

## PURCHASE ORDER TERMS AND CONDITIONS (GOODS AND SERVICES)

Civmec Construction & Engineering Pty Ltd (ABN 98 137 816 025), Seymour Whyte Constructions Pty Ltd (ABN 48 105 493 187) and WSP Australia Pty Limited (ABN 80 078 004 798) trading as Causeway Link Alliance (ABN 42 443 876 892) (collectively **the Principal**) jointly agree to purchase the Goods and/or the Services from the Supplier and the Supplier agrees to sell the Goods and/or the Services to the Principal on these Terms and Conditions.

### 1. CONTRACT

- 1.1 The Purchase Order issued by the Principal and these Terms and Conditions together form the Contract between the Principal and the Supplier. By accepting the Purchase Order and commencing the supply of the Goods or the performance of the Services, the Supplier agrees to be bound by the Contract.
- 1.2 The Purchase Order prevails in case of any inconsistency with these Terms and Conditions.
- 1.3 The Parties agree that any reference to the Supplier's terms or conditions on any quote, invoice, delivery docket or other document, shall not import those terms into the Contract unless the Principal expressly agrees otherwise in writing.
- 1.4 The Principal enters into the Contract in its own right, and not as an agent of Main Roads.

### 2. THE GOODS AND SERVICES

- 2.1 The Supplier must ensure that any Goods to be supplied by the Supplier pursuant to the Contract:
  - 2.1.1 are new, ready for use, free from Defects and fit for purpose;
  - 2.1.2 comply with all applicable Statutory requirements and Australian Standards at the minimum;
  - 2.1.3 are accompanied by all applicable instructions and technical documentation, including operating and service manuals;
  - 2.1.4 are supplied with a valid manufacturer's or supplier's warranty where the manufacturer or supplier offers such a warranty in respect of the Goods; and
  - 2.1.5 are delivered in accordance with any specifications and/or timeframe referred to in the Purchase Order or otherwise provided by the Principal to the Supplier.
- 2.2 The Supplier must ensure that any services to be supplied by the Supplier pursuant to the Contract:
  - 2.2.1 are performed to a high standard in accordance with industry best practice and, at a minimum, comply with any applicable Australian

- 2.2.2 Standards; and are performed in accordance with any specifications and/or timeframe referred to in the Purchase Order or otherwise provided by the Principal to the Supplier.

### 3. TIME FOR PERFORMANCE

- 3.1 Time is of the essence in respect of all obligations of the Supplier. The Supplier must immediately report to the Principal any actual or likely delay in supply of the Goods and/or the Services and its cause. The Supplier must take all reasonable steps to prevent delay, including but not limited to working overtime.

### 4. PACKAGING OF GOODS

- 4.1 The Supplier must:
  - 4.1.1 suitably pack the Goods to avoid damage during loading, transit, delivery, unloading or storage;
  - 4.1.2 pack and transport the Goods in accordance with any applicable regulations and industry codes; and
  - 4.1.3 clearly mark all packages of the Goods for delivery and the delivery documents for the Goods with the Contract number and ensure that the delivery documents accompany the Goods to the Delivery Address.

### 5. DELIVERY

- 5.1 The Supplier must obtain all necessary permits and licences, which must be obtained in the Supplier's name and are necessary for the Supplier to perform its obligations.
- 5.2 The Supplier must deliver any of the Goods, and/or provide the Services, at the Delivery Address by the Delivery Date.
- 5.3 All Goods delivered must be accompanied by a delivery slip.
- 5.4 The Supplier must, when delivering the Goods or providing the Services:
  - 5.4.1 not interfere with the Principal's activities or the activities of any third party at the Delivery Address or at the Site; and
  - 5.4.2 comply with, and ensure that its Personnel comply with, all

directions and orders given by or on behalf of the Principal at the Delivery Address or at the Site.

## 6. INSPECTION AND SAMPLING

- 6.1 The Supplier must conduct all inspections and tests in strict accordance with requirements of the Contract.
- 6.2 The Supplier must ensure that the Principal has the opportunity to inspect, test, and witness any test of the Goods and/or the Services wherever they may be located. The Supplier must provide the Principal with at least 48 hours' written notice of any test or inspection of the Goods and/or Services required under the Contract. The Supplier must provide or ensure that its suppliers provide unrestricted access to reasonable facilities necessary for the Principal to carry out such inspections or witness such tests.
- 6.3 The Supplier is not relieved of any of its obligations under the Contract because the Principal has signed a delivery slip for Goods, inspected the Goods and/or the Services or witnessed any testing prior to delivery of the Goods or supply of the Services.
- 6.4 The Principal shall be entitled to reject any of the Goods or the Services that do not comply with the Specification, the requirements of the Contract or any sample provided to the Principal.
- 6.5 The Principal is entitled to request samples of the Goods or components of the Goods in connection with the supply or use of the Goods, which must be supplied by the Supplier at its cost.

