

STANDARD TERMS AND CONDITIONS OF TRADE

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This is a controlled document



WESTFORCE
CONSTRUCTION

1. General

These Standard Terms and Conditions of Trade – Purchase Order (**Standard Terms**) are incorporated into and form part of any agreement entered into by Westforce Construction Pty Ltd (**Westforce**) by way of a purchase order that expressly incorporates these Standard Terms (**Agreement**).

2. Delivery, Acceptance and Title

2.1 Unless otherwise specified in the Agreement, time is of the essence with respect to the Supplier's Obligations.

2.2 If this Agreement includes a program:

- (a) for each program activity, on the start date the Supplier must commence, and on the finish date the Supplier must complete, any parts of the Supplier's Obligations corresponding with that program activity; and
- (b) for each program milestone, on the milestone date the Supplier must complete any parts of the Supplier's Obligations corresponding with that milestone.

2.3 If the Supplier is unable to perform any of the Supplier's Obligations by a date or within a period specified by this Agreement due to a breach of this Agreement by Westforce:

- (a) within 10 business days after becoming the Supplier becomes aware of that inability, the Supplier must give Westforce a written notice identifying the cause and duration of the delay, and the dates and periods it is unable to meet; and
- (b) subject to the Supplier giving a compliant notice under subclause (a), those dates and periods will be extended by a duration determined by Westforce acting reasonably.

2.4 Westforce may at any time in its absolute discretion give a written notice to the Supplier extending any dates and periods specified by this Agreement. Westforce is not obliged to exercise its discretion for the benefit of the Supplier.

2.5 None of the following events or circumstances affects Westforce's rights under this Agreement with respect to any Non-Conformance (including without limitation by constituting or evidencing acceptance by Westforce of Goods or Services):

- (a) Westforce issuing a Payment Schedule;
- (b) Westforce paying any amount to the Supplier;
- (c) Westforce taking possession or custody of Goods;
- (d) testing, commissioning, or use of Goods or Services.

- 2.6 Title to Goods passes to Westforce upon the earlier of payment for any part of Goods or delivery to Westforce.
- 2.7 Risk in Goods passes to Westforce when the Supplier has delivered the Goods and performed all Services under the Agreement.

3. **Quality and Non-Conformance**

3.1 The Supplier must:

- (a) at all times be suitably licensed, registered, accredited, qualified and experienced, shall possess the commercial and technical competence of a reasonably competent subcontractor,
- (b) have sufficient commercial resources to comply with the Supplier's Obligations;
- (c) only use materials that are new, free of defects and of the highest quality for the purpose or application required;
- (d) deliver Goods contained or packed in the manner required by this Agreement;
- (e) ensure that all workmanship will be proper, tradesman like, of the highest quality and standard, and to the standards specified in this Agreement;
- (f) comply with all applicable legislative requirements, the standards specified in this Agreement, and standards commensurate with good industry practice, including all relevant Australian Standards published by Standards Australia, codes of practice, and manufacturers' standards; and
- (g) allow Westforce to carry out any inspection, test, or audit of the Goods and Services, and any goods, services, staff and equipment used in their provision, that Westforce considers necessary in its absolute discretion.

3.2 The Supplier must ensure, and warrants and represents, that when completed and delivered, and at all times during their Service Life, the Goods and Services will:

- (a) be fit for the purposes for which Goods and Services of the same description would ordinarily be used;
- (b) be fit for any particular purpose expressly or impliedly made known to the Supplier at the time of the conclusion of the Agreement;
- (c) be of the quantity, quality and description required by the Agreement;
- (d) if applicable, meet any agreed design and performance criteria and correspond with any sample;
- (e) be complete, accurate and of merchantable quality;
- (f) comply with this Agreement in all respects, including Westforce's directions (to the reasonable satisfaction of Westforce);
- (g) meet and satisfy all performance levels and performance requirements stated in this Agreement;

- (h) comply with all applicable legislative requirements, the standards specified in this Agreement, and standards commensurate with good industry practice, including all relevant Australian Standards published by Standards Australia, codes of practice, and manufacturers' standards.

