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**TERMS AND CONDITIONS  
(SUPPLY OF GOODS AND SERVICES)**

**1. OFFER AND CONTRACT**

1.1 All offers made by Civmec Construction & Engineering Pty Ltd and its Affiliate (**Civmec**) are subject to these Terms and Conditions, unless expressly agreed otherwise in writing and are open for acceptance for a period of thirty (30) days from the date of offer /tender submission. The issuance of Purchase Order by the Purchaser to Civmec for the supply of Goods and/or Services shall, in absence of any written reservations, be deemed acceptance of Civmec's offer.

1.2 These Terms and Conditions shall apply to all Goods and/or Services supplied by Civmec. The agreement between the Purchaser and Civmec evidenced by these Terms and Conditions and all other documents agreed upon in writing by the parties (including, without limitation, any schedules, specifications, annexures and drawings) is referred to in these Terms and Conditions as the "**Contract**".

1.3 The parties agree that any reference to the Purchaser's terms and conditions on the Purchase Order, or any form of document, shall not import those terms into the Contract, unless otherwise expressly agreed in writing and signed by an authorised representative of Civmec. Where additional terms or conditions do apply, these Terms and Conditions shall prevail in case of any inconsistency.

**2. CIVMEC'S WARRANTIES**

2.1 Civmec will ensure that Goods and/or Services supplied by it:

2.1.1 comply with the Purchaser's specifications under the Contract and all required statutory requirements and Australian Standards;

2.1.2 are supplied with a manufacturer's warranty to the extent that the manufacturer offers such a warranty in respect of the Goods.

2.2 All other express or implied warranties that may be applicable by operation of law are excluded to the fullest extent permitted by law.

**3. WARRANTY PERIOD**

3.1 The defect liability period (**DLP**) of the Goods and/or Services will commence from the delivery date and shall continue for a period of twelve (12) months from delivery, unless expressly agreed otherwise in writing on the letter of offer/tender submission. Any additional warranty provided by a manufacturer of product incorporated into the Goods and/or Services which Civmec has supplied will be assigned to the Purchaser on agreement with the manufacturer (if applicable).

3.2 During the DLP, Civmec will rectify or replace (as the case may be) defective Goods and/or Services, excluding:

(a) any interfacing between the Purchaser's equipment, Site, plant or design (unless expressly included as part of the Services under the Contract);

(b) ordinary wear and tear; and

(c) any damage which has been caused or contributed to by the Purchaser's negligence or acts or omissions.

3.3 If the Purchaser finds a Defect with the Goods and/or Services, the Purchaser must notify Civmec in writing of the Defect within seven (7) days of discovery of the Defect and must take all reasonable actions to prevent further damage.

3.4 Civmec will be responsible for the costs of actual rectification and/or replacement works only, and any other associated costs (including removal, travel or

transportation costs) shall be borne by the Purchaser.

3.5 If Civmec uses a subcontractor or supplier or other person to perform any work under the Contract, any work, labour and services carried out by such other person shall only be warranted by Civmec to the degree that the other person indemnifies Civmec.

**4. DELIVERY**

4.1 Civmec will deliver any of the Goods, and/or provide the Services at the Delivery Address by the Delivery Date.

4.2 Civmec shall use its best endeavours to supply all Goods and/or Services on time.

4.3 The Purchaser must provide Civmec access to the Site and possession of a sufficient portion of the Site to enable Civmec to properly supply the Goods and/or Services without interference. Civmec will be entitled to claim an extension of time and costs incurred as a result of any delay caused due by any interference of the Purchaser or others on Site and/or delay in access to the Site.

4.4 Where no Delivery Date or Delivery Address are agreed in writing, the Goods must be collected at the time and place indicated by Civmec. Late collection may result in storage fees becoming payable by the Purchaser to Civmec, notwithstanding that Civmec is under no obligation to store any Goods not collected for more than seven (7) days.

4.5 Civmec shall not be responsible for the loading or unloading of the Goods and gives no warranty in respect to the suitability of the Goods for transport, unless otherwise agreed in writing.

