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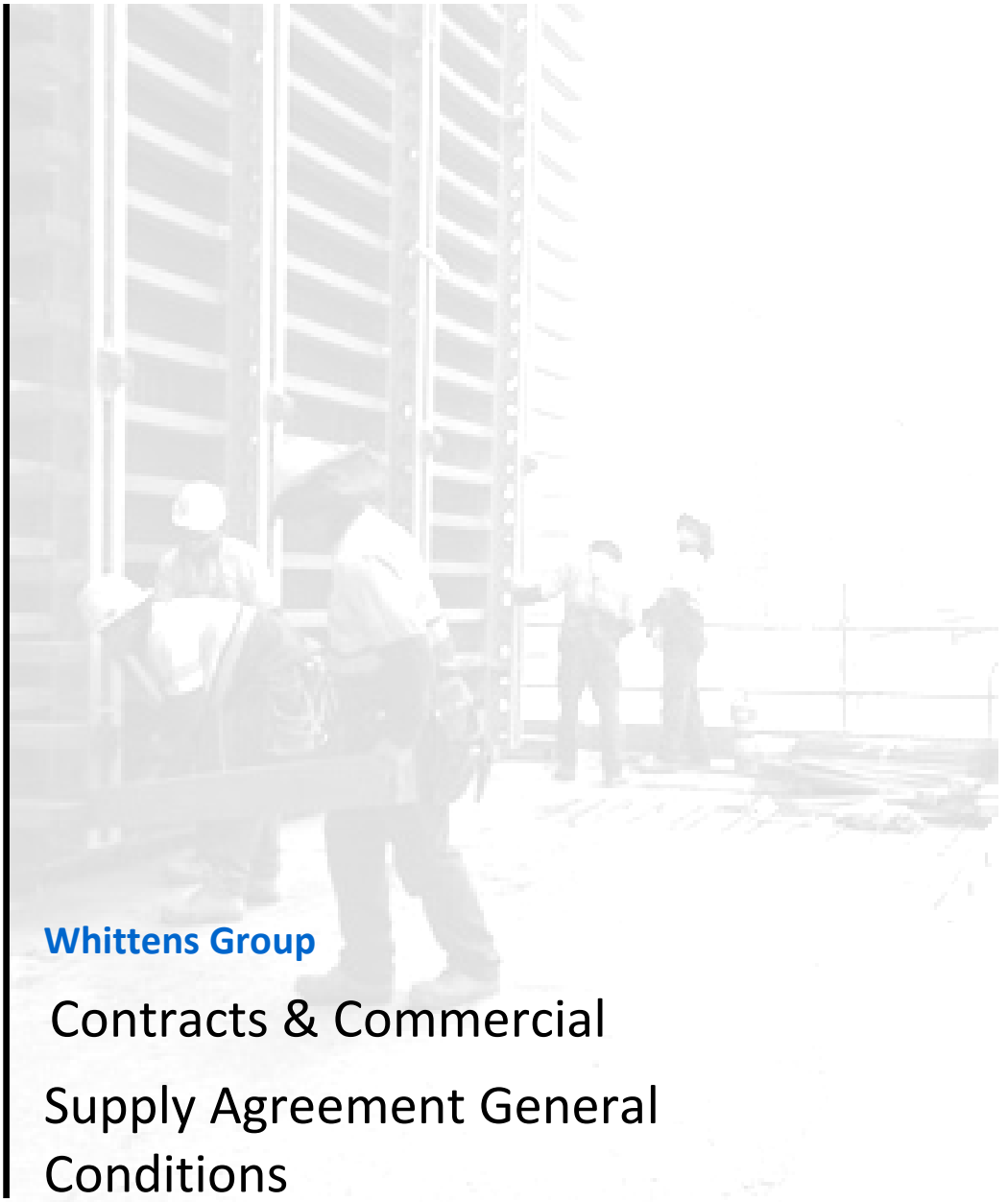
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Whittens Group

Contracts & Commercial

**Supply Agreement General
Conditions**

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Rev	Date	Description / Comments	Prepared By	Approved By
0	26/03/2014	Issued For Use	Kevin Burgoyne	Adam Goldsmith

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Revision History		
Rev	Date	Detailed Description
A	24/03/2014	Issued for review
0	26/03/2014	Issued for use

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This is the Agreement referred to in the Purchase Order. This Agreement comprises:

1. The Purchase Order and any requirements in the Purchase Order
2. The Supply Agreement General Conditions
3. Any Special Conditions
4. Particulars
5. Annexures (if any)
 - a. Contact details at delivery point
 - b. Transport requirements

1. Term

The Term of this Agreement is the Fixed Term, commencing on the Commencement Date and concluding on the End Date, unless terminated earlier in accordance with this Agreement

If the Term expires or is otherwise terminated, the terms and conditions set out in this Agreement will continue to apply to all Products supplied by you to us until a new agreement is signed by both Parties.

