

**PURCHASE ORDER
GENERAL TERMS AND CONDITIONS
(GOODS AND SERVICES)
FOR MRWA ROAD CONSTRUCTION PANEL CONTRACT**

Civmec agrees to purchase the Goods and/or Services from the Supplier and the Supplier agrees to supply the Goods and/or the Services to Civmec in accordance with the Contract.

1. DEFINITIONS

In these general terms and conditions:

Anti-corruption Laws means all laws prohibiting bribery and corruption which, by entering into the Contract, the Supplier agrees to comply with, including:

- 1.1.1 the Bribery Act 2010 (United Kingdom);
- 1.1.2 the Foreign Corrupt Practices Act of 1977 (United States); and
- 1.1.3 relevant prohibitions in the *Criminal Code Act 1995* (Cth) and in state criminal laws (Australia).

Apportionment Legislation means any legislation under which an apportionment may be made.

Business Day means any day other than a Saturday, Sunday, public holiday in Perth, Western Australia and the period between 22 December and 10 January (inclusive).

Claim means any claim, action, suit, proceeding or demand of any nature whether actual or threatened, arising out of or in connection with the Contract, or arising otherwise under law or in equity including by statute, in tort for negligence or otherwise, or for restitution.

Civmec means the entity stated in the Purchase Order.

Contract means the Purchase Order, these general terms and conditions and special conditions, if any.

Corporations Act means the *Corporations Act 2001*.

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

Delivery Address means the address for delivery stated in the Purchase Order or any location otherwise directed by Civmec in writing.

Delivery Date means the date for delivery of the Goods and performance of the Services stated in the Purchase Order.

Dispute Notice means a written notice stating that it is issued under clause 20.

Goods means the goods (if any) specified in the Contract including, without limitation, manuals, operating instructions, reports and drawings.

Head Contract means the contract between Civmec and the Principal in respect of the Project.

HSE means health, safety and environment.

Insolvency Event means in respect of a person:

- 1.1.4 a "controller" (as defined in section 9 of the Corporations Act), administrator or similar officer being appointed in respect of that person or any asset of that person;
- 1.1.5 a liquidator or provisional liquidator being appointed in respect of that person;
- 1.1.6 an application (not withdrawn or dismissed within 7 days) being made to a court for an order, an order being made, a meeting being convened or a resolution being passed, for the purpose of:
 - (a) appointing that person referred to in clauses 1.1.4 or 1.1.5 of this definition;
 - (b) winding up or deregistering that person; or
 - (c) proposing or implementing a scheme of arrangement, other than a solvent scheme of arrangement, pursuant to Part 5.1 of the Corporations Act;
- 1.1.7 any application (not withdrawn or dismissed within 7 days) being made to a court for an order, a meeting is convened, a resolution being passed or any negotiations are commenced, for the purpose of implementing or agreeing:
 - (a) a moratorium of any debts of that person;

- (b) any other assignment, composition or arrangement (formal or informal)
- (c) with that person's creditors; or
- (d) any similar proceeding or arrangement by which the assets of that person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,

or any agreement or other arrangement of the type referred to in this clause 1.1.7 being ordered, declared or agreed to;

1.1.8 as a result of the operation of section 459F(1) of the Corporations Act, that person being taken to have failed to comply with a statutory demand (as defined in the Corporations Act);

1.1.9 any writ of execution, garnishee order, *mareva* injunction or similar order, attachment, distress or other process being made, levied or issued against or in relation to any asset of that person;

1.1.10 the Commissioner of Taxation issuing a notice to any creditor of that person under the *Taxation Administration Act 1953* (Cth) requiring that creditor to pay any money owing to that person to the Commissioner in respect of any tax or other amount required to be paid by that person to the Commissioner (whether or not due and payable) or the Commissioner advising that creditor that it intends to issue such a notice;

1.1.11 anything analogous to anything referred to in clauses 1.1.4 to 1.1.10 (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to that person under any law of any jurisdiction; or

1.1.12 that person being, or admitting in writing that it is, or is being declared to be, or is being taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

IP Rights means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registrable), rights in relation to registered or unregistered trademarks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights.

Legislative Requirements means any applicable statutes, regulations, by-laws, orders, awards, proclamations of the Commonwealth, certificates, licenses, consents, permits, approvals, codes, standards and requirements of organisations.

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 profit or revenue, loss of market or loss of contracts or damage to commercial reputation).

Modern Slavery Act or **MSA** means *Modern Slavery Act 2018*.

Modern Slavery Policy means the Modern Slavery Policy, which is available at <https://www.civmec.com.au/our-approach/policies>.

Party means Civmec or the Supplier, and a reference to Parties is a reference to both of them.

Personnel means any person, employee, officer, agent, consultant or subcontractor engaged by the Supplier to provide all or any part of the Services on behalf of the Supplier.

PPSA means the *Personal Property Security Act 2009*.

Principal means Commissioner of Main Roads and, so far as concerns the functions exercisable by the Principal's Representative, includes the Principal's Representative.

Principal's Representative means the person appointed in writing by the Principal to be its representative.

Probity Event includes any event or thing which occurs before or after the date of the Contract which:

- 1.1.13 has a material adverse effect on, or on the perception of, the character, integrity or honesty of a Relevant Person;
- 1.1.14 relates to a Relevant Person and has or may have a material adverse effect on the public interest, or public confidence, in the Contract or Project;
- 1.1.15 involves a breach by a Relevant Person of any law in relation to bribery, anti-corruption, dishonesty offences, or trust in public office offences; or
- 1.1.16 involves a material failure of a Relevant Person to achieve or maintain:
 - (a) reasonable standards of ethical behaviour;
 - (b) the avoidance of conflicts of interest which will have, or are likely to have, a material adverse effect on the ability of a Relevant Person to carry out and observe its obligations in connection with the Contract; or
 - (c) other standards of conduct that would otherwise be expected of a party involved in, or associated with, a project of the Principal or the State of Western Australia.

