

## BACKGROUND

- (a) The Parties agree that, pursuant to clause 2.3 of these Subcontract terms and conditions and as indicated on the Subcontract Order, only some of these terms and conditions are included in the Subcontract where the scope of the WUC is supply only (not supply and install).
- (b) The Subcontractor agrees to supply the Goods and, where applicable in accordance with clause 2.3 of these Subcontract terms and conditions, perform the Works for the Price in accordance with the Subcontract.
- (c) Quadric agrees to purchase the Goods and, where applicable in accordance with clause 2.3 of these Subcontract terms and conditions, engage the Subcontractor to perform the Works for the Price in accordance with the Subcontract.
- (d) The Parties agree that commencing performance of Works, Delivery of Goods or execution of each Subcontract Order (whichever is first in time) will evidence a separate Subcontract between them and that these terms and conditions of Subcontract are, pursuant to clause 2.1 of these terms and conditions and the Subcontract Order, incorporated into each Subcontract.

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## 1 Definitions and Interpretation

### 1.1 Definitions

These meanings apply unless a contrary intention is specified:

**Business Day** means every day, excluding Saturdays, Sundays or Public Holidays in State and also excluding 26 to 31 December inclusive in each calendar year.

**Commencement Date** means the date set out in the Subcontract Order, from which the Works must immediately commence.

**Completion** means is that stage when the Works are complete except for minor Defects:

- (a) which do not prevent the Works from being reasonably capable of being used for their intended purpose;
- (b) which Quadric determines that the Subcontractor has reasonable grounds for not promptly rectifying;
- (c) rectification of which, individually or collectively, will not prejudice the work of Quadric or other contractors or the convenient use of the Works; and
- (d) the Site has been left clean and tidy and all rubbish and excess material has been removed.

**Date for Completion** means the date set out in the Subcontract Order, by which time the Works must be complete.

**Defect** includes, in relation to the Goods or any other aspect of the WUC (including the Works), any omission, error, fault, material non-compliance, breach of Law or Australian Standard or any material deficiency, flaw, irregularity or imperfection.

**Defects Liability Period** see clause 13.

**Delivery** means unloading and leaving the Goods at the Site in the possession of Quadric in accordance with the Subcontract.

**Site** is identified in the applicable Subcontract Order.

**Goods** means the items and materials to be Delivered by the Subcontractor, as identified by the Subcontract Order.

**GST** adopts the meaning in *A New Tax System (Goods and Services Tax) Act (1999)* Cth.

**Intellectual Property Right** means any patent, registered design, trademark or name, copyright or other similar right.

**Law** means any Act, Bill, Regulation, Ordinance, Proclamation, Permit, Approval, Permission, By-law, Statutory Instrument or similar.

**Parties** means Quadric and the Subcontractor together.

**Payment Claim** means a claim for payment by the Subcontractor.

**Payment Schedule** adopts the meaning in clause 11.2.

**Price** means the amount to be paid for the WUC as set out in or to be calculated in accordance with the Subcontract Order.

**Subcontract Order** means the document titled 'Subcontract Order' which was executed by Quadric and the Subcontractor (or provided by Quadric to the Subcontractor, as applicable) for the WUC on the terms of the Subcontract.

**Subcontract** means, in accordance with clause 2 below, these terms and conditions of subcontract, the Subcontract Order and the documents listed in the Subcontract Order which, in the event of any inconsistency or ambiguity, must be interpreted in the order of precedence listed in the Subcontract Order.

**Subcontractor** is the party identified in the applicable Subcontract Order.

**Variation** means any increase, decrease or omission in the WUC, change in character or quality or positions or dimensions of the Goods, additional Works or the removal of any Goods no longer required by Quadric.

**Works** means all of the work (including installation) to be performed in accordance with the Subcontract, including Variations.

**WUC** means the Works and also the supply of the Goods, temporary works, remedial work (including during the Defects Liability Period), plant and equipment.