2. Your Obligations

2.1. You must:

- a. provide the Products in strict accordance with this Agreement;
- b. deliver the Products to our Relevant Delivery Point on or before the Relevant Delivery Date, and in any event deliver all Products by the End Date;
- c. use all reasonable endeavours to overcome any delays (howsoever caused) to ensure an uninterrupted supply of the Products to us;
- d. when required by us for a Product, provide materials safety data sheets (“MSDS”) and any other certification (as reasonably requested by us) for each delivery of the Product;
- e. maintain proper business, accounting, financial and other records reasonably required by us.

2.2. You must ensure that the Products:

- a. are new and of merchantable quality;
- b. are suitably packaged and delivered to our Relevant Delivery Point without Damage;
- c. are fit for their intended purpose;
- d. meet or exceed all relevant industry standards;
- e. comply with all applicable Laws;

2.3. You must (and must ensure your employees, agents and subcontractors do) at all times when visiting Our Site or our Relevant Delivery Point:

- a. comply with safety, security and general site rules as may be specified by the Site Controller;
- b. not interfere with any of the activities conducted by us or any of our contractors; and
- c. comply with all reasonable directions and orders given by the Site Controller.

2.4. You agree that you must not knowingly be a party to any matter or thing, nor the doing of any act, that is prejudicial to our goodwill, commercial reputation or overall public image.

2.5. Where you have agreed to supply Consignment Products, you will maintain sufficient stocks (as nominated by us from time to time) of such Products at Our Site, so as to meet our day to day requirements.

2.6. You will, at your cost, replace any Product that is Damaged, regardless of whether we have previously accepted delivery of the Product or not.

3. Purchase Orders

3.1. Despite anything to the contrary in this Agreement, no Products are to be supplied under this Agreement until we have issued you with a Purchase Order:

- a. referencing this Agreement and detailing the actual Products to be supplied; or
- b. not referencing this Agreement, but detailing the Products (of a type similar to or of the same nature as the Products detailed in the Particulars) and the date of supply falls within the Term of this Agreement.

3.2. Where a Purchase Order specifies a limit ("**Not to Exceed**") on the value of Products to be supplied, prior to reaching the limit you shall advise us and you shall not continue to supply the Products over that limit. If we wish you to continue to supply the Products (or some of the Products) we will issue a new Purchase Order or amend the Not to Exceed limit of the existing Purchase Order.

3.3. You agree that you will not be entitled to any payment for any amount that exceeds the Not to Exceed limit of a Purchase Order.

4. Inspection and Information

4.1. You must immediately notify us of:

- a. ("**Notice of Performance**") any and all matters relating to your capacity or ability to supply the Products of which you become aware which could have a material impact on your ability to supply the Products;
- b. ("**Notice of Delay**") an event that is likely to cause a delay to the delivery of the Products by the Relevant Delivery Date, setting out the cause of the delay and stating a reasonable period by which you believe the actual delivery date will be achieved; and
- c. ("**Notice of Breach**") any breach by you of any obligation under this Agreement.

4.2. You must within 7 days of a request by us:

- a. give us such reports on the performance of the Products as we reasonably request;
- b. give us access to any records you are required to keep under this Agreement; and
- c. provide us with such other information as may be required to verify a payment claim

5. Your Representative

5.1. You must appoint, and may replace, an employee or officer as Your Representative to manage the supply of the Products for the Term with responsibilities including:

- a. providing reports and information to, and answering queries from, us in respect of this Agreement;
- b. attending meetings relating to this Agreement;
- c. representing you in relation to matters relating to this Agreement; and
- d. being available at all times to respond to directions, requests and communications from us and any relevant authority.

5.2. You are responsible for all acts and omissions of Your Representative under this Agreement.

6. References

6.1. You must:

- a. comply with all workers' compensation Laws in respect of your employees and you must obtain and maintain all insurances under and pay all amounts required by that Law and further ensure your insurance policy has a principal indemnity and waiver clause for our benefit;
- b. effect and maintain at your own expense:
 - (i) a public liability and product liability insurance policy for not less than the amount specified in the Particulars for each claim;
 - (ii) an insurance policy covering all Products (for physical damage at replacement value) until title of the Product has passed to us in accordance with clause 11.1 or 11.2 (as the case may be), notwithstanding that the Product may be on Our Site or at our Relevant Delivery Point or that we may have paid for the Product;
 - (iii) motor vehicle third party liability insurance in respect of all motor vehicles used on Our Site or at our Relevant Delivery Point; and

- (iv) any other insurances relevant to carrying out the business of supplying the Products as set out in the Particulars; and
 - c. prior to the Commencement Date, immediately following renewal and within 7 days upon request by us, provide us with insurance certificates of currency and any other evidence of such insurances reasonably required by us to verify your compliance with clauses 6.1(a) and (b); and
 - d. advise us immediately of any material change or cancellation of any of the insurances required under clause 6.1(b).
- 6.2. If requested by us, you must make and pursue a claim under your insurance policies in circumstances where:
- a. there are reasonable prospects of the claim succeeding; and
 - b. the money could be applied to rectify any breach of this Agreement.
- 6.3. You shall, unless already paid for by you, apply the proceeds received from insurance to rectify any breach of this Agreement or remedy any insured incident.

