



## Schedule of Additional Supply Terms

### 1. APPLICATION AND INTERPRETATION

- (a) **If ticked as applicable in the Order**, the terms and conditions within this Schedule of Additional Supply Terms apply additionally to the other terms and conditions in the documents comprising the Agreement between SCE and the Supplier.
- (b) Any inconsistency, discrepancy or ambiguity between the documents comprising the Agreement between SCE and the Supplier, is to be resolved and interpreted in accordance with the order of precedence set out in clause 1(a) of SCE's Standard Purchase Order Terms and Conditions unless otherwise determined by SCE.
- (c) Any capitalised terms not defined in clause 26 of this Schedule of Additional Supply Terms have the meaning set out in SCE's Standard Purchase Order Terms and Conditions.

### 2. SUPPLY OF THE MATERIALS

- (a) The Supplier acknowledges and agrees that the Materials may form part of a larger portion of work being completed by SCE under the Head Contract and that SCE and the Principal will be relying upon the Supplier to supply the Materials in accordance with this Agreement.
- (b) The Supplier must Deliver the Materials to SCE:
  - (i) on the relevant Date for Delivery or between the Date of Commencement and Final Delivery Date at the Delivery Rate (whichever is applicable);
  - (ii) to the Site, during Normal Working Hours;
  - (iii) at the Agreed Arrival Time(s); and
  - (iv) in accordance with the Directions of SCE given from time to time.
- (c) The Supplier must not do any of the following without the prior written consent of SCE:
  - (i) alter the Delivery Rate (if applicable);
  - (ii) supply the Materials to any other place other than the Site; or
  - (iii) supply the Materials to the Site outside of Normal Working Hours.
- (d) The Supplier shall ensure that vehicles carrying plant and Materials over State-controlled roads and Local Government controlled surface streets shall comply with the vehicle weight limit requirements set out in the *Transport Operations (Road User Management) Act 1995* (Qld) or similar Laws in Queensland or any other jurisdiction applicable to the Site, and with any other

vehicle weight limit requirements imposed by duly constituted authorities on whose roads such vehicles operate. The Supplier shall be responsible for the rectification of any damage to surface streets attributable to its operations. If the Supplier fails to rectify the damage, SCE may, after giving reasonable notice, arrange for the necessary rectification work to be carried out and the cost incurred shall be a debt due and payable by the Supplier.

### 3. QUALITY OF MATERIALS

- (a) The Supplier must ensure that the Materials:
  - (i) are free from Defects in design, materials and workmanship; and
  - (ii) if they have a proprietary brand, are affixed strictly in accordance with the manufacturer's instructions, Directions, specifications, recommendations or similar. In this regard:
    - (A) where any ambiguity exists between the Agreement and the manufacturer's instructions, Directions, specifications, recommendations or similar, the matter must be referred to SCE for clarification, prior to implementation;
    - (B) where a trade name appears in the specification or similar or is shown on the drawings, equal or better materials bearing other trade names may, unless otherwise specified, be used in Materials, provided they have been first approved in writing by SCE; and
    - (C) Materials bearing the hallmark of the Standards Association of Australia must be used in preference to any other Materials.
- (b) Immediately after being requested by SCE, the Supplier must supply particulars to SCE of:
  - (i) the mode and place of manufacture;
  - (ii) the source of supply;
  - (iii) the performance capacities; and
  - (iv) other information reasonably requested by SCE,in respect of any Materials supplied or to be supplied by the Supplier under or used in connection with the Agreement.

### 4. QUALITY ASSURANCE

- (a) At all times during the supply of the Materials, the Supplier must:



- (i) have quality management system which complies with AS9001 and is certified by an appropriate third party; and
  - (ii) supply the Materials in accordance with that quality management system.
- (b) Within 3 Business Days of a request by SCE, the Supplier must do all things necessary to allow SCE and the Principal to audit the Supplier's quality management system, including but not limited to, allowing SCE and the Principal to access the Supplier's premises or other place where the Materials are being prepared or supplied and providing copies of documentation to SCE and the Principal. If the audit reveals what SCE or the Principal consider to be deficiencies in the Supplier's quality management system, the Supplier must immediately rectify those deficiencies at its own cost.
- (c) Compliance by the Supplier with its quality management system will not relieve the Supplier from any of its obligations under this Agreement.

