

1. APPLICATION

Application

1.1 These Terms and Conditions apply in relation to the following:

- (a) the supply of Goods;
- (b) the provision of Services;
- (c) the performance of Works; or
- (d) the hire of Hired Items,

from/by the supplier, service provider, contractor or hirer (as the case may be) (**Contractor**) to/for Primero.

2. DEFINITIONS

2.1 In these Terms and Conditions, unless a contrary intention appears

Apportionment means:

- (a) an apportionment of liability for damages;
- (b) a limit on the amount of damages that may be awarded against a Party;
- (c) a determination of, or judgement for, the proportion of any damages which should be borne by a Party; and/or
- (d) any similar determination or limitation;

Apportionment Legislation means any legislation under which an Apportionment may be made, including the *Civil Liability Act 2002* (WA);

Authority means any:

- (a) government department;
- (b) local government council;
- (c) government or statutory authority; or
- (d) other body or instrumentality,

which has a right to impose a requirement, or whose approval is required, with respect to, or in connection with, the Contractor's Activities;

Business Day means any day except Saturdays, Sundays, public holidays and days between Christmas Day and New Year's Day in Western Australia;

Claim means any claim, demand, cause of action or proceeding of any kind under any applicable law or Legislative Requirement, at common law, in equity or otherwise (including for any payment, damages, extension of time or relief from the performance of obligations);

Confidential Information means all information regarding the relevant site or project applicable to the Contractor's Activities;

Consequential Loss means any cost, expense, loss or damage of an indirect or consequential nature, including loss of profit, loss of opportunity to earn a profit or loss

or bargain, but this does not apply the Contractor's right to receive payment of the Contract Amount for the Contractor's Activities in accordance with these Terms and Conditions;

Contractor's Activities means any of the following (as the case may be):

- (a) the Supply of Goods to Primero;
- (b) the provision of Services to Primero;
- (c) the performance of Works for Primero; or
- (d) the hire of Hired Items to Primero,

from/by the Contractor and as described in any applicable:

- (e) Scope Document;
- (f) Drawings and Specifications;
- (g) Variations; and
- (h) any other document referred to in, or forming part of, these Terms and Conditions;

Contract Amount means the amount payable to the Contractor for the performance of the Contractor's Activities in accordance with these Terms and Conditions, as specified in the Contract Details and as adjusted under these Terms and Conditions;

Contract Details means the Contract Details attached to these Terms and Conditions and to the extent of any inadequacy or omission in them, Primero will, acting reasonably, determine the relevant information;

Contractor's Representative means the person named as such in the Contract Details or such other person notified in writing to Primero by the Contractor who is approved by Primero;

Defect means any defect, inadequacy, omission, fault, breach of representation and/or warranty and breach of performance requirement in these Terms and Conditions in relation to the Contractor's Activities;

Defects Liability Period means the period commencing on when the Contractor's Activities have been performed and ending either 12 months from that date or a later date if specified in the Contract Details;

Drawings and Specifications means the drawings and specifications (if any) applicable to these Terms and Conditions;

Effective Date means the earlier of the following:

- (a) Primero's written acceptance of the Contractor's price, tender or offer in respect of the Contractor's Activities; or
- (b) the date of these Terms and Conditions;

Encumbrance means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, title retention, flawed deposit arrangement and any Security Interest;

Doc No
Rev No
Rev Date
Rev By

PRIM-CM-TMP-0021
0
17/03/2023
Ronnie Nardizzi

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Finance Change Statement has the meaning given to it in the PPSA;

Finance Statement has the meaning given to it in the PPSA;

Goods means the goods to be supplied by the Contractor to Primero;

GST has the meaning given in the GST Act;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Hired Items means the items being hired to Primero from the Contractor;

Intellectual Property Right means any copyright, patent, registered and unregistered design, circuit layout, trade mark, name or other protected right, both present and future;

Insolvent means, in respect of a Party, that it:

- (a) is (or states that it is) insolvent (as defined in the *Corporations Act 2001* (Cth));
- (b) has a Controller (as defined in the *Corporations Act 2001* (Cth)) appointed to any part of its property;
- (c) is in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration or wound up or has had a receiver or a receiver and manager appointed to any part of its property;
- (d) is subject to any arrangement, assignment, moratorium or composition or is protected from creditors under any statute or dissolved (other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other Party to these Terms and Conditions);
- (e) is taken (under section 459(F)(1) of the *Corporations Act 2001* (Cth)) to have failed to comply with a statutory demand;
- (f) is the subject of an event described in section 459(C)(2)(b) or section 585 of the *Corporations Act 2001* (Cth) (or it makes a statement from which the other Party to these Terms and Conditions reasonably deduces it is so subject); or
- (g) is otherwise unable to pay its debts when they fall due;

Ipsa Facto Amendments means:

- (a) the amendments to the *Corporations Act 2001* (Cth) set out in Part 2 of the *Treasury Laws Amendment (2017 Enterprise Incentives No.2) Act 2017* (Cth); and
- (b) any regulations, declarations or legislative instruments, prescribed, made or declared pursuant to sections 415D, 434J or 451E of the *Corporations Act 2001* (Cth);

Legislative Requirement includes:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth, a State, a Territory or other Authority;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction; and
- (c) fees and charges payable in connection with the above;

Notice means any notification, advice, communication, direction or instruction, as the case may be;

Parties means the Contractor and Primero;

Payment Milestones means the milestones specified as such in the Contract Details;

Permitted Purpose means provision of the Contractor's Activities and any purpose directly related to this in accordance with these Terms and Conditions;

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

Primero's Quality System means ISO 9001:2015;

Primero's Representative means the person named in the Contract Details or such other person notified to the Contractor by Primero at any time;

Progress Claim means a claim, from the Contractor to Primero, for payment of the Contract Amount, in the manner set out in these Terms and Conditions;

Progress Payment means payment, from Primero to the Contractor, of an approved Progress Claim, in the manner set out in these Terms and Conditions;

Schedule of Rates Pricing Schedule means any schedule of rates pricing schedule applicable to these Terms and Conditions;

Scope Document means the scope document (if any) of the Contractor's Activities;

Security means any security provided by the Contractor to Primero applicable to the Contractor's Activities as described in the Contract Details;

Security Interest has the meaning given to it in the PPSA;

Services means the services to be provided by the Contractor to Primero;

Supply means the procurement, manufacture, fabrication, assembly, finishing, treatment, factory testing, factory commissioning, storage, packing and associated activities in relation to the Goods; and

Variation means any of the following, as the case may be:

- (a) a change to any location, methodology, sequence or dates forming part of the Contractor's Activities;
- (b) an increase, decrease or omission of any part or quantity of the Contractor's Activities (and in the

Doc No PRIM-CM-TMP-0021
Rev No 0
Rev Date 17/03/2023
Rev By Ronnie Nardizzi

Custodian
First Approver
Second Approver
Rev Details

Commercial and Legal Counsel
 Commercial and Legal Counsel
 EGM - Project Delivery
 Original Issue



case of an omission, including for the purpose of having others perform the omitted part);

- (c) a change in the character, specified performance or functional requirements of the Contractor's Activities;
- (d) a change in the character or quality of any material comprising the Contractor's Activities; and
- (e) a change in the levels, lines, positions or dimensions of any part of the Contractor's Activities; and

Work means design and/or construction to be performed by the Contractor for Primero.

3. INTERPRETATION

General

- 3.1 In interpreting these Terms and Conditions, unless stated, or the context requires, otherwise:
 - (a) references to the Contractor will be deemed to include reference to its employees, agents and subcontractors;
 - (b) reference to any subcontractors of the Contractor will include any third party engaged by the Contractor to perform the Contractor's Activities;
 - (c) reference to a Party includes its executors, administrators, successors and permitted assigns;
 - (d) reference to a person includes a firm or body corporate;
 - (e) clause headings will not be used in the interpretation of these Terms and Conditions;
 - (f) words in the singular include the plural and vice versa, according to the context;
 - (g) where a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
 - (h) monetary amounts or rates stated in these Terms and Conditions and all payments due under these Terms and Conditions will be in Australian currency;
 - (i) 'including' and similar expressions are not words of limitation;
 - (j) reference to a 'right' of Primero includes any benefit, remedy, discretion, authority or power (as appropriate in the circumstances);
 - (k) reference to an 'obligation' of the Contractor means any 'warranty, representation, obligation or liability' of the Contractor (as appropriate in the circumstances);
 - (l) reference to a thing (for example, the Contractor's Activities) includes all of it or any part of it;
 - (m) reference to any Legislative Requirement includes any amendment, modification or re-enactment to it; and

- (n) all warranties and/or representations in these Terms and Conditions made by the Contractor are continually repeated, relied on by Primero and survive termination of these Terms and Conditions.