Project means the relevant project in respect of which the Goods and/or Services are supplied.

Purchase Order means the written official confirmation of an order (with a unique system-generated reference number) issued by Civmec for the supply of the Goods and/or Services.

Rail Safety Management Plan means any plan issued by Civmec to the Supplier in respect of any rail safety requirements under the Head Contract.

Relevant Person means:

- 1.1.17 the Supplier and any director, officer, employee or agent of the Supplier;
- 1.1.18 any Related Body Corporate of the Supplier and any director, officer, employee or agent of any Related Body Corporate of the Supplier; and
- 1.1.19 any contractor of the Supplier or any of its directors, officers, employees or agents.

Related Body Corporate has the same meaning as its meaning in the *Corporations Act 2001 (Cth)*.

Security of Payment Act means the *Building and Construction Industry (Security of Payment) Act 2021 (WA)* as amended from time to time.

Services means the services (if any) specified in the Contract, and includes all necessary incidental services.

Site means the land and any other places to be made available and any other lands and places made available to the Supplier by Civmec, as stated in the Purchase Order.

Specification means all codes, standards, drawings and specifications applicable to the Contract, referred to in the Contract or otherwise incorporated into the Contract by reference and to be complied with by the Supplier.

Supplier means the supplier of the Goods and/or Services specified in the Contract.

2. CONTRACT

- 2.1 These general terms and conditions will apply whenever Civmec issues a Purchase Order.
- 2.2 The Supplier may accept these general terms and conditions by proceeding with the manufacture or supply of the Goods and/or the provision of the Services requested or by otherwise confirming its acceptance.
- 2.3 The Parties agree that any reference to the Supplier's terms or conditions on any quote, invoice or other

document, shall not import those terms into the Contract unless Civmec expressly agrees otherwise in writing. Where additional Supplier's terms or conditions do apply, the Contract shall prevail in case of any inconsistency.

- 2.4 The Purchase Order and special conditions, if any, prevail in case of any inconsistency with these general terms and conditions.

- 2.5 Civmec may, at any time, require the Supplier to:

- 2.5.1 undergo a financial due diligence test;
- 2.5.2 provide details of any criminal convictions of any director, owner or key management personnel of the Supplier (other than any conviction which is a 'spent conviction' within the meaning of the *Spent Convictions Act 1988 (WA)*); or
- 2.5.3 provide any other information that Civmec requests, and comply with and assist with any review or inspection of any such information, whether in respect of the Supplier or its contractors,

where any of these requirements are necessary in order for Civmec to comply with its obligations under the Head Contract, and the Supplier must comply promptly and at its own cost with that requirement. This clause 2.5 survives expiry or termination of the Contract.

3. THE GOODS AND SERVICES

- 3.1 The Supplier will ensure that the Goods and/or Services supplied by it:

- 3.1.1 are new, ready for use, free from Defects;
- 3.1.2 are of merchantable quality and fit for purpose;
- 3.1.3 comply with all applicable Legislative Requirements and Australian standards at the minimum;
- 3.1.4 are supplied with a valid manufacturer's or supplier's warranty where the manufacturer or supplier offers such a warranty in respect of the Goods;
- 3.1.5 are supplied in accordance with any descriptions, specifications and/or timeframe referred to in the Contract or otherwise provided by Civmec to the Supplier; and
- 3.1.6 are supplied to a high standard in accordance with industry best practice.

- 3.2 In supplying the Goods and/or Services, the Supplier must:

- 3.2.1 ensure that, in respect of its Personnel, the requirements of all relevant industrial awards, industrial agreements and registered workplace agreements are observed, including that the remuneration and terms of employment of all its Personnel for the duration of the Contract are consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry;
- 3.2.2 comply with, and ensure that the Supplier's Personnel comply with, all Commonwealth and State laws relating to employment or industrial matters and relations (including the *Fair Work Act 2009 (Cth)* and the *Industrial Relations Act 1979 (WA)*) and orders of competent courts or industrial tribunals; and
- 3.2.3 ensure that it will not do or permit anything which might damage the name or reputation of the Principal or reasonably invite adverse public criticism or result in the Principal being the subject of any official investigation.

- 3.3 The Supplier is responsible for the conduct of all proceedings, conferences, negotiations and dealings with unions and union representatives, regarding industrial matters concerning the Supplier.

- 3.4 The Supplier must immediately notify Civmec if a strike or any other form of industrial unrest occurs or is reasonably likely to occur in relation to any of the Supplier's Personnel or personnel that may reasonably be engaged or have been planned to be engaged as the Supplier's Personnel and provide full details if required.

