

Conditions of Purchase

1. Definitions & Interpretation

1.1. Definitions

In these Conditions, unless otherwise indicated by the context:

Agreed Price means the amount(s) which the Customer has agreed in writing is payable for the Work;

Agreement means the agreement between the Customer and the Supplier consisting of a Purchase Order (including any special conditions), these Conditions and all documents attached by the Customer or which the Customer agrees are incorporated by reference;

Artificial Intelligence (AI) means: (i) any AI system as defined by the European Artificial Intelligence Act (**AI Act**); or (ii) any other software that can, for a given set of human-defined objectives generate outputs such as content predictions, recommendations or decisions influencing the environments they interact with, including without limitation generative AI and large language models (**LLM**);

Authority means any:

- (a) government, government department or government agency;
- (b) governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) other person (whether autonomous or not) charged with the administration of a Law;

Background IP Rights means IP Rights of a Party or a third party which: (a) are already in existence prior to the date of the Agreement; or (b) come into existence on or after the date of the Agreement otherwise than in connection with the Agreement;

Business Day means Monday through Friday (excluding public holidays in the jurisdiction where the Work is being carried out);

Chain of Responsibility Legislation means any Commonwealth, State and Territory legislation based on or adapted from the model *Road Transport Reform (Compliance and Enforcement) Bill 2003* provisions as approved by each Australian State and Territory Government;

Chief Executive Officer means the managing director, chief executive officer or the chief financial officer of a Party;

Claim means any demand, claim, action or legal proceeding of any nature including any claim for: an increase to the Agreed Price; the payment of any money (including damages); an extension of time; or a reduction of the Supplier's obligations or the Customer's rights:

- (a) arising out of or in relation to the Agreement (including any direction by the Customer under it);
- (b) arising out of or in relation to the Work under the Agreement; or
- (c) arising otherwise at Law including:
 - (i) under statute or in equity;
 - (ii) in tort for negligence or otherwise (including negligent misrepresentation); and
 - (iii) for restitution (as a result of unjust enrichment or otherwise);

Conditions means these conditions of purchase;

Confidential Information means all information regardless of form which is disclosed directly or indirectly by the Disclosing Party to the Receiving Party in connection with the Agreement which is treated or designated as confidential by the Disclosing Party or which the Receiving Party ought to know is confidential and includes without limitation: (a) trade and business secrets; (b) information concerning customers, suppliers and Related Bodies Corporate; (c) product and pricing information; (d) samples, models and prototypes; (e) Personal Information (including information about Disclosing Parties' Personnel); and (f) all information, data and knowledge of a commercial, operational, marketing, business, technical or financial nature relating to the affairs of the Disclosing Party or its Related Bodies Corporate;

Customer means Siemens Healthcare Pty Ltd (ACN 604 853 938) and/or Varian Medical Systems Australasia Pty Ltd (ACN 086 249 630) as stated in the Purchase Order;

Customer's Representative means the person nominated as such by the Customer, details of whom are specified in the Agreement or notified by the Customer to the Supplier in writing from time to time;

Date for Delivery means the delivery date by which the Work must be delivered under the Agreement (as extended by any extension of time granted by the Customer under the Agreement);

Date of Delivery means the date upon which Delivery is achieved;

Date of Final Completion means the date that Final Completion is achieved as confirmed in writing by the Customer's Representative under clause 15.16;

Defect means any part of the Products or aspect of the Services which is not in accordance with the requirements of the Agreement;

Defects Liability Period means in respect of any Work, a period of 18 months commencing upon the Date of Delivery of that Work or such other period as agreed between the Parties in writing;

Delivery means:

- (a) in respect of Products when the Products have been delivered to Site in accordance with the requirements of the Agreement and have been goods receipted by the Customer; and
- (b) in respect of Services when the Services have been performed in accordance with the requirements of the Agreement; and
- (c) in respect of both the Products and Services when all associated Documents and other information required to be delivered by the Supplier under the Agreement have been received by the Customer;

Delivery Schedule means the schedule (if any) agreed between the Parties for the execution of the Work showing the dates by which, or the times within

which, any milestones, stages or portions of the Work are to be carried out or completed under the Agreement;

Disclosing Party means the Party indirectly or directly disclosing its Confidential Information;

Dispute has the meaning given in clause 25;

Documents means all drawings, calculations, technical information, samples, specifications, software, operating and maintenance manuals and other technical information and particulars submitted (or to be submitted) by the Supplier, regardless of the form in which it is made available and irrespective of the medium in which it is embedded;

Facilities means the Supplier's sites used in connection with the Work;

Final Completion means when all Defects Liability Periods have expired and the Customer is satisfied that all of the Supplier's obligations under the Agreement have been fulfilled;

Force Majeure Event means an exceptional event or circumstance which is beyond a Party's control including:

- (a) State or nationwide industrial disputes (which are not specific to that Party or that Party's employees, officers, agents, consultants, other contractors and subcontractors);
- (b) Acts of God, epidemics and natural disasters (excluding inclement weather that is usual for that time of year);
- (c) war, civil unrest, terrorism; and
- (d) delays or disruption by Authorities,

provided that such events are unforeseeable, unavoidable, and will prevent or delay the performance of a Party's obligations under the Agreement;

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any associated acts and legislative instruments;

Incoterms means Incoterms® 2020 published by the International Chamber of Commerce;

Insolvency Event means

- (a) In relation to a company, that the company is: (i) insolvent; (ii) has an administrator, controller, liquidator, provisional liquidator, receiver, receiver and manager, mortgagee in possession or other like officer appointed to it or over all or any of its assets; or (iii) experiences any analogous event having a substantially similar effect; and
- (b) In relation to an individual that he or she: (i) is insolvent; (ii) enters into a debt agreement or personal insolvency agreement; or (iii) commits an act of bankruptcy or is bankrupt.

IP Rights means all intellectual property and industrial rights of any description including without limitation all rights conferred by statute, common law or equity (whether or not registered or registrable and including all applications for registration) in relation to inventions (including patents), trademarks, trade and business names, designs, copyright, circuit layout rights, trade secrets, know-how, moral rights and confidential information and all other rights of a proprietary nature created in any part of the world as a result of intellectual activity in the industrial, scientific, literary and artistic fields;

Latent Defect means any Defect which could not reasonably have been detected prior to the expiry of the Defects Liability Period;

Law means any applicable:

- (a) statutes, rules, regulations, by-laws, orders, codes, standards ordinances and proclamations;
- (b) principles of common law and equity;
- (c) authorisations and requirements of Authorities or organisations having jurisdiction where the Work or a particular part is being carried out; and
- (d) fees, charges, taxes, tariffs and duties payable in connection with the foregoing;

Loss means: (a) any cost, expense, liability, loss or damage; and (b) in relation to a Claim, Loss includes amounts payable on the Claim and (whether or not the Claim is successful), legal costs and disbursements on a full indemnity basis;

Modern Slavery has the meaning given in the *Modern Slavery Act 2018* (Cth);

Modern Slavery Laws means all applicable Australian State and Territory, Commonwealth laws, regulations and industry codes dealing with Modern Slavery, including the *Modern Slavery Act 2018* (Cth);

Open Source Software means any software that is licensed royalty free by the licensor of such software to any user of the software under any licence terms or other contract terms ("**Open Licence Terms**") which require, as a condition of modification and/or distribution of such software and/or any other software incorporated into, derived from or distributed with such software ("**Derivative Software**");

- (a) that the source code of such software and/or any Derivative Software be made available to third parties; or
- (b) that permission for creating derivative works of such software and/or any Derivative Software be granted to third parties;

Party means the Customer or the Supplier and "**Parties**" means both of them; **Personnel** of a Party means the employees, officers, agents, consultants, other contractors and subcontractors;

Personal Information has the meaning given to in the Privacy Laws and includes information or an opinion about an individual or an individual who is reasonably identifiable;

Policies means the Customer's written guidelines, policies, principles, procedures requirements and rules including the Customer or the Customer's third party customer privacy policies, induction policies and Site policies which will be presented or made available to the Supplier upon written request to the Customer;

PPSA means the *Personal Property Securities Act* 2009 (Cth) and all associated acts and legislative instruments;

Principal means the entity which has engaged the Customer to procure Products and/or Services on its behalf from the Supplier;

Privacy Laws means the *Privacy Act* 1988 (Cth) (**Privacy Act**) and all other applicable privacy laws relating to the collection, holding, use, disclosure or granting of access rights to Personal Information and includes any associated codes of conduct and privacy principles;

Products means the goods and other associated materials (including Documents) supplied or to be supplied by the Supplier under the Agreement including product which is the output of any Services to be provided by the Supplier;

Purchase Order means the document titled 'Purchase Order' in or to which these Conditions are referred or attached, and which is deemed to incorporate the terms of these Conditions;

Receiving Party means the Party receiving the Confidential Information of the Disclosing Party;

Relevant PPSA Matter means:

- (a) the Agreement;
- (b) a transaction under, or in connection with, the Agreement; or
- (c) any Products supplied by the Supplier, or being held by the
- (d) Supplier for the benefit of the Customer, in accordance with the terms of the Agreement;

