

BGC Asphalt & Quarries Engagement & Purchase Order: Terms and Conditions

Definitions

BGC means the BGC entity listed on the Confirmation of Engagement letter to which these Terms apply and the authorised agents, employees, heirs and successors of that BGC entity.

Chain of Responsibility means the road transport laws contained in the *Road Traffic (Administration) Act 2008 (WA)*, the *Road Traffic (Vehicles) Act 2012 (WA)* and the *Road Traffic (Vehicles) Regulations 2014 (WA)* as amended from time to time.

CLA means the *Civil Liability Act 2002 (WA)* as amended from time to time.

Company has the meaning provided for under the *Corporations Act 2001 (Cth)* as amended from time to time.

Contractor means the party who will supply the Goods and/or Services in consideration for payment of the Price.

Contractor Personnel means the Contractor's employees, agents suppliers or subcontractors.

Defective means (regarding any Goods or Services or any part of them) that those Goods or Services (or part of them) do not accord with the Engagement or are damaged, deficient, faulty, inadequate, or incomplete.

Delivery Address means the address described as the address in the Engagement to which the Goods are to be delivered and/or the address where the Services are to be performed.

Delivery Date means the delivery date specified in the Engagement.

Employment Law means any law regarding the employment of employees including any act, regulation or industrial instrument (including awards and enterprise agreements) whether State or Federal, dealing with the entitlements, terms and conditions of employment and/or income taxation of employees, including but not limited to income tax legislation, superannuation legislation, industrial relations or workplace relations legislation (including but not limited to the *Fair Work Act 2009 (Cth)*, long service leave legislation and workers' compensation legislation).

Engagement means the engagement of the Contractor by BGC for the provision of the Goods and/or Services as set out in the Confirmation of Engagement letter, these Terms and any Instructions given by BGC.

Goods means the goods, if any, described in the Engagement.

"GST", "GST Law" and other GST related terms used in the Engagement and these Terms have the meanings given to them by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* as amended from time to time.

Illegal Worker means a person who is an Unlawful Non-Citizen who is working without a visa or a Non-Citizen who is performing work in breach of a Visa Work Condition (as set out in Schedule 8 of the *Migration Regulations 1994*), as those terms are defined in the *Migration Act 1958* and the *Migration Regulations 1994*, as amended from time to time.

Instruction(s) means the lawful and reasonable directions of BGC provided to the Contractor to supplement and compliment these Terms, including but not limited to, any schedules or annexures to these Terms.

Law means any: Commonwealth, State or local government legislation (including regulations, bylaws, orders, awards and proclamations); common law or rule of equity; authority requirements, consents, certificates, licenses, permits or approvals (including conditions in respect of those consents, certificates, licenses, permits and approvals); and guidelines of

authorities with which the Contractor is legally required to comply.

Notice means notice given verbally or in writing. Written Notices are effective once sent to a registered business address or email.

Owner-Driver has the meaning provided for in the *Owner-Drivers (Contracts and Disputes) Act 2007 (WA)*.

Price means the price set out in the Engagement, or as otherwise advised by BGC, which is inclusive of all currency fluctuations, charges for tax and duties (except GST) and of all costs and charges that BGC will pay for the Goods and/or Services including all charges for packing, insurance and delivery of the Goods and the cost of any items used or supplied in the performance of the Services.

Services means the services, if any, described in the Engagement.

Site means the Delivery Address and/or BGC's premises at any other location where the Contractor is required to provide Goods or Services to BGC.

Terms means the terms and conditions set out in this document.

Warranty Period means the period of 7 years commencing on the date of delivery of the Goods and/or 7 years commencing on the date on which the Services are completed.

General

The Contractor will supply to BGC the Goods and/or perform the Services in accordance with the Instructions in consideration of payment of the Price by BGC.

No Contractor's terms and conditions, howsoever provided, form part of the Engagement (even if any representative of BGC signs those terms and conditions and/or annexes the terms and conditions to this Engagement). The parties agree that any amendments to these Terms can only be made in writing signed by authorised officers or employees of both parties, including any inclusion of special conditions in or attached to any purchase order.