**Quadric** is Quadric Pty Ltd ABN 39 010 315 625.

## 1.2 Interpretation

In the Subcontract:

- (a) 'including' and similar terms are not terms of limitation;
- (b) no part of the Subcontract may be interpreted adversely to Quadric's interests due to Quadric's development of the Subcontract;
- (c) where the time for doing anything falls on a day that is not a Business Day, it will be deemed to fall due on the next Business Day;
- (d) words in the singular include the plural and words in the plural include the singular;
- (e) the Subcontract will be interpreted in accordance with and the Parties submit to the non-exclusive jurisdiction of the courts of the State of Queensland;

- (f) if the Subcontract refers to any Law, it is a reference to that Law as updated from time to time; and
- (g) should any part of the Subcontract be determined to be void or otherwise excluded from the Subcontract, the Subcontract will be read as if that part were excluded.

## **2 Subcontract**

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### **2.1 Composition of Subcontract**

In addition to these terms and conditions, the Subcontract is comprised of the documents attached to the Subcontract Order and the Subcontract Order itself.

### **2.2 Supply only or Supply & Install**

The Parties acknowledge that, subject to clause X below, these Subcontract terms and conditions apply where the scope of the WUC is supply only and also where the scope of the WUC is both supply and install;

The Parties agree that:

- (a) where the scope of the WUC is identified as 'supply and install' on the Subcontract Order, these Subcontract terms and conditions apply in their entirety; and
- (b) where the scope of the WUC is identified as 'supply only' on the Subcontract Order, only clauses 1, 2, 3.5(b), 4 - 11 (inclusive), 14.1, 15, 16, 17.2 and 17.4 are included in the Subcontract terms and conditions – all other clauses in these Subcontract terms and conditions are excluded.

### **2.3 Formation of Subcontract**

The Parties agree that the Subcontract will be formed by the Parties executing the Subcontract Order or commencing the Works on the Site and that these terms and conditions of Subcontract are incorporated into the Subcontract by reference.

### **2.4 Exclusion of other terms and conditions**

Without limitation, the Parties agree that Quadric is not bound by any terms and conditions set out on any document, including delivery docket or receipt provided by or for the Subcontractor (regardless of whether any such document is signed by or for Quadric).

## **3 Time**

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### **3.1 Commencement**

The Subcontractor must:

- (a) confirm the Commencement Date (as set out on the Subcontract Order) between 7 and 14 days prior to that Commencement Date by contacting Quadric;
- (b) commence performance of the Works on the Date for Commencement; and
- (c) proceed with the Works with due expedition and without delay.

### **3.2 Completion**

The Subcontractor must:

- (a) bring the Works to Completion by the Date for Completion;

- (b) not suspend the progress of the Works except where expressly permitted to do so by Law or where directed to do so by Quadric; and
- (c) The Subcontractor acknowledges that it is not entitled to sole possession of any part of the Site. It agrees that it has made sufficient allowances in the Price for cooperation and interaction with other parties on the Site.

### **3.3 Adjustment of the Commencement Date**

The Subcontractor acknowledges that Quadric may, at any time at its absolute and sole discretion, adjust the Commencement Date. If Quadric adjusts the Commencement Date, the Date for Completion will, subject to the Parties agreeing to accelerate the Works, be adjusted by an amount of time equal to the change to the Commencement Date.

### **3.4 Extension to the Date for Completion**

The Subcontractor may claim an extension of time to the Date for Completion if, as a condition precedent:

- (a) the Subcontractor has been delayed reaching Completion and that delay was not caused or contributed to by an act, default or omission of the Subcontractor, its employees, officers, suppliers, contractors or agents;
- (b) within 10 Business Days of when the Subcontractor should reasonably have first become aware of the delay event, the Subcontractor gives a written claim for an extension of time to Quadric setting out the background, effect and duration (or estimated duration if the delay event has not concluded); and
- (c) it has taken and continues to take all reasonable steps to minimise the delay event.

If the delay event is ongoing, the Subcontractor must give a written claim setting out the things required in clause 3.4(b) within 10 Business Days of the delay event finishing.

Subject to compliance with clause 3.4(a) - 3.4(c), Quadric will grant a reasonable extension of time to the Date for Completion. The Subcontractor agrees that it has no other entitlements in connection with delay or disruption and it releases and discharges Quadric from any liability in connection with, delay or disruption to the performance of the Works.

