

1. Definitions

Approvals has the meaning given to it in clause 1.1(d).

Background IP means all Intellectual Property Rights of the Supplier which is in existence as at the date of this Contract or comes into existence after the date of this Contract otherwise than in relation to this Contract that relates to the Supplier's business manufacturing processes, and materials, plans designs and documents.

Business Days means a day that is not a Saturday, Sunday or public holiday in Western Australia.

Claim means any loss, damage, proceeding, claim, notice, action, or judgement whether based in contract, tort, statute or otherwise.

Company means either of T.C. Drainage (WA) Pty Ltd ABN 37 064 603 096 ACN 064 603 096 T/As TCD Civil, TCD Power, TCD SMP, TCD Water, TCD Civil Construction, TCD Group of Companies, T.C Drainage as applicable, based on the party identified in the Purchase Order.

Completion means the stage when the Works are complete except for minor defects which do not prevent the Works being used for their intended purpose and **Complete** as a corresponding meaning.

Completion Date means the date specified in the Purchase Order.

Contract has the meaning given to that term in clause 2.1.

Contract IP means all Intellectual Property Rights created, discovered, or coming into existence in connection with the performance of this Contract (including anything developed by the Supplier in the performance of this Contract).

Contract Price means the aggregate amount payable by the Company to the Supplier in relation to the Works as set out in the Purchase Order.

Date for Delivery means the date specified in the Purchase Order by which the Supplier must Deliver the Goods to the Company to the address set out in the Purchase Order.

Defect means Works or Goods are that defective, incomplete, damaged or that do not otherwise conform with the requirements of the Contract.

Deliver or Delivery means:

- (a) the Goods have been delivered to the Site;
- (b) all tests which are required to be performed under this Contract prior to Delivery being achieved have been carried out and passed to satisfaction of the Company;
- (c) there are no Defects in the Goods, apart from minor Defects which do not prevent the Goods from being used;
- (d) all documents and deliverables required to be provided under this Contract have been provided to the Company; and
- (e) the Supplier has done everything which this Contract requires the Supplier to do as a condition precedent to Delivery.

Fit for Purpose means fit for the purposes, uses and functions and meets the requirements described in, or reasonably able to be inferred from, this Contract.

General Conditions means these Purchase Order Terms and Conditions.

Good Industry Practice means:

- (a) as would ordinarily be expected of a contractor carrying out the works, services or supplying goods of the nature contemplated by this Contract;
- (b) in a manner which is:
 - (i) efficient, professional and cost effective;
 - (ii) safe to the environment (as that term is defined under the applicable Law); and
 - (iii) in accordance with all applicable Laws;
 - (iv) by trained, knowledgeable and experienced Personnel using high quality, safe and appropriate equipment, tools and procedures, and adopting the highest industry standards;
 - (v) with an adequate number of skilled Personnel, materials, resources and supplies in order to perform the Works and Deliver the Goods in accordance with this Contract;
 - (vi) using new and high quality fixtures, fittings, finishes, equipment, apparatus, machinery and all other items which are intended to form, or which form, part of the Goods or the Works, which are free from Defects and appropriate for the environment in which they are intended to be used, and where this definition results in conflicting standards, the highest standard applies.

Goods means the goods (if any) identified in the Purchase Order that are to be supplied by the Supplier.

Government Authority means any national, state, local, regional, territorial or municipal government, ministry, governmental department or authority, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body, having jurisdiction over any aspect of the performance of this Contract.

Insolvency Event means, in relation to a party, that party:

- (a) is insolvent or deemed to be insolvent under any applicable law;
- (b) has a receiver, manager, administrator, trustee, liquidator or controller or similar office appointed over it or its assets;
- (c) commits an act of bankruptcy or insolvency; or
- (d) is the subject of an application for winding up, deregistration or administration.

Intellectual Property Rights means all current and future intellectual and industrial property rights and interests throughout the world, whether registered or unregistered, including copyright, trademark rights, design rights, patent rights, circuit layouts, confidential information or know-how.

Law includes any statute, directive, ordinance, by-law, rule, order, decree, regulation, warrant, or delegated legislation, in each case, of any nation, state, jurisdiction, intergovernmental or supranational organisation, or of any political subdivision of the foregoing, where the Goods or the Works are performed and delivered, acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth, Western Australia and the State or Territory in which the Site is located, or the Goods or Works are delivered and includes the Approvals.

Liabilities means damages, Claims, losses, liabilities, costs and expenses of any kind.

Personnel means a party's employees, officers, agents and those employees, officers and agents of its contractors (but not the Supplier in respect of the Company).

