply of Goods and/or Services are maintained in a safe and serviceable condition and are serviced in accordance with the manufacturer's specifications.

4.5 Reporting

- (a) The Contractor must keep accurate records relating to the provision of the Goods and/or Services and its performance of its obligations under this Agreement.
- (b) The Contractor must make the records specified in clause (a) above available for inspection by the Principal upon the reasonable request of the Principal.
- (c) The Contractor must provide the Principal with any reports concerning the provision of the Goods and/or Services specified in the Purchase Order or which are reasonably requested by the Principal from time to time.
- (d) The Contractor must provide the Principal with such access, information and documentation as it reasonably requests to permit the Principal to:
 - (1) undertake due diligence on its supply chain; and
 - (2) report in accordance with Modern Slavery Law.
- (e) If:
 - (1) an accident occurs at the Site involving the Contractor or the Contractor's Personnel;
 - (2) an environmental incident occurs at the Site involving the Contractor or the Contractor's Personnel;
 - (3) an occupational disease is suffered by the Contractor or the Contractor's Personnel;
 - (4) an incident occurs relating to the Contractor's Chain of Responsibility obligations; or
 - (5) a Notifiable Event occurs,
 then the Contractor must:
 - (6) immediately notify the Site manager and the Principal;
 - (7) properly investigate the incident and, if required by the Principal, co-operate in any investigation of the incident; and
 - (8) promptly provide a detailed report to the Site manager and the Principal in respect of the incident.

4.6 KPIs

- (a) If the Principal, acting reasonably, determines that the Contractor has failed to achieve any or all of the KPIs to the satisfaction of the Principal, the Principal may:
 - (1) serve a notice requiring the Contractor to remedy its non-compliance with the KPIs within 14 days of the date of the notice; and
 - (2) conduct another review of the Contractor's performance under this Agreement against the KPIs in a manner it determines acting reasonably, at the cost to the Contractor so long as those

costs are reasonably incurred by the Principal.

- (b) If during the Term of this Agreement, the Principal issues two notices to the Contractor under clause (a) above and the Contractor fails to meet the same or another KPI, the Principal may, in its absolute discretion:
- (1) immediately terminate the provision of all or part of the supply of Goods and/or Services in relation to which the KPIs have not been met; or
 - (2) terminate this Agreement by giving 14 days notice to the Contractor,

and the Contractor must return any monies paid for Goods or Services that have not been supplied by the Contractor prior to termination.

4.7 Inspection and acceptance of Goods

- (a) The Principal will not be deemed to have accepted the Goods until it has had a reasonable time to inspect the Goods.
- (b) If, any Goods are Defective Goods, the Principal may reject the Defective Goods by returning them to the Contractor at the Contractor's cost.
- (c) At the Principal's option and request, the Contractor must:
 - (1) refund to the Principal any payments made by the Principal in respect of any Defective Goods that the Principal rejects; or
 - (2) replace free of charge any Defective Goods that the Principal rejects.

5 Site Procedures and obligations

5.1 Access to the Site

- (a) The Principal only has an obligation to make the Site available to the Contractor sufficient for the Contractor to carry out its obligations under this Agreement during the Working Hours.
- (b) The Contractor may only gain access to and enter and remain upon the Site as specified in this Agreement.
- (c) The Contractor enters the Site at its own risk subject to any other legal obligations owed by the Principal.
- (d) The Contractor and the Contractor's Personnel must register at the Site reception or the Site gatehouse each time they enter the Site.
- (e) The Principal may at any time inspect the contents of any vehicles of the Contractor or the Contractor's Personnel that enter the Site.
- (f) The Contractor must not, in providing the Services, disrupt any activities on the Site.

5.2 Environmental obligations

- (a) The Contractor must, where relevant:
 - (1) comply with all laws, rules, regulations and industry standards, this Agreement, and the Principal's policy and directions for the protection of the environment;
 - (2) supply the Goods and/or Services in a manner so as to avoid unlawful pollution of the Site and its surroundings.
- (b) The Contractor is responsible for, and must make good, any damage to the environment caused by its supply of the Goods and/or Services (including any unlawful pollution of the Site or its surroundings) unless that damage was directly caused by the breach, negligence or wilful misconduct of the Principal.

5.3 Safety

The Contractor must at all times:

- (a) provide safe working conditions for all persons supplying the Goods or carrying out the Services for or on behalf of the Contractor; and
- (b) if the Contractor accesses the Site:
 - (1) obtain clearance certificates from the Principal before commencing work at the Site;
 - (2) comply with the Principal's drug and alcohol policy; and
 - (3) comply with the Principal's Site Procedures and the directions of the Principal's representatives about health and safety matters.

