

## 1. DEFINITIONS AND INTERPRETATIONS

### 1.1 Definitions

**Anti-Bribery and Anti-Corruption (ABAC) Legislation** means all Laws in connection with the prohibition of bribery and corruption applicable to the performance of this Order (including by virtue of the place of domicile or operations of the parties and their related bodies corporate), and includes the *Criminal Code Act 1995* (Cth), the *Crimes Act 1914* (Cth), the *Public Governance, Performance and Accountability Act 2013* (Cth), the *Corporations Act 2001* (Cth) and the *Bribery Act 2010* (UK).

**"Business Day"** means:

- (a) if the Governing Law is not Victoria or Queensland, any day other than:
  - (i) a Saturday, Sunday or a public holiday (in the State or Territory of the Governing Law); or
  - (ii) 27, 28, 29, 30 or 31 December.
- (b) if the Governing Law is Victoria, Business Day means a day that is not:
  - (i) a Saturday or Sunday; or
  - (ii) a day that is wholly or partly observed as a public holiday throughout Victoria.
- (c) if the Governing Law is Queensland, Business Day means a day that is not:
  - (i) a Saturday or Sunday; or
  - (ii) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done; or
  - (iii) any day occurring within any of the following periods:
    - (A) 22 to 24 December inclusive;
    - (B) 27 to 31 December inclusive;
    - (C) 2 to 10 January inclusive.

**Carrier** means the company identified in the Carrier Order.

**Carrier Order** means the carrier order that by reference includes these Terms and Conditions of Carrier Order (Road Transport) and forms part of the Order.

**Claim** means any action, suit, claim, demand, cause of action, proceeding, notice, defence or set-off for any present or future Liability whether based in contract, equity, tort (including negligence), statute, for unjust enrichment or otherwise.

**COR Legislation** means Laws relating to fatigue management, speed and mass, dimension and load restraint compliance requirements generally referred to as 'Chain of Responsibility' Laws or 'Heavy Vehicle' Laws.

**COR Systems** means policies, procedures, standards, training and systems designed to ensure, so far as is reasonably practicable, compliance with COR Laws.

**Dangerous Goods** means any Goods as shall be or become in fact or at law noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable by their nature of causing damage or injury to other goods or to any person or animals or to anything in which those Goods are carried, handled or stored.

**Delivery Date** means the delivery date identified on the Carrier Order or in a schedule attached to the order as varied in writing by Select.

**Delivery Fee** means the amount identified in the Carrier Order (excluding GST) subject to any adjustments made pursuant to these General Conditions.

**Delivery Services** means the storage/warehousing, carriage, transport, movement, handling, loading, unloading and/or any other service performed or arranged by the Carrier pursuant to or ancillary to the Carrier Order.

**Event of Force Majeure** is one of the following events: fire, riot, war, extreme weather conditions, national industrial action, fuel shortage and new Laws.

**Goods** means the goods identified in the Carrier Order and any other materials required to be delivered in accordance with the Carrier Order.

**Industrial Instrument** means an award or agreement, however designated, that:

- (a) is made under or recognised by an industrial law (within the meaning of the *Fair Work Act 2009* (Cth)); and
- (b) relates to the relationship between an employer and the employer's employees.

**Liability** means any liability, Claims, costs, losses and expenses (including without limitation legal fees on a solicitor and own client basis) or damages of any nature suffered or incurred by Select directly or indirectly.

**Law** means all law (including WHS Legislation and COR Legislation), legislation, regulation, RSRT orders, Australian Standards and industry standards of Australia.

**Loading Point** means the loading point identified in the Carrier Order.

**LORAC** means Laing O'Rourke Australia Construction Pty Limited.

**Notice** means any correspondence or other written communication under this Carrier Order sent by email, facsimile or post.

**Order** means:

- (a) the Carrier Order;
- (b) the Scope of Works (if any);
- (c) any documents referred to in the Carrier Order (or attached to these General Conditions); and
- (d) these General Conditions.

**Personnel** means the Carrier and its consultants, suppliers, employees, agents and other persons engaged by the Carrier.

**Proportionate Liability Legislation** means:

if the Governing Law is the Australian Capital Territory, then the *Civil Law (Wrongs) Act 2002* (ACT) and the *Building Act 2004* (ACT);

- (a) if the Governing Law is New South Wales, then Part 4 of the *Civil Liability Act 2002* (NSW);
- (b) if the Governing Law is Northern Territory, then the *Proportionate Liability Act 2005* (NT);
- (c) if the Governing Law is Queensland, then Part 2 of the *Civil Liability Act 2003* (Qld);

- (d) if the Governing Law is South Australia, then Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA);
- (e) if the Governing Law is Tasmania, then Part 9A of the *Civil Liability Act 2002* (Tas) and the *Building Act 2000* (Tas);
- (f) if the Governing Law is Victoria, then Part IVAA of the *Wrongs Act 1958* (Vic); or
- (g) if the Governing Law is Western Australia, then Part 1F of the *Civil Liability Act 2002* (WA).

