1. **Definitions and interpretation**

**Standard Terms and Conditions of Purchase**

* 1. Definitions

In this agreement:

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act* *2010* (Cth).

**Business Day** means a day on which banks are open for business in Melbourne excluding a Saturday, Sunday or public holiday in that city and where the Purchaser and the Supplier are in different cities, States or Territories, means a day on which banks are open for business in both those cities, States or Territories (as applicable) excluding a Saturday, Sunday or public holiday in either of those locations.

**Control of a corporation or other body** means the power to determine:

1. the outcome of decisions about the financial and operating policies of that corporation or body; or
2. the membership of the majority of the board of directors (or members of a governing body having functions similar to a board of directors) of that corporation or body,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights, and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or equity interests of that corporation or body (as applicable) or otherwise.

**Commencement Date** means thedate of the Purchase Order.

**Confidential Information** means:

1. the terms of this agreement; and
2. all information, know-how, ideas, concepts, technology, industrial, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form) relating to or developed in connection with or in support of the business of a party or a Related Body Corporate of a party which is disclosed, communicated or delivered to, learnt by, or which otherwise comes to the knowledge of or into the possession of the other party under or in connection with this agreement,

but does not include:

1. information which is or becomes generally available in the public domain (other than through any breach of confidence);
2. information rightfully received by the other party from a third person who is under no obligation of confidentiality in relation to the information and who has not obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the first party; or
3. information which has been independently developed by the other party.

**Consequential Loss** means any loss of revenue, loss of income, loss of business, loss of profits, loss of production, loss of or damage to goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, losses arising from claims by third parties (including claims for liquidated damages made on the Purchaser), loss of or damage to credit rating, loss of anticipated savings, loss or denial of opportunity or any other loss, damage, cost or expense incurred by a party or any other person that is indirect or consequential.

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

**COR Laws** means Legislative Requirements relating to fatigue management, speed and mass, dimension and load restraint compliance requirements generally referred to as “Chain of Responsibility” laws or “Heavy Vehicle” laws.

**COR Systems** means policies, procedures, standards, training and systems designed to ensure, so far as is reasonably practicable, compliance in COR Laws

**Defective Goods** means Goods which are not in conformity with this agreement.

**Delivery Schedule** means the schedule specifying the dates, time and locations for the delivery of Goods by the Supplier to the Purchaser as set out in the Purchase Order.

**Disclosing Party** has the meaning given in clause 17.2.

**Dispute** has the meaning given in clause 19.1(a).

**Force Majeure Event** means:

1. an act of God;
2. war;
3. revolution;
4. any unlawful act against public order or authority;
5. a national or state-wide strike or industrial dispute; or
6. a government restraint.

**Goods** means the Goods to be provided by the Supplier to the Purchaser as described in the Purchase Order (including any spare parts) or the Purchase Order.

**Government Agency** means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world and includes any self-regulatory organisation established under statute or any stock exchange.

**GST** means goods and services tax and includes any replacement or subsequent similar tax.

**GST Law** means *A New Tax System (Goods and Services Tax) Act* *1999* (Cth).

**Incoterms 2010** means the International Commercial Terms as published by the International Chamber of Commerce, as amended from time to time.

**Insolvency Event** means the occurrence of any of the following events:

1. where a party is a natural person, the person becomes bankrupt, files or is served with a petition in bankruptcy or is served with a bankruptcy notice, the person is unable to pay his/her debts as and when they become due and payable or a creditor's meeting in relation to the person is called;
2. an application is made to a court for an order or an order is made that a body corporate be wound up, and the application is not withdrawn, stayed or dismissed within 21 days of being made;
3. appointment of a liquidator, provisional liquidator, administrator, receiver, receiver and manager or controller in respect of a body corporate or its assets;
4. except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
5. a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved;
6. a body corporate is or states that it is insolvent as that term is defined in section 95A of the Corporations Act;
7. as a result of the operation of section 459F(1) of the *Corporations Act* *2001*, a body corporate is taken to have failed to comply with a statutory demand;
8. a body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act* *2001*;
9. a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable law;
10. a body corporate ceases to carry on business; or
11. anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Intellectual Property Rights** means:

1. inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or techniques;
2. copyright (including future copyright) throughout the world in all literary works, artistic works, computer software and any other works or subject matter in which copyright subsists and may in the future subsist;
3. confidential information and trade secrets;
4. trade and service marks (whether registered or unregistered), business names, trade names, domain names, logos and get-up; and
5. proprietary rights under the *Circuit Layouts Act* *1989* (Cth).

**Law** means:

1. legislation, ordinances, regulations, by-laws, orders, awards, proclamations, directions and practice notes of the Commonwealth, a State or Territory or any Government Agency;
2. certificates, licences, consents, permits, approvals, qualifications, registrations, standards or requirements of organisations having jurisdiction in connection with the supply of the Goods under this agreement; and
3. all other laws from which legal rights and obligations may arise.

**Loss** means any loss, cost, damage, expense (including lawyer's fees and expenses on a full indemnity basis), claim, demand or liability including any Consequential Loss.

