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# CONDITIONS OF TRADE CONTRACT

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## 1.0 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Trade Contract, unless the context otherwise requires, the following words and phrases have the following meanings:

**'Aconex'** means the website [www.aconex.com.au](http://www.aconex.com.au).

**'Agent'** means any consultant, supplier, subcontractor or agent of the relevant party.

**'Amount Claimed'** has the same meaning as in the Deed of Release.

**'Australian Government Funded Project (AGFP)'** means:

- (a) a project that is undertaken by or on behalf of the Australian Government; or
- (b) a project where the Australian Government funding contribution is at least \$5 million and this represents at least 50% of the total construction project value; or
- (c) a project where the Australian Government funding contribution is \$10 million or more, irrespective of the proportion of the Australian Government funding; or
- (d) a project where the Australian Government provides a package of financial assistance in advance of construction that has an identified capital component and it is an explicit component of the grant; or
- (e) where this Project is identified as an Australian Government Funded Project in Schedule 1.

**'Author'** means an author of any copyright work.

**'Bank Guarantee'** has the meaning in clause 39.1.

**'Base Works'** means those works (which are not part of the Trade Contract Works):

- (a) upon which the Trade Contract Works are to be carried out; or
- (b) which are otherwise relevant to the Trade Contract Works or the Trade Contractor's ability to carry out the Trade Contract Works in compliance with this Trade Contract.

**'Breach of Obligation'** means a breach of any obligation including breach of a duty of care including negligence, breach of contract, breach of a statutory duty, breach of any of the Legislative and Industrial Requirements, breach of trust or any other obligation.

**'Business Day'** means a day other than:

- (a) a Saturday or a Sunday;
- (b) a day that is wholly or partly observed as a public holiday throughout Victoria; and
- (c) 27, 28, 29, 30 or 31 December.

**'Certificate of Substantial Completion'** means a certificate issued by the Construction Manager in accordance with clause 31.3.

**'Claim'** includes any claim, notice, demand, action or similar for an increase in any amount payable under this Trade Contract, for payment of money (including damages or any costs for delay, disruption or inconvenience) whether under or in connection with this Trade Contract or otherwise, for an extension of time or for a Variation.

**'Code'** means the National Code of Practice for the Construction Industry 1997 and includes the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry and the Australian Government Industry Guidelines for the National Code of Practice for the Construction Industry, as amended from time to time.

**'Construction Management Agreement'** means the agreement between the Principal and the Construction Manager for the organisation, supervision and administration of the construction of the Project under which the Construction Manager is authorised to enter into Trade Contracts for the Works on the Principal's behalf.

**'Construction Manager'** means Probuild Constructions (Aust) Pty Ltd ABN 93 095 250 945.

**'Construction Manager's Policies'** means the policies and procedures of the Construction Manager and the Principal (copies of which will be provided to the Trade Contractor on request).

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**'Construction Plant'** means appliances, equipment and all other things used in the carrying out of the Trade Contract Works but not forming part of the Trade Contract Works.

**'Construction Programme'** means the Construction Programme referred to in clause 28.1 and may show the order in which the Trade Contract Works are to be completed and the date by which the Trade Contract Works, and any part or parts of the Trade Contract Works that the Construction Manager may, in its discretion, decide to separately identify on the Construction Programme, are to be completed in accordance with this Trade Contract, but which is not a Trade Contract Document other than for the purpose of identifying the Date for Substantial Completion if no date is otherwise specified in Schedule 1.

**'Consultant'** means the architect, engineer, surveyor and any other persons employed by the Principal to design the Trade Contract Works and to prepare the Drawings and Specifications.

**'Contamination'** means a solid, liquid, gas, odour, heat, sound, vibration, radiation or substance of any kind which makes or may make the Site unsafe, unfit, or harmful for habitation, use or occupation by any person or animal or is such that any part of the Site does not satisfy or adversely exceeds the contamination criteria or standards published, or adopted from time to time by the Victorian Environment Protection Authority.

**'Damaging Act'** means any act of default or omission (including a Breach of Obligation).

**'Date for Substantial Completion'** means the date set out in Schedule 1 or such other date as is determined in accordance with this Trade Contract.

**'Date of Final Completion'** means the last day of the Defects Liability Period or the day on which all Defects notified by the Construction Manager to the Trade Contractor within the Defects Liability Period have been satisfactorily rectified by the Trade Contractor or the day on which all other obligations of the Trade Contractor under this Trade Contract have been met, whichever is the last to occur.

**'Date of Substantial Completion'** means the date certified by the Construction Manager as the date upon which the Trade Contract Works have reached the stage of Substantial Completion or such other date as may be determined as a consequence of the resolution of any Dispute.

**'Date of the Trade Contract'** means the date stated in the executed Formal Instrument.

**'Deed of Release'** means a deed of release executed by the Trade Contractor in the form set out in Schedule 8 of this Trade Contract.

**'Defect'** means:

- (a) any work or material (being part of the Trade Contract Works) that is not in accordance with this Trade Contract; or
- (b) any work or material (being part of the Trade Contract Works) that has not been performed or supplied.

**'Defects Liability Period'** is the period set out in Schedule 1.

**'Dispute or Difference'** means any dispute or difference which is in any way connected with, or arises out of or in relation to this Trade Contract (including the interpretation or termination of the Trade Contract), the Trade Contract Works, including any Variation, or any Damaging Act of the Principal, the Construction Manager or the Trade Contractor or one of the Trade Contractor's Agents, whether that dispute or difference arises before or after the ending of the Trade Contract.

**'Drawings and Specifications'** means those drawings and specifications set out in Schedule 1.

**'Excepted Risks'** means those risks set out in clause 10.2.

**'Final Certificate'** means the final certificate to be provided in accordance with clause 42.0.

**'Form of Warranty'** means a deed of warranty between the Principal and the Trade Contractor in the form specified in Schedule 3.

**'Formal Instrument'** means the formal instrument identified as such and signed, sealed and delivered as a deed by the parties in respect of this Trade Contract.

**'Hazardous Substance'** means any substance which causes or might reasonably be expected to cause (whether previously, currently or in the future) damage or injury to or be harmful to any person or property or to the environment generally.

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**'Industrial Matter'** means:

- (a) any matter in any way connected with the Trade Contract Works and which relates to a Claim for payment for or on behalf of any employee or Subcontractor of the Trade Contractor or any employee of a Subcontractor to the Trade Contractor including any Claim for a payment in the nature of a site allowance; and
- (b) any delay, dispute, disruption or inefficiency connected with or relating to an action of any employee or subcontractor of the Trade Contractor or any employee of a subcontractor to the Trade Contractor.

**'Industrial Waste'** means any waste containing any substance or materials which are potentially harmful to any person or property or the environment generally arising from the Trade Contract Works or any other related activity.

**'Legislative and Industrial Requirements'** means all legislative and regulatory requirements applying to or relating to or in any way connected with the Trade Contract Works, the performance of the Trade Contract Works or the conduct of the Trade Contractor or, where the context requires, any of the Trade Contractor's Agents, in carrying out the Trade Contract Works or any other applicable requirement, including any requirement, obligation or prohibition arising under or in connection with:

- (a) Acts, Ordinances, regulations, by-laws, orders, and proclamations of the Commonwealth and the State or Territory pursuant to which the work under the Trade Contract or any part thereof is being carried out including all applicable occupational health and safety, environment protection, dangerous goods and electricity safety legislation, regulations and codes made in respect of same together with any directions on safety or notices issued by any relevant authority;
- (b) any applicable and legally binding industrial instrument (including any award or any collective or enterprise agreement);
- (c) any relevant superannuation scheme or redundancy scheme whether arising under an applicable law, industrial agreement or otherwise;
- (d) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of Trade Contract Works (the fees and charges in respect of which the Trade Contractor is responsible and is not entitled to any adjustment of the Trade Contract Sum in connection with);
- (e) the Code; and
- (f) the Building Code of Australia.

**'Moral Rights'** has the meaning set out in section 189 of the *Copyright Act 1968* (Cth).

**'Non-Exclusive Possession'** confers a right to only such use and control as is necessary to enable the carrying out of the Trade Contract Works and shall exclude camping, residential purposes and any purpose not connected with the Trade Contract Works, unless approved by the Construction Manager.

**'Notice of Substantial Completion'** means a notice issued by the Trade Contractor in accordance with clause 31.2.

**'OHS Principal Contractor'** means the person appointed as principal contractor in accordance with occupational health and safety Legislative and Industrial Requirements.

**'Other Contractors'** includes other trade contractors of the Principal or the Construction Manager of any or their subcontractors, agents, employees, Consultants and any other person or entity authorised by the Principal or the Construction Manager from time to time and notified to the Trade Contractor.

**'Pollution'** means a discharge, emission or deposit which brings about a detrimental change in the condition of the environment including one or more of the conditions of the environment referred to in sections 39(1), 41(1) or 45(1) of the *Environmental Protection Act 1970* (Vic).

**'Principal'** means the person or entity in Schedule 1.

**'Progress Claim'** is the document described in clause 38.0 to be issued in accordance with clause 38.0.

**'Project'** has the meaning set out in Schedule 1.

**'Provisional Sums'** includes monetary sum, contingency sum and prime cost item exclusive of Goods and Services Tax as identified in Schedule 7 of the Trade Contract Documents.

**'Subcontractor'** means any contractor or supplier to the Trade Contractor, whether engaged directly or indirectly by the Trade Contractor.

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**'Security of Payment Act'** means the *Building and Construction Industry Security of Payment Act 2002 (Vic)*, as amended.

**'Separable Portion'** means a portion of the Trade Contract Works identified as such in the Trade Contract or by the Construction Manager pursuant to clause 28.5.

**'Site'** means the site described in Schedule 1.

**'Statement of Completion'** means the document referred to in clause 41.1.

**'Substantial Completion'** is that stage in the execution of the Trade Contract Works when:

- (a) the Trade Contract Works are complete except for minor defects which do not inhibit or interfere with any other trade or service or prevent the Principal's use or occupation of any part of the Project and are fit for the Principal to commence trading (if relevant);
- (b) those tests which are required by this Trade Contract to be carried out and passed before the Trade Contract Works reach Substantial Completion, have been carried out and passed;
- (c) the Trade Contractor has delivered to the Construction Manager the following:
  - (i) all original warranties;
  - (ii) all notices, permits, approvals and certificates required to be obtained from relevant authorities;
  - (iii) as-built drawings and operating and maintenance manuals for the Trade Contract Works; and
  - (iv) all documents and other information required under this Trade Contract which, in the opinion of the Construction Manager, are essential for the use, operation and maintenance of the Trade Contract Works;
- (d) the Trade Contractor has thoroughly cleaned the Site and the Trade Contract Works including all services relevant to the Trade Contract Works; and
- (e) the Trade Contractor has complied with all relevant aspects of the quality management system under clause 23.2 including, but not limited to, having undertaken all final inspections and testing of the Trade Contract Works required by that system .

**'Trade Contract'** means the contract between the Construction Manager and the Trade Contractor constituted by the Trade Contract Documents..

**'Trade Contract Documents'** means the documents described as such in Schedule 1.

**'Trade Contract Programme'** means the programme described as such in clause 28.2.

**'Trade Contract Risks'** means all risks associated or connected with the carrying out of the Trade Contract Works (whether ascertainable or not) including risks associated or connected with or arising in relation to:

- (a) all Industrial Matters;
- (b) delays, disruption, loss of productivity, cost increases, re-execution of work or modification of the methodology for the carrying out of the Trade Contract Works caused by:
  - (i) adverse site or weather conditions;
  - (ii) the physical conditions and characteristics of the Site (including sub-surface, latent conditions or hidden defects and asbestos or contamination of any kind) and its surroundings;
  - (iii) the Trade Contract Works progressing at a rate different than may have been anticipated by the Trade Contractor;
  - (iv) the availability and occupation of part of the Works as described in the Trade Contract; or
  - (v) any ambiguity, discrepancy, omission or other defect in the documents comprising the Trade Contract;
- (c) the availability of labour or materials necessary for the carrying out of the Trade Contract Works; and
- (d) any other matter in respect of which, pursuant to the Trade Contract, the Trade Contractor is required to accept the risk.

**'Trade Contract Sum'** is the sum set out in Schedule 1 and as adjusted from time to time pursuant to this Trade Contract.

**'Trade Contract Works'** means the works generally described in the Trade Contract Documents, Variations and any other work not described in those documents if that other work:

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- (a) should reasonably have been anticipated by an experienced and competent contractor as being necessary for the carrying out of the Trade Contract Works; or
- (b) was otherwise capable of inference from the Trade Contract.

**‘Trade Contractor’s Representative’** means the Trade Contractor’s Representative as described in clause 15.3.

**‘Variation’** means any:

- (a) increase, decrease or omission or reduction to or of any part of or all of the Trade Contract Works;
- (b) change in the character or quality of any material or work or of anything described in this Trade Contract;
- (c) change in the levels, lines, positions or dimensions of anything described in this Trade Contract or any part of the Trade Contract Works;
- (d) additional work to the Trade Contract Works;
- (e) demolition or removal of material or work no longer required by the Principal and/or Construction Manager; and
- (f) any combination of the above.

**‘Works’** means the works to be carried out for the completion of the Project under the Construction Management Agreement.

### 1.2 Interpretation

In this Trade Contract, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of this Trade Contract;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph or schedule or annexure to this Trade Contract unless provided for otherwise;
- (e) a reference to a document, deed, or agreement, including this Trade Contract, includes a reference to that document, deed, or agreement as novated, altered or replaced from time to time;
- (f) a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;
- (g) a reference to a party includes its executors, administrators, successors and permitted assigns;
- (h) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
- (i) no rule of construction applies to the disadvantage of the Construction Manager on the basis that the Construction Manager put forward this Trade Contract or any part of it;
- (j) a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State legislation, as applicable;
- (k) a reference to any of the words “include”, “includes” and “including” is to be read as if followed by the words “without limitation”; and
- (l) a reference to an “entitlement” includes any right or entitlement.

### 1.3 Severability

If a provision of this Trade Contract is illegal or unenforceable:

- (a) and the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are severed; and
- (b) in any other case, the whole provision is severed and the remainder of this Trade Contract continues to have full force and effect.

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#### 1.4 Joint Parties

If any party to this Trade Contract consists of two or more persons this Trade Contract shall benefit and bind such persons jointly and severally and this Trade Contract shall be read and construed accordingly.

#### 1.5 Legislative Instruments

Any reference to a Legislative and Industrial Requirement including an Act of Parliament, regulation, code or standard is a reference to the Act, regulation, code or standard as it exists from time to time or any modification, republication (with or without amendment) or replacement (in part or in whole) of the Act, regulation, code or standard.

### 2.0 TRADE CONTRACTOR'S PRIMARY OBLIGATIONS

The Trade Contractor must:

- (a) complete the Trade Contract Works in accordance with the Trade Contract and the Trade Contract Documents; and
- (b) otherwise comply with this Trade Contract.

### 3.0 TRADE CONTRACT WARRANTIES, RISK AND INDEMNITIES

#### 3.1 Trade Contractor Warranties

- (a) The Trade Contractor warrants to the Construction Manager and the Principal that the Trade Contractor:
  - (i) is competent and experienced in the execution of works of a type contemplated by this Trade Contract;
  - (ii) will at all times be suitably qualified and experienced, and will exercise due skill, care and diligence in the execution and completion of the Trade Contract Works;
  - (iii) will execute and complete the Trade Contract Works and supply material or parts in accordance with the quality and standard stipulated in this Trade Contract so that the Trade Contract Works, when completed, will:
    - (A) be fit for their stated or intended purpose; and
    - (B) comply with all the requirements of this Trade Contract;
  - (iv) has made proper allowance in the Trade Contract Sum for:
    - (A) all matters contained in or capable of inference from the documents forming part of the Trade Contract; and
    - (B) all matters which might impact upon the Trade Contractor's ability to complete the Trade Contract Works or to complete the Trade Contract Works within any particular time, cost or quality constraints;
  - (v) has, or will be able to, obtain all the necessary consents, permits or authorities necessary in order for the Trade Contractor to carry out the Trade Contract Works;
  - (vi) has carefully examined the documents comprising the Trade Contract and there are no errors, ambiguities, discrepancies, omissions or other conflict or defect in the Trade Contract including but not limited to any error, ambiguity, discrepancy, omission, conflict or other defect in the Trade Contract which could require a variation to the Trade Contract Works;
  - (vii) is not insolvent within the meaning of section 95A of the Corporations Act 2001 (Cth) or otherwise and there is no unfulfilled or unsatisfied judgment or Court order outstanding against the Trade Contractor;
  - (viii) is a registered Building Practitioner (within whatever category as is necessary so as to permit the Trade Contractor to enter into this Trade Contract and perform the Trade Contract Works without the Trade Contractor being in breach of its statutory obligations) pursuant to the *Building Act 1993* (Vic) and its registration has not been suspended;
  - (ix) carries the insurance required under the *Building Act 1993* (Vic);
  - (x) will comply fully with all of its obligations under the Trade Contract;

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- (xi) has reviewed the Provisional Sums included in the Trade Contract (if any) and they are reasonable and not understated or undervalued;
  - (xii) has not been sanctioned by any court, tribunal, government or government agency or authority for a breach of the Code;
  - (xiii) has met and will meet all its obligations in respect of superannuation, redundancy and long service leave payments as applicable;
  - (xiv) will, without limiting or reducing its obligations generally under this Trade Contract, ensure that the Trade Contract Works and all temporary works comply with applicable Australian standards; and
  - (xv) provides for the benefit of the Principal guarantees and warranties of the nature set out in Schedule 1 in respect of particular goods, services, materials, plant and equipment for the relevant period set out in the Trade Contract irrespective of whether such guarantees and warranties are separately provided by the Trade Contractor to the Principal pursuant to the Trade Contract.
- (b) The Trade Contractor will obtain warranties as specified in this Trade Contract and shall ensure that the Principal will have the benefit of such warranties
  - (c) To the extent that the terms, conditions and provisions of any of the Trade Contractor's warranties specified in this Trade Contract are inconsistent with any Legislative and Industrial Requirement or are required by any Legislative and Industrial Requirement or by an order of a competent court having jurisdiction to be varied, modified or reduced, those terms, conditions and provisions will be read down and construed to the extent necessary or required to either meet such Legislative and Industrial Requirement or to take account of such variation, modification or reduction.
  - (d) The Trade Contractor must, whether before or after the issue of the Final Certificate, if required by the Principal and/or the Construction Manager, enter into a Form of Warranty in the form in Schedule 3.

**3.2 Trade Contractor Risks**

The Trade Contractor accepts the risk of and responsibility for the Trade Contract Risks and acknowledges and agrees that it is not entitled to make any Claim against the Construction Manager or the Principal as a result of or in connection with the Trade Contract Risks, except to the extent expressly provided for in the Trade Contract.

