



Supply Contract

[*Project name*]

Date [*Date*]

Parties

HL Landscapes Pty Ltd (ABN 92 119 886 734) (HLL)

PO Box 130 Northgate QLD 4551

[*Party 2 full name*] (Supplier)

[*Address*]

Background

- A. HLL has engaged the Supplier to Supply the Goods in accordance with the Subcontract.
- B. The Supplier has agreed to Supply the Goods to HLL for the Price in accordance with the Subcontract.

Execution

Executed as an Agreement.

[*Add appropriate execution blocks for each party.*]

Executed by [*Company name and ACN*] in accordance with section 127(1) of the *Corporations Act 2001* (Cth)

Signature of director	←	Signature of director / company secretary	←
Full name of director		Full name of director / company secretary	
Signed by [*Full name*] in the presence of		Signature	←
Witness signature	←		
Witness full name			
Witness address			

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Operative provisions

1. Definitions

These meanings apply unless a contrary intention is specified:

Approval includes any necessary consent, licence, permit and confirmation from any local, state or federal government body or any instrumental or representative body in order to lawfully Supply the Goods.

Business Day means every day, excluding Saturdays, Sundays or Public Holidays in Queensland, or days between 22 to 24 December, 27 to 31 December and 2 to 10 January.

Claim includes any claim, action, demand or proceeding for payment of money (including damages or an increase in the Subcontract Sum) or for an extension of time under, arising out of, or in any way in connection with, this Subcontract; arising out of, or in any way in connection with, any task, fact, matter, thing or relationship connected with the Subcontract, the Supply of Goods, the Main Contract, or any party's conduct prior to the date of this Subcontract; or otherwise at law including for breach of any statute, in tort for negligence or otherwise, including negligent misrepresentation, or for restitution including restitution based on unjust enrichment.

Collect, Collected, Collection means where HLL collects the goods from a location agreed with the Supplier and HLL takes responsibility for transportation of the Goods after collection.

Defect or **Defective** includes, in relation to the Goods, any omission, error, fault, non-compliance, breach of Law, deficiency, flaw, irregularity, material imperfection, or similar condition and if Installation is required, any defect in Installation.

Deliver, Delivery or **Delivered** means leaving the Goods in the possession of HLL in accordance with the Subcontract at the Site.

Delivery Date means the date and time stated in the applicable Purchase Order or as otherwise directed by HLL by which the Goods are to be delivered by or on.

[Delete if no Subcontractor design under Subcontract] Design Documents means any document requested by HLL including plans, drawings, specifications, or any information whatsoever relating to the Supply of Goods.

Direction includes agreement, certificate, decision, demand, determination, explanation, instruction, notice, order or requirement given by HLL.

Environmental Requirements means all Legislative Requirements relating to the environment and the environmental policies and procedures of HLL.

Extension of Time or EOT means extension in relation to the Supply of the Goods granted or directed by HLL in accordance with clause 12.1.

Force Majeure Event includes any hurricane, cyclone, earthquake, natural disaster, tsunami or mudslide effecting the Site; act of a public enemy, war (declared or not), riot, insurrection, civil rebellion, revolution, military usurped power or other like hostilities, terrorism or act of sabotage; fire, explosion or flood at or preventing access onto, the Site; ionising radiation, contamination by radioactivity, nuclear or biological contamination; or a Site shutdown, including where directed by the Principal, which directly causes a party to be unable to perform all or a material part of its obligations at the Site (other than an obligation to pay money) under the Subcontract where the event or its consequences could not have been prevented by the exercise of a standard of care and diligence consistent with that of a prudent person undertaking the obligations under the Subcontract and where the event or its consequences were not otherwise caused or contributed by that party's failure to comply with its obligations under the Subcontract.

Goods means the items and materials to be Supplied by the Supplier, the scope of which is identified in Schedule 2 and is referred to as the Goods in the Purchase Order.

GST has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and all associated regulations made pursuant to that Act (**GST Law**).

Insolvency Event means:

- (a) the party is insolvent or is financially unable to proceed with its obligations under the Subcontract;
- (b) execution is levied against the party by a creditor;
- (c) the party is a natural person or a partnership and commits an act of bankruptcy; is made bankrupt; has a bankruptcy petition presented against him or her or presents his or her own petition; makes a proposal for a scheme of arrangement or a composition; or is required to present a debtor's petition or has a sequestration order made under Part X of the Bankruptcy Act 1966 (Cth); or
- (d) the party is a corporation and notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement; it enters a deed of company arrangement with creditors; a controller, administrator, or liquidator is appointed; an application is made to a court for its winding up and not stayed within 14 days; a winding up order is made in respect of the corporation; or it resolves by special resolution that it be wound up voluntarily.

Installation, Install or Installed means the installation of the Goods on the Site or into HLL's works under the Main Contract if required in accordance with Schedule 3 or under an applicable Purchase Order if applying under Item 3 of Schedule 1.

Intellectual Property Right means any patent, registered or unregistered design, trademark or name, copyright, trade secrets and know-how and other similar proprietary rights and all other intellectual property rights conferred under statute or common law.

Item means an Item set out in Schedule 1.

Law means any Act, Bill, Regulation, Ordinance, Proclamation, Permit, Approval, Permission, By-law, Statutory Instrument or similar legislative instrument.

Legislative Requirements includes Laws; certificates, licences, consents, permits, approvals, clearances, requirements or other precondition required by Law or any government or statutory authority having jurisdiction at the Site; and fees and charges payable in connection with the foregoing.

Main Contract means the contract described at Item 6 of Schedule 1.

Main Contractor means the party set out in Item 7 in Schedule 1.

Parties means the Supplier and HLL together.

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

Price means:

- (a) where HLL agreed to payment of a lump sum for the Goods, the amounts stated in Schedule 2 as a lump sum, or where no amount is stated in Schedule 2, the amount specified or calculated in accordance with the applicable Purchase Order;
- (b) where HLL agreed to rates for the Goods, rates for the Goods stated in Schedule 2, or where no rates are specified in Schedule 2 the rates calculated in accordance with the applicable Purchase Order; or
- (c) where HLL agreed to a lump sum and rates, the aggregate of the sums referred to in clauses (a) and (b) of this definition.

Principal means the party set out in Item 8 in Schedule 1.

Project means the project stated at Item 1 of Schedule 1. **Purchase Order** means a document provided by HLL to the Supplier during the Term for the Supply of Goods on the terms of the Subcontract and must set out the information required by clause 4.

Registration has the meaning set out in the PPSA.

Security Interest has the meaning set out in the PPSA.

Site means the site identified in a Purchase Order.

Subcontract means the executed agreement HLL and the Supplier and comprises the documents described in clause 3.

Subcontract Price means the lump sum or rates (or as may be relevant the Bill of Quantities if included and noted as binding) as set out in Schedule 1 Item 11, Schedule 2 or under a Purchase Order as applicable.

Substantial Breach includes, but is not limited to:

- (a) failing to Supply the Goods by the Delivery Date, provide evidence of insurance, comply with a Direction of HLL, comply with WHS Requirements, comply with Environmental Requirements or comply with any obligations set out under clause 10;
- (b) wrongful suspension of the Supplier's obligations under the Subcontract; and
- (c) failing to proceed with due expedition and without delay.

Supply or Supplied means to Deliver or Install the Goods to HLL as required under this Subcontract or a relevant Purchase Order.

Term means the term of the Subcontract during which Goods may be ordered by HLL set out in Item 2 of Schedule 1.

WHS Requirements means all Legislative Requirements relating to workplace health and safety.

