



**Gladstone Area
Water Board**

General Conditions

Minor Works/Goods/Services

GLADSTONE AREA WATER BOARD ABN 88 409 667 181

**General Conditions-Minor
Works/Goods/Services**

- 1 Interpretation and Agreement**
- 1.1 These General Conditions govern the supply of Services, the construction of Works and delivery of Goods, described in the Agreement Particulars.
- 1.2 This Agreement consists of:
- (a) these General Conditions;
 - (b) each Purchase Order and the relevant Agreement Particulars; and
 - (c) any schedules, or documents expressly referred to in them,
- and comprise the entire terms of the agreement between You and us, whether or not they are contained in your delivery notes or invoices.
- 1.3 Without limiting clause 1.2, the parties shall not be bound by:
- (a) any terms and conditions (including those contained in invoices or delivery notes or arising from prior dealings or trade usage); or
 - (b) any descriptions, specifications, quantities or prices,
- which are different or additional to those contained in the Agreement.
- 1.4 You must supply the Works/Goods/Services or a combination thereof to us in accordance with this Agreement.
- 1.5 Our only obligations are those expressly set out in this Agreement.
- 2 Quality and description**
- 2.1 You must ensure, and You warrant that:
- (a) the Works, Goods, and/or Services match the description (including performance criteria) referred to in this Agreement;
 - (b) any sample of Works, and/or Goods or demonstration of Services (including any output result achieved by the Services) provided to us prior to the date of this Agreement must correspond in nature and quality with the Works, Goods, and/or Services (including achieving the output result);
 - (c) the Works and Goods comply with all relevant standards and codes, including the Standards Association of Australia or any other code or standard listed in the Agreement Particulars (as applicable);
 - (d) the Works, Goods and/or Services are fit for our intended purpose (including any purpose we advised You prior to the date of this Agreement, and any purpose for which the Works, goods and / or services of the same kind are commonly supplied or bought);
 - (e) the Goods are of merchantable quality, free from defect in material and workmanship and, unless otherwise specified in the Agreement Particulars, must be new.
- 2.2 If You supply more Goods than specified in this Agreement, the excess may be returned to You at your cost.
- 3 Specifications**
- 3.1 Unless we otherwise agree in writing, You are totally responsible for the design, supply of materials, fabrication, testing, packaging, loading onto and off transport and delivery of the Works, Goods and/or Services in accordance with our specifications and performance criteria referred to in this Agreement. You must give us access to your premises at any reasonable time to verify that the Works, Goods and/or Services conform to those specifications and performance criteria.
- 3.2 Substitute Goods and/or Services must not be supplied without our written authority.
- 3.3 All drawings, patterns, tools or other items provided to You by us to produce the Works, Goods and/or Services remain our property and must be delivered to us upon our demand or within 7 days of delivery of the Works, Goods and/or Services.
- 4 Delivery**
- 4.1 You must deliver the Goods to the Place for Delivery on the Delivery Date. Until delivery has been effected to the Place for Delivery, it will be deemed to have not occurred.
- 4.2 Unless the parties specifically agree otherwise, we are not required to accept delivery of the Goods earlier than the Delivery Date or outside the Delivery Hours.
- 4.3 You must, at your own cost (unless agreed to in writing by us prior to the Delivery Date), ensure that the Goods are suitably packed and clearly identified. You are liable for all loss or damage caused by unsuitably packed Goods.
- 4.4 You must provide a packing list in each package of Goods delivered detailing the item number, destination, contents, quality, date and method of dispatch and weight of each package.
- 4.5 You must comply with all applicable codes and standards for the transport of goods (including the transport of dangerous and hazardous goods or substances) or any other codes or standards listed in the Agreement Particulars (as applicable).
- 4.6 Time is of the essence for the delivery of Goods or the supply of Services to us.
- 5 Inspection**
- 5.1 You must provide us with reasonable time to inspect the Goods after delivery. The signing of delivery receipts before inspection does not constitute acceptance of the Goods.
- 5.2 When directed to do so, You must provide us with progress reports on the performance of both the Works and the Services. A progress report must be detailed enough to allow us to ascertain whether the Works or the Services are in conformity with this Agreement.
- 5.3 At any time during the performance of either the Works or the Services we may inspect or witness tests on the Works or Services or their results.
- 5.4 If, upon inspection, we discover any Works to be Defective Works, Goods to be Defective Goods and/or any Services or their results to be Defective Services, we may exercise any of our rights in clause 18.2.
- 5.5 We may at any time inspect any Works, Goods and/or Services being performed by You, your employees, agents, contractors and/or sub-contractors including health and safety, quality assurance and compliance, audits and/or inspections.
- 6 Performance of the Services**
- 6.1 You must, in performing the Services:
- (a) use your best efforts not to interfere with any of our activities, or the activities of any other person, on our premises;
 - (b) comply with, and ensure that your employees, agents, contractors and sub-contractors comply with:
 - (i) our site procedures;
 - (ii) all applicable laws, regulations and industrial awards and agreements; and
 - (iii) all directions and orders given by our representatives; and
 - (c) ensure that our premises are left secure, clean, orderly and fit for immediate use.
- 7 Title and risk**
- 7.1 Subject to clauses 8.5(a) and 15.2, title in the Goods passes to us upon the earlier of:
- (a) delivery; or
 - (b) payment of any amount on account the Price (other than any deposit).
- 7.2 Risk in the Goods does not pass to us until the later of the time at which:
- (a) we:
 - (i) accept the Goods; or
 - (ii) if installation is required by this Agreement, the Goods have been installed; and
 - (b) title in the Goods passes to us.
- 7.3 You warrant that:
- (a) You have complete ownership of the Goods free of any liens, charges, Security Interests, and encumbrances and will provide the Goods to us on that basis; and
 - (b) we will be entitled to clear, complete and quiet possession of the Goods.
- 8 Price**
- 8.1 We agree to pay You the Price for the Works, Goods and/or Services.
- 8.2 The Price is inclusive of all costs incurred by You in supply of the Works, Goods and/or performance of the Services including all charges for packaging, packing, insurance and delivery of the

Goods in accordance with this Agreement and the cost of any items used or supplied in conjunction with the Works and/or Services. The Price is also inclusive of all Taxes except GST.