Policies and Procedures means the policies, plans, manuals, guidelines, instructions and other requirements which are provided to the Supplier or otherwise notified to the Supplier by the Company, as may be amended or updated from time to time.

Purchase Order means an individual purchase order issued by the Company to the Supplier in respect of the performance of Works or the provision of Goods which shall be subject to the terms of the Contract.

Site means the location at which the Works are to be performed or the Goods are to be Delivered as set out in the relevant Purchase Order.

Specifications means any specifications and/or drawings for the Works as set out or referenced in the Purchase Order or set out in any attachment or annexure thereto.

Supplier means the party responsible for performing the Works (as identified in the Purchase Order).

Tax Invoice means the invoice issued by the Supplier to the Company upon provision of Goods or Works specified in the Purchase Order, in a format compliant with ATO provisions.

Works means the works and or supply or Goods identified in the Purchase Order to be performed by the Supplier in accordance with the Contract.

Purchase Order from the Company. The Supplier accepts a Purchase Order:

- (a) by signing and returning Purchase Order to the Company;
- (b) by conduct, following the receipt of a Purchase Order, including where the Supplier commences the provision of Works or Goods pursuant to a Purchase Order.

2.3 Precedence of Contract documents

If there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in Clause 2.1.

2.4 Entire Agreement

- (a) The Contract contains the entire agreement between the Company and the Supplier with respect to its subject matter and supersedes all prior communications and negotiations between the Company and the Supplier in this regard, unless those communications expressly form part of the Contract.
- (b) No terms or conditions submitted by either party that are in addition to, different from or inconsistent with those contained herein or in the Purchase Order, including, without limitation, the Supplier's printed terms and conditions, and any terms and conditions contained in any Supplier's quotation, invoice, order acknowledgment, confirmation, acceptance, bill of lading or other instrument, shall be binding upon either party unless specifically and expressly agreed to in writing signed by duly authorised representatives of both parties.

2.5 Amendment to be in writing

No amendment or variation of the Contract is valid or binding on a party unless made in writing and signed by the Supplier and the Company.

3. Performance by Supplier

- (a) In consideration of the payment of the Contract Price by the Company, the Supplier must perform the Works in accordance with the terms of the Contract and perform and/or supply all ancillary Works necessary for or incidental to the proper performance of the Works.
- (b) Minor items not expressly mentioned in this Contract but which are necessary for the satisfactory completion of the Works or the Works and Delivery of the Goods shall be performed by the Supplier without adjustment to the Contract Price.

4. Supplier Obligations

The Supplier must:

- (a) Deliver the Goods and/or carry out and Complete the Works in accordance with:
 - (i) this Contract;
 - (ii) the Specifications;
 - (iii) Good Industry Practice;
 - (iv) the Policies and Procedures;

2. Contract and precedence of documents

2.1 Contract

The Contract consists of the following documents:

- (a) the Purchase Order;
- (b) the General Conditions; and
- (c) any other document which is attached to, or incorporated by reference in, the Purchase Order or the General Conditions (provided that documents incorporated by reference have been provided or made available to the Supplier), (**Contract**).

2.2 Binding Contract

The Supplier agrees to be bound by a Purchase Order and these General Conditions when it accepts a

- (v) all applicable Laws; and
- (vi) the reasonable directions of the Company;
- (b) commence the Works on the date specified in the Purchase Order or as otherwise notified by the Company and must bring the Works to Completion by the Completion Date;
- (c) ensure that the Goods are Delivered on or before the Date for Delivery;
- (d) obtain and comply with all licences, permits, determinations, permissions, approvals and consents required from a Government Authority or under any Law relating to the supply of Goods and performance of the Works or otherwise in connection with this Contract (**Approvals**), unless otherwise specified in this Contract; and
- (e) leave the Site in a clean and orderly condition following the performance of any Works on Site.

5. Company Obligations

- (a) The Company must:
 - (i) provide the Supplier with access to the Site to allow performance of the Works or delivery of the Goods (as applicable);
 - (ii) provide all items and materials to be provided by the Company as stated in the Purchase Order (if any); and
 - (iii) make available to the Supplier all information, documents and particulars relating to the Company's requirements or which might reasonably be regarded as being relevant to the Supplier for the purpose of providing the Works.
- (b) The Company will not be required to check such documents supplied by the Supplier for any errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the Purchase Order. Any approval of such documents shall not prejudice the Supplier's obligations under this Purchase Order.