7. Environment and Health & Safety

- 7.1. Without limiting the generality of clause 2.2(e), you must comply with, and ensure that your employees, agents and subcontractors comply with:
- a. all applicable environmental and occupational health and safety Laws and all Australian Standards which apply to the Products;
 - b. all safety, health and environmental guidelines, rules and procedures provided to you by us in relation to Our Site or our Relevant Delivery Point; and
 - c. any induction requirements in relation to Our Site or our Relevant Delivery Point advised by us.
- 7.2. You undertake to clean up and remove, at your costs, pollutants, contaminants or any other waste on any premises caused or contributed to by you (or your subcontractors) arising out of the provision of the Products.

8. Our Obligations

- 8.1. We must:
- a. provide sufficient access to our Relevant Delivery Point for you to make deliveries of the Products;
 - b. pay you the Price in accordance with clause 12; and
 - c. ensure that you have reasonable access to Our Representative.
- 8.2. We have no responsibility to you or any person employed by you in respect of remuneration, annual or sick leave, long service leave, public holidays, redundancy payments or any other similar benefits under any Law.
- 8.3. We must appoint, and may replace, Our Representative for the Term.
- 8.4. Unless this Agreement expressly provides otherwise:
- a. any right exercisable by us may be exercised by Our Representative; and
 - b. any consent or approval required from us may be obtained from Our Representative.

9. Variations

- 9.1. This Agreement shall not be amended except as allowed for under this agreement.
- 9.2. The Products or the timing, manner or destination of their delivery may only be varied:

- a. by a direction from Our Representative;
- b. by agreement between the Parties; or
- c. by you, when a change in Law necessitates a change to the Products to ensure compliance with the Law, ("Variation").

9.3. A direction under clause 9.2(a) may:

- a. be written or oral (but where it is an oral direction, it must be confirmed in writing within 48 hours);
- b. be to alter, amend, omit, add to, re-sequence, re-schedule or otherwise vary any of the Products or the timing, manner or destination of their delivery; and
- c. must state a time and date at which the Variation is to become effective,
- d. and you must carry out and be bound by any such Variation.

9.4. Before you carry out a Variation under clause 9.2 you must:

- a. provide to us a reasonable estimate of the impact on the Price and or the Relevant Delivery Date of such a Variation;
- b. when requested by us, provide evidence supporting the estimate; and
- c. where the Variation is necessitated by a change in Law, provide evidence of the change.

9.5. No Variation issued in accordance with this Agreement shall impair or invalidate this Agreement.

9.6. A Variation may involve the omission of a Product or Products or any part or parts of any Product or Products (including the entire remainder of Product or Products to be delivered). You acknowledge and agree that we may engage others to supply that Product, Products or any part or parts so omitted. You further acknowledge that any one or more omission will not constitute a basis to allege that we have repudiated this Agreement notwithstanding the extent or timing of the Variation.

9.7. If a Variation results in a reduction of the time required for delivery of the Products, Our Representative may determine a reasonable reduction and revise the Relevant Delivery Date, the End Date or both by notice to you.

9.8. The rate or price for each Variation must be determined by:

- a. the rates or prices detailed in this Agreement;
- b. the rates or prices detailed in the Purchase Order (which relates to the Products being varied);
- c. by agreement between the Parties; or
- d. where no agreement can be reached, a fair and reasonable rate or price must be made by us, in that descending order.

9.9. You are not entitled to any payment (pursuant to this Agreement or otherwise at common law or equity) in relation to any Variation unless:

- a. it is a Variation pursuant to clause 9.2; and
- b. you have complied with clause 9.4.

10. Extensions of Time

10.1. Within 7 days of receiving a Notice of Delay, Our Representative shall make an assessment as to an Extension of Time ("EOT") and may (at their sole discretion);

- a. grant the time requested;
- b. grant a lesser time; or
- c. refuse to grant an extension.

10.2. Where a delay is caused by an act, omission, breach or default by:

- a. us, and an EOT is granted, you will not be entitled to any other form of compensation or to make any other claim whatsoever;
- b. us, and an EOT is not granted, you will be entitled to claim delay costs, but only where those delay costs are directly related to the employment of additional resources required to meet the Date for Completion, and such costs are reasonably advised in the Notice of Delay; or
- c. you (or your subcontractors), and an EOT is nevertheless granted, you will not be entitled to any other form of compensation or to make any other claim whatsoever.
- d. If delay costs are allowed in b) above, you will only be entitled to those costs if the Date for Completion is met by you.

10.3. Notwithstanding any other provisions of this clause 10, Our Representative may at any time make a fair and reasonable extension to the Relevant Delivery Date or the End Date or both.

