

## 1. DEFINITIONS AND INTERPRETATIONS

### 1.1 Definitions:

**"Agreement"** means the agreement between Select and the Company, which consists of:

(a) the Carrier Order;

(b) these Carrier Order (Road Transport) Terms and Conditions;

(c) any specifications, documents or requirements set out in attachments, including any Scope of Work (if any); and

(d) any other documents incorporated by reference in the Carrier Order or these Carrier Order Terms and Conditions.

**"Anti-Bribery and Anti-Corruption Legislation"** means all laws in connection with the prohibition of bribery and corruption applicable to the performance of this Agreement (including by virtue of the place of domicile or operations of the parties and their related bodies corporate), and includes the *Criminal Code Act 1995* (Cth), the *Crimes Act 1914* (Cth), the *Financial Management and Accountability Act 1997* (Cth), the *Commonwealth Authorities and Companies Act 1997* (Cth), the *Corporations Act 2001* (Cth) and the *Bribery Act 2010* (UK).

**"Business Day"** means a 'business day' as defined by the Security of Payment Act.

**"Company"** means the company identified in the Carrier Order.

**"Carrier Order"** means the purchase order that by reference includes these Terms and Conditions of Carrier Order (Road Transport) and forms part of the Agreement.

**"Claim"** means any action, suit, claim, demand, cause of action, proceeding, notice, defence or set-off for any present or future Liability whether based in contract, equity, tort (including negligence), statute, for unjust enrichment or otherwise.

**"COR Laws"** means Laws relating to fatigue management, speed and mass, dimension and load restraint compliance requirements generally referred to as 'Chain of Responsibility' Laws or 'Heavy Vehicle' Laws.

**"COR Systems"** means policies, procedures, standards, training and systems designed to ensure, so far as is reasonably practicable, compliance with COR Laws.

**"Dangerous Goods"** means any Goods as shall be or become in fact or at law noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable by their nature of causing damage or injury to other goods or to any person or animals or to anything in which those Goods are carried, handled or stored.

**"Debt Due"** means an amount due and payable by the Company to Select. A Debt Due becomes due and payable at the time specified in this Agreement, or if no time is specified, it is payable on demand.

**"Delivery Date"** means the delivery date identified on the Carrier Order or in a schedule attached to the order as varied in writing by Select.

**"Delivery Fee"** means the amount identified in the Carrier Order (excluding GST) subject to any adjustments made pursuant to these General Conditions.

**"Delivery Point"** means the delivery point identified in the Agreement.

**"Delivery Services"** means the storage/warehousing, carriage, transport, movement, handling, loading, unloading and/or any other service performed or arranged by the Company pursuant to or ancillary to the Agreement.

**"Force Majeure Event"** is one of the following events: fire, riot, war, extreme weather conditions, national industrial action, fuel shortage and new Laws.

**"Good Industry Practice"** means the practice followed when work (including any supply of Services, Plant or personnel) is undertaken in accordance with all of the following:

(a) in a sound and workmanlike manner;

(b) best work practices;

(c) due care and skill;

(d) all Laws; and

(e) due expedition and without unnecessary or unreasonable delays.

**"Goods"** means the goods identified in the Agreement and any other materials required to be delivered in accordance with the Agreement.

**"Industrial Instrument"** means an award or agreement, however designated, that:

(a) is made under or recognised by an industrial law (within the meaning of the *Fair Work Act 2009* (Cth) (as amended from time to time); and

(b) relates to the relationship between an employer and the employer's employees.

**"Laing O'Rourke ABAC Policy"** means the Laing O'Rourke Global Anti-Bribery and Corruption Policy available here: <https://www.laingorourke.com/company/governance/code-of-conduct/>

**"Laws"**, means all law, legislation, statutes, ordinances, orders, rules and regulations (whether Federal, State or Local) in which the work under the Agreement (or any part) is being carried out, federal or State codes of practice including the *Building Code of Australia*, Australian Standards or industry

standards of Australia and approvals, authorisations, consents, permissions, permits, determinations, certificates, notices, licences or waivers under any of those or the common law or equity.

**"Liability"** means any debt, damage, loss, loss of use, liability, cost, charge, expense (including legal costs, deductibles, or increased premiums), fine, levy or compensation whether:

(a) arising from or in connection with any obligation under or in connection with this Agreement (including an indemnity);

(b) legal or equitable, and whether arising under or for a breach of contract, in tort (including negligence), restitution or at law; or

(c) present, prospective or contingent.

**"Loading Point"** means the loading point identified in the Agreement.

**"NGER Legislation"** means any statutory requirements, standards, codes and guidelines related to greenhouse gas and energy emissions and energy consumption, including without limitation, the *National Greenhouse and Energy Reporting Act 2007* (Cth), the *National Greenhouse and Energy Reporting Regulations 2008* (Cth) and *National Greenhouse and Energy Reporting (Measurement) Determination 2008* (Cth) and all related regulations and codes of practice.

**"Notice"** means any correspondence or other written communication under this Agreement sent by email or post.

**"Personnel"** means in respect of a party, that party's contractors, consultants, suppliers, employees, agents and other persons engaged by the Company, provided that Select's Personnel excludes the Company and the Company's Personnel.

