

# DOWSING GENERAL TERMS AND CONDITIONS OF QUOTATION FOR THE PROVISION OF WORK/SERVICES



## 1 DEFINITIONS AND INTERPRETATION

- 1.1 In the Contract the following definitions apply:
- 1.1.1 **Application for Credit** means an application for credit from the Customer to Dowsing for the provision of credit;
  - 1.1.2 **Business Day** means a day other than a Saturday, Sunday or public holiday in Western Australia;
  - 1.1.3 **Contract** means the contract between Dowsing and the Customer for the Works, inclusive of the Quotation, Particulars, General Conditions, Drawings and Specifications, Schedule of Rates and Prices, and any other document expressly referred to in the Particulars as being a Contract Document;
  - 1.1.4 **Contract Default** has the meaning given in clause 6;
  - 1.1.5 **Customer** means the person who is engaging Dowsing to perform the Works as described in this document;
  - 1.1.6 **Deliverables** means any products, materials, goods or things being supplied to the Customer as part of the Works;
  - 1.1.7 **Drawings and Specifications** means the Drawings and Specifications expressly identified in the Particulars;
  - 1.1.8 **Dowsing** means Dowsing Group Pty Ltd;
  - 1.1.9 **Dowsing Materials** means all materials, plant, tools, equipment, documents and other property of Dowsing required to be utilised in the performance of the Works;
  - 1.1.10 **Force Majeure Event** means an event beyond the reasonable control of Dowsing, including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Dowsing or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Dowsing's suppliers in any way whatsoever or howsoever caused;
  - 1.1.11 **Intellectual Property Rights** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, trade, business and domain names, rights in goodwill or to sue for passing off, rights in designs, rights in computer software,

database right, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

- 1.1.12 **Particulars** mean the Quotation Particulars that form part of the Quotation;
- 1.1.13 **Price** means the Price for the Works referred to in the Particulars and payable by the Customer to Dowsing for performance of the Works in accordance with clause 9;
- 1.1.14 **PPSA** means the *Personal Property Securities Act 2009* (Cth);
- 1.1.15 **Quotation** means the Quotation to which this document relates, and which incorporates the Particulars;
- 1.1.16 **Schedule of Rates and Prices** means the Schedule of Rates and Prices referenced in item 4 of the Particulars (if any);
- 1.1.17 **Works** means the works, including the procuring and supply of Deliverables, to be performed by Dowsing for the Customer as set out in the Particulars.

1.2 Any special conditions noted in the Particulars shall prevail to the extent of any inconsistency with any other clause of the Contract (including the General Conditions). Otherwise (and unless otherwise agreed in the special conditions), the following order of precedence applies to resolve inconsistencies or discrepancies between contract documents:

- 1.2.1 the Particulars (not including the Drawings and Specifications);
- 1.2.2 the General Conditions;
- 1.2.3 the Drawings and Specifications;
- 1.2.4 any other document comprising the Contract.

## 2 BASIS OF CONTRACT

- 2.1 Acceptance of the Quotation by the Customer may occur by any of the following (or a combination of any of them):
- 2.1.1 the Customer issuing a purchase order or similar document in respect of the Works;
  - 2.1.2 the Customer instructing (orally in or writing) Dowsing to mobilise or commence the Works; or
  - 2.1.3 by conduct, including where the Customer continues to deal with Dowsing in relation to the Works.
- 2.2 Upon acceptance of the Quotation, the Contract constitutes the entire agreement between the

