## 1 GENERAL

1.1 These Terms and Conditions shall apply to all Purchase Orders issued by CSBP Limited ("CSBP"), where the Purchase Order specifies that the order is subject to CSBP Limited Terms and Conditions for Services.

1.2 The Purchase Order, these Terms and Conditions and any documents referenced or issued with the Purchase Order shall constitute the Contract (the "Contract"). The Contract constitutes the entire agreement between the parties.

1.3 The documents comprising this Contract shall rank in the following descending order of precedence: i) the Special Conditions (if any); ii) the Purchase Order; iii) these Terms and Conditions; iv) the Basic Safety Rules; v) the Scope of Work (if any); and vi) the Contractors Site Instructions.

1.4 The "Contractor" means the organisation to whom the Purchase Order is issued.

1.5 By agreeing to undertake the Work, the Contractor is agreeing to undertake the Work in accordance with the Contract.

1.6 The Contractor shall carry out the work or services described in the Purchase Order and in any attached or referenced documents or drawings ("Work").

1.7 Where two or more persons are included in the term "Contractor" then the obligations on their part shall bind and be observed and be performed by them jointly and each of them severally.

1.8 The Contractor is engaged as an independent contractor and nothing in this Contract shall be deemed to constitute the Contractor an employee, servant or agent of CSBP.

1.9 The Contract shall be governed by and construed according to the laws of Western Australia and the parties shall submit to the jurisdiction of the Courts of Western Australia.

1.10 Each provision of this Contract shall be deemed to be separate and severable from the other provisions. If any provision is invalid or unenforceable in any jurisdiction, the balance of the Contract shall remain in full force and effect the validity or enforceability of such provision in any other jurisdiction.

1.11 All information about CSBP, its equipment, operations and affairs acquired by the Contractor during the performance of the Work shall be treated as confidential and not be disclosed to any other person or organisation. The obligations of the Contractor under this clause shall extend beyond the term of this Contract.

## 2 CONTRACTOR OBLIGATIONS

2.1 Time shall be of the essence of the Contract in all respects. The Contractor shall commence the Work on the date specified and complete the Work on or before the date specified.

2.2 The Contractor shall supply all materials, tools, equipment and personnel required to perform the Work unless CSBP specifies that it will provide nominated materials. Where CSBP provides materials, the Contractor shall satisfy itself as to the suitability of the materials for the Work before commencing the Work.

2.3 The Contractor shall perform the Work so as to not impede or interfere with activities being carried out on CSBP's premises and shall comply with the priorities determined by CSBP.

2.4 All patterns, drawings and materials supplied to the Contractor remain the property of CSBP and shall be returned in good condition at the end of the Contract.

2.5 Title to all materials supplied by the Contractor shall pass to CSBP at the time they are incorporated in the Work notwithstanding that at that time the Work is incomplete.

2.6 The Contractor shall comply with the provisions of all laws (federal, state or municipal) and to all lawful requirements and regulations of CSBP in any way affecting, or applicable to the performance of the Work or the safety of personnel on or in the vicinity of the site.

2.7 Without limiting the generality of Clause 2.6, the Contractor shall comply with the Contractors Site Instructions and the Basic Safety Rules and shall ensure compliance by its employees, agents and sub-contractors.

2.8 The Contractor shall remove and replace at the request of CSBP any employee, agent or sub-contractor who fail to perform the Work satisfactorily, misbehave or is absent from the site or fail to comply with instructions.

2.9 The Contractor shall obtain all permits and licences and give all notices required to be given and shall pay all fees, deposits, royalties, and taxes relating to the Work.

2.10 On completion of the Work the Contractor shall remove from the site all rubbish and surplus materials related to the Work.

2.11 The Contractor shall not assign or sub-contract the Contract or any part thereof without the prior written approval of CSBP and shall notify CSBP in writing of any proposed sub-contractor. The approval to assign or sub-contract all or part of the Work shall not discharge the Contractor from any liability under the Contract.

2.12 The Contractor acknowledges that prior to tendering or quoting for the Work, CSBP provided it with every opportunity to inspect the site and investigate local conditions which may effect the Work. The Contractor shall be deemed to have inspected the site prior to submitting its tender or quotation and to have fully informed itself about CSBP's operations, site rules and regulations and the effect of these on the Work.

## 3 CONTRACTOR WARRANTS

The Contractor warrants that:

i. its personnel are skilled, qualified and competent to complete the Work;

ii. all materials incorporated into the Work will be new, unless agreed otherwise, and of a quality and workmanship consistent with CSBP's requirement.

iii. all equipment brought to site for use by the Contractor is in safe and proper working order; and

iv. it shall not infringe any patent, copyright, trademark or trade secret and shall indemnify CSBP against any penalties, claims, demands, costs, damages or actions arising from any breach of warranty by the Contractor.

