

1. Purchase Orders

- (a) Kiteleys may, from time to time, issue Purchase Orders to the Contractor for the performance of Works.
- (b) The Contractor must perform the Works requested in each Purchase Order issued under this Contract.
- (c) Where the Contractor identifies that additional labour or materials are required to complete Works, the Contractor must request Kiteleys prior approval in writing in accordance with clause 9.3 of this Contract. Kiteleys may at its discretion issue an additional or supplementary Purchase Order to the Contractor.
- (d) The Contractor will not be paid for any Works that are not the subject of a Purchase Order issued under this Contract.

2. Performance of Works

2.1 Performance

The Contractor must perform the Contractor’s Activities:

- (a) in accordance with:
 - (i) this Contract.
 - (ii) any Quality Standards.
 - (iii) all relevant Laws and each Policy.
 - (iv) the applicable requirements of the National Construction Code 2022; and
 - (v) any direction given by Kiteleys or Kiteleys Personnel.
- (b) exercising Best Industry Practice.
- (c) so that the Works, when they achieve Practical Completion:
 - (i) are Fit for the Intended Purpose; and
 - (ii) satisfy any Performance Criteria.

2.2 Warranties as to Quality

The Contractor warrants that it will carry out the Contractor’s Activities:

- (a) with suitably qualified and experienced personnel.
- (b) in a good and workmanlike manner; and
- (c) using goods, equipment and material of new and merchantable quality.

2.3 Not used

2.4 Contract Documents

- (a) This Contract will supersede all previous communications and negotiations (whether oral or written) between the Contractor and Kiteleys in relation to the Works and constitutes the entire terms of the agreement between the parties in relation to the Works.
- (b) If any of the works forming part of the Contractor’s Activities are performed by the Contractor prior to the formation of this Contract, those works will be subject to the terms of this Contract.
- (c) The documents comprising this Contract are mutually explanatory. If there is any inconsistency between the documents which form this Contract, then the Contractor must notify Kiteleys who will give a direction as to the interpretation to be followed.
- (d) The Contractor will have no Entitlement as a consequence of a direction given by Kiteleys in relation to any ambiguity or discrepancy in or between the documents comprising this Contract, where that direction is consistent with the rules of construction of this Contract.

3. Administration and Program

3.1 Contractor obligations

The Contractor must:

- (a) keep Kiteleys informed regarding the state and stages of the performance of the Contractor’s Activities; and
- (b) at the times required by this Contract or, as directed by Kiteleys, attend any meetings or provide any report regarding the state and stage of the performance of the Contractor’s Activities.

3.2 Contract program and progress

Kiteleys may provide the Contractor with a schedule or program for the whole of the Contractor’s Activities which is consistent with this Contract, and the Contractor must not (without reasonable cause) depart from the schedule or program provided by Kiteleys.

4. Assignment and subcontracting

4.1 Assignment and novation

The Contractor must not assign, novate or create a Security Interest over any or all of its rights or obligations under this Contract without the prior written consent of Kiteleys.

4.2 Subcontracting

- (a) The Contractor must not subcontract any of the Contractor’s Activities.
- (b) If the Contractor subcontracts any of the Contractor’s Activities in breach of clause 4.2(a) then, without limiting Kiteleys remedies under this Contract or at law, the Contractor will be liable for the acts and omissions of any subcontractor as if they were the acts and omissions of the Contractor.

5. Defective materials and work

- (a) If, at any time during performance of the Contractor’s Activities and notwithstanding that Practical Completion has not yet been achieved, Kiteleys discovers materials or work which is not in accordance with this Contract, Kiteleys may:
 - (i) reject the material or work (in whole or part) and direct the Contractor to refund any payments made by Kiteleys in relation to that material or work, or re-perform or make good the material or work; or
 - (ii) accept the material or work and require the Contractor to pay Kiteleys for any expenses incurred as a result of the material or work (including reducing the Contract Sum to reflect the cost impact of that material or work) not being in accordance with this Contract.
- (b) The Contractor will be liable for the cost of removing from the Site any material or work not in accordance with this Contract.
- (c) If the Contractor fails to comply with a direction given by Kiteleys under this clause within the time specified by Kiteleys in the direction or, if none is specified, in a reasonable time period, Kiteleys may have the relevant works carried out by other persons and the cost incurred by Kiteleys in doing so will be a debt due and payable from the Contractor to Kiteleys.
- (d) The rights under this clause 5 survive termination or expiry of this Contract.

6. Risk and Title

- (a) The Works will be at the risk of the Contractor up to Practical Completion and the Contractor must at its cost make good any damage to the Works which occurs prior to Practical Completion and provide storage and protection necessary to preserve the Works (including any materials) until Practical Completion.
- (b) Title in the Works will remain with Kiteleys until such time as Kiteleys has been paid in full by the site owner or head contractor engaging Kiteleys.
- (c) The Contractor warrants that it will have no claim to title in the Works.

7. Access to site

- (a) Subject to the Contractor complying with its obligations under this Contract and complying with all Site Requirements, Kiteleys will facilitate the Contractor’s access to the Site necessary for the performance of the Contractor’s Activities at the time agreed.
- (b) Access to the Site will confer on the Contractor a right to use and control the Site only to the extent necessary to enable the Contractor to carry out the Contractor’s Activities.

- (c) The Contractor's Activities must be carried out by the Contractor at the times specified in this Contract or as notified by Kiteleys, a head contractor or a Site owner.
- (d) A delay by Kiteleys, a head contractor or a Site owner in giving the Contractor access to the Site or a part of the Site under this clause will not be a breach of this Contract by Kiteleys but may create an Entitlement to an Extension of Time.

8. Separate contractors

- (a) The Contractor will not unnecessarily and without good cause disrupt, hinder or interfere with the work of other contractors present on Site who have been engaged by a head contractor or the Site owner to carry out other works at the Site.
- (b) The Contractor will have no Entitlement as a consequence of any other contractors being on the Site or for anything caused or contributed to by another contractor.

9. Variations

9.1 Kiteleys-directed Variation

- (a) The Contractor will not vary this Contract except as directed by Kiteleys.
- (b) Kiteleys may at any time issue a notice (which may be in the form of a Purchase Order) to the Contractor directing a Variation, including any adjustment to the Contract Sum, adjustment to the Date for Completion and practical effects of the proposed Variation on the Contractor's Activities (**Variation Direction**).
- (c) The Contractor must implement any Variation directed by way of any Variation Direction.

