

## TERMS AND CONDITIONS OF SUPPLY TO EASTERNWELL (GOODS AND SERVICES)

### PART A – GENERAL PROVISIONS

#### 1. Acceptance

- (a) The acceptance of an Order by the Contractor includes acceptance of these terms and conditions as the sole basis of the sale and purchase of the Goods or provision of the Services to the exclusion of any terms and conditions of sale or supply appearing on any document of the Contractor. Modification of these terms and conditions expressed in any document of the Contractor will not apply unless expressly accepted in writing by Easternwell.
- (b) For the avoidance of doubt, any references in an Order or elsewhere to any offer or quotation given by the Contractor to Easternwell will not be evidence of an acceptance by Easternwell of any terms or conditions referred to or attached to such offer or quotation other than those set out in this document. Any terms and conditions proffered or referred to by the Contractor are to be disregarded and any such terms or conditions of the Contractor do not form part of the Agreement or bind Easternwell in any respect. Further, any over stamping on any acknowledgment or invoicing of the Order will not alter the Agreement.
- (c) So far as legally possible, the parties intend that the supply of any Goods or Services already provided to Easternwell by the Contractor, and for all Goods to be supplied or Services to be provided to Easternwell under any future Orders, will be governed by the Agreement.

#### 2. Easternwell's rights

- (a) Easternwell may deduct from any amount due or becoming due to the Contractor under the Agreement:
- (i) any Loss to be paid by the Contractor to Easternwell or any of its Associated Entities whether under or in connection with the Agreement or otherwise; and
  - (ii) the amount of any Claims that Easternwell or any of its Associated Entities have reasonable grounds for believing may be made against the Contractor under or in connection with the Agreement.
- (b) Easternwell must notify the Contractor of any amount deducted under clause 2(a) and the basis for the deduction at the time that the amount deducted would otherwise be due to the Contractor.
- (c) Easternwell will not pay the Contractor any fee for re-stocking where Goods have been incorrectly supplied.

#### 3. Payment for Goods and Services

- (a) Easternwell will pay the Contractor the amount of the Fees for Goods or Services supplied, together with applicable GST, no later than 45 Days after the Month in which the relevant Tax Invoice was received.
- (b) Payment of an invoice does not preclude Easternwell's right to check and object to invoices. Easternwell may dispute any part of an invoice by notifying the Contractor of the dispute within 30 Days after the Month of receipt of that invoice or of the final invoice under the Agreement. Easternwell will pay the undisputed portion of the invoice under clause 3(a).
- (c) Where relevant, Fees commence on the Commencement Date and cease on the Termination Date.

#### 4. Termination

- (a) Either party (Terminating Party) may terminate the Agreement by notice (Termination Notice) to the other party if the other party (Defaulting Party):
- (i) suffers an Insolvency Event; or