**"Proportionate Liability Legislation"** means if the Governing Law is:

(a) the Australian Capital Territory, then the Civil Law (Wrongs) Act 2002 (ACT) and the Building Act 2004 (ACT);

(b) New South Wales, then Part 4 of the Civil Liability Act 2002 (NSW);

(c) Northern Territory, then the Proportionate Liability Act 2005 (NT);

(d) South Australia, then Part 3 of the Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA);

(e) Tasmania, then Part 9A of the Civil Liability Act 2002 (Tas) and the Building Act 2000 (Tas);

(f) Victoria, then Part IVAA of the Wrongs Act 1958 (Vic); or

(g) Western Australia, then Part 1F of the Civil Liability Act 2002 (WA).

“**Related Entity**” has the same meaning as in the Code.

“**RSR Legislation**” is the *Road Safety Remuneration Act 2012* (Cth) and any regulation associated with that legislation.

“**RSRT Order**” is an order by the Road Safety Remuneration Tribunal under the RSR Legislation.

“**Scope of Works**” is the document of that name (or similar) attached to the Carrier Order.

“**Select**” means Select Plant Australia Pty Ltd (ABN 49 644 500 354).

“**State Code**” means, if the project to which the Agreement relates is located in:

- (a) New South Wales and the Delivery Services are part of building and construction work undertaken by or on behalf of a New South Wales Government department or public sector body (as defined in the *Public Sector Employment and Management Act 2002* (NSW)), the *NSW Code of Practice for Procurement (NSW Code)*, the *Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction (NSW Guidelines)*; and
- (b) Queensland and the Delivery Services are part of Queensland Government funded (in whole or in part) building and construction work, the *Queensland Code of Practice for the Building and Construction Industry (Queensland Code)*.

“**WHS Act**” means the principal work health and safety Act in the State or Territory in which the Site is situated, and, if any work is being carried out or Services provided in a different State or Territory to the location of the Site, the Act in that State or Territory. For clarity, the term WHS Act may include two or more Acts.

“**WHS Legislation**” means the WHS Act and the WHS Regulations and any other health and safety related legislation, codes of practice and guidance issued by any authority which is applicable to the Goods and the Delivery Services.

“**WHS Regulations**” means the Regulations associated with the WHS Act.

“**WHS Requirements**” means any and all directions, instructions, requests or requirements relevant to or associated with or necessary for compliance by the Company or Select with WHS Legislation, Select’s management plans identified relating to work health and safety, and any other matters of which the Company has been informed by Select orally or in writing.

“**Wilful Misconduct**” means an act or failure to act by Select that was intended to cause or was in reckless disregard of, or with wanton indifference to, harmful consequences.

- 1.2 A reference to delivery by a Delivery Date is a reference to delivery of each part of the Goods specified in the Carrier Order by the corresponding Delivery Date.
- 1.3 If the Company is comprised of 2 or more persons, the obligations under this Carrier Order bind them jointly and severally.

## 2. COMPANY’S PERFORMANCE

- 2.1 The Company:
  - (a) must perform the Delivery Services in accordance with the Agreement;
  - (b) must perform and complete its obligations under the Agreement in accordance with Good Industry Practice;
  - (c) must take all necessary steps to ensure the delivery of the Goods from the Loading Point to the Delivery Point by the Delivery Date with minimal handling (prior consent from Select is required to load or re-load any Goods) and without causing damage to the Goods; and
  - (d) comply with this Agreement and all applicable Laws.
- 2.2 If the Company is in breach of any of its obligations set out in clause 2.1 and fails to rectify within the time set out in any notice of breach issued to the Company by Select, Select may have the Delivery Services performed or completed by others and the Company will provide Select with its reasonable assistance in this regard. Any exercise by Select of its rights under this clause 2.2 will be without prejudice to any other rights or remedies that Select may have or has and any cost incurred by Select in exercising its rights under this clause 2.2 may be recovered from the Company as a Debt Due.
- 2.3 If Select considers that the Company is in breach of its obligations under clause 2.1, or is otherwise in breach of its obligations under the Agreement, and that breach, in Select’s opinion, is due to a dispute or difference between the Company and the Company’s Personnel then Select may take all steps necessary to mitigate its loss, including paying the Company’s consultants, suppliers and others engaged by the Company directly for goods or services provided in connection with or in any way related to the Agreement; and any payment made by Select in this regard may be recovered from the Company as a Debt Due.

## 3. SET OFF

Without limiting Select’s rights under this Agreement or otherwise at law, Select may set-off or deduct from any

monies due or that otherwise may become due to the Company (including any security) any:

- (a) Debt Due; or
- (b) other amount to which Select has a bona fide claim to the payment of money by the Company under, arising out of, or in connection with this Agreement, including any prospective or contingent Debt Due, claim for damages (whether arising under or for breach of contract, in tort (including negligence), restitution or at law) or any other entitlement (including under an indemnity).

