



**New Century Resources Limited**

**Supply of Goods - Standard Terms & Conditions**

<b>1.</b>	<b>General and Definitions .....</b>	<b>3</b>
1.1	General .....	3
1.2	Definitions.....	3
1.3	Interpretations.....	6
1.4	Priority.....	7
<b>2.</b>	<b>Supply of Goods .....</b>	<b>7</b>
2.1	Provision of Goods .....	7
2.2	Ordering Procedure .....	7
<b>3.</b>	<b>Term .....</b>	<b>8</b>
<b>4.</b>	<b>Co-operative approach .....</b>	<b>8</b>
<b>5.</b>	<b>Continuous improvement .....</b>	<b>8</b>
<b>6.</b>	<b>Pricing and payment .....</b>	<b>8</b>
6.1	Price.....	8
6.2	No minimum purchase .....	8
6.3	Invoice and Payment.....	9
6.4	Dispute.....	9
<b>7.</b>	<b>Manufacture and quality .....</b>	<b>9</b>
<b>8.</b>	<b>Obligations on Supplier.....</b>	<b>10</b>
<b>9.</b>	<b>Risk and title .....</b>	<b>10</b>
<b>10.</b>	<b>Warranties .....</b>	<b>11</b>
<b>11.</b>	<b>Delivery .....</b>	<b>12</b>
11.1	Delivery obligations .....	12
11.2	Site requirements .....	13
<b>12.</b>	<b>Cancellation .....</b>	<b>14</b>
<b>13.</b>	<b>Specifications of Goods.....</b>	<b>15</b>
13.1	Determination of Specifications of Goods .....	15
13.2	New products .....	15
<b>14.</b>	<b>Defects Liability Period .....</b>	<b>15</b>
<b>15.</b>	<b>Goods and Services Tax .....</b>	<b>16</b>
15.1	Goods Price GST exclusive .....	16
15.2	GST on supply of Goods .....	16
15.3	Adjustment event .....	16
15.4	General .....	16
<b>16.</b>	<b>Termination .....</b>	<b>17</b>
16.1	Termination by either party .....	17
16.2	Termination by the Company.....	17
16.3	Effect of Termination.....	18
<b>17.</b>	<b>Force Majeure Event.....</b>	<b>18</b>
17.1	Meaning of Force Majeure Event.....	18

- 17.2 No liability for inability to perform resulting from Force Majeure Event .....19
- 17.3 Notification of Force Majeure Event .....19
- 17.4 Reasonable diligence to overcome .....19
- 17.5 Termination due to an event of Force Majeure.....19
  
- 18. Indemnity and limitation of liability .....19**
  
- 19. Insurance.....20**
  
- 20. Dispute Resolution .....21**
- 20.1 Notice of Dispute.....21
- 20.2 Time of Notice.....21
- 20.3 Escalation .....21
- 20.4 Urgent interlocutory relief.....21
- 20.5 Continued performance .....21
  
- 21. Records .....21**
  
- 22. Assignment.....22**
  
- 23. Confidentiality .....22**
- 23.1 Supplier to maintain confidentiality.....22
- 23.2 Permitted copies .....22
- 23.3 Supplier obligations .....23
- 23.4 Disclosure to Personnel.....23
- 23.5 Media.....23
  
- 24. Notices.....23**
- 24.1 Form of Notice.....23
- 24.2 When Notices are taken to have been given and received.....23
  
- 25. PPSA Security registration and enforcement .....24**
  
- 26. General .....24**
- 26.1 Governing Law .....24
- 26.2 Entire Agreement .....24
- 26.3 Variations.....25
- 26.4 Survival .....25
- 26.5 Severability .....25
- 26.6 Waiver .....25
- 26.7 Relationship of the Parties.....25
- 26.8 Costs and expenses .....25
- 26.9 Contra proferentem.....26
- 26.10 Parties’ rights and remedies not affected.....26
- 26.11 Counterparts.....26
  
- 27. Anti- Corruption / Modern Slavery .....26**

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# 1. General and Definitions

## 1.1 General

- (a) The Parties have agreed to enter into an agreement for the Supply of Goods in accordance with the Purchase Order and these terms and conditions (**Terms and Conditions**), which together constitute the contract (**Contract**).
- (b) The Supplier has represented and warranted to the Company that it is sufficiently experienced, capable and qualified to provide the Goods in accordance with the Contract.
- (c) In the event of any inconsistency, conflict, ambiguity or discrepancy between any special terms set out in the Purchase Order and these Terms and Conditions, any special terms set out in the Purchase Order will take precedence.
- (d) The Supplier acknowledges that these Terms and Conditions may be updated between orders without notice to the Supplier, and any new terms or alterations to existing terms will apply to a new Purchase Order.
- (e) The execution of a Purchase Order or the commencement of the delivery of the Goods under a Purchase Order will constitute acceptance by the Supplier of these Terms and Conditions.

## 1.2 Definitions

In this Agreement the following terms shall bear the following meanings:

**Agreement** means this agreement including the Schedules, Purchase Orders and all other documents annexed to this Agreement or specifically incorporated by reference.

**Affected Party** means any Party which is prevented by a Force Majeure Event from carrying out its obligations under this Agreement.

**Business Day** means a day on which trading banks are open for business in Brisbane Queensland excluding Saturday, Sunday and designated public holidays.

**Claim** means any claim, action, suit, demand, proceeding, notice, litigation, investigation or judgment and any actual or alleged entitlement or right howsoever arising, whether present, unascertained, immediate, future or contingent and whether based in contract, arising at common law, in equity or under any Law.

**Company** means New Century Resources Limited ABN 53 142 165 080.

**Confidential Information** means all information and materials disclosed, provided or otherwise made accessible to the Supplier or its Related Bodies Corporate, directly or indirectly, in connection with this Agreement, the supply of Services under this Agreement or the Project, whether before or after execution of this Agreement (including in connection with any tender process) and including this Agreement (and the existence of this Agreement), policies, services, processes, procedures, methods, formulations, facilities, products, plans, affairs, transactions, organisations and business connections of the Company and its Related Bodies Corporate, but excludes information that the Supplier can prove:

- (a) was in the public domain at the date the Company made it available to the Supplier;
- (b) subsequent to the date the Company made it available to the Supplier, became part of the public domain otherwise than as a result of disclosure by the Supplier or the Supplier's Personnel or other person directly or indirectly in breach of this Agreement or any other obligation of confidentiality; or
- (c) was in its possession of the Supplier at the time of disclosure by the Company to this Agreement or and was not otherwise acquired from the Company directly or indirectly.

