

*Explanatory note: certain terms used have specific definitions that are found in clause 24 below or are otherwise identified by **bold** text. Headings are for convenience only, and do not affect interpretation.*

1 THIS CONTRACT

1.1 This Contract commences on the date that Rema Tip Top (RTT) gives a Purchase Order to the Supplier for the supply of Goods and/or Services the subject of this Contract.

Other contract documents

1.2 Unless expressly agreed to in writing by RTT, to the extent permitted by Law, where this Contract is in place no other terms or conditions (including the Supplier's own terms and conditions even where they have been provided to RTT) will apply or have any legal effect in connection with the supply of the Goods or Services.

1.3 Where the Supplier and RTT have separately entered into another written contract (by whatever name, including by way of example, a "Supply of Goods and Services", or "Professional Services" contract) for the supply of any Goods and/or Services (**Prevailing Contract**), then to avoid doubt:

- (a) where RTT gives the Supplier a Purchase Order for some or all Goods or Services (**PO Goods or Services**) that are the subject of or within the scope of the Prevailing Contract then, unless expressly stated in writing by RTT to the Supplier prior to or at the time of giving that Purchase Order, no contract incorporating these Conditions of Contract is formed in relation to the supply of the PO Goods or Services, and only the Prevailing Contract applies to such a supply; but
- (b) where the relevant Prevailing Contract relates to the provision of various goods and/or services and the PO Specified Goods and Services are different or additional to those Goods and/or Services (**PO Additional Goods or Services**), then this Contract applies to the supply of the PO Additional Goods or Services and the Prevailing Contract continues to apply to the goods and services to which the Prevailing Contract previously applied.

1.4 If written acceptance of this Contract under clause 1.3(b) is not provided by the Supplier, either oral acceptance or the commencement of the supply of Goods or Services by the Supplier will constitute acceptance by the Supplier of the terms and Conditions of this Contract.

Explanatory note: the purpose of clause 1.3 is to clarify which contract terms apply when RTT and the Supplier have entered into a separate Prevailing Contract and, while that Prevailing Contract is still in force, RTT issues to the Supplier a purchase order containing or incorporating by reference these Conditions of Contract. Under the circumstances described in clause 1.3(a), no new contract is formed and the Prevailing Contract applies to the relevant supply. Under the circumstances described in clause 1.3(b), a new Contract is formed but only in relation to the supply of the PO Additional Goods or Services.

2 SUPPLIER'S GENERAL OBLIGATIONS

2.1 The Supplier must supply the Goods or Services to RTT in accordance with this Contract.

2.2 The Supplier must ensure that it and the Supplier's Personnel, in performing the Supplier's Obligations under this Contract:

- (a) comply with all applicable Laws, any standards and procedures made available by RTT to the Supplier, and any reasonable instructions given by RTT;
- (b) do not interfere with RTT's activities or the activities of any other person at the Delivery Point or any place the Supplier provides the Services;
- (c) carry out and perform the Supplier's Obligations in a safe manner in a way which does not prejudice safe working practices, safety and care of property or continuity of work and is not likely to cause injury or illness to any person;
- (d) unless otherwise set out in this Contract, supply all plant, resources and equipment necessary to perform the Services; and
- (e) provide all such information and assistance as RTT reasonably requires.

2.3 Where any injury, property damage, accident or incident which is notifiable under any Legal Requirement occurs, the Supplier must:

- (a) as soon as practicable, but in any event within 24 hours, notify RTT of that injury, property damage, accident or incident; and
- (b) provide RTT with any further information requested by RTT.

2.4 The Supplier acknowledges that if, in performing its obligations under this Contract, the Supplier's Personnel enter RTT's Premises, they must comply with RTT's occupational health and safety policies and procedures and do so at the Supplier's own risk.

Conflict of interest

2.5 The Supplier warrants that, to the best of its knowledge, as at the date that this Contract commences:

- (a) the Supplier has declared in writing to RTT any Conflict of Interest in the performance of its obligations under the Contract that it has, or is likely to have; and
- (b) the information contained in the Supplier's written declaration as to the existence of any Conflict of Interest is correct and comprehensive.

2.6 If a Conflict of Interest or risk of Conflict of Interest arises after the date that this Contract commences, including because of work undertaken by the Supplier for a person other than RTT, the Supplier must immediately give written notice of the Conflict of Interest, or the risk of it, to RTT.

Time of the essence

2.7 Time is of the essence in the Supplier's Obligations.

2.8 In addition to any other rights under this Contract and at Law, if the Supplier fails to perform any obligation by the time specified in this Contract (whether as the 'Required Date' or otherwise), RTT:

- (a) at the Supplier's cost, may require the Supplier to do whatever is reasonably necessary to:
 - (i) expedite provision of the Goods and Services; and
 - (ii) expedite transport or completion of the Goods and Services as directed by RTT; and
- (b) at the Supplier's cost, may contract any others, on reasonable terms, for the supply and/or completion of the Goods and Services that have not been provided or completed on time by the Supplier; or
- (c) refuse to accept the Goods or Services and terminate the Contract. The Supplier will not have any and many not prosecute any claim whatsoever at law or inequity against RTT, provided that the failure of the Supplier to deliver the Goods or Services on the Required Date was not due to conduct by RTT.

