

**POWER SYSTEMS & SERVICES.
 TERMS AND CONDITIONS FOR MINOR WORKS (INCLUDING SERVICES)**

These terms and conditions shall be read and construed as a part of TOSHIBA's purchase order to which they are attached for minor Works (Including services) (as hereinafter defined) and shall be deemed to be incorporated by reference.

1. DEFINITION

In these terms and conditions:

"Annexure" means the annexure to these terms and conditions and which forms a part of the Order.

"Claims" means any action, suit, proceeding, application or demand of any kind;

"Completion Date" means the date the Order completes, as set out in the Order;

"Contamination" means the presence of a substance in, on or under water, land or air at a concentration above the concentration at which the substance is normally present in the same locality, being a concentration that presents, or has the potential to present, a risk of harm to human health or the Environment;

"Environment" means components of the earth, including:

- (a) land, air and water, and
- (b) any layer of the atmosphere, and
- (c) any organic or inorganic matter and any living organism, and
- (d) human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to in paragraphs (a)-(c);

"Environmental Harm" means any serious or material harm, damage or detriment to the Environment which is not Pollution or Contamination;

"Environmental Requirements" means:

- (a) Laws including the *Protection of the Environment Operations Act 1997 (NSW)*, the *Protection of the Environment Operations (General) Regulation 2009 (NSW)*, the *Protection of the Environment Operations (Clean Air) Regulation 2010 (NSW)* and the *Protection of the Environment Operations (Waste) Regulation 2014*, or their equivalents in other States and Territories of Australia to the extent that any of the obligations of the Supplier are to be performed in such a State or Territory;
- (b) codes of practice approved under a Law; and
- (c) directions or notices issued under any Law which must be complied with by Law;

"Equipment" means the goods, equipment, items, materials and commodities described on the Order or necessary to perform the Works;

"Government Agency" means any Commonwealth, state or local government or any ministry, department, court, commission, board, agency, institution, authority or similar entity of any such government;

"Government Authorisation" means all approvals, consents, authorisations, permits, clearances, licences or other requirements that are required from any Government Agency for the Supplier to perform its obligations under the Order;

"Law" means the law in force in the jurisdiction which is expressed to be the governing law of the Order (or if no jurisdiction is so expressed, the jurisdiction in which the majority of the obligations of the Supplier are to be carried out), including common or customary law, equity, judgment, legislation, orders, regulations, statutes, by-laws, ordinances or other legislative or regulatory measures and includes any amendment, modification or re-enactment of them;

"Liabilities" means damages, Claims, losses, liabilities, costs and expenses of any kind;

"Order" - means the authorised written form of purchase order of TOSHIBA bearing a valid order number and any other documents (including attachments) expressly stated on the Order as being part of the Order.

"Order Price" – means the total price accepted by TOSHIBA and stated in this Order for the complete performance of the Works in accordance with the Order by the Supplier.

"Personnel" means:

- (a) in relation to the Supplier, any of its employees, subcontractors, agents and representatives involved either directly or indirectly in the performance of the Supplier's obligations under the Order;
- (b) in relation to TOSHIBA, any of its officers, employees, agents or representatives; and
- (c) in relation to a subcontractor, any of its employees, agents or representatives involved either directly or indirectly in the performance of the Supplier's obligations under the Order;

"Order" means the authorised written form of order or purchase order of TOSHIBA bearing a valid order number and any other documents (including attachments) expressly stated on the Order as being part of the Order;

"Pollution" has the meaning given in the Protection of the Environment Operations Act 1997 (NSW);

"Prohibited Substance" means any one or more of the following:

- (a) Asbestos (Serpentine Group and Amphibole Group):
 Chrysotile Asbestos (White Asbestos), Actinolite Asbestos, Amosite Asbestos (Brown and Grey Asbestos), Anthophyllite Asbestos, Crocidolite Asbestos (Blue Asbestos).
- (b) Ozone depleting substances (ODSs) / Synthetic Greenhouse Gases (SGGs):
 Chlorofluorocarbons (CFCs), Halons, Carbon Tetrachloride, Methyl Chloroform, Hydrochlorofluorocarbons (HCFCs), Hydrofluorocarbons (HFCs), Perfluorocarbons (PFCs), Bromochloromethane (BCMs), Hydrobromofluorocarbons (HBFCs), Methyl Bromide, Sulfur Hexafluoride (SF6)
- (c) Polychlorinated Biphenyls, Terphenyls and Polyphenyls:
 Polychlorinated and Biphenyls (PCBs), Polychlorinated Terphenyls (PCTs)
- (d) Radioactive Substances:
 Any radioactive material, Radium, Any radioactive isotope;

