Model Clauses: Offsite Construction

The Office of Projects Victoria (OPV) and Department of Treasury and Finance (DTF) have prepared a suite of model clauses to assist delivery agencies adopt offsite construction (OSC) where it is considered appropriate at a project level. The objective is to maximise the productivity, efficiency, commercial and legal benefits to the State while eliminating (or if elimination is not possible, minimising and mitigating) the risks to the State posed by OSC.

The model clauses are intended to supplement the Victorian Public Construction Contracts (VPCC), which comprise DTF Standard Form Contracts and approved Agency Specific Contracts. While the clauses are designed to work with the VPCC, modification and tailoring may be necessary to align with those specific Contracts at a project level.

The model clauses facilitate the consistent treatment by the State of key issues that arise in projects employing significant OSC elements. Use of these clauses will provide significant efficiency when integrating OSC provisions into the relevant Contracts. The clauses also document the State’s position on fundamental commercial principles for inclusion in bespoke contracts that are developed for High Value, High Risk projects incorporating OSC.

The model clauses are intended to be used in projects employing significant OSC elements where standard clauses are not suitable or commercially acceptable (e.g. typical unfixed plant and equipment clauses in a construction contract).

The suite comprises three sets of model clauses, each designed to accommodate a different delivery scenario:

1. Offsite Construction Model Clauses - Supply Model 1 & Supply Model 2 - Supply Contract
2. Offsite Construction Model Clauses - Supply Model 2 - Construction Contract
3. Offsite Construction Model Clauses - Subcontracting Model - Construction Contract

This set of model clauses applies to contracting approach **Supply Model 1 and Supply Model 2** (shown below).

| 1. Contracting Approach | 1. Base Contract / Party | 1. Model Clauses |
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| **Supply Model 1 and Supply Model 2** | **Supply Contract / Supplier** | **Model Clauses as relevant for Supply Only/Supply and Design/Supply and Install/Supply, Design and Install (as relevant) are set out in:**   * **Offsite Construction Model Clauses - Supply Model - Supply Contract** |
| Supply Model 2 | Construction Contract/or | All Model Clauses are set out in:   * Offsite Construction Model Clauses - Supply Model - Construction Contract |
| Subcontractor Model | Construction Contract/or | All Model Clauses set out in:   * Offsite Construction Model Clauses - Subcontractor Model - Construction Contract |

The intention is that all of the Model Clauses will be included in the relevant Base Contract, other than where they are specified to be “Optional”, in which case the “Option” that is not applicable should be deleted. If a Model Clause is otherwise “not applicable”, rather than being deleted, it should be switched off in the “Particulars” or "Annexure Part A" as indicated in the Guidance Notes.

Model Clauses: Offsite Construction

Contracting approach: Supply Model 1 and Supply Model 2 with base supply contract / supplier

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| **Guidance Note:** This document is intended for use when the State wishes to engage a Component supplier using Supply Model 1 or Supply Model 2.  This document is **not a standalone contract**. The clauses following are designed to be included in a base supply contract, which must be DTF endorsed and approved under the Ministerial Directions (**Base Contract**).  The clauses included in the Base Contract will vary depending on whether, in addition to the supply, the Base Contract also requires design and/or installation. You may also need to add additional items to the "Particulars" or "Annexure Part A", as well as additional "Schedules" or "Annexures" in, the Base Contract. Guidance Notes are provided to assist with this exercise and to indicate when existing clauses in the Base Contract should be replaced, or new clauses inserted.  Please note that certain terms within this document will be flagged with a "##". For example, the term "the Contract" appears as <##the Contract>. This formatting has been used in circumstances where the terminology or numbering in the clauses will need to be aligned with the relevant terminology or numbering in the Base Contract. The model clauses and the Base Contract will also need to be carefully checked, and conformed, to ensure that the model clauses align and integrate with the Base Contract.  Also please note that, in the Contract Particulars and Schedules, items highlighted:   * ***green*** are to be completed by the agency before going to tender; and * ***yellow*** are to be completed by the agency using information provided by the tenderer in response to the RFT.   A Base Contract into which these clauses are integrated **must be legally reviewed** prior to issue to tender. |

# Definitions

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| 1. **Guidance Note:** The following definitions should be inserted in alphabetical order in the "Definitions" section of your contract. Note that if your contract already includes a definition for the same term, this should be replaced with the definition in this list. |

1. **Approval** means any licence, permit, registration, consent, assessment, approval, authorisation, determination, certificate, accreditation, clearance, permission or the like which is required by an Authority or under any Law to be issued, obtained, held or satisfied to perform the <##Supplier’s Activities> or to use the Component or Component Part.
2. **Asset Register** means a register of all Components and Component Parts that includes:
   1. an asset number for each Component and Component Part;
   2. where relevant, the date that Manufacture Completion occurred for each Component and Component Part;
   3. the Date of Handover and Acceptance for each Component and Component Part; and
   4. the location of each Component and Component Part within the facility at which it is ultimately located.
3. **Authority** means any:
   1. government of the Commonwealth of Australia or any Australian State or Territory and their departments, authorities, ministers, statutory corporations and instrumentalities, and any governmental, semi-governmental or local government authority, local council, administrative or judicial body or tribunal, in Australia; or
   2. person to the extent that it has legally enforceable jurisdiction over the whole or part of the Manufacturing Facility, the <##Supplier’s Activities>, the Components or the Component Parts.
4. **Business Days** means a day in Melbourne that is not:
   1. a Saturday or Sunday; or
   2. a day that is wholly or partly observed as a public holiday throughout Victoria.
5. **Certificate as to Title** means a certificate provided by the Supplier (in the form set out in Schedule <insert>, or such other form as is acceptable to the Principal) pursuant to which the Supplier certifies that it has title to the items the subject of the certificate and to which is annexed a Clear PPSA Certificate.
6. **Claim** includes any claim, action, demand, suit or proceeding (including by way of contribution or indemnity), made in any way in connection with, <##the Contract>, the <##Supplier’s Activities>, the Components or the Component Parts or otherwise at Law or in equity, including under any statute, in tort or for restitution.
7. **Clear PPSA Certificate** means a certificate generated by the Personal Property Securities Register (as a search result for the purposes of s174 of the PPS Act) which does not show the existence of any Security Interest.
8. **Collateral Warranty** means a warranty in the form of Schedule <##insert>.
9. **Component** means:
   1. each consolidated item which the Supplier must deliver to the Principal in accordance with <##the Contract> as identified in the Component Schedule and described more fully in the Component Brief, or, if <##the Contract> requires the Supplier to supply more than one Component:
      1. means each of the Components identified in the Component Schedule and described more fully in the Component Brief; and
      2. references in <##the Contract> to "Component " are taken to apply separately to each such Component; and
   2. if it is identified as a Component in the Component Schedule, the Prototype.
10. **Component Brief** means the section of the <##Delivery Requirements> named as such that sets out the requirements for the Components.
11. **Component Design** means:

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| 1. **Guidance Note:** Select one of Option A or Option B. 2. Select Option A where Option A has been selected in clause 6.3. 3. Select Option B where Option B has been selected in clause 6.3. |

1. **Option A**: those Design Deliverables that have been through the process set out in clause 6.2 and in respect of which the Supplier is entitled to commence performance of any part of the <##Supplier's Activities> to which such Design Deliverable submitted or resubmitted to the <##Principal's Representative> applies in accordance with clause 6.2(e).

**Option B:** those deliverables set out in the Component Brief.

1. **Component Part** means, in respect of a Component, each part of the relevant Component specified in the Component Schedule and includes a Component Part to which a Milestone Payment attaches as identified in the Milestone Schedule.
2. **<##Contract Sum>** has themeaning given in clause 9.1(b)(i).

**Date for Delivery** means, in respect of a Component or a Component Part (as the case may be), the date identified as such in the Component Schedule.

1. **Date for Handover and Acceptance** means, in respect of a Component Part, the date the identified as such in the Milestone Schedule.
2. **Date of Handover and Acceptance** means, in respect of a Component Part, the date on which the relevant Handover and Acceptance of the Component Part occurs as determined in accordance with clause 7.6(b)(i) or 7.6(c).
3. **Defect** means any:
   1. defect, deficiency, error, fault or omission, whether in design, quality, materials, workmanship, the <##Supplier's Activities>, the Retained Temporary Works or any Component or Component Part (as the case may be);
   2. other aspect of the <##Supplier's Activities>, the Retained Temporary Works or any Component or Component Part (as the case may be) which is not in accordance with the requirements of <##the Contract>; or
   3. physical damage resulting from any of the events of circumstances referred to in paragraph (a) or (b) of this definition.
4. **Delivery Point** means, in respect of a Component Part, the location identified as such in the Component Schedule.
5. **Design Development Payment** means so much of the <##Contract Sum> (as at the <##Contract Date>) as is specified in the Pricing Schedule, if any, to be payable in connection with the development of the design of the Components.
6. **Design Deliverables** means all design documentation (including drawings, designs, specifications, manuals, samples, models, calculations, patterns and the like) and other information (including electronic files) which is required by <##the Contract> to be created by the Supplier to perform the <##Supplier's Activities> (or any part), including to Manufacture or procure the Manufacture of the Components (or any Component Part).
7. **Design Management Plan** means a plan setting out how the Design Deliverables are to be produced and submitted for review. At a minimum, it must set out:
   1. the responsibilities, timing and processes of all design activities as between the Principal, the Supplier and any Project Participants;
   2. a schedule of proposed Design Deliverables to be produced by the Supplier and the packages in which these will be submitted to the <##Principal's Representative>;
   3. a program for the delivery of all Design Deliverables;
   4. any interface points with designs undertaken by other parties; and
   5. the means by which the Supplier will communicate with the Principal and any Project Participants.

**Developed IP** means all Intellectual Property Rights, trade secrets and know-how comprised in or related to:

* 1. the Retained Temporary Works;
  2. the Components;
  3. the <##Supplier's Activities>; and
  4. the Design Deliverables,

but excludes Supplier IP.

1. **Engineering Certificate** means a certificate in the form of Schedule <##insert>, or such other form as is acceptable to the Principal.
2. **Final RTW Payment** means so much of the <##Contract Sum> (as at the <##Contract Date>) as is specified in Item <##17 replace with relevant reference to item in the Contract Particulars of your contract>, if any, as either payment by the Supplier in accordance with clause 5.4(b)(i), or payment by the Principal in accordance with clause 9.2(a)(iii).
3. **Fit for Purpose** means fit for its intended purposes, functions and uses as specified in, or reasonably inferred from, the <##Delivery Requirements> or any other parts of <##the Contract>.
4. **GST** has the meaning given in the GST Act.
5. **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
6. **Handover and Acceptance** means, in respect of a Component or Component Part (as the case may be), that stage when:
   1. if clause 7.4 applies:
      1. a Manufacturing Completion Certificate has been issued in respect of the Component or Component Part (as the case may be); and
      2. delivery has occurred;
   2. if clause 7.4 does not apply:
      1. the Component or Component Part (as the case may be) is free from Defects, other than minor Defects which:
         1. do not prevent the Component (including in the case of a Component Part, the Component of which that Component Part is a part) or Component Part (as the case may be) from being reasonably capable of being used for the purposes stated in or reasonably able to be inferred from <##the Contract>; and
         2. can be corrected without prejudicing the convenient use of the Component (including in the case of a Component Part, the Component of which that Component Part is a part) or Component Part (as the case may be);
      2. all tests required by <##the Contract> to be carried out and passed to achieve Handover and Acceptance have been carried out and passed;
      3. all documents and information required by <##the Contract> to be provided to the Principal to achieve Handover and Acceptance have been so provided, including all Engineering Certificates required in connection with the relevant Component or Component Part (as the case may be) and all Approvals as are necessary for the use of the Component or Component Part (as the case may be); and
      4. the Supplier has done everything identified in the Component Schedule (or elsewhere in this Contract) as being required to be done before, or as a condition precedent to, Handover and Acceptance; and
   3. the Supplier has executed and provided the Principal or, if the Principal so directs, such Other Contractor, with a Collateral Warranty.

**Handover and Acceptance Certificate** has the meaning given in clause 7.6(b)(i).

1. **Hold Point** means:
   1. each Milestone identified as such in the Milestone Schedule; and
   2. any other point in the Manufacture of a Component Part identified as such in the Component Brief.
2. **Initial RTW Payment** means so much of the <##Contract Sum> (as at the <##Contract Date>) as is specified in the Pricing Schedule, if any, to be payable in connection with the Manufacturing of the Retained Temporary Works, but excludes the Final RTW Payment.
3. **Intellectual Property Right** means any patent, registered design, trademark or name, copyright or other protected right, whether created or in existence before, on or after the date of the Contract and whether existing in Australia or otherwise.
4. **Loading Protocol** has the meaning given in clause 8(a).
5. **Loss** means any:
   1. loss, damage (including damages at common law or in equity), liability, debt, cost (including legal costs, deductibles or increased premiums), expense, fee, compensation, charge or other amount; or
   2. fine or penalty (to the extent not prohibited by Law),
6. whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent.
7. **Manufacture** includes construction, manufacture and assembly.