10.4. The sums payable under clause 10.2 are your sole entitlement to compensation for delay or disruption caused by us whether in breach of this Agreement or otherwise and are in substitution for and exclude your rights and remedies at common law (including the right to recover damages for breach of this Agreement or otherwise).

11. Price, Title & Risk

11.1. Title and risk to the Products (other than Consignment Products) does not pass to us until:

- a. we take delivery of the Products; and
- b. we inspect and accept the Products.

11.2. Title and risk of Consignment Products does not pass until:

- a. we take the Products from its designated consignment location;
- b. we inspect and accept the Products.

All costs associated with Consignment Products, until transfer of ownership occurs, rest with you.

11.3. The Products will be supplied by you to us for the Price.

11.4. The Price is as specified in the Particulars and is exclusive of GST, but includes all:

- a. Taxes (other than GST);
- b. delivery to our Relevant Delivery Point;
- c. of your obligations under this Agreement;
- d. matters and things necessary for the supply of the Products; and
- e. your costs to replace Damaged Products (in accordance with clause 2.6), and you are deemed to have satisfied yourself as to the correctness and sufficiency of the Price.

11.5. The Price:

- a. shall not be varied except in accordance with this Agreement; and
- b. is not subject to escalation or any rise or fall unless specified in the Particulars.

11.6. You are responsible for the payment of all Taxes in a prompt and timely manner and indemnify us against all Taxes arising from, without limitation:

- a. your engagement; or
- b. you, or any of your employees, being deemed to be our employees for the purposes of any Commonwealth or State law.

11.7. If GST is imposed on any supply made under this Agreement by one Party ("the supplying party") to another Party ("the receiving party") and the consideration payable or to be provided for the supply under any other clause in this Agreement is not expressed to be inclusive of GST, the receiving party must pay, in addition to and at the same time as any GST exclusive consideration is payable or to be provided for the supply, an additional amount calculated by multiplying the value of that GST exclusive consideration (without deduction or set off) by the prevailing GST rate.

11.8. The receiving party is not required to pay any amount of GST to the supplying party unless the supplying party has made demand for payment by means of a Tax Invoice.

11.9. If the amount of GST recovered by the supplying party from the receiving party differs from the amount of GST payable at Law by the supplying party in respect of the supply, the amount payable by the receiving party to the supplying party will be adjusted accordingly.

11.10. Where one Party ("payer") is liable to reimburse another Party ("payee") for any expenditure incurred by the payee ("Expenditure"), the amount reimbursed by the payer shall be the GST exclusive Expenditure plus any GST payable by the payer to the payee pursuant to clause 11.4.

12. Payment

12.1. Upon Full Delivery of the Products under this Agreement, or where the duration of the Supply exceeds 1 month, at the end of each month, you shall deliver to Our Representative an invoice for payment of Products delivered, supported by evidence of the amount due ("Claim"), and shall:

- a. be in the form we determine;
- b. be in Australian dollars;
- c. include reference to this Agreement and the relevant Purchase Order; and
- d. where GST is payable, be a Tax Invoice.

We may reject any Claim, or part of a Claim, where relevant supporting documentation is not provided.

12.2. We must make payment within 35 days after the end of the month in which the Claim is received by Our Representative.

12.3. Without prejudice to any other rights, we may deduct from any moneys which may be, or become, payable to you under this Agreement (including security), any money which may be or become payable from you to us under this Agreement. Nothing in this clause affects our right to recover from you the whole of the debt or any balance that remains owing after any such deduction.

13. Indemnities

13.1. Except to the extent caused by us or our employees, you are liable for and indemnify us against any liabilities, claims, proceedings, judgments, damages, obligations, costs and expenses of any nature, arising in any manner out of your acts or omissions, or those of your employees, agents or subcontractors, whether in tort, contract or otherwise, including:

- a. personal injury or the death of any person; and
- b. loss of or damage to any property.

13.2. It is not necessary for us to incur any cost or expense or make any payment before enforcing a right of indemnity conferred by clause 13.1.

13.3. You must indemnify us against penalties, losses or damage to the extent incurred by us as a result of you breaching your obligations under this Agreement to comply with all applicable Laws.

13.4. The indemnities provided in accordance with clauses 13.1 and 13.3 survive the termination of this Agreement.

13.5. You agree to release us from all claims and demands whatsoever which you or your subcontractors may have against us arising out of the contamination or pollution of any property, occupied land or premises, or the environment caused or contributed to by you or your subcontractors.

14. Confidentiality

14.1. Each Party undertakes that it will not, either during the Term or at any time thereafter (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 the terms of this Agreement.

14.2. Nothing in this Agreement prohibits disclosure of information which:

- a. is in the public domain;
- b. after disclosure to a Party becomes part of the public domain otherwise than as a result of the wrongful act of that Party;
- 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; or
- d. is required to be disclosed by Law or any government or governmental body, authority or agency having authority over a Party.