## **5. PPSA**

- (a) For the purposes of this clause:
- (i) SCE's Personal Property means all personal property the subject of a security interest granted in favour of SCE under this Agreement; and
  - (ii) words and phrases used in this clause that have defined meanings in the PPSA have the same meaning as in the PPSA unless the context otherwise indicates.
- (b) If SCE determines that this Agreement (or a transaction in connection with it) is or contains a security interest, the Supplier agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which SCE asks and considers necessary for the purposes of:
- (i) ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
  - (ii) enabling SCE to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; and/or
  - (iii) enabling SCE to exercise rights in connection with the security interest,

SCE need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given.

- (c) The Supplier shall give to SCE notice of registration or verification of registration of any security interest it registers on the PPSA register in connection with the Agreement.

- (d) For the avoidance of doubt, any security interest in favour of the Supplier ceases on the passing of ownership of the Materials in accordance with the Agreement.
- (e) The Supplier shall remove all data from the PPSA register it has registered or caused to be registered in connection with the Agreement following Delivery.
- (f) The Supplier shall notify SCE as soon as SCE becomes aware of any of the following:
- (i) if any personal property which does not form part of SCE's Personal Property becomes an accession to SCE's Personal Property and is subject to a security interest in favour of a third party, that has attached at the time it becomes an accession;
  - (ii) if any of the SCE's Personal Property is located or situated outside Australia; or
  - (iii) upon request by the SCE, of the present location of the SCE's Personal Property.
- (g) The Supplier shall not:
- (i) create any security interest or lien over any of SCE's Personal Property (other than security interests granted in SCE's favour);
  - (ii) sell, lease or dispose of its interest in SCE's Personal Property;
  - (iii) give possession of SCE's Personal Property to another person except where SCE expressly authorises it to do so;
  - (iv) permit any of SCE's Personal Property to become an accession to or commingled with any asset that is not part of the subject of this Agreement; or
  - (v) change its name without first giving SCE 15 Business Days' notice of the new name or relocate its place of business outside Australia or change its place of registration or incorporation.
- (h) Everything the Supplier is required to do under this clause is at the Supplier's expense.

## **6. TESTING**

- (a) SCE may direct that the whole or any part of the Materials be tested before Acceptance. Such Acceptance testing shall be completed by the date and in the manner stated in the Order or otherwise advised by SCE. The Supplier must comply with any reasonable Directions of SCE in respect of Acceptance testing or otherwise as stated in this Agreement.
- (b) On completion of the tests, the Supplier shall ensure the Materials fully comply with the Agreement and promptly provide the results to SCE. If SCE has carried out the testing, it shall provide the results to the Supplier.



- (c) SCE will be responsible for the costs of testing except where the Agreement otherwise provides or the test is consequent upon, or reveals a failure of the Supplier to comply with the Agreement.

## **7. ACCEPTANCE OR REJECTION OF MATERIALS**

- (a) Within a reasonable time of delivery, SCE will give a written notice to the Supplier either Accepting or rejecting the Materials. Where the Materials are rejected, reasons will be given. Failure to notify of Acceptance will be deemed Acceptance of the Materials.
- (b) Where SCE has rejected the Materials, SCE may direct the Supplier to either:
- (i) correct the Materials in its place or take the Materials away for correction; or
  - (ii) replace the Materials.
- (c) The Supplier must reasonably assist SCE in any inquiries it may have as to the costs, time, disruption and potential damages that may be associated with either option it elects under this clause.

## **8. SUPPLIER'S WARRANTIES**

The Supplier warrants and agrees that:

- (a) it is expert and experienced in supplying materials similar to the Materials;
- (b) it will employ suitably qualified and experienced employees, agents and subcontractors to strictly discharge the Supplier's obligations; and
- (c) it has inspected the Site and has satisfied itself that the Materials are suitable for the Site.