5.4 Hazardous materials

If dealing with hazardous materials or hazardous works at the Site, the Contractor must ensure that:

- (a) it obtains prior approval from the Site manager before engaging in work of a hazardous nature or dealing with hazardous materials;
- (b) only those persons who have received adequate training and instruction in conducting the hazardous work or dealing with hazardous materials perform the relevant work; and
- (c) it makes and retains all appropriate records in connection with hazard identification and hazard controls undertaken by the Contractor in relation to the hazardous work or hazardous material.

6 Invoicing and payment

6.1 Payment

- (a) The Principal must pay the Contractor the Fees in consideration for the supply of the Goods and/or Services to the Principal by the Contractor subject to the Contractor discharging its obligations under this Agreement. Payment of the Fees does not represent acceptance of the Goods and/or Services by the Principal.
- (b) The Fees are deemed to include provision for all costs, taxes and duties (other than GST) and expenses incurred by the Contractor in complying with all its obligations under this Agreement.
- (c) The Fees are fixed for the Term.

6.2 Invoicing

- (a) The Contractor must quote an Adbri purchase order number on the invoice in order for the Principal to pay within 30 days for a Small Business or 45 days for all other Contractor's, after the end of the month within which the Contractor's valid tax invoice for the Goods and/or Services is received.
- (b) The Contractor must submit any invoices for payment prior to the end of the month in which the Goods and Services is received.

7 GST

- (a) A reference in this clause to a term defined or used in *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.
- (b) Any amount referred to in this Agreement which is relevant in determining a payment to be made by one of the parties to the other is exclusive of any GST unless indicated otherwise.
- (c) If GST is imposed on a supply made under or in connection with this Agreement, the consideration provided for that supply is increased by the rate at which that GST is imposed. The additional consideration is payable at the same time as the consideration to which it relates.

- (d) The supplier must issue a tax invoice to the recipient of the supply at the time of payment of the GST inclusive consideration or at another time agreed by the parties.
- (e) If one of the parties is entitled to be reimbursed for an expense or outgoing incurred in connection with this Agreement, the amount of the reimbursement will be net of any input tax credit which may be claimed by the party being reimbursed in relation to that expense or outgoing.

8 Sub-contracting

- (a) The Contractor may not sub-contract any part of the supply of Goods and/or Services without the Principal's consent, which consent may not be unreasonably withheld.
- (b) Any consent from the Principal to sub-contract any part of the supply of Goods and/or Services does not relieve the Contractor from any of its liabilities or obligations under this Agreement.
- (c) The Contractor is liable to the Principal for any act or omission, default or negligence of any sub-contractor or any employee or agent of the sub-contractor as if it were the act, omission, default or negligence of the Contractor.

9 Confidentiality

- (a) The Contractor must not, and must ensure that its employees, agents and sub-contractors do not, without the prior written approval of the Principal, either during the provision of the Goods and Services or after the expiry or earlier termination of this Agreement, disclose or give to any person any Confidential Information.
 - (1) is in the public domain other than as a result of a breach of this clause;
 - (2) was at the time of disclosure already in the lawful possession of the Contractor; or
 - (3) is required to be disclosed by any applicable law or the listing rules of any applicable stock exchange.
- (b) This clause does not apply to Confidential Information that the Contractor proves:
 - (1) is in the public domain other than as a result of a breach of this clause;
 - (2) was at the time of disclosure already in the lawful possession of the Contractor; or
 - (3) is required to be disclosed by any applicable law or the listing rules of any applicable stock exchange.
- (c) At the expiry or earlier termination of the Term, the Contractor must deliver up to the Principal all material comprising, including or otherwise relating to the Confidential Information.
- (d) The Principal may, without prior notice to the Contractor, notify actual, alleged or suspected Modern Slavery to:
 - (1) any Related Body Corporate of the Principal;
 - (2) any Government Agency; or
 - (3) the public.
- (e) Confidentiality of information extends to the maintenance of adequate cybersecurity controls, as follows:
 - (1) maintain industry-standard security, including encryption of Principal data in transit and at rest, multi-factor authentication, and timely security patching, to protect Principal data and the Principal's systems.
 - (2) comply with the Privacy Act 1988 of the Commonwealth of Australia, the Australian Privacy Principles, and the Notifiable Data Breaches scheme;
 - (3) notify the Principal in writing within 24 hours of any actual or suspected security incident and cooperate in investigation and remediation;
 - (4) ensure its personnel and subcontractors are bound by equivalent obligations and

provide reasonable evidence of controls on request.

