

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires:

Affected Party is defined in clause 19.1;

Authorisation means any approval, consent, exemption, licence, permit or regulation however described, of an Authority or any other applicable persons, and any renewal of them;

Authority means any government or government department, local government authority, government or statutory authority or other person who is charged with the administration of a Law that has a right to give any consent or impose any requirement in respect of the Supply Activities;

Agreement means the agreement comprising the Purchase Order, these Terms and Conditions and any other documents expressly incorporated by reference in the Purchase Order;

Background IPR is defined in clause 18.1;

Business Day means a day other than a Saturday, Sunday or a day gazetted as a public holiday in Perth, Western Australia pursuant to the *Public and Bank Holidays Act 1972 (WA)*.

Consequential Loss means any loss or damage suffered by a party which is indirect or consequential or which is by way of a loss of use, production, revenue, contract income, business, savings, profit or opportunity;

Contract Sum means the amount specified in the Purchase Order as payable in respect of the Goods and Services;

Date for Delivery means the date on which the Goods must be delivered or Services must be performed as specified in the Purchase Order;

Defect is defined in clause 9.1;

Defects Correction Period is defined in clause 9.1;

Defect Direction is defined in clause 9.1;

Delivery Notice is defined in clause 4.1;

Delivery Place means the location specified on the purchase order or, if no location is specified, in the place directed by Leichhardt at the Site;

Delivery Record is defined in clause 4.2(b);

Dispute is defined in clause 20.2;

Force Majeure Event is defined in clause 19.6;

Goods means the goods described in the Purchase Order and all goods, materials, equipment, documents, deliverables, and other things be supplied in connection with any Services;

GST is defined in clause 12.1;

GST Act is defined in clause 11.3;

Insolvency Event means, in relation to a party, means any of the following events: (a) the bankruptcy, winding up or insolvency of the party; (b) the party enters into any scheme of arrangement or composition; or (c) a receiver or administrator is appointed to any property of the party, but only to the extent that the *Corporations Act 2001 (Cth)*

does not prevent a party from terminating this Contract because of that Insolvency Event;

Intellectual Property Rights means any intellectual or industrial property rights, whether registered or unregistered, including without limitation all patents, trademarks, copyright, designs, trade secrets, know-how and other rights in any design, materials, processes, documents and methods of working, including any right to register or renew such rights;

Law means any Commonwealth, Western Australian or local government legislation (including any subordinate legislation thereof), the common law and principles of equity, and any Authorisation;

Leichhardt means Leichhardt Industrials Group Pty Ltd ACN 656 192 602 or its Related Body Corporate as specified in the Purchase Order;

Mediation is defined in clause 20.3;

Modern Slavery has the meaning given to it in the *Modern Slavery Act 2018 (Cth)*;

Modern Slavery Laws means the *Modern Slavery Act 2018 (Cth)* and Divisions 270 and 271 of the *Commonwealth Criminal Code* and the law of any jurisdiction applicable to a party which creates similar reporting obligations or offences in respect of Modern Slavery.

Notice is defined in clause 21.4;

Notice of Dispute is defined in clause 20.2;

Payment Claim is defined in clause 11.3;

Payment Schedule is defined in clause 11.4;

Personal Information is defined in the *Privacy Act 1988 (Cth)*;

Personnel in relation to a party, means the officers, employees and contractors of a party or its Related Bodies Corporate, but in the case of Leichhardt, excludes the Supplier and its Personnel;

Policies means Leichhardt's policies, procedures and standards as notified by Leichhardt to the Supplier from time to time;

Purchase Order means the document marked "purchase order" which is issued by Leichhardt to the Supplier;

Related Body Corporate is defined in the *Corporations Act 2001 (Cth)*;

Relevant IPR is defined in clause 18.2;

Services means the services described in the Purchase Order, including all work to be performed by the Supplier in connection with the supply of any Goods;

Site means Leichhardt's premises specified in the Purchase Order, or if none specified, its Lake MacLeod Operations located at 409 Blowholes Road, Carnarvon, Western Australia;

Supplier means the party identified as the Supplier in the Purchase Order; and

Supply Activities is defined in clause 3;

Supplier's Obligations is defined in clause 3;

Terms and Conditions means the terms and conditions in this document.

