

PURCHASE ORDER TERMS AND CONDITIONS

B. & J. Catalano Pty Ltd (**Catalano, we, us, our**) and the Supplier (**you, your, yours**) agree that the Supplier will supply the Goods and/or carry out the Services for B&J Catalano on these Terms and Conditions.

1. CONTRACT

- 1.1 The Purchase Order that we issue to you together with these Terms and Conditions form the Contract between you and us.
- 1.2 You agree to be bound by the Contract on the first to occur of the following events:
 - (a) you supply the Goods or commence the Services;
 - (b) you accept the Purchase Order, whether verbally or in writing; or
 - (c) you submit a claim to us for payment.
- 1.3 The Purchase Order prevails in case of any inconsistency with these Terms and Conditions.
- 1.4 In entering into the Contract, we make no representation or guarantee as to the quantity, quality, regularity or profitability of the Goods and/or Services that we may engage you to supply. You agree that we may procure services similar to the Services from any other supplier and there is no relationship of exclusivity between us.
- 1.5 To the extent that you supply terms and conditions with any quotation, email or other communication, or by reference to any website, or with the Goods or Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of the Contract (even if a representative of Catalano signs those terms and conditions or annexes the terms and conditions to the Purchase Order).

2. GOODS AND SERVICES

- 2.1 You must ensure that any Goods and/or Services that you supply under the Contract:
 - (a) are manufactured, supplied and/or carried out to a high standard in accordance with industry best practice;
 - (b) comply with all relevant Legislative Requirements, building codes and Australian Standards;
 - (c) are supplied in accordance with any specifications and timeframe set out in the Purchase Order (including any Delivery Date) or otherwise notified to you by us; and
 - (d) are supplied in accordance with any directions given by us to you.

3. TIME FOR PERFORMANCE

- 3.1 Time is of the essence in relation to the supply of the Goods and/or Services.
- 3.2 You must take all reasonable steps to prevent delay.
- 3.3 You must supply the Goods and carry out the Services by any Delivery Date and in accordance with any program that we notify to you.

- 3.4 We may update the program from time to time. You must comply with any updated program notified by us to you in connection with the Contract.
- 3.5 If requested by us, you must provide us with a program within 5 days of the date of the Purchase Order or our request, whichever occurs earlier.
- 3.6 You must notify us of any event that may lead to an actual or potential delay in the supply of the Goods and/or Services and its cause within 3 days of the occurrence of the event.
- 3.7 You may be entitled to an extension to the Delivery Date, provided that the delay is notified to us in accordance with this clause 3, is caused by us or our client and is not attributable to you.

4. PERFORMANCE

- 4.1 You must obtain in your name all permits, registrations and licences necessary for you to perform your obligations under the Contract.
- 4.2 You must deliver the Goods to, and carry out the Services at, the Site, the Delivery Address or any other location specified by us, by the Delivery Date.
- 4.3 You must, when delivering the Goods and/or performing the Services:
 - (a) ensure that you or your Personnel are available to deliver the Services on a full-time basis from the date of issue of the Purchase Order until the completion of the Services;
 - (b) not interfere with our activities or the activities of any of our other subcontractors or any other third party at the Site; and
 - (c) comply with, and ensure that your Personnel comply with, all directions and orders given by or on behalf of us at the Site.
- 4.4 The Goods and/or Services must comply strictly with the Specification.
- 4.5 You must not, and must ensure that your Personnel do not, communicate with our client or take instructions from our client or any third party in connection with the Goods and/or Services and your other obligations under this Contract, unless we consent in writing.
- 4.6 We are entitled to reject any of the Goods and/or Services that do not comply with the Specification or the requirements of the Contract.

5. SUPPLIER EQUIPMENT

- 5.1 Unless otherwise specified in the Purchase Order, you must supply all vehicles and equipment (**Supplier Equipment**) required to perform the Services.
- 5.2 The Supplier Equipment must:
- (a) meet any vehicle requirement or other Specification set out in the Purchase Order;
 - (b) be registered, at your expense; and
 - (c) be made available to us for inspection on our request.
- 5.3 You must, at your expense:
- (a) mechanically maintain and repair the Supplier Equipment;
 - (b) ensure that any vehicles used in supplying the Goods and/or Services are roadworthy, compliant with all laws and maintained in good order and condition;
 - (c) ensure that the Supplier Equipment is maintained and presented in good and clean condition; and
 - (d) pay all running costs associated with the Supplier Equipment.
- 5.4 You must immediately cease using the Supplier Equipment if we direct you to do so because in our opinion it is unsafe to use or otherwise requires repairs, maintenance, inspection or testing.