The Principal may suspend the Supplier's access where reasonably necessary to protect security. This clause survives termination.

10 Intellectual property

- (a) The ownership of the Intellectual Property Rights in any item which exists before the commencement of the supply of any Goods and/or Services will not be altered, transferred or assigned merely by virtue of using that item for the purposes of this Agreement, unless expressly agreed to the contrary.
- (b) The Contractor assigns to the Principal all Intellectual Property Rights that may be produced or developed by the Contractor for the Principal or any Related Body Corporate in relation to or as a result of the provision of the Services, effective immediately on the creation of any such Intellectual Property Rights.
- (c) The Contractor must do all things necessary to obtain all Intellectual Property Rights referred to in clause (b) above including, where necessary, obtaining an assignment of rights from any Contractor Personnel.
- (d) The Contractor warrants that:
 - (1) it has or will have all rights necessary to make the assignment referred to in clause (c) above; and
 - (2) the items, documents and material produced in the course of providing the Services will not infringe the Intellectual Property Rights of any person.
- (e) The Contractor must not use any trademarks of the Principal or its Related Bodies Corporate for any purpose without the prior written consent of the Principal and subject to any conditions the Principal may impose.
- (f) The Contractor agrees that in the course of providing the Services, it will not do any act or thing which may infringe any Intellectual Property Rights of the Principal or any third party.

11 Insurance

- (a) The Contractor must, before commencing supply of the Goods and/or Services, effect and maintain any necessary insurances in relation to the Goods and/or Services (to a minimum coverage as specified in the Purchase Order or if no amounts are specified in the Purchase Order), in the amounts set out in this clause, including, but not limited to:
 - (1) workers' compensation insurance;
 - (2) Worker's Compensation Employers Liability insurance which complies with the laws of Western Australia to a minimum cover for common law of \$50 million per claim and per employee, and endorsed to include an indemnity insurance extension for the Principal under the Agreement, if the Goods and/or Services are supplied in Western Australia. For the avoidance of doubt, this clause 11(a)(2) does not apply if the Goods and/or Services are not supplied in Western Australia;
 - (3) public and product liability insurance to a minimum cover of \$10 million per claim in respect of public liability or in respect of product liability, in the aggregate, including (without limitation) cover for death, bodily injury, damage to or destruction of tangible property including any resulting loss of use of such property;
 - (4) professional indemnity insurance (if required), to a minimum cover of \$10 million per claim and to be maintained for a period of 6 years from the cessation of

the supply of the Services. For the avoidance of doubt, this clause 11(a)(4) only applies to Contractors providing professional services including (but not limited to) design and advice work;

- (5) motor vehicle third party property insurance to a minimum cover of \$10 million per claim for all types of motor vehicles and equipment owned or controlled by the Contractor; and
 - (6) any other insurances required by law or regarded as sound commercial practice.
- (b) The Contractor must provide evidence of the currency of insurance to the Principal or its agent upon the request of the Principal or the Principal's agent.
 - (c) The Contractor must ensure that any subcontractor engaged by the Contractor in relation to the Goods and/or Services effects and maintains the insurances in clause (a) above.
 - (d) The Contractor must not do anything which may provide grounds for an insurer to refuse payment of a claim made under any policy of insurance, or which may prejudice the interests of the Principal under any policy of insurance.

12 Indemnity

- (a) Without limiting the Principal's other rights and remedies, if the Contractor is not a Small Business then the Contractor indemnifies and will indemnify the Principal, its agents, sub-contractors and Related Bodies Corporate and any employees of any of them from any loss, damage, expense (including lawyer's fees and expenses on an indemnity basis) claim, demand or liability made or incurred as a result of or in connection with:
 - (1) a negligent or other unlawful act or omission by the Contractor;
 - (2) personal injury, death or property loss or damage suffered by any person arising out of or in connection with the Goods, Services or Equipment provided by the Contractor;
 - (3) the breach by the Contractor of any material term of this Agreement;
 - (4) any infringement or alleged infringement of Intellectual Property Rights arising out of the Principal's use of the Goods, Services or Equipment.
- (b) The Principal holds the benefit of this clause on trust for its agents, sub-contractors and Related Bodies Corporate and any employee of any of them.

13 Default and termination

13.1 Remedy notice

- (a) If the Contractor is in breach of this Agreement, the Principal may give the Contractor a written notice specifying a reasonable time by which the Contractor must rectify the breach, to the extent that the breach is capable of rectification.
- (b) If the Principal gives the Contractor a written notice referred to in clause (a) above, the Contractor must comply with the written notice.