**3.3 Trade Contractor Indemnities**

The Trade Contractor indemnifies the Principal:

- (a) in respect of a breach of any of the Trade Contractor's warranties in the Trade Contract;
- (b) in respect of any Damaging Act by the Trade Contractor or the Trade Contractor's Agents;
- (c) in respect of any liability the Principal has or might have to third parties in connection with any act or omission (including Damaging Act) of the Trade Contract or the Trade Contractor's Agents; and
- (d) in respect of any Damaging Act by the Trade Contractor or the Trade Contractor's Agents.

**4.0 TRADE CONTRACTOR'S GENERAL OBLIGATIONS**

**4.1 Trade Contractor's General Obligations**

Without limiting the Trade Contractor's other obligations under and in connection with the Trade Contract, the Trade Contractor must:

- (a) execute and complete the Trade Contract Works in accordance with this Trade Contract, competently, professionally, to a high standard, free of Defects and to the satisfaction of the Construction Manager;
- (b) proceed regularly and diligently with the Trade Contract Works in the time(s) and at the rate(s) specified in this Trade Contract;
- (c) bring the Trade Contract Works to Substantial Completion by the Date for Substantial Completion;
- (d) make good any damage done to the Trade Contract Works which arises from any Damaging Act of the Trade Contractor or the Trade Contractor's Agents;
- (e) work in a cooperative manner with Other Contractors;
- (f) comply with all Legislative and Industrial Requirements, and Construction Manager's Policies (to the extent that such policies are not inconsistent with Legislative and Industrial Requirements);

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- (g) complete the Trade Contract Works to the satisfaction of the OHS Principal Contractor and in conformity with any instructions issued by the OHS Principal Contractor;
- (h) comply with directions given by the Construction Manager pursuant to this Trade Contract;
- (i) initiate and implement remedial action to rectify behaviour that does not comply with Legislative and Industrial Requirements or Construction Manager's Policies. This includes a requirement on the Trade Contractor to ensure that all of the Trade Contractor's Agents rectify any non-compliant behaviour;
- (j) if requested by the Construction Manager (which request may be made from time to time by the Construction Manager) provide evidence in a form satisfactory to the Construction Manager (which evidence may include certificates from third parties and statutory declarations) that the Trade Contractor has complied with all Legislative and Industrial Requirements;
- (k) if requested by the Construction Manager (which request may be made from time to time by the Construction Manager) provide evidence in a form satisfactory to the Construction Manager (which evidence may include certificates from third parties and statutory declarations) that one or more of the Trade Contractor's Agents have complied with all Legislative and Industrial Requirements;
- (l) co-operate fully with the Construction Manager in attending interviews and meetings as required by the Principal and/or Construction Manager;
- (m) faithfully and honestly provide information, acknowledgements and undertakings where requested by the Principal and/or Construction Manager;
- (n) comply with the obligations, acknowledgments and undertakings given by it in the Trade Contract; and
- (o) in addition to any reporting obligations contained elsewhere in the Trade Contract, ensure that it reports any of the following to the Construction Manager immediately after it becomes aware of their occurrence:
  - (i) any breaches or alleged breaches of the Code by the Trade Contractor or its employees and any of the Trade Contractor's Agents or any other conduct or event which may jeopardise the Trade Contractor's compliance with the Code, whether occurring before or during the performance of the works or any Variation;
  - (ii) any disputes or disagreements relating to workplace relations or occupational health, safety and rehabilitation matters which may impact on the Construction Programme, project costs, Trade Contract or other related contracts;
  - (iii) any threatened or actual industrial action that does, may or will impact on the Trade Contract Works; and
  - (iv) any discharge, emission, deposit or disturbance of any Pollution or Contamination, whether or not that discharge, emission, deposit or disturbance was caused by the Trade Contractor;
- (p) at the earliest possible opportunity, notify the Construction Manager of any remedial action being taken by the Trade Contractor, its employees or any of the Trade Contractor's Agents to rectify non compliance with the Code or, where no remedial action is taken, the reasons for the inaction;
- (q) to facilitate its reporting obligations in paragraphs (o) and (p) above, establish a clear and effective reporting structure in respect of the Trade Contractor Works and any Variation;
- (r) ensure that any employees, agents, subcontractors and consultants engaged in connection with the Trade Contract Works or any Variation:
  - (i) notify the Trade Contractor of the events set out in paragraph ((o)) above as soon as they become aware of their occurrence;
  - (ii) notify the Trade Contractor of the matters set out in paragraph ((p)) at the earliest possible opportunity; and
  - (iii) establish a clear and effective reporting structure to fulfil these reporting obligations;
- (s) allow site entry to a union representative only in strict compliance with the procedures governing entry and inspection under the *Fair Work Act 2009* (Cth) and occupational health and safety legislation. The Trade Contractor must immediately inform the Construction Manager on becoming aware of entry to the Site of any person under or in purported reliance of the *Fair Work Act 2009* (Cth);
- (t) allow Site entry to a workplace inspector to monitor compliance with the Code;
- (u) on the request of the Construction Manager, promptly provide copies to the Construction Manager of any industrial agreements binding on the Trade Contractor;

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- (v) not make any Claim against the Principal or the Construction Manager in respect of damage, death, delay, injury or loss to third parties caused by the operation of the Trade Contract Works arising from an act or omission of the Trade Contractor in the performance of the Trade Contract Works; and
- (w) without limiting or reducing its obligations generally under this Trade Contract, ensure that the Trade Contract Works and all temporary works comply with applicable Australian Standards.

The Trade Contractor:

- (i) acknowledges that the Drawings and Specifications forming part of the Trade Contract are preliminary design documents and will be developed by the Trade Contractor into final working drawings and specifications in accordance with which the Trade Contract Works will be executed;
- (ii) warrants that the Trade Contract contain no errors, omissions, discrepancies or conflict between its constituent documents and that the terms of each of them are not inconsistent, one with the others;
- (iii) agrees to make no Claim against or demand on the Principal for compensation as a consequence of executing the Trade Contract Works in accordance with the final working drawings and specifications unless the final working drawings and specifications show clear and material variation(s) to the intent of the Trade Contract Works shown or described in the Drawings and Specifications and, in such case, may claim a reasonable amount as a Variation pursuant to the relevant provisions of this Trade Contract; and
- (iv) accepts the risk of and responsibility for the Trade Contract Risks and acknowledges and agrees that it is not entitled to make any Claim against the Principal and/or the Construction Manager as a result of or in connection with the Trade Contract Risks, except to the extent expressly provided for in the Trade Contract.

## 5.0 DOCUMENTS

### 5.1 Ambiguities and Discrepancies

- (a) Should the Trade Contractor discover any ambiguity, error, omission or discrepancy in or divergence between the Drawings and Specifications and/or other documents comprising this Trade Contract, it will immediately give notice in writing to the Construction Manager and apply for instructions. The Construction Manager will issue instructions and the Trade Contractor will comply with and observe the instructions and the Trade Contractor is not entitled to make any Claim as a result of or in connection with the direction given by the Construction Manager under this clause.
- (b) Any items not expressly mentioned in this Trade Contract but which are necessary for the satisfactory completion and performance of the Trade Contract Works will be supplied and executed by the Trade Contractor without adjustment to the Trade Contract Sum or extension to the Date for Substantial Completion.

### 5.2 As Built Drawings

The Trade Contractor must progressively produce and maintain as-built drawings describing the Trade Contract Works. These as-built drawings must be in a form acceptable to the Construction Manager and insofar as is relevant to the Trade Contract Works, record positions of all pipes, conduits, ducting and associated equipment including the location of all access and inspection points and control valves. The Trade Contractor must make these as-built drawings available to the Construction Manager on request.

### 5.3 Supply of Documents by Trade Contractor

- (a) The Trade Contractor must supply to the Construction Manager five copies (or such other number as may be stated in Schedule 1) of:
  - (i) the documents described in Schedule 1; and
  - (ii) any other document relevant to the Trade Contract Works which is requested by the Construction Manager.
- (b) The documents supplied by the Trade Contractor must:
  - (i) be in a form satisfactory to the Construction Manager; and
  - (ii) be provided not less than five Business Days (or such other time as may be stated in Schedule 1) before the work described in those documents is commenced.

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#### 5.4 Review of Documents

The Construction Manager is not bound to review or comment upon any document provided by the Trade Contractor or to check the documents for errors, omissions or compliance with the requirements of this Trade Contract. The delivery of documents by the Trade Contractor or the Construction Manager's receipt of, review of, or comment on the documents shall not relieve the Trade Contractor from responsibility for the Trade Contractor's errors or omissions or obligations to comply with the requirements of the Trade Contract.

#### 6.0 DESIGN OF THE TRADE CONTRACT WORK

Despite the fact that the Construction Manager has made available the Drawings and Specifications, the responsibility for completion of the design (if any), obtaining all relevant authority approvals, further necessary documentation and the integrity, effectiveness and suitability of the purpose of the completed Trade Contract Works, rests with the Trade Contractor. The Construction Manager is relying upon the Trade Contractor's knowledge, skill and judgement to produce the Trade Contract Works which are fit for their intended purpose. The Trade Contractor will consider the adequacy of any design provided to it and will, unless specifically giving notice to the Construction Manager in writing to the contrary, adopt the design and be considered to be the designer of such design.

The Trade Contractor warrants that it will so far as reasonably practicable ensure that any building or structure resulting from or effected by the Trade Contract Works will be safe and without risks to health of persons using it as a workplace for a purpose for which it was designed.

Despite any other provision of this Trade Contract, any approval of the Construction Manager or any failure to disapprove under this Trade Contract will not be grounds for a Variation, extension of time or compensation to the Trade Contractor.

The Trade Contractor is not entitled to compensation under this Trade Contract or otherwise for a Variation, extra works or obtaining an authority approval unless:

- (a) the Construction Manager has given a written direction to the Trade Contractor to do the Variation, extra works or obtain the approval;
- (b) these were not in the reasonable contemplation of the Trade Contractor as a requirement for the Trade Contract Works at the date of this Trade Contract to fulfil the Trade Contractor's obligations under this Trade Contract; and
- (c) prior to commencement of the Variation, extra works, or obtaining the approval, the requirements of clause 34.0 of this Trade Contract have been met .

#### 7.0 INTELLECTUAL PROPERTY

Copyright, other intellectual property rights and property in documents and designs produced by or used by the Trade Contractor for or in relation to the Trade Contract Works hereby vest in the Principal. The Trade Contractor shall do everything necessary to perfect such vesting and to ensure that no person will make any Claim under the *Copyright Act 1968* (Cth) including Part IX of that legislation. Until such vesting is perfected the Trade Contractor grants or will procure the granting to the Principal an irrevocable, assignable and royalty-free licence to use the documents and designs at no cost to the Principal. Such licence shall also include a right to use or modify the documents and designs for the purposes of any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts, or additions or alterations to the Trade Contract Works.

The Trade Contractor must obtain from each Author a waiver of their Moral Rights with respect to any documents and designs produced by such Author for or in relation to the Trade Contract Works.

The Trade Contractor indemnifies the Principal in respect of any Claim brought against the Trade Contractor or the Principal in connection with copyright, other intellectual property rights (including Moral Rights) and property in documents and designs produced by or used by the Trade Contractor and whether ownership is vested in the Principal or the Principal has the benefit of the same under licence or otherwise.

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**8.0 ASSIGNMENT AND SUBCONTRACTING**

**8.1 Assignment**

- (a) The Trade Contractor shall not assign or novate any of its rights, obligations or entitlements under or in connection with this Trade Contract without the prior written consent of the Construction Manager, which consent may be given or withheld in the absolute and unfettered discretion of the Construction Manager.
- (b) The Principal and Construction Manager may assign or novate all or part of their rights, obligations or entitlements under or in connection with the Trade Contract by written advice to the Trade Contractor. The Trade Contractor acknowledges and agrees that its consent is not required to an assignment under this clause (b). If the Principal and the Construction Manager request, the Trade Contractor must execute a deed of novation of the Principal’s and Construction Manager’s rights, obligations and entitlements under this Trade Contract.

**8.2 Subcontracting**

- (a) The Trade Contractor shall not be entitled to sub-contract part or parts of the Trade Contract Works without prior written approval of the Construction Manager which, subject to the Construction Manager’s reasonable satisfaction of the requirements of this clause 8.2 (b), approval shall not be unreasonably withheld.
- (b) Approval to subcontract will be conditional upon the relevant subcontract including:
  - (i) a provision that the Subcontractor shall not assign or subcontract without the prior consent in writing of the Construction Manager;
  - (ii) provisions which may be reasonably necessary to enable the Construction Manager to fulfil the Construction Manager’s obligations to the Principal;
  - (iii) provisions requiring the Trade Contractor to fulfil and comply with all obligations of the Trade Contractor under the Trade Contract including the provisions of clauses 8.0, 10.0, 15.0, and 12.0;
  - (iv) provisions requiring the Subcontractor to ensure that all persons engaged in the performance of any part of the Trade Contract Works comply with all Legislative and Industrial Requirements and the provisions of clause 9.0;
  - (v) a provision that the Subcontractor acknowledges the appointment of the Construction Manager or another party as the OHS Principal Contractor for the purposes of Legislative and Industrial Requirements;
  - (vi) a provision that the Subcontractor will not interfere with, disturb, impede or obstruct the carrying out by the OHS Principal Contractor of the OHS Principal Contractor’s obligations, and will cooperate and comply with any direction of the OHS Principal Contractor; and
  - (vii) a provision that the Subcontractor will not be entitled to make any Claim against the Trade Contractor, Construction Manager or the Principal arising out of or in any way in connection with this clause or any direction of the OHS Principal Contractor or otherwise with any requirement of the OHS Principal Contractor.

**8.3 Trade Contractor’s Responsibility**

Approval to subcontract shall not relieve the Trade Contractor from any liability or obligation under this Trade Contract. The Trade Contractor shall be liable to the Construction Manager and the Principal for the acts and omissions of Subcontractors and employees and agents of the Subcontractors and of any other person engaged in the performance of any part of the Trade Contract Works, as if they were acts or omissions of the Trade Contractor.

**9.0 PROTECTION OF PEOPLE AND PROPERTY**

**9.1 Primary Obligation**

The Trade Contractor shall, in respect of the Trade Contract Works:

- (a) provide all things and take all measures necessary to protect people and property and to comply with all Legislative and Industrial Requirements;
- (b) comply with emergency safety and security procedures applicable to the Site as notified to the Trade Contractor by the Construction Manager from time to time;

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- (c) avoid unnecessary interference with the passage of people and vehicles; and
- (d) prevent nuisance and unreasonable noise and disturbance.

**9.2 Making Good Damage**

- (a) If the Trade Contractor or the Trade Contractor's Agents damage property, including but not limited to public utilities and services and property on or adjacent to the Site, the Trade Contractor shall promptly make good the damage and pay any compensation which the law requires the Trade Contractor to pay.
- (b) If the Trade Contractor fails to comply with an obligation under this clause, in addition to any other remedies of the Construction Manager or the Principal, the Construction Manager or the Principal may have the subject work carried out by other persons and the reasonable cost incurred by the Construction Manager or the Principal in doing so shall be a debt due from the Trade Contractor to the Construction Manager or the Principal (as applicable).

**9.3 Barricades, etc.**

Without limiting the generality of the Trade Contractor's obligations in this Trade Contract, the Trade Contractor must provide barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, watching, traffic flagging, safety helmets and clothing, removal of obstructions and protection of services.

**9.4 Indemnity by Trade Contractor**

The Trade Contractor hereby indemnifies and shall keep indemnified the Principal, the Construction Manager and the OHS Principal Contractor against:

- (a) loss of or damage to property of the Construction Manager or the Principal or the OHS Principal Contractor, including existing property in or upon which the Trade Contract Works is being carried out;
- (b) any and all liability, costs (including legal costs on a solicitor/own client basis and whether or not the subject of a court order), expenses or loss incurred by the Principal or the Construction Manager or OHS Principal Contractor from or associated with Claims, demands or proceedings whether at common law or pursuant to any Statute or otherwise by any person against the Principal or the Construction Manager or the OHS Principal Contractor in respect of personal injury or death or loss of or damage to any property; and
- (c) any liability or expenses from or associated with any Claim, without limitation, by the Victorian WorkCover Authority or any other person pursuant to Section 138 of the *Accident Compensation Act 1985* (Vic), and any associated costs relating to injury sustained by any person, arising out of or as a consequence of or during the carrying out of the Trade Contract Works.

**10.0 CARE OF THE WORK AND REINSTATEMENT OF DAMAGE**

**10.1 Care of the Trade Contract Works**

- (a) The Trade Contractor will be responsible for the care and maintenance of all portions of the Trade Contract Works and all materials and Construction Plant from and including the date of commencement of the Trade Contract Works until the Date of Substantial Completion. If a portion of the Trade Contract Works is taken over by the Principal before Substantial Completion, then this clause shall continue to apply only to the portion of the Trade Contract Works remaining in control of the Trade Contractor.
- (b) In particular, without limiting the generality of the previous paragraph, the Trade Contractor must ensure that the Trade Contract Works are properly and adequately protected from damage from any cause (except those Excepted Risks referred to in clauses 10.2(c)(iii) and 10.2(c)(iv)).

**10.2 Reinstatement**

- (a) The Trade Contractor will at its own cost make good to the satisfaction of the Construction Manager any loss or damage to the Trade Contract Works or to the work, materials and Construction Plant resulting from any cause whatsoever (save and except the Excepted Risks as defined in paragraph (c)) when such making good is necessary for the satisfactory completion of the Trade Contract Works. When ordered by the Construction Manager, any loss or damage caused by any of the Excepted Risks will be made good by the Trade Contractor as a Variation to the Trade Contract and dealt with under clause 34.0.

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- (b) Nothing contained in this clause 10.0 shall relieve the Trade Contractor of its responsibilities or liabilities under clause 12.0.
- (c) The Excepted Risks are-
  - (i) any negligent act or omission of the Principal, the Construction Manager or the employees, Consultants or Agents of the Principal or the Construction Manager;
  - (ii) any risk specifically excepted in the Trade Contract;
  - (iii) war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any government or public authority; and
  - (iv) ionising radiations or contamination by radioactivity from nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Trade Contractor or its employees or agents or sub-contractors.
- (d) The Trade Contractor will indemnify and keep indemnified the Principal and the Construction Manager and the OHS Principal Contractor against all loss or damage resulting directly or indirectly from any act or omission of the Trade Contractor, of any employee Subcontractor or agent of the Trade Contractor or of any employee Subcontractor or agent of the Trade Contractor or any person engaged in the performance of any part of the Trade Contract Works. This indemnity will not be defeated or reduced by reason of any negligence, omission or default of the Principal or the Construction Manager or OHS Principal Contractor or any person, other than the Trade Contractor, for whom the Principal or the Construction Manager or the OHS Principal Contractor is responsible.