### **3.5 Liquidated Damages**

- (a) Where the scope of the WUC is supply and install (as indicated on the Subcontract Order) and the Works do not reach Completion by the Date for Completion, the Subcontractor must pay to Quadric, as a debt due and owing, liquidated damages at the rate set out in the Subcontract Order for every day after the Date for Completion that the Works have not reached Completion to and including the earlier of the Date of Completion, date the Subcontract is terminated or date that Quadric takes the Works out of the hands of the Subcontractor.
- (b) Where the scope of the WUC is supply only (as indicated on the Subcontract Order) and the Goods are not Delivered by the Time for Delivery of Goods to the Site, the Subcontractor must pay to Quadric, as a debt due and owing, liquidated damages at the rate set out in the Subcontract Order for every day after the Time for Delivery of Goods to the Site to and including the earlier of the date the Goods are Delivered, date the Subcontract is terminated or date that Quadric takes the Works out of the hands of the Subcontractor.

## **4 Subcontractor's Warranties**

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The Subcontractor warrants that:

- (a) it will perform the WUC in accordance with the Subcontract and to the standard expected of an experienced and competent contractor performing similar works or supplying similar goods or materials;
- (b) it will perform the WUC in accordance with applicable Laws and Australian Standards;
- (c) it will take all reasonable steps to assign any manufacturer's warranties in the Goods (where the Goods are manufactured by a third party) to Quadric;
- (d) the Goods will be:
  - (i) complete, of merchantable quality and free of Defects;
  - (ii) free of liens, charges, claims and other encumbrances;
  - (iii) in accordance with plans, drawings, specifications, directions and instructions given by or for Quadric or provided by the Subcontractor to Quadric in the context of this Subcontract;
  - (iv) in accordance with the Subcontract, Law, applicable Australian Standards and, where applicable, the Building Code of Australia; and
  - (v) fit for the purpose set out in or that may reasonably be inferred from the Subcontract.

## **5 Variations**

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Quadric may, by written notice at its discretion, direct any Variation or cancel any Subcontract Order in relation to either the supply or installation aspect of the WUC (as applicable).

The Subcontractor is not entitled to claim payment for any Variation not directed in writing by Quadric and must immediately notify Quadric when it becomes aware that a Variation is required.

If a Variation causes the Subcontractor to incur more or less costs than otherwise would have been incurred, the difference will be assessed by Quadric and added to or deducted from the Price. Any deductions will include a reasonable amount for profit and also overheads.

The Parties agree that no Variation will vitiate, render invalid or constitute a repudiation of the Subcontract on the ground of the extent the WUC is added to, reduced or omitted.

Quadric is not obliged or required to approve a Variation for the sole benefit or convenience of the Subcontractor.

## **6 Delivery and Acceptance**

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### **6.1 Delivery**

The Subcontractor:

- (a) must Deliver the Goods to the Site at the time and date specified in the applicable Subcontract Order;
- (b) is, subject to the Subcontract Order, responsible for unloading the Goods at the Site;

- (c) must ensure that Delivery is performed so that:
  - (i) the property of Quadric and other parties is not damaged;
  - (ii) it is undertaken in accordance with all Laws, good industry practice and all procedures notified by Quadric; and
  - (iii) no activities on or in the vicinity the Site are impeded in any way;
- (d) (if applicable) acknowledges that it is responsible for all of the acts, omissions and defaults of the parties performing the Delivery, as if those parties were the Subcontractor itself.

If the Subcontractor fails to deliver the Goods by the time and date required in a particular Subcontract Order, Quadric may, without prejudice to any other remedies against the Subcontractor, terminate the Subcontract Order in writing and obtain the Goods from a third party.

Delivery occurs:

- (a) if the Subcontractor is responsible for unloading, when unloading is complete in accordance with Quadric's reasonable instructions at the Site; or
- (b) if Quadric is responsible for unloading, when the Subcontractor arrives at the place for Delivery at the Site on the date and at the time for Delivery (if the Subcontractor does not arrive at the date and time for Delivery, Delivery is deemed to have not occurred unless otherwise agreed by Quadric).