**Particular Purpose** means the particular purpose for which the Goods are acquired by the Purchaser as may be specified in the Purchase Order or as may be reasonably inferred from the agreement.

**Performance Guarantee Period** means the period set out in the Purchase Order commencing from the date of supply of the relevant Goods.

**Price** means the price for the Goods payable by the Purchaser to the Supplier as set out in the Purchase Order.

**Purchaser's Background Intellectual Property Rights** means all Intellectual Property Rights owned or used by the Purchaser prior to the date of this agreement.

**Purchase Order** means any purchase order issued by the Purchaser under this agreement for the supply of the Goods.

**Related Body Corporate** has the meaning given to it in section 9 of the Corporations Act.

**Representatives** mean officers, directors, employees, agents, representatives, contractors or subcontractors of the relevant party.

**Site** means any site at which the Goods are to be delivered as may be specified in the Purchase Order.

**Specifications** means the specifications for the Goods referable to the project for which the Goods are required (and includes all relevant Australian Standards), a copy of which has been given to the Supplier and which the Supplier acknowledges as having received.

**Supplier Background Intellectual Property Rights** means all Intellectual Property Rights owned or used by the Supplier prior to the date of this agreement.

**Termination Event** means any event specified in clause 12.

* 1. **Interpretation**

In this agreement unless a contrary intention is expressed:

1. headings and italicised, highlighted or bold type do not affect the interpretation of this agreement;
2. the singular includes the plural and the plural includes the singular;
3. a gender includes all other genders;
4. other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
5. a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any Government Agency (whether or not having a separate legal identity);
6. a reference to any thing (including any right) includes a part of that thing, but nothing in this clause (f) implies that performance of part of an obligation constitutes performance of the obligation;
7. a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this agreement and a reference to this agreement includes any clause, annexure, exhibit and schedule;
8. a reference to a document (including this agreement) includes all amendments or supplements to, or replacements or novations of, that document;
9. a reference to a party to any document includes that party's successors and permitted assigns;
10. a reference to any legislation includes all delegated legislation made under it, amendments, consolidations, replacements or re-enactments of any of them;
11. a reference to time is to Melbourne time;
12. a reference to '$', 'A$', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia.
	1. **Business Day**

If anything under this agreement is required to be done by or on a day that is not a Business Day that thing must be done by or on the next Business Day.

1. **Goods**
	1. **Supply**

The Supplier must supply the Goods (and all things necessary for the supply of the Goods) to the Purchaser in accordance with this agreement.

If the Purchase Order states that the supply is 'Exclusive', the Supplier must supply the Goods (and all things necessary for the Supply of the Goods) exclusively to the Purchaser in the Territory. For the avoidance of doubt, if the supply is 'Exclusive', the Supplier acknowledges and represents that it will not directly or indirectly supply the Goods to any other person within the Territory during the term of the agreement.

* 1. **Goods already provided**

Where some or all of the Goods have been supplied prior to the Commencement Date, the provisions of this agreement will apply as if those Goods had been supplied on the Commencement Date.

* 1. **Purchase Order**

The Purchase Order is a binding agreement between the Purchaser and the Supplier in respect of the supply of Goods by the Supplier to the Purchaser, which comprises of:

1. the terms of this agreement; and
2. the terms set out in the relevant Purchase Order.
	1. **Order of precedence**

If there is any inconsistency between the Purchase Order and the terms of this agreement, the inconsistency must be resolved by applying the following order of precedence:

1. the terms and conditions set out in this agreement; and
2. any terms and conditions in the Purchase Order including any special conditions.
	1. **Other terms and conditions not applicable**

The provisions of this agreement apply to all Goods supplied by the Supplier (and any other goods provided by the Supplier related to or provided in connection with the Goods for which no written agreement has been executed by the parties) and override any invoices or other documentation exchanged between the parties.

* 1. **Non-exclusive arrangement**

This agreement does not prevent the Purchaser from entering into arrangements or agreements with third parties for the supply of goods equivalent or similar to the Goods.

* 1. **No minimum volume**

The Purchaser gives no representations that it will engage the Supplier to supply a minimum volume of Goods.

* 1. **Suspension of supply of Goods**

The Purchaser may suspend the supply of all or any of the Goods for any time on written notice to the Supplier. In such circumstances, the Purchaser will only be liable to pay for Goods delivered (and not rejected by) the Purchaser in accordance with this agreement and will not be liable to the Supplier for any Loss.

1. **Specifications**
	1. **Goods to comply**

The Supplier must supply the Goods to the Purchaser strictly in accordance with the Specifications. A breach of this clause will be considered a breach of a material obligation by the Supplier under this agreement for the purposes of clause 12.1(a).

In the event the Supplier discovers any ambiguity or discrepancies in any Specifications, forming part of the Purchase Order, the Supplier shall immediately notify the Purchaser thereof and shall comply with the determination of the Purchaser as to such ambiguity or discrepancy.

* 1. **Variations by the Purchaser**

The Purchaser may, at any time by written notice to the Supplier, vary the Specifications. The Supplier's obligation to supply the Goods in accordance with the varied Specifications will be subject to the parties agreeing on a variation to the Price. If the Parties are unable to agree on a variation to the Price the Purchaser may terminate this agreement by written notice.