1.1 Interpretation

In the subcontract:

- (a) headings are for reference only and do not affect the meaning of this document;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) 'person' includes a firm, a body corporate, an unincorporated association or an authority;

- (e) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally, and on the part of two or more persons binds them jointly and severally;
- (f) a reference to:
 - (i) a person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
 - (ii) a document includes any variation or replacement of it and all schedules, annexures and exhibits to the document;
 - (iii) a Law includes regulations and other instruments under it and amendments or replacements of any of them;
 - (iv) a group of persons includes all of them collectively, any two or more of them collectively and each of them individually;
 - (v) '\$' or 'dollars' is a reference to Australian currency unless otherwise specified;
 - (vi) a specific time means the time in the jurisdiction set out in Item 10;
- (g) derivative words (words formed from another by derivation) have a similar or the same meaning as the word defined, unless another meaning is expressly provided by the Subcontract;
- (h) 'including' when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (i) no part of the Subcontract may be interpreted against the interests of the party responsible for the drafting or the inclusion of that provision or part in the Subcontract;
- (j) where the time for doing anything falls on a day that is not a Business Day, it will be deemed to fall due on the next Business Day;
- (k) should any part of the Subcontract be determined to be void or otherwise excluded from the Subcontract, the Subcontract will be read as if that part was excluded.

1.2 Reliability of Documents

HLL does not warrant, guarantee or assume any duty of care or other responsibility for or makes any representation about the accuracy, adequacy, suitability, currency, fitness for purpose, reasonableness, reliability or completeness of any document other than the Subcontract and its attachments, schedules and annexures other than Reliance Documents specified in Item 13 of Schedule 1, which will form part of the Subcontract.

Insofar as is permitted by Law, neither HLL, the Main Contractor nor the Principal will be liable upon any Claim by the Supplier or its subcontractors if applicable, arising out of or in any way in connection with any document other than the Subcontract.

To the maximum extent permitted by Law, but subject to the Supplier's express rights under this Subcontract, the Supplier unconditionally and irrevocably releases, discharges and indemnifies HLL, the Principal or the Main Contractor from and against any Claim against the Principal, the Main Contractor or HLL by, or liability of the Principal, the Main Contractor or HLL to, any person arising, now or in the future, in any way out of or in any way in connection with reliance on any document other than the Subcontract.

2. Engagement and performance

2.1 Engagement and performance

HLL engages the Supplier to Supply the Goods. The Supplier agrees to Supply the Goods in accordance with the Subcontract, directions authorised by HLL, and all of its obligations at Law including any relevant Legislative Requirement (including those specified as relevant under the Main Contract). Subject to compliance with this clause 2.1 HLL will pay the Supplier for Supply of the Goods.

Unless otherwise agreed, the Supplier will Supply the Goods under any Purchase Order on the dates as set out in the relevant Purchase Order.

2.2 Relationship between the Parties

The Supplier is engaged as an independent contractor to HLL in carrying out and completing the Supply of the Goods and neither the Supplier nor its employees are employees or agents of HLL.

The Supplier is responsible for its employees, including their wages or salaries, paid public holidays, annual leave, sick leave, superannuation, PAYE and other taxes, workers' compensation and other insurances and all other obligations arising out of or in connection with the activities of the Supplier.

3. Subcontract

3.1 Subcontract Documents

- (a) The Subcontract is comprised of the documents set out in Item 12 Schedule 1.

- (b) Without limitation, HLL is not bound by any terms and conditions set out on any document provided by the Supplier, including delivery documents (regardless of whether any such document is signed by or for HLL).
- (c) Figured will prevail over scaled dimensions in a discrepancy. Otherwise, if the Supplier discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of Supply of the Goods, the Supplier will give HLL written notice of it. HLL will, thereupon or upon otherwise becoming aware, direct the Supplier as to the interpretation and construction to be followed.
- (d) The Supplier shall bear the cost of compliance with a direction under this clause 3.1 to the extent that any inconsistency, ambiguity or discrepancy in any document prepared by the Supplier for the purpose of Supplying the Goods.
- (e) The Supplier acknowledges that HLL has entered into the Main Contract and the terms, if any, specified in Schedule 4, taken from the Main Contract, apply to this Subcontract.
- (f) Unless otherwise specified under a Purchase Order, [HLL] is obliged to and is responsible for obtaining all Approvals necessary for the Supply of Goods.

3.2 Subcontract Price

HLL agrees, subject to the Subcontract, to pay the Supplier the Price as adjusted by any additions or deductions made pursuant to the Subcontract. The Supplier acknowledges that the Subcontract Price includes all preliminaries, supervision, overheads (off Site and on Site), profits, costs, expenses, fees and charges incurred by the Supplier in performing all obligations of and incidental to Supplying the Goods, unless otherwise specifically excluded from the Subcontract Price. If identified in Item 3 of Schedule 1, the Supplier's scope includes:

- (a) Installation, in which case the Supplier must then install in the manner set out in Schedule 3; and
- (b) If required by HLL, compliance with any induction and personal protection equipment requirements, prior to entering the Site.

3.3 Governing Law

The Subcontract is governed by the law of the State or Territory specified in Item 10 in Schedule 1.

3.4 Discrepancies [DELETE IF NO DESIGN DOCUMENTS BEING PREPARED BY SUPPLIER]

If the Supplier prepares any Design Documents, it must provide a copy of those Design Documents for approval before commencing any work for Supplying the Goods. HLL will provide comment and either reject or approve those Design Documents prior to the Supplier commencing the preparation relating to the Design Documents.

If HLL rejects the Design Documents in whole or part, the Supplier must amend and resubmit the Design Documents, and HLL will review the resubmitted documents as soon as reasonably practicable and confirm whether they are rejected or approved.

If HLL fails to provide comment or approval within 10 Business Days of receiving the Design Documents from the Supplier, the Supplier is entitled to proceed at its risk. HLL reserves the right to make further comment

4. Purchase Orders

HLL may at any time during the Term, issue a Purchase Order to the Supplier under the Subcontract. Should HLL issue a Purchase Order to the Supplier under the Subcontract, the Supplier must Supply Goods to HLL in accordance with the Purchase Order, unless the Supplier can show that it is unable to provide the Supply in accordance with a requirement of the Purchase Order, be it the time, type or quantity of Goods required. Each Purchase Order is issued subject to and governed by the terms of this Subcontract

Purchase Orders must include a purchase order number issued by HLL, identify the Goods, the quantity of the Goods and the Price of the Goods being ordered, and specify Site and the Delivery Date when the Goods must be delivered to the Site or the location where the Goods will be Collected.

The Supplier agrees that HLL is under no obligation to purchase Goods during the Term and is not restricted from dealing with any third parties.

If the Term expires and HLL continues to issue Purchase Orders to the Supplier, the terms of the Subcontract will continue to apply to such Supply of Goods until the Parties enter into a new contract for the Supply of Goods or the Parties agree in writing that the terms of the Subcontract no longer apply.

5. Supplier's Warranties

The Supplier warrants that:

- (a) At all times the Supplier will be suitably qualified and experienced and will exercise due care skill and diligence in Supplying the Goods. The Supplier has full knowledge and awareness of all relevant Laws, Australian Standards and Codes applicable to the Supply, the Goods and the Subcontract and is in a position to ensure that all material or product supplied is Conforming Material as per clause 10.

- (b) The Supplier will employ sufficient labour, plant and materials to Supply the Goods expeditiously and by the Date for Completion or by such date as required under a Purchase Order.
- (c) It will Supply the Goods ordered by HLL during the Term in accordance with the Subcontract.
- (d) It will take all reasonable steps to assign any manufacturer's warranties in the Goods (where the Goods are manufactured by a third party) to HLL. The Supplier has systems in place to ensure that its Supply of Goods will be free from Defects and will be in accordance with all drawings, specifications, Australian Standards and Codes and will be conforming and fit for purpose and that Supplier can effectively provide notice as may be required by clause 10
- (e) Goods supplied to HLL are complete, undamaged and free of defects, free of liens, charges, claims and other encumbrances, in accordance with plans, drawings, specifications, directions and instructions given by or for HLL, in accordance with the Subcontract, Law and all applicable Australian Standard or Code and fit for the purpose set out in or that may reasonably be inferred from, Schedule 2 or the applicable Purchase Order.
- (f) The Goods are supplied in the ordinary course of the Supplier's business of dealing in goods of that kind.
- (g) The Goods are, including at Delivery or Supply and at the time title passes to HLL under clause 15 are not the subject of any Registration under the PPS; and free from any Security Interest.
- (h) The prices or rates set out in Schedule 2 are fixed for the Term and will not be subject to variation, adjustment or rise or fall for any reason except where agreed by the Parties in writing.
- (i) It will take all reasonable steps to ensure that it does not place HLL in breach of HLL's obligations under the Main Contract.

