



**LGA Procurement**  
Local Government Association  
of South Australia

**Engineering Services Basic Contract Information**

(information that is in our Head Agreement but not included in the terms and conditions attached below)

**Contract Number to quote on every order: 13007**

Contract Term: Three (3) years

Extension Period: Two (2) options to extend for a one (1) year term

Liability Insurance Policy Amount

- Public Liability Insurance: \$AUS 10 Million
- Professional Indemnity Insurance: \$ AUS 2 Million

# **LGCS PTY LTD AS TRUSTEE FOR LGCS TRUST NO 1 TRADING AS LGA PROCUREMENT**

HEADS OF AGREEMENT BETWEEN LGCS PTY LTD AS TRUSTEE FOR LGCS TRUST NO 1  
TRADING AS LGA PROCUREMENT

AND

**NAME OF COMPANY FOR ENGINEERING CONSULTANCY SERVICES/ASSET  
MANAGEMENT SERVICES/WATER MANAGEMENT ENGINEERING SERVICES.**

CONTRACT NO: **14-SP-00XX**



## Schedule D

---

### Standard Terms and Conditions of Contract between a Customer and the Contractor

**Please note:** A Contractor entering into an agreement to supply goods or services to a Customer should be aware of the following circumstances:

- There is no contract between a Customer and a Contractor under the Heads of Agreement (**HoA**).
- Under the HoA the Contractor makes a standing offer to provide goods or services to a Customer on terms and conditions determined under the HoA.
- The Standing Offer is capable of acceptance by a Customer at any time during the term of the HoA.
- A contract between a Customer and a Contractor (**Customer Contract**) comes into existence only where a Customer accepts the standing offer provided under the HoA.
- A Customer has flexibility in the terms on which it contracts with the Contractor. The Customer Contract may include the standard terms in this Schedule D to the HoA (Standard Terms), but could also include other standard terms which a Customer must use (clause 6.2.6, HoA) or special conditions (clause 6.2.7, HoA).
- The Contractor agrees under clause 5.1.4, HoA not to seek a condition in a Customer Contract which would derogate or diminish the obligations of the Contractor to the Customer under the Standard Terms.

#### 1. Interpretation

In the Customer Contract, except where the context otherwise requires:

**'Act'** means an Act passed by the Commonwealth Parliament or the South Australian Parliament and includes subordinate legislation under an Act.

**'Agreement'** means the agreement between LGCS Pty Ltd and the Contractor providing for the preferred supplier arrangement between the Customer and the Contractor (Contract Number: \_\_\_\_\_).

**'Associate Bodies'** means those entities that may access an LGA Procurement contract. This includes bodies such as Aboriginal and Islander Community Councils, LGA Procurement, the Local Government Association of South Australia. (LGA), Libraries and local government related entities or structures not constituted under the Local Government Act 1999 (SA).

**'Contract Price'** means:

- (a) where payment is to be made on a lump sum basis, the sum which is stated in the Customer Contract to be payable to the Contractor for the supply of the Deliverables by the Contractor and the performance of the obligations of the Contractor under the Customer Contract; and
- (b) where payment is to be made on a schedule of rates basis, the sum ascertained by calculating the product of the rates and the corresponding quantities set out in the schedule of rates and adding to the sum thereof

the total of any lump sums, provisional sums, contingency sums or other sums included in the schedule of rates; and

- (c) where payment is to be made on a lump sum and a schedule of rates basis, the aggregate of the sums referred to in paragraphs (a) and (b), but excluding any additions or deductions, which may be required to be made pursuant to the Customer Contract.

**'Contractor'** means *Contractor Name., ABN.*

**'Customer Contract'** means the Order and the Standard Terms.

**'Deliverables'** means the goods, services, tasks, work and requisites the subject of the Customer Contract which are more particularly described in the Specification including all variations to the goods, services, tasks, work and requisites provided for by the Customer Contract or such of them as shall be described in an Order.