6. HIRE EQUIPMENT

- 6.1 You warrant that you have the right to Hire the Hire Equipment to us in accordance with this Contract.
- 6.2 Risk in the Hire Equipment passes to us:
- (a) if the Purchase Order provides that we will collect the Hire Equipment, at the time that we remove the Hire Equipment from the Collection Location; or
 - (b) if the Purchase Order provides that you will deliver the Hire Equipment to Site or to the Delivery Address, at the time that the Hire Equipment is delivered to the Site or the Delivery Address and accepted by us.
- 6.3 Risk in the Hire Equipment reverts to you:
- (a) if the Purchase Order provides that we will return the Hire Equipment, at the time the Hire Equipment is returned to the Collection Location by us; or
 - (b) if the Purchase Order provides that you will collect the Hire Equipment from us, the time that you arrive at the Site or the Delivery Address to collect the Hire Equipment.
- 6.4 You must provide us with all relevant information and records to enable the safe and proper use of the Hire Equipment, including all operating procedures, manuals, risk assessments and manufacturer's instructions required for the safe operation and maintenance of the Hire Equipment (**Hire Information**).
- 6.5 If any Hire Information has not been provided by you to us because you do not possess or have access to the Hire Information, we may elect in our discretion to take delivery of the Hire Equipment without the Hire Information or to terminate the Purchase Order with immediate effect.

- 6.6 You must ensure that at the time of collection or delivery of the Hire Equipment, the Hire Equipment:
- (a) meets the Specification;
 - (b) is fit for the purpose for which such Hire Equipment is ordinarily used, safe to use (including mechanically, electrically, hydraulically and structurally safe), in good repair and operating condition;
 - (c) is clean and undamaged;
 - (d) has been properly serviced and maintained in accordance with good industry practice and manufacturer's recommendations;
 - (e) is complete in all respects and includes everything necessary to operate properly in accordance with any manufacturer's specifications or other applicable standards; and
 - (f) is free from any charges or encumbrances which could prevent or affect its use by us in accordance with this contract.
- 6.7 Prior to the collection or delivery of the Hire Equipment, we must undertake a joint inspection of the Hire Equipment (**Pre-delivery Inspection**) and each sign a written report that records the condition of the Hire Equipment.
- 6.8 If the Pre-delivery Inspection discloses that the condition of the Hire Equipment does not comply with this Contract, we may elect not to take delivery of the Hire Equipment, in which case no Price will be payable by us and the Contract will automatically terminate.
- 6.9 If the Purchase Order states that we are responsible for the Minor Servicing, we will carry out the Minor Servicing of the Equipment in accordance with the any agreed maintenance program, and in the absence of an agreed program, in accordance with good industry practice.
- 6.10 If the Purchase Order states that you are responsible for the Minor Servicing, you must at all times and at your expense carry out the Minor Servicing so as to keep the Equipment in good condition and working order as evidenced by the Pre-delivery Inspection Report (fair wear and tear and any other exceptions in the Purchase Order excepted).
- 6.11 You must promptly carry out the following servicing tasks:
- (a) all maintenance and servicing that is not Minor Servicing; and
 - (b) replacement of major components, required to keep the Hire Equipment in good condition and working order for the duration of the Term.
- 6.12 You must allow us to inspect any maintenance and servicing records, logbooks or other documents evidencing the condition and servicing of the Hire Equipment.