**10.3 Damage**

- (a) The Trade Contractor will be responsible for all costs in making good as and when required by the Construction Manager any damage to work and materials other than the Trade Contract Works. Such costs will be set-off against or deducted from such moneys otherwise payable to the Trade Contractor pursuant to clause 38.0.
- (b) The Trade Contractor will notify the Construction Manager when it damages work and materials other than the Trade Contract Works.
- (c) Where soiling or damage is probable from the nature of the Trade Contract Works to other work and materials the Trade Contractor will provide adequate protection to prevent soiling and damage occurring.

**10.4 Acceptance**

- (a) The Trade Contractor will not proceed to carry out its work over or interfaced with other work if in its opinion the previous work is unsatisfactory or unsuitable, unless the Construction Manager issues a written instruction overriding the opinion.
- (b) Commencement of any work otherwise than in compliance with an instruction from the Construction Manager under paragraph (a), will imply that the Trade Contractor accepts the previous work and requires no extra payments or compensation and commencement will render the Trade Contractor liable for all costs incurred by the Principal in making good any resultant Defects.
- (c) If the Trade Contractor from its training, knowledge or experience or for any other reason believes or suspects that any material, equipment, process, arrangement, workmanship, procedure or routine is unsound or is likely to produce a result which is unsafe or abnormally susceptible to failure or recurrent maintenance or unlikely to produce a result compatible with the standards reasonably to be implied from or apparent in this Trade Contract or, where the purpose is disclosed or could reasonably be inferred, not likely to achieve fitness for that purpose, it will inform the Construction Manager in writing before proceeding.

**11.0 URGENT PROTECTION**

If urgent action is necessary to protect the Trade Contract Work, other property or people and the Trade Contractor fails to take the action then in addition to any other remedies of the Construction Manager, the Construction Manager may take the necessary action. If the action was action which the Trade Contractor should have taken, the cost incurred by the Construction Manager in taking such action shall be a debt due from the Trade Contractor to the Construction Manager.

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Construction Manager	Trade Contractor

## 12.0 INSURANCE

### 12.1 Obligation to Insure and Evidence of Insurance

The Trade Contractor must, prior to commencing the Trade Contract Works and whenever requested in writing by the Construction Manager:

- (a) effect the policies of insurance set out in this clause 12.0 in a form acceptable to the Construction Manager; and
- (b) in relation to any policy of insurance in respect of liability for death of or injury to persons employed in respect of the Trade Contract Works, ensure that all Subcontractors comply with any obligation as to insurance which is imposed upon any such Subcontractor; and
- (c) produce evidence to the satisfaction and approval of the Construction Manager of the insurance required by this clause 12.0 (including insurance required of Subcontractors) having been effected. The Trade Contractor must produce a copy of any insurance policy if requested as evidence of the insurance required by this clause 12.0.

If the Trade Contractor does not comply with this clause 12, the Construction Manager may withhold moneys otherwise due to the Trade Contractor unless and until the Trade Contractor complies with this clause.

### 12.2 Insurance Does Not Limit Obligations

The effecting of insurance does not limit the liabilities or obligations of the Trade Contractor under other provisions of this Trade Contract.

### 12.3 Type of Insurance Required

The insurance required to be effected by the Trade Contractor pursuant to this clause is as set out in Schedule 1, or where no requirements are set out in Schedule 1 as follows:

- (a) a public and products (competent operations) liability policy of insurance which includes cover in respect of liabilities to third parties, and which is for an amount in respect of any one occurrence not less than the sum stated in Schedule 1 (or if no sum is stated the sum of \$20,000,000); and
- (b) a policy of insurance in respect of the Trade Contractor's liability for death of or injury to persons employed by the Trade Contractor including liability by statute and at common law, and which is for an amount in respect of any one occurrence not less than the sum stated in Schedule 1 (or if no sum is stated the sum of \$20,000,000); and
- (c) where permitted by law, a policy of insurance (which policy may be included as part of the policy required by the preceding paragraph) which indemnifies the Principal and the Construction Manager for the Principal and the Construction Manager's statutory liability to persons employed by the Trade Contractor, and which is for an amount in respect of any one occurrence not less than the sum stated in Schedule 1 (or if no sum is stated the sum of \$20,000,000); and
- (d) a professional indemnity insurance policy with a total aggregate cover of not less than the sum stated in Schedule 1 (or, if no sum is stated, the amount of \$10,000,000); and
- (e) a motor vehicle third party liability policy of insurance which includes cover in respect of liabilities for the loss of or damage to any physical property, and which is for an amount in respect of any one occurrence not less than the sum stated in Schedule 1 (or if no sum is stated the sum of \$20,000,000); and
- (f) a contracts works policy of insurance in respect of the Trade Contract Works which includes among other things cover in respect of any loss or damage resulting from any cause whatsoever. Such insurance must be in effect before the Trade Contractor commences the Trade Contract Works and be maintained until the Trade Contractor ceases to be responsible for the care of the Trade Contract Works. Without limiting the generality of the obligation to insure, the policy shall cover the Trade Contractor's liabilities under clause 9.0 and things in storage off Site and in transit to the Site. Such insurance shall be for an amount not less than the sum stated in Schedule 1 (or if no sum is stated the sum is not less than twice the Trade Contract Sum). Such insurance must not include a clause that purports to limit or exclude the response or cover of the policy because a separate policy may have been effected by the, the Principal, Construction Manager or other third party; and
- (g) insurance covering Construction Plant and equipment (whether mobile or immobile), tools, tackle, employees' effects, temporary hutments, scaffolding and the like and all the property of the Trade Contractor and Subcontractor or for which the Trade Contractor is responsible, against any damage to, or loss or destruction

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of, to that property. Such insurance must be in effect at all times during the Trade Contract Works and the sum insured in respect of such property must be at least the current market value of the property; and

- (h) where the Trade Contract Works include the removal of asbestos, the Trade Contractor and the relevant licensed asbestos removal Subcontractor must at all times during the Trade Contract Works have in effect a public liability policy protecting the interests of the Construction Manager and Principal and their Related Bodies Corporate (as defined in the *Corporations Act 2001* (Cth)) and covering (amongst other things) those asbestos removal activities upon terms reasonably acceptable to the Construction Manager for a minimum of \$5,000,000 in respect of any single event or circumstance.

**12.4 Requirements of Insurance**

Unless otherwise directed by the Construction Manager any policy of insurance required to be effected pursuant to this part must:

- (a) be in the joint names of the Principal, Construction Manager, OHS Principal Contractor and the Trade Contractor so that insurance applies to each named insured as separate insured (apart from policies of professional indemnity and worker's compensation, which will be in the name of the Trade Contractor only, and where appropriate, any Subcontractor retained by the Trade Contractor);
- (b) cover the Construction Manager, the OHS Principal Contractor, the Trade Contractor, the Principal, all Consultants and all Subcontractors employed from time to time (including by the Trade Contractor) in relation to the Trade Contract Works for their respective rights and interests;
- (c) be effected with an insurer approved in writing by the Construction Manager;
- (d) be in terms approved in writing by the Construction Manager;
- (e) be maintained until the Final Certificate is issued pursuant to this Trade Contract , save for professional indemnity insurance, which must be maintained until the expiry of seven years after the issue of the Final Certificate;
- (f) be effected or maintained with an insurer authorised to carry on business under the *Insurance Act 1973* (Cth), or if effected or maintained with an insurer operating its business out of a country other than Australia, such an insurer must provide the Construction Manager with written evidence of its authority to carry on a business as an insurer in that country;
- (g) contain provisions that require the insurer, whenever the insurer gives the Construction Manager or the Trade Contractor a notice of cancellation or other notice concerning the policy, to at the same time to inform the other party in writing that the notice has been given;
- (h) provide that a notice of claim given to the insurer by the Construction Manager or the Trade Contractor shall be accepted by the insurer as a notice of claim given by the Construction Manager and the Trade Contractor;
- (i) require the insurer, whenever the party fails to renew the policy or to pay a premium, to give notice in writing thereof forthwith to the Construction Manager prior to the insurer giving any notice of cancellation; and
- (j) in respect of any insurance required to be effected in joint names, shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

In the event the Trade Contractor's insurer does not agree to this clause 12.4 (g) and/or (i), the Trade Contractor must ensure that such notices are provided to the Construction Manager immediately upon receipt by the Trade Contractor.

**12.5 Failure to Produce Proof of Insurance**

If after being requested the Trade Contractor fails to produce evidence of insurance as required by this part the Construction Manager may:

- (a) effect and maintain the insurance and pay the premiums, in which case the amount paid shall be a debt due from the Trade Contractor to the Principal (or the Construction Manager); and
- (b) even where the Construction Manager has acted in accordance with paragraph (a) of this clause, refuse payment until the Trade Contractor:
  - (i) produces evidence of insurance as required by this part; and

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(ii) pays to the Principal or the Construction Manager any debt which has accrued under this clause.

The rights given by this clause are in addition to any other right.

**12.6 Notices of Potential Claims**

The Trade Contractor shall, as soon as practicable, inform the Construction Manager in writing of any occurrence that may give rise to a claim under a policy of insurance required by this clause and shall keep the Construction Manager informed of subsequent developments concerning the claim. The Trade Contractor shall ensure that Subcontractors in respect of their operations similarly inform the Construction Manager.

**12.7 Deductibles or Excess**

Where:

- (a) the Construction Manager or the Principal effects a policy of insurance in respect of the Trade Contract Works or in respect of works including the Trade Contract Works;
- (b) the Construction Manager or the Principal makes a claim under such insurance policy in respect of loss of or damage to the Trade Contract Works; and
- (c) any payment in respect of such claim is subject to a deductible for which the Construction Manager or the Principal is responsible,

the amount of any such deductible and any other costs incurred by the Principal or Construction Manager in respect of such claim including but not limited to legal costs (on a solicitor/own client basis, and whether or not the subject of a court order) will be set off against or deducted from moneys otherwise payable to the Trade Contractor pursuant to clause 38.0.

Without limiting the Trade Contractor's liability under this clause or the Trade Contract generally in respect of loss of or damage to the Trade Contract Works the Trade Contractor must claim on Contracts Works insurance policies effected by it and be solely responsible for meeting the deductible or excess of same without recourse to the Construction Manager or the Principal and must not unless the Construction Manager in its sole discretion agrees (which discretion the Construction Manager is not obliged to exercise at all or in the Trade Contractor's favour) make any claim on similar policies effected by the Construction Manager, the Principal or other third party.

**12.8 Insurance by Subcontractors**

The Trade Contractor must ensure that all Subcontractors effect and maintain insurance on the same terms as the Trade Contractor under this clause 12.0.

**13.0 CONSTRUCTION MANAGER AS PRINCIPAL'S AGENT**

**13.1 Acknowledgment of Agency**

The Trade Contractor acknowledges that it is aware that the Construction Manager has been appointed as the Principal's agent for the purposes of entering into and performing the Trade Contract.

**13.2 Change of Construction Manager**

The Trade Contractor acknowledges and agrees that the Principal may in its absolute discretion, from time to time, revoke the appointment of the Construction Manager as its agent for the purposes of the Trade Contract and may appoint a new construction manager. If it does so, the Principal will advise the Trade Contractor in writing of the new appointment. Unless and until any such notice is given, the Trade Contractor will continue to perform its obligations under the Trade Contract as directed by the Construction Manager pursuant to the provisions of the Trade Contract. After the Trade Contractor has received any such notice, the construction manager named in the notice will be the Construction Manager for the purposes of the Trade Contract.

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## 14.0 THE SITE

### 14.1 Access to the Site

- (a) The Construction Manager will procure, on or before the expiration of the time stated in Schedule 1, the Trade Contractor Non-Exclusive Possession of sufficient of the Site for commencement of Trade Contract Works on the Site.
- (b) If the Construction Manager has not procured for the Trade Contractor Non-Exclusive Possession of such of the Site as to enable the Trade Contractor to carry out all of the Trade Contract Works, the Construction Manager shall procure the Trade Contractor Non-Exclusive Possession of such further portions of the Site as may, from time to time, be necessary for carrying out the Trade Contract Works.
- (c) Any failure by the Construction Manager to procure sufficient access to the Site for the Trade Contractor shall be taken not to be a breach of the Trade Contract by the Construction Manager, but may be an act of the Construction Manager for which the Trade Contractor may claim an extension of time in accordance with and subject to clause 29.0.
- (d) The Construction Manager and the Principal or their Agents, Consultants, Other Contractors, representatives, Subcontractors and financiers may at any reasonable time have access to any part of the Site for any purpose.
- (e) The Trade Contractor shall permit persons engaged by the Construction Manager or by the Principal to carry out Works on the Site other than the Trade Contract Works and shall cooperate with them.
- (f) The Trade Contractor will direct all communications to the Principal concerning the Trade Contract Works through the Construction Manager.

### 14.2 Site Measurement

- (a) The Trade Contractor will take all measurements from the structure as it proceeds on the Site as are necessary for the proper execution of the Trade Contract Works.
- (b) Where the Construction Manager instructs the Trade Contractor in writing to proceed prior to the structure being available for measurement, they will agree in writing sizes to be achieved and the acceptable tolerances.

### 14.3 Site Conditions

Should Site conditions below the surface, or in the case of alterations or extensions to existing buildings, shown or described in this Trade Contract, differ from those encountered by the Trade Contractor, then the Trade Contractor will notify the Construction Manager and obtain the Construction Manager's instructions prior to proceeding with the Trade Contract Works. The Principal will have no liability to the Trade Contractor in respect of any information concerning site conditions provided to the Trade Contractor by or on behalf of the Principal.

## 15.0 CONTROL OF TRADE CONTRACTOR'S AND OTHER EMPLOYEES

### 15.1 Removal of Employees

The Construction Manager may, to the extent permitted by law, direct the Trade Contractor to have removed from the Site or from any activity connected with the Trade Contract Works, any person employed in connection with the Trade Contract Works. The person shall not thereafter be employed on the Site or on activities connected with the Trade Contract Works without the prior written approval of the Construction Manager. The removal will not entitle the Trade Contractor to any Claim.

### 15.2 Employee Training

The Trade Contractor must ensure that all employees of the Trade Contractor, of any Subcontractor and of any other person engaged in the performance of any part of the Trade Contract Works and engaged on the Site, are provided with such information, instruction, training and supervision as is necessary to enable them to perform their work in a manner that is safe and without risk to health. Without limiting the obligation set out in the previous sentence, the information, instruction, training and supervision must meet or exceed the minimum level of information, instruction, training and supervision required by all relevant Legislative and Industrial Requirements.

### 15.3 Trade Contractor's Representative

The Trade Contractor must nominate a representative to act on its behalf pursuant to this clause 15.3. The Trade Contractor's Representative must:

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- (a) be on Site when any work is being carried out; and
- (b) be responsible for discharging the responsibilities of the Trade Contractor on the Site; and
- (c) be empowered by the Trade Contractor to receive any notice or direction which may be given by the Construction Manager or the Principal pursuant to this Trade Contract.

The Trade Contractor's Representative has the authority to act on behalf of and bind the Trade Contractor.

A direction is deemed to be given to the Trade Contractor if it is given to the Trade Contractor's Representative and matters within the knowledge of the Trade Contractor's Representative are deemed to be within the knowledge of the Trade Contractor.

If, in the opinion of the Construction Manager or the Principal, the Trade Contractor's Representative is not competent or the Construction Manager or the Principal is otherwise dissatisfied with the Trade Contractor's Representative, the Construction Manager is entitled to give a notice to the Trade Contractor requiring the Trade Contractor to replace the Trade Contractor's Representative and the Trade Contractor will forthwith comply with the requirements of that notice at its own cost and without an entitlement to an adjustment to the Trade Contract Sum.

**15.4 Payment of Workmen and Compliance with Awards**

- (a) All workmen employed by the Trade Contractor on the Site will be employed at the rates of pay and conditions of employment which comply with Legislative and Industrial Requirements, including:
  - (i) any award or determinations applicable to the Works; and
  - (ii) any lawful site agreement applicable to the project made in accordance with the *Workplace Relations Act 1996* (Cth) or the *Fair Work Act 2009* (Cth).
- (b) The Trade Contractor shall be liable for actual costs and expenses of the Principal due to industrial disputes or stoppages flowing from its failure to comply with the requirements of this clause.

**16.0 INDUSTRIAL RELATIONS**

**16.1 Trade Contractor's Industrial Relations Obligations**

The Trade Contractor will establish and maintain good industrial relations environment and a good industrial record. The Trade Contractor will, and will ensure that its Agents, Consultants and Subcontractors will, for the duration of the Trade Contract:

- (a) initiate industrial relations on the Site by way of consultation, participation and communication to avoid potential conflicts;
- (b) ensure good safety practices in accordance with relevant Legislative and Industrial Requirements;
- (c) refuse Claims for payment for lost time due to industrial action unless exceptional circumstances exist on genuine safety issues. The Trade Contractor will not be reimbursed for any costs, loss or damage arising out of complying or failing to comply with this clause 16.0;
- (d) establish regular checking of superannuation, long service leave and redundancy pay requirements;
- (e) interview, verify qualifications and check references of all persons seeking employment; and
- (f) ensure that retrenchments, when necessary, are carried out according to applicable awards and pursuant to any agreement applicable to the Trade Contract Works.

The Trade Contractor acknowledges and agrees that the Date for Substantial Completion of the Trade Contract Works and the Trade Contract Sum includes full allowance to compensate the Trade Contractor for all risks whatsoever and howsoever arising concerning, connected or associated with industrial relations at the Site including demarcation disputes, increases in labour costs and site allowances, any reduction in working hours per week, compliance with the Construction Manager's instructions, demonstrations or labour disputation, special allowances or compensation or any reduction in labour or hours worked on the Trade Contract Works. The Trade Contractor will not be entitled to Claim any extensions of time for delay or disruption in respect of any delays arising from those risks or any compensation from the Principal for any loss, expense or damage or as a quantum meruit associated with any of these risks. The Trade Contractor indemnifies and agrees to keep indemnified the Principal and the Construction Manager from and against any loss, expense or damage which is incurred or suffered by the Principal or the Construction Manager as a result or arising from the cost of provision of, an absence of labour for

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or from, the Trade Contract Works or as a result of or arising from industrial relations concerning, connected or associated with, or arising at, the Site or in relation to the Project.