3.3 The Supplier must provide to Westforce in a form acceptable to Westforce any documents and information necessary for the convenient or beneficial use of the Goods and Services, including but not limited to:

- (a) evidence of licenses, registrations, quality checks, certificates of origin, servicing manuals, training, and inductions;
- (b) all manufacturer and supplier warranties, instructions, commissioning and tests, training, certificates of compliance, permits, registrations, software, and licenses;
- (c) if requested by Westforce, evidence to Westforce's reasonable satisfaction that title to the Goods has passed to Westforce; and
- (d) any other documents and information reasonably requested by Westforce during the Defects Liability Period.

4. Defects Liability Period

4.1 During the Defect Liability Period the Supplier must carry out all maintenance reasonably necessary to ensure the Goods and Services will conform with clause 3.2 until the end of the Service Life.

4.2 At any time until the end of the Defects Liability Period, if Westforce considers that there is a Non-Conformance in the Goods or Services it may, in its absolute discretion, give the following written directions to the Supplier:

- (a) that the Supplier must remove the Goods, or the parts of them that Westforce considers are affected by the Non-Conformance;
- (b) that the Supplier must rectify the Non-Conformance within a specified reasonable period;
- (c) that others will rectify the Non-Conformance; or
- (d) that Westforce accepts the Non-Conformance.

4.3 If Westforce gives a direction under subclause 4.2(a):

- (a) the Supplier must promptly remove the Goods or parts of the Goods specified in the direction, from the location specified in the direction;
- (b) any amount or amounts already paid by Westforce for the Goods or parts of the Goods specified in the direction will be immediately due and owing from the Supplier to Westforce; and
- (c) subject to the Supplier complying with subclauses (a) and (b), title to and ownership of the Goods or parts of the Goods specified in the direction will revert to the Supplier.

4.4 If Westforce gives a direction under subclause 4.2(b):

- (a) during the period specified in the direction, the Supplier must carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of the Goods or Services as is reasonably possible;

- (b) during that period, Westforce must allow the Supplier a reasonable opportunity to rectify the Non-Conformance; and
- (c) after that period, Westforce may exercise its rights under clause 4.2(c) or (d) with respect to that Non-Conformance.

4.5 If Westforce gives a written notice under clause 4.2(c):

- (a) Westforce may have others rectify the Non-Conformance; and
- (b) the costs, loss, and expense thereby incurred by Westforce may be assessed and certified by Westforce as moneys due and payable from the Supplier to Westforce.

4.6 If Westforce gives a written notice under clause 4.2(d), Westforce may:

- (a) assess the amount by which the value of the Goods and Services is reduced as a result of the Non-Conformance; and
- (b) certify that amount as moneys due and payable from the Supplier to Westforce.

4.7 Nothing in this clause 4 limits or excludes the Supplier's liability for Non-Conformances under this Agreement or at law, including its liability during and after the Defects Liability Period.

5. Termination

5.1 Westforce may terminate the Agreement by written notice to the Supplier at the following times:

- (a) to the extent the Agreement relates to Goods – before all of the Goods have been delivered;
- (b) to the extent the Agreement relates to Services – before the Supplier has completed the Services.

5.2 If Westforce terminates the Agreement under clause 5.1 the following amounts will be payable by Westforce to the Supplier:

- (a) Any amount that the Agreement expressly provides would be payable from Westforce to the Supplier if Westforce terminated the Agreement.
- (b) A proportion of the amount that would have been payable for Goods and Services corresponding to the proportion of the Services that were performed and the Goods that were delivered before the time that Westforce gave notice of cancellation.

5.3 Westforce may terminate the Agreement by written notice to the Supplier if the Supplier does any of the following:

- (a) fails to complete rectification under clause 4.2(b) within the period specified in the direction;
- (b) breaches a term of the Agreement and fails to remedy the breach within 5 business days after Westforce gives a written notice requiring it to do so; or
- (c) breaches a term of the Agreement which is not capable of remedy.