- 6.13 Unless caused by any wrongful act or omission by us, if the Hire Equipment is damaged or rendered non-operational or cannot be used or operated for its intended purpose, we may give a written notice to you:
- (a) requiring you to repair the Hire Equipment in which case you must immediately repair the Hire Equipment at your cost and provide us with temporary replacement equipment which complies with the requirements of this Contract until such time as the Hire Equipment is fully repaired;
 - (b) requiring you to supply replacement equipment that is at least capable of satisfying the requirements of this Contract in which case you must supply the replacement equipment at your cost as soon as practicable and we will continue to pay you the Price; or
 - (c) terminating the Contract with immediate effect in which case you must arrange for the prompt collection of the Equipment from the Site or Delivery Address at your cost.
- 6.14 Notwithstanding any other provision of this Contract, we are not obliged to pay any part of the Price for the period from the time the Hire Equipment is damaged or becomes non-operational (unless caused by any wrongful act or omission by us) until the Hire Equipment has been repaired or replaced and is operational and available on the Site and ready for use by us.
- 6.15 We agree that we will:
- (a) notify you as soon as practicable of the full circumstances of any mechanical breakdown or accident involving the Hire Equipment.
 - (b) not alter, dismantle or make additions to or otherwise interfere with the Hire Equipment;
 - (c) assign, sell, transfer, sub-lease, dispose of, or permit any person to acquire any rights or interests in respect of the Hire Equipment.
 - (d) If any items of the Hire Equipment are lost, damaged beyond reasonable repair or destroyed for any reason including as a result of any negligent or otherwise wrongful act or omission by us during the Hire (and reduced to the extent the loss or damage is caused or contributed to by you), our liability to you is limited in all circumstances to the lesser of:
 - (i) the reasonable direct costs actually incurred by you replacing the relevant item of Hire Equipment with equipment of the same or similar nature, age and condition; or
 - (ii) at our sole discretion, our replacement of the relevant item of Hire Equipment with equipment of the same or similar nature, age and condition, and you hereby release and hold us harmless from all other Loss connected with the Hire howsoever arising.
- 6.16 The costs of any Hire Equipment licencing such as road registration or similar which is required are your responsibility. If any inspections are required pursuant to any licensing requirements as defined under this clause, we will on reasonable notice make the Hire Equipment available for such inspections.
- 6.17 Subject to clause 6.16, we will obtain and bear the costs of any permits and/or licences required by law or any authority in connection with the use and operation of the Equipment at the Site.
- ## 7. LABOUR HIRE
- 7.1 If the Purchase Order states that the Services include the provision of Labour Hire Services, you must provide Temporary Workers to perform Assignments and supply the Temporary Worker with such tools and personal protective equipment as is specified on the Purchase Order.
- 7.2 By the end of each working day of an Assignment, you must ensure that each Temporary Worker submits a timesheet for our approval and signature, verifying the number of hours worked by the Temporary Worker during that day.
- 7.3 Prior to the commencement of any Assignment and at such regular intervals during the Assignment as we request, you must:
- (a) give notice to us of the Temporary Worker's identity, relevant experience, training, qualifications and any authorisation required by law or a professional body of the Temporary Worker so that we can determine the suitability of the Temporary Worker for the required Assignment, in our absolute discretion; and
 - (b) ensure that the Temporary Worker submits to medical examinations as required in connection with the Assignment (including alcohol and other drug screening) to demonstrate suitability and fitness for work.
- 7.4 You agree that you must:
- (a) employ Temporary Workers under an employment contract that complies with all applicable Legislative Requirements;
 - (b) ensure that your employees and agents comply with all applicable Legislative Requirements;
 - (c) ensure that the Temporary Worker complies with all relevant WHSE Requirements;
 - (d) ensure that you do not do or omit to do anything that would cause us to be in breach of Legislative Requirements or any enterprise agreement or industrial instrument; and
 - (e) pay and administer all employment costs of the Temporary Worker, including wages,

benefits, payroll tax, superannuation, PAYG income tax, other relevant entitlements and deductions applicable to the Temporary Worker and all associated costs in accordance with any employment contract between you and the Temporary Worker.

- 7.5 You are liable for, indemnify and will keep us indemnified against all Loss, and hereby release us from any claim, action, suit, proceeding or demand, arising directly or indirectly out of or otherwise connected with the death of or personal injury to, any Temporary Worker except to the extent caused or contributed to by any wrongful act or omission by us.
- 7.6 You agree and acknowledge that Temporary Workers undertake Assignments on a contract hire basis. They are at all times your employees and are deemed to be under our supervision and direction only for the duration of the Assignment. Nothing in this Contract implies an employer and employee relationship between us and the Temporary Worker.
- 7.7 If your acts or omissions or the acts or omissions of your employees or agents in connection with this clause 7 place us in breach of Legislative Requirements or cause us to incur any cost or Loss, you indemnify, defend and hold us harmless from and against all costs and Losses arising by reason of that act or omission.
- 7.8 If, in our opinion, the Temporary Worker is or becomes unsuitable for the Assignment for any reason, we may suspend the Assignment of the Temporary Worker and you must provide us with an alternative Temporary Worker of equivalent skill as soon as practicable.
- 7.9 Notwithstanding the provisions of clause 12, we may terminate any Assignment immediately by notice in writing:
- (a) if we consider (in our absolute discretion) the standards of workmanship or the conduct of the Temporary Worker are unsatisfactory; or
 - (b) in the event of misconduct by the Temporary Worker.

