



**Gladstone Ports
Corporation**

Growth, prosperity, community.

Effective from 31 December 2021

Purchase Order Terms & Conditions

GLADSTONE PORTS CORPORATION LIMITED

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Details

Parties	Purchaser and Supplier	
Purchaser	Name	Gladstone Ports Corporation Limited
	ABN	96 263 788 242
	ACN	131 965 896
	Registered Address	40 Goondoon Street (PO Box 259) Gladstone QLD 4680
	Telephone	(07) 4976 1333
Recitals	A. The Purchaser wishes to acquire Goods or Services or both from the Supplier.	
	B. The Supplier has agreed to supply the Goods and/or Services on the terms of this Purchase Order.	

1 Definitions

“**Acceptance**” has the meaning given in clause 9.

“**Anti-bribery Laws**” means all anti-bribery and anti-corruption laws applicable to the Supplier and its Personnel, representatives and persons acting on behalf of the Supplier in the performance of the Goods and/or Services, including but not limited to the *Criminal Code Act 1995* (Cth) and where relevant, the *Foreign Corrupt Practices Act 1977* (United States) and the *Bribery Act 2010* (United Kingdom).

“**Authority**” means any government department, local government, government or statutory authority or any ministry, department, court, commission, board, agency, institution or similar entity of such government or statutory authority, or any other party under a Law which has a right to impose a requirement or whose consent is required in connection with the Supplier’s performance of its obligations under this Purchase Order.

“**Business Day**” means Monday to Friday inclusive, but excludes public holidays in Gladstone, Queensland.

“**Confidential Information**” means:

- (a) the terms of this Purchase Order;
- (b) all information (in any form) relating to the Purchaser made available to the Supplier at any time in connection with the Services;
- (c) any information that concerns the business, operations, finances, plans, Personnel or customers of the Purchaser, which is disclosed to or acquired by the Supplier (including any information that is derived from such information),

but does not include information which was in the Supplier’s possession prior to the date of execution of this Purchase Order, provided that this will not include any information that was provided directly or indirectly by the Purchaser to the Supplier or which is the subject of a confidential obligation.

“**Consequential Loss**” means the following losses:

- (a) loss of customer contracts;
- (b) loss of business opportunity;
- (c) loss of profit or anticipated profit; or
- (d) business interruption,

arising out of or in connection with this Purchase Order and whether or not foreseeable or in the ordinary contemplation of the Parties at the date of this Purchase Order but does not limit or exclude the liability of either Party for fraud or intentional breach of any provisions of this Purchase Order or the Suppliers liability in respect of:

- (e) the costs of any repair, replacement, additional works, hiring or other direct costs arising from a defect in any Goods and/or Services;
- (f) the Supplier’s liability pursuant to its indemnity obligations under this Purchase Order; or
- (g) abandonment of the Services.

“**Cost**” has the meaning given in clause 14.

“Date of Delivery” means the date that the Goods are delivered to the Purchaser in accordance with the terms of this Purchase Order.

“Defects Liability Period” means, unless otherwise stipulated in the Purchase Order, the period expiring on the date that is the later of:

- (a) 18 months from the date of Acceptance of the Goods and/or Services; and
- (b) 12 months from the date of installation and commissioning of the Goods.

“Delivery Date at Site” means the date or dates (as applicable) specified in the Purchase Order by which delivery of the Goods and/or performance of the Services must be completed.

“Delivered Duty Paid” means a transaction in which the Supplier must pay for all of the costs related to transporting the Goods and is responsible for the Goods until they have been received and transferred to the Purchaser. This includes paying for the shipping, insurance, duties and any other expenses incurred while shipping the Goods.

“Delivery Point” means the location specified in the Purchase Order to which the Supplier must deliver the Goods.

“Ethical Supplier Mandate” means the Queensland Government Policy titled “Buy Queensland: Ethical Supplier Mandate” or any policy that replaces that policy and associated guidelines, available at: <https://www.business.qld.gov.au/running-business/marketing-sales/tendering/supply-queensland-government/ethical-supplier-requirements/mandate>.

“Goods and/or Services” or **“Goods or Services”** means the goods and/or services specified in the Purchase Order, as the context requires.

“GST” is goods and services tax, as governed by the GST Law.

“GST Law” has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“HSSE” means health, safety, security and environment.

“Intellectual Property Rights” means all industrial and intellectual property rights throughout the world, including all copyright and analogous rights, all rights in relation to inventions or discoveries (including patent rights), designs, registered and unregistered trademarks (including service marks), trade names, brand names, indications of source or appellations of origin, know-how, software, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields. These rights include:

- (a) all rights in all applications to register these rights; and
- (b) all renewals and extensions of these rights.

“Legislation” means all:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory applicable to the supply of the Goods and/or Services;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the supply of the Goods and/or Services;
- (c) the requirements of any authority with jurisdiction in respect of the Goods and/or Services; and
- (d) fees and charges payable in connection with the foregoing.

“Modern Slavery” means slavery, servitude, forced labour, trafficking in persons (including orphanage trafficking of children), forced marriage, child labour, debt bondage and other slavery-like practices as defined in the Modern Slavery Laws.

“Modern Slavery Laws” means the *Modern Slavery Act 2018* (Cth), the *Modern Slavery Act 2018* (NSW), Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth), and any other anti-Modern Slavery laws or regulations in force in Australia, and where relevant in other jurisdictions including anti-slavery and human trafficking Legislation, international anti-slavery and human trafficking Legislation.

“NIST Cyber Security Framework” means the Framework for Improving Critical Infrastructure Cybersecurity published by the US National Institute of Standards and Technology (as amended and updated from time to time).

“Party” or **“Parties”** means Purchaser and the Supplier together or individually as the context requires.

“Payments Act” means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld).

“Personal Information” has the meaning given to it, or any related term such as ‘personal data’ or ‘health information’, under Privacy Legislation.

“Personnel” means employees, agents, consultants, invitees, subcontractors and their respective employees, agents, consultants, invitees and contractors, and in relation to Purchaser, excludes the Supplier.

“PPSA” has the meaning given in clause 27.

“Price” means:

- (a) where the price is a fixed lump sum amount, the amount specified in the Purchase Order; or
- (b) where the price is calculated on the basis of rates and prices, the amount calculated in accordance with the Purchase Order.

