Purchase Order Terms and Conditions

1. INTERPRETATION

1.1 In these Purchase Order General Terms and Conditions:
Authorisation means any approval, licence, permit, registration, consent, certification, accreditation, declaration, exemption, notarisation or waiver howsoever it is described which is required at Law to be obtained from a government agency in relation to the Project.
Brookes Build means (ABN196103218 85) having its registered business office address at P.O. Box 755 Earlville Qld 4870, and its related entities as defined under the Corporations Act 2001 (Cth).
Background IP means IP Rights in existence at the date of this PO or come into existence after the date of this PO other than in connection with this PO.
BROOKES BUILD Policies and Procedure means BROOKES BUILD Pty Ltd policies and procedures of conduct and operation as documented (and updated from time to time) via the BROOKES BUILD Integrated Management System (IMS). The currently valid and binding version of the Purchase Order Terms and Conditions are available via BROOKES BUILD website and upon request via you emailing info@brookesbuild.com.au
Code means the Building Code 2013 as published by the Australian Government from time to time in accordance with the provisions of the **Fair Work (Building Industry) Act 2012.**
Completion Date means the date referred to as such in the PO, if applicable.
CP&E means Construction Plant and Equipment.
Defective means Goods/Services (or any aspect of them) which are not in accordance with the PO or which are damaged, deficient, faulty, inadequate or incomplete.
Delivery means the provision of the Goods/Services to the Delivery Address.
Delivery Address means the location specified on the PO where the Goods/Services are to be delivered.
Delivery Date means the date or period specified in the PO in which the Goods/Services shall be delivered to BROOKES BUILD, or if no date is specified the date notified to the supplier by BROOKES BUILD.
Day means calendar day.
Defects Liability Period means the period twelve (12) months from the Delivery Date of the Goods/Services or from the date the Goods/Services are accepted whichever is the longer.
Direction includes agreement, approval, authorisation, certificate, decision, demand, determination, instruction, notice, order, permission, request or requirement.
Force Majeure means an event which is not within the control of the party claiming force majeure relief, and which by the exercise of reasonable care, that party is not able to prevent or overcome, including without limitation:
a) an Act of God;
b) fires and earthquakes;
c) an act of war, riots or civil commotion and acts of public enemy's;
but specifically excludes:
a) any occurrence which results from the wrongful act or wrongful omission of the affected party or the failure by the affected party to act in a prudent and proper manner and in accordance with Good Industry Practice;
b) any failure by the affected party to reach agreement with any third party necessary to enable the affected party to perform its obligations under this Agreement; or
c) in the case of the Supplier, breakdown of the Supplier's CP&E.
Good Industry Practice means the practices, methods and acts engaged in or approved by a person which, in the conduct of its undertaking, exercises that degree of due diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced persons and includes but is not limited to;
a) compliance with all relevant Australian standards, regulations, industry codes of practice, Laws, and Legislative requirements;
b) compliance with industrial awards;
c) supplying conforming, fit for purpose Goods/Services in a workmanlike manner;
d) supplying Goods/Services of merchantable quality, new materials and free from defects;
Goods/Services means all work to be carried out, provided and/or supplied by the Supplier in accordance with the PO including;
a) any materials, supplies, plant, equipment, services, or other things to be supplied as part of the Goods by the Supplier to BROOKES BUILD, as specified in this Contract (including as set out in any subsequent PO
b) all Goods/Services set out in the PO;
c) other Goods/Services, functions responsibilities and obligations the PO provides that the Supplier has, or will perform or supply;
d) all Goods/Services, responsibilities, and functions not specifically described in the PO but which are incidental to, or otherwise necessary for the Supplier to provide the Goods/Services under the PO;
e) includes where applicable, the supply, hire or provision of any Goods/Services.
GST has the meaning given to that term under the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
Guidelines means the Implementation Guidelines for The National Code of Practice for the Construction Industry dated May 2012. A copy of the Guidelines can be located at www.apcc.gov.au.
Insolvency Event means the happening of any one of the following events in relation to the Supplier:
a) the Supplier voluntary or involuntarily suspends the payment of its debts;
b) where the Supplier is a body corporate, it becomes an externally administered body corporate under the Corporations Act 2001 or steps are taking towards it becoming an externally administered body corporate which are not withdrawn or dismissed within 14 days, or a controller (as that expression is defined by the Corporations Act 2001) is appointed to the Supplier or steps are taken for the appointment of a controller which are not reversed or abandoned within 14 days, or the Supplier is taken to have failed to comply with the statutory demand within the meaning of section 459F of the Corporations Act 2001;
c) where the Supplier is a natural person the Supplier commits an "act of bankruptcy" as that expression is defined by the Bankruptcy Act 1966.
Insolvent is as defined in the Corporation Act 2001 (Cth).
IP Rights means all copyright and analogous rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets), know-how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields.
Law/Legislation means the law governing this Contract wherever referred to means the applicable Commonwealth and State legislation, regulations, by-laws and other subordinate legislation and Common Law and equity.
Month means calendar month.
WHS&E means Work Health Safety & Environment.
Owner means the principal under any contract in which BROOKES BUILD is the Contractor and for which the Goods/Services are supplied and includes the Owner's Personnel.
Personnel means:
a) in relation to BROOKES BUILD, any of its employees, agents or representatives;
b) in relation to the Supplier, any of its employees, sub-contractors, their subcontractors, agents and representatives involved either directly or indirectly in the provision of the Goods/Services; and
c) in relation to a Subcontractor, any of its employees, agents and representatives involved either directly or indirectly in the provision of the Goods/Services.
d) In relation to the Owner, any if its agents, contractors, employees successors and permitted assigns.
Project means the project so described in the PO.
Project IP means all intellectual property and intellectual property rights created arising or in any way coming into existence in connection with the Project or the supply of Goods/Services pursuant to the PO.
"PO" means a document entitled 'Purchase Order' and issued by BROOKES BUILD to the Supplier for the supply of Goods/Services.
PO Sum means:
a) where BROOKES BUILD has accepted a fixed price, the fixed price specified in the PO;
b) where BROOKES BUILD has accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the schedule of rates specified in the PO; or
c) where BROOKES BUILD has accepted a fixed price and schedule of rates, the aggregate of the sums referred to in paragraphs a) and b);
d) but excluding any additions or deductions which may be required to be made under the PO.
Site means any area where the Goods/Services are to be delivered or the location where the BROOKES BUILD project is being performed.
Specification means any specification for the Goods/Services included in the PO and any modification of such Specification notified to the Supplier by BROOKES BUILD.
Supplier means the legal entity to which the PO is addressed.
Warranty Period means the period of twenty four (24) months commencing on the date of delivery of the Goods/Services or twelve (12) months from the date in which the Goods/Services are accepted whichever is the longer.