8. PRICE

- 8.1 The price for the Goods and/or Services is the price stated in the Purchase Order (**Price**).
- 8.2 The Price excludes GST but includes any other applicable taxes, customs, excise and import duties, tariffs, fees, levies, charges, costs or expenses that you incur in connection with the Contract, including transport, packing and insurance costs.
- 8.3 Where the Price relates to the Hire of Hire Equipment, the Price includes:
- (a) the cost of all labour, plant, equipment, tools, appliances or other property and items used by you in the provision of the Hire and in the performance of this Contract; and
 - (b) all costs, expenses, fees and charges incurred by you in providing the Hire.
- 8.4 Unless otherwise agreed in writing the Price is fixed and firm, and not subject to adjustment due to rise

and fall, currency fluctuation, escalation in material or labour costs or any other reason.

9. PAYMENT

- 9.1 You must claim payment for the Services by submitting payment claims to us at the times stated in the Purchase Order or, if no times are stated, monthly by the 25th day of the month.
- 9.2 Each payment claim must comply with the following:
- (a) state the Purchase Order number;
 - (b) be a tax invoice; be correctly dated;
 - (c) list the particular Goods and/or Services supplied;
 - (d) be supported by relevant records to enable us to verify the amount claimed;
 - (e) state that it is made under the Security of Payment Act.
- 9.3 If we request, you must provide additional relevant records to calculate and verify the amount stated in your payment claim, within the time requested.
- 9.4 You will not be entitled to payment under this Contract until you have:
- (a) complied with clauses 9.1, 9.2 and 9.3;
 - (b) supplied the Goods/and or Services in accordance with the Contract; and
 - (c) complied with all other obligations under the Contract including providing warranties and manuals.
- 9.5 If you submit an invoice earlier than the time stated in the Purchase Order, the invoice will be deemed to have been submitted at the stated time for payment claims.
- 9.6 For projects that fall within the Security of Payment Act, within 15 Business Days of receiving the payment claim, we will:
- (a) determine the amount payable;
 - (b) provide a progress schedule to you, explaining the reasons for any difference between the amount determined and the amount claimed; and
 - (c) pay any undisputed amounts in accordance with clause 9.8.
- 9.7 Without limiting clause 9.6, we may issue a revised progress schedule at any time correcting or modifying a previous progress schedule, including as a result of the provision of information under clause 9.3.
- 9.8 We may deduct from or set off against any monies which may be, or become, payable to you any costs, expenses or damages which are due from you to us, or which we have incurred or reasonably consider we might incur, whether under this Contract, any other agreement or otherwise at law.
- 9.9 Subject to clauses 9.3 to 9.6 9.8 we will pay the amount determined as payable into your nominated bank account in accordance with the payment terms stated in the Purchase

Order or, if no terms are stated, within 30 days of the end of the month in which the payment claim is submitted.

- 9.10 We will not pay interest on any overdue amount unless required by legislation, in which case interest will be paid at rate set by the legislation.
- 9.11 Payment by us of all or any part of a payment claim is on account only and is not approval of the Goods and/or Services.
- 9.12 You must be registered for GST.

10. WARRANTIES

- 10.1 You must be, and must remain, at all times during the delivery of the Services, a company duly incorporated under the *Corporations Act 2001* (Cth).
- 10.2 You represent and warrant that:
 - (a) the Goods and/or Services will be supplied in accordance with all applicable laws, regulations, codes and standards;
 - (b) the Goods and/or Services and the Supplier Equipment strictly comply with the Specifications;
 - (c) the Goods are manufactured from new materials;
 - (d) the Goods and/or Services are free from all Defects;
 - (e) you will, and will ensure your Personnel will, exercise the standards of diligence, due care and skill normally exercised by a prudent and similarly qualified and competent supplier supplying equivalent goods or services;
 - (f) the Goods and/or Services are fit for the purpose for which goods and/or services of the same kind are commonly supplied;
 - (g) all Personnel are appropriately qualified, competent and skilled to perform the part of the Services for which they are engaged;
 - (h) any equipment used by you to deliver the Services, including the Supplier Equipment, is in safe working condition, complies with all Legislative Requirements and will be operated by suitably qualified, licensed and accredited Personnel.
- 10.3 You must, at your cost, immediately rectify or replace (at our discretion) any Defective Goods or Services.
- 10.4 If we consider that we need to rectify or replace Defective Goods and/or Services then we may do so or engage a third party to do so, without notifying you. You must reimburse us for the full cost of that replacement or rectification.
- 10.5 If we elect to accept Defective Services on one occasion, that election does not oblige us to accept any other Defective Services and does not limit any of our other legal rights in respect of those Defective Services.
- 10.6 You consent to our assignment of any or all of the above warranties to any of our clients or related companies.