“Purchaser Data” means all data and information relating to the Purchaser and its operations, customers, Personnel, suppliers, assets, products, sales and transactions, in whatever form that information may exist, including any data produced, generated or processed in the provision of the Services and/or the supply of the Goods, and includes any database in which that data or information is contained, any documentation or records related to that data or information, any products (including new data or information) resulting from the use or manipulation of that data or information, any other data and other information entered into, generated by, stored by, or processed by any of the Purchaser’s equipment.

“Privacy Incident” means any actual, suspected or anticipated:

- (a) misuse or loss of, interference with or unauthorised access to, modification of or disclosure of Personal Information described in clause 22(c);
- (b) security vulnerability affecting the confidentiality, integrity or availability of Personal Information described in clause 22(c);
- (c) breach of clause 22;
- (d) request, complaint or enquiry made by a regulatory authority or other party in relation to the handling by the Supplier of Personal Information described in clause 22(c); or
- (e) requirement of any Law which conflicts with the Supplier’s obligations under clause 22.

“Privacy Legislation” means any Legislation governing privacy or Personal Information, including the *Privacy Act 1988* (Cth), the *Information Privacy Act 2009* (Qld) and any codes of conduct, directives or orders made or issued under such law.

“Public Official” includes and is not limited to:

- (a) a person currently or formerly holding a legislative, executive, administrative or judicial office (whether appointed or elected);
- (b) an employee, official or contractor of, or person acting in an official function or capacity for a government or public body (including a military or police force), a government-owned or government-controlled enterprise (including a state owned enterprise), or a public international organisation;
- (c) a political party, party official or candidate for political office;
- (d) a person holding an appointment, position or office created by custom or convention;
- (e) an authorised intermediary or agent of a person covered by any of the above; or
- (f) close relatives or persons closely associated with any of the above.

“Purchase Order” means the Purchase Order issued by the Purchaser to the Supplier which refers to and incorporates these Purchase Order Terms and Conditions.

“Purchase Order Terms and Conditions” means these Purchase Order terms and conditions.

“Purchaser” means Gladstone Ports Corporation Limited.

“Queensland Procurement Policy” means the Queensland Procurement Policy the most recent version of which is available at: <https://www.forgov.qld.gov.au/finance-and-procurement/procurement/procurement-resources/procurement-policies-and-frameworks/our-procurement-policy>.

“Registration” has the meaning given in clause 27.

“Security Incident” means an incident, event or problem which could result in an actual or potential compromise of the confidentiality, integrity or availability of Purchaser Data, the Goods and/or Services or the Supplier’s own information systems.

“Subcontractors’ Charges Legislation” means Chapter 4 of the Payments Act.

“Supplier” means the person or corporation named as such in the Purchase Order.

“Threshold” has the meaning given in clause 29.

“Valid Tax Invoice” means an invoice which complies with GST Law and contains the Purchase Order number.

“WHS Legislation” means any Law which has as its object, purpose or effect the protection of health and safety including:

- (a) the *Work Health and Safety Act 2011* (Qld);
- (b) all regulations made pursuant to that Act; and
- (c) all relevant guidelines, guidance notes, codes of practice, standards and requirements of any authority responsible for the health and safety matters.

2 General

- (a) This Purchase Order, when bearing an official Purchase Order number, is the only form of agreement which will be recognised by the Purchaser as authority for the Supplier charging the Goods and/or Services to the Purchaser's account and supersedes all previous communications and negotiations between the Parties.
- (b) This Purchase Order constitutes the entire agreement between the Parties. No terms stated by the Supplier in making a quotation or accepting or acknowledging this Purchase Order shall be binding on the Purchaser.

3 Supplier's General Obligations

- (a) The Supplier must:
 - (i) deliver the Goods and/or perform the Services:
 - (A) in accordance with the requirements of this Purchase Order and all Legislation including the *Disability Discrimination Act 1992* (Cth), Anti-bribery Laws and the Modern Slavery Laws;
 - (B) unless otherwise stated, the Goods must be Delivered Duty Paid; and
 - (C) to the satisfaction of the Purchaser; and
 - (ii) perform the functions required to be performed by the Supplier under this Purchase Order and comply with the obligations imposed on the Supplier by this Purchase Order including GPC Supplier Code of Conduct.
- (b) The Supplier warrants that the Goods and/or Services shall:
 - (a) comply with this Purchase Order and appropriate Australian or international standards or equivalent specifications (including any specifications forming part of this Purchase Order) relevant to the Goods and/or Services; and
 - (b) comply with all applicable Legislation and procure its agents, contractors and sub-contractors comply with all applicable Laws, including WHS Legislation, environmental laws and the *Disability Discrimination Act 1992* (Cth) and Modern Slavery Laws.
- (c) The Supplier warrants that the Goods, as at the Date of Delivery:
 - (i) are of good and sound design, materials and workmanship;
 - (ii) are of merchantable quality and fit for the known purpose for which they are supplied;
 - (iii) are new (unless otherwise specified);
 - (iv) are free from defects (including defects in design, materials and workmanship); and
 - (v) are free from all liens and encumbrances and the Supplier has good marketable title thereto.

- (d) These warranties are in addition to any warranty or service guarantee contained in this Purchase Order or implied by any Legislation.
- (e) The Supplier is responsible at its own risk and expense, for all permits, licences, registrations, certificates or other administrative authorisations required by any Legislation in order to comply with its obligations under this Purchase Order.
- (f) The Supplier's warranties shall remain unaffected notwithstanding any:
 - (i) inspection, comment, or direction given by the Purchaser;
 - (ii) variation to the Goods and/or Services by the Purchaser; or
 - (iii) information provided by the Purchaser to the Supplier.
- (g) The Supplier must immediately notify the Purchaser if it becomes aware that it, or its agents, contractors sub-contractor or suppliers of equipment, materials or items which the Supplier uses or supplies for the purposes of performing the Services have engaged in Modern Slavery, and promptly take appropriate remediate actions, keeping the Purchaser informed of those actions and the extent to which they address the relevant Modern Slavery conduct.
- (h) The Purchaser reserves the right to vary the Goods and/or Services. Any such variation shall be by way of issue of an amended Purchase Order and may include an increase or decrease in the quantity, character, quality, kind or execution of the Goods and/or Services.
- (i) The Purchaser may return excess quantities of Goods to the Supplier at the Supplier's expense. The Purchaser is not obliged to pay for excess Goods in the event that the Supplier delivers quantities in excess of those specified on the Purchase Order.
 - (i) This Purchase Order does not prevent the Purchaser from entering into arrangements or agreements with other suppliers for the purchase of equivalent or similar goods or services to the Goods and/or Services.