- (ii) commits a substantial breach of the Agreement and the breach is not remedied by the Defaulting Party within 10 Business Days after the Terminating Party gives the Defaulting Party the Termination Notice.
- (b) A Termination Notice under clause 4(a)(ii) must:
- (i) state that it is a notice under clause 4(a)(ii);
  - (ii) specify the alleged substantial breach;
  - (iii) require the Defaulting Party to show cause in writing why the Terminating Party should not exercise its right to terminate the Agreement;
  - (iv) specify the time and date by which the Defaulting Party must show cause (which will not be less than 10 Business Days after the Termination Notice is given to the Defaulting Party); and
  - (v) specify the place at which cause must be shown.
- (c) If the Agreement is terminated under clause 4(a), the rights of the parties will be the same as they would have been at common law had the Defaulting Party repudiated the Agreement and the other party had elected to treat the Agreement as at an end and to seek to recover damages.
- (d) Termination of the Agreement under this clause 4 does not prejudice any party's pre-existing rights, obligations or liabilities.
- (e) The Contractor may terminate the Agreement if Easternwell fails to make a payment due to the Contractor that is not the subject of a dispute between the parties.
- (f) If the Contractor terminates the Agreement under clause 4(d), Easternwell must pay the Contractor, as the Contractor's sole remedy all amounts due and unpaid for Services performed to the Termination Date.
- (g) The Agreement may be terminated for convenience by Easternwell giving no less than 7 Days' notice to the Contractor and in that event, subject to clause 2, Easternwell must pay the Contractor, as the Contractor's sole remedy and compensation in relation to the termination, the amounts referred to in clause 4(f).
- (h) If the Agreement is terminated in accordance with clause 4(g), the Contractor will immediately cease the part, or the whole, of the Services, as required and comply with any lawful directions by the Easternwell Representative, including any direction to:
- (i) protect property in the possession of the Contractor in which Easternwell has or may acquire an interest;
  - (ii) remove from the Site any of the Contractor's Personnel, Equipment or Vehicles;
  - (iii) use reasonable endeavours, in co-operation with Easternwell and the Subcontractor concerned, to arrange that the Subcontractor's contract be novated to Easternwell; and
  - (iv) provide Easternwell with possession of all materials and other things on or off the Site which:
    - 1) are owned by Easternwell but have been in the possession of the Contractor or its Personnel; or
    - 2) were required for the Services or for incorporation in the Services.
- (i) Other than any amounts payable under clause 3 and 4(g), Easternwell will not be liable to the Contractor for any Claim by the Contractor as a consequence of the termination pursuant to clause 4(g) and the Contractor will otherwise have no Claim.

#### 5. Contractor's warranties and undertakings

- (a) The Contractor warrants that all Goods and Services will be:

- (i) provided in accordance with any specifications and otherwise conform to the Order and all, Australian standards and/or referenced codes, or if no standards are specified the Contractor must comply with the best practice industry standards applicable to the Goods, the requirement of any relevant Government Agency and applicable Laws, including without limitation all WHS Requirements;
  - (ii) delivered on the Delivery Date; and
  - (iii) fit for the purposes for which Goods or Services of the same kind are commonly supplied or provided (as the case may be).
- (b) The Contractor also warrants that all Goods supplied will be:
- (i) new and undamaged (unless otherwise specified);
  - (ii) free from Defects in design, specification, materials and workmanship; and
  - (iii) free of pests at the time of delivery. If so required by Easternwell, the Contractor will, at or before the time of delivery to Easternwell, provide Easternwell with certification that the Goods to be supplied to Easternwell have been inspected and are free of pests.
- (c) The Contractor undertakes that:
- (i) Goods supplied will carry any applicable manufacturer's warranty and which will pass on to any purchaser from Easternwell without liability to Easternwell;
  - (ii) procured or manufactured equipment will be supplied with documentation and certification as referenced from the original build or design standard including but not limited to relevant statutory regulations / legislation and or industry standards and codes of practice, all additional documentation required by Easternwell and as specified in the Order or Agreement;
  - (iii) the Goods or Services supplied or provided (as the case may be) will not infringe the Intellectual Property Rights of any third party;
  - (iv) if the Contractor has a quality system (conforming to ISO9002, for example), then it must be applied to the manufacture or provision (as the case may be) of the relevant Goods or Services;
  - (v) if Goods or Services are not delivered by the Delivery Date then Easternwell may, without prejudice to any rights it may have under the Agreement or otherwise and despite any other provision of the Agreement, withhold any payment until the Goods or Services are delivered; and
  - (vi) neither the Contractor nor any of its Personnel will do or permit anything to be done which is dishonest, fraudulent or unlawful or which may in the opinion of Easternwell bring Easternwell or any of its Personnel into disrepute.