The parties' relationship is one of principal and independent contractor, not employer and employee or principal and agent. There is no partnership arrangement between the parties. No contractual relations will arise between BGC and any of the Contractor Personnel as a result of the Contractor and BGC's relationship. If, notwithstanding these Terms, there is a deemed employment relationship (as a result of any Employment Law) then the Price is in satisfaction of all minimum entitlements under the relevant Employment Law including (without limitation) any payroll or fringe benefit tax, superannuation contributions, workers' compensation claims, termination payments, salary, overtime, penalties and statutory leave.

The Contractor does not have the right or authority to act on behalf of or bind BGC unless the Contractor has been expressly authorised to do so by BGC in writing.

The Contractor will ensure that all Contractor Personnel faithfully, skilfully and diligently perform the Services in a careful, competent, professional and responsible manner and comply with these Terms.

The Contractor acknowledges that it is independent from BGC and the Contractor will be responsible for all employment and industrial relations issues regarding all Contractor Personnel.

The Contractor must provide to BGC all such information and assistance as BGC reasonably requires to identify, evaluate, implement and report on any matter required by any Law in respect of anything used, produced or created in connection with the performance of the Contractor's obligations under these Terms.

The Contractor must not interfere with BGC's activities or the activities of any other person at the Delivery Address or the Site.

The Contractor must ensure that any Contractor Personnel working pursuant to these Terms have satisfactorily completed any Site induction processes required by BGC or BGC's customers as a requirement for entry to their respective Sites. Such induction will be at the cost of the Contractor unless otherwise agreed by BGC in writing.

The parties agree that the *Sale of Goods (Vienna Convention) Act 1986 (WA)* does not apply to the Engagement or these Terms.

The Contractor agrees that throughout the Engagement BGC and its clients may carry out continuous and ongoing computer, camera, mobile phone and tracking surveillance including through the use of any technology provided to the Contractor or any Contractor Personnel.

The Contractor acknowledges that any information transmitted, received or stored by the electronic systems of BGC or its clients may be monitored and, in appropriate circumstances, used by BGC for purposes associated with its business including internal reporting, compliance, security, safety, oversight and marketing.

Electronic systems used by BGC and its clients will be regularly reviewed to keep up to date with advancements in technology and may result in the method and results of surveillance in the workplace changing from time to time.

Delivery and time for performance

The Contractor must deliver the Goods to the Delivery Address and/or provide the Services by the Delivery Date as required by the Instructions and these Terms.

The Contractor must ensure that the Goods are suitably packed to avoid damage in transit or in storage and in such a way to comply with any applicable laws including but not limited to the Chain of Responsibility road transport laws.

If the Contractor fails to deliver all required Goods and/or Services by the Delivery Date BGC may:

- acting reasonably, reject all or part of the Goods and/or Services;
- terminate the Engagement at any time until full delivery of all required Goods and/or Services by giving Notice to the Contractor and no payment or part payment for any Goods and/or Services undelivered or rejected will be payable;
- set off against the Price any additional costs incurred by BGC as a consequence of the Contractor's failure to supply the Goods and/or Services by the Delivery Date; and/or
- exercise any other rights or remedies available to BGC under these Terms or any Law.

Title and risk

Title in the Goods passes to BGC upon the earlier of the payment of the Price or delivery of the Goods to the Delivery Address.

Risk in the Goods passes to BGC when the Goods are delivered to the Delivery Address.

Price

BGC will pay the Price for the Goods and/or Services in the Engagement after they have been delivered and/or performed.

On delivery of the Goods and/or performance of the Services, the Contractor must provide to BGC, if BGC directs, a tax invoice which includes:

- a reference to the Engagement and these Terms including any purchase order or contract number;
- a detailed description of the delivered Goods and/or performed Services, including the date of delivery and/or period of Services and the relevant quantity of the Goods and/or Services; and
- an individual reference number for BGC to quote with remittance of payment.

If BGC requests, the Contractor must provide BGC with all relevant records to calculate and verify the amount set out in any tax invoice.

Provided that the Contractor has complied with the paragraphs above, BGC will pay each tax invoice provided by the Contractor within 30 days (or such other period as the parties agree) of the date on which the relevant tax invoice is generated (in the case of a recipient created tax invoice) or the date on which the relevant tax invoice is received by BGC, except where BGC:

- is required by Law to pay within a shorter timeframe, in which case BGC must pay within that timeframe;
- exercises any right to retain, withhold, reduce or set-off any amount due to the Contractor; or
- is required by Law to withhold a portion of payment for Goods or Services rendered by a foreign Contractor.

