

## 1. Definitions and Interpretation

a. In the Contract, unless the context requires otherwise:

**'Background IP'** means any Intellectual Property Rights which a Party makes available, contributes, brings to or uses in connection with the Contract.

**'BCI'** means the BCI entity identified in the Purchase Order.

**'Completion'** means the Deliverables have been supplied and are substantially in accordance with the requirements of the Contract, except for minor Defects which do not prevent the Deliverables from being reasonably capable of being used for their intended purpose, and **'Complete'** has a corresponding meaning.

**'Confidential Information'** means the Contract and all information (regardless of its form) which is disclosed directly or indirectly by BCI to the Supplier or Supplier's Personnel which is treated or designated as confidential, or which the Supplier or the Supplier's Personnel ought to know is confidential, but does not include information which is or becomes public knowledge (other than by the Supplier's disclosure or breach of the Contract).

**'Contract'** means the Purchase Order, these standard terms and conditions for the Purchase Order and any schedules (including any annexures to any schedules) attached to, or incorporated by reference in, the Purchase Order or these standard terms and conditions.

**'Date for Completion'** means the date for Completion or delivery to the Delivery Point specified in the Purchase Order.

**'Date of Completion'** means the date that the Deliverables are delivered to the Delivery Point or Complete.

**'Defect'** in respect of a Deliverable, means any aspect of the Deliverable not in accordance with the Contract, or any damage, deficiency, fault or inadequacy in design, performance, workmanship, quality or makeup, and **Defective** has a corresponding meaning.

**'Deliverables'** means each deliverable, including Goods or Services (or both), to be supplied by the Supplier under the Contract.

**'Delivery Point'** means the place directed by BCI for delivery of the Goods.

**'Excluded Loss'** means any loss of production, loss or revenue, loss of profit, loss of business reputation, business interruptions, loss of opportunities, loss of anticipated savings or wasted overheads.

**'Goods'** means the goods identified in the Purchase Order to be delivered by the Supplier and includes any part of the specified goods.

**'GST'** has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**'Insolvency Event'** means, in respect of the Supplier, appointment of an administrator, liquidator, provisional liquidator or controller (including receiver or receiver and manager), insolvency, bankruptcy, winding up or any similar event.

**'Intellectual Property Rights'** means all intellectual and industrial property rights, including trade marks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts, database rights, including any application or right to apply for registration of any of these rights.

**'Invoice'** means an invoice submitted in accordance with clause 12 which meets the requirements of a Tax Invoice for the purposes of *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**'Law'** means any law in force in Australia, whether common law, equity or any law under any statute, subordinate legislation, ordinance or code.

**'Party'** means BCI or the Supplier and **'Parties'** means both of them.

**'Personnel'** means:

- i. in relation to the Supplier, any of its employees, agents or representatives, and any Related Body Corporate or Subcontractor, and any of their respective employees, agents and representatives, involved either directly or indirectly in the supply of the Deliverables; and
- ii. in relation to BCI, any Related Body Corporate, and any of their respective employees, agents or representatives (but excludes the Supplier's Personnel).

**'Personal Information'** has the meaning given in the Privacy Act.

**'Policies and Procedures'** means BCI's policies and procedures that are:

- i. available on BCI's website or intranet;
- ii. provided by BCI to the Supplier in any format; or
- iii. set out or referred to in any schedule attached to the Contract (if any),

(or any combination of the above) as amended and varied from time to time.

**'Price'** means, where the Purchase Order states that the Price is based on

- i. a lump sum or lump sums, that lump sum or the aggregate of the lump sums; and / or
- ii. rates, the sum ascertained by multiplying those rates by the quantities properly supplied in accordance with this Purchase Order, or

where paragraphs (i) and (ii) do not apply, the price for the Deliverables (exclusive of GST) set out in the in the Purchase Order.

**'Privacy Act'** means the *Privacy Act 1988* (Cth).

**'Project'** means the Mardie Salt & Potash Project.

**'Purchase Order'** means the purchase order issued to the Supplier in respect of the supply of the Deliverables, and includes any schedules, specifications or drawings contained in it or annexed to it.

**'Related Body Corporate'** has the meaning given to the term 'related body corporate' in the *Corporations Act 2001* (Cth).

**'Services'** the services identified in the Purchase Order that are to be performed by the Supplier, including the delivery of any goods and performance of any ancillary Services.

**'Site'** means the location where the Services will be performed or the Goods will be used or stored by BCI, as set out in the Purchase Order, or as otherwise advised by BCI.

