

Terms and Conditions

1. Application

- 1.1 You acknowledge and agree:
- (a) the Terms apply to and govern every Contract, Quote, Purchase Order, Service Order, Tender Bid and supply of Services;
 - (b) the Terms replace all prior terms and conditions relating to the supply of Services by Us to You;
 - (c) We may change the Terms and We will publish and make available the replacement terms and conditions at www.fph.com.au. If this occurs, then You agree:
 - (i) to be bound by the replacement terms and conditions; and
 - (ii) the replacement terms and conditions apply to and govern every Contract, Quote, Purchase Order, Service Order, Tender Bid and supply of Services,
- on and from the Replacement Terms Date.

1.2 Transparency

You acknowledge and agree that:

- (a) before You enter a Contract, submit a Purchase Order or Service Order to Us or accept a Quote or Tender Bid or enter an agreement governed by the Terms:
 - (i) You have carefully read and you understand all the Terms;
 - (ii) You had the opportunity to obtain legal advice about the Terms and You obtained, or freely and voluntarily elected to not obtain, legal advice about the Terms;
 - (iii) You had a genuine opportunity to negotiate changes to the Terms and you did, or freely and voluntarily elected to not, negotiate changes to the Terms;
- (b) You freely, voluntarily and with Your informed consent or agreement:
 - (i) accept that the Terms:
 - A. give or may give Us a beneficial option, discretion or power; and
 - B. do or may impose on You a disadvantageous burden, risk or duty; and
 - (ii) acknowledge and agree that the Terms, including the matters referred to in subclauses (b)(i) A and B above, are jointly or severally reasonably necessary to protect Our legitimate business interests even if We are the party who would be advantaged by the applicable term;

- (iii) accept that enforcement of the Terms will or may cause You to suffer detriment and, to the extent You suffer detriment, You accept the risk and consequences of such detriment.

2. Quotes, Service Orders, Tender Bids and Purchase Orders

- 2.1 All Quotes, Service Orders and Tender Bids, and all Purchaser Orders, are subject to the Terms as if the Terms, to the exclusion of any and all other terms and conditions, were incorporated in full in each Quote, Service Order, Tender Bid or Purchase Order.
- 2.2 If there is an inconsistency between the Terms and any other terms or conditions incorporated in or that apply or purport to apply to any Quote, Service Order, Tender Bid, Purchase Order or Contract, then the terms or conditions in the Quote, Service Order, Tender Bid, Purchase Order or Contract (as applicable) prevail.

3. Formation of Contract

- 3.1 Offer – Quotes, Service Orders, Tender Bids and Purchase Orders
- (a) Subject to clause 3.1(c), unless otherwise stated in a Quote or Tender Bid, a Quote or Tender Bid is valid for 30 days from the date it is issued, and if You submit a Purchase Order it is deemed to be valid for 30 days from the date it is received by Us unless You withdraw the Purchase Order in writing before We accept it.
 - (b) Unless otherwise agreed in writing by Us, all Quotes, Service Orders, Tender Bids and Purchase Orders constitute an offer to enter a Contract.
 - (c) We may withdraw a Quote or Tender Bid at any time for any reason.
- 3.2 Offer and Acceptance

Unless otherwise agreed by Us in writing, an offer to enter a Contract:

- (a) is deemed to have been accepted at the time We start supplying Services; or
- (b) may be accepted:
 - (i) in writing including by Electronic Transaction; or
 - (ii) by Us verbally when, for example, We accept, verbally, a Service Order or a Purchase Order;
 - (iii) by You verbally when, for example, You accept, verbally, a Quote or Tender Bid;
 - (iv) in writing or by conduct.

3.3 Authority and Electronic Communication

You acknowledge, agree and promise that:

- (a) in the absence of fraud, every Electronic Communication sent by or on Your behalf is sent with Your express or implied authority; and
- (b) You have done everything reasonably necessary and possible to ensure that no Electronic Communication is sent by or on Your behalf by any person who is not authorised by You to send an Electronic Communication.

3.4 eDockets

You acknowledge and agree that:

- (a) online digital platforms including eDockets will be used to facilitate and process transactions incorporating or arising under the Terms including Service Orders and Service Delivery;
- (b) the use of eDockets by You to do business with Us is and is intended to be (to the maximum extent permissible at law) acknowledgement and evidence of Your acceptance of the Terms as if You or Your authorised representative had duly signed the Terms, each Contract and Service Order and any necessary ancillary document; and
- (c) We have the right to change the Terms and, subject to clause 1.2, any change to the Terms made by Us will take effect on the date the amended Terms are published on Our website (<https://fph.com.au/>) or eDockets.

3.5 Contract Cancellation

You acknowledge, agree and promise that:

- (a) You may not and will not cancel or withdraw a Purchase Order or Service Order or cancel or terminate a Contract unless:
 - (i) We are in fundamental breach of a condition under the Terms and We have failed to remedy the breach within a reasonable time after You have given us written notice of the breach; or
 - (ii) subclause (i) does not apply and We give You Our written consent (which We may give or withhold in our absolute discretion); and
- (b) if We agree to cancel or terminate a Contract or Service Order under clause 3.5(a)(ii), then You agree to pay Us as Debt Due the applicable Daily Hire Cancellation Charges.

4. Supply of Services

4.1 Start Date and End Date

- (a) We will supply Services on and from the Start Date unless We cannot because of circumstances beyond Our reasonable control, in which case We will start or restart supplying Services as soon as possible.
- (b) We do not guarantee We can supply Services as and when You may require including because We may not be able to source, procure or obtain Construction Plant and/or Operators in the quantity required to supply the Services.

- (c) We will stop supplying Services when all the Services we are required to supply under the Contract have been supplied or on the End Date, whichever is earlier.

4.2 Wet Hire and Dry Hire

- (a) We are not a common carrier and We do not accept the obligations or liability of common carriers.
- (b) (Wet Hire) If We supply Services on a Wet Hire basis, then We must supply a qualified, experienced and licensed Operator to operate the Construction Plant.
- (c) (Dry Hire) If We supply Services on a Dry Hire basis, then:
 - (i) You must supply an appropriately qualified, experienced and licensed Operator to operate the Construction Plant;
 - (ii) You must return the Construction Plant to Us or as directed by Us in the Return Condition.
- (d) Wet Hire and Dry Hire are both subject to the Hire Terms.
- (e) You agree to:
 - (i) release Us from any Claim or Damage or liability caused or contributed to by using or the use of Construction Plant and/or the act or omission of the Operator; and
 - (ii) be liable for and indemnify Us and Our officers, agents, contractors and employees against any Claim or Damage that You and/or an Operator cause or contribute to or are responsible for in respect of any property real or personal and in respect of personal injury to or illness or death of any person,except to the extent Our unlawful act or omission caused or contributed to the Claim or Damage.

4.3 Site Access

You must do all things necessary to ensure We can safely and lawfully access the Site at all times necessary to enable Us to comply with Our obligations under the Contract.

4.4 Fill Composition

- (a) You represent, warrant and promise that:
 - (i) before the Start Date, You:
 - 1) have conducted (or procured an appropriately qualified person to conduct) a valid and current test on the composition of the Fill consistent with Legislative Requirements; and
 - 2) disclosed to Us in writing all information required by the Legislative Requirements regarding the composition of the Fill (including the test results) along with any other material facts, circumstances and things You knew about or relating to the composition of Fill;

- (ii) You will as a continuing obligation disclose to Us in writing all material facts, circumstances and things You become aware of about or relating to the composition of Fill within 24 hours, including whether Fill is or is likely to be contaminated or is not Clean Fill;
- (iii) save as disclosed by You to Us in writing, the Fill is not contaminated and is Clean Fill.
- (b) If You breach Your obligations under clause 4.4(a), then You agree to be liable for and indemnify Us and Our officers, agents, contractors and employees, against:
 - (i) any Damage in respect of any property real or personal;
 - (ii) any Damage in respect of personal injury to or illness or death of any person; and
 - (iii) any Damage which We and each of Our officers, agents, contractors and employees suffers or is liable for arising out of or in connection with Your breach of Your obligations under clause 4.4(a).
- (c) If You dispose of Fill or are responsible for Disposal Services, then You must:
 - (i) do all things necessary to identify and classify the Fill and ensure the Fill is given the correct waste code;
 - (ii) give anyone who transports Fill enough information to take it to a Lawful Place; and
 - (iii) verify that the place receiving the Fill is a Lawful Place,
 in accordance with the EPA Act, EPA Regulations and any other applicable law.

4.5 Access to Documents

You must on request provide to Us all documents in Your possession or control in connection with or relevant to the Services including but not limited to:

- (a) any head contract or subcontract to which You are a party;
- (b) any construction program;
- (c) Site induction documents;
- (d) occupational health and safety documents;
- (e) geotechnical reports;
- (f) environmental reports including any reports relating to the composition of the Fill;
- (g) injury or incident reports;
- (h) disposal of Fill.

4.6 Approvals

Unless expressly provided otherwise in the Contract, We and You (as applicable) must:

- (a) comply with all Legislative Requirements relating to the Services;
- (b) obtain all Approvals and make all payment of all necessary fees and charges associated with such

Approvals; and

- (c) provide to each other copies (or originals if requested) of such Approvals.

4.7 Chain of Responsibility

To the extent HVs are used in the performance of Services, You:

- (a) acknowledge that You are primary duty holder under the COR Laws with responsibility for developing COR Systems;
- (b) must take all reasonable and necessary steps to ensure that any HVs are loaded so that vehicle mass or dimension limits are not exceeded and loads are appropriately secured, and operators carrying freight containers have a valid container weight declaration and drivers do not exceed speed limits or regulated driving hours, and do not drive while impaired (including by fatigue) and observe minimum rest requirements;
- (c) must proactively provide reasonable assistance to Us to enable You and Us to satisfy our respective duties and responsibilities under COR Laws;
- (d) must obtain and maintain, and ensure that Your Personnel obtains and maintains all Approvals required to enable the applicable activity, function or task to be undertaken lawfully;
- (e) must undertake any audits or monitoring as requested by Us to demonstrate compliance with this clause; and
- (f) warrant that You are familiar with and have the capability and resources to comply with COR Laws and ensure that Your Personnel comply with COR Laws.

4.8 Use of Contractors

- (a) You acknowledge and agree that We may or will use Our Contractors to supply Services.

(b) Restriction

- (i) You promise and irrevocably undertake that You will not during the:
 - A. term of a Contract; and
 - B. Restricted Period,
 directly employ or engage any of Our Contractors to perform or undertake any work for You or on Your behalf that is the same or substantially similar to any Services.
- (ii) If You breach Your obligations under clause 4.8(b)(i)A, then you agree:
 - A. to pay Us on demand as a Debt Due the Direct Contractor Charge for each day You employ or engage any of Our Contractors; and
 - B. the applicable Direct Contractor Charge is a fair, reasonable and genuine pre-estimate of the loss We will suffer.