Payment by BGC does not constitute an acceptance by BGC that the Goods and/or Services are not Defective and does not in any way affect BGC's rights under the Engagement, these Terms or any Law.

Quality

The Goods and/or Services must match the description (if any) referred to in the Engagement.

If the Contractor gives BGC a sample of the Goods or a demonstration of the Services, the Goods and/or Services must be of the same nature and quality as the sample or demonstration given.

The Goods and/or Services must be fit for the purpose for which Goods and/or Services of the same kind are commonly supplied or bought and for any other purpose BGC specifies.

The Goods must be of merchantable quality, unencumbered and (unless otherwise specified in the Engagement) new.

The Contractor must ensure that BGC has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Contractor must pursue any manufacturer's warranties on BGC's behalf if BGC so requests).

The Services must be provided by persons who are appropriately licensed, qualified and trained.

The Contractor must comply with any Law regarding safety applicable to the supply of Goods and/or the performance of Services. The Contractor must ensure that any person or entity employed or engaged by the Contractor, including but not limited to Contractor Personnel, is aware of and complies with safety Laws.

If the Goods are Defective or otherwise do not comply with these Terms, the Contractor must replace the Goods at the Contractor's cost and BGC may terminate the Engagement at no cost to BGC.

If the Goods are Defective or otherwise do not comply with these Terms, BGC may hold the Goods for the Contractor at the Contractor's risk. The Goods will be returned at the Contractor's cost.

If the Services are Defective or otherwise do not comply with these Terms, the Contractor must, if requested by BGC, re-

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perform the Services at the Contractor's cost and BGC may terminate the Engagement at no cost to BGC.

No guarantee of work or income

BGC does not guarantee to provide the Contractor with any minimum number of hours of work or any minimum income level during the Engagement.

Warranties

The Contractor warrants that:

- (a) it will provide the Goods and/or Services in a safe manner free from risks to health and safety including (without limitation) in compliance with all safety Laws;
- (b) the Contractor, and all Contractor Personnel have the appropriate level of skill, training and competence to perform the Services safely and to a reasonable standard of workmanship expected in the profession or industry of the Contractor and the Contractor Personnel;
- (c) the Contractor and all Contractor Personnel will comply with all relevant Laws in the performance of the Services and/or supply of Goods;
- (d) the Contractor and all Contractor Personnel will comply with all relevant Chain of Responsibility obligations in the performance of the Services and/or supply of Goods;
- (e) there is no prohibition or restriction or other obligation which would preclude, prevent or hinder the Contractor or the Contractor Personnel from providing the Goods and/or Services in accordance with these Terms;
- (f) the Contractor and all Contractor Personnel will comply with all relevant policies and procedures of BGC;
- (g) it will take all steps needed to ensure that BGC is not subject to any claim or finding that the Contractor and/or any Contractor Personnel are deemed to be employees of BGC;
- (h) information, documentation and certification provided to BGC is accurate, valid and in good order;
- (i) the Contractor will not engage in any action that could conflict with BGC's rights or with the Contractor's obligations under these Terms; and
- (j) the Contractor is aware that BGC is relying on these warranties.

The Contractor indemnifies BGC in respect of any and all claims giving rise to liability on the part of BGC in respect of a breach of this warranty clause howsoever such claims arise.

Warranty Period

If, during the Warranty Period, any of the Goods or Services are found to be Defective or otherwise fail to comply with these Terms, BGC may:

- (a) return the Defective Goods to the Contractor at the Contractor's cost;
- (b) require the Contractor to repair or make good the Defective Goods or re-perform or make good the Defective Services.

If required by BGC, the Contractor must:

- (a) repair or replace the Defective Goods or re-perform or make good the Defective Services all at its own cost, and/or
- (b) reimburse BGC for any expenses incurred by BGC in repairing, re-performing or making good (as the case may be) any Defective Goods or Services.

The Contractor must pay for any damage made by the Contractor or any Contractor Personnel (or arising from Defective Goods or Services) to property on or near any Sites.

The Contractor must assign the benefits of any warranties provided by manufacturers of the Goods or materials and other components that are used in the performance of these Terms where BGC will ultimately take ownership of those Goods, materials or components.

