1. AGREEMENT

Except to the extent otherwise agreed in writing between the parties:

(a) this Agreement governs the entire relationship between Engineering Applications Pty Ltd (ENAP) and the Client in connection with the Work and supersedes all earlier conduct and prior agreements, representations, communications and understandings between the parties in connection with the subject matter of this Agreement, whether oral or in writing; and

(b) any other document not included in this Agreement (including purchase order terms or procurement terms provided by the Client) shall have no force or effect.

This Agreement may only be varied by both parties' agreement in writing.

The laws of Queensland, Australia apply to this Agreement.

2. ACCEPTANCE OF QUOTATION

The Quotation is an offer open to acceptance by the Client within 30 days from the date on the Quotation. ENAP may withdraw the offer at any time prior to acceptance, and ENAP shall not be liable for any costs, losses, damages or expenses whatsoever in connection with the withdrawn Quotation.

The Client acknowledges the following will constitute acceptance of the offer:

(a) executing this Agreement;

(b) providing ENAP with a written or oral direction to commence the Work; or

(c) paying any tax invoice ENAP renders under this Agreement.

3. SECURITY

This Agreement excludes the provision of security by ENAP or the withholding of retention by the Client.

The Client represents and warrants that it is, and shall remain throughout the Agreement, financially capable to make payments to ENAP as required by this Agreement.

From time to time and at ENAP's request, the Client shall provide information satisfactory to ENAP to verify the Client's financial capability (including, by completing ENAP's standard credit approval forms as amended from time to time). Such information shall be provided within 5 days of ENAP's request.

If the Client fails to demonstrate its financial capability after any such request, ENAP may in its discretion suspend performance of the Work until such time that the Client demonstrates its financial capacity to make payments to ENAP as required by this Agreement. ENAP's suspension costs shall be a deemed Variation.

4. PERFORMANCE AND PAYMENT

ENAP shall perform the Work in accordance with this Agreement.

The Client shall pay ENAP the Price in accordance with this Agreement. For clarity:

(a) where the Quotation provides for a Quoted Price, the Client shall pay ENAP that Quoted Price; and

(b) where the Quotation includes a Budget Quotation only or the Work is to be carried out based on the Schedule of Rates, the Client shall pay ENAP:

(i) for Work covered by rates specified in the Schedule of Rates, the sum of the products ascertained by multiplying the measured quantity of each item of Work carried out by the applicable rate for the item specified in the Schedule of Rates;

(ii) for additional costs (including consumables and purchased items) not covered by rates in the Schedule of Rates, ENAP's actual costs plus mark-up for profit and overheads,

adjusted by any additions or deductions made pursuant to this Agreement.

Where the Quotation includes a Budget Quotation only, the Client acknowledges that it has informed itself of, and is bound by, the Schedule of Rates even where the Schedule of Rates is not attached to the Quotation.

Payments shall be made by direct payment into ENAP's bank account on or before the due date for payment.

If the requirement for a deposit is specified in the Quotation:

(c) promptly after acceptance of ENAP's offer under clause 1, ENAP shall submit a tax invoice for the amount of the deposit specified in the Quotation (**Deposit Tax Invoice**);

(d) the Client shall pay ENAP the amount of the Deposit Tax Invoice within 7 days of receipt of the Deposit Tax Invoice; and

(e) If the Deposit Tax Invoice is not paid, ENAP may in its discretion suspend performance of the Work until the deposit is received. ENAP's suspension costs shall be a deemed Variation.

ENAP shall claim payment of the Price progressively on the last day of each month for the earned value of Work done to that day of the month.

ENAP and the Client shall endeavour to agree the earned value in respect of each progress claim prior to its submission. If the earned value cannot be agreed, the earned value shall be as determined by ENAP acting reasonably.

Each progress claim shall be submitted to the Client in valid GST tax invoice format and shall include details of the value of the Work performed and may include details of other moneys then due to ENAP pursuant to provisions of this Agreement.

After receipt of a progress claim:

(f) if the Client does not dispute the progress claim within 10 business days of receipt, the progress claim is deemed to be approved; and

(g) the Client shall pay the amount owing to ENAP within 30 days of the date stated on the progress claim.

Progress claims shall be paid in full without any set-off or deduction unless expressly agreed by ENAP.

If the Client does not pay ENAP by the due date for payment, interest shall accrue at the rate stated in s 67P of the Queensland Building and Construction Commission Act 1991 (Qld).

5. NOMINATED DIMENSIONS

ENAP accepts no responsibility for quantities, dimensions or details provided by the Client or the Client's subcontractors as directed by the Client.