9.2 Urgent Variations

If Kiteleys requires a Variation as a matter of urgency Kiteleys may direct the Contractor to perform a Variation by a Variation Direction (**Urgent Variation**).

9.3 Contractor Initiated Variation

- (a) If the Contractor wishes to propose a Variation, including for any additional labour or materials required to complete Works (**Contractor Initiated Variation**), then the Contractor must give Kiteleys a written notice containing all information that may be reasonably required by Kiteleys in respect of the effect of the Contractor Initiated Variation, including any adjustment to the Contract Sum, adjustment to the Date for Practical Completion and practical effects of the Contractor Initiated Variation on the Contractor's Activities.
- (b) Kiteleys will, within a reasonable time following receipt of a Contractor Initiated Variation, either issue a Variation Direction or notify the Contractor that it does not wish to proceed with the Contractor Initiated Variation.
- (c) A Contractor Initiated Variation will only be valued as a Variation under this Contract where it has received a Variation Direction in respect of that Contractor Initiated Variation.

9.4 Valuing of Variations and adjustments to the Contract Sum

The cost of any Variation and any adjustment to the Contract Sum under this Contract will be ascertained as follows:

- (a) to the extent that the Parties have agreed the amount of the alteration, then the amount so agreed.
- (b) to the extent that this Contract provides for the amount of the alteration, then that amount.
- (c) to the extent that the rates contained in this Contract apply, by applying those rates; and
- (d) to the extent that those provisions do not apply, by arriving at a reasonable amount, having regard to any increase or decrease in the costs that have been or will be incurred by the Contractor, as determined by Kiteleys.

10. Commencement and completion of Works

- (a) The Contractor must ensure that Practical Completion is achieved by the Date for Practical Completion.

- (b) The Contractor must:
 - (i) proceed with the Contractor's Activities with due expedition and without delay; and
 - (ii) take all steps necessary to minimise and overcome the effect of any delay to the Contractor's Activities.
- (c) Kiteleys may direct in what order and at what time the various parts of the Contractor's Activities must be carried out. The right of Kiteleys to give a direction under this clause includes a right to give a direction to accelerate the Contractor's Activities. If a direction to accelerate is provided, the Date for Practical Completion and the Contract Sum will be adjusted accordingly.
- (d) The Contractor must give Kiteleys at least two (2) Business Days written notice of the date upon which the Contractor anticipates that Practical Completion will be achieved.
- (e) Kiteleys and the Contractor must jointly inspect the Works on a date no later than five (5) Business Days after the date nominated by the Contractor as the date on which Practical Completion will be achieved.
- (f) Within five (5) Business Days of Kiteleys inspection of the Works in accordance with this clause, Kiteleys must notify the Contractor of any Defects identified with the Works and the Contractor must rectify any such Defects as soon as practicable.
- (g) Practical Completion will occur on the date when the Works are complete in accordance with this Contract and free of Defects to Kiteleys' reasonable satisfaction (**Date of Practical Completion**).

11. Delay

11.1 Notice of delay

A Party must, on becoming aware of anything which may reasonably cause a delay to the Contractor's Activities, give written notice to the other Party of that delay.

11.2 Entitlement to an Extension of Time

- (a) The Contractor will be Entitled to an Extension of Time when:
 - (i) it has been delayed in reaching Practical Completion by the Date for Practical Completion due to a Qualifying Cause of Delay.
 - (ii) there is no provision in this Contract to the effect that the Contractor has no Entitlement in relation to that cause of delay; and
 - (iii) the Contractor has given all Notices strictly in accordance with the requirements of this Contract.
- (b) A Qualifying Cause of Delay will give rise to an Entitlement to an Extension of Time only:
 - (i) when the cause was beyond the reasonable control of the Contractor.
 - (ii) to the extent the Contractor had not contributed to the cause; and
 - (iii) when the Contractor has taken all reasonable steps to mitigate and overcome the effect of the delay.
- (c) Where any Contractor's Activities have been delayed by a Qualifying Cause of Delay and a delay which is not a Qualifying Cause of Delay and these causes overlap for any period of time, the Contractor will not have an Entitlement to an Extension of Time for the overlapping period of delay.

11.3 Claim for an Extension of Time

- (a) The Contractor must, within ten (10) Business Days of it becoming aware that it might be delayed in reaching Practical Completion by the Date for Practical Completion, give Kiteleys notice of that delay and any other relevant information capable of supporting the Claim for an Extension of Time.
- (b) Kiteleys must, within a reasonable time of receiving a Claim for an Extension of Time, determine the period of the Extension of Time (if any) to which the Contractor is entitled (which must be the reasonable

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period by which the Contractor has actually been delayed in reaching Practical Completion by the Date for Practical Completion by a Qualifying Cause of Delay).

- (c) A delay by Kiteleys or the failure of Kiteleys to grant an Extension of Time will not cause the Date for Practical Completion to be set at large, but nothing in this clause will prejudice any pre-existing right of the Contractor to damages.
- (d) Kiteleys may, at any time and for any reason, by notice to the Contractor, extend the Date for Practical Completion. Kiteleys is not obliged to exercise its rights under this clause reasonably or in good faith or for the benefit of the Contractor.
- (e) The Contractor acknowledges and agrees that it is not entitled to an Extension of Time for any Qualifying Cause of Delay where the Date for Practical Completion has already been adjusted under this Contract for the same event giving rise to the Qualifying Cause of Delay.

12. Not used

13. Suspension of the Contractor's Activities

- (a) The Contractor must not suspend the progress of the Contractor's Activities or any part of it except where directed to do so by Kiteleys or allowed by Law.
- (b) Kiteleys may direct the Contractor to suspend the progress of the Contractor's Activities or any part of it for such time or times as Kiteleys may think fit.
- (c) Kiteleys may give the Contractor a direction to recommence work that was the subject of a direction to suspend.
- (d) A direction to suspend all or part of the Contractor's Activities will trigger an Entitlement to an Extension of Time unless the reason for the suspension was caused or contributed to by an act, omission or default of the Contractor or the Contractor's Personnel.