3 QUALITY OF GOODS AND SERVICES

3.1 The Supplier must ensure that:

- (a) all Goods or Services conform to the description of the Goods or Services set out in this Contract or in any Specification (as the case requires);
- (b) all Goods and Services are fit for their intended purpose and to the extent Services performed are design Services, the works being designed will be fit for their intended purpose;
- (c) if the Supplier provided RTT with a demonstration of the Services or represented that a result could be achieved by the Services before RTT issued the Purchase Order, the Services correspond in nature and quality with the services demonstrated or the services that achieved that result (as the case may be);
- (d) all Goods are new and of merchantable quality; and
- (e) all goods are properly, safely and securely packaged and labelled for identification.
 - (i) The Purchase Order number must be quoted on all invoices, delivery dockets and parcels.

- 3.2 The Supplier warrants that the Supplier's Personnel engaged to perform the Services have all the necessary skills, training, licences and qualifications to carry out the Services in accordance with this Contract.
- 3.3 The Supplier must ensure that RTT has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Supplier must, at its cost, pursue any manufacturer's warranties on RTT's behalf).

4 RECEIPT, INSPECTION AND ACCEPTANCE OF GOODS AND SERVICES

- 4.1 The Supplier must deliver the Goods in full to the Delivery Point and perform the Services at the times stated in this Contract. In this respect, time will be of the essence of the Contract.
- 4.2 The Supplier must deliver the Goods to the Delivery Point and in doing so must:
- (a) arrive at the Delivery Point during RTT's normal business hours at that location, unless otherwise agreed;
 - (b) leave the Delivery Point secure and fit for immediate use; and
 - (c) obtain the signature of a member of RTT's Personnel who receives delivery of the Goods or, where obtaining such a signature is not possible, leave the Goods where requested by RTT.
- 4.3 Acceptance of the Goods or Services by RTT does not constitute approval of the Goods or Services or prejudice any claim RTT may have in connection with the Goods or Services.
- 4.4 Acceptance of the Goods or Services occurs on the earlier of:
- (a) a representative of RTT notifying the Supplier in writing that the Goods or Services have been accepted; or
 - (b) the lapse of 10 Business Days after the Required Date, without RTT notifying the Supplier in writing that the Goods or Services have been rejected.
- 4.5 If the Goods or Services are rejected, the Supplier will reimburse RTT for:
- (a) any purchase price paid by RTT with respect to such Goods or Services; and
 - (b) any costs incurred by RTT in connection with the rejection of such Goods and Services.
- 4.6 The Supplier must allow RTT or a representative of RTT, upon 2 Business Days' written notice from RTT and during standard business hours, to inspect, examine, review and witness tests of the Goods or Services, or the performance of the Goods or Services, and to carry out site inspections at the Supplier's premises.

Quantity of Goods

- 4.7 RTT shall only be required to take or accept, and pay for, the quantity of the Goods specified in the relevant Purchase Order, any Specification, or otherwise in this Contract, unless otherwise agreed in writing by the parties.
- 4.8 If the Supplier delivers more Goods than the quantity specified in the relevant Purchase Order or otherwise in writing, the Supplier must, upon RTT's direction, collect the excess Goods from RTT at the Supplier's risk and expense, unless RTT elects, in its discretion, to return the excess Goods to the Supplier, which is done at the Supplier's sole risk and expense.

5 TITLE AND RISK

- 5.1 Title in the Goods will pass from the Supplier to RTT upon payment of the Contract Price. The Supplier warrants that it has good and complete title in the Goods and that the Goods will be transferred to RTT without any encumbrances or liens.
- 5.2 Unless otherwise agreed in writing by RTT (such as specified Incoterm), risk in the Goods will pass to RTT on acceptance of the Goods in accordance with clause 4.4.
- 5.3 Neither the payment by RTT of the Contract Price for the Goods nor the delivery of the Goods, constitutes acceptance, even if title in the Goods passes to RTT under clause 5.1.

6 VARIATIONS TO GOODS OR SERVICES

The Supplier must not vary the Goods or Services, including an addition, reduction or omission to any part of the Goods or

Services, or the substitution of new Goods for the contracted Goods, except where the variation has been agreed in writing by the parties. Any such variation agreement between the parties will include an adjustment to the Contract Price if such price adjustment is agreed by the parties.

7 DELIVERY DOCUMENTATION

- 7.1 All documents related to the shipping of the Goods must be provided to RTT or its freight forwarding agent at the time that the Goods depart the port of export, including, but not limited to:
- (a) the bills of lading;
 - (b) certificate of insurance/s;
 - (c) packing list (HS codes must be included);
 - (d) packing declaration;
 - (e) fumigation certificate (if applicable);
 - (f) dangerous goods documentation (if applicable); and
 - (g) certificate of origin of the goods;
- 7.2 For national freight the Supplier must ensure that each delivery is accompanied by a delivery docket or a consignment note (as applicable) which is conspicuously attached to the Goods in a weatherproof document holder and securely fastened to the outside of the package (or to the Goods if packing is not required).
- 7.3 The delivery docket and/or consignment note must state:
- (a) the Purchase Order number, the Purchase Order line number and the RTT stock number (if applicable);
 - (b) the Supplier's name;
 - (c) the quantity, unit of measure and description of the Goods delivered as per the applicable Purchase Order;
 - (d) the Delivery Point;
 - (e) the Delivery Date;
 - (a) the number of packages;
 - (b) any dangerous goods requirements or specifications for transportation and storage purposes according to the version of the Australian Code for the Transportation of Dangerous Goods by Road and Rail in place at the time of shipping; and
 - (c) weights and dimensions of the package (or the Goods if packing is not required).