This clause does not affect BGC's rights to terminate the Engagement for breach.

Indemnities

The Contractor must indemnify BGC and agrees to hold BGC harmless from all claims for the following circumstances.

- (a) Any willful, reckless or negligent act or omission and any breach or non-performance of the Engagement or these Terms by the Contractor or the Contractor Personnel (including, without limitation, for legal fees on a solicitor-client basis).
- (b) Any performance of the Services that infringes the intellectual property rights of any person.
- (c) Any damage to property or injury or death of any person caused or contributed to by the Contractor and/or the Contractor Personnel.
- (d) Any actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against BGC or which BGC may pay, sustain or incur as a direct or indirect result of any claim brought by, or in respect of, the Contractor and/or any Contractor Personnel in relation to an Employment Law including workers' compensation insurance payments, annual leave and long service leave accruals and payments, notice payments, redundancy payments, unfair or unlawful dismissal verdicts and taxation (including, without limitation, PAYG tax instalment deductions, superannuation guarantee contributions and payroll tax payments) or any other such payments that BGC may be required to pay in relation to or arising out of the provision of the Goods and Services.
- (e) Damage to or destruction of any property belonging to the Contractor or in the Contractor's possession or under the Contractor's control except to the extent the claim for such damage or destruction arises solely as a result of BGC's negligence or breach of the contract constituted by the Engagement by BGC.
- (f) Failure by the Contractor to comply with any Law including the payment of any taxes required at Law or in accordance with the Engagement or these Terms.

Right to work

The Contractor must:

- (a) ensure that each person engaged by the Contractor would not, in doing the work for which they are engaged, be an Illegal Worker;
- (b) provide evidence to BGC prior to that person commencing that they would not be an Illegal Worker; and
- (c) notify BGC in writing within 14 days of the Contractor becoming aware that a person engaged by the Contractor is an Illegal Worker.

The Contractor must make compliance by any subcontractors with the provisions of this clause a condition of any subcontract and must monitor such compliance of its subcontractors.

The Contractor must remove, or cause to be removed, any Illegal Worker from any involvement in the provision of the Services or the Contractor's obligations under these Terms.

Equipment

The Contractor will supply its own plant and equipment as required for the performance of the Services or for the provision and installation of the Goods.

Variations

No variations to the Goods or Services required under the Engagement or these Terms are to be made unless agreed in writing between BGC and the Contractor.

Insurance

The Contractor will use reasonable endeavours to obtain, and maintain, the following insurances on terms to the reasonable satisfaction of BGC:

- (a) public and products liability insurance which:
 - (i) names BGC and extends cover to BGC as Principal;
 - (ii) provides a waiver of subrogation; and
 - (iii) has a limit of indemnity of at least \$10 million.
- (b) If the Contractor is a sole trader or partnership, income protection insurance to cover the Contractor in circumstances of a work related injury or illness which prevents the Contractor from attending work;
- (c) If the Contractor is a Company, workers compensation and employer's liability insurance, covering all claims and liabilities in respect of any statutory to common law liability for the death, injury or illness of or to any person employed by (or deemed to be employed by), the Contractor including, but not limited to, the Contractor Personnel;
- (d) any other insurance required by Law in force; and
- (e) if the Contractor is an Owner-Driver:
 - (i) Goods in transit insurance;
 - (ii) If the Contractor owns or rents a single trailer then Trailer in Control insurance with minimum coverage of \$100,000 is required;
 - (iii) If the Contractor has multiple trailers, or BGC is supplying trailers to the Contractor, Comprehensive Trailer in Control insurance with minimum coverage of \$300,000 is required;
 - (iv) third party insurance; and
 - (v) either Owner-Driver insurance or hirer insurance as appropriate.

Owner-Drivers

Where the Contractor is an Owner-Driver, the following provisions apply.

Owner-Drivers acknowledge that they are aware that the "Guideline Rates" and "Owner-Driver (Contracts and Disputes) Act 2007 Pamphlet" are available either online at www.transport.wa.gov.au or upon request from BGC.

BGC may refuse for the Services to be provided by a particular driver where BGC has reasonable grounds to believe that such a driver is:

- (a) not a fit and proper person, or sufficiently qualified or capable person to perform the Services; or
- (b) not acceptable to BGC or a customer of BGC for reasonable and lawful grounds.

