



## **MASTER SERVICES AGREEMENT**

**Client Agreement –  
Design, Certification and Installation Services**

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**THIS MASTER SERVICES AGREEMENT IS MADE BETWEEN**

**Coates Hire Operations Pty Limited (ACN 074 126 971) of Level 6, 241 O’Riordan Street, Mascot in the state of New South Wales (“Coates Hire”)**

and

**Client Name & ACN/ABN:**

**Client Address:**

**(“the Client”)**

**(together, referred to as the Parties)**

**RECITALS**

- A. Coates Hire offers specialist services with respect to the design and installation of equipment, including Special Purpose Equipment.
- B. The Client has requested Coates Hire to provide the Services to the Client.
- C. The Client may issue a Service Order for the purchase of the Services.
- D. Upon receiving a Service Order, and upon execution of the Service Order by both Parties, Coates Hire agrees to provide the Services in accordance with the terms of this Master Services Agreement.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

**GENERAL TERMS AND CONDITIONS**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definition**

In this Agreement, including any Service Order and any Project Terms and Conditions:

**Agreement** means this Master Services Agreement.

**Amendment** means any variation or amendment to the general terms and conditions of this Agreement.

**Background Intellectual Property** means any Intellectual Property owned by or licenced to a party (other than a licence to that party by the other party granted in accordance with this Agreement) that:

- (a) existed prior to the commencement of this Agreement;
- (b) was developed independently of the Services; or
- (c) subsists in the Party’s technology, software, methodologies or know-how, including without limitation algorithms, templates, architecture, class libraries, objects and reports,

and any derivatives, improvements, enhancements, developments, modifications or extensions to any of the foregoing.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in the state in which the Services are provided.

**Client’s Representative** means the client’s representative as specified in the Service Order.

**Coates Hire's Representative** means Coates Hire's representative as specified in the Service Order.

**Commencement Date** means the commencement date as set out in the Service Order.

**Completion Date** means the completion date as set out in the Service Order.

**Confidential Information** means all information passing from the one party ("the Owner") to the other party ("Recipient"), its divisions and any associated companies relating to the business of the Owner, including but not limited to:

- (a) financial information including debtor and creditor information;
- (b) customer lists;
- (c) costings;
- (d) customer information, including that information proprietary to customers;
- (e) trade secrets;
- (f) Intellectual Property and industrial property;
- (g) source and object codes;
- (h) business and marketing plans;
- (i) arrangements and Agreements with third parties; and
- (j) employee personal and pay related information

EXCEPT to the extent that

- i. such information is in or comes into the public domain other than as a result of a breach of this Agreement;
- ii. was known to the Recipient prior to entering into this Agreement; or
- iii. where the Recipient is required by law, including the listing rules of the Australian Stock Exchange, to disclose the information.

**Contamination** means the presence in, on or under the Site, air or water of a substance (whether a solid, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land, air or water in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment, or could otherwise give rise to a risk of non-compliance with any Environmental Law.

**Date for Delivery** means the date by which Coates Hire must deliver the Special Purpose Equipment to the Delivery Location as specified in the Service Order.

**Delivery Fee** means the fee payable for delivery of the Special Purpose Equipment to the Delivery Location as specified in the Service Order.

**Delivery Location** means the site address nominated by the Client for the delivery of the Special Purpose Equipment as specified in the Service Order.

**Design Documentation** means design documentation (including drawings, shop drawings, specifications, models, samples and calculations) in computer readable and written forms necessary for Coates Hire to complete and deliver any part of the Services.

**Directions** include any decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.

**Dispute Letter** means the letter sent by the disputing Party to the other Party initiating the disputing Party's question, dispute or difficulty as more fully described in clause 19.1(a) of this Agreement.

**Environment** means components of the earth, including:

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

and includes interacting natural ecosystems that include components referred to in paragraphs (a) – (d) above.

**Environmental Law** means a law relating to the Environment, including but not limited to a law, regulation, code or standard relating to the use of the Site, planning, environmental assessment, the environmental heritage, water, water catchments, pollution of air, soil, ground water or water, noise, soil, chemicals, pesticides, hazardous substances, radioactive substances, the ozone layer, waste, building regulations, the occupation of buildings, public health, environmental hazard, or any other aspect of protection of the Environment.

**Event of Force Majeure** means an event or circumstance which is beyond the reasonable control of the party affected and includes, without limitation, acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, storms, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.