## 4. TERMINATION

- 4.1 Without prejudice to any other rights or remedies of Select, Select may by written notice terminate this Agreement:
  - (a) If the Company fails to rectify any default under this Agreement within the time specified in the Notice, effective immediately;
  - (b) for its sole convenience, effective from the date stated in the Notice provided reasonably in advance to the Company;
  - (c) if the Company commits an act of bankruptcy, enters into a scheme of arrangement with its creditors, is placed in official management, has a receiver appointed, has an application to wind it up presented to the Supreme Court (including any application to which the Carrier alleges a bona fide dispute exists), has a liquidator or provisional liquidator appointed, or is deemed to be insolvent as defined in the *Corporations Act 2001* (Cth), effective immediately;
  - (d) wholly or partly suspends performance of its obligations under the Agreement, effective immediately; or
  - (e) fails to proceed with performance of the Delivery Services in a reasonable, diligent or competent manner, effective immediately.
- 4.2 Upon termination of this Agreement for any reason, the Company must:
  - (a) immediately stand down from providing the Delivery Services, or from the date of the Notice, if the Notice is written under clause 4.1(b);
  - (b) use all reasonable endeavours to minimise the costs of termination to Select;
  - (c) take any other action reasonably required by Select in relation to the termination; and
  - (d) to the extent that the Goods are in the possession of the Company or the Company’s Personnel, return the Goods to Select at the location requested by Select. If the Goods are not returned to Select within a

reasonable time, Select may arrange to collect the Goods from the Company and any costs incurred by Select in exercising its rights under this clause may be recovered from the Company as a Debt Due.

- 4.3 If the Agreement is terminated under clause 4.1 (b), the Company:
- (a) will be entitled to its reasonable costs incurred in performing the Delivery Services up to and including the date of termination; and
  - (b) will not be entitled to any cost or expense incurred by the Company by reason of the termination or any compensation for any loss or damage suffered or incurred by the Company or which it claims will be suffered or incurred by the Company by reason of the termination.
- 4.4 Without prejudice to any other rights or remedies of Select, the Company shall be liable to Select for any loss or expense incurred by Select in connection with any termination of the Agreement (other than a termination under clause 4.1 (b)), including where Select has to engage other parties to complete any of the services under the Agreement, and such amount shall be deemed to be a Debt Due.
- 4.5 The Company may:
- (a) by written notice, terminate the Agreement on Select's insolvency, effective immediately; or
  - (b) where Select fails to pay an undisputed amount to the Company in accordance with clause 9.3, and fails to remedy such non-payment within 30 days after Select's receipt of a notice from the Company, terminate the Agreement upon 30 days' written notice to Select, provided such amount remains unpaid.

## 5. COMPANY'S LIABILITY

- 5.1 The Company shall be liable to Select for all loss, damage, delay or deterioration to, or mis-delivery of or failure to deliver the Goods and any other failure to perform the Delivery Services.

## 6. INDEMNITIES AND INSURANCE

- 6.1 The Company indemnifies Select from and against any Liability suffered or incurred by Select in respect of any:
- (a) personal injury (including death);
  - (b) loss of or damage to the Goods or loss of use of the Goods and any other real or personal property; or
  - (c) any breach of this Agreement, act or omission or wilful misconduct by the Company (including any of its Personnel),

arising in any matter out of or in connection with the Delivery Services or the Agreement, however the Company's liability

to indemnify will be reduced to the extent that such Liability is caused or contributed to by any negligence of Select, breach of this Agreement by Select or Select's Wilful Misconduct.

- 6.2 Without limiting clause 6.1, the Company indemnifies Select from and against any Liability suffered or incurred by Select arising out of or in connection with any claim made by the Company's Personnel however the Company's liability to indemnify will be reduced to the extent that such Liability is caused or contributed to by any negligence of Select, breach of this Agreement by Select or Select's Wilful Misconduct.
- 6.3 The Company must effect and maintain from the date of this Agreement:
- (a) public and product liability insurance for an amount of \$20,000,000.00 commencing on the date of the Agreement;
  - (b) transit insurance for the value of the Goods being carried (unless specifically confirmed with reference to this carrier order that insurance is being provided by Select); and
  - (c) such other insurances as are required by law.
- 6.4 When requested by Select, the Company must provide evidence that such insurances have been effected and the premium paid.
- 6.5 Notwithstanding any other provision in this Agreement and to the extent permitted by law, Select shall not be liable to the Company or any of its Personnel for any loss of goodwill, loss of business, loss of revenue or profits (anticipated, actual or otherwise), loss of savings, loss of use, any pure economic loss or any indirect or consequential loss arising, out of or in connection with this Agreement.

## 7. DELIVERY

- 7.1 The Company must:
- (a) Deliver the Goods to the Delivery Point by the date specified in the Carrier Order
  - (b) (if specified in the Carrier Order) load the Goods at the Loading Point at its cost and risk;
  - (c) (if specified in the Carrier Order) unload the Goods at the Delivery Point at its cost and risk;
  - (d) ensure the Goods are:
    - (i) free of visible damage at the time of loading;
    - (ii) properly packed for transportation, loading and unloading having regard to the nature of the Goods and possible weather conditions;
    - (iii) clearly labelled as required by Select;

- (iv) accompanied by a delivery docket which contains the Carrier Order number and a list of the Goods for delivery in sufficient detail to enable checking to take place at the time of delivery.

