



PURCHASE ORDER TERMS AND CONDITIONS

TERMS AND CONDITIONS

1 Agreement

- 1.1 The Supplier must supply the Goods and/or Services in accordance with this Agreement.
- 1.2 This Agreement comprises:
 - (a) the Purchase Order referring to these Terms and Conditions;
 - (b) these Terms and Conditions; and
 - (c) any other document that the Purchase Order expressly states is to apply to the supply of the Goods and/or Services.
- 1.3 These Terms and Conditions do not apply where there is a current executed contract between the parties for the supply of Goods and/or Services, unless otherwise expressly stated in that contract.
- 1.4 To the extent of any inconsistency between the documents forming part of this Agreement, a document higher in the list in **clause 1.2** prevails over each lower document.
- 1.5 Subject to **clause 1.3**, this Agreement supersedes all other arrangements or agreements between ATCO and the Supplier in relation to the Goods and/or Services and is the entire agreement between the parties. This Agreement applies to the supply of the Goods and/or Services to the exclusion of any other conditions, including any contained in any Supplier's quotation, invoice, order acknowledgement, delivery docket, invoice or other document unless agreed in writing referring to this **clause 1.5**.
- 1.6 The Supplier is taken to have accepted the terms and conditions of this Agreement on the earlier of:
 - (a) the date the Supplier communicates acceptance of the Purchase Order;
 - (b) the date ATCO pays, in accordance with this Agreement, any deposit or advance payment with respect to the Goods and/or Services; and
 - (c) the date the Supplier starts supplying any of the Goods and/or Services.
- 1.7 If Ring-Fencing Arrangements apply to this Agreement, ATCO may ask the Supplier to provide information about the nature of any previous or ongoing association the Supplier has with any companies that buy, sell or produce gas. The Supplier must provide such information within 5 days of any request. If the Supplier does not provide the information within the required time or if ATCO considers (acting reasonably) that the Ring-Fencing Arrangements preclude ATCO from appointing the Supplier, ATCO may terminate this Agreement by notice to the Supplier, in which case **clause 22.4** applies.
- 1.8 This Agreement is non-exclusive and nothing in this Agreement prevents ATCO from appointing, at any time, any other person to supply goods or services that are the same or similar to the Goods and/or Services.
- 1.9 If ATCO provides the Supplier with any information, specification, data, models, diagrams or documents for the

purpose of, or in the course of, the provision of the Goods and/or Services (**ATCO Information**):

- (a) they remain the property of ATCO and must be returned to ATCO on written demand;
- (b) they must not be used, copied or reproduced for any purpose other than the supply of the Goods and/or Services; and
- (c) unless ATCO specifies in writing that the Supplier can rely upon an item of ATCO information:
 - (i) ATCO Information is provided to the Supplier for the Supplier's convenience;
 - (ii) the Supplier must not rely on it for any purpose; and
 - (iii) ATCO does not warrant, guarantee or make any representation as to ATCO Information, including its accuracy, completeness or adequacy for the purposes of this Agreement.

- 1.10 If either party discovers any error in, omission in, inconsistency in or between, ambiguity in or discrepancy in or between any ATCO Information, it must notify the other party without delay.

2 Supply of Goods and/or Services

- 2.1 The Supplier must supply the Goods and/or Services to ATCO at the Delivery Point by the Date for Delivery.
- 2.2 Unless specified otherwise in the Purchase Order, the supply of Goods and/or Services includes:
 - (a) all packing, loading, transport, unloading, unpacking, installing, commissioning and testing; and
 - (b) customs and border security clearance and all customs and import costs, duties and taxes.
- 2.3 The Supplier warrants that:
 - (a) the Goods and/or Services will comply with this Agreement;
 - (b) at delivery, the Goods will be new (unless stated otherwise in this Agreement) and in good order and condition;
 - (c) it will supply the Services diligently and conscientiously;
 - (d) it will supply the Goods and/or Services in accordance with Good Industry Practice;
 - (e) except to the extent necessary to comply with this Agreement, it and its Personnel will not damage or destroy the property of ATCO or any of its Personnel;
 - (f) it will supply the Goods and/or Services in a manner to ensure:
 - (i) no contaminants are discharged onto the Site; and

- (ii) no pollution occurs, in contravention of any law;
 - (g) the Goods and/or Services will comply with the description in this Agreement;
 - (h) the Goods will comply with any relevant patterns or specifications in or referred to in this Agreement;
 - (i) the Goods and/or Services will be fit for the purpose made known to the Supplier by ATCO or, if none was made known to the Supplier, fit for the purpose for which goods and/or services of that kind are ordinarily used;
 - (j) the Goods will have a life expectancy commensurate with what would be expected of similar goods provided for similar purposes by a supplier exercising Good Industry Practice;
 - (k) the Goods and/or Services will comply with all applicable Australian standards;
 - (l) the Goods and/or Services will comply with the provisions of any legislation applicable to them; and
 - (m) subject to **clause 24.1**, title in the Goods and Deliverables passes to ATCO free from all charges, liens and encumbrances.
 - 2.4 The Supplier repeats the warranties in **clause 2.3** immediately prior to each supply of Goods and/or Services under this Agreement.
 - 2.5 The Supplier must at all times provide and continually maintain adequate labour and sufficient Supplier's Plant and Equipment to allow it to complete the supply of the Goods and/or Services in accordance with this Agreement.
 - 3 Site Access and Safety**
 - 3.1 ATCO grants the Supplier and the Supplier's Personnel a right to access the Site to the extent reasonably required by the Supplier to supply the Goods and/or Services in accordance with this Agreement.
 - 3.2 Nothing in this Agreement confers a right of exclusive possession on the Supplier and it will only be granted access to the Site to the extent ATCO (acting reasonably) considers necessary for the purposes of **clause 3.1**. If ATCO requires (acting reasonably), the Supplier and its Personnel must be accompanied by ATCO's representative at all times when on the Site.
 - 3.3 The Supplier acknowledges that it may have to share access to the Site with ATCO and ATCO's Personnel and it has taken this into account in agreeing to the Price and Date for Delivery.
 - 3.4 The Supplier must at all times keep the Site, its working areas and any waste, storage and approach areas clean and tidy and must regularly remove rubbish and surplus material.
 - 3.5 If the Supplier or any of the Supplier's Personnel do not comply with any of the requirements of **clause 3.11, clause 3.14, clause 3.15** or **clause 23**, ATCO may deny the Supplier or the relevant Supplier's Personnel access to the Site and, upon being requested in writing by ATCO, the Supplier must:
 - (a) correct the non-compliance promptly; and
 - (b) take any necessary steps to avoid it happening again,
- and the Supplier is not entitled to any extension of time or increase to the Price in connection with such denial of access. As soon as practicable after the Supplier has complied with **clause 3.5(a)** and **clause 3.5(b)**, ATCO must grant the Supplier and the Supplier's Personnel with access to the Site in accordance with **clause 3.1**.
- 3.6 If the Supplier or any of the Supplier's Personnel do not comply with all applicable laws or ATCO's Policies and Rules while on the Site, ATCO may deny the Supplier or the relevant Supplier's Personnel access to the Site and, upon being requested in writing by ATCO, the Supplier must:
 - (a) correct the non-compliance promptly;
 - (b) take any necessary steps to avoid it happening again; and
 - (c) remove the applicable Supplier's Personnel responsible for the non-compliance from the Site,
- and the Supplier is not entitled to any extension of time or increase to the Price in connection with such denial of access. As soon as practicable after the Supplier has complied with **clause 3.6(a)**, **clause 3.6(b)** and **clause 3.6(c)**, ATCO must grant the Supplier and the Supplier's Personnel (other than any person removed pursuant to **clause 3.6(c)**) with access to the Site in accordance with **clause 3.1**.
- 3.7 If the Supplier or any of the Supplier's Personnel fail to comply with any of its obligations in **clause 3.6** within a reasonable time, without limiting any other right or remedy of ATCO:
 - (a) ATCO and ATCO's Personnel may do anything ATCO considers necessary to protect people, property and the environment from harm in connection with the supply of the Goods and/or Services, including removing or relocating any property in the possession or control of the Supplier or the Supplier's Personnel and conducting protective works; and
 - (b) the Supplier must reimburse ATCO on demand for any reasonable costs and any losses or damages that arise out of anything done by ATCO or ATCO's Personnel in accordance with **clause 3.7(a)**.
- 3.8 The Supplier must, in supplying the Goods and/or Services:
 - (a) not interfere with the activities of ATCO or ATCO's Personnel at the Site;
 - (b) cooperate with and coordinate its activities with ATCO and ATCO's Personnel at the Site; and
 - (c) be aware of and comply with, and ensure that the Supplier's Personnel are aware of and comply with, all:
 - (i) applicable laws (including the HSE Legislation) and industrial awards and agreements binding on it;
 - (ii) ATCO's Policies and Rules; and
 - (iii) ATCO's directions authorised by this Agreement.
- 3.9 ATCO must use reasonable endeavours to ensure that neither ATCO nor ATCO's Personnel impede the Supplier's supply of the Goods and/or Services at the Site.
- 3.10 The Supplier must ensure that all of the Supplier's Personnel use appropriate personal protective equipment which must