**Related Entity** has the same meaning as in the Code.

**RSR Legislation** is the *Road Safety Remuneration Act 2012* (Cth) and any regulation associated with that legislation.

**RSRT Order** is an order by the Road Safety Remuneration Tribunal under the RSR Legislation.

**Scope of Works** is the document of that name (or similar) attached to the Carrier Order.

**Select** means Select Plant Australia Pty Ltd (ABN 49 644 500 354).

**State Code** means, if the project to which the Order relates is located in:

- (a) New South Wales and the Delivery Services are part of building and construction work undertaken by or on behalf of a New South Wales Government department or public sector body (as defined in the *Public Sector Employment and Management Act 2002* (NSW)), the *NSW Code of Practice for Procurement (NSW Code)*, the *Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction (NSW Guidelines)* and the provisions in clause 21;
- (b) Queensland and the Delivery Services are part of Queensland Government funded (in whole or in part) building and construction work, the *Queensland Code of Practice for the Building and Construction Industry (Queensland Code)* and the provisions in clause 22;
- (c) Western Australia, was released to market or the selected respondents (as the case may be), after 1 January 2017, is publicly or privately funded, and Select is participating in a 'Covered Tender Process' relating to 'State Building Work' or is performing work under a 'Covered Contract' for the performance of 'State Building Work' (as those terms are defined in the *Western Australian Building and Construction Industry Code of Conduct 2016 (WA Code)*), the WA Code and the provisions in clause 23; or
- (d) South Australia, and is managed or partly or fully funded by the South Australian Government, the *Code of Practice for the South Australian Construction Industry* dated March 2016 (**SA Code**) and the *Implementation Guidelines to the Code of Practice for the South Australian Construction Industry (SA Guidelines)* as amended from time to time and the provisions in clause 24.

**WHS Act** means the principal work health and safety Act(s) in the State or Territory where the Delivery Point is situated, and the State or Territory where work under this Order (or any part thereof) is being carried out.

**WHS Legislation** means the WHS Act and the WHS Regulation and any other health and safety related legislation applicable to work connected with the supply of the Goods and the Delivery Services.

**WHS Regulation** means the regulation/s associated with the WHS Act.

- 1.2 A reference to delivery by a Delivery Date is a reference to delivery of each part of the Goods specified in the Carrier Order by the corresponding Delivery Date.

- 1.3 If the Carrier is comprised of 2 or more persons, the obligations under this Carrier Order bind them jointly and severally.

## 2. CARRIER'S PERFORMANCE

### 2.1 The Carrier:

- (a) must perform the Delivery Services and take all necessary steps to ensure the delivery of the Goods from the Loading Point to the Delivery Point by the Delivery Date with minimal handling (prior consent from Select is required to load or re-load any Goods) and without causing damage to the Goods; and
- (b) warrants that the Delivery Services will:
  - (i) comply with this Order and all applicable Law; and
  - (ii) be performed with due care, skill and in accordance with good industry practice.

- 2.2 If the Carrier is in breach of any of its obligations set out in clause 2.1, Select may, in its absolute discretion have the Delivery Services performed or completed by others and the Carrier will provide Select with its reasonable assistance in this regard. Further, any exercise by Select of its rights under this clause 2.2 will be without prejudice to any other rights or remedies that Select may have or has and any cost incurred by Select in exercising its rights under this clause 2.2 will be a debt due and payable by the Carrier to Select.

- 2.3 If Select considers that the Carrier is in breach of its obligations under clause 2.1, or is otherwise in breach of its obligations under the Order, and that breach, in Select's opinion, is due to a dispute or difference between the Carrier and the Carrier's Personnel then Select may take all steps necessary to mitigate its loss, including paying the Carrier's consultants, suppliers and others engaged by the Carrier directly for goods or services provided in connection with or in any way related to the Order; and any payment made by Select in this regard will be a debt due and payable by the Carrier upon demand.

## 3. DEFAULT

- 3.1 Without prejudice to any other rights or remedies of Select under the Order, if the Carrier:

- (a) Commits an act of bankruptcy, enters into a scheme of arrangement with its creditors, is placed in official management, has a receiver appointed, has an application to wind it up presented to the Supreme Court (including any application to which the Carrier alleges a bona fide dispute exists), has a liquidator or provisional liquidator appointed, or is deemed to be insolvent as defined in the *Corporations Act 2001* (Cth);
- (b) wholly or partly suspends performance of its obligations under the Order;
- (c) fails to proceed with performance of the Delivery Services in a reasonable, diligent or competent manner;
- (d) commits any breach of the Order

- 3.2 Then Select may terminate the Order by Notice to the Carrier effective immediately.