## 16.2 Australian Government Funded Projects

Without limiting any other obligations placed on the Trade Contractor under the Trade Contract, where the Project is an Australian Government Funded Project, then:

- (a) In addition to any other obligation placed upon the Trade Contractor under this Trade Contract, the Trade Contractor must comply with the Code.
- (b) Compliance with the Code shall not relieve the Trade Contractor from responsibility to perform the Trade Contract, or from liability for any Defect in the Trade Contract Works arising from compliance with the Code.
- (c) Where a change in the Trade Contract is proposed and that change would affect compliance with the Code, the Trade Contractor must immediately submit a report to the Construction Manager specifying the extent to which the Trade Contractor's compliance with the Code will be affected.
- (d) The Trade Contractor must maintain adequate records of the compliance with the Code by:
  - (i) the Trade Contractor;
  - (ii) the Trade Contractor's Subcontractors;
  - (iii) the Trade Contractor's consultants; and
  - (iv) the Trade Contractor's Related Entities (as defined in the Code).
- (e) The Trade Contractor must not appoint a Subcontractor or consultant in relation to the Project where:
  - (i) the appointment would breach a sanction imposed in connection with the Code; or
  - (ii) the Subcontractor or consultant has had a judicial decision against them relating to employee entitlements, not including decisions under appeal, and has not paid the Claim.
- (f) The Trade Contractor agrees to require that it and its Subcontractors, consultants and Related Entities provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, with access to:
  - (i) inspect any work, material, machinery, appliance, article or facility;
  - (ii) inspect and copy any record relevant to the Project and Trade Contract Works the subject of this Trade Contract; and
  - (iii) interview any person,as is necessary to demonstrate its compliance with the Code and related guidelines. For the avoidance of doubt, this clause also applies in relation to new privately funded construction work.
- (g) Additionally, the Trade Contractor and its Related Entities will, on request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, produce a specified document within a specified period, in person, by fax or by post.
- (h) The Trade Contractor must ensure that all its Subcontractors and consultants impose obligations on their subcontractors equivalent to the obligations under this clause 16.0.

## 16.3 Awards

The Trade Contractor will be responsible for the payment of all wages and costs associated with the Trade Contract Works in accordance with Legislative and Industrial Requirements.

## 17.0 OCCUPATIONAL HEALTH AND SAFETY

### 17.1 Warranty and Compliance in Respect of Occupational Health and Safety

- (a) This clause 17.0 applies, notwithstanding anything provided elsewhere in this Trade Contract.
- (b) The Trade Contractor must, so far as is reasonably practicable, provide and maintain a working environment that is safe and without risk to health.

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- (c) The Trade Contractor acknowledges that for the purposes of the Legislative and Industrial Requirements the Trade Contractor has management and control of such parts of the Site at which and at all times during which the Trade Contractor carries out Trade Contract Works.
- (d) The Trade Contractor:
  - (i) shall comply with the Legislative and Industrial Requirements; and
  - (ii) warrants that it is familiar with and has the capability, skills and resources to comply with the Legislative and Industrial Requirements; and
  - (iii) shall perform all relevant functions and fulfil all relevant duties under the Legislative and Industrial Requirements of an employer or otherwise applicable to the role of the Trade Contractor under this Trade Contract including notification of incidents.
- (e) The Trade Contractor shall at all times identify and exercise all necessary precautions for the health and safety of all persons including the Trade Contractor's employees, any Subcontractor's employees, the Construction Manager's employees and members of the public who may be affected by the Trade Contract Works. The Trade Contractor shall, upon request by or on behalf of the Construction Manager, demonstrate compliance with such requirements including, but not limited to, providing evidence of measures taken to achieve such compliance.
- (f) In the performance of the Trade Contract Works, the Trade Contractor and any Subcontractor shall comply with the Construction Manager's Policies for the Site. It is the responsibility of the Trade Contractor to be familiar with all provisions in the Construction Manager's Policies prior to the first occasion on which the Trade Contractor or any person employed by or engaged by the Trade Contractor enters the Site.

**17.2 Consultation, Co-operation and Co-ordination**

- (a) The Trade Contractor shall consult, co-operate and co-ordinate activities with the Construction Manager any suppliers or contractors or other persons engaged in or associated with the Trade Contract Works:
  - (i) to achieve effective co-ordination of activities to ensure optimal health and safety risk management; and
  - (ii) to enable the Construction Manager and the Trade Contractor and other parties to comply with their respective obligations under the Legislative and Industrial Requirements.

**17.3 Provision and Maintenance of Plant and Safety Equipment**

- (a) The Trade Contractor shall supply all plant necessary to ensure the provision of any part of the Trade Contract Works in a manner that is safe and without risks to health. The Trade Contractor must ensure that all plant supplied by it is maintained in a condition that is safe and without risks to any person.
- (b) The Trade Contractor shall supply all safety equipment necessary to ensure the provision of any part of the Trade Contract Works in a manner that is safe and without risks to health including, but not limited to safety access platforms, ladders, mobile or static scaffolds, scissor or boom lifts, handrails, barricades, guards, fencing, temporary roads, footpaths, warning signs, safety and task lighting, observation/monitoring equipment, personal protection equipment, traffic flagging, safety helmets, clothing and protection of services.

**17.4 Permits, Licences, Certification and Approvals**

If the Trade Contractor or any Subcontractor is required by the Legislative and Industrial Requirements to have a permit, licence, certification or approval in order to perform or provide the Trade Contract Works, then the Trade Contractor must at its own expense ensure that such permit, licence, certification or approval is obtained and held prior to the first occasion on which any person employed by or engaged by the Trade Contractor enters the Site and must ensure such permit, licence, certification or approval is held and maintained and that there is full compliance with any conditions for the duration of the Trade Contract Works and provide the Construction Manager with evidence of the permit, licence, certification or approval and compliance on request.

**17.5 Site Induction**

- (a) The Trade Contractor shall, prior to the commencement of the Trade Contract Works ensure that any representative of the Trade Contractor and key personnel complete the Construction Manager's site induction process.

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- (b) The Trade Contractor shall ensure that prior to commencing work at the Site the Trade Contractor's employees, Subcontractors, consultants and any of their employees commencing work related to this Trade Contract:
  - (i) have completed the Trade Contractor's toolbox meeting which complies with the Legislative and Industrial Requirements; and
  - (ii) have read and understood the Site Safety Plan, Safe Work Method Statements and Job Safety Analysis worksheets and
  - (iii) completed the Construction Manager's site induction.
- (g) The Trade Contractor shall immediately provide completed and signed induction forms to the Construction Manager.
- (h) The Trade Contractor shall immediately advise the Construction Manager if it believes that any of the matters set out in this clause 17.5 has not been completed.
- (i) Failure by the Trade Contractor to ensure completion of the induction process in accordance with this clause 17.5 may result in the removal of persons from the site by the Construction Manager at the Trade Contractor's expense.
- (j) The cost of providing the Construction Manager's site induction, the Trade Contractor's toolbox meeting and any Trade Contractor site induction, along with each employee attending the Construction Manager's site induction and any safety meetings (including wages relating to such attendance), shall be borne by the Trade Contractor.

**17.6 Meetings**

- (a) The Trade Contractor shall conduct weekly tool box meetings with relevant people including the Trade Contractor's employees, Subcontractors, consultants and any of their employees and shall provide copies of the minutes of those meetings to the Construction Manager.
- (b) The Trade Contractor shall, as requested by the Construction Manager from time to time, attend meetings for the purpose of discussing occupational health and safety issues, including any environmental management issues, arising in relation to the Project.
- (c) The Trade Contractor shall advise the Construction Manager of, and the Construction Manager may attend, any meetings between the Trade Contractor and other parties where such meetings relate to occupational health and safety or environmental issues arising in relation to the Project.

**17.7 Trade Contractor Reporting Obligations**

- (a) The Trade Contractor shall:
  - (i) inform the Construction Manager immediately upon becoming aware of entry to the Site of any person under or in purported reliance on Part 8 of the *Occupational Health and Safety Act 2004 (Vic)*. The Trade Contractor shall accompany such person for the duration of the entry to the Site and ensure compliance with the provisions of the said Part 8 and any additional requirements imposed by the Legislative and Industrial Requirements. The Trade Contractor shall upon and in accordance with any request by the Construction Manager provide a written report to the Construction Manager in respect of the entry to the Site; and
  - (ii) promptly notify the Construction Manager of any incident, accident, injury, property or environmental damage which occurs during the carrying out of and associated with the provision of any part of the Trade Contract Works. The Trade Contractor shall, within two days of any such incident, provide a written report to the Construction Manager giving complete details of the event, including the results of investigations into its cause and any recommendations or strategies for prevention of a recurrence; and
  - (iii) immediately advise the Construction Manager in writing of any act, fact or circumstance associated with the activities of the Trade Contractor or any other person relevant to the ability of the Trade Contractor to provide any part of the Trade Contract Works in a manner that is safe and without risks to health; and
  - (iv) maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Construction Manager may reasonably require.

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**17.8 Trade Contractor Provision of Information**

- (a) The Trade Contractor shall, prior to the commencement of the Trade Contract Works, prepare and make available to the Construction Manager the following material which complies with the Legislative and Industrial Requirements:
  - (i) an occupational health and safety system manual; and
  - (ii) a project specific occupational health and safety management plan which satisfactorily addresses issues including, but not limited to, safety policies, safe work method plans or statements, job safety analyses, site procedures, safety auditing, inductions, tool box meetings, rehabilitation; and
  - (iii) a project specific traffic management plan, if applicable, which makes allowance for the requirements of the Construction Manager including the provision of qualified staff and materials for directing traffic and pedestrians; and
  - (iv) an assessment and identification of the risks associated with the Trade Contract Works and details of the risk assessment(s) and of appropriate risk control measures to control all such risks.
- (b) The Trade Contractor shall, during the course of the Trade Contract Works, prepare and make available to the Construction Manager:
  - (i) its safe work method statement(s) in conjunction with job safety analysis worksheets detailing the tasks to be completed by the Trade Contractor in the performance of the Trade Contract Works and assessing the potential hazards associated with those tasks and detailing how those hazards will be eliminated or controlled; and
  - (ii) a skills and competencies assessment register confirming that the Trade Contractor’s employees and Subcontractors employees have undertaken a risk management review in accordance with the Legislative and Industrial Requirements and are trained to a level of competency sufficient to ensure health and safety while on the Site; and
  - (iii) an electrical equipment register listing all electrical equipment the Trade Contractor intends to bring on to the Site and utilise in the performance of the Trade Contract Works and recording all testing and maintenance of that equipment; and
  - (iv) a plant and machinery register specifying the equipment and appliances to be used by the Trade Contractor in the performance of the Trade Contract Works, including a risk assessment in relation to the use of such equipment and appliances and records of all testing and maintenance of that equipment; and
  - (v) a hazardous substances register, including material safety data sheets outlining all hazardous substances to be used by the Trade Contractor on the Site; and
  - (vi) an induction register together with copies of all signed induction forms completed by the Trade Contractor’s employees, Subcontractors and consultants.

**17.9 Termination for Health and Safety Breach**

- (a) The Trade Contractor shall, to the extent permitted by law, indemnify the Construction Manager against any costs, loss, liability or expense which the Construction Manager may suffer, incur or be liable for arising out of or as a result of non-compliance or breach by the Trade Contractor or any Subcontractor engaged by it or any other person engaged in the performance of any part of the Trade Contract Works of any requirement of this clause 17.0. That indemnity shall extend to any costs incurred by the Construction Manager in taking steps to ensure compliance by it or the Trade Contractor or any Subcontractor or any other person engaged in the performance of any part of the Trade Contract Works with the Legislative and Industrial Requirements, where such or equivalent steps should have been taken by the Trade Contractor in compliance with this clause 17.0.
- (b) Any breach by the Trade Contractor of any part of this clause 17.0 shall be considered a substantial breach by the Trade Contractor of its obligations under this Trade Contract.

**18.0 ENVIRONMENTAL PROTECTION**

**18.1 Environmental Management**

The Trade Contractor warrants that:

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- (a) its employees and Subcontractors are properly trained and will be adequately instructed by it in relation to complying with all relevant environmental procedures associated with the performance of the Trade Contract Works; and
- (b) it will ensure compliance with all relevant environmental laws, regulations, guidelines and directions in connection with the performance of the Trade Contract Works and that it takes the time and cost associated with such matters.

The Trade Contractor shall, prior to the commencement of the Trade Contract Works, prepare and make available upon request to the Construction Manager its environmental management plan.

**18.2 Pollution**

The Trade Contractor must ensure that its employees and Subcontractors:

- (a) do not Pollute, Contaminate or otherwise damage the Site or the environment; and
- (b) ensure any Hazardous Substance or Industrial Waste required for or produced by the Trade Contract Works is handled safely and in order to avoid injury or damage to any person or property or the environment generally;
- (c) do not allow any Hazardous Substance or Industrial Waste to be abandoned or left on, or to be discharged from the Site;
- (d) make good any Pollution, Contamination, or damage to the Site or the environment caused by the performance of the Trade Contract Works; and
- (e) comply with the Construction Manager’s directions in respect to the discharge into the Site or the atmosphere of smoke, dust, or other Contaminants or the creation of undue noise.

**18.3 Reporting Obligations**

- (a) The Trade Contractor acknowledges that the Construction Manager may be required under the *National Greenhouse and Energy Reporting Act 2007* (Cth) (**NGER Act**) to report on greenhouse gas emissions, energy production and energy usage arising out of all activities performed by the Trade Contractor which form part of the Trade Contract Works.
- (b) If requested by the Construction Manager to do so, the Trade Contractor must at its own cost provide on a monthly basis and at such other times reasonably requested by the Construction Manager, a statement in a form acceptable to the Construction Manager, setting out all information required under the NGER Act and any similar statutory requirements in respect of the Trade Contractor’s greenhouse gas emissions, energy production and energy usage arising out of or in connection with the Trade Contractor’s performance of the work under the Trade Contract (**Trade Contractor Energy Consumption Monthly Progress Report**).
- (c) The Trade Contractor must not do anything that will put the Construction Manager or the Principal in breach of its obligations under environmental statutory requirements, including meeting any reporting obligations.
- (d) The Trade Contractor must make and keep and ensure all Subcontractors make and keep accurate records relating to the information provided in the Trade Contractor Energy Consumption Monthly Progress Report. The Trade Contractor must make those records available to the Construction Manager and the Principal upon reasonable notice to inspect, audit and copy and must retain those records for a period of seven years from the end of the year in which the relevant activities took place.
- (e) The Trade Contractor has no entitlement to make any Claim against the Principal arising out of or connected with an Australian emissions trading scheme (as contemplated by the draft *Carbon Pollution Reduction Scheme Bill* (2009)) or any similar scheme introduced after the execution of the Trade Contract.

**19.0 CONSTRUCTION MANAGER’S DIRECTIONS**

**19.1 General**

- (a) The Principal has authorised the Construction Manager to give written directions regarding the Trade Contract Works with which the Trade Contractor will comply.
- (b) The Construction Manager may issue verbal directions which he may confirm in writing within seven days of the date of the giving of verbal directions.
- (c) The Principal will accept no responsibility and make no payment for work executed or materials delivered as a result of directions from any person or organisation whatsoever, other than the Construction Manager.

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- (d) Where the Construction Manager gives a direction under this Trade Contract, the Construction Manager may, as part of the direction or subsequent to the direction, prescribe a time within which the direction must be complied with. The Trade Contractor must comply with the direction within the prescribed time.
- (e) If the Trade Contractor does not comply with any direction of the Construction Manager the Principal and/or the Construction Manager may, in addition to any other right which it may have, engage others to effect compliance with the direction. Any cost, loss or damage suffered or incurred by the Principal and/or the Construction Manager in relation to this shall be a debt due by the Trade Contractor to the Principal.

**19.2 Notice by Trade Contractor as to Time and Cost Implications**

Upon the giving of a direction by the Construction Manager to the Trade Contractor (including a direction under clause 34.0), the Trade Contractor must, prior to complying with the direction and within the time stated by the Construction Manager or if no time is stated within two Business Days of the giving of the direction, notify the Construction Manager in writing as to whether compliance with the direction will involve a Claim by the Trade Contractor.

**19.3 Basis of Claim**

Any notice given by the Trade Contractor pursuant to clause 19.2 must state the basis upon which any such Claim will be made including (where applicable) the particular Trade Contract clause (if any) upon which the Claim is made. The Trade Contractor must also state the anticipated amount of any Claim for additional money and the anticipated time by which an extension of time to the Date for Substantial Completion will be sought. If the Construction Manager is of the view that the information provided by the Trade Contractor is not adequate to enable the Construction Manager to properly understand the basis or extent of the Trade Contractor's foreshadowed Claim the Construction Manager may direct the Trade Contractor to provide further information. Any such direction by the Construction Manager will be treated as if it were a direction under clause 19.1.

**19.4 Failure of Trade Contractor to Give Notice**

If the Trade Contractor does not comply with Causes 19.2 and 19.3 it will not be entitled to make any Claim against the Construction Manager or the Principal resulting from or in connection with the direction.

**19.5 Response to Trade Contractor's Notice**

The Construction Manager may rescind directions previously given by the Construction Manager or the Principal within five Business Days after receipt from the Trade Contractor of a notice given pursuant to Causes 19.2 and 19.3 in which case the Trade Contractor waives the right to make any Claim against the Construction Manager. The Construction Manager is not taken to have accepted that the Trade Contractor has any Claim or entitlement in respect of the direction notwithstanding that the Construction Manager does not rescind any direction and the Trade Contractor's entitlement, if any, will be determined in accordance with this Trade Contract.

**20.0 OTHER CONTRACTORS**

The Trade Contractor acknowledges and accepts that Other Contractors will be carrying out work on the Site of the Trade Contract Works (but the execution of which is not included in this Trade Contract) concurrently with the execution of the Trade Contract Works by the Trade Contractor.

The Trade Contractor will co-ordinate its operations with Other Contractors and will co-operate with Other Contractors for co-ordination of their work with the Trade Contract Works as a whole and use its best endeavours to facilitate the execution of work by such Other Contractors. The Trade Contractor will keep itself informed of the progress and the detailed work of such Other Contractors and notify the Construction Manager immediately of lack of progress or defective workmanship on the part of Other Contractors affecting the Trade Contract Works.

The Trade Contractor is not entitled to any Claim in connection with its compliance with its obligations under this clause 20.0.

If, through the negligent act, omission or default on the part of the Trade Contractor, any Other Contractors suffers loss or damage, the Trade Contractor will settle any compensation Claim with the Other Contractors by agreement if the Other Contractors will agree. The Trade Contractor indemnifies the Construction Manager against any Claims made by Other Contractors against the Principal on account of any damage or delay caused by the Trade Contractor. In such circumstances the Principal may recover the sum for which it is liable from the Trade Contractor and deduct the amount from any moneys due or becoming due to the Trade Contractor.

**INITIAL**

Construction Manager	Trade Contractor

## 21.0 SETTING OUT THE TRADE CONTRACT WORKS

- (a) The Construction Manager (unless Schedule 1 otherwise specifies) will be responsible for providing to the Trade Contractor all basic datums, survey marks, grids and other relevant information as described in Schedule 1.
- (b) The Trade Contractor will be responsible for setting out the Trade Contract Works in accordance with the information provided by the *Construction Manager*.
- (c) If the Trade Contractor discovers an error in the position, level, dimensions or alignment of any Trade Contract Work, the Trade Contractor must immediately notify the Construction Manager and, unless the Construction Manager otherwise directs, the Trade Contractor must rectify the error. If the error has been caused by incorrect basic datums, survey marks, grids or data supplied by the Construction Manager, the cost incurred by the Trade Contractor in rectifying the error shall be valued under clause 34.4.