8 LABELLING AND PACKAGING

- 8.1 The Supplier must label, pack and package all Goods:
- (a) in accordance with the requirements of all relevant Laws (Australian and International as applicable);
 - (b) in accordance with any shelf life or preservation requirements;
 - (c) in accordance with RTT's requirements; and
 - (d) to avoid damage during transit, delivery, loading or unloading, having regard to the means of transport and climatic conditions through which the Goods will pass during transport.
- 8.2 In relation to packing and packaging, the Supplier must ensure that:
- (a) any timber used in shipments from countries outside of Australia is kiln dried or fumigated in accordance with Australian Quarantine Inspection Service requirements;
 - (b) dangerous goods are documented and shipped according to the version of the Australian Dangerous Goods (ADG) Code for the Transportation of Dangerous Goods at the time of shipping, including:
 - (i) Any dangerous goods must be marked by the Supplier with international danger symbol(s) and display the name of the material in English;
 - (ii) accompanied by emergency materials in English in the form of written instructions, labels or markings and Material Safety Data Sheets;
 - (iii) all information held by or available to the Supplier regarding any potential hazards or special requirements known or believed to exist in the transport, packaging, storage, handling or

- use of the Goods shall be immediately communicated to RTT; and
- (iv) where required by RTT or at law, the Supplier shall provide all necessary Certificates of Conformance, Certificates of Analysis and Test Certificates together with the Goods delivered pursuant to the Contract.
- (c) packages exceeding 30kg are suitable for either:
 - (i) handling by cranes and have approved lifting lugs fitted and slinging points or load centre indicated on the package; or
 - (ii) fork lift handling and are palletised;
- (d) pallets are in good conditions, of a suitable size to accommodate the Goods, able to moved by forklift;
- (e) hire pallets are offered on a one for one exchange basis; and
- (f) palletised items are to be strapped securely on the pallets (secured to the bearers, not the boards), with wrapping to protect the Goods in transit, and to ensure complete security and no chance of fall of the items.

9 DEFECTS

- 9.1 At any time prior to the expiry of the Defects Liability Period, RTT may notify the Supplier in writing that any Goods or Services provided are Defective.
- 9.2 Upon receipt of a notice from RTT that any Goods or Services are Defective, the Supplier must, at its cost and at RTT's direction, promptly rectify all Defects other than a Defect caused by the negligence of RTT.
- 9.3 Nothing in this clause 9 prejudices any other right that RTT may have against the Supplier arising out of the failure of the Supplier to supply the Goods or perform the Services in accordance with this Contract.
- 9.4 If RTT directs the Supplier to rectify a Defect and the Supplier fails to rectify that Defect within a reasonable time specified by RTT:
 - (a) RTT may, without prejudice to any other rights RTT may have against the Supplier, rectify the Defect itself; and
 - (b) the rectification costs incurred by RTT will be a debt due and payable on demand from the Supplier to RTT.
- 9.5 Where any Defect has been rectified under this Contract, the rectification work will be the subject of an additional Defects Liability Period commencing on the date the relevant rectification works are completed.
- 9.6 RTT shall not be responsible for the care or custody of any Defective Goods after a period of 5 Business Days after the Supplier has been notified in writing by RTT that they are Defective.
- 9.7 If the Supplier becomes aware at any time that the Goods or Services may be defective, of any loss or damage during transit, or anything that may result in Defect or non-delivery, they will immediately notify RTT in writing, and will make good at their own cost.

10 INVOICING AND PAYMENT

- 10.1 RTT must pay the Contract Price to the Supplier for the Goods and the Services.
- 10.2 The Contract Price is inclusive of all costs and expenses, including packaging, freight, delivery, insurance, the cost of any miscellaneous services, compliance with this Contract and Taxes and, subject to clause 6, the Contract Price is fixed and no additional amounts will be payable by RTT.
 - (a) Freight shall be FIS unless otherwise agreed.
- 10.3 Subject to clause 10.4, on or promptly after the Required Date, the Supplier must submit an Invoice to RTT for the amount due to the Supplier.
- 10.4 If agreed in writing by RTT, the Supplier may submit an Invoice to RTT at the end of each month for any Services performed during that or previous months provided those Services have not already been included in a previous Invoice issued to RTT.
- 10.5 An Invoice must include:
 - (a) the Purchase Order number;

- (b) a description of the Goods delivered, including the quantity of Goods and the actual date on which the Goods were delivered to the Delivery Point; or
- (c) a description of the Services performed;
- (d) the amount being claimed for the Goods and the Services;
- (e) the amount of any applicable GST; and
- (f) any further information reasonably requested by RTT.

10.6 If an Invoice does not contain the information required in clause 10.4, RTT may, at its option, complete the missing details or return the incomplete Invoice to the Supplier, in which case the Supplier must submit a replacement Invoice compliant with clause 10.4.