**Fees** means the fees for the Services, and payment conditions in respect of a Project (and includes any Delivery Fee).

**Information** means any information, including any designs, plans, instructions in any format (including any Design Documentation) provided by the Client to Coates Hire in relation to the Services.

**Insolvency Event** means in respect of a Party:

- (a) where the party is a person, the person is or becomes unable to pay their debts as and when they fall due or is otherwise presumed to be insolvent under the insolvency laws applying to that person; or the person suspends or threatens to suspend payment of its debts generally;
- (b) the board of the party passes a resolution under section 436A of the *Corporations Act 2001* (Cth);
- (c) the party is placed into administration pursuant to Part 5.3A of the *Corporations Act 2001* (Cth);
- (d) a deed of company arrangement is entered in respect of the party;
- (e) an application is made to a court for the winding up of the party;
- (f) the party resolves that it be wound up voluntarily;
- (g) a winding up order is made in respect of the party;
- (h) a receiver or receiver and manager is appointed to any substantial assets of the party;
- (i) a court orders that there be a meeting of creditors or members of the party for any purpose related to Part 5.1 of the *Corporations Act 2001* (Cth);
- (j) a mortgagee takes possession of any substantial assets of the party; or
- (k) the party informs the other party or any creditor of the party, in writing, that it is insolvent.

**Intellectual Property** means all industrial and intellectual property rights, whether protectable by statute, at common law or in equity, including, without limitation, all copyright, inventions, business processes, know-how, patents, designs (whether or not registrable), registered and unregistered trademarks, circuit layout designs and rights in relation to circuit layout designs, but excluding non-assignable moral rights and similar non-assignable personal rights of authors and producers. This definition includes, but is not limited to, any technical or operational information communicated under this Agreement.

**Laws** means all relevant laws, legislation and regulations applying to the provision of the Services.

**Project** means the project described in Service Order for which the Services are to be provided.

**Project Terms and Conditions** means the terms and conditions relating to a particular Project as detailed in the Service Order and includes the terms contained in any project management plan.

**Site** means the site as stated in the Service Order.

**Service Order** means an order in writing for the provision of Services, substantially in the form of Schedule 1.

**Services** means those services in respect of a particular Project detailed in the Service Order.

**Special Purpose Equipment** means equipment used for the purposes of dewatering, compaction, shoring or propping and for any other purpose specified in the Service Order.

**Terms of Hire and Special Conditions** means Coates Hire's Terms of Hire and Special Conditions, a copy of which can be accessed at <https://www.coateshire.com.au>.

## 1.2 Interpretation

In this Agreement, unless the context indicates a contrary intention:

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to includes or including should be construed without limitation.
- (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (f) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (g) A reference to a Party to this Agreement or another agreement or document includes the Party's successors, permitted substitutes and assigns (and, where applicable, the Party's legal personal representatives).
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to conduct includes an omission, statement and undertaking, whether or not in writing.
- (j) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement whether or not in writing and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (k) A reference to writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (l) A reference to any professional body includes the successors of that body.
- (m) A reference to a year, month, week or to a day is to a calendar year, month, week or day respectively.
- (n) A reference to dollars and \$ is to the Australian currency and all invoices and payments under this Agreement shall be in Australian dollars.
- (o) A reference to Party is a reference to a Party to this Agreement.
- (p) A reference to the Client includes the Client's Personnel, unless specified otherwise.

## 2. APPOINTMENT OF COATES HIRE

The Client hereby appoints Coates Hire to provide the Services and Coates Hire hereby agrees to provide the Services in relation to Special Purpose Equipment upon the execution of a Service Order by both Parties in accordance with the terms and conditions of this Agreement and the Project Terms and Conditions.

## 3. TERM OF AGREEMENT

This Agreement shall come into effect from the date of this Agreement and shall remain in force until the Services in respect of all Projects are completed.

## 4. LEGAL RELATIONSHIP BETWEEN THE PARTIES

The relationship between Coates Hire and the Client is that of a principal and an independent contractor. Nothing in this Agreement or any conduct will constitute or deem either party to be an employee of the other nor will anything herein be construed to be a legal business partnership or venture between Coates Hire and the Client.