2. SUPPLY OF GOODS/SERVICES

2.1 In consideration of payment of the PO Sum by BROOKES BUILD, the Supplier must supply the Goods/Services as specified in any PO placed by BROOKES BUILD. The Supplier acknowledges that time is of the essence in respect of the Supplier's obligations to Supply the Goods/Services.
2.2 Where the PO relates to any Goods/Services the subject of a contract between the Supplier and BROOKES BUILD, the terms and conditions of that contract will prevail to the extent of any inconsistency with these General Terms and Conditions.
2.3 This PO commences on the commencement date and expires on the Completion Date.
2.4 Nothing in the PO confers upon the Supplier any exclusivity or obligation to request or acquire any minimum level in respect of the Goods/Services Supplied.

3. BROOKES BUILD POLICIES AND PROCEDURES

3.1 The Supplier shall and shall ensure its Personnel comply with the policies and rules of BROOKES BUILD. The Supplier is expected to and acknowledges that it has been given access to and has read and understands the latest version of the BROOKES BUILD Policies and Procedures. The BROOKES BUILD Policies and Procedures may be updated from time to time by BROOKES BUILD and the onus is upon the Supplier to regularly review the BROOKES BUILD Policies and Procedures (The currently valid and binding version of our Policies and Procedures are available upon request via you emailing info@brookesbuild.com.au and ensure that in complying with the obligations under this Clause reference has been given to the latest version of the BROOKES BUILD Policies and Rules. BROOKES BUILD reserves the right to audit the Supplier's compliance with the BROOKES BUILD Policies and Procedures.