14.3. The obligations of this clause 14 survive the termination of this Agreement.

14.4. The terms of this Agreement may be disclosed to a bona fide prospective purchaser of a Party or the business of that Party provided that such bona fide prospective purchaser agrees to keep the terms of this Agreement confidential in accordance with this clause 14.

15. Intellectual Property

15.1. We acknowledge that you remain the owner of all Background IP.

15.2. You grant us a non-exclusive, irrevocable, royalty free licence to use all Background IP to the extent necessary to enable us to exercise rights in the Project IP.

15.3. You acknowledge and agree that all Project IP vests in us and becomes our property as and when created and you hereby assign all rights, title and interest in and to the Project IP to us (including any Project IP created prior to or after the date of this Agreement).

15.4. We grant you a non-exclusive, non-transferable, revocable licence to use the Project IP for the sole purpose of providing the Products.

15.5. You must not disclose, reproduce, use or otherwise deal with the Project IP, or allow any other person to do the same, for any purpose other than to provide Products pursuant to this Agreement.

15.6. You warrant that:

- a. the provision of the Products does not and will not infringe the rights (including Intellectual Property Rights) of any third party;
- b. you will, at no further cost to us, procure all licences and consents to use any Intellectual Property Rights of a third party which are necessary to provide or use the Products;
- c. the Project IP does not and will not infringe any rights of third parties (including any Intellectual Property Rights); and
- d. you have the right to assign all Project IP to us in accordance with clause 15.3.

15.7. You agree, and you will procure the agreement of each author, that we, in our absolute discretion:

- a. need not identify you or any author as the author of the Project IP; and
- b. may:
 - (i) materially distort, destroy, mutilate, alter or in any other way change;
 - (ii) add to, delete from, retitle; and
 - (iii) reproduce, publish, copy or adapt,

the Project IP (or a substantial part of or adaptation of it) in any way we see fit in any medium and in any context and with or without other text, data or images.

15.8. You agree that any subcontract you enter into in relation to this Agreement will contain a condition that the subcontractor agrees to assign to us all Intellectual Property Rights in any Project IP created by it for the purposes of this Agreement.

15.9. You agree to notify us as soon as you become aware of any suspected, threatened or actual infringement of any Intellectual Property Rights in the Project IP and to provide all reasonable assistance in defending against such infringement.

15.10. You agree to provide all reasonable assistance we may request to protect the Intellectual Property Rights in the Project IP.

The obligations in this clause 15 survive the termination of this Agreement.

16. Liability Cap and Consequential Loss

16.1. We (nor Our Representative) are not liable to you under this Agreement, or in law of tort (including negligence), statute, in equity or otherwise for any kind of indirect or consequential loss or damage arising out of or in connection with this Agreement.

17. Suspension or Termination

17.1. We may suspend or terminate (in whole or in part) this Agreement, any Purchase Order or the supply of any of the Products, by notice to you.

17.2. You may suspend or terminate this Agreement after 7 days written notice to us if we are in breach of clause 12.2 and do not remedy the breach within 7 days of your notice, except with respect to any payment or portion that we dispute under clause 12.3 or clause 18.

17.3. Upon suspension or termination, you must immediately:

- a. cease the part, or the whole, of the Agreement, Purchase Order or Product being suspended or terminated, as the case requires;
- b. take all available steps to mitigate any loss resulting from suspension or termination;
- c. comply with any directions from Our Representative including to:
 - (i) protect property in your possession in which we have or may acquire an interest;
 - (ii) demobilise persons, vehicles, equipment and other things;
 - (iii) assign to us all rights and benefits under contracts with third parties; and
 - (iv) deliver to us any Documentation produced by you under this Agreement, whether in the course of preparation or completed by you at the date of suspension or termination, which have not been supplied to us.

17.4. We may make full use of all Documentation prepared by you (or any subcontractor employed by you) under this Agreement, regardless of any dispute and you hereby waive any right of lien or similar right which might be alleged to otherwise attach to the Documentation.

17.5. You will only be entitled to seek reimbursement from us for extra costs necessarily and reasonably incurred by you as a result of the suspension, except where the suspension was directed as a result of a Defect in the Product or an act or omission of you or your employees, agents or subcontractors.

17.6. You must recommence the supply of the Products:

- a. (suspended by us under clause 17.1) immediately (or at a time directed by the notice) following notice from us to recommence supply; or
- b. (suspended by you under clause 17.2) immediately following receipt of payment of the monies the subject of the suspension.

17.7. If either Party terminates this Agreement, we will only be liable for payment for the Products delivered to us upto the date of termination and for extra costs necessarily and reasonably incurred by you as a result of the termination.

17.8. It is a condition precedent to any payment to you of any outstanding amount as at the date of termination that you comply with your obligations under clause 17.3.

17.9. Any termination of your appointment under this Agreement will not prejudice or affect the accrued rights, claims or liabilities of either Party under this Agreement.