## 5. DUTIES AND RESPONSIBILITIES OF COATES HIRE

### 5.1 Delivery of Services

- (a) The Services are to be performed by Coates Hire;
- (b) Coates Hire acknowledges that the Coates Hire Representative has authority to transmit information to and receive instructions, directions and documentation from the Client with respect to the Services and any provision of this Agreement;
- (c) Coates Hire warrants that it will provide all the Services in accordance with the terms of this Agreement and the Project Terms and Conditions and:
  - (i) in accordance with all reasonable instructions issued by the Client's Representative;
  - (ii) in a thorough, professional and competent manner using that standard of care, skill and diligence that would reasonably be expected from an experienced provider of similar services and expertise in Australia; and
  - (iii) that the design, performance and delivery of such Services do not infringe the Intellectual Property rights of any third party.

## 6. DUTIES AND RESPONSIBILITIES OF THE CLIENT

### 6.1 Payment for the Services

- (a) The Client shall pay the Fees to Coates Hire for the provision of the Services in accordance with this Agreement and as set out in the Project Terms and Conditions.
- (b) The Client will provide accurate and timely decisions, information and instructions.

### 6.2 Changes, Alterations and Additional Services

- (a) The Fees relate exclusively to the Services as set out in the Service Order.
- (b) Where the Client, after the execution of this Agreement or the commencement of the Services, extends, increases, varies, deletes or otherwise alters the Services ("**Additional Services**") to be provided, and where such action necessitates additional staff, services or costs by Coates Hire, the Client shall pay such additional expenses and disbursements incurred by Coates Hire (such fees to be determined by Coates Hire in its absolute discretion). No such change shall require the execution of a formal amendment to this Agreement, unless otherwise agreed between the parties or as may be set out in the Project Terms and Conditions.
- (c) The obligation on the Client to pay Coates Hire for the Additional Services includes any Directions given by the Client's employees, agents, subcontractors or any other personnel within its Control to Coates Hire's employees, agents and subcontractors and where Coates Hire incurs additional expenses as a result of acting on such Directions.

### 6.3 Approval by Other Authorities

Unless otherwise provided for in this Agreement or explicitly required by legislation, where the work of Coates Hire in connection with the Services is subject to the approval or review of an authority, department of government, or agency (other than the Client) ("**Approval**"), preparation of or applications for Approval or review, and all costs associated with such Approval shall be the responsibility of the Client and the obtaining of any Approval or applications for Approval is not the responsibility of Coates Hire.

#### **6.4 Services**

- (a) The Client shall be responsible to locate and expose all underground services and advise Coates Hire of their location.
- (b) Should any underground services be required to be lowered, raised or relocated in order for Coates Hire to comply with its obligations under this Agreement, the Client shall be responsible for the cost of same.
- (c) Should Coates Hire cause any damage to any underground services not located by the Client, the cost of restoring such underground services shall be borne by the Client.

#### **6.5 General Responsibilities**

The Client shall:

- (a) engage others directly, when so required by Coates Hire, to perform services necessary to enable Coates Hire to fully carry out its duties under this Agreement (eg. a legal survey of the Site, geotechnical reports and appropriate testing);
- (b) promptly review all documentation submitted by Coates Hire, and inform Coates Hire of decisions, in a timely manner for the orderly progress of Services to be performed by Coates Hire;
- (c) obtain all required consents, approvals and licenses and permits from authorities;
- (d) arrange and make provision for Coates Hire's entry and access to the Site (including, but not limited to, obtaining any necessary licence or approval for such purposes) in connection with the performance of the Services by Coates Hire;
- (e) designate in writing a Client Representative to have authority to transmit instructions to and receive information from Coates Hire;
- (f) immediately notify Coates Hire whenever the Client, or the Client's Representative, becomes aware of a defect or deficiency in the work performed by Coates Hire in connection with the Services;
- (g) comply with all relevant industrial relations requirements, relevant Australian Standards, Work Health & Safety (WHS) & Environmental Codes of Practice, original equipment manufacturer's manuals and Coates Hire's operating instructions (where applicable);
- (h) notify Coates Hire immediately should it become aware of any constraint which may hinder Coates Hire's execution of the Services on Site;
- (i) notify Coates Hire immediately of any dangerous or potentially dangerous conditions on the Site and any fault, breakage or damage to any plant, equipment or material owned by Coates Hire;
- (j) notify Coates Hire of any incident including any significant injury to any persons and/or any significant environmental damage on or near the Site;
- (k) notify the applicable WHS and environmental regulator of all notifiable incidents within prescribed time frames and notify Coates Hire of any order received from any such regulator (including prohibition and improvement notices);
- (l) ensure that the Client's plant, equipment and other items (where used in connection with the Services) are properly maintained and/or repaired such that they are available to operate or use in an efficient, effective and safe manner at all times throughout the duration of the Project. Coates Hire shall accept no responsibility for any loss or damage to the Client's plant, equipment or other items referred to herein.

