

Contract for Supply of [insert description of Equipment]

Tomago Aluminium Company Pty Limited

acting on behalf of and as agent for Alcan Primary Metal
Australia Pty Limited, Gove Aluminium Finance Limited,
Cathjoh Holdings Pty Limited and Hydro Aluminium Australia
Pty Limited (the Participants in the Tomago Aluminium
Project Joint Venture)

[insert name of Supplier]

Supply of [insert description]

FORMAL INSTRUMENT OF AGREEMENT

Date	[insert date]
Parties	<p>Tomago Aluminium Company Pty Limited (ABN 68 001 862 228), acting on behalf of and as agent for Alcan Primary Metal Australia Pty Limited, Gove Aluminium Finance Limited, Cathjoh Holdings Pty Limited and Hydro Aluminium Australia Pty Limited (the participants in the Tomago Aluminium Project Joint Venture), of 638 Tomago Road, Tomago NSW 2322 (TAC)</p> <p>[insert name of Supplier] (ABN [*]) of [address] (Supplier)</p>
Recitals	<p>TAC requires the Supplier to supply the Equipment.</p> <p>The Supplier represents and warrants to TAC that it is experienced in the supply of equipment of a similar size and complexity to the Equipment and has the skills and experience needed to supply the Equipment in accordance with this Contract.</p> <p>TAC hereby engages the Supplier to supply the Equipment on the terms and conditions set out in this Contract and the Supplier accepts that engagement.</p>

THE PARTIES AGREE as follows:

1. Contract

This Contract is comprised of the following documents:

Document	Annexure
This Formal Instrument of Agreement	
General Conditions of Contract	
Contract Particulars	Annexure Part A
Form of Unconditional Undertaking	Annexure Part B
Description of Equipment	Annexure Part C
Schedule of Prices	Annexure Part D
Subcontractor Statement and Statutory Declaration [Note to TAC User: See clause 34 as to the relevance of this Annexure]	Annexure Part E

Supply of [insert description]

2. Parties to Carry Out Obligations

The parties promise to carry out and complete their respective obligations in accordance with this Contract.

3. Parties to give effect to this Contract

The parties agree that they will do everything reasonably necessary to give effect to this Contract.

4. Warranties

The Supplier represents and warrants to TAC, and repeats on each day of the term of this Contract, that:

- (a) it has examined and understands the documents that comprise this Contract;
- (b) it has full power and authority to execute this Contract and perform its obligations under it;
- (c) this Contract has been duly executed by it;
- (d) the obligations undertaken by it in this Contract are enforceable against it;
- (e) the execution of this Contract by it will not contravene any Legislative Requirement;
- (f) it is suitably skilled, experienced and qualified to supply the Equipment in accordance with this Contract;
- (g) it will, in performing its obligations under this Contract, exercise a standard of care, skill, judgment and diligence as would be expected of a supplier that is an expert in carrying out activities of a nature similar to those contemplated in this Contract;
- (h) it has and will retain all licences, registrations and permits required by all relevant Legislative Requirements to supply the Equipment in accordance with this Contract;
- (i) it will only engage employees and Subcontractors who are suitably skilled, licenced and experienced to carry out relevant activities in accordance with this Contract;
- (j) it will comply with all Legislative Requirements and Policies applicable to this Contract;
- (k) all Equipment and other items and documents supplied under this Contract by the Supplier will be new or unused and in 'as new' condition, in conformity with their description and fit for the purpose(s) for which they are supplied under this Contract;
- (l) TAC will receive good and clear title to the Equipment when title passes to it;
- (m) the Equipment, on its Acceptance, will:
 - (i) comply with this Contract in all respects;
 - (ii) comply with all relevant Legislative Requirements;
 - (iii) be fit for the purpose stated in Item 5;
 - (iv) be suitable for the conditions in which it will operate;
 - (v) meet the standards specified in this Contract, and to the extent standards are not specified, all relevant Australian standards;
 - (vi) be free from Defects; and

Supply of [insert description]

- (vii) not infringe any Intellectual Property Right or other protected right; and
- (n) all information provided by or on behalf of the Supplier to TAC in respect of the Equipment prior to the execution of this Contract by TAC, was true and accurate and was not misleading in any material respect when provided.

5. Warranties Unaffected

The Supplier acknowledges and agrees that:

- (a) the warranties in clause 4 and the Supplier's other warranties, obligations and liabilities under this Contract, remain unaffected; and
- (b) it will bear full liability in accordance with this Contract for the supply of the Equipment, notwithstanding any one or more of the following:
 - (c) any design work carried out by or on behalf of TAC, the Supplier or others before the date of this Contract;
 - (d) the involvement of Subcontractors in the supply of any Equipment;
 - (e) any receipt or review of, comment on or rejection or approval of any plant, equipment, material, document or information provided to TAC or the Engineer by or on behalf of the Supplier;
 - (f) any Variation directed or approved by the Engineer; or
 - (g) any failure by the Engineer to direct or approve a Variation requested by the Supplier.

6. No Duty of Care or Liability Imposed on TAC or the Engineer

No receipt of nor any review, comment, approval, consent, rejection or permission to use or supervision by or on behalf of TAC or the Engineer, nor any failure by either of them to do any of those things, will:

- (a) give rise to any entitlement for the Supplier to recover any additional payment or adjustment to the Contract Sum;
- (b) limit or exclude any obligation or liability of the Supplier;
- (c) prejudice any Indemnified Person's rights against the Supplier;
- (d) impose on TAC or the Engineer any duty of care to the Supplier;
- (e) result in TAC or the Engineer assuming any responsibility or liability for:
 - (i) the adequacy, quality, compliance or fitness of; or
 - (ii) any errors in or omissions from,the Equipment or other information provided by the Supplier; or
- (f) constitute an admission that TAC, the Engineer or any of their agents or employees have checked any document or information for errors, omissions or compliance with this Contract.

7. Acknowledgment of Reliance

The Supplier acknowledges and agrees that TAC:

Supply of [insert description]

- (a) has relied on each of the acknowledgements, warranties and agreements given in this Contract in entering into it; and
- (b) would not have entered into this Contract but for those acknowledgements, warranties and agreements.

8. Prior Work

- (a) This Contract applies retrospectively to any and all activities which have or should have been undertaken by the Supplier in respect of the Equipment, regardless of whether or not those activities were undertaken prior to the date of this Contract.
- (b) A payment made to the Supplier for activities which have or should have been undertaken by the Supplier prior to the date of this Contract as part of the supply of the Equipment is part payment of the Contract Sum.
- (c) The Supplier acknowledges that it is not entitled to claim an EOT in respect of any act, matter or thing which occurred or should have occurred prior to the date of this Contract.

Supply of [insert description]

Executed as an **AGREEMENT**

Executed as an agreement by **Tomago Aluminium Company Pty Limited**
(ABN 68 001 862 228) by its authorised representative:

Director Signature

Director / Secretary Signature

Print Name (BLOCK LETTERS)

Print Name (BLOCK LETTERS)

Executed as an agreement by [insert Supplier]
(ABN [*]) in accordance with section 127 of the *Corporations Act 2001* (Cth):

Director Signature

Director / Secretary Signature

Print Name (BLOCK LETTERS)

Print Name (BLOCK LETTERS)

[Note to TAC: The above block will need to be amended if the Supplier is not a company.]

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GENERAL CONDITIONS OF CONTRACT

1. Definitions and Interpretation

1.1. Definitions

In this Contract, except where the context otherwise requires:

Acceptable means:

- (a) the Equipment is in accordance with the requirements of this Contract except for minor Defects which do not prevent the Equipment from being reasonably capable of being used for the stated purpose in Item 5 or elsewhere in this Contract;
- (b) the Equipment satisfies the Acceptance Testing; and
- (c) all manuals, documents and other information required under this Contract have been supplied.

Acceptance means notification under clause 31.1 by the Engineer that the Equipment is Acceptable.

Acceptance Testing mean the testing described in clause 29.1 and includes examine and measure.

Approved Subcontractor has the meaning in clause 10.2.

Author means any person, including any employee of the Supplier or a Subcontractor or any other contributing person, who is the author of any Copyright Work licensed to TAC under this Contract.

Business Day means any day other than:

- (a) a Saturday, Sunday or public holiday in New South Wales; or
- (b) 27, 28, 29, 30 or 31 December.

Claim includes any claim, action, demand or proceeding including for an increase in the Contract Sum, for payment of money (including damages) or for an EOT under, arising out of, or in any way in connection with, this Contract.

Confidential Information means all documents and information in any form concerning the affairs of TAC or any of its Related Bodies Corporate, but does not include documents or information which:

- (a) enter the public domain through no fault of the Supplier or any of its Subcontractors, agents or employees;
- (b) the Supplier can establish was already in its possession at the time of its disclosure by TAC and was not acquired directly or indirectly from TAC; or
- (c) otherwise lawfully became available to the Supplier from a third party who is under no obligation of confidentiality in respect of it.

Contract has the meaning in clause 6.

Contract Sum means, where TAC accepted:

Supply of [insert description]

- (a) a lump sum, the lump sum;
- (b) unit prices, the sum of the products ascertained by multiplying the unit prices set out in the Schedule of Prices by the corresponding quantities; or
- (c) a lump sum and unit prices, the aggregate of the sums referred to in paragraphs (a) and (b),

including Provisional Sums, but excluding additions or deductions required under this Contract.

Copyright Works are copyright works forming part of the Design Documents or any other documentation, which the Supplier is required to provide to TAC under this Contract.

Date for Delivery means the date stated in Item 8, but if any EOT for Delivery is directed by the Engineer or allowed in any arbitration or litigation, it means the date resulting therefrom.

Date of Delivery means:

- (a) the date when the Equipment is Delivered; or
- (b) where another date is determined in any arbitration or litigation as the date upon which the Equipment was Delivered, that other date.

Defect includes any:

- (a) defect or deficiency in design, materials or workmanship;
- (a) omission of any Equipment or part of any Equipment;
- (b) non-compliance of any Equipment, or any part thereof, with this Contract; and
- (c) damage to the Equipment due to any such defect, deficiency, omission or non-compliance.

Defects Liability Period has the meaning in clause 32.

Deliver has the meaning in clause 28.1 and **Delivered** and **Delivering** have corresponding meanings.

Delivery has the meaning in clause 28.1.

Delivery Place means the place stated in Item 7.

Delivery Program has the meaning in clause 25.4.

Design Documents means all drawings, specifications, manuals, designs and other information, calculations, samples, models, patterns and the like which:

- (a) are required to design or manufacture the Equipment; or
- (b) this Contract requires the Supplier to create or provide,

in all forms, including electronic.

Design Life means the relevant design life set out in Annexure Part C.

Direction includes agreement, approval, assessment, authorisation, decision, demand, determination, explanation, instruction, notice, permission, rejection, request or requirement.

Dispute has the meaning in clause 42.

Engineer means the person stated in Item 6 or any other person from time-to-time appointed by TAC to be the Engineer and notified as such in writing to the Supplier and, in respect of relevant functions, includes an Engineer's Representative.

Engineer's Representative means a person appointed in writing by the Engineer under clause 19.

Environment includes:

- (a) ecosystems and their constituent parts, including people and communities;
- (b) all natural and physical resources;
- (c) the qualities and characteristics of locations and areas that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest and amenity; and
- (d) the social, economic, aesthetic and cultural conditions that affect, or are affected by, things mentioned in paragraphs (a), (b) or (c).

EOT (from 'extension of time') has the meaning in clause 28.3.

Equipment means the goods to be supplied and installed by the Supplier pursuant to this Contract and identified in Annexure Part C.

Excluded Loss means:

- (a) loss of revenue, use, goodwill, profit, income, business, contract or anticipated savings;
- (b) financing costs or increase in operating costs; or
- (c) other financial or economic loss or any other special or indirect loss or damage (excluding any losses and damages to the extent arising naturally according to the usual course of things from the relevant conduct or breach).

Final Certificate has the meaning in clause 34.7.

Final Payment Claim means the final Progress Claim referred to in clause 34.7.

Good Design and Manufacturing Practices means practices followed when design and manufacturing work is undertaken:

- (a) in a sound and workmanlike manner;
- (b) with due care and skill in applying internationally accepted equipment design, engineering and manufacturing procedures;
- (c) with due expedition and without delay;
- (d) in a manner which allows for the Equipment to be efficiently manufactured;
- (e) in accordance with all applicable Legislative Requirements; and
- (f) using materials of merchantable quality which are fit for the purpose stated in Item 5.