8.3 Any payment of monies by us will not be evidence of the value of Works, Goods and/or Services, or an admission of liability or that the Works, Goods and/or Services comply with this Agreement, but will be a payment on account only.

8.4 The Price may not be increased without our prior consent.

8.5 We are not obliged to pay any part of the Price for the Goods prior to their delivery to us. If we nonetheless agree to do so:

- (a) title in the Goods (or if the Goods are incomplete, title in the partly completed Goods and any materials and parts to be used in their manufacture or assembly and then on hand) passes to us;
- (b) You must clearly mark them with our name, properly store the Goods and insure the Goods in our name; and
- (c) we may, as a condition of our agreement to pay all or part of the Price for the Goods prior to their delivery to us, require You to provide us with Security in a form and in an amount we require.

8.6 If we consider that You have failed to fulfil any obligation under this Agreement, or You have indicated that You may be unable to fulfil any obligation under this Agreement, we or our agent may at any time enter your premises and remove the Goods and any materials or other parts to which we have title.

9 Security

- (a) This clause 9 applies where You are carrying out Works.
- (b) As security for the performance of Your obligations under this Agreement:
 - (i) where Item 7 of the Agreement Particulars requires Security in a form other than cash retentions, You shall provide us with the Security in a form reasonably acceptable to us, and before commencement of any work under this Agreement; and
 - (ii) where Item 7 of the Agreement Particulars requires Security in the form of cash retentions, We may retain from any amount payable to You, an amount necessary to ensure that We hold an amount equal to the retention percentage of the total amount of the Price previously paid or then payable to You.
- (c) If the Price increases by an amount greater than or equal to [20]%, We may in our absolute discretion require You to provide further security within 28 days so that the total Security held by us reflects the Security set out in the Agreement Particulars in respect of the increased Price.

(d) Where Item 7 of the Agreement Particulars requires Security in the form of cash or cash retentions, You may instead lodge an unconditional undertaking from a bank or financial institution, in a form acceptable to us, for the amount specified in Item 7.

- (e) You may claim:
 - (i) 20 Business Days after Practical Completion, fifty percent (50%) of Security held at Practical Completion; and
 - (ii) 20 Business Days after the last Defects Liability Period has ended and all defects for which You are responsible have been rectified, any balance of Security held by us.

(f) Despite any other provision of this Agreement a party holding security may continue to hold security where the Agreement may otherwise require it to be released or after termination of this Agreement for any reason, to the extent of any amount claimed by the party under or in connection with this Agreement (whether liquidated or otherwise);

(g) Where this Agreement is terminated by reason of You repudiating this Agreement, being in substantial breach of this Agreement or having an event referred to in clause 15 occur in respect of it, We may have immediate recourse to Security after termination for any claim to money which We may have against You under or in connection with this Agreement (whether liquidated or otherwise).

(h) Where this Agreement is terminated in circumstances other than those referred to in paragraph (g), We may have recourse to Security after termination where You fail to pay any amount which becomes due to us within the specified period for payment or, if no period is specified, within 5 Business Days.

10 Works

10.1 (**Site**) You will be granted access to the Site in accordance with this Agreement. You will not have exclusive possession of the Site.

10.2 (**QBSA**)

(Provisions Subject to QBSA Act)

- (a) The rights and obligations of the parties under this Agreement are subject to the provisions of the Queensland Building Services Authority Act 1991 (Qld) ("QBSA Act") to the extent they apply and have not been contracted out of.
- (b) Where there is any inconsistency between this Agreement and the QBSA Act, the QBSA Act shall prevail to the extent necessary to avoid the inconsistency.
- (c) Terms used in this clause and defined in the QBSA Act, shall have the meaning given to them by the QBSA Act.

(Your Registration)

- (a) You warrant that You are currently registered under the QBSA Act (under the registration number set out in Item 17 of the Agreement Particulars) to carry out the Works.

(Directions in writing)

- (a) Despite any other provision of this Agreement, You are not obliged to comply with any direction given by us or Our Representative pursuant to this Agreement until the direction is given in writing.
- (b) If You intend to not to comply with a direction until the direction is given in writing, You must notify the person giving the direction of that intention immediately the direction is first given.

(Security)

Despite any other provision of this Agreement, the parties agree that to the extent that:

- (a) the QBSA Act applies; and
- (b) this Agreement provides for the total of:
 - (i) all retention amounts withheld by us; and
 - (ii) all securities held by us,

to exceed 2.5% of the Price for this Agreement (which under the QBSA Act includes adjustments for variations) after practical completion has been reached;

the amount of the excess does not relate to the need to correct defects identified in the Defects Liability Period but instead to the recovery by us of any other costs, damages, liabilities or other amounts which may become payable to us by You under or in connection with this Agreement, your performance of this Agreement or any breach of this Agreement by You.

(Security not to exceed 5%)

The parties acknowledge that under the QBSA Act, unless the parties expressly agree otherwise, to the extent that it applies, section 67K(2) of the QBSA Act makes this Agreement subject to a condition that at any time before practical completion (as defined in the QBSA Act) the total of:

- (a) all retention moneys withheld by us; and
- (b) all securities held by us,

under this Agreement (other than those referred to in section 67K(3) of the QBSA Act) is not to exceed 5% of the Price for this Agreement (which under the QBSA Act includes adjustments for variations).

By initialling this Agreement in the space provided below, the parties expressly agree that this Agreement is not subject to the condition imposed by section 67K(2) and explained above.

[our initials]

[your initials]

(Relevant Section)

The parties agree that for the purposes of section 67J of the QBSA Act (Relevant Section) to the extent it applies:

- (a) We authorise Our Representative to give on behalf of us the notices referred to in the Relevant Section;
- (b) You accept that any payment schedule issued by Our Representative under this Agreement which refers to an amount owed by You to us shall be taken to be advice from us of the proposed use of security (as defined in the QBSA Act) held by us to obtain the amount owed; and
- (c) to the extent required by the Relevant Section, Our Representative shall give to You on our behalf any notice required pursuant to the Relevant Section to ensure our right to use security (as defined in the QBSA Act) are not prejudiced.