(iii) If You breach Your obligations under clause 4.8(b)(i)B, then you acknowledge and agree that We have an enforceable right at law or in equity to seek any one of or a combination of specific performance, injunction or damages.

(iv) In this clause 4.8(b), Restricted Period means subject to clause 4.8(b)(v), each of:

- A. six months;
- B. five months;
- C. four months;
- D. three months;
- E. two months;
- F. one month,

from the date the Our Contractor stopped supplying Services on the Site, whichever is the greatest period enforceable.

(v) Each restriction contained in this clause (resulting from any combination of the wording in clauses 4.8(b)(ii) and 4.8(b)(iii) and the definition of Restriction Period) constitutes a separate and independent provision. If a court of competent jurisdiction finally decides such restraint to be unenforceable in whole or in part, the enforceability of the remainder of that restraint and any other restraint will not be affected.

4.9 Security Interest

Until all Moneys are paid in full:

- (a) the ownership of and title to Fill delivered to You remains at all times with the owner of the Fill, which may be Us or a third party;
- (b) if We own the Fill delivered to You, You:
 - (i) hold the Fill as Our fiduciary agent and bailee;
 - (ii) must account to Us for all proceeds of the Fill, including insurance proceeds;
 - (iii) agree, as bailee for Us, hold any proceeds (as that term is defined in the PPSA) of any resale, disposal or other dealing with the Fill in trust for Us and must pay the proceeds into a separate fiduciary account to be held in trust for Us until accounted for to Us at Our demand, and to avoid any doubt, for the purposes of the PPSA, it is the intention of the parties by this clause 4.9 that there is created for the benefit of Us a Purchase Monies Security Interest in the Fill; and
- (c) You agree We may register any personal property security interest created by these Terms on the personal property securities register and You waive Your rights to receive a verification statement (as that term is defined in the PPSA) in respect of any financing statement or financing change statement (as those terms are defined in the PPSA) registered by Us in respect of any of Your personal property. You agree that, insofar as the provisions of Chapter 4 of the PPSA are for the benefit of You or place an obligation on Us, those provisions will apply only to the extent that they cannot be

contracted out of or to the extent that We otherwise agree in writing; and

- (d) if a Default Event occurs, We are entitled and permitted to, at Our discretion:
 - (i) by Our servants or agents enter Your premises and/or retake possession of Fill that We own and sell it; or
 - (ii) seek and sue for recovery of Moneys in respect of the Services.

4.10 Our Rates

You acknowledge and agree that, unless We otherwise agree in writing, Our Rates:

- (a) are variable and not fixed;
- (b) are based on Standard Working Hours;
- (c) for Disposal Services, Fill Supply Services, Loading Services and Transport Services are based on:
 - (i) Fill being classified or categorised as Clean Fill;
 - (ii) Fill not having a water or moisture content of six (6%) percent or above; and
 - (iii) Fill being 'spadeable' that is Fill must behave sufficiently like a solid to be moved by a spade at normal outdoor temperatures;
- (d) for Transport Services are based on the general mass limit or concessional mass limit or higher mass limit (as applicable) prescribed by COR Laws of the HV used to transport Fill;
- (e) exclude:
 - (i) Site allowances;
 - (ii) fees, tolls or levies (or any similar charges) charged by any third party;
 - (iii) the supply of Fill unless expressly included by Us in writing;
 - (iv) for Dry Hire and Wet Hire the transport of Construction Plant to and from the Site or place nominated for delivery and/or return of the Construction Plant;
- (f) may change (rise or fall) including if:
 - (i) Services are supplied or required to be supplied outside Standard Working Hours (in which case higher rates or penalty rates will apply and You agree to pay such higher rates);
 - (ii) Services are supplied or required to be supplied outside the Metropolitan Area or on a day that is not a Business Day;
 - (iii) the price of fuel used by Construction Plant changes;
 - (iv) Site specific allowances or rates, including penalty rates, apply;
 - (v) fees, tolls or levies (or any similar charges), which are charged by any third party (for example a road toll, tip or disposal site fees or fees or charges charged by the EPA), change;

- (vi) rates set or prescribed by any Authority or industry body (for example, the Victorian Transport Association or Transport Industry Council) that relate to any Service change;
- (vii) the composition of Fill specified or referred to in clause 4.10(c) or in a Quote, Purchase Order, Service Order, Tender Bid or Contract changes;
- (viii) a traffic management plan applies or is changed;
- (ix) wet or inclement weather causes delay or landfill or other fill material or spoil disposal sites closing or increasing the fees or cost of Fill disposal;
- (x) circumstances beyond Our control (for example, equipment failure or breakdowns, Site access or Site conditions, route changes) cause the costs We incur supplying Services to You to increase.

4.11 Variation of Our Rates

You agree that:

- (a) subject to clause 4.11 (b), We may by written notice vary Our Rates during the term of any Contract:
 - (i) as specified in a Quote, Tender Bid or Contract; or
 - (ii) if due to circumstances beyond Our control a Contract becomes uneconomic or less profitable or unprofitable for Us as determined by Us (acting reasonably and in good faith). A Contract may become uneconomic or less profitable or unprofitable for Us if, for example, the composition of Fill changes including because of moisture content or pollution or contaminants;
- (b) You agree to pay Our Rates, as varied by Us under clause 4.11 (a), provided that if the varied rates are higher than Our Rates in force immediately before the variation to ensure the Contract is not uneconomic or is profitable, then You and We must negotiate in good faith and use reasonable endeavours to agree a varied rate. If a varied rate cannot be agreed, then You and We have the right to terminate the applicable Contract by giving the other party at least 7 Business Days written notice.

4.12 Disposal Services

- (a) If We have agreed to supply Disposal Services, disposal is subject to:
 - (i) a Lawful Place being available in the Metropolitan Area for Us to dispose of the Fill;
 - (ii) the operator of a Lawful Place accepting the Fill.
- (b) We do not represent, warrant or guarantee that:
 - (i) a Lawful Place is or will be available in the Metropolitan Area for Us to dispose of Fill;
 - (ii) the operator of a Lawful Place will accept Fill.

- (c) If the operator of a Lawful Place does not, for any reason, accept Fill, then You agree:
 - (i) We are not liable or responsible for finding a Lawful Place that will accept Fill;
 - (ii) to forthwith do all things necessary to:
 - A. take or re-take possession of the Fill; or
 - B. nominate a Lawful Place in the Metropolitan Area that will accept Fill; and
 - C. pay all the costs and charges (including Our costs and charges) arising out of or incidental to the matters referred to in clause 4.12(c).

4.13 Risk

Notwithstanding clause 4.12 or any other Terms, risk in and relating to Fill:

- (a) supplied to You passes to You on delivery of Fill to You (delivery occurs when the Fill is tipped or unloaded at the Site or other place agreed by You and Us in writing); or
- (b) removed from a Site remains with You until it is lawfully disposed of at a Lawful Place.

5. Security for Payment

5.1 Charge

To secure payment or repayment of all Moneys, You charge, as the legal and beneficial owner, or the legal owner if You are trustee of any Trust, in favour of Us, all Your right, title and interest in:

- (a) land held by You now or in the future wherever located. You acknowledge and agree We may register a caveat over Your land in respect of this charge. You further agree that immediately upon Our request, You will execute and give Us a mortgage in registrable form in favour of Us over Your land and by reason of this agreement to give Us a mortgage, You acknowledge that We are an equitable mortgagee in respect of Your land; and
- (b) Your personal property.

5.2 Trustee

If You are a trustee of any Trust:

- (a) You are bound by these Terms, including the charge of land under clause 5.1, as trustee;
- (b) You warrant that it is a proper exercise of Your authority and power under the trust instrument and at law to trade with Us and to charge Your land in accordance with these Terms.

5.3 Attorney

As security for the payment of Moneys, You irrevocably appoint as Your duly constituted attorney Our company secretary from time to time to execute in Your name and as Your act and deed any mortgage of land, bill of sale or consent to any caveat We may choose to register on the title to Your land in any land titles office or registry in any state or territory of Australia, even if there is no Default Event.

6. Warranties

6.1 Your Warranties

You represent, warrant and promise that:

- (a) You are familiar with the conditions affecting construction activities in and around the Site and You have inspected the Site, existing structures and conditions to a standard that can be expected from a prudent, competent and experienced person in Your position, including as if you are or were the owner or occupier of the Site and/or a construction contractor performing construction works;
- (b) You have disclosed to Us in writing all information necessary under Legislative Requirements and any other material facts and things You are aware of that may in any way affect the supply of Services;
- (c) You accept all risks, hazards and difficulties on the Site including material handling and deliveries, traffic management, adjacent properties, Site safety and public safety;
- (d) You have examined carefully and acquired actual knowledge of the contents of all of the documents constituting each head contract or subcontract to which You are a party;
- (e) save as disclosed to Us in writing, You know of no reason why the Services cannot be efficiently performed and completed;
- (f) You have all information obtainable by the making of reasonable enquiries and relevant to the risks, contingencies and other circumstances having an effect on Your obligations and to the risks and contingencies inherent in Your contractual obligations;
- (g) You will not disclose and will ensure that none of Your Personnel do disclose any information, including Confidential Information, about the Contract except as necessary to carry out the Contract;
- (h) to the best of Your knowledge, information and belief, the carrying out of the Services as contemplated by the Contract is practical and possible including any methods of working required by the terms of the Contract;
- (i) You hold suitable and sufficient registration, Approvals and licences under Legislative Requirements under or relating to the Contract and that You will promptly notify Us of any change to Your licensing status;
- (j) if You dispose of Fill or are responsible for Fill disposal, You will dispose of Fill or ensure Fill is disposed of at a Lawful Place (a place that is authorised under law to receive Fill); and
- (k) in exercising Your rights and performing Your obligations under the Contract, You will always act in a fair, honest and reasonable manner and with integrity.

6.2 Our Warranties

We represent, warrant and promise that:

- (a) at all times, We possess the ability reasonably necessary to supply the Services under the Contract and will exercise reasonable care and diligence when supplying Services;
- (b) to the best of Our knowledge, information and belief, the supply of Services under the Contract is practical and possible including any methods of working required by the terms of the Contract;
- (c) We hold suitable and sufficient registration, Approvals (if applicable) and licences under Legislative Requirements to supply Services under the Contract and that We will promptly notify You of any change to Our licensing status; and
- (d) in exercising Our rights and performing Our obligations under the Contract, We will always act in a fair, honest and reasonable manner and with integrity.

6.3 Excluded Warranties

To the maximum extent legally permissible We disclaim all Statutory Warranties and all Statutory Warranties are excluded.

