CAMCO ENGINEERING

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Standard Terms and Conditions – Sale of Goods and Services

Background:

(a) The Customer appoints Camco to provide the Goods and Services for the Customer.

(b) Camco agrees to provide the Goods and Services for the Customer.

(c) This Contract sets out the terms and conditions on which Camco will provide the Goods and Services.

General Conditions:

1. Term and Commencement

1.1 This Contract commences on the Effective Date and continues in full force and effect for the Term. The parties may agree to extend the Term by agreeing in writing a change to the Expiry Date at any time and from time to time.

1.2 Subject to clauses 1.3 to 1.6 (inclusive), Camco will provide the Goods and Services in accordance with this Contract, including to the Delivery Location (if any and unless excluded in the relevant Quotation Documents issued by Camco), for the Purpose and by the Date for Delivery.

1.3 The Customer:

(a) will issue to Camco a purchase order (**Purchase Order**) in respect of the Goods and Services to be provided by Camco under this Contract;

(b) must not include in Purchase Orders any additional terms and/or conditions; and

(c) must supply Camco with a valid Purchase Order relating to the relevant Goods and Services before Camco will be required to provide such Goods and Services.

1.4 Each Purchase Order will be governed by the terms and conditions in this Contract.

1.5 The parties may agree changes to Purchase Orders.

1.6 Camco is only required to comply with Purchase Orders issued under clause 1.3(a), together with any changes to the Purchase Orders, where it agrees to do so.

2. Documents comprising this Contract and precedence

2.1 This Contract is comprised of the Quotation Documents, Contract Particulars, the Special Conditions, the General Conditions, the agreed Purchase Orders, Schedule 2 (Annual Reviews) and Schedule 3 (Customer-Supplied Information).

2.2 In the event of any inconsistency between any parts of this Contract, the order of precedence to be applied to the extent necessary to resolve the inconsistency will be the order in which the parts of this Contract appear in clause 2.1.

3. Reliance on information

3.1 The Customer acknowledges and agrees that unless expressly stated otherwise in this Contract and to the extent permitted by law:

(a) Camco is entitled to rely upon the accuracy, correctness and completeness of Customer-Supplied Information;

(b) Camco will not be liable for any claim or loss (or both) of any kind arising from or in connection with having relied upon the Customer-Supplied Information;

(c) any warranties provided by Camco (and liabilities of Camco) pursuant to the terms of this Contract are contingent upon the Customer-Supplied Information being accurate, correct and complete and Camco will be released from liability where it arises from or in connection with the Customer-Supplied Information not being accurate, correct or complete (any one singly or any combination);

(d) Camco is not required to independently verify the Customer-Supplied Information; and

(e) if any matter contained in any of the Customer-Supplied Information:

(i) is incorrect, inaccurate, incomplete, or changes after the date of this Contract; and

(ii) such error inaccuracy, incompleteness, or change in the relevant Customer-Supplied Information could not have been reasonably identified or anticipated by a competent contractor (experienced in providing goods and/or services substantially similar to the Goods and Services, as applicable) on or before the Effective Date; and

(iii) such error or change in the relevant Customer-Supplied Information necessitates a change to the Goods and Services (as applicable),

then:

(iv) such change to the Goods and Services (as applicable) will be deemed to be a Variation; and

(v) Camco will have no liability to the Customer for any claim or loss (or both) suffered or incurred by the Customer or any other person as a result of the Customer-Supplied Information being incorrect, inaccurate, incomplete or changing (any one singly or any combination).

4. Variations

4.1 The Customer may direct Camco to vary any aspect of the Goods and Services (**Variation**) at any time before the Date of Delivery, by giving Notice to Camco, stating that it is a direction under this clause 4.1.

4.2 To the extent that the Variation is reasonable, Camco must comply with the Notice and the Variation will be binding on the parties as if it was included in this Contract.

4.3 The difference in the cost (excluding GST), if any, caused by Variations directed by the Customer (including the costs and expenses referred to in clause 4.6) will be added to or deducted from the Contract Price as applicable.

4.4 If Camco considers that any direction given by the Customer constitutes a Variation but the direction either does not comply with the Notice requirements in this Contract or does not expressly state that it is a direction under clause 4.1 (or both), then:

(a) Camco must promptly give the Customer Notice, stating the reasons why Camco considers the direction constitutes a Variation; and

(b) upon receipt of Camco's Notice under clause 4.4(a), the Customer must promptly either:

(i) issue a direction under clause 4.1; or

(ii) if the question of whether the direction constitutes a Variation is disputed by the Customer, issue a Notice of Dispute to Camco under clause 20.1 and the direction will be deemed to be a Variation unless agreed or determined otherwise; and

(c) subject to clause 23.4 and to the extent the direction is reasonable, Camco must comply with the direction but such compliance is not a waiver of Camco's rights in contract or otherwise in relation to the direction.