5.4 If Westforce terminates the Agreement, except as provided in clause 5.2, no amount will be payable from Westforce to the Supplier, including (without limitation) for cancellation fees, change fees or restocking fees.

6. Quotation for modification to Purchase Order

- 6.1 If requested in writing by Westforce, the Supplier must promptly give Westforce a written quotation for a proposed amendment to this Agreement, including by increasing or decreasing the quantity of Goods or Services, and/or the time in which they are to be performed or delivered.
- 6.2 A written quotation given by the Supplier under clause 6.1:
- (a) is binding on the Supplier for 28 days after it is issued;
 - (b) must be based on the same unit rates as the amounts payable to the Supplier under the Agreement; and
 - (c) has no effect on this Agreement unless Westforce issues a Replacement PO consistent with the written quotation.

7. Payment

- 7.1 In this clause 7, **business day** means a day other than:
- (a) a Saturday, Sunday or public holiday in Western Australia; or
 - (b) any day that falls between 22 December in any year and 10 January in the following year (inclusive).
- 7.2 Subject to any express term of this Agreement to the contrary, the Supplier's entitlements to receive payment of any amount under this Agreement, and to make a claim for payment for such amounts (**Payment Claim**), are conditional upon and do not arise until each and every one of the following conditions apply:
- (a) the Supplier has delivered all the Goods and performed all the Services required by this Agreement;
 - (b) the Supplier has provided all documents and information required under clause 3.3; and
 - (c) all inspections, tests, and audits required under clause 3.1(g) have been completed, and their results are consistent with the Goods being free of any Non-Conformance.
- 7.3 If this Agreement expressly provides that the Supplier may make monthly progress claims, the Supplier must make Payment Claims progressively by submitting a Payment Claim to Westforce on the last date of each calendar month for the Goods and Services performed and delivered during that calendar month.
- 7.4 A Payment Claim must:
- (a) be given in writing to Westforce;
 - (b) conform with any form given to the Supplier by Westforce for that purpose from time to time;
 - (c) indicate the amount of the progress payment sought by the Supplier from Westforce;
 - (d) describe the Goods and Services to which the progress payment relates; and
 - (e) include any other information required by the *Building and Construction Industry (Security of Payment) Act 2021*.

- 7.5 Within 15 business days after receiving a Payment Claim, Westforce must issue to the Supplier a payment schedule setting out the moneys due and payable from Westforce to the Supplier (if any) (**Scheduled Amount**) and reasons for any difference in value to the payment claimed in the Payment Claim (**Payment Schedule**).
- 7.6 Each Payment Schedule must:
- (a) be given in writing to the Supplier;
 - (b) identify the Payment Claim to which it relates;
 - (c) indicate the Scheduled Amount;
 - (d) indicate if Westforce does not propose to make any payment;
 - (e) if the Scheduled Amount is less than the amount claimed in the Payment Claim, or if no payment is to be made, indicate:
 - (i) why the Scheduled Amount is less than the Payment Claim or why no payment is to be made; and
 - (ii) the reason why Westforce is withholding any payment.
- 7.7 Westforce may deduct any moneys due, payable, or owing from Supplier to Westforce from any amount otherwise payable from Westforce to the Supplier under this Agreement.
- 7.8 Westforce may correct any error which has been discovered in any Payment Schedule (other than a final payment certificate) in any subsequent Payment Schedule.
- 7.9 A Payment Claim may be in the form of a tax invoice complying with clause 7.4. If a Payment Claim is not in the form of a tax invoice, within two business days of receiving a Payment Schedule with a Scheduled Amount the Supplier must issue a tax invoice addressed to Westforce for the Scheduled Amount.
- 7.10 If GST is payable in connection with any Goods or Services be supplied under the Agreement, the Supplier irrevocably warrants and agrees that any tax invoice it issued to Westforce under this Agreement will include GST for those Goods and Services.
- 7.11 Except as expressly provided in this Agreement, the amount or amounts identified in the Purchase Order are fixed and not subject to any change, including (without limitation) by reason of changes in the costs of labour (including related overhead expenses) or materials, or both, to be incurred by the Supplier.
- 7.12 A Payment Claim must be accompanied by a statutory declaration in a form of Schedule 2.
- 7.13 Westforce's obligation to pay the Subcontractor, and the Subcontractor's rights to make a Payment Claim and to receive payment, are conditional upon the Subcontractor complying with clause 7.12.
- 8. Subcontracting**
- 8.1 Except as expressly provided in the Agreement, the Supplier may not subcontract any obligations under the Agreement without the prior written consent of Westforce, which Westforce may withhold in its absolute discretion.