10.3 (**Other contractors**) You must permit the performance of work by other contractors and workers on the Site, and You must not in any way impede the performance of their work.

10.4 (**Condition of Site**) You shall keep the Site safe, clean and tidy and before Practical Completion, clean up and make good fencing, roads, footpaths and surfaces on or adjacent to the Site and do so to the satisfaction of Our Representative.

10.5 (**WH&S**) You must act as 'principal contractor' where the Agreement Particulars specify that You are appointed to be the 'principal contractor' and in doing so under the WHS Law, You shall also:

- (a) fully comply with all applicable WHS Law at Your own cost and expense; and
- (b) give Our Representative written notice of every work caused illness, work injury, serious bodily injury and dangerous event which occurs on the Site and of the detection of any material on Site which may contain any hazardous substance (e.g. asbestos) which will adversely impact on the undertaking of the Works and do so no later than 12 hours (or such alternative period as approved by the Our Representative) after such occurrence or detection.

To the extent you are appointed as 'principal contractor', we authorise you to:

- (c) assume management and control of the site to which your appointment relates; and
- (d) carry out and discharge the duties given to the 'principal contractor' under Chapter 6 of the WHS Regulation,

for the period during which you are the 'principal contractor', unless and to the extent we withdraw such authorisation in writing.

If this Agreement does not specify that You are to be 'principal contractor', You shall fully comply with the WHS Law, and all workplace health and safety requirements as prescribed by the 'principal contractor' responsible for the Site;

10.6 (**BCIPA**) Subject to section 103 of the *Building and Construction Industry Payments Act 2004* ("**BCIPA**"), it is agreed that in the event You are seeking to serve any claims, notices and other documents upon us under the BCIPA, You shall only do so by serving such claim, notice or other document upon Our Representative. For the purposes of the BCIPA, Our Representative is authorised to receive payment claims and to issue payment schedules on behalf of us.

10.7 It is agreed that:

- (a) if within the time allowed by the BCIPA for the service of a payment schedule we do not:
 - (i) serve the payment schedule ourselves; or
 - (ii) notify You that the Our Representative does not have authority to issue the payment schedule on our behalf;

then a progress certificate issued by us under this Agreement which:

- (A) relates to the period relevant to the payment schedule;
- (B) provides such details as required by the BCIPA as to why You are not to be paid for work You have claimed; and
- (C) is served on You within the requisite time frames and in such manner required by BCIPA,

shall be taken to be the payment schedule for the purposes of the BCIPA (whether or not it is expressly stated to be a payment schedule);

- (b) we authorise Our Representative to issue payment schedules on our behalf (without affecting our right to issue a payment schedule ourselves); and
- (c) nothing in paragraphs (a) or (b) shall prejudice our obligations relating to the manner in which we are to exercise our function of issuing a payment certificate, whether or not the payment certificate is or may also be a payment schedule.

10.8 Whenever You receive a claim or notice under the BCIPA from any third party (including any subcontractor or supplier), You must give a copy of that claim or notice to both us and Our Representative.

10.9 Nothing in this Agreement shall be construed to:

- (a) make any act or omission by us in contravention of the BCIPA (including failure to pay an amount becoming due under the BCIPA), a breach of this Agreement (unless we could have been in breach of this Agreement had the BCIPA had no application); or
- (b) give You rights or remedies under this Agreement which extend (or are in addition to) rights or remedies given to You by the BCIPA in respect of any act or omission by us in contravention of the BCIPA.

10.10 If You at any time suspend the whole or any part of the Works pursuant to the BCIPA then, despite any other provision of

this Agreement except to the extent as expressly provided under the BCIPA, we shall not be liable for any costs, expenses, damages, losses or other liability whatsoever suffered or incurred by You as a result of the suspension.

10.11 If any subcontractor at any time suspends the provision by it of work, services, materials or other things (which form part of the Works) pursuant to the BCIPA, despite any other provision of this Agreement:

- (a) You shall not be relieved of any of its obligations under this Agreement and the suspension by the subcontractor shall not entitle You to any claim (including without limitation, for an extension of time); and
- (b) You shall immediately provide to us full details of the circumstances giving rise to the subcontractor's right or alleged right to suspend or take any other action.

10.12 To the extent any provision of this Agreement is (or, if not for the operation of this clause, may be) found to be void under the BCIPA, the provision shall be construed or severed from this Agreement in a manner which:

- (a) avoids the provision of any other provision of this Agreement being void; and
- (b) subject to paragraph (a), preserves to the maximum possible extent:
 - (i) the enforceability of the provision and the other provisions contained in this Agreement; and
 - (ii) the original effect and intent of this Agreement.

10.13 (**Design**) This clause 10.13 applies to the extent the Agreement Particulars specify that design work is applicable to this Agreement ("**Design Work**"). If Design Work is applicable to this Agreement, You shall:

- (a) undertake and complete all work specified in this Agreement associated with the Design Work;
- (b) ensure that such Design Work will enable the Works to meet the requirements of this Agreement in relation to such Works;
- (c) undertake and complete such Design Work so that the Works achieve Practical Completion by the Date for Completion; and
- (d) not infringe the Intellectual property rights of any person when undertaking such Design Work.

Any acceptance by us of such Design Work shall not relieve You of your obligations under this Agreement nor transfer risk in such Design Work to us.

10.14 (**Testing**) You shall conduct at your own costs all tests of the Works or part thereof in accordance with this Agreement and otherwise as may be required in accordance with the relevant standards and codes or where there are no such standards or codes in accordance with Good Industry Practice.

Our Representative will attend any tests which it is required to attend under this Agreement and may attend such additional tests of the Works and parts thereof as may reasonably be required.

10.15 The approval of any of the goods, materials or Works or part thereof following any test shall:

- (a) in no way relieve You from full responsibility for the Works and the work under this Agreement in relation to such matters;
- (b) not affect or lessen Your obligations under this Agreement;
- (c) not constitute a waiver of Your obligations nor prejudice any right arising from failure to comply;
- (d) not constitute evidence of acceptance of all or part of such goods, services, materials, Design Work or Works; or
- (e) not entitle You to any claim for additional moneys or extension of time unless otherwise expressly permitted under another clause.

