

Authorised By:

Steve Bowden

Date: 26 Nov 2010

PIONEER WATER TANKS

AGREEMENT FOR THE SUPPLY AND INSTALLATION OF COMMERCIAL STORAGE TANKS

Document Number: _____

THIS AGREEMENT is made on

201

between:

Pioneer Water Tanks
(Australia 94) Pty Ltd.
A.C.N. 009 387 660
A.B.N. 83 009 387 66023 Clayton Street,
Bellevue, Western Australia 6056
PO Box 1874, Midland, WA 6936**Tel:** +618 9274 4577
Fax: +618 9274 4588
Email: info@pwtaust.com

PIONEER WATER TANKS (AUSTRALIA 94) PTY LTD ABN 83 009 387 660 of 23
Clayton Street, Bellevue WA 6056 (**Supplier**)

and

COMPANY as described in Schedule 1 to this Agreement (**Company**)

Recitals:

- A. The Supplier manufactures and supplies water tanks and accessories.
- B. The Supplier has offered to supply and install, and the Company has agreed to acquire, the Works on the terms and conditions set out in this Agreement.

IT IS agreed as follows:

1. DEFINITIONS

In this Agreement (unless the context otherwise requires):

“Authority” means national, state, local, regional, territorial or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body.

“Background IP” means any Intellectual Property which is in existence before the date of this Agreement which the party makes available, contributes, brings to or uses in connection with this Agreement.

“Commencement Date” means the date stated in item 2 of Schedule 1.

“Company” is as described in item 1 of Schedule 1 to the Agreement and shall include anyone acting on their behalf or by their authority and includes their servants, agents, employees, assignees, transferees, heirs, executors or administrators.

“Documents” means this Agreement, and any special conditions, the Schedules, Attachments and any drawings, designs or specifications set out or referred to in the Proposal.

“Price” means the amount set out in item 5 of Schedule 1 as adjusted pursuant to the terms of the Agreement.

“Date for Practical Completion” means the date specified in item 3 of Schedule 1.

“Days” means calendar days and **“Work Days”** means Monday to Saturday (excluding Sundays and public holidays).

“Force Majeure Event” means any cause beyond a party’s reasonable control, including but not limited to, any lack of production capacity or raw materials, strikes, lock-outs, labour disputes, fires, floods, acts of God or public enemy, malicious or accidental damage, delays in transport, breakdowns in machinery or restrictions or prohibitions by any government or any semi-government authorities or embargoes.

“Intellectual Property” means any subject matter, whether tangible or intangible, that attracts, or is susceptible to protection by, Intellectual Property Rights.

“Intellectual Property Rights” means all copyright and analogous rights (including moral rights), all rights in relation to inventions (including patents), registered and unregistered trademarks, registered designs, confidential information (including trade secrets), know how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields. These rights include all right in all applications to register these rights and all renewals and extensions of these rights.

“Law” is:

- (a) Commonwealth, State and local government legislation including regulations, by-laws, orders, awards and proclamations;
- (b) common law and equity;
- (c) Authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals); and
- (d) guidelines of authorities which apply to the Works or the Site.

“OHSE” means occupational, health, safety and environmental

“Owner” means the person who will be the legal and beneficial owner of the Tank supplied by the Supplier under this Agreement upon completion of the Works.

“Practical Completion” means that the Works have been brought to the state where the Works are complete except for any omissions or defects which do not prevent the Works from being reasonably capable of being used for its intended purpose.

“Price” means the price payable (exclusive of GST) for the Works set out in item 5 of Schedule 1.

“Proposal” means the Supplier’s proposal referred to at item 8 of Schedule 1 and set out in Attachment A.

“Schedule of Rates” means the rates set out in Schedule 3 (if any).

“Site” means the location where the Works are performed and is described in item 4 of Schedule 1.

“Supplier” shall include anyone acting on its behalf or by its authority and includes its servants, agents, employees, assignees, transferees, heirs, executors or administrators.