No Contra Proferentem

3.2 These Terms and Conditions will not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of them.

Primero's Discretion

3.3 Without limiting clause 26.21, in these Terms and Conditions, any reference to 'may', as it relates to the:

- (a) exercise of a right;
- (b) making of a determination;
- (c) assessment of anything; or
- (d) provision of any direction, Notice or advice,

by or on behalf of Primero, means 'may, in its absolute discretion'.

3.4 Without limiting clause 26.21, in these Terms and Conditions, any reference to 'at any time', as it relates to the:

- (a) exercise of a right;
- (b) making of a determination;
- (c) assessment of anything; or
- (d) provision of any direction, Notice or advice,

by or on behalf of Primero, means 'at any time and from time to time'.

Conflict or Inconsistency

3.5 Without limiting clause 3.6, to the extent that there is any ambiguity, conflict, discrepancy or inconsistency between these Terms and Conditions and any other document referenced by the Parties in relation to the Contractor's Activities, these Terms and Conditions will prevail.

3.6 Unless specifically agreed by Primero in writing, these Terms and Conditions:

- (a) will apply regardless of whether or not the Contractor has promulgated its own terms and conditions for any of the Contractor's Activities; and
- (b) no regard will be made of any of the Contractor's own terms and conditions for any of the Contractor's Activities.

4. CONTRACTOR'S ACTIVITIES

Contractor to Perform Contractor's Activities

4.1 These Terms and Conditions are for the performance of the Contractor's Activities and the other obligations of the Contractor contained in these Terms and Conditions.

Doc No PRIM-CM-TMP-0021
Rev No 0
Rev Date 17/03/2023
Rev By Ronnie Nardizzi

Custodian
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Second Approver
Rev Details

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 Original Issue



4.2 The Contractor will perform the Contractor's Activities and perform all of its other obligations in these Terms and Conditions in the manner set out in, and subject to, these Terms and Conditions.

5. SUPPLY OF GOODS

Standard of Supply

5.1 To the extent that the Contractor's Activities involve the supply of Goods, the Contractor will Supply the Goods to Primero:

- (a) to the standard required by Primero, including in accordance with any:
 - the Contract Details;
 - Scope Document;
 - Drawings and Specifications;
 - Variations; and
 - any other document referred to in, or forming part of, these Terms and Conditions;
- (b) following the methodologies and procedures specified by Primero;
- (c) by the times required by Primero; and
- (d) in accordance with the other requirements of these Terms and Conditions.

Contractor's Warranties

5.2 The Contractor represents and warrants to Primero that:

- (a) it meets all requirements at law, including the holding of all relevant licences, to legally Supply the Goods;
- (b) the Goods will be manufactured to the highest standard of care, skill and diligence that would normally be expected of a reputable and competent organisation providing goods similar to the Goods;
- (c) the Goods will be new, will be in good working order, will be fit for purpose, will satisfy Primero's requirements and will be free from all Defects;
- (d) the Goods will have a life expectancy commensurate with what would be expected of similar goods provided for similar purposes by a competent and reputable supplier;
- (e) the Goods will be manufactured strictly in accordance with all manufacturing drawings, specifications or descriptions required by Primero;
- (f) prior to collection or delivery of the Goods, the Goods will be stored and protected so that they do not sustain any damage or deterioration;
- (g) unless Primero requires otherwise, the Goods will be made available for collection or delivered (as the case may be) in one package/consignment;
- (h) if the Contractor is responsible for delivery of the Goods (as specified in the Contract Details), the

Goods will be delivered safely, professionally and free of any damage or deterioration;

- (i) if the Contractor is not responsible for delivery of the Goods (as set out in the Contract Details), the Goods will be made available for collection by Primero free of any damage or deterioration;
- (j) all advice, design, services (including design services), documents (and similar deliverables) relating to the Supply of the Goods will be of a high and professional quality, will be fit for purpose, will satisfy Primero's requirements and will be free from all Defects;
- (k) subject to the Contractor's rights under Divisions 5 and 8 of the Act, when payment is made to the Contractor or title otherwise passes to Primero in respect of the Goods, the Goods will be free and clear of any Encumbrance; and
- (l) any design, drawing, specification, other document, materials and methods of working used by the Contractor in connection with the Goods will not infringe any Intellectual Property Right.

Third Party Warranties

5.3 Without limiting any of the obligations of the Contractor under these Terms and Conditions, the Contractor will, when requested:

- (a) assign to Primero, in a manner satisfactory to Primero, the benefit of all warranties or guarantees in relation to the Goods which the Contractor receives from third parties; and
- (b) do all things required of it to ensure that Primero receives the benefit of and the ability to enforce (either directly or through the Contractor as agent) those warranties and guarantees.

5.4 Without limiting its rights, Primero may require compliance with clause 5.3 as a condition of payment of any amount to the Supplier.

Collection and Delivery

5.5 If the Contractor is not responsible for delivery of the Goods (as set out in the Contract Details), without limiting any other provision of these Terms and Conditions, including any provision regarding timing (or sequence) of completion of the Goods, the Contractor will complete the Supply of the Goods, and make them available for collection by Primero at the relevant collection address and by the relevant date for collection required by Primero (as set out in the Contract Details).

5.6 Primero may give the Contractor a Notice changing the date for collection and the Contractor will comply with this Notice.

5.7 The Contractor is not entitled to any additional payment, compensation, time or other relief in relation to clause 5.6.

5.8 The Goods will be packed and secured in the manner acceptable to Primero.

Doc No PRIM-CM-TMP-0021
Rev No 0
Rev Date 17/03/2023
Rev By Ronnie Nardizzi

Custodian
First Approver
Second Approver
Rev Details

Commercial and Legal Counsel
 Commercial and Legal Counsel
 EGM - Project Delivery
 Original Issue



Ownership, Care and Reinstatement

5.9 Ownership and title in the Goods will automatically and irrevocably pass to Primero on the earlier of:

- (a) payment for;
- (b) collection of; or
- (c) delivery of,

the Goods.

5.10 Until the Goods are either collected or delivered (as the case may be), the Contractor is responsible for care of the Goods and assumes risk in them.

5.11 The Contractor will be responsible for any damage to the Goods:

- (a) while it has risk in them;
- (b) caused by Defects; and
- (c) at all other times caused by the Contractor.

5.12 The Contractor will immediately Notify Primero when the Contractor becomes aware of any damage to the Goods.

5.13 The Contractor will promptly repair and reinstate any damage to the Goods that it is responsible for to a standard which ensures that the Goods comply with the requirements of these Terms and Conditions.

5.14 The Contractor will undertake repair and reinstatement work under clause 5.13 in accordance with Primero's requirements, instructions and deadlines.

6. PROVISION OF SERVICES

Standard of Services

6.1 To the extent that the Contractor's Activities involve the provision of Services, the Contractor will provide the Services to Primero:

- (a) to the highest degree of professionalism and expertise;
- (b) without limiting clause 6.1(a), in accordance with any other standards specified by Primero, including in accordance with any:
 - the Contract Details;
 - Scope Document;
 - Drawings and Specifications;
 - Variations; and
 - any other document referred to in, or forming part of, these Terms and Conditions;
- (c) following any methodologies and procedures required by Primero;
- (d) by the times required by Primero;
- (e) in accordance with any Notice from Primero given at any time; and

- (f) in accordance with all applicable Legislative Requirements.

Contractor's Warranties

6.2 Without limiting any other provision of these Terms and Conditions, the Contractor represents and warrants to Primero that:

- (a) it meets all requirements at law, including the holding of all relevant licences, to legally provide the Services;
- (b) the Services will comply with all Legislative Requirements and applicable standards;
- (c) the Services will satisfy Primero's requirements;
- (d) the Services will be fit for the purpose for which they are required and will be free from all Defects;
- (e) the Services and any infrastructure, plant, equipment and works created pursuant to the Services, will continually satisfy Primero's performance requirements for the life of the relevant project; and
- (f) all documents produced by the Contractor will not infringe any Intellectual Property Right of any third party.

6.3 If requested by Primero at any time, the Contractor will provide Primero with a statutory declaration or evidence to Primero's satisfaction confirming the representations and warranties in clause 6.2.

6.4 Without limiting its rights, Primero may require compliance with clause 6.3 as a condition of payment of any amount to the Contractor.