The Owner-Driver will ensure that their vehicle used to perform the Services or deliver the Goods is maintained in a mechanically sound, properly painted and clean condition that is fit for the purposes of providing the Services or delivering the Goods to BGC.

The Owner-Driver will promptly advise BGC if any vehicle used in the provision of the Services or the delivery of the Goods is involved in any accident or subject to any damage.

The Owner-Driver is responsible for all working expenses and statutory charges, including tolls, incurred in the course of their business, unless otherwise specified in writing by BGC.

Where the Owner-Driver is obliged to take mandatory rest or meal breaks under a Law, such rest breaks will not be paid for as time worked. To the extent possible without otherwise breaching this provision, the Owner-Driver must take meal breaks at a convenient time to BGC having regard to BGC's requirements.

The Owner-Driver is not entitled to any payment from BGC during any period of non-performance of the Services or the delivery of the Goods as required by these Terms.

The Price paid by BGC for the performance of the Services or the delivery of the Goods is in full and final settlement of any statutory liabilities that may be payable by BGC to the Owner-Driver.

Goodwill

Under no circumstances may the Contractor and/or Contractor Personnel:

- (a) if an Owner-Driver, dispose of their vehicle to any other person and charge or receive goodwill as part of that sale;
- (b) sell or offer to sell, the rights under or in connection with these Terms or any future contract in consideration of receiving goodwill;
- (c) claim a right to introduce any new person or entity to the work to be performed under these Terms; and/or
- (d) make any representation to any person, whether written or verbal, implied or direct, that they have the right to do any of the matters referred to in paragraphs (a) to (c) above.

Without limiting any other right or remedy which may be available to BGC, BGC may regard a breach of this clause as a material breach of these Terms and may immediately terminate these Terms.

In this clause "goodwill" means any payment, benefit or premium, however described, which is paid by a purchaser, with the express or implied representation that the purchaser will obtain rights under these Terms with BGC or have any rights or expectation to continue to supply Goods or Services to BGC.

No waiver

A waiver or relaxation of the requirements of these Terms will only be valid if expressed in writing and supplied by BGC to the Contractor.

Waivers will only apply to the particular occasion to which the waiver relates, will be restricted to its terms and will not be of a continuing nature.

Jurisdiction

The Engagement and these Terms will be governed by and construed with reference to the laws of the State of Western Australia and the parties submit to the exclusive jurisdiction of the Western Australian Courts.

Dispute resolution

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If a dispute or difference arises between BGC and the Contractor in respect of any fact, act, matter or thing arising out of or in any way connected with the Engagement or these Terms and one party requires the dispute of difference to be resolved, then that party will promptly give the other party a written Notice giving details of the dispute.

Within 14 days of a party receiving a written Notice BGC and the Contractor and/or their delegates must meet and attempt to resolve the dispute in good faith.

If, within 14 days of the meeting, the dispute is still not resolved, then, either party may proceed to litigation.

Cancellation - Goods

BGC may cancel all, or any portion of, an Engagement relating to Goods at any time by giving Notice to the Contractor and BGC will only be liable for the cancellation of any custom-made Goods for which BGC does not take delivery.

BGC's liability for such Goods will be the lesser of:

- the Contractor's actual price for raw materials, components, work in progress and any finished units on hand at the time of such cancellation that are attributable to the cancelled portion of the Engagement; or
- the Price per finished unit, after giving effect to any discount BGC would otherwise be entitled to, for the cancelled portion of the Engagement.

Cancellation - Services

BGC or the Contractor may terminate all, or any part of, an Engagement for Services with effect from 30 days after giving the other party Notice, unless a shorter period is agreed in writing between the parties in the Confirmation of Engagement letter.

BGC's liability for the cancellation of Services, will be the lesser of:

- the Contractor's actual cost of the Services rendered up to cancellation taking effect; or
- the Price for the Services cancelled up to cancellation. If any hourly or other time-based rate for Services is specified in the Engagement, such rate will be used in determining the Contractor's actual costs. In no case will BGC be liable for the Contractor's lost profits as a result of any cancellation.

Cancellation - General

Upon receipt of a cancellation Notice, the Contractor will, unless otherwise directed, cease work and follow BGC's directions as to disposal of work in progress and finished Goods.