“**Tank**” means the tank which is supplied as part of the Works.

“**Technical Material**” means models, software (including source code and object code versions), information, design concepts, audio, video, drawings (including “as built” drawings), programmes, schedules, manuals, diagrams, graphs, charts, projections, specifications, estimates, records, concepts, accounts, plans, formulae, calculations, designs (including structural, mechanical, electrical and instrumentation designs) in any medium (including 2 dimensional and 3 dimensional computer assisted designs), methods, techniques and processes, including all copies of and extracts from them and data stored by any means.

“**Warranty**” means the warranty applicable to the Tank as set out in clause 6 of this Agreement.

“**Works**” means the whole of the works that the Supplier is or may be required to complete under the Agreement including works described in Schedule 2 of the Agreement, agreed variations, remedial work, Supplier supplied plant and material and any design work specified in the Agreement.

2. INTERPRETATION

In this Agreement (unless the context otherwise requires):

- (a) headings and boldings are for convenience only and do not affect the interpretation of this Agreement;
- (b) words importing the singular include the plural and vice versa;
- (c) word importing a gender include any gender;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (e) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental department or agency;
- (f) a reference to a clause, party or schedule is a reference to a clause of, and a party and schedule to, this Agreement and a reference to this Agreement includes the schedule;
- (g) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (h) a reference to a party includes that party’s successors and permitted assigns;

- (i) no provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision.

3. SUPPLIER'S OBLIGATIONS

- (a) The Supplier shall supply the Works in accordance with the Proposal.
- (b) The Supplier warrants that it shall complete the Works in a workmanlike manner with all due skill and care.
- (c) Unless otherwise agreed, the Works will be performed on Work Days.
- (d) Under no circumstances is the Supplier required to perform the Works on the Site if it determines that the Site is unsafe. If the Supplier determines for whatever reason that the Site is unsafe, the Supplier shall:
 - (i) suspend performance under this Agreement, without penalty, to the extent necessary to avoid the unsafe condition arising or continuing;
 - (ii) immediately notify the Company of the unsafe condition and the action taken by the supplier in accordance with paragraph (i); and
 - (iii) take any steps as are reasonably necessary and agreed between the Supplier and the Company to overcome or remedy the unsafe condition.

4. COMPANY'S OBLIGATIONS

- (a) The Company must obtain, at its own expense, any necessary licences and permits necessary for the performance of the Works at the Site.
- (b) The Company warrants that the Site is fit for purpose.
- (c) The Company must ensure that the Site is properly secured and implement a safety system in accordance with international best practice and all relevant OHSE Laws.

5. TIME FOR PERFORMANCE

- (a) The Commencement Date and the date for Practical Completion are as stated in item 2 of Schedule 1.
- (b) The Supplier shall notify the Company in writing when the date of Practical Completion is or was reached. **[Use Form 1. ---- Notice of Practical Completion.]**
- (c) The Company is deemed to have accepted that Practical Completion has been achieved if the Company does not, within 14 days of the receipt of the Supplier's notice of Practical Completion, give written notice to the Supplier of the reasons for the non-acceptance and propose an alternate date for

Practical Completion along with reasons for the alternative date. The Supplier must accept or reject the Company's notice within 14 days thereafter. If the Company continues to reject the Practical Completion date then clause 16 of the Agreement shall apply.

- (d) The date of Practical Completion is reached when the Works have been brought to the state where the Works are completed except for any omissions or defects which do not prevent the Works from being reasonably capable of being used for their intended purpose. If commissioning of the Tank is stipulated by either the Supplier in the scope of works or by the Company, then such commissioning must be undertaken within 30 days of the date of Practical Completion. If this timeframe is not achieved because of factors beyond the Supplier's control, then all monies owing under the Agreement, including commissioning charge, will be paid to the Supplier in full.
- (e) The Supplier is entitled to any reasonable extension of time to the date for Practical Completion for any reason provided the delay is not due to an act or omission of the Supplier in breach of this Agreement. The Supplier shall notify the Company in writing of delays to the Works. The Company is deemed to have accepted the extension of time to the date for Practical Completion if the Company does not, within 14 days of the receipt of the Supplier's notice of Practical Completion, give written notice to the Supplier of the reasons for the non-acceptance. The Supplier must accept or reject the Company's notice within 14 days thereafter. If the Company continues to reject the claim for an extension of time then clause 16 of this Agreement applies. **[Use Forms 2 or 3 ----- Notice of Extension of Time or Notice of Extension of Time claiming Delay Costs.]**

