



**COMMERCIAL STORAGE TANKS AGREEMENT  
TERMS & CONDITIONS**

Between: Pioneer Water Tanks Pty Ltd (ABN 65 604 579 651)

(Supplier)

and

**COMPANY** as described in Schedule 1 to this Agreement (**Company**)

**Recitals:**

- A. The Supplier manufactures and supplies water tanks and accessories.
- B. The Supplier has offered to supply and install, and the Company has agreed to acquire, the Works on the terms and conditions set out in this Agreement.

**IT IS agreed** as follows:

**1. DEFINITIONS**

In this Agreement (unless the context otherwise requires):

**“Authority”** means national, state, local, regional, territorial or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body.

**“Background IP”** means any Intellectual Property which is in existence before the date of this Agreement which the party makes available, contributes, brings to or uses in connection with this Agreement.

**“Commencement Date”** means the date stated in item 2 of Schedule 1.

**“Company”** is as described in item 1 of Schedule 1 to the Agreement and shall include anyone acting on their behalf or by their authority and includes their servants, agents, employees, assignees, transferees, heirs, executors or administrators.

**“Documents”** means this Agreement, and any special conditions, the Schedules, Attachments and any drawings, designs or specifications set out or referred to in the Proposal.

**“Date for Practical Completion”** means the date specified in item 3 of Schedule 1.

**“Days”** means calendar days and **“Work Days”** means Monday to Saturday (excluding Sundays and public holidays).

**“Force Majeure Event”** means any cause beyond a party’s reasonable control, including but not limited to, any lack of production capacity or raw materials, strikes, lock-outs, labour disputes, fires, floods, acts of God or public enemy,

malicious or accidental damage, delays in transport, breakdowns in machinery or restrictions or prohibitions by any government or any semi-government authorities or embargoes.

**“Goods”** – means (as the context permits) the products and or services described in the works

**“Insolvency Event”** means and of the following events in relation to a party:

- (a) the party commits an act of bankruptcy or an order is made for the party to be wound up (other than for the purpose of solvent restructuring or amalgamation);
- (b) a controller, receiver, receiver/manager or administrator or liquidator or provisional liquidator is appointed to the part;
- (c) the party takes any step such as calling a meeting of its shareholders or creditors or both;
- (d) any event analogous to the events listed in paragraphs (a), (b) or (c) above occurs; or
- (e) a judgment is entered against the Party for a sum in excess of \$20,000 and the judgment remains unsatisfied or unappealed for a period of 21 days.

**“Intellectual Property”** means any subject matter, whether tangible or intangible, that attracts, or is susceptible to protection by, Intellectual Property Rights.

**“Intellectual Property Rights”** means all copyright and analogous rights (including moral rights), all rights in relation to inventions (including patents), registered and unregistered trademarks, registered designs, confidential information (including trade secrets), know how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields. These rights include all right in all applications to register these rights and all renewals and extensions of these rights.

**“Law”** is:

- (a) Commonwealth, State and local government legislation including regulations, by-laws, orders, awards and proclamations;
- (b) common law and equity;
- (c) Authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals); and
- (d) guidelines of authorities which apply to the Works or the Site.

**“OHSE”** means occupational, health, safety and environmental

**“Owner”** means the person who will be the legal and beneficial owner of the Tank supplied by the Supplier under this Agreement upon completion of the Works.

**“Practical Completion”** means that the Works have been brought to the state where the Works are complete except for any omissions or defects which do not prevent the Works from being reasonably capable of being used for its intended purpose.

**“Price”** means the price payable (exclusive of GST) for the Works set out in item 5 of Schedule 1.

**“Proposal”** means the Supplier’s proposal set out in item 7 of Schedule 1.

**“Site”** means the location where the Works are performed and is described in item 4 of Schedule 1.

**“Supplier”** shall include anyone acting on its behalf or by its authority and includes its servants, agents, employees, assignees, transferees, heirs, executors or administrators.

**“Tank”** means the tank, liner and any accessories which are supplied as part of the Works.

**“Technical Material”** means models, software (including source code and object code versions), information, design concepts, audio, video, drawings (including “as built” drawings), programmes, schedules, manuals, diagrams, graphs, charts, projections, specifications, estimates, records, concepts, accounts, plans, formulae, calculations, designs (including structural, mechanical, electrical and instrumentation designs) in any medium (including 2 dimensional and 3 dimensional computer assisted designs), methods, techniques and processes, including all copies of and extracts from them and data stored by any means.

