

**1. Definitions:**

- 1.1. **Authorised representatives** - Means a person authorised to manage this Contract on behalf of a Party.
- 1.2. **Business days** – Means a day other than a Saturday, Sunday or Public Holiday in Brisbane Queensland, Australia.
- 1.3. **Claims** – Means claims, loss, damages, costs and expenses including legal costs on a solicitor and own client basis.
- 1.4. **Confidential Information** - means the following information provided by or for one Party to another in any way in relation to this Contract:
- a) Information designated as confidential by the Party which provides the information.
  - b) Information imparted in circumstances of confidence; or
  - c) Information that the recipient of the information knows, or ought to know, is confidential;
- but does not include information which is already known by the receiving Party at the time it is disclosed, or which is or becomes public knowledge other than by breach of this Contract.
- 1.5. **Conflict of Interest** – Means an actual, potential, or perceived conflict of interest.
- 1.6. **Contract** – Means this full contract and all referred documents hereto incorporated by express reference.
- 1.7. **Contributing Party** – Means quantifiable contribution provided for the development of Intellectual Property.
- 1.8. **Delivery** – As defined in Clause 3.
- 1.9. **Disclosing Party** – Means a Party which discloses Confidential Information to the other Party.
- 1.10. **Force majeure** – Means events or circumstances beyond the control of the supplier such as a war whether declared or not, strike or shorten hours of labour, riot, crime, civil commotion, epidemic, pandemic, lockdown or lockout, fire, flood, storm, accident or an **event** described by the legal term act of God, acts of the purchaser or the end user or any other circumstance beyond the control of the Supplier which prevent in part or in full the Supplier meeting its obligations under the contract including interruption of essential services such as electricity supply, bank payment systems or postal and freight delivery interruptions or delays.
- 1.11. **Goods** – Means any goods/products Supplied by the Supplier under this contract in an agreement that excludes services.
- 1.12. **Gross negligence** – shall mean reckless disregard of, or wanton indifference to, harmful and avoidable consequences
- 1.13. **GST** – Has the definition as found in the A New Tax System (Goods and Services Tax) Act 1999 as amended or replaced from time to time.
- 1.14. **Intellectual Property or IP** - includes all copyright, all rights in relation to inventions, plant varieties, trademarks (including service marks), knowhow, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields recognised anywhere in the world, but does not include Moral Rights.
- 1.15. **Liquidated Damaged** – Means a defined and expressly stated value to be paid by the Supplier to the Purchaser as compensation for breaches in the contract in relation to late delivery of the scope of supply. Liquidated damages shall be defined in the applicable Purchase Order Acceptance form should no amount be stated or referred to the Amount is one (1) Australian Dollar for any Delay in delivery.
- 1.16. **Moral Rights** – Has the meaning given in the Copyright Act 1968 (Cth), as amended, or replaced from time to time.
- 1.17. **Party** – Meaning Supplier or Purchaser in relation to this contract
- 1.18. **Price** – Is the total value shown in the Purchase Order acceptance or as modifies in accordance with the terms of this contract. For any scope of supply that is performed on a reimbursable basis, the price will be determined by the schedule of rates as was provided in the Suppliers Quotation to the Purchaser.
- 1.19. **Purchase order** – Is the document the Purchaser supplies to the Supplier to the benefit of receiving a scope of Supply from the Supplier, which are not validated unless a Purchase Order Acceptance has been received from the Supplier.
- Purchase Order Acceptance** – Is the document in which the Supplier provides to the Purchaser to acknowledge acceptance of the Purchase order and that the parties have now entered into a contract. **(this may take other forms and must be signed by both parties to be enforceable.)**
- 1.20. **Purchaser** – Means any person or company engaging in a contract with Supplier as defined in the purchase order acceptance form.
- 1.21. **Receiving Party** – Means any Party receiving Information, products or services from the Other Party including confidential information.

