

1 DEFINITIONS

In these Terms:

Day means calendar day unless otherwise stated.

Background IP means your Intellectual Property Rights which:

- (a) are in existence at the date of the Order; or
- (b) come into existence after the date of the Order otherwise than in connection with the Order.

Business Day means a day that is not:

- (a) a Saturday or Sunday;
- (b) a public holiday in Mackay or
- (c) 27, 28, 29, 30 or 31 December.

Goods means supplies, parts, components, , plant, equipment, vehicles and machinery gas and electricity, and computer hardware and software, together with any Services relating to their supply, installation or commissioning as identified in the Order;

Order means a purchase order provided by Purchaser bearing its company details and all documents attached thereto or incorporated therein by reference;

Intellectual Property Rights - any letters, patent, trademark, copyright, design, confidential information or any other similar protection which is held anywhere in the world

Premises means Dalrymple Bay Coal Terminal at Hay Point Queensland, and any other relevant premises we control;

Project IP means all Intellectual Property Rights created, discovered or coming into existence as a result of, or for the purpose of or in connection with the supply of Goods or provision of Services of the Order (including without limitation all Intellectual Property Rights developed by you in supplying the Goods and/or providing the Services and all modifications and improvements to Background IP developed in connection with this Order).

DBCTM means each of DBCT Management Pty Ltd ABN 16 097 698 916 and DBCTM(DBCT) Investor Services Pty Ltd as trustee of the DBCTM Trust ABN 97699483672].

Representative means a person we nominate as our representative in respect of an Order (or orders generally from you);

Services means the provision of advice, benefits, privileges, facilities or other services, with or without the ancillary supply of Goods as identified in the Order;;

Terms means the terms of this document and of any Order or other document issued by us for the supply of Goods or Services, and any document attached to or incorporated by reference in such document.

2 AGREEMENT

2.1 You will be taken to accept an Order and the Terms if you acknowledge the Order or commence work on or ship, deliver or provide any Goods or Services after we give you the Order.

2.2 If there is any ambiguity or conflict between documents, the Order prevails over the Terms.

3 PRICE AND PAYMENT

3.1 All prices you quote to us or which we include in an Order will be firm (unless otherwise stated). Where a price has not been displayed correctly on an order you must promptly notify us of the correct price prior to despatch of the goods. Prices may not be invoiced at a different amount without our prior written consent. Once the goods have been despatched we have the right to refuse to give our consent.

3.2 All applicable sales, goods and services or other taxes and duties will be taken to be included in a specified price (unless otherwise stated), but must be separately itemised by you in your invoice.

3.3 (a) If GST is payable by a party on a taxable supply made under or by reference to an Order or these Terms, the other party must pay the GST amount as additional consideration, provided that a tax invoice is given in relation to it.

(b) Where a party is required to reimburse or indemnify another party for any cost, expense or other liability, the calculation of that cost, expense or other liability will exclude the amount of any input tax credit that the other party is entitled to claim.

(c) Terms used in this clause and defined in a New Tax System (Goods and Services Tax) Act 1999 have the meaning given to them in that Act, and *input tax credit* includes an input tax credit for an acquisition made by a person to which another member of the same GST group is entitled.

3.4 Invoices must be submitted by no later than the 7th day of the month following the delivery of the goods or satisfactory completion of the services, mailed directly to the address on the Order marked to the attention of Accounts payable.

Invoices quoting multiple Order numbers or no order number will not be accepted and subsequently returned.

Where services are provided, progress claims will only be accepted if specified within the body of the Order. All Other Orders for services must be invoiced following satisfactory completion of the services.

Provided Goods and Services comply with an Order and your invoice is in order, we will pay the invoice by:

- (a) the last day of the month in which that invoice is received; or
- (b) the last day of the following month, if the invoice is received after the 7th day of a month.

Failure to comply with any term of the Order will result in payment being withheld. The payment date for any such invoice shall be re-calculated from date of meeting all terms of the Order.