## 22.0 THE BASE WORKS

### 22.1 Inspection of Base Works

The Trade Contractor must inspect the Base Works before commencing any part of the Trade Contract Works which may be affected by the Base Works.

### 22.2 Defects in Base Works

If the Trade Contractor becomes aware or should have become aware of any condition in the Base Works, or any inadequacy in or omission from the Base Works, which may affect the Trade Contract Works or the Trade Contractor's ability to carry out the Trade Contract Works in compliance with the Trade Contract, the Trade Contractor must, before proceeding with the Trade Contract Works, advise the Construction Manager, in writing, of the condition, inadequacy or omission. The Construction Manager may, upon receipt of advice from the Trade Contractor, give a direction to the Trade Contractor as to the carrying out of the Trade Contract Works, the timing of the Trade Contract Works or a Variation to the Trade Contract Works. The Trade Contractor must comply with any such direction.

### 22.3 Responsibility for Base Works

If the Trade Contractor does not advise the Construction Manager in accordance with clause 22.2

- (a) the Trade Contractor warrants that:
  - (i) the Base Works are suitable for the Trade Contractor to proceed with the Trade Contract Works; and
  - (ii) the Trade Contract Works or the Trade Contractor's ability to proceed with the Trade Contract Works will not be adversely affected by the Base Works; and
- (b) the Trade Contractor indemnifies the Principal and the Construction Manager in respect of any condition in the Base Works, or any inadequacy in or omission from the Base Works, which affects the Trade Contract Works or the Trade Contractor's ability to carry out the Trade Contract Works in compliance with this Trade Contract.

## 23.0 THE TRADE CONTRACT WORKS

### 23.1 Quality

The Trade Contractor must use materials and standards of workmanship required by this Trade Contract. In the absence of any requirement to the contrary, the Trade Contractor shall use suitable new materials and proper and tradesmanlike workmanship.

### 23.2 Quality Management

The Trade Contract must:

- (a) plan, establish and maintain a quality management system as described in Schedule 1, or if no such system is described a quality management system which complies with AS/NZS ISO 9001;
- (b) use such quality management system in relation to the carrying out of the Trade Contract Works; and

**INITIAL**

Construction Manager	Trade Contractor

- (c) provide the Construction Manager with access to the quality system of the Trade Contractor and subcontractors so as to enable monitoring and quality auditing.

Any quality management system shall be used only as an aid to achieving compliance with the Trade Contract and to document such compliance. Such system shall not relieve the Trade Contractor of the responsibility to comply with this Trade Contract.

**23.3 Quality Assurance Plan**

Prior to commencing the Trade Contract Works, the Trade Contractor shall provide for the approval of the Construction Manager a project specific quality assurance plan which details all quality assurance procedures to be followed for the Trade Contract Works to be specific to the Trade Contract Works and include:

- (a) an organisational chart with a description of the quality assurance responsibilities and authorities for each person;
- (b) documentation control procedures;
- (c) a flow chart detailing the stages of the Trade Contract Works and the major milestones for quality assurance with a summary of the procedures to be followed;
- (d) a time and responsibility schedule for the preparation of inspection and test plans;
- (e) procedures to apply to quality assurance of purchased and/or subcontracted parts of the Trade Contract Works;
- (f) quality audit procedures to apply to the Trade Contract Works;
- (g) corrective actions procedures; and
- (h) all general requirements described in the documents comprising the Trade Contract.

If the Construction Manager advises the Trade Contractor in writing of any deficiency in the quality plan, the Trade Contractor must promptly correct the deficiency at no cost to the Construction Manager.

Once approved, the quality plan shall not be changed without the approval of the Construction Manager.

**23.4 Quality Reports**

Quality reports shall be provided in writing by the Trade Contractor to the Construction Manager monthly as follows:

- (a) the quality assurance status of the Trade Contract Works (in reference to the Trade Contractor's quality plan);
- (b) a description of any problems or defective work and the corrective action being undertaken;
- (c) a list of all shop drawings approved by the design consultants and/or the Construction Manager during the period covered by the report and the name of the design consultant or firm who or which approved the shop drawing;
- (d) a list of all samples approved by the design consultants during the period covered by the report; and
- (e) subject to the Construction Manager approving otherwise, a certificate or statement signed by each design consultant confirming that:
  - (i) as far as the consultant is aware construction of the Trade Contract Works accords in all material respects with the design or detailing; and
  - (ii) any material non-conformance of construction of which the consultant is aware as at the end of the period covered by the report and which has arisen or occurred since the last certificate or statement was signed by the relevant design consultant.

**23.5 Defective Material or Work**

If the Construction Manager discovers a Defect or becomes aware of work done (included material provided) by the Trade Contractor which does not comply with the Trade Contract, the Construction Manager may direct the Trade Contractor:

- (a) to remove the material from the Site;
- (b) to demolish the work;
- (c) to redesign, reconstruct, replace or correct the material or work; and/or
- (d) not to deliver the material or work to the Site.

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Construction Manager	Trade Contractor

The Construction Manager may direct the times within which the Trade Contractor must commence and complete the removal, demolition, redesign, reconstruction, replacement, correction, or compliance referred to in this clause 23.5. The Trade Contractor is not entitled to make any Claim against the Construction Manager or the Principal as a result of or in connection with the direction given by the Construction Manager under this clause 23.5.

If the Trade Contractor fails to comply with a direction issued by the Construction Manager pursuant to this clause 23.5 within the time specified, the Construction Manager or the Principal may have that work the subject of the direction carried out by other persons and any cost, loss or damage suffered or incurred by the Construction Manager or the Principal in connection with such failure to comply and effecting of work by others shall be a debt due from the Trade Contractor to the Construction Manager or the Principal (as applicable).

**23.6 Variations due to Defective Material or Work**

Instead of a direction pursuant to clause 23.5, the Construction Manager may notify the Trade Contractor that the Principal has elected to accept the Defect. In such a case the likely cost of remedying the Defect (or, at the election of the Principal, the compensation due to the Principal for the Defect) as determined by the Construction Manager may be deducted from the Trade Contract Sum.

The Trade Contractor's obligations and liabilities under the Trade Contract or at law continue to apply in respect of the Trade Contract, any Defect and any work performed in connection with any Defect (whether by the Trade Contractor, the Principal or any third party engaged by the Principal) notwithstanding any direction or notification by the Construction Manager under clause 23.5 or this clause 23.6.

**23.7 Liens and Charges**

The Trade Contractor warrants and must ensure that all equipment and materials supplied by it under the Trade Contract are free of all Claims and encumbrances whatsoever. The Trade Contractor shall indemnify the Principal and hold the Principal free and harmless against any and all Claims by persons furnishing labour, equipment and materials in connection with the performance of the Trade Contract Works.

**24.0 EXAMINATION AND TESTING**

**24.1 Ordering of Tests**

At any time before the expiry of the Defects Liability Period the Construction Manager may direct that any material or Trade Contract Works be tested. The Trade Contractor shall provide such assistance and samples and make accessible such parts of the Trade Contract Works as may be required by the Construction Manager. On completion of the tests, the Trade Contractor shall promptly make good the work tested so that it fully complies with this Trade Contract.

**24.2 Covering Up of Work**

The Construction Manager may direct that any part of the Trade Contract Works shall not be covered up or made inaccessible without the Construction Manager's prior approval.

**24.3 Conduct of Tests**

The tests shall be conducted as provided in this Trade Contract or by the Construction Manager or a person (which may include the Trade Contractor) nominated by the Construction Manager. Results of tests shall be promptly made available by each party to the other and to the Construction Manager.

**24.4 Costs of Tests**

Costs of and incidental to testing shall be borne by the Trade Contractor or paid by the Trade Contractor to the Principal unless this Trade Contract provides that the Principal shall bear the costs.

**24.5 Trade Contractor Remains Responsible**

The Trade Contractor remains responsible for quality of the work carried out under this Trade Contract even though the Construction Manager may have had work tested or otherwise indicated that work is in accordance with this Trade Contract or otherwise acceptable.

**INITIAL**

Construction Manager	Trade Contractor

## 24.6 Opening Up and Inspection

If the Construction Manager believes during the execution of the Trade Contract Works that any materials or work do not comply with the requirements of this Trade Contract, it may direct the removal and replacement where incorporated in the structure and have it opened up for inspection and/or tested at its absolute discretion and:

- (a) where it is found that there was compliance with the terms of the Trade Contract, all such costs of complying with the Construction Manager's direction will be met by the Principal; and.
- (b) where it is found that there was not compliance with the terms of the Trade Contract, the costs of complying with the Construction Manager's direction will be met by the Trade Contractor.

## 25.0 PLANT AND FACILITIES

### 25.1 Provision of Construction Plant

The Trade Contractor must supply all Construction Plant and facilities necessary for the performance of the Trade Contract Works by the Trade Contractor, its employees or any Subcontractor or other person performing any part of the Trade Contract Works, in accordance with the Trade Contract in a manner that is safe and without risks to health. The Trade Contractor must ensure that all Construction Plant supplied by it is maintained in a condition that is safe and without risks to any person.

### 25.2 Removal of Construction Plant

The Construction Manager may, by written notice to the Trade Contractor, direct the Trade Contractor not to remove from the Site items of Construction Plant specified in the notice. Thereafter, the Trade Contractor must not remove the item of Construction Plant specified in the notice without the prior written approval of the Construction Manager.

### 25.3 Construction Plant Owned by Others

The Trade Contractor shall, upon request by the Construction Manager, notify the Construction Manager in writing of the name and address of the owner or holder of a security interest in any Construction Plant. The Construction Manager may, in order to avoid seizure by the owner or holder of a security interest in any Construction Plant, pay to the owner or such holder the amount of any overdue instalment or other sums payable by the Trade Contractor in respect of such Construction Plant. In the event of the Construction Manager making a payment under this clause the Construction Manager may recover the amount as a debt due from the Trade Contractor.

### 25.4 Scaffolding, Plant and Equipment and Attendance

- (a) If the Trade Contractor or its employees or any other person engaged in the performance of any part of the Trade Contract Works use any hoisting, scaffolding or other plant and equipment provided by the Principal not expressly for the purposes of this Trade Contract, then the use will be on the express condition that no warranty or other liability on the part of the Principal will be created or implied as to the fitness, condition or suitability of the hoisting, scaffolding or other plant and equipment. The Trade Contractor indemnifies the Principal and the Construction Manager against any loss or damage incurred arising out of the use by the Trade Contractor or its employees or such other person.
- (b) Where the Principal or Construction Manager supplies or erects any hoisting, scaffolding or other plant and equipment as detailed in Schedule 1, it will comply with Legislative and Industrial Requirements, including any relevant industry standards, dealing with hoisting, scaffolding or other plant and equipment generally and specifically for the purpose intended.
- (c) By arrangement with the Construction Manager, the Trade Contractor will be permitted, for the execution of the Trade Contract Works, sufficient use of single phase electricity, toilet (if any) and telephone facilities (if any) as exist in position for use on the Project as detailed in Schedule 1.
- (d) The cost of all services and facilities referred to in paragraph (a) and (c), supplied by the Principal or the Construction Manager and used by the Trade Contractor, will be chargeable to the Trade Contractor unless the costs are specifically agreed to be borne by the Principal in Schedule 1 and those costs may be deducted from any moneys due or becoming due to the Trade Contractor.
- (e) The Trade Contractor will keep the services and facilities referred to in paragraph (a) and (c) clean and in good order and condition, other than normal wear and tear.

**INITIAL**

Construction Manager	Trade Contractor

## 26.0 WORKING HOURS

- (a) The Trade Contractor will execute the Trade Contract Works according to the working week programme applicable for the Trade Contract Works including Saturdays as normal working days. No part of the Trade Contract Works will be executed outside normal working hours other than with the approval of the Construction Manager, which approval will not be unreasonably withheld, in which case the Trade Contractor may be required at the Construction Manager's discretion to meet the costs of supervision, preliminaries and overhead by the Construction Manager.
- (b) If the Trade Contractor is not maintaining the rate of progress in accordance with the current Trade Contract Programme approved by the Construction Manager, the Construction Manager may instruct the Trade Contractor to work overtime to remedy the position. The Principal and the Construction Manager will not be liable for any payments in excess of the Trade Contract Sum, or any costs or expenses arising from those instructions, including cost for supervision, preliminaries and overhead.

## 27.0 CLEANING UP

### 27.1 Site Cleaning

The Trade Contractor shall keep the Site and the Trade Contractor Works clean and tidy. The Trade Contractor shall regularly remove rubbish and surplus material. The Trade Contractor shall ensure that the Site and means of access to and egress from the Site are at all times safe and without risks to health.

At Substantial Completion of the Trade Contract Works, the Trade Contractor will at its own cost and to the satisfaction of the Construction Manager, thoroughly clean up and clear away from the Site all debris, building refuse, plant and equipment and leave in a condition suitable for handing over to the Principal or as required by following trades.

Should the Trade Contractor fail to comply with this clause and the failure continues after reasonable written notice from the Construction Manager requiring compliance, the Construction Manager may carry out the necessary work and any costs incurred will be a debt to the Principal from the Trade Contractor.

## 28.0 PROGRAMMING

### 28.1 General

The Construction Programme is set out at Schedule 6. The Construction Manager may, from time to time, issue to the Trade Contractor a revised Construction Programme.

### 28.2 Provision of Trade Contract Programme

The Trade Contractor will from time to time and within seven days of a written request supply a detailed Trade Contract Programme in a form required by the Construction Manager showing the various elements of the work in sequence and the time required for each element necessary to bring the Trade Contract Works to a stage of Substantial Completion by the Date for Substantial Completion.

A Trade Contract Programme must not replace the Construction Programme without the Construction Manager's prior written approval.

### 28.3 Obligations Unaffected

The submission by the Trade Contractor of a Trade Contract Programme, the acceptance of or acquiescence in the Trade Contract Programme by the Construction Manager, a direction by the Construction Manager in relation to the Trade Contract Programme or the issue by the Construction Manager of a revised Construction Programme:

- (a) does not constitute the provision of any notice or Claim under any provision of this Trade Contract;
- (b) does not relieve the Trade Contractor of the obligation:
  - (i) to proceed regularly and diligently with the Trade Contract Works; or
  - (ii) to bring the Trade Contract Works to Substantial Completion by the Date for Substantial Completion; and
- (c) does not constitute an extension of time to the Date for Substantial Completion or any other basis of or entitlement to make a Claim by the Trade Contractor.

INITIAL

Construction Manager	Trade Contractor

#### 28.4 Compliance with Programme

The Trade Contractor shall not, without reasonable cause, depart from a Construction Programme or a programme submitted in accordance with this clause 28.0.

#### 28.5 Separable Portions

The Construction Manager may determine that parts of the Trade Contract Works comprise Separable Portions. Upon making that determination the Construction Manager must acting reasonably determine the Date for Substantial Completion of any such Separable Portion, notify the Trade Contractor of the extent of any such Separable Portions and their respective Dates for Substantial Completion and the liquidated damages payable in respect of each Separable Portion (by reference to the value of the works comprised in the Separable Portions as a percentage of the original Trade Contract Sum). clauses 10.0, 24.0, 29.0, 30.0, 31.0, 32.0 and 0 apply to each Separable Portion and a reference to the Trade Contract Works and Substantial Completion in those clauses shall be read as the Trade Contract Works and Substantial Completion relevant to that Separable Portion.

### 29.0 DELAYS AND EXTENSION OF TIME

#### 29.1 Notice of Delays

Where the Trade Contractor considers that a delay in the progress of the Trade Contract Works is likely to occur or has occurred, it must give notice to the Construction Manager as soon as practicable, and in any event, within 48 hours of the commencement of the event which may or has given rise to the delay, and include in that notice the nature, cause and likely extent of the delay.

#### 29.2 Extension of Time

- (a) If the Trade Contractor is delayed in progressing the Trade Contract Works such that the Trade Contract Works will not reach the stage of Substantial Completion by the Date for Substantial Completion and each of the following is satisfied: the delay is caused by:
  - (i) a Damaging Act of the Construction Manager or the Principal;
  - (ii) any Variation to the Trade Contract Works pursuant to this Trade Contract (other than where the Variation is a result of a direction made at the request of or for the benefit of the Trade Contractor);
- (b) the Trade Contractor has strictly complied with the notification requirements of clause 29.1;
- (c) there is no other bar to claiming or being entitled to an extension of time to the Date for Substantial Completion under the Trade Contract; and
- (d) the delay is on the critical path,
  - then the Trade Contractor shall be entitled to an extension of time as determined by the Construction Manager to the Date for Substantial Completion. For the avoidance of doubt no entitlement arises when one or more of the above requirements is not satisfied including where a notice of delay is given outside the timeframe contemplated in clause 29.1.

On receipt of a Claim for an extension of time made in accordance with clause 29.1, the Construction Manager will within a reasonable time notify the Trade Contractor in writing of its decision which will be final and binding on the parties.

Extensions of time determined under the provisions of this clause 29.0 will release and discharge the Principal and Construction Manager from all Claims of whatever character by the Trade Contractor on account of delay or disruption to the execution or Substantial Completion of the Trade Contract Works and the Trade Contractor will not be entitled to Claim any reimbursement of any loss, expense or damage incurred by it or on a quantum meruit as a result of any delay or disruption in the execution or Substantial Completion of the Trade Contract Works.

#### 29.3 Extension of Time Otherwise

Notwithstanding that the Trade Contractor has not given notice of a Claim for an extension of time for Substantial Completion under clause 29.1 or is not entitled to an extension of time, the Construction Manager may, from time to time and at any time, by notice in writing addressed to the Trade Contractor, extend the Date for Substantial Completion for any reason in its absolute discretion and solely for the benefit of the Principal and the Construction Manager.

**INITIAL**

Construction Manager	Trade Contractor

**29.4 Time Not Set at Large**

A delay or failure by the Construction Manager to grant a reasonable, or any, extension of time shall not cause the Date for Substantial Completion to be set at large.

**29.5 Concurrent Delays**

Where more than one event causes concurrent delays and at least one of those events is not a delay referred to in clause 29.2(a), then to the extent that the delays are concurrent, the Trade Contractor shall not be entitled to an extension of time to the Date for Substantial Completion.

**29.6 Additional Resources**

The Trade Contractor must, at its own cost, take all steps to minimise the effect of any delay including reallocation of resources, reprogramming and the commitment of additional resources.

**29.7 Extension of Time Sole Remedy**

The right of the Trade Contractor to make a Claim for an extension of time pursuant to this clause 29.0 is the Trade Contractor's sole remedy in respect of any delay or disruption under or in connection with the Trade Contract. The Trade Contractor is not entitled to any increase or adjustment to the Trade Contract Sum or any other monetary compensation or damages (including damages for Breach of Obligation) as a result of any such delay.

