Vertex Terms and Conditions for Performance of Services

All orders are accepted and sales are made subject only to the Terms and Conditions hereinafter stipulated.

1. GENERAL

(a) In these Terms and Conditions, the following definitions shall apply:

(i) **Agreement** means:

(A) the Order; and

(B) these Terms and Conditions.

(ii) **Client** means the person, entity, business or company described (or any person acting on behalf of and with authority of the Client) on the Order.

(iii) **Commencement Date** means the date the Company accepts the Order.

(iv) **Company** means Vertex Project Solutions Pty Ltd (ACN 641 139 960).

(v) **Completion Date** means the date for completion of the Services, as stated in the Order.

(vi) **Default Interest Rate** means ten percent (10%) per annum.

(vii) **Defects Liability Period** means the period of 12 months.

(viii) **Order** means a sales order issued by the Company (whether written or otherwise) for the performance of the Services.

(ix) **Price** means the price set out in the Agreement or otherwise agreed by the parties, as adjusted pursuant to the Agreement.

(x) **Related Body Corporate** has the meaning provided in section 50 of the *Corporations Act 2001 (Cth)*.

(xi) **Services** means the services expressed in the Agreement to be supplied by the Company, or otherwise as agreed by the parties.

(xii) **Site** means the site stated in the Order or otherwise agreed by the parties.

(xiii) **Terms and Conditions** means these terms and conditions, being clauses 1 to 34.

(xiv) **Virus** means virus, worm, bomb, trojan horse, computer programming code (including source and object code), or any other software or configuration that may cause an unauthorised change to, denial of access to, or disruption to, or deletion of, any software or hardware.

(b) The Client agrees that these Terms and Conditions are incorporated in any contract made between the Company and the Client relative to the Services or other contractual documents annexed thereto.

(c) In the Agreement measurements of physical quantities are in Australian legal units of measurement within the meaning of the *National Measurement Act 1960 (Cth)* and, where any conversion is required from other units to Australian legal units of measurement, the Conversion Factors in schedule 34 of the regulations under that Act must be used or, if those regulations contain no appropriate conversion factor, the conversion factor from Australian Standard AS/NZS 1376-1996 must be used.

2. ORDERS

No Order may be altered without the Company's express written consent.

3. ORDER OF PRECEDENCE

The following order of precedence applies if there is any ambiguity, conflict, discrepancy or inconsistency between the documents comprising the Agreement or between different parts of any documents comprising the Agreement:

(a) these Terms and Conditions; and

(b) the Order.

4. NATURE OF AGREEMENT

(a) The Company must commence performance of its obligations under the Agreement following the Commencement Date.

(b) The Client is taken to have carefully examined all documents and other information furnished by the Company relating to the performance of the Services, and to have fully satisfied itself of all conditions, risks, contingencies and other circumstances which might affect the performance of the Services.

(c) The Company may subcontract any part of the Agreement.

(d) The Company must ensure that the Services are performed, in accordance with the Agreement, all laws and any quality assurance requirements expressly prescribed in the Agreement.

(e) Every exemption, limitation, defence, immunity, indemnity or other benefit contained in the Agreement or otherwise to which the Company is entitled will be held by the Company as trustee for the benefit of, and will extend to protect, each of the Company's Related Bodies Corporate, and the Company's and its Related Body Corporate's directors, officers and personnel.

5. WARRANTIES

(a) The Company warrants that, and must ensure that:

(i) the Services will comply with the Agreement; and

(ii) it has the necessary skills, resources and experience to perform the Services.

(b) The Client warrants that, and must ensure that, it has all intellectual property rights (including any patents, trade marks and copyright) necessary for the Company to perform the Services, and that the performance of the Services will not infringe any intellectual property rights of a third party.

(c) The Client warrants that, and must ensure that, all information and documentation provided by or on behalf of the Client is accurate, complete and free of errors.

(d) Except where expressly stated in the Agreement, all conditions, warranties, terms and obligations, whether express or implied by statute, common law or otherwise are excluded from the Agreement, to the fullest extent permitted by law.