18. Dispute Resolution

- 18.1. Each of the Parties must use their reasonable endeavours to co-operatively resolve a dispute.
- 18.2. If a dispute arises, the dispute must be referred to Your Representative and Our Representative for resolution.
- 18.3. If the dispute is not resolved within 10 days of such referral, the dispute must be referred to a Panel for resolution. Each Party must nominate their respective Panel representatives within 3 days of the referral to the Panel in accordance with this clause.
- 18.4. If a dispute is referred to the Panel in accordance with clause 18.3, the Panel will meet to resolve the dispute unless the Panel agrees to resolve the dispute without the need for a meeting.
- 18.5. The Panel will determine its own procedures for meetings. Decisions of the Panel may only be made by unanimous agreement of the members of the Panel. Any decision of the Panel will be final and binding on the Parties.
- 18.6. Either Party may commence legal proceedings only if the dispute has been referred to the Panel in accordance with clause 18.3 and:
- a. the Panel does not meet within 10 days of such referral unless the Panel decides that there is no need for a meeting in accordance with clause 18.4; or
 - b. the Panel fails to resolve the dispute within 20 days of such referral.
- 18.7. Prior to the resolution of a dispute, the Parties must continue to perform their respective obligations under this Agreement.
- 18.8. Nothing in this clause shall prejudice the right of a Party to seek urgent injunctive or declaratory relief.

19. Representations and Warranties

- 19.1. You represent and warrant to us that:
- a. you have good title to, and are the sole beneficial owner of, the products supplied to us under this Agreement;
 - b. as at the date of this Agreement you are not aware of any claim for infringement of Intellectual Property Rights of the breach of any obligation of confidence, arising out of the manufacture, sale or use of the Products and will immediately notify us if such a claim is made;
 - c. you have the right, power and authority to enter into and perform your obligations in accordance with this Agreement;
 - d. all corporate and other necessary action has been taken to authorise the signing and performance of this Agreement; and
 - e. this Agreement is valid and legally binding on you in accordance with the terms of this Agreement.
- 19.2. You warrant that the Products:
- a. are new (unless otherwise specified by us in writing) and of merchantable quality;
 - b. will be free from defects in design, materials and workmanship;
 - c. will be fit for purpose;
 - d. will meet any relevant specifications and standards normally applied to such Products or the Specifications and Standards required by us under this Agreement; and
 - e. where not manufactured by you, will meet the current specifications of the original manufacturer.

20. No Waiver

20.1. A power or right created by us in accordance with this Agreement may not be:

- a. waived except in writing signed by us granting the waiver; or
- b. varied except in writing signed by us.

20.2. The failure to exercise or delay in exercising any power or right by us does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right.

21. Assignment & Subcontracting

21.1. We may assign our rights and/or obligations under this Agreement at any time and we shall give you notice of any such assignment as soon as is practicable.

21.2. You may not assign your rights and/or obligations under this Agreement without our prior written consent (such consent may be withheld or given subject to conditions in our absolute discretion).

21.3. Subject to our prior written consent, you may subcontract part of your obligations under this Agreement, but you shall not be entitled to subcontract the whole of your obligations.

21.4. Subcontracting shall not relieve you from any liability or obligation under this Agreement. You shall be liable to us for the acts and omissions of your subcontractors (and their employees, agents and subcontractors) as if they were your acts or omissions.

22. Notices

22.1. Any notice, approval, consent or other communication in relation to this Agreement must be:

- a. in writing;
- b. marked for the attention of:
 - (i) in the case of a notice to us, Our Representative; and
 - (ii) in the case of a notice to you, Your Representative; and
- c. left at or sent by prepaid ordinary post to the last notified address of the Party or sent by facsimile to the last notified facsimile number of the Party.

22.2. A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.

22.3. If posted in Australia, a letter is taken to be received on the second day after posting. If posted overseas, a letter is taken to be received on the seventh day after posting.

22.4. A facsimile is taken to be received at the time shown in a transmission report by the machine which indicates that the whole facsimile was sent.

23. Further Assistance

Each Party agrees, at its own expense, at the request of the other Party, to do everything reasonably necessary to give effect to this Agreement and to the transactions contemplated by it, including the execution of documents.

24. Severability

Any provision in this Agreement which is invalid or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent only of such invalidity or unenforceability and will not invalidate the remaining provisions of this Agreement.

25. Relationship Between the Parties

- 25.1. The relationship between the Parties is that of principal and independent contractor.
- 25.2. You must ensure that you do not represent yourself, and your employees or agents do not represent themselves, as employees or agents of us.

26. These Terms are Exclusive

- 26.1. By executing this Agreement you agree to be bound by the terms in this Agreement.
- 26.2. Except as maybe specifically provided in this Agreement, any terms and conditions contained in or relating to any other documents, including any of your documents, in respect of the Products are excluded.
- 26.3. All previous communications (whether in writing or not), except to the extent expressly incorporated into and forming part of this Agreement, shall have no effect.
- 26.4. Any Purchase Order, as provided for under clause 3.1, placed by us upon you, shall form part of and be subject to the terms and conditions of this Agreement, and you agree to carry out the requirements of any such Purchase Order in accordance with this Agreement.