11. LIABILITY AND INDEMNITY

- 11.1 You are liable for, indemnify and will keep us indemnified against all Loss, and hereby release us from any claim, action, suit, proceeding or demand, arising directly or indirectly out of this Contract or the supply of the Goods and/or Services, including:
 - (a) death of, or personal injury to, any person (including any Temporary Worker);
 - (b) loss or damage to any property; and
 - (c) liability connected with any breach by you of the Contractexcept to the extent caused or contributed to by any wrongful act or omission by us.
- 11.2 To the extent permitted by law, our liability to you arising out of or in connection with the Contract is limited to the Price.
- 11.3 We are not liable to you for any indirect or consequential losses arising out of the Contract, including any loss of revenue, loss of profit, loss of production, loss of use of any plant or facility, business interruption of any nature, loss of business opportunity, loss of business reputation, loss of contract, payment of liquidated sums, penalties or damages or any other indirect or consequential loss.

12. TERMINATION

- 12.1 To the extent permitted by law, we may terminate the Contract or reduce the scope of the Goods and/or Services if you:
 - (a) fail to remedy any breach of your obligations under the Contract within 3 Business Days of receiving written notice from us requiring you to do so;
 - (b) being a corporation, become insolvent, or have an administrator, controller or liquidator appointed under the *Corporations Act 2001* (Cth), or have receivers or managers appointed;
 - (c) being an individual, are unable to pay your debts when they fall due or have a trustee in bankruptcy appointed; or
 - (d) cease or threaten to cease to carry on business,in which case our liability to you will be limited to payment of the Price for the Goods and/or Services supplied prior to termination.
- 12.2 In addition to our other rights under clause 12, we may terminate all or any part of the Contract by written notice to you at any time for any reason, in our absolute discretion.
- 12.3 On receipt of a notice of termination, you must:
 - (a) immediately cease performance of the Services to the extent specified in the termination notice; and
 - (b) immediately take all possible action to mitigate any costs incurred by you as a result of the termination.
- 12.4 If we terminate the Contract under clause 12.2:
 - (a) you are entitled to payment of the Price

- for the Services supplied prior to termination but not already paid for or any Goods ordered and not able to be cancelled;
 - (b) you are not entitled to the Price of the Goods and/or Services or to any compensation for that cancellation other than as specified in clause 12.4; and
 - (c) the compensation payable under clause 12.4 must not exceed the Price of the relevant Goods and/or Services.
- 12.5 Termination of the Contract does not affect or prejudice any legal or contractual rights that accrued prior to termination.

13. INSURANCE

- 13.1 Prior to commencing the supply of the Services and for as long as you have obligations outstanding under the Contract, you must effect and maintain and ensure that all of your Personnel effect and maintain, at your own expense:
- (a) all insurances specified in the Purchase Order;
 - (b) workers' compensation and occupational/industrial disease and any other insurance required by any Legislative Requirement relating to your workers' compensation liability to any person;
 - (c) employers' liability/common law insurance for an amount of \$50 million to cover Loss arising out of the supply of the Goods and/or Services in respect of persons employed or engaged or deemed to be employed by you;
 - (d) if the supplier is a sole trader or any of the Services will be performed by a working director, income protection or cover under 13.1(b) extended to cover working directors and/or private accident and illness insurance to cover any of your working directors, for a period of up to 104 weeks on any one claim;
 - (e) general third-party public and products liability insurance covering your operations including liability arising from unregistered mechanically propelled vehicles, with a limit of liability of not less than \$20 million any one occurrence and unlimited in the annual aggregate, extend cover to us as principal or providing insurance for us as principal in respect of our liability arising out of your acts or omissions;
 - (f) an insurance policy covering the Goods while at your risk and your plant and equipment for accidental loss, destruction and damage at all times (including while in transit) and other risks as we may reasonably require from time to time;
 - (g) if the Services include professional services, professional indemnity with a limit of liability of not less than \$5 million for any one occurrence;
 - (h) if the Services include the use or operation of mobile plant & equipment, insurance in respect of all plant, equipment and any other