## **6.6 Equipment Hire**

Where the Client has made a request to Coates Hire for the installation and hire of the Special Purpose Equipment, the terms and conditions as contained in Coates Hire's Terms and Special Conditions shall apply.

## **6.7 Directions**

- (a) The Client shall ensure that its employees, agents, subcontractors or any other personnel within its control (other than the Client's Representative) refrain from giving Directions to Coates Hire's employees, agents or subcontractors with respect to the manner in which the Services are to be carried out in connection with this Agreement.
- (b) The Client shall further ensure that all Directions given by the Client shall be given by the Client's Representative to the Coates Hire's Representative.
- (c) In the event the Client is in breach of its obligations pursuant to clause 6.7(a) herein, and Coates Hire's employees, agents or subcontractors act on any such Directions, the Client shall indemnify and save harmless Coates Hire from and against all claims, actions, losses, expenses, costs or damages that the Client or Coates Hire may suffer, sustain or incur as a result of Coates Hire acting on such Directions. This indemnity shall survive termination of this Agreement.

## **7 ENVIRONMENTAL OBLIGATIONS**

- 7.1 The Client warrants that the Site is free from Contamination and, if required by Coates Hire, will provide Coates Hire with the necessary documentation to support such warranty.
- 7.2 The Client agrees to hold harmless, indemnify and defend Coates Hire and Coates Hire's subcontractors from and against any and all claims, losses, damages, liability, and costs of defence arising out of, or in any way connected with, a breach of the warranty referred to in clause 7.1 and with respect to the presence, discharge, release or escape of contaminants of any kind arising in connection with the Services whether arising from the Site or any adjoining property.

## **8 BACKGROUND INTELLECTUAL PROPERTY**

- 8.1 Each party acknowledges that:
  - (a) the other Party may require it to apply or use its Background Intellectual Property from time to time for the purposes of providing or receiving the Services;
  - (b) unless otherwise provided in this Agreement or in the Project Terms and Conditions, all Background Intellectual Property remains the sole property of the Party who supplied it, and the other Party agrees that it will not use or apply the Background Intellectual Property except in accordance with this Agreement; and
  - (c) it will be held liable for any damage or loss arising out of the unauthorised disclosure or misuse of the other Party's Background Intellectual Property.

## **9 COPYRIGHT AND PATENTS**

### **9.1 Ownership of Documents**

- (a) The copyright in all drawings, reports, specifications, calculations and other documents ("the Documents") prepared or provided by Coates Hire in connection with this Agreement belongs to Coates Hire however the Client shall have a non-exclusive licence, royalty-free licence to use the Documents in connection with the Project. The Client shall not use the Documents other than in connection with the Project without Coates Hire's prior written approval and upon such terms as required by Coates Hire.



- (b) With the consent of the Client, Coates Hire may publish alone, or in conjunction with any other person, any articles, photographs, or other illustrations relating to the Project. The Client's consent for the publication of such materials shall not be unreasonably withheld.

## 9.2 Patents

- (a) All concepts, products, or processes which are:
  - (i) produced by, or resulting from, the Services rendered by Coates Hire in connection with the Project;
  - (ii) otherwise developed by Coates Hire in the performance of the Services; or
  - (iii) patentable, capable of trademark or otherwise,shall be and remain the property of Coates Hire.
- (b) The Client shall have a non-exclusive, royalty free licence to use all concepts, products or processes which are:
  - (i) patentable, capable of trademark or otherwise; and
  - (ii) produced by, or resulting from, the Services rendered by Coates Hire in connection with the Project for the life of the Project and for no other purpose or project.