3.5 Any discount period for early payment will run from the date we receive that invoice.

3.6 In your delivery documentation and your invoice you must include:

- (a) our Purchase Order Number and address, as stated in the Order;
- (b) any other supporting information or documentation specified or implied in the Order (for example, if the price is calculated on a schedule of rates, copies of Timesheets detailing breakdown of classifications, hours and rates; materials and equipment; copy of oncost invoices).
- (c) any further information or documentation stipulated in any applicable GST legislation or regulation, or by Purchaser, so that Purchaser will receive the benefit of any input tax credit in relation to the supply of this order.

- (a) you possess all permits, authorities and other consents needed to fulfil the Order;
- (b) you have clear legal title to Goods supplied, free from all encumbrances, liens, claims and debts of any nature;
- (c) you are entitled to and will grant us, at no additional charge, any necessary licence or consent needed for ownership or use of the Goods or Services;
- (d) the Goods are not subject to any duty, tariff, value added tax or penalty;
- (e) the Goods or similar goods are not and have not been subject to product liability claims or product recall notices in any part of the world;
- (f) the Goods and Services and all design, supply, fabrication, testing, packaging, loading, delivery and commissioning of them, and our correct use of them, will comply with all laws, standards, codes, directives and manufacturers' recommendations (as applicable);
- (g) the Goods and Services and our use of them will not infringe any Intellectual Property Rights.
- (h) the Goods (and, where applicable, Services):
 - are correctly labelled;
 - correspond with the description under which they were purchased;
 - correspond with any samples supplied by you;
 - are free from defects in design, materials and workmanship.
 - have a life expectancy commensurate with what would be expected of similar goods provided for similar purposes by a competent and reputable seller or contractor; and
 - be new unless specified otherwise by us.

4 QUANTITY

4.1 You must not deliver more Goods or provide more Services than specified in our Order. We may return any excess quantity to you, at your expense.

4.2 If you do not deliver all Goods or Services in an Order when required, or Goods or Services delivered do not comply with the Order or these Terms, we may treat that delivery as not having been made.

5.2 You must immediately (at your expense) rectify any failure of Goods or Services supplied by you to comply with these warranties.

5.3 You are responsible for complying with these warranties, even if you are providing Goods and Services in accordance with our specifications (unless we expressly waive compliance with a warranty which you tell us you cannot comply with because of our specifications).

5 WARRANTIES

5.1 In addition to any warranty or representation express or implied at law, you warrant to us in respect of each Order you accept that:

5.4 You also give us any additional warranties which are:

- (a) stated or implied in the Order;
- (b) offered by you in respect of an Order; or
- (c) customarily given by you with Goods or Services of the type supplied, except to the extent that such warranty would be less favourable to us than in the preceding clauses.

- (b) if the Order is for Goods manufactured or fabricated to specifications prepared by or for us, when you receive our notice of cancellation you must immediately cease manufacture and supply of work (either totally or to the extent specified in the notice) and do all things possible to mitigate any further costs;

6 INSPECTION DURING MANUFACTURE

- 6.1 You must ensure that we and our Representative or any other nominee can inspect and test all or part of work relevant to an Order (including subcontracted work) prior to and during manufacture of Goods, until final acceptance of them by us.
- 6.2 We have the right to reject any work which does not comply with an Order or the Terms.
- 6.3 Our rights to inspect, test and reject do not relieve you of your warranties.
- 6.4 You must give us manufacturing schedules, progress reports and other details we ask for about materials, processes, locations and other things relating to manufacturing of Goods we order.

- (c) we will pay you any costs reasonably incurred by you up to the date of cancellation which are directly attributable to the Order and which cannot otherwise be recouped by you, if you give us reasonable evidence of those costs;

- (d) upon such payment, title to and property in Services prepared to that time and Goods and materials paid for will pass to us.

7 VARIATION

- 7.1 We reserve the right to vary an Order at any time. If our variation causes an increase or decrease in your costs or an alteration in the delivery time, an adjustment may be made as follows:
 - (a) you will only be entitled to an increase in price or extension of time if you advise us as soon as practicable (and in any event within 7 days after we requested the variation) of the proposed increase or extension, and we then confirm the variation;
 - (b) the price will only vary proportionately with the variation in your costs; and
 - (c) any alteration in the delivery time must fairly represent the increase or decrease in time resulting from the variation (as reasonably determined by us).

