



**1. Definitions and Interpretation**

In the Contract, unless and to the extent the context otherwise requires or indicates:

*Abergeldie* means the Abergeldie Group company specified in the Purchase Order.  
*Abergeldie Group* means the group of companies that has as its ultimate parent Abergeldie Consolidated Pty Ltd;

*Anti-Corruption Law* means laws anywhere in the world which are intended to prohibit bribery and corruption, including:

- (a) *Bribery Act 2010 (UK)*;
- (b) *Foreign Corrupt Practices Act 1977 (USA)*;
- (c) *Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999 (Australia)*.

*Business Day* means any day other than a Saturday, Sunday, public holiday in New South Wales, or 27, 28, 29, 30 or 31 December.

*Confidential Information* means all information which is disclosed to the Vendor at any time in connection with the Contract.

*Contract* means the agreement between Vendor and Abergeldie for the supply of Goods by Vendor to Abergeldie and shall be constituted in its entirety by the Purchase Order, these Purchase Order Standard Conditions, together with any other terms agreed in writing.

*Contract Sum* is the amount set out in the Purchase Order, as varied in accordance with the Contract.

*Date(s) for Completion* means the date(s) set out in the Purchase Order.

*Delivery Location* means the location to which the Vendor must deliver the Goods described in the Purchase Order.

*Goods* means the goods to be supplied by the Vendor under the Contract as further described in the Purchase Order.

*Intellectual Property Right* means any patent, design (whether registered or not), trademark, trade name, copyright or other protected right.

*Laws* means any law, binding case law, legislation, statute, regulation, order, rule, subordinate legislation, decree, decree-law, treaty, notice or resolution of any governmental authority or any other document enforceable thereunder which affects or is applicable to the Contract, its performance, its subject matter and/or relates to a Party's rights and obligations under the Contract.

*Modern Slavery Laws* means Laws anywhere in the world which are intended to prohibit any conduct involving any form of slavery, servitude or forced labour to exploit children or other persons, including the *Modern Slavery Act 2018 (NSW)* and the *Modern Slavery Act 2018 (Cth)*.

*Party* means a party to the Contract.

*Purchase Order* means purchase order or other form of request by Abergeldie to Vendor for the supply of the Goods.

*Services* means the services to be provided by the Vendor (if any) under the Contract, as further described in the Purchase Order.

*Specification* means any specification applicable to the Goods or Services, as described in the Purchase Order.

*Vendor* means the entity specified in the Purchase Order to supply the Goods or Services to Abergeldie.

*Taxes* means all taxes, levies, duties and assessments of whatever kind, including sales taxes, goods and services tax (or equivalent), income taxes, stamp duties, import/export taxes, customs duties, excise taxes, social and health insurance and workplace payments.

*Variation* means any:

- (a) increase or decrease (including omission) in the amount of any Goods to be supplied under the Contract;
- (b) change in the character or quality of any Goods; or
- (c) change to the Date for Completion of any Goods, directed in writing by Abergeldie pursuant to clause 8.

*Warranty Period* is the 24 months period, commencing on the Completion Date pursuant to the Purchase Order, or unless otherwise specified in the Contract.

**2. Supply of Goods and Services**

2.1 The Vendor must supply the Goods and perform the Services in accordance with the terms of the Contract.

2.2 The Vendor must comply and ensure that each of its subcontractors comply with:  
(a) all applicable Laws and requirements of governmental authorities; and  
(b) all lawful directions given by Abergeldie or Abergeldie's personnel.

2.3 The Vendor must obtain and maintain all permits, licences, registrations and approvals necessary for the performance of its obligations under the Contract.

**3. Time for performance**

3.1 The Vendor must perform its obligations under the Contract with due expedition and without delay.

3.2 The Vendor must ensure that it delivers the Goods to the Delivery Location and/ or performs the Services by the Date for Completion.