## **6.2 Acceptance**

If at any time (regardless of the period of time since Delivery) Quadric discovers that the Goods do not comply with the Subcontract (including Defects or any warranty), Quadric may, at its sole discretion and without prejudice to any other right available to it, direct the Subcontractor to remove the Goods and:

- (a) rectify the non-compliance and return the Goods to Quadric; or
- (b) replace the Goods.

The Subcontractor must comply with Quadric's direction within the reasonable period nominated by Quadric. If the Subcontractor does not comply with any direction given under this clause 6.2, Quadric may at its absolute discretion:

- (a) have the Goods rectified by a third party; or
- (b) return the Goods to the Subcontractor,

and the cost, loss, damage, expense or liability suffered by Quadric as a result will be a debt due and payable by the Subcontractor to Quadric.

## **7 Title and Risk**

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The Subcontractor agrees that unencumbered title to the Goods passes to Quadric on the earlier of partial or full payment for the Goods or Delivery, whichever occurs first.

The Subcontractor acknowledges that it bears all risk of loss of or damage to the Goods, including during transit, until Completion.

## **8 Intellectual Property**

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The Subcontractor warrants that the Goods in no way infringe the intellectual property rights of any third party.

The Subcontractor indemnifies Quadric against all losses, damages, liabilities, claims and expenses (including legal costs and defence or settlement costs) arising out of any infringement of any intellectual property right belonging to a third party in connection with the Goods.

## **9 Indemnity**

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The Subcontractor must indemnify and hold Quadric harmless against:

- (a) loss of or damage to property of Quadric; and
- (b) claims (at Law, in equity or tort, under contract or statute or for restitution) by any person against Quadric in respect of personal injury, death or loss of or damage to any property,

in connection with the WUC (including, without limitation, arising from any Defect in the Goods).

## **10 Insurance**

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### **10.1 Obligation**

Before commencing the WUC, the Subcontractor must effect the types of insurance cover identified below in accordance with this clause 10:

- (a) goods insurance or contractor's all risk insurance;
- (b) public and product liability insurance;
- (c) workers' compensation insurance; and
- (d) motor vehicle liability insurance.

### **10.2 Goods Insurance**

The Subcontractor must insure the Goods for their replacement value against loss or damage occurring at any time prior to risk passing in the Goods under clause 7 (including during transit or unloading at the Site).

The policy of goods insurance must cover the respective rights and interests of the Parties.

### **10.3 Public Liability Insurance**

The public liability insurance must:

- (a) cover Quadric and the Subcontractor for:
  - (i) their respective rights and interests;
  - (ii) liability to each other for loss, loss of use or damage to property and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy); and
  - (iii) liability to third parties;
- (b) be for an amount in respect of any one occurrence not less than the sum stated in the Subcontract Order; and
- (c) be maintained until Completion or the end of any Defects Liability Period nominated in the Subcontract Order.

**10.4 Worker's Compensation Insurance**

The workers' compensation policy must:

- (a) cover statutory and common law liability for death or injury to persons employed by the Subcontractor in connection with the supply of the Goods; and
- (b) be maintained until Completion.

**10.5 General insurance requirements**

The Subcontractor must, prior to the Date of Commencement and whenever subsequently asked to do so, provide Quadric with certificates of currency to demonstrate that the insurance policies required under this clause 10 remain current and comply with this clause 10. If the Subcontractor fails to provide the certificates of currency Quadric may effect the policies and recover the costs of doing so from the Subcontractor as a debt due and payable.

The Subcontractor is liable for and must pay all premiums, deductibles or excesses payable under a policy of insurance required to be effected or maintained under the Subcontract.

**11 Payment**

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**11.1 Payment Claims**

Subject to, as condition precedent, the Subcontractor complying with the Subcontract (particularly its obligations under clauses 4, 8, 10 and 14) and the Subcontractor complying with all of its obligations at Law, Quadric will pay the Subcontractor for performance of the WUC.

The Subcontractor may only submit Payment Claims:

- (a) monthly in accordance with the Subcontract Order up until Completion;
- (b) once upon Completion; and
- (c) if applicable, once upon the end of any Defects Liability Period identified in the Subcontract Order.