6. SITE SERVICES

Except to the extent expressly provided in the Quotation, all preliminaries (including parking, scaffolding and safety, ablutions and crib facilities, temporary power, lighting, storage, access to work areas, and temporary protection) shall be provided by the Client or its other contractors.

ENAP's costs of providing any such preliminaries shall be a deemed Variation.

7. TIME

ENAP shall perform the Work in accordance with the Client's schedule.

If performance of the Work is delayed for any reason beyond the control of ENAP, then:

(a) the time for performance of the Work shall be extended by the extent of the delay; and

(b) ENAP's additional costs and expenses in connection with the extension of time shall be added to the Price.

8. RISK AND TITLE

Upon delivery of Equipment to the Site, all risk in relation to such Equipment shall pass to the Client.

Unencumbered title and ownership in the Equipment shall not pass to the Client or any other company, individual, agent or customer of the Client until ENAP has been paid in full for such Equipment.

Until title and ownership so passes, the Client holds the Equipment as bailee for ENAP and shall store them separately from any other goods and in a manner which clearly identifies them as the property of ENAP and shall maintain the state and condition in which they were received.

If full payment for the Equipment is not received within the specified time, the Client grants ENAP an irrevocable licence to enter the Site and/or the Client's premises to remove all Equipment for which ENAP retains title and ownership. The Client indemnifies ENAP against all claims arising out of or in connection with ENAP's exercise of the licence granted under this clause.

9. SITE CONDITIONS

If ENAP becomes aware of a Latent Condition it shall promptly give the Client written notice of:

(a) the Latent Condition encountered and the respects in which it differs materially; and

(b) the additional work, resources, time and cost which the Contractor estimates to be necessary to deal with the Latent Condition.

The effect of the Latent Condition shall be a deemed Variation.

10. DEFECTS

Subject to clause1, during the performance of the Work until the expiration of the Defects Liability Period, the Client may give ENAP a direction to rectify any defect in the Works.

Within a reasonable time of receipt of such a direction, ENAP shall carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of the Works as is reasonably possible.

11. VARIATIONS

ENAP is not obliged to carry out any Variation which is outside the general scope of this Agreement.

A Variation may be directed by the Client or agreed by the parties.

The price of a Variation shall be agreed by the parties or, failing agreement, the price shall be determined as follows:

(a) for Work covered by the rates in the Schedule of Rates, the Schedule of Rates shall apply; and

(b) for Work and additional costs (including consumables and purchased items) not covered by rates in the Schedule of Rates, reasonable rates or prices shall apply, with mark-up for profit and overheads.

That price shall be added to the Price.

12. LIMITATION OF LIABILITY

ENAP shall not be liable in any circumstances:

(a) for any damage to any property of whatsoever kind situated in, or adjacent to the Site resulting from Work supplied or performed in accordance with this Agreement;

(b) for any defects in the Work unless the Client notifies ENAP within 14 days of the date of when the defect occurred, which notice shall be a condition precedent to any right to

recover by the Client in respect of the alleged defect;

(c) for any Consequential Loss;

(d) for any damages (whether liquidated or otherwise) for delay; and

(e) for any costs, losses, damages or expenses arising from Equipment supplied by ENAP being placed or installed by others.

ENAP's total aggregate liability in all circumstances is limited to the Price.

13. TAXES AND OTHER CHARGES

Unless expressly stated in the Quotation, the Price does not include any statutory or government charges. Should any such charges or other any other tax become payable by ENAP, such charges shall be added to the Price.

It is agreed that the Price is exclusive of GST.

Notwithstanding any other clause in this Agreement, if any supply made under or in connection with this Agreement constitutes a taxable supply, then the recipient of the supply of goods or services ("**the Recipient**") must determine and pay to the supplier of the goods or services ("**the Supplier**") the amount of GST required to be accounted for by the Supplier to the Commissioner of Taxation in respect of the supply in addition to any amount or consideration expressed as payable elsewhere in this Agreement.

14. PERSONAL PROPERTY SECURITIES ACT

(a) The Client acknowledges and agrees that this Agreement:

(i) constitutes a security agreement for the purposes of the PPSA; and

(ii) create a security interest in:

(A) all Equipment previously supplied by ENAP to the client (if any);

(B) all Equipment that will be supplied in the future by ENAP to the Client;

(C) the proceeds of sale of all Equipment (whether already supplied or to be supplied) by the Client; and

(D) all present and after acquired personal property of the Client,

to secure payment of all monies (including but not limited to the price payable for the Equipment and any interest) owing by the Client to ENAP from time to time under this Agreement and under any other agreement or arrangement between the Client and ENAP.