"Remedial Work" means any work to remediate land affected by Pollution, Contamination or Environmental Harm, including to:

- (a) remove, destroy or reduce;
- (b) dispose of or disperse;
- (c) contain or encapsulate;
- (d) treat;
- (e) manage (including restrict or prohibit access to or use of the affected land); or
- (f) abate or control,
- (g) any Pollution, Contamination or Environmental Harm and to remove or minimise any risk or potential risk it presents to human health or the Environment;
- (h) "Remediation Date" means the earlier of:
- (i) the Completion Date; or
- (j) 60 days after the date the Order is terminated;

"Site" means the site specified in the Order, and includes any other land or place made available by TOSHIBA to the Supplier to enable the Supplier to perform its obligations under the Order;

"Supplier" means the person, firm, corporation or body described on the Order who will perform the Works;

"Supply" includes a deemed supply under the GST law;

"Term" means the term of the Order commencing on the Commencement Date and ending on the earlier of:

- (a) the date the Order is terminated; and
- (b) the date the Order expires in accordance with the Completion Date;
- (c) "TOSHIBA" means Toshiba International Corporation Pty. Ltd;
- (d) "WHS Requirements" means:
- (e) Laws including the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulation 2011 (NSW), or their equivalents in other States and Territories of Australia to the extent that any of the obligations of the Supplier are to be performed in such a State or Territory;
- (f) codes of practice approved under a Law; and