Variation or **Vary** is defined in clause 10.2;

Variation Notice is defined in clause 10.2; and

Wilful Misconduct means any act or omission which was intended to cause, or was in reckless disregard or indifference to, the foreseeable or likely harmful consequences of such act or omission, but does not include any act or omission that is required or expressly permitted by the Agreement or by Law.

1.2 In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause or paragraph is to a clause or paragraph of this Agreement;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is to Perth, Australia time;
- (g) a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- (h) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (i) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (j) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (k) headings are for ease of reference only and do not affect interpretation.

2. Agreement

2.1 Subject to clause 2.3:

- (a) these Terms and Conditions apply to the purchase Goods and Services by Leichhardt to the exclusion of all other terms specified in any document issued by the Supplier; and
- (b) the Agreement constitutes the entire agreement between the parties and supersedes any prior understanding as to its subject matter.

2.2 In the event of inconsistency, the order of precedence of the documents comprising the Agreement will be:

- (a) the Purchase Order, including any 'Special Conditions' specified or referenced therein;
- (b) these Terms and Conditions; and
- (c) any attachments, appendices or annexures to the Purchase Order

2.3 To the extent Leichhardt has properly executed a separate written contract with the Supplier in respect of the purchase of Goods and, or, Services the subject of the Purchase Order, the terms of that contract will prevail over these Terms and Conditions to extent of any inconsistency.

3. Supply of Goods and Services

The Supplier agrees to:

- (a) deliver the Goods;
- (b) perform the Services; and
- (c) correct any Defects,

(**Supply Activities**) and carry out the Supplier's other obligations (together, the **Supplier's Obligations**) in accordance with the Agreement.

4. Delivery

4.1 The Supplier must give Leichhardt reasonable advance written notice of the delivery of Goods to and, or, the provision of Services at, the Delivery Place (a **Delivery Notice**) to allow for Leichhardt to prepare necessary arrangements to receive the Goods and, or, Services. A Delivery Notice must specify:

- (a) the precise date and time for the delivery of such Goods and, or, Services, which must consistent with the Date for Delivery; and
- (b) if applicable, the total weight and volume and type and quantity of the Goods to be delivered.

4.2 The Supplier must:

- (a) deliver the Goods and, or, provide the Services (as applicable), by the Date for Delivery and as specified in the Delivery Notice;
- (b) provide a delivery record which accurately describes the type and quantity (including total weight and volume, if applicable) of Goods delivered to, or details the Services provided at, the Delivery Place (a **Delivery Record**), which quotes the Purchase Order and the Delivery Notice applicable to that delivery; and
- (c) obtain confirmation of the Delivery Record, by way of signature or other physical or electronic record, from a member of Leichhardt's Personnel.

4.3 The Supplier must:

- (a) not enter the Site without the prior permission of Leichhardt and may only access the Site in a manner which does not unreasonably impede access by Leichhardt and its Personnel;
- (b) comply with the Policies;
- (c) observe and comply with any direction provided by Leichhardt's Personnel in relation to access to the Site; and
- (d) not access or utilise its access to the Site for any other purpose than in connection with the Supply Activities,

and the Supplier agrees that Leichhardt has no liability in respect of any delay, additional costs or other effect on the Supply Activities related to any action required or prohibited pursuant to this clause 4.3.

4.4 Subject to the Supplier's compliance with clause 4.3, Leichhardt must provide the Supplier sufficient access to the Site at such times and for such periods as is reasonably necessary to enable the Supplier to comply with its obligations under this Agreement.

5. Risk and Title

5.1 Title in the Goods will pass to Leichhardt upon the earlier of payment and delivery.

5.2 The Supplier warrants that clear title will pass to Leichhardt free of any lien, charge, encumbrance, or other security interest.