13.2 Termination following default

In relation to material breaches, the Principal may terminate this Agreement with immediate effect by giving the Contractor written notice if the Contractor has not complied with a written notice given under this clause within the time period specified in that notice or if the breach is incapable of being remedied.

13.3 Termination for insolvency

If the Contractor experiences an Insolvency Event, the Principal may terminate this Agreement with immediate effect by giving written notice to the Contractor provided

that such termination right is subject to any applicable law to the contrary.

13.4 Termination for breach of Modern Slavery Law

The Principal may immediately terminate this Agreement by giving written notice to the Contractor if the Contractor or any of the Contractor's Personnel:

- (a) have not complied with a Modern Slavery Law reporting requirement or have published information that is not true and correct in relation to the risks of Modern Slavery in its operations or supply chain; or
- (b) breach a Modern Slavery Law.

13.5 Termination by notice

- (a) The Principal may terminate this Agreement by giving the Contractor 30 days written notice.
- (b) Upon termination under clause 13.5(a), the Principal must pay the Contractor:
 - (1) in relation to Goods:
 - (A) the value of all unpaid Goods delivered in accordance with the Agreement prior to the date of termination; and
 - (B) the cost of materials reasonably and necessarily ordered by the Contractor prior to the date of termination or which the Contractor is legally bound to pay in relation to the manufacture or supply of the Goods, for the purpose of supplying the Goods. The Contract must deliver the materials to the Customer following payment.
 - (2) in relation to Services, any outstanding tax invoices for Services performed up to the date of termination, and the Contractor's actual and direct out-of-pocket expenses that are reasonably incurred to the date of termination, for Services ordered (which amounts will not include any amount in respect of any loss of profit and will not be in excess of the Fees payable if this Agreement had not been terminated).

13.6 Consequences of termination

- (a) Unless terminated under clause 13.5, the Contractor will not be entitled to any compensation or to make any claim against the Principal arising from a termination of this Agreement.
- (b) The termination of the Contractor's engagement under this Agreement does not affect any other rights or remedies the Principal may have.
- (c) Clauses 9 (Confidentiality), 12 (Indemnity), and this sub-clause 13.6 and any other obligation which is expressed to, or by its nature, survive expiry or termination of this Agreement, will survive expiry or termination of this Agreement and are enforceable at any time at law or in equity.

14 Force majeure

14.1 Force majeure

- (a) Where force majeure prevents or delays a party from performing any obligation under this Agreement, the party's obligation is suspended as long as the force majeure continues.
- (b) For the purpose of this clause, force majeure means an act of God, war, revolution or any other unlawful act against public order or authority and a governmental restraint.

14.2 Notification of force majeure

Upon the occurrence of a force majeure the Contractor must immediately notify the Principal

and use its best endeavours to overcome the circumstances.

14.3 Effect of force majeure

- (a) Where force majeure prevents or delays the Contractor from performing its obligations in respect of the supply of Goods and/or Services, the Principal may elect to obtain the Goods and/or Services from an alternative provider for the duration of the Force Majeure.
- (b) Where the Force Majeure continues for 30 days or more, the Principal may immediately terminate the Agreement upon written notice to the Contractor and in that event the Contractor shall have no claims against Principal in connection with that termination.

15 Chain of Responsibility

- (a) The Contractor must ensure that it, and all Contractor Personnel:
- (1) complies with all laws, approvals and good operating practices relating to the Chain of Responsibility;
 - (2) will not engage in any activity that causes or has the effect of causing any actual or potential contravention of any laws or other requirements relating to the Chain of Responsibility;
 - (3) maintains proper, complete and accurate records and systems in relation to the Chain of Responsibility obligations;
 - (4) provides to the Principal on request copies of all information and documents and access to all electronic data, records or systems in relation to Chain of Responsibility obligations; and
 - (5) on request by the Principal, provides honest and accurate information in relation to the Chain of Responsibility, including without limitation evidence of adequate compliance with and management of Chain of Responsibility obligations.
- (b) The Principal may inspect or audit the Contractor's provision of the Goods and/or Services and performance of the Contractor's obligations under this Agreement.