## 7. TECHNICAL MATERIAL

- 7.1 The Supplier must, without additional cost to the Principal, supply all required plans, drawings, specifications, manuals, certificates, instructions, fabrication reports and the like in the form and at the times and in the numbers of copies specified in the Purchase Order or otherwise as reasonably required by the Principal.

## 8. PRICE

- 8.1 The Price for the Goods and/or the Services is the price stated in the Purchase Order. Unless otherwise agreed and clearly stated in the Purchase Order, the Price excludes GST but includes any other applicable taxes, customs, excise and import duties, tariffs, fees, levies, charges, costs or expenses incurred by the Supplier, including transport, packing and insurance costs.
- 8.2 Unless otherwise agreed and clearly stated in the Purchase Order the Price is fixed and firm, and not subject to adjustment due to currency fluctuation or any other reason.

## 9. PAYMENT

- 9.1 The Supplier must claim payment for the supply of the Goods and/or the Services by submitting invoices to the Principal in accordance with the invoicing schedule stated in the Purchase Order or, if no schedule is stated, monthly by the last Business Day of the month. Each invoice must:
  - 9.1.1 be a tax invoice;
  - 9.1.2 be correctly dated;
  - 9.1.3 be addressed to the Principal;
  - 9.1.4 indicate the amount claimed;
  - 9.1.5 refer to the Contract, including the Principal's Purchase Order Number;
  - 9.1.6 list the particular Goods and/or Services supplied;
  - 9.1.7 state that it is submitted under the Security of Payment Act; and
  - 9.1.8 be supported by relevant records (including, in the case of Goods, a delivery slip for the Goods signed by the Principal), to enable the Principal to calculate and verify the amount stated in any Supplier invoice.
- 9.2 Compliance by the Supplier with clauses 9.1 and 9.5 is a condition precedent to the Supplier's entitlement to:
  - 9.2.1 claim the amount stated in an invoice submitted by the Supplier to the Principal; or
  - 9.2.2 be paid any amount in respect of an invoice submitted by the Supplier to the Principal.
- 9.3 If the Supplier submits an invoice earlier than the time for submission of that invoice, the invoice shall not be taken to have been submitted until that time.
- 9.4 The Principal shall not be liable to pay for the Goods and/or the Services until the Goods and/or the Services have been supplied in accordance with the Contract.
- 9.5 The Principal may at any time require by written notice that the Supplier provide the Principal with all additional relevant records to calculate and verify the amount stated in any Supplier invoice, by the time stated in the notice or, where no time is specified, within 48 hours. The Supplier must provide such information.
- 9.6 Subject to clauses 9.2 and 9.7, the Principal shall pay the Supplier the amount claimed in an invoice :
  - 9.6.1 in accordance with the payment terms stated in the Purchase Order; or
  - 9.6.2 if no terms are stated, within 25 Business Days of the invoice being submitted; or
  - 9.6.3 if the Security of Payment Act applies, within 25 Business Days of the invoice being submitted.
- 9.7 If the Principal disputes any amount claimed

in an invoice, the Principal shall:

- 9.7.1 make a determination of the amount payable;
  - 9.7.2 within the time stated in these Terms and Conditions or as prescribed by the Security of Payment Act (where relevant), provide a payment schedule to the Supplier; and
  - 9.7.3 pay amounts not in dispute in accordance with clause 9.6.
- 9.8 Any payment schedule issued by the Principal in accordance with clause 9.7.2 must:
- 9.8.1 identify the invoice to which the payment schedule relates;
  - 9.8.2 state the Principal's determination, including, for each item of the invoice:
    - (a) the amount which is not disputed and therefore payable; and
    - (b) if applicable, the amount which is disputed and the reason(s) it is disputed.
- 9.9 Without limiting clause 9.7, the Principal may issue a revised payment schedule at any time correcting any omission or error discovered in any previous payment schedule or modifying any previous payment schedule issued by it, including as a result of the provision of information under clause 9.5.
- 9.10 No interest shall be payable on any amount due to the Supplier but remaining unpaid after the date upon which it should have been paid, except where interest is required to be payable pursuant to the Security of Payment Act, in which case interest will be paid at the rate prescribed by the Security of Payment Act.
- 9.11 Without prejudice to any other rights, the Principal may deduct from or set off against any monies which may be, or become, payable to the Supplier any costs, expenses or damages which are due from the Supplier to the Principal, or which the Principal has incurred or reasonably considers it might in the future incur as a consequence of any act or omission of the Supplier, whether under or in connection with the Contract or any other agreement between the Principal and the Supplier.
- 9.12 Payment by the Principal of all or any part of a claim by the Supplier or any other amount to the Supplier is on account only and does not constitute approval of any Goods and/or Services or any other matter or thing in respect of which the payment is made.

