

## PART A – MISCELLANEOUS HIRE SCHEDULE

ITEM		
1 Location of works:	See Purchase Order	
2 Description of works:	(insert general description of works e.g. heavy haulage, crantage etc	
3 Contract Documents	Part A	Contract Schedule
	Part B	Standard Contract Terms & Conditions
	Part C	Purchase Order
4 Term Commencement Date:		
5 Term Expiry Date:	12 months after the Term Commencement Date	
6 Time for payment	<b>45 days from end of month of claim, or such lesser period as required by law</b>	
7 Insurances Required (state "NIL" if not required)	<b>Insurance Type</b>	<b>Minimum Cover</b>
	<input checked="" type="checkbox"/> Third Party Public & Products Liability	\$ _____ (\$20M if not stated)
	<input checked="" type="checkbox"/> Workers Compensation	\$ _____
	<input type="checkbox"/> Professional Indemnity	\$ _____
	<input checked="" type="checkbox"/> Motor Vehicle / Plant & Equipment	\$ _____ (\$20M if not stated)
	<input checked="" type="checkbox"/> Carriers Liability	\$ _____ (\$4M if not stated)

**1 DEFINITIONS**

In these terms, except where the context otherwise requires:

**Alcohol and Other Drug Policy and Procedure** means the alcohol and other drug policy released by Daracon from time to time.

**Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether direct or indirect, consequential, present or future, fixed or ascertained, actual or contingent and whether at law, in equity, under statute or otherwise.

**Confidential Information** means all confidential information, non-public or proprietary information exchanged between the parties or known to a party before, on or after the date of this Contract relating to Daracon or its client or principal but excludes information:

- (a) which is in or becomes part of the public domain other than through breach of this agreement or an obligation of confidence owed to the disclosing party; or
- (b) which is acquired from a third party entitled to disclose it.

**Contract** means this Contract and all of the documents referred to in Item 3 of Part A.

**Contract Sum** means the price as noted in the agreed Purchase Order relating to Works or Services.

**Daracon** means Daromin Engineering Pty Limited (ABN 20 001 236 255) and all of its Subsidiaries, related entities or assigns.

**Dispute** means a dispute arising out of or relating to this Contract including a dispute as to breach or termination of this Contract or as to any claim in tort, in equity or pursuant to any statute.

**GST** means a tax imposed under the GST Law.

**GST Law** has the meaning given to it in section 195-1 of the *A New Tax System (Goods and Services Tax) Act (Cth) 1999*.

**Insurance Policies** means the policies referred to in Item 7 of Part A.

**Invoice Amount** means the aggregate amount of all invoices raised by You and accepted by Daracon in the relevant month.

**Law** means all acts, ordinances, regulations, bylaws, orders, industry standards, codes of practice, awards and proclamations, whether by the Commonwealth or any State or Territory and further includes any publication from a recognised industry body.

**Payment Period** means period set out in Item 6 of Part A.

**Personnel** includes any personnel, employee, consultant, supplier, Contractor or any other person appointed by that party.

**Purchase Order** means a purchase order issued in accordance with clause 6.1 and generally in the form set out in Part C.

**Services** means the Services required by Daracon from time to time set out in a Purchase Order and accepted by You under clause 5.1(a).

**Site** means the site identified in Item 1 of Part A.

**Subsidiary** has the same meaning given to it in the *Corporations Act (Cth) 2001*.

**Term** means the period starting on the Term Commencement Date and continuing to the Term Expiry Date.

**Term Commencement Date** means the date specified in Item 4 of Part A.

**Term Expiry Date** means the date or last day of the period of time stated in Item 5 of Part A, or as amended in writing pursuant to this Contract.

**Works** means the works required by Daracon from time to time set out in a Purchase Order and accepted by You under clause 5.1(a).

**Works Commencement Date** means the date on which the Works must commence as identified in a Purchase Order.

**Works Completion Date** means the date on which the Works must achieve Completion as identified in a Purchase Order and as otherwise extended in accordance with this Contract.

**WHS** means work health and safety.

**2 INTERPRETATION**

In these terms, unless the context indicates a contrary intention:

**(documents)** a reference to these terms or another document includes any document which varies, supplements, replaces, assigns or novates these terms or that other document.

