

By accepting a Mendi Purchase Order for goods and / or services or supplying goods and / or services without order you agree that the following Terms and Conditions will apply.

### **1. The Period Trade Contract**

- 1.1. The following documents together comprise the Period Trade Contract:
  - 1.1.1. any Purchase Order issued from time to time by Mendi to the Subcontractor;
  - 1.1.2. these Period Trade Contract Conditions;
  - 1.1.3. any Scope of Works, drawings, specifications or programs attached or referred to in this Period Trade Contract, or otherwise provided by Mendi to the Subcontractor for the purposes of carrying out the Subcontract Works.
- 1.2. If there is any ambiguity, inconsistency or conflict between the provisions of any of the documents referred to in clause 1.1 then, subject to clause 10.4, the documents take precedence in the order listed in clause 1.1.
- 1.3. The Period Trade Contract constitutes the entire, final and concluded agreement between the parties. It supersedes any previous arrangements, correspondence, tenders, representations, proposals, understandings and communications, whether oral or in writing.
- 1.4. No rule of Law will apply to the detriment of one party on the basis that that party put forward or drafted the Period Trade Contract or would otherwise obtain benefit from it.

### **2. Nature of Period Trade Contract**

- 2.1. The Parties agree that they will each be bound by the conditions of this Period Trade Contract during the Period Trade Contract Term.
- 2.2. Mendi may, from time to time issue to the Subcontractor a Purchase Order for the carrying out of Subcontract Works.
- 2.3. The Parties agree that the conditions of this Period Trade Contract will form part of each Purchase Order, whether or not they are attached to or form part of the Purchase Order, or whether or not they are expressly referenced in the Purchase Order.

### **3. Definitions**

*"Base Work"* means the Site conditions including work carried out by other in, on or over which the Subcontractor is to carry out the Subcontract Works;

*"Completion"* means the stage at which the Subcontract Works are complete in accordance with this Period Trade Contract except for minor defects or omissions;

*"Consequential Loss"* means loss of use, production, profit, income, business, contract or anticipated saving (whether direct or indirect), or for any delay, financing costs or increase in operating costs (whether direct or indirect) or any other financial or economic loss or for any special, indirect or consequential loss or damage (including, without limitation, loss suffered as a result of the termination of the Head Contract where that termination was partly or wholly based on or due to breach of the Period Trade Contract by the Subcontractor, or an act or omission of the Subcontractor, including the Subcontractor's negligence)

*"Date of Commencement"* means the date of commencement referred to in the Purchase Order;

*"Date of Completion"* means the date Mendi directs the Subcontractor that the Subcontract Works have reached Completion;

*"Day"* means calendar day;

*"Defects Liability Period"* means a period of 12 months from the date of Completion of the Subcontract Works;

*"GST"* has the same meaning as in the GST Act;

*"GST Act"* means A New Tax System (Goods and Services Tax) Act 1999 as amended;

*"Head Contract"* means the any head contract identified in the Purchase Order from time to

time;

*“Information”* means any documents, drawings, reports, technical specifications or other information relating to the Subcontract Works, or this Period Trade Contract;

*“Law”* means all Law, whether statutory or otherwise, in force in Queensland;

*“Party”* or *“Parties”* means Mendi and/or the Subcontractor, as the context requires;

*“Period Trade Contract”* means this period trade contract comprising the documents referred to in clause 1.1;

*“Price”* means the price stated in the Purchase Order;

*“Principal”* means the Principal under the Head Contract;

*“Purchase Order”* means a purchase order issued from time to time by Mendi to the Subcontractor to carry out Subcontract Works under this Period Trade Contract;

*“Purchase Order Number”* means the number stated in the Purchase Order or as advised in writing by Mendi to the Subcontractor;

*“Site”* means the Site identified in the Purchase Order;

*“Supply”* has the same meaning as in the GST Act;

*“Tax Invoice”* has the same meaning as in the GST Act;

*“Term”* means a period of 24 months from the date of this Period Trade Contract or such other period agreed in writing by the Parties at the minimum covering each Purchase Order issued within the period and each time extending for a further period of 12 months unless either part provides a notice in writing no less than 30 days from the expiry of then current Term that it does not wish for the Term to be further extended;

*“Subcontractor”* means the Subcontractor identified on page 1 of the Period Trade Contract;

*“Subcontract Works”* means the Subcontract Works described in the Purchase Order to be performed in accordance with the terms of this Period Trade Contract;

*“Variation”* means to vary the Subcontract Works by:

- a. carrying out additional work;
- b. omitting any part of the Subcontract Works;
- c. make any change to the Subcontract Works; or
- d. leave any detail of the Subcontract Works unfinished;

*“Working Hours”* means the working hours detailed in the Purchase Order;

#### **4. The Subcontract Works**

4.1. The Subcontractor must carry out and complete the Subcontract Works:

- 4.1.1. in a proper and workmanlike manner
- 4.1.2. to the satisfaction of Mendi;
- 4.1.3. in accordance with Mendi’s directions and the requirements of the Period Trade Contract; and
- 4.1.4. with due expedition and without delay.

4.2. In consideration of the due and proper performance of the Period Trade Contract by the Subcontractor, Mendi agrees to pay the Subcontractor the Price.