4.6 Civmec reserves the right to make a reasonable charge for storage of the Goods or any component of the Purchaser to be used in manufacture or supply of the Goods, if delivery instructions are not provided by the Purchaser within fourteen (14) days from a written request issued by Civmec.

**5. DELAYS**

5.1 The Purchaser shall reimburse Civmec all reasonable costs, including but not limited to overheads incurred by Civmec for any delays except for delays caused by Civmec itself.

5.2 If Civmec does not deliver the Goods and/or Services by the Delivery Date as a result of delay caused by Civmec, Civmec will pay liquidated damages to the Purchaser at the rate of 0.5% of the Purchase Price per week to a maximum of 5% of the Purchase Price in the aggregate. The Purchaser agrees that liquidated damages are a genuine and reasonable pre-estimate of Purchaser's Loss for delay arising out of the Contract; and shall be the Purchaser's exclusive sole remedy for any delay caused by Civmec. If liquidated damages are found to be unenforceable, the general damages for the delay caused by Civmec shall be capped at 5% of the Purchase Price.

**6. FORCE MAJEURE**

6.1 If performance by Civmec of any obligation under the contract is prevented, restricted or delayed by Force Majeure, then Civmec shall be excused from, and shall not be liable for, failure in performance to the extent of that prevention, restriction or delay, and the time for performance shall be extended accordingly as agreed by the parties.

6.2 If the supply of Goods and/or Services is delayed for more than ninety (90) days due to Force Majeure and the parties have not agreed upon a revised

basis for continuing the supply at the end of the delay, then either party may after that period and while the cause of non-performance still exists terminate the Contract by not less than twenty (20) Business Days' notice in writing to the other party.

## **7. INFORMATION AND DOCUMENTS**

7.1 The Purchaser will provide all information (including, without limitation, documents, data, methods, material, preliminary design, specific requirements, specifications, calculations, test results, as well as respond to any queries arising out of or in connection with the Contract) to enable Civmec to properly supply the Goods and/or Services.

7.2 The Purchaser shall be responsible for, and confirms the completeness and accuracy of, all information provided to Civmec. Civmec will not be liable to check or review any information provided by the Purchaser for the purpose of assessing completeness or accuracy.

7.3 Civmec will be entitled to claim an extension of time and any costs incurred as a result of any delay in provision of information by the Purchaser or others to Civmec or as a result of any information being inaccurate.

## **8. LATENT CONDITIONS**

Civmec will be entitled to claim an extension of time and reasonable costs directly incurred as a result of physical conditions affecting the Site, including artificial things but excluding weather conditions which differ materially from the physical conditions which Civmec reasonably anticipated at the time of submitting its offer.

## **9. VARIATIONS**

9.1 Civmec shall not be obliged to carry out any direction which Civmec reasonably considers constitutes a Variation, if the parties cannot agree to a price to perform the Variation. If Civmec carries out a Variation without prior agreement on the price, the Variation shall be calculated in accordance with the applicable rates and where no rates are applicable, on a cost plus 15% basis.

9.2 Civmec shall not be obliged to perform any Acceleration, due to changes in design, delivery schedule or the Purchaser's requirements, except for delays caused by Civmec itself or otherwise agreed by Civmec under a Variation.

## **10. SUBCONTRACTING**

Civmec may in its sole discretion subcontract all or any of the works to be performed in connection with the delivery of the Goods and/or Services.

## **11. PRICE**

The Purchaser shall pay Civmec the Purchase Price under the Contract. Unless otherwise stated in the offer(s) made by Civmec, the Purchase Price for the Goods and/or Services is based upon the information provided by the Purchaser being complete and accurate and excludes GST, any other applicable taxes, customs, excise and import duties, tariffs, fees, levies, charges, costs or expenses, transport, packing and insurance costs, overtime and other unforeseen costs, if any.

## **12. PAYMENT**

12.1 Unless otherwise agreed by Civmec, the Purchaser must pay for all Goods and any additional costs prior to the delivery of the Goods and Civmec shall not be obligated to supply the Goods prior to payment in full.

12.2 Civmec may require that the Purchaser provides security for payment or makes an advance

payment prior to the supply of the Goods and/or Services. Any invoices from Civmec are to be paid within thirty (30) days from the date of Civmec invoice and/or in any event prior to delivery of the Goods, unless parties agree otherwise in writing.