14. Contract Sum

14.1 The Contract Sum

- (a) Subject to the provisions of this Contract, Kiteleys shall pay the Contract Sum to the Contractor:
 - (i) for work for which Kiteleys accepted a lump sum, the lump sum; and
 - (ii) for work for which Kiteleys accepted rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of work actually carried out under this Contract by the rate accepted by Kiteleys for the section or item, adjusted by any additions or deductions made pursuant to this Contract.
- (b) Unless this Contract expressly provides otherwise, no schedule of rates shall form part of this Contract, and the Contractor will not have any Entitlement to any adjustment to the Contract Sum or other Claim whatsoever in connection with the schedule of rates (including any Error, omission, discrepancy or ambiguity).

14.2 Adjustments to the Contract Sum

- (a) The Contract Sum will only be adjusted under this Contract where:
 - (i) this Contract expressly provides for an adjustment of the Contract Sum; and
 - (ii) where the Contractor has complied with any relevant preconditions in respect of the Entitlement for an adjustment of the Contract Sum.

15. Payment

15.1 Payment Claim

- (a) The Contractor must, upon reaching Practical Completion of Works under a Purchase Order, submit to Kiteleys:

- (i) a payment claim detailing the amount claimed for the Contractor's Activities performed, and any other information reasonably requested by Kiteleys (a **Payment Claim**); and
- (ii) a Tax Invoice for the amount due in the Payment Claim.
- (b) Unless expressly provided otherwise, where a Payment Claim includes claim for any payment for plant, material or equipment which has not been delivered to the Site, Kiteleys will not be required to make payment for such plant, material or equipment.
- (c) If the Contractor submits a Payment Claim earlier than as provided by this clause, then that Payment Claim will be deemed to have been submitted on the relevant date for submission of that Payment Claim in accordance with this clause.

15.2 Payment

- (a) Kiteleys must, within ten (10) Business Days of the date on which the Payment Claim was received, either:
 - (i) agree to pay the Contractor the amount due under the Tax Invoice, in which case Kiteleys must make payment within a further ten (10) Business Days; or
 - (ii) where the amount assessed by Kiteleys as being payable is different to the amount claimed by the Contractor in the Payment Claim, notify the Contractor of the reasons for the difference and issue a certificate to the Contractor showing the amount that Kiteleys assesses as being payable (**Payment Certificate**).
- (b) If Kiteleys issues a Payment Certificate under clause 15.2(a)(ii):
 - (i) the Contractor must, within two (2) Business Days of receipt of the Payment Certificate, submit to Kiteleys a revised Tax Invoice for the amount certified as being due for payment in the Payment Certificate; and
 - (ii) Kiteleys must pay the Contractor the amount certified as being due for payment in the relevant Payment Certificate within ten (10) Business Days of receipt of the revised Tax Invoice.
- (c) Payment is payment on account only and is not evidence of the value of work, an admission of liability or an admission that the work is in accordance with this Contract.
- (d) If an amount is due for payment to Kiteleys by the Contractor under this Contract, the Contractor must pay Kiteleys the amount due within twenty (20) Business Days after receipt of a tax invoice or Payment Certificate in respect of that amount.

15.3 Preconditions to an entitlement to submit a Payment Claim

- (a) The Contractor must, as a precondition to any entitlement to submit a Payment Claim or receive payment in respect of any Payment Claim:
 - (i) have maintained all Insurance Policies as required by the Contract; and
 - (ii) provide a Subcontractor Statement to Kiteleys, along with any other documentation reasonably requested by Kiteleys.

16. Deductions and Set-off

- (a) Any amounts Claimed from the Contractor to Kiteleys under this Contract may be deducted by Kiteleys from any monies which may become payable to the Contractor by Kiteleys.
- (b) This clause does not affect the right of Kiteleys to recover the debt or any balance after exercising any rights under this clause by any other means available under this Contract or at Law.
- (c) The Contractor acknowledges and agrees that Kiteleys may withhold any moneys it is required by Law to withhold, including foreign resident withholding tax provisions unless the Contractor can demonstrate its exemption from that Law.

17. Taxes and GST

- (a) Unless expressly provided otherwise, the Contractor is responsible for, and will pay, all Taxes incurred or imposed in connection with the Contractor's Activities, and they are deemed to be included in the Contract Sum.

- (b) The recipient of a taxable supply will only be required to pay an amount of GST to the Party making the taxable supply if and when the Party making the taxable supply provides a valid tax invoice to the recipient of a taxable supply.
- (c) If there is an adjustment to a taxable supply made under this Contract, then the Party making the taxable supply will provide an adjustment note to the recipient of the taxable supply.

18. Not used

19. Defects Liability Period

- (a) The Defects Liability Period will commence on the Date of Practical Completion.
- (b) At any time up to ten (10) Business Days after each expiry of each Defects Liability Period, Kiteleys may direct the Contractor to rectify a Defect.
- (c) The Contractor must comply with any direction issued by Kiteleys to rectify a Defect within the time and at the times stated in the direction or, if no time is stated, promptly.
- (d) Any direction may provide, in respect of the rectification of a Defect, that there is to be a new Defects Liability Period for the Defect rectified, commencing on the date the rectification work is completed and continuing until the expiry of the period of the Defects Liability Period.
- (e) If the Contractor fails to comply with a direction to rectify a Defect, or where the rectification work is required urgently, Kiteleys may have the work performed by others and the cost to Kiteleys of having the work performed will be a debt due and payable from the Contractor to Kiteleys.

20. Not used

21. Care of Works

- (a) Except as expressly provided otherwise, the Contractor will be responsible for care of:
 - (i) the whole of the Works (including the Contractor's Activities) from and including the Commencement Date to midnight on the Date of Practical Completion, at which time responsibility for the care of the Works will pass to Kiteleys; and
 - (ii) any work or items remaining on Site or brought onto the Site by the Contractor for the purpose of performing its obligations under the Defects Liability Periods.
- (b) If loss or damage, other than that caused by an Excepted Risk, occurs to the Works or any part thereof during the period of the Contractor's care, the Contractor must, at its cost, rectify such loss or damage.

22. Releases and indemnities

22.1 Releases

- (a) The Contractor releases the Indemnified Parties from any Liability to the Contractor, or any person claiming through or on behalf of the Contractor, in respect of:
 - (i) physical loss of, or damage to, any real or personal property.
 - (ii) personal injury to, illness or death of, persons; or
 - (iii) financial loss or expense,
 arising out of or in connection with the performance of the Contractor's Activities.
- (b) The Contractor's release under this clause does not apply to the extent that the Liability is caused or contributed to by an Indemnified Party.