- 1.22. **Scope of Supply** - Means the goods or services as outlined in the purchase order acceptance.
- 1.23. **Services** – Means any physical works performed by the Supplier to the Purchaser including but not limited to on site services, planning and administrative tasks.
- 1.24. **Supplier** – Meaning Deasor Pty Ltd ABN: 95 626 506 027 (Including the Division 'Solvat')
- 1.25. **Warranty Period** – Means the period of time as stated in Clause 32.
- 1.26. **Wilful misconduct** - shall mean conduct that is committed with an intentional disregard for the safety of others and/or the safety of another's property.
- a) For 1.12 and 1.26, Gross negligence" and/or "wilful misconduct" shall not include any act or omission or any error of judgment or mistake made in good faith

**2. General / About**

- 2.1. Any purchase of goods or services are subject to these Solvat terms and conditions of sale and the relevant Purchase order acceptance document supplied by the Supplier in response to a Purchase order, unless otherwise agreed in writing and signed by both Parties.
- 2.2. Purchaser is deemed to have entered into a contract with the Supplier upon Suppliers acceptance of a Purchase order from the Purchaser on the Suppliers purchase order acceptance form, such acceptance is at the Supplier complete discretion. Any changes or variations to a purchase order acceptance or terms within this contract must be made in accordance with clause 33 Variations.
- 2.3. All previous discussion, negotiations, representations and/or other contractual commitments between the parties are hereby superseded and shall apply and rule to the elimination of all others.
- 2.4. All offers made by the Supplier shall be considered non-binding in nature unless expressly stated otherwise in a Quotation or purchase order acceptance.
- 2.5. For clarity of order of precedence within referred to documents within this contract in relation to any inconsistency found the following shall apply.
- a) Latest, completed and mutually signed Contract Variation Supplier form.
  - b) Purchase order amendment confirmed and accepted by the Suppliers Purchase order acceptance form.
  - c) The terms contained within this contract.
  - d) Suppliers Quotation including all referenced documents, attachments, appendices and contained therein.
  - e) The Purchasers specifications.

**3. Delivery**

- 3.1. Subject to complying with these terms including the acceptance of the purchaser's order by the supplier, supplier will sell and supply goods or services to you as shown on your order confirmation. If supplier does not receive anything to the contrary within 3 calendar days of the date stated within the order confirmation, all conditions held therein shall be deemed as accepted by the purchaser.
- 3.2. The supplier agrees to make delivery of goods or arrange for pick up as is outlined in the order confirmation. Any deliveries will be at the purchasers account and is in addition to the goods nominal prices, should the supplier be required to deliver or otherwise arrange for transport of goods the mode of such transport will be at the suppliers absolute discretion.
- 3.3. Goods may not be immediately available for delivery at the time of purchase, while the supplier does hold stock there may be a delay in receiving a full or complete order. The supplier will make its best endeavour to deliver your goods within 2 weeks (14 days) of order confirmation except where quantities exceed 1 pallet full and the supplier had not given the supplier a prior commitment in the form of partial (60%) payment to purchase quantities larger than 1 pallet.
- 3.4. Deliveries may be greater than 14 calendar days for regional, remote or offshore areas.
- 3.5. Dates for delivery are to be used as a guide only and will be subject to availability of goods. The Supplier under no circumstances shall be liable to the Purchaser for any late or partial delivery.
- 3.6. The Supplier accepts no responsibility for loss or damage or non-delivery arising by any reason including force majeure events occurring. Should the Supplier not be able to deliver the goods for this reason, The Supplier by notice in writing, at the supply at its sole discretion either provide partial supply of the order should it be available, extend the date for deliver or cancel the all or part of the contract.

#### 4. Title and risk

- 4.1. The title of the scope of supply shall remain with the Supplier until such time that the contract price has been paid in full to the Supplier at which time the title shall be transferred to the purchaser.
- 4.2. Risk of loss or damage to the scope of supply shall pass to the Purchaser upon delivery or collection whichever the case may be of such scope of supply.

#### 5. Purchasers Obligations

- 5.1. Once the Purchaser has received any goods under the contract, it is the purchaser's sole responsibility to ensure all Occupational Health safety and Environmental requirements are observed including but not limited to the products fitness for purpose, handling and storage and the use of the goods.
- 5.2. Further to the above, the Purchaser must ensure all its employees, contractors and visitors, customers and agents are made fully aware of any Health safety and environmental information provided by the Supplier in relation to the goods supplied. If any such information has been omitted by the Supplier as part of the delivery it is the Purchaser's responsibility to obtain such information from the website at [www.Solvat.com.au](http://www.Solvat.com.au) or call the main office on +61 7 3453 1959 and request such information.