9 TRANSPORTATION

- 9.1 You must identify or mark Goods as specified in the Order.
- 9.2 You must ensure that Goods are suitably packed so that they are not damaged and do not deteriorate in transit or in storage before we put them to use.
- 9.3 You are liable for any loss or damage due to unsuitable packing of Goods and for any difference in freight charges we incur because of any failure to follow transport instructions in an Order or to properly describe Goods being transported.
- 9.4 You must comply with all applicable codes for the transport to us of any dangerous Goods.

10 DELIVERY DOCUMENTATION

- 10.1 You must clearly mark all delivery documentation with the relevant Order number(s).
- 10.2 You must provide a copy of delivery documentation with the delivery of Goods to us.
- 10.3 All outer cartons for transport must contain a legible packing slip or invoice and must be marked with a description of the Goods, our Order number(s) and an indication of what part of the Order the container relates to (e.g. "box 1 of 10").

8 CANCELLATION BEFORE COMPLETION

We may cancel an Order for Goods or Services not yet received.

In that case:

- (a) if the Order is for Goods which are your standard stock, our obligation will only be to pay for Goods shipped prior to the cancellation and which are accepted by us;

11 SERVICES & INSTALLATION/COMMISSIONING

- 11.1 Where you or your officers, employees, agents or contractors provide Services or work in connection with the installation, fitting or commissioning of Goods, or where you or they are otherwise on our Premises:

- (a) you must ensure that all work is performed in a professional and workmanlike manner, and that you and they are careful, fully qualified, skilled and experienced and exercise due care in the performance of work;
- (b) if any of the work or materials is found to be defective or not in compliance with the Order and you fail to immediately remedy the defect or default to our satisfaction, we may remedy it at your reasonable expense;
- (c) you must supply all labour, tools, equipment and materials necessary to complete the work;
- (d) you and they must do everything practicable not to impede or interfere with other works or activities on the Premises;
- (e) you and they must comply with our safety requirements and with all reasonable directions from us in relation to the Premises;
- (f) you and they will perform all work as an independent contractor, and not as our agent or employee;
- (g) you must obtain and maintain in full force with insurers of good standing and reputation.
- public liability insurance for not less than \$10 million per event;
 - workers' compensation insurance; and;
 - motor vehicle insurance for all motor vehicles brought on to our Premises, and you must give us, on request, certificates of currency for all such insurance;
- (h) all equipment, supplies and materials belonging to you or them brought to or kept at the Premises will be at your sole risk.

12 FINAL INSPECTION OF GOODS

- 12.1 All Goods are received by us subject to our inspection within a reasonable time after arrival.
- 12.2 If we require, you must give us certificates of inspection or tests or other documents required to effect or evidence compliance by Goods with our Order or relevant standards.

- 12.3 If we determine that Goods do not comply with the Order or the Terms, we may return those Goods to you at your expense. Payment by us for Goods prior to our inspection will not be taken to be acceptance of those Goods if they are unsatisfactory or defective.
- 12.4 If we return unsatisfactory or defective Goods, you must promptly reimburse us for:
- (a) any amount paid by us for the returned Goods;
- (b) any costs incurred by us in returning the Goods; and

13 TITLE AND RISK

- 13.1 Property in Goods will pass from you to us when we pay for them and risk will be passed to us upon delivery to the nominated delivery point.
- 13.2 If we make a part-payment for Goods, property in the partly completed Goods and in any materials and parts to be used in their manufacture or assembly and then on hand will pass to us at that time. You must clearly mark them with our name and Order number(s).
- 13.3 If, in our opinion, you fail or indicate that you may be unable to fulfil any obligation under an Order, then we may at any time enter your premises (or any other relevant place) and remove Goods and any materials and/or parts to which we have title.
- 13.4 Goods will be at your risk until they have been:
- (a) loaded onto our nominated transport (if the Order is on a free on truck (**FOT**) your works basis); or
- (b) unloaded at our Premises or any other delivery point nominated by us (in all other cases).