22.2 Liability and indemnity

- (a) The Contractor is liable for and will indemnify and keep indemnified the Indemnified Parties against any Liability arising out of or in connection with any:

- (i) breach by the Contractor or the Contractor's Personnel of this Contract (including any warranty).
- (ii) negligent, reckless or wilful act or omission of the Contractor or the Contractor's Personnel.
- (iii) act or omission of Contractor or its Personnel causing property damage or personal injury, illness or death to any person.
- (iv) breach of Law by the Contractor or the Contractor's Personnel; and
- (v) any Claim that the Works, any part of the Contractor's Activities, anything the Contractor may do or not do in connection with the Contractor's Activities, or Kiteleys use of the Works infringes or allegedly infringes the Intellectual Property Rights of any person.

- (b) The Contractor's Liability under this clause will be reduced proportionally to the extent that the Liability is caused or contributed to by the Indemnified Party.
- (c) Each Indemnified Party holds for its own benefit and for the benefit of its Related Bodies Corporate and their respective Personnel, each indemnity and release given by the Contractor under this Contract and each right under this Contract and the Contractor agrees that every such indemnity, release and right extends to cover the Related Bodies Corporate and their respective Personnel of each Indemnified Party (excluding the Contractor and its Personnel).
- (d) Each indemnity in this Contract is a continuing obligation separate and independent from the Contractor's other obligations and survives termination of this Contract.
- (e) It is not necessary for an Indemnified Party to incur expense or make payment before enforcing a right of indemnity conferred by this Contract.

22.3 Limit on Liability

- (a) Neither Party will be liable to the other Party for any Claims or Liability in respect of any Consequential Loss suffered or incurred as a result of any breach, act or omission by the Party (whether in negligence or otherwise) (**Consequential Loss Exclusion**).
- (b) To the maximum extent permitted by Law, the Liability of each Party under this Contract is limited to the Liability Cap.
- (c) The Liability Cap and the Consequential Loss Exclusion do not limit Contractor's Liability to the extent that a Claim or Liability:
 - (i) is recoverable under an insurance policy required by the Contract or would have been recoverable by such insurance policy had the Contractor complied with its obligations under this Contract or the insurance policy.
 - (ii) arises as a result of fraud, wilful act or omission or criminal conduct by Contractor or its Personnel.
 - (iii) is the result of Contractor's abandonment (whether wholly or substantially) of the Contractor's Activities.
 - (iv) arises as a result of a breach of Law by Contractor or its Personnel.
 - (v) arises as a result of any claims for infringement of the Intellectual Property Rights of any person or breach of confidentiality; or
 - (vi) is in connection with any property damage, or injury to, illness or death of any person.

23. Insurance obligations

23.1 Insurances to be effected by the Contractor

The Contractor must, before commencing any Contractor's Activities, effect and maintain each Insurance Policy with a Reputable Insurer.

23.2 Evidence of insurance

Before commencing the Contractor's Activities, and at other times requested by Kiteleys, the Contractor must give Kiteleys, in respect of each Insurance

Policy, the original or a certified copy of renewal certificates or certificates of currency issued by the insurer.

23.3 Contractor’s Liability

Nothing in this clause limits the Contractor’s Liability or responsibility under any other provision of this Contract.

24. Confidentiality and media releases

- (a) Subject to this clause, and to the extent necessary to perform the Contractor’s Activities, the Contractor must ensure that:
 - (i) all Confidential Information is kept confidential; and
 - (ii) its Personnel maintain in confidence all Confidential Information.
- (b) If any employee of the Contractor must, incidentally to the performance of any of the Contractor’s Activities, access Kiteleys computer system, the Contractor must first procure execution by that person of a deed setting out that person’s obligations in respect of confidentiality and compliance with any policies.
- (c) The obligations under this clause survive termination of this Contract.

25. Disputes

- (a) Any dispute, disagreement or Claim relating to this Contract (**Dispute**) will be dealt with in accordance with this clause.
- (b) Notwithstanding the existence of a Dispute, each Party must continue to perform its obligations under this Contract. The existence of a Dispute will not prejudice either Party’s rights to terminate this Contract for any reason.
- (c) The Party claiming the Dispute will give notice of the Dispute to the other Party which will include all facts on which the Party relies in relation to that Dispute (**Dispute Notice**).
- (d) Within five (5) Business Days after service of a Dispute Notice, a representative of Kiteleys and the Contractor will meet at least once to attempt, using their reasonable endeavours, to resolve the Dispute in good faith.
- (e) If the Dispute has not been resolved within fifteen (15) Business Days after the service of the Dispute Notice, a member of the senior management of each of Kiteleys and the Contractor (or their respective nominees) with authority to settle the Dispute will meet within twenty (20) Business Days after the service of the Dispute Notice to attempt to resolve the Dispute in good faith or to mutually agree on an alternative dispute resolution process to be taken by the parties in relation to the Dispute.
- (f) If, within fifteen (15) Business Days after the first meeting of the senior management, the Dispute has not been resolved or an alternate dispute resolution process has not been agreed, then the matter may be referred to court proceedings.
- (g) A Party may not start court proceedings in relation to a Dispute until it has complied with the procedures in this clause, unless it commences legal proceedings to preserve any rights it may have.
- (h) Nothing in this clause prevents a Party seeking urgent injunctive or interlocutory relief.

26. Default and termination

26.1 Preservation of other rights

Nothing in this clause shall prejudice Kiteleys right to recover damages at Law or exercise any other right or remedy.

26.2 Breach Notice

- (a) If the Contractor is in breach of this Contract and that breach is capable of remedy, then Kiteleys may issue a Breach Notice to the Contractor.
- (b) The Contractor must submit to Kiteleys for its approval a draft remedy plan to remedy, cure or redress the breach the subject of the Breach Notice or to overcome its consequences so that:
 - (i) there ceases to be any continuing detrimental effect of that breach; and

- (ii) Kiteleys is in the position it would have been had the relevant breach not occurred,

which must include details of the timing of each step required to remedy, cure or redress the breach.

- (c) Kiteleys will, within a reasonable time following receipt of any draft remedy plan submitted by the Contractor in accordance with this clause, advise the Contractor whether the draft remedy plan has been approved or rejected and, if rejected, the notice must include reasons why the draft remedy plan was rejected.
- (d) If Kiteleys rejects the draft remedy plan, then the Contractor must promptly amend the draft remedy plan (taking into account the reasons provided by Kiteleys) and resubmit the draft remedy plan to Kiteleys for approval.
- (e) The Contractor must proceed to remedy the breach in strict accordance with any remedy plan approved by Kiteleys in accordance with this clause.