4.5 If a Variation affects the Date for Delivery, Camco will be entitled to an extension of time and an adjustment to the Contact Price in accordance with clause 5.

4.6 If Camco has prior to receipt of a Notice given under clause 4.1 performed Work in Progress in respect of Excluded Goods and Services then Camco will be entitled to claim and receive payment for:

(a) that Work in Progress, with the amount payable being the same proportion of the Excluded Contract Price that the Work in Progress bears to the Excluded Goods and Services;

(b) its reasonable costs and expenses incurred in anticipation of Delivering the Excluded Goods and Services, including:

(i) costs for goods and materials already purchased by Camco in respect of the Excluded Goods and Services;

(ii) mobilization and demobilization costs in respect of any Camco equipment that is located on the Customer's premises and which was mobilized to those premises for exclusive use in the provision of the Excluded Goods and Services; and

(iii) any other costs incurred by Camco that are attributable to the exclusion of the Excluded Goods and Services;

provided that Camco must use reasonable endeavours to mitigate such costs and expenses to the extent practicable.

5. Extensions of Time

5.1 If Camco (at any time and from time to time) is of the opinion that, despite all reasonable steps having been taken, it will not be able to provide the Goods and Services (as applicable) by the Date for Delivery due to:

(a) a breach of any provision of this Contract by the Customer;

(b) a delay caused by the Customer failing to provide a valid Purchase Order relating to the relevant Goods and Services in sufficient time to avoid such delay;

(c) a Force Majeure Event;

(d) any Latent Condition;

(e) a delay or suspension to Camco's access to the Site;

(f) a delay or disruption caused by another supplier, contractor or consultant to the Customer or any of their Personnel; or

(g) the Customer directing a Variation or there being a deemed Variation under clause 4,

Camco must give Notice to the Customer requesting a reasonable extension to the Date for Delivery and adjustment to the Contract Price, setting out its reasons.

5.2 Camco will be entitled to:

(a) an extension to the Date for Delivery (and such other date(s) in this Contract as may be necessary) to the extent of the actual delay to the provision of any part of the Goods and Services; and

(b) an adjustment to the Contract Price to account for Camco's additional costs incurred in association with that extension of time.

5.3 To the extent that the Customer does not agree with Camco's assessment of the reasonable extension to the Date for Delivery and/or the adjustment to the Contract Price, Camco will be entitled to submit a Notice of Dispute to the Customer under clause 20.1 and have the matter resolved under clause 20.

6. Warranty and Defects

6.1 Subject to the terms of this clause 6 and to the extent permitted by law (including the ACL):

(a) Camco warrants that the Goods and Services will remain free from any Defect which arises solely from faulty materials or workmanship for the Defects Liability Period in respect of the relevant Goods and Services;

(b) Camco warrants that, to the extent that Camco becomes liable under the warranty in clause 6.1(a) and performs rectification work:

(i) the work to rectify that Defect will remain free from any further Defect which arises solely from faulty materials or workmanship for the Additional Defects Liability Period; and

(ii) the Defects Liability Period in respect of the relevant Goods and Services, together with the relevant Additional Defects Liability Period, cannot exceed 18 calendar months in aggregate; and

(c) Camco is not liable under clauses 6.1(a) or 6.1(b) for any Defects, depreciation or loss of performance or any other issues or liability arising in or in connection with the Goods and Services due directly or indirectly to circumstances which are outside of Camco's control, including where caused by:

(i) wear and tear;

(ii) common neglect;

(iii) misuse or other abnormal conditions;

(iv) operation outside normal operating parameters or in accordance with instructions or manuals provided by Camco or a third party supplier or manufacturer;

(v) environmental or process factors, including corrosion, erosion or build-up;

(vi) any work subsequently carried out by or on behalf of the Customer or any other person; or

(vii) any alteration to or modification of the Goods (unless performed by Camco).

6.2 To the maximum extent permitted by law (including the ACL), Camco will not be liable under clauses 6.1(a) or 6.1(b) for:

(a) the cost of transporting goods to and from Camco's chosen facility for repair;

(b) the cost of removing goods from any machine or building in which they are installed and/or replacing them therein; or

(c) any damage to property which may have occurred due to or in connection with the Goods and Services,

any one singly or any combination.