7. Working Hours

You must do all things possible to ensure the Site is open for work during the working hours and on the days stated in the Contract, or at such other times as may be necessary to enable Us or Our Contractors to supply Services.

8. Personnel and Directions

8.1 Compliance with Directions

You and We acknowledge and agree (as and to the extent applicable):

- (a) You or We may receive directions, determinations, notices, instructions or the like from time to time under a head contract or subcontract or the Contract, which relate to the supply of Services under the Contract;
- (b) You and We must to the extent possible comply with any reasonable and lawful direction, determination, instruction or the like given by You to Us or by Us to You, and warn the other party of any potential detriment to them under the Contract in doing so;
- (c) no direction from You or Us will invalidate the Contract;
- (d) You may from time to time appoint nominated persons to exercise such of the powers, duties, discretions, and authorities vested in You as You determine and You will give notice to Us of the name of each person so appointed. We must comply with any reasonable and lawful direction given by Your authorised delegates;
- (e) We may from time to time appoint nominated persons to exercise such of the powers, duties, discretions, and authorities vested in Us as We determine and We will give notice to You of the

name of each person so appointed. You must comply with any reasonable and lawful direction given by Our authorised delegates; and

- (f) only approvals, authorisations, consents, reasonable and lawful directions or instructions issued by You or Us through a representative or delegate authorised by the Contract will be valid and binding.

8.2 Representatives

You and We must each:

- (a) ensure that, if necessary, there is present on Site at all necessary times a representative capable of receiving directions given by You and by Us, and of ensuring (as applicable) that Your obligations and Our obligations are carried out; and
- (b) prior to the Start Date, give notice to You or Us (as applicable) of that representative, and give subsequent notice of any change in that representative.

9. Release and Indemnity and Limited Liability

9.1 Release

You release Us from all Claims except to the extent Our unlawful act or omission caused or contributed to a Claim.

9.2 Indemnity

You will be liable for and will indemnify Us and each of Our officers, agents, contractors and employees, against:

- (a) any Damage in respect of any property real or personal;
- (b) any Damage in respect of personal injury to or, illness or death of any person,

You cause or contribute to; and

- (c) any Damage which We and each of Our officers, agents, contractors and employees suffer or is liable for arising out of or in connection with Your unlawful act or omission, Your Personnel or breach by You of the Contract or a term or condition of any insurance policy required to be taken out and maintained by You under the Contract,

but Your liability to indemnify Us will be reduced proportionally to the extent the circumstances in clause 9.2(a) and (b) are caused by or contributed to by Our unlawful act or omission.

9.3 Limited Liability

- (a) Except for the warranties expressly made in these Terms, all conditions, warranties, undertakings or representations, express or implied, arising by statute, general law or otherwise are expressly excluded by Us to the extent permitted by law.
- (b) Our liability to You or any third party for any Claim or Damage relating to the Services is limited (to the full extent permitted by law) to the lesser of:
 - (i) resupplying the relevant Services, the subject of the Claim or Damage; or

- (ii) the payment of the cost of supply of the relevant Services.

- (c) Nothing in these Terms is intended to exclude, restrict or modify the operation of section 274 of the Australian Consumer Law (Schedule 2 of the Competition and Consumer Act 2010 (Cth)).
- (d) We are not liable to You or any third party for any exemplary, special, indirect, incidental or consequential loss or damage or any actual or prospective lost revenue or profits.

10. Insurance

10.1 Your Insurance

You must before the Start Date take out and maintain insurances with a reputable insurer in the manner and to the extent which is in accordance with prudent business practice having regard to the nature of Your business and assets (including all insurance required by applicable law) and, to the extent possible, procure that Our interest is noted on each insurance policy.

10.2 Our Insurance

- (a) We must before the Start Date take out and maintain:
 - (i) the insurances stated in the Contract in the amounts and for the periods stated in the Contract and upon terms (including automatic reinstatement); and
 - (ii) all insurance required by Legislative Requirements.

10.3 Evidence of Insurance

- (a) Upon request by Us or You, We and You (as applicable) must produce evidence to the satisfaction of the other party (including details of material terms) of compliance with all Your or Our insurance obligations under the Contract, including providing certificates of currency. We and You must:
 - (i) not change any term of the insurances required under the Terms without the prior written consent of the other party; and
 - (ii) notify the other party within 10 days of any change in the material terms; and
 - (iii) notify the other party immediately should any insurance become ineffective for any reason.
- (b) If We or You (as applicable) fail to effect or maintain the required insurances, the other party may, in its discretion, effect and maintain any of the insurance policies and all costs and expenses incurred by that party may be recoverable from the other party as a Debt Due. We and You will not be relieved of any liability under the Contract due to or as a result of one of them effecting or maintaining such insurance policies under this clause 10.3(b).

10.4 Notice of Claims or Occurrences

- (a) You and We (as applicable) must as soon as practicable inform the other party in writing, setting

out reasonable particulars of the occurrence, incident, matter or thing that:

- (i) may give rise to a claim, however remotely, under a policy of insurance required by the Contract; or
 - (ii) which You or We (as applicable) ought reasonably expect may give rise to an insurance claim under some other policy held by You or Us, having regard to the insurance policies available in the construction industry.
- (b) You and We must give each other all information and assistance reasonably practicable as requested by the other in respect of any such claim or possible claim.
- (c) You represent, warrant and promise that You will:
- (i) notify Us in writing prior to giving notice of cancellation of a policy or any other notice concerning any policy, to the insurer; and
 - (ii) notify Us immediately in writing if You receive any notice of cancellation if You fail to renew the policy or to pay a premium.
- (d) You must ensure that every insurance policy taken out by You under the Contract which is in joint names, contains a provision that provides that a notice of occurrence of an event out of which the particular insured giving the notice alleges it has suffered, or could suffer, loss or damage or incur a liability must be accepted by the insurer as a notice of the occurrence given by all insureds.

10.5 Payment in Consequence of Breach

You must pay Us the amount of any excess or deductible:

- (a) which is paid or payable by Us under any claim, excess or deductible under any policy of insurance, where the incident resulting in the claim was caused or contributed to by Your act, default or omission; or
- (b) payable on a claim made by You as an insured party under any policy taken out by Us.

10.6 Must Not Prejudice Insurance

You and We (as applicable) must ensure that You or We:

- (a) do not do anything which prejudices any insurance;
- (b) if necessary, rectify anything which might prejudice any insurance;
- (c) reinstate a policy if it lapses;
- (d) do not cancel, vary or allow an insurance policy to lapse;
- (e) immediately notify the other party of any event which may result in an insurance policy lapsing or being cancelled; and
- (f) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

10.7 Deductibles and excesses

You acknowledge and agree that You will bear any excess or deductible payable in relation to:

- (a) any claim under the insurances You are required to effect and maintain under this clause 10; and
- (b) any claim under the insurances which We are required to effect and maintain under the Contract, to the extent that the event giving rise to the claim was caused or contributed to by You or Your employees, agents, contractors or consultants.

10.8 Insurance obligations are primary

You acknowledge that regardless of whether the insurances required to be taken out and maintained by You under the Contract respond or not, and regardless of the reason why those insurances respond or fail to respond, You are not released (in whole or in part), from any of Your obligations under the indemnities referred to in the Contract, or generally.

11. Services

11.1 Unless otherwise agreed in writing:

- (a) We must supply the Services under the Contract in accordance with the Contract;
- (b) You must supply the things (if any) specified in the Contract;
- (c) if We damage property that is not covered by insurance required under the Contract, then We must promptly make good the damage and pay any compensation which the law requires Us to pay to the extent such damage was caused by or contributed to by Our unlawful act or omission; and
- (d) if We fail to comply with an obligation under this clause 11, You may after giving reasonable notice in writing to Us, have the subject Services under the Contract carried out by someone else.

12. Excluded Services

You acknowledge and agree that:

- (a) We are not supplying and have no obligation to supply Excluded Services;
- (b) We are not responsible and have no liability for or relating to any loss or damage caused by or connected to the supply of Excluded Services.

13. Fill Ownership and Risk

Unless We otherwise agree or confirm in writing, You acknowledge and agree that:

- (a) subject to clause 4.9, We do not own or have any proprietary interest in Fill;
- (b) all risks in and connected to Fill are risks accepted by You except to the extent We expressly accept (in writing) such risks under the Contract;
- (c) all risks in and connected to Fill that are not expressly accepted by Us under the Contract are disclaimed by Us;

- (d) We have no liability for any Claim or Damage caused by or connected to Fill except to the extent Our unlawful act or omission caused or contributed to a Claim or Damage.

14. Site Co-operation, Co-ordination and Integration

- (a) We acknowledge and agree that others may be engaged on the Site to carry out work. We must:
 - (i) supply the Services when safe to do so notwithstanding the presence of any other persons on and near the Site;
 - (ii) if directed to do so by You, do all things reasonably possible and practicable to ensure Our Personnel satisfactorily complete a site induction program, before commencing work on the Site or in connection with the Services;
 - (iii) co-operate with all others working on Site so that the co-ordination and supply of Services is achieved in an effective and timely manner;
 - (iv) co-ordinate and accommodate the carrying out of work on Site with the supply of Services, and to the extent that We and any other person working on Site cannot agree, the matter must be referred to You in writing and Your (acting reasonably and in good faith) will be final and binding;
 - (v) to the extent reasonably possible and practicable, avoid interference with or disruption to or delay of the work of anyone on Site, and facilitate the work of others on Site;
 - (vi) promptly provide all information You may reasonably request regarding the performance of Services, including the preferred sequence and interface of activities, details of proposed labour, resources, plant, equipment, and all other matters relevant to the Services under the Contract; and
 - (vii) comply with any reasonable direction You give for the purposes of Site co-ordination and integration of the Services under the Contract with the work of all other persons on Site.
- (b) If the supply of any part of the Services is dependent upon the quality and completeness of work performed by any other person working on Site, We must immediately report any known defects (if any) in that work to You which, in Our opinion, render such work unsuitable for the proper supply of the Services.
- (c) If circumstances beyond Our control mean We cannot supply Services safely or in accordance with the Contract, then Our obligation to supply Services is suspended until such circumstances do not exist.

15. Work Health and Safety

- (a) Without limiting Your or Our other obligations under the Contract, You and We (as applicable) must:
 - (i) comply with Your WHS Plan;

- (ii) comply, and ensure that all persons for whom You or We (as applicable) are responsible or over whom You or We are capable of exercising control or influence while supplying the Services under the Contract, comply with all WHS Legislation; and

- (iii) in relation to Services under the Contract, not knowingly cause the other party to be in breach of any WHS Legislation.