**Consequential Loss** means:

- (a) any indirect, consequential or special damages or losses;
- (b) loss of profit, loss of contract, loss of revenue, loss of goodwill, loss of business opportunities, cost of capital and damage to reputation; or
- (c) cost, expenses, loss or damage that are not a direct consequence of the breach,

howsoever arising and whether or not a party knew or should have known of, or foreseen, the possibility of such loss or damage at the date of this Agreement.

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

**Defects Liability Period** means the period set out in Clause 14.

**Delivery Date** means that the date on which the Supplier undertakes to deliver the Goods, as set out in this Agreement, as specified in a Purchase Order or as otherwise notified by the Company to the Supplier (as applicable).

**Delivery Point** means the delivery point or delivery points specified in the Purchase Order.

**Delivery Terms** means any delivery instructions specified in this Agreement (including those in clause 11) or any other reasonable delivery terms notified to the Supplier by the Company from time to time (including in a Purchase Order).

**Force Majeure Event** has the meaning given in clause 17.1.

**Goods** means the goods, materials, equipment, supplies or other items supplied by the Supplier under this Agreement or any Purchase Order and, where applicable, includes any services provided by the Supplier in connection with the Goods or this Agreement.

**Goods Price** means the price payable for the supply of Goods under the Purchase Order.

**Government Agency** includes any federal, state, territory or local government, or any ministry, department, court, commission, board, agency, instrumentality, political subdivision or similar entity.

**Government Authorisations** means all approvals, consents, authorisations, permits, clearances, licences or other requirements that are required by or from any Government Agency for the Supplier to perform its obligations under this Agreement or any Purchase Order.

**GST** means the tax payable on Taxable Supplies under the GST Law.

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax, and includes any subordinated legislation in respect of those acts.

**Insolvency Event** means, in relation to any Party, that any of the following events or circumstances has occurred:

- (a) the affected Party is, or states that it is, insolvent (as defined in the Corporations Act) or commits an act of bankruptcy or is declared insolvent;
- (b) proceedings are commenced to appoint a liquidator or provisional liquidator to the affected Party and such proceedings are not dismissed within 60 days;
- (c) the Party is dissolved;
- (d) any of the events mentioned in section 459C(2) of the Corporations Act occurs in respect of the Party;
- (e) any Controller (as defined in the Corporations Act) is appointed in respect any material part of the affected Party's assets; or
- (f) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Law** means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instrument under them, and consolidations, amendments, re-enactments or replacement of any of them).

**Liability** means liability, loss, damage (of any nature including aggravated and punitive), cost, Claim, suit, charge, diminution in value action, statutory or equitable compensation, demand, expense or proceeding or loss of any nature and of any kind whatsoever whether present or future, actual, contingent or prospective and whether known or unknown, and howsoever arising including under any Law or Government Authorisation.

**Parties** means the Company and the Supplier.

**Personnel** means the directors, officers, employees, suppliers, contractors and agents of the Supplier or Company or their respective Related Bodies Corporate (as the context requires).

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and any regulations made pursuant to it.

**Project** means the Company's zinc project located in North Queensland.

**Purchase Order** means a document issued by the Company under this Agreement for the supply of a specific Good or Goods in accordance with this Agreement.

**Purchase Order Number** means the number assigned to the Purchase Order by the Company.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Security Interest** means any security interest, assignment by way of security, mortgage, charge (whether fixed or floating), hypothecation, deposit arrangement, pledge, trust, lien, encumbrance, preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever, and includes any other "Security Interest" as defined in Section 12(1) or 12(2) of the PPSA.

**Site Induction** means questionnaires and teachings given to a visitor or contractor in order to bring knowledge of Company's safety procedures to a level compliant with legislative and Company requirements.

**Site Safety Requirements** means the safety requirements at or associated with any Site as are imposed or required by the Company or any person that is related to health and safety.

**Specifications of Goods** means the specifications that the Goods to be provided by the Supplier under this Agreement must comply with, as described in the Purchase Order.

**Supply** means Taxable Supply as defined in the GST Law.

**Supply Commencement Date** is set out in the Purchase Order.

**Taxes** includes all taxes, fees, levies, duties and charges imposed or assessed in respect of the Goods under this Agreement by all local, state or national government authorities including income tax (including withholding for prescribed payments or group tax), payroll tax, statutory superannuation contributions and workers' compensation payments and contributions, sales tax, customs duty, excise tax, and stamp duty but does not include GST.

**Tax Invoice** has the meaning given to that term in the GST Law.

**Term** has the meaning stated in Clause 3.

**Third Party Claim** means any Claim in respect of:

- (a) loss or destruction of, or injury or damage to, or loss or use of any real or personal property; or
- (b) any personal injury or death of a person arising out of or caused by the supply or non-supply of the Goods by the Supplier.

### **1.3 Interpretations**

In this Agreement, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) words importing a gender include all genders;
- (d) other part of speech or grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (e) reference to a Party included its successors and permitted assigns;

- (f) an agreement, representation, obligation or warranty by two or more persons binds them jointly and severally;
- (g) a reference to anything (including but not limited to any right) includes a part of that thing;
- (h) a reference to a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law judgement, rule of law or equity or a rule of an applicable stock exchange and is a reference to that law as amended, consolidated or replaced;
- (i) a reference to a clause, Party, annexure, exhibit, schedule or attachment is a reference to a clause, Party, annexure, exhibit, schedule and attachment of this Agreement and a reference to this Agreement includes any annexure, exhibit, schedule and attachment to it,
- (j) a reference to an obligation includes a liability and a duty and a reference to a performance includes observance;
- (k) a reference to a day, month or year is a reference to a calendar day, calendar month or calendar year;
- (l) a reference to 'includes' or 'including' is to be read as including but not limited to;
- (m) a reference to an agreement, deed, instrument or other document includes the same as amended, novated, supplemented, varied or replaced from time to time;
- (n) a reference to \$, AUD or dollar is to Australian currency; and
- (o) a reference to time is to local time in Brisbane Queensland.