Related Body Corporate has the meaning given in the *Corporations Act* 2001 (Cth);

Resolution Institute means the Resolution Institute (ACN 008 651 232) of Level 2, 13-15 Bridge Street, Sydney, NSW 2000;

Security means security of the type referred to in clause 9.1;

Security Interest means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind. It includes:

- (a) anything which gives a creditor priority to other creditors with respect to any asset; and
- (b) retention of title other than in the ordinary course of day-to-day trading and a deposit of money by way of security;

Serial Defect means a Defect that occurs in at least 20% of Products supplied by the Supplier if the cause of such Defect is the same or similar;

Services means the services provided or to be provided by the Supplier under the Agreement;

Site means the Customer or third party site to which Products are to be delivered or at which Services are to be performed (but excludes the Facilities);

Supplier means the person or other entity named in the Purchase Order as the supplier or vendor of the Work;

Supplier's Operations means all assets, processes and systems (including information systems), data (including Supplier's data), Personnel and Facilities used or processed by the Supplier from time to time in the performance of the Agreement;

Supplier's Representative means the person nominated as such by the Supplier pursuant to clause 3.14 or any other person nominated in writing by the Supplier as a replacement, details of whom are notified to the Customer Representative; and

Work means the supply of the Products and Services under the Agreement.

1.1. Interpretation

In these Conditions, unless otherwise agreed by the Parties or required by the context:

- (a) a reference to the Agreement or any other document or agreement, includes any variation, replacement or novation of them;
- (b) the use of the word "includes" or "including" shall be interpreted to mean "includes" or "including without limitation";
- (c) headings are for ease of reference only and do not affect interpretation;
- (d) the singular includes the plural and vice versa;
- (e) a gender includes all genders;
- (f) a reference to "\$" or "dollars" is to Australian dollars;
- (g) a reference to a party to the Agreement or another agreement or document includes the Party's successors, permitted substitutes and permitted assigns (and, where applicable, the Party's legal personal representatives);
- (h) a person includes a body corporate and vice versa;
- (i) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have corresponding meanings
- (j) a reference to all or any part of a Law includes that Law as amended, consolidated, re-enacted or replaced from time to time;
- (k) a reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing;
- (l) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
- (m) references to clauses and schedules are to clauses in and schedules to the Agreement; and

- (n) references to "day" or "year" shall mean a calendar day and a calendar year respectively.

2. Formation of Contract

- 2.1. Acceptance of the Purchase Order shall be deemed to be an acceptance by the Supplier of these Conditions to the exclusion of any other terms supplied by or referred to by the Supplier (including in any acknowledgement of receipt or confirmation of Purchase Order), unless and to the extent that the Customer expressly agrees in writing to the incorporation of such other terms or any variation of these Conditions.
- 2.2. If the Supplier commences Work the Supplier shall be deemed to have accepted the Purchase Order and these Conditions notwithstanding any failure to provide written acceptance.
- 2.3. Upon acceptance of the Purchase Order, the Agreement commences, and the Supplier will be bound to provide the ordered Products and Services in accordance with the requirements of the Agreement. The Agreement shall continue in force until Final Completion (unless terminated earlier in accordance with the Agreement).
- 2.4. The Supplier shall inspect each Purchase Order and all associated documents submitted by the Customer to the Supplier and shall immediately request clarification from the Customer anything is unclear or if any information appears to be ambiguous, inadequate or missing.
- 2.5. These Conditions may be executed in one or more counterparts all of which taken together shall be deemed to constitute one and the same instrument. The Parties agree that electronic signatures may be used for execution and that if used, shall be binding upon the executing party and have the same legal effect as handwritten signatures.
- 2.6. To the extent of any inconsistency, the Parties agree that where they is a current and binding the Customer's master procurement agreement or other framework agreement in place between the Parties in respect of the subject matter of the Purchase Order ("Existing Agreement"), the terms of the Existing Agreement shall prevail in the event of any conflict with the terms of these Conditions.

3. Supplier's General Obligations and Warranties

Without limiting any other obligation under the Agreement, the Supplier:

- 3.1. shall ensure that the Products and Services comply with and are completed in accordance with all requirements set out or referred to in the Agreement (including all specifications);
- 3.2. shall be responsible for any discrepancies, errors or omissions in Documents provided to the Customer by the Supplier and shall carefully check information of any kind provided to it by the Customer;
- 3.3. shall ensure that packaging for Products is suitable, minimized and environmentally compatible and that the Supplier complies with all reasonable packaging, marking and labelling requirements of the Customer and the Customer's customers that are communicated to the Supplier or otherwise required by Law;
- 3.4. shall ensure that it and its Personnel comply with all Laws including:
 - (a) any applicable anti-corruption and anti-bribery Laws including Chapter 4, Division 70 (Bribery of foreign public officials) of the Criminal Code (Cth), anti-money laundering Laws and other criminal Laws;
 - (b) taxation Laws;
 - (c) Laws relating to employees including those governing freedom of association; employment conditions, remuneration and entitlements; minimum working age; equal opportunity and discrimination;
 - (d) competition Laws including the *Competition and Consumer Act* 2010 (Cth);
 - (e) Laws governing occupational health and safety and environmental protection and prohibited imports (including asbestos); and
 - (f) road and transport Laws (including Chain of Responsibility Legislation);
 - (g) any applicable Laws relating to security and protection of critical infrastructure, including but not limited to the *Security of Critical Infrastructure Act* 2018 (Cth)
- 3.5. acknowledges that the Building Code 2013 ("**Building Code**") may apply to the Agreement and that if so, by agreeing to undertake the Work, it is taken to have read and agreed to comply with the Code and to be able to demonstrate compliance;
- 3.6. must at all times co-operate with the Customer and the Customer's Personnel (including the Customer's other contractors and subcontractors) in order to allow, and not to disrupt, the proper provision of any goods and services whether internally by the Customer or by such the Customer's Personnel;
- 3.7. shall ensure that if the Supplier is required to provide the Customer with Documents under the Agreement, the Customer is given ownership of such Documents or the Customer is granted a perpetual, transferable and royalty-free licence to use, duplicate and alter the Documents (and associated technical data) to meet the Customer's requirements;
- 3.8. shall ensure that it has not relied upon information provided by or on behalf of the Customer without independently verifying that information and satisfying itself of the accuracy, adequacy and correctness of that information;
- 3.9. shall ensure that in supplying the Work, the Supplier exercises the degree of skill, diligence and prudence which would reasonably be expected from a skilled and experienced Supplier engaged in the same type of work under the same or similar circumstances;
- 3.10. shall not change the Facilities unless agreed in writing by the Customer acting reasonably;

- 3.11. warrants, without limiting any other provisions of the Agreement (or otherwise), that:
- all Products will:
 - be new, of merchantable quality, and be fit for their intended purpose;
 - provide the full functionality and performance claimed for the Products;
 - be free from Defects;
 - comply with all requirements of the Agreement including the specifications and with generally accepted engineering, manufacturing and industry standards;
 - not contain any form of asbestos that is prohibited by Law; and
 - in the case of software and hardware, when in operation, calculate dates correctly for the period of the useful life of the Products;
 - all Services will be provided with due skill and care to the standard reasonably to be expected of a person performing the business of the Supplier in accordance with clause 3.10;
 - the Supplier has examined the Customer's requirements under the Agreement, and any other information made available in writing by the Customer to the Supplier and has considered and evaluated all other information and matters relevant to the risks, contingencies and other circumstances relating to the Work (including the Site and all requirements relevant to the Work) and is satisfied that the Agreed Price includes due allowance for all such matters and things necessary for the proper performance and completion of the Work and for fulfilling all of the Supplier's obligations under the Agreement; and
 - the Supplier has fully checked and verified the requirements of the Agreement and will not request any adjustment to the Agreed Price for the Work or any extension of time arising out of any errors, omissions, ambiguities or discrepancies in respect of the Agreement;
- 3.12. represents and warrants that it shall not either directly or indirectly provide to any officer, employee or agent of the Customer any benefit which might reasonably be construed as an inducement for such person to show favour to the Supplier;
- 3.13. shall ensure that at all times a representative is appointed by the Supplier who is authorised to represent and bind the Supplier in all matters relating to the Agreement ("**Supplier's Representative**"). The Supplier shall ensure that the Customer's Representative is provided at all times with the current contact details for the Supplier's Representative. The Supplier shall not change the Supplier's Representative without giving prior written notice to the Customer. All matters notified by the Customer to the Supplier's Representative or otherwise within the knowledge of the Supplier's Representative will be deemed to have been notified to the Supplier and within the Supplier's knowledge. The Supplier's Representative shall promptly respond to requests and queries of the Customer's Representative and shall meet and liaise with the Customer's Representative at such times and intervals as deemed necessary by the Customer;
- 3.14. warrants that with respect to Modern Slavery Laws, it shall:
- comply with all Modern Slavery Laws;
 - actively review its supply chain and its other business operations to monitor whether it or any of its Personnel are engaging in Modern Slavery or not otherwise complying with the Modern Slavery Laws or whether there is any Modern Slavery occurring in its supply chain. This review may include audits of the Supplier's contractors and sub-contractors;
 - If applicable, the Supplier must provide to the Customer a copy of its Modern Slavery statement addressing the risk of modern slavery; and
 - The Supplier must notify the Customer as soon as it becomes of any actual or threatened Modern Slavery in its supply chain or in any other part of its business operations together with details of the steps it is taking to deal with any such Modern Slavery.
- 3.15. warrants that with respect to the *Security of Critical Infrastructure Act 2018* (Cth), it shall:
- comply with any direction given by the Customer and/or the Principal, where such direction is made for the purpose of the Principal and/or the Customer complying with the *Security of Critical Infrastructure Act 2018* (Cth);
 - provide the Customer and/or the Principal with access to all information and documentation necessary to demonstrate compliance with the *Security of Critical Infrastructure Act 2018* (Cth).
 - immediately notify the Customer, in writing in the event of any actual or suspected security breaches or incidents affecting the critical infrastructure of the Principal; and
- 3.16. The Supplier must immediately notify the Customer if it is unable to comply with a direction given under clause 3.15(a) and the parties will promptly discuss, in good faith, any acceptable resolutions or alternative action.