4 Time and Delivery Point

- (a) The Supplier shall deliver the Goods to the Delivery Point, and/or complete the Services, by the Delivery Date at Site, or such other date agreed in writing by the Purchaser.
- (b) The Parties acknowledge and agree that time is of the essence for the delivery of the Goods and/or the performance of the Services.

5 Property in Goods

- (a) Where any part payment for Goods in the course of manufacture or assembly is made by the Purchaser, the title to and property in the partly completed or wholly completed Goods and any materials and parts to be used in its manufacture, shall pass to the Purchaser and shall be appropriately marked, otherwise title to the Goods will pass to the Purchaser upon delivery to the Delivery Point.
- (b) The Goods remain at the risk of the Supplier until Acceptance by the Purchaser in accordance with clause 9.

6 Inspection and Expediting

- (a) The Supplier agrees that the Purchaser or the Purchaser's designated agent may during normal business hours inspect and expedite the Goods and/or Services while in any stage of engineering, manufacture, provision or installation. The Supplier shall make this a condition of any sub-contracted work.
- (b) The Supplier:
 - (i) must provide the Purchaser; and
 - (ii) must ensure all subcontractors provide the Purchaser, with access to any premises used to manufacture, perform, assemble or supply the Goods and/or perform the Services.
- (c) The Purchaser or its designated agent may reject any work performed, or being performed, in relation to the Goods and/or Services if:
 - (i) the Goods and/or Services do not comply with this Purchase Order; or
 - (ii) the Supplier has breached any terms of this Purchase Order,and the work rejected in relation to the Goods and/or Services shall be redone or rectified by the Supplier at no additional cost to the Purchaser. Any inspection or expediting by the Purchaser shall not relieve the Supplier of its obligations in this Purchase Order.
- (d) The Supplier must reimburse the Purchaser for any costs or expenses incurred by the Purchaser as a consequence of the rejection of the Supplier's work in accordance with this clause 6.

7 Transportation

- (a) Immediately after the Supplier dispatches the Goods, the Supplier shall notify the Purchaser, including details as to the method by which the Goods will be transported.
- (b) All Goods shall be packed, marked and transported as specified in the "Dispatch Via" field of the Purchase Order, but if not specified, then in a proper and suitable manner and in all cases, in accordance with the proper requirements of the carriers and by any applicable Legislation.
- (c) All Goods supplied under this Purchase Order shall, wherever applicable, be protected against any and all damage, and be packaged adequately to arrive at the Delivery Point nominated on the Purchase Order undamaged.
- (d) The Supplier shall provide detailed delivery dockets in duplicate. One delivery docket must be packaged with the Goods, the other delivery docket must be enclosed and attached to the outside of the packaging containing the Goods. Each delivery docket must contain as a minimum, the following information:
 - (i) the Purchase Order number and item number;
 - (ii) material number details;
 - (iii) quantity of Goods dispatched; and
 - (iv) item description.

8 The Purchaser's Premises

- (a) The following conditions apply where the Supplier is required to be present or perform work on or near premises of the Purchaser to deliver the Goods and/or perform the Services:
 - (i) all work shall be performed in a safe manner;
 - (ii) the Supplier shall supply all labour, tools, supervision, equipment and materials necessary to complete the work and perform this Purchase Order;
 - (iii) the Supplier shall not impede work in progress by the Purchaser, its contactors or any third parties;
 - (iv) the Supplier enters the premises on which the work is to be performed at its own risk;
 - (v) the Supplier, its employees, agents, subcontractors and invitees shall comply with all safety and other plans, policies, procedures, inductions and regulations applicable to the said premises and shall obey all instructions of the Purchaser;
 - (vi) the Supplier must comply with and ensure all of its officers, employees, contractors and other personnel comply with:
 - (A) all Legislation affecting HSSE in respect of the supply of the Goods and/or Services under this Purchase Order; and
 - (B) the Purchaser's "Safety, Environment and Security Standards, Policies and Procedures" available on the Purchaser's website; and
 - (vii) it is the Supplier's sole responsibility to ensure the Supplier is familiar with the Purchaser's HSSE policies and the way in which the policies relate to the Supplier's work activities.
- (b) The Supplier shall immediately notify the Purchaser of any incident affecting health, safety, security or the environment and provide the Purchaser with such details of the incident as requested.

9 Inspection and Acceptance by the Purchaser

- (a) Notwithstanding any prior payment, Acceptance of the whole or part of any Goods is subject to inspection and testing by the Purchaser after the delivery and unpacking of the Goods at the Delivery Point. If the Goods are to be installed or incorporated at a site or premises, such inspection and testing may be carried out by the Purchaser after installation or incorporation and under operating conditions.
- (b) If upon or after any such inspection or test any Goods are found to be unsatisfactory, defective, of inferior quality or workmanship or fail to meet the specifications or any other requirements of this Purchase Order, the Purchaser may, without prejudice to any other rights or remedies it might have:
 - (i) return the Goods to the Supplier at the Supplier's expense;
 - (ii) refuse to pay for the Goods; or

- (iii) require the Supplier to rectify the defects in the Goods at the Supplier's cost.
- (c) The Supplier shall pay to the Purchaser on written demand:
 - (i) any amounts paid by the Purchaser on account of the Price of returned Goods; and
 - (ii) any cost incurred by the Purchaser in connection with the delivery or return of the Goods.
- (d) The above costs shall constitute a debt immediately due and payable by the Supplier to the Purchaser.
- (e) The Goods and/or Services will be deemed to be accepted by the Purchaser the earlier of when the Purchaser notifies the Supplier in writing that the Goods and/or Services have been accepted, or after 30 calendar days from the time that the Supplier has delivered the Goods to the Purchaser at the Delivery Point or completed the Services ("**Acceptance**").