- property owned, operated or controlled by you (or your sub-subcontractors or agents) and which you use or operate in performing the Services for not less than the market value of the plant and equipment. This policy must, where available and applicable, include legal liability coverage for road registered plant and equipment to a limit of not less than \$30,000,000 any one occurrence and unlimited as to the number of occurrences any one period of insurance, must include a principal's indemnity extension indemnifying us, must include a cross liability clause and must include a waiver of subrogation in our favour;
 - (i) if the Services include the use or operation of motor vehicles, comprehensive motor vehicle insurance in respect of all vehicles owned, operated, leased, hired, or controlled by you, your employees, your subsubcontractors or agents, registered or required to be registered in accordance with any Law which are used (or to be used) on any road at any time in connection with the Services. This policy must provide cover for material damage to all vehicles for not less than their market value, must include coverage for liability in respect of third-party property damage or personal injury to a minimum limit of \$30,000,000, must include a principal's indemnity extension indemnifying us, must include a cross liability clause and must include a waiver of subrogation in our favour and
 - (j) all necessary insurance cover for all risks arising out of the performance of its obligations under the Contract.
- 13.2 The insurance referred to in clauses 13.1(b) and 13.1(c) must extend to indemnify us as principal and provide a waiver by the insurer of all rights of subrogation, action or relief against us.
- 13.3 You must give us a copy of the policy documents and certificates of currency of the insurances referred to in clause 13.1 as a condition precedent to your entitlement to:
- (a) access the Site or Delivery Address;
 - (b) make a payment claim; and
 - (c) payment of the Price.
- 13.4 If you do not comply with your obligations under clause 13, we may take out and maintain relevant insurance and the cost will be a debt due and payable by you to us.
- 13.5 Insurance will not limit your liabilities or obligations under the Contract.
- 13.6 You must notify us immediately if any incident occurs that is likely to give rise to a claim under any policy of insurance effected by you under the Contract and must keep us fully informed of all subsequent developments regarding that claim.
- 13.7 Where the Goods and/or Services involve the Hire of Hire Equipment, we will during the time during which we carry the risk of the Hire

Equipment under clauses 6.2 and 6.3 maintain:

- (a) an insurance policy covering the Hire Equipment for the lesser of the agreed value or market value in the event of loss or theft; and
- (b) public liability in the amount of \$20,000,000 in respect of the use of the Hire Equipment.

14. PERSONNEL

14.1 You must comply with all relevant Legislative Requirements in relation to your Personnel, including:

- (a) work health and safety laws; and
- (b) the *Fair Work Act 2009* (Cth) and any other workplace or industrial laws concerning the employment of workers, income tax, workers' compensation, annual leave, long service leave or any award, order, determination or agreement of a competent industrial or specialist tribunal.

14.2 You indemnify and will continue to indemnify us against any claims made by any of your officers, employees or agents in respect of any such law, award, order, determination or agreement with which you are required to comply.

We may object to any Personnel who, in our opinion, are not qualified, competent or skilled to supply the relevant part of the Goods and/or Services in respect of which they are engaged, or who engage in misconduct. You must remove and immediately replace such Personnel with a suitable replacement.

15. SITE

15.1 This clause 15 applies to the extent you or your Personnel are required to be on, or in the vicinity of, the Site.

15.2 You must:

- (a) comply, and ensure your Personnel comply, with all Legislative Requirements and all policies, standards, rules and procedures in force from time to time, including in relation to WHSE at the Delivery Address, at the Site or any other place where the Services are being performed;
- (b) ensure that your Personnel carry photographic identification (such as a current drivers' licence) at all times;
- (c) submit and amend any WHSE management plan(s) that we require (including JHAs and SWMS);
- (d) attend all induction courses that we require, at your cost;
- (e) comply with any Site requirements that we communicate to you; and
- (f) permit us to have access to your premises, documentation, data and Personnel as necessary to enable us to verify, monitor and audit your compliance with this clause 15.