6. Assignment and subcontracting

- (a) HLL may engage other subcontractors to carry out works, provide services or supply other items not included in the Supplier's Supply of any Goods.
- (b) The Supplier shall not without HLL's prior written approval (, at the discretion of the HLL), subcontract any work with respect to the Goods.
- (c) Approval to subcontract will not relieve the Supplier from any liability or obligation under the Subcontract, and the Supplier will be liable to HLL for the acts, defaults and omissions of any subcontractors it engages and employees and agents of those subcontractors the Supplier engaged as if they were those of the Supplier, irrespective of whether HLL has or has not approved the subcontractor.
- (d) If the Subcontract is terminated under clause 18.1, 18.2 or 18.4, the Supplier must assign or novate any subcontractors it has engaged to HLL upon such terms as HLL reasonably requires.
- (e) If the Subcontract is terminated under clause 18.3 the Subcontractor must assign or novate any subcontractors it has engaged to either the Main Contractor or the Principal as applicable and upon such terms as either the Main Contractor or the Principal reasonably requires.

7. Health, safety and the environment

7.1 WHS Requirements

The Supplier must:

- (a) Carry out and complete its obligations under the Subcontract and comply with all lawful directions of HLL, in accordance with the WHS Requirements and in accordance with all Legislative Requirements;
- (b) Ensure the health and safety of all its employees, agents or supplier while on the Site or otherwise while preparing the Goods;
- (c) Ensure that other persons are not exposed to risk of injury or illness arising out of the Supplier's activities on Site and all of its employees, agents and supplier comply with all directions, plans, statements, inductions, policies and procedures of HLL, or by any statutory authority concerning workplace health and safety on the Site if applicable;

7.2 Interference, Obstruction and Nuisance

In the Delivery (and, if applicable, the Installation) of the Goods, the Supplier must avoid unnecessary interference with the passage of people and vehicles, or obstruction to any property, prevent nuisance including any nuisance caused by unreasonable noise, dust, emission, vibration or disturbance, and ensure that its employees, agents, representatives and subcontractors comply with the requirements of this clause 7.2

7.3 Copies of documents

The Supplier must provide to HLL copies of any notices, correspondence or directions issued by any government or statutory authority relating to workplace health and safety or the environment within 24 hours of the Supplier's receipt of the notice, correspondence or direction.

7.4 Reporting of incidents

The Supplier must immediately report any incident relating to workplace health and safety or the environment reportable under the WHS Requirements or the Environmental Requirements to HLL and provide HLL with reasonable assistance in investigating any such incident.

8. Insurance

8.1 Obligation

Before commencing the Subcontract, the Supplier must effect the policies of insurance identified below in clauses 8.2 and 8.3 and 8.4.

8.2 Public Liability Insurance

The public liability insurance must note the interests of HLL and the Supplier and must cover HLL and the Supplier (**Insured Parties**) for their respective rights and interests, liability to each other for loss, loss of use, or damage to property and the death of or injury to any person, and liability to third parties and include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured. The public liability insurance must also be for an amount in respect of any one occurrence not less than the sum stated in Item 4 of Schedule 1, and be maintained until the end of the Defects Liability Period and completion of all Contracts on the Site.

8.3 Worker's Compensation Insurance

The workers' compensation policy must cover statutory and common law liability for death or injury to persons employed by the Supplier in connection with the performance of the Subcontract and must be maintained until the end of the Defects Liability Period and completion of all Contracts. To the extent permitted by Law the policy shall extend to include a Principal's Indemnity.

8.4 Motor Vehicle Insurance

The motor vehicle insurance must be maintained for the duration of the Subcontract, provide cover damage to property (including third party property damage) in relation to motor vehicles operated by the Supplier in the performance of the Subcontract. The Supplier must also maintain a Compulsory Third Party insurance policy in relation to vehicles owned or operated by the Supplier as required by Law.

8.5 General insurance requirements

The Supplier must, prior to the commencement of the Subcontract and whenever subsequently asked by HLL, furnish to HLL evidence in the form of certificates of currency that the insurance policies identified in this clause remain current. If the Supplier fails to provide the certificates of currency HLL may effect the policies and recover the costs of doing so from the Supplier as a debt due and payable. The Supplier is liable for and must pay all deductibles or excesses payable under a policy of insurance required to be effected or maintained by the Supplier under the Subcontract.

9. Intellectual Property and Confidentiality

9.1 Intellectual Property

- (a) The Supplier must not use any Intellectual Property Right owned or used by HLL for any purpose whatsoever except for the performance of its obligations under the Subcontract.
- (b) Intellectual Property Rights and any material created by the Supplier solely with respect to the Subcontract will be the property of HLL but HLL grants to the Supplier a license to use those Intellectual Property Rights to carry out the Subcontract.
- (c) The Supplier grants to HLL an irrevocable, royalty free, fully transferrable licence to use any Intellectual Property Right of the Supplier created prior to the execution of the Subcontract necessary for the purposes of testing, commissioning, repairing, maintaining, renovating, or upgrading of the Goods. The Supplier acknowledges and agrees that HLL may, if required to do so, transfer this licence to a third party under, or in accordance with the Main Contract, for the same purposes.

9.2 Confidentiality

- (a) Subject to the exceptions set out in this clause, the Supplier must keep confidential and must not divulge or disclose any of the information provided to it by HLL or any documents created by the Supplier in relation to the Subcontract. This confidentiality obligation does not apply where any such information is already lawfully in the public domain, is required to be disclosed by a Legislative Requirement or is disclosed to the Supplier's solicitor, accountant or other professional advisors, or to HLL or suppliers for the purpose of carrying out the Subcontract.
- (b) The Supplier must not erect signage or any other material advertising its presence, at or adjacent to the Site, without the prior written consent of HLL. If the Supplier is in breach of this clause, any cost incurred by HLL to remove the signage or other materials, will be a debt due and payable by the Supplier to HLL.
- (c) The Supplier shall not disclose any information concerning the project for distribution through any communications media without HLL's prior written approval. The Supplier shall refer to HLL any enquiries from any media concerning the project

10. Supplier obligation to ensure conforming material and obligation of Supplier to Notify

It is the Supplier's obligation and responsibility to ensure that any material, product or other item specified in the Subcontract (including but not limited to the Purchase Order, Schedule 2 and any referenced specifications) or referred to in an instruction or Direction from HLL or proposed to be Supplied by the Supplier is safe, complies with all applicable Legislative Requirements for that material, product or item, performs to the standard that it is represented to perform to and is suitable and fit for the purpose stated in or implied by the Subcontract (**Conforming Material**).

If the Supplier is of the view that the material, product or item specified, instructed, directed or proposed to be used is not Conforming Material the Supplier must, as soon as reasonably practicable notify HLL in writing of the materials, products or items that are not Conforming Material, the reasons that they are not Conforming Material and where possible an alternative material, product or item that will be Conforming Material. The Supplier must not proceed to Supply or Deliver any material, product or item that it is aware of or should have been aware of as being non-Conforming Material without further instructions from HLL.