6. FITNESS FOR PURPOSE

The Client acknowledges and warrants that it has relied on its own skill and judgement or alternatively on the skill and judgement of tradesmen and professional advisers retained by it (other than the Company) to provide advice and assistance on the suitability of the Services for specific purposes and procedures and in

this respect shall hold the Company harmless and indemnified from and against any loss, suit, claim, demand, or compensation which but for this clause 6 the Client may have had against the Company.

7. QUOTATION AND PRICE

Unless the Agreement expressly provides otherwise, the Price excludes any and all charges in relation to insurance and any sales tax or other government imposts payable in relation to Services.

8. PAYMENT TERMS

(a) The Company may submit an invoice to the Client in respect of Services performed during the relevant month following the last business day of that month.

(b) The Client must pay the Company the amount set out in each invoice, without set-off or deduction, within 14 days of the date on which the invoice is received by the Client.

(c) The Client must pay the amount set out in each invoice by electronic funds transfer to an account nominated by the Company in writing.

9. PAYMENT OF INTEREST

(a) The Client must pay interest on any amount due and payable under the Agreement, but unpaid, at the Default Interest Rate.

(b) The interest payable under clause 9(a) accrues from day to day from and including the due date for payment up to the actual date of payment.

10. TITLE AND RISK

(a) All risk in the Services shall pass to the Client upon completion of the Services (as determined by the Company acting reasonably).

(b) All title in the Services shall pass to the Client upon payment in full of the Price and satisfaction of all other obligations due by the Client to the Company under the Agreement.

(c) If the performance of the Agreement requires the Company to use or provide plant and equipment, ownership and title in the plant and equipment shall always remain with the Company at all times, and nothing in the Agreement gives rise to any proprietary right, equitable right or other interest in the plant and equipment to the Client at any time.

11. VARIATION

The Client may, by notice to the Company request a variation to the quantity, quality or description of the Services. Subject to the Company's acceptance of the variation, the Price will be adjusted by an amount agreed by the parties or, failing agreement, by a reasonable amount determined by the Company for that variation.

12. DELIVERY

(a) The Company must use reasonable endeavours to complete the Services on or before the Completion Date.

(b) The Completion Date shall be extended where the Company is delayed in the performance of the Services by:

(i) an act or omission of the Client or the Client's directors, officers, employees, contractors (other than the Company) or agents; or

(ii) an event or circumstance that is beyond the reasonable control of the Company.

(c) The period of any extension of time to the Completion Date to which the Company is entitled pursuant to clause 12(b) will be the period by which the Company has been or will be delayed in performing any Services, in each case as determined by the Company.

(d) In addition to an extension of time to the Completion Date, in the event of the Company being delayed by any events or circumstances referred to in clause 12(b)(i), the Client shall be liable for the additional costs incurred by the Company in respect of the delay, as determined by the Company.

13. SITE

(a) To the extent the Company or its personnel are required to be on or in the vicinity of the Site, the Client must procure access to the Site for the Company and its personnel.

(b) In the event that the Company's personnel are required to undertake any safety or site induction courses in order to access the Site, the Client shall arrange for the attendance and completion of the relevant courses at the Client's cost.

(c) The Client must ensure that the Company and its personnel have adequate access to the Site to ensure that the Company may perform its obligations under the Agreement on an uninterrupted basis.

14. TECHNICAL MATERIAL

(a) The Client must, within 24 hours of the Commencement Date, supply all required plans, drawings, specifications, manuals, certificates, instructions, information and documentation which are required by the Company to complete the Services.

(b) The Client represents and warrants that all plans, drawings, specifications, manuals, certificates, instructions, information and documentation provided by or on behalf of the Client are and will be accurate, complete, free of errors, and suitable for the purpose of the Company relying on to perform the Services.