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- parties and supersedes any competing terms or conditions that may have been supplied by the Customer, either under any request for tender, purchase order or other document given by the Customer to Dowsing. The parties agree that there are no contracts collateral to this Contract.
- 2.3 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Dowsing which is not set out in this Contract.
- 2.4 Any samples, drawings, construction programs, descriptive matter or advertising issued by Dowsing, and any descriptions or illustrations contained in Dowsing's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Works described in them. They are not binding between the parties and shall not form part of the Contract or have any contractual force or effect.
- 2.5 The terms and conditions in this document apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Where the Customer has an Application for Credit approved by Dowsing, the terms and conditions in this document are to be read in conjunction with the terms and conditions of the Application for Credit.
- 3 PRICE**
- 3.1 On the terms set out in this Contract:
- 3.1.1 Dowsing agrees to perform the Works for the Price stated in the Particulars; and
- 3.1.2 the Customer agrees that it will pay Dowsing the Price for its performance of the works on the terms set out in this Contract.
- 3.2 Subject to any adjustment permitted by this Contract, the Price is:
- 3.2.1 where Dowsing has quoted a lump sum, the lump sum amount indicated in the Quotation;
- 3.2.2 where Dowsing has quoted rates, the sum ascertained by multiplying the measured quantity of each section or item of work actually carried out by Dowsing by the quoted rate for the section or item (as set out in Schedule of Rates and Prices);
- 3.2.3 where Dowsing has quoted a combination of a lump sum and rates, the aggregate of the sums referred to in clause 3.2.1 and 3.2.2.
- 3.3 Dowsing (acting reasonably) shall be entitled to select a method of measurement for the determination of quantities.
- 3.4 To the extent that Dowsing is entitled to be paid a rate (as opposed to a lump sum), if:
- 3.4.1 in respect of such rate the Schedule of Rates and Prices specifies a particular quantity for the section or item or work the subject of the rate; and
- 3.4.2 the measured quantity for that section or item of work (as measured by Dowsing) exceeds the specified quantity by +/- 20%,
- Dowsing shall be entitled (if Dowsing, acting reasonably, considers it necessary) to reasonably adjust the rate for that section or item of work, having regard to the cost impact on Dowsing arising out of the adjustment in quantities between specified and measured. Where Dowsing makes an adjustment, it shall notify the Customer in writing and the Price shall be adjusted accordingly.
- 3.5 Unless expressly stated to the contrary in the Quotation, the Price includes no allowance for the following events or circumstances:
- 3.5.1 the need for more than one site mobilisation and demobilisation;
- 3.5.2 delay or disruption for reasons beyond Dowsing's control;
- 3.5.3 a change in the sequence or timing of Works (or part thereof) for reasons beyond Dowsing's control;
- 3.5.4 discovery of any site condition (natural or artificial) which had not been reasonably contemplated by Dowsing at the time of providing the Quotation;
- 3.5.5 the need for location, treatment, protection, relocation or removal of buried services;
- 3.5.6 the need for excavation in rock or hard ground (ground shall be deemed to be hard ground where the ground is incapable of being easily excavated by the excavation plant that Dowsing intended at the time of Quotation to mobilise to perform the Works);
- 3.5.7 the need for treatment or disposal of any unsuitable, hazardous or contaminated material including asbestos;
- 3.5.8 the need for dewatering or dust control measures;
- 3.5.9 the need for importation, conditioning, treatment, or disposal of fill; or
- 3.5.10 the need for working outside of usual business hours.
- 3.6 Without limitation of Dowsing's rights, where an event or circumstance referred to in clause 3.5 comes to pass (other than due to a breach of Contract on the part of Dowsing) and:
- 3.6.1 Dowsing incurs loss or damage as a result; or
- 3.6.2 Dowsing's performance of any of its obligations under the Contract is disrupted, prevented or delayed as a result; or
- 3.6.3 Dowsing chooses (in its absolute discretion) to take some action in order to overcome or address (in