6. COMMISSIONING AND WARRANTY

- (a) The Company must allow the Supplier to supervise the commissioning of any Tank.
- (b) Upon the Supplier issuing a notice of Practical Completion the Company must ensure that any Tank is filled with a minimum of 150 millimeters of water to keep the liner in place and the tank must at all times retain that minimum amount of water to ensure the integrity of the liner.
- (c) Subject to clause 6(f), the Supplier warrants to the Company only that the Tank steel body, Tank steel roof and Tank liner are free from defects in workmanship for a period of 10 years pro-rata (being a proportional value of the Tank material costs depreciated over time) limited in total to the original purchase price from the date of Practical Completion.
- (d) This Warranty is subject to the following conditions:
- (i) The Tank must be:
- (A) assembled/constructed on the site warranted by the Company as being fit for the purpose; and

- (B) installed/constructed in accordance with the Supplier's specifications.
- (ii) The Tank is to be assembled/constructed by the Supplier or by its authorised installer and in accordance with the Supplier's procedures and specifications.
 - (iii) At all times (save for during Supplier authorised repairs) the Tank is to contain water to a minimum depth of 150mm.
 - (iv) Only potable water is to be stored in the Tank, the Supplier must approve any other liquid in writing prior to the commencement of the warranty period.
 - (v) The Tank is at all times to be maintained in accordance with the Supplier's maintenance manual relevant at the time of commissioning.
 - (vi) The Warranty commences from the date of completion of the installation.
 - (vii) Any extended warranty granted by the Supplier only applies where the anodes are replaced no later than 10 years from the date of commissioning. The Owner has the onus of monitoring the age of the anodes and must notify the Supplier when the anodes should be replaced, such replacement to be undertaken by the Supplier or its authorised installer.
- (e) Where the Tank is not installed and commissioned by the Supplier or its nominated subcontractor then only the materials manufactured by the Supplier are covered by the Warranty, provided the Supplier is notified of any defects within 30 days of the materials being delivered.
- (f) This Warranty is only valid where the Supplier has been paid in full for all Works performed by the Supplier.
- (g) The Supplier shall not be liable for, and this Warranty does not cover:
- (i) Labour costs associated with the removal or repair of any defective product, or installation of the replacement product;
 - (ii) Injury to persons, damage to property, loss of income, profit or business, or any other indirect loss arising from or caused in any way by the defective product.
 - (iii) All manufactured components sourced from suppliers, although the Supplier will, where possible, transfer the benefit of supplier warranties to the Company.
 - (iv) Loss or replacement of water in the Tank or any other consequential loss.

- (v) Unauthorised modifications, alterations and/or additions to the Tank or its fittings or any damage caused by such unauthorised modifications and alterations.
- (vi) Relocation of the Tank unless such relocation is undertaken by the Supplier or its authorised installer.
- (vii) Damage or leakage of Tanks due to:
 - (A) Any act or omission of the Company or any third party.
 - (B) Damage caused by storage of products other than water, unless the Supplier has given its written consent to the storage of other liquids.
 - (C) Misuse or abuse of the Tank or liner.
 - (D) Accidental or malicious damage.
 - (E) Natural disaster, including but not limited to fire, flood and cyclone.
 - (F) Vegetation or root intrusion.
 - (G) Damage caused by vermin, pest or livestock.
 - (H) Corrosion caused by adverse conditions.
 - (I) Damage as a result of long term unreported leakage.
 - (J) Damage caused by tank being allowed to consistently overflow.
 - (K) Where there is an extended warranty in place, then damage due to a failure to replace the anodes in accordance with the extended warranty.
- (h) Subject to the above conditions and statutory obligations, if a claim is made by the Company or Owner under this Warranty, the Supplier will, at its sole discretion, either repair or replace the tank steel body, tank steel roof or the tank liner within the warranty period with the same or equivalent material (excluding labour costs) or pay the purchase the cost of repairing the defect provided that the total liability of the Supplier is limited to the original cost of the damaged part on a pro rata basis.
- (i) All other express or implied warranties are excluded to the extent permitted by law
- (j) The Warranty is not transferable without the written consent of the Supplier.