26.3 Termination for breach

Kiteleys may terminate this Contract immediately on written notice to the Contractor:

- (a) if the Contractor is in breach of this Contract and:
 - (i) the Contractor has failed to remedy the breach in accordance with the terms of the relevant Breach Notice; or
 - (ii) the breach is not capable of remedy,
- (b) if the Contractor grants a Security Interest, assigns or novates this Contract other than in accordance with the terms of the Contract.
- (c) on any other grounds specified in this Contract giving rise to a right of termination; or
- (d) the Contractor suffers an Insolvency Event.

26.4 Termination by Kiteleys for convenience

Without prejudice to any of Kiteleys other rights and powers under this Contract, Kiteleys may, at any time and for any reason within its sole discretion, upon ten (10) Business Days written notice to the Contractor, terminate this Contract.

26.5 Contractor’s obligation on termination

The Contractor must, on receipt of any notice terminating this Contract, cease the Contractor’s Activities and endeavour to mitigate any expense or losses that it may incur or has incurred in relation to its obligations under this Contract.

26.6 Amount payable on termination

- (a) If this Contract is terminated by Kiteleys (other than for Kiteleys convenience), then Kiteleys sole liability to the Contractor will be payment of the Contract Sum for any Contractor’s Activities performed up to the date of termination.
- (b) If this Contract is terminated by Kiteleys for Kiteleys convenience, then Kiteleys must pay the Contractor the total of:
 - (i) for any Contractor’s Activities performed prior to the date of termination, the amount which would have been payable if this Contract had not been terminated and the Contractor had made a payment claim on the date of termination, but only to the extent that the Works becomes the property of Kiteleys upon payment; and
 - (ii) subject to the obligation of the Contractor to mitigate its costs and expenses, the cost of plant, materials or equipment reasonably ordered by the Contractor for the Works, which the Contractor is liable to accept, but only if the plant, material or equipment become the property of Kiteleys upon payment,

up to a maximum amount of the balance of the Contract Sum unpaid at the date of termination and other amounts payable pursuant to this Contract at the date of termination.
- (c) The amounts to which the Contractor is entitled under this clause will be in full satisfaction and compensation of the Contractor in relation to

the termination and the Contractor will have no other Entitlement as a consequence of that termination or in relation to the performance of the Contractor's Activities to the date of termination.

27. Notices

27.1 Form of Notice

- (a) Any notice, demand, approval, consent, request or other communication in relation to this Contract (**Notice**) will:
 - (i) be in writing.
 - (ii) be in English.
 - (iii) be marked for the attention of Kiteleys or Contractor (as applicable); and
 - (iv) be given at the recipient's address (as specified in the Purchase Order or as notified from time to time) by being:
 - (A) hand delivered.
 - (B) sent by email; or
 - (C) sent by prepaid mail within Australia.

27.2 Time for giving Notices

- (a) Notices must be given within the time specified in this Contract.
- (b) If the Contractor fails to give a Notice that contains all of the information required by this Contract within the time specified in this Contract, the Contractor will have no Entitlement in relation to the matters to which that Notice related.

27.3 No waiver of required details

The requirement to give a Notice including all of the detail required by this Contract cannot be waived by Kiteleys.

28. Occupational health & safety

28.1 Contractor's OHS Obligations

- (a) The Parties acknowledge and agree that:
 - (i) during the performance of the Contractor's Activities, the Contractor must:
 - (A) comply with; and
 - (B) ensure that all persons for whom it is responsible comply with, all OHS Laws; and
 - (ii) the Contractor must comply with any direction of Kiteleys given following a perceived breach of an OHS Law at the Site.
- (b) The Contractor must immediately notify Kiteleys of:
 - (i) any breach or potential breach by the Contractor or its Personnel of the OHS Laws; or
 - (ii) any notice or direction received by the Contractor or its Personnel under or in connection with the OHS Laws (including by providing a copy of the notice or direction to Kiteleys).
- (c) If the Contractor fails to comply with an obligation under this clause, Kiteleys may perform, or have performed, the obligation on the Contractor's behalf and recover from the Contractor the costs and expenses incurred as a debt due and payable.
- (d) In the event that Kiteleys discovers an unsafe practice or a breach of OHS Laws or this Contract then in addition to any other rights under this Contract, Kiteleys may immediately suspend the work associated with the unsafe practice or breach. The suspension will not be lifted until the work area is made safe, the unsafe practice removed, or the breach rectified.

29. Specific Legislative Requirements

29.1 Privacy Act

The parties acknowledge and agree to comply with their obligations to each other under the *Privacy Act 1988* (Cth).

29.2 PPSA

- (a) If Kiteleys determines that this Contract (or a transaction in connection with it) is or contains a Security Interest, the Contractor agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) as Kiteleys may reasonably require for the purposes of:
 - (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective and ranks ahead of other Security Interests.
 - (ii) enabling Kiteleys to apply for, and obtain, any registration or providing any notification in accordance with the PPSA; and
 - (iii) enabling Kiteleys to exercise any right in connection with the Security Interest or the property the subject of the Security Interest.
- (b) The Contractor waives each right to receive any notice from Kiteleys under the PPSA (including notice of a verification statement) that can be waived.
- (c) At any time when title to or ownership of any plant, goods or materials is passed to Kiteleys, the Contractor must ensure that title or ownership is passed free of any Security Interest of the Contractor or any other person. Neither Kiteleys nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA and the Contractor will not authorise, and will ensure that no other party authorises, the disclosure of such information. However this does not prevent disclosure where required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

29.3 Proportionate Liability

To the extent permitted by Law, the operation of a Proportionate Liability Scheme is excluded in relation to all and any rights, obligations and liabilities under this Contract whether arising in contract, tort, equity, strict liability statute or otherwise.

29.4 Related Companies

The Contractor acknowledges and agrees that:

- (a) Kiteleys enters into this Contract on its own behalf and on trust for each Related Company.
- (b) Kiteleys Related Companies may make use of the Works and are entitled to receive the benefit of the Contractor's other obligations under this Contract.
- (c) the Indemnified Parties (other than Kiteleys) will have no Liability under this Contract to the Contractor.
- (d) a breach of this Contract may result in loss or damage being suffered by the Indemnified Parties (**Indemnified Party Loss**); and
- (e) it will pay to Kiteleys an amount equal to any Indemnified Party Loss suffered by any Indemnified Party (subject to any limitations of liability under this Contract).