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	whole or part) the effects of the event or circumstance, such as the provision of additional work or services;		
	Dowsing shall be entitled to claim from the Customer (in addition to the Price) a reasonable sum (as reasonably determined by Dowsing) to reflect its loss or damage, or to reflect the value of the action taken (as the case may be), such reasonable sum to include a margin for Dowsing's on and off-site overheads and profit.		
3.7	Nothing in this clause shall compel Dowsing to do any act or thing in order to avoid or overcome an event or circumstance referred to in clause 3.5.		
<b>4</b>	<b>DOWSING'S OBLIGATIONS</b>		
4.1	Dowsing warrants to the Customer that the Works will be performed using reasonable care and skill.		
4.2	Dowsing shall supply the Works to the Customer in accordance with the Drawings and Specification. However, Dowsing shall not in any event be responsible for any defect, discrepancy, error or omission in:		
	4.2.1 the Drawings or Specification (including the selection of any material made therein);		
	4.2.2 any design associated with the Works;		
	4.2.3 any work that is carried out by the Customer or its contractors, consultants and affiliates.		
4.3	Time shall not be of the essence for the commencement or performance of the Works.		
4.4	Dowsing shall have a reasonable period of time within which to commence and perform the Works (and any agreed variation thereof).		
4.5	Dowsing shall use reasonable endeavours to meet any performance dates/milestones referred to in the Contract or in any program (including any program prepared by Dowsing), but any such dates shall be estimates only.		
<b>5</b>	<b>LIMITATIONS OF LIABILITY</b>		
5.1	Except as expressly set out in this document, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.		
5.2	For the avoidance of doubt, nothing in this Contract (including this clause 5) excludes any statutory warranty applicable to the Customer under the <i>Australian Consumer Law</i> (or equivalent State legislation) which is not capable of being excluded by agreement.		
5.3	Dowsing will, to the extent practicable, exercise reasonable care to minimise any damage to any other property. The Customer must inspect the such other property within 7 Business Days of Dowsing completing the Works and advise Dowsing in writing within that period of any		
	damage which the Customer considers is Dowsing's responsibility. If Dowsing agrees that it is liable for such damage, Dowsing shall be given a reasonable opportunity to rectify such damage within a reasonable period of time. Dowsing accepts no liability in any event for any damage notified to it outside the nominated period.		
5.4	Dowsing will not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.		
5.5	Dowsing is not responsible for any damage due to circumstances or events beyond Dowsing's control. This includes but is not limited to any damage to property or the Works which is:		
	5.5.1 caused by the Customer, or its agents or other contractors;		
	5.5.2 damage that cannot be reasonably avoided in the performance of the Works; or		
	5.5.3 caused by improper care and maintenance of the Works by the Customer.		
5.6	In undertaking the Works, noise, dust and other debris may be produced. Unless otherwise expressly agreed in the Quotation, Dowsing is not liable for any need for any person or thing to vacate any area on or near where the Works are performed due to noise, dust or debris, or for any damage or disturbance that the dust or debris may cause.		
5.7	Dowsing shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract or the performance of the Works, including in respect of any delay damages or liquidated damages that may be payable by the Customer to a third party.		
5.8	Dowsing's total liability to the Customer in respect of any and all other losses arising under or in connection with the Contract and the Works, however arising, shall in not exceed the Price.		
5.9	Nothing in this clause 5 shall limit or exclude Dowsing's liability for:		
	5.9.1 death or personal injury caused by Dowsing's negligence, or the negligence of its employees, agents or subcontractors; or		
	5.9.2 fraud or fraudulent misrepresentation.		
5.10	This clause 5 shall survive termination of the Contract for any reason.		
<b>6</b>	<b>CUSTOMER'S OBLIGATIONS</b>		
6.1	The Customer warrants and agrees that it will:		
	6.1.1 ensure that the Particulars, the Drawings and Specifications, and further any other information supplied to Dowsing for the purposes of this Contract (including in any request for		