7. PRICE, INVOICING AND PAYMENT

- (a) In consideration for the Works supplied by the Supplier, the Company must pay the Supplier the Price (exclusive of GST).
- (b) Unless item 6 of Schedule 1 specifies otherwise, the Price shall be paid by the Company to the Supplier by the following progress payments:
 - (i) 25% of the Price payable on the placement of Company's order for the Works;
 - (ii) 60% of the Price payable on the despatch of the Tank(s); and

- (iii) 15% on Practical Completion.
- (c) The Supplier may by agreement in writing with the Company introduce payment claims for materials, events, milestones, or for any reasonable reason.
- (e) The Supplier is entitled to charge interest for any unpaid progress payments from the period beginning on the day after the date on which the progress payment is due and ending on and including the date on which the progress payment is paid at a rate stated in item 7 of Schedule 1 or if no rate is stated then at 10% per annum.
- (f) Other than any agreed retention sum (if applicable) the Company shall not withhold, set-off or back charge any amount payable under a progress payment or any portion of the Price whatsoever unless the amount to be withheld is agreed to in writing by the Supplier. The Supplier will give reasonable consideration to such a request but is under no obligation to consent.
- (g) If an application is made pursuant to 'Security of Payment' legislation then the authorised nominating authority (or equivalent) will be the Master Builders Association of W.A, unless otherwise agreed.
- (h) All costs associated with debt recovery including the preparation of submissions pursuant to any of the 'Security of Payment' legislation will be recoverable as a debt due and payable in full under the Agreement.

8. GOODS AND SERVICES TAX

- (a) If GST is imposed under the GST Act on any delivery made under this Agreement (including the delivery of any other right, goods, services, benefits or other things), the consideration for which is not included in the Price, the Supplier (as that term is defined in the GST Act) shall have the right to receive payment, in addition to the consideration for the delivery from the Company for an additional amount equal to the imposed GST and shall have an Entitlement therefor.
- (b) The additional amount referred to in paragraph (a):
 - (i) is equal to the Price multiplied by the prevailing GST rate; and
 - (ii) is payable at the same time and in the same manner as the consideration for the delivery to which the additional consideration relates.
- (c) The Company is not required to pay the Supplier any GST due in connection with any part of the Work until the Supplier has first delivered to the Company a tax invoice or, where appropriate, an adjustment note for the amount payable.
- (d) If for any reason, the amount recovered by a Supplier (as that term is defined in the GST Act) from the recipient of the delivery under this clause differs from

the amount of GST lawfully imposed on the delivery, then the Supplier (as that term is defined in the GST Act) shall issue an Adjustment Note (as that term is defined in the GST Act) to the recipient of the delivery within 10 Work Days of the date of the Adjustment Event (as that term is defined in the GST Act) and shall be entitled to recover the difference from, or shall be liable to pay the difference to, as the case may be, the recipient of the delivery.