**Manufacture Completion** means, in respect of a Component:

* 1. the Component Part is free from Defects, other than minor Defects which:
     1. do not prevent the Component from being reasonably capable of being used for the purposes stated in or reasonably able to be inferred from <##the Contract>; and
     2. can be corrected without prejudicing the convenient use of the Component; and
  2. all tests required by <##the Contract> to be carried out and passed to achieve Manufacture Completion have been carried out and passed;
  3. all documents and information required by <##the Contract> to be provided to the Principal to achieve Manufacture Completion have been so provided, including all Engineering Certificates required in connection with the relevant Component Part and all Approvals as are necessary for the use of the Component Part; and
  4. the Supplier has done everything identified in the Completion Schedule (or elsewhere in this Contract) as being required to be done before, or as a condition precedent to, Manufacture Completion.

1. **Manufacture Completion Certificate** has the meaning given in clause 7.4(c)(i).
2. **Manufacturing Facility** means the location at which any Component or Component Part is Manufactured and includes those locations identified in Item <##9 replace with relevant reference to item in the Contract Particulars of your contract>.

**Manufacturing Problem** means a feature or requirement of a Component or Component Part as specified in the Component Designs that will result in:

* 1. the work methodologies that are necessary or required for Manufacturing of the Component or Component Part in accordance with the Component Designs not being feasible;
  2. Manufacturing of the Component or Component Part in accordance with the Component Designs not being feasible within the timeframes required by <##the Contract> or for the <##Contract Sum>;
  3. the Component or Component Part as specified in the Component Design not being able to be Manufactured in a safe manner; or
  4. additional work to ensure that the relevant part of the Component or Component Part is suitable for its intended purpose.

1. **Milestone** means an event or stage in the performance of the <##Supplier Activities> as described as such (if at all) in the Milestone Schedule.
2. **Milestone Date** means the date by which a Milestone must be achieved, as specified in the Milestone Schedule.
3. **Milestone Payment** means so much of the <##Contract Sum> (as at the <##Contract Date>) as is specified in the Pricing Schedule to be payable on:
   1. in respect of a Component Part, the achievement of Handover and Acceptance of a Component Part; and
   2. in respect of any Milestone, achievement of the Milestone.
4. **Milestone Schedule** means Schedule <##insert>.
5. **Moral Right** has the meaning given by the *Copyright Act 1968* (Cth) and if any work is used in any jurisdiction other than in Australia, any similar rights capable of protection under the laws of that jurisdiction.
6. **Other Contractor** means those parties engaged by the Principal to perform Other Works and includes those parties identified in Item <##4 replace with relevant reference to item in the Contract Particulars of your contract>.
7. **Other Works** means those physical things to be constructed or installed by a contractor other than the Supplier engaged by the Principal identified in Item <##4 replace with relevant reference to item in the Contract Particulars of your contract> and described more fully in the Component Brief.
8. **Payment Claim** has the meaning given in clause 9.2(a).
9. **Payment Statement** has the meaning given in clause 9.4(a).

**PPS Act** means the *Personal Property Securities Act 2009* (Cth) and regulations made under that Act.

1. **Project Participants** has the meaning given in Item <##5 replace with relevant reference to item in the Contract Particulars of your contract> and includes any Other Contractors.
2. **Prototype** has the meaning identified in Item <##7 replace with relevant reference to item in the Contract Particulars of your contract> and described more fully in the Component Brief.
3. **Prototype Acceptance** has the meaning given in clause 7.2(f)
4. **Prototype Payment** means so much of the <##Contract Sum> (as at the <##Contract Date>) as is specified in the Pricing Schedule, if any, to be payable in connection with the Manufacturing of the Prototype.
5. **Quality Management Plan** means the Project Plan of that name described in clause 7.1, the requirements for which are specified in <##insert name and section of the contract document in which the requirements for the Quality Management Plan appear>.

**Relevant Personal Property** has the meaning given in clause 3.1(a)(iv).

1. **Retained Temporary Works** has the meaning identified in Item <##2 replace with relevant reference to item in the Contract Particulars of your contract> and described more fully in the Component Brief.
2. **RTW Manufacture** has the meaning given in clause 5.2(e).
3. **RTW Milestone** has the meaning given to that term in the Milestone Schedule.
4. **RTW Milestone Date** means the date set out in respect of the RTW Milestone in the Milestone Schedule.
5. **Security Interest** means a mortgage, charge, lien, pledge, security interest, title retention, preferential right, trust arrangement, encumbrance and contractual right of set off and includes a security interest within the meaning of the PPSA.
6. **Security of Payment Act** means the *Building and Construction Industry Security of Payment Act 2002* (Vic).
7. **Supplier IP** means Intellectual Property Rights owned by or licensed to the Supplier (or a third party) which were:
   1. brought into existence prior to the <##Contract Date> for general use in the Supplier's (or third party's) Manufacturing processes; or
   2. developed by the Supplier (or a third party) completely independently of the <##Supplier's Activities>,
8. but excludes:
   1. Intellectual Property Rights in or related to the Retained Temporary Works; and
   2. without limiting paragraph (c), the Manufacturing processes and documents (including shop drawings and fabrication drawings) that have been developed, or reviewed, commented on or approved by or on behalf of the Principal, in connection with the Retained Temporary Works, the Components, the <##Supplier's Activities> or the Design Deliverables which form part of the Developed IP.
9. **Tax Invoice** has the meaning given to them in GST Act.

# Not used[[1]](#footnote-1)

# PPS Act

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| 1. **Guidance Note:** If the Base Contract includes a clause in respect of the *Personal Property Securities Act 2009* (Cth) that clause should be deleted and replaced with the following clause. If the Base Clause does not include a clause in respect of the *Personal Property Securities Act 2009* (Cth) this clause should be added as a new clause in the Base Contract, preferably immediately after any existing payment clause. 2. The PPS Register is an official register created under the PPS Act and administered by the Registrar of Personal Property Securities. It operates as a public noticeboard of security interests in personal property. The Registrar is appointed by the Attorney General's Department. The Registrar's office sits in a Commonwealth government department called the Australian Financial Security Authority (AFSA). 3. The PPS allows the agency to take an effective security interest in the Component or Component Parts upon payment for them, provided the clauses below are included in the Base Contract. 4. In broad terms, a security interest is an interest in personal property, which includes goods and contractual rights. Under these Model Clauses, the security interests with which an agency should primarily be concerned will arise when the agency pays for a Component and becomes entitled to ownership of that Component, Component Part or Retained Temporary Works. |

## Security Interests

1. The Supplier acknowledges and agrees that:

### the Principal may:

#### immediately upon title in Components and Component Parts passing to the Principal under clause 9.5(d);

#### immediately upon title in the Retained Temporary Works passing to the Principal under clause 5.3(a); and

#### at any other time if and to the extent that the Principal forms a belief on reasonable grounds that the Principal is, or will become, a secured party arising out of or in connection with <## the Contract>,

#### at the Supplier's expense, take all steps that the Principal considers advisable to:

#### perfect, protect, record, register, amend or remove the registration of, the Principal's Security Interest in any relevant personal property that is the subject of this Security Interest (**Relevant Personal Property**); and

#### better secure the Principal's position in respect of Relevant Personal Property under the PPS Act;

### it will do all things reasonably necessary to assist the Principal to take the steps described in clause 3.1(a);

### it irrevocably and unconditionally waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of the Principal in Relevant Personal Property;

### if, and only if, the Principal is or becomes a secured party in relation to Relevant Personal Property, and to the extent only that Chapter 4 of the PPS Act would otherwise apply to an enforcement of a Security Interest in Relevant Personal Property, the Supplier and the Principal agree that, pursuant to section 115 of the PPS Act, the following provisions of the PPS Act do not apply in relation to those Security Interests to the extent, if any, mentioned in section 115: section 117, section 118, section 120, subsection 121(4), section 125, section 129, section 130, subsection 132(3)(d), subsection 132(4), section 142, and section 143;

### subject to section 275(7) of the PPS Act, it will not disclose the contents of <##the Contract>; the amount or performance obligation secured by the Principal's Security Interest in Relevant Personal Property and the other information mentioned in section 275(1) of the PPS Act pursuant to section 275(4) of the PPS Act;

### it must immediately notify the Principal if it becomes aware of any person other than the Principal taking steps to register, or registering, a financing statement in relation to Relevant Personal Property; and

### it must arrange for the removal or cessation of any registration of any Security Interest that affects the priority of the Principal's interest in Relevant Personal Property.

1. For the purposes of this clause 3.1, "financing statement", "financing change statement", "personal property", "registration", "secured party" and "verification statement" each have the meaning given to those terms in the PPS Act.

## Indemnity

1. The Supplier must indemnify the Principal on demand from any Claims against, or Loss suffered or incurred by the Principal, arising out of or in connection with any breach by the Supplier of its obligations under clause 3.1.

# Intellectual Property Rights

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| 1. **Guidance Note:** A specific IP clause is required for Contracts employing Offsite Construction. Manufacturing processes in Offsite Construction procurement are often proprietary in nature, and Suppliers frequently attempt to carve their proprietary manufacturing processes out from any licences granted to the Principal in respect of background IP (IP not created for the purposes of the Contract). 2. This clause replaces the existing clause titled "Intellectual Property Rights" in the Base Contract. Please delete that clause from the Base Contract and replace it with the following. 3. This clause provides for a broad licence in IP created for the purposes of the Supplier's Activities and in the Supplier's background IP. This is typically sufficient if the Principal is simply seeking to use the IP in the future for government projects. If the Principal requires ownership of IP (e.g. if it intends to commercialise the IP or to share the IP with other parties other than in connection with a project of the Principal), this clause should be substituted with an IP ownership clause. Legal advice must be sought for that purpose. 4. Suppliers may resist the IP licence, given its scope. Legal advice must also be sought in that event and prior to any agreement being made with the Supplier to amend the IP licence. |

## Warranty and indemnity

1. The Supplier:

### warrants to the Principal that:

#### the Retained Temporary Works;

#### the Components;

#### the <##Supplier's Activities>;

#### the Design Deliverables;

#### any methods of working; and

#### the use or enjoyment by the Principal (or any nominee of the Principal) of any RTW, Components or any Design Deliverables,

#### will not infringe any Intellectual Property Rights; and

### indemnifies the Principal on demand against any Claim or Loss (including any third party Claim against the Principal) arising out of or in connection with any actual or alleged infringement of any Intellectual Property Right.

## Licence

### The Supplier grants to the Principal (or must procure that the Principal is granted, as the case may be) a perpetual, royalty-free, irrevocable, non-exclusive, transferable, worldwide licence (including the right to sub-licence) to exercise all or any of the Intellectual Property Rights in the Developed IP for all purposes in connection with the Retained Temporary Works, Components, <##Supplier's Activities> and Design Deliverables, including:

#### the use and enjoyment of the Retained Temporary Works, Components, <##Supplier's Activities> and Design Deliverables;

#### any installation, use, operation, support, repair, maintenance of, or additions, alterations or repairs to the Retained Temporary Works and Components; and

#### use in any way for any other project of the Principal.

### The Supplier grants to the Principal (or must procure that the Principal is granted, as the case may be) a licence in respect of the Intellectual Property Rights in the Supplier IP on the terms set out in clause 4.2(a), with the exception that clause 4.2(a)(iii) will not apply.

### All sub-paragraphs of this clause 4.2 are to be construed as separate and independent grounds on which the licence may be exercised, and without limiting each other or any other part of this clause.

## Moral Rights

### The Supplier:

#### must ensure that it does not infringe any moral right of any author of any work in carrying out the <##Supplier's Activities>;

#### must ensure that it obtains an irrevocable and unconditional:

##### written consent on the terms reasonably required by the Principal, for the benefit of the Principal and the Supplier, from the author of any work to be incorporated into the Components, or used during, or as part of the <##Supplier's Activities>, including any necessary consents from its employees, subcontractors and any consultants engaged by it, or the employees of its subcontractors and consultants, to doing or authorising the doing of an act or making or authorising the making of an omission (whether occurring before or after this consent is given), anywhere in the world which, but for the consent, infringes or may infringe that author's Moral Rights in the work; and

##### waiver on the terms reasonably required by the Principal, to the extent permitted by law, of any and all Moral Rights to which that author may be entitled anywhere in the world in relation to the work;

#### must not (and must not encourage or permit anyone else to) apply any duress to any person or make a statement to any person knowing that the statement is false or misleading in a material particular, or knowing that a matter or thing has been omitted from the statement without which the statement is false or misleading in a material particular, in procuring consents and waivers under this clause 4.3; and

#### indemnifies the Principal against any Claims against, or Loss suffered or incurred by, the Principal, arising out of, or in any way in connection with, any actual or alleged infringement of any author's Moral Rights arising out of or in any way in connection with the Retained Temporary Works, Components, <##Supplier's Activities> and Design Deliverables , or arising in the future out of or in connection with any change, distortion, destruction, alteration, relocation or destruction of the Retained Temporary Works or the Components.