#### 6. Insurance

- (a) Before supplying the Goods or providing the Services (and whenever requested in writing by Easternwell), the Contractor must provide evidence to the satisfaction of Easternwell that the Contractor has obtained and maintained the Required Insurances from reputable insurers covering Easternwell and the Contractor for their respective rights, interests and liabilities.
- (b) The Contractor must report to Easternwell as soon as practicable in writing:
  - (i) the cancellation of any policy for Required Insurance;
  - (ii) all Losses, Claims and incidents that are material to the Agreement and which may give rise to an insurance claim under any policy for Required Insurance; and
  - (iii) of any event which leads or might lead to a claim for compensation or a claim under any policy for Required Insurance and must comply with the instructions of

- Easternwell in connection with any such claim for compensation or claim under the insurance policy.
- (c) If the Contractor fails to obtain or maintain any Required Insurance or fails to provide satisfactory evidence of having the Required Insurance, Easternwell may obtain the relevant insurance and the costs incurred by Easternwell in doing so will be a debt due from the Contractor to Easternwell, (which may be deducted from any amounts payable by Easternwell to the Contractor pursuant to clause 2).
- (d) Nothing in this clause 6 limits the obligations, liabilities and responsibilities of the parties under the Agreement.

#### 7. Respective responsibilities

- (a) Despite any other provision of the Agreement, Easternwell, its Associated Entities and their Personnel will not be liable to the Contractor on any account (including under any indemnity, in tort including negligence or for breach of statutory duty or otherwise, or for any Losses) and the Contractor will not make any Claim against Easternwell, its Associated Entities or their Personnel arising out of or in any way relating to the Agreement except in the case of:
  - (i) Payment of Fees and GST under clause 3(a);
  - (ii) Losses incurred as a result of the fraud or wilful, reckless or deliberate breach of the Agreement by Easternwell, its Associated Entities or its Personnel; or
  - (iii) Losses incurred as a result of Claims made against Easternwell, its Associated Entities or its Personnel for contribution or indemnity in respect of Claims by third parties (but not any Personnel of the Contractor) for personal injury, death or property damage, provided that any such Losses (in (ii) and (iii) above) do not include Consequential Loss.
- (b) The Contractor indemnifies each of Easternwell, its Associated Entities and their Personnel against any and all Loss suffered or incurred by any of Easternwell, its Associated Entities and their Personnel from:
  - (i) any breach (including non-performance or non-observance of any obligation) by the Contractor under the Agreement; and
  - (ii) any Claim (including a Claim by the Contractor's Personnel or a third party against any of Easternwell, its Associated Entities and its Personnel) arising from acts or omissions of the Contractor or any of its Personnel in the course of providing any Goods or Services to Easternwell or otherwise in connection with the Agreement, except to the extent that such Losses were caused by the gross negligence of Easternwell.
- (c) Each of the Contractor's obligations under clause 7(b) is:
  - (i) a continuing obligation, separate and independent from the other obligations of the Contractor and survives termination of the Agreement; and
  - (ii) applies regardless of the insurance coverage held by the Contractor, including that under any workers' compensation act, disability act or other Law that would limit the amount payable by or for the Contractor.

#### 8. Representatives

- (a) The Easternwell Representative is Easternwell's interface with the Contractor in relation to the Agreement and, except as otherwise specified in the Agreement or notified by Easternwell, the Easternwell Representative has full authority to act on behalf of Easternwell in connection with the Agreement.
- (b) The Services must be performed in accordance with the Agreement and any directions of the Easternwell Representative given under the Agreement.

- (c) The Easternwell Representative may delegate to another person any of its powers, duties, discretions or authorities.
- (d) The Contractor must ensure that:
  - (i) if directed by Easternwell, the Contractor Representative (or a delegate approved by the Easternwell Representative) is present as required at all times during the performance of the Services;
  - (ii) the Contractor Representative has full authority to execute the directions of the Easternwell Representative without delay and is responsible for ensuring the Services are performed in accordance with the Agreement;
  - (iii) notices to Easternwell are only issued by the Contractor Representative or persons who are duly authorised to do so by the Contractor; and
  - (iv) the Contractor Representative is only removed or replaced with the written approval of the Easternwell Representative.