As a condition precedent to payment:

- (a) Payment Claims must set out details of the WUC performed by the Subcontractor up to and including on the date of the Payment Claim
- (b) the Subcontractor must provide any information or documentation in support of its Payment Claims reasonably sought by Quadric, including statutory declarations evidencing that all subcontractors, contractors and employees have been paid all amounts due and payable in connection with the WUC up to and including on the date of the Payment Claim;
- (c) the WUC must comply with the Subcontract; and
- (d) each Payment Claim must be in the form of or have attached to it, a tax invoice in the form required by GST Law.

Payment Claims may only be submitted at the time or times identified in the Subcontract Order.

**11.2 Payment Schedule**

Quadric may, 10 Business Days after receiving a Payment Claim, issue a Payment Schedule to the Subcontractor evidencing Quadric's opinion of the moneys due from Quadric to the Subcontractor or the Subcontractor to Quadric and reasons for any difference between the Payment Claim and the Payment Schedule.

If the Subcontractor does not issue a Payment Claim in accordance with this clause 11 and the Subcontract Order, Quadric may still elect to issue a Payment Schedule setting out its view as to any payment due from or to the Subcontractor.

Where an amount is due from the Subcontractor to Quadric, the Subcontractor must pay Quadric the amount set out in the Payment Schedule no later than 15 Business Days after Quadric received the Payment Claim.

Where an amount is due from Quadric to the Subcontractor, Quadric will pay the amount determined by Quadric within the period identified in the Subcontract Order.

Neither a Payment Schedule, payment of money or acceptance of payment will be evidence that the relevant WUC has been carried out satisfactorily. Payment is on account only.

Notwithstanding any other provision of the Subcontract, the Subcontractor is not entitled to any payment unless it has, as a condition precedent, satisfied its obligations under clauses 10 and this clause 11. Payment of money or acceptance of payment will not be evidence that the WUC is acceptable. Payment is on account only.

**11.3 Set-off**

Without prejudice to any other rights under the Subcontract or at Law, Quadric may set-off or deduct from any amounts due to the Subcontractor or any retention moneys:

- (a) any amount due or which Quadric reasonably asserts will be due from the Subcontractor to Quadric in connection with the Subcontract; or
- (b) any claim for damages or otherwise at Law.

**12 Security**

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**12.1 Retention Moneys**

Quadric may retain 10% of all payments owing to the Subcontractor under the Subcontract until it holds an amount equal to 5% of the Price.

Interest on the retention moneys will belong to Quadric.

**12.2 Recourse**

Quadric may have recourse to any retention moneys held by it under the Subcontract where:

- (a) Quadric remains unpaid by the Subcontractor after the time for payment (under clause 11 or otherwise); or
- (b) Quadric is entitled to a set-off under clause 11.3; and
- (c) Quadric has given the Subcontractor notice, in writing, of its intention to have recourse to any retention moneys and the amount owed to Quadric.

If Quadric has recourse to the retention moneys at any time, it may deduct more moneys to maintain the required level of retention moneys.

**12.3 Release**

Retention moneys held by Quadric under the Subcontract will be released as follows:

- (a) 50% of retention moneys held will be released within 14 days of Completion; and
- (b) the balance of any retention moneys held by Quadric will be released following the end of the Defects Liability Period.

**13 Defects Liability Period**

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A Defects Liability Period will commence at 4pm on the date of Completion and will be in place for the period identified in the Subcontract Order (which may nominate the period required under a superior contract to which Quadric is a party).

During the defects liability period, Quadric may direct the Subcontractor to rectify a Defect. The direction must identify the Defect and state dates for commencement and completion of rectification.

The Subcontractor must carry out rectification of Defects:

- (a) at times and in a manner causing as little inconvenience to the occupants or users of the Works as is reasonably possible; and
- (b) in accordance with all directions from Quadric.

If rectification is not commenced or completed by the stated dates, Quadric may have the rectification of Defects carried out by others without prejudice to any other rights and remedies. Quadric is entitled to recover from the Subcontractor, as a debt due and payable, any costs, liability or expenses arising from the rectification of Defects by a third party under this clause 13.

**14 Workplace Health & Safety and Environment**

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**14.1 Workplace Health & Safety**

The Subcontractor must procure the health and safety of all its employees, agents or subcontractors while on the Site. The Subcontractor must also ensure that other persons are not exposed to risk of injury or illness arising out of the Subcontractor's activities on Site.