**“Warranty”** means the warranty applicable to the Tank as set out in clause 6 of this Agreement.

**“Works”** means the whole of the works that the Supplier is or may be required to complete under the Agreement including works described in item 7 of Schedule 1 of the Agreement, agreed variations, remedial work, Supplier supplied plant and material and any design work specified in the Agreement.

## 2. INTERPRETATION

In this Agreement (unless the context otherwise requires):

- (a) headings and boldings are for convenience only and do not affect the interpretation of this Agreement;
- (b) words importing the singular include the plural and vice versa;
- (c) word importing a gender include any gender;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (e) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental department or agency;
- (f) a reference to a clause, party or schedule is a reference to a clause of, and a party and schedule to, this Agreement and a reference to this Agreement includes the schedule;
- (g) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (h) a reference to a party includes that party’s successors and permitted assigns;
- (i) no provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision.

### **3. SUPPLIER'S OBLIGATIONS**

- (a) The Supplier shall supply the Works in accordance with the Proposal.
- (b) The Supplier warrants that it shall complete the Works in a workmanlike manner with all due skill and care.
- (c) Unless otherwise agreed, the Works will be performed on Work Days.
- (d) Under no circumstances is the Supplier required to perform the Works on the Site if it determines that the Site is unsafe. If the Supplier determines for whatever reason that the Site is unsafe, the Supplier shall:
  - (i) suspend performance under this Agreement, without penalty, to the extent necessary to avoid the unsafe condition arising or continuing;
  - (ii) immediately notify the Company of the unsafe condition and the action taken by the supplier in accordance with paragraph (i); and
  - (iii) take any steps as are reasonably necessary and agreed between the Supplier and the Company to overcome or remedy the unsafe condition.

### **4. COMPANY'S OBLIGATIONS**

- (a) The Company must obtain, at its own expense, any necessary licences and permits necessary for the performance of the Works at the Site.
- (b) The Company warrants that the Site is fit for purpose.
- (c) The Company must ensure that the Site is properly secured and implement a safety system in accordance with international best practice and all relevant OHSE Laws.

### **5. TIME FOR PERFORMANCE**

- (a) The Commencement Date and the date for Practical Completion are as stated in item 2 of Schedule 1.
- (b) The Supplier shall notify the Company in writing when the date of Practical Completion is or was reached.
- (c) The Company is deemed to have accepted that Practical Completion has been achieved if the Company does not, within 14 days of the receipt of the Supplier's notice of Practical Completion, give written notice to the Supplier of the reasons for the non-acceptance and propose an alternate date for Practical Completion along with reasons for the alternative date. The Supplier must accept or reject the Company's notice within 14 days thereafter. If the Company continues to reject the Practical Completion date then clause 18 of the Agreement shall apply.
- (d) The date of Practical Completion is reached when the Works have been brought to the state where the Works are completed except for any omissions or defects which do not prevent the Works from being reasonably capable of being used for their intended purpose. If commissioning of the Tank is stipulated by either the Supplier in the scope of works or by the Company, then such commissioning must be undertaken within 30 days of the date of Practical Completion. If this timeframe is not achieved because of factors beyond the Supplier's control, then all monies owing under the Agreement, including commissioning charge, will be paid to the Supplier in full unless agreed to otherwise by the parties.
- (e) The Supplier is entitled to any reasonable extension of time to the date for Practical Completion for any reason by written notice to the Company provided the delay is not due to an act or omission of the Supplier in breach of this Agreement. The Supplier shall notify the Company in writing of delays to the Works as soon

as reasonably practicable. The Company is deemed to have accepted the extension of time to the date for Practical Completion if the Company does not, within 14 days of the receipt of the Supplier's notice of Practical Completion, give written notice to the Supplier of the reasons for the non-acceptance. The Supplier must accept or reject the Company's notice within 14 days thereafter. If the Company continues to reject the claim for an extension of time then clause 18 of this Agreement applies.