**'GST'** means the goods and services tax under the GST Act.

**'GST Act'** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes other GST related legislation.

**'Insolvent'** means in relation to a party means that:

- (a) an application is made to a court for an order that the party be wound up and that application is not withdrawn or dismissed within 10 days;
- (b) an order is made that the party be wound up;
- (c) an application is made to a court for an order appointing a liquidator, or provisional liquidator, in respect of the party and that application is not withdrawn or dismissed within 10 days;
- (d) a liquidator or provisional liquidator is appointed to the party whether or not under an order;
- (e) an administrator is appointed to the party;
- (f) otherwise than for the purpose of a solvent amalgamation, restructure or reorganisation, the party enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any of its creditors, or it proposes a re-organisation, moratorium or other administration involving any of its creditors;
- (g) the party resolves to wind itself up, or otherwise dissolve itself, or gives notice of its intention to do so (except to reconstruct or amalgamate while solvent on terms approved by the other Party) or is otherwise wound up or dissolved;
- (h) the party is, or states that it is, unable to pay its debts as and when they become due and payable;
- (i) in relation to the property of the party, a receiver, or receiver and manager, is appointed in relation to substantially all of that property or a mortgagee of the party takes possession of substantially all of that property for the purpose of enforcing a mortgage; or
- (j) anything analogous or having a substantially similar effect to any of the

events specified above happens under the law of any applicable jurisdiction.

**'Standing Offer'** means the written offer (in the form of the Tender Response) submitted to the Principal by the Contractor to provide the Deliverables and, if applicable, as amended in writing by any post offer negotiations.

**'Order'** means an order for Deliverables placed by a Customer with the Contractor.

**'Quotation'** means a formal statement of offer (submitted in response to a RFQ) by the Contractor to supply the Deliverables required by the Customer, at specified prices, and within a specified period.

**'Request for Quotation or RFQ'** means a document inviting price quotations from the Contractor which defines the criteria of service, quality and delivery for the Deliverables required by a Customer.

**'Specification'** includes any specification included in the Request for Tender.

## **2. Formation of Customer Contract and Interpretation**

- 2.1 The contract between the Customer and the Contractor comprises these terms and conditions and the Order (together the **Customer Contract**). To the extent of any inconsistency, these terms and conditions take precedence.
- 2.2 The Customer Contract shall commence on the date specified in the relevant Order and shall expire, unless terminated earlier, once all Deliverables subject to the Order have been supplied to the satisfaction of the Customer.
- 2.3 Except where the context otherwise requires, the definitions and rules of interpretation set out in clause 1 of the Agreement to which this Customer Contract forms a schedule shall apply to this Customer Contract.

## **3. Entire Agreement**

- 3.1 The Customer Contract constitutes the only terms that apply to a Customer's purchase of Deliverables.
- 3.2 A Customer will not be bound by any other terms of the Contractor, even if a Customer has signed an invoice or similar document which incorporates additional terms.

## **4. Incorporation of Schedules**

- 4.1 The Customer and the Contractor agree that Schedule B (**Price Schedule**) and Schedule D of the Agreement, as amended from time to time in accordance with the provisions of the Agreement, are incorporated by reference into this Customer Contract as if they are set out in this Customer Contract.
- 4.2 The Contractor must notify the Customer of any amendments that may be made from time to time to schedules.

## **5. Request for Quotation and Ordering Process**

- 5.1 Request for Quotations

- 5.1.1 A Customer may submit an RFQ with further information and specifications of their requirements and required accessories, spare parts, maintenance and training services.
- 5.1.2 Where the Contractor wishes to submit a quotation in response to a RFQ, the Contractor must respond to a Customer RFQ in writing within the period set out in the Customer's RFQ or as otherwise agreed with the relevant Customer.
- 5.1.3 If the Contractor is unable to meet any of the requirements of a specific RFQ, this should clearly be noted in the Contractor's RFQ response.
- 5.1.4 Any free services which the Contractor offers to supply, additional to those specified and which the Customer accepts, shall be carried out in accordance with the details supplied by the Contractor at a time and place approved by the Customer.
- 5.1.5 A Customer may seek clarifications following receipt of a Contractor's RFQ response.
- 5.1.6 Customers are not bound to accept a RFQ response received from the Contractor or any other supplier on the Preferred Supplier arrangement even where such RFQ is the lowest in price.
- 5.1.7 If the Contractor's RFQ response is selected following the RFQ process, the Customer shall accept the Contractor's offer by issuing an Order pursuant to clause 4.2 below.