3.3 If the Vendor might not deliver some of the Goods and/or complete the Services by the Date(s) for Completion, the Vendor must give notice to Abergeldie within 2 days after the event (including an act, omission or breach of the Contract by Abergeldie) occurs or circumstance arises which the Vendor considers will or might prevent delivery of the Goods or Completion of the Services by the Date for Completion. The Vendor must include with that notice a statement setting out the reasons why the Vendor considers there will be an impact on the Date(s) for Completion, and an estimate of the likely Date(s) for Completion of the Goods and/or Services as a result of the event or circumstance.

3.4 If the Vendor is prevented from delivering the Goods or completion of the Services by the Date for Completion due to an act, omission or breach of Contract by Abergeldie and the Vendor has given notice as required by clause 3.3, then the Vendor will be entitled to a reasonable extension of time to the Date for Completion.

3.5 Notwithstanding that the Vendor has not claimed, or has no entitlement to, an extension of time to the Date for Completion, Abergeldie may extend the Date for Completion for any reason or no reason, in its absolute discretion.

**4. Standard of performance**

4.1 The Vendor warrants that the Goods will:

- (a) be fit for the purposes for which they are commonly used and for any other purposes described in the Contract;
- (b) comply with the Specification;
- (c) comply with any applicable Law;
- (d) comply with any applicable Australian and international standards;
- (e) be of merchantable quality and, unless otherwise specified in the Contract, new; and
- (f) be free from any encumbrance or any other third party interest at the time of delivery to Abergeldie.

4.2 The Vendor must ensure that any Services:

- (a) are fit for the purposes for which they are commonly used and for any other purposes described in the Contract;
- (b) comply with any applicable Law; and

(c) are performed by appropriately qualified and experienced personnel.

**5. Title and risk**

5.1 Title in the Goods will pass to Abergeldie upon the earlier of:

- (a) payment for the relevant Goods; and
- (b) delivery to the Delivery Location.

5.2 The Vendor must, if requested by Abergeldie, provide Abergeldie with a statutory declaration (or other evidence satisfactory to Abergeldie) that the Goods are free and clear of any encumbrance when title passes to Abergeldie pursuant to clause 5.1.

5.3 Risk in the Goods remains with the Vendor until delivery to the Delivery Location.

**6. Suspension**

6.1 Abergeldie may, in its sole discretion, direct a suspension to the performance of the Contract.

6.2 Upon receipt of a direction pursuant to clause 6.1 the Vendor must suspend the performance of its obligations until Abergeldie directs the Vendor to resume performance of the Contract.

**7. Acceleration**

7.1 Abergeldie may direct the Vendor to accelerate the delivery of the Goods or the performance of the Services.

7.2 If the acceleration is necessary due to a Vendor delay, the Vendor is responsible for the costs of the acceleration. Otherwise, the Vendor will be entitled to submit a claim for a Variation for the direct costs of the acceleration in accordance with clause 8.

**8. Variations**

8.1 Abergeldie may at any time direct the Vendor to perform a Variation.

8.2 Within 2 days of receiving the direction, the Vendor must submit to Abergeldie a statement advising of its opinion of the impact of the Variation on the Contract Sum and the Date(s) for Completion.

8.3 No variation of the Contract will be effective unless such variation is in writing and signed by Abergeldie.

**9. Defects**

9.1 If at any time prior to the expiry of the Warranty Period Abergeldie identifies any defect in the Goods or Services, it may at its election:

- (a) reject the Goods or Services by notifying the Vendor of its rejection, in which case the Vendor must within 7 days of receipt of the notice of rejection (or any longer period agreed by Abergeldie):
  - (i) collect and remove any rejected Goods; and
  - (ii) refund to Abergeldie any payments made by Abergeldie in respect of the defective Goods or Services;
- (b) direct the Vendor to rectify the defect, in which case the Vendor must rectify the defect:
  - (i) at no additional cost to Abergeldie; and
  - (ii) within the time required by Abergeldie and in a way which does not inconvenience or disrupt Abergeldie; or
- (c) make good the defect itself.

9.2 If the Vendor does not collect the Goods within the time required in clause 9.1(a), Abergeldie may return the Goods to the Vendor's premises at the Vendor's risk.