Hazardous Substance means any substance that would or might reasonably be expected to cause damage or injury to human beings, property or the Environment, as well as materials with any of the following characteristics:

Supply of [insert description]

- (a) a susceptibility to spontaneous heating;
- (b) a threshold limit value below 500 ppm in the case of a gas or vapour or 5 ug/- cubic metre for fumes and dust;
- (c) a single oral LD-50 below 500 ug/kg;
- (d) is subject to polymerisation accompanied by the release of large amounts of energy;
- (e) is a strong oxidising or reducing agent;
- (f) is, or contains, a chemical listed as, or suspected to be, carcinogenic by the World Health Organisation International Agency for Research on Cancer; or
- (g) is, or contains, a chemical known to cause birth deformities.

Indemnified Persons has the meaning in clause 43.

Information Document means any information, data, document or material (in any format or medium and whether oral or written) which:

- (a) was made available by, or on behalf of, TAC to the Supplier in connection with this Contract or the Equipment; or
- (b) is referred to, or incorporated by reference, in a document referred to in paragraph (a), whether issued or made available on, before or after the date of this Contract.

Intellectual Property Right means any and all copyright and analogous rights, Moral Rights, all rights in relation to inventions (including patent rights), rights in relation to registered and unregistered trade marks (including service marks), rights in relation to registered designs, confidential information (including trade secrets and know how), circuit layouts and database rights, processes, methodologies, know-how and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields.

Item means an item in Annexure Part A.

Legislative Requirement includes:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the supply or Delivery of the Equipment or a particular part is being carried out;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction where the supply or Delivery of the Equipment or a particular part is being carried out; and
- (c) fees and charges payable in connection with the foregoing.

Moral Rights means has the same meaning as in the *Copyright Act 1968* (Cth) and similar rights existing under foreign law.

Policies means all relevant TAC policies and procedures (available at <http://www.tomago.com.au/products/suppliers-and-contractors>) and those set out in Item 9, in each case as may be amended by TAC from time-to-time.

PPS Act means the *Personal Property Securities Act 2009* (Cth) and regulations made under it.

Progress Certificate has the meaning in clause 34.2.

Provisional Sum means each of the sums set out in Item 13.

Qualifying Cause of Delay means any negligent act or omission or default of TAC or any of its consultants, agents or other suppliers (not being employed by the Supplier).

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Schedule of Prices means the schedule of prices set out in Annexure Part D.

Security means an approved unconditional undertaking (the form in Annexure Part B is approved) given by a bank with a commercial branch in Newcastle that is approved by TAC in writing.

Security Interest means a mortgage, charge, lien, pledge, security interest, title retention, preferential right, trust arrangement, contractual right of set off or other security arrangement in favour of any person, and includes any 'security interest' as defined in the PPS Act.

Separable Portion means any portion of the Equipment identified as such in this Contract or by the Engineer pursuant to clause 4.

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

Subcontractor means any person to whom the Supplier subcontracts the performance of any of its obligations under this Contract.

Supplier means the person bound to carry out and complete the supply of the Equipment and stated in Item 3.

Supplier's Design Obligations means all tasks necessary to design and specify the Equipment, including preparation of the Design Documents.

TAC means the person stated in Item 1.

Variation has the meaning in clause 33.

WHS Legislation means all Legislative Requirements relating to work, health and safety, including the *Work Health and Safety Act 2011* (NSW), *Work Health and Safety Regulation 2011* (NSW) and associated regulations.

1.2. Interpretation

In this Contract:

- (a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
- (b) if the time for doing anything ends on a day that is not a Business Day, it is deemed to end on the day next following which is a Business Day;
- (c) headings are for convenience and do not form part of this Contract;
- (d) words in the singular include the plural and vice versa;
- (e) words importing a gender include every gender;
- (f) communications between the Engineer, TAC and the Supplier (including all deliverables, manuals, labels, instructions and drawings) must be in English;

Supply of [insert description]

- (g) a reference to a party includes its executors, administrators, successors and assigns;
- (h) a reference to a document is to that document as varied, novated or replaced;
- (i) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) prices and payments are to be in the currency in Item 11 and made at the place for payment in Item 11; and
- (k) all references to time are to local time in Tomago, New South Wales.

1.3. No Contra Proferentem

No term of this Contract will be construed against a party on the basis that this Contract or the term in question was put forward or drafted by or on behalf of that party.

2. Nature of Contract

The Supplier must carry out and complete the Delivery in accordance with this Contract and TAC Directions authorised by this Contract and TAC must pay the Supplier the Contract Sum.

3. Provisional Sums

The Contract Sum includes the Provisional Sums stated in Item 13 for the items stated therein.

A Provisional Sum is not itself payable by TAC, but where pursuant to a Direction of the Engineer the item to which the Provisional Sum relates is supplied by the Supplier, the item must be priced by the Engineer and the difference added to or deducted from the Contract Sum (as appropriate).

4. Separable Portions

Separable Portions may be directed by the Engineer, who must clearly identify for each, the:

- (a) portion of the Equipment;
- (b) Date for Delivery; and
- (c) respective amounts for Security and liquidated damages (calculated pro-rata according to the ratio of the Engineer's valuation of the Separable Portion to the Contract Sum).

5. Security

5.1. Provision

Within 3 Business Days after the date of this Contract, the Supplier must provide Security to TAC in accordance with this clause 5 and Item 14.

5.2. Recourse

Without limiting the unconditional nature of the Security, TAC may have recourse to it:

- (a) for any amount which TAC claims is due and payable to it by the Supplier;
- (b) to pay for any costs, losses, expenses or damages TAC claims it has incurred or reasonably considers it might incur as a consequence of any act or omission of the Supplier TAC asserts constitutes a breach of this Contract; or
- (c) where the Supplier fails to comply with clause 5.6.

The Supplier covenants with TAC that it will not in any circumstances institute any proceedings or exercise any rights or take any steps to restrain or injunct the financial institution that issued the Security or TAC from exercising its rights under the Security.

TAC will not be liable for any loss occasioned by the conversion of any Security into money in accordance with this clause 5.2.

5.3. Replenishment

If at any time TAC has recourse to Security provided under this Contract, the Supplier must, within 3 Business Days after such recourse, provide further security in accordance with this Contract to TAC in the amount to which TAC had recourse.

5.4. Reduction and Release

Subject to TAC's rights under this clause 5, TAC's entitlement to Security ceases 14 days after the date of the Final Certificate and it must return forthwith the Security to the Supplier.

5.5. Trusts and Interest

- (a) TAC does not hold any Security (including the proceeds of Security converted into money), as a trustee, and is not obliged to hold the proceeds resulting from any conversion in any particular or defined account.
- (b) If TAC converts Security into money, any interest earned on that money will be retained by TAC.

5.6. Expiry of Security

If any Security required under this clause 5 expires or will expire prior to the date on which it is to be released, no less than 30 days prior to such expiry, the Supplier must provide TAC with replacement Security on the same terms and in the amount of the unused portion of the expiring Security.

5.7. Costs and Stamp Duty

All costs associated with providing the Security required by this clause 5 are to be borne by the Supplier.

6. Evidence of Contract

This Contract has legal effect on the earlier of the date on which:

- (a) TAC issues a letter of award to the Supplier confirming TAC's acceptance of the Supplier's offer to supply the Equipment on the terms of this Contract; or
- (b) the Formal Instrument of Agreement is executed by the last party to execute it.

7. Service of Notices

A notice (and other documents) is deemed to have been given and received:

- (a) if addressed or delivered to the relevant address in this Contract or last communicated in writing to the person giving the notice; and
- (b) on the earliest date of:
 - (i) actual receipt;
 - (ii) 5 days after posting to a recipient within the same country as the sender;
 - (iii) 10 days after posting to a recipient in a different country to the sender; or
 - (iv) in the case of email, receipt by the sender of an email acknowledgement from the recipient (which it must send immediately upon receipt) or the recipient's information system stating that the notice has been received.

8. Contract Documents

8.1. Discrepancies

The Supplier acknowledges and agrees that it has reviewed the documents that make up this Contract and is satisfied with the adequacy of those documents to perform its obligations under this Contract.

The several documents that make up this Contract are to be read together and if they provide for standards of quality that are inconsistent, the higher standard shall apply.

If either party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of performing this Contract, that party must give the Engineer written notice of it. The Engineer, thereupon, and upon otherwise becoming aware, must direct the Supplier as to the interpretation to be followed.

The Supplier is not entitled to make any Claim in respect of any ambiguity or discrepancy in any document forming this Contract or other document prepared for the purposes of this Contract (whether prepared before or after the date of this Contract).

8.2. TAC-Supplied Documents

TAC must supply to the Supplier the documents and number of copies stated in Item 15, but they:

- (a) remain TAC's property and must be returned to TAC on written demand; and
- (b) must not be used, copied nor reproduced for any purpose other than the performance of this Contract.

Information or documents of any nature made available to the Supplier by TAC do not constitute a warranty or representation by TAC, and the Supplier acknowledges and agrees that it:

- (c) has checked and verified that information or those documents; and
- (d) is not entitled to any Claim, adjustment of the Contract Sum or EOT on account of any alleged statement, warranty, representation or material made or provided by TAC.

8.3. Supplier-Supplied Documents

The Supplier must supply to the Engineer the documents and number of copies thereof at the times stated in Item 16.

If the Supplier submits a document to the Engineer, then:

- (a) the Engineer does not assume or owe any duty of care to the Supplier and is not required to check that document for errors, omissions, ambiguities or compliance with this Contract;
- (b) the Supplier is not entitled to make any Claim in connection with the Engineer not detecting or notifying the Supplier of any error, omission, ambiguity or discrepancy;
- (c) no review of, comment upon or failure to review or comment upon any document supplied by the Supplier or any other Direction by the Engineer about the document will:
 - (i) relieve the Supplier from, or alter or affect, the Supplier's liabilities or responsibilities under this Contract or any Legislative Requirement; or
 - (ii) prejudice TAC's rights against the Supplier whether under this Contract or any Legislative Requirement; and
- (d) if this Contract requires the Supplier to obtain the Engineer's direction about such documents, the Engineer must give, within the time stated in Item 17, the appropriate direction, including reasons if the documents are not suitable.

Documents supplied by or on behalf of the Supplier to TAC or the Engineer remain TAC's property.

8.4. Availability

The Supplier must keep available to the Engineer at the place of manufacture or assembly of any Equipment, a set of the documents affecting that part.

9. Warranties and Supplier's Design Obligations

9.1. Supplier's Design Obligations

- (a) The Supplier must complete the Supplier's Design Obligations (if any) in accordance with this Contract.
- (b) In executing and completing the Supplier's Design Obligations, the Supplier must:
 - (i) comply with the requirements of this Contract and accepted industry standards;
 - (i) prepare and execute or cause the preparation and execution of all Design Documents in accordance with Good Design and Manufacturing Practices and all relevant Legislative Requirements; and
 - (ii) not make, cause or permit to be made any changes or amendments to Design Documents which have been submitted to TAC under clause 9.2 without the prior written approval of TAC.

9.2. Submission of Design Documents

- (a) The Supplier must give the Engineer throughout the preparation of the Design Documents the opportunity to review, comment on and monitor the design performance of the Supplier in accordance with this clause 9.2 and in sufficient time to enable amendments agreed or required by TAC or the Engineer to be reflected in the Design Documents and to enable the Equipment to be completed in accordance with this Contract.
- (a) The Supplier must not commence the manufacture, fabrication or assembly of any Equipment in respect of which Design Documents are required until all Design Documents for that Equipment have been submitted to the Engineer and the Engineer has given the Supplier written notice that it has permission to use those Design Documents for the manufacture, fabrication or assembly of that Equipment.
- (b) At the time of submitting such Design Documents to the Engineer, the Supplier must notify the Engineer that they are documents to which this clause applies.
- (c) If the Engineer notifies the Supplier that it does not have such permission, the Engineer must give reasons and the Supplier must promptly submit new or amended Design Documents to the Engineer and this clause 9.2 reappplies.
- (d) The Engineer's or TAC's receipt of, review of, comment on, acceptance of, or approval of, any Design Documents or any other documents provided by or for the Supplier will not:
 - (i) relieve the Supplier of any of its responsibilities under this Contract;
 - (ii) constitute acceptance by TAC or the Engineer of the performance of the Supplier's obligations under this Contract; or
 - (iii) be considered as an acknowledgment by TAC or the Engineer that the relevant documents comply with this Contract.