- comply with the HSE Legislation and ATCO's Policies and Rules.
- 3.11 If ATCO directs, the Supplier must, within 7 days after the date of this Agreement or other period agreed by the parties, submit to ATCO a proposed health, safety and environment management plan (**HSE Management Plan**), setting out how the Supplier will manage all health, safety and environmental aspects of the supply of the Goods and/or Services.
- 3.12 The proposed HSE Management Plan must be prepared in accordance with Good Industry Practice and be consistent with ATCO's Policies and Rules and the HSE Legislation.
- 3.13 Within 5 business days of receipt of the draft HSE Management Plan, or other period agreed by the parties, ATCO must notify the Supplier that:
- (a) ATCO accepts the proposed HSE Management Plan; or
 - (b) ATCO requires the Supplier to make changes to the proposed HSE Management Plan.
- If ATCO does not issue the Supplier a notice within the time stipulated under this **clause 3.13**, ATCO is deemed to have issued a notice that it accepts the proposed HSE Management Plan.
- 3.14 The Supplier must incorporate into the proposed HSE Management Plan any changes ATCO requires provided the changes are reasonably required by ATCO in order to ensure the HSE Management Plan complies with **clause 3.12** and resubmit the amended proposed HSE Management Plan for acceptance in accordance with **clause 3.13**.
- 3.15 The Supplier must comply with the accepted HSE Management Plan.
- 4 Supplier's Workforce**
- 4.1 The Supplier must ensure that all work and services performed in connection with the supply of the Goods and/or Services is carried out by Qualified Personnel.
- 4.2 ATCO may, to the extent permitted by law and acting reasonably and on reasonable grounds, direct the Supplier to remove any of the Supplier's Personnel from the Site or from the performance of works and services in connection with the supply of the Goods and/or Services. The Supplier must ensure that any of the Supplier's Personnel so removed:
- (a) are not again employed at the Site or in connection with the supply of the Goods and/or Services; and
 - (b) are replaced as soon as possible.
- 4.3 During the period the Supplier is supplying Goods and/or Services under this Agreement and for a period of 6 months afterwards, neither party will, without the other party's prior written consent, directly or indirectly solicit, offer to employ, employ, hire as a contractor, agent or consultant, or otherwise procure services from any of the other party's Personnel. This **clause 4.3** does not apply where the relevant Personnel is employed or contracted:
- (a) as a consequence of a genuine advertising or recruitment campaign advertised publicly to a wide range of potential applicants; or
 - (b) in response to an unsolicited approach made by the Personnel.

5 Leased Equipment

- 5.1 This **clause 5** applies if, pursuant to this Agreement, the Services include leasing equipment to ATCO (**Leased Equipment**).
- 5.2 The Supplier leases the Leased Equipment to ATCO for the duration set out in the Purchase Order (or, if none set out, for the period starting on the date the Leased Equipment is commissioned at the Delivery Point and ending on the date that ATCO notifies the Supplier is the date on which the Supplier can collect the Leased Equipment).
- 5.3 At ATCO's request, the Supplier must conduct any commissioning of the Leased Equipment or supervise ATCO's commissioning of the Leased Equipment, to ATCO's satisfaction (acting reasonably).
- 5.4 The Supplier must ensure that when it is commissioned the Leased Equipment is in good, proper and safe working order and complies with all applicable laws (including being licensed in accordance with all applicable laws).
- 5.5 Unless ATCO otherwise directs, the Supplier must, at its cost, maintain the Leased Equipment in a safe, operable and good working condition and must provide all spare parts and consumable items necessary to facilitate this.

6 Supplier's Plant and Equipment

- 6.1 The Supplier must ensure that the Supplier's Plant and Equipment:
- (a) is fit for the purposes for which it is used;
 - (b) complies with applicable laws and ATCO's Policies and Rules; and
 - (c) is maintained in a safe, operable and good working condition and must provide all spare parts and consumable items necessary to facilitate this.
- 6.2 ATCO may reject any item of Supplier's Plant and Equipment which it determines (acting reasonably) is unsuitable for the purposes of this Agreement. If any item is so rejected then it must be either repaired or replaced to the reasonable satisfaction of ATCO within 5 days after notification by ATCO.
- 6.3 The Supplier is responsible for the care of the Supplier's Plant and Equipment at the Site except that ATCO must pay for the repair or replacement of any of the Supplier's Plant and Equipment lost or damaged due to the negligent act or omission of ATCO or any of its employees.