6. Supplier's warranties

The Supplier warrants that:

- (a) the Goods will be new, and free from Defects;
- (b) the Goods will be of merchantable quality and Fit for Purpose;
- (c) the Goods and/or the Works will comply with all the requirements of this Contract;
- (d) the Works will be Fit for Purpose;
- (e) the Goods and/or the Works will be free from any encumbrance, lien, mortgage, security interest, charge or any other third party interest from the time when title to the Goods and/or the Works passes to us; and
- (f) the Contract Price includes an allowance for all items, works, goods, services, costs, expenses, escalation, rise and fall and taxes, duties or fees of any nature for the Delivery of the Goods and/or performance of the Works.

7. Information provided by the Company

- (a) Information or documents of any nature made available to the Supplier by or on behalf of the

Company do not constitute a warranty or representation of any kind by the Company. The Company agrees that it has checked and verified such information and documents for accuracy, correctness and completeness.

- (b) For the performance of the Works, the Supplier has carried out its own examinations and inspections of the Site and its surroundings.
- (c) The Supplier has no Claim against the Company on account of any alleged statement, warranty, representation or documentary material made or provided by the Company.

8. Defects

- (a) If at any time the Company discovers a Defect, the Company may direct the Supplier to make good the Defect by repairing, rectifying, re-performing or replacing the Goods or the Works (as relevant) and any damage caused by the Defect.
- (b) If the Supplier is directed to make good a Defect, the Supplier must do so within the time reasonably required by the Company, in a manner which causes as little disruption and inconvenience to the Company as possible. The Supplier must bear all incidental costs, including any cost of removal associated with the repair, replacement or making good the Defects.
- (c) If the Supplier fails to promptly comply with a direction to make good a Defect, the Company may make good the Defect and the cost of doing so will be a debt due from the Supplier to the Company.

9. Delivery

- (a) The Supplier must deliver the Goods (if applicable) to the Site.
- (b) Delivery shall be made in accordance with the Company specified requirements (as referenced in the Purchase Order).
- (c) Time is of the essence in respect of the delivery of the performance of the Works.
- (d) Goods must be packed and transported in accordance with relevant transportation and safety requirements and comply with any relevant packaging specifications notified by the Company. Goods, delivery notes and other documentation must reference the relevant Purchase Order.

10. Inspection of Works

- (a) The Company or its Personnel are to have all reasonable and unrestricted access to the premises of the Supplier at reasonable times, provided it has given reasonable notice in writing to inspect the Works or any documentation or process in relation to the same. Any such inspection by the Company will not relieve the Supplier in any way from its obligations under the Purchase Order or otherwise its own quality control and inspection of the Works.
- (b) The Company may reject the Goods or any part thereof that is not compliant with the Purchase Order, by notice in writing. Any Goods that are rejected by the Company must be resupplied by

the Supplier at the Supplier's cost.

11. Risk and Title

- (a) Risk and Title in the Goods passes from the Supplier to the Company upon Delivery of the Goods to the Site (or in respect of title in Goods, such earlier date that payment is made for the Goods).
- (b) Risk and title in the Works passes from the Supplier to the Company upon Completion (or in respect of title in the Works, such earlier date that payment is made for the Works).
- (c) The Supplier is responsible for the care of the Works from date of commencement of performing the Works on Site until Completion.

12. Variation

- (a) The Company may vary the Works by notice in writing.
- (b) If the Supplier believes that complying with the varied Works will result in it incurring additional or lesser costs it may submit a notice to the Company proposing that the Contract Price be increased or decreased as applicable.
- (c) If the Supplier and the Company cannot agree on whether there should be an increase or decrease in the Contract Price or the amount of any such increase or decrease within 30 days of a notice being served pursuant to Clause 1.1(b) then the Company may make a determination acting reasonably and having regard to the rates and prices used to calculate the Contract Price.

13. Contract Price

- (a) The Company agrees to pay the Supplier the Contract Price for the provision of the Works provided under this Contract.
- (b) Unless otherwise agreed by the parties in writing, the Contract Price is not subject to any rise or fall mechanism.

14. GST

- (a) In this clause **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Act)* as amended or replaced. Words and expressions used in this clause which have a particular meaning in the GST law (as defined in the GST Act), applicable legislative determinations and Australian Taxation Office public rulings, have the same meaning, unless the context otherwise requires.
- (b) Unless GST is expressly included, the consideration to be paid or provided under any other clause of this Contract for any supply made under or in connection with this Contract does not include GST.
- (c) To the extent that any supply made under or in connection with this Contract is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time as the GST exclusive consideration is to be paid or provided, subject to receipt of a tax invoice.