**'Subcontractor'** means any person engaged by the Supplier to supply all or any part of the Deliverables.

**'Supplier'** means the supplier identified in the Purchase Order.

**'Supplier's Obligations'** means all of the Supplier's obligations under the Contract.

**'Taxes'** means any present or future tax, royalty, levy, impost, deduction, assessment, charge, excise, fee, withholding or duty of any nature imposed, assessed, charged, levied or collected by any government agency or other body authorised by Law, but does not include GST.

**'Term'** means the period from the date of the Purchase Order until the Date of Completion.

b. The following rules apply unless the context requires otherwise:

- i. specifying anything after the words 'include' or 'for example' or similar expressions does not limit what else is included;
- ii. a reference to the Contract means the Contract as amended, novated supplemented, varied or replaced from time to time;
- iii. a reference to legislation includes all sub-ordinate legislation and amendments, consolidations, replacements or re-enactments;
- iv. words importing the singular include the plural (and vice versa);
- v. headings are for convenience only and do not affect the interpretation of the Contract;
- vi. a reference to any Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
- vii. a reference to a clause, Party, schedule or attachment is to a clause, Party, schedule or attachment to the Contract;
- viii. references to '\$' and 'dollars' are to AUD;
- ix. a reference to 'day', 'month', 'quarter' or 'year' is a reference to a calendar day, month, a quarter or year;
- x. no rule of construction applies to the disadvantage of a Party on the basis that the Party was responsible for the preparation of the Contract or any part of it; and

- xi. Part 1F of the *Civil Liability Act 2002 (WA)* does not apply to the Contract.

## 2. Supply of Goods and Services

- a. The Supplier must perform the Supplier's Obligations and supply the Deliverables to BCI in accordance with the Contract.
- b. Unless expressly agreed to in writing by BCI, to the extent permitted by Law, no other terms or conditions, including the Supplier's own terms and conditions, even which have been provided to or signed by a representative of BCI, will apply or have any legal effect in connection with the supply of the Deliverables or the performance of the Supplier's Obligations.

## 3. Supplier's Obligations

- a. The Supplier must, and must ensure that all Supplier's Personnel:
  - i. comply with all applicable Laws, applicable Policies and Procedures, and any reasonable instructions given by BCI;
  - ii. do not interfere with BCI's activities or the activities of any other person at the Delivery Point or Site;
  - iii. unless otherwise set out in the Contract, supply all plant, resources and equipment necessary to perform the Supplier's Obligations; and
  - iv. provide all information and assistance as BCI reasonably requires.
- b. The Supplier must:
  - i. carry out and perform the Supplier's Obligations in a safe manner and in a way which does not prejudice safe working practices, safety of persons and care of property; and
  - ii. provide all things and take all necessary measures to protect the environment and the health, safety and welfare of all persons involved in the performance of the Supplier's Obligations.

## 4. Time for performance

- a. The Supplier must:
  - i. perform the Supplier's Obligations diligently, with due expedition and without delay;
  - ii. deliver the Goods in full to the Delivery Point and perform the Services (as applicable) in accordance with the times stated in the Contract; and
  - iii. achieve Completion by the Date for Completion.
- b. If the Supplier considers that the Date for Completion has been, or is likely to be, delayed, the Supplier must immediately give BCI notice of the delay, including details of the nature, cause and the likely extent of the delay.

## 5. Site access

- a. BCI grants to the Supplier a non-exclusive, non-assignable licence to access the Site during the Term to perform the Supplier's Obligations.
- b. The Supplier must comply, and must ensure that the Supplier's Personnel comply, with:
  - i. the site requirements for the Site that BCI advises the Supplier of from time to time, including completion of a Site induction (at the Supplier's cost); and
  - ii. any direction of BCI relating to those site requirements.
- c. The Supplier must:
  - i. not use any of BCI's property or remove BCI's property from the Site without BCI's prior written consent;
  - ii. at all times when on Site, immediately report to BCI any safety, aboriginal heritage or environmental incidents of any kind, including potential incidents and any damage to property; and
  - iii. clean up at its own cost any damage to the environment at a Site caused by it or its Personnel in connection with the performance of the Supplier's Obligations

## 6. Receipt, inspection and acceptance of Goods and Services

- a. The Supplier must allow BCI or its representative, at all reasonable times, to inspect, examine, review and witness tests of the Deliverables, or the performance of the Services, and to carry out

site inspections at the Supplier's premises or wherever the Goods are stored or in the course of manufacture.