#### **5. Head Contract**

5.1. To the extent that the provisions of the Head Contract are applicable to the Subcontract Works such provisions are incorporated into this Subcontract as if references to the Principal were references to Mendi and references to Mendi were references to the Subcontractor.

#### **6. Subcontracting**

6.1. The Subcontractor must not;

- 6.1.1. subcontract any part or the whole of the Subcontract Works; or
- 6.1.2. assign the Period Trade Contract or any part of the Subcontract Works

without Mendi's prior written consent.

## **7. Nature of the relationship**

7.1. The Subcontractor is engaged by Mendi as an independent contractor and nothing in this Period Trade Contract constitutes the Subcontractor or its personnel as being agents, employees, directors or partners of Mendi. The personnel of the Subcontractor are and will remain at all times employees, independent contractors or agents of the Subcontractor.

7.2. The Subcontractor and its personnel have no authority to incur, and will not incur, any obligation on behalf of Mendi except with the prior written approval of Mendi.

7.3. Subject to the terms of this Period Trade Contract, the parties acknowledge that the Subcontractor is solely responsible for controlling the manner in which the Subcontractor carries out the Subcontract Works.

## **8. Security, Retention Moneys and Performance Undertakings**

8.1. Security, retention moneys and performance undertakings are for the purpose of ensuring the due and proper performance of the Trade Contract.

8.2. Security shall be in the form of cash retentions from the payments outlined in clause 29.4. Mendi will be entitled to retain from each payment outlined in 29.4, 10% of the value of each payment until 5% of the Price is retained

8.3. Mendi may have recourse to cash security where--

8.3.1. Mendi has become entitled to exercise a right under the Period Trade Contract in respect of the security; and

8.3.2. has given the Subcontractor 5 days notice in writing of Mendi intention to have recourse to the cash security or to convert the security

8.4. Upon the Date of Completion, Mendi's entitlement to security is reduced to 50% of the value of the security and the other 50% at the expiration of the Defects Liability Period.

8.5. Mendi will release the retained monies, less any proper deductions or set off, as follows:

8.5.1. one half within 14 days of the Date of Completion; and

8.5.2. the balance within 14 days of the issue of a final certificate in relation to the Subcontract Works.

## **9. Subcontractor responsible for payment**

9.1. The Subcontractor will be solely responsible for and solely bear:-

9.1.1. payment of remuneration to its employees, other servants, agents, contractors and personnel including salaries and wages, superannuation, annual leave, sick leave, long service leave and all other benefits to which any of them may be entitled under any contract of service or contract for service with the Subcontractor or under any award or at Law;

9.1.2. the payment of any taxes and duties in respect of that remuneration and benefits;

9.1.3. maintenance of, and the cost in respect of the maintenance of, adequate insurance in respect of workers' compensation and all other risks appropriate to the duties of the Subcontractor's employees, servants, agents, contractors and personnel;

9.1.4. compliance with, and the cost of compliance with, all other statutory, award or other legal or contractual requirements with respect to the Subcontractor's employees, servants, agents, contractors and Personnel.

9.2. If during this Period Trade Contract or at anytime after its termination the Subcontractor or any employee, servant, agent, contractors or personnel of the Subcontractor is held or deemed to be an employee of Mendi under any Law, the Subcontractor must indemnify and keep indemnified Mendi in respect of any liability Mendi may have to, or in respect of, such persons including for any:-

9.2.1. additional tax, levy or other payment whatsoever including any interest, penalty or late

fee that may be payable in respect of the late or non-payment of such tax, levy or other payment; or

9.2.2. remuneration, superannuation, workers' compensation, annual leave, long service leave, bereavement leave or other leave, or other payment, entitlement or any monetary or non-monetary benefit to be paid or provided to such persons.

## **10. Drawings and Specifications**

10.1. Mendi does not warrant the accuracy of any information provided to the Subcontractor directly or indirectly in relation to the Subcontract Works by Mendi and any such Information is provided to the Subcontractor for information only. The Subcontractor must undertake its own examination of the Site, and must confirm all measurements, descriptions and dimensions.

10.2. The Subcontractor must carefully examine all Information upon receipt by the Subcontractor and must, before commencing any work in connection with that Information, notify Mendi of any defect in the design or ambiguity, discrepancy, inconsistency, conflict or error in, or an omission from any Information.

10.3. Any drawings and technical specifications provided by Mendi to the Subcontractor represent the forms, dimensions and descriptions of the Subcontract Works. Where any discrepancy exists between figured and scaled dimensions, figured dimensions will take precedence.

10.4. If the Subcontractor discovers any inconsistency, ambiguity or discrepancy in or between the plans and the specifications, the Subcontractor must seek Mendi's direction as to the interpretation to be followed. The Subcontractor must comply at its cost, with any request for information process implemented or operated by Mendi.