27. Special Conditions and Order of Precedence

- 27.1. The special conditions contained in the Particulars apply to and form part of this Agreement.
- 27.2. If there is any conflict, ambiguity, inconsistency or discrepancy between any term or obligation in the documents comprising this Agreement, the in order of precedence is:
- 1st any Special Conditions in the Particulars;
 - 2nd these Terms and Conditions;
 - 3rd the Particulars; and
 - 4th any Purchase Order issued under clause 3.1.

28. Governing Law and Jurisdiction

- 28.1. This Agreement will be governed by the laws of the State of Western Australia.
- 28.2. The parties submit to the non-exclusive jurisdiction of the courts of the State of Western Australia and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Agreement.

29. Civil Liability Act Excluded

- 29.1. All the provisions in Parts 1A, 1B, 1C, 1D, 1E and 1F of the Civil Liability Act 2002 are expressly excluded and do not apply to anything arising out of this Agreement.

30. Definitions and Interpretations

30.1. In this Agreement, unless the contrary intention appears:

Agreement means the agreement comprising the Particulars, these Terms and Conditions, and Special Conditions, anything referred to in the Purchase Order, and any Schedules or Annexures.

Background IP means your Intellectual Property Rights which:

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

Capped Amount means the amount specified in the Particulars.

Claim has the meaning given in clause 12.1

Commencement Date means the date of commencement of this Agreement as set out in the Particulars.

Consignment Products means the products as specified in the Particulars or relevant Purchase Order that you will hold stock of at Our Site on a consignment basis for us to draw from as and when required.

Damage or Damaged means any damage, fault, omission or other defect in the Product (other than damage caused by us, our employees, agents or subcontractors) that renders the product dangerous (in any way), unlikely to meet its standard performance requirements or product life, unfit for purpose or otherwise makes the Product not comply with clause 2.2.

Date for Completion means the date on which you are to complete the Services as specified in a Purchase Order for those Services.

Documentation means all documentation which you are required to prepare, produce or recommend (including any produced by your subcontractors) under this Agreement including any plans, drawings, reports, models, prototypes, equipment, information and any other data stored or captured by any means.

End Date means the date on which this Agreement ends as set out in the Particulars.

Fixed Term means the term between the Commencement Date and the End Date.

Full Delivery means the total quantity of Products that have been ordered by us on a Purchase Order have been delivered to our Relevant Delivery Point and have been accepted by us in accordance with this Agreement.

GST means a goods and services tax or any similar tax which is imposed in Australia and has effect during the term of this Agreement.

Intellectual Property Rights includes the protected rights attaching to inventions, patents, registered designs, trademarks, copyright, circuit layouts and confidential information.

Law mean any statute decree, circular, rule or regulation by a government authority whether now or at any time in future in effect.

Notice of Delay has the meaning given in clause 4.1(b).

Our Representative means our representative appointed for the purpose of clause 8.3. Our Representative, as at the commencement of this Agreement, is the person nominated in the Particulars.

Our Site means the land or place specified in the Particulars.

Panel means the panel established in accordance with clause 18.3 which consists of 2 nominated senior representative of each of the Parties.

Particulars means the section of this Agreement headed "Particulars".

Parties' means the parties to this Agreement specified as the Principal and the Contractor in the Particulars.

Price means the price payable for the Products as specified in the Particulars or any relevant Purchase Order.

Products means the products as specified in the Particulars or relevant Purchase Order and includes any Variations.

Project IP means all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purposes of or in connection with the provision of the Services or this Agreement (including all Intellectual Property Rights developed by you in providing the Service and any Intellectual Property Rights in the technical materials provided by us to you).

Purchase Order means a document entitled 'Purchase Order' issued by us to facilitate payment and authorise the supply of the Products under this Agreement. More than one Purchase Order may be issued under this Agreement.

Relevant Delivery Date means the date, as specified in the Particulars or relevant Purchase Order, on (or by which) you must deliver the particular Product.

Relevant Delivery Point means the place specified in the Particulars or relevant Purchase Order that a particular Product is to be delivered to. Products (whether the same or different) may have different Relevant Delivery Points.

Site Controller means the lawful occupier, or their authorised representative, of the land or premises in question.

Tax Invoice has the same meaning as in the A New Tax System (Goods and Services) Tax Act 1999 (Cth).

Taxes means taxes (including a GST) levies, imposts, deductions, charges, withholdings and duties (including stamp and transaction duties), together with any related interest, penalties, fines and other statutory charges.

Term means the term of this Agreement as set out in clause 1.1.

Us and **we** and **our** means the party named in the Particulars as the Principal.

Variation means a variation to the Services under clause 9.2.

You and **yours** mean the party named in the Particulars as the Contractor.