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- quotation), is complete, accurate and suitable for its intended purpose;
- 6.1.2 obtain and maintain all necessary approvals, permissions and consents which may be required for the Works to be performed at the premises or site in which they are being performed before the date on which the Works are to commence (including any approvals from adjoining landowners);
- 6.1.3 promptly provide Dowsing with such information as Dowsing may reasonably require in order to undertake the Works, and ensure that such information is accurate in all respects;
- 6.1.4 ensure that Dowsing is not interrupted or disrupted in the performance of the Works;
- 6.1.5 provide Dowsing with adequate, continuous and uninterrupted access to the areas in which Dowsing will be required to work in order to perform this Contract, including provision of:
- (a) suitable loading, unloading and parking areas;
  - (b) suitable and accessible laydown areas at the site for storage of Dowsing Deliverables and Dowsing Materials;
- 6.1.6 except to the extent that Dowsing has expressly agreed to the contrary in the Contract, provide Dowsing in a timely fashion with any lifting equipment, access equipment or hoists as may be reasonably required Dowsing to transport (without delay) Deliverables and Dowsing Materials across the site to the place where the Works are to be performed;
- 6.1.7 provide all services and facilities as are necessary or desirable for the timely and safe performance of Dowsing's works, except to the extent that Dowsing has expressly agreed in the Contract to provide them, including without limitation water, power, ablutions, site offices and traffic management and (where work is outside Perth metropolitan area) flights, transport and accommodation;
- 6.1.8 ensure that the site where Dowsing will be carrying out any part of the Works are:
- (a) safe and free of any obstructions (including buried services) which would disrupt or delay Dowsing's performance of the Works; and
  - (b) properly prepared and ready for the performance of the Works;
- 6.1.9 ensure the safety of Dowsing's staff while on site, comply with all applicable occupational health and safety legislation, and do all things necessary to ensure that any other contractor, servant, agent, guest or client of the Customer does not injure any Dowsing staff;
- 6.1.10 in relation to all Dowsing Materials that are located at the Customer's premises or left in the Customer's custody or possession:
- (a) keep and maintain those Dowsing Materials in safe custody and in good condition at its own risk;
  - (b) not dispose of or use or encumber those Dowsing Materials, other than in accordance with Dowsing's written consent; and
  - (c) pay on demand the replacement cost of any of those Dowsing Materials that are lost or stolen while at the Customer's premises or in the Customer's possession or custody.
- 6.2 Any breach of the Customer's obligations and warranties in clause 6.1 shall be a **Contract Default**.
- 6.3 Without limitation of Dowsing's rights, where:
- 6.3.1 Dowsing incurs loss or damage by reason of a Contract Default;
- 6.3.2 Dowsing's performance of any of its obligations under the Contract is disrupted, prevented or delayed by reason of a Contract Default; or
- 6.3.3 Dowsing chooses (in its absolute discretion) to take some action in order to overcome or address (in whole or part) the effects of a Contract Default, such as the provision of additional work or services;
- Dowsing shall be entitled to claim from the Customer a reasonable sum (as reasonably determined by Dowsing) to reflect its loss or damage, or to reflect the value of the action taken (as the case may be), such reasonable sum to include a margin for Dowsing's on- and off-site overheads and profit.
- 7 DEFECTIVE WORKS**
- 7.1 Where the Customer considers that any aspect of the Works have not been performed in accordance with the Contract, the Customer

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- must give prompt written notice thereof to Dowsing, including full particulars of the nature, basis and location of the alleged non-conformance with the Contract.
- 7.2 The Customer must further give Dowsing a reasonable opportunity to inspect and test (including via a consultant or expert) the alleged non-conforming aspect of the Work.
- 7.3 Dowsing shall further be given a reasonable opportunity to attend to rectification of any failure of the Works to conform to the Contract.

## 8 VARIATIONS

- 8.1 The Customer may request Dowsing to vary the scope of the Works for a reasonable price but Dowsing shall not be obliged to agree to any such variation.
- 8.2 Where the Customer wishes Dowsing to carry out a variation to the Works, the parties shall (if Dowsing is otherwise agreeable to carrying out that variation) agree a reasonable price for such variation.
- 8.3 In the event that Dowsing agrees to carry out a variation but the parties have not or are unable to agree a reasonable price, Dowsing shall (acting reasonably) determine the price of the variation.
- 8.4 In pricing a variation, Dowsing may (to the extent it is reasonable to do so) have regard to any applicable rates and prices in the Schedule of Rates and Prices.
- 8.5 Unless otherwise agreed by Dowsing in writing:
- 8.5.1 Dowsing shall be entitled to render a separate invoice for the full price of the variation; and
- 8.5.2 Dowsing shall be entitled to defer performance of the works the subject of the variation until Dowsing's invoice for the price of the variation is paid in full.
- 8.6 Varied work agreed to be performed by Dowsing shall be otherwise subject to the terms of this Contract.

## 9 PAYMENT TERMS

- 9.1 Dowsing shall make any claim for payment from the Customer by way of invoice.