9.3. Confidential Information

The Supplier acknowledges and agrees that:

- (a) during the performance of this Contract it is likely to receive or obtain Confidential Information;
- (b) it will keep all Confidential Information confidential and not divulge it to any third party without the prior written consent of TAC;
- (c) it will not use Confidential Information for any purpose other than the performance of this Contract;
- (d) nothing in this clause 9.3 prevents the Supplier disclosing Confidential Information to:
 - (i) its Subcontractor and employees to the extent required for those persons to perform their work; or
 - (ii) its Related Bodies Corporate,in which case, the Supplier must obtain from each such person, an undertaking of confidence on terms equivalent to those set out in this clause 9.3; and
- (e) nothing in this clause 9.3 prevents the Supplier disclosing Confidential Information so received or obtained to a person or court as compelled by Legislative Requirement (but

it must, before doing so, notify TAC and give it a reasonable opportunity to defend the requirement for disclosure or to minimise the effect of the disclosure).

In the event of a breach or threatened breach of this clause 9.3, TAC is entitled to an injunction to restrain the Supplier from committing the breach without having to show or prove that it has suffered or will suffer any actual damage.

9.4. Publicity

The Supplier must not and ensure that none of its Subcontractors, employees or agents make any comment or issue any information, publication, document or article for publication concerning this Contract, the Equipment or TAC (including its employees, officers and shareholders) in any media without the prior written approval of TAC. The Supplier must refer to TAC all enquiries from media concerning this Contract, the Equipment or TAC (including its employees, officers and shareholders).

9.5. Records and Access to Records

- (a) The Supplier must make and keep, and ensure that all Subcontractors make and keep, accurate records of the Equipment, including all documents referred to in this Contract, estimates, calculations and mark ups, records as to progress, complete photographic records, quality system documents and records, equipment records, results of examinations and Testing of any Equipment, cost records relating to delays, Variations, reports and opinions obtained by the Supplier in relation to matters referred to in this clause and all necessary supporting documents (whether in writing or stored on any other medium).
- (b) TAC and its nominees are entitled to inspect and copy at any time any records referred to in clause 9.5(a).
- (c) The records referred to in clause 9.5(a) must not be destroyed by or on behalf of the Supplier before the date that is 7 years after the end of the last Defects Liability Period to expire.

10. Assignment and Subcontracting

10.1. Assignment

The Supplier must not, without the prior written approval of TAC (which may be conditional):

- (a) assign (in whole or in part) this Contract or any payment or any other right, benefit or interest of the Supplier thereunder;
- (b) create or allow to exist a Security Interest over the Supplier's rights or obligations under this Contract; or
- (c) allow a Subcontractor to assign (in whole or in part) a subcontract or any payment or any other right, benefit or interest of the Subcontractor thereunder.

10.2. Approved Subcontractors

Where Item 10 names:

- (a) an Approved Subcontractor to whom the Supplier proposes to subcontract a particular obligation under this Contract, the Supplier must subcontract that obligation to that person unless the Engineer approves otherwise in writing; or

- (b) two or more Approved Subcontractors for a particular obligation under this Contract, the Supplier must subcontract that obligation to one of those persons unless the Engineer approves otherwise in writing,

and the Supplier does not require the Engineer's prior approval for any such subcontracting.

10.3. Subcontracting generally

Subject to its rights and obligations under clause 10.2, the Supplier must not without the Engineer's prior written approval (which may be conditional):

- (a) subcontract or allow a Subcontractor to subcontract any of the Supplier's obligations under this Contract; or
- (b) allow a Subcontractor to assign a subcontract or any payment or any other right, benefit or interest thereunder.

With a request for approval, the Supplier must give the Engineer written particulars of the obligation to be subcontracted, the name and address of the proposed Subcontractor and such other information as TAC reasonably requests, including the proposed subcontract without prices.

Within 14 days after the Supplier's request for approval, TAC must give the Supplier written notice of approval or the reasons why approval is not given.

10.4. Supplier's responsibility

The Supplier is liable to TAC for the acts, defaults and omissions of Subcontractors and employees and agents of Subcontractors as if they were those of the Supplier.

Approval to subcontract does not relieve the Supplier from any liability or obligation under this Contract.

10.5. Warranties From Suppliers and Manufacturers

- (a) The Supplier must assign to TAC the benefit of all warranties obtained by the Supplier from Subcontractors and manufacturers and suppliers of plant, equipment and materials incorporated into the Equipment where such warranties continue beyond the expiration of the Defects Liability Period.
- (b) The warranties referred to in clause 10.5(a) must be such that they can be directly enforced by TAC against the parties giving the warranties. All warranties must be delivered to the Engineer prior to the expiry of the Defects Liability Period.

10.6. No Restrictions

The Supplier warrants that it has no agreement, arrangement or understanding with any Subcontractor which will or might:

- (a) restrict the supply of spare parts for the Equipment directly to TAC; or
- (b) interfere with or impede TAC in the exercise of any right or remedy under this Contract.

11. Intellectual Property Rights

11.1. Warranties

The Supplier warrants that all designs, materials, documents and methods of working provided by the Supplier will not infringe any Intellectual Property Rights.

The Supplier indemnifies and holds harmless the Indemnified Persons from and against any loss, action or claim arising from:

- (a) any infringement or alleged infringement of Intellectual Property Rights owned by a third person in respect of any Design Documents or Equipment prepared or provided by or on behalf of the Supplier; and
- (b) any breach of the above warranty.

The following procedure applies to any infringement claim to which TAC is entitled to indemnification under this clause 11.1:

- (c) TAC must:
 - (i) promptly notify the Supplier in writing; and
 - (ii) provide the Supplier with all necessary information and assistance; and
- (d) if the exercise of rights or use of any Design Document or Equipment constitutes an infringement of Intellectual Property Rights of any third person and its use is enjoined, the Supplier must, at its own expense, either:
 - (i) procure for TAC the right to continue using the Design Document or Equipment;
 - (ii) replace the Design Document or Equipment with a non-infringing item that satisfies this Contract; or
 - (iii) modify the Design Document or Equipment so it becomes non-infringing.

11.2. Ownership and Licence

- (a) As between TAC and the Supplier, ownership of Intellectual Property Rights associated with the Equipment and any documentation provided by the Supplier pursuant to this Contract is vested in and shall vest in the Supplier.
- (b) With effect from its creation, the Supplier grants TAC a royalty free, non-exclusive, transferable, perpetual and irrevocable licence (including a right to sublicense) to use all Intellectual Property Rights associated with the Equipment (including third party Intellectual Property Rights) and any documentation provided pursuant to this Contract for the installation, use, support, repair (including the manufacture of replacement parts), maintenance, expansion or alteration of the Equipment by or on behalf of TAC.
- (c) Nothing in this Contract, nor the supply of any document or information to the Supplier by or on behalf of TAC, will result in the transfer to the Supplier of any Intellectual Property Rights belonging to TAC.

11.3. Moral Rights

- (a) The Supplier must procure from each Author express agreement that he or she will not enforce any Moral Rights he or she may have, presently or in the future, in a Copyright Work, including by executing any Moral Rights' consents required by TAC.
- (b) Without limiting clause 11.3(a), the Supplier warrants that TAC and its successors, assigns and licensees may:
 - (i) exercise any rights in relation to the Copyright Works, without identifying any person as the individual responsible for creating any particular material comprising the Copyright Works;
 - (ii) have the Copyright Works bear the name of TAC or any other person; and
 - (iii) modify, alter, adapt, distort or otherwise change any of the Copyright Works as they deem fit in their absolute discretion.
- (c) The Supplier must ensure that any agreement or consent referred to in clause 11.3(a) is genuinely given and not obtained by duress or the making of false or misleading statements.
- (d) TAC may give a written direction to the Supplier to provide to TAC all agreements and consents referred to in clause 11.3(a) and the Supplier must promptly comply.

12. Legislative Requirements

12.1. Compliance

Other than those set out in Item 18, the Supplier must satisfy all Legislative Requirements needed to complete the supply of the Equipment in accordance with this Contract.

The Supplier, upon finding that a Legislative Requirement is at variance with this Contract, must promptly give the Engineer written notice thereof and comply with his or her Direction to resolve it.

12.2. Changes

The Supplier is not entitled to any Claim, adjustment of the Contract Sum or EOT for any change in a Legislative Requirement.

12.3. Civil Liability Act

- (a) It is agreed that to the extent permitted by law the operation of Part 4 of the *Civil Liability Act 2002* (NSW) and all other equivalent legislative schemes is excluded in relation to all and any rights, obligations and liabilities under this Contract.
- (b) Without limiting the generality of clause 12.3(a) it is further agreed that the rights, obligations and liabilities of TAC and the Supplier (including those relating to proportionate liability) are as specified in this Contract and not otherwise.
- (c) The Supplier further agrees that in each subcontract into which it enters for the carrying out of any of its obligations under this Contract, it will include provisions that, to the extent permitted by relevant Legislative Requirements, effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) and all other equivalent legislative schemes in relation to all rights, obligations and liabilities under each subcontract.

12.4. Work Health and Safety Obligations

- (a) The Supplier must:
 - (i) ensure that it carries out the manufacture and Delivery of the Equipment in a manner that ensures that, and otherwise provides all assistance to TAC to ensure that, TAC satisfies its obligations under the WHS Legislation in connection with the Equipment;
 - (ii) consult with the designer(s) of the whole or any part of the Equipment about how to ensure that risks to health and safety arising from the design are eliminated;
 - (iii) give each relevant designer any information the Supplier has in relation to the risks at any place where the manufacture of the Equipment is to be carried out;
 - (iv) ensure that any workplace relevant to this Contract is secured from unauthorised access;
 - (v) comply with all directions, manuals and Policies formulated from time-to-time by TAC in relation to safety insofar as they relate to the Equipment or Delivery; and
 - (vi) consult, co-operate and co-ordinate with TAC to the extent that TAC and the Supplier have mutual obligations under WHS Legislation.
- (b) The Supplier must:
 - (i) ensure that if any Legislative Requirement requires that a:
 - (A) person be authorised, registered or licensed to carry out any work in connection with the Equipment, that person is so authorised, registered or licensed, and complies with any conditions of such authorisation, registration or licence; or
 - (B) a workplace, plant, substance, design or work be authorised, registered or licensed, that workplace, plant, substance, design or work is so authorised, registered or licensed.
- (c) The Supplier indemnifies the Indemnified Persons against any Claims, actions, losses or damages arising out of any failure by the Supplier to comply with its obligations or any breach of warranty under this clause 12.4.

13. Insurance of Equipment

The Supplier must:

- (a) by the time stated in Item 21 and until risk in the Equipment passes to TAC, insure the Equipment for its replacement value against loss or damage, including unloading; and
- (a) ensure that the policy referred to in clause 13(a) is in the joint names of the parties and covers their respective rights, interests and liabilities.

14. Public and Product Liability Insurance

Before commencing the performance of this Contract, the Supplier must effect and maintain for the duration of this Contract (including the Defects Liability Period), a public and product liability policy:

- (a) in the joint names of the parties;
- (b) that covers the:
 - (i) respective rights and interests; and
 - (ii) liabilities to third parties,of the parties, the Engineer and Subcontractors whenever performing obligations under this Contract;
- (c) that covers the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 13) and the death of or injury to any person (other than liability which the law requires to be covered under a workers' compensation insurance policy);
- (d) for an amount in respect of any one occurrence of not less than the sum in Item 22; and
- (e) with an insurer and otherwise in terms both approved in writing by TAC.

15. Insurance of Employees

Before commencing performance of this Contract, the Supplier must insure against statutory and common law liability for death of or injury to persons employed by it and must maintain this cover for the duration of this Contract (including the Defects Liability Period).

Where permitted by Legislative Requirements, this policy or policies must extend to provide indemnity for TAC's statutory liability to the Supplier's employees.

The Supplier must ensure that all Subcontractors are similarly insured.

16. Professional Indemnity Insurance

Before the Supplier commences performing any of its obligations under this Contract, it must effect a professional indemnity insurance policy with:

- (a) total annual aggregate cover (plus provision for one automatic reinstatement) of not less than the sum specified in Item 23; and
- (b) an insurer that has a financial standing rated by Standard & Poor's of no less than A-.

The policy and such level of cover must be maintained until the date that is 7 years after the expiry of the last Defects Liability Period to expire and the Supplier must ensure that every Subcontractor who performs professional services is similarly insured.

17. Inspection and Provisions of Policies

17.1. Proof of Insurance

Before the Supplier commences performing this Contract and whenever requested in writing by the Engineer, the Supplier must provide satisfactory evidence that all insurances required to be effected and maintained under this Contract are effected and maintained.

17.2. Failure to Produce Proof

If after being so requested, the Supplier fails promptly to provide satisfactory evidence of compliance, then without prejudice to its other rights and remedies, TAC may take out the relevant policy and the cost thereof shall be moneys due and payable from the Supplier to TAC.