- (e) The Company's obligation to reimburse or indemnify the Supplier under this clause 8 ("reimbursable expense") shall be net of input tax credits (if any) to which the Supplier is entitled in respect of the reimbursable expense ("net amount").
- (f) This clause 8 takes effect notwithstanding any inconsistent clause or any clause to the contrary in the Agreement. To the extent of any inconsistency between this clause 8 and any other provision of the Agreement, this clause 8 shall take precedence.
- (g) If the rate of GST is varied from 10%, the consideration for any delivery under this Agreement will be varied to reflect the change of rate and any reduction in any other tax, duty or statutory charge connected with the rate change.
- (h) In this clause 8:
 - (i) "GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and related Acts as amended from time to time; and
 - (ii) any terms used in this clause which are defined in the GST Act are taken to have the meaning as defined in the GST Act.

9. RISK AND TITLE

- (a) Title in all goods and materials related to the Works, including the Tank, remains with the Supplier until payment of the Price (as adjusted in accordance with the terms of the Agreement) in full by the Company.
- (b) In the event of non payment of the Price by the Company, the Supplier or its Agent is authorised by the Company to enter on to the Site to remove all goods and materials owned by the Supplier, whether fixed or unfixd to the Site.
- (c) Risk in all goods and materials related to the Works, including the Tank, passes from the Supplier to the Company once those goods and materials are on the Site.

9. DEFECTS LIABILITY PERIOD

- (a) The defects liability period shall commence upon Practical Completion of the Works and shall continue for the period of 12 months from the date of Practical Completion.

- (b) At least 30 days prior to the expiry of the Defects Liability Period the Company shall provide to the Supplier a written list of any defects or faults arising from defective workmanship or materials not in accordance with this Agreement and the Supplier shall make good all notified and accepted defects within 30 days or by the expiry of the defects liability period.
- (c) The Supplier reserves its right to, at its sole discretion, either repair or replace any accepted defects within the defects liability period:
- (i) with the same or equivalent goods or materials; or
 - (ii) pay the Company the cost of repairing the defect provided that the total liability of the Supplier is limited to the original cost of the defective work on a pro rata basis.
- (d) Where the Supplier has failed to make good any accepted defects then the Company may issue a notice to the Supplier requiring the notified defects and the Supplier accepted defects to be rectified within 10 days failing which the Company shall engage alternate Suppliers to undertake rectification of the defects.
- (e) The Supplier will not be liable for damage or delay whatsoever caused by the Company or any third parties.

10. VARIATION

- (a) This Agreement may be varied at the written request of the Company by either additions or omissions to the Works provided the Supplier consents in writing to such variations. **[Use Form 4. --- Notice of Variation requested by Company.]**
- (b) Any addition or omission to the Works associated with revised or additional documents (drawings, specifications, etc.) shall be deemed to be a variation to the Agreement.
- (c) The Supplier shall not at any time carry out variation work without receiving a written instruction from the Company.
- (d) The Supplier shall, on receipt of a notice of variation, provide to the Company, within 21 days, a written adjustment to the Price along with any extension of time requirements. If a Schedule of Rates forms part of this Agreement then such will be applied to extra over work where possible.
- (e) No variation work shall commence until the price and extension of time are agreed between the parties.
- (f) For urgent variation work the Company must issue a written notice under this clause and the Supplier shall commence work immediately. The Supplier shall provide daily timesheets and daily material usage for signature by the Company. Unless otherwise agreed between the parties these records will

form the basis of the agreed price thereby adjusting the Price and the extension of time to the date for Practical Completion.

- (g) If the parties fail to agree that specific work is a variation pursuant to the Agreement the Company shall issue a written direction under this clause instructing the Supplier to proceed with the work in question. Claims for costs and time associated with such work, unless agreed by the parties, shall be subject to the dispute resolution procedure in clause 16 of this Agreement.

11. INSURANCE

- (a) At all times during the Supplier's performance of the Works under this Agreement, the Supplier shall, at its own expense, maintain:
- (i) workers' compensation insurance as required by law;
 - (ii) public and product liability insurance with a limit of indemnity of not less than \$10,000,000 for each and every occurrence.

On request, the Supplier shall provide the Company with a certificate of currency as evidence of its insurance.