**(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of these terms.

**(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity.

**(corporation)** a reference to a corporation includes its successors and permitted assigns.

**(including) including and includes** are not words of limitation.

**(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning.

**(singular)** the singular includes the plural and vice-versa.

**(rules of construction)** neither these terms nor any part of them is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

**(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.

**(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Newcastle, Australia even if the obligation is to be performed elsewhere.

**(writing)** a reference to a notice, consent, request, approval or other communication under these terms

or an agreement between the parties means a written notice, request, consent, approval or agreement.

**(replacement bodies)** a reference to a body (including an institute, association or government authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions.

**(Australian currency)** a reference to **dollars** or **\$** is to Australian currency.

**(day)** any reference to the word days is a reference to calendar days and is not limited to working days.

**(month)** a reference to a month is a reference to a calendar month.

**(year)** a reference to a year is a reference to twelve consecutive calendar months.

**(priority)** in the event any Contract Document is inconsistent with another Contract Document, the Contract Document ranking highest in priority (with (1) being the highest and (5) being the lowest), prevails to the extent of that inconsistency:

Part	Contract Document	Priority Ranking
A	Contract Schedule	1
B	Standard Contract Terms & Conditions	3
C	Purchase Order	2

### 3 SCOPE OF CONTRACT

3.1 This Contract commences on the Term Commencement Date and expires on the Term Expiry Date unless extended in writing by mutual agreement of the parties.

3.2 This Contract sets out the terms by which all Purchase Orders issued by Daracon will be governed.

### 4 WARRANTIES

You warrant to Daracon:

- (a) You have read these terms (and the Contract generally) and fully understand and comprehend the Contract;
- (b) You have had opportunity to obtain independent legal advice on these terms (and the Contract generally); and
- (c) You have full power and authority to enter into this Contract.

### 5 CONTRACTOR OBLIGATIONS

5.1 You must:

- (a) where Daracon issues You with a Purchase Order, accept or reject that Purchase Order within a timeframe acceptable to Daracon, which may be done either verbally or in writing;
- (b) perform the Works or Services in a proper and workmanlike manner to Daracon's satisfaction and in accordance with the provisions of this Contract;
- (c) perform the Works or Services with a standard of care and skill to be expected of a diligent and prudent Contractor and who possesses the knowledge, skill and expertise of a Contractor qualified and experienced to act in that capacity;

(d) where requested by Daracon, submit a program for carrying out the Works or providing the Services and comply with that program which must include commencing the Works or providing the Services on the Works Commencement Date and achieving Completion by the Works Completion Date;

(e) with due expedition and without delay, and in accordance with any program supplied, provide all professional skill and advice required for carrying out the Works or Services;

(f) comply with all directions provided by Daracon, whether in writing or otherwise;

(g) subject to clause 5.5, appoint Personnel with appropriate qualifications, competencies and experience to carry out the Works or provide the Services;

(h) promptly give written notice to Daracon if and to the extent the You become aware that any document or other information provided by Daracon is ambiguous or inaccurate or is otherwise insufficient to enable You to carry out the Works or Services;

(i) make reasonable enquiries to ascertain Daracon's requirements regarding the Works or Services;

(j) regularly consult with Daracon regarding the carrying out of the Works or Services;

(k) comply with all Laws in carrying out the Works or providing the Services;

(l) do all things necessary and necessarily and incidental for the proper performance of Your obligations under the Contract;

(m) obtain all permits and pay all fees required in connection with the performance of the Works or Services; and

(n) provide such plant and equipment necessary to complete the Works or Services in a safe and efficient manner, otherwise ensuring the plant and equipment is acceptable to Daracon. You are solely responsible for maintaining all plant and equipment bought onto the Site by You or Your Personnel in safe and proper working condition.

5.2 You also agree and warrant to Daracon that You have examined all documentation relating to the Works or Services and that they are suitable, appropriate and otherwise adequate for the purpose of performing the Works or Services required to be carried out in accordance with this Contract.

5.3 You agree and warrant You rely on Your own investigations as to the suitability of the Site for performing the Works or Services with the method You have suggested.