## 10 DELIVERY AND INSTALLATION OF SPECIAL PURPOSE EQUIPMENT

- 10.1 In the event the Client requires Coates Hire to deliver and install the Special Purpose Equipment, the following provisions shall apply:
  - (a) Unless otherwise agreed with the Customer, Coates Hire will deliver the Special Purpose Equipment to the Delivery Location by the Date for Delivery.
  - (b) The Client shall pay Coates Hire the Delivery Fee for the delivery of the Special Purpose Equipment.
  - (c) Coates Hire is not responsible for delays in delivery or installation or failure to deliver to the extent that the delay was caused by an Event of Force Majeure and any such delays in delivery or installation will not entitle the Client to claim for any consequential loss or damage or to cancel, rescind or terminate this Agreement.
  - (d) Coates Hire shall undertake the works required to install the Special Purpose Equipment ("**Installation Works**") in a proper and workmanlike manner.
  - (e) The client acknowledges that it shall be bound by the terms and conditions of hire contained in the Major Customer Hire Agreement upon installation of the Special Purpose Equipment by Coates Hire.
  - (f) Coates Hire shall supply all labour, tools, equipment and materials necessary to complete the Installation Works.
  - (g) The Client will not impede or interfere with the Installation Works undertaken by Coates Hire.
  - (h) The Client shall at its own expense obtain all licenses and permits to comply with any laws, regulations or ordinances in connection with the Installation Works.

- (i) The Client shall immediately inform Coates Hire if, after the Installation Works are complete, the Client, its employees, agents, subcontractors or any third party damages, moves or in any way interferes with the Special Purpose Equipment and to enable Coates Hire to determine whether any such action voids any certifications provided by it. In the event Coates Hire determines that such actions voids any certifications previously provided by it, the Client shall indemnify and save harmless Coates Hire from and against all claims, actions, losses, expenses, costs or damages that the Client or Coates Hire may suffer, sustain or incur as a result of any matter arising with respect to this clause 10.1(i). This indemnity shall survive termination of this Agreement.
- (j) The Client shall ensure that the route to the installation Site is sufficiently spacious and that the transportation to the installation Site does not require any special arrangements. Any expenses caused by special arrangements related to transportation are not included in the Delivery Fee.

## **11 INFORMATION**

- 11.1 The Client warrants that the Information is accurate, and agrees to indemnify Coates Hire for any loss it may suffer as a result of a breach of this warranty.
- 11.2 Any designs, calculations, drawings, specifications and sketches produced by Coates Hire are prepared on the Information supplied.

## **12 PAYMENT TERMS**

- 12.1 As compensation for the provision of the Services, the Client agrees to pay the Fees to Coates Hire.
- 12.2 Coates Hire will issue invoices for the Fees. Invoices will be issued as tax invoices and contain a full itemisation of the fees and expenses.
- 12.3 The Client will pay Coates Hire the Fees invoiced within 30 days from the date of the invoice.

## **13 BASIS OF PAYMENT**

### **13.1 Fees calculated on a Time Basis**

Where the Service Order specifies that fees are calculated on a time basis, the following provisions shall apply:

- (a) the Client shall pay Coates Hire a fee, calculated on a time basis, for that part of the Services described in the Service Order. Fees shall be computed on the basis of hourly billing rates as noted in the Service Order;
- (b) all time expended by Coates Hire on the Project shall be chargeable, whether it is expended in the Client's office, at the Client's premises, or elsewhere. Chargeable time also includes, but is not limited to, time expended by clerical staff to prepare documents such as reports and specifications.

### **13.2 Fees calculated on a Lump-Sum Basis**

Where the Service Order specifies that fees are calculated on a lump sum/fixed fee basis, the following provisions shall apply:

- (a) the Client shall pay Coates Hire a lump sum fee as specified in the Service Order for that part of the Services described therein.

## **14 INSURANCE**

14.1 Coates Hire shall obtain and maintain the following types of insurance (unless specified otherwise in the Service Order):

- (a) a Public Liability Insurance Policy in the sum of not less than \$10,000,000.00;
- (b) a Workers' Compensation Insurance Policy, as required by relevant state and territory legislation, to cover Coates Hire and any other persons who may from time to time be employed or engaged by Coates Hire; and
- (c) a Professional Indemnity Insurance Policy in the sum of not less than \$20,000,000.00.

14.2 Coates Hire shall, if requested by the Client, supply a certificate of currency in respect of the insurances set out in this clause at the commencement of this Agreement.

## **15. INDEMNIFICATION**

### **15.1 Indemnification by Coates Hire**

- (a) Coates Hire shall indemnify and save harmless the Client from and against all claims, actions, losses, expenses, costs or damages that the Client may suffer, sustain or incur arising from Coates Hire's negligent acts in the performance of this Agreement.
- (b) Coates Hire is not liable for indirect, consequential or economic loss or damage, loss of profit or revenue, loss of production or production stoppage or loss of data whether such loss is direct or indirect.