- 4. DELAY**
- 4.1 The Supplier agrees to deliver or supply all Goods and/or Services and ancillary items on time and that, if the Supplier is delayed, or expects a delay, it will notify Civmec as soon as possible. The Supplier will take all reasonable steps to prevent delay, including but not limited to working overtime.
- 5. PACKAGING OF GOODS**
- 5.1 The Supplier must:
- 5.1.1 suitably pack the Goods to avoid damage during loading, transit, delivery, unloading or storage;
- 5.1.2 pack and transport the Goods in accordance with any applicable regulations and industry codes; and
- 5.1.3 clearly mark all packages of the Goods for delivery and the delivery documents for the Goods with the Contract number and ensure that the delivery documents accompany the Goods to the Delivery Address.
- 6. DELIVERY**
- 6.1 The Supplier must obtain all necessary permits and licenses which must be obtained in Supplier's name and are necessary for Supplier to perform its obligations.
- 6.2 The Supplier must deliver any of the Goods, and/or provide the Services at the Delivery Address by the Delivery Date.
- 6.3 The Supplier must, when delivering the Goods or providing the Services:
- 6.3.1 not interfere with Civmec's activities or the activities of any third party at the Delivery Address; and
- 6.3.2 comply with, and ensure that its Personnel comply with, all directions and orders given by or on behalf of Civmec at the Delivery Address.
- 7. INSPECTION AND SAMPLING**
- 7.1 The Supplier must conduct all inspections and tests in strict accordance with requirements of the Contract.
- 7.2 The Supplier must ensure that Civmec and any person nominated by Civmec have the opportunity to inspect, test, and witness any test of the Goods and/or Services wherever they may be located. If required, the Supplier will provide or ensure that its suppliers provide unrestricted access to reasonable facilities necessary for Civmec to carry out such inspections or witness such tests.
- 7.3 Inspection of the Goods and/or Services or any testing prior to delivery of the Goods or supply of the Services will not affect the obligations of the Supplier.
- 7.4 Civmec may reject any of the Goods or the Services that do not comply with the Specification, the requirements of the Contract or any sample provided to Civmec.
- 7.5 Where available or applicable, the Supplier shall provide samples to Civmec at its cost.
- 8. TECHNICAL MATERIAL**
- 8.1 The Supplier must, without additional cost to Civmec, supply all required plans, drawings, specifications, manuals, certificates, instructions, fabrication reports and the like in the form and at the times and in the numbers of copies specified in the Contract or otherwise as reasonably required by Civmec.
- 9. PRICE**
- 9.1 The price for the Goods and/or Services is the price stated in the Contract. Unless otherwise agreed and clearly stated in the Contract, the price stated in the Contract excludes GST but includes any other applicable taxes, customs, excise and import duties, tariffs, fees, levies, charges, costs or expenses incurred by the Supplier, including transport, packing and insurance costs.
- 9.2 Unless otherwise agreed and clearly stated in the Contract, the price is fixed and firm and not subject to adjustment due to currency fluctuation or any other reason.
- 10. PAYMENT**
- 10.1 Where the Purchase Order specifies that a Project Bank Account applies to this Contract, clause 27 must be read in conjunction with this clause 10. The Supplier must claim payment for the supply of the Goods and/or Services by submitting invoices monthly, on the last day of each calendar month, which must:
- 10.1.1 be a tax invoice;
- 10.1.2 be correctly dated;
- 10.1.3 refer to the relevant Purchase Order;
- 10.1.4 list the particular Goods and/or Services supplied;
- 10.1.5 be supported by relevant records to enable Civmec to calculate and verify the amount stated in any Supplier invoice;
- 10.1.6 if stated as a requirement in the Contract, be accompanied by a statutory declaration in the form set out in the Contract;
- 10.1.7 state that it is submitted under the Security of Payment Act; and
- 10.1.8 contain any other information required by the Security of Payment Act.
- 10.2 Subject to the Security of Payment Act, the Supplier must submit all payment claims within 30 days of the supply of the relevant Goods and/or Services.
- 10.3 Subject to the Security of Payment Act, the Supplier agrees that claims for payment or otherwise submitted after this period shall not be considered and that payment right in relation to such claims will be deemed to have been waived by the Supplier.
- 10.4 The Supplier must only claim payment for the supply made in the period to which the invoice relates. The Supplier may resubmit a payment claim if the reason for rejection relates to the quantity of the Goods and/or Services provided and the Supplier has since then adjusted the quantity as required under the Contract.
- 10.5 Payments shall be made within 25 Business Days from the receipt of a valid payment claim. All invoices are deemed to be submitted on the last day of the respective month.
- 10.6 Civmec shall not be liable to pay for the Goods and/or Services until the Goods and/or Services have been supplied in accordance with the Contract and invoices submitted before then shall be void of effect.
- 10.7 Civmec may at any time require that the Supplier provides additional records to calculate and verify the amount stated in any Supplier's invoice, by the time stated in the notice or, where no time is specified, within 48 hours. The Supplier must provide such information.
- 10.8 If Civmec disputes any amount claimed in an invoice, Civmec shall:
- 10.8.1 make a determination of the amount payable;
- 10.8.2 issue a payment schedule to the Supplier within 15 Business Days of receipt of the Supplier's payment claim stating:
- (a) the invoice to which the payment schedule relates,
- (b) the amount that is not disputed and therefore payable; and
- (c) for any disputed amounts, the amount which is disputed and the reason(s) it is disputed; and
- 10.8.3 pay the undisputed amount(s) in accordance with clause 10.5.
- The parties agree that a payment schedule issued under this clause 10.8 is a payment schedule for the purposes of the Security of Payment Act.
- 10.9 If the Supplier receives partial or no payment upon submission of a payment claim without having been informed as per clause 10.8, the Supplier may request in writing that Civmec provides reasons within 14 days, failing which, the Supplier may issue a Dispute Notice.
- 10.10 Notwithstanding any other provisions of this clause 10, Civmec may issue a revised payment schedule at any time correcting any omission or error discovered in any previous payment made or modifying any previous payment schedule issued by it, including as a result of the provision of information under clause 10.7.
- 10.11 No interest shall be payable on any amount due to the Supplier but remaining unpaid after the date upon which it should have been paid, except where interest is required to be payable pursuant to the Security of Payment Act, in which case interest will be paid at the rate prescribed by the Security of Payment Act.