7. PERFORMANCE OF WORKS

Standard of Works

7.1 To the extent that the Contractor's Activities involve the performance of Work, the Contractor will perform the Work:

- (a) to the highest degree of professionalism and expertise;
- (b) without limiting clause 7.1(a), in accordance with any other standards specified by Primero, including in accordance with any:
 - the Contract Details;
 - Scope Document;
 - Drawings and Specifications;
 - Variations; and
 - any other document referred to in, or forming part of, these Terms and Conditions;
- (c) following any methodologies and procedures required by Primero;
- (d) by the times required by Primero;

Doc No
Rev No
Rev Date
Rev By

PRIM-CM-TMP-0021
0
17/03/2023
Ronnie Nardizzi

Custodian
First Approver
Second Approver
Rev Details

Commercial and Legal Counsel
Commercial and Legal Counsel
EGM - Project Delivery
Original Issue



- (e) in accordance with any Notice from Primero given at any time; and
- (f) in accordance with all applicable Legislative Requirements.

Contractor's Warranties

7.2 The Contractor represents and warrants to Primero that:

- (a) it meets all requirements at law, including the holding of all relevant licences, to legally execute the Work;
- (b) it holds all approvals, accreditations and certifications necessary to ensure that any equipment, goods or materials forming part of the Work are covered by the relevant manufacturer's warranty;
- (c) all goods, materials and workmanship forming part of the Work will be fit for purpose, satisfy Primero's requirements and be free from all defects;
- (d) all advice, design, services (including design services), documents (and similar deliverables) forming part of the Work will be of high and professional quality, will be fit for purpose, will satisfy Primero's requirements and will be free from all defects;
- (e) the Work will have a life expectancy commensurate with the life of the relevant project;
- (f) the Work will continually be fit for purpose as and for the life of the relevant project;
- (g) the Work will continually achieve the performance requirements for the life of the relevant project;
- (h) all goods and materials forming part of the Work will be new;
- (i) subject to the Contractor's rights under Divisions 5 and 8 of the Act, when payment is made to the Contractor or title otherwise passes to Primero in respect of goods to be incorporated into the Work, those goods will be free and clear of any Encumbrance; and
- (j) all design services and associated documents will not infringe any Intellectual Property Right.

7.3 If requested by Primero at any time, the Contractor will provide Primero with a statutory declaration or evidence to Primero's satisfaction confirming the representations and warranties in clause 7.2.

7.4 Without limiting its rights, Primero may require compliance with clause 7.3 as a condition of payment of any amount to the Contractor.

8. HIRE OF EQUIPMENT

Standard of Hire

8.1 To the extent that the Contractor's Activities involve the hire of Equipment, the Contractor will hire the Hired Items:

- (a) in accordance with any requirements specified by

Primero, including in accordance with any:

- the Contract Details;
- Scope Document;
- Drawings and Specifications;
- Variations; and
- any other document referred to in, or forming part of, these Terms and Conditions;

- (b) by the times required by Primero (see set out in the Contract Details);
- (c) in accordance with any Notice from Primero given at any time; and
- (d) in accordance with all applicable Legislative Requirements.

Operators by Primero (Dry Hire)

8.2 If and to the extent Primero is providing operators to operate the Hired Items, Primero will:

- (a) ensure that the Hired Items are located at the relevant site during the relevant hire period;
- (b) ensure that the Hired Items are kept and operated in a suitable environment;
- (c) ensure that the Hired Items are used in accordance with Legislative Requirements;
- (d) ensure that the Hired Items are used for the purposes for which they are designed;
- (e) ensure that the Hired Items are operated by an experienced, competent and fully licensed operators; and
- (f) take such steps (including compliance with all safety and usage instructions provided by the Contractor) as may be necessary to ensure, so far as is reasonably practicable, that the Hired Items are operated, maintained and stored in a safe manner and without any risk to persons, property or the environment.

Operators by Hirer (Wet Hire)

8.3 If and to the extent that the Contractor is providing operators to operate the Hired Items, the Contractor will:

- (a) ensure that all such personnel continually satisfy the requirements for on-boarding, mobilisation and access to the relevant site;
- (b) ensure that all such personnel continually have the requisite qualifications, skills, training, expertise and experience and hold all relevant authorisations required by law to operate the Hired Items;
- (c) ensure that all such personnel are fit, healthy and fully capable from a health and well-being perspective to operate the Hired Items;

Doc No PRIM-CM-TMP-0021
Rev No 0
Rev Date 17/03/2023
Rev By Ronnie Nardizzi

Custodian
First Approver
Second Approver
Rev Details

Commercial and Legal Counsel
 Commercial and Legal Counsel
 EGM - Project Delivery
 Original Issue



- (d) conduct and keep a record of regular mechanical and safety inspections of the Hired Items;
 - (e) ensure that all such personnel continually operate the Hired Items:
 - at the times (without interruption) required by Primero;
 - in a manner as required by Primero;
 - in accordance with any applicable policies and procedures of Primero;
 - in accordance with all Legislative Requirements; and
 - in a safe manner and without any risk to persons, property or the environment; and
 - (f) promptly following a request to do so, provide evidence to Primero of its compliance with the preceding provisions of this clause 8.3.
- will abide by and fully comply with all relevant occupational health and safety procedures of Primero;
 - will exercise reasonable and necessary precautions which are appropriate for the nature of operating the Hired Items;
 - will receive adequate training to ensure the Hired Items are operated in a manner that minimises the risk to their own health and safety and the health and safety of others;
 - will be fit, healthy and fully capable from a health and well-being perspective to do so;
 - will not undertake tasks for which they have not received adequate training; and
 - will immediately notify Primero in writing of any injury sustained on the relevant site or during the time in which Hired Items are being operated; and

Servicing and Maintenance

- 8.4 Unless agreed otherwise by Primero (as set out in the Contract Details), routine servicing and maintenance of the Hired Items will be performed by the Contractor.
- 8.5 Unless agreed otherwise by Primero (as set out in the Contract Details), major and scheduled servicing and maintenance of the Hired Items will be performed by the Contractor.
- 8.6 All servicing and maintenance under clauses 8.4 and 8.5 will be undertaken in accordance with the manufacturer's requirements and recommendations.

Consumables

- 8.7 Unless agreed otherwise by Primero (as set out in the Contract Details), consumables for the Equipment will be provided by the Contractor.

Undertakings, Representations and Warranties

- 8.8 The Contractor represents and warrants to Primero that, for the duration of the relevant hire period:
 - (a) the Hired Items will be in accordance with the manufacturer's specification;
 - (b) the Hired Items will be in working order and repair;
 - (c) the Hired Items will be fit for the purpose required by Primero;
 - (d) the Hired Items will be suitably licensed for operation;
 - (e) all Personnel supplied to Primero from the Contractor to operate the Hired Items:
 - will have the requisite authorisations, certifications, licenses, qualifications, skills, training, expertise and experience to do so;
 - will operate the Hired Items in a competent, professional and safe manner and in accordance with Primero's instructions and all Legislative Requirements;

- (f) it has fully understood, and will continue to understand, the requirements of the relevant site and of operating the Hired Items.

9. DOCUMENTS AND OTHER INFORMATION

Primero Supplied

- 9.1 The Contractor acknowledges that:
 - (a) Primero may issue documents and other information (including the Scope Documents and Drawings and Specifications) to the Contractor in either electronic format or hard-copy format (or both);
 - (b) any such document is not necessarily the final document and may issued progressively and amended by Primero;
 - (c) any additions or amendments referred to in clause 9.1(b) will form part of, and be governed by, the provisions of these Terms and Conditions;
 - (d) all documents supplied to the Contractor (and all copies and reproductions of them) will, as between Primero and the Contractor, remain the property of Primero and will be returned by the Contractor to Primero on request; and
 - (e) the documents referred to in this clause 9.1 will not, without the prior written approval of Primero, be used, copied or reproduced for any purpose other than for the performance of the Contractor's Activities.

Contractor's Documents

- 9.2 The Contractor will prepare and submit all documents required of it in relation to the Contractor's Activities in the manner required under these Terms and Conditions.
- 9.3 Primero's review of any of the Contractor's documents will be deemed to signify that Primero has no objection to the Contractor using them for the purpose of the Contractor's Activities, however such use will remain at

Doc No
Rev No
Rev Date
Rev By

PRIM-CM-TMP-0021
0
17/03/2023
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Rev Details

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Original Issue



the Contractor's risk and be subject to any comments or qualifications communicated to the Contractor under that review.

- 9.4 Any failure by Primero to properly review any Contractor's document will not relieve the Contractor from responsibility for errors or omissions the Contractor has made or from responsibility to perform the Contractor's Activities in accordance with these Terms and Conditions.
- 9.5 The Contractor will submit the Contractor's documents to Primero at the times required by Primero.
- 9.6 Copies of, and Intellectual Property Rights in, all Contractor's documents will, as between Primero and the Contractor, be the absolute property of Primero and such ownership vests in Primero freely, unencumbered, automatically and immediately upon their creation.