8.2 Where the Supplier subcontracts any of its obligations under the Agreement, the Supplier remains responsible for carrying out and completing those obligations.

9. Indemnity

9.1 In this clause 9, **Losses** means actions, claims, liabilities, expenses, losses, damages and costs and consequential and indirect losses and damages including those arising out of any third-party claim.

9.2 The Supplier indemnifies Westforce against all Losses that Westforce directly or indirectly sustains or incurs as a result of:

- (a) any negligent, unlawful or wilful act or omission of the Supplier, Supplier personnel or Supplier subcontractors;
- (b) death or personal injury of any person to the extent caused by the Supplier;
- (c) property damage to the extent caused by the Supplier; and
- (d) any breach by the Supplier of clause 11.

9.3 The Supplier shall be liable for any fines, damages or penalties incurred to Westforce as a result of any direct or indirect act or omission by the Supplier.

10. Insurance

10.1 The Supplier must:

- (a) take out prior to delivering any Goods or commencing performance of any Services; and
- (b) maintain at all times until the end of the Defects Liability Period,

insurance policies satisfying each and every requirement of Schedule 1 to this Agreement.

10.2 The Supplier must ensure that any subcontractor engaged by it is insured to a level commensurate (including as to amounts and types of insurance) with:

- (a) the insurance obligations of the Supplier under the Agreement; and
- (b) the work to be performed by the subcontractor.

10.3 If requested by Westforce at any time before the end of the Defects Liability Period, the Supplier must promptly provide Westforce with (a) certificates of currency; or (b) copies of policy schedules and wordings (as specified by Westforce) for all insurance required under this Agreement, including subcontractors' insurance required by clause 10.2.

10.4 The Supplier must not, and must ensure that its subcontractors and personnel do not, enter any place (including a workplace) that is owned or occupied by Westforce, or is under Westforce's management or control, if any of the following criteria apply:

- (a) the Supplier does not hold insurance policies satisfying each and every requirement of Schedule 1 to this Agreement;
- (b) a subcontractor of the Supplier does not hold insurance policies complying with clause 10.2;
or

- (c) Westforce has made a request under clause 10.3 and the Supplier has not yet complied with that request in full.

10.5 The Supplier must promptly and without delay notify Westforce if an insurer gives a notice of cancellation or other notice in respect of any insurance policy required under this Agreement.

10.6 The Supplier:

- (a) is liable for; and
- (b) indemnifies Westforce to the extent of,

any excess, deductible or self insured retention under any insurance policy required under this Agreement.

11. Confidential Information

11.1 In this clause 11, **Confidential Information** means all data and/or information disclosed by Westforce to the Supplier for the purposes of the Agreement before, on or after its commencement (including the terms of the Agreement) relating to the operations, business, research and technology of the disclosing party, but not including any information which:

- (a) is publicly available at the date of the Agreement;
- (b) becomes publicly available subsequent to the date of the Agreement without breach of the Agreement;
- (c) the Supplier obtained from a third party without breach by that third party of any obligation of confidence concerning that Confidential Information; or
- (d) was already in the Supplier's possession (as evidenced by written records) when provided by or on behalf of Westforce.

11.2 The Supplier must keep any Confidential Information disclosed to it confidential and must not deal with it in any way that might prejudice its confidentiality.

11.3 Despite clause 11.2, the Supplier may disclose Confidential Information:

- (a) to the extent required by law;
- (b) to the Supplier's officers, employees, or subcontractors to the extent necessary for the Supplier to perform and deliver the Goods and Services.