- 10.12 Without prejudice to any other rights, Civmec may deduct from or set off against any monies which may be, or become, payable to the Supplier any costs, expenses or damages which are due from the Supplier to Civmec, or which Civmec has incurred or reasonably considers it might in the future incur as a consequence of any act or omission of the Supplier, whether under or in connection with the Contract or otherwise.
- 10.13 Payment by Civmec of all or any part of a claim by the Supplier or any other amount to the Supplier is on account only and does not constitute approval of any Goods and/or Services or any other matter or thing in respect of which the payment is made.
- 11. TITLE AND RISK**
- 11.1 Risk in the Goods passes to Civmec upon delivery to the Delivery Address.
- 11.2 Property in the Goods passes to Civmec upon the earlier of payment or delivery to the Delivery Address.
- 12. WARRANTIES**
- 12.1 The Supplier represents and warrants that:
- 12.1.1 the Goods and/or Services will be supplied in an efficient manner in accordance with all applicable laws, regulations, codes and standards;
- 12.1.2 the Goods and/or Services strictly comply with the Specifications;
- 12.1.3 the Goods and/or Services are free from all Defects;
- 12.1.4 the Supplier will, and will ensure its Personnel will, exercise the standards of diligence, due care and skill normally exercised by a prudent and similarly qualified and competent supplier supplying equivalent goods and services;
- 12.1.5 the Goods and/or Services are fit for the purpose for which goods and services of the same kind are commonly supplied and for any other purpose described in the Contract;
- 12.1.6 all Personnel are appropriately qualified, competent and skilled to perform the relevant part of the Services in respect of which they are engaged;
- 12.1.7 any equipment used on Site by the Supplier will be in a safe working condition and comply with all Legislative Requirements and be operated by suitably qualified and competent Personnel;
- 12.1.8 all the Goods match the description of the Goods in the Contract;
- 12.1.9 if the Supplier gave Civmec a sample of the Goods before Civmec issued the Contract, all the Goods correspond with the sample;
- 12.1.10 all the Goods are of new and merchantable quality; and
- 12.1.11 all the Goods are completely owned by the Supplier and will be supplied to Civmec free of any interests, liens, charges or encumbrances and no interest shall be registered under the PPSA.
- 12.2 The Supplier must immediately rectify or replace at Civmec's option and at Supplier's sole cost any Defective Goods or Services discovered within 15 months after supply or 12 months after the Goods or the Services are first used or enter into the service for which they are purchased, whichever occurs first.
- 12.3 If Civmec reasonably considers that it is necessary to rectify or replace Defective Goods or Services then Civmec, if time permits, shall give the Supplier an opportunity to rectify or replace such Goods or Services before Civmec does so or causes a third party to do so. The Supplier must reimburse Civmec for the full cost of such replacement or rectification.
- 12.4 The Supplier's obligation to replace or rectify Defective Goods and/or Services is cumulative of other remedies available to Civmec.
- 12.5 The Supplier must ensure that Civmec has the full benefit of any manufacturer's warranties that may be applicable to the Goods or the Services and the Supplier must pursue any manufacturer's warranties on Civmec's behalf if Civmec so requests.
- 12.6 If the Supplier has replaced or rectified Defective Goods or Services, the rectified or replacement Goods or Services must be subject to the same warranty period as the original Goods or Services, from the date of rectification or replacement.
- 12.7 If Civmec elects to accept Defective Goods or Services on one occasion, such election does not bind Civmec to accept any other Defective Goods or Services and does not affect any of Civmec's other rights under the Contract in respect of those Defective Goods or Services.
- 12.8 Civmec may assign any or all of the above warranties to any of its clients or related companies and the Supplier consents to such assignment.
- 12.9 The Supplier shall, unless otherwise stated in the Purchase Order:
- 12.9.1 maintain a quality system in compliance with ISO 9001:2015 or comply with Civmec's quality management system; and
- 12.9.2 provide Civmec and any person nominated by Civmec with access to the quality system of the Supplier to enable monitoring and quality auditing.
- 13. LIABILITY AND INDEMNITY**
- 13.1 The Supplier must indemnify Civmec and its personnel from and against:
- 13.1.1 any loss or damage to its property, whether within or outside the Site;
- 13.1.2 any Claim or Loss suffered or incurred by it in connection with:
- (a) illness, injury to, or death of any person;
- (b) the loss or damage of any third-party property; or
- (c) violation of any applicable Legislative Requirements; or
- (d) any breach by the Supplier or its Personnel of any of the Supplier's obligations (including any warranty), in each case, in connection with the performance the Contract.
- 13.2 Notwithstanding anything to the contrary, the Supplier's liability to indemnify Civmec under the Contract shall not apply to the extent that the Claim or Loss was caused by the sole negligence of Civmec.
- 13.3 The rights and obligations under clauses 12 and 13 survive termination of the Contract.
- 13.4 Civmec is not liable for any consequential or indirect loss.
- 14. CANCELLATION**
- 14.1 In addition to its rights under clause 15, Civmec may cancel all or any part of a Purchase Order at any time for any reason, in its sole and absolute discretion by written notice of cancellation to the Supplier.
- 14.2 Upon receipt of notice of cancellation, the Supplier must:
- 14.2.1 immediately cease performance of the Services to the extent specified in the cancellation notice;
- 14.2.2 immediately take steps to cease the procurement, manufacture or delivery of the Goods to the extent specified in the cancellation notice;
- 14.2.3 immediately take all possible action to mitigate any costs incurred by it as a result of the cancellation; and
- 14.2.4 provide Civmec with a detailed report in the form required by Civmec in relation to the Goods and the Services supplied prior to cancellation.
- 14.3 In the event of cancellation by Civmec under this clause:
- 14.3.1 the Supplier is entitled to payment for the Services supplied and the Goods delivered to Civmec prior to cancellation but not already paid for;
- 14.3.2 if the Goods have been shipped, but not delivered, at the time of cancellation Civmec may either:
- (a) accept the Goods when delivered, and pay the price for them; or