- 7.2 Upon delivery of the Goods at the Delivery Point, Select may sign or stamp the Carrier Order or delivery docket as proof of delivery.
- 7.3 The parties acknowledge and agree that any Carrier Order or delivery docket signed or stamped by Select on delivery of the Goods to the Delivery Point will not be taken as evidence that the Goods comply with this Carrier Order and will not limit or exclude the responsibilities and obligations of the Company in relation to the Goods or the Delivery Services (if relevant).
- 7.4 The Company must promptly give Notice to Select of any likely delay in delivery of the Goods beyond the Delivery Date.
- 7.5 Any delay in providing access to the Delivery Point arising due to a cause beyond Select's reasonable control, will not be construed as a breach of this Agreement and will not entitle the Company to make any Claim against Select.
- 7.6 The Goods will only be at the risk of Select once the Goods have been delivered and unloaded (if unloading is included in the Delivery Services) at the Delivery Point.

## 8. ROUTE AND VARIATIONS

- 8.1 Select may at any time direct the Company by Notice to use a particular method of or route for providing the Delivery Services.
- 8.2 The Company will give priority to the method or route referred to in clause 8.1 but may provide the Delivery Services by another method or route provided that it obtains prior written consent from Select to do so (whose consent must not be unreasonably withheld).

## 9. INVOICE AND PAYMENT

- 9.1 Within 21 days of delivery of the Goods to the Delivery Point, or if not relevant, completion of the Delivery Services, the Company must submit proof of delivery and a tax invoice for the Delivery Services, in the amount of the Delivery Fee accompanied by any information reasonably requested by Select.
- 9.2 Tax invoices and credit notes must:
- (a) clearly state the relevant Carrier Order number on the first page of the tax invoice;
  - (b) be provided with all delivery dockets and any other relevant documentation;
  - (c) be sent by:

- (i) email to:  
[accountspayableaustralia@laingorourke.com.au](mailto:accountspayableaustralia@laingorourke.com.au); or
  - (ii) mail to:  
Select Plant Australia Pty Ltd  
Accounts Payable Shared Services Department  
GPO Box 5094, Brisbane QLD 4001
  - (d) where emailed:
    - (i) the tax invoice must be attached to the email as single PDF document. The first page of the PDF document must be the tax invoice. The following pages must be all delivery dockets and any other relevant documentation; and
    - (ii) where multiple tax invoices, each tax invoice must be provided in a separate email.
- 9.3 Subject to compliance with clause 10.2, and the proper performance of the Company's obligations Select will pay the undisputed amount invoiced, subject to any entitlement Select has under this Agreement or at law to deduct or set-off amounts, within:
- (a) 20 Business Days if Delivery Point is located in New South Wales; or
  - (b) 30 days if Delivery Point is not located in New South Wales,
- of receipt of the tax invoice for the Delivery Fee that complies with this Agreement, provided that such invoice is received no later an:
- (c) 20 Business Days if Delivery Point is located in New South Wales; or
  - (d) 30 calendar days if Delivery Point is not located in New South Wales,
- after the date that the invoice was due.
- 9.4 Payment will be on account only and will not be evidence of satisfactory performance by the Company of this Agreement.
- 9.5 Notwithstanding anything else in this Agreement and to the extent permitted by law, Select shall not be liable for any claim by the Company for loss, damage, cost or expense (whether in contract, tort, under statute or in equity) received later than 30 days after completion of the Delivery Services.

## 10. SUSPENSION

- 10.1 Select may at any time and for any reason suspend performance of all or any of the Company's obligations under this Agreement by written notice effective upon receipt of that Notice. The Carrier must suspend the performance of the obligations identified in the Notice until Select directs the Company to resume performance of those

obligations by further written notice. At such time, the Company must promptly recommence the performance of those obligations in accordance with this Agreement.

- 10.2 If a suspension does not arise from an act or omission of the Company or its Personnel, the Company will only be entitled to be paid the extra costs reasonably, directly and actually incurred by the Company as a result of the suspension.

## 11. HEALTH AND SAFETY

11.1 The Company acknowledges that the Company has complete control in relation to, and will ensure, so far as is reasonably practicable, the health and safety of its Personnel including on Select's premises and that Select does not control or influence the Carrier's activities in relation to health and safety matters other than as set out in this clause 11.

11.2 The Company must and must ensure that its Personnel:

- (a) comply with its obligations under WHS Legislation and the Heavy Vehicle National Law (HVNL);
- (b) carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by clause 2.1;
- (c) comply with any reasonable directions issued by Select in relation to work health and safety;
- (d) comply with Select's Safety Management System as available at <https://lorhsems.com/>

11.3 The Company must and must ensure that its Personnel:

- (a) comply with WHS Legislation and all WHS Requirements;
- (b) comply with any reasonable directions issued by Select in relation to work health and safety; and
- (c) in relation to the Plant and the Services, not knowingly cause Select to be in breach of any WHS Legislation.
- (d) ensure so far as is reasonably practicable, that the Plant is without risks to the health and safety of persons who may use, handle, store, construct, assemble or carry out any reasonably foreseeable activity including the proper storage, decommissioning, dismantling, demolition or disposal of the Plant;
- (e) the Company must at all times comply with all reasonable site safety, security, operational and procedural requirements, provided that such requirements are not illegal or unsafe;

11.4 Select will provide the Company with delivery instructions that are reasonably necessary to enable the Delivery to be completed in a safe manner in accordance with relevant Laws. The Company must advise Select if insufficient instructions have been received.