10.16 (**Defective Work**) You must promptly comply with every written direction by Our Representative issued during:

- (a) the term of this Agreement; and/or
- (b) any Defects Liability Period (where a Defects Liability Period is specified in the Agreement Particulars)

requiring You to rectify any part of the Works (or part thereof) which Our Representative finds to be defective or otherwise not in accordance with this Agreement. Such direction will state what is to be rectified, whether to repair or replace and the time period for such rectification.

If You fail to comply with any such direction, we may either engage a third party to undertake the rectification work or accept the Works at a reduced value. Any such additional rectification costs shall be a debt due and owing to us and may be deducted from payments due to You under this Agreement.

If we agree to accept the Works at a reduced value, this will be deemed to be on the basis that we are under no obligation to pay You any additional monies whatsoever in relation to the Works;

10.17 (**Emergency Work**) If:

- (a) Our Representative is of the reasonable opinion that urgent action is required to ensure that:
 - (i) (**Property and People**) the Works, other property (including our property) or people are protected; or
 - (ii) (**Environment**) any harm or damage to the environment is avoided or minimised,

We may take necessary action, including the engagement of third parties, without being obliged to give You any notice. Any such action by us shall not entitle You to claim for either:

- (iii) any adjustment to the Price;

- (iv) any adjustment to the Date for Completion; or
- (v) any claim from us in relation to any other costs and/or expenses of any nature; and

(b) the action taken by us was action You should have taken under this Agreement:

- (i) (**Costs**) the costs incurred by us shall be a debt due and owing by You to us; and
- (ii) (**Preservation of Your obligations**) our actions shall not derogate from or lessen in any way, Your obligations or liability (whether under statute, tort, equity or this Agreement) in connection with the required action.

11 EOT

(a) If You are unavoidably:

- (i) delayed in achieving Practical Completion or performing the Services by the Date for Completion; or
 - (ii) prevented from providing any Goods by the Date for Delivery,
- by an Act or Prevention (including breach), and You:
- (iii) have not, by your act or omission caused, or contributed to the cause, and have used all endeavours to minimise the delay or prevention arising from the cause (including spending reasonable sums of money and revising its program); and
 - (iv) have:

(A) notified us in writing of the existence of the cause, [5] Business Days of the first occurrence of the cause of delay, and providing a detailed written claim to us setting out:

- (1) the detailed particulars of the delay and the events or circumstances giving rise to the delay; and
- (2) the number of days extension of time claimed together with the basis of calculating that period, including evidence that the delay involves an activity which is critical to the maintenance of progress in the execution of the Services, or achieving Practical Completion by the Date for Completion, or achieving the Delivery Date for Goods in the manner beyond your reasonable control; and

(B) if the effects of the delay continue beyond the period of 14 days after the first

occurrence of the cause of the delay and You wish to claim an extension of time in respect of the further delay, provided a further written claim to us:

- (1) every [10] Business Days after the first written claim until [5] days after the end of the effects of the delay; and
- (2) containing the information required by sub-paragraph (iv)(A),

We shall (within [25] Business Days after your notice under sub-paragraph (A) is received) by notice in writing to You:

- (v) allow You a reasonable extension to the Date for Completion or Date for Delivery (as the case may be) by such reasonable period; or
- (vi) excuse You from performance during such reasonable period, as We may determine and notify to You.

(b) You acknowledge and agree, without prejudice to your rights arising from breach by us, You shall have no right to claim any delay or disruption costs for periods of extension (whether or not an allowance is granted under this clause).

(c) You agree that failure by us to extend the Date for Completion or the Date for Delivery or any other act of prevention shall not set time at large.

(d) We may, in our absolute discretion (and without being under any obligation to do so) extend the Date for Completion, or Date for Delivery at any time for any reason.

11.2 Subcontractors' Charges Act

(a) You must immediately:

- (i) give us notice if you have been required to supply information to a subcontractor under section 9A of the *Subcontractors' Charges Act 1974* (Qld), together with a copy of the information provided; and
- (ii) notify us if you become aware that a subcontractor intends to exercise a statutory charge under section 10(1) of the *Subcontractors' Charges Act 1974* (Qld) in respect of work done by that subcontractor forming part of the Works, the Services or the Goods.

(b) If we make a payment into court or to a subcontractor or other person as a result of receiving a notice of claim of charge under the *Subcontractors' Charges Act 1974* (Qld), for the purposes of calculating the Price finally payable by us to you, that payment will be treated as though it was a payment made by us to you.

- (c) You must indemnify us against any liabilities arising from or in connection with any dispute under or in connection with the *Subcontractors' Charges Act 1974* (Qld) between you and any of your subcontractors in connection with the Works, the Goods or the Services.

12 Liquidated damages

- 12.1 **(Liquidated damages)** If You fail to complete the Services by the Date for Completion, or do not reach Practical Completion by the Date for Completion, or fail to provide Goods by the Delivery Date, You must pay us on demand liquidated damages calculated at the rate in Item 6 for every day after the Date for Completion or the Delivery Date (as the case may be) to and including the earliest of the Date for Completion or the Delivery Date (as the case may be) or termination of this Agreement or us taking the Works, Goods, or Services or a combination thereof, out of your hands.
- 12.2 We may provisionally deduct or recover liquidated damages, despite completion of the Services, Practical Completion or delivery of the Goods (as applicable) having not occurred.
- 12.3 If an EOT is directed after You have paid or We have set off liquidated damages, We shall forthwith repay to You such of those liquidated damages as represent the days the subject of the EOT.
- 12.4 **(Genuine pre-estimate)** For the purposes of this Agreement, the parties:
- agree that the amount of liquidated damages in Item 6 constitute reasonable and good faith pre-estimates of the anticipated or actual loss or damage that will be incurred by us as a result of You failing to complete the Services or reach Practical Completion by the Date for Completion, or failing to provide Goods by the Delivery Date;
 - desire to avoid the difficulties of proving damages in connection with such failure and agree that the amount of liquidated damages payable by You in accordance with subclause 12.1 is reasonable and do not constitute nor are they intended to be a penalty; and
 - agree that if subclause 12.1 is found for any reason to be void, invalid or otherwise inoperative so as to disentitle us from recovering liquidated damages, we shall be entitled to recover common law damages as a result of You failing to complete the Services, or reaching Practical Completion by the Date for Completion, or failing to provide Goods by the Delivery Date.