#### 6. Notices

##### Obligation for notices

- 6.1. Each notice under this Contract must be:
  - a) In writing;
  - b) Addressed to the recipient at the applicable address for notices set out in the Purchase Order Acceptance form; and
  - c) Left at, or sent by pre-paid post, facsimile or email to, that address. For clarity any notice sent by mail, courier or left at the office must be signed for to acknowledge receipt.

##### Deemed receipt

- 6.2. Notices given in accordance with clause 6.1 of the Contract Terms will be deemed to have been received:
  - a) If delivered by hand and signed for by any representative of the Supplier.
  - b) If sent by post, which must be sent in such a fashion that required acknowledgement of receipt at the receiving end (Signed for packaged)
  - c) If sent by facsimile, on the day of transmission provided that no error report is Received in respect of the transmission (or on the next Business Day if the day of Transmission is not a Business Day); or
  - d) If sent by email, when the sender receives a confirmation of receipt from the intended Recipient's computer demonstrating that the email has been received.

#### 7. Price

- 7.1. Prices provided are in Australian Dollars and exclude GST. GST is payable on all goods and services as applicable by law.
- 7.2. Prices generally exclude shipping freight or mobilisation costs including inductions unless explicitly stated otherwise in the order confirmation.
- 7.3. Any variation in cost incurred to the Supplier in relating to performing its obligations under the contract which increase the cost of transacting the order due to material cost, shipping cost any enactment of Parliament, regulations or otherwise having the force of law or any fluctuation in currency value after the date of the Purchaser's confirmed order, such additional and unforeseen costs shall be added to the agreed price for the contracted scope of supply.

#### 8. Payment

- 8.1. Where late payment exceeds 7 days, the supplier may at its complete discretion suspend or cancel the remainder of the scope of supply after having notified the Purchaser in writing of such impending suspension or cancellation until the open invoice is satisfied and such suspension or cancellation shall have no effect on the Supplier's obligations under this contract including but not limited to Schedule and late delivery all such dates for delivery shall shift in proportion including an additional allowance for planning and reinitiating of scope of supply works. All such additional costs as a result of such suspension or cancellation under this clause shall be chargeable to the Purchaser and will be payable within the timeframes set out in this contract.
- 8.2. All payment shall be made net without any deductions excluding any portion which is in dispute and has been raised during the course of the contracted works. If payment is not received by the Supplier by the due time, the

Purchaser must pay, without reminder, interest on any outstanding amount at a rate of 10% annual interest rate compounded daily until funds are received excluding the date in which the outstanding amount was due. Any delay in applying interest shall not waive such right for any transaction where payment is not made in accordance with the terms of the contract.

- 8.3. Terms of payment shall be determined by the supplier quotation.
- 8.4. Terms of payment for services or a combination of goods and services are payable within 7 days upon receipt of an invoice which will be conducted weekly in which the work was performed whether by a milestone payment basis or reimbursable schedule of rates, regardless of completion of the full scope of supply or after the completion of the scope of supply, whichever occurs first, unless otherwise agreed in writing.
- 8.5. Payment shall not be affected by a force Majeure Event.

#### 9. Withholding tax

- 9.1. If a Party is required by law to make a deduction or withholding from an amount payable to the other Party under or in connection with this Contract, whether for tax or otherwise, it must do the following:
  - a) Notify the other Party as soon as reasonably practicable that it is required to make the deduction or withholding;
  - b) Promptly make the deduction or withholding and pay the amount in the manner required to the authority entitled to receive it; and
  - c) If requested by the other Party, as soon as reasonably practicable, deliver evidence satisfactory to the other Party that the payment has been made.
  - d) Make an appropriate adjustment note to allow both parties to balance their accounts.