The rights set out in these Terms compromise the Contractor's sole entitlements upon cancellation of the Engagement.

Termination

The Engagement and these Terms may also be terminated by a party (**Non-Defaulting Party**) at any time effective immediately upon the giving of Notice if:

- the other party (**Defaulting Party**) materially breaches any Terms or the Engagement and does not remedy that default within a reasonable time, and in any event no longer than 7 days of Notice requiring it to be remedied; or
- the Defaulting Party is unable to pay its debts as and when they fall due, goes into bankruptcy or a controller (as that term is defined in the *Corporations Act 2001 (Cth)*) is appointed in respect of the Defaulting Party.

If the Engagement or these Terms are terminated by BGC, BGC may have the Contractor's obligations performed by another party.

The Defaulting Party will be responsible for, and will indemnify the Non-Defaulting Party against, any damages, costs (including, without limitation, legal fees on a solicitor-client basis), losses and expenses, incurred by the Non-Defaulting Party as a result of the breach.

On termination of the Engagement or these Terms, each party retains its rights against the other party in respect of any past breach, in addition to any other rights, powers or remedies provided by Law.

The rights set out in these Terms compromise the Contractor's sole entitlements upon termination of the Engagement.

Goods and Services Tax (GST)

Unless otherwise stated, the Price or other amounts payable by BGC to the Contractor, are exclusive of GST.

If a Supply under these Terms is subject to GST, BGC will pay to the Contractor an additional amount equal to the amount for the amount multiplied by the prevailing GST rate.

The additional amount is payable at the same time as the amount payable for the supply is to be paid. However, the additional amount need not be paid until the Contractor provides a Tax Invoice to BGC.

If the amount of GST payable is found to differ from the amount paid in relation to a Supply then:

- the Contractor will refund to BGC the excess amount of GST paid to; or
- BGC will pay the difference to the Contractor in circumstances where the GST is less than the amount required to be paid under the GST Law.

If either BGC or the Contractor is entitled to be reimbursed or indemnified under the Engagement, the amount to be reimbursed or indemnified by either party is to be the GST exclusive amount. For the avoidance of doubt, the amount of any reimbursement does not include any amount attributable to GST for which either BGC or Contractor is entitled to an Input Tax Credit.

Entire agreement

These Terms contain the entire understanding between the parties and supersede all prior communications and agreements between the parties, including any prior written or verbal undertakings or statements.

The parties acknowledge that, except as expressly stated in these Terms, they have not relied on any representation, warranty or undertaking of any kind made by or on behalf of the other party in relation to the subject matter of these Terms.

No assignment

Subject to the "No relief" clause below, the rights and obligations of the Contractor under these Terms are personal and cannot be assigned, charged or otherwise dealt with and the Contractor will not attempt or purport to do so, without the prior written consent of BGC.

No relief

Consent given by BGC to any assignment of these Terms does not relieve the Contractor from the obligations in, or liabilities arising from, these Terms, and in all respects the Contractor will remain obliged and liable for:

- the performance of these Terms; and

- the acts or omissions of any Contractor Personnel or assignees.

Proportionate liability

The provisions of Part 1F of the CLA are specifically excluded from these Terms and have no operation or application to the rights, obligations and liabilities of BGC and the Contractor under these Terms with respect to any matter to which Part 1F of the CLA applies.

To the fullest extent permitted by law, the parties agree that the provisions of Part 1F of the CLA:

- are specifically excluded from any subcontract or other agreement entered into pursuant to these Terms by the Contractor; and
- have no operation or application to the rights, obligations and liabilities of the parties under any subcontract or other agreement entered into pursuant to these Terms by the Contractor, with respect to any matter to which Part 1F of the CLA applies.

Personal Property Securities regime

For the purposes of this clause, the following definitions apply:

BGC Property means all property in which BGC has an interest under the terms of the Transaction Documents or Security Interest for the purposes of the PPS Law.

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

PPSA Law means the PPSA and any amendment made at any time to any other law as a consequence of the PPSA.

Security Interest has the meaning given to that term in section 12 of the PPSA.

Transaction means any transaction contemplated by or in connection with any Transaction Document.

Transaction Document means:

- these Terms and any purchase order.
- any document or agreement which BGC advises and determines to be a transaction document for the purposes of these Terms and any purchase order.
- any document or written agreement that is entered into under any of the above.
- any written undertaking by or to a part or its lawyers that is given under or related to any of the above.