- b. BCI is not obliged to accept delivery of the Goods to the Delivery Point prior to the Date for Completion.
- c. Acceptance of the Deliverables occurs on the earlier of:
  - i. a representative of BCI notifying the Supplier in writing that the Deliverables have been accepted; or
  - ii. the lapse of 14 days after delivery of the Goods to the Delivery Point without BCI notifying the Supplier in writing that the Goods have been rejected.
- d. If BCI notifies the Supplier that the Deliverables have been rejected the Supplier must, at its cost (including costs of collection and redelivery if applicable), promptly rectify or replace the Deliverables so that the requirements of the Contract are met. BCI has no liability to pay for Deliverables that are subject to a notice of rejection.
- e. Acceptance of the Deliverables by BCI does not constitute approval of the Deliverables or prejudice any claim BCI may have in connection with the Deliverables.

## 7. Packaging and marking

- a. The Supplier must ensure that the Goods are suitably packed to avoid damage in transit or in storage and to facilitate inspection and repacking for on-forwarding and storage.
- b. The Supplier must provide to BCI all safety information, instruction manuals and other relevant data relating to BCI's use of the Goods, including material safety data sheets.
- c. All Goods, delivery notes and other documents must be clearly marked with the Purchase Order number, the material number (where applicable) and the Delivery Point specified in the Purchase Order.
- d. Signed delivery documents are only confirmation of the number of packages or cartons delivered and will not constitute acceptance by BCI of the Goods.
- e. Failure to comply with this clause 7 entitles BCI to reject the Goods and return them to the Supplier, at the Supplier's expense.

## 8. Risk and title

- a. Title to the Goods will pass from the Supplier to BCI upon the earlier of payment of the Price and the Goods being delivered to the Delivery Point.
- b. The Supplier bears all risk in the Goods until acceptance of the Goods occurs in accordance with clause 6c, at which time risk passes to BCI.
- c. The Supplier warrants that title in the Goods will be transferred to BCI in accordance with clause 8a without any liens, charges, security interests or encumbrances.
- d. If BCI notifies the Supplier in writing that the Goods have been rejected prior to the expiry of the period specified in clause 6cii, then risk does not pass to BCI until the Supplier rectifies or replaces the Goods in accordance with clause 6d.

## 9. Warranties

- a. The Supplier warrants that the Deliverables will:
  - i. conform to the description and standards specified in the Contract;
  - ii. be free from Defects;
  - iii. be fit for their intended purpose as stated in, or as reasonably ascertainable from, the Contract; and
  - iv. be new and of merchantable quality.
- b. The Supplier warrants that the Supplier's Personnel have all the necessary skills, training and qualifications to ensure full and proper supply of the Deliverables in accordance with the Contract.
- c. The Supplier must ensure that BCI has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Supplier must, at its cost, pursue any manufacturer's warranties on BCI's behalf if BCI requests).

## 10. Defects

- a. At any time prior to the expiry of the period of 12 months commencing on the Date of Completion, the Supplier must, at its cost, promptly rectify all Defects.
- b. If the Supplier fails to rectify a Defect within the time specified by BCI, BCI may rectify or engage another contractor to rectify the Defect and the costs incurred will be a debt due and payable on demand from the Supplier to BCI.
- c. Rectification work will be subject to an additional rectification period commencing on the date the relevant rectification works are completed, to a maximum of 24 months.
- d. Nothing in this clause 10 prejudices any other right that BCI may have against the Supplier arising out of the failure of the Supplier to supply the Goods or perform the Services in accordance with the Contract.

## 11. Price

- a. In consideration of the Supplier supplying the Deliverables, BCI must pay the Supplier the Price.
- b. The Price is inclusive of all expenses and costs (including Taxes) relating to the Supplier's performance of the Supplier's Obligations, including packaging, freight, delivery, insurance, the cost of any miscellaneous services, compliance with the Contract and no additional amounts will be payable by BCI.

## 12. Payment

- a. Subject to this clause 12, unless otherwise agreed by BCI, on or promptly after the Date of Completion, the Supplier must submit an Invoice to BCI for the amount due to the Supplier.
- b. Subject to this clause 12, BCI must pay to the Supplier the amount shown on an Invoice within 20 business days after the Invoice was received by BCI.
- c. Each Invoice must contain reasonable details of the Goods delivered and Services performed, a breakdown of the amount shown on the Invoice using the prices and rates in the Contract and quote the number of the Purchase Order.
- d. If BCI requests, the Supplier must provide BCI with all relevant information to calculate and verify the amount set out in any Invoice.
- e. If BCI disputes all or any part of the Invoice, BCI must pay the undisputed amount (if any) and notify the Supplier of the basis for disputing the balance in the time specified for payment of the invoice in clause 12. BCI may withhold payment of the disputed part of the relevant Invoice pending resolution of the dispute.
- f. The payment by BCI of any amount (whether in dispute or not) will not constitute acceptance of the Goods or Services or admission of any liability or obligation to make that payment.