6.3 To the extent that Camco becomes liable under the warranties in clause 6.1(a) and/or 6.1(b) and to the extent permitted by law (including the ACL):

(a) Camco is entitled to determine whether to repair, replace or reperform the Goods and Services (as applicable) at its sole discretion (including where the repair will be conducted); and

(b) Camco will not be liable to the Customer for any expenses of repair, replacement or reperformance of the Goods and Services incurred by the Customer without Camco's prior written approval.

6.4 The Customer must give Camco Notice of any claim arising under the warranties in clause 6.1(a) and/or 6.1(b), together with full particulars of the Defect, within seven (7) calendar days of the Defect becoming apparent. Submission of Notice in compliance with this clause 6.4 is a condition precedent to the Customer's entitlement to making a claim in respect of, and Camco's liability under, clauses 6.1(a) and 6.1(b) (as applicable).

6.5 The Customer must do everything practicable to mitigate further damage and loss once the Defect has been identified.

6.6 To the extent permitted by law (including the ACL) and unless expressly stated in this Contract, Camco does not give any representation, warranty or guarantee (express or implied) in respect of any information provided as part of the Goods and Services or that any assumptions or outcomes concerning the subject matter of the Goods and Services will be achieved.

7. Title

All Goods and Services supplied will remain the property of Camco until the price has been paid in full.

8. Risk

Risk of loss of and damage to the goods comprised in the Goods and Services will transfer to the Customer upon Delivery. The Customer undertakes to carry adequate insurance in respect of loss of and damage to those goods (to the full replacement value) from Delivery until the Contract Price has been paid in full in respect of those goods.

9. Contract Price and Payment

9.1 The Customer must pay Camco the Contract Price in respect of Camco's provision of the Goods and Services and in accordance with the Quotation Documents, subject to adjustment in accordance with the terms of this Contract (including Schedule 2).

9.2 Camco will (unless otherwise agreed between the parties in writing) be entitled to claim and invoice the Contract Price as follows (and as determined in the Quotation Documents):

(a) in monthly instalments;

(b) in respect of each part of the Goods and Services that is Delivered; or

(c) upon payment milestones,

in each case including any advance payment as stated in the Quotation Documents and upon the terms stated in the Quotation Documents.

9.3 The Customer must pay the undisputed amount showing on the invoice in full by electronic funds transfer to Camco's nominated bank account within 30 days of the date of the invoice without any set-off, deduction or withholding whatsoever. The Customer must pay any amounts agreed or determined in respect of the disputed portions of claimed amounts of the Contract Price within 30 days of the date of agreement or determination (as applicable).

9.4 Camco will be entitled to charge default interest on amounts that remain unpaid after their due date. Interest may be applied from the day after the due date until the date of payment at the rate of the current Reserve Bank of Australia Cash Rate plus 2% (two percent), calculated on the daily overdue balance.

9.5 If the Customer fails to make a payment when due under this Contract, Camco will be entitled to recover all reasonable costs of recovery as a debt due, without prejudice to any other rights that Camco may have under or in connection with this Contract (including in equity, tort or at law).

10. GST

10.1 Terms used in this clause 10 which are defined in the GST Act have the same meaning in this clause 10.

10.2 Subject to clauses 10.3 and 10.4, if for any reason GST is, or will be imposed on any supply made by a party (including costs required to be reimbursed or indemnified under this Contract), the supplier may, to the extent that the consideration otherwise provided for that supply under this Contract is not stated to already include an amount in respect of GST on that supply:

(a) increase the consideration otherwise provided for that supply under this Contract by the amount of that GST; or

(b) otherwise recover from the recipient the amount of that GST.

10.3 The recovery of GST on a supply under this Contract is subject to the supplier first issuing a relevant tax invoice or adjustment note to the recipient for that supply.

10.4 If a party is entitled under this Contract to be reimbursed or indemnified by another party for a cost or expense incurred in connection with this Contract, the party receiving the reimbursement or indemnity is not entitled to recover any GST on that reimbursement or indemnity to the extent to which an input tax credit may be claimed on the reimbursement or indemnity by that party.

10.5 Where any consideration for a supply under this Contract is not expressed as an amount of money, the party making the supply will provide the recipient with a tax invoice for that supply based on the GST inclusive market

value of the consideration as determined in good faith by the party making the supply.

10.6 Without affecting the obligations of the parties under this Contract, this Contract and supporting material is not a document notifying an obligation to make payment and is not an invoice under the GST Act.