#### 9. Force Majeure

- (a) In the event of an interruption to the supply of Goods or provision of Services to Easternwell that the Contractor attributes to Force Majeure, the Contractor must notify Easternwell immediately of the circumstances, likely duration and impact on the supply of Goods or provision of Services.
- (b) The Contractor will not be responsible for any failure to fulfil any term or condition of the Agreement if, and to the extent that fulfilment has been delayed or temporarily prevented by a Force Majeure occurrence, notification has been given in accordance with this clause 9.
- (c) Easternwell's obligations to make any payments under the Agreement are deferred to the extent that an event of Force Majeure prevents the Contractor from supplying Goods or providing Services under the Agreement for the period of the event of Force Majeure.
- (d) Easternwell may elect at any time to terminate the Agreement by written notice to the Contractor if an event of Force Majeure persists for 20 Days or more.

#### 10. Information

- (a) The Contractor warrants and represents that:
  - (i) it has carefully perused the documents forming the Agreement and there are no discrepancies, inconsistencies or ambiguities in or between those documents that would be apparent to an experienced and competent contractor that concern the Contractor; and
  - (ii) it has made proper allowance for all matters referred to in or reasonably capable of inference from the documents forming the Agreement.
- (b) The Contractor acknowledges that Easternwell:
  - (i) has endeavoured to ensure that information provided to the Contractor in connection with the Agreement (Information) is accurate, sufficient and complete;
  - (ii) does not otherwise warrant and has not made any other representation about the accuracy, sufficiency or completeness of the Information;
  - (iii) does not accept any liability for the accuracy, sufficiency and completeness of the Information and the use of it by the Contractor; and
  - (iv) has provided the Information for the convenience of the Contractor and, unless specified in the Agreement, it does not form part of the Agreement.

#### 11. Confidential Information

- (a) During the Term or at any time afterwards, the Contractor will not, except in the proper course of its duties under the Agreement or as required by law or permitted by Easternwell, use or disclose to any person any Confidential Information of or relating to Easternwell which has come into its possession as a result of the Agreement or the negotiations preceding the Agreement including the terms of the Agreement and will use its best endeavours to prevent the use or disclosure of any such information, except as permitted by this clause.
- (b) Easternwell's Confidential Information (which includes designs or specifications developed for the Contractor or any other designs or specifications) supplied by Easternwell to the Contractor and copies of it must be held by the Contractor on Easternwell's behalf and at Easternwell's disposal and must not be disclosed or furnished to any other person or used for any purpose without Easternwell's express consent and all reasonable precautions must be taken by the Contractor to protect such confidentiality.
- (c) The Contractor will return, erase or destroy any of the Confidential Information in its possession or under its control on the Termination Date or when and as directed to do so by Easternwell. The return, erasure or destruction of any of the Confidential Information does not relieve the Contractor of any of its obligations under the Agreement.
- (d) The Contractor acknowledges that damages are not a sufficient remedy for breach of this clause 11 and that Easternwell is entitled to specific performance or injunctive relief (as appropriate) for breach or threatened breach by the Contractor or any person, in addition to any other remedies available at law or in equity.
- (e) This clause 11 survives termination of the Agreement.

#### 12. Advertising

The Contractor must not, without Easternwell's prior consent, in any manner advertise or publish the fact that the Contractor has contracted to supply Goods or provide Services to Easternwell. The use of wording, brand name, logo or other distinguishing mark referring to Easternwell in any of the Contractor's promotional material or otherwise requires approval of the material by Easternwell prior to publication and approval may be withheld in Easternwell's absolute discretion.

