1. APPLICATION OF CONDITIONS

These conditions ("Trading Terms") govern the rights and obligations of the supplier ("Supplier") of goods and/or services as named on the purchase order ("Purchase Order") and the Watpac entity as named on the Purchase Order ("Purchaser"). The Purchase Order, these Trading Terms and the Technical Requirements (as defined below) are collectively referred to as the "Contract". No document or statement other than the Contract shall form part of the agreement between the Supplier and the Purchaser unless otherwise agreed in writing by the Purchaser. If there is a conflict between the Trading Terms (as varied with the Purchaser's written agreement) and any other document or statement forming part of the Contract, these Trading Terms (as varied) shall prevail. The acceptance by the Supplier of the Purchase Order or the supply of any goods or performance of any works shall be deemed to be acceptance of the terms of the Contract (including these Trading Terms) and shall constitute a binding contract between the Supplier and the Purchaser. The law of New South Wales governs this Contract.

In this Contract, "business day" has the meaning given to that term in the *Building and Construction Industry Security of Payment Act 1999* (NSW) ("SOP Act").

2. ELECTRONIC TRANSACTIONS ACT 2000 (NSW)

The *Electronic Transactions Act 2000* (NSW) applies to the Contract. By accepting the Contract, the Supplier has consented to the provision of these Trading Terms by means of electronic communication.

3. PRICE

The unit prices and values indicated on the Purchase Order for the goods and/or work the subject of the Contract ("Goods" and/or "Work" as the case may be) include, as appropriate, the cost of delivery to the address stated in the Purchase Order and any insurance, duty, taxes (subject to clause 18 in respect of GST) and packing costs and any other costs and expenses associated with manufacturing, delivering and/or supplying the Goods or the Work.

4. DELAYS

If the Supplier fails to deliver Goods or complete Work within the time specified in this Contract, the Purchaser has the option to terminate this Contract or such part or parts thereof to which there has been delay, without incurring cancellation or any other charges. The Purchaser's entitlement in this clause 4 is without limitation to any other remedy or entitlement that it may have (including to damages) for a failure to deliver the Goods or complete the Work by the time required by this Contract.

5. NON-WAIVER

Failure of the Purchaser to insist upon strict performance of any of the terms of the Contract shall not be deemed a waiver of any subsequent default of them. The shipping or receiving of any Goods or Work under the Contract shall not be deemed a waiver of any rights for any prior failure by the Supplier to comply with any of these Trading Terms.

6. NO ASSIGNMENT

The Contract shall not be assigned by the Supplier in whole or in part without prior written consent of the Purchaser.

7. INFRINGEMENT

The Supplier warrants that the Goods and the Work and the sale or use of them will not infringe any patent or any other intellectual property right, and the Supplier covenants that it will defend, at its own cost and expense, and indemnify the Purchaser against, every action which may be brought against the Purchaser or those selling or using the Purchaser's product for any alleged infringement of any patent or breach of any other intellectual property right by reason of the sale or use of such Goods or Work and the Supplier agrees to pay all costs, damages, fines and profits recoverable in any such action.

8. COMPLIANCE

In performing its obligations under this Contract the Supplier agrees to comply with all laws and regulations applying to the Contract, the Goods and the Work.

9. CHANGES

(1) The Purchaser has the right at any time to make changes to the Goods or Work (including quantities ordered or to specifications and drawings) by forwarding an amended order changing the Goods or Work to be supplied under the Contract (Variation Order).

(2) If the Purchaser issues a Variation Order to the Supplier and complying with the Variation Order will cause an increase or decrease in the cost to the Supplier of supplying the Goods or performing the Works then a variation shall be made to allow additional payment to the Supplier or a credit of the price for omitted Goods or Work to the Purchaser calculated:

   (i) by agreement between the Supplier and the Purchaser;

   (ii) by the Purchaser using the unit prices or values stated on the Purchase Order for the Work that has been completed and/or Goods supplied; or

   (iii) if neither subparagraphs 9(2)(i) or (ii) apply, an amount reasonably determined by the Purchaser.

(3) No cause of action for breach of contract or other right of action shall arise or be instituted by the Supplier as a result of a Variation Order, and the Purchaser may seek the supply of Goods or Work omitted by a Variation Order by a third party.

(4) If changes directed in a Variation Order result in an increase or decrease in the time required for performance, subject to compliance with paragraph 9(5), a reasonable variation of the time shall be made by the Purchaser.

(5) Any claim by the Supplier for adjustment of the price payable for Goods or Work, or the time required to supply them under this clause 9 must be made within 10 business days from the date when the Variation Order is issued. The Supplier is not entitled to such an adjustment if it does not make a claim in compliance with the requirements of this clause 9(5).