17.3. Notices from or to Insurer

The Supplier must ensure that each policy maintained in accordance with clause 13 or 14 contains provisions acceptable to TAC which:

- (a) require the insurer to inform both parties whenever it gives a party, the Engineer or a Subcontractor a notice in connection with the relevant policy;
- (b) provides that a notice of claim given to the insurer by either party or a Subcontractor is accepted by the insurer as a notice of claim given by both parties and the Subcontractor;
- (c) requires the insurer, whenever the Supplier fails to maintain the policy, promptly to give written notice thereof to both parties and before cancellation of the policy; and
- (d) provides that any breach of the policy by any party comprising the insured will not in any way prejudice or diminish any rights which any other party comprising the insured would have had under the policy but for the breach of the policy conditions.

17.4. Notices of potential claims

The Supplier must, as soon as practicable, inform TAC in writing of any occurrence that may give rise to a claim under an insurance policy required by clause 13, 14, 15 or 16 and must keep TAC informed of subsequent developments. The Supplier must ensure that Subcontractors in respect of their operations similarly inform the parties.

17.5. Cross Liability

Any insurance required to be effected in joint names in accordance with this Contract must include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them.

17.6. Liabilities Unaffected

The effecting of insurance and the approval of any insurance policy or insurer by TAC does not limit any liabilities or obligations of the Supplier.

Supply of [insert description]

18. Engineer

The Engineer will give Directions and carry out its other functions under this Contract as agent of TAC and the Supplier acknowledges and accepts that the Engineer may be an employee of TAC.

Except where this Contract otherwise provides, the Engineer may give a Direction orally but must as soon as practicable confirm it in writing.

The Supplier must provide the Engineer with, after reasonable notice from the Engineer, access to any place where obligations in respect of this Contract are being carried out or materials are being prepared or stored, for the purposes of discharging the functions of the Engineer under this Contract.

19. Engineer's Representative

The Engineer may from time-to-time appoint individuals to exercise delegated Engineer's functions, provided that:

- (a) no aspect of any function is at any one time the subject of delegation to more than one Engineer's Representative;
- (b) delegation does not prevent the Engineer exercising any function;
- (c) the Engineer forthwith gives the Supplier written notice of the:
 - (i) appointment, including the person's name and delegated functions; and
 - (ii) termination of each appointment.

20. Supplier's Representative

The Supplier must ensure that at all times it is represented by a competent representative in respect of this Contract (**Supplier's Representative**). Matters within a Supplier's Representative's knowledge are deemed to be within the Supplier's knowledge.

The Supplier shall forthwith give the Engineer written notice of the Supplier's Representative's name and any subsequent changes.

If the Engineer makes a reasonable objection to the appointment of a Supplier's Representative, the Supplier must terminate the appointment and promptly appoint another Supplier's Representative.

21. Information Documents

21.1. No Warranty by TAC

The Supplier acknowledges and agrees that:

- (a) TAC does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents;
- (a) insofar as is permitted by all relevant Legislative Requirements, TAC will not be liable upon any Claim by the Supplier arising out of or in any way in connection with:

Supply of [insert description]

- (i) the provision of, or the purported reliance upon, or use of any Information Document to or by the Supplier or any other person to whom the Information Document is disclosed; or
- (ii) a failure by TAC to provide any information to the Supplier.

21.2. Warranty by Supplier

The Supplier:

- (a) warrants that it did not in any way rely upon:
 - (i) any information, data, representation, statement or document made by, or provided to the Supplier, by TAC or anyone on behalf of TAC or any other information, data, representation, statement or document for which TAC is responsible or may be responsible; or
 - (ii) the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,for the purposes of entering into this Contract or supplying the Equipment;
- (b) warrants that it enters into this Contract based on its own investigations, interpretations, deductions, information and determinations;
- (c) acknowledges that it is aware that TAC has entered into this Contract relying upon the warranties, acknowledgements and agreements in this clause 21.2; and
- (d) releases and indemnifies the Indemnified Persons from and against:
 - (i) any liability to or Claim by any other person; and
 - (ii) any loss suffered or incurred by them,arising out of or in any way in connection with:
 - (iii) the provision of, or the purported reliance upon, or use of, the Information Documents to or by the Supplier or any other person to whom the Information Documents are disclosed by the Supplier or a failure by TAC to provide any information to the Supplier;
 - (iv) any breach by the Supplier of this clause 21.2; or
 - (v) the Information Documents being relied upon or otherwise used by the Supplier or its Subcontractors in the preparation of any information or document, including any Information Document which is 'misleading or deceptive' or 'false or misleading' (within the meaning of those terms in sections 18 and 29 (respectively) of the Australian Consumer Law in Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*), or any equivalent provision of State or Territory legislation.

22. Materials and Labour

The Supplier must do all work and supply everything necessary for the proper performance of its obligations and discharge of its liabilities under this Contract, including all things that are indispensably necessary for the execution, protection or Delivery of the Equipment as if they were specifically mentioned in this Contract.

Supply of [insert description]

In respect of any materials, machinery or equipment to be supplied by the Supplier in connection with this Contract, TAC may direct the Supplier to:

- (a) supply particulars of the mode and place of manufacture, source of supply, performance capacities and other related information; and
- (b) arrange reasonable inspection at such place or sources by TAC and persons authorised by TAC.

23. Quality

23.1. Quality Assurance

If Item 32 requires quality assurance, the Supplier must:

- (a) plan, establish and maintain a conforming quality system; and
- (b) ensure that the Engineer has access to that system and Subcontractor systems so as to enable monitoring and quality auditing.

Any such quality system must be used only as an aid to achieving compliance with this Contract and to document such compliance and does not discharge the Supplier's other obligations under this Contract.

23.2. Branded Items

A description in this Contract of any Equipment or other items by a proprietary, trade or brand name, supplier's or manufacturer's name, model number or other specific means does not:

- (a) relieve, limit or exclude any of the Supplier's obligations or liabilities under this Contract with respect to the Equipment or other items; or
- (b) limit or otherwise prejudice any of the warranties provided in this Contract.

24. Packaging, Marking and Transportation

- (a) The Supplier must ensure that all Equipment is packed, marked and transported in a proper and suitable manner for the purposes of protection, transportation and storage in accordance with Item 12.
- (b) All Equipment must be Delivered in good condition and without damage.

25. Programming

25.1. Rate of Progress

The Supplier must proceed with its obligations under this Contract with due expedition and in accordance with the Delivery Program.

25.2. Advance Notice by Supplier

The Supplier must give the Engineer reasonable advance notice of when the Supplier needs information, materials, documents or instructions from the Engineer.

Supply of [insert description]

TAC and the Engineer are not obliged to give any information, materials, documents or instructions earlier than TAC or the Engineer should reasonably have anticipated at the date of this Contract.

25.3. Direction Concerning Order and Timing

The Engineer may Direct in what order and at what time the various items or parts of the Equipment are to be Delivered and, if the Supplier can reasonably comply with the Direction, it must do so. If the Supplier cannot reasonably comply, it must notify the Engineer in writing, giving reasons.

25.4. Programming

- (a) A Delivery Program is a written statement showing the dates by which, or the times within which, the various items or parts of the Equipment are to be Delivered and must include critical path manufacturing dates.
- (b) Within 5 Business Days after the date of this Contract, the Supplier must prepare and lodge with the Engineer for approval a Delivery Program which:
 - (i) shows the Supplier's bona fide planned work activities and sequences for achieving Delivery by the Date for Delivery;
 - (ii) is in a form and contains such other details as the Engineer may require; and
 - (iii) is consistent with the Supplier's delivery program most recently submitted to the Engineer prior to the execution of this Contract by the Supplier.
- (c) If the Engineer rejects a Delivery Program submitted by the Supplier under this clause 25.4, the Supplier must promptly amend the Delivery Program and resubmit it to the Engineer for approval. Until such time as a revised Delivery Program is approved under this clause 25.4, the Delivery Program most recently approved by the Engineer will be regarded as the approved Delivery Program.
- (d) No changes are to be made to an approved Delivery Program without the prior written approval of the Engineer and the Supplier must not, without reasonable cause, depart from an approved Delivery Program.

25.5. Progress Reports

The Supplier must submit to the Engineer whenever requested by the Engineer reports on the progress of its obligations under this Contract in the form and with the content required by the Engineer.

25.6. Corrective Action

- (a) If at any time progress falls behind that shown in the Delivery Program or otherwise is not in accordance with this Contract, the Supplier must at its own cost take the necessary corrective action to ensure that progress is maintained in accordance with this Contract.
- (b) If the Supplier fails to take corrective action in accordance with clause 25.6(a), the Engineer may direct the Supplier as to the corrective action it is to take and the Supplier must comply with that direction at its own cost.

26. Acceleration

- (a) Where the Supplier is entitled to an EOT under clause 28.5, the Engineer may, instead of granting an EOT, Direct the Supplier in writing to accelerate its performance so as to overcome the whole or part of the relevant delay and the Supplier must comply.
- (b) If the Engineer directs the Supplier under clause 26(a) to accelerate its performance, the Supplier will not be entitled to any EOT for that delay.
- (c) If compliance with a Direction to accelerate given under clause 26(a) causes the Supplier to incur more or less cost than otherwise would have been incurred had the Supplier not been given the Engineer's Direction, the difference will be valued under clause 33.3, provided that, in the case of any increase, the Supplier has successfully accelerated the performance of the supply of the Equipment in accordance with the Engineer's Direction to accelerate given under clause 26(a).
- (d) No Direction by the Engineer will be taken to constitute a Direction to accelerate unless it is in writing, signed by the Engineer and expressly states that it is a Direction under 26(a).

27. Suspension

27.1. Engineer's Suspension

- (a) The Engineer may, in its absolute discretion, Direct the Supplier to suspend supply or Delivery of all or part of the Equipment for such time as the Engineer thinks fit and the Supplier must comply with any such Direction.
- (b) No Direction by the Engineer will be taken to constitute a Direction under clause 27.1(a) unless it is in writing, signed by the Engineer and expressly states that it is a Direction under clause 27.1(a).

27.2. Supplier's Suspension

Except to the extent permitted by the SOPA, if the Supplier wishes to suspend the supply or Delivery of all or part of the Equipment, it must obtain the Engineer's prior written approval. The Engineer is not obliged to approve any such suspension and, if approval is given, it may be conditional.

27.3. Recommencement

- (a) If supply or Delivery is suspended under clause 27.1, the Supplier must recommence its performance as soon as practicable after receiving a Direction from TAC to recommence.
- (b) If work is suspended under clause 27.2, the Supplier:
 - (i) may recommence supply or Delivery at any time after advance notice to the Engineer; but
 - (ii) must recommence supply or Delivery as soon as practicable after receiving a Direction from the Engineer to recommence.

27.4. Cost

- (a) If a suspension under clause 27.1 is Directed for any reason other than:

- (i) a breach of this Contract by the Supplier;
- (ii) a default of any Subcontractor or any employee or agent of the Supplier or any Subcontractor;
- (iii) for the protection or safety of any person, property or the Environment due to an act or omission of the Supplier or any Subcontractor or any other person for whom the Supplier is responsible; or
- (iv) to comply with an order of a court due to an act or omission of the Supplier or any Subcontractor or any other person for whom the Supplier is responsible,

and the suspension causes the Supplier to incur more or less cost than otherwise would have been incurred but for the suspension, then the difference will be valued under clause 33.3.

- (b) Any cost or loss incurred by the Supplier by reason of a suspension Directed under clause 27.2 will be borne by the Supplier.

27.5. Effect of Suspension

Suspension of the supply or Delivery does not affect the Date for Delivery except to the extent that the Supplier is entitled to an EOT under clause 28.5.

28. Time and Progress

28.1. Delivery and Progress

The Supplier, at its expense, must Deliver the Equipment on the Date for Delivery to the Delivery Place, together with all original equipment manufacturer (OEM) part numbers for all spare parts required by this Contract. If so requested, the Supplier must give TAC reasonable advance notice of each Delivery.

The party named in Item 26 must promptly unload the Equipment at the Delivery Place and when so unloaded TAC must take delivery of the Equipment.

TAC or the Engineer may Direct the Supplier to change the Date for Delivery, Delivery Place or mode of Delivery and, if the Supplier can reasonably comply with the Direction, it must do so. If the Supplier cannot reasonably comply, the Supplier must give TAC and the Engineer written notice of the reasons.

28.2. Notice of Delay

A party becoming aware of anything that will probably cause delay to supply or Delivery must promptly give the Engineer written notice of that cause and the estimated delay.