5.3 Risk in the Goods shall remain with the Supplier until they are accepted by Leichhardt.

5.4 If Goods are returned to the Supplier's physical possession due to a Defect after risk has transferred to Leichhardt pursuant to clause 5.2, risk in the Goods will return to the Supplier from the time the Supplier retakes possession or control of the Goods and the Supplier is liable for damage caused to such Goods in the course of rectifying any Defect.

6. Supplier's Obligations

6.1 The Supplier warrants that it:

- (a) has the necessary expertise, experience, creditworthiness, reputation and competence;
- (b) holds any registrations or licences necessary or preferable at law; and
- (c) has sufficient resources, including Personnel, to carry out the Supply Activities.

6.2 The Supplier must:

- (a) ensure any Goods and, or, Services:
 - (i) in the case of Goods, are new (unless otherwise specified in the Agreement), genuine, and of merchantable quality;
 - (ii) are free of Defects, and fit for their intended purposes as specified in or reasonably inferred from this Agreement;
 - (iii) conform to any sample, description or demonstration provided;
 - (iv) comply with all applicable Laws, Authorisations, and Australian Standards;
 - (v) in the case of Goods, are appropriately labelled and packaged to protect them during transportation and storage (and that such packaging and labelling complies with applicable Law);
 - (vi) do not infringe or contribute to the infringement of any third party's Intellectual Property Rights;
- (b) perform the Supplier's Obligations in a proper, thorough, and skilful manner with all due expedition, care and diligence in accordance with all reasonable commercial or professional requirements and best practice standards of organisations and businesses analogous to the Supplier;

- (c) provide all relevant data, either compiled, collected, or developed by the Supplier, in connection with the Supply Activities and advice regarding the Supply Activities as Leichhardt's Personnel reasonably request from time to time;
- (d) ensure that all Personnel of the Supplier performing the Supplier's Obligations are competent, skilled, trained and appropriately qualified (including by holding any necessary industry recognised training certifications);
- (e) ensure that all equipment used in performing the Supplier's Obligations is suitable and in safe working order;
- (f) comply with the *Privacy Act 1988* (Cth) with respect to the collection, use, storage or disclosure of all Personal Information obtained in connection with the Supply Activities; and
- (g) comply with all Modern Slavery Laws, take appropriate steps to identify, investigate and eliminate modern slavery from its operations and supply chains, and provide all information reasonably requested by Leichhardt to comply with its own obligations, including as to reporting, under Modern Slavery Laws.

6.3 The Supplier must:

- (a) ensure no person is exposed to a risk to safety, health or welfare arising out of or in connection with the carrying out of the Supply Activities;
- (b) immediately notify and provide a written report to Leichhardt of any potential or actual incidents with respect to work health and safety while at the Site;
- (c) provide all information, training, instruction and supervision necessary to protect all persons from risks to their health and safety;
- (d) manage all safety hazards and risks associated with the Supply Activities, including undertaking a review and assessment of any hazards and risks and identifying and implementing appropriate measures to control all such hazards and risks;
- (e) ensure that the Supply Activities comply with all work health and safety Laws.

6.4 If Leichhardt determines that the Supplier has failed to comply with any obligation applicable under clause 6.3, Leichhardt may direct the Supplier to:

- (a) immediately suspend performance of the Supply Activities; and/or
- (b) promptly, and within the time specified in the notice, correct the deficient act or omission at the Supplier's sole expense.

In the event the Supplier fails to remedy such deficiency within such time, the Supplier's failure will be deemed to be a material breach of this Agreement and Leichhardt may, without limiting any other rights immediately terminate this Agreement.