#### 13. Dispute resolution

- (a) If a dispute arises in connection with or relating to the Agreement, a party to the dispute must give to the other party or parties to the dispute notice specifying the dispute and requiring its resolution under this clause 13 (Notice of Dispute).
- (b) An executive officer of each party must confer within 5 Business Days after the Notice of Dispute is given to try to resolve the dispute.
- (c) If the parties cannot resolve a dispute within 5 Business Days of the Dispute first being raised between the parties, the parties agree that the dispute must then be referred to the Australian Commercial Disputes Centre for mediation.
- (d) Either party may commence court proceedings at any time in relation to any Claim arising under or in connection with the Agreement where:
  - (i) the party seeks urgent interlocutory relief; or
  - (ii) the Claim relates to a dispute which is not resolved within 30 Days after the Notice of Dispute is given.
- (e) Subject to clause 13(d), neither party may litigate until the procedures in clauses 13(a) to 13(c) above have first been complied with.
- (f) In the event of an unresolved dispute between Easternwell and the Contractor in connection with or relating to the Agreement, the

Contractor must continue to perform its obligations under the Agreement.

- (g) Easternwell may set-off or deduct from any payment due to the Contractor under this Agreement any amount due or which may become due from the Contractor to Easternwell under this Agreement or otherwise relating to this Agreement.

#### 14. Notices

All notices given pursuant to the Agreement must be in writing and will be properly served if delivered personally, posted, sent by facsimile or e-mailed to the other party at the address or facsimile number or email address set out in the Agreement or as otherwise notified in writing by the intended recipient. A notice sent by post will be deemed to have been given on the third Business Day after posting except in the case of international post, which will be deemed to have been given on the fifth Business Day after posting where sent by airmail. A notice sent by facsimile transmission will be deemed to have been given upon confirmation by the sending machine of successful transmission of the total number of pages of the notice. Notice sent by e-mail will be deemed to have been given on confirmation that the email transmission has been received. A facsimile or email sent after 17.00hrs on a Business Day or on a day which is not a Business Day will be deemed received at 09.00hrs on the following Business Day.

#### 15. Assignment and subcontracting

- (a) The Contractor must not assign, subcontract or otherwise deal with the Agreement or any right under it except with the consent of Easternwell.
- (b) The Contractor must comply with any reasonable direction from Easternwell to replace any of the Contractor's Personnel involved in the provision of the Services with other Personnel acceptable to Easternwell in its absolute discretion.
- (c) Entering a subcontract (whether with or without the consent of Easternwell) does not relieve the Contractor from full responsibility for the performance of the Services and the Contractor is responsible for the acts and omissions of its Personnel (including its subcontractors and all persons acting for a subcontractor or under its supervision or control).
- (d) Easternwell may assign, subcontract or otherwise deal with the Agreement or its rights under it.

#### 16. General

- (a) (Benefit of Agreement held on trust) Easternwell accepts the benefit of the Agreement on behalf of its Associated Entities and Personnel and holds the benefit of the Agreement on trust for its Associated Entities and Personnel and may enforce the Agreement in its own name and in the name of (or for the benefit of) any of its Associated Entities or Personnel.
- (b) (Severability) Any provision or part of the Agreement that is void or unenforceable may be severed from the Agreement and the remaining provisions or parts of the provision of the Agreement continue in force.
- (c) (No merger) The rights and obligations of any party under the Agreement do not merge on completion of any transaction contemplated by the Agreement.
- (d) (No Waiver) Time is of the essence of the Agreement, except that no delay by Easternwell in exercising any right or power will operate as a waiver of that right or power.
- (e) (Variation) Easternwell may vary these Terms and Conditions (as set out in this document) effective from the date of the Order issued to the Contractor after the earlier of:
- (i) notice by Easternwell to the Contractor of the variation; and

- (ii) the publication of the document reflecting the variation on the Easternwell website. To avoid doubt, a variation will not apply to any Order issued before the earlier of those times referred to above. Any other variation of any term of the Agreement must be in writing and signed by the parties.
- (f) (Further actions) Each party must, at its own expense, do all things and execute all documents necessary to give full effect to the Agreement and the transactions contemplated by it.
- (g) (Survival) Any indemnity or any obligation of confidence under the Agreement is independent and survives termination of the Agreement. Any other term by its nature intended to survive termination of the Agreement (e.g. clauses 2, 3, 4, 6, 7, 11, 13, 14 and this clause 16) survives termination of the Agreement.
- (h) (Entire agreement) The Agreement states all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.
- (i) (Counterparts) The Agreement may be executed in any number of counterparts.
- (j) (Governing Law) Unless otherwise specified, the Agreement will be governed and construed in accordance with the Laws of the Jurisdiction. The Contractor and Easternwell submit to the non-exclusive jurisdiction of the Courts of the Jurisdiction.
- (k) (Definitions and Interpretation) The document named FRM-S01-053: Terms and Conditions of Supply to Easternwell (Definitions) is incorporated into the Agreement, and is available from the Easternwell website ([www.easternwell.com.au](http://www.easternwell.com.au)).