#### 10. Goods and services tax

- 10.1. For the purposes of this clause 10 of the Contract Terms:
  - a) Unless otherwise stated, terms that have a defined meaning in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Act) have the same meaning as in the GST Act;
  - b) In addition to its meaning in the GST Act, the term GST includes any notional liability to pay GST;
  - c) The term consideration takes its ordinary meaning, rather than its defined meaning in the GST Act; and
  - d) If a supply is treated as a periodic or progressive supply under the GST Act, each periodic or progressive component of the supply will be treated as if it is a separate supply.
- 10.2. Unless otherwise stated, Prices provided are in Australian Dollars and exclude GST. GST is payable on all goods and services as applicable by law.
- 10.3. Notwithstanding any other provision of this Contract, the recipient need not pay the GST Amount until it has received from the supplier a tax invoice or adjustment note (as the case may be).
- 10.4. If an adjustment event arises in respect of the scope of supply, the GST Amount must be adjusted to reflect the adjustment event and a payment must be made by the supplier to the recipient, or by the recipient to the supplier, as the case may be.
- 10.5. If a Party is entitled to be reimbursed or indemnified for a cost or expense under or in connection with this Contract, the amount to be reimbursed must be reduced to the extent that the Party (or the representative member for a GST group of which that Party is a member) is entitled to an input tax credit for the cost or expense.
- 10.6. This clause 10 will survive the termination or expiry of this Contract.

#### 11. Background IP and Third Party IP Ownership

- 11.1. Nothing in this Contract affects the ownership of Background IP or Third Party IP.
- 11.2. **Process for offering Material containing Background IP or Third Party IP**
  - 12.1. A Party (Contributing Party) may offer any Material containing Background IP or Third Party IP to be Used for the performance of the Project or this Contract, for all such IP the contributing Party grants the receiving party a free, limited, irrevocable and non transferable license to use the Intellectual Property of the Contributing party and its sub-suppliers for the restricted use of the required Scope of Supply.
  - 12.2. Should there be any specific restrictions in the supplied IP. The terms which must be disclosed by the Contributing Party for the purposes of clause 11 of the Contract Terms include:

- a) Details of any restrictions, conditions or encumbrances, that apply, or may apply, to the Use of the Background IP or Third Party IP, including fees or royalties for Third Party IP; and
- b) Any other information as is reasonably requested by the Recipient Party.

### **13. Risk issues regarding Background IP or Third Party IP**

- 13.1. Each Party must take reasonable steps to ensure that it does not, without giving prior written notice, offer or provide to the other Party Material that breaches, or may cause the other Party to breach, any applicable laws or regulations.
- 13.2. A Party which becomes aware that such circumstance described in clauses 11 of the Contract Terms apply in respect of any Material must give the other Party prompt written notice of those circumstance.

### **14. Use and protection of Background IP and Third Party IP**

- 14.1. A Recipient Party must not, without the prior express written consent of the Contributing Party, Use the Contributing Party's Background IP or Third Party IP other than in accordance with this Contract or a separate agreement signed by both Parties, or as permitted by law.
- 14.2. Each Recipient Party represents and warrants to the other Party that it will not assign, encumber or otherwise deal with, dispose of or Commercialise the Contributing Party's Background IP or Third Party IP, except in accordance with this Contract or a separate agreement signed by both Parties.
- 14.3. Each Party must take all reasonable steps to protect the other Party's Background IP and Third Party IP from misuse and must give the Contributing Party prompt written notice of any actual or potential claims concerning infringement of Background IP or Third Party IP which come to their attention.
- 14.4. The Recipient Party must give the Contributing Party all assistance which it reasonably requests in order to protect the Contributing Party's Background IP or Third Party IP, at joint expense.

### **15. Moral Rights**

- 15.1. Moral rights will be owned by the Person and their employer who create Materials for the purposes of this Contract, including reports, software, etc, which is subject to the provisions of copyright law. Moral Rights cannot be assigned or transferred. If a person has Moral Rights then they should be recognised as the author of their work by the Purchaser, including by having their name appear on their work. They may also be able to prevent certain uses of their work (such as editing). If this may be problematic for one or both Parties, the Purchaser may be required to obtain written consents from the Supplier.