### This clause 4.3 will survive the termination of the Contract and the completion of the <##Supplier's Activities>.

### Where used in this clause 4.3, the term "work" has the meanings given to it in section 189 of the *Copyright Act 1968* (Cth).

# Retained Temporary Works

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| 1. **Guidance Note:** The Retained Temporary Works refers to the moulds, complex jigs, bespoke templates, etc. used to Manufacture Components or Component Parts. In circumstances where the Principal intends to use the same Components or Component Parts on future projects, the Principal might consider retaining the Retained Temporary Works as well as the Components or Component Parts. 2. The following clause provides for the Principal to own the Retained Temporary Works upon payment of the Initial RTW Payment, with the Supplier being required to deliver the Retained Temporary Works to the Principal as a condition precedent to Handover and Acceptance of the last Component Part. Principal ownership of the Retained Temporary Works can result in efficiencies in terms of procurement timeframes and construction costs on future projects. The Principal will, however, need to factor in the cost of storing Retained Temporary Works and the likelihood of use on future projects when making the decision to seek ownership. The Supplier retains the risk of loss or damage to the Retained Temporary Works until the Date of Handover and Acceptance in respect of the last Component Part to achieve Handover and Acceptance (i.e. the Supplier will need to repair or replace the Retained Temporary Works if lost or damaged at no cost to the Principal). 3. The following clause also provides that the Principal may make an election within ##10 Business Days following the Date of Handover and Acceptance in respect of the last Component Part to achieve Handover and Acceptance to require the Supplier to purchase the Retained Temporary Works at a reduced price. This clause has been included to incentivise the Supplier to design, Manufacture and maintain the Retained Temporary Works to the requisite standard, or risk not receiving payment for the full value of the Retained Temporary Works. 4. It is contemplated that the following clause will be included in each Contract as a new clause, preferably inserted near other completion clauses. If it is not relevant to your procurement, please mark "not applicable" in the relevant Contract Particulars. |

## Application

1. This clause 5 applies unless otherwise stated in Item <##2 replace with relevant reference to item in the Contract Particulars of your contract>.

## RTW Manufacture

### The Supplier must:

#### Manufacture the Retained Temporary Works by the RTW Milestone Date; and

#### give the <##Principal's Representative>:

##### ##5 Business Days prior written notice of the date on which it anticipates achieving the RTW Milestone; and

##### written notice when it considers the RTW Milestone has been achieved.

### Within ##4 Business Days after receiving notice under clause 5.2(a)(ii)B, the <##Principal's Representative> may:

#### inspect the Retained Temporary Works (together with any nominee of the <##Principal's Representative>); and

#### give written notice to the Supplier, together with reasons, if the RTW Milestone has not been achieved.

### The Supplier must provide the <##Principal's Representative> (and any nominee) with access to, and (where applicable) a demonstration of, the Retained Temporary Works if the <##Principal's Representative> elects to conduct an inspection under clause 5.2(b)(i).

### On receipt of a notice under clause 5.2(b)(ii), the Supplier must promptly address such issues as are identified in the <##Principal's Representative>'s notice, whereupon clauses 5.2(a)(ii)B to this clause 5.2(d) (both inclusive) will reapply.

### The RTW Milestone will be taken to have been achieved when ##4 Business Days expire after the giving of a notice under clause 5.2(a)(ii)B without a notice under clause 5.2(b)(ii) having been given (**RTW** **Manufacture**).

### Compliance with clause 5.2(d) does not prejudice the Supplier's rights, under clause <##insert dispute resolution clause number>, to dispute a notice given under clause 5.2(b)(ii).

## Ownership and risk

### Ownership of, and unencumbered title in, the Retained Temporary Works passes to the Principal free of any Security Interest immediately upon payment of the Initial RTW Payment.

### The Supplier must:

#### do everything necessary to give effect to clause 5.3(a); and

#### without limiting its obligations under clause 3.1, at its expense, do all things reasonably necessary to assist the Principal to register a Security Interest in, and better secure the Principal's position in respect of, the Retained Temporary Works under the PPS Act.

### The Principal grants to the Supplier a non-exclusive, revocable licence to use the Retained Temporary Works for the sole purpose of the Supplier complying with its obligations under <##the Contract>.

### The Supplier:

#### bears the risk of loss of or damage to the Retained Temporary Works until the Date of Handover and Acceptance in respect of the last Component Part to achieve Handover and Acceptance, unless caused by a negligent act or omission of the Principal; and

#### must promptly rectify, at its own cost, any loss or damage to the Retained Temporary Works for which the Supplier bears the risk in accordance with clause 5.3(d)(i).

### Subject to clause 5.4, it is a condition precedent to the achievement of Handover and Acceptance in respect of the last Component Part to achieve Handover and Acceptance that:

#### the Supplier has delivered to the Principal (at a place nominated by the Principal, acting reasonably) the Retained Temporary Works; and

#### the Retained Temporary Works are free from Defects and in good condition and repair.

## Retained Temporary Works

### The Principal may, within ##10 Business Days after the Date of Handover and Acceptance in respect of the last Component Part to achieve Handover and Acceptance, advise the Supplier in writing that it requires the Supplier to purchase the Retained Temporary Works from the Principal.

### If a notice is given under clause 5.4(a):

#### the Principal will be entitled to retain or be paid the Final RTW Payment as payment by the Supplier for the purchase of the Retained Temporary Works;

#### the Principal will procure that ownership of, and unencumbered title in, the Retained Temporary Works passes to the Supplier free of any Security Interest upon receipt by the Principal of the Final RTW Payment;

#### the Supplier will retain responsibility for, and all risk of loss of or damage to, the Retained Temporary Works; and

#### the Supplier will not be entitled to make (and the Principal will not be liable upon) any Claim for the Final RTW Payment.

# Component Design

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| 1. **Guidance Note:** The design process is integral to successful Offsite Construction. There are many design related issues that must be considered when designing Components and Component Parts, not least of which being how to lift and transport the Component Parts from the manufacturing facility to the Delivery Point. The following clauses have been prepared to address these issues. |

## Supplier obligations

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| 1. **Guidance Note:** This clause should be added to the Base Contract where the Supplier is responsible for designing the Components or Component Parts. Ideally, this clause would be inserted below any existing design clause in the Base Contract and the design of the Component and Component Parts carved out of those design obligations in the Base Contract. |

### The Supplier must design, or develop and complete the design of, the Components, Component Parts and the Retained Temporary Works in accordance with the Component Brief and other requirements of <##the Contract> and, for this purpose, prepare all relevant Design Deliverables.

### In performing its obligations under clause 6.1(a), the Supplier must:

#### liaise with and proactively seek input from all Project Participants, including by providing Project Participants with drafts of Design Deliverables, convening meetings and addressing, in the Design Deliverables submitted in accordance with clause 6.2, such issues as may reasonably be raised by any of the Project Participants;

#### ensure that the Components and Retained Temporary Works can be readily and economically transported to the Site (meaning, without limitation, the loading, transportation, tie-down and unloading of the Components and Retained Temporary Works should not require the use of vehicles or items of equipment that are specialised, bespoke or not readily commercially available, and should not result in any Approvals being required to be obtained (unless otherwise agreed with the Principal));

#### for the purposes of clause 6.1(b)(ii), assess and take into account (without limitation) lifting, transport tie-down design, transportation loads and dimension capacities and transport routes;

#### incorporate in the Components such penetrations as are necessary or desirable to facilitate connection to all relevant utility services at the Site, and in a manner that is cost efficient and consistent with good design and construction practices;

#### ensure that the Components are designed having regard to and make all due allowance for:

##### installation staging and sequencing as between the Component Parts and Components and as between any one or more of the Component Parts or Components and any Other Works;

##### cumulative fabrication, installation and construction tolerances as between the Component Parts and Components and as between any one or more of the Component Parts or Components and any Other Works;

##### any requirements to inspect the Components (or any Component Parts) during the performance of construction works (including as required by any Quality Management Plan); and

##### safe access to all points of the Component Parts and Components to which access will be required (or that a competent Supplier should reasonably anticipate will or may be required) in connection with the installation or incorporation of the Component Parts and Components in construction works (including lifting points, tie-down points and utility service connections); and

#### ensure that the Components are interfaced and coordinated with the works or services being carried out by other Project Participants.

## Design Review

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| 1. **Guidance Note:** The design review process in this clause provides the Principal with an opportunity to review and reject Design Deliverables that do not comply with the requirements of the Supply Contract. 2. Where the Components and Component Parts must integrate with the Other Works or an Other Contractor will assume liability for the Components or Component Parts, the Principal may wish to engage the Other Contractor in this design review process if that Other Contractor has been engaged at the time that Supplier is designing the Components and Component Parts. This clause may be used to incorporate comments from that Other Contractor by the Principal adopting comments provided by any Other Contractor and incorporating them into the comments provided by the Principal. Note this will require that the Principal review the comments provided by the Other Contractor to assess whether they arise out of a non-compliance with the requirements of the Contact, to avoid any argument that any such comment is a variation. Other Contractors will also have the opportunity to raise issues in the design as part of the process in clause 6.1(b)(i). 3. This clause should be added to the Base Contract where the Supplier is responsible for designing the Components or Component Parts. This clause should be inserted below clause 6.1. 4. The clauses set out below are aligned with the clauses addressing the design review process in the Other Contract and you should refrain from amending these clauses without first ensuring the alignment of any such amendment with the corresponding clauses in the Other Contract. |

### The Supplier must prepare and submit to the Principal for approval in accordance with clause <##insert cross reference to clause addressing approval of Project Plans> a Design Management Plan.

### The Supplier must submit the Design Deliverables that it prepares to the <##Principal's Representative> for review in a manner and at a rate which will give the <##Principal's Representative> a reasonable opportunity to review the Design Deliverables and otherwise in accordance with the approved Design Management Plan.

### The <##Principal's Representative> may, after the submission (or resubmission) of a Design Deliverable:

#### review the Design Deliverable; and

#### within *##*10 Business Days after its submission, reject the Design Deliverable (or any part) if it does not comply with the requirements of <##the Contract> and state the nature of the non-compliance.

### The Supplier must amend and resubmit to the <##Principal's Representative> any Design Deliverable that is rejected under section 6.2(c)(ii) within *##*10 Business Days after the date of such rejection, and this clause 6.2 will reapply.

### The Supplier must not commence performance of any part of the <##Supplier's Activities> to which any Design Deliverable submitted or resubmitted to the <##Principal's Representative> applies unless the <##Principal's Representative>:

#### has had the period referred to in section 6.2(c)(ii) to review the Design Deliverable; and

#### has not rejected the Design Deliverable.

### The Supplier must not amend any Design Deliverable that has:

#### been submitted to the <##Principal's Representative>; and

#### not been rejected under section 6.2(c)(ii),

* 1. unless the Supplier submits the proposed amendments to the <##Principal's Representative>, in which case this clause 6.2 will reapply.

### Neither the Principal nor the <##Principal's Representative> assumes or owes any duty of care or other responsibility to the Supplier to review, or in reviewing, a Design Deliverable submitted by the Supplier, including for errors, omissions or non-compliance with <##the Contract>.

### The Supplier will not be entitled to make (and the Principal will not be liable upon), any Claim arising out of or in any in connection with the <##Principal's Representative> not detecting and notifying the Supplier of any errors, omissions or non-compliance with the requirements of <##the Contract> in any Design Deliverable submitted.

### No review of, comment upon or rejection of, or failure to review or comment upon or reject, a Design Deliverable prepared or submitted by the Supplier, or any other direction by the <##Principal's Representative> in connection with the Design Deliverable, will:

#### constitute a direction to carry out a <##Variation>;

#### relieve the Supplier from or alter its liabilities or obligations, whether under <##the Contract> or otherwise according to any law; or

#### limit or otherwise affect the Principal's rights against the Supplier, whether under <##the Contract> or otherwise according to any law.