- (b) Unless otherwise agreed, at all times during the term of this Agreement, the Company shall, at its own expense, maintain works insurance for the full reinstatement cost of the Works. On request, the Company shall provide the Supplier with a certificate of currency as evidence of its insurance.

12. LIABILITY AND INDEMNITY

- (a) The Supplier shall indemnify the Company for loss or damage suffered by the Company where such loss or damage is solely and directly caused by the Supplier's negligence and willful misconduct during the performance of the Works at the Site under this Agreement.
- (b) Notwithstanding any other provision of this Agreement, neither party is liable to the other for any consequential or indirect loss, costs, damage including but not limited to loss of production, loss of profit or revenue, loss of contract or loss of product.
- (c) To the maximum extent permitted by law, the Supplier's maximum liability under this Agreement is the value of the Works supplied by the Supplier under this Agreement.

13. INTELLECTUAL PROPERTY

- (a) All Intellectual Property Rights in the Supplier's Background IP remain vested in the Supplier.
- (b) The Supplier grants to the Company a non-exclusive, revocable, transferable licence to use the Supplier's Background IP to the extent necessary for the Company to realise the full benefits of the Works.

- (c) All Intellectual Property Rights in the Company's Background IP and Technical Material remained vested in the Company.
- (d) The Company grants to the Supplier a non-exclusive, revocable, transferable licence to use the Company's Background IP and Technical Material to the extent necessary for the performance of the Works.
- (e) Each party warrants that:
 - (i) the use by the other party of its Background IP and Technical Material will not infringe the Intellectual Property Rights of any third party or breach any Law; and
 - (ii) the other party shall not be liable to pay any third party any licence or other fee in respect of the use of the Background IP or Technical Material.

14. TERMINATION AND SUSPENSION

- (a) A party may terminate this Agreement by notice in writing to the other party:
 - (i) if the other party breaches a material obligation of this Agreement and fails to remedy that default within 14 days (or as otherwise agreed); or
 - (ii) immediately if an Insolvency Event occurs in relation to the other party.

[Use Form 5. --- Notice of Default.]

- (b) When this Agreement is terminated under clause 14(a)(i) or (ii), the Supplier shall:
 - (i) stop work; and
 - (ii) use reasonable endeavours to minimise the cost of ending this Agreement.
- (c) If this Agreement is terminated under clause 14(a), on demand, the Company must pay the Supplier:
 - (i) the price of the Works provided to the date of termination not included in any previous payment
 - (ii) the cost of materials the Supplier reasonably ordered prior to the termination date for the purpose of providing the Works and which the Supplier is legally liable to accept and cannot otherwise utilize;
 - (iii) the costs the Supplier actually and reasonably incurred prior to the termination date in the expectation of providing the Works, and not included in any previous payment by the Company; and
 - (iv) the reasonable costs of demobilization provided the costs are additional to those the Supplier would otherwise have incurred had this Agreement not ended in accordance with this clause 14.

- (d) If the Supplier terminates this Agreement under clause 14(a), in addition to the payment provided for in clause 14(c), the Supplier is also entitled to payment of an amount equal to 10% of the Price.
- (e) If the Company fails to pay a progress payment in accordance with clause 7, the Supplier may, without prejudice to the right to determine this Agreement, give the Company written notice of the Contactor's intention to suspend the Works. If the Company's default continues for 7 days after the date of the notice then the Supplier may suspend the Works and must give the Company written notice of such suspension. The Supplier must lift the suspension within 21 days of the Company paying the amount owed but the Supplier is entitled to an extension of time with costs for the period of the suspension. **[Use Forms 6 --- Notice of Suspension and/or Form 7 Claim for Costs arising from Suspension]**

15. FORCE MAJEURE

- (a) If a party is prevented or delaying in performing its obligations under this Agreement (except the obligation to pay money) by a Force Majeure Event:
 - (i) that party must give the other party written notice of that fact within 14 days after the start of the Force Majeure Event;
 - (ii) the obligations under this Agreement of the party giving notice under clause 15(a)(i) are suspended to the extent to which they are affected by the relevant Force Majeure Event continues; and
 - (iii) if the Supplier is affected by the Force Majeure Event, Practical Completion will be extended by the period for which the Supplier is delayed in completing the Works as a result of the Force Majeure Event.
- (b) Each party must use its reasonable endeavours to overcome the effect of the Force Majeure Event.
- (c) If a Force Majeure Event continues for more than 180 days either party may terminate this Agreement by giving at least 14 days notice in writing to the other party.