The Subcontractor must:

- (a) comply with and ensure that all of its employees, agents and subcontractors comply with all obligations at Law governing workplace health and safety;
- (b) comply with and ensure that all of its employees, agents and subcontractors comply with all directions, plans, statements, policies and procedures of Quadric, any superior contractors on the Site or of any statutory authority;
- (c) immediately report all injuries, illnesses, dangerous events and notices received from statutory authorities relating to workplace health and safety to Quadric;
- (d) ensure that all Work is adequately supervised;
- (e) ensure that all plant, equipment and materials are used and maintained in accordance with the manufacturer's specifications; and
- (f) as a condition precedent to commencing the Works, submit a Safe Work Method Statement and Safe Work Method Statement Checklist to Quadric for approval.

**14.2 Environment**

The Subcontractor must comply with the Law and all policies, procedures, plans, statements and directions relating to the protection of the environment.

Except to the extent that it is the unavoidable result of the performance of the Works in accordance with environmental best practice, the Subcontractor is responsible for and must make good, any damage to the environment caused by the performance of the Works (including any unlawful pollution of the Site or its surroundings).

**15 Termination**

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Quadric may, without prejudice to any other rights at Law or otherwise, forthwith terminate the Subcontract by written notice in the following circumstances:

- (a) if a superior contract to which Quadric is a party relating to the WUC is terminated, ends for any reason or work which includes the WUC is taken out of the hands of Quadric;
- (b) if the Subcontractor fails to Deliver the Goods by the date for Delivery identified in the Subcontract Order;
- (c) if the Subcontractor breaches the Subcontract and fails to remedy that breach to Quadric's satisfaction within a reasonable period nominated by Quadric;
- (d) if the Subcontractor:
  - (i) has a receiver, manager or liquidator appointed;
  - (ii) passes a resolution for winding up (other than for the purpose of restructure);
  - (iii) enters into any composition or arrangement with creditors; or
  - (iv) becomes insolvent (within the meaning set out in the *Corporations Act 2001* (Cth)).

Without prejudice to Quadric's rights under the Subcontract or otherwise, upon termination of the Subcontract under clause 15(a), the Subcontractor will be entitled to be paid for WUC properly completed up to and including on the date of termination, as if the Subcontractor had made a Payment Claim on the date of termination.

**16 Disputes**

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Except for urgent interlocutory relief, any dispute or difference arising in connection with the Subcontract or the WUC may, following discussions between the Parties, be submitted to mediation in accordance with and subject to the Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules.

If the parties cannot resolve the dispute by mediation, either party may proceed to litigation.

**17 Miscellaneous**

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**17.1 Quadric's Equipment**

The Subcontractor releases and discharges Quadric from any loss, claim, action, liability, demand, cost or damage caused or contributed to by any equipment used by the Subcontractor on the Site that is supplied by or for Quadric. Quadric provides no express

or implied warranty in relation to the condition or suitability of any equipment used by the Subcontractor on the Site.

## **17.2 Notices**

Notices given under the Subcontract must be:

- (a) in writing;
- (b) given:
  - (i) personally to the Party to whom the notice is directed (including, in relation to the Subcontractor, the Subcontractor's representative on the Site);
  - (ii) by pre-paid post to the address for the Party set out on the Subcontract Order or any other address subsequently notified by a Party from time to time; or
  - (iii) by email using the address set out on the Subcontract Order or any other address subsequently notified by a Party from time to time.

A notice is given on the day that:

- (a) it is delivered to the addressee; or
- (b) if transmitted by email and a correct and complete transmission report is received, on the day of transmission.

If a notice is delivered or sent by email after 5pm on a Business Day or on a day that is not a Business Day, the notice will be deemed to have been received on the next Business Day.

In the Subcontract, notices include any directions, requests, Payment Claims, Payment Schedules and all other communications.

## **17.3 Assignment & Novation**

The Subcontractor may not novate or assign any interest in the Subcontract with the express prior written consent of Quadric.

## **17.4 GST**

Unless stated otherwise in writing, all Prices are exclusive of GST.