4. WORK HEALTH, SAFETY (WHS) & ENVIRONMENT

4.1 This Clause 4 applies to the extent the Supplier or any of its Personnel are required to be on or near the vicinity of the Site for the purposes of the Supply of the Goods/Services.
4.2 The Supplier shall promptly comply, and shall at all times during the supply of the Goods/Services under the PO, take all measures and precautions necessary to ensure all Goods/Services are in accordance with the PO and the Supplier's Personnel demonstrate Good Industry Practice and any and all applicable health, safety & environmental regulations, policies, procedures of BROOKES BUILD and the Owner. These shall include, without limitation any rules or regulations which BROOKES BUILD may be operating under whilst on the Site, and includes any requests or Directions made by BROOKES BUILD or the Owner to initiate corrective actions for any deficiencies or non-compliances.
4.3 In supplying the Goods/Services the safety of the Supplier's Personnel while on the Site shall be the responsibility of the Supplier. The Supplier indemnifies BROOKES BUILD and BROOKES BUILD personnel from any death, injury, damage, expense, loss or liability arising from the Supplier's non-observance of any requirements of this Clause four (4). The Supplier warrants it will do all things necessary to ensure the health, safety and welfare of its Personnel including (but not limited to):
a) ensuring all plant, equipment and substances are maintained and stored in a safe condition and are appropriate for the task for which they are intended;
b) providing and maintaining all necessary safety clothing and personal protective equipment for the Supplier's Personnel;
c) providing induction safety and health training prior to any person commencing supply of any Goods/Services under the PO and providing regular ongoing training.
4.4 The Supplier agrees and shall cooperate and provide any and all assistance to promptly make available all relevant records and Personnel necessary for any WHS&E audit or assessment for the purpose of ensuring statutory, BROOKES BUILD or the Owner's standards and requirements are met by the Supplier and it's Personnel (and if applicable, its Suppliers) in the course of the supply of the Goods/Services. If BROOKES BUILD considers that the supply of the Goods/Services are not being carried out in accordance with WHS&E requirements and obligations, BROOKES BUILD may direct that the supply of the Goods/Services cease immediately until the matter is rectified and/or may notify the relevant Authority.

5. EMPLOYEE RELATIONS

5.1 The Supplier is responsible for conducting its industrial and employee relations and delay or disruption in the provision of the Goods/Services that may arise as a consequence.
5.2 The Supplier must ensure the terms and conditions of employment of all of its Personnel engaged in the supply of the Goods/Services under the PO are at all times regulated by an agreement made under the Fair Work Act 2009 (Cth).
5.3 BROOKES BUILD may, at any time, request the Supplier to withdraw any of its Personnel from providing any part of the Goods/Services and upon such request the Supplier must promptly arrange for the person to cease being involved in any way in the provision of the Goods/Services notwithstanding any provision in any other contract. The Supplier must replace the person with a person of suitable ability, experience and qualifications within a reasonable time period specified by BROOKES BUILD.
5.4 The Supplier acknowledges BROOKES BUILD is required to comply with the Code and Guidelines and the Supplier shall, (and warrants it will) also comply with the Code and Guidelines.

6. STATUTORY REQUIREMENTS

6.1 The Supplier shall obtain all applicable Authorisations required and comply with the requirements of all Law and Legislation and the requirements of all persons exercising statutory authority affecting the supply of the Goods/Services.
6.2 The Supplier shall give all notices, make all applications and pay all fees necessary to comply with these requirements.

7. QUALITY

7.1 The Goods/Services shall match the description referred to in the PO.
7.2 If the Supplier gave BROOKES BUILD a sample or demonstration of the Goods/Services, the Goods/Services supplied shall be of the same nature and quality as the sample/demonstration.
7.3 The Supplier shall, if required by BROOKES BUILD, establish and maintain a quality system which conforms to the requirements of any applicable Australian Standards and the PO. The Supplier will also provide BROOKES BUILD with access to the Supplier's premises and quality system to permit verification activities and quality auditing.

8. DELIVERY, TITLE & RISK

8.1 The Supplier must deliver the Goods/Services to the Delivery Address by the Delivery Date.
8.2 The Supplier must ensure the Goods/Services are supplied safely and are suitably packed to avoid damage in transit or in storage.
8.3 Packages must be clearly marked with the PO number, item number, destination, quantity, description, date and method of dispatch and weight on each package.
8.4 Full unencumbered title of the Goods/Services shall pass to BROOKES BUILD upon the earlier of:
a) BROOKES BUILD making payment in full to the Supplier for the Goods/Services under the PO; or
b) The Goods/Services being delivered to the Delivery Address and accepted by BROOKES BUILD.
8.5 Risk in the Goods/Services will remain with the Supplier until the Goods/Services are delivered to the Delivery Address and accepted by BROOKES BUILD.

9. SUPPLIER WARRANTIES

9.1 In addition to any warranties implied by Law, the Supplier warrants that the Goods/Services shall conform to the requirements of the PO and are in accordance with Good Industry Practice
9.2 The Supplier warrants that it will not interfere with the activities of BROOKES BUILD or the activities of any other person at the Delivery Address or Site.
9.3 The Supplier acknowledges and agrees that any warranty or indemnity provided by the Supplier under the PO is provided for the benefit of BROOKES BUILD.