28.3. Claim

Subject to clause 26, the Supplier will be entitled to such EOT for delivering Equipment as the Engineer assesses (**EOT**), if the Supplier:

- (a) is or will be delayed in Delivering the Equipment by a Qualifying Cause of Delay; and
- (b) gives the Engineer, within 3 Business Days of when the Supplier should have become aware of that causation occurring, a written claim for an EOT evidencing:
 - (i) details of the Qualifying Cause of Delay;

- (ii) how the Qualifying Cause of Delay will impact the Date for Delivery;
- (iii) the measures being taken to overcome the Qualifying Cause of Delay; and
- (iv) the number of days EOT being requested by the Supplier.

If further delay results from a Qualifying Cause of Delay evidenced in a claim under clause 28.3(b), the Supplier must claim an EOT for such delay by promptly giving the Engineer a written claim evidencing the facts of that delay.

A failure by the Supplier to claim an EOT within the timeframes included in this clause 28.3 will prevent the Supplier from being able to claim an EOT for that particular Qualifying Cause of Delay.

28.4. Assessment

When both non-qualifying and Qualifying Causes of Delay overlap, the Supplier will not be entitled to an EOT to the extent of the overlap.

28.5. Extension of Time

Within 10 days after receiving the Supplier's claim for an EOT, the Engineer must give to the Supplier a written Direction evidencing the EOT so assessed. If the Engineer does not do so, the claim will be deemed to have been rejected.

Notwithstanding that the Supplier is not entitled to or has not claimed an EOT, the Engineer may at any time and from time-to-time before issuing the Final Certificate Direct an EOT. The discretion given to the Engineer by this clause is for the benefit of TAC and the Engineer is not required to exercise it for the benefit of the Supplier.

28.6. Time Not at Large

No delay nor a failure by the Engineer to grant an EOT or a reasonable EOT under clause 28.5 or to do so within the time stated in that clause, nor the giving of a Direction to accelerate under clause 26, will set the Date for Delivery at large.

28.7. Liquidated Damages

- (a) If the Equipment is not Delivered by the Date for Delivery, the Engineer must certify, as due and payable to TAC, liquidated damages in Item 27 for every day after the Date for Delivery to and including the earliest of the Date of Delivery or termination of this Contract.
- (b) All amounts payable by the Supplier to TAC under this clause 28.7 represent TAC's genuine pre-estimate of the damages likely to be suffered by it if the Equipment is not delivered by the Date for Delivery and those amounts are not to be construed as penalties.
- (c) If the remainder of this clause 28.7 is found for any reason to be void, invalid or otherwise inoperative, so as to disentitle TAC from recovering liquidated damages for the Supplier's failure to Deliver the Equipment by the Date for Delivery, TAC is entitled to recover damages from the Supplier for the relevant failure under general law.

29. Testing

29.1. Tests

- (a) The Supplier must perform the tests stated in Item 25 at the times stated in Item 25 and give the Engineer reasonable notice in writing of where the Tests will be performed.
- (b) The Supplier must give such assistance and samples and make accessible such parts of the Equipment as may be directed by the Engineer, including by making persons nominated by the Engineer in writing (with assistance from the Supplier) available to assist with testing.

29.2. Who Conducts

Tests are to be conducted as provided elsewhere in this Contract or by the Engineer or a person nominated by the Engineer.

29.3. Notice

The Engineer or Supplier (whichever is to conduct the Test) must give reasonable written notice to the other of the date, time and place of the Test and if the other does not attend, the Test may nevertheless proceed.

29.4. Delay

Without prejudice to any other right, if the Supplier or Engineer delays in conducting a Test, the other, after giving reasonable written notice of its intention to do so, may conduct the Test.

29.5. Completion and Results

On completion of a Test, the Supplier must make good the Equipment so that it fully complies with this Contract and promptly make available all relevant results to TAC and the Engineer.

29.6. Costs

Costs in connection with testing pursuant to this clause 29 are to be borne by the Supplier.

30. Risk in and Ownership of Equipment

30.1. Risk

Risk in the Equipment passes from the Supplier to TAC as stated in Item 28.

30.2. Ownership

- (a) Ownership of the Equipment and other items supplied under this Contract transfer to TAC, free of any lien, charge, encumbrance or other Security Interest, upon whichever of the following occurs first:
 - (i) TAC makes a payment to the Supplier which includes an amount for the item; or
 - (ii) the item is delivered to the Delivery Place.

Supply of [insert description]

- (b) Notwithstanding that ownership may have passed to TAC, the Supplier must still ensure that the relevant item is properly transported and stored, labelled the property of TAC, protected and insured.

31. Acceptance or Rejection of Equipment

31.1. Notification

Within the period stated in Item 29 after the later of:

- (a) Delivery; and
- (b) completion of Acceptance Testing

TAC must give a written notice to the Supplier that the Equipment is Acceptable or that it is rejected.

If TAC fails to so notify the Supplier, the Equipment is deemed to have been rejected upon the expiration of the period stated in Item 29.

31.2. Details of Notification

If notice of acceptance of Equipment is given pursuant to clause 31.1, the notice must state the minor Defects, if any, to be rectified by the Supplier.

If notice of rejection of Equipment is given pursuant to clause 31.1, the notice:

- (a) must state the reasons for the rejection; and
- (b) may either:
 - (i) direct the Supplier to submit a proposal under subclause 31.3; or
 - (ii) notify the Supplier that TAC elects to accept the Equipment and claim damages.

31.3. Supplier to Notify Action

Within 5 days after receipt of a Direction under clause 31.2(b)(i), the Supplier must notify TAC and the Engineer in writing confirming whether the Supplier proposes to:

- (a) correct the Equipment where it is located; or
- (b) recover and either:
 - (i) replace the Equipment; or
 - (ii) correct it, and, if so, where,

and, in either event, also specify the:

- (c) nature of the work involved;
- (d) times when or during which the replacement or correction will take place;
- (e) access the Supplier will require and disruption, if any, which might be caused to TAC; and
- (f) damages proposed by the Supplier to compensate TAC for the Supplier's failure to comply with this Contract.

Supply of [insert description]

If the Supplier fails to so notify TAC, clause 31.6 will apply as if a proposal by the Supplier had been rejected.

31.4. TAC's decision on Supplier's proposal

Within the period stated in Item 30 after receipt of the Supplier's proposal under clause 31.3, the Engineer must, by written notice to the Supplier:

- (a) accept the Supplier's proposal;
- (b) reject the Supplier's proposal; or
- (c) if TAC has not already done so, inform the Supplier that TAC elects to accept the Equipment and claim damages.

If the Engineer fails to give such notice to the Supplier, the Supplier's proposal will be deemed to have been rejected upon the expiration of the period stated in Item 30.

31.5. Compliance by Supplier

The Supplier must promptly:

- (a) comply with any proposal accepted by the Engineer under clause 31.4 and
- (b) give written notice to TAC and the Engineer upon the Supplier's compliance with that proposal whereupon clause 31.1 will apply.

31.6. Rejection of Supplier's proposal

If the Supplier's proposal under clause 31.3 is rejected by the Engineer under clause 31.4, or the Supplier fails to notify the Engineer under clause 31.3, the Supplier must:

- (a) prior to removal of the rejected Equipment, repay to TAC all moneys paid to the Supplier by TAC for that Equipment;
- (b) remove the Equipment from TAC's possession within the period notified in writing by TAC; and
- (c) pay all damages incurred by TAC.

The rights and remedies given by this clause are in addition to any other rights and remedies of TAC.

32. Defects Liability

The defects liability period stated in Item 31 commences at 4:00pm on the date of Acceptance.

The Supplier must carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of the Equipment as is reasonably possible.

As soon as possible after Acceptance and at its own cost, the Supplier must rectify all Defects existing at the date of Acceptance.

At any time up until 14 days after the expiry of the Defects Liability Period, the Engineer may give the Supplier a Direction to rectify a Defect which:

- (a) must identify the Defect and the date for completion of its rectification; and
- (b) may state a date for commencement of the rectification.

Supply of [insert description]

There will be a separate Defects Liability Period therefor (not exceeding that in Item 31, commencing at 4:00 pm on the date the rectification is completed and governed by this clause).

If rectification is not commenced or completed by the stated dates, TAC may have the rectification carried out by others without prejudice to any other rights and remedies it may have. All costs thereby incurred shall be certified by the Engineer as moneys due and payable to TAC by the Supplier.

In addition to rectifying Defects, the Supplier must, at its own cost, locate and rectify the cause of any Defect and 'rectification work' includes all work needed to eliminate the need for repeated rectification work.

33. Variations

33.1. Directing Variations

The Supplier must not vary any Equipment except as Directed or approved in writing by the Engineer or TAC pursuant to this clause 33.

TAC or the Engineer, before the date of Acceptance, may Direct the Supplier to vary the Equipment by any one or more of the following:

- (a) increase, decrease or omit any part;
- (b) change the character or quality of any material or work;
- (c) change the levels, lines, positions or dimensions;
- (d) carry out additional work.

The power to omit Equipment includes the power to omit it so it may be supplied by TAC or others.

33.2. Proposed Variations

The Engineer may give the Supplier written notice of a proposed Variation.

The Supplier must, within 5 days after receiving such notice, notify the Engineer whether the proposed Variation can be effected, together with, if it can be, the Supplier's estimate of its:

- (a) effect on the Delivery Program (including the Date for Delivery);
- (b) cost (including all time-related costs, if any); and
- (c) effect, if any, on any applicable warranties or other provisions of this Contract.

The Engineer may at any time Direct the Supplier to give a detailed quotation for the proposed Variation supported by measurements and other evidence required by the Engineer.

33.3. Pricing

Where the Engineer and Supplier agree the price for a Variation Directed by the Engineer or TAC, the agreed price will be added to or deducted from the Contract Sum (as appropriate).

Where the Engineer and Supplier do not agree the price for a Variation Directed by the Engineer or TAC, the Variation will be valued by the Engineer using the following order of precedence and the Contract Sum adjusted accordingly:

Supply of [insert description]

- (a) if the Schedule of Prices includes relevant prices, using those prices; or
 - (b) reasonable rates, which shall include a reasonable amount for profit and overheads,
- and any deductions shall include a reasonable amount for profit but not overheads.

33.4. Directions not Formally Identified as Variations

- (a) If the Supplier considers that a Direction by the Engineer requires the Supplier to carry out a Variation, but the Engineer has not expressly identified it as a Variation Direction, then within 2 Business Days after the relevant Direction, the Supplier must notify the Engineer in writing that the Supplier considers the Direction to be a Variation Direction.
- (b) The Supplier is not entitled to any additional payment in connection with the Direction unless it gives the notice required by clause 33.4(a) within the time stated in that clause and the Engineer, within 28 days after receiving the Supplier's notice, confirms in writing that the Direction is a Variation Directions.

34. Payment

[Note to TAC User: Whether payment mechanism 1 (including clause 35 and Annexure Part E) or payment mechanism 2 should apply depends upon whether this is a "construction contract" for the purposes of the Building and Construction Industry Security of Payment Act 1999 (NSW). I.e, If it is a "construction contract", payment mechanism 1 should apply or, if it isn't, payment mechanism 2 should apply.]

For the purposes of the Act:

"Construction Contract" means a contract or other arrangement under which one party undertakes to carry out Construction Work, or supply related goods and services, for another party.

"Construction Work" means any of the following work:

- (a) *the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures forming, or to form, part of land (whether permanent or not),*
- (b) *the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of any works forming, or to form, part of land, including walls, roadworks, power-lines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for purposes of land drainage or coast protection,*
- (c) *the installation in any building, structure or works of fittings forming, or to form, part of land, including heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply, fire protection, security and communications systems,*
- (d) *the external or internal cleaning of buildings, structures and works, so far as it is carried out in the course of their construction, alteration, repair, restoration, maintenance or extension,*

- (e) any operation which forms an integral part of, or is preparatory to or is for rendering complete, work of the kind referred to in paragraph (a), (b) or (c), including:
- (i) site clearance, earth-moving, excavation, tunnelling and boring,
 - (ii) the laying of foundations,
 - (iii) the erection, maintenance or dismantling of scaffolding,
 - (iv) the prefabrication of components to form part of any building, structure or works, whether carried out on-site or off-site, and
 - (v) site restoration, landscaping and the provision of roadways and other access works,
- (f) the painting or decorating of the internal or external surfaces of any building, structure or works,
- (g) any other work of a kind prescribed by the regulations for the purposes of this subsection,

but, does not include any of the following work:

- (h) the drilling for, or extraction of, oil or natural gas,
- (i) the extraction (whether by underground or surface working) of minerals, including tunnelling or boring, or constructing underground works, for that purpose,
- (j) any other work of a kind prescribed by the regulations for the purposes of this subsection.