10.5. The Subcontractor is responsible for and must bear the cost of any alteration to the Subcontract Works arising from;

10.5.1. any defect in design, or ambiguity, discrepancy, inconsistency, conflict or error in or an omission from any Information created or supplied by the Subcontractor; and/or

10.5.2. its failure to notify Mendi in writing of any defect in design or ambiguity, discrepancy, inconsistency, error in or an omission from any Information that it has or in Mendi's opinion should have discovered in accordance with clause 10.2;

## **11. Subcontractor to inform itself**

11.1. The Subcontractor warrants and acknowledges that it has examined or has been given the opportunity to examine

11.1.1. this Period Trade Contract and the Head Contract, the Site and any other information made available in writing by Mendi or any other person to the Subcontractor prior to entering into the Period Trade Contract; and

11.1.2. all Information relevant to the risks, contingencies and other circumstances having an effect on the Subcontractor entering into this Period Trade Contract and which is obtainable by the making of reasonable enquiries;

and has satisfied itself as to the adequacy and accuracy of such examinations or that such examinations are not necessary and that its price includes due allowance for all matters and things necessary for the proper performance and completion of the Subcontract Works.

## **12. Acceptance of Base Work**

12.1. On commencing to carry out the Subcontract Works the Subcontractor is;

12.1.1. deemed to have accepted the Base Work as satisfactory; and

12.1.2. not entitled to payment or recompense for other additional work carried out as a result of unsatisfactory Base Work.

**13. Execution of the Works**

13.1. The Subcontractor shall:

13.1.1. regularly consult with Mendi regarding the execution of the Subcontract Works;

13.1.2. fully co-operate with, and co-ordinate the Subcontract Works with the work of, Mendi, its other contractors and agents.

13.1.3. ensure that each person who performs the Subcontract Works:

13.1.3.1. holds all appropriate licenses, and certificates;

13.1.3.2. is experienced, competent and qualified; and

13.1.3.3. complies with the Contractor's Site requirements, including without limitation those relating to industrial relations, safety, site induction, environmental, and community relations.

13.1.4. keep the Subcontract Works clean and tidy as they proceed and on completion remove all its plant and equipment and leave the Subcontract Works ready for immediate use or occupation;

13.2. If the Subcontractor fails to comply with any of its obligations under clause 13.1 Mendi may, by providing written notice to the Subcontractor, carry out that obligation on the Subcontractor's behalf and any reasonable and verifiable costs that Mendi incurs in carrying out that obligation will be a debt due and payable by the Subcontractor to Mendi under this Period Trade Agreement.

13.3. Any comment, approval, consent or direction by Mendi shall not relieve the Subcontractor from, or in any way diminish or affect, the Subcontractors' obligations under this Period Trade Contract.

**14. Care of the Work**

14.1. The Subcontractor is responsible for the Subcontract Works from and including the Date for Commencement to 6.00pm on the day the Subcontract Works reach Completion, at which time the responsibility for the care of the Subcontract Works will pass to Mendi. The Subcontractor will be responsible for the care of any unfixed items accounted for in a payment schedule and the care and preservation of things entrusted to the Subcontractor by Mendi or brought onto the Site by the Subcontractor for carrying out the Subcontract Works;

14.2. If loss or damage occurs to the Subcontract Works during the period of the Subcontractor's care as a result of an act or omission by the Subcontractor, the Subcontractor must, at its cost rectify such loss or damage. The Subcontractor will not be responsible for rectifying loss or damage to the Subcontract Works that is caused or contributed to by Mendi, its representatives, agents, employees, suppliers and other subcontractors, or any third party.

14.3. If any loss or damage, caused by an act or omission by the Subcontractor, is not rectified within 7 days of the event causing the loss or damage, then Mendi may make good the loss or damage and the reasonable, direct and verifiable cost incurred by Mendi in rectifying the loss or damage will be a debt due from the Subcontractor to Mendi under this Period Trade Contract, and is capable of being deducted by Mendi from the Price.

**15. Plant and Equipment**

15.1. The Subcontractor shall be responsible for the care of its plant and equipment. Mendi shall have no liability for any loss of, or damage to, the Subcontractor's plant and equipment, unless such loss or damage is caused or contributed to by Mendi, its representatives, employees, agents, suppliers or other subcontractors.

15.2. To the extent permitted by law, no representation, warranty or other liability on the part of Mendi is implied or created as to the condition or suitability of any plant or equipment made available to the Subcontractor by Mendi. The Subcontractor uses such plant and equipment entirely at its own risk.



**16. Protection of People and Property**

16.1. The Subcontractor must:

- 16.1.1. take all reasonable measures necessary to protect people and property;
- 16.1.2. avoid unnecessary interference with the passage of people and vehicles; and
- 16.1.3. prevent nuisance and unreasonable noise and disturbance.

16.2. If the Subcontractor damages property, the Subcontractor must promptly rectify the damage and pay compensation which the law requires the Subcontractor to pay.

16.3. If the Subcontractor fails to comply with an obligation under this clause, Mendi may have the obligation performed itself or by others. The reasonable, direct and verifiable costs incurred by Mendi in doing so will be a debt due from the Subcontractor to Mendi under this Period Trade Contract.

**17. Regulations**

17.1. The Subcontractor shall give all notices, comply with all reasonable reporting and compliance requirement as imposed from time to time by Mendi or under any Head Contract, pay all fees, and obtain and hold all licenses, required for the execution of the Subcontract Works. If the Subcontractor fails to do so, Mendi may, by providing written notice to the Subcontractor:

17.1.1. terminate the Period Trade Contract and the rights and liabilities of each Party shall be as if the Period Trade Contract had been terminated in accordance with clause 30.