15.3 You will not have exclusive possession of any part of the Site and will only be granted access to the Site to the extent necessary for the performance of the Services.

15.4 You must cooperate and coordinate your performance of the Contract, and not interfere, with other contractors and persons on the Site, in accordance with clause 4.3.

16. HSE REQUIREMENTS

16.1 You must ensure that you have prepared, submitted and obtained our approval in relation to a risk assessment completed by you in the form required by us (**Risk Assessment**), prior to accessing the Site or commencing the Services.

16.2 Any approval of a Risk Assessment may be subject to site-specific conditions in our absolute discretion.

16.3 You must, and must ensure that your Personnel, adhere to any site-specific permits, procedures, conditions noted on Risk Assessments and other reasonable WHSE requirements notified to you.

16.4 You must ensure that any Supplier Equipment used in the performance of the Services complies with all Legislative Requirements.

16.5 You must ensure that all of your Personnel hold any relevant industry safety training card (blue card/white card) and are equipped at all times with the following personal protective equipment, prior to commencement of the Services:

- (a) safety helmet;
- (b) safety footwear;
- (c) hi-vis vest;
- (d) safety glasses;
- (e) long sleeved shirt and long trousers; and
- (f) any other Site-specific requirement that we communicate to you.

17. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

17.1 The Supplier warrants that any design, equipment, methods of working and documentation used or produced by the Supplier in connection with the Services do not infringe any IP Right.

17.2 Ownership of all IP Rights used or created under the Contract or in the provision of the Services vests in us on creation. We grant you a non-exclusive, transferable, royalty free, revocable and perpetual licence to use such IP Rights to supply the Services.

17.3 You indemnify us for all loss and expense incurred as a result of a breach of this clause 17.

17.4 You agree that the terms of this Contract are confidential and you will not disclose any information regarding the Contract, its existence or its terms, or acquired as a result of the Contract, to any third party (including by making any media release) without our prior written consent.

18. ASSIGNMENT, SUBCONTRACTING AND NOVATION

- 18.1 We may assign our rights and obligations under this Contract without your written consent. You must not assign your rights and obligations under this agreement without our written consent.
- 18.2 You must not subcontract part or all of the supply of the Goods and/or Services without our prior written approval.
- 18.3 Approval to subcontract will not relieve you from any liability or obligations under this Contract and you will be liable for all acts and omissions of your Personnel and their Personnel as if they were your acts or omissions.
- 18.4 If required by us, you must assign or novate any subcontract to us or our nominee.
- 18.5 You must promptly execute a deed of novation of this Contract to such person we direct on terms that we reasonably require.

19. MODERN SLAVERY

- 19.1 You warrant and agree that:
- (a) you are aware of all obligations that may apply to you under Modern Slavery Laws;
 - (b) you have complied, and will comply at all times, with Modern Slavery Laws;
 - (c) you have taken, and will continue to take, all reasonable and necessary steps to identify, investigate and eliminate Modern Slavery in your operations and supply chains to ensure that no such Modern Slavery exists; and
 - (d) you will, promptly upon request and at your cost, provide all information that we reasonably request regarding your operations and supply chains to enable us to comply with our own obligations, including as to reporting, under Modern Slavery Laws.

20. DISPUTE RESOLUTION

- 20.1 If any dispute arises between you and us in any way relating to this Contract or its subject matter, the following must occur, as a condition precedent to the commencement of any litigation or arbitration:
- (a) we must confer within 3 Business Days of one of us giving written notice to the other that a dispute or difference has arisen (**Dispute Notice**);
 - (b) in conferring, we will identify our dispute and what each of us says should be done to resolve the dispute;
 - (c) if we cannot resolve our difference or agree on a method for resolving it, we must then submit the dispute for mediation by a mediator nominated by the Resolution Institute, with the mediator's costs shared equally between us but otherwise on terms determined by the nominated mediator.
- 20.2 If the dispute is not resolved within 4 weeks of the

Dispute Notice either party may commence legal proceedings.

- 20.3 Nothing in clause 20.2 prevents a party from applying for urgent interim or interlocutory relief.
- 20.4 We agree that for the purposes of any adjudication under the Security of Payment Act in relation to the Contract or the Services the authorised nominating authority will be the Resolution Institute.