* 1. **No variations by Supplier**

The Supplier may not vary the Specifications except as agreed in writing by the Purchaser.

1. **Delivery**
	1. **Delivery Schedule**
2. The Supplier must deliver the Goods in accordance with the Delivery Schedule.
3. The Purchaser may vary the Delivery Schedule by written notice to the Supplier.
4. The Supplier must not make any changes to the Delivery Schedule unless with the prior written consent of the Purchaser.
	1. **Form of delivery and transportation costs**
5. The form of delivery of the Goods will be as set out in the Purchase Order. Acronyms or terminology used to describe the form of delivery of the Goods have the meaning given to them in the Incoterms 2010 unless otherwise specified.
6. Unless otherwise contemplated by the form of delivery set out in the Purchase Order, the Supplier is responsible for all transportation costs associated with the delivery of the Goods to the Site.

* 1. **Time is of the essence**

The Supplier acknowledges that time is of the essence in this agreement and that a breach of any time obligation under this agreement by the Supplier, unless agreed in writing by the Purchaser, will be deemed to be a breach of a material obligation by the Supplier for the purposes of clause 12.1(a) and the Supplier agrees to pay or indemnify on demand the Purchaser for any Loss from or in connection with that breach.

1. **Chain of responsibility**
2. Terms used in this clause not otherwise defined in the Purchase Order have the meaning attributed to them in the COR Laws.
3. To the extent heavy vehicles are used in the performance of works under the Purchase Order, the Supplier:
	* + 1. acknowledges that it is a primary duty holder under the COR Laws with responsibility for developing COR Systems;
			2. must ensure that any heavy vehicles are appropriately maintained with loads that do not exceed vehicle mass or dimension limits, are appropriately secured, and operators carrying freight containers have a valid Container Weight Declaration and drivers do not exceed speed limits or regulated driving hours, do not drive while impaired by fatigue and observe minimum rest requirements;
			3. must proactively provide reasonable assistance to the Purchaser to enable the Purchaser to satisfy its duties and responsibilities under COR Laws;
			4. must obtain and maintain, and ensure that each of its personnel obtains and maintains all Approvals required to enable the applicable activity, function or task to be undertaken lawfully;
			5. shall undertake any audits or monitoring as requested by the Purchaser to demonstrate compliance with this clause; and
			6. warrants that it is familiar with and has the capability and resources to comply with COR Laws and ensure that its Personnel complies with all COR Laws.
4. **Title and risk**
5. Title to the Goods passes to the Purchaser on the earlier of:
	* + 1. the first date on which the Purchaser makes a payment in respect of the Goods; and
			2. the date on which the Goods are delivered to the Purchaser under this agreement.
6. Risk in the Goods passes to the Purchaser when the Goods are delivered to the Purchaser under this agreement and the Purchaser signs a delivery receipt acknowledging delivery.
7. **Warranties**
	1. **Specific Goods warranties**

The Supplier warrants to the Purchaser that the Goods:

1. will be in conformity with this agreement;
2. are owned by the Supplier or will at the time of supply to the Purchaser be owned by the Supplier;
3. are free of any liens, charges or encumbrances including all security interests under the *Personal Property Securities Act* *2009* (Cth) and will be supplied to the Purchaser on that basis;
4. comply with the Specifications;
5. comply with all relevant Laws;
6. are of acceptable quality;
7. are fit for the purpose for which goods of the same kind are commonly supplied and for the Particular Purpose;
8. are free from any defect in workmanship or materials;
9. are supplied for a Price that is no less favourable than the Price paid by other purchasers of similar goods in similar circumstances; and
10. when supplied to the Purchaser, do not breach any Intellectual Property Rights of any other person.
	1. **Other warranties by the Supplier**

The Supplier warrants to the Purchaser that:

1. before entering into this agreement, it made its own enquiries to satisfy itself as to the truth and accuracy of, and has therefore not relied upon, any written or oral information provided by the Purchaser; and
2. it has fully informed itself in relation to all matters relevant to the supply of the Goods under this agreement.
	1. **Australian Consumer Law Consumer Guarantees**

This agreement is deemed to include all consumer guarantees that the Purchaser would be entitled to as set out in the Australian Consumer Lawas if the Purchaser were a 'consumer' within the meaning of section 3 of the Australian Consumer Law. Such consumer guarantees will be incorporated into this agreement as warranties given by the Supplier to the Purchaser.

* 1. **Reliance on warranties**

The Supplier acknowledges that the Purchaser has entered into this agreement in reliance on the warranties given by the Supplier in this agreement.