16. DISPUTE RESOLUTION

- (a) If a dispute arises between the parties concerning this Agreement then either party shall give the other written notice of the dispute. **[Use Form 8 ---- Notice of Dispute]**
- (b) Within seven (7) days of receiving the notice of dispute the parties must confer at least once in an attempt to resolve the dispute.
- (c) If the parties fail to resolve the dispute within the above-mentioned seven (7) days then the parties by agreement may have the dispute mediated or either party may apply to have the dispute resolved by expert determination.

- (d) The Mediator or Expert will be appointed by the Master Builders Association of W.A. unless otherwise agreed.

17. GOVERNING LAW

- (a) This Agreement shall be governed by the laws of the State of Western Australia, Australia.
- (b) The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State of Western Australia, Australia and all courts authorised to hear appeals from those courts.
- (c) The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (adopted at Vienna on 10 April 1980) does not apply in respect to this Agreement.

18. ASSIGNMENT

Neither party shall assign or transfer its rights or obligations under this Agreement without the other party's prior written consent, which consent shall not be unreasonably withheld.

19. MISCELLANEOUS

- (a) This Agreement constitutes the entire agreement between the parties in respect of its subject matter and supersedes all prior agreements, representations, warranties, promises, statements, negotiations and letters in respect of its subject matter.
- (b) Nothing in this Agreement constitutes a joint venture, agency, partnership or other fiduciary relationship between the parties.
- (c) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (d) The variation or waiver of a provision of this Agreement, or a party's consent to a departure from a provision by another party, shall be ineffective unless in writing, executed by the parties.
- (e) Nothing in this Agreement shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the *Trade Practices Act 1974* (Cth) and which by law cannot be excluded, restricted or modified.
- (f) Any provision in this Agreement which is invalid or unenforceable in any jurisdiction is to be severed to the extent of the invalidity or unenforceability and does not affect the remaining provisions of this Agreement or the validity or unenforceability of that provision in any other jurisdiction.

- (g) Each party must do anything (including execute any document) and must ensure that its personnel do everything that the other party may reasonably require to give effect to this Agreement.

SAMPLE

EXECUTED as an AGREEMENT

Signed for and on behalf of **Pioneer
Water Tanks (Australia 94) Pty Ltd:**

Signature of witness

Signature of authorised person

Name of witness

Name of authorised person

Date:

Signed for and on behalf of **Company:**

Signature of witness

Signature of authorised person

Name of witness

Name of authorised person

Date:

SAMPLE

COMMERCIAL STORAGE TANKS
AGREEMENT TERMS & CONDITIONS
SCHEDULE 1

Item 1	Company Name	
	ABN	
	Address	
	Attention	
	Contact No.	
	Fax No.	
Item 2	Commencement Date	
Item 3	Date for Practical Completion	
Item 4	Site	
Item 5	Price	
Item 6	Progress Payments	
Item 7	Interest (cl 7(e))	10%
Item 8	Proposal	

COMMERCIAL STORAGE TANKS
AGREEMENT TERMS & CONDITIONS
SCHEDULE 2
WORKS

SAMPLE

COMMERCIAL STORAGE TANKS
AGREEMENT TERMS & CONDITIONS
SCHEDULE 3
SCHEDULE OF RATES

SAMPLE

COMMERCIAL STORAGE TANKS
AGREEMENT TERMS & CONDITIONS
ATTACHMENT A
PROPOSAL

SAMPLE