11.4 Before the Supplier discloses Confidential Information:

- (a) to an officer or employee, the Supplier must direct the officer or employee to keep the Confidential Information confidential; and
- (b) to a subcontractor of the Supplier, the Supplier must ensure that the subcontractor is subject to a contractual obligation to keep the Confidential Information confidential.

11.5 The obligations under this clause 11 continue indefinitely.

12. Standards and Compliance

12.1 The Supplier must:

- (a) comply with any instruments made under the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth)¹, including (without limitation) the Building Code (as defined in that Act)², to the extent such instruments apply to the Supplier's Obligations;
- (b) comply with Westforce's Modern Slavery Policy published at westforce.com.au/modern-slavery.pdf and available from Westforce on request;
- (c) comply with Westforce's Privacy Policy published at westforce.com.au/privacy-policy.pdf and available from Westforce on request;
- (d) comply with the Heavy Vehicle National Law³ as enacted by the *Road Traffic (Administration) Act 2008* (WA)⁴ and regulations made under that Act (**HVNL**); and
- (e) without limiting the foregoing, ensure that where a heavy vehicle is used in connection with performing Supplier's Obligations, ensure that each party in the chain of responsibility (as defined in the HVNL) complies with the HVNL.

12.2 The Supplier must:

- (a) ensure that its subcontractors, suppliers, and consultants are subject to contractual obligations in terms equivalent to clause 12.1 above; and
- (b) take all reasonable steps to ensure its subcontractors, suppliers, consultants, directors, officers, and employees, comply with clause 12.1 above,

at all times when those persons perform any part of the Supplier's Obligations.

12.3 A reference in this clause 12 to a law, regulation, policy, or other instrument:

- (a) means that thing as amended from time;
- (b) includes its successors and replacements;
- (c) includes any regulations or other legislative instruments made under it; and
- (d) where applicable, includes its equivalent in other jurisdictions.

13. Liability and claims

13.1 The *Civil Liability Act 2002* (WA) Part 1F, including any successors to that Part, does not apply to this Agreement.

13.2 The Supplier must give written notice to Westforce of any claim within 20 business days of the occurrence of the events on which the claim is based. If the Supplier fails to give timely notice, the

¹ Available at <https://www.legislation.gov.au/Series/C2016A00087>.

² Available at <https://www.legislation.gov.au/Series/F2016L01859>.

³ Available at <https://www.legislation.qld.gov.au/view/whole/html/inforce/current/act-2012-hvnlq>.

⁴ Available at https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a146690.html.

Supplier releases Westforce from any claim arising from or in connection with the relevant fact, matter or thing.

- 13.3 Nothing in the Agreement derogates from any of Westforce's rights at common law or in equity.
- 13.4 Any right to payment pursuant to a Payment Schedule is the Supplier's sole and exclusive right against Westforce arising out of or in connection with the Agreement. To the extent permitted by law, all other rights (including in law, equity, statute, or contract) are excluded, and the Supplier waives those rights and releases Westforce from all such claims.

14. General

- 14.1 This Agreement is governed by the laws of Western Australia.
- 14.2 Each party agrees to execute such agreements, deeds and documents and do or cause to be executed or done all such acts and things as may be reasonably necessary to give effect to the Agreement. The Supplier agrees to cooperate and work with third party suppliers of Westforce to the extent necessary to give effect to the Agreement.
- 14.3 The Supplier may only assign its rights or novate its rights and obligations under the Agreement with the prior written consent of Westforce, which Westforce may withhold.
- 14.4 A right created under it may not be waived except in writing, signed by the party or parties intended to be bound.
- 14.5 A failure of a party to exercise a right arising out of the Agreement does not constitute a waiver of that right.
- 14.6 The Supplier must comply with any applicable Westforce policy and/or procedure as notified by Westforce to the Supplier from time to time or published on Westforce's website.
- 14.7 In this Agreement:
- (a) references to the singular includes the plural and vice versa; and
 - (b) references to person or individuals include that person's successors, administrators, executors and assigns and a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any government agency.
- 14.8 To the extent possible, any principles of law to the following effect are excluded:
- (a) to the effect that a party (**Party A**) may not benefit from another party's breach of contract where Party A caused or contributed to the breach; and
 - (b) to the effect that a contractual term is to be construed against the interests of the party who proffered or drafted it.
- 14.9 Westforce may disclose or publish details of the Agreement, including its terms.