## Warranties

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| 1. **Guidance Note:** Select one of Option A or Option B. |

1. **OPTION A**

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| 1. **Guidance Note:** This clause should be added to the Base Contract where the Supplier is responsible for designing the Components or Component Parts. This clause should be inserted below clause 6.2. |

1. Without limiting the Supplier's obligations under <##the Contract>, the Supplier warrants that:

### it has carefully checked, examined and analysed the Component Brief and is satisfied that the Component Brief is appropriate and suitable for the purposes of enabling the Supplier to perform its obligations under <##the Contract>, including the production of the Design Deliverables and the Manufacture of the Components and Component Parts so as to meet the requirements of the Component Brief and the remainder of the Contract;

### it has satisfied itself that there is nothing in the Component Brief that would prevent the Components and Component Parts from being Fit for Purpose;

### it will construct the Components and Component Parts in accordance with the approved Component Designs; and

### as at the Date of Handover and Acceptance, each Component and Component Part will:

#### be, and will remain, Fit for Purpose subject to being operated and maintained in a manner consistent with reasonable market operating and maintenance practices and applicable laws;

#### comply with all requirements of <##the Contract> and applicable laws.

1. **OPTION B**

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| 1. **Guidance Note:** This clause should be added to the Base Contract where the Supplier is not responsible for designing the Components or Component Parts. This clause should be as a new clause in the Base Contract, preferably this clause would be inserted together with other clauses addressing the design, Manufacturing and Handover and Acceptance of the Components and Component Parts. |

1. Without limiting the Supplier's obligations under <##the Contract>; the Supplier warrants that:

### it has carefully checked, examined and analysed the Component Design and is satisfied that the Component Design is appropriate and suitable for the purposes of enabling the Supplier to perform its obligations under <##the Contract>;

### it will not make any claim against the Principal in any way in connection with a Manufacturing Problem; and

### it will Manufacture the Components and Component Parts in accordance with the approved Component Designs.

# Handover and Acceptance

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| 1. **Guidance Note:** This clause should be added as a new clause in the Base Contract. This clause would be inserted where other clauses addressing the design, Manufacturing and Handover and Acceptance of the Components and Component Parts are located. |



## Quality Management Plan

### The Supplier must prepare and submit to the Principal for approval in accordance with clause <##insert cross reference to clause addressing approval of Project Plans> a Quality Management Plan.

### The Supplier must comply with any approved Quality Management Plan in the Manufacture of any Prototype, the Components and the Component Parts.

## Prototype Acceptance

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| 1. **Guidance Note:** This clause enables the Principal to see and sign off on the required quality of the Component or Component Parts. 2. Where used in conjunction with an Other Contract, this will also enable the Other Contractor to warrant that it has inspected the Prototype and accounted for it in terms of interfacing with the Other Works |

### If it is stated in Item <##6 replace with relevant reference to item in the Contract Particulars of your contract> that this clause 7.2 applies, then the Supplier must, by the date set out in Item <##8 replace with relevant reference to item in the Contract Particulars of your contract>, Manufacture and make available to the <##Principal's Representative> for inspection and demonstration, the Prototype.

### The <##Principal's Representative> may:

#### on reasonable prior notice to the Supplier, attend (together with any other persons nominated by the <##Principal's Representative>, including any Other Contractor) an inspection (and where applicable, require a demonstration) of the Prototypes; and

#### within ##5 Business Days after an inspection (and where applicable, demonstration) under clause 7.2(b)(i), by written notice to the Supplier setting out the reasons for doing so, reject any Prototype if the Prototype does not comply with the requirements of <##the Contract>.

### The Supplier must provide the <##Principal's Representative> (together with any other persons nominated by the <##Principal's Representative>, including any Other Contractor) with access to, and conduct demonstrations of, the Prototype when so requested under clause 7.2(b)(i).

### If a Prototype is rejected, the Supplier must make available for inspection, at its cost, a corrected or substituted Prototype which addresses the reasons identified in the <##Principal's Representative>'s notice under clause 7.2(b)(ii), whereupon clause 7.2(b) will reapply.

### Compliance with clause 7.2(d) does not prejudice the Supplier's rights, under clause <##insert dispute resolution clause number>, to dispute a notice given under clause 7.2(b)(ii).

### The Supplier must not commence the Manufacture of any Component to which a Prototype applies unless the <##Principal's Representative> has had ##5 Business Days to review, and has not rejected, the Prototype (**Prototype Acceptance**).

### The Supplier acknowledges and agrees that:

#### the <##Principal's Representative> does not assume or owe any duty of care to the Supplier to inspect any Prototype, or in inspecting, to identify any errors, omissions in the Prototype or any failure to comply with <##the Contract>; and

#### no review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any Prototype or any other direction by the <##Principal's Representative> about, or any other act or omission by the <##Principal's Representative> in relation to, a Prototype will:

##### relieve the Supplier from, or alter or affect, the Supplier’s obligations under <##the Contract> or otherwise at law or in equity; or

##### prejudice the Principal's rights against the Supplier under <##the Contract> or otherwise at law or in equity.

### The Supplier must ensure a Prototype remains available for inspection at the Supplier's premises (or such other location as is agreed in writing by the <##Principal's Representative>) until the Date of Handover and Acceptance in respect of the last Component Part to which that Prototype applies.

### The Supplier represents and warrants to the Principal that as at the Date of Handover and Acceptance all Components and Component Parts will match the quality, finish, aesthetic and operational capability of the relevant Prototype which has achieved Prototype Acceptance.

## Component Part Manufacture and inspection

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| 1. **Guidance Note:** This clause sets out an inspection process in respect of the Manufacture of Components and Component Parts. The Agency should identify any points in the manufacture of the Components and Component Parts at which it requires the right to inspect and, where there are Milestones, note this as such in the Milestone Schedule, or otherwise set out the manufacturing inspection points in the Component Brief. 2. This clause is aligned with the clauses addressing the Component Part Manufacture and inspection in the Other Contract and you should refrain from amending this clause without first ensuring the alignment of any such amendment with the corresponding clauses in the Other Contract. |

### The Supplier must:

#### not progress the Manufacture of a Component or Component Part (as the case may be) beyond a relevant Hold Point until it has complied with the requirements of this clause 7.3; and

#### give the <##Principal's Representative> not less than ##5 Business Days prior written notice of the date on which, in respect of a Component or Component Part (as the case may be), a Hold Point will be reached.

### At each Hold Point the Supplier must provide the <##Principal's Representative> and, if required by the <##Principal's Representative> the Other Contractor with:

#### access to the Component or Component Part (as the case may be) so that it can be inspected; and

#### other documents and evidence (which must be in a form required by the <##Principal's Representative>) that demonstrate that the Supplier has complied with its obligations under <##the Contract> in relation to the Component or Component Part (as the case may be).

### The <##Principal's Representative> may, within ##6 Business Days after the last to occur of:

#### an inspection of a Component or Component Part (as the case may be); and

#### the Supplier complying with clauses 7.3(b)(i) and 7.3(b)(ii) in respect of that Component or Component Part (as the case may be),

* 1. notify the Supplier (acting reasonably) that a Component or Component Part (as the case may be) does not comply with <##the Contract>, together with reasons.

### The Supplier must:

#### promptly rectify any non-compliance notified under clause 7.3(c), whereupon the requirements of this clause 7.3 will reapply; and

#### comply with clause 7.3(d)(i) regardless of whether the Supplier disputes the Principal's notice under clause 7.3(c).

### Compliance with clause 7.3(d) does not prejudice the Supplier's rights, under clause <##insert dispute resolution clause number>, to dispute a notice given under clause 7.3(c).

## Manufacture Completion and delivery

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| 1. **Guidance Note:** This clause applies where the Supplier is required to deliver any Component or Component Part to a location other than the Manufacturing Facility. 2. This clause sets out a process for signing off factory acceptance testing and inspections of all Components and Component Parts in the Manufacturing Facility before delivery to the Delivery Point. Note that if you do not give a Manufacture Completion Certificate or a rejection notice within ##6 Business Days after receiving a notice under clause 7.4(b)(iii), then the relevant Component or Component Part is deemed accepted. This drafting has been included to allow the Principal to elect not to inspect and provide sign off on all Components and Component Parts (e.g. where the Principal has undertaken a thorough review of a number of Component Parts and is comfortable that these are being Manufactured to the requisite standard, and thereafter the Principal elects to only review a limited number of Component Parts) but will mean that you need to ensure that if you have any concerns a rejection certificate is provided with the requisite ##6 Business Days. 3. The Delivery Point and any earliest date for delivery (e.g. where a Component Part can't be delivered early because works must occur at the Delivery Point in advance of delivery) must be set out in the Component Schedule. 4. This clause is aligned with the clauses addressing the Component Part Manufacture and inspection in the Other Contract and you should refrain from amending this clause without first ensuring the alignment of any such amendment with the corresponding clauses in the Other Contract. 5. Where you do not require the Supplier to deliver any Component Part to a location other than the Manufacturing Facility, please mark "not applicable" in the relevant item in the Contract Particulars. |

### This clause applies where stated in Item <##10 replace with relevant reference to item in the Contract Particulars of your contract>.

### The Supplier must:

#### complete the Manufacture of each Component and Component Part in accordance with the relevant Design Deliverables and the requirements of <##the Contract>;

#### give the <##Principal's Representative> and the Other Contractor not less than ##10 Business Days written notice of the date on which the Supplier anticipates Manufacture Completion of a Component or Component Part (as the case may be) will occur; and

#### when it considers that Manufacture Completion of a Component or Component Part (as the case may be) has occurred in accordance with clause 7.4(b)(i):

##### give written notice to that effect to the <##Principal's Representative> and the Other Contractor; and

##### provide the <##Principal's Representative> and, if required by the <##Principal's Representative> the Other Contractor with access to the Component or Component Part (as the case may be) within ##7 Business Days after giving a notice under clause 7.4(b)(iii)A so that it can be inspected.

### Within ##10 Business Days after receiving a notice under clause 7.4(b)(iii)A, the <##Principal's Representative> will give the Supplier, in respect of the relevant Component or Component Part (as the case may be) a notice:

#### certifying that Manufacture Completion has been achieved in respect of the relevant Component or Component Part (as the case may be) (**Manufacture Completion Certificate**); or

#### detailing reasons for not providing a Manufacture Completion Certificate.

### If the <##Principal's Representative> does not give a notice under clause 7.4(c) within the period specified in that clause, the Component or Component Part (as the case may be) will be taken to have achieved Manufacture Completion.

### The Supplier must:

#### promptly rectify any non-compliance notified under clause 7.4(c)(ii), whereupon the requirements of this clause 7.4 will reapply; and

#### comply with clause 7.4(e)(i) regardless of whether the Supplier disputes the Principal's notice under clause 7.4(c)(ii).

### Compliance with clause 7.4(e) does not prejudice the Supplier's rights, under clause <##insert dispute resolution clause number?>, to dispute a notice given under clause 7.4(e)(i).

### The Supplier must deliver the Component or Component Part (as the case may be) to the Delivery Point on or by the Date for Delivery (as applicable).

### The Supplier must:

#### not deliver a Component or Component Part (as the case may be) to the Delivery Point:

#### unless a Manufacture Completion Certificate has been issued in respect of that Component or Component Part (as the case may be); and

#### earlier than the date or time so specified in the Component Schedule or, if no date or time is so specified, the date or time notified by the <##Principal's Representative> (acting reasonably);

#### give the <##Principal's Representative> and the Other Contractor not less than ##10 Business Days' prior written notice of delivery;

#### package the Component or Component Part (as the case may be) to ensure reasonable protection against theft or damage during transit, delivery, loading and unloading;

#### provide all lifting and related equipment necessary to safely handle, load and unload the Component or Component Part (as the case may be); and

#### load and then, at the Delivery Point, unload the Component or Component Part (as the case may be).

### The Principal may at any time direct a change to the Delivery Point but if compliance with such direction causes the Supplier to incur more or less cost than the Supplier will be entitled to be paid its additional costs reasonably and necessarily incurred in connection with the change to the Delivery Point.

## Storage

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| 1. **Guidance Note:** This clause enables the Principal to delay delivery of a Component to the Delivery Point where this is due to the Principal and not the Supplier (e.g. because works that need to occur at the Delivery Point in advance of delivery are running late) and sets out the amounts the Supplier will be entitled to for storing a Component Part, and the obligations of the Supplier re storage where this occurs. |

### Not less than the time specified in Item <##11 replace with relevant reference to item in the Contract Particulars of your contract> before the Date for Handover and Acceptance in respect of a Component or Component Part (as the case may be) the <##Principal's Representative> may give written notice to the Supplier:

#### stating that delivery cannot be made at the Delivery Point on the Date for Handover and Acceptance; and

#### notifying the Supplier of an adjusted Date for Handover and Acceptance.

### If the Component or Component Part (as the case may be) is otherwise ready to be delivered to the Delivery Point on the Date for Handover and Acceptance (prior to adjustment under clause 7.5(a)(ii)), the Supplier must safely and securely store and protect the Component or Component Part (as the case may be) at a location nominated by or otherwise acceptable to the Principal (acting reasonably) until the adjusted Date for Handover and Acceptance.