11. Intellectual Property

11.1 Camco must grant, and hereby grants, to the Customer a non-exclusive, royalty-free, transferable, irrevocable and perpetual licence (with the right to sub-license on the same terms to the Customer's Personnel) in respect of Camco's Background IPR and its Foreground IPR for the purposes of, and to the extent reasonably required for, the Customer using and enjoying the Goods and Services for the Purpose.

11.2 The Customer must grant, and hereby grants, to Camco a non-exclusive, non-transferable, royalty-free licence (with the right to sub-license on the same terms to Camco's Personnel) in respect of the Background IPR provided by the Customer to Camco (including in any Customer-Supplied Information) for the purpose of enabling Camco and its Personnel to provide the Goods and Services.

11.3 The parties warrant to each other that, in using Background IPR and Foreground IPR in accordance with the licences granted under clauses 11.1 and 11.2 (as applicable), the other party will not breach any person's moral rights under the *Copyright Act 1968* (Cth) in the relevant IPR.

12. Termination

12.1 A party may immediately upon Notice to the other party (**Defaulting Party**) terminate this Contract where, at the time Notice is given, subject to the Ipso Facto Amendments, the Defaulting Party is Insolvent.

12.2 Camco will be entitled to suspend the Goods and Services or terminate this Contract (or both) with immediate effect in the event that:

(a) the Customer breaches any of its obligations under this Contract (including making payments when due and payable) and does not remedy that breach, to the extent capable of remedy, within 10 Business Days; or

(b) the Customer breaches any of its obligations under this Contract and the breach is incapable of being remedied.

12.3 The Customer will be entitled to terminate this Contract for its convenience upon giving Camco 20 Business Days' Notice.

12.4 In the event that the Customer terminates this Contract under any of clauses 12.1, 12.2 or 12.3, Camco will be entitled to claim and receive payment for:

(a) the Goods and Services Delivered as at the date of termination;

(b) Work in Progress, with the amount payable being the same proportion of the Residual Contract Price as the Work in Progress bears to the Residual Goods and Services;

(c) its reasonable costs and expenses incurred in anticipation of Delivering the Residual Goods and Services, including:

(i) costs for goods and materials already purchased by Camco; and

(ii) mobilisation and demobilisation costs in respect of any Camco equipment that is located on the Customer's premises;

provided that Camco must use reasonable endeavours to mitigate such costs and expenses to the extent practicable;

(d) 50% (fifty percent) of the balance of the Residual Contract Price remaining after the deduction of any amount payable under clause 12.4(b), on account of Camco's loss of profit and overhead in respect of the unperformed part of this Contract; and

(e) any other costs incurred by Camco that are attributable to the termination.

12.5 Termination will be without prejudice to any claim which either party may have against the other in respect of any breach of the terms of this Contract which occurred prior to the date of termination.

13. Indemnity

The Customer will indemnify (and will keep indemnified) Camco and its Personnel from and against all Liabilities that Camco or any of its Personnel (any one singly and any combination) suffers, sustains or incurs arising in connection with the performance of the Services on Site due to the negligent act or omission or wilful misconduct by the Customer or any of its Personnel, but the Customer's liability to indemnify Camco will be reduced proportionately to the extent that Camco or its Personnel caused or contributed to the Liability.

14. Limitation of Liability

14.1 To the maximum extent permitted by law (including the ACL), Camco's total liability in connection with this Contract and each Quotation Confirmation (including in respect of negligence) will be limited in the aggregate to the amount equal to 35% (thirty-five percent) of the Contract Price relating to the Quotation Confirmation in respect of which the liability applies.

14.2 Clause 14.1 will not limit Camco's liability arising in respect of:

(a) breaches of the law by Camco or any of its Personnel;

(b) infringements of IPR to the extent caused or contributed to by Camco or any of its Personnel; or

(c) breaches of clause 19 by Camco.

14.3 To the extent that the Consumer Guarantees apply to the relevant Goods and Services, the ACL renders clause 14.1 void and Division 1 of Part 5-4 of the ACL provides the Customer with a remedy against Camco, Camco's liability will be limited to one of those remedies at Camco's election.

14.4 To the maximum extent permitted by law (including the ACL), Camco will not be liable for personal injury and/or death arising in connection with this Contract (including any and all Quotation Confirmations) howsoever arising, including in respect of negligence.

14.5 To the maximum extent permitted by law (including the ACL), Camco will not be liable for, and the Customer will

not be entitled to rely upon, any recommendations made by Camco during the provision of the Goods and Services, including in respect of any negligence. The Customer must perform its own due diligence and make its own informed decisions in respect of the subject matter of those recommendations.