- (b) return the Goods to the Supplier at Civmec's expense;
- 14.3.3 if the Goods have been procured, manufactured or fabricated in accordance with the Specification (but not shipped) at the time of cancellation, Civmec shall pay costs reasonably incurred by the Supplier prior to the date of the cancellation which is directly attributable to the placing of the Contract and which the Supplier is not able to recoup in some other way;
- 14.3.4 the Supplier is not entitled to the price of the Goods or the Services or to any compensation for that cancellation other than as specified in clauses 14.3.1 to 14.3.3; and
- 14.3.5 the maximum compensation payable under clauses 14.3.1 to 14.3.3 arising out of the cancellation will not exceed the price of the relevant the Goods or the Services cancelled.
- 15. DEFAULT AND TERMINATION**
- 15.1 Civmec may (by written notice to the Supplier) terminate the contract formed by the Contract or reduce the scope of the Goods and/or Services to be provided thereunder:
- 15.1.1 where:
- the Supplier is in breach of any of the general terms and conditions of the Contract;
 - the Supplier is unable to pay its debts when they fall due;
 - an Insolvency Event occurs in relation to the Supplier;
 - the Supplier ceases or threatens to cease to carry on business;
 - in respect of clause 10.1.6, the Supplier knowingly provides a statutory declaration containing an untrue statement; or
- 15.1.2 for its convenience, in which case Civmec's liability to the Supplier shall be limited to payment of the price for the Goods and the Services supplied prior to such termination.
- 15.2 Termination of the Contract does not affect or prejudice any rights of Civmec which have accrued prior to the termination. Civmec's exercise of its rights under this clause does not affect or limit its ability to exercise any other rights under the Contract, at law or in equity.
- 16. INSURANCE**
- 16.1 The Supplier must prior to commencing the supply of the Goods and/ or Services and for as long as it has obligations outstanding in connection with the supply of the Goods or the Services effect and maintain:
- 16.1.1 All insurances specified in the Contract or otherwise requested by Civmec in writing, including:
- insurance against loss, damage or destruction of the Goods and all component parts while under manufacture and up until delivery to Site;
 - workers' compensation and employers' liability insurances in the names of the Supplier and all subcontractors for their respective rights and interests covering all liabilities, whether arising under statute or common law, in relation to the death of, or injury to, any employee or any person deemed to be an employee;
- 16.1.2 such insurances with a reputable insurer having a Standard & Poor's, Moodys, AM Best or equivalent ratings agency's long-term issuer credit rating of A minus or better, or otherwise as approved by Civmec in writing; and
- 16.1.3 all necessary insurance cover for all risks arising out of the performance of its obligations under the Contract.
- 16.2 The Supplier must provide evidence satisfactory to Civmec of such insurance to Civmec as a condition precedent to the Supplier being entitled to:
- 16.2.1 access the Site or Delivery Address;
- 16.2.2 make a claim for payment or received payment for the supply of the Goods or the Services.
- 16.3 If the Supplier does not comply with its obligations under clause 16.2 Civmec may effect and maintain the relevant insurance and pay the premiums and the amount of such payment shall be a debt due and payable by the Supplier to Civmec.
- 16.4 The Supplier must notify Civmec immediately in writing if any incident occurs that is likely to give rise to a claim under any policy of insurance effected by the Supplier under the Contract and must keep Civmec fully informed of all subsequent developments regarding such claim.
- 16.5 In the event that any insurance policy of Civmec responds to a claim in respect of losses or damages for which the Supplier is responsible, the Supplier will be responsible for paying the deductible or excess payable under Civmec's insurance policy.
- 16.6 The Supplier must ensure that its subcontractors effects and maintains the insurances as required by this clause 16 (including as to amounts of the insurance, type of insurances and endorsements), having regard to the nature of services or work to be performed by them, as if they were the Supplier.
- 17. PERSONNEL**
- 17.1 Civmec may object to any Personnel who, in Civmec's reasonable opinion, do not have the appropriate qualifications, competency or skill to perform the relevant part of the Services in respect of which they are engaged, or who engage in misconduct.
- 18. SITE**
- 18.1 To the extent the Supplier or Personnel are required to be on or in the vicinity of the Site, the Supplier must:
- comply, and ensure its Personnel comply, with all Legislative Requirements and all policies, standards, rules and procedures of Civmec or the Principal (including any Rail Safety Management Plan), or to be produced by the Supplier and approved by Civmec in force from time to time, including in relation to HSE;
 - submit and amend any HSE management plan(s) as reasonably required by Civmec;
 - attend all induction courses as reasonably required by Civmec;
 - permit Civmec to have access to the Supplier's premises, documentation, data and Personnel as necessary to enable Civmec to verify, monitor and audit the Supplier's compliance with this clause 18;
 - give Civmec not less than 7 days prior written notice before commencing the Services on the Site.
- 18.2 The Supplier acknowledges that it will not have exclusive possession of any part of the Site and will only be granted access to the Site to the extent necessary for the performance of the Services. The Supplier must cooperate and coordinate its performance of the Contract with Civmec, other contractors and persons on the Site.
- 19. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**
- 19.1 The Supplier warrants that any design, equipment, methods of working and documentation including but not limited to specifications, drawings, reports and publications used or produced by the Supplier in connection with the Goods and/or Services do not infringe any IP Right.
- 19.2 Civmec acknowledges that ownership of all IP Rights used or created under the Contract or in the provision of the Services is retained by the Supplier. The Supplier grants to Civmec and where required, the Principal, a non-exclusive, transferable, royalty free, irrevocable and perpetual licence (including a right to sub-licence) to use such IP Rights for the purpose of Civmec or the Principal having the benefit of the Goods and/or Services.
- 19.3 The Supplier indemnifies Civmec and (if applicable) the Principal for all loss and expense incurred as a result of a breach of this clause.
- 19.4 The Supplier acknowledges that the terms of the Contract