4. Site & Access

If the Agreement requires the Supplier to perform Work on Site:

- 4.1. the Supplier is responsible for inspecting the Site and surrounding areas where the Work will be performed and for ensuring that it is familiar with all Site conditions, including access, soil and subsoil conditions, asbestos and all other Site conditions relevant to the performance of the Work (including all applicable Laws) and for making all reasonable enquiries and investigations

- that may affect the cost and expense of executing the Work;
- the Supplier shall be given access to the Site at agreed times;
 - the Supplier's Personnel shall attend all required Site induction sessions before commencement of Work on any Site and the Supplier shall comply with and shall ensure that when on Site, the Supplier's Personnel comply with all Policies and Laws applicable to the Site;
 - unless otherwise agreed in writing the Supplier shall provide at its expense all facilities, constructional plant and other amenities as may be required for the performance of the Work at the Site; and
 - the Supplier acknowledges and agrees that there may be other contractors on or around the Site and agrees that the Agreed Price includes all of the Supplier's costs and expenses associated with managing the Supplier's interface and co-ordination of the Works with the works of such other contractors.

5. Delivery

- 5.1. The Supplier shall deliver Products in accordance with the relevant Incoterms specified in the Agreement (or if no Incoterms are so specified, without additional charge to the Customer, to the Site for delivery stated in the Agreement by the stated Dates for Delivery). The Customer may postpone delivery of Products and the Supplier shall comply with any such instruction. Unless the postponement was due to any act, default, negligence or omission of the Supplier or the Supplier's Personnel, the procedures set out at clause 12 apply to such postponement by the Customer.
- 5.2. Without limiting any other provision of the Agreement or any Law, the Supplier shall ensure that, in delivering the Products and when using vehicles, machinery and equipment in connection with the Work, the Supplier and its Personnel
- comply with all mass, dimension and load restraint requirements for vehicles and the carriage of goods;
 - comply with all driving hours, speed and traffic requirements;
 - comply with all relevant requirements in relation to container weight declarations;
 - manage all transport and journey documentation, including consignment notes, declarations, manifests and logbooks;
 - provide the Customer, upon request, with all information and documentation reasonably required by the Customer (or a relevant Authority) to monitor or audit compliance with this clause (including permitting inspections of transport and journey documentation and vehicles);
 - notify the Customer upon becoming aware of any breach by the Supplier or the Supplier's Personnel of this clause;
 - be responsible for the safe transportation of the Products and any equipment necessary for performance of the Work to, from and on the Site in accordance with the Delivery Schedule;
 - investigate the route for transport of the Products and be responsible for any civil works in relation to the roads that are necessary to ensure that its loads can be transported to meet the requirements of the Agreement;
 - obtain any necessary permits relating to the movement of its loads to, from and on the Site;
 - comply with all regulations regarding traffic, transit or access of labour, goods, equipment and materials, to, from and on the Site and must also comply with all Laws applicable to the use of existing public and private roads;
 - develop a detailed traffic management and transportation plan for the Work, and produce a copy upon request to the Customer;
 - ensure that the Supplier and the Supplier's Personnel exercise due care in using the transport routes so as not to cause damage to any of the roads or bridges connecting with or on the route to, from and on the Site by any traffic of the Supplier or any of the Supplier's Personnel;
 - continuously inform itself of the suitability of the planned transport route and take into account and plan for the relevant climatic conditions and their influence on the transport route; and
 - at the Supplier's risk and expense verify that any vehicles, machinery and equipment made available by the Customer for transportation fulfils the requirements for the Products being transported and exercise the same degree of care over such vehicles, machinery and equipment as if they were the Supplier's own.
- 5.3. The Supplier shall ensure that:
- appropriate vehicles, machinery and equipment are available to transport the Products by the Date for Delivery and that such vehicles, machinery and equipment are in good working and maintained condition; comply with all Laws; have been inspected and passed as ready and safe for operation in accordance with such Laws; are suitable for the Work and meet all requirements of the Agreement; are equipped with sufficient means for securing and protecting the Products and are equipped with fully operational communication systems;
 - operators and drivers are available at all times necessary to operate vehicles, machinery and equipment in order to support the proper sequence, performance and completion of the Work; and