17.1.2. carry out that obligation on the Subcontractor's behalf and the reasonable, direct and verifiable costs that Mendi incurs in carrying out that obligation will be a debt due and payable by the Subcontractor to Mendi under this Period Trade Contract.

17.2. The Subcontractor shall ensure that the Subcontract Works, and the execution of the Subcontract Works, comply with:

17.2.1. all requirements of this Period Trade Contract, the Building Code of Australia (if applicable), applicable Australian standards, laws, regulations, by-laws and codes of practice; and

17.2.2. the requirements of all government, statutory, and regulatory authorities or bodies having jurisdiction with respect to the Subcontract Works.

**18. Directions**

18.1. The Subcontractor must comply with any reasonable direction given by Mendi. Mendi will give a direction to the Subcontractor in writing.

18.2. Subject to clause 19.3 of this Period Trade Contract, the Subcontractor has no entitlement for additional payment or an extension of time unless the direction expressly provides otherwise in writing.

18.3. The Subcontractor must have present on site at all times an authorised representative for the purpose of managing the Subcontract Works.

**19. Variations**

19.1. The Subcontractor must not carry out a Variation unless directed in writing by Mendi.

19.2. Mendi may, by giving a written direction, require the Subcontractor to carry out a Variation. No Variation will invalidate the Period Trade Contract.

19.3. If the direction provides in writing that the additional costs will be paid to the Subcontractor, then the price of a Variation is:

19.3.1. that agreed by the Parties prior to commencement of the Work the subject of the Variation; or

19.3.2. failing agreement, reasonable rates as determined by Mendi.

19.4. The Price is to be adjusted by the price of a Variation at the next payment following the satisfactory completion of the Variation works.

## **20. Timing of the Subcontract Works**

20.1. The Subcontractor shall commence the Subcontract Works by the Date for Commencement and diligently continue with the Subcontract Works so that they reach Completion by the Date for Completion.

20.2. Mendi may grant the Subcontractor an extension of time to the Date for Completion for:

20.2.1. any act, default or omission of Mendi that delays the Subcontractor in bringing the Subcontract Works to completion by the Date for Completion except to the extent that the Subcontractor or any of its representatives, agents, employees, suppliers and other subcontractors caused or contributed to the delay; or

20.2.2. delays due to inclement weather or the effects thereof;

20.3. Notwithstanding clause 20.2, the Subcontractor shall not be entitled to an extension of time unless the Subcontractor notifies Mendi in writing, within 7 days of the delay event occurring.

20.4. The granting of an extension of time to the Date for Completion will be the Subcontractor's sole remedy for delays caused by Mendi acts, default or omissions. The Subcontractor will have no other claim against the Contractor, including a claim for any delay costs or damages that it may incur as a result of the delay.

20.5. If the Subcontractor fails to complete the Subcontract Works by the Date for Completion, the Subcontractor shall pay Mendi liquidated damages calculated in accordance with the rate set out in the Purchase Order for each day after the Date for Completion that the Subcontract Works remain incomplete. Both Mendi and the Subcontractor agree that any liquidated damages payable by the Subcontractor are a genuine pre-estimate of the damages likely to be suffered by Mendi if the Subcontractor fails to complete the Subcontract Works by the Date for Completion.

20.6. The Subcontractor must not work outside the Working Hours unless otherwise expressly authorized in writing by Mendi.

## **21. Indemnity & Insurance**

21.1. The Subcontractor indemnifies Mendi against any liability, cost, loss, expense, damage or claim (including without limitation for death or personal injury) caused by the negligent act, default or omission of the Subcontractor, its employees, contractors or agents.

21.2. The Subcontractor agrees to indemnify Mendi against any costs, losses, damages, expenses, liability or claim whatsoever that Mendi incurs as a result of the Subcontractor failing to comply with the Head Contract

21.3. Any indemnity provided by the Subcontractor under this Period Trade Contract is given on the basis that:

21.3.1. Mendi shall take reasonable steps to mitigate any loss, damage, liability, cost or expense the subject of the indemnity; and

21.3.2. the Subcontractor's liability is reduced proportionally to the extent that the act or omission of Mendi, or the employees, representatives or agents of Mendi contributed to the loss, damage, death or injury.

21.4. Before commencing the Subcontract Works, the Subcontractor shall, until Completion of the Subcontract Works, effect and maintain or cause its agent, subcontractors or related entities to effect and maintain the insurances specified in the Purchase Order for the policy limits stated in the Purchase Order or any other insurance policies as reasonably requested by Mendi from time to time.