## 10. TITLE AND RISK

- 10.1 Risk in the Goods passes to the Principal upon delivery to the Delivery Address.
- 10.2 Unencumbered legal title in the Goods

passes to Main Roads upon the earlier of payment by Main Roads of the amount which includes the Price into the Project Bank Account or delivery to the Delivery Address.

- 10.3 The Supplier acknowledges that the Principal has a purchase money security interest in the Goods (and any proceeds derived from the Goods) and may register that security interest. The Supplier must provide all information and take all other steps required by the Principal to perfect that interest and effect that registration. The Supplier agrees to waive its rights under section 157 of the *Personal Property Securities Act 2009* (Cth) (PPSA) and that, to the extent permitted by law, section 95 and chapter 4 of the PPSA shall not apply.

## 11. WARRANTIES

- 11.1 The Supplier represents and warrants that:
  - 11.1.1 the Goods and/or the Services will be supplied in an efficient manner in accordance with all applicable laws, regulations, codes and standards;
  - 11.1.2 the Goods and/or the Services strictly comply with the Specifications and Contract requirements;
  - 11.1.3 the Goods and/or the Services are free from all Defects;
  - 11.1.4 the Supplier will, and will ensure its Personnel will, exercise the standards of diligence, due care and skill normally exercised by a prudent and similarly qualified and competent supplier supplying equivalent goods and services;
  - 11.1.5 the Goods and/or the Services are fit for the purpose for which goods and services of the same kind are commonly supplied and for any other purpose described in the Contract;
  - 11.1.6 all Personnel are appropriately qualified, competent and skilled to perform the relevant part of the Services in respect of which they are engaged;
  - 11.1.7 any equipment used on the Site by the Supplier will be in a safe working condition and comply with all Legislative Requirements and be operated by suitably qualified, licensed and accredited Personnel;
  - 11.1.8 all the Goods match the description of the Goods stated in the Purchase Order;
  - 11.1.9 if the Supplier gave the Principal a sample of the Goods before the Principal issued the Contract, all the Goods correspond with the sample;

- 11.1.10 all the Goods are of new and of merchantable quality; and
- 11.1.11 all the Goods are completely owned by the Supplier and will be supplied to the Principal free of any third party interests, liens, charges or encumbrances.
- 11.2 The Supplier must immediately rectify or replace at the Principal's option and at Supplier's sole cost any Defective Goods or Services discovered within 15 months after supply or 12 months after the Goods or the Services are first used or enter into the service for which they are purchased, whichever occurs first.
- 11.3 If the Principal reasonably considers that it is necessary to immediately rectify or replace Defective Goods or Services then the Principal is not obliged to give the Supplier an opportunity to rectify or replace such Goods or Services before the Principal does so or causes a third party to do so. The Supplier must reimburse the Principal for the full cost of such replacement or rectification.
- 11.4 The Supplier's obligation to replace or rectify Defective Goods and/or Services is cumulative of other remedies available to the Principal.
- 11.5 The Supplier must ensure that the Principal and/or Main Roads has the full benefit of any manufacturer's warranties that may be applicable to the Goods or the Services and the Supplier must pursue any manufacturer's warranties on the Principal or Main Road's behalf if the Principal so requests.
- 11.6 If the Supplier has replaced or rectified Defective Goods or Services, the rectified or replacement Goods or Services must be subject to the same warranty period as the original Goods or Services, from the date of rectification or replacement.
- 11.7 If the Principal elects to accept Defective Goods or Services on one occasion, such election does not bind the Principal to accept any other Defective Goods or Services and does not affect any of the Principal's other rights under the Contract in respect of those Defective Goods or Services.
- 11.8 The Principal may assign any or all of the above warranties to any of its clients or related companies and the Supplier consents to such assignment.

**12. LIABILITY AND INDEMNITY**

- 12.1 The Supplier is liable for, indemnifies and will indemnify and keep the Principal indemnified against all Loss, and hereby releases and will release the Principal from any claim, action, suit, proceeding or demand, arising directly or indirectly out of the supply of the Goods and/or the Services, except to the extent caused or contributed to by any wrongful act or omission of the

Principal.