## 5.2 Orders

- 5.2.1 Each Order placed by a Customer with the Contractor shall incorporate (and any inconsistency or ambiguity shall be resolved in the following order of precedence - listed in order of descending importance):
  - 5.2.1.1 these standard terms and conditions ;
  - 5.2.1.2 the requirements of the Order;
  - 5.2.1.3 the requirements of the relevant RFQ;
  - 5.2.1.4 the Contractor's RFQ response; and
  - 5.2.1.5 the Specification.
- 5.2.2 Where the Contractor receives an Order from a person other than a notified Authorised Officer or which does not list the Principal's relevant Contract Number, the Contractor must:
  - 5.2.2.1 not supply the Deliverables identified in the Order; and
  - 5.2.2.2 refer the Order to the relevant Authorised Officer.
- 5.2.3 Subject to clauses 4.2.5, 4.2.6 and 4.2.7, a Customer may include special conditions in any Order which add to the Customer Contract. These special conditions will only be valid should both the Customer and Contractor agree to them. For the avoidance of doubt, the Contractor shall be deemed to have agreed to such special conditions where the special conditions are clearly set out in an RFQ issued by the Customer and the Contractor commences provision of the Deliverables pursuant to a resulting Order.

- 5.2.4 Where the special conditions are likely to constitute a material change to the Customer Contract (determined by the parties acting reasonably and in good faith), the parties must seek the approval of the Principal prior to the Order being issued.
- 5.2.5 If on review of the special conditions the Principal finds that the special conditions of an Order substantially conflict with the terms and conditions of the Agreement or the Customer Contract, the Principal shall consult the Customer and Contractor to resolve the matter.
- 5.2.6 If the matter cannot be resolved as set out above, the Principal may deem the relevant Order as being non-compliant with the terms of the Agreement.
- 5.2.7 For the avoidance of doubt, the Principal may request a copy of an Order, RFQ or quotation (or associated information) from either party at any time and the party to whom the request is directed shall provide the Principal with such documentation or information within 7 days of the request (or such other time period as may be agreed between the Principal and the relevant party).

## **6. Price**

- 6.1 In circumstances where a Customer does not undertake an RFQ process before issuing an Order, all Deliverables are to be supplied at the Prices as specified in the Price Schedule (which may be amended in accordance with the Agreement from time to time). All prices stated in the Order are firm, and are not subject to any escalation.

## **7. Supply of Deliverables**

- 7.1 The Contractor must supply the Deliverables to a Customer in the manner, and at the time, specified in the Order. The Deliverables must:
  - 7.1.1 be fit for the purpose for which the Deliverables are intended to be used by a Customer,
  - 7.1.2 comply with the requirements of the Order and Specification;
  - 7.1.3 be of merchantable quality;
  - 7.1.4 conform with samples provided to a Customer (if any); and
  - 7.1.5 carry any applicable manufacturer's warranties, the benefit of which must be passed to a Customer on the supply of the Deliverables.
- 7.2 Upon it becoming evident to the Contractor that the supply of the Deliverables is likely to be delayed, the Contractor must promptly notify the Customer in writing. Such notification shall not release the Contractor from its obligation to supply the Deliverables by the time specified in the Order (subject to the delay being caused by a force majeure event).
- 7.3 The Contractor shall not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with any delay unless the delay has been caused, or contributed to, by the Customer.
- 7.4 Unless otherwise provided in the Order or Specification, the Contractor must pay all

packaging, freight, insurance, and other charges whatsoever, in connection with the delivery of Deliverables and the return of any Deliverables wrongly supplied and all packaging.