13 Invoicing and payment

- 13.1 You must submit invoices to us to the address stated in the Agreement Particulars:
- upon delivery of the Goods in accordance with the this Agreement; and/or
 - unless the Agreement Particulars state that progress payments are to be made, at the completion of the Works and/or Services as the case may be; or

- (c) where progress payments are to be made for the provision of the works and/or Services, at the end of each calendar month (or other period specified in this Agreement) for the Works and/or Services performed by You in that month or that period (as the case may be).

13.2 As well as all other information we reasonably require, when submitting your invoice under clause 13.1, You must provide us with all relevant records to enable us to calculate and/or verify the amount of the invoice,

13.3 Subject to clause 22.2 and You not being in breach of the terms of this Agreement, we will pay all invoices rendered to us by You under clause 13.1 within thirty (30) days from receipt of the invoice, except where we dispute the invoice, in which case:

- we will pay the undisputed part of the relevant invoice (if any) and dispute the balance; and
- if the resolution of the dispute determines that we are to pay an amount to You, we will pay that amount upon resolution of that dispute.

13.4 No interest will be payable by us in respect of any invoice rendered to us by You under clause 13.1 which remains due and unpaid.

13.5 We may set-off against any amount claimed by You:

- any amount (whether incurred or an estimate) claimed by us from You (whether in connection with the Agreement or otherwise); and
- any amount we are required by law to withhold or deduct.

Any amount not set off under this clause does not limit our right to recover those amounts in other ways.

13.6 Unless otherwise agreed, any money payable to You will be paid in Australian currency.

13.7 If this Agreement involves the supply of Works, Goods, and/or Services on a cost plus or per hour basis, we have the right to conduct an audit of the basis of your charges using your records. This right continues for 12 months after we pay the relevant invoice.

14 Variation

14.1 We may, at any time by notice in writing to You, vary this Agreement. A notice may include a change to the Works, Goods and/or Services You are supplying or a change to the Delivery Date, Date for Completion or time for delivery or the Place for Delivery.

14.2 If such variation causes an increase or decrease in the Price (excluding loss of profits) or a change to the required Delivery Date, You must notify Our Representative in writing within 5 business days of receipt of the variation. Our Representative will, acting reasonably, determine the appropriate adjustment to the Price, reflecting the reasonable cost increase or decrease to You. Where Our Representative determines that a cost decrease applies, that decrease will also

apply to any overhead and profit component.

15 Cancellation

15.1 We may in our absolute discretion at any time cancel all or any of the Works, Goods or Services covered by this Agreement which are yet to be delivered or provided. Upon receipt of a cancellation notice, You must cease the Works, to manufacture the Goods or provide the Services and mitigate your costs. We will pay any expenditure reasonably incurred prior to cancellation which is directly attributable to This Agreement and not otherwise recouped by You.

15.2 Upon payment made under clause 15.1, title in property and/or incomplete Works, Goods or Services will pass to us and You must upon demand and at your cost, deliver to us any such property and/or incomplete Works, Goods or Services.

16 Termination

16.1 If You:

- fail to comply with any of your obligations under This Agreement (and do not rectify this failure within 7 days of notification from us);
- breach any law relating to the supply of the Works, Goods or Services;
- are convicted of a criminal offence; or
- become insolvent

we may terminate this Agreement by notice in writing and such termination will be without prejudice to our rights under this Agreement or otherwise at law, including the right to be reimbursed by You for any additional costs incurred in completing the Works, or obtaining the Goods and/or Services from another source of supply.

17 Independent contractor

17.1 Both Parties acknowledge and agree that for the purpose of this Agreement You are our contractor and not our agent or employee.

18 Warranties

18.1 You warrant that:

- the Works and Goods will be free from any defect in design, performance, workmanship and makeup; and/or
- the Services and the results of the Services will be rendered with due care and skill and be of high quality and workmanship and otherwise satisfactory; and
- our use of the Works, Goods and/or Services will not infringe any Intellectual Property Rights; and
- where applicable, the Goods are not a prohibited import as defined under the *Customs Act 1901* (Cth) and that such Goods may be legally imported into Australia.

18.2 If, during the Warranty Period, we find any of the Works or Goods to be Defective Goods and/or any of the Services or their results to be Defective Services, we may, at our option:

- return the Defective Goods to You;