10.7 Subject to:

- (a) the Supplier submitting an Invoice in accordance with clause 10.4 or a compliant Invoice in accordance with clause 10.6; and
- (b) any right of RTT to retain, withhold, reduce or set-off any amount due to the Supplier,

RTT must pay the amount payable 45 days after the end of the calendar month in which the Invoice (or, where applicable, the compliant Invoice) was issued by the Supplier to RTT, or within such other time as agreed in writing by the parties, provided always that, where RTT disputes the Invoice, then to the extent permitted by Law, RTT may withhold payment of the disputed part of the relevant Invoice pending resolution of the dispute.

10.8 Payment under this clause 10 will not be taken as proof or admission that all, or any part of, the Goods or the Services have been delivered or performed (as the case may be) to the satisfaction of RTT, but will be taken to be payment on account only.

10.9 The Supplier agrees that RTT may:

- (a) deduct from moneys due to the Supplier any money due or which may become due from the Supplier to RTT under, or in connection with, this Contract; and
- (b) withhold payment of any amounts payable under this Contract pending resolution of any dispute about an invoice.

11 GOODS AND SERVICES TAX

- 11.1 If GST is imposed on any supply made by the Supplier in connection with this Contract, the Supplier may recover from RTT, in addition to the Contract Price, an amount equal to the GST payable in respect of that supply.
- 11.2 The Supplier must first provide RTT with an Invoice before RTT will pay the GST amount to the Supplier.

12 CONFIDENTIAL INFORMATION

12.1 Subject to clause 12.2, the parties must not:

- (a) disclose Confidential Information to any other person; or
- (b) use Confidential Information except to the extent necessary to fulfil their obligations under this Contract.

12.2 A party may disclose Confidential Information to a third party:

- (a) with the prior consent of the party that disclosed the Confidential Information;
- (b) to the extent required by any Law or applicable securities regulation or rule;
- (c) in connection with any dispute or litigation concerning this Contract or its subject matter;
- (d) to the extent required by any government authority having jurisdiction over the party that received the Confidential Information (**Receiving Party**); or
- (e) who is an employee, officer, legal adviser or insurer of the Receiving Party, where the disclosure is necessary for the purpose of the Receiving Party performing its obligations, or enforcing its rights, under this Contract.

13 INTELLECTUAL PROPERTY

- 13.1 The Supplier warrants that any supply by it of the Goods and Services and any designs, documents or methods of working provided by it to RTT in doing so does not infringe any Intellectual Property right.

- 13.2 The Supplier shall indemnify RTT against any claim or loss resulting from any alleged or actual infringement of any Intellectual Property right arising from or in connection with the supply of the Goods and Services or from any designs, documents or methods of working provided by it to RTT.
- 13.3 Subject to clause 13.5, the Supplier IP remains vested in the Supplier and RTT IP remains vested in RTT.
- 13.4 RTT will own all Intellectual Property that the Supplier creates in the performance of the Services and the supply of the Goods.
- 13.5 The Supplier grants to RTT a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable licence (with the right to grant sub-licenses on the same terms) to use the Supplier IP to the extent necessary to use the Goods and the Services.
- 13.6 If the Supplier makes any representation or statement directly or indirectly to RTT that the Goods or Services ordered are protected by one or more patents and any such patent is found to be invalid, the Purchaser may terminate this Contract, recover any money paid, and seek remedy for any damages.

14 ACCESS TO RTT'S PREMISES; DATA SECURITY

Access

- 14.1 RTT agrees to provide the Supplier with access to RTT's Premises and RTT's Documents as reasonably required to provide the Goods and/or Services.
- 14.2 The Supplier must only use RTT's Documents for the sole purpose of providing the Goods and/or Services and must take reasonable security measures to protect RTT's Documents from unauthorised disclosure or use.
- 14.3 The Supplier acknowledges and agrees that:
- (a) RTT may need to obtain the consent of third parties to the disclosure of RTT's Documents to the Supplier;
 - (b) RTT may, acting reasonably, suspend or deny the Supplier's access to RTT's Premises or RTT's Documents at any time; and
 - (c) where RTT has suspended or denied the Supplier's access to RTT's Premises or RTT's Documents, the Supplier shall only be able to gain or regain access upon written notice from RTT.

Data security

- 14.4 The Supplier must:
- (a) do all things that a reasonable and prudent person or entity would do to ensure that all RTT Data is protected at all times from unauthorised access or use by a third party and from misuse, damage or destruction by any person;
 - (b) provide protective measures for RTT Data that are no less vigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, RTT Data; and
 - (c) either return to RTT or, if directed in writing by RTT, destroy any RTT Data immediately following the end or earlier termination of this Contract.
- 14.5 If requested in writing by RTT, acting reasonably, the Supplier must take out and maintain insurance, to RTT's reasonable satisfaction, to protect against the risks of a Cyber Incident. Clause 15 shall apply to this insurance with any necessary modifications.

15 INSURANCE

- 15.1 The Supplier must effect and maintain with a reputable insurer the following insurance policies for the entirety of the term of the Contract:
- (a) *public and products liability insurance* covering liability for damage to property and the death of or injury to any person (other than as covered under a workers compensation policy) in an amount of not less than \$20 million in respect of each and every claim, unlimited as to the number of occurrences for public liability;
 - (b) workers compensation insurance as required by Law, including cover for common law liability;

- (c) *motor vehicle insurance* covering all vehicles, plant and equipment (whether owned, hired or leased) used in connection with the Contract for loss or damage of not less than the market value and third-party liability of not less than \$20 million in respect of each and every claim;
- (d) insurance covering the Supplier's own property, goods, materials owned, hired, leased or used by the Supplier, for an amount not less than the market value of those insured items;
- (e) any additional insurance required by an applicable Law or reasonably requested in writing by RTT including any insurance requested by RTT under clause 14.5; and
- (f) where the Supplier is providing professional services, *professional indemnity insurance* of not less than \$5 million for each claim and in the aggregate for all claims arising in the same insurance period, covering the liability of the Supplier for any professional services provided by the Supplier and the Supplier's Personnel under the Contract. Where this insurance is effected on a 'claims made' basis, the policy must be maintained for a period of at least 7 years after the Required Date or the earlier termination of the Contract.