5.4 You must comply with the obligations imposed on You under this Contract and any special conditions set out in a Purchase Order.

5.5 You must not, without the prior written approval of Daracon, appoint any other contractor to perform any part of the Works or Services.

## 6 DARACON'S OBLIGATIONS

- 6.1 Daracon may issue You with purchase orders (**Purchase Order**) from time to time which will be on the terms set out in this Contract setting out the goods or services (or both) Daracon requires You to provide and any special conditions relating to those goods or services which may, as required on a case by case basis, vary this Contract.
- 6.2 Nothing in this Contract commits Daracon to any minimum order or minimum expenditure level..

## 7 INVOICING AND PAYMENT

- 7.1 Unless otherwise agreed by Daracon in writing, the Contract Sum is firm and not subject to adjustment for rise and fall in costs or for any other cause whatsoever.
- 7.2 You acknowledge that if You fail to comply with Your obligations under this Contract, Daracon is under no obligation to make any payment to You for the affected Works.
- 7.3 You agree:
- (a) You must issue a GST compliant invoice (and adjustment notes in respect of all supplies under or in connection with the Contract set out in a duly approved Work Docket) to Daracon on completion of each Purchase Order; and
  - (b) You warrant that You are registered for GST when You enter into this Contract and that it will continue to be registered for the duration of the Term.
- 7.4 On receipt of an invoice issued under clause 7.3, Daracon agrees that it will pay the Invoice Amount:
- (a) within the Payment Period; and
  - (b) by way of cash, cheque or electronic funds transfer to an account nominated by You, or such other method as agreed by the parties from time to time.
- 7.5 Daracon may set off any amount which You owe to Daracon under this Contract as a debt due against any progress payment or final payment relating to any Works.

## 8 TAXES

All prices quoted are exclusive of GST and any other Government charges and taxes that may be levied now or in the future unless specifically stated otherwise. Any such charges or taxes will be at Your expense.

## 9 COMPLETION AND DELAYS TO WORKS

- 9.1 You agree, in the absence of any agreed delays, You must complete the Works by the Works Completion Date.
- 9.2 You must employ such resources as are necessary to complete the Works expeditiously, in coordination with other trades and in accordance with the construction program, as amended from time to time.
- 9.3 Daracon reserves the right to adjust, by notice in writing to You, the Works Commencement Date and the Works Completion Date as required from time to time.
- 9.4 If, in Daracon's opinion, there are insufficient resources being deployed by You for the Completion of the Works by the Works Completion Date, Daracon may, without prejudice

to any further remedy, after giving notice to You and, where the circumstances permit, consulting with You, employ additional resources to complete the Works by the Works Completion Date at Your expense.

- 9.5 Where:
- (a) the Works are delayed by a cause outside of Your control or by a cause which could not have been anticipated by a skilled and experienced Contractor and that delay gives rise to the granting of an extension of time under the Head Contract; and
  - (b) You give notice in writing to Daracon within 5 days of becoming aware of the cause of delay setting out the cause and extent of the delay,

then Daracon may grant You an extension of the Works Completion Date.

- 9.6 Where provided for in this Contract, You may apply and Daracon may grant (at its discretion), an allowance for any costs arising from a delay except where that delay is caused or contributed to by You.

## 10 SITE ACCESS AND FACILITIES

- 10.1 Daracon will give You sufficient possession of the Site at times to enable You to execute the Works or provide the Services in accordance with this Contract.
- 10.2 Unless stated otherwise, Daracon will provide adequate sanitary facilities, temporary power outlet and water outlet.
- 10.3 Where Daracon allows You to use any scaffolding, hoisting plant, other facility or storage area belonging to or provided by Daracon (**Daracon Facilities**), such use will be on the express condition that no warranty or other liability on the part of Daracon or its Personnel will be created or implied in regard to the fitness condition, or suitability of the Daracon Facilities.
- 10.4 You must inspect all Daracon Facilities prior to use and satisfy Yourself of its condition and suitability.