### The Supplier bears the risk of any loss or damage to the Component or Component Part (as the case may be) when in storage (except to the extent the loss or damage is caused or contributed to by a negligent act or omission of the Principal).

### A notice adjusting the Date for Handover and Acceptance under clause 7.5(a) will not be a breach of <##Contract>, but the Supplier will be entitled to be paid:

#### where Item <##12 replace with relevant reference to item in the Contract Particulars of your contract> specified a rate for storage costs in respect of that Component or Component Part (as the case may be), the amount sent out in that Item; or

#### where Item <##12 replace with relevant reference to item in the Contract Particulars of your contract> does not specify a rate for storage costs in respect of that Component or Component Part (as the case may be), its costs reasonably and necessarily incurred in storing the Component or Component Part (as the case may be) in accordance with clause 7.5(b),

#### for each day that is the period of time specified in Item <##13 replace with relevant reference to item in the Contract Particulars of your contract> after the Date for Handover and Acceptance (prior to adjustment under clause 7.5(a)(ii)) until the adjusted Date for Handover and Acceptance.

## Handover and Acceptance

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| 1. **Guidance Note:** This clause applies irrespective of whether the Supplier is required to deliver any Component Part to a location other than the Manufacturing Facility. 2. This clause sets out a process under which the Principal signs off that the Component or Component Part has been accepted, and handover of risk in the Component or Component Part to the Other Contractor occurs. 3. Similar to the process in respect of Manufacture Completion, this clause assumes sign off of all Components and Component Parts. Note that if you do not give a Handover and Acceptance Certificate or a rejection notice within ##6 Business Days after receiving a notice under clause 7.6(a)(ii), then the relevant Component or Component Part is deemed accepted. This drafting has been included to allow the Principal to elect not to inspect and provide sign off on all Components and Component Parts (e.g. where the Principal has undertaken a thorough review of a number of Component Parts and is comfortable that these are being Manufactured to the requisite standard, and thereafter the Principal elects to only review a limited number of Component Parts) but will mean that you need to ensure that if you have any concerns a rejection certificate is provided within the requisite ##6 Business Days. 4. This clause also includes a mechanism for establishing whether a Component will be repaired in situ or replaced. 5. This clause is aligned with the clauses addressing handover of Component Parts in the Other Contract and you should refrain from amending this clause without first ensuring the alignment of any such amendment with the corresponding clauses in the Other Contract. |

### The Supplier must:

#### give the <##Principal's Representative> and the Other Contractor not less than ##10 Business Days written notice of the date on which the Supplier anticipates a Component or Component Part (as the case may be) and associated <##Supplier's Activities> will achieve Handover and Acceptance; and

#### when it considers Handover and Acceptance of a Component or Component Part (as the case may be) has occurred:

##### give written notice to that effect to the <##Principal's Representative> and the Other Contractor; and

##### provide the <##Principal's Representative> and, if required by the <##Principal's Representative> the Other Contractor with access to the Component or Component Part (as the case may be) within ##7 Business Days after giving a notice under clause 7.6(a)(ii)A so that it can be inspected.

### Within ##10 Business Days after receipt of a notice under clause 7.6(a)(ii)A, the <##Principal's Representative> will give the Supplier, in respect of the relevant Component or Component Part (as the case may be) a notice:

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| **Guidance Note:** The Principal's Representative may give a Handover and Acceptance Notice where any Defects:   * remaining to be rectified are minor Defects which do not prevent the Component from being reasonably capable of being used for the purposes stated in or reasonably able to be inferred from your contract and can be corrected without prejudicing the convenient use of the Component; or * are accepted by the Principal (e.g. because it is preferable for another contractor to rectify the Defect or the Principal can operate the Component with the Defect). |

#### certifying that Handover and Acceptance has been achieved in respect of the relevant Component or Component Part (as the case may be) (**Handover and Acceptance Certificate**); or

#### detailing reasons for not providing a Handover and Acceptance Certificate.

### If the <##Principal's Representative> does not give a notice under clause 7.6(b) within the period specified in that clause, the Component or Component Part (as the case may be) and associated <##Supplier's Activities> will be taken to have achieved Handover and Acceptance.

### The <##Principal's Representative> may, in any notice given under clause 7.6(b)(i), identify any:

#### minor Defects to be rectified by the Supplier; and

#### Defect that the Principal has elected to accept, in which case the Supplier must pay to the Principal the greater of:

##### the costs necessary to rectify the Defect;

##### any costs that have been avoided or otherwise reduced or saved by the Supplier as a result of the Defect and not having to rectify the Defect; and

##### the relevant diminution in the value of the Component (including in the case of a Defect in a Component Part, the diminution of the Component of which that Component Part is a part) as a consequence of the Defect.

### The Supplier must:

#### promptly rectify any:

##### minor Defect notified in a notice given under clause 7.6(b)(i); and

##### subject to clause 7.6(f), non-compliance notified under clause 7.6(b)(ii), whereupon the requirements of this clause 7.6(b) will reapply; and

#### comply with clause 7.6(e)(i) regardless of whether the Supplier disputes the Principal's notice under clause 7.6(b).

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| **Guidance Note:** Note that clause 7.6(f) has been inserted to apply where the Supplier has delivered the Component or Component Part to the Site as rectification of non-compliances on Site may significantly impact the progress of the Other Works and the Principal will likely want to provide input into the decision of whether to rectify in situ or address off site. |

### Where clause 7.4 applies, the <##Principal's Representative> may, in any notice given by the <##Principal's Representative> under clause 7.6(b)(ii), direct the Supplier to submit a proposal under clause 7.6(g) to rectify any non-compliance.

### Within 5 Business Days of receipt of a notice under clause 7.6(b)(ii) which directs the Supplier to submit a proposal under this clause 7.6(g), the Supplier must give written notice to the <##Principal's Representative> stating whether the Supplier proposes to:

#### correct the Component Part in situ and correct the associated <##Supplier's Activities>; or

#### recover and replace the Component Part and correct the associated <##Supplier's Activities>,

#### and in each case specify:

#### when the correction or replacement will occur; and

#### the access the Supplier will require to the Delivery Point, if any, might be caused to the Principal or other occupiers or users of the Delivery Point.

### Within 10 Business Days after receipt of the Supplier's proposal under clause 7.6(g), the <##Principal's Representative> must give written notice to the Supplier stating whether the Supplier's proposal is:

#### accepted; or

#### rejected, together with reasons for the rejection.

### The <##Principal's Representative> will be taken to have given notice under clause 7.6(h)(ii) if:

#### the Supplier does not submit a proposal to the <##Principal's Representative> within the time specified in clause 7.6(g); or

#### the <##Principal's Representative> does not give a notice within the time specified in clause 7.6(h).

### If the Supplier is given or taken to have been given a notice under clause 7.6(h)(ii), the Supplier must promptly amend its proposal or submit a proposal (as the case may be) that meets the requirements of clause 7.6(g) and addresses any comments provided by the <##Principal's Representative> (if any) under clause 7.6(h)(ii).

### Within 10 Business Days after receipt of the Supplier's proposal under clause 7.6(g), the <##Principal's Representative> must give written notice to the Supplier stating whether the Supplier's proposal under clause 7.6(j) is:

#### accepted; or

#### rejected, in which case such notice may also direct the Contractor to:

##### correct the Component Part in situ and correct the associated <##Supplier's Activities>; or

##### recover and replace the Component Part and correct the associated <##Supplier's Activities>,

### on the basis of what minimises:

##### the cost of rectification to the Supplier; and

##### the delay to the Other Contractor's activities.

### If the Supplier is given notice under clause 7.6(h)(i) or 7.6(k) it must:

#### promptly implement the accepted proposal or direction of the <##Principal's Representative> (as the case may be), whereupon the requirements of this clause 7.6(b) will reapply; and

#### comply with clause 7.6(l)(i) regardless of whether the Supplier disputes the Principal's notice under clause 7.6(b)(ii) or any direction under clause 7.6(k)(ii).

### Compliance with clause 7.6(e)(i) or 7.6(l)(i) does not prejudice the Supplier's rights, under clause <##insert dispute resolution clause number?>, to dispute a notice given under clause 7.6(b) or direction under clause 7.6(k)(ii) (as the case may be).

### Without limiting clauses 7.6(m), the Supplier is not entitled to make any Claim against the Principal in connection with the implementation of the proposal accepted under clauses 7.6(h)(i) or 7.6(k)(i).

### The Supplier's obligations under this clause 7.6 will survive any termination of <##the Contract>.

### A notice under clause 7.6(b) stating that the Component or Component Part (as the case may be) and associated <##Supplier's Activities> have achieved Handover and Acceptance will not:

#### constitute approval by the Principal of the Component or Component Part (as the case may be) and associated <##Supplier's Activities>;

#### be taken as an admission or evidence that the Component or Component Part (as the case may be) and associated <##Supplier's Activities> comply with <##the Contract>; or

#### prejudice any rights or powers of the Principal.

### Nothing in clause 7.6 prejudices any other right, power or remedy which the Principal or the <##Principal's Representative> may have under <##the Contract> or at Law arising out of the failure of the Supplier to provide materials, plant, equipment, other items or work in accordance with <##the Contract>.

### Neither the Principal nor the <##Principal's Representative> are obliged to give any notice or direction under this clause 7.6 to assist the Supplier.

## Liquidated Damages

### If the Supplier does not achieve Handover and Acceptance of a Component or Component Part (as the case may be) by its corresponding Date for Handover and Acceptance, it must pay the Principal liquidated damages at the rate corresponding to that Component or Component Part (as the case may be) (if any) set out in the Milestone Schedule for every day after the Date for Handover and Acceptance until it achieves Handover and Acceptance for that Component or Component Part or <##the Contract> is terminated, whichever first occurs.

### Without limiting clause 7.7(a), if the Supplier does not achieve any Milestone by its corresponding Milestone Date, it must pay the Principal liquidated damages at the rate corresponding to that Milestone (if any) set out in the Milestone Schedule for every day after the Milestone Date to and including the earliest of the date on which the Milestone is achieved and the date on which <##the Contract> is terminated.

### Amounts payable under clauses 7.7(a) and 7.7(b) (inclusive) will be a debt due and payable from the Supplier to the Principal.

### The parties acknowledge and agree that the liquidated damages referred to in clause 7.7(a) and 7.7(b):

#### are a genuine pre‑estimate of the Principal's damages if:

##### Handover and Acceptance occurs after the Date for Handover and Acceptance; or

##### a Milestone is not achieved by its corresponding Milestone Date;

#### have been agreed in good faith;

#### are reasonable; and

#### are not intended as a penalty.

### Despite clause 7.7(d), if either:

#### all or any part of this clause 7.7 is found for any reason to be void, invalid, unenforceable or otherwise inoperative so as to disentitle the Principal from receiving the amount of liquidated damages payable under clause 7.7(a) or 7.7(b); or

#### a rate for liquidated damages in respect of a Milestone is not set out in the Milestone Schedule,

* 1. then the Principal will be entitled to recover common law damages for the occurrence of any of the events referred to in clauses 7.7(d)(i)A and 7.7(d)(i)B.

## Collateral Warranty

### The Supplier must, as a condition precedent to the achievement of Handover and Acceptance in respect of a Component or Component Part (as the case may be), provide the Principal with a duly completed and executed Collateral Warranty in favour of either the Principal or, if the Principal so directs, such Other Contractor as is named in the Component Schedule in respect of that Component or Component Part or notified by the Principal to the Supplier.

### The Supplier acknowledges and agrees that any Collateral Warranty given in favour of the Principal under clause 7.8(a) may be assigned by the Principal to a third party (including any Other Contractor).

### Nothing in this clause 7.8, nor any Collateral Warranty or assignment of rights as contemplated by this clause, will limit or affect any of the Supplier’s obligations or liabilities, or derogate from any rights which the Principal may have against the Supplier, in respect of the subject matter of the Collateral Warranty.

# Loading Protocol

### The Supplier must, not later than [##20] Business Days prior to the Date for Handover and Acceptance in respect of the first Component Part to be brought to the stage of Handover and Acceptance, and as a condition precedent to the achievement of Handover and Acceptance in respect of that first Component Part, prepare and provide to the <##Principal's Representative> and the Other Contractor a protocol (**Loading Protocol**) which:

#### where clause 7.4 does not apply, describes how the Other Contractor must load the Component Part onto, and then unload it from, the delivery vehicle;

#### includes a detailed installation guide for the Component Part;

#### includes copies of all Approvals and certifications in respect of lifting and related equipment referred to in clause 8(b); and

#### addresses the minimum requirements described in clause 8(d).

### Not later than ##8 Business Days after a Loading Protocol is provided under clause 8(a), the <##Principal's Representative> may give written notice to the Supplier of any changes that the <##Principal's Representative> (which may include changes requested by the Other Contractor) requires to be made to the Loading Protocol.