## **9. INSURANCE**

In addition to any other insurances required by the Agreement, if the Supplier is responsible for transportation of the Materials to Site under the Order, the Supplier must ensure that it effects and maintains insurance for loss of or damage to the Materials in transit, the transportation vehicles and third parties.

## **10. SITE ACCESS**

- (a) SCE will provide the Supplier with access to the Site sufficient to enable the Supplier to deliver the Materials at the times agreed by the Parties. Notwithstanding this, the Supplier acknowledges that SCE may not be the owner or lessee of the Site, therefore any failure of SCE to give the Supplier access to the Site will not be a breach of this Agreement.
- (b) The Supplier is not entitled to sole possession of any part of the Site. The Supplier acknowledges and agrees that:

- (i) SCE and others (including but not limited to the Principal and its contractors) will be carrying out work on the Site concurrently with the supply of the Materials;
- (ii) the Supplier must cooperate with and not hinder SCE and others undertaking work on the Site;
- (iii) the Supplier has allowed for concurrent works by SCE and others in its planning and coordination of the supply of the Materials; and
- (iv) the Supplier will not be entitled to make any Claim against SCE in connection with SCE and others performing work on Site concurrently with the supply of the Materials.

- (c) Whilst on Site or other SCE premises, the Supplier agrees to follow all lawful Directions of SCE and/or the Principal.
- (d) All Materials must be safely and securely stored on Site in accordance with the Directions of SCE.
- (e) In delivering the Materials, the Supplier shall not enter or permit its constructional plant and equipment (including that of any subcontractor) to enter private land adjoining the Site without first obtaining the written approval of the land occupier and the land owner (where these are not the same person). All costs and/or rectification of damage associated with work on private land shall be borne by the Supplier.

## **11. PROTECTION OF PERSONS AND PROPERTY**

- (a) The Supplier must do everything reasonably necessary, having regard to any other work performed concurrently with the supply of the Materials or after the supply of the Materials which may affect the Materials, to ensure the Materials, SCE's works generally or adjoining properties, are not damaged.
- (b) The Supplier must avoid obstruction or damage to roadways and footpaths, drains and water courses and public utilities and other services on or adjacent to the Site and must have any obstruction removed immediately at the Supplier's own cost. If the Materials are damaged, or unfixed materials lost or stolen while under the Supplier's protection, the Supplier must promptly rectify any damage to the Materials or replace any lost or stolen unfixed materials. The rectification of any Materials damaged or the replacement of lost or stolen unfixed materials does not, of itself, relieve the Supplier from its obligations to complete the Materials in strict accordance with the requirements for Delivery of the Materials.
- (c) The Supplier must:
  - (i) prevent nuisance or inconvenience to the owners, tenants and occupiers of any properties adjoining the Site and to the public; and



- (ii) comply in all respects with the requirements of any contracts or deeds that may be made from time to time with adjoining owners or for the protection of adjoining property, to which SCE or the Principal may be subject.

## **12. INDUSTRIAL RELATIONS**

- (a) The Supplier is responsible for managing industrial relations with its workforce (including its subcontractors) on any place at which it works in connection with the supply of the Materials.
- (b) The Supplier must, and must ensure that its suppliers, consultants and agents, pay all wages, entitlements, taxes and levies to, or on behalf of, or in respect of, its employees, in accordance with any relevant award, industrial contract or Law. If any moneys become payable to the Supplier's employees or contractors but remain unpaid by the Supplier, SCE may withhold from the Supplier an amount sufficient to satisfy such moneys until the Supplier has provided adequate evidence of payment, failing which SCE may make direct payment to the employees or contractors, but is under no obligation of any kind to do so.