Unless defined for the purposes of this clause, or the Definitions clause of these Terms, terms used in this clause have the meaning given to them in the PPSA.

PPS Law

To the extent permitted under the PPS Law, the parties agree to the provisions in this clause.

- If, in BGC's opinion:
 - any
 - Transaction Document contains; or
 - any of the Transactions create,

a Security Interest for the purposes of the PPS Law; or

- the PPS Law does or could affect BGC's rights or obligations under or in connection with the Transaction Documents or any of the Transactions,
- The Contractor agrees that BGC may, at its absolute discretion, do any of the things contemplated below.

- register, or give any notification in connection with, any relevant Security Interest;
- exercise rights in connection with the Security Interest; or
- give notice to the Contractor requiring it to provide all requisite information, and do anything, at the Contractor's expense (including amending any Transaction Document, executing any new document or agreement, obtaining consents and supplying information) that BGC requires to:
 - ensure that any Security Interest is enforceable, perfected and otherwise effective;
 - register, or give any notification in connection with, any Security Interest in order to confer the priority BGC requires;
 - exercise rights in connection with the Security Interest; or
 - ensure that its right and obligations are not adversely affected, or that its position is improved.

- The Contractor must comply with any notice received pursuant to clause (c) above within the time stipulated in the notice.

- The Contractor gives BGC a power of attorney to complete and execute any and all documentation to give effect to clause (c) above.

- If

- clause (a) above applies; and
- BGC determines (after doing all things reasonably practicable under clause (b)) that its rights or obligations under or in connection with the Transaction Documents or any other document in connection with the Transactions have been or will be materially adversely affected,

BGC may give notice to the Contractor cancelling all or any of these Terms, any purchase order and/or the Transaction Documents or any other document in connection with the Transactions and requiring:

- full repayment of all outstanding monies; and
- the return of all BGC Property within the control of the Contractor,

within 30 days after the date of notification.

Contractors representations, warranties, acknowledgements

- The Contractor represents and warrants for the purposes of section 115 of the PPSA that BGC Property is commercial property.
- The Contractor acknowledges that where BGC Property, over which a Security Interest attached, gives rise to Proceeds then the Security Interest continues in BGC Property and attached to the Proceeds.
- The Contractor acknowledges that BGC has entered into these Terms in reliance on the representatives, warranties and acknowledgements in this clause.

Contractor's undertaking

- If the Contractor holds any Security Interest and failure to perfect any such Security Interest would materially adversely affect its business, the Contractor must establish

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and maintain suitable PPS Law procedures to ensure that it effectively:

- (i) perfects and registers all such Security Interests;
 - (ii) takes all steps under the PPS Law to continuously perfect all such Security Interests;
 - (iii) obtains the highest ranking priority possible for all such Security Interests (such as perfecting a Purchase Money Security Interest or perfecting a Security Interest by Control); and
 - (iv) takes all necessary action to reduce the risk that a third party acquires an interest free of the Security Interest (such as by including the Serial Number in a Financing Statement for Personal Property that may or must be described by a Serial Number).
- (b) Everything the Contractor is required to do to comply with this clause is at the Contractor's expense.

General PPS Law provisions

- (a) If BGC reasonable suspects that the Contractor is not complying with any of these PPS Law provisions and requests an audit of the Contractor's PPS law procedures, the Contractor must arrange such an audit at its expense.
- (b) The audit must be found satisfactory to BGC, acting reasonably, and any recommendations from the audit must be implemented by the Contractor immediately.
- (c) The Contractor agrees to pay or reimburse the costs of BGC in connection with anything the Contractor is required to under this clause.
- (d) The Contractor is irrevocably and unconditionally waives its right to receive from BGC any notice under the PPL Law (including notice of a Verification Statement) unless required by the PPS Law and if the notice cannot be excluded.
- (e) The Contractor must not registered a Security Interest against BGC without BGC's prior written consent.
- (f) The Contractor must notify BGC immediately of any change in its name, address, and any other information provided to BGC to enable BGC to register a financing change statement under the PPS Law if required.
- (g) The parties agree that the subject matter referred to in section 275(1) of the PPS Law is confidential and each party must not disclose any such information to a third party.