### The Supplier must:

#### following receipt of a notice under clause 8(b), immediately amend the Loading Protocol to give effect to the changes identified in the clause 8(b) notice; and

#### if any aspect of the Loading Protocol prepared and provided under clause 8(a) does not apply to any subsequent Component or Component Part (as the case may be), amend and provide a revised version of the Loading Protocol to the <##Principal's Representative> and the Other Contractor not later than [##20] Business Days prior to the Date for Handover and Acceptance in respect of that Component Part, whereupon clauses 8(b) and 8(c)(i) will reapply.

### Without limiting its obligations under <##the Contract>, the Supplier must ensure that:

#### the Component or Component Part (as the case may be) is cleaned, packaged and protected for safe storage and transportation; and

#### provide all lifting and related equipment necessary to safely handle and load the Component or Component Part (as the case may be) at the Manufacturing Facility.

# Payment

|  |
| --- |
| 1. **Guidance Note:** Typically, contracts require a Supplier to provide security to the full value of any amounts paid for plant and materials before they are delivered to the construction site. Given the size of the Offsite Construction market, the differing Supplier business sophistication and the likely value of any unfixed Component Parts at any point in time, Suppliers are unlikely to agree to provide security to the full value of unfixed Component Parts. Accordingly, it is typical to make substantial payments for unfixed Component Parts to ensure adequate Supplier cashflow. The following provisions ensure that the Principal's interests in the unfixed Component Parts for which it has made payment is acknowledged and protected. 2. This clause is intended to replace the existing clause titled "Payment" in the Base Contract. Please delete that clause and replace it with the following clause which addresses payment for the Retained Temporary Works, any Prototype, the Component(s) and Component Parts, and any other amounts making up the "Contract Sum" in the Base Contract. |

## Payment obligation

|  |
| --- |
| 1. **Guidance Note:** The following clause contemplates that all payment types will be retained in each Contract. If a particular payment type is not relevant to your Contract, please mark "not applicable" in the relevant "Contract Particulars" or "Annexure Part A" of the Base Contract. 2. The payment type "Prototype Payment" should only be used where a Prototype is to be provided but is sacrificial, that is, it will NOT form part of the permanent Component(s). Alternatively, if a Prototype is to be permanent, the Component Schedule will need to reflect this (see the definition of “Component”). It will need to be characterised as a Milestone and a corresponding Milestone Payment ascribed to it. |

### Clauses 9.1(b)(i)A to 9.1(b)(i)F (inclusive) apply unless otherwise stated in Item <##14 replace with relevant reference to item in the Contract Particulars of your contract>.

### In consideration of the Supplier performing its obligations under <##the Contract> the Principal will, subject to clauses 5.4(b)(i) and 9.8 and any other right of set off which the Principal may have, pay the Supplier:

#### the sum of:

##### the Design Development Payment;

##### the Initial RTW Payment;

##### unless a notice is given under clause 5.4(a), the Final RTW Payment;

##### the Prototype Payment;

##### in respect of each Component Part or Milestone, the corresponding Milestone Payment; and

##### the amount specified in Item <##14 replace with relevant reference to item in the Contract Particulars of your contract> or, if no amount is so specified, the amount calculated in accordance with the Pricing Schedule (other than amounts referred to in clauses 9.1(b)(i)A to 9.1(b)(i)E (inclusive)),

##### subject to adjustment for <##Adjustment Events> (**Contract Sum**); and

#### any other amounts which are payable by the Principal to the Supplier under <##the Contract>.

## Payment Claims

### Subject to clause 9.3, the Supplier is entitled to submit claims to the <##Principal's Representative> for payment of:

#### the Design Development Payment, at the times specified in Item <##16 replace with relevant reference to item in the Contract Particulars of your contract>, in respect of the value of all Design Deliverables delivered in the previous month;

#### the Initial RTW Payment, within 10 Business Days of RTW Manufacture;

#### unless a notice is given under clause 5.4(a), the Final RTW Payment, following the expiration of ##10 Business Days after the Date of Handover and Acceptance in respect of the last Component Part to achieve Handover and Acceptance;

#### the Prototype Payment, within 10 Business Days of Prototype Acceptance;

#### each Milestone Payment, at the times specified in Item <##16 replace with relevant reference to item in the Contract Particulars of your contract>, in respect of the value of all Milestones achieved in the previous month; and

#### the <##Contract Sum> (other than amounts referred to in clauses 9.1(b)(i)A to 9.1(b)(i)E inclusive), monthly at the times specified in Item <##16 replace with relevant reference to item in the Contract Particulars of your contract>, in respect of the value of the <##Supplier's Activities> carried out in the previous month,

#### until termination of <##the Contract> (each a **Payment Claim**).

### A Payment Claim must:

#### be in a form acceptable to the <##Principal's Representative>;

#### include an updated Asset Register, current as at the date of submission of the Payment Claim;

#### include supporting documentation and any other information reasonably required by the <##Principal's Representative>; and

#### set out any other amounts then payable by the Principal to the Supplier.

## Conditions precedent to Payment Claims

1. For the purposes of determining when a time for submitting a Payment Claim and a ‘reference date’ arise under the Security of Payment Act, neither a time for submitting a Payment Claim nor a ‘reference date’ arise unless:

### in relation to the Design Development Payment:

#### the Supplier has provided to the Principal the relevant Design Deliverables in a manipulable format; and

#### the relevant Design Deliverables have been submitted to the <##Principal's Representative> for review in accordance with clause <##insert reference to document review clause> and the specified time for review has expired without the relevant Design Deliverables having been rejected;

### in relation to the Prototype Payment, the Prototype has achieved Prototype Acceptance;

### in relation to any Milestone Payment:

#### in respect of a Component Part, the <##Principal's Representative> has given notice under clause 7.6(b)(i) that the relevant Component Part has achieved Handover and Acceptance; and

#### in respect of any other Milestone, the Milestone has been achieved; and

### the Supplier has provided the <##Principal's Representative> with:

#### not used;

#### where the payment is for the Retained Temporary Works or a Component Part, evidence that the Retained Temporary Works and the Component Parts are insured and have been properly stored and protected (as applicable), and labelled the property of the Principal;

#### in relation the Initial RTW Payment, the Prototype Payment and any Milestone Payment:

##### a duly executed Certificate as to Title in relation to the Retained Temporary Works, the Prototype or the Component Parts (as applicable) the subject of the Payment Claim; and

##### a Clear PPSA Certificate in relation to the Components the subject of the Payment Claim, which has been generated no more than 2 Business Days prior to the date of provision to the <##Principal's Representative>; and

#### a statutory declaration (together with any supporting evidence that may reasonably be required by the <##Principal's Representative>) in accordance with clause 9.9.

## Payment statements

### Within 10 Business Days after receipt of a Payment Claim, the <##Principal's Representative> will give the Supplier a payment statement which (**Payment Statement**):

#### identifies the Payment Claim to which it relates;

#### states the amount previously paid to the Supplier in accordance with <##the Contract>;

#### states the amount (if any) which the <##Principal's Representative> believes to be then payable by the Principal to the Supplier and which the Principal proposes to pay to the Supplier; and

#### if the amount in clause 9.4(a)(i) is less than the amount claimed in the Payment Claim, the reason for the difference (including, if the Principal has retained, deducted, withheld or set off any amount, the reason for so doing).

### If the Supplier does not submit a Payment Claim in accordance with clause 9.2, the <##Principal's Representative> may nevertheless issue a Payment Statement.

## Tax invoice and payment

### The Supplier must, within 2 Business Days after receipt of a Payment Statement, give the <##Principal's Representative> a Tax Invoice for the amount stated in the Payment Statement as then payable by the Principal to the Supplier.

### Subject to the provisions of <##the Contract>, within ##10 Business Days of receipt of a Payment Claim that complies with clauses 9.2 and 9.3, the Principal must pay the amount stated in the Payment Statement to the Supplier.

### If a Payment Statement indicates that an amount is due from the Supplier to the Principal, the Supplier must pay that amount to the Principal within ##5 Business Days after the issue by the <##Principal's Representative> of the Payment Statement.

### Immediately upon the Principal making payment to the Supplier under clause 9.5(b) of the amount in the Payment Statement, ownership of, and unencumbered title in, the Components and Component Parts the subject of the Payment Statement passes to the Principal free of any Security Interest.

## No admission

### Payment is on account only and neither a Payment Statement nor a payment of moneys will be an admission or evidence that the Supplier has carried out its obligations in accordance with <##the Contract>.

### Failure by the <##Principal's Representative> to set out in a Payment Statement an amount which the Principal is entitled to retain, deduct, withhold or set off will not prejudice the Principal's right to subsequently exercise the right to retain, deduct, withhold or set off any amount.

### At any time and from time to time, the <##Principal's Representative> may by a further Payment Statement correct any error discovered in any Payment Statement.

## Interest

### If a party fails to pay an amount that is due and payable by that party to the other party within the time required under <##the Contract>, then the first mentioned party must pay interest on that amount:

#### on and from the date that is 10 Business Days after the payment due date until the date on which payment is made; and

#### calculated at the rate stated in Item <##18 replace with relevant reference to item in the Contract Particulars of your contract>.

### Subject to clause <##insert termination/default clause number>, the amount specified in clause 9.7(a) will be a party's sole entitlement in respect of the other party's failure to pay an amount by its due date.

## Set off

1. The Principal may:

### deduct from moneys otherwise due to the Supplier:

#### any debt or other moneys due from the Supplier to the Principal (including liquidated damages payable under clause <##insert clause number>); and

#### any claim to money which the Principal may have against the Supplier whether for damages or otherwise under the Contract or otherwise at law or in equity arising out of or in connection with the performance of the <##Supplier's Activities>; and

### without limiting clause 9.8(a) or the unconditional nature of the security held under <[##insert security clause number]>, deduct any debt, other moneys due or any claim to money referred to in clause 9.8(a)(i) or 9.8(a)(ii) from any the security held under clause <[##insert security clause number]>.

## Payment of workers and subcontractors

### The Supplier must with each Payment Claim under clause 9.2 provide the <##Principal's Representative> with:

#### a statutory declaration in the form set out at Schedule <##insert>, together with any supporting evidence which may be reasonably required by the <##Principal's Representative>, duly signed by the Supplier or, where the Supplier is a corporation, by a representative of the Supplier who is in a position to know the facts declared, that, except to the extent disclosed in the statutory declaration (such disclosure to specify all relevant amounts, workers and subcontractors):

##### all workers who have at any time been employed by the Supplier in connection with the <##Supplier's Activities> have at the date of the Payment Claim been paid all moneys due and payable to them in respect of their employment in connection with the <##Supplier's Activities>; and

##### all subcontractors have been paid all moneys due and payable to them in respect of the<##Supplier's Activities>; and

#### documentary evidence that, except to the extent otherwise disclosed (such disclosure to specify all relevant amounts and workers), as at the date of the payment claim, all workers who have been employed by a subcontractor have been paid all moneys due and payable to them in respect of their employment in connection with the <##Supplier's Activities>.

### The Principal is entitled to withhold from any amount stated as then payable by the Supplier in a Payment Statement the amount disclosed as unpaid under clause 9.9.

## GST

### Subject to clause 9.10(b), where any supply arises out of or in connection with the Contract for which GST is not otherwise provided, the party making the supply (**Supplier**) will be entitled to increase the amount payable for the supply by the amount of any applicable GST.

### Where an amount is payable to the Supplier for a supply arising out of or in connection with the Contract which is based on the actual or reasonable costs incurred by the Supplier, the amount payable for the supply will be reduced by the amount of any input tax credits available to the Supplier (or a representative member on the Supplier's behalf) in respect of such costs before being increased for any applicable GST under clause 9.10(a).

### As a condition precedent to any amount on account of GST being due from the recipient to the Supplier in respect of a taxable supply, the Supplier must provide a Tax Invoice to the recipient in respect of that supply.

### If the amount paid to the Supplier in respect of the GST (whether because of an adjustment or otherwise) is:

#### more than the GST on the supply, then the Supplier must refund the excess to the recipient; or

#### less than the GST on the supply, then the recipient must pay the deficiency to the Supplier.

### Subject to clause <##insert definitions clause number>, in this clause 9.9 terms defined in GST Act have the meanings given to them in GST Act.