#### **1.4 Priority**

If there is any inconsistency between the documents comprising this Agreement, then the Special Conditions, the General Conditions, any Purchase Orders, the Specifications of Goods and the other schedules and appendices shall prevail to the extent of any such inconsistency in that order.

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## **2. Supply of Goods**

### **2.1 Provision of Goods**

The Company appoints the Supplier, and the Supplier accepts the appointment, to supply the Goods to the Company on a non-exclusive basis on and from the Supply Commencement Date until the end of the Term in accordance with the terms and conditions of this Agreement.

### **2.2 Ordering Procedure**

- (a) Unless otherwise set out in this Agreement, a request for Goods must be made by issue from the Company to the Supplier of a Purchase Order. Upon receipt of a Purchase Order, the Supplier must provide the Goods required under the Purchase Order (and as more particularly described in the Purchase Order or Specifications of Goods) on the terms and conditions of this Agreement.



- (b) A variation of a Purchase Order by the Supplier will only be binding on the Company if confirmed in writing by the Company Representative.
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### **3. Term**

Subject to any earlier termination provided for under this Agreement, the term commences on the date of execution of this Agreement and ends on the End Date (Term).

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### **4. Co-operative approach**

- (a) The fundamental objectives of the Parties under this Agreement are to sell and provide the Goods in accordance with the Specifications of Goods, within the agreed time and at the lowest possible cost to the Company (subject to the agreed Goods Price).
  - (b) In order to achieve this objective, the Parties commit to act with mutual co-operation based on trust, integrity and open book dealings.
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### **5. Continuous improvement**

- (a) Supplier agrees to participate in continuous improvement initiatives for the purpose of identifying improvements to better manage risk, create business options and reduce costs to the Company.
  - (b) The Parties' Representatives must, if requested by the Company's Representative, meet to discuss the provision of the Goods, the progress of the Supplier's participation in any continuous improvement initiatives and to exchange information that will assist the Parties to identify performance efficiencies provided that the Supplier shall not be obligated to incur additional costs in delivering the Goods.
  - (c) All information exchanged between the Parties in relation to any continuous improvement initiatives under this Agreement shall be treated as confidential. The Parties must not disclose any such information to any third party other than as contemplated in this Agreement.
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### **6. Pricing and payment**

#### **6.1 Price**

Subject to the performance by the Supplier of this obligations under this Agreement, Company shall pay Supplier the Goods Price for the supply of the Goods. Unless expressly stated otherwise in the Purchase Order, the Goods Price shall be fixed for the Term and shall not be subject to rise and fall.

#### **6.2 No minimum purchase**

- (a) Nothing in this Agreement obliges the Company to request or acquire any minimum volume of Goods from the Supplier.
- (b) Any estimated quantities or forecast supply of Goods contained in this Agreement is purely a non-binding estimate provided for informational

purposes only and the Company makes no representation or warranty as to any minimum quantity of Goods that it will acquire from the Supplier.

### **6.3 Invoice and Payment**

- (a) The Supplier must, within 5 days from the end of a month during which Goods were provided, provide the Company with an invoice to support the payment of the Goods Price in a form acceptable to Company, which must at a minimum contain the following information:
  - (i) this Agreement number and the Purchase Order number;
  - (ii) a brief description of the Goods supplied;
  - (iii) the quantity of Goods supplied;
  - (iv) the date on which the Goods were supplied;
  - (v) any further information stipulated in any applicable GST legislation, or by the Company, so that the Company will receive the benefit of any input tax credits in relation to the supply of the Goods; and
  - (vi) such other information as may be reasonably required by Company.
- (b) Subject to clause 6.3(c), payment will be made by the Company within 30 Days from the end of month of receipt of a validly issued Tax Invoice.
- (c) Any amounts due by the Company to the Supplier under this Agreement may be set off against any amounts due to the Company from the Supplier.
- (d) Unless otherwise agreed, all payments to be made pursuant to this Agreement shall be made by deposit to a bank account in Australia nominated in writing by the intended recipient of the payment.

### **6.4 Dispute**

If the Company disputes any amount shown on an invoice, it must notify the Supplier within 21 days of receipt of the invoice and must pay any amounts not in dispute in accordance with clause 6.3, provided that the payment by the Company of any amount the subject of a disputed invoice is not to be considered as an acceptance of the amount in dispute or of the Company's liability to make that payment.

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## **7. Manufacture and quality**

The Goods which the Supplier sells and delivers to the Company under this Agreement must:

- (a) meet the Specifications of Goods;
- (b) be of merchantable quality within the meaning of the relevant sale of goods and commercial Laws and fit for any purpose held out by the Supplier or made known to the Supplier by the Company;
- (c) be of good and marketable title such that the Company will receive title to the Goods free of any charge or encumbrance;

- (d) be free from defects in design, material and workmanship and remain so for the duration of the Defects Liability Period; and
  - (e) comply with all applicable Laws and Government Authorisations.
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## **8. Obligations on Supplier**

- (a) In supplying the Goods, the Supplier must, and must ensure that its Personnel:
    - (i) comply with all Laws (including, without limitation, all relevant mines safety and inspections laws), directives from Government Agencies and with best industry practices;
    - (ii) obtain and strictly adhere to all applicable Government Authorisations required for Supplier to source and supply the Goods; and
    - (iii) co-operate with staff, contractors and other persons providing goods or services to Company and must immediately bring to the attention of Company any conflict which may arise in relation to the supply of Goods between Supplier and any other person.
  - (b) The Supplier must comply with all provisions of International Management Codes pertaining to the Goods.
  - (c) The Supplier agrees to provide to the Company upon request, a report from an independent third party auditor confirming the Supplier's manufacturing facilities (from where the Goods are sourced) complies with all requirements as stated in applicable International Management Codes.
  - (d) The Supplier must, if requested by the Company and at the Supplier's cost, provide agreed annual training to the Company's site personnel to ensure its personnel are fully trained in compliance with Laws and regulations relevant to the unloading, storage and use of the Goods.
  - (e) The Supplier acknowledges delivery of the Goods is crucial to the Company's Project operations. If, in the Company's opinion there is a supply chain issue relating to the supply, handling and delivery of Goods under this Agreement, the Supplier shall provide more details in relation to the supply chain issue and the steps the Supplier intends to take to remedy/resolve the issue and must implement those steps.
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## **9. Risk and title**

- (a) Risk in the Goods will pass to the Company once the Goods have been delivered to, and accepted by, the Company at the Delivery Point.
- (b) Title in the Goods will pass to the Company upon payment for the Goods unless the Goods are consumed or incorporated into the Company's facilities or infrastructure prior to payment in which case title will pass at the time that this occurs.