## 11 WHS&E COMPLIANCE

- 11.1 You and all Your Personnel must comply with all relevant Laws including obtaining any necessary certificates, licenses, consents, permits and approvals of any organisation having jurisdiction required for performance of the Works.
- 11.2 In addition to its obligations under clause 11.1, You must comply with the obligations set out in the *Work Health and Safety Act 2011 (and any of its regulations)* and *The Protection of the Environment Operations Act (NSW) 1997*.
- 11.3 Before commencing the Works, You must:
- (a) provide a Safe Work Method Statement (**SWMS**) or Risk Assessment for the Works on industry acceptable terms and otherwise in a form reasonably acceptable to Daracon and implement and train all Your Personnel in the execution of that SWMS;
  - (b) provide evidence of:
    - (1) each of Your Personnel and any of Your Contractor's Personnel having completed the WorkCover Accredited

- General Induction for Construction Work; and
- (2) a Work Activity Induction (as per the WorkCover Code of Practice for WHS Induction Training in the Construction Industry) prior to completing a Daracon site specific induction; and
- 11.4 During the term of this Contract, You must:
- (a) ensure any operator, Personnel and any other person performing the Works (**Support Personnel**) are competent and suitably skilled and trained for the assigned task and have been properly inducted for working on the Site;
- (b) ensure Support Personnel carry in their possession any relevant licence, ticket, training records and any other document required by Daracon from time to time (including Certificates of Competency where required) and present those documents to Daracon on request;
- (c) ensure You and Your Support Personnel immediately report to Daracon any changes to the work conditions, the work method, condition of equipment that impact upon risk (including current SWMS);
- (d) identify, control and monitor the environmental aspects of its work including waste, dust, noise, habitat and heritage issues and where requested to do so by Daracon, present control measures to Daracon and ensure the compatibility of those control measures with other facilities planned for the Site;
- (e) report all incidents, including damage, near misses, injuries, illnesses, plant and equipment failure and defects to Daracon and the project manager immediately during the term of this Contract. All documentation created as a result of the incident, near miss, injury, illness, equipment failure or defects are to be provided to Daracon as soon as reasonably practicable following its creation;
- (f) at all times, comply with Daracon's WHS policies as released by Daracon from time to time including those set out in Part D (if any) (copies of which Daracon must make available to You on request);
- (g) comply with any direction provided by Daracon or any of its superintendents, customers or principals;
- (h) if working on or about a mine site, comply with all requirements of the *Coal Mine Health and Safety Act (NSW) 2002* and related regulations;
- (i) report any ambiguities or inconsistencies contained in any Daracon policy relating to the Services.
- 11.5 All communication for the purpose of this clause 11 must be:
- (a) immediately communicated verbally by the You to Daracon; and
- (b) confirmed in writing by You to Daracon within 12 hours of the occurrence of the event giving rise to the notice obligation.
- 11.6 You must participate in Daracon's WHS consultation arrangements when required to do so by Daracon. You are required to demonstrate daily communication (on the work and any safety directions) with work teams (referred to by Daracon as Daily Pre-start Meetings) to ensure that communication and consultation takes place regularly.
- 11.7 You agree Daracon may (at Daracon's cost) monitor and inspect Your compliance with WHS and environmental Laws from time to time which may include carrying out an audit on Your relevant work practices. You must use Your reasonable endeavours to comply with any request for information by an auditor.
- 11.8 You acknowledge You have read, understand and accept the terms of the Daracon Alcohol and Other Drug Policy and Procedure and agree You and Your Personnel must:
- (a) comply with the terms of that policy, including the right for Daracon to conduct random and "show cause" testing from time to time; and
- (b) be "fit for work" at all times when performing the Services.
- 11.9 If You are in breach of Your obligations under clause 11.8, Daracon may require You to take such remedial or corrective action as it considers reasonably necessary and You must do so at Your expense. Failure by You to comply with Your obligations under this clause will entitle Daracon to terminate this Contract in accordance with clause 14.
- 12 INSURANCES**
- 12.1 Prior to the Term Commencement Date, You must obtain and maintain the Insurance Policies referred to in Item 7 of Part A.
- 12.2 Daracon and the principal must be nominated as interested parties on each public liability and works insurance policy relevant to the Contract.
- 12.3 You must produce evidence of the currency of each policy to Daracon immediately prior to the Term Commencement Date and within 7 days of any subsequent request by Daracon.
- 12.4 If You do not comply with Your obligations under this clause, You agree Daracon may obtain the Insurance Policies on Your behalf and treat any costs associated with such Insurance Policies as a debt due by You to Daracon and exercise its rights of set off.
- 13 EQUIPMENT**
- 13.1 Prior to delivery of any equipment to be used in the performance of the Works, and for each day of the Works, You warrant to Daracon that the equipment is:
- (a) fit for purpose;
- (b) safe and without risk;
- (c) free of defects and faults; and
- (d) maintained in accordance with the original equipment manufacturers recommendations.
- 13.2 Daracon may, at its election, conduct an inspection of the equipment, assess the equipment and identify