- (g) directions or notices issued under any Law which must be complied with by Law;
- "Works" means the whole of the works described on the Order.
2. **ACCEPTANCE OF ORDER**
Supplier shall be deemed to have accepted the Order upon the Supplier returning the attached copy of the Order or acknowledging receipt of the Order or signifying its acceptance through performance of the Works. Any conditions contained in the Supplier's quotation, acceptance of order, acknowledgement of receipt or other documentation which differ from or are contrary with the Order, shall not bind TOSHIBA and the Supplier acknowledges that it shall be bound solely by the Order which, for the avoidance of doubt, includes TOSHIBA's terms and conditions herein.
3. **MATERIAL SAFETY AND DELIVERY DECLARATION**
A Material Safety Data Sheet must be supplied on delivery for hazardous substances (as defined in the Australian National Occupational Health & Safety Commission List of Designated Hazardous Substances [NOHSC: 10005 (1999) as amended from time to time]). Any Equipment delivered to TOSHIBA'S store or site must be accompanied by a packing slip, delivery docket or invoice specifying the Order number, and the Equipment provided by the Supplier, and incorporating the following statement: "The Supplier declares that the Equipment referred to in this document does not contain any Prohibited Substance".
4. **FIXED PRICE AND TIME FOR PERFORMANCE**
The Supplier shall perform and complete the Works for the Order Price and upon the dates or within the time for performance (including any milestone dates if applicable) as specified on the Order and/or in the Annexure to the Order. The Order Price shall include all federal, state, local or foreign taxes, stamp duties and other government charges upon the manufacture, sale, transportation, execution or provision of the Works. The Order Price and any separate rates or prices comprised within or forming part of the Order Price and stated in the Order shall be fixed and not subject to escalation, fluctuation or any basis of adjustment. The Order Price and any separate rates or prices for specified items of work shall include all items and things necessary to complete the Works or such specified items of work in accordance with the Order (as the case may be). No change in time or dates for performance shall be allowed unless approved in writing by TOSHIBA. TOSHIBA reserves the right to extend the time or dates for performance and completion of the Works (including any milestone dates if applicable) at its sole discretion.
5. **BASIS OF PRICE.**
If the Order Price is to be determined by the calculation of the final quantity of the Works against corresponding rates as described in the Annexure, the Supplier shall be paid the adjusted price for the Works based upon the actual quantities for the Works properly performed in accordance with the Order PROVIDED ALWAYS that (1) the Supplier shall not perform, execute or undertake any quantities in excess of that stated in the Order without a Change notice from TOSHIBA, (2) the Supplier shall be solely liable for any costs and delay in performing, executing or undertaking any quantities in excess of that stated in the Order without a Change notice from TOSHIBA and (3) the Supplier has no entitlement to be reimbursed or claim for any loss of profit, additional overhead or other operating costs as a result of the final quantities being greater than or less than the quantity of Works stated on the Order.
6. **GST**
Expressions used in this clause 6 have the same meaning as those set out in New Tax System (Goods and Services Tax) Act 1999 except as may be defined elsewhere in the Order.
(a) Unless stated otherwise, the Order Price and all payments made by TOSHIBA to the Supplier under this Order are exclusive of GST.
(b) Subject to provision by TOSHIBA of a Recipient Created Tax Invoice, Supplier shall provide to TOSHIBA (1) a Tax Invoice at the time at which any payment is made by TOSHIBA to Supplier under or in connection with the Order including the amount of GST attributable to the payment for Supply, and (2) an Adjustment Note at the time at which there is any adjustment for GST purposes for the Supplies made to TOSHIBA by Supplier under or in connection with the Order.
7. **CHANGES**
Supplier may not change or vary the Works unless prior approval is given by TOSHIBA in writing in every particular case. TOSHIBA shall have the right to add, omit, amend, alter or otherwise change (collectively "Change") the Works and which right shall not vitiate the Order. The Supplier shall carry out such Change as may be directed by TOSHIBA's nominated representative from time to time. If Supplier considers that a direction stated to be a Change or if not stated which the Supplier deems to be a Change, will affect the Order Price or the time or dates for performance of the Works, it shall notify TOSHIBA not less than five (5) days from receipt of such direction and provide details of the effect or likely effect in such detail as to allow TOSHIBA to investigate the same. If TOSHIBA does not accept the information provided by the Supplier, TOSHIBA shall proceed to evaluate and ascertain an adjustment (if any) of the Order Price in accordance with the prices contained therein (and if no prices are contained or such prices are inappropriate then on a reasonable basis) and the time or dates for performance and notify the Supplier. The provision of information or agreement as to an adjustment of the Order Price or time for performance as aforesaid shall not excuse the performance of the Supplier in commencing, executing or completing a Change in the Works as notified by TOSHIBA. The Supplier shall not be entitled to an increase in the Order Price or a prolongation of the time or dates for performance of the Works in the event that a Change is made either (1) for the convenience of the Supplier, (2) to overcome an error or defect in the Works due to the actions or omissions of the Supplier, (3) non-compliance with the terms of the Order by the Supplier, or (4) any other matter for which the Supplier is responsible.
8. **DEFECTIVE OR NON-COMPLYING WORKS [RIGHT OF INSPECTION]**
(a) TOSHIBA shall be entitled to inspect the Works and to reject the Works if they are defective or not in accordance with the Order. Such inspection and rejection may take place at any time before, during or after completion of the Works (including after purported acceptance or payment by TOSHIBA) and the Supplier shall, if requested, provide TOSHIBA with reasonable access to the Works prior to delivery for the purpose of such inspection.
(b) Nothing in paragraph (a) above shall oblige TOSHIBA to inspect the Works and the Supplier's liabilities and obligations shall not be prejudiced or affected whether or not any such defect or other non-compliance may have been apparent upon inspection and whether or not TOSHIBA has purported to accept or pay for such Works.
(c) Supplier shall supply detailed reports and programs for the Works in the manner and at the times required by TOSHIBA
9. **DRAWINGS, SPECIFICATIONS / LICENCE**
(a) All drawings, prints, specifications, samples, patterns, materials and all other data ("Data") submitted by TOSHIBA for the purpose of the Order (whether contained in the Order or otherwise submitted from time to time by TOSHIBA to effect the Works) remain the property of TOSHIBA and shall not be disposed of nor disclosed to others or used for the purpose of others by the Supplier without the written consent of TOSHIBA. The Supplier shall ensure that any materials supplied by TOSHIBA or held by the Supplier are correct to the requirements of the Order, Data and any other drawings specified on the Order prior to proceeding with the Order. Unless instructed otherwise, upon completion or termination of work under the Order, the Supplier will return all Data submitted by TOSHIBA together with all copies at the Suppliers' expense and shall thereafter make no further use either directly or indirectly of any information derived therefrom without TOSHIBA's prior written consent.
(b) The Supplier grants to TOSHIBA a perpetual irrevocable licence to use, maintain, modify and exercise all patent and intellectual property rights in the Works and any data, drawings, information and things provided by Supplier. Such licence shall survive termination of this Order and shall also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, the Works.
(c) Any invention, improvement or work created or made by the Supplier incorporating or attributable in whole or in part to the Data shall be the property of TOSHIBA. The Supplier shall execute such reasonable documentation as TOSHIBA may require to perfect its ownership of such material.
10. **CANCELLATION**
(a) TOSHIBA for convenience may cancel the Works or any part thereof at any time. Pursuant to any act of cancellation for convenience, TOSHIBA shall only be liable to pay to the Supplier any outstanding amounts properly due