10. DEFECTS LIABILITY & TESTING

10.1 BROOKES BUILD will not be deemed to have accepted the Goods/Services until the Goods/Services have been inspected. For the avoidance of doubt, payment shall not be deemed to constitute acceptance of the Goods/Services.
10.2 BROOKES BUILD may at any time direct that any Goods/Services provided under the PO be examined or tested by a person nominated by BROOKES BUILD. The Supplier shall provide such assistance and samples and make accessible such parts of the Goods/Services as may be required. On completion of the tests the Supplier shall make good the Goods/Services so they fully comply with the specifications and requirements of the PO.
10.3 Costs of and incidental to testing shall be paid by the Supplier unless the test shows that the Services provided are in accordance with the PO.
10.4 BROOKES BUILD may at any time prior to the expiration of the Warranty Period, reject the Goods/Service if BROOKES BUILD believes the Goods/Service is defective or does not meet the requirements set out in the PO. BROOKES BUILD may unpack, inspect and test the Goods/Services for this purpose.
10.5 If BROOKES BUILD discovers any material or Goods/Services which are not in accordance with the PO or if the Goods/Services cease to be fit for the purpose required by BROOKES BUILD prior to the Completion Date without default on the part of BROOKES BUILD, BROOKES BUILD may, at its absolute discretion, direct the Supplier to:
a) remove the defective Goods/Services at the expense of the Supplier; and/or
b) replace or repair the defective Goods/Services with conforming Goods/Services as required by the PO at the expense of the Supplier; and/or
c) reimburse BROOKES BUILD for any expenses incurred by BROOKES BUILD in repairing, re-performing or making good (as the case may be) any Defective Goods/Services.
10.6 BROOKES BUILD may direct the times within which the Supplier must replace or repair the defective Goods/Services.

11. GST

11.1 For the purposes of this clause, the expressions "adjustment note", "Australian Business Number", "GST" and "tax invoice" shall have the meanings assigned to them in legislation including A New Tax System (Goods and Works Tax) Act 1999.
11.2 If GST is imposed on any supply of Goods/Services by the Supplier under or in connection with this PO, the Supplier may recover from BROOKES BUILD, in addition to the PO Sum, an amount equal to the GST payable in respect of that Supply.
11.3 BROOKES BUILD need not make a payment to the Supplier under clause twelve (12) until the Supplier is registered for the purpose of GST and has provided BROOKES BUILD with a valid tax invoice which states the following; PO number, Supplier's name; Supplier's Australian Business Number; the words "tax invoice" stated prominently; GST inclusive price; total amount of GST payable; the date of issue; BROOKES BUILD's name; BROOKES BUILD 's address or Australian Business Number; a brief description of Goods/Services supplied and the quantity or extent of each item.

12. PRICE, INVOICING & PAYMENTS

12.1 Upon delivery of the Goods/Services the Supplier shall deliver to BROOKES BUILD a valid tax invoice as required under Clause 11.3. Within forty five (45) days of the end of the month in which the valid tax invoice is received by BROOKES BUILD, BROOKES BUILD shall pay the Supplier the PO Sum for the Goods/Services.
12.2 The amount due to the Supplier will be the value of the Goods/Services supplied to BROOKES BUILD inclusive of all costs incurred by the Supplier (including all charges for packing, insurance and delivery of the Goods/Services) less amounts already paid and other amounts due from the Supplier to BROOKES BUILD which BROOKES BUILD is entitled to deduct. The price is inclusive of all taxes and duties, except GST.
12.3 If any moneys due to either party remains unpaid, after the date or the expiration of the period within which they should have been paid, then interest at 2% above the Reserve Bank Cash Rate, shall be payable from but excluding the due date for payment to and including the date upon which the money's are paid.

13. VARIATIONS

13.1 The Supplier shall not vary the PO except with the prior written approval of BROOKES BUILD.
13.2 BROOKES BUILD may omit any part of the supply of Goods/Services.
13.3 The Supplier will not be entitled to claim payment for any variation not directed in writing by BROOKES BUILD.
13.4 Unless BROOKES BUILD and the Supplier agree upon a price for a variation, the variation shall be valued by BROOKES BUILD. BROOKES BUILD may direct the Supplier to provide a detailed quotation for the Goods/Services of a variation.
13.5 In valuing a variation, if the PO prescribes specific rates or prices to be applied in determining the value, those rates or prices shall be used. To the extent that th is does not apply, reasonable rates or prices shall be used in any valuation