- 3.3 Select is also entitled to act to complete the requirements under the Order and claim any subsequent costs as a debt due from the Carrier

- 4. SET OFF**  
Select may set off, deduct or withhold from any monies due to the Carrier under this Order, any debt, amount, claim for damages or any other entitlement Select considers that it has against the Carrier arising from or incidental to:
- the Delivery Services or otherwise under the Order; or
  - Select having to make payment to another party in order to release any goods due to that party withholding the Goods due to a default (or future potential default) or breach by the Carrier
  - any other work performed by the Carrier for Select under any other agreement between Select and the Carrier, and if such monies are insufficient for this purpose then the deficiency may be recovered as a debt due and owing by the Carrier to Select.
- 5. TERMINATION**
- 5.1 If the Carrier is in breach of any term of the Order, is in default or commits a negligent act or omission or in any way acts so as to endanger any property or any person, Select shall be entitled to immediately terminate the Order by written notice to the Carrier, whereupon Select, without limiting any other of its entitlements under the Order or at law, shall be entitled to recover damages from the Carrier. The Carrier shall have no recourse or claim against Select for termination of the Order pursuant to this clause.
- 5.2 Without limiting clause 5.1, Select may by Notice terminate this Order:
- If the Carrier fails to rectify any default under this Order within the time specified in the Notice, effective immediately;
  - for its sole convenience, effective from the date stated in the Notice; or
  - on insolvency or threatened insolvency of the Carrier as determined in the absolute discretion of Select, effective immediately.
- 5.3 On receiving a Notice of termination under clause 5.2, the Carrier must:
- Immediately stand down from providing the Delivery Services, or from the date of the Notice, if the Notice is written under clause 5.2(b)
  - Use all reasonable endeavors to minimise the costs of termination to Select.
- 5.4 If the Order is terminated under clause 5.2, the Carrier:
- will be entitled to its reasonable costs incurred in performing the Delivery Services up to and including the date of termination.
  - will not be entitled to any cost or expense incurred by the Carrier by reason of the termination or any compensation for any loss or damage suffered or incurred by the Carrier or which it claims will be suffered or incurred by the Carrier by reason of the termination.
- 6. CARRIERS LIABILITY**
- 6.1 The Carrier will not, without the prior written consent of Select, assign, transfer or subcontract this Order or any part of the Delivery Services.
- 6.2 The Carrier shall be liable to Select for all loss, damage, delay or deterioration to, or mis-delivery of or failure to deliver the Goods and any other failure to perform the Delivery Services.
- 7. INDEMNITIES AND INSURANCE**
- 7.1 The Carrier indemnifies Select against all Liability for:
- Personal injury, illness or death of any person
  - Loss or damage to or loss of use of the Goods and any other real or personal property, arising out of, or in connection with, any act or omission of the Carrier or its Personnel under or in any way in connection with this Order; and
  - any breach of this Order,
- 7.2 The Carrier must effect and maintain from the date of this Order:
- Public and product liability insurance for an amount of \$10,000,000.00 if no amount is specified in the Carrier Order commencing on the date of the Order;
  - Transit insurance for the value of the goods being carried (unless specifically confirmed with reference to this carrier order that insurance is being provided by Select).
  - such other insurances as are required by law.
- 7.3 The Carrier must provide evidence of such insurance on request of Select.
- 7.4 Notwithstanding any other provision in this Order, Select shall not be liable to the Carrier or any of its Personnel for any loss of goodwill, loss of business, loss of profits (anticipated, actual or otherwise), loss of savings, loss of use, any pure economic loss or any indirect or consequential loss arising, out of or in connection with this Order.
- 7.5 Select's liability to the Carrier whether under this Order or otherwise at law shall in no event exceed the total value of the Order.
- 8. DELIVERY**
- 8.1 The Carrier must:
- (if specified in the Carrier Order) load the Goods at the Loading Point at its cost and risk;
  - (if specified in the Deliver Order) deliver and (if specified in the Carrier Order) unload the Goods at the Delivery Point at its cost and risk;
  - ensure the Goods are:
    - free of visible damage at the time of loading;
    - properly packed for transportation, loading and unloading having regard to the nature of the Goods and possible weather conditions;
    - clearly labelled as required by Select;
    - accompanied by a delivery docket which contains the Carrier Order number and a list of the Goods for delivery in sufficient detail to enable checking to take place at the time of delivery.
- 8.2 Upon delivery of the Goods at the Delivery Point, Select may sign or stamp the Carrier Order or delivery docket as proof of delivery.
- 8.3 The parties acknowledge and agree that any Carrier Order or delivery docket signed or stamped by Select on delivery of the Goods to the Delivery Point will not be taken as evidence that the Goods comply with this Carrier Order and will not limit or exclude the responsibilities and obligations of the Carrier in relation to the Goods or the Delivery Services (if relevant).
- 8.4 The Carrier must immediately give Notice to Select of any likely delay in delivery of the Goods beyond the Delivery Date.
- 8.5 Any delay in providing access to the Delivery Point whether caused by Select or arising due to some other cause beyond Select's reasonable control, will not be construed as a breach of this Order and will not entitle the Carrier to make any Claim against Select.
- 8.6 The Goods will only be at the risk of Select once the Goods have been delivered and unloaded (if unloading is included in the Delivery Services) at the Delivery Point.
- 9. ROUTE AND VARIATIONS**
- 9.1 Select may at any time direct the Carrier by Notice to use a particular method of or route for providing the Delivery Services.
- 9.2 The Carrier will give priority to the method or route referred to in clause 9.1 but may provide the Delivery Services by another method or route provided that it obtains prior written authority from Select to do so.
- 10. INVOICE AND PAYMENT**
- 10.1 Within 21 days of delivery of the Goods to the Delivery Point, or if not relevant, completion of the Delivery Services, the Carrier may submit proof of delivery and a tax invoice for the Delivery Services, in the amount of the Delivery Fee accompanied by any information requested by Select.
- 10.2 Tax invoices and credit notes must:
- clearly state the relevant Carrier Order number on the first page of the tax invoice;
  - be provided with all delivery dockets and any other relevant documentation;
  - be sent by:
    - email to:  
accountspayableaustralia@laingorourke.com.au; or
    - mail to:  
Select Plant Australia Pty Ltd  
Accounts Payable Shared Services Department  
GPO Box 5094, Brisbane QLD 4001
  - where emailed:
    - the tax invoice must be attached to the email as single PDF document. The first page of the PDF document must be the tax invoice. The following pages must be all delivery dockets and any other relevant documentation; and
    - where multiple tax invoices, each tax invoice must be provided in a separate email.
- 10.3 Subject to compliance with clause 10.2, and the proper performance of the Carrier's obligations Select will pay the undisputed amount invoiced, less any deductions pursuant to clauses 4 and/or 10.5, within:
- 20 Business Days if Delivery Point is located in New South Wales; or
  - 30 days if Delivery Point is not located in New South Wales, of receipt of the tax invoice.
- 10.4 Payment will be on account only and will not be evidence of satisfactory performance by the Carrier of this Carrier Order.
- 10.5 Select may deduct from any payment otherwise due to the Carrier:
- any debt or other amount due from the Carrier to Select; or
  - any bona fide claim to payment Select may have against the Carrier whether for damages or for a debt due and owing under this Order or otherwise under this Carrier Order or at law.
- 11. SUSPENSION**
- 11.1 Select may at any time and for any reason suspend performance of all or any of the Carrier's obligations under this Order by Notice effective upon receipt of that Notice. The Carrier must suspend the performance of the obligations identified in the Notice until Select directs the Carrier to resume performance of those obligations by further Notice. At such time, the Carrier must promptly recommence the performance of those obligations in accordance with this Order.
- 11.2 If a suspension does not arise from an act or omission of the Carrier or its Personnel, the Carrier will only be entitled to be paid the extra costs reasonably incurred by the Carrier as a result of the suspension, as determined by Select in its absolute discretion.
- 12. HEALTH AND SAFETY**
- 12.1 The Carrier acknowledges that Select does not control or influence the Carrier's activities except activities of the Carrier performed on Select's premises.
- 12.2 Without limiting the generality of clause 2.1(b)(i), the Carrier must:
- comply with its obligations under WHS Legislation and COR Legislation;
  - carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for the performance of the duty imposed by clause 2.2;
  - comply with any obligation it has under WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
  - comply with Select's Safety Management System as available at <https://nextgearsms.com/>;
  - the Carrier must at all times comply with all site safety, security, operational and procedural requirements, provided that such requirements are not illegal or unsafe.
  - Select will provide the Carrier with delivery instructions that are reasonably necessary to enable the Delivery to be completed in a safe manner in accordance with relevant Laws. The Carrier must advise Select if insufficient instructions have been received.