10. WARRANTY

Notwithstanding the Purchaser's acceptance or right of inspection and/or other terms of the Contract, the Supplier warrants that the Goods, the Work, the materials, workmanship and all other articles furnished under the Contract are free from any encumbrances, free from any defects (including in design), fully comply with any specifications and drawings supplied or referenced in the Purchase Order ("Technical Requirements") and are suitable and fit for their intended purpose and comply with all requirements of law. The Purchaser relies on this warranty by the Supplier in purchasing the Goods and Work covered by the Contract. The Supplier must obtain and provide for the benefit of the Purchaser and the person who engaged the Purchaser ("the Principal") the guarantees and warranties as may be required under the Contract or as are advised by the Purchaser.

11. INSPECTION AND TESTING

The Purchaser, its insurers and the Principal shall be entitled to inspect and test the Goods or Work during manufacture, whether on the Supplier's premises or the premises of any subcontractor, and the Supplier shall attend the inspection and provide any requested assistance to those conducting the inspection and testing. Such inspection and testing shall not release the Supplier from any obligation of the Supplier under the Contract.

12. REJECTION

The Purchaser may at any time, whether before or after delivery, reject any Goods or Work found to be inferior or defective or damaged or not in accordance with the Contract and without limiting the liability of the Supplier, the Purchaser may require, at its option:

(1) a refund of payment by the Supplier within seven (7) days; or

(2) replacement of the Goods or resupply of the Work. Risk in the rejected Goods immediately re-vests in the Supplier once the Purchaser has notified the Supplier of its rejection. The Supplier is liable for all loss or expenses incurred by the Purchaser due to the rejection of the Goods or Work. This condition shall apply notwithstanding that the Goods or Work have been inspected or tested or that the Purchaser has paid for the Goods or Work.

13. CANCELLATION

The Purchaser may by notice in writing to the Supplier cancel the Contract in whole or in part if:

(1) the Supplier fails to complete supply of the Goods or Work by the date and time specified in the Purchase Order;
(2) fails to replace defective Goods or Work in accordance with the Contract;
(3) breaches any provision contained in the Contract; or
(4) becomes insolvent or subject to any kind of external administration, files or has filed against it a petition in bankruptcy, or makes an assignment for the benefit of creditors;

Upon such cancellation the Purchaser may cease payment, recover from the Supplier all monies paid for undelivered Goods or uncompleted Work and purchase similar Goods or Work from an alternative supplier. The Supplier must indemnify the Purchaser for any additional cost it may incur in doing so.

The Supplier may by notice in writing to the Purchaser suspend the supply of Goods or Work if the Purchaser has not made payment of an amount due and payable to the Supplier under this Contract within 10 business days of notification that payment is outstanding. If the Purchaser has not made good that default in payment within a further 10 business days of suspension by the Supplier, the Supplier may by notice in writing to the Purchaser cancel the Contract in whole or in part.

14. DELIVERY OF GOODS AND COMPLETION OF WORK

Delivery shall occur when the Goods have been delivered in good condition at the address stated in the Purchase Order at a point stipulated by the Purchaser's representative and receipt of the Goods has been given by the Purchaser's representative. All the Goods shall remain at the Supplier's risk until delivery is effected. Title to the Goods passes to the Purchaser on delivery unless payment has been made prior to delivery, in which case title to the Goods passes upon payment.

Completion of Work shall occur when the Work has been completed to the reasonable satisfaction of the Purchaser and complies with the requirements of this Contract, and the Purchaser's representative has given notice to this effect to the Supplier.

15. WORK ON PURCHASER'S PREMISES

If any Work is to be performed at the Purchaser's or Principal's premises, then the Supplier must comply with all applicable laws and requirements of the Purchaser or Principal in the performance of the Work.

16. INSURANCE

Unless the Purchaser has provided evidence in writing to the Supplier of insurance cover for:

(1) damage to vehicles, plant and equipment of the Supplier used or supplied under the Contract, including liability cover for property damage and death or bodily injury ("Plant and Equipment Insurance");
(2) liability at common law in accordance with statutory requirements for the Supplier's employees ("Worker's Compensation Insurance"); or
(3) the Supplier's liability to third parties for loss or damage to property (including any indirect or consequential loss) and death of or injury to any person ("Public Liability Insurance"),

the Supplier shall have in place its own Plant and Equipment Insurance, Worker's Compensation Insurance and Public Liability Insurance on equivalent terms to those set out in paragraphs 16(1) to 16(3). If requested by the Purchaser, the Supplier shall produce evidence of the currency of the Supplier's Worker's Compensation, Public Liability and Plant and Equipment Insurance policies.