14.6 To the maximum extent permitted by law (including the ACL):

(a) it is a condition precedent to the Customer's entitlement to make a claim under or in connection with this Contract that the circumstances giving rise to the claim materialise, and the Customer submits a claim in respect of those circumstances to Camco, prior to the Liability End Date; and

(b) Camco will not be liable (including in respect of negligence) if the condition precedent in clause 14.6(a) is not satisfied.

14.7 The limitations on and exclusions from Camco's liability set out in this Contract or otherwise applicable to this Contract apply to Camco and its Related Bodies Corporate and Camco holds the benefit of those limitations and exclusions on trust for its Related Bodies Corporate. Those limitations and exclusions apply irrespective of whether the Customer, any of its Related Bodies Corporate or any other person suffers or incurs liability or brings a claim against Camco.

15. Consequential Loss

To the extent permitted by law (including the ACL), neither party is liable for any Consequential Loss sustained or incurred by the other party, any of its Related Bodies Corporate or any of their Personnel, including to the extent arising as a result of negligence, in connection with this Contract (including any and all Quotation Documents).

16. Joint and several liability

Where the Customer is comprised of more than one person, those persons will bear the responsibility for the obligations and liabilities of the Customer on a joint and several basis.

17. Security

Camco has the right to require payment before Delivery or security of payment in a form acceptable to Camco.

18. PPSA

18.1 If Camco determines (acting reasonably) that the Goods and Services supplied under this Contract, or any terms of this Contract, create or contain a security interest, the Customer agrees to do anything, within its reasonable control, which Camco (acting reasonably) asks and considers necessary for the purposes of:

(a) ensuring that the security interest is enforceable, perfected and otherwise effective; or

(b) enabling Camco to apply for any registration, complete any financing statement give any notification, in connection with the security interest; or

(c) enabling Camco to exercise rights in connection with the security interest,

any one singly and any combination.

18.2 The Customer agrees that the Goods are inventory and acknowledges that Camco may register a purchase money security interest (or other security interest) in respect of the Goods and may exercise its rights under the PPSA.

18.3 Camco's rights under this Contract are in addition to and do not limit its rights under the PPSA.

18.4 If this Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the PPSA, each party agrees that (to the extent permitted by law) sections 142 and 143 of the PPSA are excluded and Camco need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA (including the giving of notices).

18.5 The parties will bear their own costs in respect of the actions taken under this clause 18.

18.6 The Customer and Camco must not, without the consent of the other, disclose any information of the kind referred to in section 275(1) of the PPSA, except where otherwise permitted by this Contract or required by law including where required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

18.7 The Customer agrees not to register any "all present and after acquired property" (i.e. All-PAAP) security interest under the PPSA over the business and/or assets of Camco and must ensure that no Related Body Corporate or Personnel of the Customer or a Related Body Corporate of the Customer makes such a registration.

18.8 Words and phrases defined in the PPSA have the same meaning when used in this clause 18.

19. Confidentiality

19.1 Neither party is permitted to use or disclose Confidential Information, except as provided for by this Contract. A party may disclose Confidential Information to the extent:

(a) the other party gives written consent, such consent being given on such terms and conditions as the consenting party considers reasonably necessary and breach of which will be a breach of this Contract;

(b) required by law, regulation, a court or a regulator; or

(c) reasonably necessary for the enforcement of a right or the performance of an obligation under this Contract or to defend a claim made against that party in respect of this Contract.

19.2 Where a party discloses Confidential Information, it must ensure that the recipient of the Confidential Information keeps it confidential on the same terms as this clause 19.

20. Disputes

20.1 If an issue or dispute arises under or in connection with this Contract (**Dispute**), either party may give Notice to the other, giving details of the Dispute and requesting that a meeting take place to discuss it (**Notice of Dispute**). A Notice of Dispute must be given within 10 Business Days after the Dispute has arisen.

20.2 The Customer's Representative and Camco's Representative must meet within 5 Business Days after the Notice of Dispute to resolve the Dispute.

20.3 The parties agree that:

(a) the Customer's Representative and Camco's Representative will facilitate the resolution of the Dispute; and

(b) the parties must use their best efforts in good faith to co-operatively resolve the Dispute.

20.4 If the Dispute has not been resolved within 20 Business Days after the date of the Notice of Dispute, either party may refer the Dispute to the CEO/Managing Director of the relevant party (**Senior Representatives**) for resolution.

20.5 If the Dispute has not been resolved within 10 Business Days after being referred to the respective Senior Representatives, either party may commence legal proceedings to resolve the Dispute.