9.3 The reasonable costs incurred by Abergeldie in returning rejected Goods to the Vendor, or rectifying defective Goods, are a debt due and payable from the Vendor to Abergeldie.

**10. Payment**

10.1 Abergeldie will pay the Vendor the Contract Sum.

10.2 The Contract Sum is fixed and will not be subject to adjustment for rise and fall, exchange rate variations or any changes in general or market specific economic conditions.

10.3 The Contract Sum is inclusive of all labour, materials, tools, plant, taxes, duties, levies and fees and everything required to perform the Vendor's obligations under the Contract including delivery of the Goods to the Delivery Location.

10.4 The Vendor must submit an invoice to Abergeldie after the Goods have been delivered and accepted and/or the Services have been completed.

10.5 The Vendor's invoice must include particulars of the Goods and/or Services supplied for which payment is claimed, be addressed in accordance with the purchase order, identify the purchase order number, be a tax invoice for GST purposes and must include any details and substantiating documentation reasonably required by Abergeldie.

10.6 Subject to clause 10.8, Abergeldie will pay the amount certified for payment within 30 days after the end of the month in which the Vendor's payment claim was received.

10.7 Any payment to the Vendor is not an acknowledgement by Abergeldie that the Goods and Services to which the payment relates comply with the Contract, and its payment on account only.

10.8 Abergeldie may deduct from any money due or becoming due to the Vendor all debts and moneys due or becoming due by the Vendor to Abergeldie.

**11. Intellectual Property**

11.1 The Vendor grants Abergeldie a non-exclusive, irrevocable, worldwide, royalty free, perpetual and transferable licence (with the right to sub-licence), to use (and allow others to use) all Intellectual Property Rights in connection with the Contract for any purpose in connection with the use of the Goods.

11.2 The Vendor warrants that performance by the Vendor of its obligations under the Contract, and any design, materials, documents and methods of working provided by the Vendor, will not infringe any Intellectual Property Right of others.

**12. Confidentiality and Publicity**

12.1 The Vendor must ensure that it and its personnel keep confidential any Confidential Information unless the Confidential Information:

- (a) was in the possession of the Vendor prior to the date of the Contract;
- (b) becomes generally available to the public or is in the public domain other than by the fault of the Vendor;
- (c) is required to be produced by any Law or order of the court; or
- (d) was obtained from a third party.

12.2 Except as required by Law, the Vendor:

- (a) must not make any public announcements or disclosures or place any advertisements in relation to this Contract or Abergeldie's client without the prior written consent of Abergeldie; and
- (b) must refer any media enquiries concerning the Contract, Abergeldie's clients, subcontractors or the Works to Abergeldie.

**13. Insurance**

13.1 The Vendor must obtain and maintain the following insurances with a reputable insurer and on reasonable commercial terms:

- (a) public and product liability insurance for not less than \$20 million for any occurrence;
- (b) workers' compensation insurance as required by law;