12.3 If the Purchaser fails to pay an amount due to Civmec under the Contract by the due date, it must pay Civmec interest on that amount at 6% per annum calculated daily (but excluding the due date until and including the date payment is made).

12.4 The Purchaser may not deduct from or set off against any monies which may be, or become, payable to Civmec any costs, expenses or damages which may become or are due from Civmec to the Purchaser, whether under or in connection with the Contract or otherwise.

## **13. RETURNED GOODS**

13.1 Civmec is not under any duty to accept Goods returned by the Purchaser. If Civmec agrees to accept returned Goods from the Purchaser, the Purchaser must return the Goods to Civmec at any place directed by Civmec and on such other terms as Civmec directs.

## **14. TITLE AND RISK**

14.1 Risk in the Goods passes to the Purchaser upon notification by Civmec that the Goods are ready for collection or delivery.

14.2 Property in the Goods passes to the Purchaser upon payment.

## **15. INTELLECTUAL PROPERTY**

15.1 Civmec retains all intellectual property and ownership rights of such in any intellectual property whether protected by statute, at common law or in equity, including any patent, invention, copyright or design right (whether or not registrable), in any design, specification, process, technique, software, know-how, trade secret, technical information, financial information, business method and confidential information, and other information relating to the Goods which is created or modified by Civmec during the Contract.

15.2 Civmec grants to the Purchaser a perpetual, irrevocable, non-exclusive, royalty free, transferable licence to use all intellectual property which is used or developed by Civmec, for the purpose of, or in connection with, the Goods and/or Services supplied under the Contract.

15.3 The Purchaser acknowledges that Civmec will not be responsible for any infringement of any intellectual property of the Purchaser that the Purchaser has in any components, material or documents, and Civmec will not be liable for any claim whatsoever due to Civmec's use of the Purchaser's intellectual property.

15.4 The Purchaser shall indemnify and hold harmless Civmec against and from any claim alleging an infringement of all intellectual property rights, moral rights and ownership rights in any information provided by the Purchaser to Civmec.

## **16. PERSONAL PROPERTY SECURITY ACT**

16.1 In this clause 16 words and expressions which are not defined in these Terms and Conditions but which have a defined meaning in the *Personal Property Security Act 2009* (Cth) (PPSA) have the same meaning as in the PPSA.

16.2 The Purchaser acknowledges that Civmec has a purchase money security interest in the Goods, including, but not limited to, where the Purchaser has not paid for the Goods in full prior to delivery.

16.3 The Purchaser acknowledges that, if Civmec

has rights and interest in proceeds derived from the Goods, such rights and interests constitute a security interest in such proceeds.

16.4 Civmec may register any security interest on the PPSA register in any manner it chooses (including by registering one or more financing statements in relation to its interest in the Goods, with such expiry dates as Civmec determines in its absolute discretion). The Purchaser must provide Civmec with any information Civmec requires for the purposes of giving effect to such registration.

16.5 For the purposes of section 157(3) of the PPSA, the Purchaser irrevocably and unconditionally waives its right to receive any notice from Civmec in connection with the registration of a financing statement or a financing change statement in respect of the Goods.

16.6 If section 95 or chapter 4 of the PPSA would otherwise apply to the enforcement of any security interests then those provisions are excluded, to the extent possible.

16.7 The Purchaser must take any steps (including provide information) Civmec reasonably requires to perfect or otherwise ensure the enforceability and priority of any security interest.

16.8 Neither the Purchaser nor Civmec will disclose information of the kind described in PPSA section 275(1), unless section 275(7) of the PPSA applies.

16.9 Until Civmec's security interest (whether perfected or not) is satisfied, the Purchaser agrees not to cause or allow a security interest of higher priority to be created in the Goods. If the Purchaser breaches this subclause, the Purchaser shall indemnify Civmec for any Loss suffered or incurred.

#### **17. LIABILITY AND INDEMNITY**

17.1 Notwithstanding any other provision of the Contract and to the full extent permitted at law, the parties shall be not liable for any consequential or indirect loss (including but not limited to loss of actual or anticipated profits, loss of opportunity, loss of contract, loss of use, loss of production, loss of goodwill and loss of revenue) suffered in connection with the Contract.