15. VIRUSES

The Client must:

(a) take all necessary precautions, in accordance with good industry practice, to prevent a Virus or other malware from affecting the Site and the Company's information technology infrastructure, including but not limited to, by using the most recent versions (including the most recent updates), from industry-accepted providers, of:

(i) anti-virus and end point protection software;

(ii) software to prevent unauthorised access; and

(iii) intrusion detection software,

and must take all other prudent steps to:

(iv) check for, remove and prevent Viruses or unauthorised access; and

(v) detect internal attacks or other code that is harmful, destructive, disabling or assists in or enables theft or alteration of data;

(b) ensure that no Virus is allowed in or to access to any part of the Site or the Company's information technology infrastructure, in connection with any of the Services. If a Virus is found in or to have had access to any part of the Site or the Company's information technology infrastructure, the Client must promptly notify the Company, eliminate the Virus and remedy any loss or damage the Virus

has caused as quickly as possible; and

(c) not install at the Site or on the Company's information technology infrastructure any Virus, computer instructions, circuitry, or other technological means whose purpose or effect is to disrupt, damage, or interfere with the Site or any of the Company's information technology infrastructure or computer facilities or equipment, or to provide unauthorised access to the Company's information technology infrastructure or computer facilities or equipment.

16. INTELLECTUAL PROPERTY

(a) All copyright material, patents, registered designs and trademarks created in connection with the performance of the Services shall vest in the Company upon their creation.

(b) The Client hereby licenses the use by the Company of any copyright material, patents, registered designs or trademarks of which the Client is the owner or in the case of copyright material, patents, registered designs or trade marks of which the Client is a licensee, sub-licenses the use of them by the Company, for the purpose of the performance of the Services by the Company.

(c) The Company hereby licenses the use by the Client of any copyright material, patents, registered designs or trademarks of which the Company is the owner for the purpose of the installation, operation, maintenance and repair of the Services.

17. LICENCES

All Services are performed by the Company on the basis that all licences and permits under all relevant statutes, ordinances, rules and regulations have been obtained by and complied with by the Client at its cost.

18. INSURANCE

The Client shall effect and maintain during the performance of the Company's obligations under the Agreement each of the following insurances:

(a) Public liability and property damage insurance

Insurance in respect of any injury to or death of any person or any loss, damage or destruction to any property (including that of the Company) howsoever caused. These insurances must provide cover to an amount not less than A$10,000,000 in the aggregate.

(b) Workers' compensation / employer's liability insurance

Workers' compensation and employer's liability insurances in the names of the Client for its respective rights and interests covering all liabilities, whether arising under statute or common law, in relation to the death of, or injury to, employees or any person deemed to be an employee of the Client.

(c) Plant and equipment insurance

Insurance covering all loss of and damage to the Client's plant and equipment, for its replacement value.

(d) Motor vehicle insurance

Third party liability insurance covering all liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property arising from the use of motor vehicles by or on behalf of the Client.

19. DEFAULT

(a) If the Client breaches any term of the Agreement, the Company may without prejudice to any other rights of the Company under the Agreement, subject to providing the Client with a period of 7 days to remedy the default to the absolute satisfaction of the Company, terminate the Agreement.

(b) In the event of termination of the Agreement by the Company pursuant to clause 19(a), the Company's rights under the Agreement shall be the same as they would have been at common law had the Client repudiated the Agreement and the Company elected to treat the agreement as at an end and recover damages.

20. LIMITATION OF LIABILITY

(a) Subject to clauses 20(b) and 20(c) and otherwise notwithstanding any provision of the Agreement, to the maximum extent permitted by law, the Company's maximum liability to the Client, whether in contract, tort (including negligence), statute, warranty or otherwise in connection with the Agreement shall be limited to 20% (twenty per cent) of the Price.

(b) The limitation contained in clause 20(a) shall not apply to liability arising as a direct result of:

(i) claims by natural persons or their estates in respect of personal injury or death of third parties caused by negligence;

(ii) fraudulent or malicious conduct;

(iii) wilful deceit; or

(iv) intentional breaches of the Agreement.