- (c) insurance which covers the Goods for not less than the replacement value of the Goods up until the time that the Goods are accepted by Abergeldie at the Delivery Location; and
- 13.2 On request by Abergeldie, the Vendor must provide Abergeldie with certificates of currency for its insurances.
- 14. Indemnities**
- 14.1 The Vendor indemnifies Abergeldie and its personnel against all liabilities, claims, demands, damages, losses and expenses (including reasonable legal fees, fines, penalties and interest) arising from:
- (a) a breach by the Vendor of any of its obligations under the Contract;
- (b) any illness, injury or death of any person, or any loss or destruction of or damage to property which is caused by the Vendor, its personnel and subcontractors; or
- (c) failure on the part of the Vendor to comply with any Law relating to Intellectual Property Rights, or infringement of the Intellectual Property Rights of a third party, in relation to the Goods and Services.
- 14.2 Each indemnity in the Contract is a continuing obligation separate and independent from the Vendor's other obligations.
- 15. Compliance with Laws**
- 15.1 The Vendor must:
- (a) comply with all Laws;
- (b) implement policies, procedures, systems and controls to:
- (i) ensure that the Vendor does not breach any Laws while performing the Contract; and
- (ii) endeavour to prevent breaches of any Laws by its subcontractors while they are performing their subcontracts;
- (c) maintain appropriate records of the actions it takes to comply with its obligations in clauses 15.1(a) and 15.1(b), and make those records available to Abergeldie upon request;
- (d) on request by Abergeldie, confirm in writing that it has complied with its obligations under this clause 15.1 and provide any information reasonably requested by Abergeldie; and
- (e) allow Abergeldie or its representatives to have access to any of the Vendor's premises, personnel and relevant records as may be required to verify compliance with this clause 15.1.
- 15.2 Without limiting clause 15.1, the Vendor must implement and maintain the systems, strategies and plans required to comply with, and must comply with and meet any obligations imposed by, the following government guidelines:
- (a) New South Wales Industrial Relations Guidelines: Building and Construction Procurement;
- (b) NSW Government Vendor Code of Conduct; and
- (c) the Aboriginal Procurement Policy.
- 16. Taxes**
- 16.1 The Vendor is responsible at its own cost for complying with all applicable Laws and administrative requirements relating to Taxes.
- 16.2 The Vendor is responsible for paying all Taxes arising or imposed by or under the authority of any governmental authority anywhere in the world in connection with the Contract.
- 16.3 All Taxes payable by the Vendor (including any withholding tax which Abergeldie is required to deduct and remit to the appropriate governmental authority) must be included in the Contract Sum.
- 16.4 Upon Abergeldie's request, the Vendor must provide Abergeldie with all information and documentation necessary for Abergeldie to comply with all applicable Laws relating to Taxes and any request for tax information from any governmental authority.
- 17. Business integrity**
- 17.1 The Vendor must not undertake any activity which may constitute a breach of any provision of the Anti-Corruption Law.
- 17.2 The Vendor warrants and represents that:
- (a) it has not offered, paid, promised to pay, authorised the payment of or transferred money or anything of value to any person (including any government official or private individual or enterprise) to secure any improper advantage or benefit in relation to the Contract, either directly or indirectly through a third party;
- (b) it has not engaged in any collusive or anti-competitive arrangement or understanding in connection with its tender for, or entry into, the Contract;
- (c) prior to entering into the Contract, no action of the Vendor would have been in breach of this clause 17, had the obligations under clause 17 been in force or effect at the time of the action;
- (d) it has complied and will continue to comply with the Anti-Corruption Law;
- (e) it is familiar with and will comply with Abergeldie's Code of Conduct;