- (b) reject the Defective Services by notifying You that we are rejecting them;
- (c) repair or make good the Defective Works or Goods; or
- (d) re-perform or make good the Defective Services.
- 18.3 At our option and request, during the Warranty Period You agree to, at your cost:
- (a) repair or, at our option, replace any Defective Works or Defective Goods (or part thereof) that we return to You;
- (b) re-perform or make good any Defective Services that we reject; or
- (c) reimburse us for any expenses we incur in making good any Defective Works, Defective Goods and/or Defective Services including costs of repair and transport costs of return.
- 18.4 We may exercise our rights under clause 18.2 or reject and return to You (in the case of Goods) any Goods which are not in conformity with this Agreement even if we have accepted or paid for those Goods.
- 18.5 Any:
- (a) repairs or replacement made to the Works or Goods provided by You under this clause will be subject to the same warranty as the original Works or Goods, from the date of repair or replacement; and/or
- (b) Defective Services that are re-performed or made good by You under this clause will be subject to the same warranty as the original Services, from the date of re-performance or the date on which the Defective Services were made good.
- 18.6 You must assign to us any warranty or guarantee that You have received from any manufacturer or supplier (whether under contract or by implication or operation of law);
- 18.7 The remedies provided in this clause do not exclude any other remedies provided by law.
- 19 Insurance**
- 19.1 You must effect and maintain for the duration of the Agreement (and in accordance with Item 8):
- (a) insurance for the Goods while they remain at your risk for an amount not less than their replacement value;
- (b) a comprehensive public and products liability policy (on terms acceptable to us) to cover all sums which You may become legally liable to pay as compensation consequent upon:
- (i) death of, or bodily injury (including disease or illness) to, any person; and
- (ii) loss of, or damage to, property, happening anywhere in Australia arising out of or in connection with this Agreement. The limit of liability provided by this policy must be not less than \$20 million, and such policy must include a principal's indemnity clause;
- (c) to the extent this Agreement involves Works, Works insurance covering the whole of the Works including plant and materials being held off Site and in transit, from and including the Commencement Date until Practical Completion for an amount not less than the aggregate of:
- (i) the Price of the Works;
- (ii) an amount for costs of demolition and removal of debris;
- (iii) any consultants fees;
- (iv) any Goods or things to be supplied by You for the purpose of the Works;
- (d) if You provide professional services, professional indemnity insurance for an amount not less than \$5 million or such other amount required by us in writing;
- (e) third party property damage motor vehicle insurance for an amount not less than \$20 million or such other amount required by us in writing.
- (f) insurance relating to workers compensation or employer's liability as required by law. You must ensure that all sub-contractors are similarly insured in respect of their employees; and
- (g) other insurances required by law or reasonably required by us.
- 19.2 You must notify us immediately of any cancellation of a relevant insurance policy and of any change to the policy which affects our interests.
- 19.3 If any event occurs which may give rise to a claim involving us under any policy of insurance to be taken out by You under this clause then You must:
- (a) notify us within 14 days of that event; and
- (b) ensure that we are kept fully informed of any subsequent actions and developments concerning the relevant claim.
- 19.4 At our request, You must produce evidence that You are maintaining the insurances required by this clause.
- 19.5 We may take out and maintain any policy of insurance required by this clause if You fail to do so. You agree to reimburse us for any expenses we incur in taking out and maintaining any policy of insurance under this clause.
- 20 Liability and indemnities**
- 20.1 We will not be liable to You (whether in tort or in contract, or on any other basis in law or equity) for or in respect of any loss or damage of any kind whatsoever arising directly or indirectly from any act or omission (whether negligent or otherwise) on our part or on the part of any of our employees, agents, contractors and/or sub-contractors in connection with or relating to this Agreement.
- 20.2 You acknowledge that if You enter our premises, You do so at your own risk. You must ensure that your employees, agents, contractors and sub-contractors are also aware that they enter our premises at their own risk.
- 20.3 Subject to clause 20.7, You will be liable for and will indemnify us and keep us indemnified from and against any liability and/or any loss or damage of any kind whatsoever, arising directly or indirectly from:
- (a) any breach of any warranty or any of the terms and conditions of this Agreement by You;
- (b) the illness, injury or death of any of your employees, agents, contractors and/or sub-contractors arising out of or in connection with this Agreement;
- (c) any loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by:
- (i) the Works, Goods and/or Services; and/or
- (ii) any act or omission by You or your employees, agents, contractors and/or sub-contractors;
- (d) any claim made against us by any of your employees, agents, contractors and/or sub-contractors in respect of any relevant legislation concerning income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal;
- (e) any penalty imposed for breach of an applicable law in connection with the supply of the Works, Goods and/or performance of the Services by You;
- (f) loss or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by You and used in relation to this Agreement; and
- (g) any claim that the Works, Goods, Services or the results of the Services, anything You do in supplying us with the Works, Goods and/or the Services, or our use of the Works, Goods or the results of the Services infringes or allegedly infringes the Intellectual Property Rights of any person.
- 20.4 Every exemption, limitation, defence, immunity or other benefit contained in this Agreement to which we are entitled will also be held by us for the benefit of, and will extend to protect, each of our employees, agents, contractors and sub-contractors (excluding You, your employees, agents, contractors and sub-contractors) and our Related Bodies Corporate and their employees, agents, contractors and sub-contractors (excluding You, your employees, agents, contractors and sub-contractors).
- 20.5 Each indemnity in this Agreement is a continuing obligation separate and independent from your other obligations