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## 10. Warranties

Without limiting any other warranty or obligation under this Agreement, Supplier represents and warrants to the Company (as at the date of this Agreement and on each day during the Term) that:

- (a) the Supplier will supply all Personnel involved in the delivery of the Goods with the supervision and expertise necessary for the delivery of the Goods in accordance with this Agreement;
- (b) the Goods will be fit for their intended purpose, of merchantable quality, free from defects in design, materials or workmanship, in safe working condition, comply with all applicable Laws and meet the Specifications of Goods or any change to the Specifications of Goods thereafter mutually agreed by the Parties in writing;
- (c) the Goods will be manufactured to the standard of care, skill and diligence that would normally be expected of a reputable and competent organisation providing goods similar to the Goods;
- (d) the Goods have a life expectancy commensurate with what would be expected of similar goods provided for similar purposes by a competent and reputable supplier or contractor;
- (e) it has the resources to ensure sufficient and continuous supply of the Goods for the Term;
- (f) the Goods will be new unless specified otherwise;
- (g) the Supplier has good, marketable title to such Goods and the Company will receive title to the Goods free of any charge or encumbrance;
- (h) the Supplier will (if necessary) obtain, at its cost, all usual trade warranties, and any warranties specifically requested by the Company and on delivery of the Goods assign the benefit of these warranties to the Company and provide copies of the warranties to the Company;
- (i) in manufacturing and supplying the Goods, the Supplier will not infringe the intellectual property rights of any third party;
- (j) in receiving or using the Goods, the Company will not infringe the intellectual property rights of any third party; and
- (k) all information in relation to the Supplier's performance of this Agreement is true and correct in every respect and is not misleading or deceptive and the Supplier has not withheld from the Company any information concerning the Supplier, its experience or expertise which might reasonably be supposed to be material to the Company in determining whether or not to engage the Supplier to deliver the Goods or the price at which or the terms on which the Company would be prepared to engage the Supplier to deliver the Goods.

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# 11. Delivery

## 11.1 Delivery obligations

- (a) The Supplier must immediately notify the Company of the date and time of each dispatch of Goods, and include the Purchase Order Number, the quantity and description of the Goods dispatched, and the expected date and time of arrival at the Delivery Point.
- (b) Delivery of Goods is complete when the Goods have been delivered and unloaded at the Delivery Point and received by the Company or its agent as evidenced by the receipt signed by the Company or its agent.
- (c) The Goods must be delivered in accordance with the Delivery Terms and the other relevant terms and conditions of this Agreement.
- (d) The Goods must be delivered by the Delivery Date during the opening hours of the Site or other location which is the Delivery Point.
- (e) All goods must be packed, marked and transported as specified in the Delivery Terms and in accordance with requirements pertaining to transportation of dangerous goods (where applicable) and industry best practice.
- (f) The Supplier shall ensure that the Goods are adequately protected from damage and deterioration during shipment and short term storage having due regard for the conditions and environment at the Site or other location which is the Delivery Point and areas through which the Goods will traverse, to include climate, roads, and requirement for multiple handling. In packaging, marking and transporting the Goods, the Supplier must abide by applicable international and national Laws regarding the transportation of Goods and the protection of safety, health and the environment.
- (g) All hazardous goods must be clearly labelled. If the Goods include or constitute dangerous, hazardous or toxic items, the Supplier must include Safety Data Sheets and clearly mark or label the Goods with appropriate information, provide necessary shipping certification and otherwise comply with all applicable Laws and Governmental Authorisations and requirements of the Company. Costs arising from failure of the Supplier to follow proper packaging, marking and transporting procedures and instructions as specified in the Purchase Order shall be for the account of the Supplier.
- (h) If required by the Company, the Supplier must include with each delivery of Goods a delivery docket:
  - (i) setting out the date of despatch, the quantity and the unit of measure of Goods shipped, Purchase Order Number, line item number, delivery docket number and, if applicable, the consignment note number and freight carrier; and
  - (ii) naming the Supplier as the Shipper and the Company as the Consignee.
- (i) Where the Supplier fails to provide a delivery docket the Company's count will be accepted as final and conclusive on shipments.

- (j) If the Supplier believes that the Goods may not be delivered by the Delivery Date, the Supplier must immediately give written notice to the Company's Representative as soon as it forms, or ought to have formed, that belief.
- (k) The Supplier must, after consultation with the Company, and without limiting the Company's rights or remedies under this Agreement or under any Laws, take such remedial steps as necessary to expedite and accelerate the delivery of the Goods so that the Goods are delivered on or as close to the Delivery Date as reasonably practicable. The Supplier will be responsible for all costs and expenses arising from the remediation of the delay, except to the extent the Company or its Personnel contribute to any such delay.
- (l) If the Goods are not delivered by the Delivery Date, then, without limiting any other right or remedy the Company may have under this Agreement, at law or in equity, the Company may:
  - (i) refuse to take any subsequent attempted delivery of the Goods;
  - (ii) cancel the relevant Purchase Order without liability to the Company and obtain substitute goods from a third party supplier and recover from the Supplier any costs and expenses reasonably incurred by the Company in obtaining such substitute goods; and
  - (iii) claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Goods on the Delivery Date provided that the Supplier will have no liability for any failure or delay in delivering the Goods to the extent that such failure or delay is caused by the Company's failure to comply with its obligations under this Agreement.
- (m) All Goods received in excess of Purchase Order requirements will be subject to return for credit at the Supplier's cost.
- (n) If stipulated in , the Supplier must provide to the Company an 'Emergency Service' pursuant to which the Supplier must prepare the Goods for dispatch at the Supplier's premises and make them available to a nominated transporter of the Company within three (3) hours of receiving notification by the Company, such Emergency Service must be available seven (7) days a week (including Saturdays, Sundays and Public Holidays) and twenty-four (24) hours a day.