6.5 The Supplier is solely responsible for all costs associated with the performance of the Supplier's Obligations.

7. Timing

- 7.1 Leichhardt may direct the Supplier to bring forward the Date for Delivery:
- as a variation to the Supply Activities in accordance with clause 10; or
 - by providing written notice to the Supplier, provided Leichhardt has first consulted with the Supplier and that the new Date for Delivery is reasonable taking into account the nature of the Supply Activities.
- 7.2 If the Supplier becomes aware of any event causing, or likely to cause, delay or disruption to the Supply Activities, the Supplier must promptly give Leichhardt notice (**Delay Notice**) stating:
- the event;
 - the Supplier's estimate of the expected disruption or period of delay; and
 - the steps, if any, the Supplier proposes to take to prevent or lessen the delay or disruption.
- 7.3 The Supplier is only entitled to an extension for the Date for Delivery:
- with the prior consent of Leichhardt (such consent may be subject to an adjustment to the Contract Sum as agreed between the parties), such consent being at Leichhardt's complete discretion; or
 - if the Supplier has provided a Delay Notice within seven (7) calendar days of the delay commencing (to allow Leichhardt to gather and assess facts contemporaneously), has not caused, or contributed to, the delay and the event the subject of the Delay Notice is as a result of:
 - an act, omission or breach of this Agreement by Leichhardt;
 - a Force Majeure Event to extent the Supplier is entitled to relief under clause 19; or
 - a variation to the Supply Activities arranged in accordance with clause 10.
- 7.4 In the event an extension is granted or permitted by reason of sub-paragraphs (a) or (b) of clause 7.3, the Supplier is only entitled to an extension of time as is reasonably necessary to compensate for such an event, which shall also take into consideration any steps the Supplier should have reasonably taken to prevent or lessen the delay.

8. Suspension

- 8.1 Leichhardt may in its sole discretion, at any time, give notice to suspend the execution of all or part of the Supply Activities and the Supplier must, upon receiving such notice, immediately suspend the execution of the Supply Activities (including any associated Supplier's Obligations) and Leichhardt must pay the Supplier compensation equal to the direct costs actually incurred (excluding any and all indirect costs, overheads, margins and profits) which could not reasonably have been mitigated or avoided by the Supplier during the suspension.

- 8.2 Leichhardt may, by notice, direct the Supplier to resume execution of all or part of the Supply Activities suspended pursuant to clause 8.1.

9. Defects

- 9.1 Without limiting clause 6, if, during the performance of the Supply Activities or within a period of 12 months following delivery of the Goods and, or completion of Services (or such other period specified in the Purchase Order) (the **Defects Correction Period**) Leichhardt identifies any:

- error, non-conformance, defect, deficiency, fault or omission of or in the applicable Goods and, or, Services; or
- any aspect of, the applicable Goods and, or, Services which is not in accordance with the requirements of this Agreement,

(each, a **Defect**), Leichhardt may provide notice to the Supplier directing the Supplier to rectify, replace, re-perform or otherwise address (at the direction of Leichhardt) the Goods and, or, Services the subject of the Defect (a **Defect Direction**).

- 9.2 A Defect Direction must identify the Defect and state a date by which the Supplier must comply with the Defect Direction, such time being reasonable.
- 9.3 The Supplier must carry out the work, supply or performance needed to comply with the Defect Direction at its own cost and risk and within the period indicated within the Defect Direction.
- 9.4 If the Supplier complies with clause 9.3 and rectifies the relevant Defect, there will be no change to the Contract Sum with respect to such Goods and, or, Services the subject of the Defect and Leichhardt will have the same rights in respect of replaced or repaired Goods and re-performed Services, as it had in respect of the Goods and, or, Services which were originally supplied.
- 9.5 If the Supplier fails to rectify the relevant Defect pursuant to clause 9.3 and Leichhardt has accepted the Goods and, or, Services subject to the Defect or has to rectify, replace, re-perform or otherwise address the Goods and, or, Services the subject of the Defect itself, without limiting any other remedy of Leichhardt, the Contract Sum will be reduced by the lesser of:
- the costs incurred by Leichhardt in doing so; or
 - the diminution in value of the Goods and, or, Services the subject of the Defect,

and to the extent Leichhardt has already paid the Contract Sum, Leichhardt may claim the amount so determined as a debt due and payable from the Supplier.

10. Variations

- 10.1 The Supplier must not vary the Supply Activities except in accordance with a written direction of Leichhardt.
- 10.2 Leichhardt may at any time direct the Supplier in writing (**Variation Notice**) to add, omit, increase, decrease, change the character, quality, or scope of, or Date for Delivery for, any Supply Activities (**Vary** or **Variation**).