14. INDEMNITY AND LIABILITY

14.1 The Supplier is liable for and shall indemnify (and keep indemnified) BROOKES BUILD and BROOKES BUILD 's Personnel from and against any liability and/or any loss or damage of any kind whatsoever, arising directly or indirectly from any one or more of the following:
a) any breach of the Supplier's obligations or any breach of any warranty of the PO by the Supplier;
b) any negligent act or omission or wilful misconduct by the Supplier or its Personnel arising out of the supply of the Goods/Service under the PO;
c) the illness, injury or death of any of the Suppliers Personnel arising out of or in connection with the Supply of the Goods/Services under the PO;
d) any loss or damages arising out of or in connection with any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed by the supply and/or use of the Goods/Services by the Supplier.
14.2 The Supplier shall indemnify BROOKES BUILD against any and all costs incurred by BROOKES BUILD as a result of any statutory liability imposed on BROOKES BUILD in respect of the Supplier's Personnel.
14.3 The Supplier's liability to indemnify BROOKES BUILD shall be reduced proportionally to the extent an act or omission of BROOKES BUILD contributed to the liability.
14.4 The provisions of this clause 14 shall survive termination of this Contract for any reason.
14.5 Notwithstanding anything in the PO to the contrary, BROOKES BUILD shall not be liable to the Supplier for any consequential, indirect or special loss or damages of any nature whatsoever whether based on warranty, tort (including negligence) or otherwise including (but not limited to) those arising out of delay, loss of product, loss of production, business interruption, loss of revenue or loss of profits.
14.6 The effecting of any or approval of any or all insurance provided under the PO shall not in any way limit the liabilities or obligations of the Supplier under other provisions of the PO.

15. DEFAULT AND TERMINATION

15.1 If at any time the Supplier suffers an Insolvency Event, BROOKES BUILD may immediately terminate the PO by notice in writing to the Supplier.
15.2 BROOKES BUILD may terminate the PO in whole or in part and with immediate effect, by notice to the Supplier, if:
a) the Supplier or any Supplier Personnel commits an act of gross negligence, wilful misconduct, fraud or dishonesty in respect of any matter undertaken or required to be undertaken
under the PO; or
b) the Supplier commits a breach of any breach of the PO (incorporating these terms and conditions) which is capable of remedy and fails to remedy that breach at its own expense and to the reasonable satisfaction of BROOKES BUILD within seven (7) days of a notice by BROOKES BUILD specifying the nature of the breach;
c) the Supplier commits a breach of any provision of the PO (incorporating these terms and conditions) which is not capable of remedy;
d) BROOKES BUILD is expressly entitled to exercise a right of termination under any other provision of the PO.
15.3 BROOKES BUILD may at any time terminate the PO in whole or in part, without cause by giving the Supplier no less than fourteen (14) days' notice in writing and the effective date thereof.
15.4 In the event of termination under Clause 15.3 BROOKES BUILD shall pay to the Supplier (less any amounts previously paid and subject to any rights BROOKES BUILD may have to suspend, withhold or set-off payments):
a) the price for the Goods/Services provided to BROOKES BUILD prior to the effective date of termination and not included in any previous payment by BROOKES BUILD;
b) the cost of materials reasonably ordered by the Supplier for the purpose of providing the Goods/Services, which the Supplier is legally liable to accept and cannot otherwise utilise,
but only if the materials become the property of BROOKES BUILD;
c) the reasonable costs of complying with any Direction given by BROOKES BUILD upon, or subsequent to, termination.
15.5 On the expiration or earlier termination of the PO, the Supplier must:
a) stop work to the extent required by BROOKES BUILD;
b) take such action as necessary and as BROOKES BUILD directs, for the transfer, protection and preservation of the BROOKES BUILD's Property;
c) do its best to minimise the cost of termination to BROOKES BUILD;
d) within fourteen (14) days of termination or expiration, return to BROOKES BUILD (or if requested, erase and/or destroy) all copies in any form of the applicable IP in the possession or
control of the Supplier and/or Supplier Personnel.

16. INTELLECTUAL PROPERTY

16.1 BROOKES BUILD and the Supplier acknowledge ownership of all Background Intellectual Property ("IP") remains vested in its creator.
16.2 The Supplier gives BROOKES BUILD a non-exclusive, royalty free licence to use all the Supplier's Background IP to the extent necessary to enable BROOKES BUILD to exercise rights in the Project IP.
16.3 The Supplier grants to BROOKES BUILD a perpetual, irrevocable, non-exclusive and royalty free licence for BROOKES BUILD and others engaged by BROOKES BUILD to use, adapt, modify and copy the Supplier's Background IP.
16.4 The Supplier acknowledges and agrees all Project IP is vested in BROOKES BUILD and is BROOKES BUILD's property as and when created and the Supplier hereby assigns all rights, title and interest in and to the Project IP to BROOKES BUILD.
16.5 The Supplier warrants that it owns the IP Rights in the Supplier's Background IP and that the supply of the Goods/Services does not and will not infringe the rights (including IP Rights) of any third party; The Supplier indemnifies BROOKES BUILD, and BROOKES BUILD Personnel against any loss or damage (including fees and other legal costs in defending any action) arising out of or in connection with any breach and shall be liable to BROOKES BUILD for all costs associated with providing any equivalent goods which do not infringe any IP Rights of any third party.
16.6 The Supplier agrees to provide all reasonable assistance BROOKES BUILD may request to protect the IP Rights in the Project IP and/or BROOKES BUILD's Background IP.
16.7 The Supplier must not disclose, reproduce or otherwise deal with the IP, or allow any other person to do the same, for any purpose other than to provide the Goods/Services pursuant to the PO.