## **6. APPLICATION OF THE AUSTRALIAN CONSUMER LAW (ACL)**

- (a) The parties acknowledge that the Company is a consumer for the purposes of the Australian Consumer Law (ACL) (**Consumer**) if:
- (i) the Company acquires goods or services from the Supplier where the amount paid or payable for the goods or services is \$40,000 AUD or less; or
  - (ii) the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption,
- Unless in the case of goods, the goods were acquired for the purpose of re-supply or the purpose of using them up or transforming them in trade or commerce in the course of a process of production or manufacture, or in the course of repairing or treating other goods or fixtures land.
- (b) If the Company is a Consumer in respect of any acquisition under this agreement then nothing in this Agreement (including clauses 11, 12 and 14) will be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the ACL) and which by law cannot be excluded, restricted or modified.
- (c) If the Company is a Consumer and the Supplier fails to comply with a consumer guarantee which by law may not be excluded, then to the extent the law permits the Supplier to limit its liability in respect of such failure, the Supplier's liability, is limited to:
- (i) in the case of goods:
    - (A) replacement or the cost of replacing the goods or supply of equivalent goods; or
    - (B) repair or cost of repairing the goods; and
  - (ii) in the case of services, supplying the services again or payment of the cost of having the services supplied again.

## **7. PRICE, INVOICING AND PAYMENT**

- (a) In consideration for the Works supplied by the Supplier, the Company must pay the Supplier the Price (exclusive of GST).
- (b) Unless item 6 of Schedule 1 specifies otherwise, the Price shall be paid by the Company to the Supplier by the following progress payments:
- (i) 25% of the Price payable on the placement of Company's order for the Works payable within 14 days of the invoice date;
  - (ii) 65% of the Price payable from agreed despatch date of the Good(s) payable within 30 days from the end of the month in which the invoice is dated; and
  - (iii) 10% on Practical Completion payable within 30 days from the end of the month in which the invoice is dated.
- (c) The Supplier may by agreement in writing with the Company introduce payment claims for materials, events, milestones, or for any reasonable reason.

- (d) The Supplier is entitled to charge interest for any unpaid progress payments from the period beginning on the day after the date on which the progress payment is due and ending on and including the date on which the progress payment is paid at a rate of 10% per annum.
- (e) Other than any agreed retention sum (if applicable) the Company shall not withhold, set-off or back charge any amount payable under a progress payment or any portion of the Price whatsoever unless the amount to be withheld is agreed to in writing by the Supplier. The Supplier will give reasonable consideration to such a request but is under no obligation to consent.
- (f) If an application is made pursuant to 'Security of Payment' legislation then the authorised nominating authority (or equivalent) will be the Master Builders Association of W.A, unless otherwise agreed.
- (g) All costs associated with debt recovery including the preparation of submissions pursuant to any of the 'Security of Payment' legislation will be recoverable as a debt due and payable in full under the Agreement.
- (h) The Company authorises the Supplier to obtain from any credit reporting agency and other credit providers, personal and commercial information relating to the Company for the purpose of assessing the Company for credit and collecting overdue payments. Subject to the Privacy Act 1988 (Cth), the Company also authorises the Supplier to give information on the Company's credit worthiness with the Supplier to credit reporting agencies and other credit providers.
- (i) If the goods cannot be delivered to Site or collected from the Supplier within 7 calendar days of the original agreed dispatch date, the Supplier may charge a storage fee after the 7<sup>th</sup> day to be charged per week on a pro rata basis until the goods are delivered or collected from the Supplier. If in the event the Contract is for *supply only* the Purchaser must immediately make full payment for the goods and any relevant storage fees before the goods are released and upon such payment all risk transfers to the Purchaser despite the goods being stored on the Suppliers premises.

## **8. GOODS AND SERVICES TAX**

- (a) If GST is imposed under the GST Act on any delivery made under this Agreement (including the delivery of any other right, goods, services, benefits or other things), the consideration for which is not included in the Price, the Supplier (as that term is defined in the GST Act) shall have the right to receive payment, in addition to the consideration for the delivery from the Company for an additional amount equal to the imposed GST and shall have an Entitlement therefore.
- (b) The additional amount referred to in paragraph (a):
  - (i) is equal to the Price multiplied by the prevailing GST rate; and
  - (ii) is payable at the same time and in the same manner as the consideration for the delivery to which the additional consideration relates.
- (c) The Company is not required to pay the Supplier any GST due in connection with any part of the Work until the Supplier has first delivered to the Company a tax invoice or, where appropriate, an adjustment note for the amount payable.
- (d) If for any reason, the amount recovered by a Supplier (as that term is defined in the GST Act) from the recipient of the delivery under this clause differs from the amount of GST lawfully imposed on the delivery, then the Supplier (as that term is defined in the GST Act) shall issue an Adjustment Note (as that term is defined in the GST Act) to the recipient of the delivery within 10 Work Days of the date of the Adjustment Event (as that term is defined in the GST Act) and shall be entitled to recover the difference from, or shall be liable to pay the difference to, as the case may be, the recipient of the delivery.