1. **Inspection, testing and Defective Goods**
	1. **Inspection and testing**
2. The Purchaser may inspect and, if the Purchaser chooses, test the Goods after they have been supplied by the Supplier.
3. The Supplier must provide the Purchaser with access to the premises of the Supplier in order to enable the Purchaser to inspect and/or test the Goods in accordance with clause 8.1(a) above.
4. The Purchaser's inspection, testing or acceptance of or payment for some or all of the Goods does not in any way:
	* + 1. change or affect the Supplier's obligations under this agreement; or
			2. affect the Purchaser's rights to:
				1. make a claim for any Loss it may suffer because of the Supplier's breach of any warranty or failure to fulfil any of its other obligations under this agreement; and/or
				2. reject any Defective Goods.
	1. **Defective Goods**

If, on inspection or testing, or at any time during the Performance Guarantee Period, the Purchaser determines that any of the Goods provided are Defective Goods, the Purchaser may, at its option and in addition to any other rights it may have, reject the Defective Goods by notifying the Supplier that it is rejecting them and the Supplier must promptly (at the Purchaser's option):

1. refund to the Purchaser any payments made by the Purchaser in respect of any Defective Goods that the Purchaser rejects;
2. at no cost to the Purchaser, make good any Defective Goods that the Purchaser rejects;
3. at no cost to the Purchaser, replace any Defective Goods that the Purchaser has rejected with new Goods;
4. indemnify the Purchaser from and against or any Loss the Purchaser incurs or suffers in relation to or as a result of any Defective Goods including making good any Defective Goods on behalf of the Supplier or replacing any Defective Goods with alternative goods from an alternative supplier.
	1. **No waiver**

If the Purchaser does not reject some Goods which do not comply with the terms of this agreement, that decision will not prevent the Purchaser from rejecting any other Goods which do not comply with the terms of this agreement.

1. **Calculation of Price**
	1. **Price**

The Purchaser must pay the Price for the Goods to the Supplier in accordance with the terms of this agreement.

* 1. **Components of the Price**
1. Unless otherwise stated in this agreement, the Price is inclusive of:
	* + 1. all costs incurred by the Supplier in supplying the Goods (including all labour costs); and
			2. all federal, state and territory taxes and duties (other than GST).
2. The Price excludes GST.
3. Subject to any change in the Price resulting from the application of any express provision of this agreement, the Price is fixed.
4. **Payment of Price**
	1. **Invoicing**

The Supplier must provide the Purchaser with a Tax Invoice (as that term is defined in the GST Act) within 2 Business Days of the end of each month during the term of the agreement.

* 1. **Payment**

Subject to the Supplier not being in breach of this agreement, the Purchaser must pay the invoiced amount due to the Supplier for the invoiced period within 45 days from end of month upon receipt of goods. The Supplier must provide the Purchaser with bank account details into which payments by the Purchaser are to be deposited.

* 1. **Disputed invoices**

If any invoiced amount is disputed by the Purchaser, the Purchaser must pay the undisputed amount to the Supplier in accordance with this agreement and the parties must deal with the disputed amount.

1. **GST**
	1. **Preliminary**

Words or expressions used in this clause that are defined in *A New Tax System (Goods and Services Tax) Act* *1999* (**GST Act**) have the same meaning given to them in that Act.

* 1. **GST exclusive**

Unless otherwise stated, any amount specified in this agreement as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.

* 1. **Liability to pay GST**

If a party makes a taxable supply under this agreement (**Supplier**), then the recipient of the taxable supply (**Recipient**) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.

* 1. **Tax invoice**

Notwithstanding the foregoing, the Recipient is not obliged under this agreement to pay the amount of any GST payable until the Supplier provides it with a valid tax invoice for the taxable supply.

* 1. **Adjustment event**

If an adjustment event arises in relation to a taxable supply made by a Supplier under this agreement, the amount paid or payable by the Recipient pursuant to clause 11.3 will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.

* 1. **Reimbursement of expenses**

If a third party makes a taxable supply and this agreement requires a party to this agreement (**the payer**) to pay for, reimburse or contribute to (**pay**) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.

* 1. **Non merger**

This clause does not merge on completion and will continue to apply after expiration or termination of this agreement.

1. **Termination**
	1. **Termination for default**

It is a Termination Event if:

1. the Supplier breaches a material obligation in this agreement and, in the reasonable opinion of the Purchaser, the breach:
	* + 1. cannot be remedied; or
			2. can be remedied but is not remedied by the Supplier within 5 Business Days after the Purchaser gives the Supplier notice of the breach;
2. an Insolvency Event occurs in respect of the Supplier; or
3. the Supplier commits fraud or an act of serious or wilful misconduct.
	1. **Effect of Termination Event**

If a Termination Event occurs, the Purchaser may:

1. terminate this agreement immediately by notice to the Supplier; and
2. exercise its rights as if it had accepted a repudiation of this agreement by the Supplier.
	1. **Termination for convenience**
3. The Purchaser may, in its absolute discretion, terminate this agreement at will for any reason on 10 days written notice to the Supplier.
4. The Purchaser's only liability will be to pay the Supplier for any Goods:
	* + 1. delivered;
			2. which the Purchaser has not subsequently rejected under this agreement; and
			3. that are not yet paid for.
5. **Indemnity and release**
	1. **Indemnity by Supplier**

The Supplier must indemnify the Purchaser from and against any Loss arising directly or indirectly from or in connection with:

1. a breach of this agreement by the Supplier;
2. personal injury to, or illness or death of, any person (including the Supplier's Representatives, the Purchaser's Representatives or a third party) in connection with the Goods;
3. damage to any property (including to any property of the Supplier, the Purchaser or a third party) caused or contributed to by an act or omission of the Supplier or in connection with the Goods;
4. any claim made against the Purchaser by any of the Supplier's Representatives in respect of any Law concerning remuneration, income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal;
5. any claim by a third party against the Purchaser arising out of any act or omission of the Supplier in connection with this agreement or the Goods;
6. any penalty imposed for breach of any Laws in connection with the Goods;
7. any claim that the Goods or anything the Supplier does in connection with the Goods infringes or allegedly infringes the Intellectual Property Rights of any person;
8. the Purchaser's use of the Goods infringes or allegedly infringes the Intellectual Property Rights of any person; and
9. any misleading or deceptive conduct by the Supplier or any of its Representatives.
	1. **Extent to which indemnity will not apply**

The indemnity in clause 13.1 will not apply to the extent that any Loss is caused by the negligence of the Purchaser, or its Representatives (other than the Supplier or the Supplier's Representatives).

* 1. **No incurring of expense necessary**

The Supplier acknowledges that it is not necessary for the Purchaser to incur an expense or make a payment before enforcing a right of indemnity conferred by this agreement or to mitigate its loss.

* 1. **Benefit of indemnity**
1. A reference to the Purchaser in this clause 13 includes a reference to the Purchaser's, employees, directors, agents, contractors, subcontractors and Related Bodies Corporate (each, an **Indemnified Party**).
2. The Purchaser holds the benefit of this clause 13 for itself and on trust for each other Indemnified Party.
	1. **Continuing indemnity**

The indemnity in clause 13.1 and any other indemnity in this agreement is a continuing obligation separate and independent from any other obligation and survives the expiry or termination of this agreement.

* 1. **Assumed risks by Supplier**

Notwithstanding:

1. any information provided to the Supplier by or obtained by the Supplier from the Purchaser or others or which is withheld (except where information is unreasonably withheld by the Purchaser);
2. any difficulties the Supplier might have in satisfying the requirements of this agreement;
3. any errors, omissions, ambiguities, conflicts or other problems in any Specification provided by the Purchaser to the Supplier;
4. any differences in the conditions encountered on, in, near, or in connection with the Site from those which the Supplier anticipated;
5. any changes in Law whether or not foreseeable at the date of execution of this agreement;
6. compliance with the Purchaser's, reasonable directions and any consequences in connection with such compliance;
7. any increase in cost; or
8. any other difficulties the Supplier might have in constructing, installing, commissioning, testing and delivering the Goods in accordance with this agreement,

the Supplier acknowledges that these matters are regarded as within the Supplier's liability and risk and the Supplier remains fully responsible for constructing, installing, commissioning, testing and delivering the Goods in accordance with the requirements of this agreement at its own expense and the Price in this agreement will be regarded as providing adequate allowance for this.

* 1. **Release by Supplier**

The Supplier undertakes to release and discharge the Purchaser from any Loss or damage it may suffer or incur, whether arising from the negligence of the Purchaser, or howsoever, which arises directly or indirectly from or in connection with this agreement and which is not notified in writing to the Purchaser in reasonable detail within 10 days from the expiry or early termination of this agreement.

* 1. **Maximum liability of the Purchaser**

The aggregate liability of the Purchaser for any Loss suffered or incurred by the Supplier in connection with this agreement (other than liability for fees due and payable under this agreement) is limited to an amount equivalent to the total fees paid or properly invoiced and due to be paid under this agreement by the Purchaser in the 12 months period prior to the Loss was suffered.

1. **Force majeure**
	1. **Suspension of obligations**

An obligation of a party under this agreement (other than the obligation to make any payment) is suspended for the time and to the extent that party is prevented from or delayed in complying with that obligation by a Force Majeure Event.

* 1. **No relief**

The occurrence of a Force Majeure Event does not relieve the affected party from performing its obligations:

1. if the delay or failure by the affected party in the performance or the occurrence of a Force Majeure Event could have been prevented by reasonable precautions taken by the affected party; or
2. if the Force Majeure Event results from any intentional act or omission on the part of the affected party, except to the extent such fault was itself caused by a Force Majeure Event.
	1. **Responsibilities**

On the occurrence of a Force Majeure Event, the affected party must promptly:

1. notify the other party and describe in reasonable detail the nature of the Force Majeure Event and its likely effect on the ability of the affected party to perform its obligations under this agreement;
2. use all reasonable endeavours to avoid or remove the cause of the Force Majeure Event and perform its obligations under this agreement as soon as possible; and
3. take all reasonable steps to mitigate any Losses caused to the other party.
	1. **Termination**

Either party may, by providing 20 Business Days' notice to the other party, terminate this agreement if a Force Majeure Event continues for more than 3 months.

1. **Intellectual Property Rights**
	1. **Supplier Background Intellectual Property Rights**
2. The Supplier remains the owner or licensee (as the case may be) of all Supplier Background Intellectual Property Rights.
3. The Supplier grants or must procure the granting to the Purchaser of a non-exclusive, royalty-free licence to use the Supplier Background Intellectual Property Rights for the purpose of using the Goods.
	1. **The Purchaser's Background Intellectual Property Rights**

The Purchaser remains the owner or licensee (as the case may be) of all of the Purchaser's Background Intellectual Property Rights.