## 13. Set-off

The Supplier agrees that BCI may:

- a. deduct from monies due to the Supplier any money due or which may become due from the Supplier to BCI under, or in connection with the Contract; and
- b. withhold payment of any amounts payable under the Contract pending resolution of any dispute

## 14. GST

- a. If GST is imposed on any supply made by the Supplier in connection with the Contract, the Supplier may recover from BCI, in addition to the Price, an amount equal to the GST payable in respect of that supply.
- b. The Supplier must first provide BCI with an Invoice before BCI will pay the GST amount to the Supplier.

## 15. Assignment and subcontracting

- a. The Supplier must not assign or novate the Contract, or assign any other right, benefit or interest under the Contract to any person or entity without the prior written consent of BCI.
- b. The Supplier is liable to BCI for the acts and omissions of any subcontractor, its personnel and the Supplier's Personnel as if they were acts or omissions of the Supplier.

- c. BCI may assign its rights or delegate any obligation in respect of the Contract or novate the Contract to a Related Body Corporate or a party financially capable of complying with BCI's obligations under the Contract, and the Supplier irrevocably consents to such assignment, delegation or novation. The Supplier will execute any document reasonably required to give effect to the assignment, delegation or novation.

## 16. Supplier's insurance

- a. Unless BCI agrees otherwise in writing, the Supplier must (at its own cost) effect and maintain with a reputable insurer and on terms consistent with prudent risk management:
  - i. **(motor vehicle third party liability insurance)** in respect of motor vehicles used in connection with the Contract, for an amount of not less than \$30,000,000. The Supplier must also comply with all statutory requirements concerning the arrangement of compulsory motor vehicle third party liability insurance;
  - ii. **(workers' compensation insurance and employer's liability insurance)** which complies with applicable Laws, including cover for common law liability and, for employer's liability, for an amount not less than \$50,000,000;
  - iii. **(public and product liability insurance)** for an amount of not less than \$20,000,000 in respect of each and every claim (and in respect of products liability in the annual aggregate), which includes a cross liability clause, indemnity for BCI's vicarious liability arising from the Supplier's performance of the Contract and waiver of subrogation against BCI and its Related Bodies Corporate.
  - iv. **(professional indemnity insurance)** where the Supplier is providing professional services, of not less than \$2 million for each claim and in the aggregate which must be maintained for a period of at least 7 years after the Date of Completion or the earlier termination of the Contract; and
  - v. any additional insurance required by an applicable Law or reasonably requested by BCI.
- b. The Supplier must provide to BCI, within 3 business days of a written request, certificates of currency for each of the insurance policies required under this clause 16.
- c. If the Supplier subcontracts any part of the Supplier's Obligations, then the Supplier must ensure that every Subcontractor effects and maintains insurances required under this clause 16, as appropriate for the work being performed by that Subcontractor, before the Subcontractor commences any of the Supplier's Obligations.

## 17. Indemnities and limits of liability

- a. The Supplier indemnifies BCI, each of BCI's Personnel and each of BCI's Related Bodies Corporate from and against any claims (including third party claims) and losses suffered or incurred by any of them arising out of, or in connection with, any negligent or wrongful act or omission of the Supplier or any of the Supplier's Personnel, or the Supplier's presence on Site. This indemnity will be proportionately reduced to the extent the claim or loss is caused by the negligence of BCI or BCI's Personnel.
- b. Neither Party is liable to the other for Excluded Loss.
- c. The exclusion of liability in clause 17b does not apply in respect of:
  - i. injury to, or illness or death of, any person;
  - ii. damage to, or loss or destruction of, any property;
  - iii. a breach of the party's obligations under the Contract relating to Intellectual Property Rights or confidentiality;
  - iv. liability for a third party's loss under an indemnity in clause 17a;
  - v. to the extent the liable party recovers insurance proceeds in respect of the liability from an insurance policy required

to be effected in accordance with the Contract, or would have recovered insurance proceeds if it had complied with the Contract, complied with the terms of the relevant insurance policy, and taken all reasonable steps to diligently pursue any potential claim; or

- vi. fraud, criminal offence, wilful default, wilful misconduct or gross negligence of the liable party or any of its Personnel.
- d. For the purposes of determining the amounts recoverable under clause 17cv, the exclusion of liability in clause 17b must be disregarded.