- (b) You may remove any Personnel from the Site if any Personnel do not attend training or induction reasonably required by You.
- (c) If, during the performance of the Services under the Contract, You or We inform the other party that, in Your or Our reasonable opinion, the other party is:
 - (i) failing to comply with its obligations under this clause 15; or
 - (ii) performing the Services or operating the Site in such a way as to endanger the health and safety of Personnel or any other person on the Site; or
 - (iii) in actual breach of WHS Legislation or will breach WHS Legislation,
 You or We (as applicable) must promptly remedy that breach and the other party may, without prejudice to any other remedy it may have:
 - (iv) issue a warning notice to the other party in respect of the breach;
 - (v) direct the other party to provide appropriate training or counselling, in a manner acceptable to the other party, to any person who caused or contributed to the failure with the aim of preventing any repeat of the breach;
 - (vi) direct the other party to remove from their involvement in the Services any person who caused or contributed to the breach;
 - (vii) take any action that may be required to rectify the breach;
 - (viii) suspend the Services if You or We consider that is necessary in respect of the breach; or
 - (ix) take action under clause 21, including termination of the Contract or termination of the whole or a part of the Services.

- (d) If We take action under clause 15(c), any costs incurred by Us in taking that action will be a Debt Due.

- (e) If You have been appointed the Principal Contractor in respect of the Site for the purposes of the WHS Regulations, We must, when accessing the Site, comply with any directions given by the Principal Contractor in its capacity as 'principal contractor' under the WHS Regulations.

16. Protection of People and Property

Without limiting any other obligation of You or Us under the Contract, You and We agree we are each committed to protecting both people and property when performing the Services or work on Site, and You must take all reasonable and practicable action to ensure this commitment is met including by You:

- (a) providing all things, procedures and training and take all reasonable measures necessary to protect people and property;
- (b) avoiding to the extent reasonably possible unnecessary interference with the passage of people and vehicles;
- (c) avoiding to the extent reasonably possible damage, obstruction or other interference with any utility service or other similar services to a Site;
- (d) minimising to the extent reasonably possible the effect of the Services on the aesthetic qualities of the Environment and social activities of the local community members;
- (e) eliminating to the extent reasonably possible nuisance including implementing appropriate dust control measures and avoiding unnecessary noise and disturbance; and
- (f) preventing to the extent reasonably possible unlawful Environmental damage or pollution.

17. Intellectual Property Rights

- (a) You promise You will not infringe Our Intellectual Property Rights or anyone else's Intellectual Property Rights.
- (b) You must not use Our Intellectual Property Rights, including by use or display all rights of image and reproduction relating to photographs, audio and video recording, digital images and the like, marketing, publicity and use of images relating to the Services under a Contract, and workplaces associated with the Services under a Contract, without first obtaining Our prior written consent.
- (c) You must notify Us immediately if You become aware of any infringement or potential infringement by You or anyone else of Our Intellectual Property Rights and You must take all timely steps necessary to ensure that Your agents, employees and subcontractors who have access to Our Intellectual Property Rights do not use Our Intellectual Property Rights, except in accordance with the Terms.
- (d) If You, in the course of the performance of any Contract, make use of any work or other subject matter in which copyright subsists, You must procure from every person (whether Your employee or a subcontractor or consultant) involved in the creation of that work or subject matter an agreement from that person for the benefit of Us under which that person irrevocably and unconditionally consents to Us:
 - (i) using, disclosing, reproducing or publishing that work or subject matter anywhere in the world in

whatever form We think fit as so used, disclosed, reproduced or published; and

- (ii) using, disclosing, reproducing or publishing that work or subject matter or any adaptation anywhere in the world without making any identification of that person in relation to the work or subject matter.

- (e) You indemnify Us and Our officers, employees and agents, against any damage, loss, liability, cost, charge, expense, outgoing or payment suffered or incurred, arising out of or in connection with:
 - (i) the infringement of any Intellectual Property Right by You or Your officers, employees or agents; and
 - (ii) You not complying with Your obligations under clause 17.

18. Environmental Obligation

- (a) You and We (as applicable) must:
 - (i) be committed to achieving the highest reasonable and practicable standard of environmental practices in performing the Services and work on Site;
 - (ii) proactively work to minimise the impact of the performance of the Services on the environment including by:
 - A. providing and maintaining systems, methods and techniques of work, and Construction Plant, that have as minimal impact on the environment as is reasonably possible and practicable and do not knowingly expose the environment to any hazard that is within Our control; and
 - B. developing and complying with procedures for dealing with environmental hazards or emergencies (or potential environmental hazards or emergencies) including procedures for interacting with the EPA or other relevant Authority;
 - (iii) comply with all Legislative Requirements and the Contract for the protection of the Environment;
 - (iv) execute the Services under the Contract in a manner to avoid as far as is reasonably practicable:
 - A. adversely impacting the Environment; and
 - B. nuisance to, and damage or unlawful pollution of, the Site and the surroundings;
 - (v) comply with any reasonable requirements concerning the Environment set out in a scope of works and any other requirements, rules or policies concerning the Environment adopted by You from time to time.
- (b) We will be responsible for and will make good any unlawful damage to the Environment caused by the supply of Services under the Contract and to the extent such unlawful damage was caused or contributed to by Our unlawful act or omission.

19. Invoicing, Payment, Late Payment and GST

19.1 Invoicing and Payment

Unless otherwise agreed in writing:

- (a) We will invoice You for Services supplied at such intervals and at times We determine;
- (b) You must pay Us by the due date for payment stated on Our invoice. If no payment due date is stated on Our invoice, then the due date for payment is 30 days end of month (that is 30 days from the end of the month the invoice is dated. For example, if the invoice is date 15 June 2023, the due date for payment is 30 July 2023).

19.2 Late Payment

If You do not pay Us moneys you owe Us on time, then We may do any or all of the following:

- (a) charge interest, and You agree to pay interest, on the outstanding amount at the rate being the aggregate of 2.00% per annum plus the business overdraft rate quoted by the National Australia Bank at the relevant time, calculated and accruing daily;
- (b) charge and require You to pay, in advance, for any Services (or any part of the Services) which have not yet been supplied; and
- (c) suspend supply of Services.

19.3 Goods and Services Tax (GST)

- (a) In this clause, the expressions 'adjustment note', 'consideration', 'GST', 'input tax credit', 'supply', 'tax invoice', 'recipient' and 'taxable supply' have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (b) Unless otherwise expressly stated in the Contract, all prices or other sums payable or consideration to be provided under the Contract are exclusive of GST.
- (c) Despite any other provision in the Contract, if GST is payable by a supplier under the Contract, the recipient must pay to the supplier an amount equal to the GST payable on the supply by the supplier. Subject to receipt of a valid tax invoice, that amount will be paid at the same time that the consideration for the supply is to be provided under the Contract and will be provided in addition to the consideration expressed elsewhere in the Contract.
- (d) The recipient must pay the amount referred to in clause 19.3(c) in addition to and at the same time as payment for the taxable supply is required to be made under the Contract.
- (e) If the Contract 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:
 - (i) the amount of the reimbursable expense net of input tax credits (if any) to which the other party is

entitled in respect of the reimbursable expense; and

- (ii) if the other party's recovery from the first party is a taxable supply, any GST payable in respect of that supply and for the avoidance of doubt, if the supply is a taxable supply, clause 19.3(c) will apply.
- (f) If a GST inclusive price is charged or varied under the Contract, 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.
- (g) If the amount of GST paid or payable by the supplier on any supply made under the Contract differs from the amount of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST or for any other reason, then 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.
- (h) The parties agree that:
 - (i) a payment claim under the Contract is not a tax invoice;
 - (ii) We acknowledge that We are registered for GST when We enter the Contract and that We will notify You if We cease to be registered; and
 - (iii) You acknowledge that You are registered for GST when You enter the Contract and that You will notify Us if You cease to be registered.

19.4 Security of Payments Act

(a) Payment Claim

You acknowledge and agree that each invoice delivered by Us to You for Services supplied by Us or Our Contractors is a 'payment claim' for the purposes of the Security of Payments Act (**SOP Act**).

(b) Our Representative

You acknowledge that unless We notify You otherwise in writing:

- (i) Our nominated representative is not Our agent for the purpose of receiving any documents under the SOP Act and You must serve such documents on Us at the same time as Our representative (but Our representative may be Our agent for serving documents under the SOP Act on You);
 - (ii) unless otherwise expressly required by the SOP Act, any adjudication application made under the SOP Act must be made with the Institute of Arbitrators and Mediators Australia.
- (c) You indemnify Us against any Damage We may suffer or incur as a result of Your failure to comply with Your obligations under the SOP Act or this clause 19.4.

- (d) Payment of moneys for which You become liable to pay to Us by reason of the SOP Act (including amounts which have been determined by an adjudicator or which are the subject of an adjudication under the SOP Act), will be evidence of the value of work or services or an admission of liability or evidence that work or services has been executed or performed satisfactorily.

20. Workplace Relations

20.1 Legislative Requirements

- (a) You and We each represent, warrant and promise that each of us will, at our own cost, comply with all applicable Legislative Requirements concerning industrial relations and employment conditions and all conditions of any Industrial Instrument that apply to us including paying all applicable wages, workers' compensation insurance, fringe benefits tax, all payroll taxes and other applicable employee entitlements including in respect of any applicable superannuation fund, scheme or arrangement for the benefit of workers.
- (b) You and We must not engage in any unlawful arrangements or practices which may:
 - (i) avoid obligations under applicable Industrial Instruments or Legislative Requirements including treating a genuine employee as an independent contractor; or
 - (ii) allow an inappropriate application of the Pay As You Go (PAYG) system of taxation.
- (c) You and We acknowledge and agree that:
 - (i) if reasonably required, we must work together to prepare a workplace relations management plan in relation to the Services, which must comply with the Legislative Requirements that apply to the workplace relations management plan in the State or Territory in which the Services are performed (Workplace Relations Management Plan); and
 - (ii) each party must implement and comply with the Workplace Relations Management Plan.

20.2 Code compliance

If the Code applies:

- (a) We agree and You agree to comply with it to the extent required;
- (b) We and You will both ensure that remedial action is taken to rectify any behaviour on the part of our respective Personnel that is non-compliant with the Code;
- (c) compliance with the Code will not relieve Us or You from our respective obligations under a Contract or otherwise arising out of or in connection with the Services.

20.3 Industrial disputes and industrial action

You and We:

- (a) must take all reasonable and practicable steps and measures to avoid and to minimise the consequences of industrial disputes affecting the

Services under the Contract including to ensure that Your Personnel and Our Personnel are conversant with and adhere to the dispute settlement procedures contained in any applicable Industrial Instrument;

- (b) must advise each other of any demarcation problem or dispute that arises or is likely to arise amongst Your employees or between You employees and the employees of others;
- (c) must as soon as practicable, and no later than 24 hours, inform each other of any actual or threatened industrial action, or demands made by its workforce or any representative of its workforce which may affect the Services either on or off the Site and of any other matter which could lead to industrial action affecting the continuity of the Services under the Contract;
- (d) must comply at our own cost with any reasonable direction by the other party issued with the objectives of reducing industrial disputation.