7 ATCO Supplied Items and ATCO Equipment

- 7.1 ATCO Supplied Items remain the property of ATCO.
- 7.2 ATCO Supplied Items must not be used by the Supplier for any purpose other than fulfilling the Supplier's obligations under this Agreement.
- 7.3 The Supplier must repair or replace any ATCO Supplied Item damaged due to the negligent or otherwise wrongful act or omission of the Supplier or the Supplier's Personnel.
- 7.4 The Supplier must use ATCO Supplied Items efficiently and ensure they are not wasted.
- 7.5 The Supplier must not and must procure that its Personnel do not remove ATCO Supplied Items from the Site.
- 7.6 The Supplier is responsible for the care of ATCO Equipment when it is in the Supplier's or its Personnel's possession or control except that ATCO is responsible for the repair or replacement of such ATCO Equipment lost or damaged due

to the negligent act or omission of ATCO or any of its employees.

8 Inspection, Testing and Information

- 8.1 Provided ATCO has informed the Supplier of its intention to exercise its rights under this **clause 8.1** a reasonable period in advance of doing so, ATCO may inspect, review, examine and witness tests on the Goods, Services or Deliverables at any time during the supply of the Goods and/or Services.
- 8.2 ATCO may from time to time request the Supplier to provide it with information and documents relating to the Goods, Services or Deliverables or the Supplier's compliance with this Agreement and the Supplier must comply with any reasonable request as soon as reasonably practicable.

9 Acceptance of Goods and/or Services

- 9.1 The supply of the Goods and/or Services is not complete until ATCO has accepted the Goods and/or Services.
- 9.2 Without limiting **clause 11**, for the purposes of this **clause 9**, ATCO must:
- (a) accept or reject Goods and/or Services that have been delivered; and
 - (b) give the Supplier written evidence of such acceptance or rejection, within a reasonable time after delivery.
- 9.3 ATCO's acceptance of the Goods and/or Services entitles the Supplier to issue an invoice pursuant to **clause 12** and:
- (a) is not a waiver of any rights or a representation or admission that the Goods and/or Services have been supplied in accordance with this Agreement; and
 - (b) if ATCO signs a delivery slip or other acknowledgement, this will constitute acceptance by ATCO but, unless agreed in writing referring to this **clause 9.3**, will not have the effect of incorporating additional terms into, creating new terms with respect to, varying or waiving any part of this Agreement.

- 9.4 If the Supplier is or will be delayed in supplying the Goods and/or Services, ATCO may direct the Supplier to accelerate the supply of the Goods and/or Services and take necessary corrective action to overcome or minimise the extent of the delay. Such actions may include increasing the Supplier's workforce, making more Supplier's Plant and Equipment available for the supply of the Goods and/or Services or increasing the number of shifts the Supplier's Personnel are devoting to the supply of the Goods and/or Services.

- 9.5 Except to the extent that acceleration under **clause 9.4** overcomes a delay for which the Supplier would have been entitled to an increase in the Price pursuant to **clause 19.4**, the Supplier is not entitled to any additional costs it incurs in complying with a direction under **clause 9.4**. Any increase in the Price must be calculated in accordance with **clause 16.4**.

10 Provision of Documents

- 10.1 The Supplier must provide ATCO with all manufacturer's warranties and guarantees and any other similar documents in relation to workmanship and materials contained in the Goods and/or Services that are specified in the Purchase Order.
- 10.2 The Supplier must provide ATCO with the certification, manufacture data reports and material safety data sheets

and other technical or verification information that are specified in the Purchase Order.

- 10.3 Compliance with **clause 10.1** and **clause 10.2** is a pre-condition to ATCO's acceptance of the Goods and/or Services.

11 Defective Goods and/or Services

- 11.1 If, at any time, (whether or not a reasonable time has passed for inspection after delivery of the Goods and/or Services) ATCO discovers that the Goods and/or Services do not comply in any material respect with any warranty given under **clause 2.3** or are otherwise not in accordance with this Agreement, ATCO may (without limiting any other right available to it) deliver to the Supplier a notice under **clause 11.2**.

- 11.2 The Supplier must, if ATCO so requires by notice in writing, at the cost of the Supplier and within the timeframes ATCO (acting reasonably) specifies:

- (a) in respect of Goods or Deliverables, either:
 - (i) remove some or all of the Goods or Deliverables, rectify the defects in them and return them to ATCO; or
 - (ii) replace some or all of the Goods or Deliverables; and
- (b) in respect of Services, either:
 - (i) rectify some or all of the Services; or
 - (ii) resupply some or all of the Services.

- 11.3 If ATCO gives the Supplier a notice under **clause 11.2** within a reasonable time of delivery of Goods and/or Services and the Supplier fails to comply with that notice within the timeframes specified, ATCO may return the Goods and/or Deliverables to the Supplier.

- 11.4 If ATCO exercises its rights under **clause 11.3**, the Supplier must pay ATCO:

- (a) the Price paid by ATCO for the Goods and/or Deliverables returned; and
- (b) any costs reasonably incurred or losses suffered by ATCO due to the delivery or return of those Goods and/or Deliverables.

12 Price and Payment

- 12.1 The Supplier must supply the Goods and/or Services for the Price. The Price is fixed and will not be subject to rise and fall or any other adjustment except as expressly stated in this Agreement.

- 12.2 Unless specified otherwise in the Purchase Order, on the last business day of each calendar month, the Supplier must deliver to ATCO an invoice for Goods and/or Services accepted under this Agreement in that month or since the last invoice (as applicable).

- 12.3 Unless specified otherwise in the Purchase Order and subject to **clause 12.4**, ATCO must pay all invoices submitted by the Supplier by the end of the month following the month in which the invoice was received (or any shorter period required by legislation).

- 12.4 If ATCO disputes the amount payable in an invoice issued pursuant to this **clause 12**, it must pay the undisputed part of the invoice and either party may serve a Dispute Notice pursuant to **clause 29** in respect of the unpaid part.

- 12.5 The invoice must:

- (a) be in the form of a Tax Invoice;
 - (b) set out the Supplier's name, address and Australian Business Number;
 - (c) include an adequate description of the Goods and/or Services to which it relates;
 - (d) set out the quantity of Goods and/or Services supplied and the Price payable with respect to that quantity;
 - (e) include evidence of ATCO's acceptance of the Goods and/or Services to which it relates;
 - (f) include a valid ATCO Purchase Order number;
 - (g) set out the total invoice amount, including GST; and
 - (h) be accompanied by all other documentation and material required by this Agreement or under any law.
- 12.6 ATCO may deduct from any amount owing to the Supplier under this Agreement, including any part payment of the Price, any amount which is due and payable by the Supplier to ATCO.
- 12.7 Payment of an invoice is not a waiver of any rights or a representation or admission that the Goods and/or Services comply with this Agreement.
- 13 GST and other Taxes**
- 13.1 To the extent that a supply made under this Agreement is a taxable supply (as defined in the GST Act), the Supplier may recover from ATCO (provided it has first provided ATCO with a valid Tax Invoice), in addition to the Price, an amount equal to the GST payable in respect of that supply.
- 13.2 All taxes and duties other than GST levied on or in respect of the Goods and/or Services are deemed to be included in the Price and are payable by the Supplier.
- 14 Representatives**
- 14.1 ATCO may, by notice to the Supplier, appoint or change an ATCO Representative.
- 14.2 If an ATCO Representative is appointed, they are responsible for issuing to, and receiving from, the Supplier all notices, information, instructions and decisions under this Agreement.
- 14.3 Except as expressly stated in this Agreement, the ATCO Representative does not have authority to amend this Agreement, or to relieve the Supplier of any of its obligations under this Agreement.
- 14.4 If ATCO requests, the Supplier must appoint a Supplier's Representative.
- 14.5 If a Supplier's Representative is appointed they have the authority to commit the Supplier in all matters under this Agreement and are responsible for issuing to, and receiving from, ATCO all notices, information, instructions and decisions under this Agreement.
- 15 Intellectual Property**
- 15.1 ATCO remains the owner of the ATCO Background IP. ATCO grants to the Supplier a non-exclusive, non-transferrable, royalty-free, revocable licence (or if the IP is licensed to ATCO, a sublicense) to use the ATCO Background IP for the sole purpose of supplying the Goods and/or Services.
- 15.2 The Supplier may sublicense the licence granted pursuant to **clause 15.1** to its Subcontractors to the extent strictly necessary for the supply of the Goods and/or Services.
- 15.3 The Supplier remains the owner of the Supplier Background IP. The Supplier grants to ATCO and ATCO's Personnel a non-exclusive, transferrable, royalty-free, irrevocable, sublicensable and perpetual licence (or if the IP is licensed to the Supplier, a sublicense) to use, adapt, modify or copy all Supplier Background IP to the extent necessary to enjoy the full benefit of the Goods, Services, Deliverables and Agreement IP.
- 15.4 The Supplier agrees that all Agreement IP will be vested in ATCO and will be ATCO's property as and when created and the Supplier transfers all rights, title and interest in the Agreement IP to ATCO.
- 15.5 The Supplier must not disclose, reproduce or otherwise deal with the Agreement IP or ATCO's Background IP, or permit anyone else to do so, for any purpose other than supplying the Goods and/or Services.
- 15.6 The Supplier must obtain all consents from the individual creator to ensure that ATCO can exercise all its rights under this **clause 15** without infringing any Moral Rights.
- 15.7 The Supplier warrants that:
- (a) it owns, or licences on terms that enable it to comply with this Agreement, all IP in the Supplier's Background IP; and
 - (b) the:
 - (i) supply and use of the Goods and/or Services and/or the Deliverables;
 - (ii) Agreement IP and its use, adaptation, modification or copying; and
 - (iii) the exercise by ATCO or its Personnel of any rights pursuant to the licence granted under **clause 15.3**,
- will not infringe any person's rights in relation to IP, within or outside of Australia.
- 15.8 ATCO warrants that:
- (a) it owns, or licences on terms that enable it to comply with this Agreement, all IP in the ATCO Background IP; and
 - (b) the exercise by the Supplier or its Personnel of any rights pursuant to the licence granted under **clause 15.1**,
- will not infringe any person's rights in relation to IP, within or outside of Australia.
- 16 Variation Proposal**
- 16.1 ATCO may provide the Supplier with notice of a proposed Variation.
- 16.2 Within 5 days of receiving notice of a proposed Variation pursuant to **clause 16.1**, or other period as agreed by the parties, the Supplier (at its own cost) must provide ATCO with a response setting out (in accordance with Good Industry Practice):
- (a) the changes to the Goods and/or Services that would be required to execute the proposed Variation; and

- (b) the impact of the proposed Variation on the Price and the time for supplying the Goods and/or Services,
- (Proposed Variation Response).**
- 16.3 ATCO may, acting reasonably, direct a Variation the subject of a Proposed Variation Response and such direction may specify that ATCO:
- (a) accepts the Proposed Variation Response, in which case the Price and the time for supplying the Goods and/or Services is varied in accordance with the Proposed Variation Response; or
- (b) rejects the Proposed Variation Response, in which case the Price will be adjusted in accordance with **clause 16.4** and the time for supplying the Goods and/or Services will be adjusted in accordance with **clause 19.3**.
- 16.4 If the Variation affects the Price, it must be adjusted to reflect the value of the varied Goods and/or Services, which must be agreed between the parties. Where there is no agreement, the value will be calculated by ATCO using:
- (a) where applicable rates and costs are included in this Agreement, by applying those rates and costs; and
- (b) where applicable rates and costs are not included in this Agreement, ATCO's assessment (acting reasonably) of a fair and reasonable price for the varied Goods and/or Services.
- 17 Directions Varying the Goods and/or Services**
- 17.1 If the Supplier considers that a direction given by ATCO, other than a direction under **clause 16.3**, constitutes a Variation that will affect the Price (where the Supplier is entitled to a Price adjustment) or the time for supplying the Goods and/or Services, it must, as soon as practicable and in any event before complying with the direction, notify ATCO, identifying the relevant direction and the estimated impact on the Price and the time for supplying the Goods and/or Services.
- 17.2 As soon as reasonably practicable after receiving a notice under **clause 17.1**, ATCO must either:
- (a) notify the Supplier that it is to proceed to comply with the direction, in which case the Price will be adjusted in accordance with **clause 16.4** and the time for supplying the Goods and/or Services will be adjusted in accordance with **clause 19.3**; or
- (b) withdraw the direction.
- 17.3 Irrespective of whether the Supplier has issued a notice under **clause 17.1**, if a direction results in a reduction in the Price or a reduction in the time for supplying the Goods and/or Services, ATCO may adjust the Price in accordance with **clause 16.4** and adjust the time for supplying the Goods and/or Services in accordance with **clause 19.3**.
- 17.4 No Variation that ATCO directs invalidates or repudiates this Agreement.
- 18 Change in law or change in ATCO's Policies and Rules**
- 18.1 The Supplier must notify ATCO within 10 business days of becoming aware of any:
- (a) Change in Law; or
- (b) Change in ATCO's Policies and Rules,
- that the Supplier considers is likely to affect the Supplier's supply of the Goods and/or Services. A notice under this **clause 18.1** must include details of the Change in Law or change in ATCO's Policies and Rules and its impact on the supply of the Goods and/or Services.
- 18.2 To the extent that a Change in Law or change in ATCO's Policies and Rules cause an increase to the costs of the Supplier supplying the Goods and/or Services (other than a trivial increase in cost) or the time at which the Supplier can supply the Goods and/or Services, this will be a Variation and the Price and the Date for Delivery will be adjusted in accordance with **clause 16.4** and **clause 19.3**.
- 19 Extensions of Time**
- 19.1 The Supplier may request, by notice in writing to ATCO, an extension of time for supplying the Goods and/or Services.
- 19.2 ATCO is only required to grant the Supplier an extension of time for supplying the Goods and/or Services if:
- (a) the Supplier has been or will be delayed in supplying the Goods and/or Services by the Date for Delivery because of:
- (i) a suspension for which it is entitled to an adjustment to the Price or the time for supplying the Goods and/or Services;
- (ii) a breach of this Agreement by ATCO; or
- (iii) a Force Majeure Event; and
- (b) the Supplier has, within 15 days of the event giving rise to the delay, given ATCO notice identifying the event and the anticipated impact on when the Goods and/or Services will be supplied.
- 19.3 An extension of time granted pursuant to **clause 19.2** must reflect ATCO's assessment (acting reasonably) of the actual impact of the event on the time for supplying the Goods and/or Services.
- 19.4 If ATCO grants an extension of time pursuant to **clause 19.2(a)(i)**, the Price is adjusted by adding the verified additional costs the Supplier incurs as a direct consequence of the delay.
- 19.5 ATCO may at any time, and for any reason and at its sole discretion, by notice to the Supplier, extend the time for supplying the Goods and/or Services.
- 20 Suspension**
- 20.1 ATCO may from time to time direct the Supplier to suspend the supply of some or all of the Goods and/or Services (**Suspension Notice**). A Suspension Notice must set out the Goods and/or Services that are suspended and the expected duration of the suspension.
- 20.2 ATCO must keep any period of suspension to the minimum period ATCO reasonably requires.
- 20.3 The Supplier must, without delay, comply with a Suspension Notice.
- 20.4 ATCO may, from time to time, direct the Supplier to recommence the supply of any of the Goods and/or Services suspended pursuant to a Suspension Notice and the Supplier must, without delay, comply with such a direction.
- 20.5 If a Suspension Notice is directed for a reason other than an act, omission or default by the Supplier, the Supplier will be entitled to claim an adjustment to the Price and the time for supplying the Goods and/or Services in accordance with **clause 19**.