10. INTELLECTUAL PROPERTY

Ownership

- 10.1 At all times Primero retains ownership of its background Intellectual Property.
- 10.2 Without limiting Primero's rights under clause 10.1 but subject to clause 10.3, all Intellectual Property Rights produced in connection with the performance of the Contractor's Activities (including all Contractor's documents) will absolutely and irrevocably be transferred to and become the property of Primero automatically upon their creation.
- 10.3 The Contractor:
 - (a) retains ownership of its background Intellectual Property;
 - (b) grants Primero an assignable, irrevocable, non-exclusive, royalty free and perpetual licence to use the Contractor's background IP to the extent necessary to enable it to properly use and enjoy the Contractor's Activities; and
 - (c) will be entitled to use, by way of a non-exclusive, revocable and royalty free licence from Primero, all of the Intellectual Property Rights referred to in clause 10.2 solely for the purpose of performing the Contractor's Activities.
- 10.4 The Contractor will do all things reasonably required of it by Primero in order to formally record, effect and secure the transfer of Intellectual Property Rights as referred to in clause 10.2.

11. DEFECTS

Defective Contractor's Activities

- 11.1 If the Contractor's Activities are Defective at any time, Primero may, by Notice of this to the Contractor:
 - (a) direct the Contractor to remedy such Defect (including any consequential effects of the Defect);
 - (b) notify the Contractor that it will instead accept the Defect; or
 - (c) notify the Contractor that it rejects the Defect.

- 11.2 If clause 11.1(a) applies, the Contractor will remedy such Defect by the times and in the manner required by Primero.
- 11.3 If clause 11.1(b) applies, Primero will conduct a valuation of any harm, loss, cost, damage or diminution in value suffered or incurred (or to be suffered or incurred) by Primero as a consequence of the Defect and:
 - (a) the Contractor will, on demand by Primero, reimburse Primero for the amount so valued and by the time required by Primero; and
 - (b) without limiting clause 11.3(a), Primero may set off the amount so valued against any amount owing from the Primero to the Contractor.
- 11.4 If clause 11.1(c) applies:
 - (a) in relation Works or Supply, the Contractor will remove the Works or the Goods by the times and in the manner required by Primero;
 - (b) the Contractor will immediately repay any monies received in relation to the Defective Contractor's Activities; and
 - (c) the Contractor releases Primero from any Claim (it would otherwise have were it not for this clause) in relation to the above provisions of this clause.

Acknowledgement

- 11.5 Nothing in this clause 11 limits or excludes the Contractor's liability for Defects under these Terms and Conditions or generally at law.

12. INSURANCE

Contractor's Insurances

- 12.1 The Contractor will maintain those insurances required of it by Primero (as set out in the Contract Details).
- 12.2 Each of the insurance policies required of the Contractor:
 - (a) will be maintained for the duration required by Primero; and
 - (b) will be taken out with an insurer with a minimum S&P rating of A- or equivalent and on terms approved by Primero.
- 12.3 Whenever requested by Primero, the Contractor will produce written evidence to the satisfaction of Primero that it has satisfied all of its insurance obligations under these Terms and Conditions.
- 12.4 The Contractor will remain liable to Primero under these Terms and Conditions regardless of whether or not (or the degree to which) the Contractor's insurer responds under any of its insurances.
- 12.5 Primero is not required to make a Claim under any of the Contractor's insurances before enforcing any of its rights or remedies against the Contractor, including any indemnities under these Terms and Conditions.

Doc No PRIM-CM-TMP-0021
Rev No 0
Rev Date 17/03/2023
Rev By Ronnie Nardizzi

Custodian
First Approver
Second Approver
Rev Details

Commercial and Legal Counsel
 Commercial and Legal Counsel
 EGM - Project Delivery
 Original Issue



12.6 The Contractor's insurer cannot require that a Claim relating to an indemnity under these Terms and Conditions be exhausted before that insurer considers or pays the relevant Claim.

12.7 Whenever a Claim is made under any of the Contractor's policies of insurance, the Contractor is liable for any excess or deductible payable under that Claim.

13. CONTRACT AMOUNT

General

13.1 In consideration of the Contractor performing the Contractor's Activities and performing all of its other obligations in these Terms and Conditions, Primero will pay to the Contractor the Contract Amount in the manner set out in, and subject to the terms and conditions of, these Terms and Conditions (including the Contract Details).

13.2 Except where the Contractor is specifically entitled to additional remuneration or compensation under these Terms and Conditions:

- (a) the Contractor will perform all of its obligations under these Terms and Conditions at its own cost; and
- (b) payment of the Contract Amount is the full extent of the Contractor's entitlement to remuneration and compensation for this.

13.3 Calculation and payment of the Contract Amount is subject to:

- (a) the provisions of these Terms and Conditions regarding any adjustment, setoff or withholding of the Contract Amount; and
- (b) any conditions precedent to payment specified in these Terms and Conditions.

Lump Sum

13.4 Clause 13.5 applies to any lump sum component of the Contract Amount.

13.5 The Contractor acknowledges that:

- (a) any bill or schedule of quantities indicating the build-up of a lump sum Contract Amount is a 'bulk' bill or schedule indicating only the approximate quantities and/or general descriptions of certain aspects of the Contractor's Activities relevant to that lump sum Contract Amount;
- (b) it did not rely on the completeness or accuracy of the items or quantities in any such bill or schedule in calculating the lump sum Contract Amount; and
- (c) unless specifically stated otherwise, the lump sum component of the Contract Amount will not be increased under any circumstances.

Schedule of Rates

13.6 Clauses 13.7 – 13.11 apply to any schedule of rates component of the Contract Amount.

13.7 Any Contractor's Activities described in a schedule of rates pricing schedule will be carried out and remunerated on a schedule of rate basis.

13.8 The Contract Amount for the Contractor's Activities referred to in clause 13.7 will be determined by multiplying the quantity of the relevant item of work relating to the relevant Contractor's Activity actually performed by the corresponding rate for that item contained in the relevant schedule of rates pricing schedule.

13.9 Without limiting clause 13.2, the rate for an item of work relating to the Contractor's Activities, including in any schedule of rates pricing schedule, includes all things necessary to carry out and complete the item in accordance with the requirements of these Terms and Conditions and all on site and off site overhead and profit in connection with that item.

13.10 An item of work relating to the Contractor's Activities that is not specifically enumerated in a schedule of rates pricing schedule, but which is reasonably associated with an item of work that is enumerated, will be performed by the Contractor and will be deemed to be included in the rate for the enumerated item without any entitlement for the Contractor to receive additional remuneration.

13.11 Unless specifically stated otherwise, the rates included in a schedule of rates pricing schedule will not be increased under any circumstances.

14. CO-OPERATION, CO-ORDINATION AND INTEGRATION

General Requirements

14.1 The Contractor will:

- (a) promptly provide all information that Primero may request regarding the Contractor's Activities, including information as to the preferred sequence and interface of activities and details of proposed labour, resources, materials, plant and equipment and all other matters relevant to the Contractor's Activities;
- (b) inspect and check all materials, plant, equipment and/or other things supplied by Primero and promptly Notify Primero if any of them do not comply with the requirements of these Terms and Conditions or are inadequate for the proper performance of the Contractor's Activities;
- (c) attend meetings as and when required by Primero; and
- (d) ensure that Primero and other persons authorised by Primero have access at all reasonable times to the place where any Contractor's Activities are being performed.

Communication Plan

14.2 Primero may prepare a communication plan for the Contractor's Activities.

14.3 The Contractor will comply with any communication plan referred to in clause 14.2.

Doc No PRIM-CM-TMP-0021
Rev No 0
Rev Date 17/03/2023
Rev By Ronnie Nardizzi

Custodian
First Approver
Second Approver
Rev Details

Commercial and Legal Counsel
 Commercial and Legal Counsel
 EGM - Project Delivery
 Original Issue



Reporting

14.4 If required by Primero, the Contractor will provide Primero with written reports in respect of safety, health and/or environmental issues relating to the Contractor's Activities in the manner, and at the times, required by Primero.

15. ASSIGNMENT, NOVATION AND SUBCONTRACTING

Assignment and Novation

15.1 The Contractor will not assign or novate any of its rights or obligations under these Terms and Conditions without Primero's prior written approval to do so.

15.2 Any approval under clause 15.1:

- (a) will be at the discretion of Primero; and
- (b) if given, may contain conditions Primero considers appropriate.

15.3 If required by Primero at any time, the Contractor will agree to a novation of these Terms and Conditions as required by Primero and will sign all documents necessary in order to effect such a novation.