10 Rectification of defective Goods and/or Services

- (a) If any defect is found in any Goods and/or Services before or during the Defects Liability Period, the Supplier must, promptly and at its cost, repair, replace or otherwise make good the defect in the Goods as well as any damage to the Goods caused by the defect and/or re-perform the defective Services. The rectification work or re-performance must cause as little disruption to the Purchaser as is reasonably possible. The timing of the rectification work or re-performance must be agreed with the Purchaser prior to such work commencing. The Supplier must bear all incidental costs, including any costs of removal associated with the repair, replacement or making good of the defect or damage.
- (b) If the Supplier fails to rectify the defect, or any damage to the Goods caused by the defect and/or re-perform the Services within the time agreed or specified by the Purchaser, the Purchaser may:
 - (i) return the Goods to the Supplier at the Supplier's expense;
 - (ii) make good the defect in the Goods itself; or
 - (iii) engage another contractor to make good the defect in the Goods, supply replacement Goods and/or re-perform the Services.
- (c) The costs, including incidental costs, incurred by the Purchaser as a result of such action will be a debt due and owing from the Supplier to the Purchaser.

11 Engineering Data and Documents

The Supplier shall provide to the Purchaser all engineering, documentation and other data in accordance with this Purchase Order and within the time stated in this Purchase Order or such other time as notified to the Supplier by the Purchaser.

12 Firm Price

- (a) In consideration of the Supplier's fulfilment of its obligations under this Purchase Order the Purchaser will pay the Supplier the Prices in accordance with clause 13.

- (b) All Prices are firm and not subject to escalation or variation for any reason unless otherwise stated.

13 Invoices and Payment

- (a) The Supplier must provide a Valid Tax Invoice to the accounts payable department (accountspayable@gpcl.com.au) of the Purchaser, upon delivery of the Goods to the Delivery Point or completion of the Services. The Purchaser shall pay the Supplier 30 days (or the next Business Day thereafter) from the end of the calendar month in which a Valid Tax Invoice is received by the Purchaser or such earlier time as is required by law.
- (b) By delivering an invoice to the Purchaser for payment for the Goods and/or Services, the Supplier warrants to the Purchaser that:
 - (i) the Goods and/or Services comply with the requirements of this Purchase Order;
 - (ii) the Supplier is registered for GST; and
 - (iii) the Supplier is not insolvent within the meaning of any applicable law relating to the insolvency of corporations or individuals.
- (c) Where an invoice that has been delivered to the Purchaser in respect of the Goods and/or Services is not a Valid Tax Invoice, the Purchaser may return the invoice to the Supplier and payment may not be made.
- (d) Making a payment will not be construed as evidence or an admission that the Goods and/or Services have been supplied in accordance with this Purchase Order, but is a payment on account only.
- (e) Unless otherwise provided for in this Purchase Order, the Supplier must pay all taxes including sales tax, payroll tax, levies, duties and assessments due in connection with the Purchase Order and the supply of the Goods and/or Services.
- (f) The Purchaser may at any time deduct or set off from any moneys which are, or may be, payable to the Supplier:
 - (i) any amounts which are due and payable by the Supplier to the Purchaser in connection with this Purchase Order; or
 - (ii) any amount which the Purchaser (acting reasonably) claims from the Supplier under or in connection with this Purchase Order.
- (g) Nothing in clause 13(f) affects the right of the Purchaser to recover from the Supplier the whole of the debt or any balance that remains owing after any deduction.

14 GST

- (a) Words and expressions which are not defined in this Purchase Order but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise specified in this Purchase Order, all stated amounts are GST exclusive.
- (c) The Supplier must be registered for GST and for Australian Business Number purposes, and indemnifies the Purchaser against any loss resulting from it not being registered for those purposes.

- (d) If any supply made under this Purchase Order is, or becomes, subject to GST, the party to whom the supply is made must pay to the party making the supply, as consideration, in addition to any consideration payable or to be provided elsewhere in this Purchase Order, subject to issuing a valid tax invoice, an additional amount on account of GST, such amount to be calculated by multiplying the consideration by the applicable rate of GST.
- (e) If any party is required to reimburse or indemnify the other party for a cost or expense (“**Cost**”) incurred by the other party, the amount of that Cost for the purpose of this Purchase Order is the amount of the Cost incurred, less the amount of any credit or refund of GST, which the party incurring the Cost is entitled to claim in respect of the Cost.

15 Termination for default

- (a) The Purchaser, without prejudice to any other rights it might have, may by written notice cancel any undelivered Goods and/or the performance of any Services and terminate this Purchase Order with immediate effect in the event:
 - (i) of a breach by the Supplier of any of the terms, conditions or warranties contained in this Purchase Order;
 - (ii) that the Purchaser is not satisfied (acting reasonably) that the Supplier has shown cause in accordance with clause 31(e) why this Purchase Order should not be terminated for a breach of clause 31; or
 - (iii) that the Supplier suffers an Insolvency Event.
- (b) Following a termination for default under clause 15(a):
 - (i) the Purchaser shall not be obliged to make any further payment to the Supplier;
 - (ii) the Purchaser may immediately take possession of any of the Goods, for which the Purchaser has paid, including any documents under clause 11; and
 - (iii) the Purchaser may exercise its set off rights in accordance with clause 13(f).
- (c) If the Purchaser terminates for the Supplier’s default, the Supplier indemnifies, defends and holds harmless the Purchaser against all costs (including legal costs) or expenses incurred by the Purchaser in obtaining the Goods and documents elsewhere and/or arranging for a third party to supply the Goods and/or perform the Services.

16 Cancellation

- (a) The Purchaser may cancel all or part of the Goods and/or Services for its convenience by written notice to the Supplier.
- (b) Upon receipt of a cancellation notice under clause 16(a), the Supplier shall:
 - (i) cease manufacturing, supplying or providing the Goods and/or performing the Services in accordance with and to the extent specified in the notice; and
 - (ii) immediately do everything possible to mitigate any costs incurred by the Supplier and any subcontractors.

- (c) If the Purchaser cancels for its convenience, then to the extent that the cancellation relates to:
- (i) Goods which are stocked by the Supplier in the usual course of its business, the Purchaser shall be entitled to return the Goods at the Purchaser's expense; and
 - (ii) either:
 - (A) Goods which are manufactured or fabricated to the Purchaser's specification or specifications prepared by the Supplier for the Purchaser's exclusive use; or
 - (B) Services,
- the Supplier shall be entitled to the payment of reasonable and documented expenses directly incurred by the Supplier for satisfactory performance or delivery of the Goods and/or the performance of the Services prior to the date of cancellation.

