

## RWE General Terms and Conditions for Purchase of Goods and Services (AUS) – 05/2025

### 1. Contract

- 1.1 On and from the Start Date, a Contract is made between the Contractor and RWE.
- 1.2 In accordance with the terms of this Contract, the Contractor agrees to:
  - (a) supply and deliver the Goods (if any);
  - (b) perform the Services (if any); and
  - (c) take all steps and perform any ancillary activity in connection with the Goods and/or Services to ensure RWE obtains its desired value and benefit of the Goods and/or Services.
- 1.3 In accordance with the terms of this Contract, RWE agrees to purchase the Goods and/or Services and pay the Fee.
- 1.4 Any member of the RWE Group may be named in a Purchase Order. Unless substituted by novation in accordance with the terms of this Contract, the RWE Group entity named in the Purchase Order is the party in the relevant Contract (i.e., the purchaser).
- 1.5 The acquisition of Goods and/or Services and any Purchase Orders issued by RWE are subject to these terms, conditions, and warranties (described in these "RWE General Terms and Conditions for Purchase of Goods and Services (AUS)"), which are in effect on the Start Date and/or which are provided as an accompaniment with the Purchase Order (the **Terms**).
- 1.6 Without limiting how the Contractor may accept the Contract and be bound by the Terms at law, the Contractor may accept the Contract and be bound by the Terms by:
  - (a) giving RWE notice of its acceptance or accepting the Contract in writing (including returning a signed Purchase Order); or
  - (b) by conduct by commencing performance, or performing or fulfilling the Purchase Order (in whole or part),
 in each case within 14 calendar days of the date of receipt of the Purchase Order from RWE.

### 2. Interpretation

- 2.1 In the Contract (unless context requires otherwise):
  - (a) Clause 57 includes definitions that apply to this Contract.
  - (b) A reference to a time or to a day is a reference to that time or day in Melbourne, Victoria.
  - (c) A **day** is a calendar day. A **Business Day** is any day except for Saturday, Sunday, or a public holiday, in Melbourne, Victoria or at the Site.
  - (d) A reference to dollars, \$ or A\$ is a reference to the currency of Australia.
  - (e) The use of 'includes', 'including', 'for example', 'such as', and similar expressions does not limit the generality of any preceding words.
  - (f) Unless the context otherwise requires, a reference to a statute or statutory provision includes any statute or statutory provision as enacted, re-enacted, replaced, or amended, either before or during the Term and any subordinate or delegated legislation made under it.
  - (g) Where something is exercised at the discretion of RWE, RWE's discretion is sole, absolute, and not required to be exercised for the benefit of, or to avoid a detriment for, any other party, and

no terms are to be implied as applying to the exercise of that discretion (including good faith).

- (h) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this agreement or any part of it.
- (i) Written form includes a document signed by simple electronic signature and received by email.
- 2.2 This Contract (including each of its parts) and the [RWE Materials](#) (if any) are intended to be mutually explanatory. To the extent of any ambiguity, inconsistency, or discrepancy, the higher standard or more onerous obligation required of the Contractor prevails.
- 2.3 Whilst the RWE Materials may set out requirements for the Contractor's performance of the Contract and the Goods/Services (refer to clause 23), the RWE Materials are not a Contract document. RWE Materials are to be interpreted lower in priority than the documents comprising the Contract.
- 2.4 Each party must notify the other, within a reasonable time, if it considers there is an ambiguity, inconsistency, or discrepancy, in any document or between any documents relevant to the performance of obligations under this Contract. The parties may discuss and agree (in writing) how an ambiguity, inconsistency, or discrepancy, is to be resolved. If the Parties cannot agree, RWE may reasonably direct how the ambiguity, inconsistency, or discrepancy, is to be resolved. Otherwise, the Purchase Order prevails over any of the Terms.

### 3. Non-Exclusivity, Group Benefit

- 3.1 The purchase of Goods and/or Services by RWE pursuant to this Contract is on a non-exclusive basis.
- 3.2 RWE may purchase the Goods and/or Services for the benefit of anyone in the RWE Group.

### 4. Term

- 4.1 The Contract begins on the Start Date and ends when all obligations under the Contract have been fulfilled or this Contract is otherwise terminated (**Term**).
- 4.2 From the Start Date the Contractor must commence and take all action to progress its obligations under this Contract with haste, due diligence, and without delay and complete them by the Delivery Date.

### 5. Contractor's key obligations and risk

- 5.1 The Contractor must:
  - (a) perform all of the work to supply the quantities of Goods and provide the Services set out in the Purchase Order;
  - (b) carry out all relevant risk assessments connected with its obligations in this Contract;
  - (c) ensure safe organisation and implementation of the supply of the Goods and/or Services; and
  - (d) supervise the supply of the Goods and/or Services,
 in a competent, lawful, business-like manner, and at all times acting in accordance with the Applicable Law, all relevant Standards, Good Industry Practice, and in accordance with the Contract.
- 5.2 The Contractor must comply with:
  - (a) RWE's procurement policy (including sustainability) and other relevant policies

- (including health and safety and security) that RWE gives the Contractor access to or provides to the Contractor; and
- (b) local procedures and processes that RWE gives the Contractor access to or provides to the Contractor, particularly if the Contractor accesses RWE's property.
- 5.3 The Contractor must deliver such goods as are necessary for the proper provision of the Services and provide such services as are necessary for the proper supply of the Goods. The Contractor must take all steps and perform any ancillary activity in connection with the Goods and/or Services to ensure RWE obtains its desired value and benefit from the Goods/Services.
- 5.4 As a specialist supplier of Goods/Services and in consideration of the Fee, except to the extent expressly stated otherwise in this Contract, the Contractor bears all risks, liabilities, costs, and expenses, (howsoever arising), out of or in connection with the supply of the Goods/Services in connection with this Contract.
- 5.5 Time is of the essence in respect to the Contractor's obligations.
- 5.6 RWE may give directions from time to time. The Contractor must comply with any reasonable direction given by RWE in connection with the performance of this Contract.
- 5.7 RWE may provide comment on any document, solution, design, output, report, or deliverable, including the Goods/Services. The Contractor must incorporate those comments into the document, solutions, designs, outputs, report, or deliverable. Despite any comments by RWE in connection with any document, solutions, designs, outputs, report, or deliverable, the Contractor remains solely liable for those things and the Goods/Services.
- 5.8 If the Contractor requires comments from RWE, the Contractor must allow a reasonable time (not to be less than 10 Business Days) for RWE to comment on any solutions, designs, outputs, report, or deliverable.
- 5.9 To the extent reasonably required, the Contractor must fully co-ordinate and interface with RWE and any third parties when performing this Contract.
- 5.10 The Contractor must avoid and minimise any disturbance or interference with RWE or any third party in connection with this Contract.
- 6. Delivery and interfacing**
- 6.1 The Contractor is responsible at its sole cost and risk including the cost to insure for all transport, loading, collection, handling, storage, packing, unpacking, reception at site and delivery reasonably necessary for the supply of the Goods and/or Services and obtains and pays for all import permits or licences required for any part of the Goods or the Contractor's equipment DDP (delivered duty paid) (as defined in the Incoterms 2020).
- 6.2 Delivery includes the delivery of all tools and documentation (e.g. user manuals, health and safety data) relevant to the Goods/Services and their use. The Contractor must inform RWE if there are any tools or material that may be relevant to the use of the Goods/Services.
- 6.3 The Contractor must deliver and/or complete the Goods/Services at the time specified or directed by RWE (**Delivery Date**), at the delivery address or location specified or directed by RWE (**Site**), and in

the complete quantity, as set out in the Purchase Order. If the time is unspecified, delivery must occur on or before 5.00 pm at the Site on the specified Delivery Date.

- 6.4 Delivery occurs when the Goods/Services are delivered at the Site, unencumbered, and in the condition required by this Contract, and is otherwise to the reasonable satisfaction of RWE, including any conditions it may impose from time to time.
- 6.5 Any signature from RWE on any delivery note or other documentation presented in connection with the delivery of the Goods/Services is not evidence that the correct quantity of Goods has been delivered or that the Goods/Services comply with the requirements of this Contract.
- 6.6 When the Contractor unloads Goods to deliver them, it must ensure that safe and appropriate manual handling practice is observed at all times, and all lifting / unloading equipment is in a good and serviceable condition. The Contractor's Staff must be trained in the use of the Contractor's equipment.
- 6.7 The Contractor must comply with any relevant safety requirement or policy and procedure, and RWE's reasonable instructions.
- 6.8 If any of RWE's personnel assist the Contractor to unload they are doing so under the Contractor's control, and the Contractor will hold RWE and RWE's Staff harmless and indemnify RWE without limit and on demand for any damage caused or injury suffered and any connected Loss.

## 7. Delivery Date

- 7.1 The Contractor must give RWE reasonable notice (and if practicable, both at least 28 days and 7 days notice) prior to the date it anticipates delivery of any Goods/Services.
- 7.2 Without limiting RWE's rights:
- (a) If, prior to delivering the Goods/Services, the Contractor considers that it cannot deliver the Goods/Services on the Delivery Date, the Contractor must notify RWE with expected timing and the cause of the delay or change, as well as detailed particulars of all of the circumstances, as soon as practicable after the Contractor becomes aware of the cause (being within 7 days). The Contractor must provide regular updates (at least every 7 days) with information and particulars regarding the delay;
  - (b) if the delay is entirely outside the control of the Contractor and the Contractor was unable to mitigate or avoid the delay or change by taking all reasonable steps, RWE will discuss the delay or change with the Contractor subject to clause 7.4; and
  - (c) the Contractor must take all reasonable steps to mitigate or avoid delays or changes to the Delivery Date, and provide evidence of these steps to RWE on request.
- 7.3 From time to time when reasonably required by RWE (but which may be discussed with the Contractor), RWE may specify, change, or update, the Delivery Date or Site by giving notice from its authorised representative to the Contractor in writing.
- 7.4 RWE may extend or change the Delivery Date for the Contractor at RWE's discretion.

## 8. Instalment Delivery

- 8.1 The Contractor may not deliver the Goods/Services in instalments unless stated in the Purchase Order

or unless RWE otherwise agrees in writing in advance of the planned Delivery Date.

- 8.2 If any of the Goods/Services are ordered or delivered in instalments, this Contract for the purchase of those Goods is treated as a single Contract.
- 8.3 Delivery only occurs after all of the Goods/Services are delivered to the Site.

## 9. Standards of Goods and Services

- 9.1 The Contractor must ensure the Goods and Services:
  - (a) comply with this Contract;
  - (b) comply with all Applicable Law;
  - (c) are provided in accordance with Good Industry Practice;
  - (d) adhere to the technical, functional and performance specifications, descriptions or quality standards set out in the Purchase Order, any RWE Material, or any direction by RWE;
  - (e) are of sound material and workmanship, and are free from any defects;
  - (f) are of satisfactory quality to RWE, and are fit for the purpose specified by RWE;
  - (g) are fit for the purpose generally ascribed to such Goods/Services;
  - (h) comply with all relevant Standards (applying Good Industry Practice);
  - (i) do not infringe RWE's IPR or the IPR of any third party; and
  - (j) correspond to any description or previous sample supplied by the Contractor.
- 9.2 The Contractor must ensure the Goods are:
  - (a) delivered in the quantity as set out in the Purchase Order;
  - (b) delivered compliant with, and capable of continued compliance with, all relevant Standards;
  - (c) are new and of merchantable quality (and not refurbished, unless approved in writing by RWE);
  - (d) capable of being used effectively for its purpose, and for the design life communicated by RWE (or reasonably expected of similar high-quality goods);
  - (e) free from any lien, charge or other encumbrance; and
  - (f) fit for use in conjunction with the Services (if applicable) and for any other purpose which is indicated in the Purchase Order or otherwise made known to the Contractor.
- 9.3 The Contractor must ensure the Goods/Services are buildable, efficient, and economical, and provide for buildable, efficient, and economical solutions for the purpose specified by RWE.
- 9.4 The Contractor must assign or pass on the benefit of all manufacturers' and any other relevant third party warranties or guarantees to RWE in connection with the Goods and/or Services.
- 9.5 If requested by RWE, the Contractor must execute and provide a letter of reliance providing warranties and the benefit of the Services/Goods in favour of a third party. The terms for that letter shall be specified by RWE but are intended to be no more onerous than the terms under this Contract.