- (f) it has implemented anti-bribery and corruption policies;
- (g) its officers, employees, representatives, agents, subcontractors and sub-Vendors have been given training about the Anti-Corruption Law and the Vendor's anti-bribery and corruption policies; and
- (h) it will notify Abergeldie as soon as it becomes aware of any breach of this clause 17.
- 17.3 If the Vendor has any concerns that there has been a breach of this clause 17, then it must notify Abergeldie as soon as those concerns arise and co-operate in good faith with Abergeldie to determine whether such a breach has occurred.
- 17.4 If Abergeldie determines in its sole discretion that there has been a breach of this clause 17 or that the Vendor has taken any action that would create a material risk of liability for Abergeldie under any applicable Anti-Corruption Law, it may treat the breach as a breach that is not capable of remedy and terminate the Contract immediately upon giving notice to the Vendor.
- 17.5 The Vendor:
- (a) must not engage in, and must thoroughly investigate its labour practices, and those of its subcontractors and direct Vendors, to ensure that in the Vendor's operations and supply chains used in the procurement or delivery of the Works there are not:
- (i) any activities, practices or conduct that would constitute an offence under Modern Slavery Laws; or
- (ii) any activities, practices or conduct which occurs outside of an Australian jurisdiction which would constitute an offence under Modern Slavery Laws, if it had taken place within the relevant Australian jurisdiction;
- (b) must notify Abergeldie as soon as reasonably practicable after it becomes aware of any actual or suspected activity, practice or conduct of the kind described in clause 17.5.
- (c) undertakes to:
- (i) comply with its obligations under the Modern Slavery Laws, to the extent applicable, and provide a copy of its modern slavery statement produced in accordance with such legislation to Abergeldie, within 30 days of being required to produce such statement under the Modern Slavery Laws (where relevant);
- (ii) put in place all necessary processes, procedures and compliance systems to ensure that it can comply with its obligations under this clause 17.5; and
- (d) must, on request by Abergeldie, confirm in writing that it has complied with its obligations under this clause 17 and provide any information reasonably requested by Abergeldie.
- 18. Termination for the Vendor's default**
- 18.1 If Abergeldie considers that the Vendor is in breach of the Contract, Abergeldie may give the Vendor a notice specifying the breach and the date by which the breach must be remedied (which must be a period of at least seven days from the date of the notice).
- 18.2 If the Vendor fails to remedy the default within the date specified in Abergeldie's notice then Abergeldie may terminate the Contract by giving notice to the Vendor.
- 18.3 Abergeldie's rights under this clause 18 are in addition to any other rights at law.
- 19. Termination for Abergeldie's default**
- 19.1 If Abergeldie fails to pay the Vendor in accordance with clause 10.6, the Vendor may give Abergeldie a notice specifying the breach and the date by which the breach must be remedied (which must be a period of at least seven days from the date of the notice).
- 19.2 If Abergeldie fails to remedy the breach within the date specified in the Vendor's notice then the Vendor may terminate the Contract by giving notice to Abergeldie.
- 19.3 The Vendor's rights under this clause 19 are in addition to any other rights at law.
- 20. Termination for convenience**
- 20.1 Abergeldie may, at any time, in its sole discretion terminate the Contract by giving 30 days notice to the Vendor.
- 20.2 In the event of such termination, Abergeldie must pay the Vendor:
- (a) for any Goods or Services provided to Abergeldie prior to the date of termination;
- (b) the cost of materials reasonable ordered by the Vendor for the purpose of performing its obligations under the Contract, which the Vendor is legally liable to accept, but only if the materials become the property of Abergeldie upon payment; and