- are confidential and agrees not to disclose any information regarding the Contract, its existence or its terms to any third party (including by making any media release) without the express written permission of Civmec and the Principal.
- 19.5 This clause 19 shall survive the cancellation, termination or repudiation of the Contract for any reason.
- 20. DISPUTE RESOLUTION**
- 20.1 If any dispute arises out of or in connection with the Contract ("**Dispute**"), a Party may not commence any court proceedings unless clauses 20.2 to 20.9 have been complied with, except where the Party seeks urgent interlocutory relief, declaratory relief or equitable relief.
- 20.2 A Party must give written notice to the other Party setting out the details of the Dispute ("**Notice of Dispute**") and this clause 20 will apply to the Dispute.
- 20.3 Where a Dispute relates to a direction of Civmec, the Notice of Dispute must be given within 5 Business Days from the date of the Dispute arising in respect of the direction issued by Civmec, or otherwise the disputes or differences are barred.
- 20.4 Civmec's representative and Supplier's representative ("**Representatives**") must meet to discuss and attempt to resolve the Dispute between the Parties within 10 Business Days from the date of the Notice of Dispute upon receipt by the other Party, or such longer period as may be agreed between the Representatives from time to time ("**First Meeting**").
- 20.5 If the Representatives do not resolve the Dispute within 10 Business Days from the First Meeting, they shall refer the Dispute to the senior executive officers of Civmec and the Supplier ("**Senior Executives**") for resolution by submitting a written notice to the other Party (as appropriate). The Senior Executives must meet and confer within 5 Business Days after receipt of the written notice and use their best endeavours to resolve the Dispute, which conferral shall be confidential and on a 'without prejudice' basis.
- 20.6 If the Dispute remains unresolved for 25 Business Days of the First Meeting, the Senior Executives must within a further 5 Business Days seek to agree the process for resolving the Dispute through the means of alternative dispute resolution ("**ADR**"), other than litigation.
- 20.7 Any ADR (including arbitration, mediation and expert determination) will be kept confidential and without prejudice between Civmec and the Supplier.
- 20.8 The Parties may be legally represented in any ADR. Each Party will bear the costs and expenses of all legal representatives, witnesses and employees retained by it, except if a Dispute is determined or otherwise involves court proceedings, in which case the court may determine otherwise.
- 20.9 During the dispute resolution process, the Parties must continue to perform their obligations under the Contract.
- 20.10 Subject to clause 20.1, the Supplier agrees that it will not initiate any legal or administrative proceeding, and without limiting other rights or remedies of Civmec, Civmec will be entitled to plead this clause as a bar to any such proceeding
- 20.11 Either Civmec or the Supplier may commence litigation if the Parties fail to resolve the Dispute through the ADR process.
- 20.12 This clause 20 shall survive the cancellation, termination or repudiation of the Contract for any reason.
- 21. SECURITY OF PAYMENT**
- 21.1 The Parties agree that for the purposes of any adjudication under any Security of Payment Act in relation to the Contract or the Goods and/or Services, the authorised nominating authority is Resolution Institute.
- 22. ANTI-SLAVERY**
- 22.1 The Supplier undertakes, warrants and represents that:
- 22.1.1 neither the Supplier nor any of its Personnel has:
- (a) committed an offence under the MSA (an "**MSA Offence**"); or
- (b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the MSA;
- or
- (c) 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;
- 22.1.2 it shall comply with the MSA and the Modern Slavery Policy;
- 22.1.3 it shall notify Civmec immediately 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 Supplier's obligations under this clause. Such notice will set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations under the MSA; and
- 22.1.4 it shall provide all reasonable assistance (including the provision of information and access to documents and the Supplier's Personnel as Civmec may require) to Civmec to enable Civmec to comply with its obligations under the MSA.
- 22.2 Any breach of clause 22.1 by the Supplier shall be deemed a material breach of the Contract and shall entitle Civmec to terminate the Contract with immediate effect.
- 22.3 Civmec may, by immediate notice to the Supplier, terminate the Contract if a Prohibitory Event occurs in respect of the Supplier. The Supplier shall not be entitled to make any Claim whatsoever associated with a direction issued under this clause, and the Supplier will be responsible for any loss that Civmec incurs as a result of or in connection with such termination.
- 23. CONFLICT OF INTEREST**
- 23.1 The Supplier must, and must ensure its Personnel, declare any conflict of interest between Civmec or its Personnel, and the Supplier or its Personnel, whether that conflict of interest is perceived or actual, prior to entering into any agreements with Civmec, and in any event as soon as a conflict of interest comes to the attention of the Supplier.
- 24. ANTI-CORRUPTION OBLIGATIONS**
- 24.1 The Supplier represents, warrants and agrees that neither the Supplier, any of its related entities nor the Supplier's Personnel authorised, offered, promised or gave or will authorise, offer, promise or give anything of value to:
- 24.1.1 any:
- (a) individual who is employed by or acting on behalf of an authority, government, government-controlled entity or public international organisation;
- (b) political party, party official or candidate;
- (c) individual who holds or performs the duties of an appointment, office or position created by custom or convention; or
- (d) individual who holds himself out to be the authorised intermediary of any person specified in paragraphs (a), (b) or (c) above (each, a "**Government Official**"),
- in order to influence official action relating to either, or both, Civmec or the Contract;
- 24.1.2 any person (whether or not a Government Official) to influence that person to act in breach of a duty of good faith, impartiality or trust ("acting improperly") in relation to either, or both, Civmec or the Contract, to reward the person for acting improperly or in circumstances where the recipient would be acting improperly by receiving the thing of value; or
- 24.1.3 any other person while knowing, or while he or she ought reasonably to have known, that all or any portion of the money or other thing of value that was authorised, offered, promised or given or will be offered, promised or given to:
- (a) a Government Official in order to influence or reward official action relating to either, or both, Civmec or the