- (c) all operators and drivers are capable, experienced, sufficiently qualified, certified and suitable to perform the Work in accordance with the Law and are trained in occupational health and safety and instructed to stop Work whenever they consider it likely that the Work does not comply with occupational health, safety or environmental regulations and to inform the Customer accordingly.
- 5.4. The Supplier shall bear the risk of delays including waiting time during transportation unless such delay is caused by the Customer.
- 5.5. The Supplier shall ensure that prior to the delivery or use of any Products containing or comprising dangerous goods or hazardous substances (together known as "**Hazardous Substance**") to or on Site, the Supplier:
- ensures that any such Hazardous Substance is appropriately packed, marked and labelled;
 - provides all applicable Hazardous Substance data to the freight forwarder (if the Supplier is responsible for arranging transport of the Hazardous Substance);
 - provides the Customer with a copy of the current Material Safety Data Sheet for such Hazardous Substance that complies with the National Code of Practice for the Preparation of Material Safety Data Sheets; and
 - provides the Customer with a completed risk assessment, if any Services include the use of such Hazardous Substances
- 5.6. Unless otherwise agreed between the Parties in writing the Supplier shall ensure that all Products are adequately insured, packaged and protected, loaded and transported to ensure safe delivery to the Site by the Date for Delivery including, where carriage is by sea, ensuring that non-containerised Products are stowed under deck, unless otherwise agreed by the Customer in writing.
- 5.7. The Supplier shall ensure that Products are accompanied by the requisite delivery documents (including any shipping and customs documents) at no additional cost and that a delivery note excluding the price is supplied with all deliveries and shall provide the Customer with copies of all transport related permits and any other transport documents promptly upon request or at the times set out in the Agreement.
- 5.8. Delivery notes must include all information requested by the Customer and the Supplier must obtain the signature of an authorised representative of the Customer on the delivery note evidencing goods receipt. The signing of the delivery note or the passing of title to the Customer will not constitute approval by the Customer of the Supplier's performance of its obligations, nor be taken as an admission or evidence that any of the Products comply with the requirements of the Agreement nor prejudice any rights or powers of the Customer in any way.
- 5.9. Partial, advance, excess or short deliveries may only be made with the prior written consent of the Customer's Representative. The Supplier shall indemnify the Customer for any Loss suffered or incurred by the Customer as a result of any unapproved partial, advance, excess or short deliveries (including transport costs).
- 6. Title, Property and Risk**
- 6.1. Unless otherwise agreed between the Parties, title to and property in Products passes to the Customer upon payment or delivery, whichever occurs first. Risk in Products shall pass to the Customer upon receipt of the Products by the Customer at the named place of destination/delivery in accordance with the relevant Incoterms specified in the Agreement (or if no Incoterms are so specified, upon the Date of Delivery of the Products to the nominated Site for delivery specified in the Agreement).
- 6.2. For each Product, the Supplier warrants that at the time of delivery of the Product to Site:
- the Supplier has complete ownership of the Product free of any liens, charges, Security Interests and encumbrances and provides the Product to the Customer on that basis; and
 - the Customer is entitled to clear, complete and quiet possession of the Product.
- 7. Export Control and Foreign Trade Regulations**
- 7.1. The Supplier shall comply with all applicable export and import restrictions, customs and foreign trade regulations ("**Foreign Trade Regulations**") in relation to all Work to be provided and/or all Products to be delivered according to this Agreement. The Supplier shall obtain all necessary export licenses pursuant to the applicable Foreign Trade Regulations.
- 7.2. The Supplier shall advise the Customer in writing as early as possible but not later than 14 days after receipt of the Purchase Order and promptly in case of changes of any information and data required by the Customer to comply with all Foreign Trade Regulations in the case of export and import as well as re-export. In any case, Supplier shall provide the Customer for each Product and Service:
- all applicable export list numbers, including the 'Export Control Classification Number' according to the U.S. Commerce Control List (ECCN); and;
 - the statistical commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) coding; and
 - the country of origin (non-preferential origin) and upon request of the Customer documents to provide the non-preferential origin; and
 - the preferential country of origin and upon request of the Customer, documents pursuant to the requirements of the applicable preferential law to prove the preferential origin (e.g. supplier's declaration). ("Export Control and Foreign Trade Data")
- 7.3. In case of any alterations to origin and/or characteristics of the Products and Services and/or to the applicable Foreign Trade Regulations, the Supplier shall update the Export Control and Foreign Trade Data as early as possible, but not later than 5 days prior to the Delivery. The Supplier shall be liable for any expenses and/or damages incurred by the Customer due to any breach of the obligations according to this clause 7.3, unless the Supplier is not responsible for such breach
- 7.4. The Supplier warrants that all Products exported by the Supplier to Australia are not exported at a price below their 'Normal Value' as that term is defined in the *Customs Act 1901* (Cth).
- 7.5. The Supplier shall indemnify the Customer and the Customer's Personnel from and against any Claims and Loss incurred or suffered by them due to any breach of this clause 7 by the Supplier or the Supplier's Personnel. The Supplier shall promptly notify the Customer if the Supplier receives any notification that it has breached any Foreign Trade Regulations
- 7.6. The Customer shall not be obligated to fulfil the Agreement if such fulfilment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargos or other sanctions.
- 7.7. If and to the extent the sale or supply of products and services is subject to prior authorization by the competent export control authorities this agreement shall come into force only upon granting of such authorization.
- 8. Price & Payment**
- 8.1. The Supplier shall only invoice the Customer at the times or intervals set out in the Agreement or at such other times as otherwise agreed between the Parties. Subject to any contrary term of the Agreement and the Customer rights under the Agreement, the Customer shall pay the Supplier within the following payment period after the Supplier's correctly rendered invoice is received:
- 60 days; or
 - if the Supplier is a "Small Business Supplier" as defined under the *Payment Times Reporting Act 2020* (Cth) and the Payment Times Reporting Rules 2024, 30 days.
- 8.2. If the Supplier makes a payment claim under any applicable Australian security of payment legislation, the payment claim (to the extent that it is undisputed) shall become due and payable by the Customer within the shorter of:
- the payment period specified in clause 8.1; and
 - the maximum period permitted by such legislation.
- 8.3. Unless otherwise specified in the Agreement, prices, the Customer shall not be required to pay any invoice or reimburse the Supplier for any approved expenses unless it receives a correctly rendered invoice. An invoice will be correctly rendered if::
- the Work to which the invoice relates has been provided in accordance with the requirements of the Agreement;
 - the specified amount is correctly calculated and due for payment;
 - the invoice specifies the Purchase Order number, Product item number (if applicable) and all other relevant details requested by the Customer and the invoice is set out in a manner that enables the Customer to ascertain the Work to which the invoice relates and the amount payable in respect of such Work;
 - the invoice is accompanied (where necessary or where reasonably requested by the Customer) by verifying documentation;
 - the invoice reflects the Agreed Price or expenses which have been previously approved by the Customer
 - the invoice includes all information necessary for it to be used as a valid tax invoice for GST purposes (where the invoice includes an amount in respect of GST);
 - the invoice is forwarded to the correct the Customer invoice address specified in the Purchase Order; and
 - the invoice is accompanied by a Subcontractor Statement in accordance with clause 8.10 (if applicable).
- 8.4. the Customer shall not be required to pay any invoice (or any part of the invoice) or reimburse the Supplier for any approved expenses unless the Customer receives a correctly rendered invoice. An invoice will be correctly rendered if
- are fixed and may not be varied without the prior written consent of the Customer and
 - are in Australian dollars and include all Government taxes, duties, excises, tariffs and charges (except GST).
- 8.5. The Customer shall not be required to pay the Agreed Price (or any part of the Agreed Price) for the Work or reimburse the Supplier for any agreed expenses unless the Supplier has provided the Customer with:
- all required bank details to enable the electronic transfer of the Agreed Price;
 - Not used;
 - evidence that all insurance required to be effected by the Supplier under the Agreement has been effected.

- 8.6. The Supplier acknowledges and agrees that the Customer may withhold from the Agreed Price otherwise payable to the Supplier any amounts required to be withheld or remitted by the Customer to relevant authorities under any applicable Laws.
- 8.7. The Parties agree that the consideration for any supply made under or in connection with the Agreement does not include GST. To the extent that any supply made under or in connection with the Agreement is a taxable supply, the consideration for that taxable supply is the amount for that taxable supply specified in the Agreement plus GST and the GST must be paid at the same time as the payment for the Taxable Supply is required to be made under the Agreement. Each Party must do all things (including providing the other Party with tax invoices and all other documentation that may be necessary or desirable to enable or assist the other Party to claim any input tax credit, adjustment, set off, rebate or refund for or in relation to any amount of GST paid or payable pursuant to any taxable supply made under or in connection with the Agreement). Words used in this clause which have a defined meaning in the GST Law have the same meaning as given in the GST Law, unless the context otherwise requires.
- 8.8. The Customer and the Supplier may agree in writing upon special pricing arrangements such as rebate schemes, price review mechanisms, exchange rate variation mechanisms and rise and fall pricing.
- 8.9. Without prejudice to any other rights or remedies available to the Customer, the Customer may set-off, deduct or withhold from any amount due by the Customer to the Supplier any amount which the Supplier, is liable to pay to the Customer however or whenever incurred under of in connection with the Agreement (including under an indemnity)
- 8.10. To the extent permitted by Law, the Customer has no obligation to make any payment in respect of any Supplier invoice unless and until:
- if the Products or Services are to be supplied to or from New South Wales, the Supplier has first given to the Customer, for the month to which the Supplier's invoice relates, a completed subcontractor's statement regarding workers' compensation, payroll tax and remuneration in the form prescribed by the New South Wales Government;
 - if Products or Services are to be supplied to or from any other Australian State or Territory, the Supplier has first given to the Customer a statutory declaration (in any applicable form) for the month to which the Supplier's invoice relates, declaring that, in respect of the invoiced Work, all of the Supplier's Personnel have been paid all monies due and payable to them (including superannuation and other entitlements) and all taxes, whether State or Federal, have been paid in respect of them including any State and/or Territory pay-roll tax; and
 - the Supplier has provided certificates of currency for all insurances required to be effected and maintained by the Supplier under clause 23.
- 8.11. If the Customer becomes liable to pay any amount to any third party by reason of the Supplier's failure to provide the documentary evidence required under the Agreement, then clause 8.9 applies and the Customer may recover any such amount from the Supplier.
- 8.12. Payment by the Customer to the Supplier shall not:
- constitute approval or acceptance of the Work or prejudice any claim by the Customer
 - constitute evidence of the value of any Work; or
 - be construed to mean that the Work has been supplied in accordance with the Agreement and shall not relieve the Supplier from any of the Supplier's obligations and responsibilities under the Agreement.
- 8.13. The Supplier must notify the Customer in writing if any of the Supplier's contractors, subcontractors, consultants or suppliers ("Contractors") are or may be entitled to exercise a right to suspend work under a relevant agreement or subcontract pursuant to any security of payment legislation in force in Australia.
- 8.14. In circumstances described in clause 8.13 above:
- the Customer is entitled (but is not obliged) to provide a form of security to or to pay the Contractor to avoid suspension of work by such party; and
 - the Supplier indemnifies the Customer for any loss or damage (direct or indirect) that the Customer may suffer as a result of a suspension by a Contractor, unless and to the extent that such suspension is caused by the acts of the Customer or the Customer's Personnel (other than the Supplier).
- 8.15. If the Customer exercises its entitlement to provide a form of security to or to pay a Contractor under clause 8.14, then the amount of that security or payment plus any associated costs to the Customer arising from a call on that security or provision of that security, will be a debt due by the Supplier to the Customer and may be set-off by the Customer against any other payments that are due or become due to the Supplier
- 9. Security**
- 9.1. NOT USED.
- 10. Time**
- 10.1. The Supplier shall perform the Work under the Agreement competently with due expedition and without delay (including in accordance with the Delivery Schedule (if any) for the Work) so as to deliver the Work by the Date for
- Delivery, which date is binding and of the essence of the Agreement.
- 10.2. The Supplier shall take all reasonable steps to avoid delay and shall notify the Customer immediately if a delay to the Delivery Schedule (if any) or the Date for Delivery is expected to occur. The Supplier shall bear all costs of any express shipments required to enable the Supplier to meet the applicable Date for Delivery
- 10.3. The Supplier shall ensure that progress (including against the Delivery Schedule (if any)) is monitored at all times and shall update the Customer of this progress at the intervals requested by the Customer. The Supplier shall inform the Customer of the name of the Supplier's employee who shall be responsible for monitoring deadlines and shall ensure that such employee is authorised to take all measures and to issue all instructions which, in the Customer's opinion, may be necessary to ensure that deadlines are adhered to.
- 10.4. Review of, comments on or approval of, or any failure to review or comment on, any Delivery Schedule by the Customer will not:
- relieve the Supplier from, or alter, the Supplier's liabilities or obligations under the Agreement;
 - evidence or constitute the granting of an extension of time or a direction by the Customer to accelerate, disrupt, prolong or vary any Work under the Agreement; or
 - affect the time for carrying out the Work under Agreement.
- 10.5. The Supplier shall ensure that any Work supplied on a the Customer or the Customer's customer Site is performed during the hours agreed between the Parties.
- 10.6. If the Supplier does not achieve Delivery by the Date for Delivery, the Supplier shall pay to the Customer (and the Customer may deduct) liquidated damages equal to 1% of the Agreed Price for each day of delay capped at 10% of the Agreed Price (or such other liquidated damages amount and cap as may be agreed between the Parties in writing). Liquidated damages shall be applied from the Date for Delivery up until the earlier to occur of: (a) the Date of Delivery; and (b) the liquidated damages cap being reached.
- 10.7. The Supplier acknowledges that the liquidated damages set out in the Agreement are a genuine pre-estimate of loss, are not a penalty and are without prejudice to any other rights or remedies of the Customer under the Agreement. The obligation to pay or payment of such liquidated damages by the Supplier shall not affect any other obligations of the Supplier under the Agreement.
- 11. Extensions of Time**
- 11.1. The Supplier may claim an extension of time under the Agreement in accordance with this clause, if the Supplier has been or will be delayed in executing the Work by the Date for Delivery due to:
- a breach of contract by the Customer;
 - postponement under clause 5.1 unless the instruction was due to any act, default, negligence or omission by the Supplier or the Supplier's Personnel;
 - variations directed in writing by the Customer under clause 12 (unless such variation has been requested due to any act, default, negligence or omission by the Supplier or the Supplier's Personnel); and
 - suspension under clause 13.2 (unless the suspension was due to any act, default, negligence or omission of the Supplier or the Supplier's Personnel); or
 - a Force Majeure Event, however, neither Parties' rights under clause 29.4 are limited under this clause.
- 11.2. If an extension of time is granted by the Customer, the Customer shall as soon as practicable notify the Supplier in writing of the extension of time granted and if the claim for an extension of time (or any part) is rejected, the Customer shall notify the Supplier of the reasons for the rejection.
- 11.3. The Supplier shall not be granted an extension of time under the Agreement unless the delay for which the extension is claimed is on the critical path of the Delivery Schedule (if any) or has affected or will affect the Supplier's ability to meet the Date for Delivery. Where there are concurrent delays, the Supplier shall not be entitled to claim an extension of time for the period where the delays overlap.
- 11.4. As a condition precedent to being granted an extension of time, the Supplier must:
- notify the Customer in writing of the likelihood of the delay, as soon as becoming aware of the likelihood of the delay;
 - take all reasonable steps possible to prevent the cause of the delay and to mitigate the extent and consequences of the delay;
 - within 7 days after the occurrence of the cause of any delay, notify the Customer in writing of the Supplier's intention to apply for an extension of time, specifying the cause of the delay, an estimated duration of the delay and the steps that the Supplier will take to mitigate the delay (which notices shall be consecutively numbered and otherwise be in the format requested by the Customer);
 - within 14 days after the occurrence of the cause of any delay, give the Customer a written claim for an extension of time. The claim shall state all the facts upon which the claim is based, the extension period claimed and shall show and justify any effect the extension of time shall have on the Delivery Schedule (if any) and the Date for Delivery, which claim shall be accompanied by a copy of the Delivery