17.2 Notwithstanding any other provision of the Contract and to the full extent permitted at law, Civmec's total liability to the Purchaser arising out of, or in connection with, the supply of the Goods and/or Services for all Loss suffered or incurred, whether in contract or tort (including negligence), in equity, in restitution, by way of warranty or indemnity or under statute or howsoever arising at law, is limited to 10% of the Purchase Price, except where the damages are caused solely by the gross negligence or wilful default of Civmec.

#### **18. DEFAULT AND TERMINATION**

18.1 Civmec may withdraw its offer or terminate the Contract or reduce the scope of the Goods:

18.1.1 where the Purchaser is in breach of any of the Contract; or

18.1.2 where the Purchaser is a corporation and becomes insolvent, or has an administrator, controller or liquidator appointed under the *Corporations Act*, or has receivers or managers appointed to it; or

18.1.3 where the Purchaser, being an individual, is unable to pay its debts when they fall due or has a trustee in bankruptcy appointed;

18.1.4 where the Purchaser ceases or threatens to cease to carry on business; or

18.1.5 for Civmec's convenience, in which case Civmec's liability shall be limited to return of payment of

the Purchase Price for the Goods received prior to such termination.

#### **19. DISPUTE RESOLUTION**

19.1 If a difference or dispute between the parties arises in connection with the subject matter or interpretation of the Contract, including a dispute concerning a claim in tort, under statute, or on any other basis in law or equity available under the law governing the Contract, either party may by hand or registered post give the other party written notice of the dispute identifying and providing details of the dispute and marked as 'Dispute Notice'.

19.2 Within ten (10) Business Days of receipt of the dispute notice, representatives of the parties having authority to bind the parties shall confer to seek to resolve the dispute or agree on a method of doing so and whether that method shall be binding. If a resolution or method of resolution has not been agreed within twenty (20) Business Days of the receipt of the dispute notice, the senior management of the parties shall confer for the same purpose as the parties' representatives. All aspects of such conference(s) shall be privileged.

19.3 Neither party may institute legal proceedings in respect of any dispute unless a dispute notice has first been given and then only after a period of thirty (30) Business Days from receipt of such dispute notice has elapsed.

#### **20. GENERAL**

20.1 The Contract is governed by the law of Western Australia and the parties submit to the non-exclusive jurisdiction of those Courts.

20.2 Any waiver partly or whole of the terms of the contract will be valid only if in writing and signed by Civmec.

20.3 Any provision of the Contract that is prohibited or unenforceable, such unenforceability shall not invalidate the remaining provisions of the Contract nor affect the validity or enforceability of that provision.

20.4 These Terms and Conditions (which can only be waived in writing and signed by an authorised representative of Civmec) prevail over all conditions of the purchaser's order or other documents.

20.5 Nothing in these Terms and Conditions shall be read or applied so as to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by law and which by law cannot be excluded, restricted or modified.

#### **21. ANTI-BRIBERY AND CORRUPTION**

21.1 Civmec is committed to operating in a manner consistent with the laws of the jurisdiction in which it operates, including laws relating to anti-bribery and anti-corruption, including any statute, law, code, regulation or similar instrument in connection with the prohibition of bribery and corruption (including by virtue of the place of domicile or operations of Civmec and the Purchaser).

21.2 The Purchaser represents and warrants it complies with anti-bribery and anti-corruption legislation and that it has and maintains reasonable and effective anti-bribery and anti-corruption policies and procedures, such policies and procedures to be made available to Civmec for inspection on demand.

21.3 The Purchaser represents and warrants it has not and will not breach any anti-bribery and anti-corruption legislation in connection with the Contract.

21.4 If the Purchaser becomes aware of any breach or suspects a breach of anti-bribery and anti-corruption legislation in connection with the Contract, the Purchaser

must immediately notify Civmec in writing and provide reasonable details of such breach or suspected breach and provide reasonable access to information, books and records relevant to such breach.