- 12.2 To the extent permitted by Legislative Requirements, the Principal's liability to the Supplier arising out of or in connection with the Contract is limited to the Price.
- 12.3 The Principal shall not be liable to the Supplier for any consequential, indirect or special loss, damage or expense (including but not limited to loss of profit or revenue, loss of market or loss of contracts or damage to commercial reputation).

**13. CANCELLATION**

- 13.1 In addition to its rights under clause 14, the Principal may cancel all or any part of the Contract at any time for any reason, in its sole and absolute discretion by written notice of cancellation to the Supplier.
- 13.2 Upon receipt of notice of cancellation under clause 13, the Supplier must:
  - 13.2.1 immediately cease performance of the Services to the extent specified in the cancellation notice;
  - 13.2.2 immediately take steps to cease the procurement, manufacture or delivery of the Goods to the extent specified in the cancellation notice;
  - 13.2.3 immediately take all possible action to mitigate any costs incurred by it as a result of the cancellation; and
  - 13.2.4 provide the Principal with a detailed report in the form required by the Principal relation to the Goods and the Services supplied prior to cancellation.
- 13.3 In the event of cancellation by the Principal under this clause:
  - 13.3.1 the Supplier is entitled to payment of the Price for the Services supplied and the Goods delivered to the Principal prior to cancellation but not already paid for;
  - 13.3.2 if the Goods have been shipped, but not delivered, at the time of cancellation the Principal may either:
    - (a) accept the Goods when delivered, and pay the Price for them; or
    - (b) return the Goods to the Supplier at the Principal's expense;
  - 13.3.3 if the Goods have been procured, manufactured or fabricated in accordance with the Specification (but not shipped) at the time of cancellation, the Principal shall pay costs reasonably incurred by the Supplier prior to the date of the cancellation which is directly attributable to the placing of the Contract and which the Supplier is not able to recoup in some other way;

- 13.3.4 the Supplier is not entitled to the Price of the Goods or the Services or to any compensation for that cancellation other than as specified in clauses 13.3.1 to 13.3.3; and
- 13.3.5 the maximum compensation payable under clause 13.3.1 to 13.3.3 arising out of the cancellation will not exceed the Price of the relevant the Goods or the Services cancelled.

**14. DEFAULT AND TERMINATION**

- 14.1 To the extent permitted by law, the Principal may (by written notice to the Supplier) terminate the Contract or reduce the scope of the Goods and/or Services to be provided thereunder where the head contract is terminated or where the Supplier:
  - 14.1.1 fails to remedy any breach of its obligations under the Contract within 5 Business Days of receiving written notice from the Principal requiring it to do so;
  - 14.1.2 becomes subject to a Probity Event;
  - 14.1.3 is a corporation and becomes insolvent, or has an administrator, controller or liquidator appointed under the *Corporations Act 2001* (Cth), or has receivers or managers appointed to it;
  - 14.1.4 being an individual, is unable to pay its debts when they fall due or has a trustee in bankruptcy appointed; or
  - 14.1.5 ceases or threatens to cease to carry on business,
 in which case the Principal's liability to the Supplier shall be limited to payment of the Price for the Goods and the Services supplied prior to such termination.
- 14.2 If the Principal repudiates the Contract and the Supplier terminates the Contract, the Supplier shall be entitled to claim contract damages and shall not be entitled to claim on a quantum meruit basis.
- 14.3 Termination of the Contract does not affect or prejudice any rights of the Principal that have accrued prior to the termination. The Principal's exercise of its rights under this clause does not affect or limit its ability to exercise any other rights under the Contract, at law or in equity.

**15. INSURANCE**

- 15.1 The Supplier must prior to commencing the supply of the Goods and/ or Services and for as long as it has obligations outstanding in connection with the supply of the Goods or the Services effect and maintain:
  - 15.1.1 all insurances specified in the Purchase Order;
  - 15.1.2 such insurances with a reputable

insurer having a Standard & Poor's, Moodys, AM Best or equivalent ratings agency's long-term issuer credit rating of A minus or better, or otherwise as approved by the Principal in writing; and

- 15.1.3 all necessary insurance cover for all risks arising out of the performance of its obligations under the Contract.
- 15.2 The Supplier must provide evidence satisfactory to the Principal of such insurance to the Principal as a condition precedent to the Supplier being entitled to:
  - 15.2.1 access the Site or Delivery Address;
  - 15.2.2 make a claim for payment for the supply of the Goods or the Services; and
  - 15.2.3 payment for the supply of the Goods or the Services.
- 15.3 If the Supplier does not comply with its obligations under clause 15.2, the Principal may effect and maintain the relevant insurance and pay the premiums and the amount of such payment shall be a debt due and payable by the Supplier to the Principal.
- 15.4 Insurance shall not limit the Supplier's liabilities or obligations under the Contract.
- 15.5 The Supplier must notify the Principal immediately if any incident occurs that is likely to give rise to a claim under any policy of insurance effected by the Supplier under the Contract and must keep the Principal fully informed of all subsequent developments regarding such claim.
- 15.6 Where the Principal has taken out insurance policies for the Project relevant to the Supplier, the Supplier acknowledges that it has been made aware of and agrees to comply with the terms and conditions within them.