for Works completed in accordance with the Order and which have been delivered to TOSHIBA and provided that such outstanding amounts do not exceed the aggregate Order Price and any authorised Changes. TOSHIBA shall not be liable to reimburse the Supplier for any further costs, expenses or charges incurred by the Supplier including, without limitation, any Works not delivered to TOSHIBA unless TOSHIBA has expressly stated the same.

- (b) Without prejudice to its rights under sub-clause (a), TOSHIBA may cancel the Works or any part thereof on the grounds of the Supplier (1) performing defective or non-conforming Works, (2) becoming insolvent or committing an act of bankruptcy or having execution levied against it or being a company going into liquidation or have a Receiver and Manager appointed or call a meeting of its creditors, or (3) committing any breach of the terms of the Order. TOSHIBA's rights under this sub-clause are in addition to and not exclusive of any other remedies, which TOSHIBA may have in law or equity. TOSHIBA may withhold any moneys due or becoming due to Supplier at the date of cancellation pursuant to this sub-clause and Supplier shall have no right of reimbursement of any moneys due or becoming due under the Contract at the date of cancellation. Supplier shall be liable to TOSHIBA for the costs of completing the Works specified in the Order whether by TOSHIBA itself or another party engaged to do so.
- (c) On the event of termination under (a) or (b), the Supplier shall immediately stop work and shall immediately cause all its subcontractors and suppliers to stop work.

11. TIME FOR PERFORMANCE

The Works shall be supplied and completed by the dates or time period(s) as specified on the Order and/or in the Annexure to the Order or any extended time pursuant to clause 4. Timely performance is essential under the Order and the Supplier acknowledges that delay in completion of its Works may cause TOSHIBA to incur liquidated or other damages under separate contracts with others. TOSHIBA may expedite the Works to maintain delivery dates, schedules or to minimise delay including a direction that equipment be transported by air freight or by other expeditious means than set out in the Order. The Supplier shall be responsible for delays to the Works generally and the costs of expediting as a result of the Supplier causing or being responsible for the delays to the Works, including any partial or joint liability as to the cause of delays to the Works. The Supplier shall give TOSHIBA prompt written notice of any delay as soon as it is aware of such delay. TOSHIBA may at any time and from time to time direct the temporary suspension of the Works or any part thereof without liability for any damages, claims, loss or expense incurred by the Supplier as a result thereof.

Notwithstanding the generality of the previous paragraph and without prejudice to any other rights of TOSHIBA in this Order or at law, the Supplier shall be liable to pay to TOSHIBA liquidated damages at the rate and amount stated in the Annexure to the Order for each day (or part of day) that it is delayed due to its own default (or partial default) in achieving completion of the Works in accordance with the date or time periods set forth in the Annexure to the Order. Liquidated damages shall be calculated from the day after which the Supplier should have completed the Works to the day when completion is actually achieved. Liquidated damages shall not be the sole remedy of the Supplier to TOSHIBA for its failure to meet the specified date or time period(s) in this Order.