- (g) Notwithstanding clause 12.2(f), Select is not liable in any way for any loss of any kind, arising out of any error, inaccuracy, incompleteness or other similar defect in the delivery instructions provided by Select to the Carrier. Compliance by the Carrier with this clause will not, of itself, relieve the Carrier of any of its other obligations under this Order.
- (h) Without limiting any other provision of this clause 12.2 or the Order generally, the Carrier must ensure that vehicles are operated, and Delivery Services are carried out at a standard equal to or above the relevant Primary Standards (including all the additional Primary Standards and information noted within same) for Site Establishment and Logistics which available via the following link <https://nextgearsms.com/home/primary-standards/ps-17-site-establishment-and-logistics/>.
- (i) Where Select reasonably suspects that a vehicle and/or driver assigned to perform a Delivery Services has breached, or will breach, any Law, any site safety, security, operational and procedural requirements or any term of this Order, Select is entitled to immediately revoke the access of the driver and/or vehicle, and require the Carrier to provide an alternate driver and/or vehicle to carry out the Delivery Service.
- (j) Select is entitled, on reasonable notice to the Carrier, at any time within normal business hours to inspect the Carrier's place of business, equipment and documentation to ensure that all relevant Laws have been and are being complied with.
- (k) without limiting the generality of this clause, the Carrier agrees to provide to Select on request any available data on transport related fines and infringements, insurance claims and any occupational health and safety incidents involving the Carrier or its Personnel.