**16. PERSONNEL**

- 16.1 The Principal may object to any Personnel who, in the Principal's opinion, do not have the appropriate qualifications, competency or skill to perform the relevant part of the Services in respect of which they are engaged, or who engage in misconduct. The Supplier must remove and immediately replace such Personnel with a suitable replacement upon being directed to do so by the Principal.

**17. SITE**

- 17.1 This clause 17 applies to the extent the Supplier or its Personnel are required to be on, or in the vicinity of, the Site.
- 17.2 The Supplier must:
  - 17.2.1 comply, and ensure its Personnel comply, with all Legislative Requirements and all policies, standards, rules and procedures in

- force from time to time, including in relation to HSE at the Delivery Address or at the Site (where applicable);
- 17.2.2 submit and amend any HSE management plan(s) as reasonably required by the Principal;
  - 17.2.3 attend all induction courses as reasonably required by the Principal;
  - 17.2.4 permit the Principal to have access to the Supplier's premises, documentation, data and Personnel as necessary to enable the Principal to verify, monitor and audit the Supplier's compliance with this clause 17;
  - 17.2.5 give the Principal not less than 7 days prior written notice before commencing the Services on the Site.
- 17.3 The Supplier acknowledges that it will not have exclusive possession of any part of the Site and will only be granted access to the Site to the extent necessary for the performance of the Services. The Supplier must cooperate and coordinate its performance of the Contract with other contractors and persons on the Site and coordinate its work with them.

## **18. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

- 18.1 The Supplier warrants that any design, equipment, methods of working and documentation including but not limited to specifications, drawings, reports and publications used or produced by the Supplier in connection with the Services do not infringe any IP Right.
- 18.2 The Supplier acknowledges that ownership of all IP Rights used or created under the Contract or in the provision of the Goods and/or Services (other than pre-existing IP Rights of the Supplier) is vested in the Principal. The Principal grants to the Supplier a non-exclusive, transferable, royalty free, irrevocable and perpetual licence to use such IP Rights for the purpose of the Supplier supplying the Goods or the Services.
- 18.3 The Supplier grants to the Principal an irrevocable, non-exclusive, world-wide, perpetual, transferable, royalty free licence to use the Supplier's pre-existing IP Rights which are supplied as part of, relate to or are otherwise connected with the Goods and/or Services to the extent necessary for the Principal or Main Roads to use the Goods and/or Services.
- 18.4 The Supplier indemnifies the Principal for all loss and expense incurred as a result of a breach of this clause.
- 18.5 If any of the Goods or Services (or their use)

is agreed or held to infringe the rights (including IP Rights) of any third party, then without prejudice to the operation of the remainder of this clause 18, the Supplier must immediately at its own cost for the Principal the right to use or to continue to use the relevant Goods or Services. If the Supplier is unable to obtain such consent, the Supplier must, at its own cost and at the Principal's direction, either replace the infringing Goods or Services with Goods or Services that do not infringe, or modify the infringing Goods or Services to avoid any infringement. The Supplier shall have no entitlement to make any claim arising out of compliance with this clause 18.5.

- 18.6 The Supplier acknowledges that the terms of the Contract are confidential and agrees not to disclose any information regarding the Contract, its existence or its terms to any third party (including by making any media release) without the express written permission of the Principal.

## **19. DISPUTE RESOLUTION**

- 19.1 If a Dispute arises then either Party may serve the other Party with a Dispute Notice.
- 19.2 Within 5 Business Days of receipt of a Dispute Notice, representatives of the Parties having authority to bind the Parties shall confer in an attempt to resolve the Dispute, which conferral shall be confidential and without prejudice.
- 19.3 If a resolution or method of resolution has not been agreed within 15 Business Days of the service of the Dispute Notice, the General Manager (or their equivalent) of the Parties shall confer for the same purpose as the Parties' representatives, which conferral shall be confidential and without prejudice.
- 19.4 Neither party may commence legal proceedings (except for urgent interlocutory relief) in relation to any Dispute unless the procedure referred to in clause 19 has been strictly complied with.
- 19.5 Notwithstanding the existence of a dispute, the Supplier shall continue to carry out its obligations under the Contract.