21.5. The insurances required under this clause:

- 21.5.1. must be on terms and with an insurer satisfactory to Mendi;
- 21.5.2. be for an amount not less than the sum stated in the Purchase Order;
- 21.5.3. if requested, be in the joint names of Mendi, the Principal (if any) and the Subcontractor; and
- 21.5.4. include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured.
- 21.6. The Subcontractor shall give Mendi evidence, in the form of certificates of currency, that all insurances have been effected and that they are current.
- 21.7. If the Subcontractor fails to produce evidence in the form of certificates of currency, as proof of compliance with its insurance obligations under this Period Trade Contract, Mendi may effect and maintain the insurance and pay the premiums and the reasonable, direct and verifiable amount paid will be a debt due from the Subcontractor to Mendi under this Period Trade Contract.

## **22. Site**

- 22.1. Mendi will give the Subcontractor sufficient, but not exclusive access to the Site to carry out the Subcontract Works.
- 22.2. The Subcontractor is responsible for any damage (whether to the Subcontract Works, or the property of Mendi or a third party) caused by the Subcontractor and its agents or employees.
- 22.3. The Subcontractor must:
  - 22.3.1. immediately on request by Mendi, remove all;
    - 22.3.1.1. its plant, equipment and facilities; and
    - 22.3.1.2. debris and refuse arising out of the Subcontract Worksfrom the Site unless otherwise directed by Mendi;
- 22.3.2. co-operate with Mendi, other contractors and other subcontractors of Mendi and their respective employees, consultants and agents in the execution of the Subcontract Works;
- 22.3.3. at the Subcontractor's cost, keep the Site clean and tidy as the Subcontract Works proceed and regularly remove rubbish from the Site.
- 22.3.4. If the Subcontractor fails to comply with this clause 21.4, Mendi may rectify the breach and the cost will be a debt due and payable by the Subcontractor to Mendi.
- 22.4. Mendi may at any time and for any reason direct the removal from the Site of any employee of the Subcontractor or its subcontractors.

## **23. Health, Safety**

- 23.1. The Subcontractor shall be responsible for, and Mendi may set off against any monies owing to the Subcontractor, or failing that, recover from the Subcontractor as a debt due and owing, an amount equal to, any fines or other monetary penalties incurred by Mendi arising out of or in connection with a breach of this clause 23 by the Subcontractor.
- 23.2. The Subcontractor must:
  - 23.2.1. comply with and must ensure that its employees comply with:
    - 23.2.1.1. any Workplace Health and Safety Plan prepared by the Subcontractor and approved by Mendi;
    - 23.2.1.2. Mendi's occupational health, safety and environment policies and any project specific safety requirements;
    - 23.2.1.3. all occupational health, safety and environmental Law and if so directed by Mendi, provide reasonable evidence of such compliance;
    - 23.2.1.4. any direction by Mendi; and
    - 23.2.1.5. any relevant requirements of the Principal under the Head Contract.
  - 23.2.2. ensure that no person (whether employed or not) is exposed to risk to their health and safety.



23.3. All workers on site must:

23.3.1. Conduct the Subcontract Works in a manner that shall comply with the Workplace Health and Safety Act 2011, associated Regulations and within such relevant Federal, State and Local Laws as are applicable to the work;

23.3.2. Not cause hazard or risk of injury or damage to the Principal, its contractors; employees; proprietors or the general public;

23.3.3. Obey any reasonable safety direction of the Principal or Contract Supervisor, their WH&S Advisor and shall, where applicable, conform to Mendi safety policies, procedures and rules;

23.3.4. Make available a copy of Work Method Statements or Construction Safety Plan to the Principal for works that shall be deemed "high risk construction activity" or is deemed "construction work", or "demolition work";

23.3.5. At all times, wear mandatory and appropriate, Personal Protective Equipment as deemed necessary by statutory requirements, the Principal or Mendi;

23.3.6. Understand that any Subcontract Works that are carried out in any manner which does not comply with the requirements of Workplace Health and Safety 2011 shall constitute a breach of this Period Trade Contract and shall constitute grounds for the Period Trade Contract to be suspended or terminated by Mendi;

23.3.7. Understand that upon notification of a WH&S noncompliance, Mendi's WH&S Advisor has the right to enter a site under direction of Mendi to conduct a workplace health and safety inspection in consultation with the principal contractor and or Subcontractor;

23.3.8. Should a dispute occur pertaining to work methods which cannot be solved to the mutual satisfaction of the Mendi and the Subcontractor, a representative of Workplace Health and Safety Queensland shall arbitrate in a dispute to the satisfaction of the Department; and

23.3.9. Ensure that all of the Subcontractor's on-site personnel have undertaken general induction training and shall undertake an on-site induction course where applicable.

## **24. Inspection and Testing**

24.1. Mendi may at any time inspect the Subcontract Works or the Site and must be given reasonable access by the Subcontractor in order to do so.

24.2. The Subcontractor acknowledges that:

24.2.1. In inspecting the Subcontract Works or the Site, Mendi owes no duty to the Subcontractor to review for errors, omissions or compliance with the requirements of this Period Trade Contract; and

24.2.2. No inspection or review by Mendi will in any way lessen or otherwise affect the Subcontractor's obligations or Mendi's rights against the Subcontractor, whether under this Period Trade Contract or at Law.

24.3. The Subcontractor must successfully perform the tests required by and in accordance with the Purchase Order or this Period Trade Contract, and comply with any relevant Australian Standards.