17 Insurance

- (a) The Supplier shall effect and maintain the following policies of insurance during the supply of the Goods and/or Services:
- (i) with respect to its employees under the provisions of any relevant workers compensation legislation;
 - (ii) public and products liability insurance covering legal liability for damage to any real or personal property and injury to, or death of, any person, with a minimum coverage of A\$20,000,000 per occurrence;
 - (iii) if the performance of the Purchase Order includes or is related to the provision of professional advice or services, professional indemnity insurance in respect of any negligent acts or omissions by the Supplier, for an amount of not less than A\$5,000,000 for each and every claim, and maintain the insurance for a period of not less than 3 years after completion of the Supplier's obligations under the Purchase Order;
 - (iv) comprehensive motor vehicle insurance that provides cover for the Supplier's statutory third party liability and covering loss or damage to property of third parties arising out of the Supplier's use of a registered motor vehicle (whether owned, rented or leased) in connection with either the supply of Goods and/or Services under this Purchase Order;
 - (v) transit insurance with a limit of not less than the total Price of the Goods, covering loss of or damage to the Goods (or any items thereof) during delivery to the Delivery Point; and
 - (vi) any additional insurance required by Legislation or reasonably requested by the Purchaser, having regard to the nature of the Goods and/or the Services.
- (b) The Supplier shall provide the Purchaser with certificates of currency evidencing that the above insurances are in place immediately upon demand by the Purchaser.

18 Indemnity

The Supplier indemnifies the Purchaser against all costs, damage, expense, loss or liability of any nature suffered or incurred by the Purchaser arising out of, in connection with, or as a result of the provision of the Goods and/or Services including:

- (a) physical loss of or damage to the property of any third party;
- (b) damage, expense, loss or liability in respect of personal injury, disease, illness or death; and
- (c) damage, expense, loss or liability arising out of or in connection with the presence of the Supplier, its employees, agents, subcontractors, and invitees at the Purchaser's premises,

except to the extent that the costs, damage, expense, loss or liability arises out of the negligent acts or omissions of the Purchaser or a breach of this Purchase Order by the Purchaser.

19 Limitation of liability

- (a) Notwithstanding anything expressed or implied in this Purchase Order to the contrary, neither the Purchaser nor the Supplier will be liable to the other for the other's Consequential Loss, whether arising under the Purchase Order, in tort (including negligence), under statute, by way of indemnity or otherwise.
- (b) The Supplier's liability to the Purchaser under any principle of law for a breach by the Supplier of its obligations under or in connection with this Purchase Order is limited to twice (2x) the Price of the Goods and Services.
- (c) Clauses 19(a) and 19(b) does not exclude or limit the Supplier's liability in respect of:
 - (d) the indemnity given under clause 18, clause 20(b), clause 31(c) or clause 31(g);
 - (e) fraud or deliberate breach of the provisions of this Purchase Order; or
 - (f) any liability which is covered by any insurance policy or which would have been so covered but for:
 - (i) the Supplier failing to take out and maintain the required insurance;
 - (ii) the Supplier vitiating or prejudicing any insurance policy;
 - (iii) the Supplier failing to make a claim under an insurance policy; or
 - (iv) the limitation of liability.

20 Intellectual Property

- (a) The Supplier warrants to the Purchaser and its successors in interest that the manufacture, sale, enjoyment and use of the Goods and/or Services will not infringe any Intellectual Property Rights or involve the misuse of any other person's confidential information.
- (b) The Supplier indemnifies the Purchaser and its successors in interest against any loss or damage (including legal fees and costs) arising from breach of this warranty

or prevention or hindrance of use of the Goods and/or Services as a result of such breach.

- (c) The Supplier grants the Purchaser a non-exclusive, perpetual, irrevocable, sub-licensable, royalty-free licence to all background Intellectual Property Rights belonging to the Supplier necessary for the Purchaser to use the Goods and/or Services as contemplated by this Purchase Order. For any background Intellectual Property Rights belonging to any subcontractor of the Supplier necessary for the Purchaser to use the Goods and/or Services as contemplated by this Purchase Order, the Supplier must procure the subcontractor to grant the Purchaser a non-exclusive, perpetual, irrevocable, sub-licensable, royalty-free licence to all background Intellectual Property Rights belonging to the subcontractor for the Purchaser to use the Goods and/or Services as contemplated by this Purchase Order.
- (d) The Supplier assigns to the Purchaser, immediately on creation, all Intellectual Property Rights created by the Supplier in the supply of Goods and/or Services to the Purchaser in accordance with this Purchase Order. If any Intellectual Property Rights are created by a subcontractor of the Supplier in the supply of Goods and/or Services with this Purchase Order, the Supplier must procure the assignment of all Intellectual Property Rights created by the subcontractor in the supply of Goods and/or Services to the Purchaser.
- (e) The Purchaser grants the Supplier and any subcontractor of the Supplier under this Purchase Order a non-exclusive, sub-licensable, royalty-free licence to the Intellectual Property Rights created by the Supplier or a subcontractor of the Supplier under this Purchase Order in order to provide the Goods and/or Services to the Purchaser as stipulated in this Purchase Order.

21 Confidential Information

- (a) Any engineering documentation and other data furnished to the Supplier by or on behalf of the Purchaser, or any information obtained by the Supplier in connection with this Purchase Order is confidential and shall not be disclosed by the Supplier to any third person without the prior written consent of the Purchaser.
- (b) Unless otherwise specified in this Purchase Order, all plans, drawings and specifications prepared or supplied by or on behalf of the Purchaser and any document, plan or otherwise made therefrom shall be and remain the property of the Purchaser and shall be used by the Supplier only in performance of this Purchase Order and shall be returned to the Purchaser by the Supplier on completion of this Purchase Order or upon demand.