17. FORCE MAJEURE

17.1 A Party will not be liable for any delay or failure to perform any of its obligations under the PO (other than an obligation to pay money) if as soon as possible after the beginning of the Force Majeure affecting the ability of the Party to perform any of its obligations under the PO, it gives a notice to the other party that complies with Clause 17.2 A notice given under Clause 17.1 must:
a) Specify the obligations the Supplier cannot perform
b) Fully describe the Force Majeure
c) Estimate the time during which the Force Majeure will continue; and
d) Specify the measures proposed to be adopted to remedy or abate the Force Majeure.
17.3 The Party prevented from carrying out its obligations under the PO as a result of Force Majeure must:
a) remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible; and
b) take all action reasonably practicable to mitigate any Liabilities suffered by the other Party as a result of its failure to carry out its obligations under the PO.

18. CONSTRUCTION PLANT & EQUIPMENT

18.1 If required to provide Construction Plant and Equipment ("CP&E") on Site, the Supplier agrees to provide the CP&E at its own risk and expense and shall ensure that all CP&E:
a) is properly manufactured to specification of merchantable quality and is fit for the purpose for which it is intended;
b) is of such safety standard as BROOKES BUILD is entitled to expect;
c) complies with all relevant Laws and Australian industry and safety standards;
d) is inspected and tested to ensure it is safe and fit for purpose before use at the Site (and appropriate certification records to this effect are maintained); and
e) is operated by appropriately skilled and qualified Supplier's Personnel.
18.2 The Supplier shall ensure and is obligated to perform all required servicing, maintenance, repairs and for the supply of equipment, materials, wearing parts, tyres and consumables for all CP&E supplied under the PO to a safe, operable, and in accordance with Good Industry Practice throughout the term of the PO.
18.3 BROOKES BUILD may reject any item of CP&E which it determines is unsuitable for the purposes of the PO. If any item is so rejected then it shall either be (at the sole discretion of BROOKES BUILD) repaired
or replaced to the reasonable satisfaction of BROOKES BUILD within two (2) days of notification by BROOKES BUILD.
18.4 If the Supplier fails to comply with a Direction to cease using unsafe CP&E, BROOKES BUILD may perform or have performed the obligation on the Supplier's behalf and the costs and expenses
incurred by BROOKES BUILD are recoverable from the Supplier as a debt due and payable to BROOKES BUILD.
18.5 Any CP&E or other property that BROOKES BUILD provides to the supplier to enable it to complete its obligations under the PO (BROOKES BUILD Property) remains the property of BROOKES BUILD and must only be
used for the purposes of fulfilling the Supplier's obligations under the PO. BROOKES BUILD may register a security interest under the Personal Property Securities Act 2009 over and in respect of all BROOKES BUILD property that is provided to the Supplier under this clause or otherwise.
18.6 Should the Supplier's Personnel be permitted to use any CP&E belonging to BROOKES BUILD, then such use shall be on the condition that no warranty or other liability on the part of BROOKES BUILD will be created or implied as to the condition or suitability of the CP&E.
18.7 The Supplier must keep BROOKES BUILD's CP&E well maintained, in good working order and is responsible for and must compensate BROOKES BUILD for, any loss, waste or damage to BROOKES BUILD's CP&E by the Supplier's Personnel.
18.8 If the Supplier is providing CP&E to BROOKES BUILD (Dry Hire) the Supplier warrants that CP&E shall be provided in accordance with Clause 18.1 a) – d) inclusive.
18.9 The Supplier further warrants that the equipment shall achieve a minimum availability during the hire of 90%.
18.10 BROOKES BUILD shall;
a) ensure the Supplier's CP&E is Operated by suitably skilled and qualified BROOKES BUILD Personnel;
b) whilst under the care of BROOKES BUILD, BROOKES BUILD is responsible for the operation and direct supervision of the Supplier's CP&E;
c) if the Supplier's CP&E is required to be maintained by BROOKES BUILD , it shall be maintained in accordance with OEM specifications;
d) take proper care of the supplier's CP&E and keep the Supplier's CP&E in good working order and condition (reasonable wear and tear excepted);
e) ensure the CP&E is used in accordance with the OEM or Supplier's instructions and recommendations and only used for BROOKES BUILD business operations and for the purpose for which they are designed;
f) not part with possession of the supplier's CP&E except to the extent permitted by this PO;
g) not modify the Supplier's CP&E in any unauthorised manner;
h) BROOKES BUILD shall return the Supplier's CP&E to the Supplier in good working order and condition (reasonable wear and tear excepted) on the Completion Date.
18.11 BROOKES BUILD shall only be liable to the Supplier for the actual hours the CP&E works. If minimum hours apply to the Hire, Minimum hours shall be reduced proportionately to the extent the equipment does not meet the availability requirement specified in Clause 18.9.
18.12 In the event of a breakdown of the Supplier's CP&E, BROOKES BUILD shall notify the Supplier as soon as practicable of the breakdown ("Breakdown Notice"), within 48 hours (or such time agreeable by BROOKES BUILD in writing) of receipt of the Breakdown Notice, the Supplier shall, at the supplier's expense, repair or replace the CP&E to the satisfaction of BROOKES BUILD. If the Supplier does not repair or replace the CP&E to the satisfaction of BROOKES BUILD, BROOKES BUILD may at its sole discretion, repair or replace the equipment, any expense incurred by BROOKES BUILD shall be a debt due and payable by the Supplier to BROOKES BUILD.