- 15.2 Where this Contract is for Goods, the Supplier must effect and maintain with a reputable insurer insurance covering the Goods against all risks to the point of delivery at the Delivery Point (e.g. Marine insurance) and, if the Goods are rejected by RTT, from the time the Supplier collects the Goods from RTT, for an amount not less than the full replacement costs of the Goods.

- 15.3 The Supplier must provide to RTT, within 3 Business Days of a written request by RTT, certificates of currency for each of the insurance policies required under clauses 15.1 or 15.1 (or both, as applicable).

- 15.4 Subject to clause 20.4, if the Supplier subcontracts any part of the Supplier's Obligations, then the Supplier must ensure that every subcontractor effects and maintains all of the insurances required under clause 15.1 or 15.1 (or both, as applicable), as appropriate for the work being performed by that subcontractor, before the subcontractor commences any of the Supplier's Obligations.

16 INDEMNITY AND LIMITS OF LIABILITY

- 16.1 The Supplier indemnifies RTT, the Group, and RTT's officers, employees, agents and contractors for and against any Loss suffered or incurred by any of them arising out of, or in connection with:
- (a) any breach of this Contract by the Supplier; or
 - (b) any breach of Law, wrongful or negligent act or omission by the Supplier or any of the Supplier's Personnel;
 - (c) any injury to, or death of, any person or any loss of, or damage to, any property caused by or arising in connection with the supply under the Contract; or
 - (d) any claim made by a third party against RTT or its Personnel, to the extent that the claim arose out of any act or omission of the Supplier or the Supplier's Personnel,
- except to the extent that the Loss is caused by the negligence of RTT or RTT's personnel.

- 16.2 For the avoidance of doubt, failure to deliver the Goods or Services in accordance with the Contract is a breach.

- 16.3 Neither party is liable to the other for Consequential Loss.

Civil Liability

- 16.4 In determining the rights, obligations and liabilities of the parties in any Claim arising under the Contract or in relation to the subject matter of the Contract:
- (a) the operation of any Civil Liability Legislation which would otherwise be applicable is expressly excluded to the maximum extent permitted by Law; and
 - (b) the indemnity provisions of this Contract will apply notwithstanding any provision in any applicable Civil Liability Legislation, to the maximum extent permitted by Law.

17 SUSPENSION AND TERMINATION

- 17.1 If the Supplier is at any time the subject of:

- (a) an investigation into its conduct by the Corruption and Crime Commission; or
 - (b) an investigation or prosecution in relation to potential or actual criminal charges by the Supplier or any of its Personnel in relation to the Goods or Services,
- then RTT may suspend the performance of its obligations (or any of them) and the Supplier's obligations (or any of them) by written notice to the Supplier, until such time that the matter is resolved to RTT's reasonable satisfaction or RTT otherwise directs that the performance of the Contract is no longer suspended at which point the parties must promptly recommence the performance of their obligations.
- (b) in any case of termination under clause 17.4(a) not covered by clause 17.6(a), RTT must pay the Supplier that part of the Contract Price for any Supplier's Obligations performed prior to termination that have not already been paid by RTT; and
 - (c) the Supplier is not entitled to, and RTT is not liable for, any additional amounts whatsoever.

17.2 The Supplier must bear any cost it incurs as a result of a suspension under clause 17.1 and any costs incurred by RTT as a result of the suspension. Any amounts payable by the Supplier under this clause become a debt due to RTT by the Supplier.

17.3 To avoid doubt, if RTT suspends the Contract or any part of it in accordance with clause 17.1, the Required Date shall not be extended by the period of that suspension, except as otherwise agreed in writing by the parties.

Termination

- 17.4 RTT may terminate this Contract by written notice to the Supplier, with such notice to specify under which of the following paragraphs the Contract is terminated:
- (a) for Convenience, at any time and in its absolute discretion by giving 3 Business Days' written notice to the Supplier; or
 - (b) if the Supplier has committed a breach of the Contract and has failed to remedy that default within 10 Business Days of RTT giving the Supplier written notice of that breach, by RTT giving further written notice to the Supplier; or
 - (c) immediately if an Insolvency Event occurs; or
 - (d) if the Supplier or any of the Supplier's Personnel are found guilty of any criminal action relating to the Goods and/or Services; or
 - (e) if the Supplier gives to RTT, in relation to the provision of the Goods or Services under the Contract, any statement, representation, description of fact, matter, information or thing which is, in RTT's opinion, acting reasonably, materially false, untrue, incorrect or inaccurate, whether known to the Supplier or not; or
 - (f) if a report published by the Corruption and Crime Commission finds that the Supplier has acted unethically or corruptly, or the report recommends that criminal charges be investigated against the Supplier.