### 18. Variations

The Supplier must not change the Deliverables, including an addition, reduction or omission to any part of the Deliverables except in accordance with a written direction of BCI, in which case the Supplier must comply with that direction and the Price will be adjusted by an amount agreed to in writing by the Parties.

### 19. Intellectual Property Rights

- a. Subject to clause 19c, a Party's Background IP remains vested in that Party.
- b. BCI will own all Intellectual Property that the Supplier creates in the performance of the Services and the supply of the Goods.
- c. The Supplier grants to BCI a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable licence (with the right to grant sub-licenses on the same terms) to use its Background IP to the extent necessary to use the Deliverables.

### 20. Confidentiality

The Supplier must not use any Confidential Information or disclose any Confidential Information other than to any of the Supplier's Personnel who need to know the information to perform the Services or deliver the Goods, to the Supplier's legal advisers or where required by Law.

### 21. Privacy

Where the Supplier processes Personal Information in connection with the Contract, the Supplier will:

- i. comply with the *Privacy Act*; and
- ii. take all appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Information and against accidental loss, disclosure or destruction of, or damage to, Personal Information.

### 22. Termination

- a. BCI may terminate the Contract by notice to the Supplier:
  - i. at any time for any reason whatsoever on 24 hours written notice to the Supplier;
  - ii. immediately if the Supplier commits a breach of the Contract and fails to remedy that breach within the time period specified in a written notice of the breach from BCI, or which BCI considers, acting reasonably, is not capable of remedy; or
  - i. immediately if an Insolvency Event occurs.
- b. On termination of the Contract, the Supplier must immediately cease performance of the Supplier's Obligations, promptly return to BCI any Confidential Information, property and documents which BCI owns or in which BCI has an interest, and comply with BCI's directions including any direction to protect BCI's property in the Supplier's possession.
- c. If the Contract is terminated under clause 22a.i:
  - ii. BCI must pay the Supplier that part of the Price for any Supplier's Obligations performed prior to termination that have not already been paid by BCI; and
  - iii. the Supplier is not entitled to, and BCI is not liable for, any additional amounts whatsoever.
- b. Subject to clause 22c, termination of the Contract is without prejudice to the rights and obligations of the Parties under the Contract arising prior to the date the Contract is terminated or arising out of matters or circumstances occurring prior to that date.

### 23. Dispute resolution

- a. Neither Party may commence any action, bring any proceedings or seek any relief or remedy in a court, except interlocutory or equitable relief, in respect of a dispute until they have complied with the process in this clause 23.
- b. If any dispute arises between the Parties, either Party must give written notice to the dispute to the other Party.
- c. A senior representative of each of the Parties will meet for the purpose of resolving the dispute within 21 days after the service of the notice under clause 23b.
- d. If the dispute is not resolved within 28 days after the service of the notice under clause 23b, then either Party may commence court proceedings.
- e. The Supplier must continue to perform its obligations under the Contract notwithstanding the existence of any one or more dispute(s).

### 24. Entire agreement

The Contract comprises the entire agreement between the Parties and supersedes all prior contracts, arrangements, understandings or representations (if any) between the Parties in respect of its subject matter.

### 25. Survival

The provisions of clauses 9, 16, 17, 19, 20, 30 and 30 survive the termination or expiry of the Contract.

### 26. Governing law and jurisdiction

The Contract is governed by the laws of Western Australia and each Party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia.

### 27. No waiver

No waiver of or variation to the Contract will be binding on the Parties unless in writing signed by the Parties.

### 28. Rights cumulative

Except to the extent that the contrary intention expressly appears, the rights and remedies of BCI provided in the Contract are cumulative and do not exclude any rights or remedies provided by any Laws.

### 29. Discretion on consent

Where the consent, approval or agreement of a Party is required under the Contract, that consent, approval or agreement may be given conditionally or unconditionally, or withheld by that Party in its absolute uncontrolled discretion, unless the Contract expressly provides otherwise.

### 30. Severability

Any provision in the Contract which is invalid or unenforceable will be ineffective to the extent only of that voidness or unenforceability without invalidating the remaining provisions.

### 31. Costs and stamp duty

Each Party must bear its own costs arising out of the negotiation, preparation and execution of the Contract. All stamp duty payable, including related fines and penalties must be borne by the Supplier.

### 32. Notices

Any notice or other communication relating to the Contract must be in writing, signed by or on behalf of the sender or its agent, and either hand delivered, sent by pre-paid post or emailed to the other Party at the address or email address set out in the Purchase Order or as otherwise notified by the relevant Party.