#### 13. DANGEROUS GOODS

- 13.1 Select must disclose whether the Goods are Dangerous Goods.
- 13.2 If the Carrier accepts Dangerous Goods for Delivery Services, Select will ensure that such Goods are:

- (a) accompanied by a written declaration of their nature and contents; and
- (b) properly and safely packed in accordance with statutory obligations applicable to the carriage of those Goods.

#### 14. COMPLIANCE WITH TRANSPORT LAWS AND CHAIN OF RESPONSIBILITY LEGISLATION

- 14.1 As a transport Carrier to Select, and without limiting the generality of clause 2.1(b)(i), the Carrier:

- (a) Will at all times comply with all applicable road Laws and regulations in the provision of the Delivery Services, including the COR Legislation.
- (b) acknowledge that the Carrier is the primary duty holder (including as the operator, packer, loading manager, loader and unloader), under the COR Legislation with responsibility for developing COR Systems applicable to the supply of any plant or materials including but not limited to ensuring that:
  - (i) any plant or tooling is appropriately maintained;
  - (ii) loads do not exceed vehicle mass or dimension limits; and
  - (iii) the items are appropriately secured.
- (c) as primary duty holder under the COR Legislation, warrants that it has in place and will ensure that it and Personnel are aware of and at all times comply with the Carrier's COR Systems.
- (d) operators carrying freight containers have a valid Container Weight Declaration, as defined by the COR Legislation.
- (e) will not aid or abet, cause or permit or coerce or induce any breach of any applicable road Law or regulation or allow any employees to do any of the foregoing.
- (f) warrants that it is not in breach of and will at all times comply with the RSR Legislation and RSR Orders.
- (g) will promptly advise Select of any facts and circumstances which come to its attention which may give rise to any breach of any applicable road Laws and regulations, including the COR Legislation and RSR Legislation;.
- (h) will ensure that at all times all vehicles are duly registered and maintained and comply with any Laws and regulations applicable to such vehicles including in respect of the use of such vehicles to provide the Delivery Services to Select.
- (i) will ensure that at all times the Carrier's employee drivers are duly licensed, qualified and experienced, observe good driver etiquette and reasonable instructions or guidelines notified by Select from time to time (whether orally or in writing) and comply with all Laws and regulations applicable to such persons to the extent they are engaged in the provision of the Delivery Services.
- (j) the Carrier will ensure that any demands made will not require a driver to:
  - (i) exceed permitted driving hours;
  - (ii) fail to have minimum rest periods;
  - (iii) exceed the speed limit;
  - (iv) carry goods that exceed vehicle dimension limits;
  - (v) inappropriately carry any goods on Select's behalf that are not appropriately secured; and
  - (vi) breach any Law, in so far as it relates to their employment under this contract as a driver.

#### 15. ANTI-BRIBERY AND ANTI-CORRUPTION

- 15.1 Select is committed to operating in a manner consistent with the laws of the jurisdictions in which it operates, including ABAC Legislation.
- 15.2 The Carrier must not, and must take all reasonable steps to ensure that any employee, agent, contractor, representative, does not in connection with the Order, commit any act which would breach any applicable ABAC Legislation.
- 15.3 The Carrier must implement adequate policies and procedures to manage and ensure compliance with ABAC Legislation and disclose those policies and procedures to Select upon request. Where the Carrier does not have a written policy or, in Select's opinion, an adequate policy, it agrees that it will comply with LORAC's ABAC policy available at: <http://www.laingorourke.com/who-we-are/governance/code-of-conduct.aspx> and will comply with the principles of that policy in all respects as if it were its own policy.
- 15.4 The Carrier will immediately notify Select in writing if it becomes aware of any breach, alleged breach or facts or circumstances which could reasonably be considered to constitute a breach of ABAC Legislation.
- 15.5 Without limiting any other rights Select has under this Order, if Select reasonably believes that the Carrier is in breach of this clause or that a breach is imminent, it may, by written notice effective immediately terminate the Order.

#### 16. CODE AND INDUSTRIAL LAWS COMPLIANCE

- 16.1 The Carrier is responsible for and will ensure that it complies with its obligations under any Industrial Instrument or Laws that apply to it relating to the Carrier's employee entitlements, including:
  - (a) paying all applicable wages, workers' compensation insurance, fringe benefits tax, all payroll taxes and other employee entitlements including in respect of any superannuation fund, scheme or arrangement for the benefit of the Carrier's employees; and
  - (b) complying with all applicable Laws with respect to the deduction and payment of tax instalment deductions from salaries and wages paid to employees.
- 16.2 The Carrier must not engage in any unlawful arrangements or practices which may avoid obligations under awards, Industrial Instruments or Laws including treating a genuine employee as an independent contractor or allowing an inappropriate application of the Pay As You Go (PAYG) system of taxation.
- 16.3 Where a State Code applies to this Order, the Carrier must comply with the relevant State Code.
- 17. **FORCE MAJEURE**
- 17.1 If either party is delayed or prevented from performing an obligation under this Order by an Event of Force Majeure, that party must promptly give Notice of the Event of Force Majeure to the other party detailing the obligation it is unable to perform.
- 17.2 If a Notice is given by one party to the other party under clause 19, the performance of that obligation will be suspended for the period during which the obligation is prevented from being performed by the Event of Force Majeure.
- 17.3 The Carrier will be entitled to an extension of time to the Delivery Date to the extent the Event of Force Majeure has delayed delivery of the Goods in accordance with this Order.