## 11.2 Site requirements

If, in supplying the Goods under this Agreement or any services related to the supply of the Goods under this Agreement, the Supplier's Personnel enter the Site, the following conditions will apply:

- (a) Supplier must ensure that its Personnel who visit Site are aware of and comply with:
  - (i) a requirement of zero BAC (blood alcohol concentration) limit and minimum drug level concentrations at the Site; and
  - (ii) Company's random and "for cause" drug and alcohol testing program;
- (b) Company may inspect the contents of any vehicle entering, leaving or within the Site at any time;

- (c) it is a condition of entry to Site that the Supplier's Personnel comply with the Company's procedures, including the Company's Site Induction, Site Safety Requirements and any other reasonable training as the Company may require from time to time. The Company may deny access to the Site to any person who fails to complete the Site Induction to the satisfaction of the Company in its sole discretion;
- (d) the Supplier must ensure that all Personnel sign all of the Company's documentation in relation to the Company's Site Entry Clearance protocols prior to entering the Site; and
- (e) the Supplier must ensure that Personnel that refuse to comply with the National Police Clearance Process or that fail the National Police Clearance process, as determined by the Company, are immediately removed from the Site and are not permitted to re-enter the Site.

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## 12. Cancellation

- (a) The Company may cancel a Purchase Order in whole or in part by giving written notice to the Supplier indicating the date of cancellation (**Cancellation Date**).
- (b) As of the Cancellation Date:
  - (i) the Supplier must:
    - (A) cease the manufacture and supply of the Goods and all other work related to the supply of the Goods;
    - (B) not place any further orders or commitments; and
    - (C) take all action in relation to the cancellation that the Company may reasonably require;
  - (ii) to the extent the Goods are standard or stock items and are not yet delivered or in transit, the Company will have no further obligation to the Supplier; and
  - (iii) if the Goods are manufactured exclusively for the Company and have been delivered or are in transit or are in the process of being manufactured, the Company must pay the Supplier all reasonable costs and expenses incurred as a result of cancellation (as reasonably determined by the Company), provided that:
    - (A) the Supplier must make all reasonable efforts to mitigate all costs and expenses incurred as a result of the cancellation;
    - (B) the Supplier is not entitled to claim for any profit, or loss of profit or any damage or other Claim arising as a result of the cancellation; and
    - (C) in no circumstance will the amount owed by the Company be greater than the Goods Price that would have been payable had the cancellation not been made and the Goods delivered.

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## 13. Specifications of Goods

### 13.1 Determination of Specifications of Goods

- (a) The Company will determine, acting reasonably, whether the Goods supplied are in accordance with this Agreement, meet the Specifications of Goods and are to the standard, quality and quantity required by the Company.
- (b) Acceptance of delivery does not constitute acknowledgement by the Company as to the condition of the Goods or compliance with this Agreement.
- (c) If any Goods delivered to the Company do not comply with the Specifications of Goods, clause 7 (as to manufacture and quality), clause 10 (warranties) or are otherwise not in conformity with the terms of this Agreement, then, without limiting any other right or remedy that the Company may have, the Company may reject those Goods and require, at its sole election:
  - (i) the Supplier to repair or replace the rejected Goods at the Supplier's cost and expense, which must be done as soon as reasonably practicable; or
  - (ii) the Supplier to repay the price of the rejected Goods in full, and claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Goods that are not in conformity with the terms of this Agreement.
- (d) The Company's rights and remedies under this clause are in addition to the rights and remedies available to it in respect of the statutory conditions relating to merchantable quality and fitness for purpose by the relevant sale of goods or any commercial Laws.
- (e) The terms of this Agreement will apply to any repaired or replacement Goods supplied by the Supplier.
- (f) If the Supplier fails to promptly repair or replace rejected Goods in accordance with clause 13.1(c), the Company may, without affecting its rights, obtain substitute goods from a third party supplier, or have the rejected Goods repaired by a third party, and the Supplier will reimburse the Company for the costs it incurs in doing so.

### 13.2 New products

If, during the Term, any party identifies any additional products that could offer potential benefit to the Company, the Company may request, and the Supplier must provide, pricing for those products.

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## 14. Defects Liability Period

- (a) The Defects Liability Period will commence on and from the date that the Goods are delivered to the Company in accordance with this Agreement, being 12 months from acceptance or 18 months from delivery, whichever is earlier.
- (b) Upon receipt of a notice from the Company of any defect or deficiency in the Goods during the Defects Liability Period, the Supplier must redesign, repair or replace the affected items or parts at no cost to the Company prior to the



expiration of the time specified in the notice and such rectification work will be subject to a separate and additional Defects Liability Period commencing from the notification by the Company of acceptance of the work of rectification and extending for the Defects Liability Period.

- (c) If the Supplier fails to make the necessary redesign, repair or replacement to the Goods within the time specified, the Company may perform or cause to be performed such redesign, repair or replacement at the Supplier's risk and expense and any costs and expenses incurred by the Company will be recoverable from the Supplier as a debt due and payable.

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## **15. Goods and Services Tax**

### **15.1 Goods Price GST exclusive**

Unless otherwise expressly stated in this Agreement, the Goods Price is exclusive of GST.

### **15.2 GST on supply of Goods**

If GST is imposed in relation to any Supply under this Agreement by one Party to another, the Party receiving the Supply (**Recipient**) must pay the amount imposed to the Party providing the Supply (**Provider**) at the same time as the Party is required to pay the Provider for the Supply in question, provided that the Provider issues a valid tax invoice to the Recipient:

- (a) within 7 days after the occurrence of the event that causes the GST liability of the Provider on any taxable Supply to the Recipient to be attributed to a particular tax period (and the Recipient is not required to make any payment for GST until the Recipient has received a valid tax invoice from the Supplier); or
- (b) in the case of the provision of Goods by the Supplier, in accordance with the invoice requirements in clause 6.3.

### **15.3 Adjustment event**

If there is an Adjustment Event in relation to a supply that results in the amount of GST on a supply being different from the amount in respect of GST recovered by the Supplier, the Supplier:

- (a) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount recovered; and
- (b) must refund to the recipient the amount by which the amount recovered exceeds the amount of GST on the supply.

### **15.4 General**

Words used in this clause 15 which have a defined meaning in the GST Law have the same meaning as in the GST Law unless the context otherwise indicates.

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## 16. Termination

### 16.1 Termination by either party

- (a) Either Party may terminate this Agreement by written notice if the other Party is in material breach of a material term of this Agreement and has not remedied the breach within 30 days after the non-defaulting Party gives written notice of the details of the breach and the non-defaulting Party's requirement to remedy the breach.
- (b) Either Party may terminate this Agreement by immediate written notice where an Insolvency Event has occurred in respect of the other Party.