## 10. Labelling, Advice Notes and Packaging of Goods

- 10.1 The Contractor must clearly mark the Goods with RWE's name, address, Purchase Order number, and

with an advice note (detailing the name or description of the Goods, transport, per component the item number, weight, number or volume and point and date of dispatch) and any other information RWE notifies to the Contractor that RWE requires, and makes it clear that the Contractor is the supplier of them and the date and place of manufacture, where relevant.

- 10.2 The Contractor must ensure RWE is the named "Consignee" on any "Bill of Lading" for the Goods/Services. The Contractor must also provide RWE all original "Bill(s) of Lading" in respect of any of the Goods/Services.
- 10.3 The Contractor must properly label the Goods and supply them with all necessary warnings, instructions and other information relevant to their storage and use including, where applicable, any onward transport and/or lifting requirements.
- 10.4 The Contractor must notify RWE about any hazards to health, safety or the environment with full details of the hazardous content or nature of the Goods and/or Services and details of correct measures to be taken in the event of exposure or spillage. The Contractor must obtain any restricted or dangerous goods licences or approvals for the importation of the Goods/Services, and provide these to RWE on request.
- 10.5 The Contractor properly packs the Goods, secures them and transports them in such a manner as to enable them to reach the Site in good and new condition.
- 10.6 The Contractor must remove and dispose of any packaging material, waste or rubbish, in compliance with relevant Applicable Law. RWE may dispose of, or not return to the Contractor, any packaging materials used in the delivery or supply of Goods / Services.

## 11. Inspection and testing

- 11.1 RWE may, and the Contractor shall assist, RWE (or its nominee(s)) to inspect and test the Goods/Services (and if necessary, re-test and re-inspect) if RWE considers it is appropriate to do so or as may be required by Applicable Law. RWE may direct testing and inspection requirements for the Contractor to demonstrate the compliance of the Goods/Services with under this Contract.
- 11.2 Where RWE tests or inspects (or attends the Contractor's tests or inspections), the Contractor must co-operate with RWE and give RWE access to all relevant places, documents, and any other information or thing requested by RWE.
- 11.3 If a fault is found, the Contractor shall rectify the fault, and RWE may recover any of its costs from the Contractor to re-inspect and/or re-test as a debt due.
- 11.4 If, to resolve a dispute or otherwise, RWE may arrange an independent person to test, inspect, re-test or re-inspect the Goods/Services, then the Contractor and RWE are each bound by the outcome of such independent test or inspection (except they shall not be bound in the case of manifest, or material error, or fraud). If RWE consents or approves of the recommendations, the Contractor must implement the recommendations from the independent test or inspection at the Contractor's sole cost. Each party shall pay half of the expense of engaging the independent person(s).

11.5 Any test or inspection that RWE attends or arranges is not an admission or an acceptance by RWE that the Goods/Services comply with this Contract.

## 12. Title and risk

12.1 Title to Goods passes to RWE on the earlier of payment, physical possession by RWE, or delivery to the Site. Title (if any) in the Services passes to RWE on the earlier of payment, physical possession by RWE, or the rendering of the Services.

12.2 Where title in the Goods passes to RWE and where the Goods have not yet been delivered to RWE, the Contractor must:

- (a) keep the Goods separate from any similar Goods owned by the Contractor, Staff, or any third party;
- (b) properly store, protect, and identify, the Goods as RWE's property (including with labels and security accessible by RWE); and
- (c) deliver up the Goods to RWE on request – and if the Contractor does not, RWE may enter any premises of the Contractor, the Contractor's Staff, or the Contractor's suppliers (or of any other third party), where RWE reasonably considers that the Goods are stored and take possession of them.

12.3 Whether or not title has passed, on delivery, RWE may install or otherwise use the Goods in the ordinary course of RWE's business.

12.4 Risk in the Goods passes to RWE on safe and complete delivery to the Site.

12.5 Where, in the provision of the Services such as dismantling or repairing, materials (including asset components) are created or identified and the removal of them is not part of the Services then title in them remains with RWE and risk in them remains with the Contractor. Unless the Contract states otherwise, the Contractor must bring these to RWE's attention, makes them available for RWE's use, and keeps them safe and tidy, until RWE removes or reinstalls them or RWE asks the Contractor to remove or reinstall them.

12.6 On or prior to the Delivery Date, the Contractor must deliver to RWE good marketable title free from charge, encumbrances, or liens on all Goods and/or Services. The Contractor must (at its sole cost) prior to delivery remove any charge, encumbrances, or liens on all Goods and/or Services and ensures no charge, encumbrances, or liens will be enforced against any Goods and/or Services. Provided RWE has paid the Fee for those Goods/Services, the Contractor indemnifies and holds harmless RWE (without limit) if the Contractor fails to provide RWE good marketable title free from charge, encumbrances, or liens on all Goods and/or Services.

12.7 The Contractor agrees to assist RWE with the registration of its interest in the Good/Services in accordance with the Personal Property Securities Act 2009 (Cth) (**PPSA**) (including by registering the Contractor's interest in any part of the Goods/Services held by a subcontractor or a third party, and holding that interest for the benefit of RWE). The Contractor waives the requirement for RWE to give it notice regarding any action RWE may take in respect of RWE's interest or any actions taken under the PPSA.

## 13. Price, invoicing, payment and tax

13.1 In consideration of the successful delivery of the Goods and/or Services and the Contractor's compliance with this Contract, RWE will pay to the Contractor the price in the fixed price amount and/or at the rate, frequency, or time, set out in the Purchase Order (**Fee**). Unless otherwise specified in the Purchase Order, the Fee is only payable after complete and successful delivery of all of the Goods/Services.

13.2 The Fee is inclusive of all matters including freight, insurance and other delivery costs and out-of-pocket expenses including subsistence, accommodation, supply of equipment or tools, payment of the Contractor's Staff (including salaries, wages, bonuses and other emoluments, statutory charges and levies, pension provisions, overtime or payments for working unsociable hours) and compliance with all obligations under this Contract.

13.3 The Contractor has taken into account all materials and activities required to supply the Goods/Services, and all of its costs, expenses, and its obligations under this Contract, and potential vicissitudes, in setting the Fee. RWE has relied on the Contractor taking this action.

13.4 The Contractor's invoices must show date, invoice number, the Contractor's name and address, GST breakdown, Purchase Order number, Fees and the Contractor supplies all other information or supporting documentation that RWE may reasonably require, including in accordance with Security of Payment Legislation (see clause 49).

13.5 After delivery, the Contractor must send its invoices in the format and to the address as required by RWE. The Contractor may only send an invoice after it has delivered the Goods/Services or otherwise satisfied the requirements to claim payment, as may be set out in the Purchase Order.

13.6 The due date for payment of the Fee is:

- (a) Subject to sub-paragraphs (b) to (d), 30 days after RWE's receipt of the invoice under clause 13.5;
- (b) to the extent s67W of the Queensland Building and Construction Commission Act (Qld) applies to the relevant payment, 15 Business Days (being any day other than a Saturday, Sunday, public holiday, special holiday or bank holiday in the place in which payment is to be made) after the date of receipt of the payment claim;
- (c) to the extent s11(1A) of the Building and Construction Industry Security of Payment Act 1999 (NSW) applies to the relevant payment, 15 Business Days after the date of receipt of the payment claim; or
- (d) to the extent s20 of the Western Australia, the Building and Construction Industry (Security of Payment) Act 2021 (WA) applies to the relevant payment, 20 Business Days after the date of receipt of the payment claim.

13.7 If RWE considers the amount payable differs to the amount claimed by the Contractor in an invoice, RWE may issue a payment schedule with the amount it considers is due with its reasons for the difference. RWE may then withhold the difference. RWE may assess and reduce (or dispute) the amount payable in respect to an invoice or include



- any amounts which may be due to RWE within the payment schedule. Upon receipt of RWE's payment schedule, within 2 Business Days the Contractor must issue a new invoice replacing the prior invoice. RWE will pay the amount shown on the payment schedule in accordance with clause 13.6. RWE will issue a payment schedule:
- (a) if the Contract is subject to the Security of Payment Legislation, within the maximum time permitted by the relevant Security of Payment Legislation; or
  - (b) otherwise RWE will issue a payment schedule (if any) within 10 Business Days.
- 13.8 If payment is not made on undisputed amounts when due, the Party due money may charge interest at 3% per annum above the base rate of the RBA accruing daily and compounded monthly on all unpaid amounts.
- 13.9 RWE may, at any time, set off against any liability or amount(s) due to the Contractor by RWE (or by the RWE Group):
- (a) an amount (determined reasonably by RWE) in respect of any good faith claim or demand which RWE (or the RWE Group) may have against the Contractor for any Loss caused or contributed to by the Contractor; or
  - (b) an amount in respect of any of the Contractor's liability to RWE (or to the RWE Group) including for Loss or any debts due.
- RWE will inform the Contractor if RWE makes any such set off.
- 13.10 If a payment schedule shows a negative amount, the Contractor must:
- (a) pay the amount shown to RWE; or
  - (b) issue a notice of dispute setting out the rationale for its objection, strictly within 10 Business Days.
- 13.11 From time to time, RWE may issue a payment schedule replacing, adjusting, or correcting, any previous payment schedule.
- 13.12 Until finally determined, payment is on an account basis only. Any payment does not affect any rights or obligations of either the Contractor or RWE and does not mean RWE accepts that the Contractor has complied with its obligations under this Contract.
- 13.13 In the remainder of this clause 13:
- (a) words and expressions that are not defined in these Terms but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
  - (b) "GST Law" has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 13.14 Unless otherwise stated, the Fee is exclusive of GST.
- 13.15 If GST is payable in respect of any *supply* made by a *supplier* under this Contract (**GST Amount**), the *recipient* will pay to the *supplier* an amount equal to the GST payable on the *supply*.
- 13.16 Subject to clause 13.17, the *recipient* will pay the GST Amount at the same time and in the same manner as the consideration for the *supply* is to be provided under this Contract.
- 13.17 The *supplier* must provide a *tax invoice* to the *recipient* before the *supplier* will be entitled to payment of the GST Amount under clause 13.16.
- 13.18 If this Contract requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
- (a) the amount of the expense or outgoing less any *input tax credits* in respect of the expense or outgoing to which the other party is entitled; and
  - (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.
- 13.19 If an *adjustment event* occurs in relation to a *taxable supply* under this Contract:
- (a) the *supplier* must provide an *adjustment note* to the *recipient* within 7 days after becoming aware of the *adjustment*; and
  - (b) any payment necessary to give effect to the *adjustment* must be made within 7 days after the date of receipt of the *adjustment note*.
- 13.20 To the extent permitted by law, RWE's liability for GST or in connection with the GST Law is capped at 10% of the Fee. If RWE pays GST and the Contractor is not liable for GST on the Goods/Services or received any refund of GST in connection with the Goods/Services, it must repay any GST to RWE.
- 13.21 Other than in accordance with clause 13.10, amounts due from the Contractor to RWE under this Contract shall be due and payable from receipt by the Contractor of a notice of demand from RWE.
- 13.22 Any Goods/Services which are expressed as a provisional sum or estimate are included in the Works and total Fee, unless otherwise directed by RWE. If a provisional sum is removed by RWE, that amount shall be deducted from the Fee. No provisional sum may be changed or varied without RWE's written approval.
- #### 14. Change and variation
- 14.1 RWE may, in writing, direct a change to the Goods/Services or a Contract in each case at any time prior to the expiry of the Warranty Period. No change or variation shall be a breach of this Contract, including any material change or any variation reducing or removing any part of the Goods/Services.
- 14.2 Where a change is directed and is not material, the change is to be made with no adjustment to the Fee or Delivery Date unless RWE agrees in writing. Where a change is directed and is material, the Contractor and RWE shall seek to agree in writing the change including any necessitated change in the Fee, the Delivery Date, or the Site.
- 14.3 If the Contractor and RWE are unable to agree to the terms of a material change and RWE nonetheless instructs the Contractor in writing to implement it, the Contractor may recover reasonable, direct, and auditable, costs incurred in implementing the material change (plus 5% for all margin and overhead). The Contractor's cost recovery is subject to the production of appropriate documentary evidence of such direct cost. Any such costs are limited to a cap of 50% of the Fee that would have been payable had there been no change, unless RWE's authorised representative agrees in writing otherwise.
- 14.4 If any cost or change is not reasonably capable of documentary proof, RWE shall determine the effect of the variation (cost or change) acting reasonably.