### **15.2 Indemnification by the Client**

The Client releases and indemnifies Coates Hire and its employees and agents ("the Indemnified Parties") from and against all actions whatsoever which may be brought or made against the Indemnified Parties by any person, including the Client, arising directly or indirectly from:

- (a) any breach of a duty owed by the Client or its subcontractors, or any person for whose conduct the Client is liable;
- (b) any contravention of any legislative requirement or any unlawful or negligent act or omission by the Client, its subcontractors, or any person for whose conduct the Client is liable;
- (c) any unlawful or negligent act or omission of the visitors, invitees or licensees of the Client;
- (d) any death, personal injury, loss or damage suffered by Coates Hire or the Client (or any of its subcontractors, employees, agents, visitors, invitees or licensees) or any other person, arising from any act or an unlawful or negligent act or omission of the Client in the course of the performance (or attempted performance) of this Agreement;
- (e) any loss of or damage to tangible property, including the Specialist Purpose Equipment, caused or contributed by any act or any unlawful or negligent act or omission of the Client or its subcontractors or any persons for whose conduct the Client is liable; or
- (f) any breach of this Agreement by the Client.

## **16 LIMITATION OF LIABILITY**

16.1 Notwithstanding any other provision in this Agreement, Coates Hire's liability to the Client for any claim for loss or damage made in connection with this Agreement (for contract, tort, under statute or otherwise) in respect of death, personal injury or damage to property is limited to \$10 million.

## 17 SERVICES COMMENCEMENT & COMPLETION TIMES

The Services are to be provided in accordance with the Commencement and Completion Dates detailed in the Service Order.

## 18 TERMINATION

### 18.1 Termination for Breach

Coates Hire may terminate this Agreement by giving 7 days' written notice to the Client if it is in breach of any term of this Agreement, and the Client has failed to remedy that breach within 7 days of being requested to do so in writing by Coates Hire.

### 18.2 Termination by the Client

The Client may terminate this Agreement by giving 7 days' written notice to Coates Hire if it is in breach of any material term of this Agreement, and Coates Hire has failed to remedy that breach within 7 days of being requested to do so in writing by the Client.

### 18.3 Further Grounds for Termination

Either Party may terminate this Agreement immediately by written notice to the other Party, if the other Party:

- (a) suffers an Insolvency Event; or
- (b) attempts to assign this Agreement other than in accordance with the terms of this Agreement.

## 19. DISPUTE RESOLUTION

19.1 The Parties agree that in the event of a question, dispute or difficulty arising from the content of this Agreement, the matter shall be dealt with as follows:

- (a) the Party initiating the question, dispute or difficulty will provide the other Party with a letter or email detailing the specifics of the question, dispute or difficulty;
- (b) the matter will be initially discussed between the chosen representatives of the Client and Coates Hire within 5 Business Days of receipt of the Dispute Letter;
- (c) if the matter is not settled within 5 Business Days of the discussion referred to in (b) then the Parties shall refer the matter to mediation within 5 Business Days. Both Parties shall agree to the mediator appointed to chair the mediation, failing which the mediator will be appointed by the Australian Commercial Disputes Centre Limited (**ACDC**). An ACDC mediation will be conducted in accordance with the ACDC's mediation rules and take place in Sydney, or at such other location and/or in accordance with such rules as are mutually agreed; and
- (d) where mediation is not successful within 10 Business Days following the successful appointment of a mediator, either Party may commence proceedings in court provided that the prior steps referred to in this clause have been followed.

## 20. GST

20.1 Unless otherwise expressly stated, all amounts payable for any supply under this Agreement are expressed to be exclusive of GST. If GST is payable on a taxable supply made by Coates Hire to the Client under this Agreement, then the Client will pay to the supplier an amount in respect of the GST in addition to any other consideration provided that Coates Hire provides the recipient with a "tax invoice" in accordance with the applicable legislation.

20.2 In this clause the terms "GST", "supply", "taxable supply" and "tax invoice" have the meanings respectively given to them in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

## **21. PRESERVATION OF CONFIDENTIALITY**

21.1 Neither Party shall, without the prior written consent of the other Party:

- (a) disclose any of the Confidential Information to any person; or
  - (b) use or exploit or copy any of the Confidential Information,
- except where required to do so by law, regulation or relevant stock exchange.