## **13. VARIATIONS**

- (a) The Supplier must not carry out a Variation except in accordance with a Direction in writing from SCE and no Variation shall vitiate the Agreement.
- (b) If the Supplier has received a Direction which it considers to be a Direction to vary the Materials it shall notify SCE within 3 Business Days and must not vary the Materials until a written Direction has been provided by SCE to vary the Materials.
- (c) If the Supplier does not strictly comply with the requirements set out in this clause, it shall not be entitled to make any Claim in connection with a Direction.
- (d) If SCE Directs a Variation which decreases or omits any part of the Materials to be supplied, it will not be a breach of this Agreement if SCE supplies those Materials itself or engages a third party to do so. SCE may also bring forward the Date for Delivery or the Final Delivery Date, whichever is applicable, by a reasonable period if the omission or decrease in the Materials to be supplied reduces.

## **14. PROGRESS OF THE SUPPLY OF THE MATERIALS**

- (a) Time is of the essence in relation to the supply of the Materials in that the Supplier must:
  - (i) ensure that the Materials are supplied on the Date for Delivery; or
  - (ii) where a Delivery Rate applies:

- (A) commence the supply of the Materials on the Date of Commencement or on any reasonable other date notified to the Supplier by SCE;
- (B) proceed with the supply of the Materials with due expedition and without delay, in accordance with the Delivery Rate; and
- (C) ensure that the quantity of Materials required by this Agreement are supplied until the Final Delivery Date.

- (b) If a Delivery Rate applies and the Supplier's supply of the Materials falls below the Delivery Rate, SCE may enter the Supplier's premises and take over the production or supply of the Materials, in which case, the costs incurred by SCE will be a debt due and payable by the Supplier.

## **15. EXTENSIONS OF TIME**

- (a) Within 48 hours of the Supplier becoming aware of a potential delay to the Delivery of the Materials, the Supplier must notify SCE of the potential delay, including the facts behind and the extent of the potential delay.
- (b) In the case of an ongoing delay, every seven (7) days after the date on which notice is first given under this clause, the Supplier must provide SCE with the written details of the status of the delay.
- (c) Within 48 hours of the actual delay ceasing, if the Supplier wishes to claim an extension of time to the Date for Delivery or the Final Delivery Date, whichever is applicable, the Supplier must provide SCE with a written claim for an extension of time with evidence of the circumstances set out in clause 15(d).
- (d) The Supplier will only be entitled to an extension of time to the Date for Delivery or Final Delivery Date if:
  - (i) the Supplier has complied with clauses 15(a) and/or 15(b) (as applicable) and 15(c);
  - (ii) the Supplier is delayed in achieving the Delivery of the Materials by the Date for Delivery or the Final Delivery Date, whichever is applicable;
  - (iii) the Supplier has not caused or, if it contributed to the delay, will not be entitled to an extension of time to the extent it contributed to the delay;
  - (iv) the Supplier has taken all reasonable steps to minimise the delay; and
  - (v) the delay is caused by a Delay Event.
- (e) After receiving notice from the Supplier under clause 15(c) (or any further information or documentation from the Supplier requested by SCE in order to assess the extension of time claim, SCE will (in accordance with clause 15) determine what, if any, extension of time is



to be given to the Date for Delivery or the Final Delivery Date and advise the Supplier of its determination.

- (f) Notwithstanding that the Supplier is not entitled to or has not claimed an extension of time to the Date for Delivery or Final Delivery Date, SCE may at any time before the Date for Delivery or Final Delivery Date in its absolute discretion and for its sole benefit, but without being under any obligation to do so, extend the Date for Delivery or the Final Delivery Date.
- (g) A delay caused by SCE or its employees or agents, or the failure of SCE to grant any or any reasonable extension of time will not cause the Date for Delivery or the Final Delivery Date to be set at large.

## **16. SUSPENSION**

- (a) SCE may direct the Supplier to suspend the supply of the Materials at any time.
- (b) The Supplier must not suspend the supply of the Materials without a written Direction from SCE.
- (c) The Supplier will have no Claim arising from a suspension directed by SCE under this clause 16.