### 16.2 Termination by the Company

- (a) In addition to the rights of the Company as provided for elsewhere in this Agreement, the Company may, at any time and at its sole and absolute discretion, terminate this Agreement in whole or in part by giving the Supplier not less than 30 days' written notice.
- (b) In the event of termination by the Company under clause 16.2(a), the Company will pay to the Supplier:
  - (i) all amounts due and payable by the Company to the Supplier for Goods delivered prior to the termination date;
  - (ii) any reasonable, direct costs and expenses incurred as a result of the termination (as reasonably determined by the Company) in relation to Goods that are manufactured exclusively for the Company (and are not standard or stock items) and are either in transit or are in the process of being manufactured, provided that:
    - (A) the Supplier must make all reasonable efforts to mitigate all costs and expenses incurred as a result of the termination;
    - (B) the Supplier must provide reasonable documentary evidence of those costs; and
    - (C) the Supplier is not entitled to claim for any profit, or loss of profit or any damage or other Claim arising as a result of the termination,

which shall be accepted by the Supplier in full and final settlement of all and any rights and remedies of the Supplier in respect of termination of this Agreement by the Company. All Goods for which the Supplier is paid in accordance with this clause 16 shall be delivered to, and become the property of the Company.

- (c) Upon payment by the Company to the Supplier in accordance with clause 16.2(b), the Supplier shall waive any Claims for damages, loss, expenses and costs (including loss of any anticipated profits) which the Supplier may otherwise have had on account of the termination of this Agreement by the Company, and acknowledges that the Company be released from all further obligations to the Supplier pursuant to the provisions of this Agreement from the date on which termination is effective (other than as contemplated in this clause 16.2).

## 16.3 Effect of Termination

Upon termination or expiry of this Agreement:

- (a) the Supplier must cease to dispatch and supply any Goods that have not already been dispatched to the Company prior to the date of termination;
- (b) the Company will remain liable to pay for any Goods that the Supplier can demonstrate were already dispatched for delivery prior to the date of termination;
- (c) the Parties will be released from their requirement to perform any further obligations under this Agreement, except those expressed to survive termination; and
- (d) each Party retains the rights it has against the other Parties in respect of any breaches of this Agreement that occurred prior to termination.

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## 17. Force Majeure Event

### 17.1 Meaning of Force Majeure Event

- (a) A Force Majeure Event means any event or circumstance, or combination of events and circumstances that:
  - (i) are not within the reasonable control of the Affected Party;
  - (ii) could not reasonably have been prevented, mitigated or avoided by the exercise of due diligence or Good Engineering and Operating Practice; and
  - (iii) cause or result in failure or delay in the performance by the Affected Party of any of its obligations under this agreement.
- (b) Subject to meeting the qualifications in clause 17.1(a), a Force Majeure Event includes the following:
  - (i) acts of God, lightning strikes, earthquakes, floods, droughts, storms, tempests, mud slides, washaways, explosions, cyclones, tidal waves, landslides, adverse weather conditions, fires and any natural disaster;
  - (ii) acts of war (declared or undeclared), acts of public enemies, riots, malicious damage, sabotage, blockade, revolution, riot, insurrection, civil commotion and epidemic;
  - (iii) acts or omissions (whether legislative, executive or administrative) of any Government Agency;
  - (iv) inability to obtain or delay in obtaining any necessary Authorisation after making due application; and
  - (v) strikes, lockouts or other labour difficulties other than a strike, lockout or labour difficulty which is specific to the party claiming Force Majeure.

## **17.2 No liability for inability to perform resulting from Force Majeure Event**

If, due to a Force Majeure Event, a Party is unable to perform an obligation under this Agreement on time and as required, then that obligation is suspended for so long as the Affected Party's ability to perform it is affected by that Force Majeure Event provided that a suspension for a Force Majeure Event will not extend the Term.

## **17.3 Notification of Force Majeure Event**

- (a) An Affected Party must as soon as reasonably practicable notify the other party of:
  - (i) the occurrence and details of any Force Majeure Event;
  - (ii) the estimated delay in performance resulting from the Force Majeure Event; and
  - (iii) where possible, the proposed method of remedying or abating the Force Majeure Event.
- (b) An Affected Party must promptly notify the other party of any changes in or cessation of the occurrence or effects of Force Majeure.

## **17.4 Reasonable diligence to overcome**

An Affected Party must use all reasonable diligence to overcome the effect of the event of Force Majeure as quickly as possible.

## **17.5 Termination due to an event of Force Majeure**

- (a) If an event of Force Majeure continues for a period of 30 days, the Company may give the Supplier a notice of termination with immediate effect.
- (b) After termination under clause 17.5(a) the Company will pay to the Supplier all amounts due and payable by the Company to the Supplier for the Goods provided under this Agreement prior to the date of termination.

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# **18. Indemnity and limitation of liability**

- (a) Supplier is liable for and must indemnify and hold harmless the Company, its Related Bodies Corporate and its and their Personnel (**Indemnified Parties**) from and against any Liability, whether arising under any statute or at common law, in respect of:
  - (i) the performance, non-performance or breach by the Supplier or its Personnel of any of the Supplier's obligations (including any warranty) under this Agreement;
  - (ii) any negligent act or omission of the Supplier or its Personnel arising out of or in any way connected or related to the delivery of the Goods or the performance or non-performance of this Agreement;
  - (iii) any Third Party Claim;
  - (iv) the entry onto and the activities undertaken on, the Site, by the Supplier and its Personnel (if applicable);

- (v) the illness, injury or death of any of the Supplier's Personnel arising out of or in any way related to this Agreement; and
- (vi) any breach of third party intellectual property rights,

provided that the Supplier is not liable under this indemnity to the extent (and in the proportion) that such Liability arises from:

- (vii) any negligent act or omission of the Indemnified Parties;
  - (viii) any breach of this agreement by the Company; or
  - (ix) a failure by the Indemnified Parties to take reasonable steps to mitigate their Liability.
- (b) To the maximum extent permitted by Law, neither Party will be liable to the other Party for any Consequential Loss.