- 10.3 The Supplier must amend the Supply Activities to be provided under this Agreement as directed in any Variation Notice.
- 10.4 In the event the Supplier is required to Vary the Supply Activities in accordance with clause 10.2, the Contract Sum will be amended accordingly, being increased or decreased by such amount as is reasonably appropriate, using the following order of priority:
- to the extent that the parties have agreed the amount of the alteration, then the amount agreed;
 - to the extent that this Agreement provides for the amount of the alteration, then that amount;
 - to the extent that the rates contained in this Agreement apply, by applying those rates to the quantities properly supplied in accordance with this Agreement; and
 - failing any of the above being applicable, then as determined by Leichhardt acting reasonably.
- 11. Payment**
- 11.1 Leichhardt must pay the Supplier the Contract Sum and any other amounts which the Supplier is entitled to under this Agreement in accordance with this clause 11.
- 11.2 The Supplier may make monthly progress claims for payment if expressly permitted by the Purchase Order but otherwise may not make a claim for payment of:
- any part of the Contract Sum, until the Goods and, or, Services the subject of the Supply Activities relevant to the part of the Contract Sum so claimed have been delivered or provided to Leichhardt (as applicable);
 - any other amounts which the Supplier is entitled to under this Agreement until, in accordance with the terms of this Agreement, it becomes entitled to such other amounts.
- 11.3 Any claim for payment made pursuant to clause 11.2 (a **Payment Claim**) must be a tax invoice (as that term is defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) (**GST Act**) with an accompanying written statement:
- showing the amount calculated in accordance with the Purchase Order that the Supplier claims in the Payment Claim;
 - describing the items and quantities of work, or related Goods and, or, Services, to which the Payment Claim relates; and
 - including any other information Leichhardt reasonably requires.
- 11.4 Leichhardt may respond to a Payment Claim by assessing the Payment Claim and giving a written schedule (a **Payment Schedule**) to the Supplier within 15 Business Days after receipt of the Payment Claim. The Payment Schedule must indicate the amount of the payment that Leichhardt proposes to make to the Supplier including the reasons for any difference with the amount claimed in the Payment Claim, including any set-offs or deductions Leichhardt is entitled to make.
- 11.5 Leichhardt must pay a tax invoice submitted by the Supplier within 30 calendar days of receipt of the Payment Claim subject to any deductions assessed in the Payment Schedule.
- 11.6 Leichhardt may set-off or deduct from any amounts payable to the Supplier under this Agreement, any moneys payable by the Supplier to Leichhardt under this Agreement or otherwise.
- 12. GST**
- 12.1 In this clause 12, "**GST**" means GST within the meaning of the GST Act and terms which are defined in that Act have the same meaning in this Agreement.
- 12.2 In addition to any payment obligation of Leichhardt for a taxable supply in connection with this Agreement, Leichhardt must pay to the Supplier the GST payable by the Supplier on any taxable supply under this Agreement by the later of:
- the date when any consideration for the taxable supply is first paid or provided; and
 - the date when the Supplier issues a tax invoice to Leichhardt.
- 12.3 If this Agreement requires a party to pay for, reimburse or compensate against any expense or liability (reimbursable expense) incurred by the other party (payee) to a third party, the amount to be paid, reimbursed or compensated is the amount of the reimbursable expense net of any input tax credit to which the payee is entitled in respect of the reimbursable expense (net amount).
- 13. Default and Termination**
- 13.1 Without prejudice to any other rights or remedies, either party may immediately terminate the Agreement by written notice to the other party if the other party:
- is in material breach of this Agreement and fails to remedy such breach within 14 days notice; or
 - suffers an Insolvency Event.
- 13.2 In addition to any other rights of termination available to Leichhardt, Leichhardt may terminate the Agreement without cause by giving 7 days' notice to the Supplier, in which case Leichhardt will pay the Supplier:
- the portion of the Contract Sum due under this Agreement prior to the effective date of termination;
 - the cost of Goods reasonably ordered by the Supplier for the purpose of performing the Supplier's Obligations, which the Supplier is legally liable to accept and cannot otherwise utilise, but only if the Goods become the property of Leichhardt upon payment; and
 - the Supplier's reasonable direct costs of demobilisation from the Site arising from termination,
- provided such costs are demonstrated to the reasonable satisfaction of Leichhardt.
- 13.3 Termination of the Agreement does not affect any rights or remedies which accrued before termination.