17.5 On termination of this Contract, the Supplier must promptly return to RTT any of RTT's Confidential Information, property (including RTT IP) and documents which RTT owns or in which RTT has an interest.

17.6 If this Contract is terminated under clause 17.4(a):

- (a) if the terminated Contract is for the supply of Goods to be specially manufactured, fabricated or prepared by the Supplier to fit RTT's Specifications, then:
 - (i) the Supplier must immediately stop all work in connection with the Purchase Order, except as otherwise directed by RTT;
 - (ii) RTT will pay the Supplier for any actual out-of-pocket expenses directly attributed to the Goods up to the date work stops, including reasonable expenses incurred in terminating subcontracts, plus ten per cent (10%) PROVIDED THAT the Supplier accepts payment as full compensation for termination, all such expenses are first approved in writing by RTT, and the total amount paid to the Supplier, including previous payments, must not exceed the portion the performed work bears to the aggregate total purchase price specified in the relevant Purchase Order; and
 - (iii) the Goods, including uncompleted portions, will be the property of RTT. The Supplier must for a

reasonable period hold safely and securely RTT's Goods, until it receives written instructions from RTT;

17.7 Subject to clause 17.6, termination of this Contract, however it may occur, does not prejudice any claim that either party may have against the other under the Contract on termination.

17.8 Clauses 5, 0, 10.9, 12, 13, 15.1(f), 16, 17.7, 19 and 20 survive the termination or expiry of this Contract.

18 NOTICES

18.1 Any notice or other communication relating to this Contract must be in writing, signed by the party sending the notice or that party's agent, and either hand delivered, sent by pre-paid post, faxed or emailed to the other party at the address, fax number or email address set out in the Purchase Order.

18.2 Any notice or other communication is regarded as being given by the notifying party and received by the receiving party:

- (a) if by hand delivery, when delivered to the address of the receiving party;
- (b) if by post, 5 Business Days from and including the date of postage;
- (c) if sent by email, in accordance with section 14 of the *Electronic Transactions Act 2011* (WA); and
- (d) if sent by fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error,

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (receiving party's time), it is regarded as received at 9.00am on the following Business Day.

19 DISPUTES

19.1 If a party considers that a dispute has arisen between the parties in relation to this Contract, then that party must give written notice of the dispute to the other party, specifying the nature of the dispute.

19.2 A senior representative of each of the parties must meet as soon as is practicable (and in any event within 10 Business Days) and attempt to resolve the dispute. If the parties are unable to resolve a dispute within 15 Business Days of the giving of the notice referred to in clause 19.1, then either party may issue court proceedings.

19.3 Neither party may commence any action, bring any proceedings or seek any relief or remedy in a court, except interlocutory relief, from a court in respect of a dispute until they have complied with the dispute resolution process in accordance with this clause 19.

19.4 Notwithstanding the existence of a dispute, each party must continue to perform its obligations under the Contract, unless agreed in writing by the parties otherwise.

20 GENERAL

20.1 This Contract states all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior representations, discussions, negotiations, understanding and agreements in respect of its subject matter.

20.2 This Contract is governed by the law in force in Western Australia and each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia. RTT expressly exclude the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods with respect to sales covered by these Terms and Conditions of Contract.

20.3 The Supplier must not assign or novate this Contract or assign any other right, benefit or interest under the Contract

to any person or entity without the prior written consent of RTT.

- 20.4 The Supplier must not, without the prior written consent of RTT, which consent must not be unreasonably withheld, subcontract any of the Supplier's Obligations.
- 20.5 No term or provision of this Contract will be construed against a party on the basis that the Contract or the term or provision in question was put forward or drafted by that party.
- 20.6 This Contract is a non-exclusive contract for the supply of Goods or Services, and it does not prevent RTT from entering into other contracts for the supply or performance of the same or similar goods or services with other contractors.
- 20.7 Any provision of this Contract which is illegal, void or unenforceable will be ineffective to the extent only of that illegality, voidness or unenforceability without invalidating the remaining provisions.
- 20.8 Except as required by any applicable Law, no party may make any public announcements or disclosures in relation to the Contract without the prior written consent of the other party. Both parties must agree on the wording and form of any media release and the forum for publication
- 20.9 the Supplier must not use the RTT's name, logos or trademarks (whether registered or unregistered) for any reason, including in any marketing and promotion of the Goods or Services.
- 20.10 RTT is entitled to assign any rights, benefits or duties under the Contract to members of the Group without requiring the consent of the Supplier. If RTT is restructured, then the rights and obligations of RTT under this Contract are novated to and assumed by the appropriate legal entity as determined by RTT or the successors of RTT under the restructure.
- 20.11 The Supplier must not create or allow any security interest under the PPS Law (*Personal Property and Securities Act 2009 (Cth)* or similar) to subsist over the Goods or Services, or the Agreement generally, unless RTT has provided its prior written consent.

20.12 Regarding waiver:

- (a) a party may only waive a right or power it has under this Contract by written notice to the other party; and
- (b) no forbearance, delay or indulgence by a party in enforcing a provision of this Contract shall prejudice, restrict or limit the rights of, or the exercise of the powers of, that party, nor shall any waiver of those rights operate as a waiver of any subsequent breach or of that right or power in the future.