“Related goods and services”, in relation to construction work, means any of the following:

- (a) goods of the following kind:
- (i) materials and components to form part of any building, structure or work arising from construction work,
 - (ii) plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of construction work,
- (b) services of the following kind:
- (i) the provision of labour to carry out construction work,
 - (ii) architectural, design, surveying or quantity surveying services in relation to construction work,
 - (iii) building, engineering, interior or exterior decoration or landscape advisory services in relation to construction work,
- (c) goods and services of a kind prescribed by the regulations for the purposes of this subsection.]

[Payment Mechanism 1]

34.1. Progress Claims

The Supplier must claim payment progressively in accordance with Item 19 and this clause 34.

An early Progress Claim will be deemed to have been made on the date for making that claim.

Each Progress Claim must be given in writing to the Engineer and must include:

- (a) details of the value of Equipment supplied and Delivered;
- (b) details of other moneys then due to the Supplier pursuant to this Contract;
- (c) a subcontractor statement and statutory declaration in the form set out in Annexure Part E executed by an appropriate senior executive of the Supplier; and
- (d) such other details as may be required by the Engineer,

but must not include any claim which is barred under this Contract or a relevant Legislative Requirement.

34.2. Progress Certificates

The Engineer must, within 14 days after receiving a Progress Claim, issue to TAC and the Supplier:

- (a) a Progress Certificate evidencing the Engineer's opinion of the moneys due from TAC to the Supplier pursuant to the Progress Claim and reasons for any difference (**Progress Certificate**); and
- (b) a certificate evidencing the Engineer's assessment of other moneys due from the Supplier to TAC pursuant to this Contract.

If the Supplier does not make a Progress Claim in accordance with Item 29, the Engineer may issue a Progress Certificate with details of the calculations.

TAC must within 21 days after the Engineer receives a Progress Claim, pay to the Supplier the balance of the Progress Certificate. If the balance is negative, the Supplier must pay that balance to TAC within 7 days after receiving written notice thereof.

Neither a Progress Certificate nor a payment of moneys is evidence that the subject Equipment has been supplied satisfactorily. Payment other than final payment is on account only.

The Engineer may, in any Progress Certificate, correct any error in, or otherwise modify, any previous Progress Certificate.

34.3. Conditions Precedent

TAC is not obliged to make a payment under clause 34.2 unless the Supplier has:

- (a) complied with clause 5;
- (b) effected all insurances required to be effected by it under this Contract;
- (c) complied with its programming obligations under clause 28; and
- (d) complied with clause 35.1.

34.4. SOPA

- (a) Expressions defined or used in the SOPA have the same meanings in this clause 34.4.

Supply of [insert description]

- (b) The Supplier must ensure that a copy of any written communication it delivers or arranges to deliver to TAC in relation to the SOPA is provided to the Engineer at the same time.
- (c) In responding to the Supplier under the SOPA, the Engineer acts as agent of TAC.
- (d) If, within the time allowed by the SOPA for the service of a payment schedule, TAC does not:
 - (i) serve the payment schedule itself; or
 - (ii) notify the Supplier that the Engineer does not have authority from TAC to issue the payment schedule on its behalf,then a payment schedule issued by the Engineer under this Contract which relates to the period relevant to the payment schedule will be taken to be the payment schedule for the purpose of the SOPA.
- (e) Without limiting clause 34.4(c), TAC authorises the Engineer to issue payment schedules on its behalf (without affecting TAC's right to do so itself).
- (f) For the purposes of this Contract, the amount of any progress payment the Supplier is entitled to under this Contract will be the amount certified by the Engineer in a Progress Certificate under clause 34.2 less any amount TAC may elect to retain, deduct, withhold or set off in accordance with clause 36.1.
- (g) The Supplier acknowledges and agrees that:
 - (i) the date prescribed by clause 34.1 as the date on which the Supplier is entitled to make a Progress Claim is, for the purposes of the SOPA, the reference date; and
 - (ii) a Progress Claim is not a document notifying an obligation on TAC to make any payment and TAC will have no liability to make a payment in respect of a claim for payment unless the amount has been included in a Progress Certificate issued by the Engineer in accordance with clause 34.2.
- (h) If a Subcontractor suspends work or supply pursuant to the SOPA, despite any other provision of this Contract:
 - (i) the Supplier is not relieved of any obligation under this Contract and the suspension does not entitle it to bring any Claim against TAC;
 - (ii) the Supplier must immediately provide TAC and the Engineer with full details of the circumstances giving rise to the suspension; and
 - (iii) TAC may in its absolute discretion pay the Subcontractor such money that may be owing to it in respect of the relevant obligation and recover the amount so paid as a debt due and owing from the Supplier.
- (i) The Supplier indemnifies the Indemnified Persons from and against any losses suffered or incurred by them arising out of the suspension by a Subcontractor of the provision by it of any work or supply pursuant to the SOPA.

[Payment Mechanism 2]

Supply of [insert description]

34.5. Invoices and time for payment

At the times stated in Item 20, the Supplier must render to the Engineer an invoice for moneys then due to the Supplier pursuant to this Contract. Each invoice must include details of the Equipment supplied and Delivered and may include details of other moneys then due to the Supplier pursuant to the provisions of this Contract.

An early invoice will be deemed to have been received on the date for rendering that invoice.

Within the 60 days after receiving an invoice under this clause, TAC must pay to the Supplier the amount then due to the Supplier pursuant to this Contract.

With such payment, TAC must issue a statement to the Supplier setting out the calculations employed to arrive at the amount and, if the amount is more or less than the invoice rendered by the Supplier, the reasons for the difference.

If the Supplier does not render an invoice, TAC may nevertheless make payment to the Supplier pursuant to this clause.

34.6. Effect of payment

Payment of moneys under clause 34.5 is not evidence that the subject Equipment complies with this Contract. Payment other than final payment shall be on account only.

34.7. Final Payment Claim and Final Certificate

Within 20 days after the date of Acceptance of all Equipment or earlier termination of this Contract, the Supplier must give the Engineer a written final payment claim endorsed 'Final Payment Claim' being a Progress Claim together with all other Claims in connection with this Contract.

Within 42 days after the date of Acceptance of all Equipment or earlier termination of this Contract, the Engineer must issue to both the Supplier and TAC a Final Certificate evidencing the moneys finally due and payable between the Supplier and TAC on any account whatsoever in connection with the subject matter of this Contract.

The moneys certified as due and payable must be paid by TAC or the Supplier, as the case may be, within 7 days after the debtor receives the Final Certificate.

Following the issuing of the Final Certificate the Supplier is barred from making any Claim for the payment of money against TAC in respect of any fact, matter or thing arising out of or in any way in connection with the Equipment or this Contract.

35. Payment of Workers and Subcontractors

35.1. Workers and subcontractors

The Supplier must give in respect of a Progress Claim, a subcontractor statement and statutory declaration in the form set out in Annexure Part E executed by an appropriate senior executive of the Supplier confirming the payment of moneys due and payable to:

- (a) workers of the Supplier and of the Subcontractors; and
- (a) Subcontractors,

in respect of Equipment the subject of that claim.

Supply of [insert description]

35.2. Direct payment

Before final payment, TAC, if not aware of a relevant relation-back day (as defined in the *Corporations Act 2001* (Cth)) may pay unpaid moneys the subject of clause 35.1 directly to a worker or a Subcontractors where:

- (a) permitted by Legislative Requirement;
- (b) given a court order in favour of the worker or Subcontractor; or
- (c) requested in writing by the Supplier.

Such payment and a payment made to a worker or Subcontractor in compliance with a Legislative Requirement is deemed to be part-satisfaction of TAC's obligation to pay pursuant to clause 34.2 or 34.7, as the case may be.

36. Set-Off and Fixed Contract Sum

36.1. Set-off

- (a) TAC may deduct from any moneys otherwise due to the Supplier under this Contract:
 - (i) any debt or other moneys due from the Supplier to TAC; and
 - (ii) any claim to money TAC may have against the Supplier, whether under this Contract or otherwise.
- (b) The rights given to TAC under this clause 36.1 are in addition to and do not limit or affect any other rights of TAC under this Contract or any Legislative Requirement.

36.2. Rise and Fall and Other Liabilities

The Supplier acknowledges and agrees that:

- (a) the Contract Sum are not subject to any cost adjustment or rise and fall in respect of fluctuations in exchange rates or changes in the cost of labour and materials or otherwise; and
- (b) it is not entitled to claim and TAC is not obliged to pay the Supplier any reimbursement in respect of any payments the Supplier may be obliged to make on behalf of its employees in respect of any superannuation fund, scheme or arrangement for the benefit of workers or otherwise.

37. GST and Customs

37.1. GST

- (a) Except where the context suggests otherwise, terms used in this clause 37.1 have the meaning given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Any part of a supply that is treated as a separate supply for GST purposes will be treated as a separate supply for the purposes of this clause 37.1.
- (c) Unless otherwise expressly stated, all consideration to be provided under this Contract (other than under this clause 37.1) is exclusive of GST.

- (d) Any payment or reimbursement required to be made under this Contract that is calculated by reference to a cost, expense or other amount paid or incurred will be limited to the total costs, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (e) If GST is payable in relation to a supply made under or in connection with this Contract, then any party (Recipient) that is required to provide consideration to another party (Supplier) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as any other consideration is to be first provided for that supply.
- (f) The Supplier must provide a tax invoice to the Recipient at the same time as any consideration is to be first provided for that supply.
- (g) If the GST payable in relation to a supply made under or in connection with this Contract varies from the additional amount paid by the Recipient under clause 37.1(e), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 37.1(g) is deemed to be a payment, credit or refund of the additional amount payable under clause 37.1(e). If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an adjustment note event within 5 Business Days after the date of the adjustment event.

37.2. Customs Clearance and Customs Duty

The Supplier:

- (a) is responsible for handling and clearing through customs in all applicable jurisdictions all exported and imported items required for incorporation into the Equipment;
- (b) must pay, and if it fails to pay, indemnify the Indemnified Persons with respect to, all customs and import duties payable on items required for incorporation into the Equipment, and this Contract Sum is deemed to include all such customs and duties;
- (c) must identify TAC as the "Importer of Record" for all exported or imported items for incorporation into the Equipment; and
- (d) must co-operate with TAC in seeking, and use its best endeavours to obtain, exemptions from or reductions in such customs and import duties. If such exemptions or reductions are obtained, the Supplier must pass the full benefit thereof on to TAC and the Contract Sum will be reduced accordingly.

38. Default or insolvency

38.1. Preservation of Other Rights

If a party breaches (including repudiates) this Contract, nothing in this clause 38 prejudices the right of the other party to recover damages or exercise any other right or remedy.

38.2. Supplier's Default

If the Supplier commits a substantial breach of this Contract, TAC may give the Supplier a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:
 - (i) provide Security;
 - (ii) provide evidence of insurance;
 - (iii) comply with a Direction of the Engineer; or
 - (iv) use the materials or standards of work required by this Contract;
- (b) wrongful suspension;
- (c) substantial departure from a Delivery Program without the Engineer's approval;
- (d) where there is no Delivery Program, failing to proceed with due expedition; and
- (e) knowingly providing documentary evidence containing an untrue statement.

38.3. TAC's Notice to Show Cause

A notice under clause 38.2 must state:

- (a) that it is a notice under clause 38.2;
- (b) the alleged substantial breach;
- (c) that the Supplier is required to show cause in writing why TAC should not exercise a right referred to in clause 38.4;
- (d) the date and time by which the Supplier must show cause; and
- (e) the place at which cause must be shown.

38.4. TAC's rights

If the Supplier fails to show reasonable cause by the stated date and time, TAC may by written notice to the Supplier terminate this Contract.

38.5. Termination

If this Contract is terminated pursuant to clause 38.4, the parties' remedies, rights and liabilities are the same as they would have been under the law governing this Contract had the Supplier repudiated this Contract and TAC elected to treat this Contract as at an end and recover damages.