Schedule (if any) which has been marked up to show the direct impact of the delay and the revised Date for Delivery.

- 11.5. Notwithstanding that the Supplier is not entitled to or has not claimed an extension of time, the Customer may at any time and from time to time before Final Completion direct an extension of time.

12. Variations

- 12.1. The Customer may direct the Supplier to vary the Work including by increasing, decreasing, or omitting any part of the Work. The Supplier shall not vary the Work except as directed in writing by the Customer.
- 12.2. The Supplier shall immediately notify the Customer if the Supplier considers that it is not possible for the Supplier to comply with a variation direction and shall provide written reasons for not being able to do so.
- 12.3. If the Supplier considers that the variation will have an effect on the value of the Work, the Date for Delivery, or the Delivery Schedule, or if so requested in writing by the Customer, the Supplier shall:
- within 5 Business Days after a variation is directed, submit to the Customer a statement advising whether or not a difference in Agreed Price will arise as a result of the directed variation and shall advise the Customer of the approximate value of the cost difference (which statements shall be consecutively numbered and otherwise be in the format requested by the Supplier);
 - within 10 Business Days after a variation is directed, submit to the Customer a detailed statement of the cost of any variation (bearing the same number and in the same format as stipulated in clause 12.3(a)) which statement shall set out all adjustments to the Agreed Price and other amounts claimed by the Supplier arising out of or in relation to the applicable variation request (on the basis that all other adjustments and/or amounts not included in the detailed statement arising out of or in relation to such variation shall be deemed to have been waived by the Supplier); and
 - comply with clause 11 if it intends to claim an extension of time.
- 12.4. The Supplier shall not be entitled to claim any payment for any variation:
- unless the Customer has directed the Supplier in writing to execute the variation and the Supplier has complied with this clause 12. If the Supplier has not complied with clause 12, the Supplier may not claim any extension of time or any additional payment. The Supplier shall promptly implement variations to the Work requested by the Customer; or
 - if the variation was directed by the Customer due to any act, default, negligence or omission of the Supplier or the Supplier's Personnel.
- 12.5. No variation shall invalidate the Agreement and the Supplier agrees that the Customer may engage others to carry out any parts of the Work which the Customer directs the Supplier to omit. Any direction to omit Work will not constitute a repudiation of the Agreement regardless of the extent or timing of that direction.

13. Suspension

- 13.1. The Supplier shall not suspend the supply of the Work without a written request from the Customer.
- 13.2. the Customer may at any time request that the progress of the whole or part of the Work under the Agreement be suspended for such period as the Customer deems necessary. In such case, the Supplier shall, in consultation with the Customer, cease to perform the applicable Work. If during a suspension period, the Customer instructs the Supplier to resume the Work, the Supplier shall promptly recommence execution of the Work.
- 13.3. Unless the suspension was due to a Force Majeure Event or any act, default, negligence or omission of the Supplier or the Supplier's Personnel, the procedures set out at clause 12 shall apply to such postponement by the Customer.
- 13.4. Suspension shall not affect the Date for Delivery specified in the Agreement, but the cause of the suspension may be a ground for the Supplier to seek an extension of time.

14. Notification of Claims

To the extent permitted by Law, the Customer shall not be liable in respect of any Claim (whether in contract, tort, negligence at equity or otherwise) arising out of or in relation to the Agreement or the Work unless:

- the Supplier has given the Customer notice in writing within 14 days of first becoming aware of the event or circumstances on which the Claim is based; and
- within 28 days of the cessation of the events or circumstances on which the Claim is based, the Supplier has provided a Claim.

15. Quality Assurance & Defects

- 15.1. The Supplier shall plan, establish and maintain a quality system which ensures conformance of the Work with the requirements of the Agreement. The Supplier shall provide the Customer with access to the quality systems of the Supplier and the Supplier's Personnel upon request by the Customer to enable the Customer to inspect, test and monitor the Supplier's compliance with the requirements of the Agreement. Without limiting any other provision of the Agreement, the Supplier shall comply with any specific quality management requirements of the Customer which are notified to it by the Customer from time to time.
- 15.2. The Customer and third parties authorised by the Customer may upon giving the Supplier reasonable notice, inspect the Work being carried out by the Supplier or the Supplier's Personnel (at any stage of progress) at the Site and at the

Facilities. As part of such inspections the Customer may (amongst other things):