22 Privacy

The Supplier:

- (a) acknowledges that the Purchaser is required to comply with all laws relating to Privacy Legislation;
- (b) acknowledges that it is bound by its obligations under this Purchase Order even if the Supplier would not otherwise be subject to Privacy Legislation;
- (c) must, and must establish effective measures to:
 - (i) safeguard Personal Information from loss and interference, and from unauthorised access, modification, use, loss or disclosure;
 - (ii) act in a manner consistent with the Privacy Legislation;

- (iii) not access or use Personal Information other than for the purpose of performing its obligations under the Purchase Order;
- (iv) not disclose Personal Information without the prior written consent of the Purchaser, unless required by Law;
- (v) not transfer or make accessible any Personal Information outside of Australia, except with the prior written consent of the Purchaser;
- (vi) ensure that access to Personal Information is restricted to those of its Personnel who require access in order to perform their duties under the Purchase Order;
- (vii) ensure that its Personnel are aware of the Supplier's obligations under this clause 22 and comply with the same obligations imposed on the Supplier under this clause;
- (viii) fully cooperate with the Purchaser to enable the Purchaser to respond to applications for access to, or amendment of, a document containing a person's Personal Information and to privacy complaints;
- (ix) on rescission, termination or expiry of this Purchase Order, or on request by the Purchaser, return to the Purchaser or securely destroy (at the Purchaser's election) all copies or other records containing Personal Information;
- (x) ensure accurate and complete records are kept of the Supplier's use, copying and disclosure of Personal Information provided by the Purchaser;
- (xi) give the Purchaser or its nominee or regulator access to all premises, Personnel, materials and systems to assess the Supplier's compliance with all or any part of this clause 22; and
- (xii) comply with such other privacy measures as the Purchaser reasonably advises the Supplier in writing from time to time,

in respect of Personal Information collected or accessible by the Supplier or its Personnel in connection with the Purchase Order; and

- (d) must ensure that its terms and conditions for engaging employees or subcontractors, so far as possible, authorise the Supplier to disclose to the Purchaser, and the Purchaser to collect and use, Personal Information about those employees or subcontractors for the purposes of this Purchase Order, and inform those employees and subcontractors of the Purchaser's Information Privacy Procedure.
- (e) In the event of a Privacy Incident the Supplier must:
 - (i) immediately notify the Purchaser (providing full details and ongoing updates as available);
 - (ii) conduct a reasonable and expeditious investigation and assessment of the incident; and
 - (iii) co-operate with the Purchaser's requests in relation to responding to and remediating the incident.

23 Information Security

- (a) Without limiting any other obligations of the Supplier under this clause 23, the Supplier must establish, maintain, enforce and continuously improve its safety and

security procedures and safeguards against the unauthorised use, disclosure, destruction, loss or alteration of Purchaser Data and the Purchaser's other Confidential Information.

- (b) The Supplier must comply with such security requirements of the Purchaser communicated to the Supplier from time to time, including security requirements relating to access to, and use of, any data, information systems or facilities provided by the Purchaser or another third party.
- (c) If the Supplier becomes aware of a Security Incident it must:
 - (i) immediately, and in any event no later than 24 hours after the Security Incident first occurs, notify the Purchaser in writing, and give the Purchaser full details, about the Security Incident;
 - (ii) co-operate with the Purchaser in any investigation or audit (including by providing access to the Supplier's premises, the Supplier's Personnel, processes and systems) in respect of the Security Incident; and
 - (iii) conduct its own investigation of the Security Incident, and:
 - (A) implement rectification measures if an actual incident or breach occurred or an incident or breach is likely to occur; or
 - (B) confirm to the Purchaser that no actual incident or breach occurred or is likely to occur.
- (d) The Supplier undertakes and warrants that it will:
 - (i) ensure that, at all times:
 - (A) Purchaser Data is protected against misuse, interference, loss, unauthorised or unlawful access, use, modification or disclosure or accidental destruction;
 - (B) only authorised Supplier's Personnel with a legitimate role in performing the Supplier's obligations under this Contract have access to the Purchaser Data; and
 - (ii) upon the Purchaser's request, produce to the Purchaser or its nominee evidence of the Supplier's compliance with its obligations under clause 23(d)(i);
- (e) Without limiting any other clause of this Contract, the Supplier will (at the Purchaser's election) securely destroy or return all Purchaser Data and Confidential Information of the Purchaser in the Supplier's possession and control, including without limitation permanently deleting or returning all devices in its possession or control used to store Purchaser Data or Confidential Information of the Purchaser, when it is no longer required by the Supplier to perform its obligations under this Contract.
- (f) All electronic mail communications between the Purchaser and the Supplier must be appropriately secured by leading industry standard encryption. The encryption algorithm and methodology must be reviewed annually and any changes must be approved by the Purchaser.
- (g) The Purchaser may, without limiting its rights or limiting the obligations of the Supplier, if it considers that there is a breach of this clause 23 by any of the Supplier's Personnel, immediately:
 - (i) remove the Supplier's Personnel from the facilities of the Purchaser; and

- (ii) deny any access by the Supplier's Personnel to the information systems of the Purchaser.
- (h) The Supplier's security policies, standards, guidelines, guidance notes and similar documents must address, to at least a standard of experienced and competent contractors performing services similar to the Services and/or supplying goods similar to the Goods, at least the following:
 - (i) acceptable use of technology by the Supplier's Personnel;
 - (ii) confidentiality;
 - (iii) management of Security Incidents;
 - (iv) cryptography;
 - (v) identity and access management;
 - (vi) management direction for information security;
 - (vii) transfer of information;
 - (viii) security logging and event management; and
 - (ix) material vulnerability management.
- (i) The Supplier must ensure that the Supplier's own security policies, standards, guidelines, guidance notes and similar comply with either of the following applicable industry standards, as updated or replaced from time to time:
 - (i) AS/NZS ISO/IEC 27001:2013; or
 - (ii) NIST Cyber Security Framework,or an equivalent industry standard approved by the Purchaser in writing.

24 Assignment and Subcontracting

- (a) The Supplier may not assign its rights, delegate its obligations under this Purchase Order or novate this Purchase Order without the Purchaser's prior written consent (which will not be unreasonably withheld).
- (b) The Purchaser may assign its rights, delegate its obligations or novate this Purchase Order without obtaining the Supplier's prior written consent. The Supplier must execute any documents reasonably required by the Purchaser to give effect to that assignment or novation.
- (c) The Supplier is not, as a result of any subcontracting arrangement, relieved from the performance of any obligation under this Purchase Order. The Supplier is liable for all acts and omissions of a Supplier's subcontractor as though they were the acts of the Supplier itself. The Supplier must ensure that any subcontracting arrangement includes terms which are substantially the same as clause 29 and allow the Supplier to comply with their obligations under clause 25.
- (d) No waiver of a breach of any provision of this Purchase Order shall constitute a waiver of any other breach of any other provision.