38.6. Insolvency of the Supplier

- (a) Where the Supplier is 2 or more persons, a reference to the 'Supplier' in this clause 38.6 means any one or more of those persons.
- (b) If:
 - (i) the Supplier informs TAC in writing or creditors generally that the Supplier is insolvent or financially unable to proceed with this Contract;
 - (ii) in relation to the Supplier:

- (A) notice is given of a meeting of creditors with a view to the Supplier entering a deed of company arrangement; or
- (B) a controller, administrator, liquidator, provisional liquidator, receiver or receiver and manager is appointed;
- (iii) the Supplier enters a deed of company arrangement with creditors;
- (iv) an application is made to a court for the winding up of the Supplier and not stayed within 10 days thereafter;
- (v) a winding up order is made in respect of the Supplier;
- (vi) the Supplier resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up);
- (vii) a mortgagee of any property of the Supplier takes possession of that property; or
- (viii) the Supplier takes or suffers in any place, any step or action analogous to any of those mentioned in clauses 38.6(b)(i) - (viii),

then TAC may, without prejudice to any other right or remedy, exercise the right to terminate this Contract under clause 38.4.

39. Termination by Frustration

If this Contract is frustrated:

- (a) the Engineer must issue a statement for work or supplies carried out to the date of frustration, evidencing the amount which would have been payable had this Contract not been frustrated and the Supplier been entitled to and made a claim for payment on the date of frustration;
- (b) TAC must pay the Supplier the:
 - (i) amounts due to the Supplier under this Contract; and
 - (ii) cost of materials and equipment reasonably ordered by the Supplier for incorporation into the Equipment and which the Supplier is liable to accept, but only if they will become TAC's unencumbered property upon payment; and
- (c) TAC must promptly release and return all Security provided by the Supplier to which recourse has not been had.

40. Termination for Convenience

40.1. Right

- (a) TAC may terminate this Contract at any time by giving a written notice of termination to the Supplier and may do so for any reason it thinks fit and notwithstanding that the Supplier has not breached this Contract. This discretion is an absolute and unfettered discretion and is not subject to any condition that it will only be exercised reasonably.
- (b) Termination of this Contract under clause 40.1(a):

- (i) will be effective on the date of termination stated in the notice of termination or, if no such date is stated, on the date upon which the notice of termination is given to the Supplier;
- (ii) is without prejudice to any other right or remedy of TAC; and
- (iii) is without prejudice to any right or remedy of the Supplier accrued as at the date of termination.

40.2. Payment to Supplier

- (a) Subject to TAC's rights under clauses 5 and 36.1, if TAC terminates this Contract under clause 40.1(a), it must pay the Supplier the following amounts as determined by the Engineer:
 - (i) amounts due to the Supplier under this Contract; and
 - (ii) the cost of materials and equipment reasonably ordered by the Supplier for incorporation into the Equipment and which the Supplier is liable to accept, but only if they will become TAC's unencumbered property upon payment, and

TAC must promptly release and return all Security provided by the Supplier to which recourse has not been had.
- (b) Upon payment being made in accordance with clause 40.2(a), ownership of all physical work carried out up to the date of termination will, if it has not previously been transferred to TAC, transfers to TAC free of any Security Interest.
- (c) The provisions of this clause 40.2 are the Supplier's sole remedy in the event that TAC terminates this Contract under clause 40.1(a).
- (d) Payment of moneys under this clause 40.2 is not an admission of liability or evidence that Equipment has been Delivered in accordance with this Contract.

41. Notification of Claims

41.1. Communication of Claims

- (a) TAC will not be liable upon any Claim by the Supplier:
 - (i) arising out of or in connection with:
 - (A) a breach of this Contract by TAC;
 - (B) any Direction or approval by TAC or the Engineer;
 - (C) any other act or omission of TAC or the Engineer or their employees, consultants or agents; or
 - (D) the subject matter of this Contract;
 - (ii) under any provision of this Contract;
 - (iii) in tort;
 - (iv) for strict liability;
 - (v) under any statute;

- (vi) for payment or compensation on the basis of restitution; or
- (vii) for payment or compensation on any other legal or equitable basis, unless within 5 days after the earlier of the first day on which the Supplier could reasonably have been aware of the:
- (viii) breach, Direction, approval, act, omission or other event, fact, matter or circumstance on which the Claim is based; and
- (ix) entitlement to make the Claim,

the Supplier gives a Prescribed Notice to the Engineer.

- (b) A 'Prescribed Notice' is a notice in writing which is endorsed 'Prescribed Notice Under Clause 41' and includes full particulars of the following:

- (i) the breach, act, omission, direction, approval, event, fact, matter or circumstance on which the Claim is or will be based;
- (ii) the provision of this Contract or other basis for the Claim or proposed Claim; and
- (iii) the quantum or likely quantum of the Claim (including detailed calculations).

- (c) This clause 41 does not apply to:

- (i) any claim for payment of the Contract Sum;
- (ii) any claim for payment of a Variation directed by the Engineer; or
- (iii) any claim for an EOT,

but nothing in this clause 41 limits the operation or effect of any other notice provision, time-bar provision, condition precedent or limitation or exclusion clause in this Contract.

41.2. Liability for Failure to Communicate

If the Supplier fails to comply with clause 41.1:

- (a) TAC will not be liable upon the purported Claim by the Supplier; and
- (b) the Supplier is absolutely barred from making any Claim against TAC,

arising out of or in any way in connection with, the relevant act, default, omission, direction, fact, matter or thing (as the case may be) to which clause 41.1 applies.

Nothing in this clause 41 limits the operation or effect of any other provision of this Contract which requires the Supplier to give notice to TAC or the superintended in order to preserve an entitlement to make a Claim against TAC.

41.3. Engineer's Decision

If within 10 days after giving a Prescribed Notice the Supplier does not notify TAC and the Engineer of particulars of the Claim, the Prescribed Notice is deemed to be the Claim.

Within 40 days after receipt of a Prescribed Notice the Engineer must assess the Claim and notify the parties in writing of its decision. Unless a party within a further 15 days of such notification gives a notice of dispute under clause 42.1 which includes such decision, the Engineer must certify the amount of that assessment to be moneys then due and payable.

42. Dispute Resolution

42.1. Notice of dispute

If a difference or dispute (together called a 'dispute') between the parties arises in connection with the subject matter of this Contract, including a dispute concerning:

- (a) an Engineer's Direction; or
- (b) a claim:
 - (i) in tort;
 - (ii) under statute;
 - (iii) for restitution based on unjust enrichment or other quantum meruit; or
 - (iv) for rectification or frustration,

or like claim available under the law governing this Contract,

either party must, by hand or by registered post, give the other and the Engineer a written notice of dispute adequately identifying and providing details of the dispute.

Notwithstanding the existence of a dispute, the parties must, subject to clauses 38 and 39 and clause 42.4, continue to perform this Contract.

42.2. Conference

Within 10 days after receiving a notice of dispute, the parties must confer at least once to resolve the dispute or agree methods of doing so. At every such conference each party must be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

If the dispute has not been resolved within 20 days after service of the notice of dispute or such longer period agreed by the parties in writing, the dispute is hereby referred to arbitration.

42.3. Arbitration

If within a further 10 days the parties have not agreed upon an arbitrator, the arbitrator shall be nominated by the person in Item 33(a). The arbitration shall be conducted in accordance with the rules in Item 33(b).

42.4. Summary Relief

Nothing herein prejudices the right of a party to institute proceedings to enforce payment due under this Contract or to seek injunctive or urgent declaratory relief.

43. General Indemnity

43.1. Indemnity

- (a) To the fullest extent permitted by all relevant Legislative Requirements, the Supplier indemnifies TAC and each of its employees, officers, agents, shareholders and other Suppliers (together, the **Indemnified Persons**) from and against:
 - (i) any Claim by any other person; and
 - (ii) any loss suffered or incurred by an Indemnified Person,

Supply of [insert description]

arising out of, or in any way in connection with:

- (iii) the Supplier's breach of this Contract;
 - (iv) loss of or damage to property and any loss resulting from such loss or damage;
 - (v) any act of abandonment of some or all of the Supplier's obligations under this Contract;
 - (vi) any breach of a duty of confidence, whether owed under this Contract or a Legislative Requirement;
 - (vii) any wilful misconduct or negligent or unlawful act or omission of the Supplier or any of its Subcontractors or any of their respective employees and agents;
 - (viii) a Defect and its rectification (including the removal, transportation and replacement of the Defective item and TAC's use of any temporary equipment); or
 - (ix) any of the indemnities provided by the Supplier elsewhere in this Contract.
- (b) Where the Supplier indemnifies an Indemnified Person under this Contract, the Supplier's liability to indemnify the relevant Indemnified Person will be reduced to the extent that a negligent act or omission of that Indemnified Person contributed to the relevant liability or loss.

43.2. Other Beneficiaries

- (a) Where an indemnity in this Contract is expressed to be given by the Supplier in favour of a person other than TAC, this Contract operates as a deed poll by the Supplier for the benefit of that person. Such person may rely on, and enforce, each indemnity as a deed poll made in the person's favour by the Supplier.
- (b) If for any reason a person is unable to rely on, or enforce, an indemnity as contemplated by clause 43.2(a), the Supplier agrees to execute such documents as may be reasonably necessary to give full benefit of the indemnities to the person as contemplated by the indemnities.

43.3. No Exclusion

Neither clause 43.1 nor 43.2 apply to exclude any other right of the Indemnified Persons to be indemnified by the Supplier under this Contract or any other right or remedy of the Indemnified Persons arising out of or as a consequence of any breach of this Contract by the Supplier.

44. Limitation of Liability

44.1. Liability Cap

Other than in the case of the heads of liability identified or referred to in clauses 43.1(a)(iv) - (a)(ix) (which are all uncapped), to the extent permitted by all relevant Legislative Requirements, the Supplier's maximum aggregate liability to the Indemnified

Supply of [insert description]

Parties under or arising out of this Contract or any Legislative Requirement is capped at the sum of the:

- (a) Contract Sum; and
- (b) insurance proceeds recovered or recoverable by the Supplier under the insurances required to be maintained by the Supplier under this Contract.

44.2. Excluded Loss

To the fullest extent permitted by all relevant Legislative Requirements:

- (c) TAC and each of the Indemnified Persons will have no liability to the Supplier or any of its employees, agents or contractors (whether arising in contract, tort (including negligence), statute, equity or otherwise) for Excluded Loss; and
- (d) other than in the case of the heads of liability identified or referred to in clauses 43.1(a)(iv) - (a)(ix), the Supplier will have no liability to TAC or any of the Indemnified Persons (whether arising in contract, tort, statute, equity or otherwise) for Excluded Loss.

45. Vienna Convention

The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (adopted at Vienna on 10 April 1980) does not apply in any respect to this Contract.

46. Spare Parts

TAC may direct the Supplier to provide spare parts related to the Equipment and listed in Annexure Part D at any time prior to the expiry of the last Defects Liability Period to expire. As soon as reasonably practicable, and in any event within 10 days after that request, the Supplier must supply the requested spare parts to TAC, at TAC's cost, calculated in accordance with the prices set out in Annexure Part D.

47. PPS Act

The Supplier acknowledges and agrees that:

- (a) if and to the extent that TAC at any time forms a belief on reasonable grounds that it is, or will become, a secured party arising out of or in connection with this Contract or any transaction contemplated by it, TAC may at the Supplier's expense take all steps that TAC considers advisable to:
 - (i) perfect, protect, record, register, amend or remove the registration of, TAC's Security Interest in any relevant personal property that is the subject of this Security Interest (relevant personal property); and
 - (ii) better secure TAC's position in respect of the relevant personal property under the PPS Act;
- (b) it will do all things reasonably necessary to assist TAC to take the steps described in clause 47(a);

Supply of [insert description]

- (c) it irrevocably and unconditionally waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of TAC in the relevant personal property;
- (d) if, and only if, TAC is or becomes a secured party in relation to relevant personal property, and to the extent only that Chapter 4 of the PPS Act would otherwise apply to an enforcement of a Security Interest in relevant personal property, the parties agree that, pursuant to section 115 of the PPS Act, the following provisions of the PPS Act do not apply in relation to those Security Interests to the extent, if any, mentioned in sections 115, 117, 118, 120, 121(4), 125, 129, 130, 132(3)(d), 132(4), 142 and 143;
- (e) subject to section 275(7) of the PPS Act, it will not disclose the contents of this Contract, the amount or performance obligation secured by TAC's Security Interest in relevant personal property and the other information mentioned in section 275(1) of the PPS Act pursuant to section 275(4) of the PPS Act;
- (f) it will immediately notify TAC if the Supplier becomes aware of any person other than TAC taking steps to register, or registering, a financing statement in relation to relevant personal property; and
- (g) it must arrange for the removal or cessation of any registration of any Security Interest that affects the priority of TAC's interest in relevant personal property.

For the purposes of this clause 47, "registration", "secured party", "verification statement", "financing statement", "personal property" and "financing change statement" each have the meaning given to those terms in the PPS Act.