11.5 Notwithstanding clause 11.2.11.4, Select is not liable in any way for any loss of any kind, arising out of any error, inaccuracy, incompleteness or other similar defect in the delivery instructions provided by Select to the Company. Compliance by the Company with this clause will not, of itself, relieve the Company of any of its other obligations under this Agreement.

11.6 Without limiting any other provision of this clause 11.2 or the Agreement generally, the Company must ensure that vehicles are operated, and Delivery Services are carried out at a standard equal to or above the relevant Primary Standards (including all the additional Primary Standards and information noted within same) for Site Establishment and Logistics which available via the following links [PS Logistics - Laing O'Rourke](#), [Logistics](#), [PS Site Establishment - Laing O'Rourke](#) and Chain of Responsibility <https://lorhsems.com/safety/ps-chain-of-responsibility/> .

11.7 Where Select reasonably suspects that a vehicle and/or driver assigned to perform a Delivery Services has breached, or will breach, any Law, any site safety, security, operational and procedural requirements or any term of this Agreement, Select is entitled to immediately revoke the access of the driver and/or vehicle, and require the Company to provide an alternate driver and/or vehicle to carry out the Delivery Service.

11.8 Select is entitled, on reasonable notice to the Company, at any time within normal business hours to inspect the Company's place of business, equipment and documentation to ensure that all relevant Laws have been and are being complied with.

11.9 The Company agrees to provide to Select on reasonable request any available data on transport related fines and infringements, insurance claims and any occupational health and safety incidents involving the Company or its Personnel.

## 12. DANGEROUS GOODS

12.1 Select must disclose whether the Goods are Dangerous Goods.

12.2 If the Company accepts Dangerous Goods for Delivery Services, Select will ensure that such Goods are:

- (a) accompanied by a written declaration of their nature and contents; and
- (b) properly and safely packed in accordance with statutory obligations applicable to the carriage of those Goods.

## 13. COMPLIANCE WITH TRANSPORT LAWS AND CHAIN OF RESPONSIBILITY LEGISLATION

### 13.1 The Company:

- (a) will at all times comply with all applicable road and transport Laws and regulations in the provision of the Delivery Services, including the COR Laws;
- (b) acknowledges that the Company is the primary duty holder (including as the operator, packer, loading manager, loader and unloader), under the COR Laws with responsibility for developing COR Systems applicable to the supply of any plant or materials including but not limited to ensuring that:
  - (i) any plant or tooling is appropriately maintained;
  - (ii) loads do not exceed vehicle mass or dimension limits;
  - (iii) the items are appropriately secured; and
  - (iv) all load restraint safety systems must comply with the current NTC Load restraint Guide
- (c) warrants that itself and its Personnel are aware and comply with the Company's COR Systems;
- (d) must comply with all applicable Laws in the provision of the Delivery Services including the COR Laws, the RSRT Legislation and RSRT Orders;
- (e) must ensure that any heavy vehicles are appropriately maintained with loads that do not exceed vehicle mass or dimension limits, and operators carrying freight containers have a valid container weight declaration and drivers do not exceed speed limits or regulated driving hours, do not drive while impaired by fatigue and observe minimum rest requirements;
- (f) must not aid or abet, cause or permit or coerce or induce their drivers to breach any applicable road Laws, exceed permitted driving hours, fail to have minimum rest periods, exceed the speed limit, carry goods that exceed vehicle dimension limits, inappropriately carry any goods on Select's behalf that are not appropriately secured, and breach any Law insofar as it relates to their employment under this contract as a driver;
- (g) will ensure that at all times all vehicles are duly registered and maintained and comply with any Laws and regulations applicable to such vehicles including in respect of the use of such vehicles to provide the Delivery Services to Select;
- (h) must proactively provide reasonable assistance to Select to enable Select to satisfy its duties and responsibilities under all relevant COR Laws;

- (i) must ensure Personnel are qualified and experienced, observe good driver etiquette and take on reasonable instructions or guidelines notified by Select from time to time and ensure that each of its Personnel obtains and maintains all licences, approvals, notices and other legal requirements required to enable the applicable activity, function or task to be undertaken lawfully;
- (j) undertake any audits or monitoring as requested by Select to demonstrate compliance with this clause; and
- (k) warrants that it is familiar with and has the capability and resources to comply with all relevant COR Laws and ensure that its Personnel comply with all COR Laws.

### 13.2 The Company must:

- (a) promptly inform Select of all incidents involving any Personnel engaged in connection with the performance of its obligations under the Agreement which results in any non-compliance with this clause 13; and
- (b) promptly comply with any reasonable direction given by Select to rectify or prevent that breach.
- (c) immediately notify Select in writing if it becomes aware of any breach, alleged breach or facts or circumstances which could reasonably be considered to constitute a breach of or non-conformance with the COR Laws.