## **20. SECURITY OF PAYMENT**

- 20.1 The Parties agree that for the purposes of any adjudication under any Security of Payment Act in relation to the Contract or the Goods or the Services the authorised nominating authority shall be Resolution Institute.

## **21. BUILDING CODE**

- 21.1 The Supplier must ensure that it and its Personnel:
  - 21.1.1 comply with the Building Code;
  - 21.1.2 will not engage anyone who is, and are not themselves, subject to an Exclusion Sanction;

- 21.1.3 will not engage anyone who is, and are not themselves, excluded from undertaking work funded by a state or territory government, unless approval to do so is provided by the ABC Commissioner.
- 21.2 The Supplier acknowledges that compliance with the Building Code does not relieve the Supplier from responsibility to perform the Contract or from liability for any Defect in the Goods and/or Services arising from compliance with the Building Code.
- 21.3 The Supplier must ensure all its sub-contracts contain clauses equivalent to this clause 21.
- 22. PROJECT BANK ACCOUNT**
- 22.1 The Principal hereby notifies the Supplier:
- 22.1.1 that the Project is a Project Bank Account project and relevant Project Bank Account information is available from Main Roads' website at: <http://www.mainroads.wa.gov.au/technical-commercial/contracting-tomain-roads/#pba>;
- 22.1.2 of the trust created and contemplated by the PBA Trust Deed Poll and PBA Agreement and of the rights that the Supplier has to participate in that trust;
- 22.1.3 that the Supplier may 'opt-in' to become a PBA Subcontractor if the Price is less than \$20,000 (GST inclusive), by giving written notice to the Principal; and
- 22.1.4 the Supplier is a PBA Subcontract if the Price is \$20,000 or more (GST inclusive), including as a result of any variation of the Price under this Contract.
- 22.2 The Principal must, within 7 days of the Supplier's notice under clause 22.1.3, provide the Supplier with the form of an Opt-in Notice.
- 22.3 On and from receipt by the Principal of an Opt-in Notice duly signed by the Supplier, the Supplier will become an Opt-in Subcontractor and will be paid from the Project Bank Account pursuant to the operation of the PBA Trust Deed Poll.
- 22.4 If the Supplier is or becomes a PBA Subcontractor, the Principal will provide to the Supplier upon request:
- 22.4.1 a copy of the executed PBA Trust Deed Poll; and
- 22.4.2 a copy of the executed PBA Agreement which must include details of the relevant account number and name of the Project Bank Account.
- 22.5 The requirement (if any) to pay performance security comprising retention into the Project Bank Account shall only apply once the Supplier is a PBA Subcontractor and the Price equals or exceeds \$20,000 (GST inclusive).
- 22.6 If the Supplier is or becomes a PBA Subcontractor, the Principal must give the Supplier a copy of any Payment Instruction issued in respect of a payment due to the Supplier, on the same day that the Payment Instruction is issued.
- 23. PROBITY**
- 23.1 The Supplier must give notice to the Principal immediately on becoming aware that Probity Event has occurred, or is likely to occur, describing the Probity Event and the circumstances giving rise to the Probity Event.
- 24. GENERAL**
- 24.1 **Entire Agreement:** The Contract comprises the entire agreement between the Parties in respect of its subject matter and supersedes all prior agreements, quotation requests, understandings, representations, warranties, promises, statements, negotiations, letters and documents in respect of its subject matter. The Principal shall have no obligations of good faith or fair dealing except as expressly stated in the Contract.
- 24.2 If at any time in relation to the Goods and/or the Services the Supplier provides or refers to any terms or conditions not included in the Contract (including in quote forms) those terms and conditions shall not form part of or be incorporated into the Contract and are deemed to have been withdrawn in favour of the provisions of these Terms and Conditions.
- 24.3 Any terms that may have been attached or embodied in the Supplier's tender or offer or other correspondence (including quote forms and Contracts) whether before, at or after the acceptance of the Contract are not applicable.
- 24.4 **Severance:** If any provision of the Contract is determined to be void by any court then that determination does not affect any other provision of the Contract, which otherwise remains in full force and effect.
- 24.5 **Waiver:** the Principal's failure or delay to exercise a power or right does not operate as a waiver of that power or right. No waiver by the Principal of any breach of a provision of the Contract is a waiver of any subsequent breach of that provision or any other provision. A waiver is not effective unless it is in writing, signed by the Principal.
- 24.6 **Variations:** An amendment or variation to the Contract is not effective unless it is in writing and signed by a duly authorised director of the Principal prior to the supply of additional or varied Goods and/or Services.
- 24.7 **Assignment:** The Supplier must not assign

the Contract or any part of the Supplier's obligations under the Contract without the prior written consent of the Principal, which must not be unreasonably withheld. The Principal may assign the Contract or any part of it or any right or interest under the Contract, by notice to the Supplier.