29.5 Kiteleys holds for the benefit of each Indemnified Party

Each party to this Contract acknowledges and agrees that Kiteleys and each Related Company holds each exception, limitation, defence, immunity or other benefit contained in this Contract on behalf of and for the benefit of each Indemnified Party.

30. Business Standards

30.1 Anti-bribery and corruption

- (a) The Parties must not offer or provide any benefit (including any payment, gift, hospitality or gratuity, whether monetary or in-kind) to any person with the intention of improperly influencing such person in the exercise of their duties (including to make a decision or to take or refrain from taking other action).
- (b) Each Party represents, warrants and undertakes that:
 - (i) in performing its obligations under this Contract neither it nor any of its Personnel have offered, authorised, promised, given, solicited or accepted, and none of the foregoing will offer, authorise, promise, give, solicit or accept, to or from any person (including any Authority), any payment, gift, service, thing of

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value or other advantage where such an action would violate any laws relating to anti-bribery and corruption in the jurisdictions in which it operates (**ABC Laws**);

- (ii) in performing its obligations under this Contract, it and its Personnel will comply with all ABC laws.
- (iii) neither party, nor any of its Personnel, engage in Modern Slavery and, in the case of the Contractor, it will take reasonable steps to ensure that none of its subcontractors or suppliers, directly or indirectly involved in the provision or manufacture of goods or services supplied under this Contract, engage in Modern Slavery; and
- (iv) it will comply with all Modern Slavery reporting requirements applicable to it.

30.2 Business Practice Standards

- (a) Kiteleys is owned by BlueScope Steel Limited, and BlueScope has developed the following policies, guides and statements regarding business practices and standards:
 - (i) BlueScope’s Supplier Code of Conduct.
 - (ii) BlueScope’s Code of Conduct; and
 - (iii) BlueScope’s Human Rights Policy,
 (together, the **Business Practice Standards**) which are available at <https://www.bluescope.com/sustainable-steel/suppliers/>.
- (b) Contractor acknowledges that it has received or gained access to copies of the Business Practice Standards.
- (c) Contractor is expected to read, understand and at all times comply with the Business Practice Standards and Kiteleys reserves the right to monitor and/or audit Contractor’s compliance with the Business Practice Standards.

30.3 Notice

Upon becoming aware of any actual or reasonably anticipated breach of clauses 30.1 or 30.2, Contractor must immediately provide written notice of the breach (giving full details of such breach) to Kiteleys.

30.4 Right of Termination

- (a) If the Contractor is in material breach of any part of this clause 30, or Kiteleys reasonably suspects such a breach in its sole discretion, then without prejudice to any other remedy Kiteleys may have, Kiteleys may terminate this Contract immediately by notice to the Contractor.
- (b) Despite any other provision in this Contract, as a consequence of termination under clause 30.4(a), Kiteleys shall not be liable for any Loss that the Contractor or any other person may suffer as a result of such termination, and Kiteleys shall not be liable to purchase any goods or services.

31. General

31.1 Relationship of Parties

- (a) Nothing in this Contract creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the Parties.
- (b) Neither Party has the authority to bind the other Party by any representation, declaration or admission, or to make any contract or commitment on behalf of the other Party or to pledge the other Party’s credit.

31.2 Governing Law

- (a) This Contract is governed by the Laws of the State or Territory in which the Site is located.
- (b) The Parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State or Territory in which the Site is located and any court competent to determine appeals from those courts with respect to any proceedings which may be brought arising out of or in connection with this Contract.

31.3 Variation of agreement

This Contract may only be varied or replaced by a document duly executed by the Parties.

31.4 Waiver

A right created by this Contract cannot be waived except in writing signed by the Party entitled to that right. Delay by a Party in exercising a right does not constitute a waiver of that right, nor will 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.

31.5 Further assurances

Each Party will promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this Contract.

31.6 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Contract without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

31.7 Preservation of existing rights

The expiration or termination of this Contract does not affect any right that has accrued to a Party before the expiration or termination date.

31.8 No merger

Any right or obligation of any Party that is expressed to operate or have effect on or after the completion, expiration or termination of this Contract for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

31.9 Counterparts and execution

- (a) This Contract may be executed in any number of counterparts. All counterparts taken together constitute one instrument.
- (b) To the extent permitted by law, a person may sign this Contract electronically, including by using software or a platform for the electronic execution of documents, and each Party consents to the Contract being signed in this way.

31.10 Legal costs and expenses

Each Party will pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Contract.

31.11 Exclusion of the United Nations Convention on Contracts for the International Sale of Goods

All of the terms of the United Nations Convention on Contracts for the International Sale of Goods (adopted in Vienna, Austria on 10 April 1980) are expressly excluded from this Contract.

32. Definitions

In this Contract the following terms have the following meanings:

Authority means all persons and any government, government body, semi-government, local government, authority, administrative or judicial body, public authority, statutory corporation or instrumentality that has jurisdiction over the Contractor’s Activities or the Site.

Best Industry Practice means exercising the degree of skill, care, diligence, efficiency, prudence and foresight which would be expected from a skilled and competent contractor experienced in providing works and services commensurate to the type, size, value and complexity of the Contractor’s Activities.

Breach Notice means a Notice issued by Kiteleys:

- (a) specifying details of a breach of the Contract; and
- (b) requiring the Contractor to remedy that breach within twenty (20) Business Days of the Notice, or such other reasonable time as Kiteleys may determine.

Business Day means any day other than a Saturday, Sunday or public holiday in New South Wales, Australia.

Claim means any claim, action, demand, suit or proceeding of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at Law under or in connection with this Contract.

Commencement Date means the date for the commencement of the Contractor's Activities, more particularly referred to in the Purchase Order.

Confidential Information means any information in any form which:

- (a) is, by its nature, confidential or non-public.
- (b) is marked or designated or confirmed by a Party as confidential or proprietary at the time of its disclosure; or
- (c) a Party knows or ought to know is confidential,

but excludes:

- (d) information that is in or enters the public domain through no fault of either Party.
- (e) information that was made available to a Party by a person (other than the other Party) who, as far as that Party knows, has or then had the unrestricted legal right to do so.
- (f) information that is required to be disclosed by Law, any Authority or the rules of a recognised securities exchange.
- (g) information that is disclosed to the Party's professional advisers to obtain professional advice; or
- (h) disclosure of the information to a Related Body Corporate or the Party, provided that the Related Body Corporate is subject to an obligation of confidence no less onerous than that owed under this Contract.