15. Definitions

- 15.1 Definitions of terms that appear in other documents that form part of this Agreement (including the PO Terms) apply to these Standard Terms.
- 15.2 The following definitions apply to this Agreement.

- (a) **Defects Liability Period** means the period:
- (i) commencing on the day after the Supplier has delivered all Goods and performed all Services under the Agreement; and
 - (ii) ending on the day 12 months after that date, or any longer period stated on the face of the Purchase Order.
- (b) **Non-Conformance** means any defect or omission in the Goods or Services resulting from a failure of the Goods or Services to comply with, or the Supplier to perform its obligations in accordance with, the Agreement.
- (c) **PO Terms** means Westforce's Purchase Order Terms and Conditions.
- (d) **Service Life** means the period commencing upon completion and delivery of the Goods and Services and ending upon the latest of the following:
- (i) the end of any periods during which this Agreement states the Goods and Services are intended to be used;
 - (ii) the end of any period during which this Agreement requires that the Goods and Services must remain in conformance with this Agreement and/or free from any Non-Conformance;
 - (iii) the end of the period during which the Goods and Services are reasonably expected to be used, having regard to their nature and intended use; and
 - (iv) the end of the Defects Liability Period.
- (e) **Supplier's Obligations** means all of the Supplier's obligations under this Agreement, including (without limitation) its obligations to deliver the Goods and perform the Services.

**SCHEDULE 1
INSURANCE**

PART I : INSURANCE TO BE OBTAINED BY SUPPLIER

1. Public and product liability insurance

1.1 Public and product liability insurance written on an occurrence basis with a limit of indemnity of not less than:

- (a) \$50,000,000 for each and every occurrence; and
- (b) in the case of product liability, \$50,000,000 in the aggregate during any one 12 month period of insurance.

1.2 Covering the liability of the Supplier and any of the Supplier's personnel (including liability to Westforce) in respect of:

- (a) physical loss of, damage to, or loss of use of, any real or personal property; and
- (b) the bodily injury of, disease or illness (including mental illness) to, or death of, any person, arising out of the performance of the Supplier's Obligations.

1.3 Extending to cover liability for:

- (a) the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with this Agreement;
- (b) registered vehicles used as a tool of trade in the performance of the Supplier's Obligations;
- (c) any plant and equipment of Westforce in the care, custody or control of the Supplier;
- (d) professional advice or services provided under this Agreement which is not given for a specific fee by the Supplier;
- (e) all the activities of Supplier or Supplier's personnel carried out in performing the Supplier's Obligations; and
- (f) sudden and accidental pollution, including any clean up or remediation cost or expenses.

2. Motor vehicle insurance

Motor vehicle insurance, covering all mechanically propelled vehicles that are registered, or capable of being registered, for road use and are at any time used in connection with this Agreement, including:

- (a) insurance that is compulsory under applicable laws governing the use of motor vehicles and liability for personal injury or death; and
- (b) liability insurance for third party property damage or bodily injury with a sum insured of not less than \$30,000,000 per occurrence; and
- (c) bodily injury gap coverage.

3. **Workers compensation**

- 3.1 Workers compensation insurances covering liability, including any applicable worker's compensation legislation, to the Supplier's personnel engaged in doing anything for the purpose of the performance of the Supplier's Obligations.
- 3.2 Extends to name Westforce and Westforce's personnel as a principal via a principal extension where the policy indemnifies Westforce and Westforce's personnel for benefits under the *Workers Compensation and Injury Management Act 1981* (WA) or equivalent legislation and at common law.
- 3.3 Cover for not less than \$50,000,000.
- 3.4 The insurer agrees to wavier any rights of subrogation against Westforce and Westforce's personnel.
- 3.5 Policy to have common law industrial diseases extensions.