### PART B – PROVISIONS APPLYING TO PURCHASE OF GOODS

#### 17. Price

- (a) An Order is placed on a fixed and firm price basis in accordance with the prices listed on the Order Ex-Works. Unless otherwise stated, the price includes:
- (i) delivery of the Goods to the Delivery Address if listed on the Order (including freight, freight-in and all transport costs);
- (ii) off-loading of the Goods by the Contractor at the Delivery Address;
- (iii) any items specified in the Agreement or the Order;
- (iv) the performance of Services as specified in the Order; and
- (v) all Taxes concerning the Agreement and its performance.
- (b) No charge will be made by the Contractor to Easternwell for wrapping, packaging, packing, using cartons or crating, freight-in or unpacking, unless approval for such charge is expressly incorporated in the Order. All Goods must be suitably packed or otherwise prepared for shipment so as to ensure no damage occurs to the Goods in transit.

#### 18. Inspection and acceptance of Goods

- (a) For the purposes of inspection, the Contractor must allow Easternwell (or its representative) access to the Contractor's premises and any other premises at which the Goods are being fabricated or located. Where requested by Easternwell, the Contractor will furnish schedules and progress reports to Easternwell within 3 Business Days of receiving the request.
- (b) All Goods must be accompanied by an itemised and priced delivery docket, or itemised Tax Invoice.
- (c) Signing a delivery docket will not mean acceptance by Easternwell of any of the Goods delivered but only that items were delivered at that time.
- (d) Easternwell may in its absolute discretion reject any Goods, but must state the reasons for rejection and may:

- (i) direct the Contractor to remove the Goods at the Contractor's cost and refund any amount paid in relation to the Goods; or
- (ii) direct the Contractor to replace or rectify the Goods at no additional cost to Easternwell, or Easternwell may notify the Contractor that Easternwell elects to accept the Goods and seek damages for the Contractor's failure to comply with the Agreement and seek to recover the costs of replacing or rectifying any Defect in the Goods and the Contractor must upon demand reimburse Easternwell for any costs or expenses incurred in connection with inspection of the Goods. For the avoidance of doubt:
- (iii) Easternwell is not required to make any payment to the Contractor for any Goods rejected by Easternwell; and
- (iv) any damages or costs or expenses may be deducted by Easternwell from any amount due or becoming due to the Contractor pursuant to clause 2.
- (e) If the Contractor is to replace or rectify the Goods, the Contractor must notify Easternwell in writing when the replacement or rectification is completed.
- (f) Neither payment for Goods nor inspection of Goods under clause 18(a) constitutes acceptance of Goods that do not comply with the Agreement nor does it affect the right of Easternwell to subsequently reject the Goods.

#### 19. Defects

- (a) The Contractor must, at its expense, rectify to the satisfaction of Easternwell any Defect discovered within the Defect Period.
- (b) If the Contractor fails to rectify a Defect within a reasonable time after receiving notice of the Defect, Easternwell may, without prejudice to its other rights under the Agreement or otherwise, rectify the Defect and the costs incurred in doing so will be a debt due from the Contractor to Easternwell and payable upon demand.

#### 20. Title and risk

Title to and risk in the Goods will pass to Easternwell upon acceptance of Goods by Easternwell. Title must be free of encumbrances and all other adverse interests. Where the Contractor has agreed to hold Goods at its premises, title will pass upon payment for the Goods and risk of loss, damage or depreciation in the Goods passes to Easternwell upon delivery in accordance with Easternwell's instructions.