14.5 Without limiting clauses 14.3 or 14.4, if the Contractor and RWE are unable to agree a change and RWE opts not to direct or instruct the Contractor in writing to implement it, then either:

- (a) RWE does not proceed with the change; or
- (b) the Contractor or RWE can escalate the matter for resolution; and
- (c) if no agreement is reached via escalation, RWE may elect either not to implement the change or instead, to terminate the Contract for no fault.

14.6 Subject to the above provisions of this clause, no variation of this Contract or any part of it is valid unless it is in writing, expressed to be a variation to this Contract, and signed or approved by an authorised representative on behalf of RWE.

14.7 RWE may direct the removal of any part of the Goods/Services from hands of the Contractor under this Contract. RWE may perform itself or engage a third party to perform any work removed from the Contractor's hands by variation or otherwise.

14.8 Without RWE's direction, the Contractor must not vary any part of the Goods/Services.

## 15. Warranties

15.1 The Contractor agrees that the Goods and/or Services are, and will remain, free of defects and compliant with this Contract for a minimum of twenty-four months from delivery being accepted by RWE (or any longer period if set out in the Purchase Order) (**Warranty Period**).

15.2 Where any Goods and/or Services are repaired or replaced during the Warranty Period, the Warranty Period commences again on delivery of any repaired or replaced Goods and/or Services.

15.3 The Goods and/or Services must be capable of repair or replacement for the design life communicated by RWE.

15.4 Spare or replacement parts must be available for purchase for the Goods / Services for the design life communicated by RWE. Spare or replacement parts must be offered and supplied by the Contractor to RWE at commercially reasonable prices, which must not be more than the lowest quartile average market price for those spare or replacement parts.

15.5 Nothing in this clause limits RWE's rights under this Contract or at law.

## 16. Default and Remedy

16.1 If:

- (a) the Contractor does not comply with any Applicable Law;
- (b) the Contractor does not comply with any of these Terms (including if Goods/Services are not delivered or completed by the Delivery Date); or
- (c) during the Warranty Period, RWE discovers a defect or non-conformance in the Goods/Services,

(each a **Default**), then the Contractor is liable for the Loss suffered by RWE as a result of that Default (including any Loss arising in connection with the exercise of any of RWE's rights under a clause in this Contract) as a debt due.

16.2 Without limiting RWE's rights, RWE may notify the Contractor of the Default and, if RWE thinks the Default is capable of replacement, repair, or rectification, require the Contractor to replace,

repair or rectify it. If notified, the Contractor must immediately act to replace, repair or rectify, that Default at the Contractor's cost and risk. The replacement, repair, or rectification, by the Contractor must occur within the reasonable time specified by RWE, or if not specified, within a reasonable time. Without prejudice to its rights, RWE may at any time reject the Contractor's attempt to replace, repair, or rectify, the Default.

16.3 Without prejudice to any other rights and remedies, whilst a Default exists RWE may, on written notice to the Contractor, with RWE's reasons:

- (a) suspend delivery of Goods/Services and RWE's obligations in respect of payment for any period reasonable in the circumstances; or
- (b) ask the Contractor, at RWE's discretion, to rectify the Default (including pursuant to clause 16.2); or
- (c) RWE may itself rectify the Default or ask a third party to do so, at the Contractor's cost and risk; or
- (d) reject the Goods/Services (in whole or part); or
- (e) accept the Default in consideration for a reduced Fee to take account of the nature and extent of the Default; or
- (f) step-in to the Contractor's downstream arrangements, through either itself or a third party, and enforce the Contractor's arrangements at the Contractor's cost and risk; or
- (g) terminate the Contract.

Whilst the Default exists, RWE may exercise each of these options severally or jointly, or re-exercise any of these options, at its discretion. No exercise of any one option will constitute an election.

16.4 Without limiting RWE's rights or remedies at law, if RWE terminates the Contract for the Contractor's Default, the Contractor must pay to RWE:

- (a) the cost of the Goods/Services paid for by RWE; plus
- (b) any cost or expense incurred by RWE in relation to the Default including any additional cost to RWE to replace or rectify the Contractor's delay or failure (including reasonable adviser costs); plus
- (c) any Loss arising in connection with any third parties because RWE relied on the Contractor to comply with the Contractor's obligations under this Contract.

16.5 Without affecting RWE's rights, where RWE gives the Contractor notice that the Contractor is in Default, RWE may, at its discretion, use and/or receive the benefit of any Goods/Services that the Contractor may already have delivered whether they are in Default or not in the usual course of RWE's business until the Contractor rectifies the Default. This may mitigate some of RWE's Loss but RWE is otherwise not obliged to mitigate its Loss.

16.6 Without limit, where the Contractor's Default causes Loss to any third party, the Contractor must indemnify (on demand) and hold RWE harmless for any Loss incurred by, demanded, claimed, or awarded, in favour of that third party against RWE or RWE's Staff.

16.7 Where the Default relates to the Contractor's unlawful restraint of competition or any other breach of anti-trust or anti-competitive Applicable

Law, the Contractor must pay to RWE by way of liquidated damages and without affecting other rights and obligations the sum equivalent to 15% of the aggregate Fees (which as at the Start Date could reasonably be expected to become due and payable on satisfactory performance of the Contract).

16.8 This clause 16 does not exclude or limit any rights or remedies that may be available to RWE under this Contract, the Applicable Law (including torts), or pursuant to equity.

## 17. Insurance

17.1 On and from the Start Date the Contractor must take out insurance and maintain it for the Term, and for the period of time over which the Contractor has continuing liabilities under this Contract or Applicable Law (being at least 7 years after the end of the Term), with reputable and substantial insurers (with a Standard & Poor's credit rating of at least A- (or comparable rating from a equivalent rating agency)) with an Australian branch and of the nature and extent as would reasonably be expected taking into account the nature and extent of the Contractor's obligations under this Contract or Applicable Law and which includes the insurance cover set out in the clause below and to be evidenced by certificates of insurance or policies made available to RWE within seven (7) days of RWE's request. The Contractor is obliged to take out at minimum the following insurances:

- (a) employer's liability insurance or work cover insurance for the amount required by Applicable Law in respect of all persons who are employed by the Contractor or for whom coverage is required in accordance with Applicable Law in the countries in which work is performed or the employees are employed in connection with the Services, to at least the minimum value required by Applicable Law;
- (b) public and third party liability insurance (including products liability) for a limit of indemnity not less than AUD20 million for each and every occurrence, which covers the Contractor and its Staff for their liabilities (and RWE for any vicarious liability) for loss of or damage to any property, or any injury, disease, illness, or death, caused by or in connection with the negligent performance or any right exercised under this Contract or otherwise is in connection with this Contract to RWE or third parties, including in respect of the manufacture, processing, alteration, repair, installation, supply, distribution, or sale of any product;
- (c) if the Goods are required to be transported, then cargo insurance (or equivalent) for the replacement value of the Goods plus appropriate contingencies;
- (d) motor vehicle insurance covering any vehicle used by the Contractor or involved in the performance of this Contract, including at least a limit of indemnity not less than AUD20 million for each and every occurrence for loss of or damage to any property, or any injury, disease, illness, or death, caused by or in connection with the use of that motor vehicle;

- (e) (if professional services or design work is performed as part of the Contract) a professional indemnity insurance for a limit of indemnity not less than AUD5 million (or other amount specified in the Purchase Order) for any one event in any 12 month period and including a right of reinstatement, covering the Contractor and its Staff's liability at general law in connection with a negligent breach of duty owed in a professional capacity arising from the performance of the Services or the supply of the Goods; and
- (f) such other insurances as Applicable Law requires.

17.2 The Contractor must ensure that subcontractors or suppliers (including, as far as practicable, the entire supply chain) satisfy the same insurance requirements as the Contractor.

17.3 Deductibles applying under any insurance are for the Contractor's account where such deductibles relate to Loss for which the Contractor is responsible under the Contract.

17.4 The Contractor must ensure the third party liability insurance insures RWE as if it was an additional insured, with a waiver of subrogation in RWE's favour.

17.5 The insurances are primary, and not secondary, to the indemnities in this Contract, and do not limit liabilities or obligations under other provisions of this Contract.

17.6 Where the Contractor receives insurance proceeds from the Contractor's insurers relating to an insured event under this Contract, the Contractor pays to RWE such sums as are claimed from and/or are due and payable to RWE from such insurance proceeds and/or uses them solely to replace/rectify any associated Default.

17.7 The Contractor must, as soon as possible, inform RWE in writing of any occurrence which the Contractor or its Staff become aware that may give rise to a claim under an insurance policy which includes RWE as an additional insured under this Contract. The Contractor shall notify the insurer (or other party required to be notified) within the time required by the policy (or otherwise within thirty (30) days) after becoming aware of the occurrence and shall provide RWE with a copy of such notification contemporaneously with the notification being provided to the insurer (or other party required to be notified). The Contractor shall provide regular updates to RWE of the progress of such claims.

## 18. Exclusions and Limits of Liability

18.1 The liability of the Contractor to RWE for breach of contract, tort (including negligence), or breach of statutory duty, is limited in the aggregate to double the expected total Fees (2x).

18.2 The Contractor and RWE are not liable to the other for any indirect or consequential loss which arise in connection with this Contract, including breach of contract, pursuant to tort, or breach of statutory duty. In this Contract indirect and consequential loss means losses suffered by a party to this Contract that were unforeseeable and cannot reasonably be considered to arise naturally from that act, omission, or breach, and may include economic loss such as loss of indirect cost or profit, loss of goodwill, loss of future opportunity, loss of capacity, loss of production, or loss of anticipated

savings. This provision does not limit a party's obligation to perform its obligations under the Contract.

18.3 The liability of the RWE Group (or RWE Group Staff) to the Contractor in connection with this contract, including breach or in tort (including negligence) or for breach of statutory duty, is limited to the expected total Fees.

18.4 RWE's cap on liability to the Contractor excludes RWE's liability to pay the Contractor the Fee which are or become due and payable for Goods/Services. The Contractor's cap on liability to RWE excludes the cost to the Contractor to rectify a Default in the Goods/Services and/or the liability for any amount set off against the Fees by RWE.

18.5 Nothing in this Contract excludes or limits the Contractor or RWE's liability in connection with:

- (a) fraud;
  - (b) reckless or wilful default;
  - (c) reckless or gross negligence;
  - (d) wilful misconduct or substantial abandonment (or conduct evincing an intention not to be bound);
  - (e) misrepresentation;
  - (f) damage to any property;
  - (g) death or personal injury;
  - (h) breach of any Applicable Law; or
  - (i) any other liability that cannot be excluded or limited by Applicable Law,
- (or any combination of them), in each case, in connection with this Contract.

18.6 Each cap on liability excludes:

- (a) any Loss where a separate liability limit is stated in this Contract;
- (b) a failure to effect or maintain insurances as required under this Contract; or
- (c) any Loss which may be recoverable (or are recovered) from insurers in relation to the insurance that is required to be taken out in connection with this Contract, or would have been recoverable insurance proceeds if the parties had complied with this Contract, complied with the insurance policy(s) and taken all reasonable steps to recover the proceeds.