15.4 Primero may at any time assign any of its rights and obligations under these Terms and Conditions to an assignee who agrees to be bound by Primero's obligations under these Terms and Conditions.

15.5 Primero will give the Contractor Notice of any such assignment under clause 15.4.

Subcontracting

15.6 The Contractor will not subcontract any of its obligations under these Terms and Conditions without Primero's prior written approval to do so.

15.7 Any approval under clause 15.6:

- (a) will be at the discretion of Primero; and
- (b) if given, may contain conditions Primero considers appropriate.

15.8 The Contractor will not terminate the engagement of a subcontractor approved by Primero without Primero's prior written consent to do so.

15.9 If so required by Primero, the Contractor will promptly provide Primero with a copy of any proposed or executed subcontract of any of its obligations under these Terms and Conditions (including all specifications, drawings and other documents and information relating to that subcontract).

15.10 Any engagement or act of a subcontractor of the Contractor will not in any way relieve the Contractor from any liability or obligation under these Terms and Conditions and the Contractor will remain wholly responsible and liable to Primero for the Contractor's subcontractors.

Approved Installers

15.11 If a manufacturer or supplier of plant, equipment and/or materials to be incorporated in the Contractor's

Activities stipulates that the warranties and guarantees associated with those items are dependent upon them being installed or applied by an installer or applicator approved by the manufacturer or supplier, the Contractor will provide Primero with written confirmation from the manufacturer or supplier that the Contractor or the Contractor's proposed subcontractor is an approved installer or applicator for those items.

15.12 The written confirmation under clause 15.11 will be provided to Primero at least 10 Business Days before the proposed commencement of the installation or application of the relevant item.

16. PERSONAL PROPERTY SECURITIES ACT

Registration of Security Interests

16.1 If Primero determines that these Terms and Conditions or any transaction in connection with them contains a Security Interest, the Contractor will, upon request, do anything that Primero reasonably requires (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) for the purposes of:

- (a) ensuring that the Security Interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;
- (b) enabling Primero to apply for and maintain any registration, or give any notification, in connection with the Security Interest so that the Security Interest continually has the priority required by Primero (including registration under the PPSA for whatever collateral class Primero thinks fit); and
- (c) enabling Primero to exercise rights in connection with the Security Interest.

16.2 In relation to any Security Interest that may arise in favour of the Contractor under or in connection with these Terms and Conditions:

- (a) the Contractor will be responsible for registering a Finance Statement in respect of that Security Interest but will consult with Primero in relation to the Finance Statement as required by the following provisions of this clause;
- (b) the Contractor will provide Primero with a draft Finance Statement in relation to that Security Interest at least 15 Business Days prior to its registration;
- (c) the Contractor will allow a consultation period of at least 10 Business Days to agree the Finance Statement with Primero prior to its registration;
- (d) Primero will not be liable to the Contractor for any failure of the Contractor to register the Finance Statement or for any error or omission in the Finance Statement;
- (e) the Finance Statement description of the collateral will only refer to the Goods specifically supplied under these Terms and Conditions and will not use any other description which may cover any other assets beyond this;
- (f) without limiting clause 16.2(e), the Finance Statement description will not use the collateral

Doc No | PRIM-CM-TMP-0021
 Rev No | 0
 Rev Date | 17/03/2023
 Rev By | Ronnie Nardizzi

Custodian
 First Approver
 Second Approver
 Rev Details

Commercial and Legal Counsel
 Commercial and Legal Counsel
 EGM - Project Delivery
 Original Issue



classes 'all present and after-acquired property' or 'all present and after-acquired property, except' (or similar expressions/classes); and

- (g) when all of the relevant Contractor's Activities have been performed, the Contractor will immediately lodge a Finance Change Statement discharging the Security Interest.

PPSA

16.3 The Parties agree that, despite any other provision in these Terms and Conditions and to the extent permitted by law, in relation to any Security Interest that arises in Primero's favour:

- (a) sections 142 and 143 of the PPSA are excluded and Primero need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and any other section(s) of the PPSA Notified to the Contractor by Primero after the Effective Date; and
- (b) neither Primero nor any receiver need give any notice required under any provision of the PPSA (except section 135).

17. VARIATIONS

Variations Directed

17.1 Primero may, at any time, by Notice of this to the Contractor, effect a Variation and the Contractor will comply with any such Variation.

Directions which Supplier considers Variations

17.2 If the Contractor considers that any direction given to it by Primero involves a Variation or is likely to prevent it from fulfilling its obligations, the Contractor will Notify Primero in what respect it considers the direction to involve a Variation or is likely to prevent it from fulfilling its obligations.

17.3 A Notice referred to clause 17.2 will be given by the earlier of:

- (a) 3 Business Days after the date of the direction; and
- (b) before the Contractor proceeds with the direction.

17.4 The Contractor acknowledges and agrees that if it fails to comply with clause 17.3, the Contractor:

- (a) will proceed with the direction; and
- (b) will not be entitled to receive a Variation, extension of time or any other compensation for it.

17.5 Within 5 Business Days of receipt of the Contractor's Notice under clause 17.2, Primero will, acting reasonably, Notify the Contractor as to whether or not it grants the Contractor a Variation (and if granted, Primero's Notice will contain sufficient details of the Variation as determined by Primero).

Valuation

17.6 If Primero:

- (a) directs a Variation under clause 17.1;

- (b) Notifies the Contractor under clause 17.5 that it has granted the Contractor a Variation under that clause,

a reasonable valuation of the Variation will be made by Primero and this will be the full extent of any entitlement, compensation, remedy and relief available to the Contractor for this.

17.7 Without limiting clause 17.1, Primero may request the Contractor to submit a quotation with respect to a proposed Variation and the Contractor will promptly comply with this request.

17.8 No Variation will invalidate these Terms and Conditions or set time at large.

18. PROGRESS CLAIMS

General

18.1 Unless agreed otherwise, the Contract Amount will not be subject to adjustment for rise and fall in costs for any cause, including changes in exchange rates, the cost of labour, plant, equipment, materials, taxation (except for GST), excise, duty, fees or charges.

Progress Claims

18.2 Subject to:

- (a) the other provisions of these Terms and Conditions; and
- (b) the Contractor:
 - having executed these Terms and Conditions and provided them to Primero;
 - having provided Primero with any security and other assurances under these Terms and Conditions;
 - complying with clause 18.5; and
 - preparing its Progress Claims in a form acceptable to Primero,

the Contractor will be entitled to submit Progress Claims as stated in the Contract Details.

18.3 If the Contractor submits a Progress Claim earlier than the time stated in the Contract Details, the Progress Claim will be deemed to have been given at the time stated in the Contract Details.

Details of Progress Claims

18.4 If required by Primero, all of the Contractor's Progress Claims will be prepared using the format prescribed by Primero.

18.5 If required by Primero, Progress Claims will be submitted along with a statutory declaration and/or evidence to the satisfaction of Primero confirming that:

- (a) all persons employed or engaged by the Contractor (including subcontractors) in relation to the Contractor's Activities have been paid all moneys due and payable to them;
- (b) the Contractor and its subcontractors have

Doc No | PRIM-CM-TMP-0021
 Rev No | 0
 Rev Date | 17/03/2023
 Rev By | Ronnie Nardizzi

Custodian
 First Approver
 Second Approver
 Rev Details

Commercial and Legal Counsel
 Commercial and Legal Counsel
 EGM - Project Delivery
 Original Issue



complied with their insurance obligations;

- (c) the Contractor and its subcontractors have complied with all statutory obligations with respect to the Contractor's Activities; and
- (d) any goods/items incorporated into the Contractor's Activities, are free of any Encumbrances.

18.6 By submitting a Progress Claim, the Contractor warrants and represents to Primero that:

- (a) the quality of the Contractor's Activities the subject of the Progress Claim accords with these Terms and Conditions;
- (b) if applicable, the quantities and hours on which the Progress Claim is based and any associated summaries, calculations, surveys and timesheets are true and correct;
- (c) all of the matters referred to in clause 18.5 are true and correct; and
- (d) the Progress Claim does not include any claim for costs or expenses incurred by the Contractor in the re-performance of any Contractor's Activities under clause 11.

Independent Audit

18.7 Primero is entitled at any time to arrange for an independent auditor to inspect the Contractor's business records to verify the information in any statutory declaration and/or supporting evidence provided by the Contractor under clause 18.5.

Acknowledgement

18.8 The Contractor will be deemed not to have elected to submit a Progress Claim if it does not do so strictly in accordance with the preceding provisions of this clause 18 and by the required time.

18.9 The Contractor will provide Primero with such further information regarding its Progress Claims as Primero may reasonably require in order for Primero to properly assess and determine them.