20.6 Nothing in this Contract will prevent a party from:

(a) applying to a court of competent jurisdiction to seek urgent relief; or

(b) initiating any legal process immediately prior to the end of any period specified by the relevant law during which legal process or the bringing of an action must be initiated.

21. Governing law and jurisdiction

21.1 This Contract will be governed in accordance with the laws of the State or Territory specified in the Contract Particulars.

21.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State or Territory specified in the Contract Particulars and to the courts competent to determine appeals from those courts.

22. Representatives

22.1 The Customer must ensure that the Customer's Representative is competent, fluent in the English language and available at all reasonable times. The Customer's Representative is duly authorised to act on behalf of the Customer in relation to sending and receiving Notices under this Contract and supervising the performance of the Customer's obligations under this Contract.

22.2 Camco must ensure that Camco's Representative is competent, fluent in the English language and available at all reasonable times. Camco's Representative is duly authorised to act on behalf of Camco in relation to sending and receiving Notices under this Contract and supervising the performance of Camco's obligations under this Contract.

23. Notices and directions

23.1 Any and all Notices given under or in connection with this Contract must be:

(a) in writing;

(b) addressed to the relevant recipient(s) of the Notice as specified in the Contract Particulars (or as otherwise Notified by the relevant party to each other party from time to time);

(c) signed (which may be electronically) by the party making it or (on that party's behalf) by the Representative for, solicitor for, or any attorney, director, secretary or authorised agent of, that party; and

(d) delivered as follows:

(i) by hand; or

(ii) posted by prepaid post to the address of the addressee, or emailed to the email address of the addressee, as set out in the Contract Particulars or as otherwise Notified by the relevant party to each other party at any time and from time to time.

23.2 All Notices must be in writing, in English and sent to the Customer's Representative or Camco's Representative (as applicable) at the relevant address specified in the Contract Particulars. A Notice will be deemed to have been received as follows:

(a) for Notices delivered by hand, on delivery, but where delivery is made after 4:00 pm on a Business Day or at any time on a day which is not a Business Day, that delivery will be deemed to have occurred at 9:00 am on the next Business Day;

(b) for Notices sent by post that are sent and received within Australia, 3 Business Days after the date of posting; and

(c) for Notices sent via email, on receipt, but where a transmission is made after 4:00 pm on a Business Day or on a day which is not a Business Day, that transmission will be deemed to have occurred at 9:00 am on the next following Business Day.

23.3 A party may change its address for the receipt of Notices by giving the other party a Notice of this.

23.4 Nothing in this Contract obliges Camco to comply with a direction that:

(a) is unreasonable or unlawful (including any direction that may adversely affect Camco's reputation);

(b) is outside the character and extent of the Goods and Services contemplated by, and capable of being provided under, this Contract; or

(c) may in Camco's opinion (acting reasonably) create an uninsurable risk to Camco or prejudice its insurances.

24. General

24.1 **Entire agreement:** To the maximum extent permitted by law (including the ACL), this Contract contains the entire agreement between the parties and no regard will be had to any prior negotiations, qualifications or dealings.

24.2 **Execution and counterparts:** The parties agree that this Contract may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes an original of this Contract, and all together constitutes one Contract. The counterparts of this Contract may be signed and delivered electronically.

24.3 **Unenforceability:** If any provision of this Contract is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Contract will not be affected or impaired in any way.

24.4 **Waiver:** The non-exercise of, or a delay in exercising, any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right by a party. A power or right of a party may only be waived by Notice by that party.

24.5 **Relationship:** Nothing in this Contract constitutes a joint venture, agency, partnership or other fiduciary relationship or employment relationship between the Customer and Camco. At all times during the performance of this Contract, Camco is an independent contractor and not an employee or agent of the Customer or any other person.

24.6 **Survival:** Clauses 2, 3.1(b), 3.1(c), 3.1(e)(v), 7, 9.3, 9.4, 9.5, 10, 11, 12.4, 12.5, 12.6, 13, 14, 15, 16, 18, 19, 20, 21, 24 and 25 and the Schedules survive discharge, expiry or termination of this Contract, together with any other limitations on Camco's liability.

24.7 **Subcontracting:** The Customer consents to Camco subcontracting any part or parts or the whole of the performance of the Goods and Services as it sees fit. Camco will be responsible for the performance of its subcontractors under the terms of this Contract as if it had performed the relevant Goods and Services itself.