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## 19. Insurance

- (a) Prior to commencing the provision of Goods, the Supplier shall provide to the Company certificates of currency for:
- (i) public liability insurance, such insurance:
    - (A) covering liability relating to death, bodily injury, loss of property and damage to property for the amount not less than \$20,000,000;
    - (B) insuring the Goods against loss or damage during manufacture, pending delivery and in transit to the Delivery Point specified in the Purchase Order and until accepted by the Company;
    - (C) must contain a waiver of the insurer's rights of subrogation to the Company rights;
  - (ii) if (and only if) the Supplier is using its own vehicles on Site in relation the delivery of the Goods or the performance of any services in relation to the Goods:
    - (A) compulsory motor vehicle third Party liability insurance for all Supplier's vehicles; and
    - (B) insurance for third Party property damage by Supplier's vehicles for an amount of not less than \$20,000,000; and
  - (iii) workers' compensation insurances that complies with any applicable Laws for any Personnel of the Supplier that perform any services on Site.
- (b) The insurances referred to in this clause 19 must be maintained by the Supplier for the Term.

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## 20. Dispute Resolution

### 20.1 Notice of Dispute

- (a) Subject to clause 20.4, if a dispute between the Supplier and the Company arises out of or in connection with this Agreement (**Dispute**) then, subject to clause 20.2, a Party may give the other Party a notice (**Notice of Dispute**) specifying the Dispute and requiring its resolution under this clause 20.
- (b) During the existence of any Dispute, the parties must continue to perform all of their obligations under this Agreement without prejudice to their position in respect of such Dispute.

### 20.2 Time of Notice

The Supplier must not submit a Notice of Dispute in respect of a Claim for any extra costs, loss or damage unless the claim has previously been submitted to and determined in writing by the Company's Representative. Where a Claim has been submitted to the Company and has not been determined by the Company's Representative within 28 days then the Claim will be deemed to have been rejected by the Company at the end of that time and a Notice of Dispute may be given.

### 20.3 Escalation

- (a) If the Dispute is not resolved within 21 days of the date of the Notice of Dispute, then either Party may request a meeting between their respective executive management to attempt to resolve the Dispute and the executive management must meet and attempt to resolve the Dispute by good faith negotiations.
- (b) If the Dispute is not resolved within 45 days of the date of the Notice of Dispute (or such longer period as the Parties may agree), either Party may refer the Dispute to a court of competent jurisdiction for resolution.

### 20.4 Urgent interlocutory relief

Nothing in this clause prevents a party from seeking urgent interlocutory relief.

### 20.5 Continued performance

Notwithstanding the existence of any Dispute or that a Dispute resolution process is ongoing, the Parties must continue to perform their obligations under this Agreement.

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## 21. Records

The Supplier must:

- (a) maintain a true, correct and complete set of records, books and accounts, relating to the costs and expenses for which the Supplier seeks compensation or reimbursement prepared in accordance with generally accepted accounting principles and accounting standards in Australia; and
- (b) make these available at no cost to the Company for audit, inspection, and copying by the Company or its designated representative during the term of this Agreement and for a period of two (2) years afterwards or as required by

Law, whichever is the greater following any termination or completion of this Agreement.

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## **22. Assignment**

- (a) Subject to clauses 22(b) and 22(c), neither Party shall, without the prior written consent of the other Party, assign, mortgage, transfer or charge any or all of its rights or obligations under or pursuant to this Agreement.
  - (b) The Company may assign or transfer its rights or obligation under this Agreement to any Related Body Corporate without the prior written consent of Supplier provided that it gives the Supplier notice of such assignment. Supplier shall enter into any documentation reasonably required by the Company to give effect to such assignment or transfer.
  - (c) Notwithstanding any clause to the contrary in this Agreement, the Company is entitled to create a permit to exist a Security Interest over this Agreement in favour of any financier or other party in order to secure the financing of the Project.
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## **23. Confidentiality**

### **23.1 Supplier to maintain confidentiality**

The Supplier must not, and must ensure that its Personnel do not, unless the Company has first agreed in writing:

- (a) disclose to anyone else, or
- (b) use for a purpose other than the provision of Goods,

any of the Confidential Information or the details of this Agreement, except to the extent permitted by clause 23.2 or required by Law or the rules of a recognised stock exchange.

### **23.2 Permitted copies**

The Supplier may make copies of written or computer stored materials incorporating Confidential Information only if those copies are necessary for the purpose of providing the Goods and must:

- (a) return to the Company all Confidential Information (including any copies made by it); and
- (b) permanently delete any Confidential Information stored by it in a computer or electronic retrieval system so that it is incapable of retrieval,

within 7 days after the earlier of:

- (c) a receipt of a request from the Company to do so; or
- (d) the termination or expiry of this Agreement;

and must, if requested by the Company, provide a certificate to the Company that these obligations have been complied with.

### 23.3 Supplier obligations

The Supplier must notify the Company immediately if it becomes aware of, or suspects, any disclosure, use or copying of Confidential Information that is not authorised by this Agreement and must take all steps reasonably required by the Company to stop that unauthorised disclosure, use or copying.

### 23.4 Disclosure to Personnel

The Supplier must restrict disclosure of the Confidential Information to its Personnel who need to know it in order to provide the Goods and will, on reasonable request by the Company, ensure those Personnel execute confidentiality agreements containing terms similar in effect to this clause 23.

### 23.5 Media

- (a) The Supplier may not advertise or issue any information, publication, document or article for publication or media releases or other publicity relating to the Goods or the Project, the Site or this Agreement without the prior written approval of the Company, except that the Supplier may disclose such information and other matters:
  - (i) to its shareholders, directors, officers, employees, contractors or consultants, and to any Government Agency, who have a specific need to have access to such information and other matters; or
  - (ii) as required by Law or any listing rules applying to it (or any of its Related Bodies Corporate).
- (b) The Supplier must not, and must ensure that its employees and its subcontractors and their respective employees do not, take any photographs or video recording of any part of the Site or the Project, without the prior written approval of the Company's Representative.

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## 24. Notices

### 24.1 Form of Notice

- (a) Unless expressly stated otherwise in this Agreement, any notice, certificate, consent, approval, waiver or other communication in connection with this document (**Notice**) must be in writing or given by electronic transmission, signed by the sender (if an individual) or an authorised officer of the sender and addressed as set out in the Purchase Order.
- (b) Each Party may change its address details from time to time by giving notice to the other Party in accordance with clause 24.1(a).