### Invoices for the Price

- 9.2 Dowsing is entitled to invoice the Customer for the Price:
- 9.2.1 in the manner set out in the Particulars (if applicable); or
- 9.2.2 the Particulars do not indicate the manner of invoicing for the Price, progressively every 14 days following the date of Contract for the value of Works performed by Dowsing up to the date of the invoice, plus the value of any deposit or fee paid or agreed to be paid by Dowsing to its suppliers in that period to acquire any

Deliverable or material necessary to perform, or be incorporated into, the Works.

- 9.3 Where by this Contract Dowsing invoices for the value of Works performed by Dowsing up to the date of the invoice, then (subject to any contrary position stated in the Particulars):

- 9.3.1 to the extent the Price is a lump sum for the performance of Dowsing's obligations under this Contract (**lump sum obligations**), the value claimed in the invoice shall be Dowsing's assessment of proportion of the Price that is equal to the proportion that the obligations performed and detailed in the invoice are of the lump sum obligations; or
- 9.3.2 to the extent the Price is such that Dowsing is to be paid in accordance with rates, the value claimed shall be Dowsing's assessment of the value of the obligations performed and detailed in the claim calculated by reference to those rates (subject to any adjustment to those rates authorised by this Contract); or
- 9.3.3 in any other case — a reasonable amount for the obligations performed and detailed in the invoice.

- 9.4 Where a deposit is referred to in the Particulars as payable by the Customer to Dowsing, then Dowsing is entitled to withhold performance of the Works (including the ordering of any Deliverables) until the deposit has been paid in full.

- 9.5 Any failure on Dowsing's part to issue an invoice on the date or dates on which Dowsing is entitled to issue an invoice shall not be a breach of this Contract or prejudice Dowsing's rights to invoice and Dowsing may issue an invoice after the date on which it would otherwise have been entitled to invoice the Customer.

### Assessment and payment

- 9.6 Within 14 days of the date of receipt of an invoice, or within any other period of time specified in the Particulars, the Customer shall:
- 9.6.1 review the invoice to check that it is in accordance with the Contract;
- 9.6.2 to the extent that the Customer disputes paying the invoice, or any aspect of it, notify Dowsing in writing of the extent to which, and grounds on which, the invoice is disputed; and
- 9.6.3 in any event pay the full amount of the invoice to Dowsing (in full and in cleared funds to the bank account nominated in the invoice).
- 9.7 Where the Customer does not dispute the invoice strictly in accordance with clause 9.6, the invoice shall be deemed to be undisputed.
- 9.8 Where the Customer disputes an invoice for any reason, the parties must negotiate in good faith



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and endeavour to resolve the dispute within 7 days of the date on which the Customer first provided written notice of the dispute in accordance with clause 9.6.2. If the dispute is not resolved within this period then it may be resolved by a court of competent jurisdiction in Western Australia.

- 9.9 Time for payment shall be of the essence of the Contract.
- 9.10 Without limiting any other right or remedy of Dowsing, if the Customer fails to make any payment due to Dowsing under the Contract by the due date for payment, Dowsing shall have the right to charge interest on the overdue amount at the rate of 10% per cent per annum from the original due date for payment until the date of actual payment of the overdue amount.
- 9.11 The Customer shall pay all amounts due under the Contract in full without any abatement, deduction, set-off or withholding.

## Invoices for other payment claims that may be made under this Contract

- 9.12 Where, by this Contract, Dowsing is entitled to claim an amount from the Customer, or invoice the Customer, for an amount other than (or in addition to) the Price, Dowsing may (at a time of its choosing subject to this Contract) submit an invoice to the Customer for such amount. Such invoice shall be reviewed and paid for by the Customer as if it were an invoice pursuant to clause 9.2 above and clauses 9.6 to 9.11 shall apply with any necessary changes.

## 10 GST

- 10.1 Unless expressly agreed otherwise in writing, all amounts stated in the Contract are exclusive of GST. Where any taxable supply for GST purposes is made by Dowsing to the Customer under this Contract, the Customer must (on receipt of a valid GST invoice from Dowsing) pay to Dowsing such additional amounts in respect of GST as are chargeable at the same time as payment is due for the Works. Terms used in this paragraph which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning as in that Act.