(c) Notwithstanding any provision of the Agreement, to the maximum extent permitted by law, the Company is not liable to the Client for any indirect, consequential or special loss (including loss of revenue, loss of profit, loss of product, loss of production, increased financing costs, loss of opportunity, loss of business opportunity, costs of or associated with fabrication or re-fabrication of materials, costs of or associated with installation or re-installation of materials, loss of contract, and delay costs), whether arising out of or in connection with the Agreement, under statute, in tort (for negligence or otherwise) or any other basis in law or equity.

(d) This clause 20 shall survive the term or termination of the Agreement.

21. INDEMNITY

(a) The Client must indemnify the Company, the Company's Related Bodies Corporate, and each of their directors, officers and personnel (**Indemnified Parties**) from and against any claim or loss, however caused, brought against, suffered or incurred by the Indemnified Parties arising out of or in connection with:

(i) damage to, or loss or destruction of, any real or personal property (including property of the Company and property of the Client) caused or contributed to by the Client, its Related Bodies Corporate or any of their directors, officers and personnel;

(ii) injury to, or death or disease of, any person, caused or contributed to by the Client, its Related Bodies Corporate or any of their directors, officers and personnel;

(iii) a breach by the Client of its obligations under the Agreement; and

(iv) any claim that the Company's performance of the Services infringes any intellectual property rights or moral rights of a third party which is caused or contributed to by the Client.

(b) The Client's liability to indemnify the Indemnified Parties under clause 21(a) will be reduced proportionately to the extent the claim or loss was caused by the wilful misconduct of an Indemnified Party.

(c) The Company need not incur any cost or make any payment before enforcing any right of indemnity under this clause 21.

(d) The indemnity under this clause 19 benefits the Company and each other Indemnified Party. The Company may enforce the indemnity in its own right and on behalf of any other Indemnified Party.

(e) This clause 21 shall survive the term or termination of the Agreement.

22. WAIVER

Any failure by the Company to insist upon strict performance of any obligation in the Agreement shall not be deemed a waiver thereof of any right that the Company may have and shall not be deemed a waiver of any subsequent breach of any term or condition.

23. DEFECTIVE SERVICES

(a) A Defects Liability Period shall apply to the Services.

(b) The Defects Liability Period shall commence on completion of the Services.

(c) The Client must immediately provide notice in writing to the Company upon becoming aware of any defect in the Services.

(d) The Company shall rectify a defect in the Services within a reasonable period of time following receipt of a notice from the Client in accordance with clause 23(c).

24. GST

(a) In this clause:

(i) **GST** means GST within the meaning of the GST Act and includes penalties and interest.

(ii) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (as amended).

(b) Expressions used in this clause and in the GST Act have the same meanings as when used in the GST Act.

(c) Except where the Agreement specifies otherwise, an amount payable by a party under the Agreement in respect of a taxable supply (**taxable supply amount**) by the other party represents the value of the supply or the net amount under clause 24(d). The recipient of the supply must, in addition to that amount and at the same time, pay to the supplier the amount of GST payable in respect of the supply.

(d) If the Agreement requires a party to pay for, reimburse or indemnify against any expense or liability (**reimbursable expense**) incurred by the other party (**payee**) to a third party, the amount to be paid, reimbursed or indemnified is the amount of the reimbursable expense net of any input tax credit to which the payee is entitled in respect of the reimbursable expense (**net amount**).

(e) The GST payable on a taxable supply amount or reimbursable expense will be paid in Australian dollars regardless of whether the taxable supply amount or reimbursable expense is paid in Australian dollars or in any other currency. If the taxable supply amount or reimbursable expense is payable in a currency other than Australian dollars:

(i) for the purposes of calculating the GST payable, the taxable supply amount or reimbursable expense will be converted into Australian dollars using the daily exchange rate as published on the Reserve Bank of Australia's website on the date prior to or the date that a valid tax invoice for the taxable supply amount or reimbursable expense is issued, in accordance with the Australian Taxation Office Guidelines; and

(ii) the relevant tax invoice must specify the exchange rate used and the date of conversion, the GST payable in Australian dollars and the account details into which the GST payable must be paid.

(f) A party is not obliged, under clause 24(c), to pay an amount for GST in respect of a taxable supply to it, until given a valid tax invoice for the supply.