21 Force Majeure

21.1 If a party is prevented from performing an obligation under this Agreement (other than an obligation to pay money it is obliged to pay under this Agreement) by a Force Majeure Event:

- (a) it must, as soon as possible, give the other party a notice describing the Force Majeure Event and its effects, including the anticipated period for which it will be prevented from performing that obligation; and
- (b) for the period it is prevented from performing that obligation, it is excused from performing (and is not liable for non-performance of) that obligation.

21.2 If a party is prevented from performing an obligation under this Agreement by a Force Majeure Event, it must:

- (a) use all reasonable skill and effort to overcome the Force Majeure Event and recommence performance of the affected obligation as soon as possible; and
- (b) keep the other party informed of the status of the Force Majeure Event and its efforts to overcome it.

22 Termination

22.1 If ATCO or the Supplier suffers an Insolvency Event, subject to Chapter 5 of the *Corporations Act 2001* (Cth), the other party may terminate this Agreement with immediate effect by notice to the insolvent party.

22.2 If the Supplier is in breach of any of its obligations under this Agreement and ATCO has given the Supplier a notice specifying the obligation and requiring the Supplier to rectify the breach with a reasonable period and, within that period, the Supplier has not rectified the breach to ATCO's satisfaction (acting reasonably), ATCO may terminate this Agreement with immediate effect by notice to the Supplier. If ATCO terminates the Agreement under this **clause 22.2**, subject to **clause 25**, ATCO's rights and remedies are the same as they would have been if the Supplier had repudiated this Agreement and ATCO had elected to treat this Agreement as at an end and recover damages.

22.3 The Supplier may terminate this Agreement by giving ATCO 30 days' written notice if ATCO has not paid an amount due and payable pursuant to **clause 12** for a period of 30 days or longer after the amount became due and payable.

22.4 ATCO may terminate this Agreement at any time for any reason by giving the Supplier 30 days' written notice. Subject to any rights of set off or deduction that ATCO may have, following termination pursuant to this **clause 22.4**, ATCO's only obligation (and sole liability resulting from such termination) is to pay the Supplier for:

- (a) the Goods and/or Services which have been supplied in accordance with this Agreement prior to the date of termination (and not included in any other payment to the Supplier);
- (b) the costs of goods and materials:
 - (i) reasonably ordered for the supply of the Goods and/or Services;
 - (ii) for which the Supplier is bound to pay;
 - (iii) that the Supplier cannot otherwise utilise in the ordinary course of its business;

- (iv) the cost of which is not included in the amount payable pursuant to **clause 22.4(a)**; and

- (v) upon payment, free and clear title to the goods and materials will vest in ATCO;

- (c) the Supplier's reasonable and verified demobilisation costs;

- (d) the reasonable costs to the Supplier of complying with ATCO's directions on or after termination; and

- (e) an additional amount of 5% of the amounts in **clause 22.4(b)**, **clause 22.4(c)** and **clause 22.4(d)** on account of profit and overheads.

22.5 After the expiry or termination of this Agreement, the Supplier must:

- (a) take all reasonable actions, or such actions as ATCO directs (acting reasonably), for the transfer, protection and delivery to ATCO of any ATCO Supplied Items, Goods, Deliverables or any other property of ATCO;

- (b) use all reasonable endeavours to minimise the cost to ATCO of termination;

- (c) except to the extent ATCO directs, immediately stop using all ATCO Supplied Items and ATCO Information; and

- (d) if ATCO directs, return to ATCO or destroy all copies in any form of the ATCO Information in the possession or control of the Supplier or any of the Supplier's Personnel, however the Supplier may retain ATCO Information to the extent required by law.

23 Insurance

23.1 The Supplier must effect and maintain the following insurance policies with reputable insurers:

- (a) from the date of this Agreement until acceptance of the Goods in accordance with this Agreement, insurance of the Goods against all risks of loss or damage for their full replacement value;

- (b) during any period the Supplier is supplying the Goods and/or Services, public and products liability insurance with a limit of \$10,000,000 in respect of any one claim and unlimited as to the number of claims;

- (c) during any period the Supplier is supplying the Goods and/or Services, motor vehicle third party property insurance with a limit of \$10,000,000 for any one occurrence and unlimited as to the number of occurrences;

- (d) during any period the Supplier is supplying the Goods and/or Services, where the Supplier is providing professional services, professional indemnity insurance:

- (i) with a limit of \$5,000,000 in relation to any one claim and in the aggregate; and

- (ii) with a run-off cover for a period ending 7 years after the Goods and/or Services were supplied; and

- (e) any other insurance required by law.