## 11 CONFIDENTIALITY

- 11.1 The Customer shall keep in strict confidence the Price, all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by Dowsing to the Customer, its employees, agents or subcontractors, and any other confidential information concerning the Dowsing business or its products or its services which the Customer may obtain from entering into this Contract. The Customer shall restrict disclosure of such confidential information to circumstances where such disclosure is required

by law or necessary to perform the Contract. This clause 11 shall survive termination of the Contract.

## 12 TERMINATION AND SUSPENSION

- 12.1 Without limiting any other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 12.1.1 the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing of the breach;
- 12.1.2 the other party becomes insolvent or commits an act or insolvency which includes, but is not limited to:
- (a) if a controller, receiver, administrator or liquidator is appointed to the other party or any part of its property;
- (b) if the other party commits an act of bankruptcy or fails to comply with a statutory demand;
- (c) any other event of insolvency occurs; or
- (d) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 12.1.3 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his/her own affairs or becomes a patient under any mental health legislation.
- 12.2 Without limiting its other rights or remedies, Dowsing may immediately suspend performance of its obligations under this Contract by giving written notice to the Customer whenever:
- 12.2.1 the Customer fails to pay any amount due under this Contract on the due date for payment; or
- 12.2.2 a Contract Default is subsisting, and may terminate the Contract by further written notice where such failure to pay or Contract Default (as the case may be) continues to subsist for a further 7 days after Dowsing suspends performance.

## 13 CONSEQUENCES OF TERMINATION

- 13.1 On termination of the Contract for any reason:
- 13.1.1 the Customer shall immediately pay to Dowsing all of Dowsing's outstanding unpaid invoices and interest (if applicable);

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- 13.1.2 in respect of work the subject of this Contract which has been performed by Dowsing (including the procurement or partial procurement of any Deliverables) but for which no invoice has yet been submitted to the Customer, Dowsing shall submit an invoice to the Customer as soon as practicable for the value of such work, and such invoice shall be reviewed and paid for by the Customer as if it were an invoice pursuant to clause 9.2 above and clauses 9.6 to 9.11 shall apply with any necessary changes;
- 13.1.3 if Dowsing was entitled, immediately prior to the termination, to render any invoice pursuant to the Contract, Dowsing shall be entitled to render such invoice as soon as practicable following termination and such invoice shall be reviewed and paid for by the Customer as if it were an invoice pursuant to clause 9.2 above and clauses 9.6 to 9.11 shall apply with any necessary changes;
- 13.1.4 the Customer shall return all of Dowsing Materials and any Deliverables which have not been fully paid for at the date of termination. If the Customer fails to do so, then Dowsing may, without prior notice, enter the Customer's premises or the site on which the Works were being performed and take possession of them. Until such time as the Dowsing Materials have been returned to Dowsing, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;
- 13.1.5 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 13.1.6 clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 13.2 Where Dowsing terminates the Contract pursuant to clause 12, Dowsing shall be entitled to claim from the Customer such relief as it could have claimed from the Customer as if Dowsing had terminated for repudiation at common law.
- 14 INSURANCE AND RISK**
- 14.1 Deliverables supplied by Dowsing to the Customer in the course of performance of the
- 14.2 Works are at the Customer's risk immediately on delivery to the Customer or into the Customer's custody (whichever is the sooner). The Customer must insure the Deliverables at its own cost from the date of delivery until they are paid for. The Customer must note the interest of Dowsing in the Deliverables on the insurance policy and, at the request of Dowsing, must produce an insurance certificate to this effect for inspection. Dowsing agrees to only take out those insurances as required by law. The Customer is responsible for all other insurance that may be necessary or desirable in respect of the Works. In any event, the Customer is responsible for effecting and maintaining:
- 14.2.1 any insurance required by law;
- 14.2.2 contract works insurance in respect of the Works for reinstatement value, in respect of which Dowsing is an insured party and which will respond even if Dowsing is a negligent party;
- 14.2.3 public liability insurance with a coverage limit of not less than \$10 million.
- 15 OWNERSHIP AND RETENTION OF TITLE**
- 15.1 Property in the Deliverables supplied by Dowsing under this Contract does not pass to the Customer until Dowsing has been paid the Price in full. Until such time as the Price is paid in full, the Customer:
- 15.1.1 must properly store, protect and insure the Deliverables which have been delivered to the Customer or to site in a manner that clearly shows that such Deliverables are the property of Dowsing;
- 15.1.2 may not re-sell or otherwise deal with or encumber or grant any interest to any third party in respect of the Deliverables except with Dowsing's express written consent.
- 15.2 Without prejudice to any other rights of Dowsing, Dowsing is entitled to reclaim possession of the Deliverables wherever Dowsing has reason to believe that it is entitled to exercise a right of termination under this Contract.
- 15.3 The Customer irrevocably authorises Dowsing to at any time and without prior notice enter any premises or site upon which Deliverables or Dowsing Materials are stored to enable Dowsing to reclaim possession of them.
- 15.4 Dowsing's property in the Deliverables is not affected by the fact that the Deliverables become fixtures attached to premises of the Customer or a third party.
- Personal Property Securities Act 2009 (Cth) (PPSA)**
- 15.5 Dowsing may register a security interest as defined in the PPSA in relation to any security interest contemplated or constituted by this Contract and the proceeds of any dealings with