19. PROGRESS PAYMENTS

Primero's Determination

19.1 Primero will make a determination of the amount payable in respect of each Progress Claim submitted by the Contractor.

19.2 Primero may provide a statement (in any form) to the Contractor of its determination of the amount payable in respect of a Progress Claim submitted by the Contractor at any time prior to the time for payment of the claim.

19.3 When providing the statement under clause 19.2, Primero may authorise the Contractor to issue it with a valid tax invoice under clause 20 in relation to the amount Primero determines is payable to the Contractor.

Payment

19.4 Subject to Primero first receiving a valid tax invoice from the Contractor under clause 20, Primero will make payment of the amount determined by Primero under clause 19.1 by the time specified in the Contract Details via electronic funds transfer to the Contractor's nominated bank account.

19.5 Payment to the Contractor does not constitute approval of any of the Contractor's Activities under these Terms and Conditions but will be payment on account only.

No Interest on Late Payments

19.6 The Contractor is not entitled to charge, and Primero is not required to pay, any interest on late payments from Primero to the Contractor.

Primero's Vendor Management System

19.7 The Contractor will utilise Primero's vendor management system (currently Felix) in relation to registering the Contractor's details and payment information with Primero.

19.8 The Contractor utilises Primero's vendor management system solely at its own risk.

19.9 The Contractor releases Primero from all Claims (past, present and future) in connection with any interruption, loss of data, corruption of data, third party fraud, third party hacking, identity theft or incorrect payment regarding Primero's vendor management system.

20. GOODS AND SERVICES TAX

General

20.1 Terms used in this clause 20 which are defined in the GST Act have the same meaning in this clause 20.

20.2 Subject to clauses 20.3 and 20.4, if for any reason GST is, or will be imposed on any Supply made by a Party (including costs required to be reimbursed or indemnified under these Terms and Conditions), the Party making the supply may, to the extent that the Consideration otherwise provided for that Supply under these Terms and Conditions is not stated to already include an amount in respect of GST on the Supply:

- (a) increase the Consideration otherwise provided for that Supply under these Terms and Conditions by the amount of that GST; or
- (b) otherwise recover from the recipient the amount of that GST.

Invoices required

20.3 Without limiting any other provisions of these Terms and Conditions regarding payment (including any conditions precedent to payment), the recovery of GST on a supply by the Contractor under these Terms and Conditions is subject to the Contractor first issuing a relevant Tax Invoice or Adjustment Note to Primero for that supply.

Reimbursements

20.4 If a Party is entitled under these Terms and Conditions to be reimbursed or indemnified by another Party for a cost or expense incurred in connection with these

Doc No PRIM-CM-TMP-0021
 Rev No 0
 Rev Date 17/03/2023
 Rev By Ronnie Nardizzi

Custodian
 First Approver
 Second Approver
 Rev Details

Commercial and Legal Counsel
 Commercial and Legal Counsel
 EGM - Project Delivery
 Original Issue



Terms and Conditions, the Party receiving the reimbursement or indemnity is not entitled to recover any GST on that reimbursement or indemnity to the extent to which an Input Tax Credit may be claimed on the reimbursement or indemnity by that Party.

Value of Taxable Supplies

20.5 Where any Consideration for a Supply under these Terms and Conditions is not expressed as an amount of money, the Party making the Supply will provide the recipient with a Tax Invoice for that Supply based on the GST inclusive market value of the Consideration as determined in good faith by the Party making the Supply.

Invoice

20.6 Without affecting the obligations of the Parties under these Terms and Conditions, these Terms and Conditions and supporting material is not a document notifying an obligation to make payment and is not an invoice under the GST Act.

21. DEFAULT AND TERMINATION

Urgent Action by Primero

21.1 Without limiting the other provisions of this clause 21, if the Contractor commits a breach of these Terms and Conditions, Primero may, at no cost to it, take whatever action is necessary including:

- (a) taking possession of any of the Contractor's plant and equipment;
- (b) taking possession of the Goods; and/or
- (c) instructing any of the Contractor's personnel or subcontractors,

so as to remedy the breach or mitigate its effects.

21.2 The Contractor will fully cooperate with any action taken by Primero under clause 21.1.

Supplier's Default

21.3 If any of the following occur:

- (a) the Contractor repudiates these Terms and Conditions;
- (b) the Contractor becomes Insolvent;
- (c) without limiting clauses 21.3(a) and (b), in relation to a breach of these Terms and Conditions which is capable of remedy, the Contractor commits such a breach and that breach is not remedied to Primero's satisfaction within 5 Business Days of the Contractor receiving a Notice from Primero requiring it remedy such a breach; or
- (d) without limiting clauses 21.3(a) and (b), in relation to a material breach of these Terms and Conditions which is not capable of remedy, the Contractor commits such a breach,

Primero may, by Notice of this to the Contractor:

- (e) remove any Contractor's Activities from the Contractor's possession; or

(f) subject to the Ipso Facto Amendments, terminate these Terms and Conditions by Notice of this to the Contractor.

21.4 If Primero terminates these Terms and Conditions under clause 21.3(f), the rights and liabilities of Primero and the Contractor will be the same as they would be at common law as if the Contractor had repudiated these Terms and Conditions and Primero elected to treat these Terms and Conditions at an end and recover damages.

21.5 Without limiting clause 21.4, if Primero does any of the things described in clauses 21.3(e) or (f):

- (a) Primero may, to the extent allowable at law, withhold any or all monies which are then, or which may become, due and payable to the Contractor;
- (b) Primero may, at no cost to it, use, or engage others to use, the Contractor's plant and equipment, temporary buildings, materials and other things to complete the Contractor's Activities;
- (c) Primero, at no cost to it, is authorised by the Contractor to obtain and use materials of the Contractor to complete the Contractor's Activities; and

(d) if requested by Primero, the Contractor will assign or novate (in a manner acceptable to Primero) its rights to Primero under any of its subcontracts relating to the Contractor's Activities,

and the Contractor irrevocably appoints Primero as its attorney to do any of these things (including signing any document).

21.6 If any purported termination of these Terms and Conditions by Primero on any basis is invalid, Primero will be deemed to have instead terminated these Terms and Conditions under clause 21.9 on the date of the purported termination.

Primero's Default

21.7 If any of the following occur:

- (a) Primero repudiates these Terms and Conditions;
- (b) Primero becomes Insolvent;
- (c) the Contractor is not paid a payment due to it under these Terms and Conditions and that payment remains outstanding after 15 Business Days from the Contractor Notifying Primero that such payment is overdue; or
- (d) Primero commits a serious breach of these Terms and Conditions that is not any of the matters referred to in the preceding paragraphs of this clause and either:
 - if the breach is capable of remedy, that breach is not remedied within 15 Business Days of Primero receiving a Notice from the Contractor requiring it to do so; or
 - if the breach is not capable of remedy, after being Notified of this breach by the

Doc No PRIM-CM-TMP-0021
Rev No 0
Rev Date 17/03/2023
Rev By Ronnie Nardizzi

Custodian
First Approver
Second Approver
Rev Details

Commercial and Legal Counsel
 Commercial and Legal Counsel
 EGM - Project Delivery
 Original Issue



Contractor, Primero fails, within 15 Business Days of receiving this Notice, to provide the Contractor with reasonable assurance that this breach will not reoccur,

the Contractor may (as the full extent of its rights and remedies available to it for those events):

- (e) in the case of clauses 21.7(a), (b) or (d), terminate these Terms and Conditions by Notice of this to Primero; or
- (f) in the case of clause 21.7(c), suspend performance of the Contractor's Activities until the payment is made.

21.8 If the Contractor terminates these Terms and Conditions under clause 21.7(e):

- (a) effective from such termination, these Terms and Conditions will come to an end and the Parties will have no further rights or obligations under these Terms and Conditions, except for any rights or obligations expressed or implied to survive termination and except for any of Primero's rights arising out of any breach or non-conformance of these Terms and Conditions occurring before termination;
- (b) these Terms and Conditions will be deemed to have been terminated under clause 21.9; and
- (c) the Contractor will have no other entitlement to any payment, compensation, damages, remedy or relief, of any nature, in relation to this.

Primero's Other Termination Rights

21.9 At any time, Primero may, by Notice of this to the Contractor, elect to terminate these Terms and Conditions for Primero's convenience.