* 1. **Agreement Intellectual Property Rights**

Any Intellectual Property Rights developed by the Supplier solely or developed by the Supplier and the Purchaser in relation to this agreement are owned by the Purchaser. The Supplier assigns all right, title and interest in such Intellectual Property Rights to the Purchaser. The Supplier must provide the Purchaser with all reasonable assistance, at the Purchaser's cost, to protect such Intellectual Property Rights, including obtaining patents and other registered protection in the Purchaser's name.

1. **Insurance**
	1. **Insurance policies**

The Supplier must, before the Commencement Date and at its own cost, take out and maintain during the term of the agreement with a reputable insurer:

1. product liability insurance for a minimum cover for an amount of $10M in aggregate in any one policy year, unless varied with the written consent of the Purchaser;
2. professional indemnity insurance in respect of the supply of the Goods in connection with this agreement for an amount of at least $10M (to be maintained during the term of the agreement and for a period of not less than seven years after the expiry or termination of this agreement);
3. a comprehensive public liability insurance policy to cover all sums which the Supplier may become legally liable to pay as compensation consequent on:
	* + 1. death of, or bodily injury (including disease or illness) to, any person; and
			2. loss of, or damage to, property,

happening anywhere in Australia arising out of or in connection with this agreement, for an amount of at least $20M per event;

1. insurance in respect of all claims and liabilities arising, whether at common law or under statute, relating to workers compensation or employer's liability, from any accident or injury to any person employed by the Supplier in connection with the Goods. This insurance must be in compliance with the Laws of the relevant jurisdiction in which the Goods are supplied and be extended to indemnify the Purchaser where the jurisdiction allows;
2. a policy of insurance covering liability for death or personal injury to any person, and for loss or damage to property, caused by the Supplier's ownership and/or use of any motor vehicles in connection with this agreement. Unless otherwise limited by statute, the limit of liability provided by that policy must be for an amount of at least $20M; and
3. any other insurance policies reasonably required by the Purchaser from time to time.
	1. **Interest of the Purchaser**

The Supplier must ensure that the policies of insurance that it is required to take out under this agreement note the Purchaser's interest as a principal.

* 1. **Failure to insure**

Without prejudice to any other right it may have under this agreement, if the Supplier fails to comply with this clause 16 the Purchaser may:

1. refuse to make payments owed to the Supplier under this agreement until the Supplier complies with this clause 16; and/or
2. take out and maintain any policies of insurance required by this clause 16 and, at its option, set off payment of any invoice against the expenses incurred in taking out such policies on behalf of the Supplier or recover the expenses as a debt payable by the Supplier on demand.
	1. **Currency certificate**

On the Commencement Date and each anniversary of the Commencement Date, the Supplier must provide to the Purchaser evidence of the currency of the insurance policies it is required to maintain under this clause 16 and a copy of the relevant policies.

* 1. **No prejudice**

The Supplier must not do anything which prejudices any policy of insurance and must immediately notify the Purchaser in writing of any event which results in an insurance policy being altered where such alteration materially affects coverage under this agreement.

* 1. **Policy claims**

If any event occurs which may give rise to a claim involving the Purchaser under any policy of insurance taken out by the Supplier under this clause 16, then the Supplier must:

1. notify the Purchaser within 14 days of that event; and
2. ensure that the Purchaser is kept fully informed of any subsequent actions and developments concerning the relevant claim.
	1. **Subcontractors**

The Supplier must ensure that:

1. any subcontractor engaged by the Supplier in relation to the supply of the Goods effects and maintains the insurances, and for the amounts, required by this clause 16; and
2. its subcontractors comply with all relevant Laws concerning insurance cover for liabilities in relation to employees and subcontractors.
3. **Confidentiality**
	1. **No disclosure**

Other than as permitted under clause 17.2, neither party may disclose to any person the Confidential Information.

* 1. **Permitted disclosures**

A party (**Disclosing Party**) may disclose the Confidential Information of the other party:

1. to its Related Bodies Corporate, its Representative and/or a Representative of its Related Bodies Corporate that need to know the Confidential Information for the purposes of this agreement, subject to the Disclosing Party taking reasonable steps to ensure that any such Related Bodies Corporate and/or Representative (as applicable) are fully aware of the confidential nature of the Confidential Information before the disclosure is made;
2. which is required to be disclosed by Law, provided that the Disclosing Party has:
	* + 1. given the other party prior notice where practicable; and
			2. provided all assistance and co-operation which the other party reasonably considers necessary for that purpose; and
3. to professional advisers of a party or to potential buyers of the party or the party's business, provided that the recipients of such Confidential Information are subject to obligations of confidentiality.
	1. **No agency**

The Supplier must not hold itself out as an agent of the Purchaser or publicise that it has been engaged by the Purchaser.

* 1. **Duration of obligations**

The obligations under this clause 17 will survive the termination or expiry of this agreement.

* 1. **Benefit**

The Disclosing Party holds the benefit of this clause 17 for itself and for each of its Related Bodies Corporate.