- 23.2 The Supplier is not entitled to submit an invoice with respect to any Goods and/or Services unless it is compliant with its obligations under **clause 23.1**.
- 23.3 The Supplier must provide ATCO with details of the insurance, verifying compliance with the requirements of **clause 23.1**, within 2 days of any request from ATCO.
- 23.4 The Supplier must ensure that any Subcontractor of the Supplier effects and maintains insurances similar to those set out in **clause 23.1**.
- 23.5 If the Supplier fails to effect and maintain, or ensure that its Subcontractors effect and maintain, the insurance required pursuant to **clause 23.1**, without limiting its other rights under this Agreement, ATCO may effect and maintain the relevant insurance and the costs reasonably and properly incurred by ATCO in doing so will be a debt due and payable by the Supplier to ATCO.
- 23.6 If ATCO requests, the Supplier must promptly make and pursue a claim under its insurance policies where:
- (a) liability, loss or damage has occurred and is covered under any of the Supplier's insurance policies (**Loss or Damage**);
 - (b) there are reasonable prospects of the claim succeeding; and
 - (c) some or all of the proceeds from a successful claim could be applied towards any Loss or Damage,
- however, this clause does not apply in circumstances where the Supplier is ready, willing and able to pay for the Loss or Damage on its own account.
- 24 Title and Risk**
- 24.1 Unless specified otherwise in the Purchase Order:
- (a) property and title in Goods and Deliverables passes to ATCO on the first to occur of payment of the whole of the Price for the Goods or Deliverables and acceptance of the Goods or Deliverables in accordance with this Agreement; and
 - (b) subject to **clause 24.2**, risk in the Goods and Deliverables passes to ATCO on acceptance of those Goods or Deliverables in accordance with this Agreement.
- 24.2 If ATCO has accepted the Goods or Deliverables in accordance with this Agreement but they remain in the Supplier's custody (such as in the Supplier's warehouse), risk in those Goods or Deliverables passes to ATCO when ATCO takes custody of those Goods or Deliverables.
- 24.3 All redundant or waste goods, materials, equipment and the like removed from any facility, equipment or structure on the Site in the course of or in connection with the provision of the Goods and/or Services (**Salvage**) remain the property of ATCO. The Supplier must dispose of any Salvage at its own cost, unless ATCO elects to keep any of it.
- 25 Liability and Indemnity**
- 25.1 Subject to **clause 25.2**, neither party is liable to the other for Consequential Loss.
- 25.2 **Clause 25.1** will not apply to relieve or limit the Supplier's liability:
- (a) under its indemnity obligations under **clause 25.4(a)**, **clause 25.4(b)** or **clause 25.4(c)**;
- (b) caused by the Supplier's fraudulent or wilful misconduct; and
 - (c) to the extent the Supplier is insured and the Supplier is entitled to be indemnified for the relevant liability under and insurance policy effected in accordance with this Agreement or would have been so insured and indemnified but for:
 - (i) the application of **clause 25.1**; or
 - (ii) any act or omission of the Supplier.
- 25.3 **Clause 25.1** will not apply to relieve or limit ATCO's liability:
- (a) under its indemnity obligations under **clause 25.5(a)** or **25.5(b)**; and
 - (b) caused by ATCO's fraudulent or wilful misconduct.
- 25.4 The Supplier indemnifies ATCO from and against any cost, loss, claim, damages or liability:
- (a) arising out of the personal injury or death of any person to the extent caused by the Supplier or any of the Supplier's Personnel;
 - (b) for pollution and contamination caused by the Supplier or the Supplier's Personnel;
 - (c) caused by a breach of **clause 15.7**;
 - (d) any claim made against ATCO by any of the Supplier's Personnel in respect of any legislation concerning income tax, workers' compensation, annual leave, long service leave or superannuation or any applicable award, determination or agreement of any competent industrial tribunal; and
 - (e) for any statutory penalty imposed on ATCO because of the Supplier's breach of this Agreement.
- 25.5 ATCO indemnifies the Supplier from and against any cost, loss, claim, damages or liability:
- (a) arising out of the personal injury or death of any person to the extent caused by ATCO or any of its employees;
 - (b) caused by a breach of **clause 15.8**; and
 - (c) for any statutory penalty imposed on the Supplier because of ATCO's or any of ATCO's Personnel's breach of this Agreement.
- 25.6 If, pursuant to this Agreement, a party (**Indemnifying Party**) is liable to indemnify the other party (**Indemnified Party**), the Indemnified Party must use reasonable endeavours to mitigate the amount the Indemnifying Party is required to indemnify.
- 26 Confidentiality**
- (a) Neither party may make any media or other announcement or releases relating to this Agreement or the Site without the other party's prior written approval of the form, content and manner of the announcement or release, except to the extent that the announcement or release is required to be made by a party by any applicable law, government authority or by a stock exchange.
 - (b) Each party must keep confidential, and not use or disclose, any of the other party's Confidential Information, except (subject to **clause 27**):

- (i) to the extent necessary for the performance of their obligations under this Agreement;
 - (ii) that a party may disclose Confidential Information to its legal and other advisers;
 - (iii) to the extent necessary to resolve any genuine Dispute;
 - (iv) that a party may disclose Confidential Information to a genuine prospective purchaser of the party or its business provided such prospective purchaser is bound by obligations of confidentiality no less onerous than this **clause 26(b)**; and
 - (v) that a party may disclose Confidential Information if required by any applicable law (including any order of a court of competent jurisdiction) or the rules of any stock exchange.
- (c) Each Party must ensure that any of its Personnel who receive Confidential Information do not disclose that Confidential Information and each party is liable for breaches of confidentiality by its Personnel.

27 Data Protection

- (a) Each party warrants to the other that it will comply with all applicable laws relating to the Processing of Personal Data collected by, or disclosed to, it pursuant to this Agreement.
- (b) The Supplier must not engage any Subcontractor to Process ATCO Personal Data without ATCO's prior written consent (which must not be unreasonably withheld).
- (c) If there is any situation involving loss or destruction of, unauthorised disclosure of, or access to, ATCO Personal Data (or an imminent risk that any of these things might occur), the Supplier must:
 - (i) immediately report the situation to ATCO;
 - (ii) to the extent practicable, mitigate any harmful effect of such disclosure or access; and
 - (iii) cooperate with ATCO in responding to and investigating the situation.
- (d) After the expiry or termination of this Agreement:
 - (i) if ATCO directs, the Supplier must return, destroy or dispose of any ATCO Personal Data at its own cost; and
 - (ii) if the Supplier directs, ATCO must return, destroy or dispose of any Supplier Personal Data at its own cost,

however, each party may retain Personal Data to the extent required by law.

28 Assignment and Subcontracting

- 28.1 The Supplier must not assign this Agreement without ATCO's prior written consent (which must not be unreasonably

withheld) and any purported assignment in breach of this **clause 28.1** is void.

- 28.2 ATCO can assign this Agreement without the Supplier's consent provided the assignee has the financial and technical capabilities to fulfil ATCO's obligations under this Agreement.
- 28.3 The Supplier must not subcontract the performance of any of its obligations under this Agreement without ATCO's prior written consent (which must not be unreasonably withheld).

29 Dispute Resolution

- 29.1 If a Dispute arises between the parties, either party may serve a notice on the other setting out the issuing party's position in respect of the Dispute and requiring ATCO's Representative and the Supplier's Representative to meet to try to resolve it (**Dispute Notice**).
- 29.2 ATCO's Representative and the Supplier's Representative must meet within 7 days of receiving a Dispute Notice and endeavour in good faith to resolve the Dispute.
- 29.3 If a Dispute has not been resolved within 30 days after the Dispute Notice was served, either party may commence legal proceedings to resolve the Dispute.
- 29.4 If for any reason there is no ATCO's Representative or Supplier's Representative, ATCO or the Supplier (as applicable) may nominate a senior manager to undertake the role and obligations of ATCO's Representative or Supplier's Representative (as applicable) under this **clause 29**.
- 29.5 Notwithstanding the existence of a Dispute, the Supplier must continue to supply the Goods and/or Services in accordance with this Agreement.
- 29.6 Nothing in this **clause 29** prevents a party from commencing legal proceedings seeking urgent interlocutory relief.