## 14. ANTI-BRIBERY AND ANTI-CORRUPTION

- 14.1 Select is committed to operating in a manner consistent with the laws of the jurisdictions in which it operates, including Anti-Bribery and Anti-Corruption Legislation.
- 14.2 The Company must not, and must take all reasonable steps to ensure that any employee, agent, contractor, representative does not in connection with the Agreement, commit any act which would breach any applicable Anti-Bribery and Anti-Corruption Legislation.
- 14.3 The Company must implement adequate policies and procedures to manage and ensure compliance with Anti-Bribery and Anti-Corruption Legislation and disclose those policies and procedures to Select upon request. Where the Company does not have a written policy or, in Select's opinion, an adequate policy, it agrees that it will comply with the Laing O'Rourke ABAC policy and will comply with the principles of that policy in all respects as if it were its own policy.
- 14.4 The Company will immediately notify Select in writing if it becomes aware of any breach, alleged breach or facts or circumstances which could reasonably be considered to constitute a breach of Anti-Bribery and Anti-Corruption Legislation.

14.5 Without limiting any other rights Select has under this Agreement, if Select reasonably believes that the Company is in breach of this clause or that a breach is imminent, it may, by written notice effective immediately terminate the Agreement.

## 15. CODE AND INDUSTRIAL LAWS COMPLIANCE

- 15.1 The Company is responsible for and will ensure that it complies with its obligations under any Industrial Instrument or Laws that apply to it relating to the Company's employee entitlements, including:
  - (a) paying all applicable wages, workers' compensation insurance, fringe benefits tax, all payroll taxes and other employee entitlements including in respect of any superannuation fund, scheme or arrangement for the benefit of the Company's employees; and
  - (b) complying with all applicable Laws with respect to the deduction and payment of tax instalment deductions from salaries and wages paid to employees.
- 15.2 The Company must not engage in any unlawful arrangements or practices which may avoid obligations under awards, Industrial Instruments or Laws including treating a genuine employee as an independent contractor or allowing an inappropriate application of the Pay As You Go (PAYG) system of taxation.
- 15.3 Where a State Code applies to this Agreement, the Company must comply with the relevant State Code.

## 16. FORCE MAJEURE

- 16.1 If either party is delayed or prevented from performing an obligation under this Agreement by a Force Majeure Event, that party must promptly give Notice of the Force Majeure Event to the other party detailing the obligation it is unable to perform.
- 16.2 If a Notice is given by one party to the other party under clause 16, the performance of that obligation will be suspended for the period during which the obligation is prevented from being performed by the Force Majeure Event.
- 16.3 The Company will be entitled to an extension of time to the Delivery Date to the extent the Force Majeure Event has delayed delivery of the Goods in accordance with this Agreement.

## 17. GOODS AND SERVICES TAX

- 17.1 Terms defined in A New Tax System (Plant and Services Tax) Act 1999 (Cth) have the same meaning when used in this clause.

- 17.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under the Agreement are exclusive of GST.
- 17.3 If GST is payable on any supply made under the Agreement, the recipient must pay to the supplier an amount equal to the GST payable on the supply.
- 17.4 Subject to subclause 17.5, the recipient must pay the amount referred to in subclause 17.5 in addition to and at the same time as payment for the taxable supply is required to be made under the Agreement.
- 17.5 The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under subclause 17.3. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.
- 17.6 If the Agreement requires a party to reimburse any other party for any expense, loss or outgoing (reimbursable expense) incurred by another party, the amount required to be reimbursed by the first party will be the sum of:
- 17.7 the amount of the reimbursable expense net of input tax credits (if any) to which the other party or the representative member of any GST group of which that party is a member is entitled in respect of the reimbursable expense; and
- 17.8 if the reimbursement is subject to GST, an amount equal to that GST.
- 17.9 If a GST inclusive price is charged or varied under the Agreement, the supplier must provide the recipient of the supply a valid tax invoice or adjustment note at or before the time of payment or variation.
- 17.10 If an adjustment event arises in respect of a taxable supply made by a supplier under the Agreement, the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient as the case requires.
- 17.11 The Company must provide notice to Select of its entitlement (or not) to claim input tax credits in respect of premiums paid for relevant insurances under the Agreement as soon as practicable after the date of the Agreement.

## 18. TAXES

- 18.1 All other taxes, duties and levies arising out of or in connection with the Agreement or arising out of the use or possession of the Plant shall be paid by the Company and are deemed to be included in the Hire Charges.

## 19. SELECT'S RIGHT TO WITHHOLD TAX

- 19.1 Notwithstanding any other provision to the contrary, if Select considers it necessary to satisfy its obligations under any law (acting reasonably), Select may:

- (a) withhold an amount from a payment to be made to the Company; and
- (b) pay the withheld amount directly to the to the Commissioner of Taxation (**Commissioner**).

- 19.2 If the amount withheld in accordance with this clause is paid by Select to the Commissioner, it is deemed to have been paid to the Company on the date on which the remainder of the payment to which it relates was paid to the Company.
- 19.3 To the extent permitted by law, the Company agrees and acknowledges that it has no Claim against Select for any amounts withheld and paid to the Commissioner in accordance with this clause, and Select will not be required to pay the Company by the amount withheld.
- 19.4 If Select does not withhold an amount under this clause which it is required to under any law, the Company agrees to pay that amount to Select, upon request by Select within 7 days and Select will remit this amount to the Australian Taxation Office.
- 19.5 The Company must indemnify Select from and against any Liability of any kind suffered or incurred by Select as a consequence of a breach of warranty, failure by the Company to provide information or assistance requested by Select, or provision of incorrect information, with respect to a withholding tax matter except to the extent caused or contributed to by the negligence, breach or Wilful Misconduct of Select.