- 7.5 Where it is a requirement of the Order or Specification that Deliverables must be installed or commissioned, the Customer will not have accepted the Deliverables unless the Deliverables are satisfactorily installed or commissioned within the period stipulated in the Order or Specification or, if no period is stipulated, within a reasonable period.
- 7.6 The Customer may conduct any examination or testing of the Deliverables. If the testing shows that the Deliverables do not comply with the Order or Specification or are otherwise defective, the cost of the testing shall be a debt due and payable by the Contractor to the Customer.
- 7.7 All materials of construction shall be new and all components standardised so that replacements can be installed without structural alteration.
- 7.8 Unless the Order or Specification states otherwise, all Deliverables supplied must be in accordance with Australian Standards where such exist. Where an Australian Standard does not exist any relevant ISO Standard shall apply.
- 7.9 Any repairs or replacement Deliverables provided by the Contractor under warranty will be subject to at least the same warranty as applied to the original Deliverables, from the date of repair or replacement.
- 7.10 Requests for repair under warranty are to be handled by the Contractor so that there is only one point of contact required by Customer to arrange warranty repairs.
- 7.11 The Contractor must, when attending any premises or facilities of the Customer, comply with all reasonable directions and procedures as notified by the Customer, including those relating to security and work health and safety.
- 7.12 Title in the Deliverables, free of encumbrances, passes to a Customer upon acceptance of the Deliverables by the Customer or upon payment (whichever is the earlier).
- 7.13 Risk in the Deliverables prior to acceptance by the Customer shall remain with the Contractor except where the damage, deterioration, theft or loss results from a negligent act or omission of the Customer or any agent or employee of the Customer.

## **8. Conflict of Interest**

- 8.1 The Contractor warrants that, to the best of its knowledge, no conflict of interest of the Contractor, its employees, agents or subcontractors exists or is likely to arise in the performance of its obligations under this Customer Contract.
- 8.2 The Contractor must:
  - 8.2.1 notify in writing, and consult with, the Customer immediately upon becoming aware of the existence or possibility of a conflict of interest; and
  - 8.2.2 comply with any direction given by the Customer in relation to those circumstances directed at managing that conflict of interest, mitigating its

effects or preventing its recurrence.

- 8.3 For the purposes of this clause, "conflict of interest" includes engaging in any activity, or obtaining any interest, likely to conflict with the performance by the Contractor of, or to restrict the Contractor in performing, its obligations under the Customer Contract.
- 8.4 The Customer may terminate the Customer Contract if in its view a conflict of interest exists.

## **9. Packaging**

- 9.1 Unless otherwise agreed in writing by a Customer, the Contractor must pack the Deliverables in a manner which is sufficiently robust and adequate, to protect the Deliverables from damage or deterioration during transit and delivery to a Customer.
- 9.2 The Contractor must comply with a Customer's reasonable directions concerning the packing of the Deliverables (including the removal of any packaging from the Customer's premises).

## **10. Warranties**

- 10.1 The Contractor warrants to a Customer that:
- 10.1.1 the Deliverables will be provided by the Contractor with due care and skill and will be free of defects in materials and workmanship;
- 10.1.2 to the extent specified in the Order, an attachment or other formal communication, the Contractor is aware of the requirements of a Customer, concerning the nature and quality of the Deliverables, the purpose for which the Deliverables are required or the result that a Customer desires the Deliverables to achieve, and that a Customer is relying upon the Contractor's skill and judgement in provision of the Deliverables, and
- 10.1.3 conditions and warranties implied by operation of law (including by the *Competition and Consumer Act 2010* (Cth)) relevant to the supply of the Deliverables under the Customer Contract apply and the protections provided to the Customer by those conditions and warranties cannot be derogated from or diminished by the Contractor.
- 10.2 To the extent (if any) that a manufacturer's or supplier's warranty is less than 12 months, the Contractor provides a warranty to the Customer against defects in the Deliverables and materials, parts or labour in respect of the Deliverables.