Consequential Loss means any loss of opportunity, profit, anticipated profit, business, business opportunities or revenue, loss of use, or any failure to realise anticipated savings.

Consequential Loss Exclusion has the meaning given to that term in clause 22.3(a).

Contract means the agreement between Kiteleys and the Contractor to perform the Contractor's Activities more particularly described in:

- (a) any Purchase Order issued under these Terms and Conditions; and
- (b) these Terms and Conditions.

Contract Sum means the amount payable by Kiteleys for the performance of the Contractor's Activities, more particularly referred to in each Purchase Order (as adjusted in accordance with this Contract).

Contractor means the person required to carry out the Contractor's Activities, more particularly referred to in the Purchase Order.

Contractor Initiated Variation has the meaning given in clause 9.3(a).

Contractor's Activities means all works and obligations that the Contractor is required to do to satisfy each Purchase Order issued under this Contract, and includes Variations, remedial work and any other work reasonably necessary for or inferred from the work expressly referred to in this Contract.

Corporations Act means the *Corporations Act 2001* (Cth).

Date for Practical Completion means the date the Works are to achieve Practical Completion, more particularly referred to in the Purchase Order (as adjusted in accordance with this Contract).

Date of Practical Completion has the meaning given in clause 10(g).

Defect means any Error, defect, damage, shrinkage, expansion or fault, or any aspect of the Works not in accordance with the requirements of this Contract.

Defects Liability Period means a 12-month period (as adjusted in accordance with this Contract).

Dispute has the meaning given to that term in clause 25.

Dispute Notice has the meaning given to that term in clause 25.

Entitlement means an entitlement of the Contractor to:

- (a) an Extension of Time.

- (b) a declaration to the effect that time is at large.
- (c) an adjustment to the Contract Sum; or
- (d) recover any loss, cost, damage or expense of any kind arising:
 - (i) under the Contract; or
 - (ii) out of or in connection with the performance of the Contractor's Activities (including a claim for *quantum meruit*).

Error means any error, omission, ambiguity, inadequacy or inefficiency.

Excepted Risks means:

- (a) any negligent act or omission of Kiteleys or Kiteleys Personnel (other than the Contractor or the Contractor's Personnel).
- (b) any risk specifically excepted elsewhere in the Contract.
- (c) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Authority (except where the confiscation arises as a consequence of an act of the Contractor);
- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or its Personnel; and
- (e) use or occupation of any part of the Works by Kiteleys or its Personnel (other than the Contractor or the Contractor's Personnel).

Extension of Time means an extension to the Date for Practical Completion.

Fit for the Intended Purpose means that the Works are fit for their intended purpose, function, requirement or use as specified in, or reasonably inferred from, this Contract.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Indemnified Parties means Kiteleys, Kiteleys Personnel, any Related Body Corporate of Kiteleys and their respective Personnel and an **Indemnified Party** means any of the Indemnified Parties.

Insolvency Event in relation to an entity, means:

- (a) a receiver, receiver and manager, administrator, trustee or similar official being appointed over any of the assets or undertaking of the entity.
- (b) the entity suspending payment of its debts generally.
- (c) the entity being or becoming unable to pay its debts when they are due or is unable to pay its debts within the meaning of the Corporations Act.
- (d) the entity entering into or resolving to enter into any arrangement, understanding or compromise with, or assignment for the benefit of, its creditors or any class of them.
- (e) an application or order being made for the winding up or dissolution of, or the appointment of a provisional liquidator to, the entity or a resolution is passed, or steps are taken to pass a resolution for the winding up or dissolution of the entity otherwise than for the purpose of an amalgamation or reconstruction which has the prior consent of all of the members of the entity; or
- (f) an administrator being appointed in accordance with the Corporations Act,

and, in relation to an individual, means the individual being or becoming insolvent or committing an act of bankruptcy as those terms are used in the *Bankruptcy Act 1966* (Cth).

Insurance Policy means:

- (g) Public Liability Insurance.
- (h) Workers' Compensation Insurance; and
- (i) Motor Vehicle Insurance.

Kiteleys means Lysaght Building Solutions Pty Ltd trading as Kiteleys Roofing ABN 61 103 232 444.

Law means:

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- (a) all Legislative Requirements.
- (b) any Licences; and
- (c) those principles of common law and equity established by decision of the courts.

Legislative Requirements means all present and future Acts of Parliament of the Commonwealth of Australia, or of any State or Territory of Australia, regulations, codes, ordinances, local laws, by-laws, rules and requirements of all Authorities.

Liability means any debt, obligation, Claim, action, cost (including legal costs on an indemnity basis, deductibles or increased premiums), expense, loss (whether direct or indirect), damage, losses, compensation, charge or liability of any kind (including fines or penalties), whether it is:

- (a) actual, prospective or contingent; or
- (b) currently ascertainable or not,

whether incurred or payable under this Contract or otherwise at Law.

Liability Cap means, in respect of each Purchase Order issued under this Contract, the greater of:

- (a) 125% of the value of the Purchaser Order; or
- (b) \$1,000,000.

Licence means all licences, qualifications, registrations and other statutory requirements necessary for the performance of the Contractor's Activities.

Motor Vehicle Insurance means a policy of comprehensive motor vehicle insurance covering third party property damage, or any injury to or death of any person, arising from or in relation to any plant or vehicles (registered or unregistered) in connection with this Contract, which is to be maintained until the end of the Defects Liability Period.

Notice has the meaning given in clause 27.

OHS Laws means:

- (a) the Work Health and Safety Act 2011 (NSW); and
- (b) any associated legislation or other legislative requirement dealing with health, safety or protection of workers on building sites in the jurisdiction where the Site is located.

Party means a party to this Contract and **Parties** has a corresponding meaning.

Payment Certificate has the meaning given to that term in clause 15.2.

Payment Claim has the meaning given to that term in clause 15.1.

Performance Criteria means any performance criteria set out in a Purchase Order.

Personnel means in relation to a Party, any of its past or present officers, employees, agents, representatives, contractors and consultants of that Party (other than where they are also a Party to this Contract).