12. PASSING OF TITLE AND RISK

Title to the Works (including temporary equipment to perform the Works if any) free of encumbrances and all other adverse interests shall pass to TOSHIBA on performance of the Works at the destination specified on the Order. Without prejudice to Clause 17 or any other warranties or undertakings under these terms or conditions or otherwise at law, risk in the Works shall pass to TOSHIBA on the completion of the Works in accordance with the Order or on cancellation under Clause 10, whichever is the earlier subject to any provisions thereof relating to rejection of the Works by TOSHIBA. For the avoidance of doubt, risk at cancellation shall only pass for such Works completed in accordance with the Order

13. COST OF DELIVERY AND PACKING

The Order Price for the Works includes for boxing, packing, crating or cartage unless expressly stated to the contrary. The Supplier must, at its own cost and risk, comply with all conditions, laws and regulations relating to the shipment and transportation of any goods comprised within the Works and shall further provide

at its own cost and risk all documentation to TOSHIBA necessary for the effective shipment and delivery of such goods. Goods supplied in shipping containers shall be packaged in such a way that the items may be unloaded from the containers at TOSHIBA's store or site and stored on a level concrete floor or slab without the need for further protective packaging. The Supplier shall indemnify TOSHIBA against any losses it may suffer as a result of shipping damage to the Works supplied under the terms and conditions of the Order due to insufficient or defective packing and crating.

14. INSURANCE

Unless stated otherwise on the Order, Supplier shall effect the insurance policies in the Annexure for the term of the Order and in the amounts stated in the Annexure. The insurance policies shall be made in the name of Supplier and, with the exception of Workers Compensation Insurance, shall note TOSHIBA, and all parties concerned with or affected by the Works, as interested parties on the policy.

The Supplier acknowledges that the TOSHIBA has taken out a Contract Works Insurance Policy as a requirement of the contract between TOSHIBA and its principal, and that the cover provided by that policy extends to cover the Subcontractor. Where a claim is made under that policy by the Supplier, to the extent that the circumstances giving rise to the claim are caused or contributed to by acts or omissions of the Supplier, the Supplier will be liable to pay, or to reimburse to TOSHIBA, any deductibles or excesses relating to the claim and any increase in premium imposed on TOSHIBA as a result of the claim having been made.

Certificate of currency for insurance policies shall be made available to TOSHIBA and any failure to effect or maintain such insurance policies required by the Order shall entitle TOSHIBA to take out such policies on the behalf of the Supplier and recover the costs of such insurance policies as a debt due from the Supplier. Failure to provide adequate or sufficient insurance (including the amounts insured) shall not relieve the Supplier of its obligations under the Order and the Supplier shall be liable for any difference between any claimed amount and insured sums due and indemnifies TOSHIBA and its customers fully in that respect. Where expressly requested by TOSHIBA on the Order, the Supplier shall ensure that TOSHIBA and such other parties as TOSHIBA shall reasonably nominate are named as insured parties on the insurance policies and the insurance policies shall include a waiver of subrogation against TOSHIBA and such nominated parties. If applicable, insurances effected by others that include coverage of the Works may have a deductible amount which the Supplier shall be responsible for if an insured risk occurs which is attributable to the Supplier.

15. TERMS OF PAYMENT

Unless otherwise agreed, payment shall be made by the end of the month following the month in which the Supplier's invoice is received, subject to the form of invoice and the Works being in accordance with the Order and accepted by TOSHIBA. Without prejudice to any other provisions of the Order, TOSHIBA may set off against any payments or monies due or becoming due to the Supplier for any amounts owing to it from the Supplier for any reason whatsoever and whether arising under this Order or any other orders or agreements between TOSHIBA and the Supplier. TOSHIBA shall have the right to make any payments due to the Supplier directly to the subcontractors of the Supplier whenever TOSHIBA has reason to believe that Supplier has not paid or is likely not to pay such subcontractors' amounts due to them on a timely basis and any such payments by TOSHIBA to Supplier's subcontractors shall be deemed payment to the Supplier in satisfaction of payment for the Works. During the term of the Order and for a period of two (2) years thereafter, TOSHIBA may query any invoice presented by the Supplier and require correction of any error or omission therein notwithstanding that the invoice may relate to a payment which has been made or may specify a period of time in which queries are to be raised.