14. Indemnity

14.1 To the extent permitted by law, the Supplier indemnifies Leichhardt, its Related Bodies Corporate, and each of their officers and employees (**Indemnified Parties**) against any and all cost, expense, loss, injury, damage, liability or claim, whether actual or threatened, of whatever nature suffered, sustained or incurred, arising under, out of, or in connection with any:

- (a) personal injury, illness or death;
- (b) loss or damage to property; or
- (c) breach of Law;

caused or contributed to by any breach of this Agreement by, or negligent act or omission or Wilful Misconduct of, the Supplier or its Personnel.

14.2 The Supplier's liability to indemnify the Indemnified Parties under clause 14.1 will be reduced to the extent that the relevant occurrence was caused by the negligent act or omission of the Indemnified Parties.

14.3 The operation of Part 1F of the *Civil Liability Act 2002 (WA)* is excluded in relation to all and any rights, obligations and liabilities under this Agreement whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at law.

14.4 Without limiting the generality of clause 14.3, the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Agreement and not otherwise whether such rights, obligations and liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at law.

15. Insurances

15.1 The Supplier must procure and maintain (and to extent not covered under Supplier's insurances, ensure its Personnel procure and maintain) the following insurances with reputable insurers:

- (a) workers compensation insurance in accordance with applicable law and providing for common law liability of not less than \$50,000,000 in relation to any one occurrence and unlimited in the aggregate;
- (b) public and product liability insurance for not less than \$20,000,000 any one claim and, in the case of public liability insurance, unlimited in the aggregate;
- (c) in respect of any motor vehicle used in connection with delivery of the Goods or performing the Services, an insurance policy to cover third party liability for an insured sum of not less than \$20,000,000 for each claim per occurrence and in the aggregate; and
- (d) where the Services include professional advice or design services, professional indemnity insurance for not less than \$2,000,000 for each claim, such policy to be maintained for a period of 6 years after completion of the Services,

and in the case of the insurances described under paragraphs (a) and (b), unless precluded by law, include a principal's indemnity extension and a waiver of

subrogation in favour of Leichhardt and its Related Bodies Corporate.

15.2 The Supplier must provide a certificate of insurance evidencing the insurances required under clause 15.1 upon request of Leichhardt.

15.3 The Supplier shall in the event of any loss or claim do all things necessary to obtain the full benefit of its insurances under this clause 15 including but without limitation by giving prompt notice to its insurances of any such loss or claim.

16. Limitation of Liability

16.1 Subject to clause 16.2 and to the maximum extent permitted by law:

- (a) a party's aggregate liability to the other party under or in connection with the Agreement is limited to the Contract Sum; and
- (b) neither party will be liable to the other for any Consequential Loss.

16.2 The limitation and exclusion of liability in clause 16.1 does not apply to limit or exclude a party's liability:

- (a) in respect of the injury or death of any person or the loss or destruction of any physical property;
- (b) for any act or omission of fraud or Wilful Misconduct or of a party and/or any of its Personnel;
- (c) in relation to any liability for a penalty imposed for breach of Law;
- (d) for any breach of clauses 17, 18, 6.2(f) and 6.2(g); or
- (e) for any loss arising from an occurrence which should be covered by a policy of insurance required under the Agreement or which would but for any act or omission of the Supplier.

17. Confidential Information

17.1 In this clause, Confidential Information means:

- (a) all information relating to Leichhardt's business affairs or operations including this Agreement; and
- (b) all information that: (i) the Supplier knows or ought to know is confidential; (ii) is designated as confidential; or (iii) is by its nature confidential or received by the Supplier in circumstances connoting its confidentiality,

but excludes information that is in, or enters into, the public domain through no fault of the Supplier or its Personnel.