## **17. ACCELERATION**

- (a) SCE may direct the Supplier to accelerate the supply of the Materials (or any part of them).
- (b) The Supplier must within 48 hours of the Direction under clause 17(a), and in any case before it takes steps to comply with SCE's Direction to accelerate, notify SCE in writing of the additional direct costs it will incur in complying with the Direction to accelerate.
- (c) SCE may, after receiving the Supplier's notice under clause 17(b), do one of the following:
  - (i) withdraw the Direction under clause 17(a); or
  - (ii) affirm the Direction in writing and advise:
    - (A) that SCE accepts the amount of additional direct costs notified by the Supplier or any amendments to those costs agreed between SCE and the Supplier;
    - (B) the details of the required acceleration; and
    - (C) the adjusted Date for Delivery or the Final Delivery Date, whichever is applicable.
- (d) The Supplier's entitlement to be paid its additional direct costs of any acceleration of the supply of the Materials under this clause 17 is subject to each of the following:
  - (i) the Supplier Delivering the Materials by the adjusted Date for Delivery or the Final Delivery Date stated by SCE under clause 17(c)(ii)(C).

- (ii) the amount of acceleration costs payable to the Supplier (if any) is limited to the actual additional direct costs notified by the Supplier under clause 17(b) or as agreed under clause 17(c)(ii)(A); and
  - (iii) subject to clause 17(e), the Supplier is entitled to only the direct acceleration costs actually expended by the Supplier that the Supplier can verify to SCE's satisfaction.
- (e) The Supplier shall have no Claim arising out of any Direction to accelerate under this clause 17 where the need to accelerate has arisen as a result of or has been contributed to by an act or omission of the Supplier.

## **18. CARE, RISK AND TITLE TO THE MATERIALS**

- (a) Care and risk in the Materials shall pass from the Supplier to SCE following the Date of Delivery and when the Materials have been Accepted by SCE, or where Materials are supplied using the Delivery Rate, when a particular supply of Materials is Accepted by SCE.
- (b) Title to the Materials passes to SCE once:
  - (i) those Materials have been Delivered to and Accepted by SCE in writing; or
  - (ii) SCE has paid for the Materials,whichever is the earlier.
- (c) Regarding any imported Materials or portion of the Materials, the Supplier must also provide SCE or an agent of SCE a clean on board bill of lading or airways bill, as the case may be, drawn or endorsed to the order of SCE, appropriate insurance certificates and a customs invoice for the Materials or that part, as the case may be.
- (d) If SCE does not Accept the Materials for any reason, then title ownership will revert to the Supplier upon the Supplier repaying to SCE any money paid to the Supplier in respect of the non-Accepted Materials and the Supplier removing the Materials from SCE's possession.
- (e) If SCE has title to Materials which are not in the possession of SCE, a security interest under the PPSA is created in favour of SCE.
- (f) If loss or damage occurs to anything while the Supplier is responsible for its care, the Supplier must (at its own cost) promptly make good (which may include re-supply) the loss or damage so that the Materials comply with the provisions of the Agreement.
- (g) From the Date of Commencement to the Date of Delivery or the Final Delivery Date, if SCE discovers Materials (or any part of them) provided by the Supplier which is not in accordance with the Agreement, SCE may direct the Supplier to:
  - (i) remove the Materials from the Site;



- (ii) destroy the Materials; or
- (iii) replace, correct or otherwise rectify the Materials.
- (h) If the Supplier fails to comply with a Direction given under clause 18(g), SCE may have the action carried out by other persons and the cost incurred by SCE will be a debt due and payable by the Supplier.
- (i) Nothing in this clause 18 will affect any other right which SCE may have against the Supplier arising out of the failure of the Supplier to supply the Materials in accordance with the Agreement.
- (j) SCE may accept Materials that do not strictly comply with the Agreement up to the Date of Delivery however is under no obligation to do so. If SCE does so, SCE may reduce the Price by an amount determined by taking into account the following and adding a 10% mark up:
  - (i) the diminution in the value of the Materials because of the Defect;
  - (ii) the costs from which the Supplier is relieved of rectifying the Defective Materials; and
  - (iii) the cost to SCE to rectify or re-supply the Defective Materials.