#### 18. GENERAL

- 18.1 This Order is governed by the law applicable in the State or Territory in which the Delivery Point is located. The parties submit to the non-exclusive jurisdiction of the Courts of that State or Territory.
- 18.2 This Order constitutes the entire agreement of the parties about its subject matter and:
  - (a) supersedes all previous agreements, understandings and negotiations on that subject matter irrespective of whether or not in writing; and
  - (b) will prevail over any other document (including any delivery docket executed by Select, tax invoice or other document containing terms and conditions in relation to the delivery of the Goods) issued by the Carrier from time to time whether signed by Select or not and whether post-dating this Order or not.
- 18.3 The delay or non-exercise of a right (including a set off) does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or future exercise of it or the exercise of any other power or right. Any waiver or consent given by a party will only be effective if given or confirmed in writing.
- 18.4 The remedies provided in this Order do not prejudice Select's rights against the Carrier whether arising out of or in connection with this Order or otherwise at law.
- 18.5 The Carrier will be subject to all conditions and warranties implied by the Australian Consumer Law (Schedule 2 to the *Competition and Consumer Act 2010* (Cth)) if and to the extent applicable to this Order.

#### 19. DISPUTES

If a dispute arises in any way in connection with the Order, then either party may give the other Notice of that dispute. Within 14 days of that Notice, senior executives of the parties must meet to negotiate in good faith a resolution of the dispute. If the dispute has not been resolved 7 days after the expiry of the 14 days period for negotiation, either party may commence proceedings in a court of competent jurisdiction.

#### 20. EXCLUSION

To the maximum extent permitted by Law, the operation of the Proportionate Liability Legislation is excluded in relation to rights, obligations and any Liability under the Order whether such rights, obligations or Liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at Law.

#### 21. STATE CODE COMPLIANCE – NEW SOUTH WALES

- 21.1 The provisions in this clause 21 apply where the relevant State is New South Wales and the Carrier is required to comply with the State Code applicable to New South Wales.
- 21.2 In addition to terms defined in this document, terms used in this clause 21 have the same meaning as is attributed to them in the NSW Guidelines (as published by the NSW Treasury July 2013). The NSW Code and NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).
- 21.3 **Primary Obligation**
  - (a) The Carrier must at all times comply with, and meet any obligations imposed by, the NSW Code and NSW Guidelines.
  - (b) The Carrier must notify the CCU and the Client Agency of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
  - (c) Where the Carrier engages a subcontractor or consultant, the Carrier must ensure that that contract imposes on the subcontractor or consultant equivalent obligations to those in this section 1.2 of Part A, including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
  - (d) The Carrier must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

#### 21.4 Access and information

- (a) The Carrier must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its subcontractors, consultants and related entities.
- (b) The Carrier must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
  - (i) enter and have access to sites and premises controlled by the Carrier, including but not limited to the project site;
  - (ii) inspect any work, material, machinery, appliance, article or facility;

- (iii) access information and documents;
  - (iv) inspect and copy any record relevant to the project;
  - (v) have access to personnel; and
  - (vi) interview any person,
- as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the Carrier, its subcontractors, consultants, and related entities.
- (c) The Carrier, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

## 21.5 Sanctions

- (a) The Carrier warrants that at the time of entering into this contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (b) If the Carrier does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- (c) Where a sanction is imposed:
- (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
  - (ii) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
  - (iii) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction;
  - (iv) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Carrier, and
  - (v) its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

## 21.6 Compliance

- (a) The Carrier bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Carrier is not entitled to make a claim for reimbursement or an extension of time from the Client Agency or the State of NSW for such costs.
- (b) Compliance with the NSW Code and NSW Guidelines does not relieve the Carrier from responsibility to perform the Services and any other obligation under the contract, or from liability for any defect in the Services or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (c) Where a change in the contract or Services is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the Carrier must immediately notify the Client Agency (or nominee) of the change, or likely change and specify:
- (i) the circumstances of the proposed change;
  - (ii) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
  - (iii) what steps the Carrier proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Work Health and Safety Management Plan), and
  - (iv) the Client Agency will direct the Carrier as to the course it must adopt within 10 Business Days of receiving notice.