24.4. In addition to the tests required by clause 24.1, at any time before Completion Mendi may direct that any materials and equipment or part of the Subcontract Works be tested, in which case:

24.4.1. Mendi may direct that any part of the Subcontract Works, must not be covered up or made inaccessible without Mendi prior approval; and

24.4.2. the Subcontractor must provide such assistance and make accessible any part of the Subcontract Works as may be required by Mendi. Any such access will not release the Subcontractor from any obligations under this Period Trade Contract.

24.5. On completion of the tests, the Subcontractor must promptly make good the Subcontract Works or any part of the Subcontract Works tested so that it fully complies with this

Period Trade Contract..

24.6. Testing required under this Period Trade Contract must be carried out by appropriately qualified and skilled persons adequately trained for the tasks allocated to them.

24.7. Tests must be chosen and testing must be carried out in the manner that will cause the least possible damage to the Subcontract Works.

24.8. Results of tests conducted by the Subcontractor must be promptly made available to Mendi.

24.9. The Subcontractor must bear all costs of testing

24.10. If the Subcontractor fails to perform any test that the Subcontractor is required to perform under this Period Trade Contract:

24.10.1. Mendi may perform that test at a date and time determined by Mendi; and

24.10.2. the cost incurred by Mendi in performing that test will be a debt due and payable immediately from the Subcontractor to Mendi.

## **25. Defect Liability Period**

25.1. The Subcontractor must, at its own cost, make good any work that does not conform with the requirements of this Trade Contract before the end of the Defects Liability Period.

25.2. Mendi may direct the Subcontractor to correct, remove or replace any non-conforming work before or during the Defects Liability Period.

25.3. If the Subcontractor does not comply with such a direction, Mendi may have that work carried out by others and the cost is a debt due and payable by the Subcontractor to Mendi.

25.4. In addition to exercising other rights and remedies, Mendi may set off such debt against any security held under this Trade Contract and any amount due or which becomes payable to the Subcontractor in connection with this Trade Contract.

25.5. A further defects liability period will apply in respect of any defect remedied by the Subcontractor, commencing upon completion of the correction of the defect and ending 12 months after that date (or such lesser period as Mendi may in its absolute discretion determine). Clause 25.1 will apply to the further defects liability period.

## **26. Suspension**

26.1. Mendi may, at any time by notice in writing to the Subcontractor:

26.1.1. suspend the performance of the Subcontract Works; and

26.1.2. direct the Subcontractor to recommence the performance of the Subcontract Works.

26.2. The Subcontractor will have no claim of any kind against Mendi arising out of any suspension, if the suspension is caused by an act or omission of the Subcontractor.

## **27. Termination of Period Trade Contract**

27.1. Mendi may at any time for its sole convenience, by written notice to the Subcontractor, terminate the Period Trade Contract and thereafter either itself, or by a third party, complete the uncompleted part of the Period Trade Contract work. If Mendi terminates the Period Trade Contract pursuant to this clause 27.1 and the Subcontractor has complied with all requirements for the making of such a claim expressed in this Period Trade Contract then the Subcontractor will be entitled to be paid the following amounts as determined by Mendi:

27.1.1. the unpaid value of all Subcontract Works completed in accordance with the Period Trade Contract prior to the date of termination;

27.1.2. the reasonable cost of goods or materials reasonably ordered by the Subcontractor for the Subcontract Works and delivered to the site or to Mendi and for which the Subcontractor is legally bound to pay and which the Subcontractor cannot otherwise utilize, subject to clear title to such goods and materials being transferred to Mendi.

27.2. The Subcontractor must immediately take all necessary steps to mitigate the costs

referred to in clause 27.1, and the Subcontractor's entitlement to claim these costs will be reduced proportionately to the extent of any breach of this clause.

27.3. Any payment under this clause 27 will be the Subcontractor's sole and full entitlement to compensation for termination of the Period Trade Contract.

## **28. Warranty**

28.1. The Subcontractor warrants that:

28.1.1. any design prepared by the Subcontractor in relation to the Subcontract Works will be in accordance with the requirements of this Trade Contract;

28.1.2. the Subcontract Works will be free from defects;

28.1.3. the Subcontract Works will be carried out in accordance with the Period Trade Contract and will comply with all requirements of the Trade Contract and all relevant Australian Standards;

28.1.4. the Subcontract Works will be fit for the purpose for which they are intended;

28.1.5. the Subcontractor will use new material free from defects and provide all documents required by the Purchase Order for quality assurance purposes;

28.1.6. the Subcontractor will execute the Subcontract Works in a proper, skillful and tradesman like manner and within the time frames required by the Trade Contract or where there are no relevant time frames, expeditiously and without delay;

28.1.7. it has satisfied itself that any Subcontract Works performed by Mendi or another Subcontractor to Mendi or any third party upon which the Subcontractor performs the Subcontract Works has been properly performed in all respects;

28.1.8. it has satisfied itself that the design of the Subcontract Works (and any related design) is free from defects;

28.1.9. it will, at all times comply with the terms set out in the Head Contract and not act in any way that will cause Mendi to suffer loss or damage as a result of the Subcontractor's breach of the Head Contract;

28.1.10. it can and will comply with any warranty provided by Mendi under the Head Contract, to the extent that it applies to the Subcontract Works; and

28.1.11. it holds all licenses required to carry out the Subcontract Works.