17. TERMS OF PAYMENT

(1) The Supplier may issue a payment claim on or after the last day of each calendar month in a form acceptable to the Purchaser.
(2) Within 10 business days of receipt of a valid payment claim, the Purchaser may issue to the Supplier a payment schedule setting out the amount payable by the Purchaser to the Supplier (subject to set off of any moneys due from the Supplier to the Purchaser).
(3) Within 3 business days of receiving the payment schedule the Supplier must provide the Purchaser with a valid tax invoice for the amount stated in the payment schedule. If no payment schedule is issued, the Supplier must provide the Purchaser with a valid tax invoice for the amount claimed in the Supplier's payment claim within 18 business days of the issue of the payment claim.
(4) The Purchaser shall pay the Supplier the amount stated in the payment schedule, or (if no payment schedule is issued) the amount claimed in the Supplier's payment claim, within 20 business days after the Supplier's payment claim for the Goods or Work is received by the Purchaser provided that all other terms of the Contract have been observed.
(5) For the purposes of this clause 17 and clause 18, a tax invoice is valid if:
    (i) it is addressed to the correct Watpac entity named on the Purchase Order (i.e. the Purchaser);
    (ii) a valid Purchase Order number is included on the invoice (provided a Purchase Order number was provided at the time it was issued);
    (iii) the invoice identifies the project that the Purchase Order has been issued in relation to; and
    (iv) the invoice has been submitted to invoices@besixwatpac.com or by such other means as the Purchaser communicates to the Supplier from time to time.

18. GST

Unless this Contract provides otherwise, and subject to this clause, any consideration that may be provided for under the Contract is exclusive of GST. If a party makes a taxable supply in connection with this Contract for a consideration which represents its value, then the recipient of the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply subject to the provision to the recipient of a valid tax invoice.

19. PRICE VARIATION

Unless explicitly stated in the body of the Purchase Order the cost of the Goods or Work shall be fixed and not subject to escalation for any reason whatsoever.

20. HEALTH AND SAFETY

The Supplier must ensure that the Goods and Work are supplied and performed in accordance with, and otherwise comply with, safe practices applicable in the relevant industry and all applicable laws, including, without limitation, the provisions of the *Work Health and Safety Act 2011* (NSW) and any regulations and/or codes of practice prescribed thereunder.

21. PROPORTIONATE LIABILITY

The parties agree that to the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities arising out of or in connection with this Contract, the Goods or the Work.

22. SEVERABILITY

If any provision in this Contract is unenforceable, illegal or void or makes this Contract or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Contract remains in force.

23. NSW CODE

Alternative 1 – Purchase Orders up to $25,000

The NSW Government's Code of Practice for the Building and Construction Industry ("NSW Code") and the NSW Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry ("NSW Guidelines") apply to the Contract. By accepting this Contract, the Supplier warrants and agrees that it will be taken to have read and understood, and that it will comply with, the NSW Code and NSW Guidelines.

Alternative 2 – Purchase Orders over $25,000

In this clause 23, words and expressions that are defined in the NSW Guidelines have, unless the context otherwise indicates, the same meaning as in the NSW Guidelines. The NSW Code and NSW

Guidelines are available at www.industrialrelations.nsw.gov.au. The Supplier must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines. The Supplier must notify the Construction Compliance Unit, the Purchaser and the Principal of any alleged breaches of the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance. Where the Supplier is authorised to engage a subcontractor or consultant, and it does so, the Supplier must ensure that any secondary contract imposes on the subcontractor or consultant equivalent obligations to those in this clause 23 (under a heading "NSW Code and NSW Guidelines"), including that the subcontractor or consultant must comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.

The Supplier must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines. The Supplier must:

(1) maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its subcontractors, consultants and related entities; and
(2) allow, and take reasonable steps to facilitate, New South Wales Government authorised personnel (including personnel of the Construction Compliance Unit) to:
    (i) enter and have access to sites and premises controlled by the Supplier;
    (ii) inspect any work, material, machinery, appliance, article or facility;
    (iii) access information and documents;
    (iv) inspect and copy any record relevant to the Goods or Work;
    (v) have access to personnel; and
    (vi) interview any person, as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the Supplier, its subcontractors, consultants and related entities.

The Supplier, and its related entities must, agree to, and comply with, a request from New South Wales Government authorised personnel (including personnel of the Construction Compliance Unit) for the production of specified documents by a certain date, whether in person, by post or electronic means.