### **16. Project IP**

- 16.1. Any IP created by the Supplier during a contract shall remain with the Supplier, the Supplier hereby grants the receiving party a royalty free, limited, irrevocable and non-transferable license to use the Intellectual Property and its sub-suppliers for the restricted use of the Scope of Supply.
- 16.2. Any IP created by the Purchaser during a contract shall remain with the Purchaser, the Purchaser hereby grants the receiving party and affiliates and its sub-supplier a royalty free, limited, irrevocable and non-transferable license to use the Intellectual Property.
- 16.3. Project IP vests on its creation by the contributing party that perform the majority of contribution to the Project IP.
- 16.4. Each Party must co-operate and promptly do all acts and things and execute all documents which may be necessary or desirable for the purpose of vesting ownership of the Project IP as described in clause 16.3 of the Contract Terms.
- 16.5. Upon joint creation of Project IP, the Purchaser grants to the Supplier a perpetual, irrevocable, world-wide, non-exclusive royalty free and fee-free licence to Use the Project IP for the purposes of further work on the owning parties behalf. This licence includes the right for the Supplier to further Commercialise the IP.
- 16.6. The registration of the Project IP is only permitted subject to agreement of the Supplier.

### **17. Confidentiality**

- 17.1. The Supplier and Purchaser under this agreement agree that without limitation, any information including documents, plans, drawings, designs trade secrets, knowhow, models, verbal communication and notes, collectively or individually referred to as 'information', shall be deemed confidential and neither party shall disclose to any other party such information unless required to do so by law or to verify with their own legal

counsel or subcontractors and suppliers. Both parties must ensure any information passed on to such parties the terms of confidentiality are maintained to the benefit of the disclosing party. This does not include information available in the public domain. All such confidential information shall only be used by either party to the extent it is required to use such information to perform their obligations under this contract.

- 17.2. The obligations under this clause are continuing obligations and shall survive the term of this contract for a period of no less than three (3) years.

### **18. Conflict of interest**

- 18.1. Each Party warrants that at the Commencement Date, to the best of its knowledge and after making diligent inquiry, no Conflict of Interest exists or is likely to arise in the performance of its obligations under this Contract.
- 18.2. If, during the Term, it comes to the attention of either party that a Conflict of Interest arises or appears likely to arise in respect the scope of supply, that party must:
  - a) Immediately notify the other party in writing of all relevant information relating to the Conflict of Interest, and the steps that it proposes to take to resolve or otherwise deal with the Conflict of Interest; and
  - b) Promptly take any and all steps that the party reasonably requires to resolve or otherwise deal with the Conflict of Interest.
- 18.3. If either party fails to notify the other party that a Conflict of Interest has arisen or appears likely to arise in accordance with clause 18.2 of the Contract Terms, or is unable or unwilling to resolve or deal with the Conflict of Interest as required in accordance with clause 18.2 of the Contract Terms, then the other party may terminate this Contract for breach of a material term in accordance with clause 30.1(b) of the Contract Terms.

### **19. Disclaimer and Indemnity**

- 19.1. To the extent permitted by law. The Supplier and their bodies corporate exclude all liability to the Purchaser or anyone else for loss or damage of any kind (however caused or arising) relating in any way to the scope of supply. The Purchaser agrees to indemnify and hold harmless the Supplier, including their directors, officers, employees and agents of damage to third party property, or for bodily injury (including death) or both however so caused arising out of the performance of the contract to the extent that such damage or injury is attributable to the negligence or wilful misconduct of the indemnifying party, and keep the Supplier Indemnified against any claim. This indemnity includes legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.
- 19.2. Except as expressly provided in these terms, and to the fullest extent allowed by the law, the Supplier and its third parties will not be liable for any direct, indirect, special, incidental or consequential damages arising out of your use of our goods or services or use of the website.

### **20. Force Majeure**

- 20.1. The Supplier shall not be liable for events or circumstances beyond the control of the supplier such as a war whether declared or not, strike or shorten hours of labour, riot, crime, civil commotion, epidemic, pandemic, lockdown or lockout, fire, flood, storm, accident or an event described by the legal term act of God, acts of the purchaser or the end user or any other circumstance beyond the control of the Supplier which prevent in part or in full the Supplier meeting its obligations under the contract including interruption of essential services such as electricity supply, bank payment systems or postal and freight delivery interruptions or delays.
- 20.2. Payment obligations shall not be affected by force majeure events, for extended force majeure events the terms of the contract shall be determined by clause 3.
- 20.3. Any additional costs as a result of a force majeure event shall be at the Purchasers account and the Supplier shall be entitled to recoup all costs from the Purchaser for the delivery of the contract, where termination of the contract is enacted by the purchaser under the terms of the contract, the Supplier shall be entitled to receive full compensation for and expenses that are not cancellable in which the Purchaser shall receive those goods in which could not be cancelled prior to termination.