21. Breach and Termination

21.1 You or others may perform if We default

If We fail to perform or delay performance of any obligation under the Contract in breach of the Contract within a reasonable time after receiving notice of such failure or delay, then You may, but will not be obliged to, perform or retain others to perform the obligation on Our behalf.

21.2 Termination for Default

- (a) If You or We commit a substantial breach of the Contract then, without limiting any other right of the party not in default, upon breach or repudiation by You or Us (as applicable) the other party may by notice in writing serve a notice to show cause entitled 'Default Notice'.
- (b) The Default Notice must:
 - (i) state that it is a notice under this clause 21;
 - (ii) specify the substantial breach upon which it is based;
 - (iii) require the party to show cause in writing why the other party should not exercise a right referred to in this clause 21;
 - (iv) specify the time and date, which must be reasonable, by which the party must show cause.
- (c) Upon being served with a Default Notice:
 - (i) if the party is Us, then We are not entitled to make a claim for payment until the earlier of:
 - A. the date upon which We remedy the substantial breach;
 - B. the date upon which You terminate the Contract; or
 - C. the date which is 5 working days after the last day for showing cause in the notice under this clause 21.2;

(ii) if the party is You, then We are entitled to suspend supply of Services until the earlier of:

- A. the date upon which You remedy the substantial breach;
- B. the date upon which We terminate the Contract; or
- C. the date which is 5 working days after the last day for showing cause in the notice under this clause 21.2;

(d) If You or We (as applicable) do not show reasonable cause or remedy the substantial breach to the other party's reasonable satisfaction within the reasonable time prescribed in the Default Notice, You or We (as applicable) may terminate the Contract.

21.3 Substantial breaches

For the purposes of clause 21.2 substantial breaches by You or Us (as applicable) include but are not limited to:

- (a) impeding or suspending Services without cause;
- (b) failure to proceed with due expedition and without delay and in accordance with an agreed program;
- (c) failure to supply Services in a competent manner;
- (d) failure to provide evidence of and maintain insurance as required by the Contract;
- (e) failure to comply with a reasonable and lawful direction issued under a provision of the Contract;
- (f) failure to safely protect any person or property or otherwise to comply with any obligations under the Contract relating to safety or access to the Site;
- (g) failure to act reasonably in the discharge of obligations relating to workplace relations in accordance with clause 20;
- (h) failure to supply the Service or any part of the Services in accordance with the terms of the Contract;
- (i) failure to comply with its obligations under clauses 9 (Releases and Indemnity) and 10 (Insurance) and 24 (Confidentiality, Media Releases and Privacy);
- (j) failure to comply with the requirements of any relevant superannuation fund, or any other applicable fund or scheme, to the extent required by the relevant certified enterprise agreement or award applicable to a party and its workers or employees, or be in arrears in contribution; or
- (k) any other breach which is stated in the Contract to be a substantial breach.

21.4 Termination for insolvency

You or We (as applicable) may, without prejudice to any other right it may have, immediately terminate the Contract by notice in writing to the other party with effect from the date appearing on the notice, if there is an Insolvency Event.

21.5 Termination Without Default

We may for Our convenience and without regard to Your interests by written notice to You, terminate the Contract at any time effective from the time stated in the notice, or if no time is stated, at the time the notice is given to You.

21.6 Obligations on termination

If the Contract is lawfully terminated, then:

- (a) We must immediately cease supply of Service under the Contract;
- (b) You and We must immediately take all possible action to ensure the safety of our respective employees, subcontractors, agents and representatives and the protection of all property;
- (c) You and We must immediately take all possible action to mitigate any Damage or liabilities incurred by either of us as a result of such termination; and
- (d) You and We must comply with any reasonable and lawful directions given by the other party and take any other action reasonably required by the other party in relation to the termination.

22. Disputes

22.1 Notice of Disputes

Subject to clause 22.2, if a dispute or difference (Dispute) between You and Us arises out of or in connection with the Contract, then either party may within 28 days of the occurrence of the circumstances that give rise to the Dispute serve the other party with a notice of dispute in writing, specifying:

- (a) the particularised assertion of fact giving rise to the entitlement (including reference to relevant Contract provisions);
- (b) the legal basis and cause of action;
- (c) the relief the party seeks; and
- (d) the calculation of any amounts of money or extensions of time claimed.

Notwithstanding the existence of a Dispute, You and We must, subject to respective rights under the Contract, continue to perform our respective obligations under the Contract.

22.2 Time for disputing direction

If You or We dispute a direction given pursuant to the Contract then You or We (as applicable) must serve the other party with a notice of dispute which complies with clause 22.1, within 10 Business Days of the direction being given. If no such notice of dispute is given regarding a direction strictly in accordance with this clause 22.2, You or We (as applicable) will be forever barred from disputing the direction.

22.3 Meeting of representatives

- (a) If a Dispute notified under clause 22.1 has not been settled within 7 days of the date of that notice, either party may serve the other party with a notice in writing requesting the other party to

- attend negotiations in an attempt to resolve the Dispute.
- (b) Such negotiations will be:
- (i) attended by senior representatives of the parties who must have the authority to resolve the Dispute (and any other representative of either party nominated by them); and
 - (ii) held by the parties in good faith with a view to resolving the Dispute.
- (c) If the Dispute has not been settled within 28 days of the date of the notice given under clause 22.3(a), either party may refer the Dispute to arbitration.

22.4 Reference to arbitration

- (a) Unless a Dispute has been referred to the parties' representatives for negotiation in accordance with clause 22.3 and the period for negotiation under that clause has not yet ended, either party may notify the other party that it requires a Dispute to be referred to arbitration.
- (b) Upon receipt by the other party of a notice under this clause 22.4, the Dispute will be referred to arbitration.

22.5 Arbitration

- (a) Arbitration in accordance with this clause will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) and as otherwise set out in this clause 22.
- (b) The seat of the arbitration will be Melbourne, Victoria.
- (c) The language of the arbitration will be in English.

22.6 Appointment of arbitrator

The parties will endeavour to agree on the person to be appointed as arbitrator, but if no such agreement is reached within 10 Business Days of the Dispute being referred to arbitration in accordance with clause 22.4, the arbitrator will be appointed by the Australian Centre for International Commercial Arbitration.

22.7 General principles for conduct of arbitration

- (a) The parties agree that:
- (i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (ii) any arbitration conducted in accordance with this clause 22 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (iii) in conducting the arbitration the arbitrator must take into account the matters set out in clauses 22.7(a)(i) and 22.7(a)(ii).
- (b) All evidence in chief must be in writing unless otherwise ordered by the arbitrator.

- (c) The rules for evidence and discovery will be the IBA Rules current at the date of arbitration.
- (d) The oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties.

22.8 Extension of ambit of arbitration proceedings

- (a) Where:
- (i) a Dispute between the parties is referred to arbitration in accordance with this clause 22; and
 - (ii) there is some other Dispute also between the parties to and under Contract (whenever occurring),

the arbitrator may, upon application being made to the arbitrator by one or both of the parties at any time before a final award is made in relation to the first-mentioned Dispute, make an order directing that the arbitration be extended so as to include the other Dispute.

- (b) An arbitrator may make an order in accordance with clause 22.9(a) on such terms and conditions (if any) as the arbitrator thinks fits.

22.9 Award final and binding

- (a) Subject to clause 22.9(b), an award by the arbitrator will be final and binding on the parties.
- (b) Each party consents to any appeal to a court where that appeal is made under the Commercial Arbitration Act 2011 (Vic) on a question of law arising in connection with an arbitral award made pursuant to this clause 22.

22.10 Governing law of arbitration agreement

The law governing this arbitration agreement is the law of Victoria, Australia.

22.11 Interlocutory relief

This clause 22 does not prevent a party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that party's reasonable opinion, that action is necessary to protect that party's rights.

23. Notices

23.1 Essential requirements

A notice, demand, consent, approval or communication under the Contract (Notice) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) sent by post or electronic mail to the recipient's address for Notices specified in the Contract, as varied by any Notice given by the recipient to the sender.

23.2 Delivery

A Notice given in accordance with this clause 23 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery; or
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent or delivered by electronic mail before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

23.3 Electronic Mail

- (a) A notice may be sent by electronic mail to the electronic mail address of the addressee specified in the Contract or, if no address is specified, the address used by an officer or manager of You and an officer or manager of Us.
- (b) If the notice is sent or delivered by electronic mail, it must be treated as given to and received by the party to which it is addressed if sent before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- (c) Despite clause 23.3(b):
 - (i) an electronic mail message is not treated as given or received if the sender's computer reports that the message has not been delivered; and
 - (ii) an electronic mail message is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 3 hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.

23.4 Validity

A notice sent or delivered in a manner provided by this clause 23 must be treated as validly given to and received by the party to which it is addressed even if:

- (a) the addressee has been liquidated or deregistered or is absent from the place at which the notice is delivered or to which it is sent;
- (b) the notice is returned unclaimed; or
- (c) in the case of a notice sent by electronic mail, the electronic mail message is not delivered or opened (unless the sender's computer reports that it has not been delivered).

23.5 Changes of Address

A party may change its address for Notices at any time by giving Notice of that change to the other party.

23.6 Notice of Third Party Claims

Notwithstanding any other provision of this clause 23, You and We must immediately notify the other party upon it becoming aware of any dispute, litigation, claim, threat or such like by any person, body, Authority, or any adjacent owner or occupier, in connection with the Contract or the Site.

24. Confidentiality, Media Releases and Privacy

24.1 Confidential Information

- (a) You and We:
 - (i) may use our respective Confidential Information only for the purposes of the Contract; and
 - (ii) must keep confidential all Confidential Information except:
 - A. for disclosure permitted under clause 24.2; and
 - B. to the extent (if any) either party is required by law to disclose any Confidential Information.
- (b) You and We agree not to disclose information about the terms of the Contract, except:
 - (i) to our respective officers, employees, legal and other advisers and auditors (and only to the extent that the person has a need to know);
 - (ii) with the consent of the other party; or
 - (iii) if the disclosure is necessary to comply with any applicable law, the rules of any securities or stock exchange or an order of a court or tribunal and the other party is given prior notice of the disclosure.

24.2 Permitted Disclosure

You and We may disclose Confidential Information to persons who:

- (a) have a need to know for the purposes of the Contract (and only to the extent that each person has a need to know and that person is a servant, employee, agent or contractor of the party); and
 - (b) before disclosure:
 - (i) in the case of the other party's officers and employees, have been directed by that party to keep confidential all Confidential Information; and
 - (ii) in the case of other persons approved in writing by a party, have agreed in writing with the other party to comply with substantially the same obligations in respect of Confidential Information as those imposed on the other party under the Contract,
- (each a Permission).