**29.8 Determination of this Trade Contract in the Event of Delay**

If the Trade Contract Works are delayed or suspended for any reason for a period of not less than two continuous calendar months, the Construction Manager by written notice to the Trade Contractor may at the Principal's option forthwith determine this Trade Contract subject to the Trade Contractor's entitlement to claim for costs and expenses not already paid for work done to the date of determination plus a reasonable allowance for the cost of demobilisation and vacation of the Site.

**30.0 LIQUIDATED AND ASCERTAINED DAMAGES**

**30.1 Liability**

If the Trade Contractor fails to reach Substantial Completion by the Date for Substantial Completion:

- (a) the Trade Contractor indemnifies the Principal and the Construction Manager in respect of any Claim, demand or suit brought against the Principal or the Construction Manager where that Claim arises out of or in connection with the Trade Contractor's failure; and
- (b) the Trade Contractor shall be indebted to the Principal for liquidated damages (in respect of matters other than those referred to in paragraph (a) of this clause at the rate set out in Schedule 1 for each calendar day or part of a calendar day during which the Trade Contract Works have not reached Substantial Completion after the Date for Substantial Completion, or as extended pursuant to clause 29.0, liquidated and ascertained damages calculated at the rate set out in Schedule 1.

**30.2 Interim Deduction**

The Principal may at any time deduct from moneys otherwise due to the Trade Contractor and/or have recourse to the security or retention moneys for the amount in respect of which the Trade Contractor is or may be indebted to the Principal pursuant to clause 30.1(b) and the amount being the Principal's or the Construction Manager's estimate of the Trade Contractor's liability to the Principal that might accrue under clause 30.1(a).

**30.3 Refund of Excessive Deduction**

If the Date for Substantial Completion is extended after the Trade Contractor has paid or the Principal has deducted liquidated damages or money on account of a liability pursuant to clause 30.1(a) or 30.1(b) the Principal shall, at the time of the next progress payment, repay to the Trade Contractor any liquidated damages paid or deducted or any money held in respect of the period of extension to the Date for Substantial Completion.

**INITIAL**

Construction Manager	Trade Contractor

### 31.0 SUBSTANTIAL COMPLETION OF THE TRADE CONTRACT WORKS

#### 31.1 The Trade Contractor's Obligations

The Trade Contractor will:

- (a) avoid delay in progress of the Trade Contract Works;
- (b) bring the Trade Contract Works or any relevant stage to Substantial Completion by the Date for Substantial Completion;
- (c) ensure it has ready access to the supply of all materials, labour, plant equipment as required for execution and completion of the Trade Contract Works by the Date for Substantial Completion;
- (d) comply with its obligations relating to industrial matters including complying with Legislative and Industrial Requirements and avoid strikes or stoppages having a delaying effect on the progress of the Trade Contract Works; and
- (e) do all that may reasonably be required by the Construction Manager to expedite the execution of the Trade Contract Works so as to bring the Trade Contract Works or any relevant stage to Substantial Completion by the Date for Substantial Completion.

#### 31.2 Notice that the Trade Contract Works will and have Reached Substantial Completion

When the Trade Contractor is of the opinion that the Trade Contract Works will within five Business Days reach Substantial Completion, the Trade Contractor must notify the Construction Manager, specifying the date on which, in the Trade Contractor's opinion, the Trade Contract Works will reach Substantial Completion.

The Trade Contractor must give a further notice to the Construction Manager specifying the date when it is of the opinion that the Trade Contract Works have reached Substantial Completion.

#### 31.3 Construction Manager's Response

Within ten Business Days of receipt from the Trade Contractor of a notice from the Trade Contractor that the Trade Contractor is of the opinion that the Trade Contract Works have reached Substantial Completion, the Construction Manager must:

- (a) issue a certificate of Substantial Completion to the Trade Contractor;
- (b) issue a notice to the Trade Contractor identifying those items which must be attended to prior to the Trade Contract Works being considered to have reached Substantial Completion; or
- (c) issue a notice to the Trade Contractor stating that the Works have not reached Substantial Completion and are so far from Substantial Completion that the Construction Manager has declined to issue a notice under clause 31.3(b).

If the Construction Manager issues a notice under clause 31.3(b), the Trade Contractor must, as soon as practicable, attend to the matters listed in that notice. Upon the Trade Contractor having attended to the matters listed in the notice, the Trade Contractor must give a further notice to the Construction Manager pursuant to clause 31.2 advising of its opinion that the Trade Contract Works have reached Substantial Completion. This clause 31 will continue to apply until the Construction Manager issues a certificate of Substantial Completion.

If the Construction Manager issues, or is deemed to have issued, a notice under clause 31.3(c), the Trade Contractor must continue to progress the Trade Contract Works in accordance with this Trade Contract.

#### 31.4 Effect of Certificate

A certificate of Substantial Completion is not evidence that the Trade Contract Works have been executed in accordance with this Trade Contract.

#### 31.5 Failure to Issue

If no certificate or notice is issued by the Construction Manager pursuant to clause 31.3 within ten Business Days of receipt of a notice from the Trade Contractor pursuant to clause 31.2 that the Trade Contractor is of the opinion that Substantial Completion has been reached, the Construction Manager shall be deemed to have issued a notice under clause 31.3(c).

**INITIAL**

Construction Manager	Trade Contractor

### 31.6 Handover on Reaching Substantial Completion

The Trade Contractor will, on Substantial Completion, hand over to the Principal, the Trade Contract Works.

### 32.0 DEFECTS LIABILITY PERIOD

#### 32.1 Rectification of Defects Existing at Substantial Completion

As soon as possible after the Date of Substantial Completion, the Trade Contractor shall rectify all Defects existing at the Date of Substantial Completion.

#### 32.2 Rectification of Defects Arising During the Defects Liability Period

During the Defects Liability Period, the Construction Manager may give to the Trade Contractor a written direction to rectify any Defects which appear at any time up to the expiration of the Defects Liability Period, and upon receipt of such direction the Trade Contractor shall rectify those Defects at its own cost.

#### 32.3 Additional Defects Liability Period

The Construction Manager's direction may provide that in respect of the rectification work there shall be a separate Defects Liability Period of a duration stated by the Construction Manager not exceeding the original Defects Liability Period and commencing from the date of rectification of the Defect. This clause shall apply in respect of the rectification work and the Defects Liability Period for that rectification work.

#### 32.4 Rectification of Defects By Others

In the event that Defects or other faults are not made good by the Trade Contractor within twenty four hours (or within such other reasonable period as may be agreed or directed by the Construction Manager) of a written direction by the Construction Manager so to do, then the Construction Manager may remedy or engage another person to remedy the Defects or other faults, at the cost of the Trade Contractor and recover that cost as a debt due from the Trade Contractor, without prejudice to any other rights and remedies the Construction Manager or Principal may have.

#### 32.5 Carrying out of Rectification

The Trade Contractor shall carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of the Works as is reasonably possible.

### 33.0 GUARANTEES AND WARRANTIES

#### 33.1 Trade Contractor's Guarantees and Warrantees

(a) The Trade Contractor must:

- (i) assign the benefit of any guarantee or warranty which the Trade Contractor holds to the Principal or its nominee; or
- (ii) if the benefit of any guarantee or warranty cannot be assigned to the Principal, hold that guarantee or warranty on trust for the Principal or the Principal's nominee.

(b) Where any guarantee or warranty is held on trust by the Trade Contractor, the Trade Contractor must cooperate fully with the Principal in the enforcement of the guarantee or warranty. The Trade Contractor hereby irrevocably appoints the Principal as attorney of the Trade Contractor for the purpose of enforcing the benefit of the guarantee or warranty with full power to act in the name of the Trade Contractor for this purpose.

### 34.0 VARIATIONS

#### 34.1 Variations to the Trade Contract Work

The Construction Manager may at any time and for any reason during the progress of the Trade Contract Works direct a Variation by written notice. The Construction Manager is not obliged to direct the Trade Contractor to carry out a Variation for the convenience or benefit of the Trade Contractor. The Trade Contractor must comply with any written Variation direction, notwithstanding the existence of any dispute or difference arising from the Variation. The

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Trade Contractor shall not vary the Trade Contract Works except as directed by the Construction Manager in accordance with this clause or otherwise expressly provided for in this Trade Contract.

**34.2 No Variations to Invalidate the Trade Contract**

No Variation shall invalidate or vitiate this Trade Contract.

**34.3 Deleted Work**

If, in respect of a Variation directed by the Construction Manager part of the Trade Contract Works is deleted or omitted from the Trade Contract Works, the Construction Manager or Principal may themselves carry out, or engage others to carry out and complete, any such works. The Trade Contractor has no Claim and is not entitled to any compensation as a result of the Construction Manager or the Principal exercising this right.

**34.4 Valuation of and Payment for Variations**

(a) Unless otherwise agreed, all Variations will:

- (i) be valued according to the following provisions of this clause and the valuation will be added to or deducted from the Trade Contract Sum as the case may require; and
- (ii) be submitted in writing by the Trade Contractor to the Construction Manager setting out a reasonable price for each Variation within five days after the Construction Manager's notice under clause 34.1 for evaluation by the Construction Manager prior to execution of the Variation and:
  - (A) if the Variation is of a similar character and executed under similar conditions to work in any schedule of rates relating to this Trade Contract approved by the Construction Manager (whether or not part of the Trade Contract), the Variation will be valued on the basis of those rates; or
  - (B) if the Variation is not of similar character and / or not executed under similar conditions to work in any such schedule of rates, then a fair valuation shall be made by the Construction Manager and, whenever it is reasonable to do so, that valuation shall be based on the unit prices in any such schedule of rates; or
  - (C) in cases where paragraph (A) or (B) cannot reasonably be applied, the price will be supported by evidence of cost for labour, materials, plant and equipment. Where labour is provided it will be at the rates specified in Schedule 1. The Trade Contractor's margin for overhead and profit on materials plant and equipment will be calculated using the percentage specified in Schedule 1;

(b) Unless otherwise instructed by the Construction Manager, before proceeding with a Variation involving an addition to the Trade Contract Sum or work considered by the Trade Contractor to be outside of the scope of this Trade Contract, the Trade Contractor will either agree in writing with the Construction Manager the actual sum or provide a written estimate of the sum to be added to the Trade Contract Sum in accordance with this clause or to be claimed from the Principal and any proposed extension of time determined in accordance with clause 29.0 required for carrying out any Variation or work. If the Trade Contractor fails to do so, the Trade Contractor will not be entitled to any payment in respect of the Variation or work, either under the Trade Contract or otherwise. The Trade Contractor will not be entitled to an extension of time or payment for any Variation or any work of whatever nature where the Trade Contractor has not given the appropriate notice required by this clause. This clause may be relied on by the Principal as an absolute bar at law and in equity to the Trade Contractor's entitlement to make any Claim on the Construction Manager in respect of the Variation of the Trade Contract Work.

(c) In the event that any instruction is given by the Construction Manager which is not in its terms a written Variation, but in the Trade Contractor's opinion compliance with the instruction will involve a Variation or Variations or is work outside of the scope of this Trade Contract, then the Trade Contractor will within five days of receiving that instruction give written notice to the Construction Manager that in the Trade Contractor's opinion compliance with the instruction will constitute a Variation or is work outside of the scope of this Trade Contract. Any failure on the part of the Trade Contractor to comply with the requirements of this clause may be relied on by the Principal as an absolute bar at law and in equity to the Trade Contractor's entitlement to claim that the instruction given by the Construction Manager constitutes a Variation or is work outside the scope of this Trade Contract.

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**35.0 PRIME COST AND PROVISIONAL SUMS**

- (a) Provisional Sums as set out in Schedule 7 shall be included in the Trade Contract Sum including for the purpose of calculating retention moneys but shall not be payable to the Trade Contractor by the Contractor unless as provided for in this clause.
- (b) Where, and only where, at the prior written direction of the Contractor the work or item to which a Provisional Sum relates is performed or supplied by the Trade Contractor (whether personally or via a Subcontractor) then the Trade Contractor shall claim payment in accordance with clause 38.
- (c) Subject to the Contractor’s rights under the Trade Contract and at law generally, and provisions (d) and (e) below, the Trade Contract Sum will be adjusted up or down taking into account the amount reasonably and necessarily expended by the Trade Contractor in performing Provisional Sums (if anything) as determined by the Contractor in its sole discretion as compared to the original allowance for the Provisional Sums in the Trade Contract Sum.
- (d) In the event that the Contractor determines that sum of all amounts reasonably and necessarily expended exceeds the sum of the original Provisional Sum allowances in Schedule 7 by more than 25%, then the Trade Contractor may also claim a fixed and capped percentage for overhead and margin against the excess sum (being the sum beyond 25% above the sum of the original Provisional Sum allowances) at the percentage stated in Schedule 1.
- (e) In the event that the Contractor determines that sum of all amounts reasonably and necessarily expended is below the sum of the original Provisional Sum allowances in Schedule 7 by more than 25%, then the Contractor may also deduct a fixed and capped percentage against the excess sum (being the sum beyond 25% below the sum of the original Provisional Sum allowances) at the percentage stated in Schedule 1.

**36.0 GOODS AND SERVICES TAX**

- (a) In this clause:
  - (i) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended (**GST Act**) or any replacement or other relevant legislation and regulations;
  - (ii) words or expressions used in this clause which have a particular meaning in the **GST Law** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
  - (iii) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;
  - (iv) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and
  - (v) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.
- (b) Unless GST is expressly included, the consideration to be paid or provided under any other clause of this Trade Contract for any supply made under or in connection with this Trade Contract does not include GST.
- (c) To the extent that any supply made under or in connection with this Trade Contract is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is to be paid or provided.
- (d) To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.
- (e) To the extent that any consideration payable to a party under this Trade Contract is determined by reference to a cost incurred by a party, or is determined by reference to a price, value, sales, revenue or similar amount, the GST exclusive amount of that cost, price, value, sales, revenue or similar amount must be used.
- (f) Despite any other clause of this Trade Contract, if the parties agree in Schedule 1 of the Trade Contract then:

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- (i) the party who is the recipient will issue tax invoices in the form of recipient created tax invoices in respect of taxable supplies made to the recipient under this Trade Contract; and
- (ii) the party making the taxable supplies (**Supplier**) will not issue tax invoices in respect of the taxable supplies the Supplier makes to the recipient under this Trade Contract.
- (g) The Supplier acknowledges that it is registered for GST, or will be registered for GST by the date of this Trade Contract and agrees that it will notify the recipient if it ceases to be registered.
- (h) The recipient acknowledges that it is registered for GST, or will be registered for GST by the date of this Trade Contract and agrees that it will notify the Supplier if it ceases to be registered.
- (i) The recipient may issue an adjustment note in relation to GST adjustment events, where appropriate.

**37.0 SECURITY OF PAYMENT ACT**

**37.1 Service of Notices under the Security of Payment Act**

The Trade Contractor must:

- (a) ensure that a copy of any written communication it delivers or arranges to deliver to the Principal of whatever nature in relation to the Security of Payment Act, (including a payment claim under the Security of Payment Act), is provided to the Construction Manager at the same time; and
- (b) if the Trade Contractor becomes aware that a Subcontractor is entitled to suspend work pursuant to the Security of Payment Act the Trade Contractor must promptly and without delay give the Construction Manager a copy of any written communication of whatever nature in relation to the Security of Payment Act (including a payment claim under the Security of Payment Act), which the Trade Contractor receives from a Subcontractor.

For the avoidance of doubt the Construction Manager is authorised on behalf of the Principal to receive Security of Payment Act claims and give or serve Security of Payment Act payment schedules on behalf of the Principal, and act on the Principal's behalf in respect of any adjudication process under the Security of Payment Act.

**37.2 Authorised Nominating Authority**

If the Trade Contractor applies for adjudication (including review adjudication) under the Security of Payment Act the authorised nominating authority for the purpose of the Security of Payment Act in respect of the adjudication is to be one of:

- (a) RICS Dispute Resolution Service, business address c/o- Arrus Knoble, Suite 510, 530 Little Collins Street, Melbourne VIC 3000, postal address PO Box 7815, Waterfront Place, Brisbane QLD 4001, telephone 1300 953 459, fax 1300 953 529;
- (b) Building Adjudication Victoria Inc, business and postal address c/o Romauld Andrew, 205 William Street, Melbourne VIC 3000, telephone 03 9225 7326, fax 03 9670 8916; and
- (c) Rialto Adjudicators Pty Ltd, business and postal address Level 46, 525 Collins Street, Melbourne VIC 3000, telephone 03 9629 6269, fax 03 9629 4775

**37.3 Substantial Breach**

Failure to comply with clause 37.1 shall be a substantial breach of the Trade Contract entitling the Principal, in addition to its rights under clause 43.0, to terminate the Trade Contract on the giving of 21 days written notice to the Trade Contractor. Such a right shall be in addition to any other right the Principal may have.

**37.4 Suspension of Trade Contract Works under the Security of Payment Act**

If the Trade Contractor validly suspends the whole or part of the work under the Trade Contract pursuant to the Security of Payment Act:

- (a) the suspension shall not affect the Date for Substantial Completion but may be a ground for an extension of time under clause 29.0;
- (b) for the avoidance of doubt and notwithstanding any other provision of the Trade Contract to the contrary (if any) the Principal is not liable for any costs, expenses, damages, losses or other liability, including delay or disruption costs suffered by the Trade Contractor as a result of the suspension; and

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- (c) the Construction Manager may terminate the Trade Contract or direct the Trade Contractor to omit the whole or part of the suspended work and the Construction Manager may engage others to carry out the suspended work. If the Trade Contract is terminated in accordance with this clause the parties entitlements are as if the Trade Contract was terminated pursuant to clause 43.4.

**37.5 Subcontractor Suspension**

If the Construction Manager becomes aware that a Subcontractor is entitled to suspend work pursuant to the Security of Payment Act, the Construction Manager may (in its absolute discretion subject only to the approval of the Principal) pay the Subcontractor such money that is or may be owing to the Subcontractor in respect of that work, and any amount paid by the Construction Manager shall be a debt due from the Trade Contractor to the Construction Manager.

**37.6 Indemnity**

The Trade Contractor shall indemnify the Principal and the Construction Manager against all damage, expense (including lawyer's fees and expenses on a solicitor/client basis), loss (including consequential, economic and pure economic loss) or liability of any nature suffered or incurred by the Principal and/or the Construction Manager arising out of:

- (a) a suspension by a Subcontractor of work which forms part of the Trade Contract Works pursuant to the Security of Payment Act; and
- (a) a failure by the Trade Contractor to comply with its obligations under clause 37.1.

**37.7 General Indemnity**

The Trade Contractor indemnifies the Principal and the Construction Manager from and against all loss, expense or damage suffered or incurred by the Principal and/or the Construction Manager (including as a result of a Claim made against the Principal and/or the Construction Manager by a third party), to the extent caused or contributed to by the Trade Contractor failing to comply with any of its obligations under this Trade Contract or any negligent act or omission of the Trade Contractor or any of those for whom it is responsible.