4. **Mobile plant and equipment**

- 4.1 Mobile plant and equipment insurance covering all insurable risks for the Supplier's equipment and the like, and all other property of the Supplier for which the Supplier is responsible, for an amount not less than its full replacement value or reinstatement value.
- 4.2 Policy must provide a waiver of subrogation in favour of Westforce.

5. **All risks insurance**

- 5.1 All risks insurance for each item of equipment or tools or product covering an amount not less than its replacement value.
- 5.2 Policy must note the interest of Westforce as an interested party.
- 5.3 Policy must provide a waiver of subrogation in favour of Westforce.

6. **Professional services**

- 6.1 If the Supplier will provide professional services under this Agreement, professional indemnity insurance of not less than the \$10,000,000 for each claim and in the aggregate for all claims arising in any one 12 month period of insurance, covering the liability of the Supplier for any professional services provided by the Supplier and the Supplier's personnel under this Agreement for a specific fee.

7. **Other insurance**

Such other insurances that the Supplier requires by law or in order to conduct their work under this Agreement.

PART II : GENERAL REQUIREMENTS FOR INSURANCE POLICIES

1. **Requirements for certain insurance policies**

- 1.1 This section 1 applies to all insurance identified in Schedule 1, Part 1, except for sections 3 and 6 of that Part.
- 1.2 The policy must include Westforce and Westforce's personnel as additional insureds in respect to this Agreement.

- 1.3 The policy must contain a cross liability clause as if there was a separate policy of insurance covering all parties included as additional insured (subject always to the overall sum insured not being increased thereby).
- 1.4 The policy must contain a waiver of subrogation from the insurer in favour of Westforce and Westforce's personnel.
- 1.5 The policy must provide that failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance of any other insured.
- 1.6 The policy must contain provisions to the effect that:
 - (a) notice to the insurer by one insured party is deemed to be notice by all insured parties;
 - (b) disclosure to the insurer by one insured party is deemed to be disclosure by all of the insured parties.

2. **Requirements for all insurance policies**

- 2.1 This section 2 applies to all insurance identified in Schedule 1, Part 1
- 2.2 The policy is effected with reputable insurers with a financial security rating of A- or better by Standard & Poors or the equivalent rating with another recognised rating agency.
- 2.3 The policy is primary, and not secondary, to the indemnities referred to in this Agreement. The insurer cannot require any party to exhaust a claim under an indemnity referred to in this Agreement before the insurer considers or pays the relevant claim.

SCHEDULE 2 FORM OF STATUTORY DECLARATION

Contract Details:

Contractor: Westforce Construction Pty Ltd ("**Westforce**")
Subcontractor: [Insert] ("**Subcontractor**")
Project Number: [Insert]
Project Name: [Insert]
Work Package: [Insert]
Date of Contract: [Insert]

Declaration:

I, [insert name of person making declaration] of [insert address], [insert occupation] sincerely declare as follows:

1. This declaration relates to the contract between Westforce and the Subcontractor identified in the Contract Details above ("**Contract**").
2. As of the date of this declaration, the Subcontractor has paid the following in full:
 - a. all amounts due from the Subcontractor to all employees who are or were engaged by the Subcontractor and who have carried out work under the Contract ("**Employees**"), in accordance with their employment contract and any applicable award or industrial agreement (including wages, superannuation, redundancy, and any other remuneration); and
 - b. all amounts due to subcontractors, consultants, and suppliers who have or will carry out work, provide services, and/or supply goods for the purposes of the Contract, in accordance with the terms of agreement with the Subcontractor.
3. The Subcontractor has fully complied with all laws in relation to portability of long service leave for all Employees.
4. I am authorised to make this declaration on behalf of the above named Subcontractor.

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the Oaths, Affidavits and Statutory Declarations Act 2005 (WA) at [insert place] on [date] by –

[Signature of person making the declaration]
.....

in the presence of:

[Name of authorised witness]
.....

[Signature of authorised witness]