Effect of Termination

21.10 Without limiting any of Primero's rights under these Terms and Conditions (including any rights arising out of a breach of these Terms and Conditions by the Contractor or Primero's rights regarding any retention or security provided by the Contractor), if Primero terminates these Terms and Conditions under clause 21.9, the Contractor will receive the following from Primero:

- (a) payment for those Contractor's Activities performed under these Terms and Conditions prior to the date of termination (and not already paid for) as if the Contractor had made a valid Progress Claim for that work under clause 18 on the date of termination;
- (b) payment of the cost of materials and/or goods reasonably ordered by the Contractor for incorporation into the Contractor's Activities which the Contractor is legally liable to accept and as set out in clause 21.11; and
- (c) subject to Primero's rights in regarding to any retention or security provide by the Contractor, return of the retention and security held by Primero under these Terms and Conditions.

21.11 For the purposes of clause 21.10(b), Primero will only

pay for the costs referred to in that clause to the extent that:

- (a) the relevant materials and/or goods are delivered to Primero as directed by Primero;
- (b) the relevant materials and/or goods are labelled as directed by Primero;
- (c) the relevant materials and/or goods are free from any Encumbrances; and
- (d) ownership of the relevant materials and/or goods passes to Primero upon their delivery to, and acceptance by, Primero.

21.12 Without limiting the other provisions of these Terms and Conditions, if these Terms and Conditions are terminated, the Contractor will, upon request by Primero, deliver to Primero all documents prepared by or on behalf of the Contractor, Primero or the Company held by the Contractor relating to the design of the Contractor's Activities.

22. INDEMNITIES AND WAIVER

General Requirements

22.1 Subject to the other provisions of these Terms and Conditions and without limiting any other remedy available to Primero, the Contractor indemnifies Primero from and against any damage, cost, expense, harm, loss or liability it suffers or incurs in respect of the following:

- (a) any breach by the Contractor of any provision of these Terms and Conditions;
- (b) any negligence by the Contractor;
- (c) any action taken by Primero under clauses 21.1, 21.3 or 21.5;
- (d) all physical loss or damage to any form of property arising out of, or resulting from, any act, error, omission or neglect of the Contractor, its employees, agents and subcontractors;
- (e) death or personal injury arising out of, or resulting from, any act, error, omission or neglect of the Contractor, its employees, agents and subcontractors; or
- (f) to the extent that the exclusion in clause 22.4 does not apply (including any damage, cost, expense, harm, loss or liability to any subcontractors of the Contractor).

Nature of Indemnities

22.2 All of the indemnities specified in these Terms and Conditions are:

- (a) continuing, separate and independent obligations and survive completion or termination of these Terms and Conditions;
- (b) without limiting Primero's rights under clause 23.7, a debt due and owing to Primero; and
- (c) payable on demand.

Doc No PRIM-CM-TMP-0021
Rev No 0
Rev Date 17/03/2023
Rev By Ronnie Nardizzi

Custodian
First Approver
Second Approver
Rev Details

Commercial and Legal Counsel
 Commercial and Legal Counsel
 EGM - Project Delivery
 Original Issue



22.3 If the Contract Details specify that Primero enters into these Terms and Conditions for and on behalf of others, Primero holds the indemnities granted to it from the Contractor under these Terms and Conditions for itself and on trust for those others.

Apportionment Legislation

22.4 To the extent permitted by law, any Apportionment Legislation which seeks to diminish the Contractor's liability to Primero, or Primero's ability to recover against the Contractor, is excluded from these Terms and Conditions.

23. SECURITY AND RETENTION

Acknowledgement

23.1 Security and retention under these Terms and Conditions are provided:

- (a) to ensure proper performance by the Contractor of its obligations under these Terms and Conditions; and
- (b) as security against any liability of the Contractor to Primero under these Terms and Conditions.

Security

23.2 The Contractor will provide the Security to Primero within 7 days of the Effective Date.

Retention

23.3 Primero will retain from each Progress Payment the amount specified in the Contract Details.

Interest

23.4 No interest will be paid to the Contractor on any security or retention under these Terms and Conditions.

Conversion

23.5 Primero may, without notice to the Contractor, convert the Security to money at any time.

Recourse

23.6 Without limiting the Contractor's liability to Primero or any of Primero's other rights or remedies under these Terms and Conditions or at law generally, Primero may have recourse to any Security or retention referred to in these Terms and Conditions:

- (a) to recover any amount (by way of damages, debt, reimbursement, indemnity or otherwise) owed by the Contractor to Primero; and
- (b) to compensate Primero for any non-compliance, breach, termination or Claim which Primero has against the Contractor,

under these Terms and Conditions or any other contract, arrangement or account involving the Parties.

Set-Off

23.7 Without limiting any of its other rights under these Terms and Conditions or at law generally, Primero may set off or deduct from any payments due to the

Contractor under these Terms and Conditions any amount which the Contractor is liable to pay Primero, including costs, charges, damages, expenses and any debts owed by the Contractor to Primero.

Acknowledgement

23.8 For the avoidance of doubt, clauses 23.6 and 23.7 in no way limit Primero's ability to recover from the Contractor any outstanding amount owing to Primero after Primero has had recourse to the Security or retention or has made any set-off or deduction.

Return of the Security and Retention

23.9 Without limiting Primero's rights in these Terms and Conditions to convert and/or call on any Security, retention or assurance referred to in this clause 23:

- (a) within 10 Business Days after completion of the Contractor's Activities, Primero will release or return to the Contractor half of the Security and retention referred to in clauses 23.2 and 23.3; and
- (b) Primero will retain the remaining half of the Security and retention referred to in clauses 23.2 and 23.3 until the later of expiry of the Defects Liability Period or when the Contractor has fulfilled all of its obligations under these Terms and Conditions, upon which that remaining half will be released or returned to the Contractor within 10 Business Days.

24. RELEASE

Release upon Delivery or Collection

24.1 Immediately and automatically upon completion of the Contractor's Activities, but subject to clause 24.2:

- (a) the Contractor irrevocably and fully releases Primero from all Claims (past, present and future) in connection with these Terms and Conditions or the Contractor's Activities; and
- (b) without limiting clause 24.1(a), Primero may provide the Contractor with a release and waiver acknowledging the matters referred to in clause 24.1(a), in which case:
 - the Contractor will promptly execute and return to Primero the release and waiver; and
 - regardless of whether or not the Contractor complies with the preceding paragraph, the release and waiver will be final and binding on the Contractor immediately upon its receipt by the Contractor.

Exceptions

24.2 The release and waiver referred to in clause 24.1 will not apply in relation to the Contractor's:

- (a) entitlement to receive payment for the Contractor's Activities in accordance with these Terms and Conditions; and
- (b) rights under clause 23.9.

25. CONFIDENTIALITY

Confidential Information

Doc No PRIM-CM-TMP-0021
 Rev No 0
 Rev Date 17/03/2023
 Rev By Ronnie Nardizzi

Custodian
 First Approver
 Second Approver
 Rev Details

Commercial and Legal Counsel
 Commercial and Legal Counsel
 EGM - Project Delivery
 Original Issue



- 25.1 Subject to clause 25.2, the Contractor undertakes that:
- (a) it will at all times keep all Confidential Information in the strictest confidence;
 - (b) it will only use Confidential Information for the Permitted Purpose; and
 - (c) other than as specified in clause 25.1(b), it will not disclose any of the Confidential Information to anyone.

- 25.2 Clause 25.1 does not impose obligations on the Contractor concerning Confidential Information which:
- (a) as at the Effective Date, is publicly available; or
 - (b) subsequently to the Effective Date, becomes publicly available without any breach by the Contractor of that clause.

25.3 The Contractor will (to Primero's satisfaction) ensure that its employees, officers, agents and advisors who receive or have access to the Confidential Information (for the Permitted Purpose) observe the Contractor's undertakings under this clause 25.

25.4 If requested by Primero, the Contractor will promptly return to Primero and/or destroy (to Primero's satisfaction) any records of the Confidential Information.

25.5 The Contractor acknowledges that in addition to any other remedy which may be available in law or in equity, Primero is entitled to interim, interlocutory and permanent injunctions, or any of them, to prevent a breach of the undertakings in this clause 25 and/or to compel specific performance of them.

Media Release

25.6 The Contractor will not issue for publication any information concerning the relevant project applicable to the Contractor's Activities or these Terms and Conditions in any media without the prior written approval of Primero.

25.7 The Contractor will refer to Primero any media enquiries concerning the relevant project applicable to the Contractor's Activities.

26. GENERAL PROVISIONS

Supplier's Representative

- 26.1 The Contractor's Representative is duly authorised to act on behalf of the Contractor in relation to:
- (a) receiving and carrying out Primero's directions;
 - (b) receiving and sending Notices under these Terms and Conditions; and
 - (c) supervising the Contractor's obligations under these Terms and Conditions.

- 26.2 The Contractor will ensure that the Contractor's Representative is:
- (a) competent;
 - (b) fluent in the English language; and

- (c) available at all times.