16 Notices

- (a) Any notice, approval, consent or other communication in relation to this Agreement must be in writing and sent by pre-paid post or email as follows:
- (1) if to the Principal, at the address or email specified on the Purchase Order, with a copy to:
 - (A) Address: Level 4
151 Pirie Street
Adelaide,
South Australia 5000
 - (B) Email: company.secretary@adbri.com.au
 - (C) Attention: Company Secretary
 - (2) if to the Contractor, at the address or email set out in the Purchase Order or email provided by the Contractor,
or as otherwise specified by a party by notice.
- (b) A notice is regarded as given by the sender and received by the addressee:
- (1) if delivered in person, when delivered to the addressee;
 - (2) if posted, 5 Business Days from and including the date of posting to the addressee; and
 - (3) if sent by email, on the date of the email

unless the sender receives an automatically generated reply advising that the message could not be delivered,

but if delivery or receipt is on a day which is not a Business Day or is after 5.00pm at the place of delivery or receipt, it is regarded as given at 9.00am on the next Business Day.

17 General

17.1 Set off

The Principal may deduct from any amounts due and payable to the Contractor any amounts due and payable from the Contractor to the Principal

17.2 Waiver

- (a) Waiver of any right arising from a breach of this Agreement must be in writing and executed by the party granting the waiver.
- (b) A failure to exercise or delay in exercising, or a partial exercise of a right arising from a breach of this Agreement does not result in a waiver of that right.

17.3 Privacy

The Contractor represents and warrants that:

- (a) any personal information that the Contractor discloses to the Principal under this Agreement has been collected, handled and disclosed in accordance with the *Privacy Act 1988 (Cth)* (**Privacy Act**);
- (b) the individual to whom the information relates has been made aware of the Principal's identity, its contact details and of the other matters of which the Principal is required to inform a person about whom it collects, handles and uses information under the Privacy Act; and
- (c) the Principal is authorised to collect the information from the Contractor and handle and use the information for the purposes of this Agreement.

17.4 Assignment

- (a) The Principal may at any time assign or novate or otherwise transfer all or any part of its rights or liabilities under this Agreement to any other Principal listed in this Agreement.
- (b) The Contractor must not assign its rights under this Agreement without the prior written consent of the Principal which must not be unreasonably withheld.

17.5 Governing law and jurisdiction

The governing law of this Agreement is the law of the State or Territory in which the Site is located and the parties submit to the non-exclusive jurisdiction of the Courts of that State or Territory (and if there are multiple Sites then the State or Territory in which the first Site listed on the Purchase Order is located and if no Sites are listed on the Purchase Order then South Australia).

17.6 Variation

A variation of any term of this Agreement must be in writing and signed by the parties.

17.7 Further action

Each party must do all things and execute all further documents necessary to give full effect to this Agreement.

17.8 Benefits held on trust

The Principal holds the benefit of each indemnity, promise and obligation in the Agreement expressed to be for the benefit of:

- (a) a director, officer or employee of the Principal;
- (b) a Related Body Corporate of the Principal; or
- (c) the director, officer or employee of a Related Body Corporate of the Principal,

on trust for that party.

17.9 Severance

Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

17.10 Entire agreement

This Agreement constitutes the entire agreement between the parties for the Goods and Services and supersedes all previous agreements, proposals, representations, correspondence and discussions in connection with the Goods and Services.

17.11 Relationship between parties

- (a) The Principal and the Contractor are independent contracting parties and nothing in this Agreement will make either party an agent or legal representative of the other for any purpose whatsoever. Nor does the Agreement grant either party any authority to assume or to create an obligation on behalf or in the name of the other party.
- (b) The Principal is not responsible to the Contractor or any Contractor's Personnel for any payments in respect of, any employment related expenses including wages, annual leave, sick leave, long service leave, superannuation, workers' compensation, accidents, sickness or life insurance.
- (c) The Contractor indemnifies the Principal from and against all losses sustained by the Principal arising from any claims made by Contractor's Personnel relating to the employment of the Contractor's Personnel other than to the extent to which the losses are caused or contributed to by the Principal, including without limitation workers' compensation claims.

Contract Acceptance

The Contractor acknowledges and agrees that, unless otherwise specified in writing by the Principal:

- (a) on each occasion that the Principal issues a Purchase Order to the Contractor for the supply of Goods and/or Services, a binding and enforceable contract in relation to the supply of the Goods and/or Services which are the subject of the Purchase Order will arise upon acceptance of the Purchase Order under clause 2(b) ; and
- (b) the Contractor will supply the Goods and/or Services to the Principal for the Fees and on the conditions contained in the applicable Purchase Order and these Standard Conditions.

The Contractor warrants that the signatory below is authorised to sign this Agreement on behalf of the Contractor.

Signed for the Contractor

by its authorised representative:

Authorised Representative (signature)

Name of Authorised Representative (please print)

Contractor legal name (please print)

ABN

Address

Date (please print)

Signed for the Principal

by its authorised representative:

Authorised Representative (signature)

Name of Authorised Representative (please print)

Date (please print)