### **19. LIQUIDATED DAMAGES**

- (a) If the Supplier fails to Deliver the Materials:
  - (i) by the Date for Delivery, the Supplier will pay the Liquidated Damages to SCE between the Date for Delivery and the Date of Delivery; or
  - (ii) in compliance with the Delivery Rate:
    - (A) the Supplier will pay the Liquidated Damages to SCE between the Final Delivery Date and the Date of Delivery; and/or
    - (B) the Supplier will pay the Liquidated Damages to SCE between the date at which the Supplier first began to fall behind the Delivery Rate and the date on which the Supplier recovered the Delivery Rate (ie. brought the cumulative quantity of the Materials back to what it would have been had the Delivery Rate been complied with).
- (b) The Liquidated Damages may be deducted progressively from time to time by SCE from money then due and owing or which becomes due and owing to the Supplier by SCE. If no further money is payable to the Supplier under the Agreement, or if the Liquidated Damages exceed the amount remaining payable or to become payable to the Supplier under the Agreement, SCE may recover such sum, or any excess, as a debt due and payable by the Supplier to SCE.

- (c) The Supplier agrees and acknowledges that the Liquidated Damages are genuine pre-estimate of the damage which SCE will incur due to the failure of the Supplier to achieve Delivery by the Date for Delivery, Final Delivery Date or to maintain the Delivery Rate (as applicable).
- (d) In the event that clause 19(a) is found to be void, invalid or inoperative so as to disentitle SCE from any Liquidated Damages, then the Parties agree and acknowledge that SCE shall be entitled to claim general law damages for Supplier's failure to meet the Date for Delivery, Final Delivery Date or maintain the Delivery Rate (as applicable).
- (e) If the Order indicates Liquidated Damages do not apply (i.e. Liquidated Damages are crossed out, left blank or the words "NIL" or "N/A" or similar have been inserted), this shall not in any way waive SCE's entitlement or ability to claim general damages including but not limited to damages for loss arising out of delays caused by the Supplier.

### **20. DEFECTS LIABILITY PERIOD**

- (a) During the Defects Liability Period, the Supplier must rectify any Defect in the Materials. The Supplier must perform this obligation whether it has been given an instruction by SCE or not.
- (b) If the Supplier does not comply with its obligations under clause 20(a), SCE may give the Supplier a written Direction to rectify any Defect in the Materials, stating:
  - (i) the Defect that requires rectification;
  - (ii) the time by which the Defect must be rectified; and
  - (iii) any conditions, or restrictions, on access to the part of the project works in which the Defect is located.
- (c) If the Supplier rectifies a Defect during the Defects Liability Period, a new Defects Liability Period will commence for that Defect or those parts of the Materials containing the Defect starting on the date the Defect was rectified.
- (d) If SCE issues a Direction under clause 20(b) and the Supplier does not rectify the Defect in accordance with SCE's Direction:
  - (i) SCE may rectify or engage another person to do this on SCE's behalf the Defect and any costs will be set off by SCE as a debt due and payable by the Supplier; and
  - (ii) a new Defects Liability Period will commence for that Defect starting on the date the Defect was rectified.



- (e) SCE may accept Materials that do not strictly comply with the Agreement during the Defects Liability Period, however is under no obligation to do so. If SCE does so, SCE may reduce the Price by taking into account the following:
- (i) the diminution in the value of the Materials because of the Defect; and
  - (ii) the costs from which the Supplier is relieved of rectifying or re-supplying the Defective Materials.

## **21. NOTIFICATION OF CLAIMS**

Subject to any other clause of this Agreement which specifies a pre-condition to the Supplier making a Claim, SCE will not be liable upon any Claim and is deemed released by the Supplier in respect of any matter arising under or in connection with the Agreement or the Materials unless the Claim, together with full particulars of the Claim, is lodged in writing with SCE not later than 10 Business Days after the date of occurrence of events or circumstances on which the Claim is based.