- Contract; or
- (b) any person in order to influence or reward such person for acting improperly.
- 24.2 Civmec may terminate the Contract for default, if the Supplier breaches this clause 24 or any applicable Anti-corruption Laws in performing its obligations under the Contract.
- 25. SUPPLIER AS A TRUSTEE**
- 25.1 If applicable, the Supplier as a trustee of a trust, in relation to the Contract:
- 25.1.1 is liable both personally, and in its capacity as trustee of that trust;
- 25.1.2 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 the Contract;
- 25.1.3 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 the prior written consent of Civmec; and
- 25.1.4 represents and warrants that:
- (a) it enters into the Contract as trustee of the trust and in its own right;
- (b) the trust has been duly established and currently exists;
- (c) it is the duly appointed, current and only trustee of that trust;
- (d) 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 the Contract;
- (e) it has an unqualified right of indemnity out of the assets of that trust in respect of its obligations;
- (f) there is no conflict of interest by the trustee entering into the Contract;
- (g) no breach of the relevant trust deed exists or would arise;
- (h) no beneficiary under that trust is presently entitled to the distribution of any of the capital of the trust;
- (i) 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
- (j) it is not aware of any revocation of its obligations to act as trustee.
- 26. GOODS AND SERVICES TAX (GST)**
- 26.1 For the purpose of this clause:
- 26.1.1 the following definitions apply:
- (a) **GST Law** means A New Tax System (Goods and Services) Act 1999 (Cth);
- (b) **Recipient** means the Party to which the relevant supply is made; and
- (c) **Supplier** means the Party making the relevant supply; and
- 26.1.2 unless the context otherwise requires, words or expressions used in this clause 26 which are defined in the GST Law have the same meaning in this clause.
- 26.2 The Supplier shall be registered for GST in accordance with the GST Law.
- 26.3 If the Supplier makes a supply under or in connection with the Contract on which GST is payable (not being a supply the consideration for which is specifically described in the Contract as inclusive of GST), then:
- 26.3.1 the consideration payable for that supply under the Contract but for the application of this clause (the "**GST exclusive consideration**") is increased by, and the Recipient of the supply must also pay to the Supplier, an amount equal to the GST payable on the supply (the "**GST Amount**"); and
- 26.3.2 the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided, subject to the Supplier giving the Recipient a tax invoice in respect of that taxable supply.
- 26.4 If a payment to a Party under the Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that Party, then the payment will be reduced by the amount of any input tax credit to which that Party, or the representative member of a GST group of which that Party is a member, is entitled for that loss, cost or expense.
- 26.5 If a payment is calculated by reference to, or as a specified percentage of, another amount or revenue stream, that payment shall be calculated by reference to, or as a specified percentage of, the amount or revenue stream exclusive of GST.
- 26.6 If an adjustment event arises in respect of a supply made under or in connection with the Contract, then:
- 26.6.1 the Supplier must issue an adjustment note to the Recipient within 7 days of the adjustment event occurring or otherwise as soon as it becomes aware of the adjustment event, outlining the revised amount of GST payable in respect of that supply (the "**Corrected GST Amount**");
- 26.6.2 if the Corrected GST Amount is less than the previously attributed GST Amount, the Supplier shall refund the difference to the Recipient within 15 days of the adjustment note being issued by the Supplier; and
- 26.6.3 if the Corrected GST Amount is greater than the previously attributed GST Amount, the Recipient shall pay the difference to the Supplier within 15 days of the adjustment note being issued by the Supplier.
- 26.7 This clause 26 will continue to apply after expiration or termination of the Contract.
- 27. PROJECT BANK ACCOUNT**
- 27.1 In this clause 27, the following terms have the following meanings:
- 27.1.1 **Bank** means the bank with which the Project Bank Account is established.
- 27.1.2 **Opt-in Notice** means a notice executed by an Opt-in Subcontractor in the form set out in the PBA Trust Deed Poll.
- 27.1.3 **Opt-in Subcontractor** means:
- (a) any person that is contracted by Civmec to undertake services and/or supply goods or materials, where the total aggregate value of such 'services' or services and supply goods or materials' in connection with the Contract is less than \$20,000 (GST inclusive); or
- (b) any person that is a Supplier in connection with the Contract, where the person has expressly stated (to Civmec) that they wish to participate in the trust created by the PBA Trust Deed Poll.
- 27.1.4 **PBA Agreement** means the agreement entered into between Civmec, the Principal and the Bank which establishes the Project Bank Account and which is in the form available on the Main Roads website at <https://www.mainroads.wa.gov.au/technical-commercial/contracting-to-main-roads/#pba>.
- 27.1.5 **PBA Trust Deed Poll** means the document of that name executed by Civmec and which is also executed by the Principal pursuant to the Head Contract, pursuant to which a Project Bank Account is to be established.
- 27.1.6 **Project Bank Account** means the bank account established as a trust account with a single Bank as more particularly defined in the PBA Trust