- (e) The Company's obligation to reimburse or indemnify the Supplier under this clause 8 ("reimbursable expense") shall be net of input tax credits (if any) to which the Supplier is entitled in respect of the reimbursable expense ("net amount").
- (f) This clause 8 takes effect notwithstanding any inconsistent clause or any clause to the contrary in the Agreement. To the extent of any inconsistency between this clause 8 and any other provision of the Agreement, this clause 8 shall take precedence.
- (g) If the rate of GST is varied from 10%, the consideration for any delivery under this Agreement will be varied to reflect the change of rate and any reduction in any other tax, duty or statutory charge connected with the rate change.
- (h) In this clause 8:
  - (i) "GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and related Acts as amended from time to time; and
  - (ii) any terms used in this clause which are defined in the GST Act are taken to have the meaning as defined in the GST Act.

## **9. RISK AND TITLE**

- (a) Title in all goods and materials related to the Works, including the Tank, remains with the Supplier until payment of the Price (as adjusted in accordance with the terms of the Agreement) in full by the Company.
- (b) In the event of non payment of the Price by the Company, the Supplier or its Agent is authorised by the Company to enter on to the Site to remove all goods and materials owned by the Supplier, whether fixed or unfix to the Site.
- (c) Risk in all goods and materials related to the Works, including the Tank, passes from the Supplier to the Company once those goods and materials are on the Site.

## **10. APPLICATION OF THE PPSA**

- (a) In this clause, PPSA means the Personal Property Securities Act 2009. If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.
- (b) The Company grants to the Supplier a security interest under the PPSA in any Goods supplied under this Agreement.
- (c) The Goods are steel water tanks and accessories.
- (d) The Company acknowledges and agrees that the Supplier may apply to register a security interest in the Goods at any time before or after delivery of the Goods. The Company waives its right under s 157 of the PPSA to receive notice of any verification of the registration.
- (e) The Supplier can apply amounts it receives from the Company towards amounts owing to it in such order as the Supplier chooses.
- (f) If the Company defaults in the performance of any obligation owed to the Supplier under this Agreement or any other agreement for the Supplier to supply Goods to the Company, the Supplier may enforce its security interest in any Goods by exercising all or any of its rights under this Agreement or the PPSA. To the maximum extent permitted by law, the Company and the Supplier agree that the following provisions of the



PPSA do not apply to the enforcement by the Supplier of its security interest in the Goods: sections 95, 118, 121(4), 125, 130, 132(3) (d), 132(4), 135, 142 and 143.

- (g) The Company and the Supplier agree not to disclose information of the kind mentioned in s 275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA.
- (h) The Company must promptly do anything required by the Supplier to ensure that the Supplier's security interest is a perfected security interest and has priority over all other security interests in the Goods.
- (i) Nothing in this clause is limited by any other provision of this Agreement or any other agreement between the parties.

## **11. DEFECTS LIABILITY PERIOD**

- (a) Where the Company is a Consumer, the following is in addition to and does not limit the Company's rights and remedies available under the ACL. Otherwise, this clause 11 states the Supplier's entire obligations in respect of defects.
- (b) The defects liability period shall commence upon Practical Completion of the Works and shall continue for the period of 12 months from the date of Practical Completion.
- (c) At least 30 days prior to the expiry of the Defects Liability Period the Company shall provide to the Supplier a written list of any defects or faults arising from defective workmanship or materials not in accordance with this Agreement and the Supplier shall make good all notified and accepted defects within 30 days or by the expiry of the defects liability period.
- (d) The Supplier reserves its right to, by agreement with the Company, to either repair or replace any accepted defects within the defects liability period:
  - (i) with the same or equivalent goods or materials; or
  - (ii) pay the Company the cost of repairing the defect provided that the total liability of the Supplier is limited to the original cost of the defective work on a pro rata basis.
- (e) Where the Supplier has failed to make good any accepted defects then the Company may issue a notice to the Supplier requiring the notified defects and the Supplier accepted defects to be rectified within 10 days failing which the Company shall engage alternate Suppliers to undertake rectification of the defects.
- (f) The Supplier will not be liable for damage or delay whatsoever caused by the Company or any third parties in respect of the Goods supplied pursuant to this agreement.
- (g) The Supplier's obligations under this clause 11 are subject to the following conditions:
  - (i) Upon the Supplier issuing a notice of Practical Completion (PC) the Company must ensure that any Tank is filled with a minimum of 150 millimeters of water to keep the liner in place and the tank must at all times retain that minimum amount of water to ensure the integrity of the liner.
  - (ii) The Company must allow the Supplier to supervise the commissioning of any Tank and the Supplier recommends commissioning takes place immediately upon Practical Completion while the Supplier's team is still on site. If in the event this is not possible for whatever reason (e.g pipe works not completed at the time) the work will be quoted as an additional cost to return to site to complete the works.
  - (iii) If the Company undertakes the commissioning process they must adhere to the Supplier's documentation relating to commissioning and in any event commissioning must occur within a reasonable period (maximum period of 30 days from PC).