1. **Privacy**

The Supplier must comply with the provisions of the *Privacy Act* *1988* (Cth) (as amended) in relation to any Personal Information (as defined in the Privacy Act) provided to the Supplier by the Purchaser or the Purchaser's Representatives.

1. **Disputes**
	1. **Dispute Notice**
2. If a party claims that a dispute has arisen under or in connection with this agreement (**Dispute**), that party must give notice of the Dispute (**Dispute Notice**) to the other party in accordance with clause 19, specifying the nature of the Dispute.
3. A Dispute cannot be the subject of litigation until the provisions of clauses 19.2, 19.3, 19.4 and 19.5 have been complied with (except where a party seeks urgent interlocutory relief from a court, in which case that party does not need to comply with clauses 19.2, 19.3, 19.4 and 19.5 before seeking such relief).
	1. **Resolution by parties**

Within 5 Business Days of the date of the Dispute Notice (or such other period as agreed between the parties to the Dispute) each of the parties to the Dispute must meet to negotiate ingood faith and seek to resolve the Dispute.

* 1. **Resolution by senior executives**

If the Dispute is not resolved under clause 19.2 within 10 Business Days (or such other period agreed between the parties to the Dispute) after the date of the Dispute Notice, the Dispute must be referred to the senior executives of each of the parties to the Dispute, who must meet to negotiate ingood faith and seek to resolve the Dispute.

* 1. **Mediation**

If the Dispute is not resolved under clause 19.3 within 20 Business Days (or such other period agreed between the parties to the Dispute) after the date of the Dispute Notice, the parties to the Dispute must refer the Dispute to mediation administered by the Australian Commercial Disputes Centre (**ACDC**) before having recourse to litigation.

* 1. **Parties’ obligations**

Pending resolution of any Dispute, the parties must continue to perform their obligations under this agreement without prejudice to their respective rights and remedies (except where such obligations are the subject of the Dispute).

* 1. **Litigation**

If the Dispute is not resolved under clause 19.5 within 40 Business Days after the date of the Dispute Notice, either party may commence litigation proceedings.

* 1. **Survival**

This clause 19 survives termination of this agreement.

1. **Occupational Health and Safety**
	1. **Definitions**

In this agreement:

**Environment** means the physical factors of the surroundings of human beings including the land, waters, atmosphere, climate, sound, odours, tastes, the biological factors of animals and plants, and the social factor of aesthetics.

**Environmental Law** means a law relating to the Environment, including any law relating to land use, planning, heritage, coastal protection, water catchments, pollution of air or waters, soil or groundwater contamination, chemicals, waste, use of hazardous or dangerous goods or substances, building regulations, public and occupational health and safety, noxious trades, or any other aspect of protection of the Environment or person or property.

**Contaminant** means a solid, liquid, gas, odour, heat, sound, vibration, radiation or substance which makes or may make the Sites or the surrounding Environment:

1. unsafe or unfit for habitation or occupation by persons or animals;
2. not comply with any Environmental Law; or
3. not satisfy the contamination criteria or standards published or adopted by the relevant environmental authority.

**Health and Safety Legislation** means all applicable occupational health and safety, environmental protection, dangerous goods and electricity safety Laws, together with any directions on safety or notices issued by any relevant authority or any code of practice or compliance code, appropriate or relevant to the supply of the Goods.

**Health and Safety Requirements** means any and all directions, instructions, requests or requirements (including Site Requirements) made by:

1. the Purchaser; or
2. the person with management or control of the Site,

relevant to or associated with or necessary for compliance by the Supplier or the Purchaser; with Health and Safety Legislation and including:

1. any such matters of which the Supplier has been informed by the Purchaser or the entity with management or control of the Sites orally or in writing; and
2. the Safety Management Plan obligations set out in clause 20.3(a).

**Site Safety Requirements** means safety requirements at or associated with any Site (as are imposed or required by any person) which are related to health and safety.

* 1. **Sites**

The Supplier:

1. may only gain access to and enter and remain on the Site as specified in this agreement or as directed by the Purchaser or the controller of the Site;
2. enters the Site at its own risk;
3. must not, in delivering the Goods, disrupt any activities on the Site and must ensure that it and its Representatives:
	* + 1. take all measures necessary to protect people and property;
			2. avoid unnecessary interference with the passage of people and vehicles;
			3. comply with any direction of the Purchaser or the controller of the Site with respect to parking vehicles on or around the Site;
			4. do not undertake any activity which may result in a Contaminant being introduced to the Site, or use substances which may give rise to or become a Contaminant at any time; and
			5. prevent nuisance and unnecessary noise and disturbance;
4. must ensure that the Site is kept secure, clean, orderly and fit for immediate use;
5. must ensure the Site is left in the same condition as it was as at the Commencement Date, fair wear and tear excepted; and
6. must notify the Purchaser of any potential breach of any Environmental Law.
	1. **Occupational Health and Safety**
7. If requested by the Purchaser on or prior to the Commencement Date, the Supplier must provide to the Purchaser a 'Safety Management Plan' to the reasonable satisfaction of the Purchaser.
8. The Supplier warrants that it is familiar with and has the capability and resources to comply with all relevant Health and Safety Legislation.
9. The Supplier must comply with, and ensure that any of the Supplier's Representatives involved with supply of the Goods comply with all:
	* + 1. Health and Safety Legislation;
			2. Site Safety Requirements;
			3. Health and Safety Requirements; and
			4. Environmental Laws.
10. The Supplier must, upon reasonable request by or on behalf of the Purchaser, demonstrate compliance with the requirements set out in clause 20.3(c) above including, providing evidence of measures taken to achieve such compliance.
11. Any policies, so far as they relate to occupational health and safety, are intended to assist the Supplier to construct, install, commission, test and deliver the Goods in accordance with occupational health and safety standards, but in no way relieve the obligations of the Supplier to comply with all relevant Health and Safety Legislation.
12. Where Health and Safety Legislation provides for the appointment or nomination of a Principal Contractor (as that term is defined in the relevant legislation), the Supplier must:
	* + 1. accept nomination or appointment as Principal Contractor, at the discretion of, the Purchaser; and
			2. comply with all obligations imposed by that Health and Safety Legislation on a Principal Contractor.
13. The Supplier must:
	* + 1. co-operate with any other contractors or other persons engaged in or associated with the Goods or other works at the Site in order to maintain uniform safety and industrial practices;
			2. co-operate with the Purchaser to enable the Purchaser to comply with its obligations under all relevant Health and Safety Legislation;
			3. immediately advise the Purchaser in writing of any act, fact or circumstance associated with the activities of the Supplier or any other person relevant to the ability of the Supplier to supply the Goods in a manner that is safe and without risks to health.
14. The Supplier must, prior to the supply of the Goods, undertake an assessment of the risks associated with the Goods and identify and implement appropriate measures to control all such risks. Details of the risk assessment and evidence of implementation of adequate risk control measures must be provided to the Purchaser upon and in accordance with any reasonable request by or on behalf of the Purchaser.
15. The Supplier must immediately notify the Purchaser of any accident, injury, property damage or Contaminant which occurs during delivery of the Goods. The Supplier must, within two days of any such incident, provide a written report to the Purchaser giving complete details of the incident, including the results of investigations into its cause and any recommendations or strategies for prevention of a recurrence.
16. For the avoidance of doubt, any breach by the Supplier of any part of this clause 20 will be considered a breach of a material obligation by the Supplier under this agreement for the purposes of clause 12.1(a).
17. Notwithstanding clause (i), if the breach exposes a person to an immediate risk of serious injury, the Purchaser may immediately terminate this agreement on written notice to the Supplier.
18. **General**
	1. **Assignment**

The Supplier may not assign or otherwise deal with any of its rights under this agreement, without the prior written consent of the Purchaser may withhold its consent in its absolute discretion.

* 1. **Subcontractor**
1. The Supplier may not subcontract any of its obligations under this agreement without the prior written consent of the Purchaser, which consent may be withheld by the Purchaser in its absolute discretion.
2. The Supplier is not as a result of any subcontracting arrangement relieved from the performance of any obligation under this agreement.
3. The Supplier is liable to the Purchaser for any act or omission, default or negligence of any subcontractor or any employee or agent of the subcontractor as if it were the act, omission, default or negligence of the Supplier.
	1. **Set off**

The Purchaser may set off from any amounts it owes the Supplier any amounts the Supplier owes to the Purchaser whether under this agreement or otherwise and Loss (including Loss under an indemnity) for which the Purchaser is liable to the Supplier under this agreement or otherwise.

* 1. **Variation**

A variation of any term of this agreement will be of no force or effect unless it is in writing and signed by each of the parties.

* 1. **Waiver**
1. A waiver of a right, remedy or power must be in writing and signed by the party giving the waiver.
2. A party does not waive a right, remedy or power if it delays in exercising, fails to exercise or only partially exercises that right, remedy or power.
	1. **Severance**

If a provision in this agreement is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of this agreement.

* 1. **Governing law and jurisdiction**
1. This agreement is governed by and is to be construed under the laws in force in Victoria.
2. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.
	1. **Entire agreement**

This agreement and the terms and conditions in any Purchase Order (including any special conditions) state all of the express terms of the agreement between the parties in respect of its subject matter. They supersede all prior discussions, negotiations, understandings agreements and agreements in respect of its subject matter.

* 1. **Relationship of parties**
1. The parties are not and are not to be taken to be in a partnership, joint venture, employment or fiduciary relationship.
2. Nothing in this agreement gives a party authority to bind any other party in any way.
	1. **Exercise of rights**
3. Unless expressly required by the terms of this agreement, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this agreement.
4. A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this agreement. Any conditions must be complied with by the party relying on the consent, approval or waiver.
	1. **Remedies cumulative**

Except as provided in this agreement and permitted by law, 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.

* 1. **Clauses that survive termination**
1. Without limiting or impacting upon the continued operation of any clause which as a matter of construction is intended to survive the termination of this agreement, clauses 6, 13.4, 13, 15.1, 15.2, 16, 18 and 21.12 survive the termination of this agreement.
2. Each indemnity contained in this agreement is a continuing obligation, independent from the other obligations of the parties and survives the termination of this agreement. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this agreement