16. PERFORMANCE BOND OR RETENTION MONEYS

TOSHIBA may request a performance bond in the manner and form approved by TOSHIBA for the proper performance of the Works by Supplier. Alternatively, TOSHIBA may deduct an amount as retention at the percentage stated in the Annexure from payments due to the Supplier. TOSHIBA may claim against the performance bond or deduct from the retention moneys (as applicable) in

satisfaction of any amounts due to it from Supplier. The performance bond or remaining retention moneys (if any) shall be reduced or returned (as applicable) to the Supplier in accordance with the times stated in the Annexure.

17. INDEMNITY

- (a) The Supplier shall indemnify TOSHIBA against any liability for any kind of loss, damage, death or injury whatsoever (including by negligence) to persons or property however caused by the Supplier or its employees or agents arising out of or in connection with the Works and the amount of all claims, damages, costs and expenses which may be paid, suffered or incurred by TOSHIBA in respect of any such loss, damage, death or injury shall be met and fully discharged at Supplier's risk and expense.
- (b) The Supplier shall indemnify and keep indemnified TOSHIBA or persons or corporations acquiring from TOSHIBA goods or services at the Supplier's expense against all suits, actions, claims, demands, expenses, losses, damages, costs, proceedings or any other liability brought against TOSHIBA or such persons or corporations as aforesaid, as a result of any claim or infringement of, or alleged infringement of, any patent, intellectual property or similar rights by the sale or use of the Works and the Supplier shall defend at its own cost, any claim that the Works infringe the patent, intellectual property or similar rights of any person or corporation or any proceedings arising from such a claim.
- (c) The Supplier will be liable and shall keep TOSHIBA indemnified against any kind of loss or damage caused directly or indirectly from any failure of the Works (including by negligence) or by delays in repair or replacement pursuant to warranty. Without limiting the survival of any other terms of this Order that expressly survive certain actions, the indemnities set forth in this Order shall survive the completion of the Works, payment for the Works, and any termination or cancellation of this Order.

18. WARRANTIES.

Without limiting any conditions, warranties or liabilities of the Supplier which may be implied by law, the Supplier warrants to TOSHIBA and to TOSHIBA's customers that

- (a) the Works shall conform to the Order and information provided by TOSHIBA and shall be merchantable, of good material and workmanship, provided with the highest standard of care and skill required for such works, free from defects and do not contain and are not manufactured from materials containing Asbestos, Hydrofluorocarbons (HFCs), Polychlorinated Biphenyls (PCBs), Polychlorinated Terphenyls (PCTs) or ozone depleting substances.
- (b) The Works be fit for their intended purpose, and shall comply in all respects to Supplier's agreed quality plan.

19. BREACH OF WARRANTIES / REJECTION OF WORKS.

- (a) If the Works at any time are found to be defective, non-conforming or in breach of Supplier's warranties (whether express or implied) TOSHIBA has the right (but not the obligation) to (1) refuse delivery or acceptance of the defective Works and make reasonable purchase of alternate Works and the Supplier shall be liable for any additional cost thereby incurred by TOSHIBA; or (2) require the Supplier to repair the defective Works to the satisfaction of TOSHIBA and at the expense of the Supplier; or (3) require the Supplier to immediately replace the defective Works at Supplier's expense; or (4) correct the defect by the most expeditious means at the Supplier's expense; or (5) cancel the Order and recover any loss, damages or monies paid from the Supplier. Any costs incurred by TOSHIBA in exercising any of its rights under this clause shall be considered as a debt due from the Supplier and shall be immediately paid by the Supplier or subject to set-off against any monies due to the Supplier.
- (b) The obligations of the Supplier under this Clause 19 continue in full up to the expiry of the warranty period for the period stated in the Annexure from putting the Works into operational service and for latent defects (to the maximum extent permissible at law) or any matter requiring survivability under this contract, at any time.
- (c) Nothing in this Clause 19 shall restrict or limit TOSHIBA's rights and remedies in this Order or under any statute or law, in any way whatsoever.

20. RELEVANT LAWS

It is the Supplier's responsibility to comply with all relevant laws.