		Date for Completion (as the case may be); or
20.6 It is not necessary for us to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.		(b) cancel this Agreement.
20.7 Except to the extent it is recoverable pursuant to a policy of insurance required under clause 19.1 or would have been recoverable had You complied with your obligations under that clause and the relevant policy of insurance or arises out of fraud or wilful default or misconduct, in no event shall either party bear any liability to the other party for Consequential Loss arising from or relating to its acts or omissions in the performance of the Agreement.	22.3 Where any indemnity, reimbursement or similar payment under this Agreement is based on any cost, expense or other liability, it shall be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.	25.2 Each Party must bear their own costs and no Party will have any claim for compensation against the other arising from the cancellation of this Agreement pursuant to this clause.
21 Confidentiality	22.4 If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.	26 PPSA
21.1 Each Party undertakes that it will not, at any time (except in the proper course of its duties under this Agreement or as required by law or by the other Party) disclose to any person any confidential information of or relating to the other Party of which it has become possessed as a result of this Agreement or the negotiations preceding this Agreement including, but not limited to, the terms of this Agreement.	22.5 This clause will not merge upon completion and will continue to apply after expiration or termination of this Agreement.	26.1 If we determine that this Agreement (or a transaction in connection with it) is or contains a Security Interest, You agree to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed, and supplying information) as we may reasonably require for the purposes of: (a) ensuring that the Security Interest is enforceable, perfected and otherwise effective and ranks ahead of other Security Interests; (b) enabling us to apply for, and obtain, any registration or providing any notification in accordance with the PPSA; and (c) enabling us to exercise any right in connection with the Security Interest or the property the subject of the Security Interest.
21.2 Nothing in this Agreement prohibits disclosure of information which:	22.6 Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST law (as defined in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth)) shall have the same meaning in this clause.	26.2 You waive each right to receive any notice from us under the PPSA (including notice of a verification statement) that can be waived.
(a) is in the public domain;	23 Assignment and sub-contracting	26.3 Except as expressly agreed in writing to the contrary, You:
(b) after disclosure to a Party becomes part of the public domain otherwise than as a result of the wrongful act of that Party;	23.1 Subject to clause 23.2, neither Party may assign its rights and/or obligations under this Agreement without the prior written consent of the other Party (which may not be unreasonably withheld).	(a) acknowledge that neither this Agreement nor any transaction in connection with it is intended to provide for a Security Interest in favour of You; and
(c) is received from a third party provided that it was not acquired directly or indirectly by that third party from a Party to this Agreement that represents it has the right to disseminate the information;	23.2 We may assign or novate any or all of our obligations or rights under this Agreement at any time to any Related Body Corporate, or to any entity owned or controlled by the State of Queensland. You must execute any document we reasonably require to give effect to that assignment or novation.	(b) accordingly, agree that You will not register or otherwise perfect or seek to perfect any Security Interest, and will remove any registration, in respect of this Agreement or any transaction in connection with it.
(d) is required to be disclosed by law or any government or governmental body, authority or agency having authority over a Party;	23.3 You may not sub-contract your obligations under this Agreement unless we consent to such arrangement.	26.4 You must:
(e) (in the case of disclosure by us), is to the State of Queensland or any entity owned or controlled by the State of Queensland, including to the Queensland Procurement office; or	24 Key Personnel	(a) promptly notify us if You know or become aware (whether by receipt of a notice under the PPSA or otherwise) that a third party has or claims a Security Interest in any Goods :
(f) is to legal and other professional advisors under a duty of confidentiality	You must:	(i) owned by us; or
21.3 The obligations under this clause 21 survive termination of this Agreement.	(a) ensure the Key Personnel listed in Item 10 are engaged under this Agreement in the respective capacities also set out in Item 10;	(ii) supplied or to be supplied by You to us; or
22 Taxes	(b) only replace the Key Personnel:	(iii) in which we have an interest; and
22.1 Subject to clause 18.2, You are responsible for any Taxes levied on, in respect of, or in relation to, the Works, Goods and/or Services (including without limitation any income tax) and must provide on demand documentary evidence of the payment of any such Taxes.	(i) in circumstances of death, serious illness, change of employment or request from us or Our Representative; and (ii) with others (having equivalent skill and experience) approved by us or Our Representative.	(b) give us any information reasonably required by us in relation to any such Security Interest or claim.
25 Force majeure	25.1 If the occurrence of a Force Majeure Event prevents or is likely to prevent the supply of Goods by the Delivery Date or the Works and/or Services by the Date for Completion, You must immediately give us written notice of the Force Majeure Event. Upon receipt of such notice, we may:	27 Other matters
22.2 If GST is payable, or notionally payable, on a supply made under or in connection with this Agreement, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the GST Amount). Subject to the prior receipt of a relevant tax invoice, the GST Amount is payable at the same time that the other	(a) request You to supply the Works, Goods or Services by a mutually agreed alternative Delivery Date, or	27.1 Any of our rights under this Agreement can only be waived by us in writing. 27.2 Any consent required under these terms to be provided by us is ineffective unless it is provided in writing. 27.3 We may exercise a right, remedy or power in any way we consider appropriate.

27.4 If we do not exercise a right, remedy or power at any time, this does not mean that we cannot exercise it later.

27.5 A reference to an attachment, annexure or schedule is a reference to an attachment, annexure or schedule to this Agreement and a reference to this Agreement includes an attachment, annexure or schedule.

27.6 To the extent of any inconsistency, ambiguity or conflict between the General Conditions of this Agreement and any other terms, the terms and conditions as set out in the General Conditions of this Agreement prevail.

27.7 You must obtain at your own expense any necessary Licences or permits and comply with applicable laws, including all duties and obligations imposed on suppliers, in supplying the Works, Goods and/or Services to us.

27.8 At our request, You must produce all evidence that You, and your employees, agents, contractors and sub-contractors have obtained all relevant and necessary licences, approvals and qualifications required to perform the Works, Services, and supply the Goods, under and in accordance with all relevant regulatory requirements, Acts, laws, or regulations and in accordance with our policies and procedures.

27.9 Our rights, powers and remedies provided in these terms are in addition to any rights, powers and remedies provided by law.

27.10 You must not release any advertising copy or promotional material using our name or the names of our employees without our written approval.

27.11 The parties agree to exclude:

- (a) the application of the United Nations Convention on Contracts for the International Sale of Goods 1980; and
- (b) to the maximum extent permitted by Law, the operation of the *Sale of Goods Act 1986* (Qld).

28 Governing law

28.1 This Agreement is governed by the laws of Queensland, Australia and You and We agree to submit to the non-exclusive jurisdiction of the courts of Queensland and the courts of appeal from them.

29 Definitions

Terms to be completed in the Details have the meaning given to those terms in the Details, once completed.

Act of Prevention means:

- (a) a material breach of this Agreement by us;
- (b) an act or omission by us or our employees or agents and not being an act or omission:
 - (i) expressly permitted or allowed by this Agreement;
 - (ii) which is within a timeframe expressly permitted, or allowed by this Agreement; or
 - (iii) to the extent the act or omission is caused or contributed to by a breach by You of this Agreement or any negligent, or unlawful, act or omission by You, or your subcontractors, or any

of their respective employees or agents;

Agreement has the meaning given to it in clause 1.2.

Agreement Particulars means those items, particulars and requirements set out in a Quotation Form the subject of a Purchase Order signed by us and issued to you in respect of the relevant Quotation Form.

BCIPA means the *Building and Construction Industry Payments Act 2004* (Qld).

Business Day means anything other than:

- (a) a Saturday and Sunday;
- (b) a public holiday in Gladstone; or
- (c) 22 to 24 December inclusive;
- (d) 27 to 31 December inclusive; and
- (e) 1 to 10 January inclusive.

Consequential Loss means any:

- (a) loss of revenue, profit or opportunity to make a profit;
- (b) loss of business or business opportunity; or
- (c) special indirect or consequential loss or indirect damage, except to the extent that they arise naturally according to the usual course of things from the breach of contract, tort or any other relevant act or omission,

but does not include damages for the difference in value between the Works, Goods and/or Services contracted for and the Works, Goods and/or Services provided, including the direct cost of remedying any defect or non conformance in the Works, Goods and/or Services.

Date for Completion means the date means the date for completion specified in item 4 of the Agreement Particulars.

Defective Goods means Goods which are not in conformity with this Agreement or are defective in design, performance, workmanship or makeup.