## Security of Payment Act

### The Supplier agrees with the Principal that:

#### a Payment Claim submitted to the <##Principal's Representative> under clause 9.2 which also purports to be (or is at law) a payment claim under the Security of Payment Act is received by the <##Principal's Representative> as agent for the Principal;

#### unless otherwise notified to the Supplier by the Principal in writing, the <##Principal's Representative> will give Payment Statements and carry out all other functions of the Principal under the relevant Security of Payment Act as the agent of the Principal;

#### to the extent permitted by and for the purposes of the Security of Payment Act, the “reference dates” are those of the dates prescribed in clause 9.2(a) on which the Supplier has satisfied the requirements of clause 9.3;

#### a reference to a “Payment Statement” is also a reference to a “payment schedule” for the purposes of the Security of Payment Act; and

#### the amount stated in a Payment Statement under clause 9.4 as then payable by the Principal to the Supplier is, to the extent permitted by and for the purposes of the Security of Payment Act, the amount of the "progress payment" (as defined in the Security of Payment Act) calculated in accordance with the terms of the Contract and which the Supplier is entitled to be paid under <##the Contract>.

### Failure by the <##Principal's Representative> to state in a Payment Statement issued under the Security of Payment Act or otherwise an amount which the Principal is entitled to retain, deduct, withhold or set off from the amount which would otherwise then be payable by the Principal to the Supplier will not prejudice:

#### the <##Principal's Representative>’s ability or power to state in a subsequent Payment Statement an amount which the Principal is entitled to retain, deduct, withhold or set off from the amount which would otherwise then be payable by the Principal to the Supplier; or

#### the Principal’s right to subsequently exercise its right to retain, deduct, withhold or set off any amount under the Contract or otherwise at law or in equity.

### The parties agree that clause <##insert dispute resolution clause number> is a method for resolving disputes for the purposes of section 10A(3)(d) of the Security of Payment Act.

### The Supplier irrevocably chooses the person specified in Item <##19 replace with relevant reference to item in the Contract Particulars of your contract> as, to the extent permitted by and for the purposes of the Security of Payment Act, the authorised nominating authority.

### The Supplier must give copies of any notice given by a subcontractor under the Security of Payment Act (including notice of a subcontractor's intention to suspend work under the Security of Payment Act but excluding any "payment claim" or "payment schedule") to the <##Principal's Representative> within 2 Business Days after receipt by the Supplier.

### The Principal may, if it becomes aware that a subcontractor is entitled to suspend work under the Security of Payment Act, pay the subcontractor moneys owing to the subcontractor and the amount so paid will be a debt due and payable by the Supplier to the Principal.

Contract Particulars

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| --- |
| **Guidance Note:** The following additional items should be inserted by the Agency into the Particulars in your Contract and the clause references in the "Description" column updated to reflect the clause references in your Contract prior to issue for tender. |

| 1. Item No. | 1. Description | 1. Detail | |
| --- | --- | --- | --- |
|  | Not used |  | |
|  | Does clause 5 apply?  (Clause 5.1) | |  | | --- | | **Guidance Note:** Refer to the Guidance Note at clause 5 for guidance as to whether this clause should apply and select yes or no below. |   Yes/No | |
|  | Retained Temporary Works:  (Clause 5.1) | |  | | --- | | **Guidance Note:** This should set out a brief description of any Retained Temporary Works which are moulds, complex jigs, bespoke templates, etc. used to Manufacture Components or Component Parts. This should cross refer to the relevant sections of the Component Brief. | | |
|  | Other Contractor and Other Works:  (Clause 6.2) | |  | | --- | | **Guidance Note:** Insert the names of any Other Contractor known at the time of entering into your contract. If the contractor responsible for any Other Works is not known, state "To be advised" in this item. | | |  | | --- | | **Guidance Note:** Insert description of works to be constructed by Other Contractor (including reference to further detail provided in the Delivery Requirements. | |
|  | Project Participants:  (Clause 6.2) | |  | | --- | | **Guidance Note:** Insert the names of any other Project Participants known at the time of entering into your contract. In all cases, you should include any future owners or users of the Components where these parties are known at the time of entering into your contract. | | |
|  | Does clause 7.2 apply?  (Clause 7.2(a)) | |  | | --- | | **Guidance Note:** Select yes if you require the Supplier to provide a Prototype. |   Yes/No | |
|  | Prototype:  (Clause 7.2) | |  | | --- | | **Guidance Note:** This should set out a brief description of any Prototype including whether the prototype needs to be connected to any services etc to operate. This should cross refer to the relevant sections of the Component Brief. | | |
|  | Date for completing Manufacture of the Prototype:  (Clause 7.2(a)) | |  | | --- | | **Guidance Note:** State "Not applicable" if clause 7.2 does not apply.  Otherwise, insert the date for completing Manufacture of the Prototype before issue for tender. |   "Not applicable"/ [insert date] | |
|  | Manufacturing Facility:  (Clause 7.3) | |  | | --- | | **Guidance Note:** Insert address(es) for Supplier's manufacturing facility(ies). |   [insert] | |
|  | Does clause 7.4 apply?  (Clause 7.4(a)) | |  | | --- | | **Guidance Note:** Refer to the Guidance Note at clause 5 for guidance as to whether this clause should apply and select yes or no below. |   Yes/No | |
|  | Minimum notice period required to store Components or Component Parts:  (Clause 7.5(a)) | |  | | --- | | **Guidance Note:** The minimum notice period required to store Components or Component Parts will likely vary based on the Supplier and the relevant Components and Component Parts, including, for example, the physical dimensions of the Components and Component Parts. |   [insert] Business Days.  *(if nothing stated, 10 Business Days)* | |
|  | Daily rate for storage costs:  (Clause 7.5(d)) | |  | | --- | | **Guidance Note:** If a daily rate for additional storage of Components or Component Parts has been agreed, this should be inserted below. Note that if there are separate costs for separate Components and Component Parts, this should be specified below.  If no rate is stated the Supplier will be entitled to its costs reasonably and necessarily incurred in storing the relevant Components. |   $[insert] per day.  *(if nothing is stated, "not applicable")* | |
|  | Period of time after the Date for Handover and Acceptance at which payment of storage costs commences:  (Clause 7.5(d)) | |  | | --- | | **Guidance Note:** It is likely that the Supplier will need to store some Components for a period of time after the Date for Handover and Acceptance. This item provides a buffer period between that date, and the date that the Principal commences paying for such storage. Note that tenders will likely factor this period of time into their tender prices. |   [insert] days.  *(if nothing stated, 28 days)* | |
|  | Components of Contract Sum that do not apply:  (Clause 9.1(a)) | 1. “Not applicable” / [Insert components of the Contract Sum that do not apply]  |  | | --- | | **Guidance Note:** Where all components of the Contract Sum apply, including “Not applicable”. Otherwise specify components of the Contract Sum that will not apply i.e. the Prototype Payment. | | | |
|  | Other amounts forming part of the <##Contract Sum>:  (Clause 9.1(b)(i)F) | 1. $[insert] excluding GST.  |  | | --- | | **Guidance Note:** Specify GST after Contract Sum agreed with preferred Supplier. | | | |
|  | Time for submission of Payment Claims by the Supplier:  (Clause 9.2(a)(vi)) | 1. [insert] day of each month. | | |
|  | Final RTW Payment:  (Clause 1) | |  | | --- | | **Guidance Note:** This is the final payment in respect of the Retained Temporary Works aimed at ensuring that the Principal holds back sufficient funds in connection with the RTW to ensure that the Supplier does not run the RTW into the ground in manufacturing the Components, such that the RTW retains no value for the Principal. Where the Principal requires the Supplier to purchase the Retained Temporary Works back from the Principal, this final payment will also be the amount due to the Principal as payment by the Supplier for the Returned Temporary Works. This amount would ordinarily be approximately 20% of the value of the Retained Temporary Works. |   [insert $]  *(if nothing is stated, "not applicable")* | | |
|  | Interest rate:  (Clause 9.7(a)(ii)) | |  | | --- | | 1. **Guidance Note:** the Fair Payments Act requires this be the Penalty interest Rate where the value of the goods or services does not exceed $3 million. Select the applicable option below. |  1. If the *Fair Payments Policy* DOES apply: Simple interest calculated on a daily basis at the rate for the time being fixed under Section 2 of the *Penalty Interest Rates Act 1983* (Vic) 2. If the *Fair Payments Policy* DOES NOT apply: [insert]% 3. *(if nothing stated, [insert]%)* | | |
|  | Authorised nominating authorities:  (Clause 9.11) | 1. Adjudicate Today Pty Limited;  2. Australian Solutions Centre Pty Ltd;  3. Resolution Institute;  4. Rialto Adjudications Pty Ltd;  5. RICS Dispute Resolution Service; or  6. such other entity authorised pursuant to the *Building and Construction Industry Security of Payment Act 2002* (Vic). | | |

Component Schedule

| 1. Component No. | Component / Component Part Title | Component / Component Part Description | 1. Additional Requirements for Manufacture Completion / Handover and Acceptance | 1. Delivery Point 2. (Clause 7.4) | 1. Earliest date for delivery 2. (Clause 7.4) | 1. Date for Delivery 2. (Clause 7.4) | 1. Party obtaining benefit of Collateral Warranty 2. (Clause 7.8(a)) |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  |  | |  | | --- | | **Guidance Note:** This needs to clear identify the relevant Component or Component Part (noting that a Component Part will be a part of a particular Component set out in this schedule and in respect of which a separate Milestone Payment will apply), including by reference to any relevant section of the Component Brief that further specifies the Component or Component Part. | |  | |  | | --- | | **Guidance Note:** If Components will be delivered to the Delivery Point fully assembled, this will only apply to Components. If Components are to be delivered to the Delivery Point in Component Parts, this will also apply to Component Parts. | | |  | | --- | | **Guidance Note:** If Components will be delivered to the Delivery Point fully assembled, this will only apply to Components. If Components are to be delivered to the Delivery Point in Component Parts, this will also apply to Component Parts. | | |  | | --- | | **Guidance Note:** If Components will be delivered to the Delivery Point fully assembled, this will only apply to Components. If Components are to be delivered to the Delivery Point in Component Parts, this will also apply to Component Parts. | |  |
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|  |  |  |  |  |  |  |  |
|  | Guidance Note: Add additional rows as required |  |  |  |  |  |  |

Milestone Schedule

| 1. Milestone No. | Milestone Title | Milestone Description | 1. Hold Point | 1. Milestone Date 2. OR 3. Date for Handover and Acceptance 4. OR 5. RTW Milestone Date | Milestone Payment (excluding GST) | 1. Liquidated damages rate 2. (Clause 7.7(a) and 7.7(b)) |
| --- | --- | --- | --- | --- | --- | --- |
|  | |  | | --- | | **Guidance Note:** This should include all Components and Component Parts and any Returned Temporary Works together with any additional Milestones (e.g. delivery of Design Deliverables, completion of training). | | |  | | --- | | **Guidance Note:** Where this includes Components and Component Parts, cross refer to the relevant description in the Component Schedule. | | |  | | --- | | **Guidance Note:** State "yes" or "no" against each Milestone. State "no" against each Component and Component Part. | |  | |  | | --- | | **Guidance Note:** This should include all Components and Component Parts and any Returned Temporary Works together with any additional Milestones (e.g. delivery of Design Deliverables, completion of training). | | |  | | --- | | **Guidance Note:** Insert the $ value applying each day. If no value is agreed, leave this item blank. | |
|  |  |  |  |  |  |  |
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Delivery Requirements

|  |
| --- |
| **Guidance Note:** The Delivery Requirements must include a section with the title "Component Brief". This section must set out in detail:   * the requirements in respect of the Components and Component Parts including any quality standards and functional requirements (e.g. maintainability, degree of adaptability or future proofing required) applying to the Components and Component Parts; * a list of any Component Designs; * any hold points applying in respect of any Components or Component Parts (these must be clearly set out and described as "Hold Points"); * if clause 5 applies, a section with the title "Returned Temporary Works" which set out in detail the requirements in respect of the Returned Temporary Works including, if relevant, any quality standards applying to the Returned Temporary Works; and * a section with the title " Prototype" which describes any specific requirements in respect of the Prototype.   The Delivery Requirements should also set out the scope of any Other Works. |

Statutory Declaration

|  |  |
| --- | --- |
| **To:** | [##Insert name] of [##insert address] (**Principal’s Representative**) |
| **From:** | [##insert name] (ACN [##insert ACN]) of [##insert address] (**Supplier**) |
| **Project:** | [##Insert] project name] (**Project**) |
| **Contract:** | between the Principal and the Supplier dated [##insert] (**Contract**) |
| **Payment claim:** | made by the Supplier and dated [##insert date of Payment Claim] (**Payment Claim)** |
| **Period covered by this Payment Claim:** | from: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(**Payment Claim Period**) |