17.2 The Supplier must:

- (a) keep the Confidential Information confidential;
- (b) only use the Confidential Information for the purpose of providing the Supply Activities; and
- (c) not disclose any Confidential Information except: (i) to its Personnel to the extent necessary for the Supply Activities, provided the Supplier remains liable for any breach of confidentiality by its Personnel; (ii) to the extent required by law, government agency, or stock exchange, provided that to the extent practical prior to such disclosure the Supplier notifies Leichhardt and takes all

practicable and legal measures to limit such disclosure; (iii) to the Supplier's legal, financial or other professional advisors; or (iii) with Leichhardt's prior written consent.

- 17.3 Leichhardt acknowledges that all information relating to the Supplier's business affairs or operations is confidential and must not disclose such information except: (i) to its Personnel, provided Leichhardt remains liable for any breach of confidentiality by its Personnel; (ii) to the extent required by law, government agency, or stock exchange, provided that to the extent practical prior to such disclosure Leichhardt notifies the Supplier and takes all practicable and legal measures to limit such disclosure; (iii) to Leichhardt's legal, financial or other professional advisors; or (iv) with the Supplier's prior written consent.

18. Intellectual Property

- 18.1 Each party will retain ownership of all Intellectual Property Rights owned by or licensed to that party before the date of this Agreement or created by that party other than in connection of this Agreement (**Background IPR**).
- 18.2 Leichhardt will own all Intellectual Property Rights (**Relevant IPR**) generated, created or acquired by or on behalf of the Supplier for the purposes of, or in connection with, the supply of the Goods and Services. The Supplier must (and procure that its Personnel) assign all Relevant IP to Leichhardt and sign all documents required to give effect to this clause.
- 18.3 Leichhardt grants the Supplier a revocable royalty free non-exclusive licence to its Background IPR and Relevant IPR to the extent required and for the sole purpose of Supplier performing the Supplier's Obligations.
- 18.4 The Supplier grants to Leichhardt a non-exclusive, perpetual, irrevocable, royalty free, sublicensable licence to the Supplier's Background IPR to the extent required and for the sole purpose of Leichhardt enjoying the full use and benefit of the Goods and Services.
- 18.5 The Supplier warrants it has the right to license all Intellectual Property Rights required by Leichhardt to enjoy the full use and benefit of the Goods and Services and indemnifies Leichhardt and each of its Related Bodies Corporate against any cost, expense, loss, injury, damage, liability or claim they may suffer or incur in connection with any actual or alleged infringement of Intellectual Property Rights.

19. Force Majeure Events

- 19.1 If a Force Majeure Event occurs, the affected party (**Affected Party**) must immediately give the other party a written notice containing:
- full particulars of the Force Majeure Event, including its nature and likely duration;
 - details of the obligations of the Affected Party the performance of which is prevented or delayed; and
 - the nature and extent of the effects of the Force Majeure Event on those obligations.
- 19.2 The obligations of the Affected Party are suspended, to the extent that they are affected by the Force Majeure Event, from the date the Affected Party gives the written notice under clause 19.1 until cessation of the Force Majeure Event and the Affected Party will have no liability

for the non-performance of such obligations during the period of suspension.

- 19.3 On the cessation of the Force Majeure Event which is the subject of a written notice given under clause 19.2, the Affected Party must immediately give written notice to the other party of the cessation of the Force Majeure Event and resume performance of the obligations suspended as a result of the Force Majeure Event.
- 19.4 The Affected Party must:
- use its best endeavours to remedy the impact of the Force Majeure Event to extent reasonably practicable; and
 - report to the other party in writing (on such basis as is requested by other party acting reasonably) of the steps taken by it to remove the effect of that Force Majeure Event.
- 19.5 If the obligations of the Affected Party remain suspended pursuant to clause 19.2 for a continuous period of three months, either party may terminate this Agreement with immediate effect by giving notice to the other party.
- 19.6 In this clause, "**Force Majeure Event**" means an event beyond a party's reasonable control which, by the exercise of reasonable diligence and foresight, could not have been prevented or overcome by that party, and is specifically limited to fire, storm, flood, earthquake, explosion, war, invasion, rebellion, sabotage, epidemic or labour dispute not limited to the parties.