## **11. Indemnities**

- 11.1 The Contractor is liable for and indemnifies and must keep indemnified, the Customer *and its officers, employees and agents* against any claim, loss or expense (including a claim, loss or expense arising out of personal injury, death or damage to property) which any of them suffers, incurs or is liable for (including reasonable legal costs on a solicitor and client basis) (together the Loss) as a result of:
- 11.1.1 the defective or negligent supply or non-supply of any Deliverables;

11.1.2 any unlawful, negligent, reckless or deliberately wrongful act or omission of the Contractor (or its employees, agents or subcontractors or their employees) in the performance of the Customer Contract; or

11.1.3 any breach by the Contractor of the Customer Contract or the Agreement.

11.2 The Contractor's liability in respect of the indemnity given under this clause shall be reduced proportionately to the extent that any breach of the Customer Contract by the Customer, its officers, employees or agents caused or contributed to the Loss.

11.3 Despite clause 11.1 and 11.2, the Contractor will not be liable for any special, indirect, incidental or consequential damage arising out of or in connection with this Customer Contract.

## **12. Variation of Order**

12.1 A Customer is entitled to cancel an Order at any time before the Deliverables are delivered. If this occurs, the Contractor must take all necessary steps to mitigate any losses which it may suffer as a result of the cancellation.

*Note: This provision does not apply if a Customer cancels this Customer Contract because of the Contractor's default. Please read 'Cancellation of Contract' below.*

12.2 A Customer is entitled to vary the quantity or the scope of Deliverables under an Order. The Contractor must not vary the item price or hourly rates of the Deliverables if the variation of quantity is 10% or less from the original Order.

## **13. Rejection of Deliverables**

13.1 A Customer may reject any of the Deliverables which do not comply in all respects with this Customer Contract. The Contractor will be given reasonable opportunity to rectify the rejected Deliverables.

13.2 Where reasonable opportunity has been provided to rectify the Deliverables, but they remain in an unacceptable condition, the Customer may reject an entire order of Deliverables even if only a portion of those Deliverables do not comply in all respects with this Customer Contract.

13.3 A Customer is not required to make payment for any rejected Deliverable until rectified. The Contractor must pay a Customer for all reasonable direct costs incurred by a Customer in removing or returning the rejected Deliverables.

## **14. Inspection of Deliverables**

A Customer is entitled to inspect the Deliverables as they are used. A Customer is not required to inspect or to reject the Deliverables within any specified time period.

## **15. Payments**

15.1 Subject to the Customer's confirmation that:

15.1.1 the Deliverables supplied by the Contractor comply with the relevant Order and

the Specification; and

15.1.2 the Deliverables supplied by the Contractor are complete; and

15.1.3 the Contractor's invoice is in accordance with the Customer Contract,

the Customer must pay the amount due to the Contractor within 30 days of receipt of a correctly rendered tax invoice (or such other period as may be mutually agreed in writing between the parties) or, if additional information is required by the Customer, within 30 days (or such other period as may be mutually agreed in writing between the parties) after receipt of the additional information.

15.2 Upon receipt of an invoice, the Customer may require the Contractor to provide additional information to assist the Customer to determine whether or not an amount is payable.

15.3 A correctly rendered tax invoice must:

15.3.1 identify the Deliverables the subject of the tax invoice;

15.3.2 specify the title of the Customer Contract;

15.3.3 specify the contract number allocated to the Customer Contract by the Principal as well as any other number the Customer may specify in writing to the Contractor for the purposes of the Customer Contract)(if any);

15.3.4 where Deliverables are charged on a time basis, be supported by records of time spent by individual persons on the Services, verified by the Customer;

15.3.5 specify details of the Order;

15.3.6 specify details of the Contract Price requested by the Customer; and

15.3.7 provide sufficient detail to enable the Customer to assess progress against targets (if any) set out in the Order; and

15.3.8 specify the Australian Business Number of the Contractor; and

15.3.9 specify the address for payment of the Contractor; and

15.3.10 specify the date of supply of the Deliverables identified in the invoice; and

15.3.11 specify the Contractor's invoice number and invoice date; and

15.3.12 specify the Contract Price payable by the Customer and particulars of any GST payable in respect of the Contract Price; and

15.3.13 otherwise comply with the requirements of a tax invoice for the purposes of the GST Act.