- Deed Poll.
- 27.1.7 **Subcontractor** means:
- (a) any person that is contracted by Civmec to undertake services and/or supply goods or materials, where in either case the total aggregate value of such 'services' or 'services and supply of goods or materials' in connection with the Contract is equal to or greater than \$20,000 (GST inclusive); and
- (b) any Opt-in Subcontractor that has signed an Opt-in Notice and given a copy of that notice to Civmec.
- 27.1.8 **Supplier** (in this clause) means a person who has been contracted to supply goods or materials to Civmec in connection with the Contract but who undertakes no design, fabrication, construction work or service of any kind in connection with the Contract.
- 27.2 Upon request by the Subcontractor, Civmec must provide to the Subcontractor:
- 27.2.1 a copy of the executed PBA Trust Deed Poll; and
- 27.2.2 a copy of the executed PBA Agreement which must include details of the relevant account number and name of the Project Bank Account.
- 27.3 Prior to any person being contracted by Civmec to:
- 27.3.1 undertake work or services; or
- 27.3.2 undertake work or services and supply goods or materials,
- in connection with the Contract, where the total aggregate value of such work or services or supply goods or materials in connection with the Contract is less than \$20,000 (GST inclusive), or
- 27.3.3 supply goods or materials without undertaking any design, fabrication, construction work or service of any kind in connection with the Contract where the value of such goods or materials is \$20,000 (GST inclusive) or more,
- Civmec must provide reasonable written notice of the trust created and contemplated by the PBA Trust Deed Poll and PBA Agreement and of the rights that person has to participate in the same.
- The Subcontractor may view the PBA information available from Main Roads' website at <https://www.mainroads.wa.gov.au/technical-commercial/contracting-to-main-roads/#pba>.
- 27.4 Civmec will ensure that any Opt-in Subcontractor is promptly provided with the form of an Opt-in Notice (which must be within seven days of the Opt-in Subcontractor expressly stating to Civmec that they wish to participate in the trust created by the PBA Trust Deed Poll). Upon the supply of a duly signed Opt-in Notice to Civmec, the Opt-in Subcontractor that has signed that notice will be deemed a Subcontractor (on and from that point) for all purposes of the Contract and shall be paid via the Project Bank Account pursuant to the operation of the PBA Trust Deed Poll, subject to and in accordance with clause 10 of this Contract.
- 28. GENERAL**
- 28.1 **Entire agreement:** The Contract comprises the entire agreement between the Parties in respect of its subject matter and supersedes all prior agreements, quotation requests, understandings, representations, warranties, promises, statements, negotiations, letters and documents in respect of its subject matter. Any terms that may have been attached or embodied in the Supplier's tender or offer or other correspondence (including quote forms and Contracts) whether before, at or after the acceptance of the Contract are not applicable.
- 28.2 **Severance:** If any provision of the Contract is determined to be void by any court then that determination does not affect any other provision of the Contract.
- 28.3 **Waiver:** Civmec's failure or delay to exercise a power or right does not operate as a waiver of that power or right. No waiver by Civmec of any breach of a provision of the Contract is a waiver of any subsequent breach of that provision or any other provision. A waiver is not effective unless it is in writing, signed by Civmec.
- 28.4 **Variations:** An amendment or variation to the Contract is not effective unless it is in writing and signed by Civmec prior to the supply of additional or varied Goods and/or Services.
- 28.5 **Assignment:** The Supplier must not assign the Contract or any part of the Supplier's obligations under the Contract without the prior written consent of Civmec, which must not be unreasonably withheld. The Supplier must provide Civmec with any information that Civmec reasonably requests regarding any of the Supplier's contractors or any of their key personnel.
- 28.6 **Novation:** If required by Civmec, the Supplier shall when directed by Civmec and without being entitled to compensation, promptly execute a deed of novation in a form acceptable to Civmec for the novation of:
- 28.6.1 any subcontract for the supply of any part of the Goods and/or Services to Civmec or its nominee; or
- 28.6.2 the Contract to Civmec's client or its nominee.
- 28.7 **Subcontracting:** The Supplier must not subcontract all or any of its obligations under the Contract without the prior written consent of Civmec, which must not be unreasonably withheld.
- 28.8 **Exclusion and apportionment:** The operation of, to the extent not prohibited by law, Apportionment Legislation, including the operation of Part 1F of the *Civil Liability Act 2002* (WA), is excluded. The Supplier indemnifies Civmec against any claim, cost, expense or liability whatsoever arising out of or in connection with the Contract which are caused or contributed to by the Supplier's Personnel and for which the Supplier would have been liable to Civmec but for, or which Civmec is not able to recover from the Supplier because of, any apportionment under any Apportionment Legislation.
- 28.9 **Supplier capacity:** If requested by Civmec at any time, the Supplier must provide a deed of guarantee and indemnity from its parent company to Civmec, in the form specified in the Contract or otherwise acceptable by Civmec.
- 28.10 **Privacy requirements:** In providing the Goods and/or Services, the Supplier agrees to comply with, and to ensure that Personnel comply with, Civmec's policy and all applicable privacy laws.
- 28.11 **Governing Law:** The Contract is governed by, and is to be interpreted in accordance with the laws in force in the State or Territory in which the Goods and/or Services are supplied and the Parties submit exclusively to the jurisdiction of the courts in that State or Territory.
- 28.12 **No Obligation on Principal:** The contractual relationship between Civmec and the Supplier does not include or imply any obligation on the Principal to the Supplier.