**37.8 Claims under the Security of Payment Act by Trade Contractor**

If the Trade Contractor makes a Progress Claim or a Statement of Completion under clauses 38.0 and 0 and those claims are made pursuant to the Security of Payment Act, then the Trade Contractor will draw the attention of the Construction Manager to that fact by written notice to the Construction Manager at the same time as delivering the claims to the Construction Manager.

**38.0 PAYMENT**

**38.1 Progress Claims**

The Trade Contractor must, on or before the 25th day of each month, deliver a Progress Claim to the Construction Manager as provided for in clause 38.2.

**38.1A Conditions Precedent**

The Trade Contractor's entitlement to deliver a Progress Claim under clause 38 is conditional upon the Trade Contractor having:

- (a) complied with clause 12.1;
- (b) complied with its programming obligations under clause 28;
- (c) complied with clause 39.1; and
- (d) executed the Trade Contract.

**38.2 Progress claim – Requirements**

A Progress Claim must comply with the requirements set out in Schedule 1 and must:

- (a) be addressed to the Principal care of the Construction Manager;

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- (b) be supported by evidence of the amount claimed to be due to the Trade Contractor and such information as the Construction Manager may reasonably require;
- (c) set out the work and the value of work carried out by the Trade Contractor in the performance of the (original) Trade Contract Works to the date of the claim, as well as the Trade Contractor's certification of the percentage of the Trade Contract Works complete as at the date of the claim;
- (d) set out the work and the value of work of any Variation, Prime Cost or Provisional Sum carried out to the date of the claim;
- (e) set out the amounts (including amounts due in respect of a Damaging Act) otherwise due or claimed to be due from:
  - (i) the Principal to the Trade Contractor; and
  - (ii) the Trade Contractor to the Principal,
 including which clause or clauses the Trade Contractor relies upon in support of any entitlement in its favour and a description of the acts, defaults or omissions relied upon;
- (f) set out the amounts previously paid by the Principal to the Trade Contractor in respect of the Trade Contract Works, Variations and Provisional Sums;
- (g) set out the amounts previously claimed under this Trade Contract in respect of the Trade Contract Works, Variations and Provisional Sums;
- (h) set out the retention moneys to be deducted pursuant to this Trade Contract;
- (i) set out the amount which the Trade Contractor asserts is payable to the Trade Contractor in accordance with this Trade Contract;
- (j) be accompanied by a statutory declaration signed by an officer of the Trade Contractor in the form in Schedule 12;
- (k) in respect of off-site or unfixed plant and materials, include the amount claimed (if any) pursuant to clause 38.3, including the security required under that clause;
- (l) be accompanied by all relevant documentation evidencing (to the satisfaction of the Construction Manager) the Trade Contractor's full compliance with all Legislative and Industrial Requirements together with the items and matters referred to in the statutory declaration; and
- (m) comply with any other reasonable requirements notified by the Construction Manager to the Trade Contractor.

**38.3 Off-site or Unfixed materials**

- (a) The Trade Contractor is not entitled to claim or receive payment for off-site or unfixed plant and materials (Materials) until the Materials are incorporated into the Trade Contract Works unless the Trade Contractor establishes, to the satisfaction of the Construction Manager, that the Materials for which payment is claimed:
  - (i) physically exist;
  - (ii) are properly and securely stored and have not been prematurely ordered;
  - (iii) are clearly marked at all times as the property of the Principal;
  - (iv) are free from any charge, licence or encumbrance by or from any third party;
  - (v) full title to the Materials will vest in the Principal on payment to the Trade Contractor of the value of the Materials, despite the fact that the items concerned may still be subject to some further manufacturing or fabrication process; and
  - (vi) all risks insurance cover for the value of the Materials naming the Principal as the owner, has been taken out by the Trade Contractor at the Trade Contractor's cost,
 and the Construction Manager, in its absolute discretion, consents in writing.
- (b) As a condition precedent to the obligation of the Principal to make any payment of any Materials under this clause, the Trade Contractor must provide the Principal with security in the form of an unconditional undertaking from a bank approved by the Construction Manager in favour of the Principal in an amount equal to the total sum claimed or to be claimed by the Trade Contractor under this clause.
- (c) The Principal will release the security referred to in paragraph (b) above within 14 days of:
  - (i) the incorporation into the Trade Contract Works of the Materials; and

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- (ii) provision by the Trade Contractor of a written statement that title in the Materials has passed to the Principal.
- (d) The Trade Contractor acknowledges and agrees that the Trade Contract Sum includes allowance for all purchase, import, storage and transport costs, taxes, duties and charges in connection with Materials and that under no circumstances will the Trade Contract Sum be adjusted due to changes to those costs, taxes, duties and charges for any reason.

**38.4 Effect of Progress Claim**

By making a Progress Claim the Trade Contractor warrants to the Principal (or the Construction Manager on its behalf) that:

- (a) it has completed the work which is the subject of the Progress Claim in accordance with the requirements of the Trade Contract;
- (b) there are no Defects in the work which is the subject of the Progress Claim ;
- (c) it has paid the Trade Contractor's suppliers and subcontractors all moneys in respect of work carried out and Materials supplied in relation to the work which was the subject of the immediately preceding Progress Claim ;
- (d) it has paid the Trade Contractor's employees all moneys in respect of the work which is the subject of the Progress Claim (and all moneys in respect of the work which was the subject of previous Progress Claims);
- (e) the figures appearing in the Progress Claim are accurate;
- (f) the Trade Contractor has complied with all of the obligations imposed on the Trade Contractor by this Trade Contract where those obligations have fallen to be complied with at the time of the making of the Progress Claim ;
- (g) the Trade Contractor is not aware of any Claim against the Principal or Construction Manager which is not identified in the Progress Claim or in a notice previously given to the Construction Manager in accordance with this Trade Contract; and
- (h) all information and documentation provided in and accompanying the Progress Claim is complete and accurate.

**38.5 Validity of Progress Claim**

A document which is relied upon by the Trade Contractor as being a Progress Claim that does not comply with clauses 38.1 and 38.2 or the Trade Contract generally is not a valid Progress Claim and does not give rise to any obligation on the Construction Manager or Principal to take any step or make any payment.

**38.6 Progress claim – Assessment**

- (a) The Construction Manager may, within ten Business Days of receipt of a Progress Claim made under Clause 38.1, issue to the Trade Contractor a payment schedule identifying the Progress Claim to which it relates and the amount of payment which, in the opinion of the Construction Manager, is to be made to the Trade Contractor or is to be made by the Trade Contractor.
- (b) If the amount identified in the payment schedule as payable to the Trade Contractor is less than the amount claimed in the Progress Claim, the Construction Manager must set out the reasons for the difference in the payment schedule.
- (c) If no payment schedule is issued within time then it will be deemed that the Construction Manager has issued a payment schedule identifying that no amount is owing, save that the Construction Manager may issue a revised payment schedule at its absolute discretion at any time prior to the date for delivery of the next Progress Claim.
- (d) The Construction Manager may at its absolute discretion and for its benefit also issue to the Trade Contractor a payment schedule within 10 Business Days of the time for delivery of a Progress Claim as stated in Clause 38.1 notwithstanding that the Trade Contractor has not delivered a valid Progress Claim in accordance with this Trade Contract.

**38.7 Progress claim – Payment**

If the payment schedule identifies an amount payable to the Trade Contractor then unless the recipient-created tax invoice arrangement applies the Trade Contractor must deliver to the Construction Manager a valid tax invoice for the amount assessed in the payment schedule within 15 Business Days following the issue by the Construction Manager of the payment schedule.

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If a payment schedule issued pursuant to Clause 38.6 identifies an amount payable to the Trade Contractor or by the Trade Contractor as the case may be, then, without prejudice to any other right the Construction Manager has or might have pursuant to the Trade Contract or at law and in the case of the payment schedule identifying an amount payable by the Construction Manager to the Trade Contractor and the Trade Contractor having complied with the first paragraph of this Clause 38.7, the party to make payment must pay the amount identified as payable in a payment schedule issued under Clause 38.6 within 25 Business Days following the issue by the Construction Manager of the payment schedule.

**38.8 Consequences of Payment**

Subject to the terms of this Trade Contract, a payment made under this Trade Contract:

- (a) will not prejudice the right of either party to dispute whether the amount so paid is the amount properly due and payable; and
- (b) will not be evidence of the value of work or admission of liability or evidence that work has been executed satisfactorily or in accordance with this Trade Contract but will be a payment on account only.

**39.0 SECURITY / RETENTION MONEYS**

**39.1 Provision of Security/Retention Moneys**

- (a) The Principal (or Construction Manager) may retain money otherwise due to the Trade Contractor in the amount set out in Schedule 1 as security that the Trade Contractor will carry out its obligations under this Trade Contract.
- (b) If the Principal agrees, the Trade Contractor may provide a bank guarantee, or other form of security acceptable to the Principal (**Bank Guarantee**), equivalent (unless otherwise agreed) to the amount set out in Schedule 1 as the limit of the retention amount and in such event the same shall be effective as security in lieu of the retention amount referred to in Schedule 1.

**39.2 Conversion of Security and Recourse to Retention Moneys**

The Principal may have recourse to the retention moneys (or Bank Guarantee, if applicable) where:

- (a) the Principal or Construction Manager has become entitled to exercise a right under this Trade Contract in respect of the retention moneys; or
- (b) in order to satisfy any Claim that, in the Principal's or Construction Manager's opinion, they have or may have against the Trade Contractor whether in connection with the Trade Contract or otherwise for a debt, damages or by way of set off.

**39.3 Replenishment of Security and Retention Moneys**

- (a) If the Principal (or Construction Manager) calls upon any of the retention moneys (or Bank Guarantee, if applicable), the Construction Manager may, by notice in writing directed to the Trade Contractor, require the Trade Contractor to provide further moneys by way of retention (or by additional Bank Guarantee), in an amount equivalent to the amount called by the Principal.
- (b) If the Construction Manager serves a notice under this clause 39.3 on the Trade Contractor, the Principal and/or Construction Manager may withhold payments of moneys due to the Trade Contractor until the Trade Contractor complies with the notice.

**39.4 Release of Retention Moneys**

- (a) If the Trade Contractor has provided retention moneys or a Bank Guarantee then subject to the Construction Manager having already had recourse to the same or believing it may have a right to have recourse to the same, the Principal shall release fifty percent of the retention moneys or Bank Guarantee following both:
  - (i) execution and delivery of the Deed of Release pursuant to clause 41.4; and
  - (ii) ten Business Days having passed from the date of receipt by the Construction Manager of a notice from the Trade Contractor requesting the partial release of retention moneys or Bank Guarantee (which request must not be made until after execution and delivery of the Deed of Release pursuant to clause 41.4).
- (b) The balance shall be dealt with in accordance with the terms of this Trade Contract including clause 42.4.

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- (c) The Construction Manager will use its reasonable endeavours to cause the Principal to release the retention moneys (or Bank Guarantee, if applicable) in accordance with this clause 39.4.

**39.5 Interest and Trust**

The Principal does not hold retention moneys or the Bank Guarantee (if applicable) on trust for the benefit of the Trade Contractor. The Principal owns any interest earned on the retention moneys or the Bank Guarantee (if applicable), regardless of whether the Principal has recourse to the retention moneys or the Bank Guarantee (if applicable).

**40.0 OTHER FINANCIAL MATTERS**

**40.1 Set Off**

The Principal may deduct from moneys due to the Trade Contractor any moneys due or that the Construction Manager claims is or might become due from the Trade Contractor to the Principal or its related entities whether under the Trade Contract, another trade contract or agreement (including on other projects) or otherwise including any entitlement the Principal may have to damages from the Trade Contractor for breach of this Trade Contract.

**40.2 No Rise and Fall**

The Trade Contractor acknowledges and agrees that:

- (a) unless otherwise expressly provided for in this Trade Contract the Trade Contract Sum is not subject to any cost adjustment or adjustment for rise and fall for any reason, including:
  - (i) any site allowances or industrial awards or agreements or any changes to any industrial awards or agreements;
  - (ii) fluctuations in exchange rates; or
  - (iii) changes in the cost of labour or materials; and
- (b) the Trade Contractor is not entitled to be paid or reimbursed for payments which the Trade Contractor may be obliged to make on behalf of its employees in respect of any superannuation fund, scheme or arrangement for the benefit of workers or any other similar employee fund which is in existence at the Date of the Trade Contract or which comes into existence after the Date of the Trade Contract.

**40.3 Debt Due and Payable**

Without prejudice to the rights of the Principal and the Construction Manager to set off under clause 40.1 or at law or to have recourse to security in accordance with clause 39.0, the Construction Manager or the Principal may demand payment at any time of any debt due from the Trade Contractor to the Principal or its related entities whether under the Trade Contract or otherwise and such debt shall be payable 5 Business Days after the demand is made.

**41.0 FINAL PAYMENT**

**41.1 Entitlement and Process - Delivery of a Statement of Completion**

Within ten Business Days of the issue by the Construction Manager of a Certificate of Substantial Completion or when directed by the Construction Manager, the Trade Contractor must deliver to the Construction Manager a Statement of Completion.

**41.2 Content of a Statement of Completion**

- (a) The Statement of Completion must be entitled "Statement of Completion" and must include all of the matters set out in clause 38.2 together with the details of all Claims, including any evidence relied upon in relation to such Claims, which the Trade Contractor has, or may have, in connection with the Trade Contract Works.
- (b) If a document purporting to be a Statement of Completion is delivered by the Trade Contractor but that document does not comply with the requirements of this clause the document will not be taken to be the Statement of Completion.

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### 41.3 Construction Manager's response to Statement of Completion

The Construction Manager must review the Statement of Completion and determine the amount it says is then payable from the Principal to the Trade Contractor or from the Trade Contractor to the Principal and issue its assessment to the Trade Contractor (**Substantial Completion Assessment**).

### 41.4 Deed of Release

Within 10 Business Days of receiving the Substantial Completion Assessment, the Trade Contractor must execute and deliver a Deed of Release in accordance with Schedule 8 and which identifies the Amount Claimed in the Deed of Release as the amount of the Substantial Completion Assessment (but no more), excluding retention moneys and a Bank Guarantee (if any). Where the Amount Claimed is a positive amount in favour of the Trade Contractor, the Trade Contractor must also deliver to the Construction Manager on behalf of the Principal at the same time a valid tax invoice for the Amount Claimed (unless the recipient-created tax invoice arrangement applies).

Subject to and upon strict compliance with the preceding paragraph, the Principal will pay the Amount Claimed excluding retention moneys and the Bank Guarantee (if any) within a further 30 Business Days.

The issue of the Substantial Completion Assessment, the execution of the Deed of Release (whether pursuant to clause 41.4 or 41.5) and the payment of any amount by the Principal to the Trade Contractor or the Trade Contractor to the Principal whether in accordance with the Deed of Release or otherwise does not preclude any Claim then or later by the Principal or the Construction Manager against the Trade Contractor pursuant to the Trade Contract or otherwise including for breach of contract, negligence or on any other basis whether accruing before or after the execution or issue of the Deed of Release.

### 41.5 Non Delivery of Statement of Completion

If the Trade Contractor does not deliver a valid and complying Statement of Completion, together with a valid and complying Deed of Release, as required by the preceding clauses within the prescribed time the Trade Contractor will be deemed to have delivered to the Construction Manager:

- (a) a Statement of Completion with a nil amount inserted in respect of Claims which the Trade Contractor has, or may have, against the Principal or the Construction Manager (whether under this Trade Contract or otherwise); and
- (b) a Deed of Release in the prescribed form with a nil amount inserted as the Amount Claimed.

The Trade Contractor irrevocably appoints the Construction Manager the Trade Contractor's attorney for the purpose of executing a Statement of Completion and a Deed of Release to record, and to give further effect to, the requirements of this clause 41.5.

## 42.0 FINAL CERTIFICATE

### 42.1 Issue

Within ten Business Days after the expiry of the final Defects Liability Period, the Construction Manager may issue to the Trade Contractor a Final Certificate endorsed "Final Certificate", showing the final amount due to the Trade Contractor.

### 42.2 Content

The Final Certificate must, if relevant, include the Construction Manager's payment schedule as provided under clause 38.6.

The Construction Manager must determine the final amount payable by the Principal to the Trade Contractor or by the Trade Contractor to the Principal as the case may be in connection with the Trade Contract and state that amount in the Final Certificate. If in the Final Certificate the Construction Manager determines an amount is payable to the Trade Contractor (**Further Amount**), the Principal will pay that Further Amount (excluding retention moneys or the Bank Guarantee, if applicable) within 14 Business Days after:

- (a) the issue of a valid tax invoice for the Further Amount (unless the recipient-created tax invoice arrangement applies); and

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- (b) the provision by the Trade Contractor of a further deed of release validly executed and in the form of Schedule 8 but entitled “Deed of Release – Final Certificate” and with the Amount Claimed stated to be the Further Amount.

If in the Final Certificate the Construction Manager determines an amount is payable by the Trade Contractor to the Principal, the Trade Contractor must pay that amount within 14 Business Days of provision of the Final Certificate by the Construction Manager to the Trade Contractor. Nothing in this clause limits any other rights or entitlements that the Principal or the Construction Manager has in respect of any Claim or set-off against the Trade Contractor.

**42.3 Rights of the Principal and Construction Manager after the Issue of the Final Certificate**

The issue of the Final Certificate and payment of any amount by the Trade Contractor to the Principal pursuant to the Final Certificate or otherwise does not preclude any Claim by the Principal or the Construction Manager for breach of contract, negligence or on any other basis against the Trade Contractor whether accruing before or after the issue of the Final Certificate.

**42.4 Release of Retention Moneys or Bank Guarantee**

Within ten Business Days after the later of:

- (a) the issue by the Construction Manager to the Trade Contractor of a Final Certificate; and
- (b) receipt by the Construction Manager of a written request from the Trade Contractor for release of retention moneys or Bank Guarantee then held by the Principal,

the Principal shall release to the Trade Contractor any retention moneys or Bank Guarantee then held by the Principal and to which it has not had recourse. If the Trade Contractor fails to issue the request contemplated by this clause 41.4 (b) within 1 year of the date referred to in (a) then, to the extent the Principal then holds retention moneys the Trade Contractor forfeits any entitlement it has in connection with such retention moneys and releases the Principal and the Construction Manager from any Claim for release of or return of those retention moneys.