- (c) reasonable costs of complying with any direction of Abergeldie in relation to the termination.
- 20.3 The amount payable to the Vendor pursuant to clause 20.2 must not exceed the Contract Sum.
- 20.4 The Vendor will have no entitlement to claim any lost profits as a result of the termination, or any costs or losses incurred by the Vendor after receipt of the notice under clause 20.1.
- 21. Dispute resolution**
- 21.1 If a dispute arises out of or in connection with the Contract, then a party may give a notice of dispute to the other party.
- 21.2 The parties must confer in an endeavour to settle the dispute.
- 21.3 If the parties are unable to resolve the dispute within 60 days of the receipt of the notice of dispute then, either party may proceed to litigation to resolve the dispute.
- 21.4 Notwithstanding the existence of a dispute, the parties must continue to perform their obligations under the Contract.
- 21.5 Nothing in this clause 21, prevents a party from seeking urgent relief in a court of competent jurisdiction.
- 22. Governing Law**
- 22.1 The Contract is governed by the laws of the place where the Goods are to be delivered. If there is more than one place for delivery, then any of those places at Abergeldie's election. Vendor unconditionally submits to the non-exclusive jurisdiction of the courts of that place.
- 23. Notices**
- 23.1 Any notice in relation to the Contract must:
- (a) be in writing and signed by the Party sending it; and
- (b) be left at or sent by prepaid ordinary post to the last notified address or the Party.
- 23.2 A notice is taken to be received by the addressee;
- (a) upon actual receipt, when hand delivered; and
- (b) in the case of posting, three business days after posting to an address within Australia and five business days after posting by airmail to an address outside Australia.
- 24. General**
- 24.1 The Vendor must not assign its rights or transfer its obligations under the Contract without the prior written consent of Abergeldie (not to be unreasonably withheld).
- 24.2 The Vendor must not subcontract the whole or any part of its obligations under the Contract without the prior written consent of Abergeldie.
- 24.3 The Contract is the entire agreement between the parties and supersedes all prior agreements, statements, arrangements, letters and negotiations in relation to the subject matter of the Contract.
- 24.4 Upon receipt of a Purchase Order, unless otherwise specified in the Contract, acceptance shall be constituted by:
- (a) The Vendor expressly or implicitly communicating acceptance; or
- (b) the performance of the Contract by the Vendor.
- 24.5 Any part of the Contract which is unenforceable may be severed from the Contract and the remaining provisions of the Contract will continue in force. Invalidity of any provision of the Contract does not affect the validity of any other provision, except to the extent made necessary by the invalidity.
- 24.6 No amendment or variation of the Contract is effective unless made in writing and signed by both parties.
- 24.7 A failure or delay by a party in exercising any right, power or remedy under the Contract does not operate as a waiver of that right, power or remedy. A single or partial waiver of any right, power or remedy does not preclude any other or future exercise of that right, power or remedy.
- 24.8 The rights and obligations contained in clause 4 (Standard of performance), 6 (Indemnities), 11 (Intellectual Property), 12 (Confidentiality and Publicity), 13 (Insurance), 15 (Business Integrity) and 21 (Dispute Resolution), survive termination of the Contract.
- 24.9 Nothing in the Contract creates a joint venture, agency, partnership or fiduciary relationship between the parties. The Vendor is an independent Vendor and is not an employee or agent of Abergeldie.
- 24.10 No approval, consent, permission or certificate given by Abergeldie will diminish or relieve the Vendor from any of its responsibilities under the Contract.
- 24.11 In the case of any inconsistency between the documents comprising the Contract Documents, the following order of precedence applies, with the first listed document having the highest precedence:
- (a) The Purchase Order;
- (b) any conditions agreed in writing;