## 22. STATE CODE COMPLIANCE – QUEENSLAND

22.1 The provisions in this clause 22 apply where the relevant State is Queensland and the Carrier is required to comply with the State Code applicable to Queensland.

22.2 In addition to terms defined in this Order, terms used in this clause 22, have the same meaning as is attributed to them in the Queensland Code (as published by the Department of Justice and Attorney- General). The Queensland Code is available at [www.treasury.qld.gov.au](http://www.treasury.qld.gov.au).

### 22.3 Primary Obligation

- (a) The Carrier must comply with, and meet any obligations imposed by, the Queensland Code.
- (b) The Carrier must notify the BCCB (or nominee) and the Client Agency of any alleged breaches of the Queensland Code and of voluntary remedial action taken, within 24 hours of becoming aware of the alleged breach.
- (c) Where the Carrier is authorised to engage a subcontractor or consultant, and it does so, the Carrier must ensure that any secondary contract imposes on the subcontractor or consultant equivalent obligations to those in this section 1.2 of Part B, including that the subcontractor or consultant must comply with, and meet any obligations imposed by, the Queensland Code.
- (d) The Carrier must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the Queensland Code.

### 22.4 Access and information

- (a) The Carrier must maintain adequate records of compliance with the Queensland Code by it, its subcontractors, consultants and related entities.
- (b) The Carrier must allow, and take reasonable steps to facilitate, Queensland Government authorised personnel (including personnel of the BCCB) to:
- (i) enter and have access to sites and premises controlled by the Carrier, including the project site;
  - (ii) inspect any work, material, machinery, appliance, article or facility;
  - (iii) access information and documents;
  - (iv) inspect and copy any record relevant to the project;
  - (v) have access to personnel; and
  - (vi) interview any person,
- as is necessary for the authorised personnel to monitor and investigate compliance with the Queensland Code and Queensland Guidelines, by the Carrier, its subcontractors, consultants and related entities.

- (c) The Carrier, and its related entities, must agree to, and comply with, a request from Queensland Government authorised personnel (including personnel of the BCCB) for the production of specified documents by a certain date, whether in person, by post or electronic means.

## 22.5 Sanctions

- (a) The Carrier warrants that at the time of entering into this contract, neither it, nor any of its related entities, are subject to a sanction in connection with the Queensland Code that would have precluded it from tendering for work to which the Queensland Code applies.
- (b) If the Carrier does not comply with, or fails to meet any obligation imposed by, the Queensland Code, a sanction may be imposed against it in connection with the Queensland Code.
- (c) Where a sanction is imposed:
- (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
  - (ii) the State of Queensland (through its agencies, Ministers and the BCCB) is entitled to:
  - (iii) record and disclose details of non-compliance with the Queensland Code and the sanction; and
  - (iv) take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the Carrier, or its related entities, in respect of work to which the Queensland Code applies.

## 22.6 Compliance

- (a) The Carrier bears the cost of ensuring its compliance with the Queensland Code. The Carrier is not entitled to make a claim for reimbursement or an extension of time from the Client Agency or the State of Queensland for such costs.
- (b) Compliance with the Queensland Code does not relieve the Carrier from responsibility to perform the Services and any other obligation under the contract, or from liability for any defect in the Services or from any other legal liability, whether or not arising from its compliance with the Queensland Code.
- (c) Where a change in the contract or Services is proposed, and that change would, or would be likely to, affect compliance with the Queensland Code, the Carrier must immediately notify the Client Agency (or nominee) of the change, or likely change and specify:
- (i) the circumstances of the proposed change;
  - (ii) the extent to which compliance with the Queensland Code will, or is likely to be, affected by the change; and
  - (iii) what steps the Carrier proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan),
- and the Client Agency will direct the Carrier as to the course it must adopt within 5 Business Days of receiving notice.

## 23. STATE CODE COMPLIANCE – WESTERN AUSTRALIA

23.1 The provisions in this clause 23 apply where the relevant State is Western Australia and the Carrier is required to comply with the State Code applicable to Western Australia.

23.2 In addition to terms defined in this Order, terms used in this clause 23, have the same meaning as is attributed to them in the WA Code and WA Guidelines as published by the Department of Commerce. The WA Code and WA Guidelines are available at [www.commerce.wa.gov.au](http://www.commerce.wa.gov.au).

### 23.3 Primary Obligation

- (a) The Carrier must comply with, and meet any obligations imposed by, the Western Australian Government's WA Code and WA Guidelines.
- (b) The Carrier must notify the BCCMU (or nominee) of any suspected breaches of the WA Code and WA Guidelines as soon as practicable, but no later than 48 hours after becoming aware of the breach or suspected breach.
- (c) Where the Carrier is authorised to engage a subcontractor or consultant, and it does so, the Carrier must ensure that any secondary contract imposes on the subcontractor or consultant equivalent obligations to those in this section 1.2 of Part C, including that the subcontractor or consultant must comply with, and meet any obligations imposed by, the WA Code and WA Guidelines.
- (d) The Carrier must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the WA Code and WA Guidelines.