24.3 Obligations

You and We (as applicable) must:

- (a) ensure that each person to whom it discloses Confidential Information under clause 24.2 complies with its Permission; and
- (b) notify the other party of, and take all steps to prevent or stop, a suspected or actual breach of a Permission.

24.4 Disclosure by Law

Subject to clause 24.1 (b) if a party is required by law to disclose any Confidential Information to a third person (including, but not limited to, government) that party must:

- (a) before doing so:
 - (i) notify the other party; and
 - (ii) give the other party a reasonable opportunity to take any steps that the party considers necessary to protect the confidentiality of that information; and
- (b) notify the third person that the information is Confidential Information of You or Us (as applicable).

24.5 Breach

- (a) If a party considers that the other party (or any person involved in the performance of the Services) is disclosing Confidential Information in breach of this clause 24, then the party may, by notice in writing to the other party, require the other party to return all documents and materials containing or based upon Confidential Information. The other party must upon receipt of such notice immediately return to the party all such documents and materials and no copies will be retained by the other party except that the other party may retain Confidential Information that it is required to retain by law, provided that any Confidential Information retained is kept confidential in accordance with this clause 24.
- (b) A failure by a party to comply with the requirements of this clause 24 confers on the other party an enforceable right at law or in equity to seek any one of or a combination of specific performance, injunction or damages and, to the extent that any right under a Legislative Requirement may be excluded by the Contract, under that Legislative Requirement.

24.6 Media Releases

You and We must not make or authorise a press release or other public statement relating to the negotiations of the parties, the subject matter or terms of the Contract unless:

- (a) it has the prior written approval of the other party; or
- (b) it is required by law or the listing rules of ASX Limited.

24.7 Privacy

You and We must:

- (a) comply with all Privacy Laws, whether or not it is an organisation bound by the Privacy Act;
- (b) use or disclose Personal Information only for the purposes of providing the Services or as expressly permitted under the Contract;
- (c) take all reasonable steps to ensure that the Personal Information is protected against misuse, interference, loss and unauthorised access, modification or disclosure;
- (d) promptly notify the other party if a party becomes aware of any actual or potential breach of a party's obligations under this clause, and comply with any reasonable direction from the other party with respect to remedying that breach;
- (e) not do any act or engage in any practice that would breach any Privacy Law, or would result in a party breaching any Privacy Law;
- (f) not disclose or transfer any Personal Information outside of Australia without the other party's prior written consent; and
- (g) on the termination or expiry of the Contract, return, destroy or otherwise deal with any Personal Information in accordance with the reasonable instructions of the other party.

25. General

25.1 Governing Law

The Contract is subject to and is to be construed in accordance with the Governing Law and the parties submit to the non-exclusive jurisdiction of the Courts of the State or Territory of the Governing Law.

25.2 Assignment

You may not without Our written consent:

- (a) assign the Contract or any payment under the Contract or any interest in the Contract or in such payment; or
- (b) materially change the shareholding or beneficial ownership of You.

We may upon written notice to You assign any of Our rights and entitlements under the Contract.

25.3 Severability

Part or all of any provision of the Contract that is illegal or unenforceable may be severed from the Contract and the remaining provisions of the Contract continue in force.

25.4 Costs of Contract

Each party must bear its own costs of and incidental to the preparation and execution of the Contract. You must pay all stamp duties or other taxes of a similar nature on the Contract.

25.5 Novation of Contract

We may in Our discretion and at any time after the execution of the Contract require You, at no cost to Us or

the New Contractor (as defined in this clause), to execute a deed of novation (Deed of Novation) in a form determined by Us whereby:

- (a) We and You and a person nominated by Us (the "New Contractor") are parties to the Deed of Novation;
- (b) We and You mutually agree that the Contract is terminated upon the execution of the Deed of Novation;
- (c) You and the New Contractor agree that they will enter into a new contract on the same terms and conditions as the Contract, except that:
 - (i) the New Contractor must be named in lieu of Us; and
 - (ii) the obligations of You and the New Contractor will be as if the New Contractor had executed the Contract in lieu of Us;
- (d) We will have no obligation to You in connection with the Services under the Contract; and
- (e) You will remain liable to Us in respect of the performance of the Services under the Contract up to and including the termination of the Contract.

25.6 Survival of Provisions

The rights and obligations contained in clauses 9.2 (Indemnities) 10 (Insurance), 17 (Intellectual Property Rights), 19.3 (Goods and Services Tax (GST)), 21.6 (Obligations on Termination), 22 (Disputes), 24 (Confidentiality, Media Releases and Privacy), 25.1 (Governing Law) and 25.7 (Indemnities) bind the parties notwithstanding the expiry or earlier termination of the Contract.

25.7 Indemnities

All obligations to indemnify under the Contract survive termination of the Contract. No indemnity in the Contract limits the effect or operation of any other indemnity in the Contract. Each indemnity in the Contract is a continuing obligation, separate and independent from the other obligations of the parties. If applicable, a party may recover a payment under an indemnity in the Contract before it makes the payment in respect of which the indemnity is given.

25.8 Electronic communication

The parties may issue relevant documentation to each via an agreed online platform or application.

26. Special Conditions

26.1 Minimum Hire Period

The supply or hire of Construction Plant is subject to a minimum charge or minimum period as notified or published by Us from time to time.

26.2 Tipper Truck HV Conditions

The following special conditions apply if the supply of Services includes Us supplying HVs that are tipper trucks:

- (a) unless otherwise agreed in writing, Our Rates quoted on a 'per load' basis are based on the applicable HV mass limit;

- (b) unless otherwise agreed in writing, Our Rates include a loading time allowance of 5 minutes from the time the HV arrives at or in the vicinity of the site. If a HV is not loaded within this 5 minute allowance, We may charge and You agree to pay a waiting time charge for each minute over the 5 minute allowance based on an hourly rate determined by Us from time to time;
- (c) Our Rates based on hourly hire or supply of Services:
 - (i) exclude road toll charges or fees and You agree to pay all such charges or fees (hourly hire);
 - (ii) apply to and will be charge for Travel Time;
 - (iii) will be subject to the 'rock rate' where applicable;
 - (iv) will be charged from time to time in lieu of rate or price that may otherwise apply where anything beyond Our control, including delays, supply chain blockages or scarcity and incorrect classification of Fill, causes or means that minimum time limits or thresholds cannot be achieved.

26.3 Transport Only or Transport and Supply

Our Rates may be quoted and based on:

- (a) cartage or transport only and, if so, rates exclude any supply of Fill;
- (b) cartage or transport plus or including supply of Fill and, if so, rates include supply of a specified or agreed volume of Fill.

26.4 Construction Plant

If the supply of Services includes supplying Construction Plant, Our Rates for combination HVs (for example, HV known as b-doubles or rigid truck and dog) will be based on a full day (Standard Working Hours) and rates based on hourly hire or supply do not apply unless agreed in writing.

26.5 Watercarts and Sweepers

If Construction Plant supplied or to be supplied is a watercart or sweeper, then:

- (a) Our Rates exclude:
 - (i) the cost of water. If We supply water, We will charge and You agree to pay for the water We supply; and
 - (ii) Travel Time and We will charge and You agree to pay for Travel Time based on Our applicable rates;
- (b) unless otherwise agreed in writing, watercarts will always arrive empty (without water) on site at the start of each day;
- (c) the time taken to fill a watercart with water is included in Our Rates;
- (d) if sweeper waste cannot be lawfully tipped or disposed of on the site from which it was collected, then such waste will be transported to the nearest Lawful Place for disposal and We will charge and

You agree to pay for the cost of such transport and disposal including any applicable road toll and/or landfill or tip site fees or charges.

27. Definitions and Interpretation

27.1 Definitions

Unless and to the extent the context otherwise requires or indicates, in the Terms:

Approvals means any necessary approvals, authorisations, consents, registrations, filing, permissions, notarisations, agreements, permits, exemptions, determinations, certificates, notices, licences or waivers under any Legislative Requirements or by any Authority (including any applicable conditions) and under any renewal, amendment or variation thereof for supplying the Services under the Contract;

Authority means any Commonwealth, State, Territory or Local authority court or tribunal or any public statutory or government body, authority, council, inspectorate, department, ministry, official or agency which in any way governs or affects the Services, the Services under the Contract, the Site, Personnel or any private or corporate provider of a Utility;

Business Day means a day that is not: a Saturday or Sunday; or a day that is wholly or partly observed as a public holiday in Victoria;

Claim means any claim for:

- (a) recovery of any costs, loss, damages, liabilities, expenses or other amounts of any kind (including loss of profit); and
- (b) relief from any obligations or liabilities under the Contract,

whether under, arising out of, or in connection with the Contract or otherwise at law (including under statute or common law), in tort (including negligence and negligent misrepresentation), in equity (including unjust enrichment or restitution), quantum meruit or otherwise;

Clean Fill means Fill Material that does not:

- (a) contain or comprise of cement, concrete, rubble, brick, rock, gravel, sand or vegetation or green waste or garden waste;
- (b) have a water content or concentration of more than six percent (6%); and
- (c) have contaminant(s):
 - (i) of a concentration that exceeds the contaminant threshold specified in relevant EPA Act, EPA Regulations or associated Legislative Requirements; or
 - (ii) that is/are listed in the relevant EPA Act, EPA Regulations or associated Legislative Requirements such that the Fill Material will be deemed contaminated.

Code means the *Code for the Tendering and Performance of Building Work 2016*, (available at <https://www.legislation.gov.au>) and as amended and replaced from time to time;

Confidential Information means:

- (a) information concerning the contents of a Contract, or any transaction undertaken in connection with a Contract;
- (b) all data bases, source codes, methodologies, manuals, artwork, advertising manuals, trade secrets and all financial, accounting, marketing and technical information, customer and supplier lists, know how, technology, operating procedures and other information, used by or relating to Fleet (or any of its subsidiaries) and its transactions and affairs;
- (c) all and any information which relates to the current or future business, interests or affairs of Fleet (or any of its subsidiaries) received by the Customer or its agents, consultants or representatives;
- (d) the confidential information of Fleet or any of its subsidiaries which relates to the subject matter of the Terms including:
 - (i) information relating to the customers, personnel, policies or business strategies of Fleet or any of its subsidiaries;
 - (ii) the commercial terms of an agreement incorporating the Terms and any related documentation; and
 - (iii) any other proprietary information of Fleet or any of its subsidiaries that is not publicly available;
- (e) all notes and reports incorporating or derived from information referred to in paragraph (a), (b), (c) or (d); and
- (f) all copies of the information, notes and reports referred to in paragraphs (a) to (e);

Construction Plant means apparatus, plant, equipment, machinery and other things supplied by Us or on Our behalf and used in performing the Services;

Construction Plant Hire means the hire (Wet Hire or Dry Hire) of Construction Plant;

Contract means an agreement between Us and You to supply Services including an agreement arising from You accepting a Quote or Tender Bid, or Us accepting a Purchase Order or Service Order;

COR Laws means Legislative Requirements 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 in COR Laws;

Customer and You, Your means the entity specified as the customer in a Contract, or if none is specified the recipient of the Services supplied by or on behalf of Us;

Daily Hire Cancellation Charges means:

- (a) the amount equal to Our applicable rate multiplied by:

- (i) the minimum hire period specified in the Standard Variable Terms; or
 - (ii) 2 hours if no applicable minimum hire period is specified in the Standard Variable Terms; or
- (b) the amount stated in or calculated by reference to the formula specified in the Contract, Quote, Purchase Order or Tender Bid (as applicable),

whichever is higher.