- (iv) The Tank is at all times to be maintained in accordance with the Supplier's maintenance manual relevant at the time of commissioning.
  - (v) Where the Tank is not installed and commissioned by the Supplier or its nominated subcontractor then only the materials manufactured by the Supplier are covered during the Defects Liability Period, provided the Supplier is notified of any defects within 30 days of the materials being delivered.
  - (vi) If this clause is not strictly adhered to it may void any applicable warranty/defects claims.
- (h) The Supplier shall not be liable for:
- (i) Loss or replacement of water in the Tank or any other consequential loss;
  - (ii) Unauthorised modifications, alterations and/or additions to the Tank or its fittings or any damage caused by such unauthorised modifications and alterations;
  - (iii) Damage or leakage of Tanks due to:
    - (A) Any act or omission of the Company or any third party.
    - (B) Damage caused by storage of products other than water, unless the Supplier has given its written consent to the storage of other liquids.
    - (C) Natural disaster, including but not limited to fire, flood and cyclone.
    - (D) Damage caused by tank being allowed to consistently overflow.
- (i) All other express or implied warranties are excluded to the extent permitted by law

## 12. VARIATION

- (a) This Agreement may be varied at the written request of the Company by either additions or omissions to the Works provided the Supplier consents in writing to such variations.
- (b) Any addition or omission to the Works associated with revised or additional documents (drawings, specifications, etc.) shall be deemed to be a variation to the Agreement.
- (c) The Supplier shall not at any time carry out variation work without receiving a written instruction from the Company.
- (d) The Supplier shall, on receipt of a notice of variation, provide to the Company, within 21 days, a written adjustment to the Price along with any extension of time requirements. If a Schedule of Rates forms part of this Agreement then such will be applied to extra over work where possible.
- (e) No variation work shall commence until the price and extension of time are agreed between the parties.
- (f) For urgent variation work the Company must issue a written notice under this clause and the Supplier shall commence work immediately. The Supplier shall provide daily timesheets and daily material usage for signature by the Company. Unless otherwise agreed between the parties these records will form the basis of the agreed price thereby adjusting the Price and the extension of time to the date for Practical Completion.
- (g) If the parties fail to agree that specific work is a variation pursuant to the Agreement the Company shall issue a written direction under this clause instructing the Supplier to proceed with the work in question. Claims for costs and time associated with such work, unless agreed by the parties, shall be subject to the dispute resolution procedure in clause 18 of this Agreement.

## 13. INSURANCE

- (a) At all times during the Supplier's performance of the Works under this Agreement, the Supplier shall, at its own expense, maintain:
  - (i) workers' compensation insurance as required by law;

- (ii) public and product liability insurance with a limit of indemnity of not less than \$10,000,000 for each and every occurrence.

On request, the Supplier shall provide the Company with a certificate of currency as evidence of its insurance.

- (b) Unless otherwise agreed, at all times during the term of this Agreement, the Company shall, at its own expense, maintain Works insurance for the full reinstatement cost of the Works. On request, the Company shall provide the Supplier with a certificate of currency as evidence of its insurance.

#### **14. LIABILITY AND INDEMNITY**

- (a) To the extent permitted by law and if the Company is a Consumer without limiting the Company's rights under the ACL, this clause 14 states the Supplier's entire liability to the Company under this agreement.
- (b) The Supplier shall indemnify the Company for loss or damage suffered by the Company where such loss or damage is solely and directly caused by the Supplier's negligence and willful misconduct during the performance of the Works at the Site under this Agreement.
- (c) Notwithstanding any other provision of this Agreement, neither party is liable to the other for any consequential or indirect loss, costs, damage including but not limited to loss of production, loss of profit or revenue, loss of contract or loss of product.
- (d) To the maximum extent permitted by law, the Supplier's maximum liability (in aggregate) under this Agreement is the value of the Works supplied by the Supplier under this Agreement.