48. General

48.1. Prohibition and Enforceability

- (a) Any provision of, or the application of any provision of, this Contract or any right, power, authority, discretion or remedy which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this Contract which is void, voidable, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in another jurisdiction or of the remaining provisions in that or another jurisdiction.
- (c) If any provision of this Contract is deemed to be or become void, voidable or enforceable, it shall be read down, or if incapable of being read down, severed and the remaining provisions of this Contract shall continue to have full force and effect.

48.2. Variation

A variation of any term of this Contract must be in writing and signed by the parties.

48.3. Counterparts

This Contract may be executed in any number of counterparts and all counterparts, taken together, constitute one instrument.

48.4. Survival of Rights

Clauses 1 - 23, 27, 28.7 and 30 - 48 survive expiry or termination of this Contract.

48.5. Governing Law

This Contract is governed by and must be construed according to the law applying in New South Wales.

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts; and
- (a) waives any objection it may now or in the future have to the venue of any proceedings if that venue falls within clause 48.5(a).

48.6. Joint and Several Obligations and Liabilities

If the Supplier comprises 2 or more persons:

- (a) the obligations and liabilities of the Supplier under this Contract bind those persons jointly and severally;
- (b) those persons must notify TAC of their leader who must have authority to bind the Supplier and each of those persons; and
- (c) the Supplier must not alter its composition or legal status without the prior written consent of TAC.

48.7. Units of Measurement

Measurements of physical quantities must be in Australian legal units of measurement within the meaning of the *National Measurement Act 1960* (Cth).

48.8. Entire Agreement

To the extent permitted by all relevant Legislative Requirements, it is agreed that:

- (a) in relation to its subject matter, this Contract;
 - (i) embodies the entire understanding of the parties; and
 - (ii) supersedes any prior written or other agreement of the parties;
- (b) all prior or contemporaneous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Contract are merged in and superseded by this Contract and TAC has no liability to the Supplier in respect of those matters; and
- (c) no oral explanation or information given to the Supplier by or on behalf of TAC will:
 - (i) affect the meaning or the interpretation of this Contract; or
 - (ii) constitute any collateral agreement or warranty between the parties.

48.9. Severability

If any provision of this Contract is or becomes illegal, invalid, unenforceable or void in any relevant jurisdiction, the legality, validity, enforceability and validity of the remainder of this Contract will not be affected (unless incapable of being operable in the absence of

such provision) and this Contract will be read as if the part had been deleted in that jurisdiction only.

48.10. Waiver

- (a) No failure to exercise and no delay in exercising any right, remedy or power under this Contract will operate as a waiver of that right, remedy or power.
- (b) No single or partial exercise of any right, remedy or power under this Contract will preclude any other or further exercise of that or any other right, remedy or power.
- (c) No waiver of any right, remedy or power on any particular occasion will operate as a waiver by the waiving person of that right, remedy or power in relation to any other occasion or preclude any other or further exercise of that right, remedy or power in relation to any other occasion.
- (d) No relaxation by TAC or the Engineer of any requirement of this Contract on any particular occasion will operate as a relaxation by TAC or the Engineer of that requirement in relation to any other occasion.

48.11. Indemnities

- (a) Each indemnity given under this Contract is a continuing obligation, separate and independent from the other obligations of the parties and survives the termination, rescission or expiration of this Contract.
- (b) It is not necessary for a party to incur an expense before enforcing a right of indemnity conferred by this Contract.
- (c) A party must pay on demand any amount it must pay under an indemnity in this Contract.

48.12. Legal Costs

Each party will bear its own legal costs of and incidental to the preparation, negotiation and execution of this Contract.

48.13. Approvals and Consent

Subject to any express provision in this Contract to the contrary, TAC and the Engineer:

- (a) may give or withhold any consent or approval in their sole discretion; and
- (b) are not obliged to give their reasons for doing so.

48.14. Independent Supplier

The Supplier is an independent Supplier with respect to the supply of the Equipment and neither the Supplier nor any Subcontractor nor any agents or employees of any of them will be deemed to be the employees, agents or representatives of TAC or any Related Body Corporate of TAC.

48.15. Further Acts and Documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this Contract.

Part A

Item		
1	TAC (clause 1)	Tomago Aluminium Company Pty Limited, acting on behalf of and as agent for Alcan Primary Metal Australia Pty Limited, Gove Aluminium Finance Limited, Cathjoh Holdings Pty Limited and Hydro Aluminium Australia Pty Limited (the participants in the Tomago Aluminium Project Joint Venture) ABN 68 001 862 228
2	TAC's address	638 Tomago Road, Tomago NSW 2322 Phone: 02 49669244 Email: tony.camps@tomago.com.au
3	Supplier (clause 1)	[*]..... ACN [*] ABN [*]
4	Supplier's address	[*]..... Phone [*] Email [*]
5	Stated Purpose for Equipment (clause 1)	Refer Specification (Annexure C)
6	Engineer (clause 1)	[insert name] [insert address] Phone [*] Email [*]
7	Delivery Place (clause 1 and clause 28.1)	Warehouse Tomago Aluminium Co Pty Ltd North Gate Entrance, Old Punt Road Tomago NSW 2322 Australia
8	a) Date for Delivery (clause 1 and clause 28.1) OR b) Period of time for Delivery (clause 1 and clause 28.1)	[*] [*]
9	Additional Policies (clause 1)	Refer Specification (Annexure C)

Supply of [insert description]

10	Approved Subcontractor (clause 1 and clause 10.2)	Approved Subcontractor [*]	Subcontract Work [*]
11	a) Currency (clause 1)	[*]	
	b) Place for payments (clause 1)	Electronic funds transfer	
12	Packaging, marking and transportation (Clause 24)	Proposed Method of Land Shipment to Delivery Place [*]	
		Place of Manufacture (city):	[*]
		Estimated number of:	[*]
		Containers	[*]
		Crates	[*]
		Pallets	[*]
		Skids	[*]
		Other	[*]
		Weight of heaviest piece (kg):	[*]
		Total shipping weight (kg):	[*]
		Volume of largest piece (m):	[*]
		Total shipping volume (m'):	[*]
		Storage at the Site is recommended to be:	[*]
		Outdoor	[*]
		Indoors	[*]
		Other (Please specify):	[*]
		Packaging Description Dimension in m X m X m	Packaged Weight (kg) Packaged
13	Provisional Sums (clause 3)	[*]	
14	Security (clause 1 and clause 5)	Security (as defined) in the amount of 10% of the Contract Sum (2 x 5% Bank Gurantees)	
15	TAC-supplied documents (clause 8.2)	Document TAC Tender	No. of copies [*]
16	Supplier-supplied documents (clause 8.3)	Document [*]	No. of copies [*]

Supply of [insert description]

17	Time for Engineer's Direction about documents (clause 8.3)	14 days	
18	Legislative Requirements to be satisfied by TAC (clause 12.1)	Refer Specification (Annexure C)	
19	Reference Date	Not Used	
20	Tax invoices (clause 34.5)	28 th day of each month	
21	Time by which insurance of Equipment is to be effected (clause 13)	The date of this Contract	
22	Public and Product Liability Insurance (clause 14)	Public Liability - \$20,000,000 for each and every claim Product Liability - \$10,000,000 for each and every claim	
24	Professional Indemnity Insurance (clause 16)	\$10,000,000	
25	Tests (clause 29)	Tests Refer Specification (Annexure C)	Times As Noted
26	Party responsible for unloading Equipment (clause 28.1)	TAC	
27	Liquidated damages (clause 28.7)	\$[*] per day	
28	When risk in the Equipment passes (clause 30.1)	Upon the passing of all Acceptance Tests	
29	Period for TAC's notice that Equipment accepted or rejected (clause 31.1)	7 days	
30	Period for TAC's notice accepting or rejecting Supplier's proposal (clause 31.4)	7 days	
31	Defects Liability Period (clause 32)	12 months	
32	Quality Assurance (clause 23.1)	ISO9001	

Supply of [insert description]

- 33
- Arbitration
(clause 42.3)
- a) Person to nominate an arbitrator

President of Resolution Institute
- b) Rules for arbitration

Rules of Resolution Institute for the Conduct of
Commercial Arbitrations

|

Part B

Approved form of Unconditional Undertaking

(clause 1 – Security)

At the request of

ACN..... ABN (the *Supplier*) and in consideration of
Tomago Aluminium Company Pty Limited (ABN 68 001 862 228) (the *Purchaser*) accepting this undertaking
in respect of the *Contract* for the supply and installation of (the *Project*)
ACN ABN

(‘the *Financial Institution*’) unconditionally undertakes to pay on demand any sum or sums which may from
time to time be demanded by the *Purchaser* to a maximum aggregate sum of
(\$)

The undertaking is to continue until notification has been received from the *Purchaser* that the sum is no
longer required by the *Purchaser* or until this undertaking is returned to the *Financial Institution* or until
payment to the *Purchaser* by the *Financial Institution* of the whole of the sum or such part as the *Purchaser*
may require.

Should the *Financial Institution* be notified in writing, purporting to be signed by.....
for and on behalf of the *Purchaser* that the *Purchaser* desires payment to be made of the whole or any part
or parts of the sum, it is unconditionally agreed that the *Financial Institution* will make the payment or
payments to the *Purchaser* forthwith without reference to the *Supplier* and notwithstanding any notice given
by the *Supplier* not to pay same.

Provided always that the *Financial Institution* may at any time without being required so to do pay to the
Purchaser the sum of

(\$)

less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may
be required and specified by the *Purchaser* and thereupon the liability of the *Financial Institution* hereunder
shall immediately cease.

Dated at this day of 20

Supply of [insert description]

Part C

Description of Equipment

(clause 1 – Equipment)

[insert description of Equipment and all relevant Design Lives (see definition)]

Supply of [insert description]

Part D

Schedule of Prices

(clause 1 – Schedule of Prices)

[insert all relevant prices (including prices for Spare Parts (see clause 46))]

Supply of [insert description]

Part E

Subcontractor Statement and Statutory Declaration

(clause 34.1 – Progress Claims)



SUBCONTRACTOR'S STATEMENT REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note 1 – see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: ABN:
(Business name)

of
(Address of subcontractor)

has entered into a contract with ABN:
(Business name of principal contractor) (Note 2)

Contract number/identifier
(Note 3)

This Statement applies for work between:/...../..... and/...../..... inclusive, (Note 4)

subject of the payment claim dated:/...../..... (Note 5)

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

(a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box. (Note 6)

(b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../..... (Note 7)

(c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)

(d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)

(e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. (Note 10)

(f) Signature Full name

(g) Position/Title Date/...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987*.

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called *the subcontractor*) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

STATUTORY DECLARATION

Statutory declaration in the matter of the Contract for Supply and Installation of [insert description of Equipment], dated [insert date] (**Contract**)

BETWEEN

Tomago Aluminium Company Pty Limited (ABN 68 001 862 228), acting on behalf of and as agent for Alcan Primary Metal Australia Pty Limited, Gove Aluminium Finance Limited, Cathjoh Holdings Pty Limited and Hydro Aluminium Australia Pty Limited (the participants in the Tomago Aluminium Project Joint Venture), of 638 Tomago Road, Tomago NSW 2322 (**TAC**)

AND

[insert Supplier name] (ABN [*]) of [insert address] (**Supplier**)

I, [name of declarant] of [address] in the state of New South Wales, [occupation], do solemnly and sincerely declare that, after having made enquiries:

- 1 I have knowledge of the relevant facts and am authorised by the Supplier to make this statutory declaration on its behalf;
- 2 this statutory declaration is made under clause [#] of the Contract in respect of progress claim no. [#];

[Note :In the case of the final payment claim submitted by the Supplier, replace the above paragraph with the following paragraph:

this statutory declaration is made under clause [#] of the Contract in relation to payment claim no. [#];]

- 3 all amounts properly payable by the Supplier to consultants, suppliers and subcontractor in respect of the Equipment have been paid;
- 4 there are no outstanding amounts due and payable by the Supplier or any security held by any person in relation to the Equipment.

AND I MAKE this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1900* (NSW).

Supply of [insert description]

DECLARED at place

on date

by
Signature of declarant

I, *[name of authorised witness]*, a *[qualification of authorised witness]*, certify the following matters concerned with the making of this statutory declaration by the declarant:

[Delete the relevant parts of Statement 1 and Statement 2]

1 I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.

2 I have known the person for at least 12 months OR I have not known the person for at least 12 months, but I have confirmed the person's identity by reference to:

.....
document relied on

.....
Signature of authorised witness

.....
Name of authorised witness (block letters)