30 Notices

- 30.1 Any notice given under or in connection with this Agreement:
- (a) must be in writing;
 - (b) must be addressed to the relevant address in this Agreement or last communicated in writing to the person giving the notice;
 - (c) must be posted by pre-paid mail, delivered by hand to the address of the addressee or emailed to the relevant email address with the notice attached in PDF format; and
 - (d) shall be deemed to have been given and received:
 - (i) (in the case of post) 5 business days after posting;
 - (ii) (in the case of delivery by hand) on delivery; and
 - (iii) (in the case of email) when the email is delivered to the server of the recipient party,

but if the notice is taken to be received on a day that is not a business day or after 5.00 pm in that place, it is taken to be received at 9.00 am on the next business day in the place of receipt.

- 30.2 A notice takes effect from the time it is received unless a later time is specified in it.

30.3 If ATCO (acting reasonably) directs, the Supplier must use the Electronic Delivery System for the purposes of issuing those communications and notices set out in that direction.

31 Business Integrity

31.1 Each party must not, and must procure that its Personnel and any other person acting for or on its behalf, do not:

- (a) give anything of value (which is not properly due) to the other party or its Personnel that is contrary to fair dealing; or
- (b) provide or offer a benefit (which is not properly due) to a public official (within or outside Australia) in order to retain or obtain an improper advantage.

31.2 Each party represents and warrants to the other that neither it nor any of its Personnel:

- (a) is or will become a Restricted Party; or
- (b) has violated or will violate any Sanctions.

31.3 Each party must:

- (a) comply with all applicable laws in relation to Modern Slavery (as defined in the *Modern Slavery Act 2018* (Cth));
- (b) take reasonable steps to ensure there is no Modern Slavery in its supply chains; and
- (c) notify the other party as soon as it becomes aware of any actual or suspected Modern Slavery in any supply chain that has a connection with this Agreement.

31.4 Each party must implement processes and procedures designed to ensure compliance with this **clause 31**.

31.5 The Supplier must maintain records in a reasonable level of detail concerning the steps it has taken in compliance with **clause 31** and, upon ATCO's request, make these records available to ATCO together with such other information as ATCO requests in order for ATCO to assess the Supplier's compliance with this **clause 31** and in order to comply with the law.

31.6 If the Supplier becomes aware of any potential or actual breach of this **clause 31**, it must immediately notify ATCO using the 'ATCO Integrity Line' (www.atcointegrity.com or telephoning 1800 238 497 (in Australia) or +16046407831 (collect call) outside Australia) and provide ATCO with all necessary assistance in investigating that breach.

32 Miscellaneous

32.1 This Agreement can only be amended by written agreement signed by the parties.

32.2 The Supplier is liable for the acts and omissions of its Personnel performing works and services in connection with the supply of the Goods and/or Services as if such acts and omission were acts and omissions of the Supplier.

32.3 No test, review (or failure to review), approval, statement of satisfaction or comment by or on behalf of ATCO with respect to the Goods and/or Services including any acceptance of a proposed HSE Management Plan:

- (a) constitutes a direction by ATCO; or
- (b) waives or varies any of the Supplier's obligations under this Agreement.

32.4 All obligations to indemnify under this Agreement are independent and survive termination of this Agreement.

32.5 Each party's remedies under this Agreement are without prejudice to any other remedies under this Agreement or any remedies available under any applicable law.

32.6 This Agreement is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

32.7 Where the Supplier is required under this Agreement to perform an obligation, matter or thing, or discharge a liability, the Supplier must do so at its own cost, unless expressly provided otherwise.

32.8 The Supplier is an independent contractor and nothing in this Agreement creates any agency, joint venture, partnership or employer and employee relationship between the parties.

32.9 No waiver by a party of a breach of this Agreement by the other party constitutes a waiver for any subsequent or continuing breach by that party.

32.10 All provisions of this Agreement which, expressly or by implication from their nature, are intended to survive termination or expiry of this Agreement, will survive such termination or expiry, including any provisions relating to:

- (a) confidentiality;
- (b) IP;
- (c) any indemnity; and
- (d) any right or obligation arising on termination of this Agreement.

32.11 This Agreement is governed by the laws of the State or Territory in which the Delivery Point is situated and the parties submit to the jurisdiction of the courts of that State or Territory and any courts which have jurisdiction to hear appeals from any of those courts.

32.12 The operation of the Vienna Convention on Contracts for the International Sale of Goods 1980 and the *Sale of Goods (Vienna Convention) Act 1986* (WA) is excluded in relation to all matters in connection with this Agreement.

32.13 If any of the provisions of this Agreement are held by a court of competent jurisdiction to be invalid or otherwise unenforceable that provision may be severed from the Agreement and the remainder of this Agreement will continue to be effective and valid notwithstanding such severance.

33 Definitions and Interpretation

33.1 In this Agreement:

Agreement IP means IP created, discovered or coming into existence as a result of performing this Agreement but does not include the Supplier's Background IP.

ATCO means the member or members of the ATCO Group identified in the Purchase Order.

ATCO Equipment means any item of equipment owned by ATCO or its Related Body Corporate that is to be serviced, repaired or modified as part of the Services.

ATCO Group means ATCO Australia Pty Ltd and its Related Bodies Corporate.

ATCO Information has the meaning given in **clause 1.9**.

ATCO Personal Data means Personal Data provided by or on behalf of ATCO to the Supplier or any of its Personnel.

ATCO Supplied Items means the plant, equipment, infrastructure, facilities, utilities and other items that ATCO supplies to the Supplier as set out in this Agreement and otherwise made available to the Supplier by ATCO for the purposes of the supply of the Goods and/or Services but excludes the ATCO Equipment.

ATCO's Background IP means any IP owned by or licensed to ATCO (including any licence granted by another member of the ATCO Group) and which was in existence at the Date of this Agreement.

ATCO's Policies and Rules means ATCO's policies, standards and rules of conduct and operation applicable to the supply of the Goods and/or Services or the Site, as updated from time to time and available on request by the Supplier.

ATCO's Representative means the person appointed as ATCO's Representative pursuant to **clause 14**.

Change in Law means any change in an applicable law occurring after the Date of this Agreement which was not reasonably foreseeable at the Date of this Agreement.

Confidential Information means the terms of this Agreement and all information exchanged between the parties in connection with this Agreement (including all Personal Data but excluding information that is or becomes public knowledge other than as a result of a breach of this Agreement).

Consequential Loss means any unforeseeable, indirect or consequential loss and includes (whether such loss is foreseeable, direct or consequential) any:

- (a) loss of revenue and profit (other than revenue or profit attributable to the supply of the Goods and/or Services in accordance with this Agreement);
- (b) loss of goodwill;
- (c) loss of reputation or adverse publicity; or
- (d) financing costs.