### **21. Insurance**

- 21.1. The Purchaser shall be responsible to effect and/or maintain any and all insurance including sufficient product liability insurance, transport insurance, work cover insurance and automobile liability insurance which cover its legal liability of the purchaser for bodily injury and /or damage to own or third party physical property including the supplied goods from the time of

delivery as outlined in clause 3 including all risk of loss or damage, to, or deterioration of the goods from whatever cause.

- 21.2. In no event shall the Suppliers insurance be primary insurance in respect to the scope of supply, furthermore the Suppliers Insurance will not provide nor grant a waiver of subrogation to the purchaser, its customers or end users nor name such parties as additional or co-insured persons or parties.

## **22. Transfer and Assignment**

- 22.1. Supplier retains the right at all times to merge, sell or otherwise change control of its business to a third party, furthermore the supplier reserves the right to transfer or assign personal information and other content the purchaser has collected during the course of its business to such third parties without giving notice or seeking consent, acceptance of a commercial relationship based on these terms will be deemed as acceptance.
- 22.2. Any transfer or assignment including a delegate by a Purchaser to a third party shall not be recognised as valid under this agreement and shall be rendered Null and Void without the prior written consent of the supplier. This does not apply to either party engaging with subcontractors or sub-supplier which are part of either parties typical business practices to fulfill their obligations under this contract.

## **23. Privacy and Personal Information**

- 23.1. Your privacy of your personal information is important to Solvet. Please refer to the Privacy Policy located on our website at [www.Solvat.com.au](http://www.Solvat.com.au).

## **24. Waiver**

- 24.1. If either party fail to exercise or enforce any right or provision under these terms will not constitute or deemed to be a waiver or forfeiture of such rights or provisions.
- 24.2. Until title of the goods passes to the Purchaser as outlined in clause 4, the Purchaser waives its rights it would otherwise have under the Personal Property Security Act 2009 or any further amendment thereto.

## **25. Jurisdiction and Governing Law**

- 25.1. Any agreement made under this contract shall be governed by and construed in accordance with the laws of Queensland, Australia. The purchaser acknowledges and irrevocably submits to the non exclusive jurisdiction of the courts of Queensland, Australia. In line with the Severability clause 34. Any provisions of these terms that are found to be unenforceable by the court of law, such invalid or unenforceable portion shall not affect any other terms contained in the remainder of the agreement, and all other terms shall continue in full force and effect.

## **26. Dispute Resolution**

- 26.1. Any Dispute arising in relation to this contract must be handled in order of precedence as follows (a) first, if no resolution, then (b), if no resolution then (c). All steps (a), (b), (c) and (d) must be exhausted prior to any commencement of court proceedings relating to such disputes unless a party requires to seek urgent interlocutory relief.
- Genuine attempt to resolve disputes directly between Supplier and Purchaser authorised representatives, settled within no more than five (5) business days by negotiation agreed to in writing.
  - Agreement to continue scope of supply in accordance with the terms of this contract, all payment and supply rights are to be fulfilled and variances to be balanced in accordance with the mutually agreed resolution
  - Disputes not resolved in accordance with (a) and (b) above shall be amicably negotiated between senior management of Supplier and Purchaser, these must be conducted in good faith and attempted to be resolved expeditiously. Should a resolution not be reached either party may ask for mediation to commence.
  - If senior management of the Supplier and Purchaser cannot come to a resolution of the dispute in writing within 10 business days from when the dispute was first raised by either party then mediation may commence. The supplier shall nominate Three (3) reputable mediators and the Purchaser shall choose one within two (2) business days, if none are selected in writing than the Purchaser shall choose the mediator. All costs of mediation shall be paid equally between the parties.

## **27. Mediation**

- 27.1. All costs of mediation shall be paid equally between the parties.
- 27.2. Mediation must take place in Queensland, Australia.
- 27.3. Both parties must comply with the instruction of the appointed mediator in relation to the mediation.