- (d) If an adjustment event occurs in relation to a supply under or in connection with this Contract, the amount payable under clause 1.1(c) will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties within the normal terms of the original submission.
- (e) To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

15. Payments to Supplier

15.1 Tax Invoices

- (a) The Supplier must, unless otherwise agreed with the Company, render a Tax Invoice to the Company in relation to the provision of the Works at the end of each month during the period in which the Works are provided and calculated by reference to the prices, fees or other amounts specified in the Purchase Order.
- (b) Tax Invoices must be in a form acceptable to the Company and must contain the following information:
 - (i) Suppliers name and address and contact details, supplier ABN, GST Amount and a brief description of the works and quantity provided in the period covered by the Tax Invoice;
 - (ii) the Purchase Order number to which the Tax Invoice relates; and
 - (iii) any further verification or documentation in relation to the Tax Invoice as is reasonably required by the Company.
- (c) The Supplier acknowledges that the Company cannot process any Tax Invoice which does not contain the information set out in clause 15.1(b) and the Company is not liable to pay any Tax Invoice which does not comply with clause 15.1(b).

15.2 Payment of Tax Invoices

Subject to Clauses 15.3, the Company must pay to the Supplier the amount claimed in a Tax Invoice within 45 days of receipt of the Tax Invoice unless otherwise agreed in writing.

15.3 Disputed Tax Invoices

- (a) The Company will notify the Supplier if it disputes any amount shown on a Tax Invoice and will pay any amounts not in dispute in accordance with Clause 15.2, provided that the payment by the Company of any amount the subject of a disputed Tax Invoice is not to be considered as an acceptance of the amount in dispute or of the Company's liability to make that payment.
- (b) Upon receipt of the Company's notice of dispute, the Supplier and the Company will jointly review the nature of the disputed amount, and the Supplier must, if appropriate, provide adequate substantiation for the amount shown on the Tax

Invoice and/or take prompt corrective action and promptly adjust the relevant invoice or refund overpayments. If the parties cannot resolve the disputed Tax Invoice in accordance with this clause, then clause 23 applies.

15.4 Set off

The Company may set-off any amounts due and payable by it under this Contract against any amounts due and owing to the Company by the Supplier.

16. Insurances

16.1 Supplier Insurances

The Supplier is required, at its cost, to effect and maintain throughout the performance of the Works:

- (a) public and product liability insurance of not less than \$10,000,000 for each event;
- (b) workers compensation insurance as required by Law;
- (c) comprehensive motor vehicle insurance third party bodily injury and property damage liability insurance for a combined limit of not less than \$20,000,000;
- (d) if the Supplier is providing professional services, professional indemnity insurance of not less than \$5,000,000; and
- (e) all insurances (and with appropriate coverage) which a prudent and responsible supplier of the Works would maintain.

16.2 Evidence

Before commencing the Works, the Supplier must provide the Company with certificates of currency for each insurance policy listed in Clause 16.1.

17. Safety and site

The Supplier acknowledges that if it enters on to the Site, it does so at the Supplier's own risk. The Supplier must ensure that its Personnel are also aware that they enter onto the Site at their own risk and must comply with any Site safety policies and procedures governing the Site from time to time during the performance of the Works.

18. Liability and Indemnity

18.1 Supplier Indemnity

The Supplier indemnifies the Company on a full indemnity basis for all Liabilities suffered or incurred by the Company in relation to the Supplier's performance and delivery of the Works including (but not limited to) any Claims in connection with personal injury, death, loss of or damage to property, any infringement of Intellectual Property rights and any legal costs incurred by the Company in respect of any associated Claim.

18.2 Indirect Loss

Without limiting the Supplier's liability under clause 18.1, neither party will be liable for any special, indirect, consequential or economic loss including loss of profits, loss of revenue, loss of production or loss of contract (in contract or tort or arising from any other cause of action) suffered by the other party in connection with the Contract or the performance of the Works.

18.3 Indemnity continuing

Each indemnity in the Contract is a continuing obligation separate and independent from the Supplier's other obligations and survives termination of the Contract.

19. No fault termination

- (a) The Company may terminate this Contract or any part of it by giving the Supplier not less than 30 days' notice in writing.
- (b) If the Contract is terminated under this clause, the Supplier's remedy and entitlements are limited to the value of the Goods delivered and Works properly carried out prior to the date of termination.

20. Company Default

The Supplier may terminate this Contract by notice in writing to the Company if the Company:

- (a) is in default of an obligation to pay an amount due and payable to the Supplier within 10 Business Days after receiving notice from the Supplier providing details of the payment default; or
- (b) suffers an Insolvency Event.