## **22. INDEMNITY BY SUPPLIER**

- (a) The Supplier must fully indemnify SCE, the Principal and their respective employees, agents and representatives against all loss, damages, Claims, liens, actions, liabilities or proceedings whatsoever in any way arising out of or in connection with this Agreement or the supply of the Materials, whether arising under contract, any statute or common law or in tort incurred or suffered by SCE relating to any of the following:
- (i) any personal injury to or death of any person caused or contributed to by the Supplier;
  - (ii) damage to any property, real or personal, caused or contributed to by the Supplier;
  - (iii) any injury or death of any person involved in the supply of the Materials;
  - (iv) damage to the Materials that is not caused by SCE or the Principal;
  - (v) breach of any Intellectual Property Rights of any person;
  - (vi) any breach of the provisions of this Agreement by the Supplier or any negligent act or omission;
  - (vii) damage to the Supplier's plant equipment and vehicles that is not caused by SCE or the Principal; and
  - (viii) any liability or expense incurred by SCE as a result of a breach by the Supplier of any of its warranties stated in this Agreement.
- (b) It is not necessary for SCE, the Principal or their respective employees, agents and representatives to

incur expense or make payment before enforcing a right of indemnity conferred by the Agreement.

## **23. DISPUTE RESOLUTION**

- (a) A Party claiming that a dispute has arisen shall notify the other Party in writing. Such notice shall be within 5 Business Days of the cause of the alleged dispute.
- (b) If the amount in dispute is less than \$400,000 and the dispute cannot be resolved by negotiation, then, to the extent permitted by Law, the dispute shall be settled by the final and binding decision of an arbitrator appointed:
- (i) by agreement between the Parties; or
  - (ii) if agreement is not reached within 10 Business Days after a notice of dispute, an arbitrator nominated by the President of the Resolution Institute.
- (c) The arbitration shall be conducted in accordance with the Resolution Institute Arbitration Rules. Unless otherwise agreed, the costs of the arbitration will be borne by both Parties equally.
- (d) Notwithstanding this clause 23, SCE may give written notice to the Supplier requiring any dispute which affects a Head Contract dispute to be resolved as part of the Head Contract dispute.

## **24. INTELLECTUAL PROPERTY RIGHTS**

- (a) Except as otherwise provided in the Agreement, the Supplier shall retain ownership of intellectual property rights (other than third party intellectual property rights) associated with the Materials and any documentation provided by the Supplier pursuant to the Agreement.
- (b) The Supplier grants SCE a royalty-free, non-exclusive, transferable, perpetual licence to use the intellectual property rights associated with the Materials and any documentation provided pursuant to the Agreement for the installation, use, support, repair, maintenance or alteration of the Materials by or on behalf of SCE.

## **25. SERVICE OF NOTICES**

- (a) Except as otherwise stated in this Agreement any notice required pursuant to this Agreement or the Order must be:
- (i) in writing; and
  - (ii) either sent by email, certified mail or delivered by hand.
- (b) A notice to either of the Parties must be addressed to that Party at the address in the Order or such other address as may be notified by the other Party at any time for the purposes of the Order.



(c) A notice (and other documents) shall be deemed to have been given and received:

(i) if sent by email: at the time of departure from the sender's mail server unless the sender receives an automated message generated by the recipient's mail server (Failure Message) that the email has not been delivered within two hours.

For the avoidance of doubt, any response generated by or at the instigation of the recipient (including an 'out of office' message) will not be a Failure Message;

(ii) if delivered by hand: that day, if delivered by 5.00pm on a Business Day or the next Business Day, in any other case; or

(iii) 7 Business Days after posting.

## **26. DEFINITIONS AND INTERPRETATION**

Any capitalised terms not defined in this clause 26 of this Schedule of Additional Supply Terms have the meaning set out in SCE's Standard Purchase Order Terms and Conditions.

**Accepted** or **Acceptance** means written notification under clause 7 by SCE that the Material is acceptable.

**Agreement** has the meaning in SCE's Standard Purchase Order Terms and Conditions.

**Agreed Arrival Time(s)** means the Agreed Arrival Time(s) specified in the Order or otherwise advised by SCE.

**Business Day** has the meaning in SCE's Standard Purchase Order Terms and Conditions.

**Claim** means any claim, notice, demand, debt, account, lien, liability, action, proceedings or suit under, arising out of, or in any way in connection with this Agreement, whether at law (including breach of contract) or in equity (including restitution), by statute or in tort (including negligence).