#### **15. INTELLECTUAL PROPERTY**

- (a) All Intellectual Property Rights in the Supplier's Background IP remain vested in the Supplier.
- (b) The Supplier grants to the Company a non-exclusive, revocable, transferable licence to use the Supplier's Background IP to the extent necessary for the Company to realise the full benefits of the Works.
- (c) All Intellectual Property Rights in the Company's Background IP and Technical Material remained vested in the Company.
- (d) The Company grants to the Supplier a non-exclusive, revocable, transferable licence to use the Company's Background IP and Technical Material to the extent necessary for the performance of the Works.
- (e) Each party warrants that:
  - (i) the use by the other party of its Background IP and Technical Material will not infringe the Intellectual Property Rights of any third party or breach any Law; and
  - (ii) the other party shall not be liable to pay any third party any licence or other fee in respect of the use of the Background IP or Technical Material.

#### **16. TERMINATION AND SUSPENSION**

- (a) A party may terminate this Agreement by notice in writing to the other party:
  - (i) if the other party breaches a material obligation of this Agreement and fails to remedy that default within 14 days (or as otherwise agreed); or

- (ii) immediately if an Insolvency Event occurs in relation to the other party.
- (b) When this Agreement is terminated under clause 16(a)(i) or (ii), the Supplier shall:
  - (i) stop work; and
  - (ii) use reasonable endeavours to minimise the cost of ending this Agreement.
- (c) If this Agreement is terminated under clause 16(a), on 48 hours' written demand, the Company must pay the Supplier:
  - (i) the price of the Works provided to the date of termination not included in any previous payment
  - (ii) the cost of materials the Supplier reasonably ordered prior to the termination date for the purpose of providing the Works and which the Supplier is legally liable to accept and cannot otherwise utilize, for example liner specifically ordered for the tank and other custom made materials ;
  - (iii) the costs the Supplier actually and reasonably incurred prior to the termination date in the expectation of providing the Works, and not included in any previous payment by the Company, for example labour costs the Supplier may incur; and
  - (iv) the reasonable costs of demobilization provided the costs are additional to those the Supplier would otherwise have incurred had this Agreement not ended in accordance with this clause 16.
- (d) If the Supplier terminates this Agreement under clause 16(a), in addition to the payment provided for in clause 16(c), the Supplier is also entitled to payment of an amount equal to 5% of the Price (at its discretion).
- (e) If the Company fails to pay a progress payment in accordance with clause 7, the Supplier may, without prejudice to the right to determine this Agreement, give the Company 24 hours' written notice of the Supplier's intention to suspend the Works. If the Company's default continues for 7 days after the date of the notice then the Supplier may suspend the Works and must give the Company written notice of such suspension. Upon payment, the Supplier must lift the suspension within five business days of receiving the payment and the Supplier is entitled to its reasonable costs as a result of the suspension.

## 17. FORCE MAJEURE

- (a) If a party is prevented or delaying in performing its obligations under this Agreement (except the obligation to pay money) by a Force Majeure Event:
  - (i) that party must give the other party written notice of that fact within 14 days after the start of the Force Majeure Event;
  - (ii) the obligations under this Agreement of the party giving notice under clause 17(a)(i) are suspended to the extent to which they are affected by the relevant Force Majeure Event continues; and
  - (iii) if the Supplier is affected by the Force Majeure Event, Practical Completion will be extended by the period for which the Supplier is delayed in completing the Works as a result of the Force Majeure Event.
- (b) Each party must use its reasonable endeavours to overcome the effect of the Force Majeure Event.
- (c) If a Force Majeure Event continues for more than 180 days either party may terminate this Agreement by giving at least 14 days notice in writing to the other party.

## 18. DISPUTE RESOLUTION

- (a) A party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this agreement (**Dispute**) unless it has complied with this clause 18.

- (b) A party claiming that a Dispute has arisen must notify as soon as possible the other party of the Dispute in writing giving details of the Dispute.
- (c) During the period of 7 days after a notice is given under clause 18(b) (or a longer period agreed in writing by the parties to the Dispute) (**Initial Period**), each party to the Dispute (**Disputant**) must use its best endeavours to resolve the Dispute.
- (d) If the Disputants are unable to resolve the Dispute within the Initial Period, each Disputant agrees that the Dispute must be referred, at the request of any Disputant, to a nominated senior management representative of each party and the parties agree that their respective management representatives will use their best endeavours to resolve the Dispute within a further 7 days from the end of the Initial Period (**Escalation Period**).
- (e) After the Escalation Period has expired, a Disputant that has complied with clause 18(d) may terminate the dispute resolution process by giving notice to the other Disputants.
- (f) If in relation to a Dispute, a Disputant breaches any provision of this clause 18, each other Disputant need not comply with this clause 18 in relation to that Dispute.