## 4 QUALITY

4.1 The Contractor shall establish and maintain a quality assurance program and quality control procedures to ensure that the quality of the Work is delivered and maintained at a consistently high standard.

4.2 CSBP shall have the right to inspect the Work at all times, including without limitation at the Contractors and its subcontractors premises and at the site.

4.3 Such inspection shall not be deemed to be acceptance by CSBP of the materials or work inspected, nor will relieve the Contractor of its responsibilities or liabilities under this Contract.

4.4 CSBP has the right to reject any item of Work found to be of an inferior standard or in any way not in accordance with the Contract at no additional cost to CSBP.

## 5 PRICE, PAYMENT AND VARIATIONS

5.1 This Contract shall not exceed the lower of the lump sum price or the maximum value limit specified on the Purchase Order. The Contractor acknowledges that CSBP shall not be liable for payments in excess of this amount.

5.2 CSBP shall pay the Contractor the amount specified on the Purchase Order within 30 days from the end of the month in which the invoice is received, providing the Work has been satisfactorily completed and approved.

5.3 Unless provided otherwise in the Special Conditions, progress claims will not be accepted against this Contract.

5.4 Where the Work or any variation thereto is carried out on a rates basis or includes items that the Contractor is entitled to reimbursement for;

i. It shall be the responsibility of the Contractor to ensure that the Contractor's Representative submits to the Responsible Officer for approval, on a daily basis, the labour timesheets &/or Daily Records of Unit Rate and

ii. CSBP shall have access to, and the right to audit the Contractors books, accounts and other records relating to the Work.

5.5 The Contractor shall keep true records and accounts of all Work performed and materials used pursuant to this Contract and shall maintain them for a minimum period of two years from the date of completion of the Work.

5.6 The Contractor acknowledges that the prices are inclusive of all its costs including but not limited to labour, materials, transport, overheads and profit.

5.7 The prices are not subject to variation during the term of the Contract.

5.8 CSBP may offset against payments due to the Contractor any amounts owing to CSBP by the Contractor and may deduct all amounts liable to any other person or organisation in relation to the Work and may pay the same to the person entitled thereto.

5.9 The Contractor shall not proceed with any services involving additional cost prior to issue, by the Responsible Officer, of a Field Direction confirming the additional cost or the parameters for its calculation.

5.10 All additions or variations are to be confirmed in writing through the issue of a Field Direction by the Responsible Officer. It shall be the Contractor's responsibility to ensure that any instructions, received from the Responsible Officer, upon which it is reliant, has been confirmed by a Field Direction.

5.11 The amounts payable under the Contract will be increased by the amount of GST payable by the Contractor in respect of the supplies made under the Contract. Where a party is liable to any tax or impost in the nature of a GST in respect of any indemnity payment made by that party to the other under this Contract, the indemnifying party shall, in addition to any other payment required by this Contract, pay the other party on demand the GST imposed in respect of the indemnity payment. For the purpose of this clause, "GST" has the meaning which it bears in a "A New Tax System (Goods and Services Tax) Act 1999" and any legislation substituted for, replacing or amending that Act.

## 6 INDEMNITY

The Contractor will be liable for, and must indemnify and keep indemnified CSBP and CSBP's directors, employees, agents and contractors against:

a) loss or damage to property of CSBP, including without limitation property upon which the Work is carried out;

b) claims by any person against CSBP or CSBP's directors, employees, agents or contractors in respect of loss of or damage to any property;

c) claims by any person against CSBP or CSBP's directors, employees, agents or contractors in respect of personal injury, disease, illness or death; and

d) any liability, loss and/or damage, claims, actions, suits, demands, expenses or proceedings of whatever nature,

either directly or indirectly arising out of, or in connection with, any act, omission, negligence, breach of statute or breach of contract by the Contractor, however the Contractor's liability to indemnify CSBP will be reduced in proportion to the extent that such claims, damages or losses were directly caused by or contributed to by the negligence of CSBP.

## 7 CONTRACTOR'S INSURANCES

7.1 Worker's Compensation

The Contractor must, at its own cost, effect and maintain throughout the term of this Contract, Workers Compensation Insurance covering liability to employees of the Contractor under all applicable workers compensation legislation and will ensure that any sub-contractor is similarly insured. The common law employer's liability cover must not be less than FIFTY MILLION DOLLARS ($50,000,000) for any one person or number of persons arising out of any one event. Such insurance must include an extension for "Principals Liability" and name CSBP as principal.