21. PLANT RISK ASSESSMENT.

Supplier acknowledges that the Works may be intended for use in a workplace

which is subject to health and safety legislation and that proper hazard identification, plant risk assessment may be required to be carried out by either TOSHIBA or the Supplier. Where the Works are intended for such a workplace, it is a condition of this Order that the Supplier has made all assessments to the maximum extent required by law, all health and safety matters relating to the Works and has taken all practicable measures to eliminate such risk. The Supplier shall provide TOSHIBA with such documentation as is necessary to demonstrate its actions. If the Supplier fails to perform such actions as aforesaid (whether in whole or in part) or such actions do not meet legislative requirements, TOSHIBA may, without prejudice to its other rights and remedies under this Order or at law, perform such actions on behalf of the Supplier and recover the costs of so doing at the Supplier's expense. Such actions on the part of TOSHIBA shall not relieve the liabilities and obligations of the Supplier under this Order.

22. NO WAIVER

The rights and remedies of TOSHIBA under these conditions or at law or in equity shall not be prejudiced or affected by reason or a claim being made after the Works have been put to use. Neither the failure nor any delay on the part of TOSHIBA to exercise any right, remedy, power or privilege under this Order shall operate as a waiver thereof. No waiver by TOSHIBA shall be effective unless it is in writing and is signed by TOSHIBA asserting to have granted such waiver.

23. GOVERNING LAW

Any contract arising from the Order shall be deemed to have been executed and entered into in the State of the origin of the Order and the same shall be construed enforced and performed in accordance with the laws thereof and any proceedings shall be heard at the capital city of that State.

24. PRECEDENCE OF DOCUMENTS

The terms and conditions on the Purchase Order form shall, in the event of any ambiguity or discrepancy, take precedence over these terms and conditions.

25. NON-ASSIGNMENT

Any assignment or subcontracting of this Order, or any of the Supplier's rights and obligations under this document without TOSHIBA's written consent shall be void. Any consent granted by TOSHIBA shall not relieve the Supplier of its obligations, duties and liabilities under this Order.

26. DISPUTE RESOLUTION.

If a dispute arises between TOSHIBA and Supplier and the parties are unable to resolve the dispute, then before either party takes legal proceedings in respect of the dispute (other than proceedings for urgent injunctive relief) representatives of both parties must report the nature of the dispute to their respective senior management and allow a further twenty-one (21) days for further negotiation before legal proceedings are commenced.

27. COMPLIANCE WITH WHS REQUIREMENTS AND ENVIRONMENTAL REQUIREMENTS

- (a) The Supplier must perform and complete the Works in conformity with all relevant Laws.
- (b) The Supplier must comply, and ensure that its Personnel comply with all applicable Environmental Requirements and WHS Requirements.

28. PROHIBITED SUBSTANCES, POLLUTION, CONTAMINATION AND ENVIRONMENTAL HARM

- (a) Prohibited Substances
 - 1) The Supplier and its Personnel must not cause or allow any Prohibited Substance to be imported into Australia for the purposes of or in any way in connection with the Order, or to be brought onto, produced on, transported to or from, treated, stored or disposed of on the Site.
 - 2) No goods, materials or products supplied to TOSHIBA by the Supplier may contain, or be manufactured from materials containing, any amount of any Prohibited Substance.
- (b) Pollution, Contamination and Environmental Harm
 - 1) The Supplier and its Personnel must not cause or allow Pollution, Contamination or Environmental Harm to occur in, on or under the Site or surrounding land.
 - 2) The Supplier must notify TOSHIBA immediately upon the Supplier or its Personnel becoming aware of:
 - (i) the existence of Pollution, Contamination or Environmental