Defective Services means Services or the results of any Services which are not in conformity with this Agreement, are of inferior quality or workmanship or are otherwise unsatisfactory.

Defective Works means the works or part thereof which are not in conformity with this Agreement or are defective in design, performance, workmanship or makeup, or otherwise do not conform to the Specification or relevant codes and standards.

Defects Liability Period means the Defects Liability Period specified in the Agreement Particulars.

Delivery Date means the date (and where appropriate time) specified in item 4 of the Agreement Particulars.

Delivery Hours means for each Business Day, between the hours of 8 am and 5 pm.

Design Work has the meaning given to it in clause 9.11(a).

EOT (from extension of time) has the meaning given to it in clause 10.

Force Majeure Event means a labour dispute, lockout, act of government, war, riot, civil disturbance, embargo, fire, natural disaster or

similar event beyond your or our reasonable control.

General Conditions means these general terms and conditions.

Good Industry Practice means the most stringent of practices which are engaged in or observed by experienced and competent contractors in the construction industry with respect to works similar to the Works and which, with respect to any objective, may be expected, in the exercise of reasonable judgment, to accomplish that objective in a manner consistent with applicable law, any approval and recognised standards of reliability, safety, environmental protection, economy and expediency.

Goods means any goods, parts, materials, plant, and machinery and/ or substances as described in this Agreement, including any deliverable provided as the result of the Services.

GST means the goods and services tax imposed by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the related imposition Acts of the Commonwealth.

Insolvent means being in liquidation or provisional liquidation, receivership, bankruptcy (protective or otherwise) or under administration (voluntary or otherwise), being unable to pay its debts as and when they fall due or otherwise insolvent, entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors or any analogous event.

Intellectual Property Rights includes without limitation the protected rights attaching to inventions, patents, registered designs, trade marks, copyright, circuit layouts and confidential information.

Item means an Item in the Agreement Particulars.

Licences means all licences, qualifications, registrations and other statutory requirements necessary for the supply of the Work, Goods and/or Services under this Agreement.

Our Representative means the person and/or position nominated in Item 11 of the Agreement Particulars.

Place for Delivery means the Gladstone Area Water Board, 147 Goondoon Street, Gladstone Q, 4680 or another place notified by us in writing.

PPSA means the *Personal Property Securities Act 2009* (Cth)

Practical Completion is the stage in carrying out and completion of the Works when,

- (a) the Works are completed except for minor defects:
 - (i) which do not prevent the Works from being used for their stated purpose; and
 - (ii) the rectification of which will not prejudice the convenient use of the Works;
- (b) all tests and commissioning has been carried out to our satisfaction; and to the standards contained in item 9 of the Agreement Particulars;
- (c) all documents and warranties required to be supplied under the Agreement have been provided to us;

- (e) You have removed all rubbish and surplus material from the Site; and
- (f) the Works or any relevant part of the Works are accepted as completed by the relevant municipal, public or other statutory authorities.

Price means the price set out in the Agreement Particulars in item 6 which is exclusive of GST (unless expressly stated) but inclusive of all other costs and charges including duty, freight, packing, insurance and delivery in accordance with our requirements.

Purchase Order means the document substantially in the form of Schedule 3 to the Quotation Form.

QBSA Act means the *Queensland Building Services Authority Act 1991* (Qld).

Related Body Corporate has the meaning given in the Corporations Act 2001 (Cth).

Security means:

- (a) cash;
- (b) retention moneys;
- (c) an approved unconditional undertaking or an approved performance undertaking given by an approved financial institution or insurance company; or
- (d) other form approved by the party having the benefit of the security;

Security Interest includes any mortgage, pledge, encumbrance, lien or charge or any security or preferential interest or arrangement of any kind. It includes:

- (a) anything which gives a creditor priority to other creditors with respect to any asset;
- (b) any assignment by way of security, hypothecation, option, lease, trust or assignment;
- (c) retention of title;
- (d) any 'security interest' under the PPSA; and
- (e) any agreement to create or give any arrangement to effect any of the above;

Services means services described in this Agreement.

Site is as described or specified in the Agreement Particulars.

Specifications means all documents relevant to the carrying out and completion of the Works, Goods and/or Services and which are specified in this Agreement. If the document(s) forming the Specifications are comprised (in whole or in part) of:

- (a) specifications, drawings, samples or other descriptions of the Works, Goods and/or Services as provided by us when seeking quotes, tenders or market responses in relation to the Works, Goods, and/or Services to be provided under this Agreement (**Our Specifications**);
- (b) specifications, drawings, samples or other descriptions of the Works, Goods and/or Services as submitted by You in or in relation to this Agreement (**Your Specifications**);
- (c) any further specifications agreed to by us and You in the performance of each party's respective obligations under and in accordance with the terms of this Agreement (**Additional Specifications**).

then Our Specifications, Your Specifications and the Additional Specifications will collectively form the Specifications for the purposes of this Agreement.

Taxes means any and all present and future sales, use, personal, property, real property, value added, goods and services, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on our net income) by any government, governmental, semi-governmental or other relevant authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable.

Warranty Period means :

- (a) the case of the Works, 12 months commencing from the date the last defect is rectified in accordance with the Defects Liability Period;
- (b) in the case of Goods, 24 months from the date of delivery of the Goods or 12 months from the date of installation or initial use of the Goods, whichever is the later; and
- (c) in the case of the Services, 12 months from the date on which the Service is performed.

We us or our means Gladstone Area Water Board (GAWB).

WHS Law means any *legislative requirement*, principles of law or equity established by decisions of Australian Courts or requirements of persons acting in the exercise of statutory powers relating to health and safety, including the *Work Health and Safety Act 2011* (Qld) and the *Work Health and Safety Regulation 2011* (Qld);

Works means the physical works to be carried out by You under this Agreement, and includes the supply of equipment (if required under this Agreement), but does not include the Services or the supply of Goods;

- (a) the work described in this Agreement to be carried out by You; and
- (b) all other work necessary for the carrying out of the Works

including any temporary work, or work resulting from a Variation under clause 11.

You or your means the supplier of the Works, Goods and/or Services specified in this Agreement.