## 19. Force Majeure

19.1 Subject to clause 19.2 and compliance with clause 19.4, the Contractor and RWE are not liable for any event(s) beyond their respective reasonable control which was not reasonably foreseeable as of the Start Date and which directly causes the Contractor or RWE to be unable to comply with all or a material part of their respective obligations under the Contract (**Event of Force Majeure**) provided that such event does not arise from the Contractor's or RWE's act, omission or negligence.

19.2 An Event of Force Majeure is not:

- (a) events capable of being reasonably anticipated prior to the Start Date;
- (b) an event which could have been avoided or mitigated by Good Industry Practice, or by exercising reasonable diligence or taking reasonable steps;
- (c) typical weather events;
- (d) a strike by or lockout or other industrial dispute or trade dispute involving the Contractor or any of the Contractor's Staff;

- (e) non-supply of Goods or equipment by any of the Contractor's Staff to the Contractor;
- (f) failure by the Contractor to have sufficient contingency or redundancy in its supply chain;
- (g) the Contractor's failure to hire suitably qualified Staff;
- (h) mechanical or electrical breakdown or failure of any of the Contractor's or the Contractor's Staff's equipment, machinery or plant; or
- (i) insolvency or similar financial difficulties.

19.3 The COVID-19 pandemic is itself not deemed to be an Event of Force Majeure because it is foreseeable as of the Start Date. Measures to address COVID-19 are to be included in the Contract. If such measures materially change after the Start Date that change may constitute an Event of Force Majeure. Subject to clause 19.2, any other pandemic may be an Event of Force Majeure.

19.4 If either the Contractor or RWE is affected by an Event of Force Majeure, the Contractor or RWE as the case may be:

- (a) must immediately issue written notice to the other of the nature and extent of the Event of Force Majeure and details of any adverse impacts of it on the ability to perform obligations under the Contract; and
- (b) take such steps as are reasonably practicable in all the circumstances and in consultation with each other to prevent, mitigate and reduce to a minimum the adverse effect of any Event of Force Majeure.

19.5 If:

- (a) a written notice in relation to an Event of Force Majeure is not withdrawn or the Event of Force Majeure is not resolved within thirty (30) days or such other longer period of time as RWE may reasonably determine; or
- (b) Loss is incurred by RWE which exceeds in aggregate a sum equal to 50% of the Fees which would otherwise be due and payable under the Contract for the term but for any disruption or suspension by an Event of Force Majeure (or any higher sum as RWE may determine),

then RWE may, by written notice, terminate the Contract on a no fault basis with immediate effect.

19.6 Unless terminated under clause 19.5, when the Event of Force Majeure ceases, the Contractor and RWE, in consultation with each other, take such steps as are reasonably practicable in all the circumstances to resume normal performance of their respective obligations under the Contract.

## 20. Termination

20.1 Either the Contractor or RWE may terminate the Contract by notice if:

- (a) the other is in material breach of any of its obligations under the Contract and the breach is not capable of remedy; or
- (b) the other is in material breach of any of its obligations and fails to remedy the breach (if capable of remedy) within 14 days of a written notice requesting such remedy (a breach is considered capable of remedy if time is not of the essence in performance of the obligation and if the person in Default can comply with the obligation within the 14 day period given to comply); or



- (c) the other becomes insolvent, bankrupt, is in liquidation, external administration or receivership, makes an arrangement with its creditors, is unable to pay its debts or suffers possession or sale by an encumbrancer of any of its assets or is subject to orders or events leading to any of the foregoing or suffers any analogous event; or
  - (d) ceases or threatens to cease to trade or ceases to comply or threatens to cease to comply with its obligations under this Contract; or
  - (e) demonstrably commits an unlawful restraint of competition or any other breach of anti-trust or anti-competitive Applicable Law; or
  - (f) otherwise a right to terminate accrues pursuant to any condition of this Contract or at law.
- 20.2 RWE may terminate this Contract at any time by giving to the Contractor a written notice of termination.
- 20.3 Any of RWE's rights to terminate under this Contract are without prejudice to any other rights RWE may have at law regarding termination of the Contract or to accept any anticipated or actual breach of this contract as having brought the Contract to an end (including, where relevant, a right to claim repudiatory damages).
- 20.4 Where the Contractor is in default because the Contractor has demonstrably been involved in unlawful restrictions of competition at RWE's expense, then in addition and/or instead of the remedy available to RWE under clause 16 (*Default and Remedy*) RWE may immediately on written notice terminate the Contract. In the event of rescission, the relevant Applicable Law applies.
- 21. Consequences of Termination**
- 21.1 Termination or expiry of the Contract will not:
- (a) affect any rights or liabilities accrued as at the date of expiry or earlier termination; or
  - (b) affect the coming into force or the continuation of any provisions which expressly or by implication are intended to come into force or continue on or after the termination or expiry of the Contract.
- 21.2 On any termination or expiry of this Contract, the Contractor must:
- (a) immediately deliver to RWE any Goods/Services that RWE has paid for;
  - (b) discontinue the provision of further Goods and/or Services; and
  - (c) to the extent permitted by law, at RWE's election, promptly delete, destroy or return to RWE any and all of RWE's or RWE Group's confidential material, personal data and/or property including IPR and any data stored on the Contractor's infrastructure then in the Contractor's or the Contractor's Staff's possession or control and on request certify any such deletion, destruction or return.
- 21.3 If the Contractor fails to comply with clause 21.2, then RWE may (without limiting RWE's other rights or remedies) enter the Contractor's premises or other place where they are and take possession of them and do anything else necessary to give effect to that clause. Until the Goods / Services are delivered, the Contractor is solely responsible for the safe keeping of the Goods / Services and will not use them except as directed by RWE.
- 21.4 On any termination or expiry of this Contract and subject to clauses 21.5 and 21.6, RWE shall pay the Contractor the Fees due and payable pro rata for any Goods/Services delivered to RWE's satisfaction (and not cancelled or rejected) and not yet paid for as at the date of expiry or termination.
- 21.5 On any termination or expiry of this Contract, RWE has no liability to the Contractor to pay the Contractor for any other sums including any indirect or consequential loss arising out of or in connection with such termination.
- 21.6 If RWE terminates this Contract at its convenience or if the Contractor terminates for a lawful reason, then RWE will pay the Contractor for any cost or expense the Contractor is already contractually committed to and actually incurs, provided that:
- (a) the Contractor takes all steps to mitigate the cost or expense;
  - (b) the Contractor cannot repurpose or use the thing for other commercial purposes;
  - (c) the Contractor has complied with clause 21.2;
  - (d) the Contractor provides all documentary evidence of such cost and expense; and
  - (e) RWE shall not be liable to pay the Contractor any sum that exceeds the sum equivalent to the outstanding Fees for the balance of the Term and which would have been due and payable had the Contract not terminated early.
- 21.7 As payment is RWE's primary obligation under this Contract, the right to payment(s) in this clause 21 shall constitute the Contractor's sole and exclusive remedy for RWE's termination for convenience or the Contractor's termination of this Contract for any reason.
- 21.8 Where RWE terminates for the Contractor's Default, RWE may recover from the Contractor, to the extent not already recovered, the sums set out at clause 16 (*Default and Remedy*).
- 21.9 Damages for RWE's repudiation or any other remedies available to the Contractor (including quantum meruit, quantum valebant, and other similar remedies at law), for any breach by RWE or termination are to be limited to the Fee payable at the Start Date. Any amount payable may be limited further by the other provisions in this Contract.
- 22. Contractor Staff**
- 22.1 This Contract does not create a contract between RWE and any of the Contractor's Staff.
- 22.2 The Contractor must make appropriate PAYG deductions for tax from payments to Staff, pay appropriate payroll tax, and pay insurance contributions required by the Applicable Law or other law applying to the Contractor.
- 22.3 The Contractor ensures that:
- (a) it supplies its Staff with all vehicles and necessary safety and other tools and equipment that they need to deliver the Goods and/or Services;
  - (b) all vehicles, equipment and other tools that the Contractor and its Staff use to deliver the Goods and/or Services are in a good, legal and serviceable condition;
  - (c) its Staff are suitably qualified, licensed, competent, skilled and experienced to perform the Contractor's obligations and deliver the

- Goods and/or Services in compliance with this Contract;
- (d) any Staff performing professional services are appropriately qualified and registered with the appropriate registration body and hold all required qualifications, so those Staff are properly considered "professionals" under any professional indemnity insurance policy;
  - (e) it puts procedures in place to ensure that its Staff are able to understand and comply with oral and written instructions given by RWE including those which relate to health and safety; and
  - (f) it puts in place suitable precautions to prevent damage to property or injury to person.
- 22.4 Prior to any of the Contractor's Staff performing the Services, the Contractor (to the extent lawful) must ensure that each member of the Contractor's Staff satisfies any checks or vetting requirements which are appropriate according to Good Industry Practice or which are reasonably notified by RWE to the Contractor. Such vetting requirements include but are not limited to: checking identities, rights to work, references, qualifications, records and checks from the Disclosure and Barring Service, FCA compliance and driving licences. The Contractor keeps records of such checks and shows the records to RWE if RWE asks to see them (subject to compliance with any Applicable Law relating to privacy, which the Contractor must arrange compliance or a waiver for). The Contractor does not (without RWE's prior written consent) use any Staff to supply the Goods and/or Services whom, to the Contractor's knowledge, having made all reasonable enquiries in accordance with clause 22.4 has been convicted of any crime involving violence or threat of violence, theft or other dishonest conduct, drugs or controlled substances, computer-related crimes or similar crimes which create an increased risk to persons or property.
- 22.5 The Contractor provides any information reasonably and lawfully directed to be provided by RWE in relation to the Contractor's Staff who deliver the Services within 10 Business Days of a request.
- 22.6 The Contractor ensures that its Staff:
- (a) comply with RWE's local security arrangements including the right to search and drugs and/or alcohol testing; and
  - (b) carry out their duties so as to cause minimum disruption to RWE's business operations.
- 22.7 RWE may at any time on notice to the Contractor remove or request the removal from RWE's premises any individual whom, in RWE's reasonable opinion, is not qualified or competent to be present on RWE's site or who at any time acts in a way that contravenes RWE's safety or security processes or policies, causes or may cause injury to others or damage to property or who poses any other safety or security risk. The Contractor's obligations are not affected if RWE removes or requests such removal.
- 22.8 Without limit, the Contractor indemnifies (on demand) RWE and RWE Group and will hold them harmless against Loss suffered or incurred by RWE (and/or RWE Group) as a result of any act or omission by the Contractor or its Staff to comply with the Contractor's obligations under this clause.
- 22.9 Any breach of this clause is a material breach and RWE may terminate this Contract immediately for the Contractor's Default.
- ### 23. RWE Materials
- 23.1 All information, documents, specifications, drawings, sketches, models, prototypes, samples, tools, designs, technical information or data or other proprietary information or IPR (whether written, oral or otherwise and including personal data) made available to the Contractor by RWE or on RWE's behalf (**RWE Materials**).
- 23.2 RWE may provide RWE Materials to the Contractor from time to time. RWE Materials remain RWE's property and do not become the Contractor's property.
- 23.3 The Contractor:
- (a) keeps RWE Materials separate from the Contractor's property and property of others;
  - (b) properly stores and protects them and identifies RWE Materials as RWE's property; and
  - (c) delivers up RWE Materials to RWE on request and if the Contractor does not, RWE may enter any of the Contractor's premises or systems or those of the Contractor's suppliers or of any other third party where RWE reasonably considers that RWE Materials are stored and repossess or delete them.
- 23.4 Risk (but not title) in RWE Materials passes to the Contractor as soon as the Contractor obtains them or RWE makes the RWE Materials available for the Contractor's review or use.
- 23.5 The Contractor's performance of the Goods and/or Services must conform with any requirements or conditions set out in the RWE Materials, or as may be directed by RWE from time to time.
- ### 24. Intellectual Property Rights
- 24.1 All the Contractor's IPR existing on or prior to the Start Date remain vested in the Contractor and all RWE's IPR existing on or prior to the Start Date remain vested in RWE.
- 24.2 The Contractor hereby grants to RWE a perpetual, transferable, irrevocable, non-exclusive, royalty free, worldwide licence to use any of the Contractor's (or its Staff's) pre-existing IPR which are necessary for RWE and RWE Group to derive the benefit of the Goods/Services and this Contract.
- 24.3 The Contractor assigns and transfers to RWE all IPR (including copyright) free from encumbrances created under this Contract and in any Goods and/or Services created or developed by the Contractor or by others on the Contractor's behalf in relation to this Contract or otherwise resulting from delivery of the Goods/Services (including new or bespoke computer code and including any new versions (e. g. updates, upgrades, releases, patches, bugfixes)). This assignment and transfer either takes effect on the Start Date or immediately on the coming into existence of any new or developed IPR during the Term.
- 24.4 The Contractor agrees to obtain waivers of all moral and other rights, execute all documents and to do any other things reasonably necessary to perfect the creation and transfer or licensing of IPR rights.
- 24.5 Where any software is created or developed for RWE, RWE owns and the Contractor supplies to RWE the source code for software created or developed.