21 FORCE MAJEURE

- 21.1 In this clause, a Force Majeure Event means an event, circumstance or omission after the Contract start date which:
- (a) is beyond the reasonable control of the Party affected by that event, circumstance or omission (**Affected Party**);
 - (b) causes or results in the Affected Party:
 - (A) being prevented from performing its obligations under the Contract; or
 - (B) where the Affected Party is the City, the City being prevented from accessing, operating, or using the Site;
 - (c) could not have been prevented, overcome or remedied by the Affected Party exercising a standard of care and diligence consistent with that of a skilled and experienced person under similar circumstances and conditions, which might (if it satisfies the requirements of paragraphs (a)(i), (a)(ii) and (a)(iii)) include an act of war (whether declared or not), terrorism, civil commotion or riot, acts of God, natural disasters, industrial action or labour disturbance, action or inaction by a Government Agency, pandemic or a failure of a public utility or common carrier.
- 21.2 The following events or circumstances do not constitute a Force Majeure Event:

- (a) lack of funds, financial hardship, inability to make a profit; or
- (b) loss of customers or loss of market share.

21.3 Neither Party shall be liable to the other in the occurrence of a Force Majeure Event provided that the Affected Party by such occurrence gives written notice to the other party within 7 days of the commencement of that occurrence. The Affected Party must use reasonable endeavours to minimise the effect of the Force Majeure Event.

21.4 The other Party is entitled to rely on the notification from the Affected Party, and to make alternative arrangements for the sale or purchase of the Goods and Services that the Affected Party is not able to provide or take according to the terms of the notification.

22 WHS

- 22.1 In providing the Goods and Services, the Supplier must (and must ensure that the Supplier's Personnel):
- (a) comply with all applicable WHS Law applicable to occupational health and safety and environment protection;
 - (b) comply with any instructions, directions, guidelines, rules and procedures provided to you by RTT in relation to work health and safety or the environment (including, when on a site controlled by RTT or any of RTT's contractors);
 - (c) if the Supplier becomes aware of any matter with respect to the provision of the Goods or Services on a site controlled by RTT or any of RTT's contractors and that poses or might create a potential hazard to any worker involved in or proximate to where any works connected with the provision of those Goods and Services is being undertaken, immediately inform RTT of that matter, the nature of the potential hazard and the resources required to eliminate or minimise it as far as is reasonably practicable.
- 22.2 The Supplier accepts that the Supplier is the "person conducting a business or undertaking" (PCBU) (as defined in WHS Law) with respect to the provision of the Goods and Services (Works) with control and power over the manner in which the Works are performed. The Supplier is, unless otherwise directed by RTT, appointed and authorised as the principal contractor (as defined in WHS Law) in connection with the Works.
- 22.3 If the Supplier is not appointed as the principal contractor the Supplier must not interfere with, disturb, impede or obstruct the carrying out by the principal contractor of the principal contractor's obligations under the WHS Law, and must co-operate and comply at the Supplier's own cost with any direction of the principal contractor and do all other things reasonably required by RTT to comply with WHS Law and ensure that the Supplier does not cause any non-compliance by RTT with WHS Law.

23 ETHICAL SOURCING AND MODERN SLAVERY

- 23.1 In this Contract Modern Slavery Act means the Modern Slavery Act 2019 (Cth) and Modern Slavery has the meaning given to it in the Modern Slavery Act.
- 23.2 RTT is committed to respecting and supporting international human rights. The Supplier represents and warrants that the Supplier will:
- (a) not tolerate or support the use of child, forced or compulsory labour, or any other form of Modern Slavery;
 - (b) comply with its obligations under the Modern Slavery Act and any other similar legislation; and
 - (c) include a provision substantially similar to this clause in contracts with any subcontractor engaged by the Supplier in relation to the Goods and Services, requiring it to assume similar obligations and make similar representations and warranties.

24 DEFINITIONS

Business Day means a day that is not a Saturday, Sunday, a public holiday in as applicable in the relevant State in which the Delivery Point is located.

Civil Liability Legislation means:

- (a) *Civil Liability Act 2002* (NSW) – Part 4;
- (b) *Civil Liability Act 2002* (WA) – Part 1F;
- (c) *Wrongs Act 1958* (Vic) – Part IVAA; and
- (d) *Proportionate Liability Act 2005* (NT).
- (e) *Civil liability Act 1936* (SA)
- (f) Any similar provisioning under similar legislation in any other Australian State.

Conditions of Contract means these general conditions of contract for the supply of goods and/or services under a purchase order.

Confidential Information means:

- (a) this Contract;
- (b) information relating to RTT's past, existing or future business, strategic plans or operations, finances, specifications, technical documentation, or customers; and
- (c) any other information disclosed by one party to the other party which is identified by the disclosing party as confidential;

but excluding information which has entered the public domain other than through a breach of a confidentiality obligation owed to the disclosing party by the receiving party or by any other person.

Conflict of Interest means an interest, whether personal, financial or otherwise, which conflicts or may reasonably be perceived as conflicting with the ability of the Supplier to perform its obligations under this Contract fairly and objectively.

Consequential Loss means any loss of production, loss or revenue, loss of profit, loss of business reputation, business interruptions, loss of opportunities, loss of anticipated savings or wasted overheads.

Contract and **'this Contract'** both mean the Conditions of Contract and the relevant Purchase Order and, where applicable, any Specification.

Contract Price means the price for the Goods or Services (exclusive of GST) set out in the Purchase Order.