## 19. GOVERNING LAW

- (a) This Agreement shall be governed by the laws of the State of Western Australia, Australia.
- (b) The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State of Western Australia, Australia and all courts authorised to hear appeals from those courts.
- (c) The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (adopted at Vienna on 10 April 1980) does not apply in respect to this Agreement.

## 20. ASSIGNMENT

Neither party shall assign or transfer its rights or obligations under this Agreement without the other party's prior written consent, which consent shall not be unreasonably withheld.

## 21. MISCELLANEOUS

- (a) This Agreement constitutes the entire agreement between the parties in respect of its subject matter and supersedes all prior agreements, representations, warranties, promises, statements, negotiations and letters in respect of its subject matter.
- (b) Nothing in this Agreement constitutes a joint venture, agency, partnership or other fiduciary relationship between the parties.
- (c) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (d) The variation or waiver of a provision of this Agreement, or a party's consent to a departure from a provision by another party, shall be ineffective unless in writing, executed by the parties.
- (e) Any provision in this Agreement which is invalid or unenforceable in any jurisdiction is to be severed to the extent of the invalidity or unenforceability and does not affect the remaining provisions of this Agreement or the validity or unenforceability of that provision in any other jurisdiction.
- (f) Each party must do anything (including execute any document) and must ensure that its personnel do everything that the other party may reasonably require to give effect to this Agreement.

## 22. PROJECT CONDITIONS

Project Conditions nominated in Attachment A shall have force in this contract.

### PROJECT CONDITIONS

#### ATTACHMENT A

##### 1 DESIGN PARAMETERS

- 1.01 Access platforms are designed to withstand the worse of 2.5kPa distributed load or 1kN point load in accordance with AS1657.
- 1.02 The tank and its ancillaries are designed to withstand loads in accordance with AS/NZS1170.0, AS/NZS1170.1 and AS/NZS1170.2. Design parameters: Importance Level = 2; Design Life = 25 years; Region = A; Terrain Category = 2.5; Topographic Multiplier = 1.00.
- 1.03 Roofs are designed to withstand the dead, live and wind loads in accordance with the Australian Standards nominated above. Roofs are designed for the code-specified values of stacked material, equipment and workmen, and are not intended for general pedestrian traffic.
- 1.04 The tank and its ancillaries are designed to withstand seismic loads in accordance with AS2304, utilising acceleration coefficients derived from AS1170.4 - 1993. Design Parameters: Site factor = 1.5; Probability factor = 1.25.
- 1.05 The tank body and roof are designed for atmospheric pressure and applicable environmental loads as nominated above.
- 1.06 The tank contents shall be potable water.
- 1.07 Pipe brackets for risers located adjacent to the tank will be provided on the same radial line as the riser. Where the riser connects to a roof nozzle, the centre line of the pipe brackets (and riser) shall be located on the same radial line as the roof nozzle. The roof nozzle itself will be located to enable appropriate support by the tank roof structure.
- 1.08 Nozzle positions, both vertically and circumferentially, are constrained by the location of bolted seams and by the presence of profiled ribs in the tank body.
  
- 1.09 Should the water for this tank be subject to chlorine dosing, chlorination of the water should be done by a system which allows chlorinated water to flow into the tank and not by attempting to chlorinate the water when it is already inside the tank. If chlorination is intended, the procedure needs to be provided to the Supplier beforehand for approval. In any event, the chlorine dosing method shall not allow chlorine concentration to exceed 10ppm in any part of the tank at any time

## **2 DOCUMENTATION & DRAWINGS**

- 2.01 Unless otherwise ordered, drawings included in the price will be limited to a schematic (Not To Scale) plan and elevation showing nozzles (Nozzle Specification Document or NSD), and a schematic ring beam and associated concrete works drawing. These will be in pdf format. The NSD must be approved, signed and dated by the client and returned to the Supplier in order for the work to progress.
- 2.02 Where required by the contract, the Supplier will provide AutoCAD (Version 2008) drawings on Company's border (if required) to the Supplier standards. PDF files of the drawings will be provided for approval by the Company during the approval and construction phases.
- 2.03 A General Arrangement (GA) drawing showing nozzles will be provided by the Supplier provided it has been ordered as part of the contract.
- 2.04 More than two iterations of drawing revisions required by the Company will also be charged as a variation at the rates given in Schedule 3.
- 2.05 Fabrication drawings are not provided. Other drawings can be provided by the Supplier as images for information only. If the Company requires these to be put on their border, this will be charged as a variation at the rates given in Schedule 3.
- 2.06 Calculations will not be provided
- 2.07 If 'As-constructed' drawings are required, this must be stated at time of order. If required, they will be based on the GA drawings provided, as marked up by the Supplier's site supervisor.
- 2.08 If MDR or other quality documentation is required, it must be discussed and enumerated in the accepted proposal.