Policy means:

- (a) BlueScope's Code of Conduct.
- (b) Site Requirements; and
- (c) any other rules, plans, standards, policies and procedures of Kiteleys or BlueScope Steel Limited as communicated or made available to the Contractor from time to time.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Practical Completion means that stage in the execution of the Contractor's Activities when:

- (a) the Contractor has completed all of the Works.
- (b) the Works are free from Defects to Kiteleys reasonable satisfaction, except for minor omissions or minor defects which do not prevent the Works from being reasonably capable of use for the intended purpose; and
- (c) documents and other information which, in the opinion of Kiteleys, are essential for the use, operation and maintenance of the Works have been supplied.

Proportionate Liability Scheme means Part 4 of the *Civil Liability Act 2002* (NSW).

Public Liability Insurance means a policy of insurance, written on an occurrence basis, covering all liability in respect of:

- (a) loss of, or damage to, property (other than the Works);
- (b) equipment, materials or construction aids (of the Contractor and its Personnel); and
- (c) the death or personal injury (including disease or illness) of any person,

in connection with this Contract, the Works or the performance of the Contractor's Activities with a limit of cover of not less than \$20,000,000 for any one occurrence and unlimited in the number of occurrences during the period of insurance, which is to be maintained until the expiry of the Defects Liability Period.

Purchase Order means a document so identified, from Kiteleys to the Contractor, requiring the performance of the Works.

Qualifying Cause of Delay means:

- (a) any act or omission of Kiteleys or any employee, consultant or agent of Kiteleys (not otherwise permitted or contemplated by this Contract).
- (b) a Variation.
- (c) a direction to suspend the Contractor's Activities (other than to the extent such direction arises as a result of an act or admission by the Contractor or its Personnel); and
- (d) any other cause which is expressly stated in this Contract giving rise to an Entitlement to an Extension of Time on the part of the Contractor.

Quality Standards means all standards, codes, specifications and requirements to be complied with pursuant to this Contract or by Law and includes without limitation the applicable provisions of the National Construction Code (NCC).

Related Body Corporate has the meaning given to that term in the Corporations Act.

Related Company means:

- (a) a Related Body Corporate of Kiteleys; and
- (b) any joint venture, whether incorporated or not, in relation to which Kiteleys or a Related Body Corporate of Kiteleys, has the ability to influence the business decisions of that joint venture and which Kiteleys notifies Contractor is to receive the Works.

Reputable Insurer means an insurance company with a credit rating of at least A- by Standard & Poor's (Australia) Pty Limited or equivalent credit rating.

Security Interest means:

- (a) a 'security interest' as that term is defined by the PPSA; and
- (b) any mortgage, pledge, hypothecation, encumbrance, lien or charge or any security or preferential interest or arrangement of any kind or any other right or arrangement with any creditors to have its claims satisfied prior to other creditors with or from the proceeds of any assets.

Security of Payment Legislation means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

Site means the location where the Works are to be performed, more particularly referred to in the Purchase Order.

Site Requirements means the requirements relating to working on and around the Site.

Tax means any and all present and future sales, use, personal, property, real property, value added, goods and services, GST, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on Kiteleys net income) by any Authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable.

Tax Invoice means an invoice which complies with the GST Act in relation to the production and form of tax invoices for GST purposes.

Terms and Conditions means these terms and conditions.

Urgent Variation has the meaning given to that term in clause 9.2.

Variation means:

- (a) additional work or services.
- (b) a change in the character or quality of the Works.
- (c) a change to the scope of the Works.
- (d) an increase or decrease in the scope of the Works; or
- (e) an omission from the scope of the Works,

but does not include any work to overcome a breach of this Contract or any act or omission by the Contractor.

Variation Direction has the meaning given in clause 9.1(b).

Workers Compensation Insurance means a policy of insurance providing cover in respect of all liability (including at common law) for death of, or injury (including illness) to, persons employed by or deemed to be employed by the Contractor:

- (a) in a form prescribed or approved under or issued in pursuance of any workers' compensation legislation applicable to the Contractor; and
- (b) where permitted by Law, extended to indemnify Kiteleys for Kiteleys statutory liability to persons employed by the Contractor

which is to be maintained until expiry of the Defects Liability Period.

Works means the whole of the work to be carried out and completed in accordance with this Contract, including any Variation provided for by this Contract, which is required to be handed over to Kiteleys (including without limitation any plant and material to be supplied by the Contractor, and to become the property of Kiteleys, whether or not intended to be fixed to the Site),

32.2 Interpretation

In this Contract, unless expressly provided otherwise:

- (a) a reference to this Contract, or another instrument, Licence, Policy, code or standard means this Contract, that other instrument, Licence, Policy, code or standard and includes any variation, supplement, assignment, novation, substitution or replacement of any of them.
- (b) the singular includes a reference to the plural and vice versa.
- (c) includes or including means includes or including without limitation.
- (d) a reference to a person includes a natural person, firm, partnership, body corporate, unincorporated association, Authority, the Crown or any other organisation or legal entity.
- (e) a reference to a natural person includes a reference to the person's executors, administrators, successors, substitutes (including, persons taking by novation) and assigns.
- (f) a reference to a corporation includes its successors and permitted assigns.
- (g) a reference to a body or Authority which ceases to exist is a reference to either a body or Authority that the Parties agree to substitute for the named body or Authority or, failing agreement, to a body or Authority having substantially the same objects as the named body or Authority.
- (h) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
- (i) a reference to a time is to that time at the Site.
- (j) a requirement to do anything includes a requirement to cause or procure that thing to be done and a requirement not to do anything includes a requirement to prevent that thing being done.
- (k) a word that is derived from a defined word has a corresponding meaning.
- (l) any reference to a right or discretion on the part of Kiteleys means Kiteleys may exercise that right or discretion in its sole and absolute discretion.

- (m) any terms used in this Contract (unless the context otherwise requires) which are defined in the GST Act are taken to have the meaning as defined in the GST Act.
- (n) a reference to \$, AUD or dollar is to the lawful currency of the Commonwealth of Australia.
- (o) a reference to a court is to an Australian court.
- (p) headings and the table of contents are inserted for convenience only and do not affect interpretation of the Contract; and
- (q) a reference to "supplier" "contractor" or "service provider" or any similar derivative of such terms in any document comprising this Contract will be taken to mean the Contractor.