15.4 If the Customer pays an invoiced amount to the Contractor, and it is subsequently found not to have been a correctly rendered tax invoice, the Customer may deduct any overpaid amount owed to the Customer from the next invoiced payment or, if no other payment is due to the Contractor pursuant to the Customer Contract, recover

the amount from the Contractor as a debt due and payable to the Customer.

- 15.5 Payment of money to the Contractor does not constitute an admission by the Customer that Deliverables have been supplied in accordance with the Customer Contract.
- 15.6 Upon payment for the Deliverables, property in that part of the delivery comprising the Deliverables shall pass to the Customer.
- 15.7 Payment shall include credit by way of set off.
- 15.8 Failure by the Customer to pay the amount payable by the due time will not be grounds to invalidate or avoid the Customer Contract.
- 15.9 The Contractor shall not be entitled to any interest or charge for extending credit or allowing time for the payment of the Contract Price unless otherwise provided in the Order.
- 15.10 The Customer may deduct from moneys due to the Contractor under the Customer Contract or on any other account, any moneys due from the Contractor to the Customer, and if those moneys are insufficient, the Customer may have recourse to any security held by the Customer under the Customer Contract. Nothing in this Clause shall affect the right of the Customer to recover from the Contractor any moneys due from the Contractor to the Customer or any balance that remains owing after the deduction of moneys due from the Contractor to the Customer.
- 15.11 If the Contractor complies with its obligations under this Customer Contract, a Customer must make the payments duly invoiced to a Contractor by a Contractor in relation to the provision of the Deliverables at Prices in accordance with the Price Schedule.
- 15.12 Unless otherwise agreed in writing, a Customer must make such payment by the end of the month following the month of invoice.

## **16. Termination**

- 16.1 A Customer may terminate this Customer Contract and related Order:
  - 16.1.1 if the Agreement is terminated or expires;
  - 16.1.2 if the Deliverables or any part of the Deliverables are not delivered or provided within the time specified in the Order, or
  - 16.1.3 if the Contractor does not comply with a material term of this Customer Contract and, the breach is not able to be remedied, or
  - 16.1.4 if the Contractor does not comply with a material term of this Customer Contract and, where the breach is able to be remedied, does not remedy it within 30 days of receiving notice to do so from the Customer or
  - 16.1.5 if the Contractor becomes or is likely to become Insolvent; or
  - 16.1.6 at convenience, provided the Customer agrees to pay all outstanding money for work satisfactorily completed as well as the Contractor's direct costs and other

reasonable costs associated with the Customer not fulfilling its contractual promise.

16.2 On termination under clauses 16.1.2 or 16.1.3, a Customer:

16.2.1 may refuse to accept any undelivered Deliverables,

16.2.2 may reject any delivered Deliverables,

16.2.3 is not required to make any payment to the Contractor other than for services that comply with the Customer Contract,

16.2.4 may recover from the Contractor all direct costs incurred by a Customer in obtaining other goods or services, in replacement of the Deliverables, and

16.2.5 may recover from the Contractor, any other direct losses incurred by a Customer as a result of the Contractor's breach of the Customer Contract or the Agreement.

## **17. Sub-Contracting and Assignment**

17.1 The Contractor may subcontract part or all of the performance of any of the Deliverables under a Customer Contract to a subcontractor approved in writing by the Principal from time to time or identified in Schedule A of the Agreement.

17.2 The Contractor will continue to be bound by, and responsible for, the performance of the Customer Contract and will remain responsible for the acts and omissions of any sub-contractor as if such acts and omissions were those of the Contractor itself, notwithstanding that part or all of it may have been subcontracted.