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- or in respect of the Deliverables (**PPS Security Interest**).
- 15.6 The Customer is required to do anything that Dowsing requires of it for the purposes of:
- 15.6.1 ensuring that Dowsing's PPS Security Interest in the Deliverables is enforceable, perfected and otherwise effective under the PPSA;
  - 15.6.2 enabling Dowsing to apply for any registration, or give any notification, in connection with the PPS Security Interest so that the PPS Security Interest has the priority required by Dowsing;
  - 15.6.3 ensuring that the PPS Security Interest remains vested in Dowsing;
  - 15.6.4 enabling Dowsing to register a "financing statement" or a "financing change statement"; and
  - 15.6.5 enabling Dowsing to exercise its rights in connection with the PPS Security Interest.
- 15.7 The Customer need not give any notice under the PPSA (including a notice of a verification statement) and Dowsing waives its right to receive such notices, unless the notice is required by the PPSA and cannot be excluded.
- 15.8 To the extent that Chapter 4 of the PPSA applies to any PPS Security Interest under this Contract, the following provisions of the PPSA do not apply, and for the purposes of section 115 of the PPSA are "contracted out" of: s 95, s 118, s 121(4), s 125, s 130, s 132(3)(d), s 132(4), s 135, s 142 and 143, and all other provisions that are contrary to this Contract.
- 15.9 The Customer will not create or purport to create any security interest in the Deliverables or the Dowsing Materials, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the Deliverables or the Dowsing Materials in favour of a third party without Dowsing's prior written consent.
- 15.10 To the extent that any other security interest is registered on the PPSR over the Deliverables or the Dowsing Materials, the Customer agrees to remove or take all steps as directed by Dowsing to remove such registration within a reasonable time (and in any event within 14 days) of being notified by of the existence of the registration of that security interest.
- 15.11 Unless otherwise agreed in writing, and to the extent permitted by the PPSA, Dowsing and the Customer agree not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person, or any other person or entity instructed by an interested person. The Customer waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.

## 16 GENERAL

- 16.1 Dowsing may at any time and without prior notification to the Customer assign any or all of its rights under the Contract, or subcontract the performance of any part of the Works to a subcontractor.
- 16.2 The Customer must not, without the prior written consent of Dowsing, assign any of its rights under the Contract.
- 16.3 Any notice or other communication required to be given to a party under or in connection with this Contract must be in writing and must be delivered to the other party:
- 16.3.1 personally; or
  - 16.3.2 by fax or email to the numbers/addresses nominated in the Quotation (which details may be updated by notice in writing to the other party pursuant to this clause).
- 16.4 A waiver of any right under the Contract by Dowsing is only effective if it such waiver is in writing. Any such waiver shall not be deemed to be a waiver of any subsequent breach or default.
- 16.5 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 16.6 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 16.7 This Contract is governed by the Law of the State of Western Australia. The parties submit to the non-exclusive jurisdiction of its courts.