24.6 Any rights granted by RWE to the Contractor or the Contractor's Staff to use RWE's IPR cease on expiry the Term or earlier termination of this Contract.

24.7 Without limit, the Contractor holds harmless and will indemnify RWE and RWE Group from and against any Loss incurred by and/or awarded against RWE and/or RWE Group in each case as a result of or in connection with:

- (a) a breach by the Contractor or the Contractor's Staff of RWE's IPR; and
- (b) any claim or action that Goods and/or Services (in whole or part) infringe the IPR or any other rights of a third party.

24.8 The Contractor and RWE each notify the other of any alleged or actual third party IPR claim as soon as is reasonably practicable upon becoming aware of any such claim.

24.9 Neither the Contractor nor RWE make any admission as to liability or agree to any settlement of or compromise any third party IPR claim without the prior written consent of the other which consent shall not be unreasonably withheld, conditioned or delayed.

24.10 The Contractor may, on written request to RWE and at the Contractor's cost and expense and on providing adequate financial security to RWE for any debt or liability under the indemnity, have the conduct of or settle all negotiations and litigation arising from any third party IPR claim and RWE shall, at the Contractor's request and expense, give the Contractor reasonable assistance in connection with those negotiations and litigation - provided that prior to entering into any binding settlement the Contractor obtains RWE's consent to that settlement (which may be reasonably conditioned by RWE). The Contractor must keep RWE informed and allow RWE to participate (at the Contractor's cost) in the defence of any claim. In order to preserve its other commercial interests, RWE may give directions in respect of the conduct of any IPR claim. Any settlement shall not affect the terms of this Contract or RWE's IPR rights under it.

24.11 If any third party IPR claim is made or, in the Contractor's opinion, is likely to be made against the Contractor or RWE with respect to the Goods/Services and/or with respect to the IPR which the Contractor is required to licence or assign to RWE, then without affecting any rights or obligations the Contractor will promptly and at its own expense:

- (a) procure for RWE and/or RWE Group the right to continue using the Goods/Services or IPR (or any part of them) in accordance with this Contract; or
- (b) modify or replace the infringing Goods/Services (or any part of them) so as to avoid the infringement or alleged infringement and as if they were defective and so as to comply with the clause 16 (*Default and Remedy*); or
- (c) pay to RWE all sums as set out at clause 16(*Default and Remedy*) as if the Goods/Services were defective.

24.12 Any breach of this clause is a material breach and RWE may terminate this Contract immediately for the Contractor's Default.

## 25. Confidentiality

25.1 The Confidential Information is strictly confidential and the Contractor does not use it except as is

strictly necessary in the performance of the Contractor's obligations under this Contract.

25.2 The Contractor keeps RWE Materials and Confidential Information safely and will maintain and apply appropriate technical and organisational measures, processes and procedures to safeguard against any unauthorised access, loss, destruction, theft, use or disclosure of personal data and all Confidential Information. The Contractor will not retain the Confidential Information longer than is required for the performance of the Contractor's obligations under this Contract or as otherwise required or permitted by law.

25.3 The Contractor may disclose Confidential Information if and to the extent that:

- (a) the Contractor considers it is necessary to disclose Confidential Information to the Contractor's Staff or group companies for the purpose only of performing the Contractor's obligations under this Contract or to professional advisers, auditors and bankers, provided in each case that the Contractor places similar conditions of confidentiality on those persons;
- (b) the Contractor is required to do so by law or any securities exchange or regulatory or governmental body to which the Contractor is subject wherever situated provided that the Contractor gives RWE advance notice warning of this as soon as it is reasonably practicable and legally able to do so; or
- (c) it is or comes into the public domain through no fault of the Contractor or any party whom the Contractor is responsible.

25.4 To the extent permitted by law, the Contractor promptly deletes, destroys or returns RWE Materials and Confidential Information and any data stored on the Contractor's infrastructure promptly to RWE (and all copies) at RWE's request and on request, certifies any such deletion, destruction or return.

25.5 The Contractor does not make any announcement or publicity statement relating to RWE, RWE Group, the Contract or any part of it or its subject matter without RWE's prior written approval (except as required by Applicable Law or by any legal or regulatory authority in which case the Contractor will give RWE as much advance warning of this as it is reasonably practicable to do so).

25.6 Without limit, the Contractor indemnifies RWE and RWE Group from and against any Loss, incurred by RWE and/or RWE Group as a result of or in connection with a breach by the Contractor or the Contractor's Staff of this clause.

25.7 Any breach of this clause is a material breach and RWE may terminate this Contract immediately for the Contractor's Default.

25.8 The obligations in this clause apply for a period of three (3) years after the end of the Term.

25.9 If there is already a confidentiality agreement or non-disclosure agreement agreed between the Contractor and RWE Group covering the subject matter of this Purchase Order, then this clause 25 only applies to the extent the terms are more onerous. Additionally, the duration of the existing confidentiality agreement or non-disclosure agreement is extended to align with clause 25.8.

## 26. Data Protection

- 26.1 Each of the Contractor and RWE acknowledges that the Contractor or RWE, in their respective capacities of data controller, may disclose to each other personal data which is limited in scope to contact details of their respective Staff or their corporate group Staff who will be managing the performance of this Contract. The personal data so shared is to be used only for the purpose of satisfying the Contractor's or RWE's respective obligations and receiving their respective benefits under this Contract and only during the Term or to continue to receive the benefit of rights and enforce remedies that extend beyond the Term.
- 26.2 Each of the Contractor and RWE complies with and procures compliance with obligations imposed on data controllers contained within Australia data protection Applicable Law in force from time to time, including publishing and complying with their respective privacy notices (which includes RWE's data protection policy available here: <https://au.rwe.com/data-protection/>).
- 26.3 The Contractor does not process personal data on behalf of RWE nor appoints a third party processor to process such personal data.
- 26.4 The Contractor must not export personal data outside of Australia (unless expressly agreed in writing, signed by RWE's authorised representative).
- 26.5 The Contractor warrants that it has in place and maintains and applies appropriate technical and organisational measures, processes and procedures to safeguard against any unauthorised access, loss, destruction, theft, use or disclosure of personal data.
- 26.6 On termination or expiry of the Contract, the Contractor securely destroys or returns to RWE all personal data shared with the Contractor and in the Contractor's possession or control.
- 26.7 Without limit, the Contractor indemnifies and keeps RWE and RWE Group fully indemnified immediately on demand against any Loss, directly or indirectly suffered or incurred by RWE and/or RWE Group as a result of a breach of this clause or any other breach of the Australian data protection Applicable Law in force from time to time by the Contractor or the Contractor's Staff.
- 26.8 Any breach of this clause is a material breach and RWE may terminate this Contract immediately for Contractor's Default.

## 27. Information Security and Critical Infrastructure

- 27.1 RWE may ask the Contractor (and the Contractor may already have done so) from time to time to complete a self-declaration form and to provide relevant evidence relating to information security and critical infrastructure protection (such as the RWE Prequalification Information Security IT/OT (PIO) or the RWE Data Protection Questionnaire (DPQ) and/or where relevant the Data Protection Agreement (DPA)). The Contractor warrants that its answers are and will remain true and accurate. Any breach of this warranty or false declaration is a material breach of the Contract and RWE may terminate immediately for the Contractor's Default.
- 27.2 The Contractor does not access and does not permit anyone to access RWE's computing system(s) without RWE's express written authorisation.

- 27.3 Where authorised by RWE in advance and in writing, RWE may provide the Contractor with access to RWE's computing system(s).
- 27.4 Where RWE provides such access the Contractor employs anti-virus procedures and complies with IT policies and procedures that align with RWE's security requirements.
- 27.5 The Contractor may use any access granted to it only to deliver the Goods/Services and any such access must be through RWE's agreed security gateways and/or firewalls.
- 27.6 RWE may terminate the Contractor's access to RWE's system(s) at any time without notice to the Contractor.
- 27.7 The Contractor immediately notifies RWE ([csirt@rwe.com](mailto:csirt@rwe.com)) of and provides assistance with any suspected, actual or threatened security incidents or security breaches, unusual or malicious activity or events and/or vulnerabilities of which Contractor becomes aware that may affect RWE's system(s) in any way or lead to unauthorised access to RWE's systems, or impacts the provision of Goods/Services to RWE.
- 27.8 The Contractor must comply with all applicable laws, regulations, and government policies relating to the security of critical infrastructure, including the Security of Critical Infrastructure Act 2018 (Cth) (**SOCI Act**) and any associated rules, directions, or obligations issued under the SOCI Act (collectively, **SOCI Requirements**).
- 27.9 The Contractor must:
- implement and maintain security measures to ensure the protection of any critical infrastructure assets or systems of national significance (as defined under the SOCI Act) that it accesses, controls, or operates on behalf of RWE;
  - not take any action that would cause RWE to be in breach of the SOCI Requirements; and
  - promptly notify RWE in writing of any matter that could reasonably be expected to affect RWE's compliance with the SOCI Requirements.
- 27.10 If the Contractor becomes aware of any cyber incident, supply chain vulnerability, unauthorised access, or other security threat that could impact the resilience, availability, integrity, or security of RWE's operations or critical infrastructure assets, the Contractor must:
- immediately notify RWE.
  - provide all reasonable assistance to RWE in investigating and mitigating the issue.
- 27.11 The Contractor acknowledges that RWE may be subject to government directions under the SOCI Act, including those issued by the Cyber and Infrastructure Security Centre (CISC) or the Australian Signals Directorate (ASD). If RWE receives a direction requiring action from the Contractor, the Contractor must:
- comply with all reasonable instructions issued by RWE to ensure compliance with the direction; and
  - cooperate in good faith with any risk management program, security assessment, or remedial action required by Australian government authorities.
- 27.12 Upon RWE's request, the Contractor must provide evidence of its compliance with the SOCI



Requirements, including security policies, risk assessments, and relevant certifications. RWE may conduct audits or request an independent third-party review of the Contractor's security practices to verify compliance.

27.13 Any breach of this clause is a material breach and RWE may terminate immediately any Contract with the Contractor for the Contractor's Default.

## 28. Business Continuity

28.1 The Contractor has in place and reviews regularly a suitable business continuity plan in relation to general day-to-day service disruptions and disaster recovery affecting either the Contractor's, RWE's or RWE Group's business relevant to this Contract. The Contractor on request must share its business continuity plan with RWE and takes account of any comments RWE may have on it relating to the Contractor's obligations under this Contract or other contracts between the parties.

28.2 In the event of a business interruption or disaster, the Contractor implements its business continuity and/or disaster recovery plan and keeps RWE informed of its implementation.

## 29. Disrepute

29.1 The Contractor does not use RWE's information or do anything that brings RWE's name or RWE Group's name into disrepute or damages or conflicts with RWE's or RWE Group's reputation, goodwill or business interests.

29.2 Any breach of this clause is a material breach and RWE may terminate this Contract immediately for Contractor's Default.