## 20. GENERAL

- 20.1 This Agreement is governed by the law applicable in the State or Territory in which the Delivery Point is located. The parties submit to the non-exclusive jurisdiction of the Courts of that State or Territory.
- 20.2 This Agreement constitutes the entire agreement of the parties about its subject matter and:
- (a) supersedes all previous agreements, understandings and negotiations on that subject matter irrespective of whether or not in writing; and
- (b) will prevail over any other document (including any delivery docket executed by Select, tax invoice or other document containing terms and conditions in relation to the delivery of the Goods) issued by the Company from time to time whether signed by Select or not and whether post-dating this Agreement or not.
- 20.3 The delay or non-exercise of a right (including a set off) does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or future exercise of it or the exercise of any other power or

right. Any waiver or consent given by a party will only be effective if given or confirmed in writing.

- 20.4 The remedies provided in this Agreement do not prejudice Select's rights against the Company whether arising out of or in connection with this Agreement or otherwise at law.
- 20.5 The Company will be subject to all conditions and warranties implied by the Australian Consumer Law (Schedule 2 to the *Competition and Consumer Act 2010* (Cth)) if and to the extent applicable to this Agreement.
- 20.6 The Company will not, without the prior written consent of Select, assign, transfer or subcontract this Agreement or any part of the Delivery Services.

## 21. DISPUTES

If a dispute arises in any way in connection with the Agreement, then either party may give the other Notice of that dispute. Within 14 days of that Notice, senior executives of the parties must meet to negotiate in good faith a resolution of the dispute. If the dispute has not been resolved 7 days after the expiry of the 14 days period for negotiation, either party may commence proceedings in a court of competent jurisdiction.

## 22. EXCLUSION

To the maximum extent permitted by Law, the operation of the Proportionate Liability Legislation is excluded in relation to rights, obligations and any Liability under the Agreement whether such rights, obligations or Liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at Law.

## 23. STATE CODE COMPLIANCE – NEW SOUTH WALES

- 23.1 The provisions in this clause 23 apply where the relevant State is New South Wales, and the Company is required to comply with the State Code applicable to New South Wales.
- 23.2 In addition to terms defined in this document, terms used in this clause 23 have the same meaning as is attributed to them in the NSW Guidelines (as published by the NSW Treasury July 2013). The NSW Code and NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).

### 23.3 Primary Obligation

- (a) The Company must at all times comply with, and meet any obligations imposed by, the NSW Code and NSW Guidelines.
- (b) The Company must notify the CCU and the Client Agency of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the Company engages a subcontractor or consultant, the Company must ensure that that contract

imposes on the subcontractor or consultant equivalent obligations to those in this section 1.2 of Part A, including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.

- (d) The Company must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

#### 23.4 Access and information

- (a) The Company must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its subcontractors, consultants and related entities.
- (b) The Company must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
  - (i) enter and have access to sites and premises controlled by the Company, including but not limited to the project site;
  - (ii) inspect any work, material, machinery, appliance, article or facility;
  - (iii) access information and documents;
  - (iv) inspect and copy any record relevant to the project;
  - (v) have access to personnel; and
  - (vi) interview any person,as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the Company, its subcontractors, consultants, and related entities.
- (c) The Company, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

#### 23.5 Sanctions

- (a) The Company warrants that at the time of entering into this contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (b) If the Company does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.

- (c) Where a sanction is imposed:
  - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
  - (ii) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
  - (iii) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction;
  - (iv) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Company, and
  - (v) its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

#### 23.6 Compliance

- (a) The Company bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Company is not entitled to make a claim for reimbursement or an extension of time from the Client Agency or the State of NSW for such costs.
- (b) Compliance with the NSW Code and NSW Guidelines does not relieve the Company from responsibility to perform the Services and any other obligation under the contract, or from liability for any defect in the Services or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (c) Where a change in the contract or Services is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the Company must immediately notify the Client Agency (or nominee) of the change, or likely change and specify:
  - (i) the circumstances of the proposed change;
  - (ii) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
  - (iii) what steps the Company proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Work Health and Safety Management Plan), and
  - (iv) the Client Agency will direct the Carrier as to the course it must adopt within 10 Business Days of receiving notice.

#### 24. STATE CODE COMPLIANCE – QUEENSLAND

- 24.1 The provisions in this clause 24 apply where the relevant State is Queensland and the Company is required to comply with the State Code applicable to Queensland.
- 24.2 In addition to terms defined in this Agreement, terms used in this clause 24, have the same meaning as is attributed to them in the Queensland Code (as published by the Department of Justice and Attorney- General). The Queensland Code is available at [www.treasury.qld.gov.au](http://www.treasury.qld.gov.au).

#### 24.3 Primary Obligation

- (a) The Company must comply with, and meet any obligations imposed by, the Queensland Code.
- (b) The Company must notify the BCCB (or nominee) and the Client Agency of any alleged breaches of the Queensland Code and of voluntary remedial action taken, within 24 hours of becoming aware of the alleged breach.
- (c) Where the Company is authorised to engage a subcontractor or consultant, and it does so, the Company must ensure that any secondary contract imposes on the subcontractor or consultant equivalent obligations to those in this section 1.2 of Part B, including that the subcontractor or consultant must comply with, and meet any obligations imposed by, the Queensland Code.
- (d) The Company must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the Queensland Code.