25 Audit and availability of information

25.1 Audit

- (a) During the period of this Purchase Order, and for a further two (2) years after the end of the last Defects Liability Period, the Purchaser's authorised representatives may, from time to time on 10 Business Days' notice, at its own cost conduct an audit or investigation of the Supplier's (or any subcontractor's) compliance with any applicable Law, the Threshold and matters relevant to the Ethical Supplier Mandate in connection with the performance of Services under this Purchase Order.
- (b) The Supplier must cooperate with the Purchaser's authorised representative in relation to the conduct of any audit under this clause.
- (c) The Purchaser must conduct (or direct that the Purchaser's authorised representative to conduct) any audit so as to minimise any inconvenience as far as reasonably practicable.
- (d) If requested by the Purchaser following an audit or investigation under clause 25.1(a), the Supplier must meet with the Purchaser or the Purchaser's authorised representative within 30 days to:
 - (i) discuss the findings from the audit or investigation, including any finding that the Supplier has breached an obligation under this Contract and any recommendation of the report as to how the Supplier may remedy that breach; and
 - (ii) agree on the appropriate remedies (if applicable) to be implemented by the Supplier and the timeframes for implementing such remedies.

25.2 Access to information

- (a) The Supplier must, on request by the Purchaser or the Purchaser's authorised representative:
 - (i) provide copies of or access to any relevant Personnel, accounts, records (including data stored in computer files), vouchers, receipts and documents of any description which belong to the Supplier, or any of its employees, agents, contractors and/or subcontractors;
 - (ii) make any relevant Personnel available for interview by the Purchaser or the Purchaser's authorised representative or direct that the Personnel provide information or documents within their knowledge or possession;
 - (iii) grant the Purchaser or the Purchaser's authorised representative access to the Supplier's premises and any other premises, workshops or place where work is being prepared or from where goods or materials are being obtained for use in connection with supply of the Good or Services; and
 - (iv) provide any other information or assistance,as reasonably required for the Purchaser or the Purchaser's authorised representative to identify, evaluate, implement or report on any matter in connection with the Purchaser's right to audit or investigate under clause 25.1(a).
- (b) The Supplier must procure that its agents, contractors and sub-contractors agrees to give the Purchaser or the Purchaser's authorised representative the same audit and access rights as apply to the Supplier under this clause 25.

- (c) The Purchaser must comply with Privacy Legislation in relation to any information collected and stored under this clause 25.

25.3 Copies

The Purchaser's duly authorised representatives may copy any relevant documents accessed under this clause 25.

25.4 Other Government Entities

The Supplier authorises the Purchaser to make enquiries and obtain information from Authorities for the purposes of conducting an audit under this clause and to share information obtained under an audit under this clause with Authorities responsible for monitoring compliance with the Threshold, the Ethical Supplier Mandate and Law.

26 Dispute Resolution

- (a) If a dispute arises, then either Party may give to the other Party a notice of dispute in writing adequately identifying and providing details of the dispute. The Parties must, prior to commencing legal proceedings, use their best efforts to reach a resolution of the dispute in accordance with clause 26(b) and clause 26(c).
- (b) Within ten (10) Business Days after service of a notice of dispute, the Supplier's authorised representative and the individual at the Purchaser with the title "Contract Specialist" must confer at least once to attempt to resolve the dispute, and failing resolution of the dispute to consider and if possible agree on methods of resolving the dispute by other means.
- (c) If the dispute is not resolved by the Purchaser's Contract Specialist and the Supplier's authorised representative within ten (10) Business Days after a referral in accordance with clause 26(b), the relevant general manager of the Purchaser (or person for the time being acting in that role) and an individual of equivalent standing with the Supplier with authority to resolve the dispute must confer at least once to attempt to resolve the dispute, and failing resolution of the dispute to consider and if possible agree on methods of resolving the dispute by other means.
- (d) If the dispute is not resolved within ten (10) Business Days after the referral under clause 26(c), either Party may commence legal proceedings.
- (e) Nothing in this clause 26 prevents a Party seeking urgent injunctive relief or similar interim relief from a court.
- (f) Despite the existence of a dispute, the Parties must continue to perform their respective obligations under this Contract except where this Contract has been terminated.

27 Personal Property Securities Act

- (a) "PPSA" means the *Personal Property Securities Act 2009* (Cth) and the terms "collateral", "financing statement", "financing change statement", "grantor" and "register" have the meaning given in the PPSA.
- (b) The Supplier may not register a financing statement under the PPSA against the Purchaser as grantor (a "**Registration**") except with the prior written consent of the Purchaser.
- (c) Without limiting the rights of the Purchaser under the PPSA, if at any time there is no collateral which is subject to a Registration, then the Supplier undertakes, at its own cost, to promptly:

- (i) notify the Purchaser that there is no collateral subject to that Registration;
- (ii) register a financing change statement on the register to end the Registration; and
- (iii) do anything the Purchaser reasonably requires (including completing and signing any document) to notify any relevant authority or other person of the end of the Registration.

28 Anti-bribery

The Supplier warrants that:

- (a) neither it, its Personnel, representatives nor persons acting on its behalf have been investigated or convicted for contravention of any Anti-bribery Laws;
- (b) neither it, its Personnel, representatives nor persons acting on its behalf will offer, give or agree to give any person, or solicit, accept or agree to accept from any person, either directly or indirectly, any benefit or thing of value (including any facilitation payment) in order to obtain, influence, induce or reward any improper advantage;
- (c) will adhere and require its Personnel, representatives and persons acting on its behalf to adhere to the Purchaser's Fraud and Corruption Policy and the related policies, standards and procedures referred to therein;
- (d) it is not government owned or controlled, has no Public Officials as direct or indirect owners, and (apart from the relationship between the Parties under this Purchase Order) none of its Personnel, representatives or persons acting on its behalf are Public Officials, except as disclosed in writing to the Purchaser ; and
- (e) it will immediately notify the Purchaser if:
 - (i) it or any of its Personnel, representatives or persons acting on its behalf have engaged in conduct which breaches clause 3(a)(i)(A) or this clause 28, including if it receives any complaint or allegation of breach;
 - (ii) it or any of its Personnel, representatives or persons acting on its behalf receive a request for, or demands any benefit or thing of value referred to in clause 28(b); or
 - (iii) it becomes government owned or controlled, any Public Official takes a direct or indirect interest in it, or if its Personnel, representatives or persons acting on its behalf become a Public Official during the term of this Contract.