25. NOTICES

(a) All notices under the Agreement must be in writing and in the English language.

(b) Subject to anything elsewhere specifically provided to the contrary, and without limiting any other proper mode of service, a notice will be properly served or given:

(i) if handed to the party's representative personally;

(ii) if posted by mail to the address (if any) nominated in the Agreement as being the address of the party, or if left at that address;

(iii) if posted to the party at its registered office in Western Australia, or if left at that registered office; or

(iv) if sent electronically as an attachment to an email to the party or the party's representative at the email address specified in the Agreement.

(c) The notice will be deemed to have been received:

(i) if delivered personally, upon delivery;

(ii) if mailed to an address in the city of despatch, upon expiry of 2 working days after the day of despatch;

(iii) if mailed elsewhere within Australia on the expiry of 7 days after the day of despatch;

(iv) if mailed from overseas, on the expiry of 14 days after the day of despatch; or

(v) if sent electronically as an email attachment:

(A) if it is transmitted by 5.00pm (Australian Western Standard Time) on a day – on that day; or

(B) if it is transmitted after 5.00pm (Australian Western Standard Time) – on the next day.

(d) Either party may from time to time substitute a new address or email address for any of the addresses or email addresses of the party and the party's representative for the purpose of this clause 25.

26. CONFIDENTIALITY

The Client must not and must ensure that each of its personnel does not, without the express prior written consent of the Company, divulge to third parties or use for their own or any other purposes:

(a) any information relating to the Agreement, including the terms of the Agreement; and

(b) any information provided to the Client by the Company,

until that information has been published or made available to the public at large, other than due to a breach of an obligation of confidentiality.

27. ANNOUNCEMENTS

The Company may make media announcements, public statements and social media releases in relation to the existence and subject matter of the Agreement and the Services.

28. ASSIGNMENT

(a) None of the rights or obligations of the Client under the Agreement may be novated, assigned or transferred in whole or in part without the prior express written consent of the Company (which shall not be unreasonably withheld).

(b) The Company may novate, assign or transfer in whole or in part any of its rights or interests in the Agreement, and the Client hereby consents to such novation, assignment or transfer and must provide all assistance reasonably required to give effect to such novation, assignment or transfer.

29. APPLICABLE LAW

The Agreement (and any proceedings whereby one party might be entitled to join the other as a third party) shall in all respects be governed by and construed in accordance with Western Australian law and the parties hereby submit to the non-exclusive jurisdiction of the Western Australian courts.

30. ENTIRE AGREEMENT

(a) The Agreement represents the entire agreement between the Client and the Company with respect to the Services.

(b) The Agreement may not be varied, modified, amended or altered without the express written agreement of the parties.

(c) The Client hereby acknowledges that any terms and conditions attached to any communication between the parties shall not form part of the Agreement.

(d) These Terms and Conditions apply to all future contracts entered into between the Client and the Company unless otherwise agreed to by the Company in writing.

31. FURTHER ASSURANCES

Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of the Agreement and the transactions contemplated by it.

32. DISPUTE RESOLUTION

(a) If at any time there is any dispute, question or difference of opinion between the parties concerning or arising out of the Agreement, or its validity, construction, meaning, operation or effect, or concerning the rights, duties or liabilities of either party (**Dispute**), then the parties shall as a condition precedent to the commencement of any proceedings in respect of the Dispute, forthwith confer in an endeavour to settle such Dispute.

(b) The Client shall ensure that a senior executive officer who has authority to bind the Client attends the conference.

(c) If the Client and the Company fail to agree within thirty (30) days after first conferring, either party may commence legal proceedings in an appropriate court to resolve the Dispute.

33. SURVIVAL

Clauses 1, 8, 10,20, 23 and 34 shall survive the term and termination of the Agreement.

34. ENFORCEABILITY

(a) If a provision of these Terms and Conditions can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.

(b) If any provision or part of these Terms and Conditions is illegal, unenforceable or invalid, that provision or part is to be treated as removed from this document, but the rest of this document is not affected.