The Supplier warrants that at the time of entering into this Contract, neither it nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from tendering for work to which the NSW Code and NSW Guidelines apply. If the Supplier does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.

Where a sanction is imposed:

(3) it is without prejudice to any rights that would otherwise accrue to the parties; and
(4) the State of New South Wales (through its agencies, Ministers and the Construction Compliance Unit) is entitled to:
    (i) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
    (ii) take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the Supplier, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

The Supplier bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Supplier is not entitled to make a claim for reimbursement or an extension of time from the Purchaser, the Principal or the State of New South Wales for such costs. Compliance with the NSW Code and NSW Guidelines does not relieve the Purchaser from responsibility to perform the Work or supply the Goods and any other obligation under the Contract, or from liability for any defect in the Goods or Work or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines. Where a change in the Contract or the Goods or Work is proposed, and that change would, or would be likely to, affect compliance with the NSW Code and NSW Guidelines, the Supplier must immediately notify the Purchaser and the Principal of the change, or likely change and specify:

(5) the circumstances of the proposed change;
(6) the extent to which compliance with the NSW Code and NSW Guidelines will, or is likely to be, affected by the change; and
(7) what steps the Supplier proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Work Health and Safety Management Plan); and
(8) the Purchaser will direct the Supplier as to the course it must adopt within 10 business days of receiving notice.

24. NOTICES

In this clause 24, “Electronic Portal” means the electronic portal or document management system (if any) nominated by the Purchaser and notified to the Supplier.

Subject to clause 24(3), any notice, demand, consent or other communication given or made under these Trading Terms which is in writing:

(1) must either be delivered to the intended recipient:
    (v) by prepaid post, by hand, by facsimile transmission or via the Electronic Portal, to the address, facsimile number or in accordance with the Electronic Portal details, last notified by the intended recipient to the sender; or
    (vi) by email:
        1. with a subject heading of the email containing the name of the notice that is being given in the following format: "[name of project] Purchase Order – [name of notice]" – so that the nature of the email is readily identifiable by the recipient; and
        2. to the email address last notified by the intended recipient to the sender; and
(2) will be taken to be duly given or made:
    (i) in the case of delivery in person, when delivered;
    (ii) in the case of delivery by post by:
        1. regular prepaid post or registered post, 6 business days after the date of posting;
        2. priority prepaid post or priority registered post, 4 business days after the date on which the notice was posted; and
        3. using express post, 2 business days after posting; and
    (iii) in the case of facsimile transmission, on receipt by the sender of a transmission control report from the despatching facsimile machine showing the relevant number of pages, the correct destination facsimile machine number and the result of the transmission as “OK” (or equivalent wording); and
    (iv) in the case of sending via the Electronic Portal, immediately upon the notice being successfully uploaded to, or sent to the recipient via, the Electronic Portal; and
    (v) in the case of sending via email, immediately upon the email being sent, unless the sender receives an automatically generated notification from the recipient, or the recipient’s email system, that the notice or relevant email has not been delivered or received or that the delivery of the notice or relevant email has been delayed (‘bounce back notification’), in which case the notice is not taken to have been effected,

    but if the email (other than where the sender receives a bounce back notification from the recipient or the recipient’s email system), facsimile transmission or Electronic Portal transmission is received after 4.00 pm on any day, or on a day that is not a business day, it will (unless it is a payment schedule or any notice issued by the Purchaser under the SOP Act) be taken to have been duly given or made at the commencement of business on the next business day in that place.

(3) Notices to be given or served by the Supplier under, or in connection with, clause 17 or the SOP Act must not be served via email or facsimile transmission.

25. MODERN SLAVERY LEGISLATION

The Supplier warrants that:

(1) it has not engaged in, and does not engage in, any activity, practice or conduct in its operations that would constitute a modern slavery offence under any law (including the *Modern Slavery Act 2018* (Cth)) or otherwise contravene any laws or codes of practice in force from time to time in relation to modern slavery; and

(2) it will comply with, and take reasonable steps to ensure any subcontractor complies with, mandatory reporting obligations in any laws or codes of practice in force from time to time in relation to modern slavery.

26. EXCLUSION OF INCOTERMS AND VIENNA CONVENTION

(1) The Supplier and Purchaser acknowledge and agree that INCOTERMS and the Vienna Convention are excluded from, and have no application to, this Contract.

(2) In this clause 26, INCOTERMS refers to the International Commercial Terms, a series of pre-defined commercial terms published by the International Chamber of Commerce relating to international law.