21. Supplier Default

If the Supplier breaches a provision of this Contract and that failure or breach:

- (a) is incapable of remedy; or
- (b) if capable of remedy, continues for 10 Business Days after the Company gives the Supplier a notice requiring the breach to be remedied; or
- (c) an Insolvency Event occurs in relation to the Supplier,

then the Company may by notice to the Supplier terminate the Contract or any part of it with effect from the date specified in the notice.

- (d) If the Contract is terminated the accrued rights, remedies, obligations and Liabilities of the parties as at the expiry on termination will not be affected, including the right to claim damages in respect of any breach of the Contract which existed before termination.

22. Intellectual Property

22.1 Ownership of documents provided by the Company

Drawings and other technical documentation supplied by the Company, as well as drawings prepared from such documentation and all Intellectual Property Rights attaching to the same are the exclusive property of the Company and must only be used by the Supplier for performing its obligations under this Contract and not be used for any other purpose, copied or disclosed to a third party without the Company's prior written consent.

22.2 Intellectual Property Rights in Contract IP

The Supplier agrees that all Contract IP is vested in the Company and is the Company's property as and when created and the Supplier assigns and must ensure that all of its Personnel assign all their respective rights, title and interest in and to the Contract IP to the Company without any encumbrances.

22.3 Background IP

The Supplier grants to the Company an irrevocable, transferable, perpetual, royalty free and unconditional license to use the Background IP in all for the installation, use, support, repair, maintenance or alteration of the Works by the Company.

23. Dispute Resolution

- (a) Neither party may commence litigation or legal action against the other unless they have first complied with this clause.
- (b) If a dispute or difference arises between the Supplier and the Company in respect to any fact, act, matter or thing arising out of, or in any way connected with the Contract (**Dispute**) or any matter the subject thereof then either party may give the other party a written notice giving details of the dispute (**Dispute Notice**).
- (c) Within 14 days of the party receiving a notice Dispute Notice, the Company and the Supplier and/or their delegates must meet and attempt to resolve the Dispute in good faith.
- (d) If a Dispute has not been resolved within 14 days after a meeting has taken place pursuant to clause 1.1(c), either party may commence proceedings in respect of that Dispute.

24. Assignment and sub-contracting

- (a) The Supplier is not permitted to assign or sub-contract all or any part of the Works or any of its rights or obligations under this Contract without the prior written consent of the Company, such permission not to be unreasonably withheld or delayed and subject to any terms and conditions the Company may reasonably think appropriate, including requiring the proposed assignee or sub-contractor to execute a document whereby it agrees to be bound by and observe any or all of the provisions of the Contract.
- (b) Any approval to subcontract pursuant to clause 24(a) given by the Company shall not relieve the Supplier from any of its obligations or Liabilities under the Contract.

25. Notices

Any notice, request, consent, demand or application required to be given by a party to the other pursuant to this Contract:

- (a) must be in English and in writing; and
- (b) must be either:
 - (i) delivered to the other party personally; or
 - (ii) left at the address or sent by prepaid post addressed to the other parties' address; or
 - (iii) sent by email addressed to the other party.

26. Confidentiality

- (a) Subject to paragraph (b), each party must:
 - (i) keep the contents of the Contract and all information of a technical, business or financial nature, created or exchanged in relation to this Contract and its negotiation, confidential; and
 - (ii) not disclose the same to any other person

without the written consent of the other party.

- (b) Paragraph (a) does not apply in the following circumstances:
 - (i) disclosure of any information which is in the public domain other than as a result of a breach of the Contract;
 - (ii) disclosure of information, which at the date of disclosure, is already in the possession of the party to whom it is disclosed from sources other than the other party;
 - (iii) any disclosures as required by law or by any governmental authority, including to comply with any laws;
 - (iv) any disclosure to a party's, employees, contractors and agents whose duties in relation to the Contract; require disclosure and whom have given a binding covenant to maintain confidentiality.

27. General

27.1 Governing Law

The Contract is governed by the laws of the Western Australia. Each party submits to the non-exclusive jurisdiction of the Courts exercising jurisdiction there in connection with matters concerning the Contract.

27.2 Counterparts

A Purchase Order may be executed by more than one authorised person and all of those authorised people taken together constitute one and the same instrument and may be exchanged by way of electronic means.

27.3 Severability

Each clause in these General Conditions is severable and if any clause is held to be illegal or unenforceable, then the remaining clauses will remain in full force and effect.

27.4 No Merger

These General Conditions do not merge on Completion of a Purchase Order.

27.5 Waiver

No failure, delay, relation or indulgence in exercising any power, right or remedy precludes any other or further exercise of that or any other power, right or remedy.