- Harm affecting the Site or surrounding land;
 - (ii) the potential for Pollution, Contamination or Environmental Harm to affect the Site or surrounding land;
 - (iii) any complaint made against the Supplier or its Personnel to any Government Agency;
 - (iv) any proceedings commenced against the Supplier or its Personnel, relating to an alleged failure by the Supplier or its Personnel to comply with a Law or Government Authorisation in relation to the performance by the Supplier of its obligations under the Order; or
 - (v) any Governmental Notice being served on the Supplier or its Personnel.
- (c) Remediation
 - 1) If the Supplier or its Personnel cause, allow or contribute to any release or threatened release of Prohibited Substances, the Supplier must, at its own cost and as soon as practicable, perform Remedial Work to TOSHIBA's satisfaction to prevent, mitigate and rectify any damage or potential damage resulting from the release or threatened release to the extent that the release or threatened release was caused or contributed to by the Supplier or its Personnel.
 - 2) If the Supplier or its Personnel cause, allow or contribute to the Site or the surrounding land becoming affected or potentially affected by Pollution, Contamination or Environmental Harm the Supplier must, at its own cost and as soon as practicable but not later than the Remediation Date, perform Remedial Work to TOSHIBA's satisfaction to prevent, mitigate and rectify any resulting damage or potential damage to the Site or the surrounding land to the extent that the Pollution, Contamination or Environmental Harm was caused or contributed to by the Supplier or its Personnel.
 - 3) TOSHIBA reserves the right to determine the method and means of Remedial Work performed by the Supplier under this clause 28(c).
 - 4) If the Supplier fails to perform the Remedial Work required by this clause 27(d), TOSHIBA may do those things required by this clause 28(c) (including engaging a third party to do those things) at the Supplier's expense, and the cost incurred by TOSHIBA in doing so will be a debt due and payable on demand by the Supplier to TOSHIBA.
- 5) This clause 28(c) survives the expiry on termination of the Order.
- (d) Environmental Release

The Supplier releases TOSHIBA from all Liabilities arising from or connected with (directly or indirectly) the presence of any Pollution, Contamination or Environmental Harm in, on or under the Site and surrounding land at any time during or after the Term of the Order, to the extent that the Pollution, Contamination or Environmental Harm was caused or contributed to by the Supplier or its Personnel.
- (e) Environmental Indemnity

The Supplier indemnifies TOSHIBA in respect of all Liabilities and any judgement, order, obligation or duty for which TOSHIBA is or may become liable, including Claims by third parties, in respect of or arising from (directly or indirectly):

 - 1) default by the Supplier or its Personnel under this clause 28; and to the extent caused or contributed to by the Supplier or its Personnel, any Pollution, Contamination or Environmental Harm in, on or under the Site or surrounding land during or after the Term of the Order.

THE SUPPLIER ACCEPTS THESE TERMS AND CONDITIONS

.....
Signature of Supplier's authorised representative **Date**

.....
Name and position of authorised representative (please print)

ANNEXURE TO TERMS AND CONDITIONS – MINOR WORKS (INCLUDING SERVICES)

1	The Works (Clause 1)	In addition to the description in the Purchase Order the Works shall consist of and include: (If no further description then as per the Order description)
2	Time for Performance (Clause 4)	(a) Date for completion of Works: 24 working days after the date of mobilisation to site.
3	Order Price (Clause 5)	The Order Price shall be calculated in accordance with the rates and prices shown on the following attachments to this Order which shall be deemed to be incorporated into this Order: (a)..... (b)..... (If left blank then no rates applicable to this Order)
4	Delay liquidated damages (Clause 11)	(a) Rate –1% of the Order Price per day (If left blank then liquidated damages do not apply) (b) Limit – 10% of the Order Price (If left blank then there is no limit)
5	Insurance (Clause 14)	Supplier shall provide the following insurance at the insured amounts as follows: (a) Workers Compensation Insurance - to be provided in accordance with federal and state law (b) Public Liability Insurance – Amount – A\$10,000,000 (c) Professional Indemnity Insurance – Amount -\$..... (if left blank then not required)
6	Security (Clause 16)	(a) Form: Retention Moneys* / Performance Bond* / Not Required* (if nothing deleted – Not Required shall apply) (b) Amount or Percentage of Order Price: \$.....OR% of Order Price (if nothing stated – five (5) per cent of the Order Price) (c) If retention moneys, moneys withheld from interim payment:% of Order Price until limit in (b) is reached. (if nothing stated retention moneys amount - ten (10) per cent) (d) Release of retention moneys or reduction in amount of Bond: - One moiety on completion of the Works in accordance with Order; - Remainder on expiry of warranty period. (e) Time for provision of Performance Bond: - Withindays of issue of Order by TOSHIBA (if nothing stated – 14 days of issue of Order by TOSHIBA)
7	Warranty (Clause 19)	Period of warranty for the Works - months (if nothing stated – twelve (12) months warranty period shall apply)
8	Other documents included as a part of the Order	(a)..... (b)..... (c)..... (If no further description then as per consolidated contract)
		*delete as appropriate