- 24.8 **Subcontracting:** The Supplier must not subcontract all or any of its obligations under the Contract without the prior written consent of the Principal, which must not be unreasonably withheld.
- 24.9 **Exclusion and apportionment:** The operation of the *United Nations Convention on Contracts for the International Sale of the Goods* and, to the extent not prohibited by law, the operation of Part 1F of the Apportionment Legislation is excluded. The Supplier indemnifies the Principal against any claim, cost, expense or liability whatsoever arising out of or in connection with the Contract which are caused or contributed to by the Supplier's Personnel and for which the Supplier would have been liable to the Principal but for, or which the Principal is not able to recover from the Supplier because of, any apportionment under the Apportionment Legislation.
- 24.10 **Survival:** Clauses 12, 13, 14, 18, 19 and 19.4 shall survive the cancellation, termination, repudiation or expiry of the Contract for any reason.
- 24.11 **Governing Law:** The Contract is governed by, and is to be interpreted in accordance with the laws in force in Western Australia and the Parties submit exclusively to the jurisdiction of the courts in Western Australia.
- 24.12 **Further Assurance:** Each Party shall promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to the Contract.
- 24.13 **Third Party Rights:** The Supplier acknowledges that clauses of the Contract confer a benefit on Main Roads and may be enforced by Main Roads, notwithstanding that it is not a party to the Contract.

## 25. DEFINITIONS

In these Terms and Conditions:

**ABCC** means the Australian Building and Construction Commission referred to in section 29(1) of the BCIIIP Act.

**ABC Commissioner** means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the BCIIIP Act.

**Alliance Agreement** means the project alliance agreement entered into between the Principal and Main roads in relation to the Project.

**Apportionment Legislation** means the *Civil Liability Act 2002 (WA)*.

**apportionment** includes an apportionment of liability for damages, a limit on the amount of damages that may be awarded against a party or a determination of or judgment for the proportion of any damages that should be borne by a party.

**Bank** means the bank with which the Project Bank Account is established.

**BCIIP Act** means the *Building and Construction Industry (Improving Productivity) Act 2016 (Cth)*.

**Building Code** means the *Code for the Tendering and Performance of Building Work 2016*, made under the BCIIP Act, which is available at <https://www.legislation.gov.au/Details/F2022C00793>, as amended by the *Code for the Tendering and Performance of Building Work Amendment Instrument 2022 (Amended Code)*.

**Business Day** means a day except Saturdays, Sundays and public holidays in the State where the Site is located, or any other day excluded by the definition of "business day" in the Security of Payment Act.

**Contract** comprises the Purchase Order and these Terms and Conditions.

**Defect** means any aspect of the Goods or the Services not in accordance with the Contract, or which is damaged, deficient, faulty, inadequate or incomplete in design, performance, workmanship, quality or makeup and **Defective** has an equivalent meaning.

**Delivery Address** means the address for delivery stated in the Purchase Order.

**Delivery Date** means the date for delivery of the Goods and performance of the Services stated in the Purchase Order.

**Dispute** means a dispute or difference arising out of or in connection with the Contract.

**Dispute Notice** means a written notice stating that it is issued under clause 19 and that outlines the nature of the dispute.

**Exclusion Sanction** has the same meaning as in subsection 3(3) of the Building Code 2016.

**Goods** means the goods (if any) specified in the Purchase Order including, without limitation, manuals, operating instructions, reports and drawings.

**GST** has the meaning given to that expression in the GST Act.

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

**HSE** means health, safety and environment.

**IP Rights** means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in works or any subject matter, rights



in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registrable), rights in relation to registered or unregistered trademarks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.

**Legislative Requirements** means any applicable statutes, regulations, by-laws, orders, industrial awards, workplace agreements, proclamations of the Commonwealth, certificates, licenses, consents, permits, approvals, codes, standards and requirements of organisations.

**Loss** means any loss, damage, expense, payment or liability, whether direct or indirect, and includes consequential loss, damage or expense (including but not limited to loss of profit or revenue, loss of market or loss of contracts or damage to commercial reputation).