- monitor compliance with applicable Laws;
 - review, inspect, examine and witness any scheduled testing of Products;
 - review the Supplier's progress against the Delivery Schedule (if any) and the Supplier's ability to meet the Date for Delivery;
 - inspect any test equipment used in measuring or testing Products at the scheduled time of testing for such Products; and
 - examine the production status and test the quality of Products.
- 15.3. The Supplier and the Supplier's Personnel shall provide all the requisite test and inspection equipment, devices and personnel required for the purposes of carrying out any Product quality tests and inspections (at the Supplier's cost). The Customer will use reasonable endeavours not to interfere with the day to day operations of the Supplier and the Supplier's Personnel while carrying out any of the tests and inspections under this clause 15.
- 15.4. The Supplier shall not be released from any of the Supplier's obligations arising out of or in relation to the Agreement by the fact that the Customer or third parties authorised by the Customer perform any quality reviews.
- 15.5. The Supplier shall agree the same quality assurance measures as set out in clauses 15.1 through 15.3 above with the Supplier's subcontractors and shall ensure that such subcontractors grant corresponding access, inspection, testing and monitoring rights to the Customer and third parties authorised by the Customer.
- 15.6. The Customer shall not be deemed to have accepted any Work until the Customer has had a reasonable time to inspect and perform tests, even if it has signed a delivery receipt or made any payment. The Customer may perform tests to confirm compliance of the Work with the Agreement. If such tests show that the Work does not materially conform to the requirements of the Agreement, the Customer's reasonable costs of such testing shall be a debt due and owing by the Supplier to the Customer.
- 15.7. The Customer may direct the Supplier to rectify any Defects which occur during the Defects Liability Period by (at the Customer option) either:
- repairing or replacing the defective Products; re-supplying the defective Services (or paying for the cost of the Products to be repaired or replaced or Services to be re-supplied) and correcting and supplying the Customer with all associated updated Documents; and
 - providing the Customer with any materials, parts, drawings, Documents and instructions necessary to correct or have corrected the Defect.
- 15.8. If the Customer makes a direction to rectify any Defects, the Supplier shall (at the Supplier's cost and without prejudice to any of the Customer other rights and remedies) promptly
- carry out the rectification to the Customer satisfaction at times and in a manner causing as little inconvenience to the Customer as is reasonably possible;
 - commence and complete the rectification of Defects by the dates specified by the Customer or if no timetable is provided by the Customer as soon as practicable after notification of the Defect by the Customer; and
 - dispose of rejected Products (or parts thereof) (if requested to do so by the Customer).
- 15.9. There shall be a further, separate defects liability period for the rectified Work equal in length to the Defects Liability Period (unless otherwise agreed between the Parties in writing) which shall commence upon the date of completion of the rectification and which shall be governed by this clause
- 15.10. If the rectification is not commenced or completed by any dates specified by the Customer or otherwise in accordance with this clause 15, or if the Customer reasonably considers that the Defects are incapable of being rectified by the Supplier within the required time frame or at all, the Customer may at the Customer option (without prejudice to any of the Customer' other rights and remedies):
- rectify the Defect or have the rectification carried out by others at the Supplier's cost; or
 - reject all or part of the Product or Services in which case:
 - the Supplier shall refund to the Customer any payments made by the Customer in respect of such rejected Product and Services;
 - the Supplier shall arrange for the removal of rejected Product (if any) at its cost within the reasonable period of time specified by the Customer; and
 - title and risk in rejected Product shall revert to the Supplier upon receipt by the Customer of the refund.
- 15.11. Upon request by the Customer, the Supplier shall indemnify the Customer from and against all Loss suffered and Claims incurred by the Customer and the Customer's Personnel (including payments required to be made to third parties) arising out of or in relation to a Defect and its rectification including additional labour costs (on a time and materials basis); costs associated with removing and returning defective Products; inspection, evaluation and testing costs; re-working and installation costs; additional transportation costs; and all other additional internal administration, processing and travel costs.

The indemnity given by the Supplier in this clause 15.11 shall be reduced proportionately to the extent the Loss or Claim was caused by the negligence of the Customer and/or the Customer Personnel.

- 15.12. If the Customer exercises its right under this clause 15 to carry out or have others carry out any rectification work, the Supplier shall remain responsible for the Work in accordance with the Agreement.
- 15.13. Until Product Defects are rectified in full, the Supplier shall bear the risk of accidental loss, destruction or deterioration to such defective Product.
- 15.14. For a period of 2 years after expiry of the Defects Liability Period, the Supplier shall remedy all Latent Defects on the same terms and conditions as apply to the rectification of Defects during the Defects Liability Period
- 15.15. If a Serial Defect is identified the Supplier shall, at the Customer request, rectify the Serial Defect in all the Products affected by the Serial Defect in accordance with the defect provisions contained in this clause 15 (irrespective of whether the Serial Defect has manifested itself in all of the individual Products). The Parties shall use reasonable endeavours to ensure that repair or replacement is carried out at a time that will cause as little disruption as possible to the Customer and any person to whom the Products have been on-supplied (including where relevant taking into account any planned maintenance periods that may apply to the Products affected by the Serial Defect).
- 15.16. Within 42 days after the expiry of the last Defects Liability Period under the Agreement, the Customer's Representative shall notify the Supplier of the Date of Final Completion. The issue of such notice shall not prejudice any claim by the Customer or relieve the Supplier from any of its unfulfilled obligations or responsibilities including with respect to Latent Defects and Serial Defects.

16. Personnel and subcontracting

- 16.1. If requested to do so the Customer, the Supplier shall provide the Customer with an up-to-date, detailed organisational chart showing the positions of key Supplier Personnel associated with the provision of the Work ("**Key Supplier Personnel**").
- 16.2. The Customer may request the Supplier to ensure that the Work under the Agreement is provided by particular Key Supplier Personnel. the Customer may require the Supplier to immediately replace any of the Key Supplier Personnel on reasonable grounds.
- 16.3. The Supplier shall use its best endeavours to:
 - (a) supply and retain the Key Supplier Personnel;
 - (b) promptly inform the Customer if any of the Key Supplier Personnel cease or give notice of an intention to cease being engaged by the Supplier;
 - (c) promptly replace any Key Supplier Personnel who cease being engaged by the Supplier with a person having the necessary skill, experience, expertise and qualifications to perform the Work;
 - (d) ensure that appropriate Key Supplier Personnel attend meetings if requested to do so by the Customer.
- 16.4. The Supplier is responsible for supervising the Supplier's Personnel and bears the risk of any dispute, delay, disruption or inefficiency connected with or relating to any industrial action, of any of the Supplier's Personnel where that action arises out of or in connection the Work under the Agreement or the way in which the Supplier conducts its business.
- 16.5. The Supplier shall not subcontract the whole or any part of the Work without obtaining the prior written consent of the Customer. To the extent permitted by Law, the Supplier shall remain responsible for all acts, defaults, negligence and omissions of its subcontractors at all times and shall maintain and provide a list to the Customer of all approved subcontractors upon request by the Customer.

17. Relationship between the Parties

- 17.1. The relationship between the Parties is one of independent contractor at all times. Nothing in the Agreement is intended to:
 - (a) create an agency, partnership, joint venture or fiduciary relationship between the Customer and the Supplier; or
 - (b) have the effect of making any of the Supplier's Personnel the employees of the Customer.
- 17.2. The Supplier shall pay all applicable salaries, leave entitlements, taxes (including payroll and PAYG taxes), superannuation and workers' compensation for the Supplier's employees.
- 17.3. The Supplier shall provide the Customer with all necessary information to enable the Customer to answer any enquiries made by the Australian authorities arising out of or in relation to the Agreement.
- 17.4. The Supplier shall provide satisfactory evidence to the Customer upon request of the Supplier's compliance with this clause 17.

18. The Customer's property

- 18.1. The Customer may from time to time supply goods and materials ("**The Customer's Material**") to the Supplier to enable the Supplier and the Supplier's Personnel to perform the Work. Legal title to and property in all the Customer's Material supplied by the Customer for the Work shall remain with the Customer and shall not pass to the Supplier under any circumstances. The Supplier shall only use the Customer's Material to perform the Work and for no other purpose and bears the risk of loss, damage or deterioration to it. The Supplier shall store and take appropriate care of the Customer's Material and compensate the Customer for all Loss sustained by the Customer if any the Customer's Material is lost or damaged or deteriorates. The Supplier must deliver the Customer Material to the Customer upon request by the Customer

- 18.2. To the extent applicable, the Supplier consents to the Customer perfecting the Customer's interest in any goods provided by the Customer to the Supplier by registration under the PPSA and agrees to do anything reasonably requested by the Customer to enable the Customer to do so.
- 18.3. All drawings, specifications, information and samples provided by the Customer shall remain the Customer's sole and exclusive property and is deemed to be Confidential Information. The Customer makes no warranties regarding the accuracy of, and shall not be liable for, any defects, mistakes or inaccuracies in such documents, information or samples.

19. PPSA

The Supplier must:

- 19.1. not register or otherwise perfect or seek to perfect any Security Interest in or in connection with a Relevant PPSA Matter;
- 19.2. use best endeavours to ensure that no third party registers or otherwise perfects or seeks to perfect any Security Interest in or in connection with a Relevant PPSA Matter;
- 19.3. remove from, and use best endeavours to ensure third parties remove from, any relevant register any Security Interest in or in connection with a Relevant PPSA Matter that the Supplier or such other third party has previously registered; and
- 19.4. ensure all subcontracts (if any) entered into by the Supplier in connection with the Work have, for the benefit of the Customer, a clause that reflects this clause 19.