**Date for Delivery** means the date(s) specified in the Order or otherwise advised by SCE.

**Date of Commencement** means the Date of Commencement stated in the Order or otherwise advised by SCE.

**Date of Delivery** means the last date on which the Materials are actually Delivered in accordance with this Agreement. For clarity, where a Delivery Rate applies, the Date of Delivery is the date on which the total required quantity of Materials has been Delivered under this Agreement.

**Defects** or **Defective** has the meaning in SCE's Standard Purchase Order Terms and Conditions.

**Defects Liability Period** is the period commencing on the Date of Delivery and lasting for 12 months or any longer period as specified in the Order.

**Delay Event** means:

(a) an act or omission of SCE; or

(b) an event described in the Order, if any,

that prevents the Supplier from achieving Delivery by the Date for Delivery or Final Delivery Date.

**Deliver, Delivery or Delivered** is that stage in the supply of the Materials (or any part of them) when:

(a) the Materials have been supplied in accordance with the Agreement except for minor Defects which do not prevent the Materials from being reasonably capable of being used for the purpose stated in or implied by the Agreement;

(b) the Supplier has provided SCE with three (3) copies of all necessary warranties, guarantees, certificates, operating manuals and other operating literature, shop drawings, as built drawings, technical specifications and quality assurance materials required or reasonably inferred by the Agreement;

(c) the items, documents and information specified in the Order have been provided to SCE; and

(d) the tests specified in the Order have been carried out (at the Supplier's cost) and SCE is satisfied that the testing results are in accordance with the Agreement.

**Delivery Rate** means the rate at which the Supplier must provide the Materials to SCE between the Date of Commencement and the Final Delivery Date as specified in the Order or otherwise advised by SCE.

**Direction** includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.

**Final Delivery Date** means, where Materials are to be provided at a set rate, the date specified in the Order or otherwise advised by SCE.

**Head Contract** means any contract between the Principal and SCE identified in the Order or as is otherwise advised by SCE as applicable.

**Intellectual Property Rights** means any patent, registered design, trademark or name, copyright or other protected right.

**Law** has the meaning in SCE's Standard Purchase Order Terms and Conditions.

**Liquidated Damages** means the amount calculated at the daily rate specified in the Order.

**Materials** means the goods, materials and other tangible items which the Supplier is or may be required to supply or use under the Agreement as specified in the Order and any services which are reasonably incidental to or can be inferred





from the supply of those goods, materials or other tangible items.

**Normal Working Hours** means the Normal Working Hours as specified in the Order or otherwise advised by SCE.

**Order** has the meaning in SCE's Standard Purchase Order Terms and Conditions.

**Party** or **Parties** has the meaning in SCE's Standard Purchase Order Terms and Conditions.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Price** has the meaning in SCE's Standard Purchase Order Terms and Conditions.

**Principal** is the person named as principal in any Head Contract relating to the Order.

**SCE** means Shamrock Civil Engineering Pty. Ltd. ABN 68 066 655 856 ACN 066 655 856.

**Schedule of Additional Supply Terms** means this document forming part of the Agreement.

**Site** has the meaning in SCE's Standard Purchase Order Terms and Conditions.

**Standard Purchase Order Terms and Conditions** means SCE's Standard Purchase Order Terms and Conditions applying to the Order.

**Supplier** has the meaning in SCE's Standard Purchase Order Terms and Conditions.

**Variation** means any of the following directed in writing by SCE under the Agreement:

- (a) addition of or amendment to any third party interface;
- (b) increase, decrease or omission of any part of the Materials;
- (c) change in the character or quality of any Materials;
- (d) change in the levels, lines, positions or dimensions of any part of the Materials;
- (e) supply of additional Materials; and/or
- (f) removal of Materials no longer required by SCE.