25. Definitions

In this Contract, the following terms have the corresponding meanings unless expressly stated otherwise or defined in the Contract Particulars:

ACL means the Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

Background IPR means IPR in information, documentation or material either created prior to the Effective Date or is not or has not been created solely for the purpose of Camco providing the Goods and Services;

Business Day means a day on which banks are open for business in Perth, Western Australia;

Consequential Loss means any and all:

(a) loss of revenue and profit (whether actual or anticipated, direct or indirect), use, production, interest, goodwill, business, business opportunity, anticipated savings and contract (excluding this Contract);

(b) loss and corruption of data and information;

(c) damage to software;

(d) costs and damages under third party contracts, additional and increased operating and financing costs; and

(e) wasted costs, pure economic loss and special, indirect and consequential costs, loss and damages whatsoever and howsoever arising;

Consumer Guarantees means the means the consumer guarantees in Division 1, Part 3.2 of the ACL;

Contract Particulars means the details set out in Schedule 1;

Contract Price means the aggregate price payable for the Goods and Services, calculated by reference to the pricing information provided in the Quotation Documents and as adjusted in accordance with the terms of this Contract, including the annual review mechanism set out in Schedule 2;

Corporations Act means the *Corporations Act 2001* (Cth);

Customer-Supplied Information means:

(a) the documents and information specified in Schedule 3;

(b) the documents and information specified in the relevant Quotation Documents; and

(c) other documents and information (in any form) provided or made available by or for the Customer to Camco in connection with this Contract or any Quotation Documents;

Date for Delivery means the date by which the Goods and Services are to have been Delivered (or, where there are multiple dates, the relevant date by which the relevant part of the Goods and Services (as the context requires) are to have been Delivered) in accordance with the requirements of this Contract, as specified in the relevant Quotation Documents;

Date of Delivery means the date on which the Goods and Services have been Delivered (or, where there are multiple dates, the relevant date on which the relevant part of the Goods and Services (as the context requires) have been Delivered) in accordance with the requirements of this Contract;

Defect means any part of the Goods and Services which do not comply with the requirements of this Contract;

Delivery means the delivery of the Goods and Services in accordance with the requirements of this Contract, including the delivery arrangements expressly stated in the Quotation Documents;

Delivery Location means the location specified in the relevant Quotation Documents;

Excluded Contract Price means the part of the Contract Price (if any) that is no longer payable as a result of the exclusion of Excluded Goods and Services;

Excluded Goods and Services means the portion of the Goods and Services (if any) that are no longer required as a result of a Variation;

Force Majeure Event means any event or circumstance that is beyond the control of the affected party and that prevents the performance of any of the affected party's obligations under this Contract (except for the obligation to pay money), after that affected party has taken every reasonable step (including reasonable expenditures of money) to mitigate the impact of the event, including:

(a) earthquakes, cyclones, storms, tidal waves, floods, or other physical natural disasters;

(b) acts of war (whether declared or undeclared), terrorism, riot, civil war, blockade, insurrection, or civil disturbances;

(c) acts of an Government Authority that prevent or make unlawful a party's performance under this Contract;

(d) strikes or labour disputes at the national level, but excluding any strike or dispute which is specific to the performance of this Contract; and

(e) changes in law that occur after the Effective Date, which could not have been reasonably foreseen at the Effective Date,

but does not include any of the following events or circumstances:

(f) the mere shortage of or inability to obtain labour, equipment, materials, fuel or transportation which is not itself caused by a Force Majeure Event;

(g) the insolvency or change in economic circumstances of the affected party; or

(h) a change in market conditions;

Foreground IPR means IPR that is created by or on behalf of Camco solely for the purpose of, or as part of, Camco providing the Goods and Services;

General Conditions means clauses 1 to 26 (inclusive);

Goods and Services means the goods and services to be provided and subsequently provided by Camco under this Contract (as applicable and as stated in the relevant Quotation Documents);

Government Authority means any court or tribunal within the relevant jurisdiction, or any public or statutory or government (whether federal, state or local) body, authority, council, inspectorate, department, ministry, official or agency which in any way governs or affects any aspect of this Contract;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Insolvent means, in respect of a party, that it:

(a) is (or states that it is) insolvent (as defined in the Corporations Act);

(b) has a controller (as defined in the Corporations Act) appointed to any part of its property;

(c) is in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration or wound up or has had a receiver or a receiver and manager appointed to any part of its property;

(d) is subject to any arrangement, assignment, moratorium or composition or is protected from creditors under any statute or dissolved (other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other party to this Contract);

(e) is taken (under section 459(F)(1) of the Corporations Act) to have failed to comply with a statutory demand;

(f) is the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the other party to this Contract reasonably deduces it is so subject); or

(g) is otherwise unable to pay its debts when they fall due;