**43.0 TERMINATION BY THE CONSTRUCTION MANAGER**

**43.1 Insolvency**

- (a) If the Trade Contractor, or, if in respect of the Trade Contractor:
  - (i) has an execution or any other process of any court or authority is issued or levied against it or on any of its property;
  - (ii) is made bankrupt or commits an act of bankruptcy;
  - (iii) has a bankruptcy petition presented against it;
  - (iv) enters or attempts to enter into any composition or arrangement with its creditors;
  - (v) passes or attempts to pass a resolution for winding up or, without the prior written consent of the Principal, enters into or undertakes any reconstruction or amalgamation or proposes to do so;
  - (vi) has a liquidator, provisional liquidator, trustee, administrator, trustee in bankruptcy, official manager or receiver, receiver and manager, an agent in possession or other encumbrance appointed for the whole or any part of its property or undertaking;
  - (vii) becomes a party to or attempts to enter into a composition or scheme of arrangement with its creditors or any of them;
  - (viii) becomes insolvent or informs the Principal or the Construction Manager or its creditors generally that it is insolvent;
  - (ix) has a resolution passed at a meeting of creditors to place it under official management;
  - (x) has an application made against it to a court for its winding up;
  - (xi) has a winding up order made against it;
  - (xii) a meeting of creditors of the Trade Contractor is called with a view to:
    - (A) entering a scheme of arrangement or composition with creditors;

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- (B) placing the Trade Contractor under official management; or
  - (C) the winding up or dissolution without winding up of the Trade Contractor;
- (xiii) the registered holder or agent of a registered holder of an instrument of charge or mortgage takes possession of the Trade Contractor as a mortgagee in possession or takes possession of the business of any property of the Trade Contractor; or
- (xiv) suffers any event analogous to those listed in paragraphs (i) to (xiii) above,
- the Construction Manager, without giving notice to show cause, may terminate the Trade Contract or take works out of the hands of the Trade Contractor by giving notice to the Trade Contractor of the same.

**43.2 Substantial Breach**

- (a) If the Trade Contractor commits a substantial breach, then (without prejudice to any rights of the Principal to rescind this Trade Contract at common law) the Construction Manager may give the Trade Contractor written notice of the nature of the substantial breach and of its intention to exercise its rights pursuant to this clause within five days (or such lesser time as may be stipulated in the notice if the substantial breach is incapable of remedy or to prevent serious disruption of the Works or other trade contractors, in which latter case the period of notice will be reasonable time in the circumstances and the reasons for shortening the time will be stated in the notice) and stating which right or rights the Construction Manager intends to exercise. A substantial breach by the Trade Contractor includes, the Trade Contractor:
- (i) assigns or sublets or attempts to assign or sublet all or part of this Trade Contract without the written consent of the Construction Manager;
  - (ii) neglects or omits to properly carry out the Trade Contract Works as specified or comply with any reasonable instructions of the Construction Manager or the OHS Principal Contractor in respect to the performance of this Trade Contract or fails to proceed with the Trade Contract Works with reasonable diligence or in a competent manner;
  - (iii) fails to complete the Trade Contract Works or any part thereof at the rate specified in this Trade Contract or by the time or times specified in this Trade Contract for completion or by such extended date, time or times as becomes valid by the operation of this Trade Contract or, failing any such specific reference in this Trade Contract, at the rate, time or times necessary for the proper completion of the Trade Contract or it becomes obvious that it is impossible or impracticable for the Trade Contractor to achieve these rates or times;
  - (iv) without reasonable cause wholly suspends the carrying out of the Trade Contract Works before Substantial Completion or intimates that it is unable or unwilling to proceed with and/or complete the Trade Contract Works;
  - (v) without the prior written consent of the Principal suspends payment generally, ceases or threatens to cease to carry on business or is unable to pay its debts as they fall due;
  - (vi) failing to comply with any of its obligations under the Code, including any failure to ensure Code compliance by its employees or Subcontractors;
  - (vii) there is a material change in its financial condition, operation, business assets, management, ownership or control or any event or circumstance occurs or comes into existence which in the opinion of the Principal would have a materially adverse effect on the ability of the Trade Contractor to perform its obligations under the Trade Contract; or
  - (viii) fails to comply with any Legislative and Industrial Requirement.
- (c) If, from the date of issue of a notice under clause 43.2 (a) the substantial breach continues for five days or such lesser time as may have been reasonably stipulated in the notice, the Construction Manager may by written notice to the Trade Contractor either:
- (i) determine the employment of the Trade Contractor under this Trade Contract, or
  - (ii) take the Trade Contract Works wholly or partially out of the control of the Trade Contractor and complete or assist in the completion of them.

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If the Construction Manager has exercised, or given notice of its right of taking the Trade Contract Works partially out of the control of the Trade Contractor, it may at any time thereafter by written notice to the Trade Contractor exercise its right of determination or its right of taking the Trade Contract Works wholly or partially (as to some other part) out of the Trade Contractor's control.

- (d) For either of the purposes stated in paragraphs (b)(i) and (ii):
- (i) the Construction Manager or the Principal may ensure the proper execution and completion of the Trade Contract Works in the manner to best serve the interests of the Principal and all costs reasonably incurred will become a debt due to the Principal from the Trade Contractor;
  - (ii) the Trade Contractor will, if required by the Construction Manager, assign or hand over to the Principal or the Construction Manager without further payment, the benefit of any agreement for the supply of materials or labour to which the Trade Contractor is a party and any plant, facilities and pertinent shop drawings, specifications and other documentary material, which in the Construction Manager's opinion is of benefit to the completion of these Trade Contract Works;
  - (iii) until the Trade Contract Works have been completed and the total costs, loss, damage and expense in completing the Trade Contract Works has been determined by the Construction Manager, no further payment will become due to the Trade Contractor. The Principal and the Construction Manager are entitled to exercise their rights under clause 40.3 prior to completion of the Trade Contract Works;
  - (iv) if after reconciliation of the accounts in accordance with clause 43.2(d)(iii) the total cost, loss, damage and expense is less than the Trade Contract Sum, then the balance will become due for payment to the Trade Contractor at the time of completion and agreement of the accounts or at the time it would have become due had no action been taken under this clause, whichever is the latter; and
  - (v) if, after reconciliation of the accounts, in accordance with clause 43.2(d)(iii) the total costs, loss, damage and expenses exceeds the Trade Contract Sum, the excess will become a debt due to the Principal from the Trade Contractor and the Principal may apply moneys, if any, which it holds under this Trade Contract towards the payment of that debt. The Trade Contractor will pay interest at the rate set out in Schedule 1 from and including fifteen Business Days after the Construction Manager's determination to the Trade Contractor up to the date of payment.

**43.3 Rights of the Parties**

If the Construction Manager terminates this Trade Contract or takes the remaining works out of the Trade Contractor's hands in accordance with clause 43.0, the respective rights and liabilities of the Principal, Construction Manager and the Trade Contractor will be:

- (a) the Principal or the Construction Manager will not be obliged to make any further payment in respect of the work taken out of the hands of the Trade Contractor or not yet performed in accordance with the Trade Contract at the date of termination;
- (b) the Principal or the Construction Manager will not be obliged to make any payment to the Trade Contractor in relation to the work completed by the Trade Contractor until such payment becomes due under this clause;
- (c) the Principal or the Construction Manager may complete the Trade Contract Works;
- (d) the Principal or the Construction Manager may, without obligation or making payment, take possession of all plant and other things on or in the vicinity of the Site as are owned by the Trade Contractor and are reasonably required by the Principal or the Construction Manager to facilitate completion of the Trade Contract Works; and
- (e) if the Principal or the Construction Manager completes the Trade Contract Works, the Construction Manager will determine the cost, loss, damage and expense incurred in completing the Trade Contract Works along with the value of its accrued rights in connection with the Trade Contract at the date of termination or date of works being taken out of the Trade Contractor's hands in accordance with clause 43.0. Without limiting any other rights the Principal or Construction Manager has under the Trade Contract or at law, if the combined cost, loss, damage and expense incurred by the Principal or the Construction Manager and the value of its accrued rights is greater than the amount which would have been paid to the Trade Contractor if the Trade Contract Works had been completed by the Trade Contractor, the difference shall be a debt due from the Trade Contractor to the Principal.

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**43.4 Termination for Convenience**

The Construction Manager may give notice to the Trade Contractor terminating this Trade Contract for the sole convenience of the Principal, in which case this Trade Contract will be terminated as and from the date of service of such notice (which notice must state that it is given pursuant to this clause).

If the Construction Manager terminates this Trade Contract pursuant to clause 43.4 then the Trade Contractor is entitled to payment of the value of that part of the Trade Contract Works executed by the Trade Contractor to the date of termination subject to the accrued rights of the Construction Manager under the Trade Contract and at law along with amounts previously paid (**Termination Value**).

The Principal shall determine the Termination Value in consultation with the Construction Manager.

In determining the value of that part of the Trade Contract Works executed by the Trade Contractor to the date of termination, the Principal may take into account, among other things, the percentage of the Trade Contract Works completed compared to the Trade Contract Sum on a pro rata basis or such other method determined by the Principal.

**43.5 No Quantum Meruit**

For the avoidance of doubt, the Trade Contractor is not entitled to payment on a quantum meruit whatever the basis of termination whether under clause 43.2, clause 43.4 or otherwise at law (including if the Construction Manager repudiates the Trade Contract and the Trade Contractor accepts that repudiation). Should the Construction Manager repudiate the Trade Contract and the Trade Contractor accept that repudiation, the Trade Contractor's entitlements whether under the Trade Contract or otherwise at law, shall be limited to the damages that are proven by the Trade Contractor.

**43.6 Novation**

If requested by the Principal and/or the Construction Manager, the Trade Contractor will take all steps necessary to effect a novation of this Trade Contract on terms determined by the Principal and the Construction Manager such that the Principal steps into the shoes of the Construction Manager.

**44.0 DEFAULT BY PRINCIPAL**

(a) If the Principal:

- (i) has an execution levied against it, is made bankrupt or enters or attempts to enter into any composition or arrangement with its creditors or (being an individual) becomes bankrupt or (being a company) has an execution levied against it or a winding up order made or (except for the purpose of reconstruction) passes or attempts to pass a resolution for winding up or becomes a party to the appointment of or has an official manager or receiver appointed for the whole or any part of its property or undertaking or becomes a party to or attempts to enter into any composition or scheme of arrangement; or
- (ii) fails to make any payment due to the Trade Contractor within the time required by clause 38.7,

the Principal will be deemed to be in default.

(b) If the Principal is in default then (without prejudice to any rights of the Trade Contractor to rescind this Trade Contract at common law) the Trade Contractor may give the Principal written notice by certified mail of the nature of the default and of its intention to exercise its rights pursuant to this clause within twenty one days (or such lesser time as may be stipulated in the notice if the default is incapable of remedy or if the continuance of the default seriously disadvantages the Trade Contractor, in which case the period of notice will be a reasonable time in the circumstances and the reasons for shortening the time will be stated in the notice) and stating which right or rights the Trade Contractor intends to exercise.

If the default continues for twenty-one days, or such lesser time as may have been reasonably stipulated in the notice, the Trade Contractor may by written notice to the Principal either:

- (i) suspend the whole or part of the Trade Contract Works for the period the default continues, and the period of the suspension will automatically operate as an extension of the date, time or times for Substantial Completion; or

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- (ii) determine this Trade Contract, in which case the Trade Contractor will be entitled to all such costs and expenses as if this Trade Contract had been rescinded by the Trade Contractor at common law for breach or repudiation by the Principal.
- (c) The Trade Contractor's rights of suspension and/or determination under paragraph (b) will not be available in respect of a default of the Principal under paragraph (a)(ii) if at the relevant time the Trade Contractor is in default and that default constitutes a substantial breach of this Trade Contract.

**45.0 NOTIFICATION OF CLAIMS**

The Principal and Construction Manager will not be liable on any Claim by the Trade Contractor in respect of or arising out of the Trade Contract or out of a breach of the Trade Contract by the Principal or the Construction Manager unless, within seven days after the first day on which an experienced and competent trade contractor could reasonably have been aware of the Breach of Obligation or an entitlement to make a Claim (whichever is the earlier) the Trade Contractor gives to the Construction Manager a written notice which includes particulars of all of the following:

- (a) the breach, act, omission, direction, approval or circumstances on which the Claim is or will be based;
- (b) the provision of the Trade Contract relied on or allegedly breached or other basis for the Claim or proposed Claim; and
- (c) the quantum or likely quantum of the Claim.

Any failure on the part of the Trade Contractor to comply with the requirements of this clause may be relied upon by the Principal and the Construction Manager as an absolute bar at law in respect of the Claim concerned.

**46.0 DISPUTES**

**46.1 Prohibition Against Other Action**

If any Dispute or Difference arises this clause must be followed.

**46.2 Interlocutory Relief**

A party must not, except in the case of urgent interlocutory relief, commence Court proceedings or other proceedings until it has complied with this clause.

**46.3 Notice of Dispute**

The party desiring to bring the dispute forward for resolution must give to the other party a notice setting out the nature and summary of the dispute. This notice is referred to as a Notice of Dispute.

**46.4 Further Steps Required Before Proceeding**

Each party must nominate a senior manager to meet to attempt to resolve the Dispute or Difference. If the senior managers fail to resolve the Dispute or Difference within five Business Days after service of the Notice of Dispute the senior managers must advise the respective Chief Executive Officers of the Principal and the Trade Contractor of the failure to resolve the Dispute or Difference (**Secondary Notice**). The Chief Executive Officers must attempt to resolve the Dispute or Difference within five Business Days of the Secondary Notice. If the Dispute or Difference is not resolved by the Chief Executive Officers within ten Business Days of the date of the Secondary Notice, either party shall have the right to pursue the resolution of the Dispute or Difference through litigation.

**47.0 BILL OF QUANTITIES (WHERE APPLICABLE)**

**47.1 Nature of Bill of Quantities**

- (a) If the parties agree on a Bill of Quantities or a Priced Bill of Quantities, this clause will apply.
- (b) The Bill of Quantities and the Priced Bill of Quantities shall not form part of the Trade Contract except to the extent that rates in the Priced Bill of Quantities may be used by the Construction Manager and/or Principal for the purpose of valuing Variations and assessing Progress Claims.

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- (c) The Trade Contractor acknowledges that the Bill of Quantities and the Priced Bill of Quantities only form part of the Trade Contract to the extent described in this clause. No difference between any quantities in the Bill of Quantities or the Priced Bill of Quantities and the actual quantities in the works, nor any error, incorrect measurement, inaccuracy or other defect in the Bill of Quantities or the Priced Bill of Quantities entitles the Trade Contractor to any Claim for an extension of time to the Date of Substantial Completion or adjustment to the Trade Contract Sum.

**47.2 Condition Precedent to Payment**

It is an express term of this Trade Contract that no progress payment shall be made to the Trade Contractor until such time as the Priced Bill of Quantities is received by the Construction Manager and is approved by both the Principal and the Construction Manager.

**48.0 GENERAL**

**48.1 Release and Indemnity**

- (a) Where any indemnity is given under this Trade Contract, the indemnity is in respect of any loss, damage or expense, including:
  - (i) loss of profit; and
  - (ii) consequential loss; and
  - (iii) liability to third parties; and
  - (iv) legal costs (on a solicitor own client basis, and whether or not the subject of a court order) in respect of enforcing the indemnity or defending any Claim brought by a third party in respect of a matter which is the subject of the indemnity; and

is given in respect of any such loss damage or expense arising from or in any way connected with the Damaging Act or other event in respect of which the indemnity is given.

- (b) Where any release is given or required to be given by this Trade Contract the party giving the release indemnifies the party enjoying the benefit of the release in respect of any liability which arises out of or in any way connected with the subject matter of the release.
- (c) Where the entitlement of the Trade Contractor is prescribed by this Trade Contract or limited by this Trade Contract the Trade Contractor hereby releases the Principal and/or Construction Manager from any Claim which it might have had against the Principal and/or Construction Manager in so far as that Claim is in excess of any entitlement the Trade Contractor may have had otherwise.

**48.2 Entire Understanding**

This Trade Contract:

- (a) constitutes the entire agreement and understanding between the parties on everything connected with the subject matter of this Trade Contract; and
- (b) in relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.

**48.3 Applicable Law**

This Trade Contract shall be constructed in accordance with the laws of the State of Victoria but all relevant laws, rules, regulations, by-laws, ordinances and other like enactments in force in the place where the Trade Contract Works are to be executed will be observed and carried out by the parties.

**48.4 Patent Rights**

- (a) Subject to paragraph (b), the Trade Contractor shall indemnify the Principal and the Construction Manager against any action, Claim, suit or demand, cost or expense arising from any alleged infringement of letters patent, design, trade mark or the name or other protected rights in respect of any article of thing or method fixed or used or supplied by the Trade Contractor in the Trade Contract Works.

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- (b) The Trade Contractor shall be under no liability to indemnify the Principal in respect of any article or thing or method that the Construction Manager has nominated or specified to be fixed, used or supplied.

**48.5 Notices**

A party giving notice or notifying under this Trade Contract:

- (a) must do so in writing directed to the recipient’s address specified in the Details, as varied by any notice;
- (b) may be:
  - (i) hand delivered
  - (ii) sent by prepaid ordinary mail;
  - (iii) sent by facsimile to the party’s current fax number for notices; or
  - (iv) sent via the Aconex document control system.
- (c) A notice given in accordance with this clause 48.5 is taken to be received:
  - (i) if hand delivered, on delivery;
  - (ii) if sent by prepaid ordinary mail, three Business Days after the date of posting;
  - (iii) if sent by facsimile, when the sender’s facsimile system generates a message confirming successful transmission of the total number of pages of the notice; or
  - (iv) if sent via the Aconex document control system, when the system generates a message confirming successful transmission inclusive of attachments;
- (d) If a communication is given ;
  - (i) after 5:00pm in the place of receipt; or
  - (ii) on a day which is not a Business Day,
 it is taken as having been given at 9:00am on the next Business Day.

**48.6 Waiver**

The failure of a party at any time to require performance of any obligation under this Trade Contract is not a waiver of that party’s right:

- (a) to insist on performance of, or claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver; and
- (b) at any other time to require performance of that or any other obligation under this Trade Contract.

**48.7 Construction Methods**

The Trade Contractor is and shall remain responsible for all construction means, methods, techniques, sequences and procedures employed and to be employed by it in and about the execution of the Trade Contract Works and for co-ordinating all portions of and the execution of all portions of the Trade Contract Works.

**48.8 Failure to Comply**

Despite any other terms of this Trade Contract, any loss, expenses or damage incurred or suffered by the Principal due to the act, omission, default or neglect on the part of the Trade Contractor in the observance of or compliance with clauses 16.0 or the Legislative and Industrial Requirements will be a debt due and owing to the Principal by the Trade Contractor. Any such amount may be deducted by the Principal from any moneys then due and owing or thereafter to become due and owing to the Trade Contractor by the Principal or may be recovered from the Trade Contractor by the Principal.

**48.9 No Release**

If for whatever reason the Construction Manager has had Trade Contract Works performed by persons other than the Trade Contractor (including Other Contractors) the Trade Contractor remains liable to the Construction Manager and the Principal for the whole of the Trade Contract Works as if it had completed the Trade Contract

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Works and the Trade Contractor is not released from any liability by reason of the performance of the Trade Contract Works by others.

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