## 30. Marketing and Advertising

30.1 The Contractor may not, without RWE's prior written consent use:

- (a) any information concerning this Contract; or
- (b) photographs of RWE's sites, facilities or personnel in each case for reference or marketing purposes.

30.2 The Contractor may not use RWE's trade names, trademarks or logos or those of RWE Group either individually or in combination with the Contractor's trade names or trade names of others.

## 31. Code of Conduct and Human Rights

31.1 RWE and RWE Group are committed to the RWE Code of Conduct (**RWE Code of Conduct**) set out at: <https://www.group.rwe/en/the-group/compliance/code-of-conduct/>.

31.2 The Contractor accepts the "Principles of Conduct" contained in the RWE Code of Conduct as a basis for cooperation between the Contractor and RWE.

31.3 RWE expects the Contractor to commit to support and implement (and that the Contractor will procure that its Staff support and implement) the principles on human rights, labour relations, environmental protection and combating of corruption which are established within the framework of the United Nations Global Compact Initiative ([www.unglobalcompact.org](http://www.unglobalcompact.org)).

31.4 RWE and the RWE Group are committed to its corporate policy on human rights and applies the Human Rights Supplier Contract Appendix to all contracts entered into by RWE and the RWE Group <https://www.rwe.com/en/products-and-services/supplier-portal/general-conditions/rwe-human-rights-supplier-contract-appendix/> (**Human Rights Appendix**).

31.5 RWE expects the Contractor to, and the Contractor agrees to:

- (a) accept and comply with the principles and all obligations contained in the Human Rights Appendix and, in particular, to commit itself to support and implement the principles on human rights, labour relations and environmental protection in its own business and towards its own supply chain; and
- (b) operate and maintain throughout the Term suitable policies and procedures to comply with and prevent the infringement of the fundamental principles and rights and obligations referred to in this clause 31 by the Contractor or any of its Staff.

31.6 In order to assess and determine the risk for human rights, labour relations and environmental protection associated with the supply chain, RWE may from time to time submit and the Contractor promptly replies to any RWE questionnaire regarding typical risk areas and preventive and remedial actions required within the business area of the Contractor.

31.7 The Contractor warrants that its responses to any such questionnaire are true and accurate and that the Contractor operates consistently with the Human Rights Appendix. The Contractor further acknowledges that RWE is induced and enters into this Contract in reliance upon this warranty.

31.8 The Contractor must promptly inform RWE of any incident, violation of or increased risk of potential violation of the Human Rights Appendix in its supply chain and RWE expressly reserves its rights to apply clauses 38 (*Records*) and 39 (*Audit*) to assess the Contractor's compliance with this clause and the Human Rights Appendix.

31.9 Any breach of this clause is a material breach and RWE may terminate immediately any Contract with the Contractor for the Contractor's Default.

## 32. Combating Corruption and Undue Influence

32.1 The Contractor undertakes not to give or receive, offer or ask for, directly or indirectly, to anyone, any payment or benefit that constitutes undue financial or other advantage of any kind.

32.2 The Contractor complies with all Applicable Law relating to anti-bribery and anti-corruption and the Contractor ensures that neither the Contractor nor the Contractor's Staff engage in any activity, practice or conduct which constitutes an offence under such Applicable Law.

32.3 The Contractor must not use any payment received from RWE to improperly influence public or private decision-makers, RWE has the right to demand immediate repayment of the amount used for such purposes, and the Contractor shall repay such amount immediately on demand. Improper influence includes, but is not limited to:

- (a) the Contractor passing on payments received, in whole or in part, to public or private decision-makers; or
- (b) the Contractor using payments to offer unlawful gifts, gratuities, event invitations, travel, or other benefits to public or private decision-makers.

32.4 Without limit, the Contractor indemnifies RWE and RWE Group against all Loss incurred or suffered by RWE and/or RWE Group as a result of a breach by

the Contractor or the Contractor's Staff of this clause.

32.5 Any breach of this clause is a material breach and RWE may immediately terminate any Contract with the Contractor for the Contractor's Default. If terminated in connection with this clause, the Fee is revoked and the Contractor must repay to RWE any amounts of the Fee paid.

### 33. Sanctions

33.1 Sanctions means any economic or financial sanctions, import or export control regimes or trade embargoes implemented, administered, or enforced by the European Union (EU), its member states, or the United Nations Security Council. Sanctions also means any economic or financial sanctions, import or export control regimes or trade embargoes implemented, administered, or enforced by the United States of America, or the United Kingdom, unless this constitutes a violation of any applicable blocking law, or compliance with such Sanctions constitutes a violation of any applicable blocking law (**Sanctions**).

33.2 The Contractor warrants that neither the Contractor nor any of the Contractor's group companies nor, to the best of the Contractor's knowledge, any legal representative of the Contractor or any of the Contractor's Group companies is:

- (a) a person against whom Sanctions have been imposed;
- (b) owned or controlled by a person against whom Sanctions have been imposed;
- (c) located in or has been registered in or has its registered office in, a country or territory against which Sanctions applicable to itself or its Government have been imposed (currently but not limited to: Russia, Cuba, Iran, North Korea, Syria, Crimea and the so-called Donetsk and Luhansk People's Republics).

33.3 The Contractor complies with all Sanctions and export control requirements applicable to it and its business activities as far as actions in connection with this Contract are concerned.

33.4 The Contractor does not sell, supply or transfer items received from RWE to third parties if this results in the Contractor or RWE violating any applicable Sanctions or export control regulations.

33.5 The Contractor does not act or omit to act so as to result in RWE violating any applicable Sanctions or export control regulations.

33.6 The Contractor immediately informs RWE in writing if the Contractor becomes aware of any event or matter which may result in a violation of applicable Sanctions or export control regulations by the Contractor or by RWE relating to the Contract.

33.7 Without limit, the Contractor indemnifies RWE and RWE Group against all Loss incurred or suffered by RWE and/or RWE Group as a result of a breach by the Contractor or the Contractor's Staff of this clause.

33.8 Any breach of this clause is a material breach and RWE may immediately terminate any Contract with the Contractor for the Contractor's Default.

### 34. Responsibilities as an employer

34.1 The Contractor complies and procures that its Staff comply with all Applicable Law relating to labour or employment law, including laws relating to

discrimination, equality, minimum wage, employee health, safety and welfare and allows to all Contractor's Staff all their rights at law.

34.2 The Contractor warrants to RWE that its Staff performing any part of the Contract have all necessary rights to work in Australia and/or work permits where they are located.

34.3 Without prejudice to the general obligations in clauses 34.1 and/or 34.2 or otherwise to comply with Applicable Law, in relation to the Contractor's Staff, the Contractor warrants that it:

- (a) has effective procedures to verify the age of Staff at the time they are recruited;
- (b) keeps adequate age documents of Staff, such as ID copies and personnel records;
- (c) complies with local legal requirements in relation to the minimum age of Staff;
- (d) employs Staff under the age of 18 only on non-hazardous or daytime work;
- (e) allows Staff to leave the place of work after working hours;
- (f) treats all Staff in a humane manner, including not subjecting a worker to physical or verbal abuse;
- (g) treats all Staff in a lawful and acceptable manner in relation to their personal documents, including not requiring employees to lodge deposits or original documents such as ID papers and training certificates;
- (h) treats all Staff in an appropriate manner over access to and from the place of work; and
- (i) ensures that all employment is voluntary.

34.4 The Contractor at all times during the Term properly enforces such policies and procedures and carries out periodic monitoring of its compliance with such policies and procedures on at least an annual basis.

34.5 In the event that the Contractor engages any third party Staff in relation to any activity connected with this Contract, the Contractor ensures that provisions equivalent to this condition are included within the Contract or terms of engagement under which that third party is appointed.

34.6 Any breach of this clause is a material breach and RWE may terminate this contract for Contractor's fault.

### 35. Modern Slavery

35.1 The Contractor complies with all Applicable Laws and regulations relating to anti-slavery and human trafficking, including but not limited to *Modern Slavery Act 2018 (Cth)*.

35.2 The Contractor does not and the Contractor's Staff do not make use of forced, compulsory or trafficked labour or of anyone (whether adults or children) held in slavery or servitude.

35.3 The Contractor warrants, represents and undertakes that neither the Contractor nor any of the Contractor's Staff has:

- (a) committed an offence under the *Modern Slavery Act 2018 (Cth)*;
- (b) been notified that it is subject to an investigation relating to an alleged offence or prosecution under the *Modern Slavery Act 2018 (Cth)*; or
- (c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged offence or prosecution under the *Modern Slavery Act 2018 (Cth)*.

35.4 The Contractor must notify RWE immediately in writing if it becomes aware or has reason to believe that it or any of its staff or supply chain have breached or potentially breached any modern slavery associated obligations under this contract or at law, such notice to set out full details of the circumstances concerning the breach or potential breach of Contractor obligations.

### **36. Code of Conduct and Employer Responsibility Infringements**

36.1 If the Contractor becomes aware of or has reason to believe that it or any of its Staff have breached or have potentially breached any of the Contractor's responsibilities referred to at clauses 27 (*Information Security and Critical Infrastructure*), 31 (*Code of Conduct*), 34 (*Responsibilities as an Employer*) and 35 (*Modern Slavery*), then the Contractor notifies RWE of the breach or potential breach and takes steps to rectify the breach or potential breach.

36.2 RWE may use any appropriate means to establish the validity or details of such breach or potential breach including pursuant to clause 39 (*Audit*) and if validated, without prejudice to any rights or obligations under this Contract, RWE may:

- (a) issue the Contractor with a warning to provide as soon as reasonably practicable a detailed action plan to address the potential breach or where necessary to remediate the actual breach and which, if appropriate, is implemented immediately; and/or
- (b) suspend this Contract until the potential breach is addressed or where necessary the actual breach is remedied.

36.3 Where the Contractor is given adequate opportunity to address the potential breach or to remedy the actual breach and the Contractor has in either case, in RWE's opinion failed to do so, the Contractor is in material breach of this Contract and RWE may terminate this Contract for Contractor's Default. If terminated in connection with this clause, any Fee paid is revoked and the Contractor must repay those amounts to RWE.

36.4 Without limit, the Contractor indemnifies RWE, the RWE Group, and their Staff, against all Loss (including fine or other penalty imposed and reasonable costs incurred in defending any proceeding):

- (a) suffered by RWE and/or the RWE Group as a result of a breach of the Contractor's responsibilities in clauses 27 (*Information Security and Critical Infrastructure*), 31 (*Code of Conduct*), 34 (*Responsibilities as an Employer*) and 35 (*Modern Slavery*) or any breach of related Applicable Law or other law which applies to the RWE Group; and
- (b) in the event RWE or the RWE Group is held liable for any breach of Applicable Law or law which applies to the RWE Group which is attributable to the conduct of the Contractor in failing to comply with the Human Rights Appendix.

### **37. Warranty and Representation**

37.1 The Contractor warrants and represents that:

- (a) it has the required capacity, staff, skills, expertise, and know-how, to provide the Goods and/or Services in accordance with the requirements of the Contract;

- (b) the profile, experience, and proposed approach to delivering the Goods/Services, of the Contractor (or its staff) contained in any proposal provided to RWE in respect of the Goods and/or Services is accurate;
- (c) it has legal capacity to enter into this Contract and ability to deliver the Goods and/or Services;
- (d) the entering into and/or fulfilment of this Contract does not breach or contravene any Applicable Law or contractual requirements or obligations that apply to the Contractor; and
- (e) it has and will maintain all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract and in respect of the Goods/Services.

37.2 RWE warrants and represents that:

- (a) it has the capacity (or will procure the capacity) to pay the Fee; and
- (b) it has legal capacity to enter into this Contract.

### **38. Records and reporting**

38.1 The Contractor must maintain such records relating to the Goods/Services as may be necessary to trace the supply chain and to demonstrate compliance with its obligations under this Contract including: correct invoicing, information security, obligations of confidentiality and data protection and keep them for at least 7 years after the Term ends.