- 27.4. Both parties hereby agrees to indemnify the mediator against any and all liability in respect to the mediation of the dispute.

- 27.5. If resolution is made during the course of the mediation, each party must comply with the terms of the resolution, and such terms are binding on the parties and override anything else to the contrary in the contract to the extent that it related directly to the dispute in mediation.

- 27.6. If resolution is not made between the parties within ten (10) business days of the first hearing by the mediator, the mediation ceases unless agreed to be extended by both parties in writing.

- 27.7. All parts, discussions, written statements prepared for or during the mediation procedure are conducted on a **without prejudice** basis and cannot be used in any legal proceedings.

## **28. Export Control**

- 28.1. Purchaser shall not under any circumstances, divert, use or export the goods supplied contrary to any Applicable Export Laws.
- 28.2. Purchaser shall not under any circumstances, export or provide and goods supplied to them from the Supplier to any person or entity that is subject to any sanctions or are ineligible under Applicable Export Laws.

## **29. Suspension**

- 29.1. Should the purchaser Issue a notice in writing of suspension of any or all parts of the scope of supply. The Supplier shall cease all work on the suspended part(s) of the contract until the Purchaser notifies otherwise in writing. The Purchaser shall take all necessary actions to protect the part(s) of the scope of supply directly or indirectly affected by the suspension. Any additional costs incurred will be payable by the Purchaser with the exception that the suspension was due to an act or an omission of the Supplier or its sub-suppliers.
- 29.2. The Delivery date of the scope of Supply shall be adjusted to allow for delays caused by the suspension other than suspensions being due to an act or omission of the Supplier or its sub-suppliers.

## **30. Termination**

- 30.1. Without limiting any other right of termination that the Parties may have under law or equity, this Contract may be terminated:
- At any time by the mutual written agreement of the Parties, where the Supplier is entitled to receive all amounts owing up until the date of termination under this contract for all reasonably, substantiated direct costs sustained as a result of such termination;
  - Immediately by a Party giving notice in writing, if the other Party experiences an Insolvency Event or breaches a material term of this Contract which breach cannot be remedied;
  - By a Party if the other Party has reached a limit of liability described in clause 31 of the Contract Terms; or
  - By a Party (First Party) if a breach of this Contract occurs by the other Party (Breaching Party) and the Breaching Party fails to remedy that breach within thirty (30) Business Days after the date on which the First Party notified it of that breach.
- 30.2. Termination of this Contract by a Party does not limit or affect any right of action or remedy which has accrued to that Party subject to clause 31.

## **31. Limitation of Liability**

- 31.1. Notwithstanding any other provision of the contract, neither party shall have any liability to the other party, whether for breach of contract, under indemnity, in tort (including for but not limited to negligence) or on any other basis in law or equity for loss of production, profit, earnings, delay damages, interruption, loss of use, revenue, loss of opportunity or business contract or for any financing costs or increase in operating costs or for any consequential, special, punitive, incidental or indirect loss whatsoever.
- 31.2. Earnings, delay damages, interruption or loss of production, loss of use, loss of opportunity or business, indirect, punitive, special, incidental, or consequential damages whatsoever that may be suffered by purchaser. The extent of the suppliers liability for are restricted to a maximum value of and shall not exceed one hundred percent (100%) of the portion of the contract value in which it directly related unless claims arise from gross negligence or wilful misconduct of the supplier or from the suppliers legal liability for personal injury.
- 31.3. Notwithstanding the foregoing, the liability of the Supplier for goods is restricted to the replacement of the goods required under Warranty. For services, the liability of the Supplier is restricted to the reperformance of the service at the Suppliers cost. The Purchaser hereby agrees to be liable for any other related costs such as but not restricted to providing access to any areas required for rectification to be done, craneage, transportation,

scaffolding, elevated work platforms, permits, costs of disassembly or removal and reinstallation as required.