I, [##insert name] of [##insert address], [##insert occupation], do solemnly and sincerely declare as follows:

1. I am an employee duly authorised to make this statutory declaration on behalf of the Supplier;

2. all workers who are, or who have at any time been employed by the Supplier in connection with the <##Supplier's Activities> have, for work done during the Payment Claim Period, been paid all moneys due and payable to them in respect of their employment in connection with the <##Supplier's Activities>, including any superannuation or redundancy payments (if applicable) and in accordance with any applicable award or industrial agreement;

3. subject to paragraph 4(d), all consultants, suppliers and subcontractors who are, or have been, engaged by the Supplier in connection with the Contract have been paid in full all moneys due and payable to them in respect of the<##Supplier's Activities> that have become payable to them under the terms of their agreement with the Supplier; and

4. as at the end of the Payment Claim Period:

|  |  |  |
| --- | --- | --- |
| (a) | the total amount payable by the Supplier to all subcontractors in respect of the <##Supplier's Activities> is: | $\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| (b) | the amount paid by the Supplier to all subcontractors in respect of the <##Supplier's Activities> is: | $\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| (c) | the amount claimed by all subcontractors in respect of the <##Supplier's Activities> which is disputed by the Supplier as being due and payable is: | $\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| (d) | the amount referred to in paragraph 4(c) of this statutory declaration is disputed, as at the date of this statutory declaration, on the following grounds:  [##insert grounds for dispute] |  |

**The Statutory Declaration Witness and the person making**

**this statutory declaration must sign or initial this page**

**Declarant: ……… Witness: ………**

**And I** acknowledge that this declaration is true and correct, and I make it in the belief that a person making a false declaration is liable to the penalties for perjury.

|  |  |  |  |
| --- | --- | --- | --- |
| Declared **at**  **this day of 20**  **Before me:** |  |  |  |
| **Signed** |
|  |  |  |  |
| ***Signature of person before whom the declaration is made*** |  |  | ***Name of Declarant*** |
|  |  |  |  |
| ***Name, qualification and contact address of person before whom the declaration is made*** |  |  |  |

Certificate as to Title

|  |  |
| --- | --- |
| To: | [##insert name] of [##insert address] (**Principal**) |
| Project: | [##insert project name] (**Project**) |
| Identification numbers: | [##insert] (**Identification Numbers**) |
| Contract: | between the Principal and the Supplier dated [##insert] (**Contract**) |
| Payment claim: | made by the Supplier and dated [##insert] (**Payment Claim)** |

1. This certificate is issued for the benefit of the Principal in relation to the <##insert “Retained Temporary Works” or “the Prototype” or “the Component Parts” as applicable> bearing the Identification Numbers referred to above (the **Components**).
2. I certify as follows:
   * + 1. I am a director of the Supplier;
       2. the Components bear the Identification Numbers in a permanent, indelible and conveniently visible manner;
       3. the Supplier has full legal, beneficial and unencumbered ownership of the Components and all plant and materials incorporated in the Components;
       4. the Supplier has clear title to the Components (including all plant and materials incorporated in the Components);
       5. the Components (including all plant and materials incorporated in the Components) are not the subject of any Security Interest;
       6. the Supplier is able to immediately pass clear title to the Components (including all plant and materials incorporated in the Components) to the Principal; and
       7. the Components (including all plant and materials incorporated in the Components) are insured for their full replacement value (including the cost of fabrication) and that the interests of the Principal are noted in relation to that insurance.
3. I acknowledge that risk in the Components (including all plant and materials incorporated in the Components) remains with the Supplier until that risk passes to the Principal under the Contract.
4. I attach a Clear PPSA Certificate.

Unless otherwise indicated, terms defined in this certificate have the meanings given in the Contract.

Signed by the Supplier

Date:

|  |  |  |
| --- | --- | --- |
| **Director** of the Supplier | ……………………………………. | ……………………………………. |
|  | Signature of Director | Signature of witness |
|  | Name of Director | Name of witness |

Collateral Warranty

|  |
| --- |
| **Guidance Note:** Note the Beneficiary may be the Principal or, if required by the Principal, an Other Contractor. |

**Date**

**Parties** [##insert name] (ACN [##insert ACN]) of [##insert address] (**Beneficiary**)

[##insert name] (ACN [##insert ACN]) of [##insert address] (**Supplier**)

**Background**

A. The Supplier has entered into the Contract with the Principal for the performance of the Supplier’s Activities.

B. In return for the Principal allowing the Component to be used in the Supplier’s Activities, the Supplier agrees to give the warranties, indemnities and other promises in this deed.

C. The obligations created by this deed are in addition to the obligations of the Supplier to the Principal and do not affect any other rights or remedies available to the Principal against the Supplier.

**Operative provisions**

# Definitions

## Incorporated terms

1. In this deed, terms defined in <##the Contract> and not otherwise defined in clause 1.2 have the same meanings, unless the context otherwise requires.

## Defined terms

1. In this deed:
2. **Business Day** means a day that is not:
   1. a Saturday or Sunday; or
   2. a day that is wholly or partly observed as a public holiday throughout Victoria.
3. **Component** means the <##insert either “Component” or “Component Part”, as applicable> stated in the Schedule.
4. **Contract** means the Contract dated [##insert date] between the Principal and the Supplier in respect of the Supplier’s Activities.
5. **Defect** means any defect in the Component, including any failure to comply with this deed or with the Contract.
6. **Principal** means the person so named in the Schedule.
7. **Supplier’s Activities** has the meaning given in the Contract.
8. **Warranty Period** means the period stated in the Schedule.

# Warranty

### The Supplier warrants to the Beneficiary that:

#### alll work performed, and materials supplied, by the Supplier in connection with the Component will comply in all respects with the requirements of the Contract;

#### it has, and will maintain, the skill and experience to properly fulfil its obligations under this deed and the Contract.

### The Supplier agrees that the warranties set out in this deed extend to the acts defaults and neglects of any subcontractor, supplier, employee or agent of the Supplier as fully as if they were the acts defaults or neglects of the Supplier.

# Replacement or making good Component

### The Supplier must at its cost make good, to the reasonable satisfaction of the Beneficiary, the Component or any part which, within the Warranty Period, is found to not comply with the requirements referred to in clause 2(a) of this deed.

### The liability of the Supplier under this clause 3 is reduced to the extent that deterioration is caused by:

#### normal wear and tear; or

#### incorrect operational procedures or maintenance, in each case not attributable to the Supplier.

# Rectification of Defects

### The Beneficiary may at any time give the Supplier written notice of any Defect, which notice may specify the time within which the Supplier must rectify the Defect.

### The Supplier must rectify any Defect the subject of a notice given under clause 4(a):

#### to the satisfaction of the Beneficiary;

#### at the Supplier’s expense; and

#### within the time specified in the Beneficiary's notice or, if the Beneficiary does not specify a time, within a reasonable time from receipt of the Beneficiary's notice.

### If the Supplier fails to rectify any Defect in accordance with this deed, the Beneficiary may arrange for the Defect to be rectified at the Supplier’s expense and the Supplier indemnifies the Beneficiary against all costs, losses and damages suffered or incurred by the Beneficiary in so doing.

# Urgent action by Beneficiary

### The Beneficiary may take any urgent action necessary to protect the Supplier’s Activities, other property or people as a result of a breach of clause 2(a) of this deed.

### Where the Beneficiary takes action in accordance with clause 5(a), the Supplier:

#### agrees that the Beneficiary taking such action does not affect any obligation of the Supplier under this deed; and

#### indemnifies the Beneficiary against all costs, losses and damages suffered or incurred by the Beneficiary in taking that action.

# Beneficiary's rights

### The rights of the Beneficiary pursuant to:

### this deed are in addition to and do not derogate from any other rights which the Beneficiary may have; and

### any clause of this deed are cumulative and the rights arising under one clause do not derogate from rights arising under any other clause.

# Operation of deed

1. This deed comes into effect when executed by the Supplier and is effective whether or not executed by the Beneficiary.

# Assignment

1. The Beneficiary may assign its interest in this deed at any time without notice to the Supplier.

# Notices

## How notice to be given

1. Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed must:

### be given to a party by hand delivery, courier service, prepaid express post or email;

### be delivered to the address or other details for the party set out in the Schedule (or as otherwise notified by that party to the other party from time to time under this clause 9); and

### must be in legible writing and in English.

## When notice taken to be received

1. Without limiting the ability of a party to prove that a notice has been given and received at an earlier time, each communication (including each notice, consent, approval, request and demand) under or in connection with this deed is taken to be given by the sender and received by the recipient:

### (in the case of delivery by hand or courier service) on delivery;

### (in the case of prepaid express post sent to an address in the same country) on the 6th Business Day after the date of posting;

### (in the case of prepaid express post sent to an address in another country) on the 10th Business Day after the date of posting;

### (in the case of email, whether or not containing attachments) the earlier of:

#### the time sent (as recorded on the device from which the sender sent the email) unless, within 4 hours of sending the email, the party sending the email receives an automated message that the email has not been delivered;

#### receipt by the sender of an automated message confirming delivery; and

#### the time of receipt as acknowledged by the recipient (either orally or in writing),

### provided that if the communication would otherwise be taken to be received on a day that is not a Business Day or after 5.00pm, it is taken to be received at 9.00am on the next Business Day.

# No waiver

### Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed Contractby a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.

### A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.

### No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

# Governing law and jurisdiction

### This deed is governed by and must be construed according to the law applying in Victoria.

### Each party irrevocably:

#### submits to the non‑exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed; and

#### waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 11(b)(i).

# Further acts

1. Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

# Counterparts and electronic signature

## Electronic signature

Each party warrants that immediately prior to entering into this deed, it has unconditionally consented to:

### the requirement for a signature under any law being met; and

### any other party to this deed executing it,

1. by any method of electronic signature that other party uses (at that other party's discretion), including signing on an electronic device or by digital signature.

## Counterparts

1. This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

## Electronic communication

1. Without limitation, the parties agree that this deed may be exchanged by hand, post, facsimile or any electronic method that evidences a party's execution of this deed, including by a party forwarding a copy of its executed counterpart by hand, post, facsimile or electronic means to the other party.

# Severability

1. If at any time a provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

### the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or

### the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.



|  |  |  |
| --- | --- | --- |
| **Item** | **Description** | **Details** |
|  | **Principal**  (Clause 1) | [##Insert] |
|  | **Component**  (Clause 1) | [##Insert] |
|  | **Warranty Period**  (Clause 1) | [##Insert] |
|  | **Notices**  (Clause 9) | **Beneficiary:**  [##Insert]  **Supplier:**  [##Insert] |

**Executed** as a deed.

|  |
| --- |
| **Guidance Note:** Insert appropriate execution block. |

Engineering Certificate

|  |  |
| --- | --- |
| **To:** | [##insert name] of [##insert address] (**Principal**) |
| **From:** | [##insert name] (ACN [##insert ACN]) of [##insert address] (**Engineer**) |
| **Project:** | [##insert project name] (**Project**) |
| **Contract:** | between the Principal and the Supplier dated [##insert] in relation to the Project (**Contract**) |

1. This certificate is issued for the benefit of the Principal in relation to the <##Component> <Component Part> provided by the Supplier and listed in the attached Schedule.
2. I certify as follows:
   * 1. I have undertaken an independent detailed inspection of the <##Component> <Component Part>;
     2. I am satisfied that the <##Component><Component Part> has been manufactured in accordance with the approved Component Design identified in the attached Schedule; and
     3. the <##Component><Component Part> is free from Defects, other than the following minor Defects:

[##List]

1. I have used the due skill, care and diligence of a professional engineer in my inspection of the <##Component><Component Part>.
2. Terms defined in the Contract have the same meaning in this certificate.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Signed for and on behalf of  
[##insert name of Engineer]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Date

**Schedule**

|  |  |  |
| --- | --- | --- |
| **No** | **Item** | **Details** |
|  | <##Component><Component Part> | [##Insert] |
|  | Approved Component Design | [##Insert] |

Pricing Schedule

|  |
| --- |
| **Guidance Note:** This will need to be inserted based the successful tender and final negotiated position. Note that the template issued for tendering purposes should make provision for those of the elements adopted from the Model Clauses that need to be addressed. Relevantly, the Model Clauses contemplate that:   * if the Contract Sum is not an amount specified in the Contract Particulars, it is an amount able to be calculated in accordance with the Pricing Schedule; and * each of the Design Development Payment, Milestone Payment, Prototype Payment and Initial RTW Payment will be specified in the Pricing Schedule. |

1. Note clause 2 is used only in the Subcontractor Model. [↑](#footnote-ref-1)