## **29. Payment**

29.1. Notwithstanding any other clause in this Period Trade Contract, and to the extent permitted by Law, the Subcontractor shall not be entitled to submit a progress claim under this Period Trade Contract;

29.1.1. prior to the date for submitting claims stated in the Purchase Order;

29.1.2. whilst the Subcontractor is in breach of any clause or requirement of the Period Trade Contract; and

29.1.3. unless that progress claim;

29.1.3.1. contains all relevant supporting documentation including a supporting statement as that term is defined in the Building Industry Fairness (Security of Payment) Act 2017 (Qld);

29.1.3.2. is in a form satisfactory to Mendi; and

29.1.3.3. states the Purchase Order Number.

29.2. Subject to compliance with clause 29.1, the Subcontractor may, on the date for submitting claims stated in the Purchase Order, submit a progress claim for payment of that portion of the Price in respect of the Subcontract Works performed up to the date of the progress claim.

29.3. Within 15 business days of receiving the Subcontractor's progress claim, Mendi will assess the progress claim and issue to the Subcontractor a payment schedule, setting out the

amount that, in Mendi's reasonable opinion is due to the Subcontractor. Mendi will pay the Subcontractor the amount set out in the payment schedule within the time stated in the Purchase Order. The Price shall not be subject to rise and fall. Any payment shall be on account only.

29.4. Within 25 business days after receipt by Mendi of a progress claim made in accordance with this clause 29.4, Mendi will pay the amount it determines is payable in respect of the progress claim.

29.5. If Mendi gives a written notice to the Subcontractor stating that the Subcontractor owes Mendi an amount of money, then, for the purposes of section 67J of the Queensland Building and Construction Commission Act 1991 (Qld) that notice shall be taken to be a notice of Mendi's intention to use retention monies to recover the amount owed.

29.6. Mendi may deduct from any moneys payable to the Subcontractor under this Period Trade Contract any liquidated debt that is due and payable by the Subcontractor to Mendi under this Period Trade Contract.

29.7. Unless otherwise agreed, 'Business Days' has the meaning given to it by the Building Industry Fairness (Security of Payment) Act 2017 (Qld).

### **30. Default of Subcontractor**

30.1. Subject to clause 30.2, if the Subcontractor fails to perform or observe any obligation, term, condition, warranty or stipulation contained or implied in the Period Trade Contract and on its part to be performed, then Mendi may give a notice to the Subcontractor specifying the default and stating its intention, if the default is not remedied within the time stated in the notice, to proceed under clause 30.2.

30.2. Without limiting any other right of Mendi under the Period Trade Contract or at Law, if the Subcontractor;

30.2.1. without reasonable cause, wholly or substantially suspends performance of the Subcontract Works;

30.2.2. fails to comply with a valid notice from Mendi under the Period Trade Contract (including a notice under clause 30.1);

30.2.3. fails to comply with the requirement of clause 8 and clause 21.

30.2.4. becomes insolvent, bankrupt or makes an assignment of its estate for the benefit of its creditors, or attempts to enter into a scheme of arrangement, voluntary or otherwise, or being a company goes into liquidation; or

30.2.5. fails to complete the Subcontract Works by the Date for Completion

30.2.6. fails to comply with the Code;

then the Subcontractor shall be in substantial breach of the Period Trade Contract and Mendi may immediately do any one or more of the following:

30.2.7. suspend any entitlement to payment to the Subcontractor until the default has been remedied;

30.2.8. take the remaining Subcontract Works wholly or partly out of the hands of the Subcontractor; or

30.2.9. terminate the Period Trade Contract.

30.3. If Mendi terminates this Period trade Contract, Mendi shall only be liable to pay the Subcontractor for Subcontract Works already carried out by the Subcontractor, less any reasonable, direct and verifiable cost, loss, expense or damage Mendi has or is likely to incur as a result of the Subcontractor's breach. The Subcontractor will have no other claim whatsoever against Mendi, including any claim for any Consequential Loss.

30.4. Termination shall not prejudice any right of Mendi to recover from the Subcontractor general damages for any breach of this Period Trade Contract.

**31. Contamination or pollution**

31.1. The Subcontractor must conduct its operations in a manner that will prevent pollution or contamination. The Subcontractor must comply with the requirements of Mendi's environmental policies, any requirements of the Principal under the Head Contract relating to the environment or pollution and any other project specific requirements relating to environmental management.

**32. Compliance with Law (including the Building Code 2016) and change in Law**

32.1. The Subcontractor warrants that;

32.1.1. it has complied, and will comply with all applicable Law and give all notices and pay all fees and other amounts which it is required to pay in respect of the performance of its obligations under this Period Trade Contract; and

32.1.2. without limiting clause 32.1.1, it is aware of, is compliant with, and will remain compliant for the term of this Period Trade Contract with, all relevant requirements of the Building Code 2016;

32.2. The Subcontractor must immediately notify Mendi in writing if the Subcontractor becomes aware at any time that it is no longer compliant with the Building Code 2016.