Primero's Representative

- 26.3 Primero's Representative is duly authorised to act on behalf of Primero in relation to the administration of these Terms and Conditions, including:
- (a) giving directions to the Contractor;
 - (b) sending and receiving Notices to/from the Contractor under these Terms and Conditions; and
 - (c) supervising the performance by the Contractor of its obligations under these Terms and Conditions.
- 26.4 The Contractor will comply with the directions of Primero's Representative or the authorised delegates of Primero's Representative.

26.5 The Contractor will not deal directly with, or comply with the directions of, the Company or their representatives (including, where relevant, design consultants) without the prior written approval of Primero's Representative.

Notices

- 26.6 All Notices will be in writing, in English and sent to Primero's Representative or the Contractor's Representative (as the case may be) at the relevant address specified in the Contract Details.
- 26.7 A Notice will be deemed to have been received as follows:
- (a) for Notices delivered by hand, on delivery, but where delivery is made after 4:00 pm on a Business Day or at any time on a day which is not a Business Day, that delivery will be deemed to have occurred at 9:00 am on the next Business Day;
 - (b) for Notices sent by post that are sent and received within Australia, 3 Business Days after the date of posting;
 - (c) for Notices sent by registered post that are sent and received between different countries, 5 Business Days after the date of posting;
 - (d) for Notices sent via facsimile, on receipt of a transmission report which indicates that the facsimile was sent in its entirety, but where a transmission is made after 4:00 pm on a Business Day or at any time on a day which is not a Business Day, that transmission will be deemed to have occurred at 9:00 am on the next Business Day; and
 - (e) for Notices sent via email, on receipt, but where a transmission is made after 4:00 pm on a Business Day or on a day which is not a Business Day, that transmission will be deemed to have occurred at 9:00 am on the next following Business Day.

26.8 A Party may change its address for the receipt of Notices under clause 26.6 by giving the other Party a Notice of this.

Joint and Several Liability

Doc No
Rev No
Rev Date
Rev By

PRIM-CM-TMP-0021
0
17/03/2023
Ronnie Nardizzi

Custodian
First Approver
Second Approver
Rev Details

Commercial and Legal Counsel
Commercial and Legal Counsel
EGM - Project Delivery
Original Issue



- 26.9 Where the Contractor comprises two or more parties, those parties will be bound under these Terms and Conditions jointly and severally.
- Supplier's Cost**
- 26.10 Where the Contractor is required under these Terms and Conditions to perform an obligation, matter or thing or to discharge a liability, the Contractor will do so at its own cost, unless expressly specified otherwise.
- Waiver**
- 26.11 None of the terms of these Terms and Conditions (including the provisions of this clause 26.11) will be waived, discharged or released at law or in equity unless Primero gives its prior written consent to this in each instance.
- Representations and Warranties**
- 26.12 All of the representations and warranties in these Terms and Conditions which are made by the Contractor are irrevocable and continually repeated and survive termination of these Terms and Conditions.
- Independent Advice**
- 26.13 The Contractor represents and warrants to Primero that it:
- (a) at minimum, possesses the commercial and technical competence of a reasonably competent contractor; and
 - (b) has obtained, or has been given the opportunity to obtain, independent financial and legal advice on these Terms and Conditions.
- Contractor's Acknowledgement**
- 26.14 The Contractor acknowledges that it has fully understood and properly satisfied itself of, and assumes risk in, the following:
- (a) the requirements of these Terms and Conditions and any associated performance requirements, scope of work, drawings and specifications, policies, standards and procedures relevant to the Contractor's Activities;
 - (b) existing conditions and information pertaining to the relevant site for which the Contractor's Activities are to be performed;
 - (c) all other circumstances, conditions and requirements pertaining to or connected with the performance of the Contractor's Activities; and
 - (d) that the Contract Amount represents adequate payment for complying with its obligations under these Terms and Conditions.
- 26.15 Primero does not warrant, make any representation or assume any duty of care with respect to:
- (a) the completeness, accuracy, adequacy or content of any of scope of work, drawing, specification or site information provided to the Contractor by or on behalf of Primero;
 - (b) any interpretations, deductions, opinions or conclusions set out in any of the items referred to in clause 26.15(a);
 - (a) the suitability or adequacy of any services or facilities provided by Primero for use by the Contractor.
- 26.16 Clauses 26.14 and 26.15 apply despite any conduct or directions of Primero towards the Contractor.
- 26.17 The Contractor acknowledges that notwithstanding any review, vetting or approval by Primero, it remains responsible for all design, calculations, formulas, assessments, processes, procedures, construction means, methods or proposed methods of work, techniques, equipment, labour levels, procedures and other matters employed, or to be employed, by the Contractor in the execution of the Contractor's Activities.
- Other Documents**
- 26.18 Where these Terms and Conditions refer to all or part of another document not physically included with these Terms and Conditions, the Contractor is deemed to have obtained a copy of that other document from Primero or the relevant source.
- Remedies and Liability Caps**
- 26.19 To the extent permitted by law:
- (a) all of the Contractor's rights and remedies under these Terms and Conditions are limited to those specified in these Terms and Conditions and the Contractor irrevocably waives any other rights and remedies of any nature that it would, if it were not for this clause, have had; and
 - (b) without limiting the preceding paragraph of this clause, the Contractor is not entitled to (and may not make) any Claim relating to these Terms and Conditions which is in any way related to quantum meruit, unjust enrichment or restitution (or similar equitable concepts).
- 26.20 Unless expressly stated otherwise, where any obligation is imposed on the Contractor under these Terms and Conditions, that obligation is not to be limited or affected by any other obligation in these Terms and Conditions.
- 26.21 Primero's rights and remedies under these Terms and Conditions are not limited to those specified in these Terms and Conditions and are cumulative with Primero's other rights and remedies provided by law and in equity.
- 26.22 Primero may exercise, pursue or seek to enforce any of its rights and remedies under these Terms and Conditions in any manner which it considers appropriate.
- 26.23 Despite any other provision of these Terms and Conditions:
- (a) Primero is not liable to the Contractor in any way for any Consequential Loss; and
 - (b) without limiting clause 26.23(a), the maximum liability of Primero to the Contractor in any way relating to these Terms and Conditions (including

Doc No PRIM-CM-TMP-0021
Rev No 0
Rev Date 17/03/2023
Rev By Ronnie Nardizzi

Custodian
First Approver
Second Approver
Rev Details

Commercial and Legal Counsel
 Commercial and Legal Counsel
 EGM - Project Delivery
 Original Issue



for a repudiation of these Terms and Conditions by Primero) is the Contract Amount.

26 survive termination of these Terms and Conditions.

26.24 Any principle of law or equity (including the Prevention Principle) which would, if it were not for this clause, operate to invalidate these Terms and Conditions, set any deadlines for performance of the Contractor's Activities at large or render liquidated and other damages under these Terms and Conditions unenforceable, is excluded from these Terms and Conditions.

Time Bar

- 26.25 Unless stated otherwise, if the Contractor submits a Notice or a Claim under these Terms and Conditions later than the time specified for submission of that Notice or Claim:
- (a) the relevant matter or Claim will automatically extinguish;
 - (b) the Contractor is absolutely time barred in relation to pursuing the relevant matter or Claim;
 - (c) the Contractor irrevocably waives any entitlement it would, if it were not for this clause, have had in relation to the relevant matter or Claim; and
 - (d) all matters or Claims which are extinguished and time-barred under the preceding provisions of this clause 26.25 cannot be relied on or used by the Contractor either as a cross-claim or by way of set-off.

Entire Agreement

26.26 These Terms and Conditions contains the entire agreement between the Parties and no regard will be had to any prior negotiations, qualifications or dealings.

Unenforceability

26.27 If any provision of these Terms and Conditions is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of these Terms and Conditions will not be affected or impaired in any way.

Proper Law

- 26.28 These Terms and Conditions will be governed by the laws for the time being in force in Western Australia.
- 26.29 The Parties irrevocably submit to the non-exclusive jurisdiction of the courts of Western Australia and to the courts competent to determine appeals from those courts.

Good Faith and Conflict of Interest

- 26.30 The Contractor will at all times act with total honesty, integrity and good faith towards Primero.
- 26.31 The Contractor will not engage in any activity which causes a conflict with the reputational, commercial or legal interests of Primero.

Survival of Provisions

26.32 Clauses 2, 3, 10, 11, 12, 15, 16, 21, 22, 23, 24, 25 and

Doc No	PRIM-CM-TMP-0021	Custodian	Commercial and Legal Counsel
Rev No	0	First Approver	Commercial and Legal Counsel
Rev Date	17/03/2023	Second Approver	EGM - Project Delivery
Rev By	Ronnie Nardizzi	Rev Details	Original Issue