11. Change

If HLL requires additional Supply of Goods, HLL will notify the Supplier (**Request for Supply**). The Supplier will confirm whether it can meet the Request for Supply and the parties will agree quantity and price of the additional Goods. If the quantity and price are agreed between the parties, HLL will notify the Supplier in writing (and if relevant, by way of Purchase Order).

HLL may, at its discretion, amend, vary (including by omitting Goods or changing a Delivery Date or Site) or cancel this or any Purchase Order prior to Supply. If an amendment, variation or cancellation causes the Supplier to incur more or less costs than otherwise would have been incurred, the difference will be assessed by HLL acting reasonably and added to or deducted from the Price.

12. Delay and extensions of time

12.1 Delay

Time is of the essence in this Subcontract.

If the Supplier will be delayed in Supplying the Goods by the Delivery Date, the Supplier will promptly notify HLL and set out in writing the reason for the delay, what the Supplier is doing to mitigate the delay, and alternative options for Supply of the Goods.

HLL may, at its absolute discretion, delete the Supply of Goods which have been delayed from the scope of work, grant an EOT by accepting the Goods with a revised Delivery Date, or obtain the Goods which have been delayed from another supplier (in those circumstances, HLL is entitled to recover from the Supplier as a debt due and payable the additional costs incurred in obtaining the Goods from a third party).

Alternatively where a Purchase Order specifies liquidated damages for delay, HLL may, elect to enforce the Purchase Order and in its absolute discretion apply those liquidated damages for the period of delay. The liquidated damages will be a debt due and payable to HLL.

13. Supply

13.1 Supply of Goods

- (a) The Supplier:
 - (i) must Supply the Goods to the Site in accordance with the specified Delivery Date(s) and is (unless the Parties agree otherwise in writing) responsible for unloading the Goods at the Site;
 - (ii) must comply with Purchase Orders;
 - (iii) must ensure that Supply is performed so that the property of HLL and other parties is not damaged, it is undertaken in accordance with all Laws and good industry practice, it is performed in accordance with all WHS Requirements and all procedures notified by HLL and no activities on or in the vicinity of the Site are impeded in any way;
 - (iv) acknowledges that it is responsible for all of the acts, omissions and defaults of the parties performing the Delivery, as if those parties were the Supplier itself.
- (b) Supply occurs when the Supplier has Delivered and if applicable, Installed the Goods. Delivery occurs if the Supplier is responsible for unloading, when unloading is complete in accordance with HLL's reasonable instructions at the Site, or if HLL is responsible for unloading, when the Supplier arrives at the Site at the Delivery Date required in a particular Purchase Order (if the Supplier does not arrive at the Delivery Date required in a particular Purchase Order, Delivery is deemed to have not occurred unless otherwise agreed by HLL). Installation occurs once HLL has certified that the Goods have been installed as required by the relevant Purchase Order.
- (c) HLL is under no obligation to accept any Goods which are Delivered or provided before or after the Delivery Date. HLL will provide access to the Site but is not obliged to provide full or sole access to the Site.

13.2 Failure to Supply on time

If the Supplier fails to Supply the Goods on the Delivery Date required in a particular Purchase Order, HLL may, without prejudice to any other remedies against the Supplier, cancel the Purchase Order in writing and obtain the Goods from a third party (in those circumstances, HLL is entitled to recover from the Supplier as a debt due and payable the additional costs incurred in obtaining the Goods from a third party).

14. Defects

For the Goods, a defects liability period will either apply for 12 calendar months from Delivery (or if being Installed, the date when Installation is complete) or until the expiry of any defects liability period covering the Goods under the Main Contract, whichever expires later.

During the defects liability period, HLL may, at HLL's discretion, direct the Supplier to rectify a Defect or replace the Goods. The Direction must identify the Defect and state dates for commencement and completion of rectification of the Defect.

If rectification or replacement is not commenced or completed by the stated dates, the Supplier may have the rectification or replacement carried out by others without prejudice to any other rights and remedies HLL may have. Any cost, loss, damage, expense or liability suffered by HLL relating to matters to which this clause 14 applies, will be a debt due and payable by the Supplier to HLL.

15. Title and Risk

Unencumbered title to the Goods passes to HLL at the time of the earlier of either any partial or full payment by HLL for the Goods, or Delivery.

The Supplier acknowledges that it bears all risk of loss of or damage to the Goods, including in relation to transit, until the Goods have been Delivered.

16. Indemnity

The Supplier indemnifies and holds HLL harmless against any loss of or damage to property; as limited by law, all claims arising during or after the Subcontract from the Supply of the Goods by the Supplier or any of its employees, subcontractors or agents; and any claims (at Law, in equity or tort, under contract or statute or for restitution) by any person against HLL in respect of personal injury, death or loss of or damage to any property, in connection with the Goods or Installation of the Goods by the Supplier (including arising from any Defect in the Goods).

The Supplier indemnifies and holds HLL harmless against any loss, damage or expense incurred by HLL, including but not limited to any loss, damage or expense arising from any investigation or action taken by any regulatory body, or any Claim by any person against HLL arising from any breach of the Subcontract by the Supplier, including but not limited to, any breach of the Supplier's Warranties or any Defect in the Goods or the Supply, or any breach of clause 10.

Any loss, cost, damage or expense which is or may be incurred by HLL to which the indemnity under this subclause applies shall be an amount due and payable from the Supplier to HLL. Each indemnity given by the Supplier under the Subcontract is a continuing obligation separate and independent from the obligations of the Supplier and survives termination of the Subcontract.

17. Suspension

17.1 HLL's Suspension

- (a) HLL may, at its discretion, direct the Supplier to suspend Supply of the Goods for such time as HLL thinks fit. The Supplier will bear the cost of suspension and will not be entitled to any Claim, where the suspension is because of an act, default or omission of the Supplier, or its employees, subcontractors or agents, or where the Supplier otherwise made the suspension necessary.
- (b) If the suspension is due to an act or omission of the HLL and the suspension causes the Supplier to incur more or less cost than would otherwise have been incurred, including the costs of demobilising and remobilising to Site, the actual and documented direct costs incurred will be assessed by HLL and added to or deducted from the Subcontract Price and the Supplier will be entitled to claim an EOT for delay under clause 12.1 caused by the suspension.
- (c) As soon as HLL becomes aware that the reason for any suspension no longer exists, HLL will direct the Supplier to recommence the suspended Delivery as soon as reasonably practicable.
- (d) If the Supplier wishes to suspend Delivery, the Supplier must obtain HLL's prior written approval. HLL may approve the suspension and may impose conditions of approval subject to any rights to suspend the Delivery which the Supplier may have under any Legislative Requirements.

18. Termination

18.1 Termination for Substantial Breach or Default

If the Supplier commits a Substantial Breach of the Subcontract, HLL may give the Supplier a written notice to show cause, requiring the Supplier to show cause within 10 Business Days why HLL should not exercise its right to terminate the Subcontract under this clause 18.

If the Supplier does not show reasonable cause within 10 Business Days of the date of suspension, HLL may, by written notice to the Supplier, terminate the Subcontract.

18.2 Termination for Insolvency Event

If an Insolvency Event occurs to a party, the other party may, without giving a notice to show cause, terminate the Subcontract upon giving written notice, notwithstanding that there has been no breach of contract.

18.3 Termination under the Main Contract

If the Main Contract between HLL and the Main Contractor, is terminated for any reason whatsoever, HLL may terminate the Subcontract by written notice to the Supplier or the Supplier agrees that it will novate or assign the Subcontract as required by the Main Contractor or Principal.

18.4 Termination for convenience of HLL

HLL may, at any time for its sole convenience, provide five (5) Business Days written notice to the Supplier to terminate the Subcontract. Entitlement to Payment upon Termination

Without prejudice to HLL's rights under the Subcontract or otherwise, upon termination of the Subcontract:

- (a) the Supplier will be entitled to be paid for Goods Supplied prior to the date of termination; and
- (b) where the termination is due to an Insolvency Event of HLL or HLL terminates for convenience under clause 18.4, the Supplier will be entitled to be paid for Goods Supplied prior to the date of termination, had the Supplier made a payment claim on the date of termination, and the reasonable cost of materials and goods reasonably ordered by the Supplier for the Goods, which the Supplier is legally bound to accept.