(b) The Client undertakes to:

(i) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which ENAP may reasonably require to:

(A) register a financing statement or financing change statement in relation to a security interest on the register and otherwise do all things necessary and required by ENAP to ensure that any security interest registered by ENAP is a perfected security interest under the PPSA;

(B) register any document on any register reasonably necessary to secure ENAP's interest under this Agreement;

(C) register any other document required to be registered under the PPSA; or

(D) correct a defect in a statement referred to in clauses 14(b)(i)(A), 14(b)(i)(B) or 14(b)(i)(C);

(ii) indemnify, and upon demand reimburse, ENAP for all expenses incurred in registering a financing statement or financing change statement on the register or releasing any Equipment that are the subject of a security interest;

(iii) not make an amendment demand in respect of a security interest, apply to the Registrar to register a financing change statement in respect of a security interest, without the prior written consent of ENAP; and

(iv) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the prior written consent of ENAP; and

(v) immediately advise ENAP of any material change in its business practices of selling the Equipment which may result in a change in the use of the Equipment by the Client or in the nature of proceeds derived from the sale of the Equipment.

(c) The Client and ENAP agree that sections 96 and 125 of the PPSA do not apply to the security interest created by this Agreement.

(d) The Client hereby waives its rights to receive notices, information or statements (as the case may be) under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA and its rights as a grantor and/or a customer under sections 142 and 143 of the PPSA.

(e) Unless otherwise agreed to in writing by ENAP, the Client waive the Client's right to receive a verification statement in accordance with section 157 of the PPSA.

(f) The Client unconditionally ratifies any actions taken by ENAP under clauses 14(c) to 14(e).

(g) The provisions of this clause 14 will survive termination of this Agreement or any other agreement between ENAP and the Client for the sale of Equipment, for whatever reason.

(h) For the purposes of this clause 14 the expressions, "financing statement", "financing change statement", "register", "Registrar", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given to them under, or in the context of the PPSA.

15. TERMINATION

If this Agreement is terminated for any reason, the Client shall pay ENAP:

(a) the value the Work completed by the ENAP up to the time of termination;

(b) the costs of materials and equipment reasonably ordered by ENAP for the Work, which ENAP is liable to accept and which the Client has not already paid for, but only if they will be the Client's property upon payment; and

(c) the costs of removing temporary works and construction plant from the Site.

16. DEFINITIONS AND INTERPRETATION

In this Agreement, unless the context otherwise requires:

"Agreement" means the agreement between ENAP and the Client set out in:

(a) these Conditions;

(b) the Quotation; and

(c) if the Quotation includes a Budget Quotation, the Schedule of Rates.

"Budget Quotation" means an estimated (and non-binding) total Price for the Work.

"Client" means the customer named on the Quotation, and if no customer is named, the customer for whom the Work is performed.

"Conditions" means these conditions.

"Consequential Loss" means loss of revenue, loss of profits, loss of anticipated savings or business, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss and any form of consequential, special, indirect, punitive or exemplary loss or damages, however it arises (including as a result of negligence).

"Defects Liability Period" means 12 months from Practical Completion.

"ENAP" means Engineering Applications Pty Ltd ABN 93 135 980 111.

"Equipment" means the goods to be supplied or supplied by ENAP pursuant to this Agreement.

"Latent Conditions" are physical conditions on the Site and its surroundings, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by ENAP entering into this Agreement.

"PPSA" means the *Personal Property Securities Act 2009* (Cth).

"PPS Law" means the PPSA and any amendment made at any time to the *Corporations Act 2001* (Cth) or any other legislation as a consequence of the PPSA.

"Practical Completion" means that stage when the Work is complete except for minor defects or omissions that do not prevent the Client's use of the Works.

"Price" means the price shown on, or worked out under, the Quotation.

"Quotation" means the quotation to which these Conditions are attached, including any other documents referenced in the quotation.

"Quoted Price" means the fixed price for the Work.

"Schedule of Rates" means the ENAP schedule of rates current at the time of the Quotation.

"Site" means the location for the performance of the Work.

"Variation" means to vary the Work and includes:

(d) increasing, decreasing or omitting any part of the Work;

(e) changing the character or quality, or sequence or timing, of the Work;

(f) changing the levels, lines, positions or dimensions; and

(g) carrying out additional Work.

"Work" means the work and other things which ENAP is or may be required to execute or provide under this Agreement, as described in the Quotation, and which may include the Equipment, supply and delivery of the Equipment, services, variations and remedial work.

"includes" or **"including"** means includes or including without limitation and words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.