#### 21. No royalties

The Contractor acknowledges that the Goods are for the use of, or resale by, Easternwell and may be incorporated in a product or item of plant or equipment. Under no circumstances will any claim for royalties or other additional compensation be made by or through the Contractor by reason of such use, resale or incorporation.

#### 22. Certificates

Where certification guidelines apply to Goods, Easternwell will issue those guidelines with or before the Order for those Goods and the Contractor must ensure that the Goods comply with those guidelines and provide a certificate of conformance with the delivery of the Goods or upon demand.

### PART C – PROVISIONS APPLYING TO SERVICES

#### 23. Payment for Services

- (a) In relation to a Contractor providing Services, the Contractor must include with each invoice a statement that all remuneration or other amounts payable by the Contractor by law or under any industrial instrument in respect of the Services to any of its employees, consultants or subcontractors has been paid.
- (b) In relation to a Contractor who has performed Services:

- (i) in NSW (or otherwise has liabilities which arise under the Payroll Tax Act 2007 (NSW)), the Contractor must include with each invoice a statement by the Contractor in accordance with the requirements of clause 18 of schedule 2 of the Payroll Tax Act 2007 (NSW); and
- (ii) in NSW, the Contractor must include with each invoice a statement by the Contractor in accordance with the requirements of section 175B(4) of the Workers Compensation Act 1987 (NSW).
- (c) Easternwell may withhold any payment due to the Contractor until it receives from the Contractor the relevant statements required by this clause 23.

#### 24. Intellectual Property Rights

- (a) In this clause 24, a reference to 'Easternwell' includes a reference to an Associated Entity of Easternwell.
- (b) Title to any Intellectual Property Rights in all work (including any product, design, drawing or material), improvements and processes of any nature developed or produced at Easternwell's direction or for the Services excluding any intellectual property rights owned or developed by the Contractor before commencing providing the Services to Easternwell (Manufactured Goods) will become the absolute property of Easternwell. The Contractor assigns, and must ensure that its Personnel assign, to Easternwell all of its and their rights to such Intellectual Property Rights. The Contractor must at its expense do all things necessary, and must ensure all things necessary are done, to vest the ownership and full benefit of all such Intellectual Property Rights in Easternwell.
- (c) The Contractor grants to, agrees to grant to or will procure for Easternwell a non-exclusive, irrevocable, worldwide, royalty free licence to use, reproduce, adapt and sub-license any Intellectual Property (other than the Rights referred to in clause 24(b)) created with or without the assistance of Easternwell through the performance of the Services or for the purpose of performing the Services in perpetuity for any purpose, and the Contractor:
  - (i) will promptly disclose in writing to Easternwell the existence of any inventions, discoveries or improvements that fall within the description of Intellectual Property to be licensed under this paragraph (c); and
  - (ii) warrants and represents that it has the authority to grant the licence under this paragraph (c).
- (d) All royalties and fees claimable by or payable to any person for or in connection with any material, matter or thing (including any Intellectual Property) used or required to be used in the performance of the Services or supply of the Manufactured Goods under the Order will be paid by the Contractor and the Contractor will indemnify Easternwell against any Loss incurred as a result of the Contractor's failure to comply with this clause.
- (e) The copyright in all drawings, documents and other material containing data or information furnished to the Contractor by Easternwell under the Agreement will remain vested in Easternwell or, if it is furnished to the Contractor directly or through Easternwell by a third party including a process licensor or supplier of materials, the copyright in that material will remain vested in such third party.
- (f) The Contractor warrants that its Personnel have provided consents and waivers, to the fullest extent possible under the Laws of any applicable jurisdiction, in relation to their Moral Rights, sufficient to ensure Easternwell the unimpeded use of any documents or other property or rights licensed or assigned to Easternwell under the Agreement by Easternwell or persons authorised by Easternwell and must do all things requested by Easternwell, including signing or procuring the signature and delivery of any document, to give full effect to this clause.