20. Confidentiality

- 20.1. Both Parties shall:
 - (a) keep confidential, and not use, access, copy or disclose any Confidential Information except as permitted by this clause 20 or otherwise consented to by the Disclosing Party in writing; and
 - (b) immediately notify the Disclosing Party if the Receiving Party becomes aware of any loss or unauthorised use, access, copying, disclosure or publication of any Confidential Information.
- 20.2. Both Parties may, to the extent necessary, use Confidential Information for the purposes of performing its obligations or exercising its rights arising under the Agreement
- 20.3. The Supplier may disclose Confidential Information to the Supplier's Personnel who have a specific need to access that Confidential Information for the purposes of enabling the Supplier to perform its obligations or exercise its rights arising under the Agreement provided that:
 - (a) the Supplier's Personnel have first been made aware of the terms upon which the Confidential Information has been disclosed to the Supplier and a duty to handle such Confidential Information in confidence is imposed upon the Supplier's Personnel;
 - (b) the Supplier ensures that the Supplier's Personnel comply with the terms of this clause as if they were parties to the Agreement; and
 - (c) any breaches of this clause 20 by the Supplier's Personnel shall be deemed to be breaches by the Supplier.
- 20.4. The Customer may disclose the Confidential Information to the Customer's Personnel, to its Related Bodies Corporate and to the Personnel of its Related Bodies Corporate as it deems reasonably necessary
- 20.5. The confidentiality obligations in this clause 20 do not apply to Confidential Information which:
 - (a) is or becomes public knowledge other than as a result of a breach of confidence;
 - (b) is lawfully obtained by the Receiving Party from a third party without any confidentiality obligation (other than as a result of a breach of confidence);
 - (c) is independently developed by the Receiving Party without reference to any obtained Confidential Information; or
 - (d) the Receiving Party is required to disclose to comply with any applicable Law, legally binding court order, request by a governmental agency or under the rules of a stock exchange.
- 20.6. The burden of proving that Confidential Information falls within an excluded category in clause 20.5 rests with the Disclosing Party
- 20.7. If any Laws require that Confidential Information be passed on to public bodies for the purpose of obtaining approvals and permits, the Receiving Party shall do everything reasonably within the Receiving Party's power to ensure that such Confidential Information is also treated confidentially by such public bodies.
- 20.8. The Disclosing Party may at any time request the Receiving Party to either destroy or return to Disclosing Party all Confidential Information received from Disclosing Party. The Receiving Party shall destroy or return the Confidential Information (and all copies of such Confidential Information) to Disclosing Party within 14 days after receipt of Disclosing Party's request.
- 20.9. The duty to maintain secrecy shall survive the expiration or earlier termination of the Agreement.

20A Privacy

If the Supplier collects, holds, uses, discloses or grants access rights to any Personal Information in connection with the Agreement, the Supplier must:

- 20A.1 comply with all applicable Privacy Laws, privacy Policies and the Customer's reasonable directions relating to the handing of such Personal Information (whether or not the Supplier is an organisation bound by the Privacy Act and if the Supplier is a small business under the Privacy Act, the Supplier agrees to choose to be treated as an organisation bound by the Privacy Act in accordance with section 6EA of the Privacy Act during the term of the Agreement);
- 20A.2 only use such Personal Information for and to the extent necessary to perform the Supplier's obligations under the Agreement.
- 20A.3 ensure that such Personal Information is protected against loss and any unauthorised access, use, modification, disclosure, destruction or other misuse;
- 20A.4 not transfer any such Personal Information outside of Australia or disclose any such Personal Information to any third party without the Customer's prior written consent (unless required by Law to do so);
- 20A.5 fully cooperate with the Customer to enable the Customer to:
- (a) respond to any applications for access to, or correction of, any document containing such Personal Information;
 - (b) respond to any privacy complaints; and
 - (c) make any necessary notifications required by applicable Privacy Laws and/or privacy Policies;
- 20A.6 immediately notify the Customer if the Supplier is required to provide notice of an actual or potential data breach (involving such Personal Information) under any applicable Privacy Laws and/or other privacy Policies, or if the Supplier receives or becomes aware of:
- (a) any applications for access to or correction of any such Personal Information;
 - (b) any complaint about the handling of any such Personal Information;
 - (c) any loss (or potential loss) of, or unauthorised access to, use, modification, destruction, disclosure, or other misuse of such Personal Information by the Supplier or the Supplier's Personnel; or
 - (d) any actual or potential breach of this clause 20A by the Supplier or the Supplier's Personnel;
- 20A.7 ensure that all of the Supplier's Personnel handling any such Personal Information are made aware of the Supplier's obligations under this clause 20A and are obliged to comply with them.

21. IP Rights

- 21.1. Except to the extent otherwise agreed between the Customer and the Supplier in writing, nothing in the Agreement operates to transfer ownership of any Background IP Rights from either Party or any third party to the other Party. All such Background IP Rights are and remain owned by the relevant Party or third party. The Supplier grants the Customer an irrevocable, non-exclusive, transferable, royalty-free licence to use Background IP Rights in connection with the Work and for the use, repair, maintenance, upgrade or modification of Products.
- 21.2. Unless otherwise agreed by the Parties in writing and subject to clause 21.1, the Supplier:
- (a) assigns to the Customer free from all encumbrances all IP Rights specifically created by the Supplier or the Supplier's Personnel for the Customer in connection with the Work; and
 - (b) acknowledges that by virtue of this clause all such IP Rights vest in the Customer upon their creation, and the Supplier shall, at its cost, do all things reasonably requested by the Customer to enable the Customer to assure further the rights assigned under this clause, including executing (and procuring the Supplier's Personnel to execute) any formal assignment or other documents required to give effect to this clause and to provide all reasonable assistance to the Customer to protect the Customer interests.
- 21.3. The Supplier must disclose to the Customer any significant material which the Supplier and/or the Supplier's Personnel create in the course of providing the Work at the time of its creation.
- 21.4. The Supplier represents and warrants that Products do not contain any Open Source Software other than as disclosed by the Supplier to the Customer in accordance with this clause. If any Products contain Open Source Software, the Supplier (prior to accepting the Purchase Order) shall deliver to the Customer:
- (a) a list of all Open Source Software to be provided by the Supplier (indicating the correct version number) and the relevant Open Licence Terms;
 - (b) a complete copy of all Open Licence Terms; and
 - (c) the source code and build scripts for each version of the relevant Open Source Software to be provided to the Customer (insofar as the applicable Open Licence Terms require such disclosure).
- 21.5. The Customer use of material provided by the Supplier under the Agreement includes the Customer's right to reproduce, publish, copy, adapt, communicate to the public, destroy or in any way change the materials (or any part):
- (a) with or without attribution of authorship;
 - (b) in any medium; and
 - (c) in any context and in any way it deems fit.
- 21.6. The Supplier warrants that:
- (a) the Supplier has the authority to grant the rights granted under this clause 21; and

- (b) the possession and use of the Products by the Customer in accordance with the Agreement shall not infringe any third party's IP Rights (including any author's moral rights under the *Copyright Act 1968* (Cth) and will not result in any royalties, fees or other amounts (not agreed to by the Customer) becoming payable for or relating to the use of such IP Rights.

- 21.7. The Supplier shall indemnify the Customer and the Customer's Personnel against any Claims and Loss incurred by the Customer or the Customer's Personnel arising out of or in relation to any actual or alleged infringement of a third party's IP Rights. The Supplier shall at the Customer's option and at the Supplier's expense either replace such infringing Product with a non infringing Product, or modify such Product so as to render it to be non infringing (in either case, to deliver the same functionality and performance as the infringing part), or procure for the Customer's the right to use such Product.
- 21.8. The Customer's shall inform the Supplier if any third party brings a Claim against the Customer alleging breach of any third party's IP Rights arising out of or in relation to the Customer's possession or use of the Products.

22. Indemnity and Liability

- 22.1. The Supplier releases and indemnifies the Customer and the Customer's Personnel ("**Indemnified Parties**") from and against all Loss and Claims, suffered or incurred by the Indemnified Parties to the extent caused or contributed to by
- (a) the performance or non-performance of the Work or any act, omission or negligence by the Supplier or the Supplier's Personnel; or
 - (b) any Claim by a third party arising out of or in connection with the performance or non-performance of the Work or any act, omission or negligence by the Supplier or the Supplier Personnel including any Loss or Claim arising out of:
 - (i) breach of contract or warranty;
 - (ii) breach of any Laws;
 - (iii) personal injury, disease, illness and/or death;
 - (iv) loss of or damage to property;
 - (v) tort (including negligence), fraudulent or wilful misconduct; or
 - (vi) breach of confidentiality, infringement of third party IP Rights or infringement of any author's moral rights

but the indemnity shall be reduced proportionately to the extent that the Loss or Claim by the Supplier or the Supplier's Personnel was caused by the negligence of the Indemnified Parties.

- 22.2. The indemnity in clause 22.1 shall survive the expiration or earlier termination of the Agreement.
- 22.3. Except to the extent that liability cannot be legally limited or excluded:
- (a) the Customer's total liability arising out of or in relation to the Agreement shall not exceed the Agreed Price; and
 - (b) the Customer's shall not be liable for indirect or consequential loss or damage, economic loss, loss of profit, loss of revenue, loss of contract, loss of production or production stoppage, or loss of data.

This limitation and exclusion of liability applies whether the liability claim is based upon breach of contract, tort (including negligence), under a warranty or an indemnity, under statute, in equity or otherwise.