Your Representative means your representative appointed for the purpose of clause 5. Your Representative, as at the commencement of this Agreement, is nominated in the Particulars.

30.2. In this Agreement unless the contrary appears:

- a. a reference to this Agreement or another instrument includes any variation or replacement of either of them;
- b. the singular includes the plural and vice versa;
- c. the word person includes a firm, a body corporate, an unincorporated association or an authority;
- d. a reference to a person includes a reference to the person's executives, administrators, successors, substitutes (including persons taking by novation) and assigns;
- e. if a period of time is specified and dates from a given day or the day of an actual event, it is to be calculated exclusive of that day;
- f. a reference to a clause is a reference to a clause in this Agreement;
- g. a reference to a third person or a third party is a reference to a person who is not a party to this Agreement;
- h. "includes" in any form is not a word of limitation; and
- i. A reference to "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency.

30.3. Headings are inserted for convenience only and do not affect the interpretation of this Agreement.

31. Supply Agreement – Particulars

Item:	Details:
1. Principal:	Whittens Pty Ltd
2. Principal's Address for Notices:	Level 2, 76 Hasler Road Osborne Park WA 6017 (Postal address: P.O. Box 102, Osborne Park WA 6017) Facsimile: 1300 208 365
3. Our Representative:	Name: Position: Telephone: Email:
4. Our Site:	<i>[Insert the address/location/GPS reference of any (if applicable) of the Principal's Sites (e.g. Head Office, Mine, Port, Construction Camp) that the Contractor is required to perform any of the Services at. If the Contractor is not required to attend our site, write "No Access to Our Site"].</i>
5. Relevant Delivery Point:	<i>[Insert the address/location (if applicable) of the Principal's Relevant Delivery Point (e.g. Transport Agent, Head Office, Mine, Port, Construction Camp) where the Contractor is required to deliver the Products].</i> And as further detailed in any Purchase Order.
6. Contractor:	Name: ACN or ABN:
7. Contractor's Address for Notices:	[insert physical address and Postal Address (if different)] Facsimile:
8. Your Representative:	Name: Position: Telephone: Email:
9. Products:	<i>[insert or attach a full list of the Products to be provided under this Agreement, including: relevant Specifications; and relevant Standards]</i> and as further detailed in any Purchase Order.
10. Commencement Date:	<i>[insert the date this Agreement is to commence]</i>

Item:	Details:
11. End Date:	<i>[insert the date this Agreement is to end]</i>
12. Relevant Delivery Date:	<i>[insert the Relevant Delivery Date for each Product]</i> <i>and as further detailed in any Purchase Order.</i>
13. Price:	<p>The Price applicable to the Products is: <i>[insert the Price for each Product, or attach a full schedule of rates, applicable to the Products to be provided under this Agreement]</i> and as further detailed in any Purchase Order.</p> <p>Escalation or rise or fall: <i>[include escalation or rise or fall formula or attach a "Schedule - Price Adjustment"]</i></p>
14. Insurance:	<p>The Contractor is required to provide the following Insurances (with the minimum cover as shown):</p> <p>Public Liability: Minimum Cover: \$10 million.</p> <p>Product Insurance: Minimum Cover: Replacement Value of Products.</p> <p>Product Liability: Minimum Cover: \$10 million.</p> <p>Other Insurances: <i>[Detail other insurances and the minimum cover required]</i></p>
15. Special Conditions:	<p><i>[Insert any Special Conditions to apply, including any amendments to the Terms & Conditions. If there are no Special Conditions, write "Not Used".]</i></p> <p>Principal Supplied Items: <i>[consider including a list of all Principal Supplied Items, or attach a "Schedule of Principal Supplied Items" or delete if not applicable].</i></p>

32. Execution – When Contract Amount Exceeds \$1 Million

Executed by **Whittens Pty Ltd** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of Director

Signature of Company Secretary/Director

Full name of Director (BLOCK LETTERS)

Full name of Company Secretary/Director (BLOCK LETTERS)

Date

Date

Executed by **Contractor** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of Director

Signature of Company Secretary/Director

Full name of Director (BLOCK LETTERS)

Full name of Company Secretary/Director (BLOCK LETTERS)

Date

Date

33. Execution – When Contract is Below \$1 Million

Signed for and on behalf of **Whittens Pty Ltd** by its authorised representative in the presence of:

Signature of Witness

Signature of Authorised Representative

Full name of Witness (BLOCK LETTERS)

Full name of Authorised Representative (BLOCK LETTERS)

Address of Witness

Date

Date

Signed for and on behalf of the **Contractor** by its authorised representative in the presence of:

Signature of Witness

Signature of Authorised Representative

Full name of Witness (BLOCK LETTERS)

Full name of Authorised Representative (BLOCK LETTERS)

Address of Witness

Date

Date

Annexure A

Contact details at delivery point

Annexure B

Transport requirements

34. Records

Records will be stored, managed, retained, archived and disposed of in accordance with Whittens Record Management Procedure WG_QMS_SOP_002.