#### 24.4 Access and information

- (a) The Company must maintain adequate records of compliance with the Queensland Code by it, its subcontractors, consultants and related entities.
- (b) The Company must allow, and take reasonable steps to facilitate, Queensland Government authorised personnel (including personnel of the BCCB) to:
  - (i) enter and have access to sites and premises controlled by the Company, including the project site;
  - (ii) inspect any work, material, machinery, appliance, article or facility;
  - (iii) access information and documents;
  - (iv) inspect and copy any record relevant to the project;
  - (v) have access to personnel; and
  - (vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the Queensland Code and Queensland Guidelines, by the Company, its subcontractors, consultants and related entities.

- (c) The Company, and its related entities, must agree to, and comply with, a request from Queensland Government authorised personnel (including personnel of the BCCB) for the production of specified documents by a certain date, whether in person, by post or electronic means.

## 24.5 Sanctions

- (a) The Company warrants that at the time of entering into this contract, neither it, nor any of its related entities, are subject to a sanction in connection with the Queensland Code that would have precluded it from tendering for work to which the Queensland Code applies.
- (b) If the Company does not comply with, or fails to meet any obligation imposed by, the Queensland Code, a sanction may be imposed against it in connection with the Queensland Code.
- (c) Where a sanction is imposed:
- (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
  - (ii) the State of Queensland (through its agencies, Ministers and the BCCB) is entitled to:
  - (iii) record and disclose details of non-compliance with the Queensland Code and the sanction; and
  - (iv) take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the Company, or its related entities, in respect of work to which the Queensland Code applies.

## 24.6 Compliance

- (a) The Company bears the cost of ensuring its compliance with the Queensland Code. The Company is not entitled to make a claim for reimbursement or an extension of time from the Client Agency or the State of Queensland for such costs.
- (b) Compliance with the Queensland Code does not relieve the Company from responsibility to perform the Services and any other obligation under the contract, or from liability for any defect in the Services or from any other legal liability, whether or not arising from its compliance with the Queensland Code.
- (c) Where a change in the contract or Services is proposed, and that change would, or would be likely to, affect compliance with the Queensland Code, the Company

must immediately notify the Client Agency (or nominee) of the change, or likely change and specify:

- (i) the circumstances of the proposed change;
  - (ii) the extent to which compliance with the Queensland Code will, or is likely to be, affected by the change; and
  - (iii) what steps the Company proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan),
- and the Client Agency will direct the Company as to the course it must adopt within 5 Business Days of receiving notice.

## 25. MODERN SLAVERY

25.1 In this clause 25, '**Modern Slavery**' means trafficking in persons, slavery, servitude, forced marriage, forced labour, debt bondage, deceptive recruiting for labour or services and the worst forms of child labour.

25.2 The Company must:

- (a) comply with all Laws, including the *Modern Slavery Act 2018* (Cth);
- (b) establish appropriate systems and processes to ensure risks or occurrences of Modern Slavery in its supply chains or any part of its business are identified, assessed and addressed; including:
  - (i) undertaking due diligence of its own suppliers and subcontractors to ensure that any risks or occurrences of Modern Slavery in their supply chains or any part of their businesses are identified, assessed and addressed;
  - (ii) implementing a system of training for its employees in relation to the identification, assessment and addressing of Modern Slavery; and
  - (iii) establishing mechanisms through which individuals can raise concerns about working conditions or modern slavery without fear of negative consequences;
- (c) notify Select as soon as reasonably practicable after it becomes aware of, or reasonably suspects, Modern Slavery is occurring in its supply chains or any part of its business; and
- (d) within such reasonable timeframes as are agreed with Select, undertake remediation to address any instances of Modern Slavery in its supply chains or any part of its business.

25.3 The Company must provide reasonable assistance (including the provision of information and access to documents, or

completion of reports or questionnaires) that Select reasonably requires to enable Select to determine whether the Company is complying with its obligations under this clause and, if applicable, to assist with the obligations of Select under the *Modern Slavery Act 2018* (Cth).

25.4 The Company, if requested by Select, must prepare and provide to Select no later than within 20 Business Days an annual report documenting the steps taken to identify and address risks or occurrences of Modern Slavery in its supply chains, or in any part of its business.

25.5 Despite any other provision of this Agreement, if the Company refuses or fails to:

- (a) comply with clause 25.2(b)(i); or
- (b) remediate and cease instances of Modern Slavery in its supply chains or any part of its business, to the satisfaction of Select,

Select may immediately terminate this Agreement.

25.6 The Company indemnifies Select from and against any Liability Select may suffer or incur as a result of a failure by the Company to comply with its obligations under this clause 25 except to the extent caused or contributed to by the negligence, breach or Wilful Misconduct of Select. To the extent permitted by law, the Company releases Select from all claims which it may have against Select which relate to the exercise of Select's rights under this clause 25.

## 26. NO WAIVER

26.1 The delay or non-exercise of a right (including a set-off) does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or future exercise of it or the exercise of any other power or right. Any waiver of consent given by Select will only be effective if given or confirmed in writing.