If Civmec, acting reasonably, believes the Purchaser has breached anti-bribery and anti-corruption legislation in connection with the Contract, Civmec must give the Purchaser written notice of such. If the Purchaser, within thirty (30) days of that written notice, fails to show there is no reasonable basis to conclude a breach has occurred, Civmec may terminate the Contract without further notice to the Purchaser.

## 22. ANTI-SLAVERY

Civmec undertakes, warrants and represents that:

22.1 neither the Civmec nor any of its Personnel has:

22.1.1 committed an offence under the *MSA* (an "**MSA Offence**"); or

22.1.2 been notified that it is subject to an investigation relating to an alleged *MSA Offence* or prosecution under the *MSA*; or

22.1.3 is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged *MSA Offence* or prosecution under the *MSA*;

22.2 it shall comply with the *MSA* and the Modern Slavery Policy; and

22.3 it shall notify the Purchaser as soon as practicable in writing if it becomes aware or has reason to believe that it, or any of its Personnel have breached or potentially breached any of Civmec's obligations under this clause. Such notice will set out details of the circumstances concerning the breach or potential breach of the Civmec's obligations under the *MSA*.

## 23. DEFINITIONS

In these Terms and Conditions:

**Acceleration** means where Civmec is required to work overtime including night shifts, Saturdays, Sundays and holidays; furnish additional labour, supervision and equipment; and/or expedite the procurement or the manufacture of any Goods.

**Affiliate** means any company, corporation or other entity controlled by, in control of or under common control with, a party. For the purpose of this definition, "control" means the ownership, legally or beneficially, directly or indirectly, of fifty percent (50%) or more of the voting shares or membership interest of a company, corporation or other entity

**Business Days** means any day other than a Saturday, Sunday, public holiday; but excluding the period between 27 to 31 of December.

**Defect** means any aspect of the Goods and/or the Services not in accordance with this Contract, or which is damaged, faulty, or incomplete in workmanship or quality and **Defective** has an equivalent meaning.

**Delivery Address** means the address for delivery agreed in the Contract.

**Delivery Date** means the date for delivery of the Goods and/or performance of the Services stated in the Contract.

**Force Majeure** means an act of God, strike, lockout or other industrial disturbance, accident, act of the public enemy, war (declared or undeclared), terrorism, pandemic or epidemic, blockade, revolution, public riot, flood, earthquake, explosion, governmental restraint or action, industrial action, ionising radiations or contamination by radioactivity from any nuclear fuel or waste not caused by the Civmec, increment weather which prevents access to, or work at the Site, embargoes

or restrictions thereon or limitations upon the use thereof or delays in transportation and also includes the consequential effect of any of the events or things detailed above, or events otherwise beyond the reasonable control of Civmec.

**Goods** means goods, products, materials or equipment supplied by Civmec under the Contract and any agreed Variation (if any).

**Loss** means any loss, damage, expense, payment or liability, whether direct or indirect, and includes consequential loss, damage or expense (including but not limited to loss of actual or anticipated profits, loss of opportunity, loss of contract, loss of use, loss of production, loss of goodwill and loss of revenue).

**Modern Slavery Act (the MSA)** means *Modern Slavery Act 2018*.

**Modern Slavery Policy** means the Civmec's anti-slavery and human trafficking policy which is available at [www.civmec.com.au](http://www.civmec.com.au) (as amended from time to time).

**Personnel** means any officers, employees, agents or subcontractors of Civmec.

**Purchaser** means purchaser of Civmec's Goods and/or Services.

**Purchase Order** means the written order issued by or on behalf of the Purchaser for the supply of the Goods and/or the Services.

**Purchase Price** means the total price submitted by Civmec either as a lump sum fixed price, schedule of rates, cost plus or a combination of these as detailed under the Contract.

**Services** means all services performed by Civmec under the Contract and any agreed Variation (if any).

**Site** means the premises specified in the Contract.

**Terms and Conditions** means these terms and conditions for the supply of the Goods and/or Services by Civmec to the Purchaser, as amended or varied in writing by Civmec.

**Variations** means any increase or decrease in, or omission from or addition to, or change in the character or quality of, any part of the Goods and/or the Services or an acceleration or resequencing of the Goods and/or the Services.