### **32. Warranty**

- 32.1. The Supplier warrant all goods and services shall be in accordance with what is stated within the contract and associated documents and shall be of industry standard. They shall be free of workmanship and material defects to the extent that they do not perform the functionality of the intended purpose except where the Supplier was required to use specifications supplied by the Purchaser that are not part of the Suppliers usual scope of supply.
- 32.2. Warranty periods shall cease upon twelve (12) months after the date of Delivery as defines by clause 3 for goods and six (6) months after date of acceptance as defined by Clause 3 for Services. For replacement of products a service fee will be payable by the Purchaser for the supplier to perform the works.
- 32.3. Surface treatments are not covered under warranty unless they are maintained as appropriate and required for the environment in which they apply to.
- 32.4. If during the warranty period any portion of the scope of supply does not meet the requirements of the contract (defect), the Purchaser must provide notification in writing to contact@Solvet.com.au, detailing the nature of the warranty claim and provide sufficient evidence to prove any surface treatments have been maintained as per above. Such notice should be done within five (5) days of the defect becoming known to the Purchaser. The Supplier shall within five (5) business days of receiving such warranty claim and agreeing to its validity commence to rectify the specific defect. Purchaser shall make the area and item fully accessible to the Supplier to perform such rectifications.
- 32.5. For any valid warranty claim, the costs of the Supplier for rectification of that item shall be restricted to the Suppliers own costs. The Purchaser hereby agrees to be liable for any other related costs such as but not restricted to providing access to any areas required for rectification to be done, crantage, transportation, scaffolding, permits, costs of disassembly or removal and reinstallation as required.
- 32.6. The warranty for any rectified portions shall enjoy the same duration as the initial warranty period from the date of completing the rectification for that portion only and no part of the scope of supply shall exceed twenty four (24) months for goods and twelve (12) months for services from the first date of acceptance of the scope of supply.
- 32.7. All warranties shall be null and void and terminate immediately under the following conditions
- a) The Purchaser does not notify the Supplier of a defect within seven (7) days of becoming aware of such defect and take all necessary steps to mitigate damages.
  - b) If the fault or defect is in any way contributable to the Purchasers actions or inactions.
  - c) If the Supplier was following the Purchasers specification outside of the Suppliers usual scope of supply.
  - d) If the fault of defect cannot be proven to be the fault of the Supplier.
  - e) Incorrect use of the scope of supply or equipment it has been applied to.
  - f) Failure to maintain as appropriate and required for the environment in which they apply to.
  - g) Normal wear and tear
  - h) Unsuitable exposure to other chemicals, or products of Purchasers operations and maintenance activities.
  - i) Any reason that is beyond the control of the Supplier.
- 32.8. Suppliers conformance to this clause in conjunction and full effect of the limitation of liability clause 31 within this contract, shall be the sole remedy for warranty claims and Suppliers fulfilment of the contract.
- 32.9. The warranties contained within this clause 32 are the full and complete warranties, conditions or representation of the Supplier in respect to the scope of supply. All other warranties, conditions, representations, express or implied by statute, common law or otherwise, in relation to the scope of supply are excluded to the extent permitted by law.

### **33. Variations**

- 33.1. The Purchaser may instruct the Supplier to vary the scope of supply at any time. Within two (2) business days the Supplier shall notify the Purchaser of any cost associated with partially completed scope that will be discontinued as a result of the variation. Any scope of supply which will become discontinued as a result of the variation request will be stopped immediately.

Once a signed Contract variation form has been signed by both parties acknowledging all associated costs and changes in delivery time which will be made equitably.

- 33.2. If a signed variation of the scope of supply requiring variation by the Purchaser is not reached within five (5) business days from the date the variation was requested by the Purchaser. The portion in which was discontinued as per above, if required to continue, shall enjoy a time extension on delivery of the same number of days required to reach a signed variation.
- 33.3. For all requested variations under clause 33.1, an automatic and equal extension of time shall be granted by the Purchaser to the Supplier for that an any other directly or indirectly affected scope of supply to a minimum time extension as outlined in clause 33.2.

### **34. Severability**

- 34.1. If any part or portion thereof is found to be unenforceable, void, invalid or unlawful, then that part or portion thereof shall be deemed severed from this contract, this shall not render the remaining parts or portion of this contract invalid and all other terms will remain in force, furthermore as far as legally possible, those parts or portions as the case may be shall be replaced after both parties make their best endeavour to replace such parts or portions with a valid one which covers the original commercial intent.