## **3 NOZZLES**

- 3.01 Nozzles to be supplied will comply with AS2129 Table 'D' or Table 'E'. If the accepted proposal stipulates that ANSI flanges are required, they will comply with ASME B16.5. (Class150)
- 3.02 Steel Nozzles will comply with AS1074 or AS1579 and will be galvanised to AS/NZS4680.
- 3.03 HDPE nozzles will be Grade PE100 to AS/NZS 4130.
- 3.04 Design nozzle loads at the face of the flange, imposed by incident pipe work, are limited to the following static-equivalent resultant values:  
For nozzles  $\varnothing 250$  and greater, a resultant design force of 1.0kN can be applied to the external end of the nozzle in any direction.  
For nozzles  $\varnothing 200$  and down to  $\varnothing 100$ , the resultant design force is 0.5kN.  
For nozzles less than  $\varnothing 100$ mm, the resultant design force in kN, is 0.5% of the nozzle nominal diameter in mm.  
Where incident pipework imposes greater loads than these, suitable supporting structure shall be provided by others.

- 3.05 Where fitted, anti-vortex plates are designed to match the minimum size nominated in AS2419 : 2005. It is assumed that the maximum flow velocity is 1.2ms<sup>-1</sup>.

#### **4 SUPPLY**

- 4.01 When a tank is ordered and fabricated, the Supplier will store the tank free of charge for up to four weeks from the agreed despatch date.
- 4.02 If no despatch date has been agreed, the Supplier will store the tank free of charge for up to four weeks from completion of fabrication. The date of completion of fabrication will be the later of completion of roof structure fabrication or tank body fabrication.
- 4.03 If the Company delays despatch beyond the four week free storage period, a variation will be charged for storage and transport to that storage based on commercial rates plus profit, overheads and GST. Storage area required can be roughly estimated as the same area as the plan area of the tank.

#### **5 SITE**

- 5.01 Prior to construction of the tank commencing, the Company's site representative shall clearly mark a suitable reference point on the ring beam to enable correct orientation of the tank. This mark shall be witnessed by the Company's site representative and the Supplier's site representative in the Site Quality Documentation.
- 5.02 Geotechnical conditions shall be the responsibility of others and shall comply with the notes on the ring beam drawing provided by Pioneer Water Tanks Pty Ltd. Site civil works and drainage shall be the responsibility of others and shall be performed to avoid undermining of the tank footing and overflow. Soil subsidence, from whatever cause, in the vicinity of the tank ring beam shall not in any way be the responsibility of the Supplier.
- 5.03 It is important to meet the tolerances shown on the ring beam drawing in order to enable correct construction and operation of the tank. If the Company is responsible for construction of the ring beam, the Company shall perform a survey of the completed ring beam in accordance with the Supplier's survey form and shall return it, certified, together with a photograph of the completed ring beam. This is required prior to mobilisation of the Supplier's construction crew.
- 5.04 For tank installations where no craneage is required, the Supplier will require a minimum construction clearance around the envelope containing the tank and platforms of 1m, including above the tank roof. Where craneage is required, the clearance shall be a minimum of 4m around the tank and platforms envelope, and shall be as required above the tank.
- 5.05 Because of the nature of construction of bolted tanks, as-constructed locations of nozzles, fittings and tank parts can be expected to vary by approximately  $\pm 75$ mm horizontally and  $\pm 15$ mm vertically from theoretical locations. Appropriate allowance must be made by others to plumb up to the tank.



- 5.06 Time allowed for inductions on site shall be half a working day for each of the Supplier's construction crew member. Any further time required for inductions will be charged as a variation at the rates given in Schedule 3.
- 5.07 The Supplier is committed to safe working practices. The safe working method for tank and ancillary construction that we utilise is described in the Supplier's Quality document of the same name. This methodology has been proven as safe practice. Should the Company require any supplementary safety provisions that require greater time or expenditure by the Supplier; these will be charged as a variation at the rates given in Schedule 3.