21. GENERAL

- 21.1 This Contract constitutes the entire agreement between us with respect to its subject matter and supersedes all prior oral or written representations and agreements.
- 21.2 This Contract may only be varied in writing signed by us both.
- 21.3 You may not assign your rights or obligations arising under this Contract without our prior written consent.
- 21.4 A waiver by either of us of a breach of any term of this Contract does not constitute a waiver of any succeeding breach of the same or any other term.
- 21.5 If any provision or part provision of this Contract is invalid or unenforceable, that provision will be deemed deleted to the extent necessary and the remaining provisions of this Contract will remain in full force and effect.
- 21.6 To the extent permitted by law, Part 1F of the *Civil Liability Act 2002* (WA) is excluded, including for the arbitration of any dispute under this Contract.
- 21.7 Nothing in this Contract creates a relationship of employer and employee, principal and agent, partnership or joint venture between us or between us and any third party including your Personnel or between you and any head client.
- 21.8 Neither of us has authority to act for or to bind or incur liabilities on behalf of the other than as expressly contemplated by this Contract.
- 21.9 The provisions of this Contract that are capable of having effect after the termination or expiry of this Contract, remain in full force and effect following its termination or expiry.
- 21.10 This Contract is governed by the laws of Western Australia. We both submit to the non-exclusive jurisdiction of the courts of Western Australia and any courts which hear appeals from those courts.
- 21.11 Each of us must promptly at our own cost do all things (including executing all documents) necessary or desirable to give full effect to the Contract.

22. DEFINITIONS

In these Terms and Conditions:

Assignment means the work for which the Temporary Worker is supplied, as described more fully in the Purchase Order and any Assignment Form.

Assignment Form means the form provided by us to you, setting out the details of any Assignment.

Assignment Period means the period during which the Assignment is delivered.

Business Day means a day except Saturdays, Sundays and public holidays in Western Australia and any other day excluded by the Security of Payment Act.

Collection Date means the date specified in the Purchase Order as the date from which the Hire will commence.

Collection Location means the location specified in the Purchase Order or otherwise agreed between us as that where the Hire Equipment is located prior to the Collection Date.

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

Delivery Address means any address for delivery stated in the Purchase Order or otherwise notified by us to you.

Delivery Date means the date for supply of the Goods or performance of the Services stated in the Purchase Order.

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

Dispute Notice means a written notice stating that it is issued under clause 18 and that outlines the nature of the dispute.

Goods means the Goods specified in the Purchase Order and includes any incidental services required to supply the Goods.

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

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

Hire means the hire of any Hire Equipment on the terms of this Contract and includes any variations to that Hire and all services, responsibilities and functions which are incidental or necessary for you to provide the Hire under this Contract.

Hire Equipment means the Goods provided to us by you for Hire in accordance with this Contract and which will be used or operated by us.

IP Rights means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registrable), rights in relation to registered or unregistered trademarks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights

and similar non-assignable personal rights of authors and producers.

Labour Hire Services means the provision by you of Temporary Workers to deliver an Assignment on a contract hire basis as part of the Services.

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

Loss means any loss, damage, expense, payment or liability, whether direct or indirect.

Minor Servicing means any daily servicing, scheduled maintenance and (at our sole discretion) minor running repairs to ensure the Hire Equipment remains in good repair and condition during the term of the Hire.

Modern Slavery has the meaning stated in the Modern Slavery Laws.

Modern Slavery Laws means any modern slavery Legislative Requirements that are applicable to you, to us or the Subcontract, including the *Modern Slavery Act 2018* (Cth) and the *Modern Slavery Act 2018* (NSW).

Party means B&J Catalano or the Supplier, and a reference to Parties is a reference to both of them.

Personnel means any person, employee, consultant or subcontractor engaged by you to provide all or any part of the Goods and/or Services on your behalf.

Price has the meaning given in clause 8.1.

Purchase Order means the written order issued by or on behalf of us for the supply of the Goods or Services.

Security of Payment Act means the *Building and Construction Industry (Security of Payment) Act 2021* (WA).

Services means the services specified in the Purchase Order and includes all necessary minor incidental services.

Site means the project site to which the Services relate.

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

Supplier means the supplier specified on the Purchase Order referring to or attaching these Terms and Conditions.

Temporary Worker means the individual provided by you to us as temporary personnel provided by you to us to deliver the Assignment.

WHSE means Work, Health, Safety and Environment.