19. CONFIDENTIALITY AND MEDIA

19.1 The Supplier shall not (except in the proper course of its duties under the PO or as required by Law or BROOKES BUILD) disclose to any person any information relating to BROOKES BUILD of which it has come into the possession of as a result of the PO or the negotiations preceding the PO.
19.2 The Supplier shall ensure the information is kept confidential and return or destroy the same within three (3) days following written request by BROOKES BUILD.
19.3 The Supplier may not discuss the Goods/Services or the PO with any third party or the media nor make any public statement about the PO or anything related to the subject matter of the PO without the prior written consent of BROOKES BUILD.
19.4 The provisions of this clause 19 shall survive termination of the PO.

20. INSURANCE

20.1 Insurances type and coverage to be provided by the Supplier.
Before commencing a supply of Goods/Services under the PO, the Supplier shall effect and maintain with an insurer on terms approved in writing by BROOKES BUILD, suitable policies in respect of the following insurances:
a) Worker's Compensation insurance, complying with all statutory requirements providing any compulsory statutory workers compensation benefits in respect of the Suppliers "workers", as that expression is defined by the Workers Compensation and Rehabilitation Act 2003.
b) Motor Vehicle insurance which is compulsory under the Laws for the time being in force in the State or Territory where the Goods/Services are supplied governing the use of registered motor vehicles. The limit of liability shall not be less than $20 Million for any one occurrence and unlimited as to the number of occurrences. Is this necessary?
c) Comprehensive (including Third Party) insurance covering all mechanically-propelled vehicles required to be licensed in the State or Territory where the Goods/Services are supplied, in an amount of not less than $20 Million in respect of any one incident or series of incidents arising out of one event and unlimited to the number of events.
d) Insurance covering the Supplier's CP&E, including all mobile equipment, tools, tackle, Personnel' effects, and the like, and all other property for which the Supplier is responsible, for an amount of not less than market value (unless otherwise insured to the satisfaction of BROOKES BUILD).
e) Third Party Public and Product Liability insurance covering the Supplier against liability with respect to injury (including death) and/or property damage in respect of the supply of Goods/Services under the PO with a liability limit of not less than $20 Million in respect of any one claim and unlimited as to the number of claims (with the exception of Products Liability which shall be for an amount of $20 Million for any one claim and in the aggregate), including BROOKES BUILD as an additional insured with respect to the liability incurred as a result of the acts or omissions of the Supplier and provide a waiver of subrogation in favour of BROOKES BUILD. The policy of insurance taken out under this clause must extend to and cover all persons upon the Site including workers, contractors, agents and other engaged by BROOKES BUILD.
f) Professional Indemnity Insurance, if the Services to be supplied include Professional Services, the Supplier must take out professional indemnity insurance in respect of the services to cover liability to a limit of not less than $2 Million in relation to any one claim.
20.2 Period of Insurances
All insurances under clause 22.1 shall be maintained for the duration of the PO, with the exceptions being;
a) Workers Compensation insurance which shall be maintained for so long as the Supplier's Personnel or those for whom the Supplier is responsible are located on the Site; and
b) Professional Indemnity insurance which shall be in force for seven (7) years following completion of the PO.
20.3 Other Insurances
The Supplier acknowledges that it is responsible for the maintenance of any other insurance required by Law or regarded as sound commercial practice.
20.4 Inspection of Policies
Upon written request the Supplier shall provide to BROOKES BUILD, a Certificate of Currency for each of the policies to be effected by it under the PO.
20.5 Failure to Provide Proof of Insurance
If, after being requested in writing to do so, the Supplier fails to provide evidence of compliance with its insurance obligations under the PO to BROOKES BUILD's satisfaction, BROOKES BUILD may, without prejudice to other remedies:
a) effect and keep in force any such insurance;
b) refuse payment under the PO until evidence of compliance with the Supplier's insurance obligations is provided to the satisfaction of BROOKES BUILD;
c) recover from the Supplier any costs incurred by BROOKES BUILD in effecting the required insurances.