any modifications, repairs or additions to the equipment that may be required prior to or at any time during the Works. Any costs relating to any modifications, repairs or addition will be at Your expense (unless otherwise agreed by Daracon in writing).

13.3 You agree:

- (a) You must provide full details of all plant and equipment to be used in the Works for registration in a register held by Daracon (**Plant**);
- (b) You must ensure any of Your Personnel operating the equipment hold a valid license and are competent in operating the Plant in a safe, efficient and skilled manner and provide evidence of that competency prior to commencing the Works;
- (c) You must ensure the Plant is fully registered with all relevant authorities (including workplace and environmental authorities) for its intended use and properly licensed for the Works to be performed;
- (d) You must do all things necessary to assist Daracon in completing a Contractor HSEQ Assessment - Prequalification IM-FOR-0702-001 or a pre-work assessment IM-CHK-0702-001 and such other pre-qualification assessments as required by Daracon from time to time;
- (e) where Daracon so requires, You must do all things necessary to assist Daracon in completing a Plant Hazard Assessment;
- (f) You must ensure that, for the duration of the Works, the Plant is inspected daily noting:
  - (1) compliance with inspection and testing regimes (testing and tagging);
  - (2) compliance with any site specific specifications and requirements;
  - (3) that the Plant is in good working order, free of defect and otherwise in accordance with any standard so prescribed by Daracon from time to time; and
  - (4) any defects requiring rectification,and once completed, that inspection report must be submitted to Daracon each day prior to commencement of any Works.

Where any defect is identified, You must not operate that Plant and it must be stood down as "out of service" until such time as repairs have been carried out by a suitably qualified and competent person.
- (g) where Daracon so requires, You must provide Daracon with a schedule of Preventive Maintenance Inspections that are to be carried out regularly on the Plant for the duration of the Works;
- (h) where the Plant has been modified by persons other than the original equipment manufacturer, You must provide Daracon

with copies of any structural and design certification together with any other specifications or relevant information pertaining to the safe use and maintenance of the Plant.

**14 TERM AND TERMINATION**

- 14.1 This Contract is valid for the Term and otherwise applies in accordance with clause 3.
- 14.2 A party may immediately terminate this Contract if:
  - (a) the other party defaults in the performance of a term of this Contract and that default is capable of remedy and the default is not remedied within 14 days after written notice specifying the default and the acts required to rectify the default has been given to the other party;
  - (b) the other party defaults in the performance of a term of this Contract and that default is not capable of remedy;
  - (c) an order is made or a resolution passed for the winding up of the other party other than for the purpose of solvent reconstruction;
  - (d) the other party ceases or threatens to cease to carry on its business;
  - (e) the other party is unable to pay its debts as and when they fall due; or
  - (f) the other party has a receiver and/or manager or official manager or provisional liquidator appointed or a secured creditor takes possession of the whole or a substantial part of its assets or undertaking; or convenes a meeting for the purpose of, or enters or proposes to enter into, any arrangement or composition with its creditors.
- 14.3 Daracon may terminate this Contract for convenience in its absolute discretion at any time. Upon termination under this clause 14.3, You will be entitled to payment for:
  - (a) that part of the Work performed as at the time of termination; and
  - (b) the cost of materials or goods properly ordered for the Works, which You have paid for or are legally bound to pay, subject to title transferring to Daracon on payment.