Date for Delivery means the date set out in the Purchase Order or, if none, a reasonable time after the date of this Agreement.

Date of this Agreement means the date the Supplier is taken to have accepted the terms and conditions of this Agreement pursuant to **clause 1.6**.

Deliverables means all data, plans, drawings, software, specifications, procedures, reports, documents and other information prepared by the Supplier and to be delivered to ATCO as part of the Services.

Delivery Point means the location identified in the Purchase Order where the Supplier is to supply the Goods and/or Services or, if none identified, the location ATCO nominates (acting reasonably).

Dispute means a dispute or difference between the parties in connection with this Agreement.

Electronic Delivery System means ATCO's nominated web-based communications portal.

Force Majeure Event means any event or circumstance beyond the reasonable control of the party affected by it and that could not have been avoided or overcome using all reasonable skill and effort to do so.

Good Industry Practice means performance:

- (a) as would ordinarily be expected of a Relevant Supplier;
- (b) in a manner which is:
 - (i) efficient, professional and cost effective; and
 - (ii) safe to the environment; and
- (c) by Qualified Personnel using high quality, safe and appropriate equipment, tools and procedures and adopting high industry standards.

Goods means the goods, if any, referred to in this Agreement and includes all goods described in this Agreement, all manuals, spare parts and operating instructions ATCO needs for the proper use of the Goods and all things that can be reasonably inferred from the description of the Goods in this Agreement.

GST has the meaning given in the GST Act.

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

HSE Legislation means all relevant legislation relating to health and safety on the Site or in connection with the supply of the Goods and/or Services and any regulations, codes of practice or safety standards made under any of that legislation.

Insolvency Event means the occurrence of any one or more of the following events with respect to a party:

- (a) a meeting has been convened, resolution proposed, petition presented or order made for the winding up of the party;
- (b) a receiver, receiver and manager, provisional liquidator, liquidator, or other officer of the court, or other person of similar function has been appointed regarding all or any material asset of the party;
- (c) a security holder, mortgagee or chargee has taken, attempted or indicated an intention to exercise its rights under any security of which the party is the security provider, mortgagor or chargor; or
- (d) an event has taken place with respect to the party which would make, or deem it to be, insolvent under any laws applicable to it.

IP means all intellectual and industrial property rights, including trademarks, copyright, inventions, patents, designs, circuits and other eligible layouts, database rights and other intellectual property rights.

Leased Equipment has the meaning given in **clause 5.1**.

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth).

Other Contractor means any contractor at any level engaged by ATCO or a member of the ATCO Group to perform activities at the Site (but excluding the Supplier and the Supplier's Personnel).

Personnel means:

- (a) in relation to ATCO:
 - (i) ATCO's Related Bodies Corporate, its Other Contractors and its employees, officers, agents and consultants; and

- (ii) all Related Bodies Corporate, employees, officers, agents and consultants of ATCO's Related Bodies Corporate, Other Contractors, agents and consultants;
- (b) in relation to the Supplier:
 - (i) the Supplier's Related Bodies Corporate, its Subcontractors and its employees, officers, agents and consultants; and
 - (ii) all Related Bodies Corporate, employees, officers, agents and consultants of the Supplier's Related Bodies Corporate, Subcontractors, agents and consultants.

Personal Data means any information relating to an identified and identifiable natural person.

Price means, with respect to Goods and/or Services, the price for those Goods and/or Services set out in the Purchase Order.

Process means any operation or set of operations performed on Personal Data, including collection, recording, use, disclosure, transfer, access, storage, hosting, alteration, erasure or destruction.

Purchase Order means the purchase order, setting out the details of the Goods and/or Services and referring to these Terms and Conditions.

Qualified Personnel means personnel who are fit for work and suitably qualified, trained (including trained in respect of health and safety) and experienced to undertake and carry out the work they are allocated.

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

Relevant Supplier means a supplier that exercises the degree of skill, quality, care, diligence and prudence that would reasonably be expected of a competent and experienced supplier undertaking the supply of goods and/or services and obligations similar to the supply of the Goods and/or Services under this Agreement.

Restricted Party means any government, person or entity which is:

- (a) listed on, or owned or controlled by a person (including 50% or more in the aggregate by two or more Restricted Parties) listed on, the U.S. Specially Designated Nationals List maintained by the U.S. Treasury Department's Office of Foreign Assets Control or any similar restricted party or Sanctions list maintained by the United States, the United Kingdom, the United Nations, the European Union, Australia, Canada or any other relevant government;
- (b) located or organised in any country or territory that is the target of comprehensive or country-wide Sanctions (including Cuba, Iran, North Korea, South Sudan, Crimea and Syria); or
- (c) otherwise the target of Sanctions.

Ring-Fencing Arrangements means any ring-fencing of gas pipeline service providers from entities buying, selling or producing gas required by any applicable law.

Sanctions means the export controls laws, economic sanctions, regulations or restrictive measures administered or enforced by Australia, Canada, European Union members,

United States or America, United Kingdom, United Nations Security Council, or any other relevant government.

Services means the services, if any, referred to in this Agreement and includes the preparation and delivery of the Deliverables and any good, document or activity necessary or incidental to the performance of the Services.

Site means any site ATCO makes available to the Supplier for the purpose of supplying the Goods and/or Services.

Subcontractor means a subcontractor at any level engaged by the Supplier or another Subcontractor to perform part of the supply of the Goods and/or Services.

Supplier Personal Data means Personal Data provided by or behalf of the Supplier to ATCO or any of its Personnel.

Supplier's Background IP means any IP owned by or licensed to the Supplier (including any licence granted by a Related Body Corporate of the Supplier) and which:

- (a) was in existence at the Date of this Agreement;
- (b) came into existence after the Date of this Agreement, other than in connection with the supply of the Goods and/or Services or this Agreement; or
- (c) has been developed by the Supplier for general use in the Supplier's business and not specifically developed for the purpose of supplying the Goods and/or Services.

Supplier's Plant and Equipment means all plant, equipment, tools, appliances or other property required by the Supplier to fulfil its obligations under this Agreement (and includes any Leased Equipment but excludes any ATCO Supplied Items).

Supplier's Representative means the person appointed as the Supplier's Representative pursuant to **clause 14**.

Tax Invoice means a tax invoice for the purposes of the GST Act.

Variation means any change to the Goods and/or Services, including any modification, alteration, variation, addition, omission of, to or from the Goods and/or Services.

The words 'including' and 'includes' and any variants of those words will be read as if followed by the words 'without limitation'.

The word 'direction' includes a demand, request or requirement.

Words in the singular include the plural and vice versa.

Unless expressly stated in this Agreement, a reference to:

- (a) a day is to a calendar day where the Delivery Point is situated; and
- (b) to time is to time where the Delivery Point is situated.

Any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced.

An obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.

An obligation or liability assumed by, or a right conferred on, 2 or more persons bind or benefits them jointly and severally.