38.2 The Contractor shall provide RWE a monthly report regarding its activities in the form requested by RWE from time to time.

### **39. Audit**

39.1 RWE and/or RWE's auditors may access the Contractor's premises and any premises of the Contractor's Staff or supply chain during normal working hours upon giving reasonable notice as appropriate in the circumstances and audit and/or inspect all matters (including all records) at the Contractor's premises and/or at those of the Contractor's Staff relating to the supply of the Goods and/or Services to RWE and the Contractor's compliance with its obligations in this Contract including the Contractor's operations, facilities, working conditions, procedures and systems. The Contractor must provide appropriately qualified Staff to support audits. The Contractor provides appropriately qualified staff to support such audits.

### **40. Assignment**

40.1 The Contractor cannot assign, novate or otherwise transfer any of the Contractor's rights and/or obligations under the Contract without RWE's prior written consent.

40.2 RWE may assign or sub-license any of RWE's rights under this Contract within RWE Group without the Contractor's prior consent. RWE may assign or novate this Contract to a third party without consent, and may require the Contractor (at its cost) to sign a confirmation or an agreement in a form reasonably proposed by RWE.

### **41. Subcontracting**

41.1 The Contractor must not subcontract any of its obligations under the Contract or change subcontractors without RWE's prior written consent (except to the extent set out in the Purchase Order).

41.2 The Contractor is entirely liable for any act or omission of the Contractor's Staff (including all suppliers or subcontractors and their workers of any

tier). Any appointment of a subcontractor does not affect the Contractor's obligations and liabilities.

- 41.3 To the extent permitted by the Applicable Law, the application of the Proportionate Liability Legislation and any equivalent statutory provision in any other state or territory) does not apply to the liability of the parties under this Contract.
- 41.4 To the extent permitted by law, the Contractor must not seek to apply the provisions of the Proportionate Liability Legislation in relation to any claim or Loss claimed by RWE against the Contractor.
- 41.5 The Contractor agrees it shall not raise the Proportionate Liability Legislation in response to any claim or demand by RWE.
- 41.6 To the extent permitted by law, the Contractor indemnifies RWE against the difference, if any, between:
  - (a) the amount of any loss, damage, costs and expenses suffered or incurred by the RWE for which, but for the Proportionate Liability Legislation (or any equivalent State or Territory law or legislation), RWE would otherwise have been entitled to recover from the Contractor; and
  - (b) the liability to RWE of the Contractor as determined by any court under the Proportionate Liability Legislation.

#### **42. Entire agreement and exclusion of other terms**

- 42.1 This Contract constitutes the whole agreement between the Contractor and RWE and supersedes all previous arrangements or agreements between the Contractor and RWE relating to the subject matter of this Contract (except as required by clause 25.9).
- 42.2 Neither the Contractor nor RWE has relied on and neither the Contractor nor RWE has any right or remedy in respect of any statement, representation, term, condition, assurance or warranty other than as expressly set out in this Contract.
- 42.3 Terms and conditions of the Contractor or correspondence or acknowledgement from the Contractor relating to an order and any of the Contractor's quotes, proposals, order acceptance or terms and conditions set out in any of them are excluded from this Contract, and RWE's Terms apply. Unless contained in any specifications appended with the Purchase Order, any other deviation from RWE's Terms are expressly excluded from this Contract. This is necessary to give the parties certainty as to the terms and conditions which apply to the rendering of the Goods and/or Services.
- 42.4 The Contractor acknowledges that its provision of the Goods or Services and the promise of payment by RWE under these Terms is part of the consideration for the exclusion of any of the Contractor's terms, clauses, conditions, exceptions, exclusions, or any other condition or warranty, which may be inconsistent with these Terms.
- 42.5 The terms of this Contract shall apply to any activity in connection with the Goods/Services performed prior to the Start Date.

#### **43. Cumulative Remedies**

- 43.1 Unless otherwise stated in the Contract, the rights, powers and remedies conferred on the Contractor or RWE by this Contract and the remedies available to the Contractor or RWE are cumulative and are

additional to any right, power or remedy which the Contractor or RWE may have under Applicable Law.

#### **44. Waiver**

- 44.1 Unless otherwise stated in the Contract, no failure or delay by the Contractor or RWE to exercise any right or remedy provided under this Contract or by law constitutes a waiver of that or any other right or remedy, nor does it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy precludes or restricts the further exercise of that or any other right or remedy.
- 44.2 No act or omission of either the Contractor or RWE is or is deemed to be a waiver or release of a right or remedy unless expressly notified in writing.
- 44.3 Unless this agreement expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this agreement in its discretion (including by imposing conditions).

#### **45. Severance**

- 45.1 If any court or competent authority finds that any part of this Contract is invalid, void, illegal or unenforceable, that part of the Contract, to the extent required, is deemed to be severable and the validity and enforceability of the any other term or condition in the Contract is not affected. Subject to clause 45.2, this clause has no effect if the severance alters the basic nature of this agreement or is contrary to public policy.
- 45.2 If any invalid, void, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were amended, the Contractor and RWE shall seek to agree the minimum modification necessary to make it legal, valid and enforceable and align with the original commercial intent of the Contract. If no agreement is reached, RWE may terminate the Contract with no liability.
- 45.3 If any of provisions of this Contract are considered by a Court in respect of Part 2-3 of the Australian Consumer Law, then as far as practicable that term is to be read down to relieve that term from being determined to be "unfair" (as defined in the Australian Consumer Law). If incapable of being read down, RWE will amend these Terms to account for the opinion of the Court.
- 45.4 These Terms have been prepared in consideration of:
  - (a) RWE being a purchaser of the Goods/Services with limited purchaser protections available to it under the Applicable Law;
  - (b) the Contractor being a specialist in the provision of the Goods/Services;
  - (c) in respect of the Goods/Services, RWE has limited obligations, primarily related to payment of the Fee;
  - (d) RWE has limited means to compel the compliance or provision of appropriate Goods/Services or information relating to those Goods/Services without these Terms;
  - (e) the provision of the Goods/Services in accordance with the Contract are reasonably necessary for RWE's continued commercial operation of its business; and
  - (f) the provision of information or compliance with these terms in relation to the provision of the



Goods/Services may be relevant in other jurisdictions in which the RWE Group operates.

#### 46. No partnership

46.1 Nothing in these Terms and no action taken pursuant to them constitutes or is deemed to constitute a relationship between the Contractor and RWE of partnership, association, joint venture or other co-operative entity.

#### 47. Costs and Expenses

47.1 The Contractor and RWE each bear their own respective costs and expenses incurred in the preparation, execution and implementation of the Contract, and any of the activities or actions contemplated under this Contract (unless otherwise specified).

#### 48. Third Party Rights

48.1 To the extent to which any Goods/Services provided pursuant to this Contract are for the benefit of a company in RWE Group, that company may enforce the Contract subject to and in accordance with its terms to the extent permitted by Applicable Law.

48.2 Any Loss that is suffered by any of the RWE Group or RWE Staff as a result of a breach of the Contract or any tort or statutory duty in relation to it is recoverable by RWE as a Loss and is not deemed to be an indirect or consequential loss merely because the Loss is suffered by RWE Group.

48.3 Save for the foregoing, a person who is not a party to this Contract may not enforce this Contract.

#### 49. Security of Payment Legislation

49.1 Applicable Law includes any of the following statutes relating to security of payment which may apply to the Contractor, RWE or their respective sub-/contractors, in which case the remainder of this clause 49 applies:

- (a) Victoria, the Building and Construction Industry Security of Payment Act 2002 (Vic);
- (b) New South Wales, the Building and Construction Industry Security of Payment Act 1999 (NSW);
- (c) Queensland, the Building Industry Fairness (Security of Payment) Act 2017 (Qld);
- (d) Western Australia, the Building and Construction Industry (Security of Payment) Act 2021 (WA);
- (e) South Australia, the Building and Construction Industry Security of Payment Act 2009 (SA);
- (f) the Australian Capital Territory, the Building and Construction Industry (Security of Payment) Act 2009 (ACT);
- (g) the Northern Territory, the Construction Contracts (Security of Payment) Act 2004 (NT); and
- (h) Tasmania, the Building and Construction Industry (Security of Payment) Act 2009 (Tas),

(together **Security of Payment Legislation**).

49.2 The Contractor must comply with its obligations under Security of Payment Legislation and indemnifies RWE against any Losses arising from the Contractor's failure to perform its obligations under Security of Payment Legislation.

49.3 With any invoice issued under clauses 13.4 and 13.5, the Contractor must submit a statutory declaration in the industry standard form (to RWE's reasonable satisfaction) from an authorised employee of the Contractor who is in a position to know the facts declared stating that the Contractor's personnel and sub-contractors have

received all amounts and entitlements due and payable to or on behalf of them in connection with the performance of the Contract, other than amounts expressly stated in the statutory declaration to be subject to a bona fide dispute.

49.4 RWE may withhold amounts certified due and payable until the Contractor complies with clause 49.3. RWE must not withhold payment of money in excess of the amounts evidenced as due and payable to personnel and subcontractors.

49.5 The Contractor must promptly give RWE a copy of any notice of any referral to or application for adjudication or other communications under or related to any Security of Payment Legislation made by subcontractor in connection with the Contract. Furthermore, the Contractor must provide to RWE copies of any information provided to a subcontractor in response to a referral or application for adjudication or other communication pursuant to the Security of Payment Legislation.

49.6 RWE reserves all rights that it has pursuant to or related to Security of Payment Legislation, including the right to withhold or set off payments to the Contractor in respect of the RWE's liability under the Security of Payment Legislation. Furthermore, without limit, the Contractor indemnifies RWE in respect of any amounts paid by RWE in respect of a claim by a subcontractor pursuant to Security of Payment Legislation.

49.7 If any subcontractor or third party providing any works or services in connection with the Contract (other than the Contractor) suspends the provision of any of those works or services under the Contract pursuant to the Security of Payment Legislation, the Contractor shall have no claim in respect of or arising out of such suspension.

49.8 To the extent permitted by the applicable Security of Payment Legislation, the authorised nominating authority shall be the "Resolution Institute".

#### 50. Adequacy of Damages; Remedies

50.1 The Contractor acknowledges and agrees that damages alone may not be an adequate remedy for any breach of this Contract. Accordingly, RWE may invoke the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of this Contract.

50.2 The Contractor agrees that any liability for a Loss payable in connection with an indemnity crystallises as a debt due on notice of a demand pursuant to that indemnity or obligation to hold harmless.

50.3 The Contractor covenants with RWE that the provisions of all statutes now or hereafter in force whereby or in consequence whereof any or all of the powers, rights, and remedies of RWE and the obligations of the Contractor hereunder may be curtailed, suspended, postponed, defeated or extinguished shall not apply hereto and are expressly excluded insofar as this can lawfully be done.

50.4 Each party must promptly do anything reasonably requested by the other party to this Contract (including executing agreements and documents) to give full effect to this Contract and the transactions contemplated by it.

#### 51. Notices

51.1 Any notice given under this Contract shall be in writing and in each case is delivered personally or

sent by recorded delivery to the postal addresses or email addresses set out in the Purchase Order or otherwise notified. Any notices delivered to RWE must also be copied to: LegalNoticesAU, [legalnoticesau@rwe.com](mailto:legalnoticesau@rwe.com).

51.2 A notice is served at (a) the time of delivery, if delivered personally; (b) 3 Business Days after posting, in the case of posting to a postal address in Australia; (c) 10 Business Days after posting, for any other address that (b) does not apply; or (d) if sent by email, at the time of sending if sent before 17:00 on a business day or otherwise 09:00 on the first business day after sending.

51.3 The language of this contract is English and all notices, documents, correspondence and any other information exchanged between the parties shall be in English, unless agreed otherwise by RWE in writing.

## 52. Signing and counterparts

52.1 The Contractor and RWE agree that electronic signature to the Contract or changes to it electronically signed by authorised representatives in accordance with the Contract is conclusive of the Contractor's and RWE's respective intentions to be bound by the Contract or amendments to it.