**15 INDEMNITY AND RISK**

- 15.1 You indemnify Daracon and the principal to the fullest extent permitted by Law from and against all Claims suffered or incurred by Daracon or the principal (including third party claims) arising directly or indirectly from any damage, injury or loss caused by or resulting from any:
  - (a) breach of Your obligations under this Contract;
  - (b) injury, total and permanent disability or death caused by You or Your Personnel;
  - (c) damage to property (whether owned by Daracon or not) caused by You or Your Personnel; and
  - (d) negligent act or omission by You or Your Personnel.

- 15.2 Daracon agrees that where it contributes to any loss or damage being suffered, Your liability under clause 15.1 will be reduced proportionately to the extent that the act or omission of Daracon or its Personnel (excluding You and Your Personnel), have contributed to the loss or damage.
- 15.3 With respect to You only, the operation of Part 4 of the *Civil Liability Act (NSW) 2002 (the Act)* is excluded in relation to all and any rights, obligations and liabilities under this Contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at Law.
- 15.4 You specifically agree and undertake that in the event of any proceedings to which the Act are applicable, You will not seek to rely on the provisions of the Act, other than as directly against any such concurrent wrongdoer in its own capacity.

## 16 CONFIDENTIALITY

- 16.1 You acknowledge that You and Your Personnel may be given access to Confidential Information in the course of performing the Works.
- 16.2 Except as otherwise required by Law, You must, and You must ensure Your Personnel:
- (a) keep strictly secret and confidential the Confidential Information; and
  - (b) not copy, publish, divulge or disclose in any manner whatsoever the Confidential Information to any person other than to those of its employees, contractors and agents directly involved in the performance of this Contract and only to the extent that such disclosure is required for the performance of this Contract.
- 16.3 On demand by Daracon, You must immediately return to Daracon all Confidential Information and other information obtained during the course of providing the Works to Daracon.

## 17 DISPUTE RESOLUTION

- 17.1 A party may not commence any court or arbitration proceedings relating to a Dispute unless it complies with this clause 17 except where the party seeks urgent interlocutory relief.
- 17.2 A party claiming that a Dispute has arisen under or in relation to this agreement must give written notice to the other party to this contract specifying the nature of the Dispute within 5 days of the cause of the Dispute arising.
- 17.3 On receipt of that notice by that other party, the parties must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or other techniques agreed by them.
- 17.4 If the parties do not agree within 7 days of receipt of the notice (or any further period agreed in writing by them) as to:
- (a) the dispute resolution technique and procedures to be adopted;
  - (b) the timetable for all steps in those procedures; and
  - (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales. The parties must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

- 17.5 The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 17 is to attempt to settle the Dispute concerned. No party may use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause 17 for any purpose other than in an attempt to settle the Dispute concerned.
- 17.6 Unless otherwise agreed by the parties, the parties must continue to perform their obligations under this Contract despite the existence of a Dispute.

## 18 ENERGY EMISSION AND DATA

- 18.1 Where relevant and if requested by Daracon, You must ensure that You establish and maintain all necessary information (to the extent and in a manner required) to enable Daracon (and any of its principals) to comply with:
- (a) the National Greenhouse and Energy Reporting Act 2007 (Cth) (**NGERS**) and all associated regulations and guidelines;
  - (b) the Energy Efficiency Opportunities Act 2006 (Cth) (**EEOS**) and all associated regulations and guidelines;
  - (c) any other requirements of the Government's proposed carbon pollution reduction scheme (**CPRS**) or any similar scheme pursuant to which the emission of greenhouse gases incurs a liability to acquire and surrender permits whatever data, information, records and/or reports of a type that a registered corporation or any other person may be required or entitled to provide under NGERS, EEOS or CPRS (**Greenhouse Data**)
- 18.2 You acknowledge and agree:
- (a) Daracon may provide or otherwise disclose the Greenhouse Data to any of its related entities, the principal and any applicable authority;
  - (b) Your promises and obligations in this clause 18 are:
    - (1) given and assumed by You in favour of Daracon and separately in favour of each of its related entities; and
    - (2) enforceable by Daracon and any of its related entities jointly and severally.
- 18.3 Nothing in this clause 18 is to be taken as meaning that Daracon (or any of its related entities) has agreed to perform on Your behalf, any obligation that You may have under any statutory requirement regarding the provision of Greenhouse Data to any authority.