IPR means any and all industrial and intellectual property rights whether protectable or conferred by statute,

at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registerable), rights in relation to registered or unregistered trademarks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers;

Ipso Facto Amendments means:

(a) **the amendments to the Corporations Act set out in Part 2 of the *Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017* (Cth); and**

(b) **any regulations, declarations or legislative instruments, prescribed, made or declared pursuant to sections 415D, 434J or 451E of the Corporations Act;**

Latent Condition means any physical condition (whether on, at, under, near, or in connection with the Site) which:

(a) **could not reasonably have been ascertained or anticipated by Camco prior to the Effective Date; and**

(b) **will materially affect the provision of the Goods and Services;**

Liability includes any and all loss, cost, expense, damage, fine, penalty or liability of any kind;

Notice means any notice, demand, consent, approval, direction or communication;

Personnel means:

(a) **a party's directors, officers, employees, workers, contractors, representatives, agents, subcontractors, subconsultants and persons otherwise under the control of a party; and**

(b) **the directors, officers, employees, workers, contractors, representatives, agents, subcontractors, subconsultants and persons otherwise under the control of a party's subcontractors or subconsultants; but**

(c) **the Customer's Personnel do not include Camco or Camco's Personnel and vice versa;**

PPSA means the *Personal Property Securities Act 2009* (Cth);

Purchase Order has the meaning given to that term in clause 1.3(a);

Purpose means the Customer's purpose for the Goods and Services which is evidenced by the drawings and specifications set out in the Customer-Supplied Information;

Quotation means the relevant document issued by Camco providing a quotation in respect of Goods and Services to be provided by Camco under this Contract;

Quotation Confirmation means the document issued by Camco confirming that it will perform the relevant Goods and Services on the terms of this Contract (including the associated Quotation);

Quotation Documents means the Quotation and the Quotation Confirmation issued by Camco in respect of the relevant Goods and Services;

Related Body Corporate has the meaning given to that term in section 50 of the Corporations Act;

Residual Contract Price means, at any given time, the part of the Contract Price that relates to the Residual Goods and Services;

Residual Goods and Services means, at any given time, the portion of the Goods and Services that have yet to be Delivered;

Site means the site stated in the relevant Quotation Documents or, where no site is stated in the Quotation Documents, the Delivery Location;

Special Conditions means the terms and conditions set out in Schedule 4;

Term means the term of this Contract commencing on and from the Effective Date and ending on the earlier of:

(a) **the Expiry Date (as may be extended by agreement between the parties in writing) or the end of the last Defects Liability Period or Additional Defects Liability Period (if any) to expire if later; and**

(b) **the date this Contract is otherwise terminated by a party in accordance with its terms.**

Variation has the meaning given to that term in clause 4.1.

Work in Progress means any work performed in respect of a part of the Goods and Services that have yet to be Delivered.

26. Interpretation

(a) In this Contract, unless the context otherwise requires:

(i) headings and clause numbers are for convenience only and do not affect the interpretation of this Contract;
(ii) words importing the singular include the plural and vice versa;
(iii) words importing a gender include any gender;
(iv) a reference to a person includes a corporation and any entity capable of being the subject of legal proceedings;
(v) a reference to legislation or to a provision of legislation includes an amendment, modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
(vi) if a word or phrase is defined in this Contract, its other grammatical forms have a corresponding meaning;
(vii) mentioning anything after the words “includes”, “including”, “inclusive”, “for example”, or similar expressions, does not limit what else might be included;
(viii) monetary amounts or rates stated in this Contract and all payments due under this Contract will be in Australian currency;
(ix) a reference to a clause in the General Conditions is a reference to the clause as it appears in the General

Conditions unless expressly stated otherwise;

(x) a reference to clause in a Schedule is a reference to the clause as it appears in that Schedule unless expressly stated otherwise;

(xi) unless expressly stated otherwise, a reference to a party, Schedule, attachment or exhibit is a reference to a party, Schedule, attachment or exhibit to this Contract and a reference to this Contract includes any Schedule, attachment and exhibit;

(xii) a reference to a party to this Contract includes the party's successors, permitted substitutes and permitted assigns and, where applicable, the party's legal personal representatives; and

(xiii) a right or obligation of any two or more persons confers that right or imposes that obligation, as the case may be, on each of them severally and on any two or more of them jointly.

(b) In the interpretation of this Contract:

(i) no rule of construction will apply to disadvantage a party because that party proposed a provision of this Contract; and

(ii) subject to any express provision to the contrary, a provision of this Contract which says that a party 'may' do or not do something is not to be construed as imposing an obligation on the party to do or not to do that thing.