14 CANCELLATION FOR DEFAULT OR INSOLVENCY

- 14.1 If you breach an Order or these Terms, we may, at our option and without prejudice to any other rights, cancel the Order. You are not entitled to any compensation in respect of that cancellation.
- 14.2 If you become bankrupt, enter into an assignment, arrangement or composition with any creditors, are placed into administration, liquidation or receivership, or any steps are taken to effect any of these things (for example, an application is made or a meeting is held), we may:
- (a) terminate any Order with you by notice to you (or the receiver, liquidator or other person in whom your affairs have vested);

- (b) give the receiver, liquidator or other person in whom your affairs have vested the option of carrying out the Order, subject to their providing security satisfactory to us for the due performance of the Order (or a specified part of it).
- 14.3 If we duly cancel an Order and you have already delivered some Goods or Services, we may elect to:
- (a) keep them, and pay a proportionate amount of the entire Order for them; or
- (b) in the case of Goods, return them, and you must then promptly refund us any amount we have paid for them.

15 CONFIDENTIALITY

- 15.1 If we give you a document or information in connection with an Order (other than documentation relating to your standard stock) you must keep it confidential and only use it for the purpose of the Order.
- 15.2 You must not disclose it to anyone except our officers or employees, or subcontractors who have entered into a similar undertaking with us and who are engaged in the design, construction or manufacture of Goods or supply of Services for us.
- 15.3 You may disclose information if you are required by law to do so.
- 15.4 If we ask, you must return to us all documents and information we have given you and all copies of it (including originals and copies in electronic form).

16 INDEMNITY

- 16.1 You indemnify us and DBCTM and each of our respective officers and employees from any claim, damage, loss or liability incurred because or arising out of:
- (a) any breach by you of an Order or the Terms;
- (b) any death, injury, loss or damage to us or them or to third parties or to property, arising out of any negligence or breach of duty by you or your officers, employees, agents or contractors relating to Goods or Services; or
- (c) any actual or alleged violation of any statute or other law in which instance your liability will be reduced proportionately to the extent any such loss was caused by any act or omission of us and our personnel, except to the extent caused by our negligence. This indemnity will continue to apply after your services are completed or terminated for any reason.

- 16.2 You must defend, protect and indemnify us and DBCTM and our respective officers and employees against any claim relating to the ownership or use of Goods or Services, including claims for actual or alleged infringement of any Intellectual Property Rights.
- 16.3 These indemnities extend to all legal and other professional expenses incurred by us.
- 16.4 You must insure to cover your liability for these indemnities.
- 16.5 Notwithstanding any other clause of these terms, neither Party is liable to the other in contract, in tort (including but not limited to negligence), in equity, by operation of statute or otherwise for any kind of:
- (a) Loss of opportunity;
- (b) Loss of revenue;
- (c) Loss of profit or anticipated profit;
- (d) Loss of contracts;
- (e) Loss of goodwill; or
- (f) Loss arising from business interruption.

17 TIME

- 17.1 Time specified for completion or delivery in an Order is an essential term of the Order. We reserve the right to cancel the Order for lateness, and you will not be entitled to any compensation;
- 17.2 If a scheduled completion or delivery date may not be met, you must advise us in writing immediately when the delay is foreseen.
- 17.3 Every Tuesday you must update us of the date we will receive the goods onsite of all open orders that we have with your company. Failure to provide this update every Tuesday may result in the cancellation of any orders and you must indemnify us of any costs including additional amounts paid for the good or service in placing these orders with another company.

18 INTELLECTUAL PROPERTY

- 18.1 As from the time that you use any existing intellectual property of yourself or others (Background IP), you grant us a non exclusive, perpetual, royalty-free, irrevocable, transferable licence to use this for any purpose associated with the completion, development, use, operation, redevelopment or other dealing with the project or property contemplated in Our Agreement. Existing intellectual property must be declared clearly in writing to the our representative prior to its introduction to us, otherwise it will be deemed to be Project IP and you must indemnify us for any loss or liability arising from any claims.

- 18.2 Any intellectual property which you create or develop in connection with the provision of your services for us (Project IP) shall vest absolutely in us from the date it is created, developed or used. You must not use Project IP for any other use other than for works for us unless you have our written approval and have paid any compensation agreed at the time this approval is granted.
- 18.3 Any documents we issue you during the course of the engagement must not be reproduced or used without our express written consent.
- 18.4 You must warrant that the supply of any Goods or services does not and will not infringe any Third Party Intellectual Property Rights. In all cases you must obtain at no additional cost to us the necessary licences and consents from a third party which is necessary for the supply of any goods or services.
- 18.5 You must immediately notify us as soon as you become aware of any suspected, threatened or alleged infringement of any Intellectual Property Rights, in relation to Goods and Services supplied and any breach of Project IP.
- 18.6 You agree to provide reasonable assistance to protect our Intellectual Property Rights.