**Main Roads** means the Commissioner of Main Roads of Western Australia.

**Opt-in Notice** means a notice executed by an Opt-in Subcontractor in the form set out in the PBA Trust Deed Poll.

**Opt-in Subcontractor** means:

- (a) any person that is contracted by the Principal to:
  - (i) undertake work or services; or
  - (ii) undertake work or services and supply goods or materials,where the total aggregate value of such 'work or services' or 'work or services and supply goods or materials' in connection with the Project is less than \$20,000 (GST inclusive); or
- (b) who is a PBA Supplier in connection with the Project,

where the person has expressly stated to the Principal that they wish to participate in the trust created by the PBA Trust Deed Poll.

**Party** means the Principal or the Supplier, and a reference to Parties is a reference to both of them.

**Payment Instruction** means an instruction issued by the Principal to the Bank for the payment of an amount from the Project Bank Account.

**PBA Agreement** means the agreement entered into between the Principal, Main Roads and the Bank which establishes the Project Bank Account and which is in the form available at:

<https://www.mainroads.wa.gov.au/technical-commercial/contracting-to-main-roads/#pba>.

**PBA Subcontractor** means:

- (a) a person who has been contracted by the Principal to:

- (i) undertake work or services; or
- (ii) undertake work or services and supply goods or materials,

where in either case the total aggregate value of such 'work or services' or 'work or services and supply goods or materials' in connection with the Project is equal to or greater than \$20,000 (GST inclusive); and

- (b) any Opt-in Subcontractor that has signed an Opt-in Notice and given a copy of that notice to the Principal.

**PBA Supplier** means a person who has been contracted to supply goods or materials to the Principal in connection with the Project but who undertakes no design, fabrication, construction work or service of any kind in connection with the supply of the relevant goods or materials.

**PBA Trust Deed Poll** means the document of that name executed by the Principal and Main Roads, pursuant to which a Project Bank Account is to be established and moneys due to the Principal under the Alliance Agreement are to be paid and held on trust in that account, such document to be in the form as available on the Main Roads website at:

[www.mainroads.wa.gov.au/technical-commercial/contracting-to-main-roads/#pba](http://www.mainroads.wa.gov.au/technical-commercial/contracting-to-main-roads/#pba).

**Personnel** means any person, consultant or subcontractor engaged by the Supplier to provide all or any part of the Services on behalf of the Supplier.

**Price** has the meaning given in clause 8.1.

**Principal** means Civmec Construction & Engineering Pty Ltd (ABN 98 137 816 025), Seymour Whyte Constructions Pty Ltd (ABN 48 105 493 187) and WSP Australia Pty Limited (ABN 80 078 004 798) trading as the Causeway Link Alliance (ABN 42 443 876 892).

**Probity Event** includes any event or thing which occurs before or after the date of this Contract which:

- (a) has a material adverse effect on, or on the perception of, the character, integrity or honesty of the Supplier or its Personnel;
- (b) relates to the Supplier or its Personnel and has or may have a material adverse effect on the public interest, or public confidence, in the Project;
- (c) involves a breach by the Supplier or its Personnel of any:
  - (i) Legislative Requirement; or
  - (ii) any equivalent of a Legislative Requirement in a foreign jurisdiction,in relation to bribery, anti-corruption, dishonesty offences, or trust in public office offences; or

- (d) involves a material failure of the Supplier or its Personnel to achieve or maintain:
- (i) reasonable standards of ethical behaviour;
  - (ii) the avoidance of conflicts of interest which will have, or are likely to have, a material adverse effect on the ability of the Supplier or its Personnel to carry out and observe its obligations in connection with the Project; or
  - (iii) other standards of conduct that would otherwise be expected of a party involved in, or associated with, a Main Roads or Western Australian Government project.

**Project** means the Causeway Pedestrian and Cyclist Bridge Project to be carried out by the Principal.

**Project Bank Account** means the bank account established as a trust account with the Bank as more particularly defined in the PBA Trust Deed Poll.

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

**Purchase Order** means the written official confirmation of an order (with a unique system-generated reference number) issued by the Principal for the supply of the Goods and/or Services.

**Security of Payment Act** means the *Building and Construction Industry (Security of Payment) Act 2021* (WA), as amended from time to time.

**Services** means the services (if any) specified in the Purchase Order, and includes all necessary incidental services.

**Site** means the site stated in the Purchase Order.

**Specification** means all codes, standards, drawings and specifications applicable to the Contract, referred to in the Purchase Order or otherwise incorporated into the Contract by reference and to be complied with by the Supplier.

**Supplier** means the supplier of the Goods and/or Services specified in the Purchase Order.