As a precondition to any entitlement under this clause the Supplier must first:

- (c) deliver to HLL all materials, goods, property, documentation or information which have become the property of HLL or were provided by HLL under the Subcontract; and
- (d) if directed by HLL, assign or novate in favour of HLL any Secondary Subcontracts or rights under contracts entered into or obtained by the Supplier in connection with the Goods.

18.5 Termination Generally

If a party breaches, including repudiates, the Subcontract, nothing in this clause 18 will prejudice the right of the parties to recover damages or exercise any other right or remedy.

19. Force Majeure

- (a) If a party is prevented from, or delayed in performing any of its obligations under the agreement by a Force Majeure Event (**Affected Party**), then it must notify the other party in writing of the occurrence of the Force Majeure and the circumstance resulting or arising from it within a reasonable time after the occurrence of the Force Majeure Event.
- (b) HLL may (acting reasonably) elect to suspend the Subcontract for the effect of a Force Majeure Event
- (c) The Parties shall use their reasonable endeavours to remove or relieve any Force Majeure Event and to minimise the delay in the performance of the Affected Party's obligations under the Subcontract caused by a Force Majeure.
- (d) The Affected Party must keep the other party informed (not less than weekly) of the steps being taken to mitigate the effects of the Force Majeure Event upon the performance of the Affected Party's obligations under this agreement and of estimate of the duration of any delays.
- (e) If the Subcontract is suspended, then when the period for which the Affected Party's obligations are affected by a Force Majeure Event ceases, the Affected Party must recommence performance of all its obligations under the contract as soon as practicable.
- (f) The obligations of a party under this Subcontract, other than the obligation to pay money and, to the extent if possible, to maintain any safety or environmental obligations, shall be suspended during the time and to the extent that the party is prevented from complying with such obligations during the period of suspension due to Force Majeure Events.
- (g) If the Main Contracted is terminated for a Force Majeure Event or if the Force Majeure Event continues for a period of [insert time], HLL may elect to terminate the Subcontract, in which case the termination under this clause 19(g) will be treated as a termination for convenience under clause 18.4.

20. Payment

20.1 Payment Claims

Before the Supplier is entitled to payment:

- (a) the Supplier must provide any information or documentation in support of its payment claims sought by HLL;
- (b) the Goods must comply with all of the requirements set out in the Subcontract and applicable Purchase Order; and
- (c) each payment claim must be in the form of or have attached to it, a tax invoice in the form required by GST Law.

Payment claims may be submitted from the times specified in Item 9 of Schedule 1.

20.2 Payment

HLL may issue a payment schedule to the Supplier setting out the payment due to the Supplier within 10 Business Days of receipt of the payment claim. If there are any amounts being withheld, the payment schedule must also state the amount withheld and the reason that the amount is being withheld. Neither a payment schedule, payment of money or acceptance of payment will be evidence that the relevant Goods have been supplied (and if the Subcontract requires Installation, Installed) satisfactorily. Payment is on account only. Payment will be made by HLL, subject to the Subcontract, 25 Business days from the end of the calendar month in which the payment claim, in accordance with clause 20.2, is received by HLL.

20.3 Set-off

Without prejudice to any other rights whether under the Subcontract or at Law, HLL may set-off or deduct from any amounts due to the Supplier under the Subcontract or any other contract between HLL and the Supplier any amount due or which HLL reasonably asserts is or will be due from the Supplier to HLL in connection with the Subcontract without prejudice to the right of HLL to recover the whole of any debt or any claim or any balance that remains owing.

20.4 Service of notices

A notice (and other documents) will be deemed to have been given and received:

- (a) If addressed or delivered to the applicable address in the Subcontract or last communicated in writing to the person giving the notice.
- (b) On the earliest date of actual receipt, confirmation of correct transmission of fax (or any other electronic form agreed upon in writing), or three Business Days after posting.
- (c) If by email, at the time shown in an email acknowledgement sent by the receiver to the sender (not the automatic delivery confirmation report generated by the sender's email system), except where the sender receives notice that the email was undelivered or unsuccessful, or receives an out of office notice from the receiver, in which case, the email will not be delivered under the Subcontract.

21. Dispute Resolution

All disputes between the parties in connection with the Subcontract must be resolved as follows:

- (a) If a party considers that a dispute exists in connection with the Subcontract, that party may give the other party a written notice detailing the nature of the dispute (Notice of Dispute);
- (b) Upon receipt of a Notice of Dispute, each party must meet at least once within 14 days and otherwise use its best efforts to resolve the dispute;
- (c) If the parties have not resolved the dispute or agreed an alternate means of resolving the dispute within the 14 days after the Notice of Dispute is served, then either party may commence mediation by giving notice to the other party and referring the matter to the Institute of Arbitrators and Mediators Australia. The Mediation and Conciliation Rules of the Institute of Arbitrators and Mediators Australia will apply to any mediation under the Subcontract and the parties must comply with those rules;
- (d) If the parties do not resolve the dispute by mediation or within 14 days after conclusion of the mediation conference, then either party may, at its discretion, refer the dispute to litigation;
- (e) Notwithstanding the existence of a dispute, the parties must continue to perform the Subcontract in all aspects with the exception of the item in dispute;
- (f) Nothing in this clause shall prejudice the right of a party to institute proceedings to seek urgent injunctive or declaratory relief in respect of a dispute arising under the Subcontract;

If there is a dispute under the Main Contract which relates to the Goods, the Supplier will provide all necessary assistance to HLL to resolve that dispute.

22. General provisions

22.1 Severance

If any provision of the Subcontract is or becomes illegal, invalid, unenforceable or void in a particular jurisdiction, the legality, validity and enforceability of the Subcontract will not be affected (unless the Subcontract is rendered incapable of operation in the absence of such provision) and the Subcontract will be read as if the part had been deleted in that jurisdiction only.

22.2 Survival of Subcontract

The warranties, indemnities and covenants in the Subcontract are continuing, separate and independent obligations and will survive termination or the end of the Subcontract.

22.3 Retrospectivity

The Subcontract will apply to the Supplier and HLL with respect to the performance, by either party, of any obligation in connection with the subject matter of the Subcontract prior to the execution of the Subcontract.

22.4 Entire Agreement

Except where expressly provided otherwise in the Subcontract, the Subcontract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.

22.5 Reliance

Each party acknowledges and agrees that:

- (a) it has not entered into the Subcontract in reliance on, or as a result of any statement or conduct of any kind (including without limitation, any representation, warranty, advice or undertaking); and
- (b) the Subcontract may only be amended by agreement of the Parties in writing;

22.6 No Waiver and execution

Except as provided at Law, or elsewhere in the Subcontract, none of the terms of the Subcontract will be varied, waived, discharged or released except as agreed by the parties in writing.

22.7 Counterparts

The Subcontract may be executed in counterparts. If executed as counterparts, each party will provide a colour copy of the executed Subcontract to the other party within three days of execution.

22.8 Further Assurances

Each party agrees, at its own expense, on request of the other party, to do everything reasonably necessary to give effect to the Subcontract and the transactions contemplated by it, including the execution of documents.