17.3 The Contractor must not, without a Customer's prior written permission, sub-contract or assign any part of its rights and obligations under this Customer Contract. A Customer is not required to make any payment to any sub-contractor or assignee of the Contractor.

## **18. Confidentiality**

18.1 The parties must not disclose to any person, any Confidential Information concerning this Customer Contract, and any other information acquired by the one party in its dealings with the other party, unless where:

18.1.1 such information is in the public domain, other than through disclosure by the Contractor;

18.1.2 is approved in writing by the other party;

18.1.3 disclosure is made to the party's professional legal, audit or financial advisers;  
or

18.1.4 such disclosure is required by law (but only to the extent of such required disclosure).

18.2 Both parties acknowledge that all information provided by either party to the other party under this Customer Contract remain the property of the providing party.

## **19. Statutory Requirements**

19.1 The Contractor must obey, and must ensure that its employees, sub-contractors and agents obey, all laws, regulations and any codes of conduct which apply to the Contractor's performance of this Customer Contract. This includes, without limitation, laws relating to work health and safety.

## **20. Dispute Resolution**

- 20.1 Disputes in relation to this Customer Contract must be resolved in accordance with this clause 20.
- 20.2 Either party may, in a case of genuine urgency, seek immediate interlocutory relief or an interim remedy.
- 20.3 Subject to clause 19.2, any dispute must be resolved as follows:
- 20.3.1 each party must submit the dispute to one of its senior officers who has not previously been involved in the dispute ("Negotiators") within 3 days of the dispute arising;
  - 20.3.2 the Negotiators must meet as soon as practicable to resolve the dispute;
  - 20.3.3 if the Negotiators cannot resolve the dispute within 14 days of its reference to them (or such other period as may be agreed), each Negotiator must prepare a written summary of his or her attempts to resolve the dispute and refer that summary to the Principal; and
  - 20.3.4 if the Principal cannot resolve the dispute within 14 days of its reference to it (or such other period as may be agreed between the parties), either party may submit the dispute to arbitration in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Arbitration Rules. The arbitrator's decision shall be final and the arbitrator's costs shall be borne by the losing party unless otherwise determined by the arbitrator.
- 20.4 Notwithstanding the existence of a dispute each party must continue to perform its obligations under this Agreement.

## **21. General**

### **21.1 Amendment**

This Customer Contract may only be varied or replaced by a document duly executed by the parties.

### **21.2 Further Assurance**

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by the Customer Contract.

### **21.3 GST**

- 21.3.1 In this clause words that are defined in the GST Act have the same meaning as their definition in the GST Act.
- 21.3.2 Except as otherwise provided by this clause, all consideration payable under this Agreement in relation to any supply is exclusive of GST.
- 21.3.3 If GST is payable in respect of any supply made by a supplier under a Customer Contract, subject to clause 20.3.4 the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under the Customer Contract.
- 21.3.4 The supplier must provide a tax invoice to the recipient before the supplier will

be entitled to payment of the GST payable under clause 20.3.3.

#### **21.4 Intellectual Property**

21.4.1 Subject to clause 20.4.2 the Customer Contract shall not affect the intellectual property rights of either party.

21.4.2 Unless otherwise set out in the relevant Order, all intellectual property rights in any design work commissioned by the Customer shall vest in the Customer.

#### **21.5 Waiver and Exercise of Rights**

21.5.1 A single or partial exercise or waiver of a right relating to the Customer Contract does not prevent any other exercise of that right or the exercise of any other right.

21.5.2 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

#### **21.6 Survival of Indemnities and Warranties**

Each indemnity and warranty in the Customer Contract is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of the Customer Contract.

#### **21.7 Enforcement of Indemnities**

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

#### **21.8 No Merger**

The warranties, undertakings, deeds and continuing obligations in this Customer Contract do not merge on completion.

#### **21.9 Governing Law and Jurisdiction**

21.9.1 This deed is governed by the law in South Australia.

21.9.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.