### 23.4 Access and information

- (a) The Carrier must maintain adequate records of compliance with the WA Code and WA Guidelines by it, its subcontractors, consultants and related entities.
- (b) The Carrier must allow, and take reasonable steps to facilitate and assist Select and Western Australian Government authorised personnel (including personnel of the BCCMU) to:
- (i) enter and have access to the Carrier's business premises and any other places where records, documents or information is kept by the Carrier, including the project site;
  - (ii) locate, inspect, access and/or take copies of any record, document, information or other evidence whether in hard copy or electronic format;
  - (iii) speak with or interview the Service Provider's employees or contractors; and
  - (iv) respond to requests for information made by the BCCMU,
- as is necessary for the authorised personnel to monitor and investigate compliance with the WA Code and WA Guidelines, by the Carrier, and its related entities, must agree to, and comply with, a request from Select or Western Australian Government authorised personnel (including personnel of the BCCMU) for the production of specified documents by a certain date, whether in person, by post or electronic means.
- (c) The Service Provider and its related entities must not obstruct the BCCMU.

### 23.5 Finding of material WA Code non-compliance

- (a) The Carrier warrants that at the time of entering into this contract, neither it, nor any of its related entities, are subject to a finding of material WA Code non-compliance in connection with the WA Code or WA Guidelines which may adversely affect the prospects of, or serve to prevent, the Carrier and its Related Entities being awarded 'State Building Work'.

- (b) If the Carrier does not comply with, or fails to meet any obligation imposed by, the WA Code and WA Guidelines, a finding of material WA Code non-compliance may be made against it in connection with the WA Code and WA Guidelines.
- (c) Where a finding of material WA Code non-compliance is made:
  - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
  - (ii) the State of Western Australia (through its agencies, Ministers and the BCCMU) and Select are entitled to take the finding into account which may adversely affect the prospects of, or serve to prevent, the Carrier and its Related Entities being awarded the 'State Building Work' the subject of the procurement processes to which the WA Code and WA Guidelines apply.

#### 23.6 Compliance

- (a) The Carrier must initiate voluntary remedial action aimed at rectifying a finding of material WA Code non-compliance with the WA Code and WA Guidelines when it is drawn to their attention.
- (b) The Carrier bears the cost of ensuring its compliance with the WA Code and WA Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the WA Australia Code and WA Guidelines. The Carrier is not entitled to make a claim for reimbursement or an extension of time from the State of Western Australia for such costs.
- (c) Compliance with the WA Code and WA Guidelines does not relieve the Carrier from responsibility to perform the works and any other obligation under the contract, or from liability for any defect in the works or from any other legal liability, whether or not arising from its compliance with the WA Code and WA Guidelines.

#### 24. STATE CODE COMPLIANCE SOUTH AUSTRALIA

24.1 The provisions in this clause 24 apply where the relevant State is South Australia and the Carrier is required to comply with the State Code applicable to South Australia.

24.2 In addition to terms defined in this Order, the terms used in this clause 24 have the same meaning as is attributed to them in the SA Code and the SA Guidelines as amended from time to time.

#### 24.3 Primary Obligation

- (a) The Carrier must at all times:
- (b) comply with, and meet any obligations imposed by, the SA Code and the SA Guidelines;
- (c) ensure that its subcontractors comply with, and meet any obligations imposed by, the SA Code and the SA Guidelines; and
- (d) not cause Select to breach any of its obligations under the SA Code or the SA Guidelines.

#### 24.4 Additional matters constituting a substantial breach

- (a) The parties acknowledge and agree that a failure by the Select to pay the Carrier in accordance with the terms of this Services Agreement will constitute a substantial breach of this Services Agreement.

#### 24.5 WHS Management System

- (a) The Carrier acknowledges that it has an appropriate WHS management system in place that satisfies the requirements of the SA Code.
- (b) Notification of industrial relations matters
- (c) The Carrier must promptly notify the Select of any industrial relations matters that may have an impact on the cost or completion of this Services Agreement or other contracts relating to the Project (including those to which the Carrier is not a party).

#### 24.6 Skills Development Training

- (a) The Carrier acknowledges its obligations under Schedule 6 of the SA Guidelines in relation to skills development training and undertakes to take all necessary steps to satisfy the requirements of Schedule 6 of the SA Guidelines, including by making such contributions to the Construction Industry Training Fund as are required.
- (b) If requested by the Select, the Carrier must provide Select with proof of the Carrier's or any of the Carrier's subcontractors' payment of the Construction Industry Training Levy.
- (c) The Carrier must comply with the South Australian Government's Workforce Participation in Government Construction Procurement Policy.

#### 24.7 Environmental management

- (a) The Carrier acknowledges its obligations under Schedule 8 of the SA Guidelines in relation to environmental management and, without limiting its obligations under the SA Guidelines, undertakes to comply with the South Australian Government's Energy Efficiency Action Plan.