Schedule 1 Contract Details

Item	Description	Details
1.	Project	[*details*]
2.	Term	[*details e.g. the term will end on the date the last of the Goods are Supplied.*]
3.	Installation	[*details e.g. no installation required*]
4.	Public Liability Insurance	not less than \$10,000,000
5.	Motor Vehicle Insurance	not less than \$20,000,000
6.	Main Contract	The Contract between [*name*] and HLL dated [*date*] a copy of which is available for review by the Supplier at the office of the Purchaser upon request.
7.	Main Contractor	[*details*]
8.	Principal	[*details*]
9.	Day from which payment claims may be submitted	[*details e.g. the last business day of each calendar month*]
10.	Governing law	[*Queensland*]
11.	Subcontract Price	[insert lump sum OR as set out in Schedule 2]
12.	Subcontract Documents	[*details*]
13.	Reliance Documents	[*details of documents the Supplier may rely on if any*]

Schedule 2 Goods Schedule and Price Breakdown / Rate Schedule

1. Goods Schedule, Specification and Price Breakdown / Rate schedule

[*details*]

2. Installation Scope and Price

[*details*]

3. Authorisations required to be obtained

[*details*]

Schedule 3 Installation Obligations

This Schedule applies if identified as applicable in Item 3 of Schedule 1.

[*detail relevant specification or installation requirements*]

If installation is required insert the following clause on Site Access.

Site access

To the extent that the Supplier is required to install Goods, HLL will give the Supplier sufficient access to the Site to permit the Installation of the Goods, subject to the Supplier complying with its obligations under this Subcontract. The Supplier acknowledges that:

- (a) it is not entitled to sole possession of any part of the Site;
- (b) other parties, including HLL and third parties, will be performing work on the Site;
- (c) it has made sufficient allowances in the Price for reasonable cooperation and interaction with other parties on the Site;
- (d) it will not interfere with the activities of any other party on the Site; and
- (e) it will not disturb or damage any works or property on the Site or any properties adjoining or nearby to the Site.

Schedule 4 Main Contract Obligations

23. Main Contract

23.1 Personal Property Securities Act 2009 (Cth)

- (a) The Supplier acknowledges and agrees that:
- (i) if and to the extent that the Main Contractor or HLL at any time form a belief on reasonable grounds that the Main Contractor is, or will become, a secured party arising out of or in connection with this Subcontract or any transaction contemplated by this Subcontract, the Main Contractor or HLL may at the Supplier's expense take all steps that the Main Contractor or HLL considers advisable to:
 - (A) perfect, protect, record, register, amend or remove the registration of the Main Contractor's Security Interest in any relevant personal property that is the subject of this Security Interest (relevant personal property); and
 - (B) better secure the Main Contractor's position in respect of the relevant personal property under the PPSA;
 - (ii) it will do all things reasonably necessary to assist the Main Contractor or HLL to take the steps described in clause 23.1(a)(i);
 - (iii) it irrevocably and unconditionally waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of the Main Contractor in the relevant personal property;
 - (iv) if, and only if, the Main Contractor is or becomes a secured party in relation to relevant personal property, and to the extent only that Chapter 4 of the PPSA would otherwise apply to an enforcement of a Security Interest in relevant personal property, the Supplier, HLL and the Main Contractor agree that, pursuant to section 115 of the PPSA, the following provisions of the PPSA do not apply in relation to those Security Interests to the extent, if any, mentioned in section 115, section 117, section 118, section 120, subsection 121(4), section 125, section 129, section 130, subsection 132(3)(d), subsection 132(4), section 142, and section 143;
 - (v) subject to section 275(7) of the PPSA, it will not disclose the contents of this Subcontract, the amount or performance obligation secured by the Main Contractor's Security Interest in relevant personal property and the other information mentioned in section 275(1) of the PPSA pursuant to section 275(4) of the PPSA;
 - (vi) it must immediately notify the HLL or the Main Contractor if the Supplier becomes aware of any person other than the Main Contractor taking steps to register, or registering, a financing statement in relation to relevant personal property; and
 - (vii) it must arrange for the removal or cessation of any registration of any Security Interest that affects the priority of the Main Contractor's interest in relevant personal property.

For the purposes of this clause 23.1, registration, secured party, verification statement, financing statement, personal property and financing change statement each have the meaning given to those terms in the PPSA

23.2 Professional Standards Legislation

To the extent permitted by law, the Supplier:

- (a) declares that at the date of executing this Subcontract, it is not a person to whom a limitation of liability scheme applies under any Professional Standards Legislation; and
- (b) undertakes that for the period of its potential liability at law under or in respect of this Subcontract, it will not, without the prior written consent of HLL, become a person to whom such a scheme applies if such a scheme will have the effect of limiting or excluding the Supplier's liability under or in respect of this Subcontract.

In this clause, **Professional Standards Legislation** means legislation providing for the limitation of occupational liability by reference to schemes for limiting that liability that are formulated and published in accordance with that legislation (and such legislation includes the Professional Standards Act 1994 (NSW), the Professional Standards Act 2003 (Vic), the Professional Standards Act 2004 (Qld), the Professional Standards Act 1997 (WA), the Professional Standards Act 2004 (SA), the Professional Standards Act 2005 (Tas), the Civil Law (Wrongs) Proportionate Liability and Professional Standards Amendment Act 2004 (ACT), the Professional Standards Act 2004 (NT) and the Treasury Legislation Amendment (Professional Standards) Act 2004 (Cth)).

23.3 Information Documents

- (a) Information Document means any information, data, document or material (in any format or medium including any electronic form and whether oral or written) which is:
 - (i) referred to in Exhibit G of the Main Contract;

- (ii) issued or made available by, or on behalf of, the Principal, the NSW Government, the Main Contractor or HLL to the Supplier in connection with the Supply or any works under the Main Contract (including anything issued or made available through the Principal's website), regardless of whether it was expressly classified or stated to be an "Information Document"; or
 - (iii) referred to, or incorporated by reference, in an Information Document unless such information, data, document or material is otherwise expressly stated to form part of this Contract,
- (b) Without limiting or otherwise affecting clause 23.3(a):
- (i) HLL, the Main Contractor and the Principal do not warrant, guarantee or assume any duty of care or other responsibility for or makes any representation about the accuracy, adequacy, suitability, currency, fitness for purpose, reasonableness, reliability or completeness of the Information Documents;
 - (ii) whether or not an Information Document or any part thereof forms an annexure (or schedule, appendix, exhibit or other attachment) to this Subcontract, the Supplier acknowledges that:
 - (A) the Information Document or part thereof does not form part of this Subcontract; and
 - (B) where an Information Document or any part thereof forms an annexure (or schedule, appendix, exhibit or other attachment) to this Subcontract, it does so only for the purposes of identification of that document or part thereof;
 - (iii) insofar as is permitted by law, HLL, the Main Contractor and the Principal will not be liable upon any Claim by the Supplier or any Secondary Subcontractor arising out of or in any way in connection with:
 - (A) the provision of, or the purported reliance upon, or use of the Information Documents to or by the Supplier, Secondary Subcontractors or any other person to whom the Information Documents are disclosed; or
 - (B) a failure by HLL to provide any information to the Supplier .
- (c) The Supplier:
- (i) warrants that it did not in any way rely upon:
 - (A) any information, data, representation, statement or document made by, or provided to the Supplier by the Principal or the Main Contractor or HLL or anyone on behalf of the Principal or the Main Contractor or HLL or any other information, data, representation, statement or document for which the Principal or the Main Contractor is responsible or may be responsible whether or not obtained from the Principal or the Main Contractor or HLL or anyone on behalf of the Principal or the Main Contractor or HLL; or
 - (B) the accuracy, adequacy, suitability, currency, fitness for purpose, reasonableness, reliability or completeness of such information, data, representation, statement or document, for the purposes of entering into this Subcontract or carrying out the Supply but nothing in this clause 23.3 will limit or otherwise affect the Supplier's obligations under this Subcontract;
 - (ii) warrants that it or anyone it provides the Information Documents to, has sufficient expertise to understand the risks involved with any decision to enter into or perform any of the Supplier's obligations under this Subcontract and enters into this deed based on its own investigations, interpretations, deductions, information and determinations; and
 - (iii) acknowledges that:
 - (A) the Information Documents do not form the basis for the Supplier's decision to enter into this Subcontract;
 - (B) the Information Documents do not purport to contain, or be, all of the information that an interested party may require in order to make any decision to enter into this contract or perform any of the Supplier's obligations under this Subcontract; and
 - (C) it is aware that HLL has entered into this Subcontract relying upon the warranties, acknowledgements and agreements in this clause 23.3.
- (d) To the maximum extent permitted by Law, but subject to the Supplier's express rights under this Subcontract, the Supplier:
- (i) unconditionally and irrevocably releases, discharges and indemnifies HLL, the Principal and the Main Contractor from and against:
 - (A) any Claim against the Principal, the Main Contractor or HLL by, or liability of the Principal or the Main Contractor or HLL to, any person; or
 - (B) without being limited by clause 23.3(c)(i)(A) any loss suffered or incurred by the Main Contractor or HLL,

arising, now or in the future, in any way out of or in any way in connection with:

- (C) the provision of, or the purported reliance upon, or use of, the Information Documents to or by the Supplier or any other person to whom the Information Documents are disclosed by the Supplier or a failure by the Principal, the Main Contractor or HLL or any other party to provide any information to the Supplier; or
 - (D) the Information Documents being relied upon or otherwise used by the Supplier in the preparation of any information or document, including any Information Document which is “misleading or deceptive” or “false and misleading” (within the meaning of those terms in sections 18 and 29 (respectively) of the Australian Consumer Law in Schedule 2 to the Competition and Consumer Act 2010 (Cth) or any equivalent provision of State or Territory legislation); and
- (ii) unconditionally and irrevocably agrees that no Claim can be made by the Supplier against the Principal or the Main Contractor or HLL arising in any way from, or relating in any way whatsoever to, the Information Documents, including:
- (A) the accuracy, adequacy, currency, suitability, fitness for purpose, reasonableness, completeness or reliability of any of the Information Documents;
 - (B) the financial, taxation, accounting, environmental, legal or other implications of any reliance upon the Information Documents or anything whatsoever derived from them;
 - (C) the reasonableness, or possibility of achievement of, any forecasts which may be included in, or which may be or are capable of being derived in any way from, any of the Information Documents; and
 - (D) the reliability of any of the Information Documents for use in any way whatsoever in connection with the decision to enter into this Subcontract or perform the Supplier's obligations under this Subcontract.

23.4 Resources

- (a) The Supplier must:
- (i) provide sufficient and suitable resources (including materials, plant, equipment, supervision and labour) to Supply the Goods in a proper and workmanlike manner with due diligence and expedition and in accordance with this Subcontract.
 - (ii) ensure that only persons who are careful, skilled, experienced and qualified in their respective trades and callings are employed in connection with the Supply of Goods and that they hold all certificates and licences required by law in order for them to perform the relevant Supply of Goods.
- (b) If there is reasonable evidence the Supplier is not complying with its obligations under this clause 23.4 and the Supplier fails to rectify or satisfy HLL evidence it will be rectified, HLL may give the Supplier a notice it intends to proceed under this clause 23.4. 24 hours after giving notice under clause 23.4, HLL may:
- (i) take out of the hands of the Supplier, the whole or any part of the Supply of Goods the Contract that remains to be completed;
 - (ii) complete any or all of that work itself or by other means;
 - (iii) retake possession of the whole or any part of the Supply of Goods and any other property of HLL or the Main Contractor or the Principal that is in the care, possession or control of the Supplier; and
 - (iv) take possession of any or all unfixed work, plant, equipment, materials, goods, items or other things, whether or not such work, plant, equipment, materials, goods, items or other things have been delivered to the Site,
and a valuation will be made, and the Subcontract Sum adjusted, under clause 11 in respect of any work and other things done by HLL (by itself or by other means) instead of by the Supplier.
- (c) HLL may direct the Supplier to remove or have removed from the Site or from any activity, any person employed in connection with the Supply of Goods.
- (d) The Supplier must maintain records of all personnel, plant and other resources used on the Site and must make such records available to HLL for inspection as required by HLL from time to time.
- (e) The Supplier acknowledges that the Main Contractor encourages the employment of Indigenous persons on its projects and, without limiting any of the Supplier's obligations under this, the Supplier agrees that in performing the Supply of Goods it will consider:
- (i) the employment, training and mentoring of Indigenous persons; and
 - (ii) subcontracting the performance of work and the supply of goods and services to Indigenous companies.

23.5 Code of Conduct

- (a) The Supplier acknowledges that HLL has developed a Code of Business Conduct (Code) that sets out guidelines on how the Main Contractor and its business partners (including the Supplier and any Secondary Subcontractors) should behave in doing business. The Supplier agrees that:
 - (i) it has or will, obtain a copy of the Code from the Main Contractor for its information;
 - (ii) it will ensure that its Secondary Subcontractors obtain a copy of the Code for their information;
 - (iii) it will conduct its business and ensure that its Secondary Subcontractors conduct their business in a proper manner, including full compliance with accepted business practices, applicable codes of conduct and generally accepted business ethics (including those acceptable business ethics and applicable standards of conduct outlined in the Code); and
- (b) the values, principles and behaviours outlined in the Code do not replace or change any of the Supplier's obligations under this Subcontract.

23.6 Testing

- (a) In this clause 23.6, **test** includes examine and measure.
- (b) At any time before the expiry of the Defects Liability Period, HLL may direct that any material or work be tested.
- (c) With respect to any such tests:
 - (i) the Supplier must provide such assistance and samples and make accessible such parts of the Supply of Goods as may be required by HLL;
 - (ii) HLL may direct that any part of the Supply of Goods is not to be covered up or made inaccessible without HLL's prior consent;
 - (iii) the test must be conducted as provided in this Subcontract or by HLL or a person (which may include the Supplier) nominated by HLL; and
 - (iv) on completion of the test, the Supplier must make good the Supply of Goods so that it fully complies with this Subcontract.
- (d) Before a test is conducted, the Supplier or HLL, as the case may be, must give reasonable notice in writing to the other party of the time, date and place of the test. If the other party does not then attend, the test may nevertheless proceed.
- (e) Without prejudice to any other right, if the Supplier or HLL delays in conducting a test, the other, after giving reasonable notice in writing of its intention to do so, may conduct the test.
- (f) Results of all tests must be promptly made available by a party to the other party.
- (g) The costs of and incidental to testing will be borne by HLL or will be valued under clause 11 unless:
 - (i) this Subcontract provides that the Supplier must bear the costs or the test is one which the Supplier is required to conduct other than pursuant to a direction under this clause 23.6;
 - (ii) the test shows that the material or work is not in accordance with this Subcontract;
 - (iii) the test is in respect of Supply of Goods covered up or made inaccessible without HLL's prior consent where that was required; or
 - (iv) the test is consequent upon a failure of the Supplier to comply with a requirement of this Subcontract.
- (h) Where such costs are not to be borne by HLL, they will be borne by the Supplier or will be deemed to be work performed by HLL instead of the Supplier for which the costs will be valued, and the Subcontract Sum adjusted, by specific rates or prices under the Subcontract, and to the extent that no specific rates apply under the Subcontract, on the basis of the costs incurred by HLL to perform the work, supply the thing or take the action plus a reasonable amount for off-site overheads and profit.