7.2 Public and Products Liability

The Contractor must, at its own cost, effect and maintain throughout the term of the Contract insurance covering legal liability to CSBP and/or third parties arising out of the Contractor's, its employees, agents or subcontractors activities, acts, omissions, or their supply of goods and or products. Cover shall be for a minimum amount of not less than TEN MILLION DOLLARS ($10,000,000) for losses arising from any one event.

7.3 Motor Vehicle

The Contractor must, at its own cost, effect and maintain throughout the term of this Contract, Motor Vehicle Third Party Property and Liability Insurance (including "gap" coverage for claims in respect of personal injury or death not covered nor able to be covered by the insurance referred to in Clause 7.2 in respect of all mechanically propelled vehicles used by the Contractor in connection with the performance of the work under the Contract for an amount of not less than TWENTY MILLION DOLLARS ($20,000,000) any one occurrence.

7.4 Insurances Specified by CSBP

The Contractor must, at its own cost, effect and maintain during the term of this Contract any other insurances required to be taken out by the Contractor pursuant to the Special Conditions of Contract.

7.5 Evidence of Insurance Cover

On request by CSBP the Contractor must provide evidence of the currency of insurance cover required pursuant to this Clause 7.

7.6 Requirements of each Policy

The Contractor must ensure that any policies of insurance referred to in Clauses 7.2 and 7.3 effected by it pursuant to this Contract contain provisions acceptable to CSBP that will require the insurer to issue a policy in the name of the Contractor including the interest of CSBP and to accept the term "insured" as applying to each of the Contractor and CSBP and as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased).

## 8 DEFECTS LIABILITY PERIOD

The Contractor guarantees the Work against any defect for a period of twelve (12) months from the completion of Work. The Contractor shall at its own expense make good or re-perform the Work. When directed by the Responsible Officer, the rectification work shall be subject to a further period of twelve (12) months from the completion of the rectification. If the defect is not remedied within a reasonable time CSBP may arrange the rectification of the Work at the risk and expense of the Contractor.

## 9 COMMUNICATION

9.1 Prior to the commencement of the Work, CSBP and the Contractor shall each appoint Representatives to act for them and on their behalf in the administration of the Contract. All rights of the parties hereunder and all notices and consents shall be properly received from or given by the Representatives.

9.2 All notices given by one party to the other shall be in writing and may be personally delivered to the nominated Representative of either party or sent by mail or facsimile to the address or facsimile number listed on the Purchase Order. Notices shall be deemed to have been given and received

i. on the day of delivery if personally handed to the Representative, or

ii. on the third working day after posting, or

iii. on the next working day after facsimile transmission.

9.3 No waiver of any provision or consent to any departure therefrom shall be effective unless given in writing. Any waiver or consent shall be effective only in the specific instance and for the purpose for which it is given. No delay in exercising any rights under the Contract shall operate as a waiver of any other right hereunder.

## 10 DISPUTES

In the event of a dispute arising between the Contractor and CSBP, either party may give written notice to the other party stating the reason for the dispute. If the dispute has not been settled within fourteen (14) days from the date of service of the notice, either party may require by written notice to the other party that the matter be referred to senior representation for determination. Following receipt of a notice of referral by either party, both parties shall appoint a senior representative to discuss and all outstanding issues. Notwithstanding the existence of a dispute, the Contractor shall continue to perform its obligations under the Contract.

## 11 TERMINATION

11.1 If the Contractor fails to perform or observe any obligation, term, condition or stipulation contained in the Contract or fails or refuses or neglects to comply with any instruction or direction which CSBP is entitled to give, then CSBP may, without prejudice to any other right which it may have, give written notice to the Contractor that unless the default is remedied within three (3) days, the Contract will be terminated and the engagement of the Contractor under the Contract determined.

11.2 CSBP may at any time during the performance of the Work terminate this Contract or suspend the Work by giving notice in writing to the Contractor. If CSBP suspends the Work the Contractor shall rearrange its affairs so that it minimises the cost of the suspension to CSBP. In the event of termination, the liability of CSBP to the Contractor shall not exceed, in the case of

i. a lump sum price, the percentage of the Work which has been completed, or

ii. rates, the value of the completed Work.

11.3 If the Contractor becomes insolvent or being a company goes into receivership, passes a resolution to enter liquidation or has execution levied on its goods, it shall immediately notify CSBP and CSBP may terminate this Contract forthwith or at any time while these circumstances continue.