## **22. MISCELLANEOUS PROVISIONS**

### **22.1 Entire Agreement**

- (a) The terms and conditions contained in this Agreement, the Project Terms and Conditions and the Service Order constitute the entire agreement and supersede any other agreement or understanding between the Parties.
- (b) To the extent that the Client's terms and conditions are supplied in connection with the Services to be supplied (including as printed on purchase orders or any other Client documentation), those terms and conditions will be of no legal effect and will not constitute part of this Agreement (even if any representative of Coates Hire signs those terms and conditions or annexes the terms and conditions to any purchase order).
- (c) In the event of any inconsistency the Project Terms and Conditions shall prevail to the extent of that inconsistency.

### **22.2 Severability**

In the event of the invalidity of any part or provision of this Agreement, such invalidity shall not affect the enforceability of any other part or provision of this Agreement.

### **22.3 Amendment and Variation**

- (a) This Agreement cannot be amended except by an instrument in writing signed by the Parties and stating the Parties intention to amend this Agreement accordingly.
- (b) Any Amendment which has been agreed by the Parties is detailed in Schedule 2.

### **22.4 Assignment**

This Agreement and the rights contained herein are not assignable without the prior written consent of the other Party (which consent shall not be unreasonably withheld).

### **22.5 No waiver**

The failure of either Party to exercise or the delay in exercising, any right, power or privilege available to it under this Agreement will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise by that Party of any other right, power or privilege under this Agreement.

### **22.6 Force majeure**

Failure or delay in performance of any obligation under this Agreement by either Party will not be deemed to be a breach of this Agreement if that failure or delay is due to any cause beyond the reasonable control and without the fault or negligence of that Party, but in order to excuse its default on this basis, a Party will notify the other of the occurrence of the cause as soon as it becomes aware, specifying the nature, particulars and expected duration thereof.

## 22.7 Governing Law

This Agreement is to be governed and construed according to the laws of the state or territory specified in Service Order (or if no state or territory is specified, then in accordance with the laws of the state in which the Services are to be provided) and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of the said state including any Courts having appellate jurisdiction thereof.

## 22.8 Notices

- (a) A notice issued by a Party to the other Party under this Agreement must be:
  - (i) in writing;
  - (ii) directed to the recipient's address specified in this Agreement or as varied by written notice; and
  - (iii) left at or sent by prepaid registered post, hand delivery or email to that address.
- (b) A notice issued by a Party to the other Party under this Agreement will be deemed to be duly given:
  - (i) on the day of delivery if by hand;
  - (ii) 3 days after the date of posting by prepaid registered post if posted within Australia, or 14 days after the date of posting by prepaid registered post if posted from outside Australia; or
  - (iii) if sent by email, when the sender's email enters the email system of the recipient,as the case may be.



**SCHEDULE 1**  
**SERVICE ORDER**

Project Name	
Site	
Special Purpose Equipment  To be delivered by Coates Hire: Y/N Date for Delivery: Delivery Location:	
Services  Certification required by Client for Design/Installation of Special Purpose Equipment?	
Fees <i>(Time Basis or Lump Sum/Fixed Fee)</i>  Delivery Fees	
Insurance Requirements	As per Master Services Agreement
Governing Law	
Project Terms and Conditions Project Management Plan (attached: Y/N)	
Client's Representative	
Coates Hire's Representative	
Commencement Date	
Completion Date	

**It is agreed as follows:**

- (a) Except as otherwise provided in this Service Order, the terms and conditions of the Master Services Agreement apply to the provision of the Services by Coates Hire to the Client.
- (b) By executing this Service Order, Coates Hire and the Client are entering into a contract for the performance of the Services described in this Service Order ("the Contract").
- (c) The Contract shall consist of:
  - (i) the Project terms and Conditions set out in this Service Order;
  - (ii) the general terms and conditions of the Master Services Agreement (including any amendments agreed between the parties);
  - (iii) the terms and conditions of any other documents attached to, or referred to, in this Service Order.
- (d) If there is any inconsistency between the documents referred to in paragraph (c) above, the documents will prevail in the order of precedence set out in paragraph (c) of this Service Order.
- (e) The parties represent and warrant that the execution of this Service Order has been properly authorised.



**Signed for and on behalf of Coates Hire by its Authorised Representative:**

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**Signed for and on behalf of the Client by its Authorised Representative:**

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