23.7 Building Code

- (a) This clause 23.7 only applies if there are Commonwealth Works, being works set out in Items 1 to 8 of Schedule 1 of the *Code for the Tendering and Performance of Building Work 2016* (Cth) (**Building Code**) issued under s 34 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) (**BCIIP Act**).
- (b) The Supplier declares as at the date of this Subcontract and must ensure during the term of this Subcontract that, to the extent relevant to the Supply of Goods, in relation to the Commonwealth Works, it (and must procure that its Separate Subcontractors):
 - (i) complies with the Building Code;
 - (ii) is not covered by an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code;
 - (iii) is not subject to an Exclusion Sanction as defined in section 3(1) of the Building Code;

- (iv) has not had an adverse decision, direction or order made by a court or tribunal for a breach of the BCIIIP Act, a designated building law, work health and safety law or competition and consumer law and failed to comply with the decision, direction or order;
 - (v) only uses products in relation to the Commonwealth Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;
 - (vi) unless approved otherwise by the ABC Commissioner, is not excluded from performing Building Work (as defined in s 3(3) of the Building Code) funded by a state or territory government; and
 - (vii) complies with the Main Contractor's Workplace Relations Management Plan approved by the ABCC in accordance with Part 6 of the Building Code that applies to the Commonwealth Works.
- (c) Without limiting and notwithstanding this clause 23.7, the Supplier will ensure that remedial action is taken to rectify any behaviour on the part of it and its Secondary Subcontractors that is non-compliant with the Building Code.
- (d) The Supplier acknowledges and agrees that compliance with the Building Code does not relieve the Contractor from any responsibility or obligation under this Subcontract, or from liability for any Defect in Commonwealth Works arising from compliance with the Building Code.
- (e) The Supplier must notify the ABCC of any breach or suspected breach of the Building Code as soon as practicable but no later than 2 Business Days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.
- (f) The Supplier acknowledges the powers and functions of the ABC Commissioner and Secondary ABCC under the BCIIIP Act and the Building Code and must ensure that it (and must procure that its Secondary subcontractors) complies with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including requests:
- (i) for entry under section 72 of the BCIIIP Act;
 - (ii) to interview any person under section 74 of the BCIIIP Act;
 - (iii) to produce records or documents under sections 74 and 77 of the of the BCIIIP Act; and
 - (iv) (j) for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- (g) The Supplier must not enter into a Secondary Subcontract for any aspect of the Commonwealth Works unless:
- (i) the Secondary Subcontractor has submitted a Declaration of Compliance, including the further information outlined in Attachment A to the Declaration of Compliance, which the Supplier agrees is substantially in the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code; and
 - (ii) the Secondary Subcontract with the Secondary Subcontractor includes an equivalent clause to this clause 23.7.
- (h) Prior to entering into a subcontract for any aspect of the Commonwealth Works, and for every six months during the term of the subcontract, the Supplier must ensure that the subcontractor it has engaged advises HLL whether:
- (i) it has in the preceding 6 months or since it last advised HLL, whichever is the earliest, had an adverse decision, direction or order of a court or tribunal made against it for a breach of a designated building law, work health and safety law or the Migration Act 1958; or
 - (ii) it or its related entities have in the preceding 6 months or since it last advised HLL, whichever is the earliest:
 - (A) been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) to a Building Contractor or Building Industry Participant as those terms are defined in the BCIIIP Act; or
 - (B) owed any unsatisfied judgement debts to a Building Contractor or Building Industry Participant.
- (i) The Supplier must provide the Commonwealth with any Secondary Subcontractors' Declaration of Compliance promptly upon request.
- (j) The Supplier must maintain adequate records of the compliance with the Building Code by:
- (i) the Supplier;
 - (ii) its Secondary Subcontractors;
 - (iii) its consultants; and
 - (iv) any related entity of the Supplier (as that term is defined in subsection 3(2) the Building Code).

23.8 Media Events

- (a) The Supplier acknowledges the Principal and NSW Government may hold media events on the Site and that the Supplier must comply with reasonable site access requirements and co-operate or otherwise facilitate the Principal and the NSW Government to hold such media events.
- (b) Where a media event is held in relation to either the Main Tunnel Date of Opening Completion and the Date of Opening Completion, the Supplier agrees that it will not be entitled to make and HLL, the Main Contractor and the Principal will not be liable for, any Claim arising out of or in connection with such media events.
- (c) Where a media event is held at such other times as may be reasonably requested by the Principal, the Supplier will be entitled to claim reasonable additional costs that it incurs in connection with the media event, but will otherwise not be entitled to make and HLL, the Main Contractor and the Principal will not be liable for, any Claim arising out of or in connection with such media events.

23.9 Intellectual Property

The Supplier provides a royalty free, irrevocable licence to HLL, the Main Contractor and the Principal to use, possess, modify, vary or amend (and to sublicense to other to use, possess, modify, vary or amend) all intellectual property rights for the purposes of completing construction, commissioning and testing, using, operating, further development, any other purpose associated with the Supply of Goods, maintenance, upkeep, and repair of the works under the Main Contract.

The Supplier:

- (a) warrants that the Supply of Goods will not infringe any author's moral rights under the Copyright Act 1968 (Cth) or similar legislation in any jurisdiction;
- (b) must indemnify HLL and the Main Contractor to the extent any Claims, or costs, expenses, losses or damages are suffered or incurred by HLL, the Main Contractor, the Principal, another entity or a third party contractor engaged by the Principal or Main Contractor, arising out of, or in any way in connection with, any actual or alleged infringement of any author's moral rights under the Copyright Act 1968 (Cth) or similar legislation in any jurisdiction in connection with the Supply of Goods.

The Supplier must not use any intellectual property right owned or used by HLL or the Main Contractor for any purpose whatsoever except for the performance of its obligations under the Supplier.

23.10 Confidentiality

Subject to the exceptions set out in this clause 23.10, each party must keep confidential and must not divulge or disclose any of the information provided to it by the other party or any documents created in relation to the Works. This includes the contents of the Subcontract, any information relating to negotiations and any information regarding the operations, dealings, transactions, contracts, commercial or financial arrangements or affairs of the Main Contractor. This confidentiality obligation does not apply where any such information is already lawfully in the public domain, is required to be disclosed by a legislative requirement or is disclosed to the parties solicitor, accountant or other professional advisors, or to the Secondary Subcontractors or suppliers for the purpose of carrying out the Supply of Goods.

23.11 Suspension

- (a) HLL may at any time by written notice, direct the Supplier to suspend the progress of the whole or any part of the Supply of Goods for such period as HLL determines.
- (b) Without the Supplier's concurrence, HLL cannot order a suspension the duration of which, when added to earlier periods of suspension already directed under this clause 23.11 and complied with by the Supplier, exceeds 2 years.
- (c) At any time HLL may, by notice in writing to the Supplier, lift the suspension in whole or in part and direct the Supplier to resume progress of the whole or any part of the Supply of Goods. The Supplier must comply with the notice as soon as reasonably practicable after receiving it.
- (d) Further to this clause 23.11:
 - (i) the Supplier must ensure that any subcontractor it engages and each lower tier subcontractors are obliged under their subcontracts to immediately copy direct to HLL, the Supplier and (where relevant) the subcontractor it engages, any notice they receive from a subcontractor of any intention to suspend work pursuant to the Security of Payment Legislation;
 - (ii) upon the receipt of any such notice, HLL (and the Main Contractor and Principal where relevant) will be entitled if it so elects (but is under no obligation to do so), to make a payment instead of the Supplier direct to the subcontractor that gave the notice of intention to suspend work. In such circumstances, a valuation will be made, and the Subcontract Price adjusted, under clause 11 **Error! Reference source not found.** to reflect the amount of such direct payment plus a reasonable charge for HLL's (or where relevant, the Main Contractor's or Principal's) administrative costs; and
 - (iii) the Supplier indemnifies HLL for any cost, expense, Loss and damages suffered or incurred by it arising from any breach of this clause 23.11 by the Supplier.

23.12 Programs

The Supplier's obligation to achieve Completion by the Date for Completion is paramount and this clause 23.12 is to be construed so as not to derogate from this obligation.

HLL may prepare and provide programs during the course of the Supply of Goods and the Supplier must provide all information to HLL to assist in this regard.

The purpose of these programs is to facilitate the coordination of the Supply of Goods and the work of other contractors. The programs are not statements or contractual obligations and are not to be construed as directions of HLL.