32.3. The Parties acknowledge that the Office of the Australian Building and Construction Commissioner is entitled to access to the Site, and any documents and any personnel to monitor compliance with the Building Code 2016.

**33. Manufacturers and Subcontractors warranties**

33.1. The Subcontractor will take all necessary steps to enforce, at its cost, any warranty;

33.1.1. provided by any Subcontractor or manufacturer of materials used by the Subcontractor in carrying out the Subcontract Works; or

33.1.2. implied by Law in respect of such materials for the benefit of Mendi.

**34. Intellectual Property**

34.1. Intellectual property in any plans or designs supplied by Mendi to the Subcontractor remain the property of Mendi.

34.2. The Subcontractor must not reproduce or use any plans or designs, in whole or in part, other than for the purpose of completing the Subcontract Works.

**35. Dispute Resolution**

35.1. Unless the Head Contract provides otherwise any dispute or difference between Mendi and the Subcontractor must be resolved in accordance with this clause 35.

35.2. If a dispute or difference arises between Mendi and the Subcontractor under this Period Trade Contract and one party requires it to be resolved, that party must promptly give the other party notice identifying and giving details of the dispute or difference.

35.3. Within ten (10) days of a party receiving the notice referred to in clause 35.2, the parties will meet and, in good faith, attempt to resolve the dispute or difference.

35.4. If the dispute is not resolved under clause 35.3, then the parties must meet again within a further ten (10) days and, in good faith, attempt to resolve the dispute or difference.

35.5. If the dispute or difference is still not resolved, then either party may, by giving written notice to the other, refer the matter for determination by an expert.

35.6. If a matter is referred for determination by an expert then;

35.6.1. the expert will be chosen by the parties but in the absence of an agreement on the expert within (5) days of the notice referred to in clause 35.5, the expert will be appointed by the President for the time being of Resolve Australia; and

35.6.2. the expert determination will be governed by the Resolve Australia Expert Determination



Rules, save and except that the expert may not make any determination which is inconsistent with the Code.

35.7. Subject to clause 35.8 a Party must not commence proceedings in respect of a dispute without first complying with all available procedures under this clause 35.

35.8. Nothing in this clause will prejudice the right of a Party to seek injunctive or declaratory relief pursuant to this Period Trade Contract.

### **36. Severability and Waiver**

36.1. If any provision or sub-provision of the Period Trade Contract is voidable or unenforceable that provision or sub-provision will be severed and the rest of the Period Trade Contract will remain in full force and effect. Any waiver or relaxation by Mendi partly or wholly of any provision of this Period Trade Contract is valid only if in writing and signed by Mendi. Any such waiver or relaxation is restricted to its written terms and unless expressly stated otherwise applies to that particular occasion only, is not continuing and does not constitute a waiver or relaxation of any other provision.

### **37. Goods and Services Tax**

37.1. If GST is imposed on any Supply made by a Party ("the First Party") to the other Party ("the Second Party") under this agreement, then the Second Party must pay, in addition to any GST exclusive consideration for the Supply payable by the Second Party, an additional amount calculated by multiplying the prevailing GST rate by that GST exclusive consideration.

37.2. The First Party must provide the Second Party with a Tax Invoice for any Supply referred to in clause 37.1.

37.3. The Subcontractor must use reasonable endeavours to assist Mendi to claim any GST credit including a full input tax credit for any amount paid or allowed by Mendi to the Subcontractor.

### **38. Service of Notices**

38.1. A notice required pursuant to this Period Trade Contract must be in writing and either sent by email transmission, mail or delivered by hand to the address of the recipient as stated in this Period Trade Contract.

### **39. Governing Law and Jurisdiction**

39.1. This Period Trade Contract and all questions arising in connection with it are governed by and will be construed according to the laws from time to time in force in Queensland and the Parties irrevocably submit to the authority of the Queensland Courts.

### **40. Inclusion of Implied Terms**

40.1. The Subcontractor acknowledges, that all warranties, terms, or conditions, implied by law are included in addition to those specifically stated in this Period Trade Contract. Including but not limited to, any implied warranties or conditions of merchantability, suitability or fitness for a particular purpose.

### **41. Limitation of Liability**

41.1. Except where contrary timeframes are stated and required to be adhered to by the Subcontractor in this Period Trade Contract, Mendi shall not be liable for any claims of any nature not notified to it in writing on the earlier of within 14 days of the occurrence of the event or circumstance giving rise to the claim, together with full particulars of the claim.

41.2. Notwithstanding any other clause of this Period Trade Contract, the Mendi's aggregate liability to the Subcontractor under or in any way connected with this Period Trade Contract,

whether arising in contract, by indemnity, in tort (including negligence or otherwise), statute, in debt, by warranty, or any other basis in law or equity, will be limited to the 50% of the Price ("Overall Liability Cap").

41.3. For the avoidance of doubt, delay damages form a part of, and are not in addition to, the Overall Liability Cap in clause 41.1.

41.4. To the extent permitted by law the Subcontractor indemnifies and releases Mendi from any claim it or any of its employees, contractors or agents may bring against for any Consequential Loss whether arising in contract, by indemnity, in tort (in negligence or otherwise), statute, in debt, by warranty, or any other basis in law or equity.