21. WORKING HOURS

21.1 No part of the Services referred to in the PO and executed on the Site shall be executed outside the roster cycle (where applicable), ordinary working hours or on other than ordinary working days without BROOKES BUILD 's prior written consent. Working hours applicable to the Site are as agreed between BROOKES BUILD and the Supplier.
21.2 BROOKES BUILD may from time to time, by notice in writing to the Supplier and subject to reasonable notice, vary the roster cycle and workforce hours of the Supplier.

22. CLEANING UP

The Supplier shall keep the Site clean and tidy and on completion of the Services will remove all the Supplier's CP&E and leave the Site clean and tidy and ready for immediate use.

23. DISPUTE RESOLUTION

23.1 BROOKES BUILD and the Supplier must follow the requirements of this Clause twenty three (23) if a dispute arises in connection with the PO including a dispute concerning a claim in tort, under statute, or on any other basis in Law or equity available under the Law governing the PO ("Dispute") and then, only after a period of twenty eight (28) days after receipt of such Dispute Notice has elapsed may either party commence legal proceedings (with the exception of seeking injunctive or urgent declaratory relief).
23.2 If a dispute arises either party may by hand or registered post give the other party a written notice of dispute ("Dispute Notice") identifying and detailing the Dispute including notice that it is a notice under this Clause twenty three (23).
23.3 Within seven (7) days of receipt of a Dispute Notice, representatives of the parties having authority to bind the parties shall confer to resolve the Dispute or agree on a method of doing so and whether that method shall be binding.

24. MISCELLANEOUS

24.1 Waiver of any right arising from a breach of the PO must be in writing and executed by BROOKES BUILD. BROOKES BUILD not exercising a right, remedy or power at any time does not mean BROOKES BUILD cannot exercise it later.
24.2 The PO shall be governed by and construed in accordance with the Laws of the State of Queensland and the parties submit to the jurisdiction of the Courts of Queensland.
24.3 The PO contains the entire Agreement between the Supplier and BROOKES BUILD and no regard shall be had to any prior dealings between the parties, whether oral or in writing. To the extent the Suppliers terms and conditions are supplied with the Goods/Services, those terms and conditions will be of no legal effect and will not constitute part of the PO (even if signed by any representative of BROOKES BUILD).
24.4 Should any of the PO be invalid, illegal, unenforceable or void, that part shall be severed from the PO. The remaining terms will not be affected and the PO will be construed as if such invalid, illegal, unenforceable or void term had never been included in the PO.
24.5 The Supplier shall not, without the prior written approval of BROOKES BUILD, assign, novate or subcontract the PO or any payment or obligation hereunder.
24.6 Nothing in the PO constitutes a joint venture, agency, partnership or any other fiduciary relationship between BROOKES BUILD and the Supplier. At all times during the performance of the Supplier's obligations under the PO, the Supplier is an independent contractor and not an employee or agent of BROOKES BUILD.
24.7 Upon completion, termination or cancellation of the PO and prior to the final payment to the Supplier, the Supplier shall fully release BROOKES BUILD (and BROOKES BUILD Personnel) from any and all liability in relation to the PO. Acceptance of the final payment shall be deemed to constitute such release and discharge.
24.8 Without prejudice to any other rights, BROOKES BUILD may deduct from any monies which may be, or become, payable to the Supplier any money due from the Supplier to BROOKES BUILD. Nothing in this clause shall affect the right of BROOKES BUILD to recover from the Supplier the whole of the debt or any balance remaining owing after deduction. If it is subsequently found that BROOKES BUILD was not entitled to deduct any monies, then it must immediately repay those monies to the Supplier.