### 24.2 When Notices are taken to have been given and received

- (a) A Notice is regarded as given and received:
  - (i) if delivered by hand, when delivered to the address in the Purchase Order;
  - (ii) if sent by pre-paid post, on the 3rd day following the date of postage; and



- (iii) if sent by e-mail, when a delivery confirmation report or receipt is received by the sender which records the time that the e-mail was delivered to the addressee's e-mail address (unless the sender receives a delivery failure notification indicating that the e-mail has not been delivered to the addressee).
- (b) A Notice delivered or received other than on a Business Day or after 5.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day. A Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.

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## 25. PPSA Security registration and enforcement

- (a) If either Party provides a Security Interest to another party pursuant to this Agreement, that Party consents to the other Party effecting a registration of the relevant Security Interest on the PPSA Register (in any manner it considers appropriate) and agrees to provide all assistance reasonably required to facilitate this.
- (b) The Parties agree that each of the provisions of the PPSA which section 115 of the PPSA permits Parties to contract out of, other than sections 117 and 118 (relationship with land laws) and 134(1) and 135 (retention of collateral), do not apply to the enforcement of any Security Interest provided pursuant to this agreement.
- (c) To the extent permitted by section 275 of the PPSA, the Parties agree to keep all information of the kind mentioned in section 275(1) of the PPSA confidential and to not disclose that information to any other person, except where disclosure is otherwise permitted or authorised under this Agreement.
- (d) Notwithstanding anything in this Agreement, notices or documents required or permitted to be given pursuant to this Agreement for the purposes of the PPSA must be given in accordance with the PPSA.
- (e) The Party providing a Security Interest waives the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

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## 26. General

### 26.1 Governing Law

This Agreement shall be governed by the laws of Queensland. Each Party submits to the non-exclusive jurisdiction of courts of Queensland and any courts entitled to hear appeals from those courts.

### 26.2 Entire Agreement

This Agreement constitutes the entire agreement between the two Parties in relation to the subject matter and supersedes all prior negotiations, conditions, representations, proposals, understandings and agreements whether written oral which are excluded and negated save and except for such conditions or representations that cannot be excluded by virtue of the *Competition and Consumer Act 2010* (Cth) or any applicable Law.

### **26.3 Variations**

No modification or alteration of the terms of this Agreement shall be binding unless made in writing dated subsequent to the date of this Agreement and duly executed by the Parties.

### **26.4 Survival**

- (a) Any indemnity or any obligation of confidence under this Agreement is independent and survives termination or expiry of this Agreement.
- (b) Clauses 14, 16, 18, 19, 20, 21, 22, 23, 24, and 26 survive termination or expiry of this Agreement.
- (c) Any other term by its nature intended to survive termination or expiry of this Agreement, or expressed to survive termination or expiry of this Agreement, survives termination or expiry of this Agreement.

### **26.5 Severability**

Any provision of this Agreement that is invalid or unenforceable in any relevant jurisdiction will be deemed to be severed from this Agreement, without affecting the validity or enforceability of the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

### **26.6 Waiver**

A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.

### **26.7 Relationship of the Parties**

- (a) The Parties acknowledge and agree that the relationship between Company and Supplier is that of principal and independent contractor.
- (b) Nothing in this Agreement will be deemed to constitute Supplier nor any of its Personnel as an employee, partner, agent or representative of Company and Supplier nor any of its Personnel will have no authority to incur and will not incur any obligation on the part of Company, except with, and to the extent of, the prior written authority of Company.

### **26.8 Costs and expenses**

- (a) Subject to clause 26.8(b), each Party must pay its own costs and expenses in respect of the negotiation, preparation, execution and delivery of this Agreement.
- (b) The Supplier shall be responsible for and must from time to time as required by law pay all compulsory superannuation, payroll tax, income tax and any other government levies and charges incurred in connection with providing the Goods, and indemnifies and will keep indemnified the Company from and against all losses, liabilities, damages, Claims, proceedings, demands, costs and expenses however arising that the Company or its servants, agents or

Suppliers suffer, sustain or incur by reason of the Supplier's breach of any part of this clause 26.8.

## **26.9 Contra proferentem**

In the interpretation of this Agreement, no rule of construction applies to the disadvantage of one party on the basis that it put forward this Agreement or any part of it.

## **26.10 Parties' rights and remedies not affected**

The rights, powers and remedies provided in this agreement are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this agreement.

## **26.11 Counterparts**

This agreement may be executed in any number of counterparts (and exchanged by way of electronic copy) each of which shall be deemed for all purposes to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

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# **27. Anti- Corruption / Modern Slavery**

27.1 The Supplier represents, warrants and agrees that, in connection with this Agreement:

- (a) neither the Supplier nor their Personnel, directly or indirectly, has engaged (upon entering into this agreement) or will engage in the bribery of an official, agent or representative of a Government Agency or any person;
- (b) the Supplier (including their Personnel) will otherwise comply with any applicable Anti-corruption Laws;
- (c) it will notify the Company promptly upon becoming aware that any officer, director, employee or shareholder becomes, or expects to become, an official, agent or representative of a Government Agency in a position to influence action for or against the Company;
- (d) if the Supplier engages a sub-supplier or other third party to interact with others on behalf of the Company, it will perform appropriate risk based anti-corruption due diligence on that sub-supplier or third party, will keep records of the same, and take reasonable measures to ensure they comply with clauses 27.1(a), 27.1(b), and 27.1(c);
- (e) it will notify the Principal promptly upon becoming aware of any actual or potential breach of clause 27.1(a), 24.1(b) and 27.1(c) by the Supplier or their Personnel.

27.2 Without limiting any other rights of the Company at law or under this Contract, if the Company reasonably suspects that the Supplier is in breach of or has breached clauses 27.1(a), 27.1(b) and 27.1(c), or the Company knows or reasonably suspects that such a breach is imminent, then:

- (a) the Company may immediately terminate this Agreement by notice to the Supplier; and
- (b) any claims for payment by the Supplier in relation to this Agreement will be automatically terminated and cancelled.

27.3 In performing its obligations under this Agreement, the Supplier shall and shall ensure that each of its sub-suppliers shall:

- (a) comply with all applicable laws, statutes, regulations in force from time to time including but not limited to the Modern Slavery Act 2018 (Cth); and
- (b) take reasonable steps to ensure that there is no modern slavery or human trafficking in the Supplier's or sub-suppliers supply chains or in any part of their business.