## 19 INDUSTRIAL REQUIREMENTS

- 19.1 Prior to commencing Works on any Site, You must make yourself aware of all requirements for the Works and the Site relating to:
- (a) working hours;

- (b) industrial Matters;
- (c) occupational health and safety Matters; and
- (d) environmental Matters,
- which may apply to the Works or the Site.
- 19.2 You must ensure that You and any of Your Personnel comply with all Laws relating to industrial matters (including all relevant legislation, awards, enterprise agreements, industrial instruments, codes of practice and implementation guidelines) during the execution of the Works.
- 19.3 You agree this clause is a material term of this Contract and any failure by You to comply with Your obligations under this clause is a material breach of this Contract.
- 19.4 For the purposes of clause 19.1, **Matters** means all relevant legislation, awards, enterprise agreements, industrial instruments, codes of practice and implementation guidelines and any other standard which could reasonably applied to the matter.
- 20 ASSIGNMENT AND CONTRACTING**
- 20.1 You must not assign or sublet the whole or any part of this Contract without first obtaining written approval from Daracon. Such consent may be withheld in Daracon's absolute discretion.
- 20.2 Any permission to assign or sublet any part of this Contract will not discharge You from any liability under this Contract.
- 20.3 Daracon may in its absolute discretion assign this Contract or any benefit or right conferred under it.
- 21 RELATIONSHIP BETWEEN THE PARTIES**
- 21.1 Nothing in this Contract:
- (a) constitutes a partnership between the parties; or
- (b) except as expressly provided, makes a party an agent of another party for any purpose.
- 21.2 A party cannot in any way or for any purpose:
- (a) bind another party; or
- (b) contract in the name of another party.
- 21.3 If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.
- 22 FEDERAL AND STATE CODES**
- 22.1 The Building Code 2013 (**Federal Code**) may apply to the Works or Services if the relevant project receives federal government funding.
- 22.2 By agreeing to undertake the Works or Services, You will be taken to have read and agree to comply with the Federal Code.
- 22.3 Copies of the Federal Code can be found at [www.deerw.gov.au/BuildingCode](http://www.deerw.gov.au/BuildingCode)
- 22.4 The NSW Government's Code of Practice for the Building and Construction Industry (**NSW Code**) and the NSW Government's Implementations Guidelines to the NSW Code of Practice for Building and Construction Industry (**NSW Guidelines**) may apply to the Works or Services if the relevant project receives state government funding.
- 22.5 Where applicable, compliance with the NSW Code and the NSW Guidelines are a pre-requisite to submitting any response to a procurement process (expression of interest, tender response or pricing submission) or accepting a Purchase Order.
- 22.6 Copies of the NSW Code and the NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au)
- 23 GENERAL**
- 23.1 Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Contract.
- 23.2 A provision of this Contract can only be varied by a later written document executed by all parties.
- 23.3 This Contract may be executed in any number of counterparts. All counterparts taken together constitute one instrument.
- 23.4 Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Contract.
- 23.5 The contents of this Contract constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this Contract, whether orally or in writing.
- 23.6 A word or provision must be read down if:
- (a) this Contract is void, voidable, or unenforceable if it is not read down;
- (b) this Contract will not be void, voidable or unenforceable if it is read down; and
- (c) the provision is capable of being read down.
- 23.7 A word or provision must be severed if:
- (a) the provision is void, voidable or unenforceable if it is not severed; and
- (b) the contract will be void, voidable or unenforceable if it is not severed.
- 23.8 The remainder of this Contract has full effect even if clause 23.7 applies.
- 23.9 A right or remedy created by this Contract cannot be waived except in writing signed by the party entitled to that right.
- 23.10 Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- 23.11 Clauses 4, 11, 12, 15, 16, 17 and any other clause which by its nature is intended to survive termination of this Contract, continue to apply after expiration or termination of this Contract.
- 23.12 The Laws applicable in New South Wales govern this Contract.
- 23.13 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.



## PART C – PURCHASE ORDER

Purchase Orders will take the form determined by Daracon from time to time.

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