Cyber Incident means action taken through the use of computer networks that result in an actual or potentially adverse effect on the Supplier's information system and/or RTT Data residing on that system.

Defect means any defect, error, damage, deficiency, fault or inadequacy in the design, performance, workmanship, quality or makeup of the Goods or Services and **'Defective'** has a corresponding meaning.

Defects Liability Period means a period of 12 months commencing on the Required Date and, where relevant, any additional period of time specified in accordance with clause 9.5.

Delivery Point (Delivery To) means the place set out in the Purchase Order for delivery of the Goods or Services, or otherwise notified by RTT in writing.

Delivery Terms means Free Into Store (FIS) unless otherwise specified on the Purchase Order.

Goods means any goods, materials, supplies, equipment or other items set out in the Purchase Order.

Group means:

- (a) Any of Rema Tip Tops Related Bodies Corporate;
- (b) Any subsidiary of Rema Tip Top Corporation; and
- (c) If applicable, any other entity as described in the Purchase Order Details

GST means goods and services tax or similar value added tax levied or imposed in Australia pursuant to *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means in respect of the Supplier, the following events: appointment of an administrator, appointment of a liquidator, appointment of a provisional liquidator, appointment of a controller (including any receiver or receiver and manager), insolvency, bankruptcy, winding up or any event analogous to these events.

Intellectual Property means all intellectual and industrial property rights, including trademarks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts, database rights, including any application or right to apply for registration of any of these rights.

Invoice means any document or record treated by the Commissioner of Taxation as an invoice or as a document entitling a recipient to an input tax credit.

Law means any law in force in Australia, whether common law, equity or any law under any statute, subordinate legislation, ordinance or code.

Legal Requirement means a requirement under any Law including a requirement to pay any fees and charges in connection with any Law.

Loss means any liability, loss, damage, cost (including litigation costs on a full indemnity basis), claim, suit, charge, diminution in value, action, demand, expense or proceeding whether present or future, actual, contingent, or prospective and whether known or unknown, and howsoever arising.

Purchase Order means RTT's purchase order form for the Goods or Services.

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth).

Rema Tip Top (RTT) is defined in the Purchase Order details, being the party issuing a Purchase Order in relation to this Contract as a member of the Group.

Required Date means the date for delivery of the Goods and/or the date for the completion of the Services, as the case may be, specified in the relevant Purchase Order or otherwise agreed by the parties in writing. To avoid doubt, if the Goods are delivered or the Services are completed after the date specified in the relevant Purchase Order or other date agreed in writing, but RTT does not by written notice insist on the written Required applying, then the date of actual delivery of the Goods or actual completion of the Services shall be the **Required Date** under the Contract. Nothing in this definition limits the operation of clauses 2.7 and 2.8.

RTT Data means information and materials of RTT in respect of which the Supplier has custody or control for the purpose of providing the Goods and/or Services or which are accessed, transmitted or stored using the Supplier's information systems or equipment under this Contract.

RTT IP means any Intellectual Property of RTT (or licensed to RTT by a third party) which RTT makes available, contributes, brings to or uses in connection with this Contract.

RTT's Documents means any documents, including drafts or working versions, whether in hard copy or electronic format, in the possession of, or otherwise under the control of, RTT.

RTT's Premises means any land, including buildings, under the control, care and management of RTT.

Services means any services set out in the Purchase Order, including the delivery and/or installation of any goods and performance of services ancillary to the Services.

Specification means any technical specifications, special conditions and schedules to be read with these General Conditions as part of the Contract, whether such specifications are referred to in the Purchase Order or otherwise notified in writing by RTT to the Supplier before the commencement of the Contract. In the event of any inconsistency between the Specifications and these Conditions of Contract, the former prevails unless otherwise stated.

Supplier means the supplier, vendor, company, consultant, contractor or other legal entity specified in the Purchase Order, and includes its servants, agents and sub-contractors.

Supplier IP means any Intellectual Property of the Supplier (or Intellectual Property licensed to the Supplier by a third party) which:

- (a) is in existence before the date of this Contract or comes into existence after the date of the Contract other than in connection with the Contract, the Goods or the Services; and
- (b) which the Supplier makes available, contributes, brings to or uses in connection with the Contract.

Supplier's Obligations means all the Supplier's obligations under this Contract.

Supplier's Personnel means the Supplier's officers, employees, agents and subcontractors and their respective employees and agents.

Tax means any income, land, indirect and other taxes, levies, imposts, deductions, charges, duties, compulsory loans and withholdings, including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person and includes any interest, penalties, charges, fees, fines or other amounts imposed in respect of any of the above, but does not include GST.

WHS Law means the *Work Health Safety Act 2020* (WA) and associated regulations (including the *Work Health and Safety (General) Regulations 2022* (WA)), and all other Laws applicable to work health and safety, including in the relevant State where Goods or Services are being supplied.

25 INTERPRETATION

In this Contract:

- (a) a reference to "Goods or Services" or to 'Goods and Services' is to be read as "Goods or Services, or both of them, as applicable";
- (b) the singular includes the plural and the plural includes the singular;
- (c) a reference to a clause or party is a reference to a clause of, and a party to, this Contract;
- (d) a reference to legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (e) the words 'include', 'includes' and 'including' must be construed without limitation as to what else might be included; and
- (f) the explanatory note to clause 1.3 does not form an operative part of the Contract and is included as an aid to understanding only.