20. Disputes

- 20.1 Nothing in this clause 20:
- limits the parties' rights under the *Building and Construction Industry (Security of Payment) Act 2021* (WA); or
 - prevents a party from seeking any urgent interlocutory relief.
- 20.2 If a dispute between the parties arises in connection with this Agreement, then either party must give a written notice of dispute to the other identifying the dispute (**Dispute**) and providing details of it (the **Notice of Dispute**).
- 20.3 The parties must endeavour to settle the Dispute by:
- first, having duly authorised representative of each party negotiate in good faith for a period of not less than 5 Business Days to resolve the Dispute; and
 - failing resolution pursuant to sub-clause (a) above, by mediation to be conducted by a mediator independent of the parties appointed by agreement of the parties or, failing agreement within 10 Business Days of receiving the Notice of Dispute, by a person appointed by the Chair of the Resolution Institute for Western Australia (**Mediation**).
- 20.4 The mediation rules of the Resolution Institute shall apply to the Mediation.
- 20.5 It is a condition precedent to the right of either party to arbitrate or litigate the Dispute that it has first complied with the Mediation process.

20.6 Despite any Dispute and Mediation pursuant to this clause 20, each party must continue to perform its obligations under this Agreement.

21. General

21.1 The Agreement may only be amended by agreement of the parties in writing.

21.2 Neither party may assign or otherwise deal with this Agreement or any right under it without the prior written consent of the other party, not to be unreasonably withheld.

21.3 The Supplier may not subcontract to any person the performance of any of its obligations under this Agreement without the written approval of Leichhardt which must not be unreasonably withheld.

21.4 A notice, demand, consent, approval or communication under this agreement (**Notice**) must be in writing, in English and signed by a person duly authorised by the sender and hand delivered or sent by prepaid post, courier or email to the recipient's address for Notices specified in the Purchase Order, as varied by any Notice given by the recipient to the sender.

21.5 The relationship between the parties shall be that of principal and independent contractor and this Agreement does not create a relationship of employment, agency or partnership between the parties.

21.6 A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

21.7 Clauses 3, 5, 6, 9, 11, 12, 13, 14, 15, 16, 17, 18, 20 and 21 and any provision of the Agreement which expressly or by implication from its nature is intended to survive termination will survive the termination of this Agreement.

21.8 This Agreement is governed by the law applicable in Western Australia and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Western Australia.

21.9 Sub-clauses 21.10 and 21.10(d) applies only if the Supplier enters into this Agreement as a trustee of a trust.

21.10 If applicable, the Supplier as trustee of a trust, in relation to this Agreement:

- (a) is liable both personally, and in its capacity as trustee of that trust;
- (b) must not assign, transfer, mortgage, charge, release, waive, encumber or compromise its right of indemnity out of the assets of that trust, but retain and apply such indemnity only towards meeting its obligations under this Agreement;
- (c) must not retire, resign nor by act or omission effect or facilitate a change to its status as the sole trustee of that trust without prior written consent of Leichhardt; and
- (d) the Supplier represents and warrants that:
 - (i) the trust has been duly established and currently exists;

(ii) it is the duly appointed, current and only trustee of that trust;

(iii) as trustee it has the power and authority in its own right and as trustee of that trust to enter into and perform its obligations under this Agreement;

(iv) it has an unqualified right of indemnity out of the assets of that trust in respect of its obligations;

(v) there is no conflict of interest by the trustee entering into this Agreement;

(vi) no breach of the relevant trust deed exists or would arise by entering into this Agreement;

(vii) no beneficiary under that trust is presently entitled to the distribution of any of the capital of the trust;

(viii) no resolution has been passed or direction been given by the beneficiaries for the winding up or termination of that trust or distribution of the property of that trust; and

(ix) it is not aware of any revocation of its obligations to act as trustee.