Damage means any damage, Claim, proceeding, demand, loss, loss of use, liability, cost, charge, expense (including legal costs), fine, penalty, outgoing or payment suffered or incurred by Us or You or another person (as applicable);

Debt Due means any amounts payable by You to Us pursuant to a Contract;

Default Event means any of the following:

- (a) Moneys are not paid or not paid on time;
- (b) You are unable to pay Your debts as and when they fall due;
- (c) You cease or suspend the conduct of Your business, or threaten to;
- (d) an administrator, liquidator, provisional liquidator, receiver and/or manager or any other form of insolvency administrator or controller is appointed to You or over all or part of Your assets or property;
- (e) You commit any act of bankruptcy or are bankrupt, You die, if You are a partnership, the partnership is dissolved;

Direct Contractor Charge means the amount (calculated daily) You would have paid Us to supply Services using Our Contractor.

Disposal Services mean the disposal of Fill including in accordance with Legislative Requirements;

Dry Hire means the supply of Construction Plant on hire without an Operator;

eDockets means Our:

- (a) online digital transaction platform; or
- (b) if the online digital transaction platform is not working or is not being used by You, the paper-based transaction platform,

that among other things facilitates and processes Service Orders, Service Delivery, Service Approval and matters ancillary to these things.

Electronic Communication has the same meaning as that term is defined in the ET Act;

Electronic Transaction:

- (a) means a transaction, including a Contract, entered or given effect by means of one or more Electronic Communications; and
- (b) 'transaction' in this context has the same meaning as that term is defined in the ET Act;

End Date means (as applicable) the date specified in a Contract on which We will stop supplying Services under the Contract;

Environment includes the meaning given to that term in any Legislative Requirements of the Governing Law (including the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)) and also includes the following (and any combination):

- (a) land, air, water;
- (b) any layer of the atmosphere;
- (c) flora and fauna;
- (d) any organic or inorganic matter and any living organism including humans;
- (e) human made or modified structures and areas;
- (f) the aesthetic characteristics of the components of the earth including appearance, sound, odour, taste and texture; and
- (g) ecosystems and their constituent parts, including people and communities;

EPA means:

- (a) the Environment Protection Authority Victoria if the Site is located or Services are supplied in Victoria;
- (b) if the Site is located or Services are supplied outside Victoria, the Authority that is the equivalent of the Environment Protection Authority Victoria in the state or territory where the Site is located or Services are supplied;

EPA Act means:

- (a) the *Environment Protection Act 2017* (Vic) as amended from time to time if the Site is located or Services are supplied in Victoria;
- (b) if the Site is located or Services are supplied outside Victoria, the Act that is the equivalent of the *Environment Protection Act 2017* (Vic) in the state or territory where the Site is located or Services are supplied;

EPA Regulations mean:

- (a) the *Environment Protection Regulations 2021* (Vic) as amended from time to time if the Site is located or Services are supplied in Victoria;
- (b) if the Site is located or Services are supplied outside Victoria, the regulations that are the equivalent of the *Environment Protection Regulations 2021* (Vic) in the State or Territory where the Site is located or Services are supplied;

ET Act means:

- (a) where the Site is located, or Services are provided in Victoria – the *Electronic Transactions (Victoria) Act 2000* (Vic);
- (b) where the site is located, or Services are provided in Queensland – the *Electronic Transactions (Queensland) Act 2001* (Qld); and
- (c) where the Site is located or Services are provided in another state or territory, the relevant electronic transaction legislation for that state or territory.

Excluded Services mean:

- (a) any kind of services or advice relating or in connection with the design (including any plan or

drawing or methodology) of or relating to earthworks or the digging, excavation or tunnelling of, under or through land or any body of water;

- (b) the hire of a person to provide labour;

Fill includes Clean Fill and Fill Material, and Fill means material removed or arising from digging, tunnelling or other form of excavation or earthworks, and may comprise of soil, rocks, sand, liquid and other things, which may or may not be contaminated;

Fill Material means Fill that is industrial or commercial waste that is soil which may contain, among other things, cement, concrete, rubble, soil, brick, rock, gravel, sand and water:

- (a) with contaminant concentrations not exceeding the contaminant threshold specified in the relevant EPA Act or EPA Regulations and
- (b) that does not contain asbestos.

Fill Material is not:

- (a) controlled waste as defined in the *National Environmental Protection Measure for the Movement of Controlled Waste*;
- (b) e -waste;
- (c) where material is located in Victoria:
 - (i) Category A waste;
 - (ii) Category B waste;
 - (iii) Category C waste;
 - (iv) Category D waste;
 - (v) other priority waste including designated waste,as defined in the EPA Regulations,
- (d) where material is located in Queensland:
 - (i) Category 1 Regulated Waste; or
 - (ii) Category 2 Regulated Waste,as defined in the *Environmental Protection Regulation 2019* (QLD);
- (e) where Fill is located in another State or Territory, Fill that requires special treatment or management under the relevant EPA Act or EPA Regulation in that State or Territory due to the contaminated or unique nature of the Fill.

Fill Supply Services mean the supply of Clean Fill or Fill Material by Us to You or by Us to another party on Your behalf;

Fleet Plant Hire Solutions and **Fleet, Our, Us, We** means:

- (a) Fleet Plant Hire Pty Limited ABN 90 053 329 301 trading as Fleet Plant Hire Solutions (**FPH**) when Services are supplied by or on behalf of FPH; or
- (b) Fleet Plant Hire Solutions (Qld) Pty Ltd ABN 20 667 695 945 trading as Fleet Plant Hire Solutions Qld (**FPHS Qld**) when Services are supplied by or on behalf of FPHS Qld.

Governing Law means the laws in force in the State of Victoria;

Hire Terms means the terms and conditions in Schedule 1 of these Terms;

HV means a heavy goods vehicle;

IBA Rules mean the International Bar Association rule on the taking of evidence in international arbitration;

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;

Insolvency Event means any of the following occur in relation to You or Us:

- (a) stops or suspends payment of its debts;
- (b) ceases or threatens to cease carrying on its business;
- (c) if the party on reasonable grounds suspects that the other party is unable to pay its debts as they fall due or will cease to carry on its business;
- (d) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
- (e) the corporation entering a deed of company arrangement with creditors or has execution or other processes levied against it by creditors;
- (f) a controller, administrator, receiver, manager, receiver and manager, trustee, provisional liquidator or liquidator is appointed to the corporation or any asset of the corporation;
- (g) an application is made to a court (and is not stayed, withdrawn or dismissed within 10 working days) for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
 - (i) appointing a person under subclause (f) of this definition;
 - (ii) winding up the corporation; or
 - (iii) proposing or implementing a scheme of arrangement in respect of the corporation;
- (h) resolves by special resolution that the company be wound up voluntarily (other than for a member's voluntary winding-up);
- (i) has a mortgagee seek to exercise a right of possession, management or control over the whole or a part of the party's property;
- (j) a moratorium of any debts of the corporation or an official assignment or a composition or an arrangement (formal or informal) with the corporation's creditors or any similar proceeding or arrangement by which the assets of the corporation are subjected conditionally or unconditionally to the control of the corporation's

creditors is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 5 working days;

- (k) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the corporation; or
- (l) a statutory demand under section 459(E) of the *Corporations Act 2001* (Cth) is served on a party and that party has failed to comply with the demand within 5 Business Days; or
- (m) the Commissioner of Taxation issues a notice to any creditor of a person under the *Taxation Administration Act 1953* (Cth) requiring the creditor to pay any money owing to that person to the Commissioner in respect of any tax or other amount required to be paid by that person to the Commissioner (whether or not due and payable) or the Commissioner advises the creditor that it intends to issue such a notice;
- (n) is subject of anything analogous or with a substantially similar effect to any of the events specified in subclauses (a) to (m).

Intellectual Property Rights means all existing and future intellectual property rights and proprietary rights (whether registered or unregistered) throughout the world (including existing and future copyright) in:

- (a) all materials or things, including patents, copyright, rights in circuit layouts, registered designs, trademarks, trade secrets, documents, reports, photographs, video tapes, statements, diagrams, technical information, plans, drawings, calculations, tables, schedules and the right to have Confidential Information kept confidential, and whether existing, created, improved or developed before, during or after the date of the Contract;
- (b) all materials or things created, generated, improved or developed by Us (or any other person engaged by or on behalf of Us) arising out of in connection with the Contract;
- (c) all results, information and material brought into existence or obtained by or on behalf of Us in the course of, as a result of, in connection with or arising out of or in connection with the Contract; and
- (d) any application or right to apply for registration of any of the rights in paragraphs (a) or (b);

Lawful Place means a place where Fill can be placed, tipped or disposed of in accordance with Legislative Requirements;

Legislative Requirements includes:

- (a) Acts, ordinances, regulations, conventions, bylaws, orders, directions given under a statute, rules and other subordinate legislation, awards guidelines, policies and proclamations of the Commonwealth and the State or Territory and Local Governments applicable to the work under the Contract;
- (b) codes (including the Building Code of Australia);

(c) Approvals; and

(d) fees and charges payable in connection with the foregoing;

Loading Services mean loading Fill into HVs;

Operator means the person who operates Construction Plant;

Our Contractors mean subcontractors, namely third-party body corporates, engaged by Us to supply Services;

Our Rates mean:

- (a) the rates, including for Dry Hire and Wet Hire, We specify in writing including in a Quote or Tender Bid or Contract; or
- (b) as specified by Us from time to time in a written notice from Us to You,

whichever is higher;

Our Representative means the person identified in a Contract or a person nominated by Fleet Plant Hire Solutions;

Metropolitan Area means:

- (a) if the Site is located or the Services are supplied in Victoria, the area within the municipal districts under the local government of the municipal councils set out in Schedule 2 of the *Planning and Environment Act 1987* (Vic);
- (b) if the Site is located or the Services are supplied outside Victoria, the area within the municipal districts under the local government of the municipal councils within or immediately adjacent to the capital city of the state or territory in which the Site is located or the Services are supplied;

Moneys means all moneys now or in the future actually owed or contingently owing by You to Us on any account and include any part of those moneys and includes all interest accruals and costs, expenses, and disbursements You are liable to pay Us under a Contract;

Personal Information means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not, which is received, collected and/or handled in connection with a Contract;

Personnel means contractors, subcontractors, consultants, suppliers, employees, agents and other persons engaged by You or Us (as applicable and as the context requires);

Privacy Act means the *Privacy Act 1988* (Cth);

Privacy Laws means the *Privacy Act 1988* (Cth), the *Privacy and Data Protection Act 2014* (Vic) or the equivalent privacy legislation for that State or Territory if the Site is located or Services are provided in a different State or Territory other than Victoria and all other applicable Legislative Requirements relating to the handling of Personal Information;

Purchase Order means an order or request for services, that may include Services, from You or on Your behalf to Us;

Quote means a quote from Us to supply Services;

Return Condition means:

- (a) free of damage (fair wear and tear excepted); and
- (b) clean and tidy and free of rubbish.