- (g) The Contractor indemnifies Easternwell and its Associated Entities and Personnel against all Claims and Losses arising out of or in any way connected with or relating to the infringement of any Intellectual Property Right.
- (h) If a Claim is made against Easternwell or any of its Associated Entities or Personnel relating to an alleged infringement of an Intellectual Property Right, Easternwell will promptly give the Contractor written notice of it and, subject to paragraph (i), the Contractor may at its own expense and in Easternwell's name (or the name of the Associated Entity or Personnel) conduct that Claim or negotiate a settlement of that Claim.
- (i) Before taking any step in a Claim referred to in paragraph (h) in the name of Easternwell or its Associated Entity or Personnel, the Contractor must supply to Easternwell security in a form and of an amount reasonably acceptable to Easternwell to cover any Loss to which Easternwell or its Associated Entity or Personnel may become exposed. Throughout the Claim, the Contractor must utilise the services of a lawyer competent in advising upon the issues in the Claim and reasonably acceptable to Easternwell and must keep Easternwell fully informed of all aspects of the Claim including any advice, opinion or other information available to the Contractor concerning the Claim and will not settle the Claim without the consent of Easternwell which will not be unreasonably withheld or delayed.
- (j) If, due to any order or judgment in any proceedings, Easternwell or the Contractor is prevented from using or providing any Intellectual Property required under the Agreement, the Contractor will be liable for all the costs of making such Intellectual Property or the Services non-infringing or of acquiring a licence to use the Intellectual Property or to perform the Services from the owner of the relevant Intellectual Property Right.
- (b) Easternwell owns a licence to Intellectual Property Rights and copyright in any work, invention, technical information or know-how arising from or developed by the Contractor and the Contractor's Personnel in the course of the providing of the Supervisory Services;
- (c) in addition to the requirements of clause 11, any Confidential Information disclosed by Easternwell to the Contractor's Personnel or those Supervisory Services Personnel in the course of providing the Supervisory Services will be used for the sole purpose of performing the Supervisory Services and will not be copied, communicated or given to any other person;
- (d) in the performance of the Supervisory Services, the Contractor is at all times acting as an independent entity and nothing in the Agreement will be construed as creating an agency, partnership or employment relationship between the Contractor and Easternwell; and
- (e) the Contractor indemnifies Easternwell and Easternwell's Personnel against any Loss Easternwell or Easternwell's Personnel suffers or incurs, including, without limitation, as a result of the negligence, default or breach by the Contractor or the Contractor's Personnel arising out of the performance of the Supervisory Services by the Contractor's Personnel, except to the extent that the Loss is caused by the gross negligence of Easternwell or Easternwell's Personnel (who are not the Contractor's subcontractors) and is not a Consequential Loss.

## 25. Warranties in relation to Services

The Contractor must ensure that its Personnel carry out the Services:

- (a) with due care, skill and diligence and to the best of their ability and expertise;
- (b) in a timely, thorough and professional manner in accordance with all applicable professional principles and standards and industry best practice;
- (c) to any other standards as specified by Easternwell; and
- (d) in accordance with:
- (i) the requirements of all Laws including all WHS Requirements;
- (ii) HSE Guidelines and procedures provided to Personnel by the Contractor or Easternwell; and
- (iii) all reasonable directions and orders given by the Contractor or Easternwell.

## 26. Variation of Services

The parties may agree to vary or add to the Services. Any variation must be agreed to by the parties in writing and must specify either how much the Contractor is entitled to charge Easternwell or the basis on which the Contractor will calculate the amounts that it may charge Easternwell for the provision of any varied or additional Services.

## 27. Third party Supervisory Services

When providing Personnel for providing Supervisory Services, the Contractor acknowledges and agrees that:

- (a) those Supervisory Services Personnel will abide by all of Easternwell's policies and procedures (including any site safety plan, site emergency response plan and HSE management system) and the reasonable instruction or direction of the Site Manager or other Personnel as directed by Easternwell;