- (c) Purchase Order Standard Condition; and  
(d) Standard Conditions of Tender and HSEQ Requirements.
- 25. Installation Work**
- 25.1 This clause applies if the Vendor is present on or performs Services at a Site.
- 25.2 In this clause the following definitions apply:  
Site means a worksite, whether or not controlled by Abergeldie, or on or near premises or sites of Abergeldie.
- 25.3 If the Vendor is present on or performs Services at a Site:
- (a) all Services must be performed in a good and workmanlike manner;
  - (b) the Vendor must supply all labour, tools, equipment and materials necessary to complete the work and to perform the Contract;
  - (c) subject to any applicable Laws:
    - (i) the Vendor, its employees, agents, contractors and subcontractors enter Abergeldie's premises and the Site at the Vendor's own risk; and
    - (ii) the Vendor acknowledges that it is aware of the normal hazards of such places;
  - (d) the Vendor must pay to Abergeldie the cost of making good any damage done by the Vendor or its employees or subcontractors;
    - (i) to the work of Abergeldie or any other person; and
    - (ii) to adjoining properties and to services above and/or below ground, fencing, foot ways, road, services drains and other services on or adjacent to the Site.
- 25.4 If Abergeldie directs the Vendor to rectify defective Goods or Services:
- (a) the Vendor must rectify the defective Goods or Services as directed at its own cost and risk; and
  - (b) if the Vendor is required to rectify the defective Goods or Services on Site, the Vendor must:
    - (i) obtain sufficient resources to rectify the defective Goods or Services without delaying Abergeldie's performance of its obligations under any other agreement; and
    - (ii) must carry out rectification works at times and in a manner to cause as little inconvenience to the other contractors or workers on the Site as is reasonably possible.
- 25.5 Abergeldie may direct the Vendor to remove from the Site (or from any activity connected with the Contract) within such time as Abergeldie directs (acting reasonably), any person employed or engaged in connection with the Contract:
- (a) who Abergeldie has been directed to have removed or replaced by Abergeldie's client; or
  - (b) who, in Abergeldie's opinion (acting reasonably), misconducts him or herself, is incompetent or negligent, carries out work in an unsafe manner or fails to comply with any direction issued by Abergeldie.
- 25.6 The Vendor must, and must ensure that its employees, subcontractors and their employees:
- (a) complete a Site induction conducted or approved by Abergeldie before commencing work on the Site;
  - (b) keep themselves informed as to the requirements of, comply with and not do anything which may place Abergeldie in breach of, Laws applying to the Site;
  - (c) comply with all procedures, policies or rules adopted from time to time by Abergeldie in connection with the Site;
  - (d) comply with the directions (if any) given to the Vendor by Abergeldie or Abergeldie or others authorised by Abergeldie or any Law at any time in connection with the Site (including access to and use of the Site);
  - (e) co-ordinate access to the Site with Abergeldie in sufficient time for any necessary approvals and clearances to be obtained;
  - (f) only access the Site during the hours and on the days provided for in the Contract;
  - (g) ensure the Site is kept safe and secure; and
  - (h) keep the Site clean and tidy at all times and regularly remove rubbish from the Site caused by the Vendor.
- 25.7 The Vendor must (at its own cost) clean the Site and remove all of the Vendor's temporary works and construction plant from the Site within 14 days after the it has completed the Services.
- 25.8 If the Vendor fails to do what it is required to do by clause 25.7, Abergeldie may carry out the work itself or have the work carried out by others and have any plant removed and stored, and the costs of doing those things will be a debt due from the Vendor to Abergeldie.
- 25.9 The Vendor must implement and maintain the systems, strategies and plans required to comply with the Work Health and Safety Management Systems and Auditing Guidelines.
- 26. Building Code 2016**
- 26.1 This clause applies if the project to which the Supply relates is Commonwealth Funded Building Work and the Vendor is carrying out Works.
- 26.2 In this clause the following definitions apply:  
ABCC means the body referred to in subsection 29(2) of the BCIIIP Act.  
ABC Commissioner means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the Act.  
BCIIIP Act means the *Building and Construction Industry (Improving Productivity) Act 2016*.  
Building Code means the Code for the Tendering and Performance of Building Work 2016, which is available at <https://www.legislation.gov.au/Details/F2016L01859>.  
Building Contractor has the same meaning as in the BCIIIP Act.  
Building Industry Participant has the same meaning as in the BCIIIP Act.  
Building Work has the same meaning as in subsection 3(4) of the Building Code.  
Commonwealth Funded Building Work means Building Work in items 1-8 of Schedule 1 of the Building Code.  
Enterprise Agreement has the same meaning as in the Fair Work Act 2009.  
Exclusion Sanction has the same meaning as in subsection 3(3) of the Building Code.  
Related Entity has the same meaning as in subsection 3(2) of the Building Code.  
Subcontractor means a Building Contractor or Building Industry Participant who the Vendor entered, or proposes to enter, into a subcontract with to undertake any of the Works.  
Works means Commonwealth Funded Building Work that is the subject of the Contract.
- 26.3 The Vendor declares as at the date of commencement of this Contract in relation to the Works, that it:
- (a) is not subject to an Exclusion Sanction;
  - (b) unless approved otherwise by the ABC Commissioner, is not excluded from performing Building Work funded by a state or territory government; and
  - (c) is not covered by, and does not have Related Entities covered by, an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code.
- 26.4 The Vendor:
- (a) declares as at the date of commencement of the Contract in relation to the Works; and
  - (b) must ensure that during the term of the Contract in relation to the Works, that it and its Subcontractors:
    - (c) comply with the Building Code; and
    - (d) will only use products in relation to the Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia.
- 26.5 Without limiting and notwithstanding clause 1.4(c), the Vendor must ensure that remedial action is taken to rectify any behaviour on the part of it and its Subcontractors that is non-compliant with the Building Code.
- 26.6 The Vendor must every six months during the term of the Contract advise Abergeldie whether:
- (a) it has in the preceding 6 months or since it last advised Abergeldie, whichever is the earliest, had an adverse decision, direction or order of a court or tribunal made against it for a breach of a designated building law, work health and safety law or the Migration Act 1958; or
  - (b) it or its Related Entities have in the preceding 6 months or since it last advised Abergeldie, whichever is the earliest:
    - (i) been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) to a Building Contractor or Building Industry Participant; or
    - (ii) owed any unsatisfied judgement debts to a Building Contractor or Building Industry Participant.
- 26.7 Compliance with the Building Code does not relieve the Vendor from responsibility to perform the Contract, or from liability for any defect in the Works arising from compliance with the Building Code.
- 26.8 The Vendor must notify the ABCC of any breach or suspected breach of the Building Code as soon as practicable but no later than 2 Business Days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.
- 26.9 The Vendor acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCIIIP Act and the Building Code and will ensure that it and its Subcontractors comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including but not limited to requests for entry under section 72 of the BCIIIP Act, requests to interview any person under section 74 of the BCIIIP Act, requests to produce records or documents under sections 74 and 77 of the BCIIIP Act and requests for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- 26.10 The Vendor must only enter into a subcontract for any of the Works where:
- (a) the Subcontractor has submitted a declaration of compliance in substantively the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code (located in Part 4 in the document titled Model Clauses Type B, available on the ABCC website ([www.abcc.gov.au](http://www.abcc.gov.au))); and
  - (b) the subcontract with the Subcontractor contains clauses in substantively the same form as the model contract clauses applicable to contractors and subcontractors in relation to the Building Code.
- 26.11 The Vendor must ensure that it and its Subcontractor comply with clauses contained in the sub-subcontract referred to in clause 26.10(b).
- 27. Code and Guidelines**
- 27.1 This clause applies if the project to which the Supply relates is work for a New South Wales government client and the Vendor is carrying out Works.
- 27.2 In addition to terms defined in this document, terms used in this clause have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (NSW Guidelines) (as published by the NSW Treasury July 2013). The NSW Code and NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).
- 27.3 The parties must comply with and meet any obligations imposed by the NSW Government Code of Practice for Procurement (NSW Code) and the NSW Guidelines.
- 27.4 The Vendor must notify the CCU and Abergeldie of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- 27.5 Where the Vendor engages a Subcontractor or Consultant, the Vendor must ensure that that contract imposes on the Subcontractor or Consultant equivalent obligations to those in this clause, including that the Subcontractor or Consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- 27.6 The Vendor must not appoint or engage another party in relation to the contract where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.
- 27.7 The Vendor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its Subcontractors, Consultants and related entities.
- 27.8 The Vendor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
- (a) enter and have access to sites and premises controlled by the Vendor, including but not limited to the project site;
  - (b) inspect any work, material, machinery, appliance, article or facility;
  - (c) access information and documents;
  - (d) inspect and copy any record relevant to the project;
  - (e) have access to personnel; and
  - (f) interview any person;
- as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the Vendor, its Subcontractors, Consultants, and related entities.
- 27.9 The Vendor, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.
- 27.10 The Vendor warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- 27.11 If the Vendor does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- 27.12 Where a sanction is imposed:



- (a) it is without prejudice to any rights that would otherwise accrue to the parties; and
  - (b) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
    - (a) record and disclose details of noncompliance with the NSW Code or NSW Guidelines and the sanction; and
    - (b) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Vendor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.
- 27.13 The Vendor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Vendor is not entitled to make a claim for reimbursement or an extension of time from Abergeldie or the State of NSW for such costs.
- 27.14 Compliance with the NSW Code and NSW Guidelines does not relieve the Vendor from responsibility to perform the works and any other obligation under the contract, or from liability for any defect in the works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- 27.15 Where a change in the Contract or Works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the Vendor must immediately notify Abergeldie (or nominee) of the change, or likely change and specify:
  - (a) the circumstances of the proposed change;
  - (b) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
  - (c) what steps the Vendor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a workplace relations management plan or work health and safety management plan); andAbergeldie will direct the Vendor as to the course it must adopt within 10 *Business Days* of receiving notice.