52.2 This agreement may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document.

## 53. Work health and safety

53.1 This clause 53 does not affect any other provision of these Terms relating to health and safety.

53.2 The Contractor must comply with RWE's "HSE Conditions of Contract" available here: <https://www.rwe.com/-/media/RWE/documents/lieferantenportal/liefer-und-leistungsbedingungen-rwe-renewables/HSE-conditions-of-contract.pdf>.

53.3 The Contractor must comply with the "HSE Conditions of Contract" in force from time to time and check the latest "HSE Conditions of Contract" before it commences any work (including providing the Goods or Services). RWE may provide updated or replacement "HSE Conditions of Contract" to the Contractor from time to time.

53.4 RWE (or any person with management and control of the Site) may stop all or any part of the Services if it believes the working processes being used are unsafe or pose a risk to persons or property.

53.5 The Contractor must reasonably assist RWE and any other person on Site to comply with any work health and safety requirements applicable to them in relation to the Contract and Site.

53.6 The Contractor, at its own cost, must provide its Staff with training and all necessary safety equipment to ensure that they are qualified and competent and able to perform the Goods/Services safely.

53.7 The Contractor must comply with relevant and industry applicable quality and safety standards and codes of practice as may be applicable to it, and any further health and safety policies as RWE may notify to the Contractor.

53.8 The Contractor must make itself and its Staff aware of any safety risks on Site, and must obey all instructions (including signs) of RWE or any other person that has management and control of the Site.

53.9 If directed by RWE, the Contractor shall perform the role and accepts its engagement as the "principal contractor" under the relevant law of the Site for activities connected with this Contract. RWE may include conditions (at its discretion) on the appointment of the Contractor as "principal contractor" and compliance with health and safety obligations associated with this role.

53.10 In connection with this Contract, the Contractor must comply with all health and safety requirements imposed by the Applicable Law (and satisfy those obligations for RWE in respect of the Goods/Services), including in respect of:

- (a) provide and maintain a working environment that is safe and free of risks to health, so far as is reasonably practicable;
- (b) the manufacture, importation, transportation, supply, storage, handling or use of dangerous goods;
- (c) the design, manufacture, importation, supply, erection or installation of plant; and
- (d) the manufacture, importation or supply of substances.

## 54. Dispute resolution

54.1 If a dispute arises out of or in connection with the Contract, the Contractor or RWE must notify the other in writing (including background, details of the dispute, and proposed resolution). The parties must meet within 20 days of notice and seek to resolve the dispute through negotiations between the Contractor's and RWE's respective senior representatives with authority to resolve the dispute.

54.2 Subject to clause 54.3, if a dispute is not resolved within 20 days of notice, either party may refer the dispute to a court.

54.3 If any of the parties to this Contract are not incorporated in Australia, the parties agree any dispute, controversy or claim arising out of, relating to or in connection with this Contract, including any questions regarding its existence, validity or termination, shall be finally resolved by arbitration in accordance with the most recent "ACICA Expedited Arbitration Rules". The seat of arbitration shall be Melbourne, Australia. Unless the rules prescribe otherwise, the arbitration shall be before one arbitrator and the parties shall mutually agree the arbitrator within 14 days of notice of the dispute, and failing that the arbitrator shall be appointed by the Australian Centre for International Commercial Arbitration (ACICA). The language of the arbitration shall be English. This arbitration and the arbitration agreement are governed by the law of Victoria. The arbitration award shall be binding on the parties.

54.4 Any arbitration shall be confidential.

54.5 If clause 54.3 applies, nothing prevents a party from seeking urgent interlocutory or injunctive relief from a court of competent jurisdiction.

54.6 Any arbitration award shall be final and binding on the parties and may be enforced in any court of competent jurisdiction.

## 55. Time limit on claims

55.1 If the Contractor considers it may have a claim or cause of action in respect of this Contract, if it wishes to make that claim or bring that cause of action against RWE, it must notify RWE in accordance with clause 55.2 within 60 Business

Days of the Claim Event Date (or such longer period as may reasonably be determined by RWE).

55.2. The Contractor's notice must:

- (a) be in writing;
- (b) state the relevant basis or clause of the Contract that the claim or cause of action is made pursuant to;
- (c) include full details of:
  - a. all facts or events upon which the claim or cause of action is based;
  - b. the legal basis or bases for the claim or cause of action including any Applicable Law, tort, or clause of the Contract relied upon; and
  - c. the quantum or likely quantum of the claim (if any).

55.3. RWE will not be liable upon any claim or cause of action by the Contractor which was not notified strictly in accordance with clauses 55.1 and 55.2, and such claim or cause of action will be absolutely barred.

## 56. Governing Law and Jurisdiction

56.1. Subject to clause 56.2, the laws of Victoria, Australia apply to this Contract (**Applicable Law**).

56.2. Applicable Law includes any law applicable by reason of the location of the Site.

56.3. Subject to clause 54.3, the Contractor and RWE respectively each agree to irrevocably submit to the exclusive jurisdiction of the Victorian courts as regards any dispute, claim or matter arising under or relating to this Contract (including its subject matter, formation and any non-contractual disputes and claims).

56.4. Except as otherwise provided in this Contract, any present or future law which operates to vary or limit the obligations of a party in connection with the agreement with the result that another party's rights, power, or remedies, are adversely affected (including by way of delay or postponement) are excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

56.5. The provisions of the United Nations Convention on Contract for the International Sale of Goods (CISG) concluded in Vienna on 11 April 1980 (also known as the Vienna Sales Convention), including as enacted in any Applicable Law, are expressly excluded from application to this Contract.

## 57. Definitions

Capitalised terms in this agreement have the meaning set out below and in the Purchase Order, unless the context requires or a contrary intention appears:

**Claim Event Date** means the earlier of the following dates:

- (a) the day the Contractor was aware of the conduct, circumstance, event, act, default, omission, direction, fact, matter or thing upon which the claim or cause of action is or will be based (**Claimable Event**); or
- (b) the day the Contractor could reasonably have been expected to be aware of the Claimable Event.

**Confidential Information** means:

- (a) the information contained in the Contract and any RWE Materials and any document shared

in connection with the Contract and the RWE Materials;

- (b) any other project, technical, or commercial information of a confidential nature (either marked as such or which, by its nature, can reasonably be considered to be confidential) which the Contractor receives from RWE (or from a person acting on RWE's behalf) either expressly or impliedly or otherwise gleaned by the Contractor (including any information relating to RWE's business or financial or other affairs or those of a member of RWE Group or RWE's Staff and including any personal data or information relating to information systems and/or networks);
- (c) any and all information and data (whether written or oral or disclosed in any other way including by electronic means) provided by or on behalf of RWE (or its Staff) to the Contractor (or its Staff) in connection with this Contract or the Good/Services, and any analyses, compilations or any document or data prepared either party which contain or reflect any such information or data relating to any processes, technical information, business secrets or know-how as well as the fact that the parties are working in connection with the Contract and Goods/Services and the status of this work and discussions.

Confidential Information includes information disclosed prior to the date of this Contract.

Confidential Information shall not include information which:

- (d) at the time of disclosure is in the public domain;
- (e) was already known to the Contractor at the time of its disclosure by RWE; and/or
- (f) at any time is lawfully acquired by or comes into the possession of the Contractor from any third party that is not bound by any obligation of confidentiality in relation to such Confidential Information and no breach of confidentiality has been involved in the information coming into the Contractor's possession.

The burden of proof regarding the non-confidential character of the information is with the respective party referring to the non-confidential character of the information.

**Contract** means the agreement for the Contractor to sell and RWE to purchase the Goods and/or Services, comprised of (in priority, unless otherwise specified by RWE):

- (a) the Purchase Order;
- (b) these Terms (as applicable at the Start Date); and
- (c) any attachments or Annexure(s) to the Purchase Order or these Terms issued by RWE.

**Contractor** means the party named in the Purchase Order, and includes that party's successors, administrators/liquidators, or permitted assigns or substitutes.

**Delivery Date** has the meaning given to it in clause 6.3.

**Good Industry Practice** means exercising the degree of diligence, skill, care, prudence, and foresight, which would reasonably and ordinarily be expected of a skilled, experienced, and professional, contractor engaged in the same type of work (including as to scope and complexity) as the Contractor, under the same or similar circumstances.

**Goods** includes:

- (a) all goods, equipment, materials, articles, or any other chattel, property or parts; and
- (b) all activities relating to the goods including design, manufacture, inspection, testing, expediting, quality assurance and control, packing, transport, delivery, work, installation, commissioning, or decommissioning,

to be supplied to RWE, or performed, by the Supplier under this Contract. The Goods may be generally described in the Purchase Order.

**IPR** means any intellectual property rights, including patent, trademark and service marks (registered or unregistered), copyright, and moral rights, or confidential information, or inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or techniques, or any other similar rights.

**Loss** means any cost (including any charge, deductible or premium payable in respect of any insurance and any cost of any adviser), expense, loss, damage or liability (including any charge, compensation, debt or fine), including those arising from any claim from a third party, whether present or future, ascertained or unascertained, actual, contingent or prospective, or (to the extent not against public policy or prohibited by Applicable Law) any fine or penalty, and whether arising under breach of contract, indemnification, in tort (including negligence), restitution, pursuant to statute or otherwise at law or in equity

**Proportionate Liability Legislation** means (a) in Victoria, the Wrongs Act 1958 (VIC), Part IVAA, (b) in New South Wales, the Civil Liability Act 2002 (NSW), Part 4, (c) in Queensland, the Civil Liability Act 2003 (Qld), Part 2, (d) in Western Australia, the Civil Liability Act 2002 (WA), Part 1F, (e) in South Australia, the Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA), Part 3 and the Planning, Development and Infrastructure Act 2016 (SA), (f) in Tasmania, the Civil Liability Act 2002 (TAS), (g) in the ACT, the Civil Law (Wrongs) Act 2002 (ACT) and the Building Act 2004 (ACT), and (h), in the NT, the Proportionate Liability Act 2005 (NT).

**Purchase Order** means the document titled "Purchase Order" (or similar) which includes a general description of the Goods and/or Services and the relevant price for those Goods and/or Services (including any special instructions). The Purchase Order may include requirements for the Goods and/or Services.

**RWE** means the entity named on the covering page of the Purchase Order, which may be RWE Renewables Australia Pty Ltd ACN 626 156 894 or any other member of the RWE Group.

**RWE Group** means *related bodies corporate or affiliates* (as those terms are defined in the *Corporations Act 2001* (Cth)) of RWE Renewables Australia Pty Ltd ACN 626 156 894, RWE Renewables Europe & Australia GmbH, or RWE Aktiengesellschaft (a

company registered in Germany with the commercial register being the district court of Essen with HRB 14525).

**RWE Materials** has the meaning given to it in clause 23.

**Services** means the services generally described in the Purchase Order to be performed by the Contractor under this Purchase Order, which may include:

- (a) any work, services, or deliverables to be performed in connection with the Goods; and
- (b) the creation or preparation of any document, solution, design, output, report, or deliverable.

**Site** has the meaning given to it in clause 6.3.

**Staff** means in respect of the relevant party, that party's employees, directors, officers, agents, personnel, staff, contractors, sub-contractors, or any other sub-party in the supply chain and their workers.

**Standards** means the:

- (a) standards published by Standards Australia Limited (ABN 85 087 326 690);
- (a) standards published by International Organisation for Standardization (ISO); and
- (b) any other domestic or international guideline, requirement, practice or standard, applicable in the same or similar circumstances (applying Good Industry Practice),

relevant to any activity in connection with the same type of work as the Contractor is performing under this Contract.

**Start Date** means the earlier of:

- (a) the date the Contractor accepts the Contract or is bound by the Terms in accordance with clause 1.6 or at Law;
- (b) any start date specified in any part of the Contract; or
- (c) the "Document date" specified in the Purchase Order.

In addition to the terms defined above, unless the context requires otherwise, a capitalised term has the meaning given to it by the words or context appearing prior that term being placed in (**Bold**) in these Terms.