Replacement Terms Date means the date that is the earlier of:

- (a) 30 days from the date We publish replacement terms and conditions on the website at www.fph.com.au;
- (b) the date You otherwise agree in writing;

Security of Payments Act means where a Site is located or Services are provided:

- (a) in Victoria - the *Building and Construction Industry Security of Payment Act 2003* (Vic);
- (b) in Queensland - the *Building Industry Fairness (Security of Payment) Act 2017* (Qld);
- (c) in any other State or Territory - the equivalent legislation for that State or Territory;

Service Approval means the acknowledgement, confirmation, recognition or approval of a Service including that Services have been delivered by Us to You;

Service Delivery means the delivery of Services to You;

Service Order means the order by You of Services including pursuant to clause 3;

Services mean, alone or in combination, Construction Plant Hire, Disposal Services, Fill Supply Services, Loading Services and Transport Services, supplied by or on behalf of Us, but **excludes** the Excluded Services;

Site means the place or places:

- (a) described in the Contract from which, as the context requires, Fill is, or is to be either collected and taken, or delivered;
- (b) Construction Plant is to be used on Wet Hire or Dry Hire;

Standard Working Hours means 6:00am to 6:00pm on Business Days;

Standard Variable Terms means the terms and conditions published on a webpage on Our website (www.fph.com.au) and titled or described as 'Standard Variable Terms'.

Start Date means (as applicable) the date for commencement of the Services under the Contract as specified in the Contract or as otherwise agreed by Us and You or as notified to You by Us;

Statutory Warranties means all warranties, promises and representations that by law apply to Us, the Terms, a Contract or Quote or Service Order or Purchaser Order or Tender Bid;

Tender Bid means a submission from Us to supply Services in response to a tender;

Terms mean these terms and conditions and the Standard Variable Terms notwithstanding and to the exclusion of all other terms and conditions including any

terms and conditions delivered, provided, submitted or tendered by or on behalf of You to Us later in time, except to the extent such other terms and conditions are expressly approved and accepted by Us in writing;

Transport Services mean:

- (a) the supply of HVs to move Fill from a Site to another place or from one place to another place within a Site;
- (b) moving Construction Plant from one place to another place;

Travel Time means the time taken to move, transport or drive Construction Plant (for example, a HV, watercart or sweeper) from its location:

- (a) before the start of Standard Working Hours to the place or Site where it is required to be used; and
- (b) at the end of Standard Working Hours or when the last load has been tipped or delivered, whichever is earlier, to the site from which the load was collected or the usual home depot of the Construction Plant, whichever is closer;

Utility means any utility service, including water, electricity, gas, telecommunication and electronic communications (including voice and data), drainage and sewerage, and supply of all supporting structures and media necessary for such services;

Wet Hire means the supply on hire of Construction Plant together with an Operator to operate the Construction Plant;

WHS Act means the principal work health and safety Act in the State or Territory in which the Site is situated, and, in addition, the State or Territory in which any work under the Contract (or any part) is being carried out if in a different State or Territory to the location of the Site, and the term "WHS Act" may include two or more Acts;

WHS Legislation means the WHS Act and the WHS Regulation and any other health and safety related legislation applicable to the work under the Contract;

WHS Plan means a plan that:

- (a) describes how work is to be carried out;
- (b) identifies the work activities assessed as having safety risks;
- (c) identifies the safety risks; and
- (d) describes the control measures that will be applied to the work activities in accordance with the risk management requirements of the WHS Regulations,

and includes a description of the equipment used in the work, the standards or codes to be complied with, the qualifications of the Personnel doing the work (including competency certificates and licences of the Personnel), the training required to do the work and confirmation that the training has been provided in compliance with the WHS Legislation, and applicable codes of practice and other guidance material issued by any Authority that enforces the WHS Legislation;

WHS Regulations means the Regulations associated with the WHS Act.

27.2 Interpretation

27.2.1 In the Terms, unless the context otherwise requires:

(a) references to:

- (i) a party includes the party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
 - (ii) a reference to 'including', 'includes', or 'include' must be read as if it is followed by (without limitation);
 - (iii) persons include companies, associations, firms, authorities and bodies corporate;
 - (iv) gender includes all other genders;
 - (v) a document includes the document as changed or replaced from time to time;
 - (vi) legislation (or to a code) or to a provision of legislation (or a code) includes a modification or re-enactment of it, a legislative (or other) provision substituted for it and a regulation or statutory instrument issued under it;
 - (vii) currencies mean Australian currencies;
 - (viii) a party, where the party is more than one person, means all of them together and each of them separately;
 - (ix) a clause or Schedule or recital refers to a clause or Schedule or recital in the Contract;
 - (x) a statute, regulation, code or standard includes a reference to it as amended from time to time; and
 - (xi) a day refers to the period commencing at midnight and ending 24 hours later;
- (b) interpretation will not be affected by the fact that one party put forward any part of the Contract;
- (c) invalidity of any provision of the Contract will not affect the validity of any other provision except to the extent made necessary by the invalidity;
- (d) the singular includes the plural and the other way around;
- (e) headings do not affect the meaning of the Contract;
- (f) if a word or phrase is defined, any variation of that word or phrase has the same meaning to the extent possible;
- (g) a reference to 'a party' or 'parties' is a reference to a party or the parties to the Contract;
- (h) a reference to 'indemnify' means that the person giving the indemnity will indemnify and keep indemnified the person given the indemnity against any loss, damage, claims, actions, demands, costs or expenses suffered or sustained because of the event indemnified against. This means that if the person indemnified suffers any loss or must pay any money (whether or not it is actually paid) because

of an indemnified event the party giving that indemnity must pay the amount of loss or the amount of liability to the indemnified party immediately on demand. If it does not, the indemnified party can recover the amount as a Debt Due;

- (i) a Debt Due becomes due and payable at the time specified in the Contract, or if no time is specified, it is payable on demand;
- (j) if anything to be done under the Contract falls on a day which is not a working day, then it must be done on the next working day;
- (k) where examples of a general term are given, the use of the examples is without limitation to the general term; and
- (l) where a plan or drawing is included reduced in size for convenience, a reference to that plan or drawing is a reference to the plan or drawing in its proper scale.

27.2.2 Rights and Remedies Not Affected

The rights, powers and remedies provided in a Contract are cumulative with and not exclusive of the rights, powers and remedies provided by law independently of a Contract.

27.2.3 Discretion

You acknowledge and agree that in respect of any approval, power, entitlement, consent, permission, acceptance or discretion (all of which are referred to in this clause 27.2.3 as a discretion) and notwithstanding anything to the contrary in the Contract:

- (a) a discretion of Us or Our Representative under the Contract is not required to be exercised for the benefit of You or as required by any other legal doctrine which in any way limits the express words used in the Contract conferring the discretion and there is no substantive limitation upon the manner in which We or Our Representative may exercise any discretion conferred by a Contract; and
- (b) We or Our Representative may impose any conditions or requirements in conjunction with its exercise of a discretion.

27.2.4 Application of Terms

The Terms apply to the supply of Services whether the Services were supplied before or after a Contract is entered.

27.2.5 Entire Agreement

- (a) A Contract constitutes the entire agreement between the parties in respect of its subject matter and supersedes all prior agreements, representations, warranties, promises, statements, negotiations and letters in respect of its subject matter.
- (b) A Tender Bid will form part of a Contract and nothing in a Contract will limit, reduce or in any way modify the obligations of the parties set out in a Tender Bid.

27.2.6 Variations and Waivers in Writing

- (a) A party may exercise a right, power or remedy at its discretion and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or any other right, power or remedy. Except where a provision of the Contract expressly requires a party to exercise any right, power or remedy within a specified time, delay in exercising a right, power or remedy does not prevent its exercise.
- (b) A provision of a right, power or remedy created under the Contract may not be:
 - (i) waived except in writing signed by the party granting the waiver; or
 - (ii) varied except in writing signed by the parties.

27.2.7 Joint and Several

If You are comprised of one or more persons:

- (a) the obligations of those persons as You under a Contract are joint and several;
- (b) We may proceed against all or any one of them in respect of Your obligations in Our discretion, but is not obliged to make any claim against all of the persons comprising You; and
- (c) any indemnity given under a Contract is given by each person comprising You in respect of each person comprising You.

Schedule 1 – Hire Terms

- 1. Wet Hire and Dry Hire are, in addition to the Terms, subject to the following terms and conditions.
- 2. You agree to pay Us in full and without set-off or deduction:
 - (a) Our Rate for supply during Standard Operating Hours;
 - (b) Our Rate for supply outside Standard Operating Hours;
 - (c) the costs of:
 - (i) delivering Construction Plant to the Site or the location You nominate in writing; and
 - (ii) returning the Construction Plant to the place specified or nominated by Us;
 - (d) any special or additional allowances, charges or entitlements We are required to pay Our Personnel because of or relating to the Site, Your operational requirements or Legislative Requirements;
 - (e) the cost of insurance taken out by Us at Your request;
 - (f) all costs and expenses We incur because the movement of Construction Plant is delayed due to circumstances beyond our control;
 - (g) for Damage We suffer that is directly or indirectly caused or contributed to by:
 - (i) You or Your Personnel breaching the Terms;
 - (ii) an unlawful act or omission of You or Your Personnel;
 - (iii) You or Your Personnel failing to disclose to Us in writing material facts, matters or things relating to the Construction Plant, including Site conditions, the composition of Fill or other material the Construction Plant or Operator will or may come into contact with.
- 3. You are solely responsible for taking out and maintaining insurance covering accidental damage and theft, for the full replacement value, of any goods, including Fill, that We move or transport for You or on Your behalf.