19 LANGUAGE

All correspondence between you and us must be in the English language.

20 SET-OFF

We may set-off any amount we owe you under an Order against any amount you owe us in any way.

21 NO ASSIGNMENT OR SUBCONTRACTING

21.1 You may not assign or subcontract your rights in relation to an Order without our prior written consent. Any attempt to do so will be ineffective, and will allow us to terminate the Order.

21.2 We may assign an Order to DBCTM or another person.

22 GOVERNING LAW

Orders will be governed by Queensland law, and we and you accept the jurisdiction of the courts of Queensland.

23 DBCTM

We are a contractor for the operation and maintenance of the Premises. Where Goods or Services relate to operation or maintenance of the Premises, we enter into Orders for the benefit of both ourselves and DBCTM, and you agree that

DBCTM also has the benefit (jointly with us and by itself) of all warranties and other obligations by you under our Order and the Terms.

24 DISPUTE RESOLUTION

24.1 Until the Parties have complied with this clause, a Party must not commence any action, bring any proceedings or seek any relief or remedy in a court, except seeking interlocutory or equitable relief from a court.

24.2 Where any Dispute arises, a Party may give notice in writing of the Dispute to the other Party's Representative setting out the material particulars of the Dispute. The Representatives must act in good faith to try to resolve the Dispute quickly.

24.3 If the Dispute has not been resolved within 15 business days of the Dispute Notice (or any longer period the Representatives agree), each Party must nominate one representative from its senior management (each, a "Dispute Resolution Representative") who must act in good faith to try to resolve the Dispute quickly.

24.4 If the Parties have not:

- (a) resolved the Dispute; or
- (b) agreed to an alternative method of resolving the Dispute, within 15 business days after the Dispute is referred to the Dispute Resolution Representatives (or any longer period the Dispute Resolution Representatives agree), either Party may submit the Dispute to mediation.

24.5 If the Dispute is submitted to mediation and the Parties do not, within 15 business days (or any longer period the Parties agree) after the Dispute is submitted to mediation, agree on:

- (a) a mediator and the mediator's compensation;
- (b) the procedure for the mediation; or
- (c) the timetable of each step of the procedure,

the mediation will be conducted in accordance with the Australian Commercial Dispute Centre's Mediation Guidelines in force at the time that the Dispute is referred.

24.6 If a Dispute is not resolved within 30 calendar days after the Dispute Notice or, where a Party has submitted the dispute to mediation, 60 calendar days after the Dispute Notice (or any longer period the Parties agree), either Party who has complied with this clause 24 may end this dispute

25 FORCE MAJEURE

Where either party's ability to carry out its obligations under the Purchase Order (not including financial causes) is prevented, impeded, restricted or delayed by any cause outside its reasonable control, which shall be deemed to include, but shall not be limited to fire, explosion, flood, storm, earthquake, tidal wave, war, military operation, national emergency, civil commotion, or other event of the type of the foregoing; any strike, lock out or industrial dispute; any governmental law, (other than laws regarding taxation) regulation, decree, order, or similar act, actions of any governmental agency; or similar events affecting a supplier to the Seller, then the party whose ability is so impeded, restricted or affected shall have the right, by giving written notice to the other party, to suspend performance of its obligations until such time that the party giving the notice is able to continue the performance of its obligations under the Purchase Order.

26 WAIVER

No waiver or breach by us of any part of an Order or the Terms will be a waiver of any other breach of that part or of any other part.

27 NO OTHER TERMS AND CONDITIONS

Subject to 5.4, unless otherwise stated by us in writing in an Order, no other terms or conditions of sale or supply form part of any sale or supply of Goods or Services by you to us. No terms or conditions stated by you in acknowledging an Order will be binding on us, unless accepted in writing by our Representative.

This is the case, even if we (or someone on our behalf) signs a document (for example, a confirmation of Order or delivery papers) which purports to incorporate other terms and conditions.