29 Ethical Supplier obligations

- (a) The Supplier acknowledges that the Purchaser is a Government Owned Corporation under the *Government Owned Corporations Act 1993* (Qld) and is obliged to comply with the Queensland Procurement Policy including ensuring that its suppliers comply with the "**Threshold**" as defined in the Queensland Procurement Policy and the Ethical Supplier Mandate. Under the **Threshold** set out in the Queensland Procurement Policy the Supplier must not:
 - (i) contravene a civil remedy provision of Chapter 2 or Chapter 3 of the *Fair Work Act 2009* (Cth), or commit an offence against the *Fair Work Act 2009* (Cth);

- (ii) contravene a civil remedy provision of Chapter 2, 3, 4, 5, or 7 of the *Industrial Relations Act 2016* (Qld), or commit an offence against the *Industrial Relations Act 2016* (Qld), or fail to pay employment related levies, or other payments, established under Queensland legislation;
 - (iii) fail to make superannuation contributions on behalf of employees in accordance with Law;
 - (iv) purport to treat employees as independent contractors, where they are not;
 - (v) require persons who would otherwise be employees to provide an Australian Business Number so that they could be treated as independent contractors;
 - (vi) engage persons on unpaid work trials or as unpaid interns, where they should be treated as employees;
 - (vii) enter into an arrangement for the provision of labour hire services with a person who is not licensed under the *Labour Hire Licensing Act 2017* (Qld), or a supplier who is an unlicensed provider under the *Labour Hire Licensing Act 2017* (Qld);
 - (viii) pay employees wages below those provided for in an applicable modern award.
- (b) The Supplier must, and must ensure that its subcontractors comply with the Threshold and the Ethical Supplier Mandate throughout the term.
 - (c) The Supplier warrants that as at the date of this Contract it is not in breach of the Threshold and has not been in breach of the Threshold since 1 August 2019.
 - (d) The Supplier must promptly notify the Purchaser upon becoming aware that it (or any of its subcontractors) has not complied with the Threshold or the Ethical Supplier Mandate.
 - (e) If the Purchaser reasonably believes that the Supplier has not complied with the Threshold, the Purchaser may issue a notice to the Supplier requiring the Supplier to show cause within 10 Business Days following the notice why the Purchaser should not exercise its right to terminate the contract for breach of the Supplier's obligations under this clause.
 - (f) The Supplier acknowledges that compliance with the Ethical Supplier Mandate may be investigated and demerits or other penalties applied in accordance with the Ethical Supplier Mandate.

30 General

- (a) The Purchaser's right to require strict performance of the terms of the Purchase Order are not affected or waived by any failure to enforce any of the terms or by the Purchaser's acceptance of performance under the Purchase Order.
- (b) The Purchase Order does not create any partnership between the Purchaser and the Supplier.
- (c) Headings in the Purchase Order are for convenience only and do not affect the interpretation or construction of the Purchase Order.
- (d) No representation or warranty, express or implied, is or will be made and no responsibility or liability is or will be accepted by the Purchaser as to, or in relation to, the accuracy or completeness of any information made available to the Supplier.

- (e) A person or company who is not a Party has no right under any Legislation to enforce any term of the Purchase Order notwithstanding that any term may be construed as conferring a benefit on such person or company.
- (f) Any notice under the Purchase Order is to be delivered in writing in the English language personally, by courier, by recorded delivery or sent by email (with confirmation) to the other Party at the registered address or an address specified in the "Bill To" and "Email" fields of the Purchase Order and for the attention of any individual specified in the "Buyer" field the Purchase Order.
- (g) If any part of the Purchase Order is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remainder of the Purchase Order shall not be affected and every part of the Purchase Order shall be severable and separately valid and enforceable.
- (h) The following clauses survive the cancellation or termination of the Purchase Order: 1, 10, 15, 16, 18, 19, 20, 21, 22, 23, 26 and 28.
- (i) This Purchase Order shall be governed by and construed in accordance with the laws of the State of Queensland.

31 Goods and Services related to building and construction

- (a) The Supplier must:
 - (i) promptly give the Purchaser a copy of any notice the Supplier receives from any subcontractor; and
 - (ii) ensure that each subcontractor promptly gives the Purchaser a copy of any notice that the subcontractor receives from another person,under sections 78 and 92 of the Payments Act.
- (b) If the Purchaser becomes aware that a subcontractor is entitled to suspend work pursuant to section 98 of the Payments Act, the Purchaser may pay the subcontractor such money that is, or may be, owing to the subcontractor in respect of the work forming part of the Supplier's delivery of the Goods and/or Services, and any amount paid by the Purchaser is recoverable as a debt due from the Supplier to the Purchaser.
- (c) The Supplier indemnifies the Purchaser against any cost or expense and lawyer's fees and expenses on an indemnity basis, suffered or incurred by the Purchaser arising out of:
 - (i) a suspension by a subcontractor of work, which forms part of the Supplier's provision of the Goods and/or Services under section 98 of the Payments Act; and
 - (ii) a failure by the Supplier to comply with this clause.
- (d) If the Supplier intends to exercise its right under the Payments Act to suspend the Supplier's delivery of the Goods or performance of the Services, it must give notice to the Purchaser of no less than two (2) Business Days prior to the Supplier exercising that right.
- (e) The Supplier must promptly give the Purchaser a copy of any notice of charge lodged under the Subcontractors' Charges Legislation received by the Supplier.
- (f) The Purchaser may deduct from any payment otherwise due and payable to the Supplier, any payment which the Purchaser makes in accordance with the

Subcontractors' Charges Legislation to or in respect of a claim made under that Act by a subcontractor to the Supplier. Any payment which is not recovered by way of deduction is a debt due and payable by the Supplier to the Purchaser.

- (g) The Supplier must indemnify the Purchaser against any loss, cost, damage, liability or expense of any nature suffered or incurred by the Purchaser as a result of any charges lodged under the Subcontractors' Charges Legislation which are lodged or notified as a consequence of the Supplier's failure to pay, or delay in making payments to, any subcontractor.