23. Insurance

- 23.1. Before commencing any Work under the Agreement, the Supplier shall effect with a reputable insurer all insurances to adequately cover the Supplier and the Supplier's Personnel under the Agreement, including:
- (a) a public and products liability policy which provides coverage for an amount of not less than AUD 20 million per occurrence or such other amount as agreed in writing between the Parties;
 - (b) a contract works insurance policy covering loss of or damage to the Work (if any Work will be performed on Site);
 - (c) if the Work includes any consulting or design, a professional indemnity insurance policy for an amount of not less than AUD 5 million per occurrence, to be maintained for 6 years following the Date of Final Completion or such other amount and time period as may be agreed in writing between the Parties;
 - (d) comprehensive motor vehicle insurance in respect of any vehicle used by the Supplier and the Supplier's Personnel in performing the Work;
 - (e) workers' compensation insurance to cover the Supplier's statutory and common law liability to persons engaged by the Supplier to perform the Work which insurance policy will comply with the Laws applicable in the location where the Work is to be performed; and
 - (f) any other insurance which is required by Law to be effected in the location where the Work is to be performed.
- 23.2. The public and products liability policy and the contract works policy (if any) must include the Customer as a named insured under the policy.
- 23.3. All insurance policies shall be on terms and with an insurer reasonably acceptable to the Customer. The Supplier shall provide the Customer with certificates of currency evidencing the above insurance requirements and details of the insurance cover before commencing any Work under the Agreement and at other times within 5 Business Days after receiving a request from the Customer to do so.

23.4. Without prejudice to any other rights or remedies, if the Supplier fails to take out and maintain the required insurances, the Customer may effect them and the cost of such insurance shall become a debt due and payable from the Supplier to the Customer and may be recovered by the Customer under clause 8.9. The Customer may withhold payment until evidence of insurance is provided by the Supplier in accordance with this clause 23.

24. Termination

24.1. If the Supplier:

- (a) breaches clause 3.5 or clause 3.13 of these Conditions;
- (b) commits an irremediable breach and/or any persistent breach of the Agreement;
- (c) does not remedy any other breach of the Agreement within 14 days of receiving a notice of breach requesting remedy of same;
- (d) becomes unable to pay the Supplier's debts as and when they fall due, becomes bankrupt or has an administrator; controller; liquidator; provisional liquidator; mortgagee in possession; receiver; receiver and manager; or other like officer appointed to it or over some or all of its assets or undertaking or experiences any analogous event having a substantially similar effect; or
- (e) experiences a substantial change to its legal or financial status, ownership structure, shareholders or management (which in the Customer's reasonable opinion makes it unreasonable to expect the Customer to remain bound by the Agreement),

then the Customer may, at its option and without prejudice to any other rights it may have, by notice in writing terminate the Agreement in whole or part with immediate effect. The Supplier shall immediately refund any amounts paid by the Customer in respect of Work not yet performed under the terminated Agreement and, if requested to do so by the Customer, shall deliver to the Customer any Work completed in accordance with the Agreement, as at the date of termination (subject only to payment of agreed costs, or failing agreement, direct costs and normal overheads for such Work).

24.2. The Customer may terminate the Agreement at any time, for convenience, in whole or part, by providing at least 14 days' written notice to the Supplier and may thereafter either by itself or by a third party complete the uncompleted part of the Work under the Agreement. In the event of termination for convenience under this clause, the Supplier shall be entitled to payment of the following amounts, as its sole entitlement for compensation arising out of or in relation to such termination:

- (a) the unpaid value of Work completed in accordance with the Agreement prior to the date of termination;
- (b) any pre-approved expenses already incurred by the Supplier prior to the date of receipt of the notice of termination;
- (c) the cost of goods or materials reasonably ordered by the Supplier for the Work for which the Supplier is legally bound to accept and pay, (subject to clear title and possession of such goods and materials being transferred to the Customer upon payment); and
- (d) the costs of demobilisation of the plant and equipment set up to produce the Work including cancellation fees,

provided that such costs are unavoidable, substantiated to the Customer (in a written form reasonably requested by the Customer) and only to the extent that the Supplier cannot recover or mitigate such costs, but in no event shall such amounts exceed the Agreed Price that would have otherwise been paid to the Supplier under the Agreement but for the Customer's termination and the Customer shall have no further liability to the Supplier in respect of the termination.

24.3. If the Agreement is terminated by the Customer:

- (a) the Supplier must immediately return all of the Customer's Material and the Customer's Confidential Information to the Customer; and
- (b) Not used.

24.4. The Supplier may terminate the Agreement with immediate effect by notice to the Customer, if the Customer:

- (a) commits a material breach of the Agreement and it fails to remedy such a breach within 60 days from being given written notice by the Supplier; or
- (b) suffers an Insolvency Event

25. Dispute Resolution.

25.1. If any dispute or difference occurs between the Parties arising out of or in relation to the Agreement ("Dispute"), either Party may give written notice of that Dispute to the other Party, giving details of the subject-matter of the Dispute ("Notice of Dispute").

25.2. Upon the giving of a Notice of Dispute, the following shall apply:

- (a) the Dispute shall be submitted for negotiation by the management representatives of the Parties who have the authority to resolve the Dispute;
- (b) if within 14 days of the giving of the Notice of Dispute (or such further period agreed by the Parties), the Dispute has not been resolved between the appointed management representatives to the satisfaction of both Parties, the Dispute may be referred by either Party to the respective Chief Executive Officers of the Parties or their respective senior management delegates who have the authority to resolve the Dispute;
- (c) if within 28 days of the giving of the Notice of Dispute, the Dispute has not been resolved, then: if the Dispute is for an amount less than \$100,000, either Party may commence legal proceedings to resolve the Dispute; or otherwise, the Dispute shall be submitted to mediation in accordance with

and subject to the Resolution Institute Mediation Rules by a mediator who is independent of and agreed to by the Parties, or failing agreement by a mediator appointed by the Chair of the Resolution Institute or the Chair's designated representative;

- (d) if the Dispute is not settled within 30 days of referral to mediation (unless such period is extended by agreement between the Parties), either Party may refer the Dispute to arbitration in accordance with, and subject to, the Resolution Institute Arbitration Rules by one arbitrator who shall be a lawyer, be independent of the Parties, and who shall make a decision in writing based on legal substance; and
- (e) if the Parties fail to agree upon the identity of the arbitrator, the Chair of the Resolution Institute shall nominate the arbitrator.

25.3. The award of the arbitration shall be final and binding on both Parties in accordance with the applicable legislation applying to commercial arbitrations and judgment may be entered in any court having jurisdiction

25.4. A reference to arbitration under this clause shall not relieve the Supplier of any obligations under the Agreement, including, if and so far as is reasonably practicable, the obligation to take steps necessary during arbitration proceedings to ensure that the progress of the Agreement will be maintained.

25.5. Unless otherwise agreed between the Parties, the seat of arbitration shall be Melbourne, Victoria. The language to be used in the arbitration shall be English.

25.6. Nothing in this clause shall prejudice the right of a Party to seek urgent injunctive or declaratory relief in respect of a Dispute under this clause 25 or any matter arising out of or in connection with the Agreement.

26. Occupational Health, Safety and the Environment

26.1. The Supplier is responsible for the management of health, safety and environmental issues during its performance of the Agreement. The Supplier shall take all reasonable precautions to protect persons and the environment and without limiting the foregoing shall comply with and ensure that the Supplier's Personnel comply with all applicable Laws relating to health, safety and the environment.

26.2. Without limiting any other provision or obligation under the Agreement, the Supplier shall use its best endeavours to ensure that workplaces (including the Facilities) used to perform any part of the Work are safe, adequately managed and to the extent reasonably practicable, are free from risks to health, safety and the environment. In doing so, the Supplier shall ensure that:

- (a) it has implemented a safety and environmental management system complying with ISO 45001 and ISO14001 respectively (or an equivalent standard);
- (b) it prepares and provides to the Customer upon request all applicable safe work method statements for the Work which describe how the Work is to be performed and equipment used and which identify:
 - (i) the Work activities assessed as having safety and environmental risks and the control measures that will be applied to such risks;
 - (ii) the standards or codes to be complied with;
 - (iii) the qualifications of the Supplier's Personnel required to do the Work; and
 - (iv) the training required to do the Work;
- (c) the Work is adequately supervised at all times to ensure workplace health and safety and protection of the environment;
- (d) all of the Supplier's Personnel under the Supplier's control are qualified, have undertaken the relevant training for the Work and hold relevant current qualifications, licences, permits, authorisations, competencies and certifications in accordance with applicable Laws;
- (e) all Supplier Personnel are provided with all relevant information, tools, plant, equipment and instruction to ensure safe performance of the Work;
- (f) all plant, equipment and substances used in performing the Work are safe and limit, as far as reasonably practicable, risks to health, safety and the environment (when properly used);
- (g) it conducts its operations in a manner that protects the environment and prevents pollution;
- (h) to the extent reasonably practicable, it avoids the use of environmentally harmful materials or substances (and if such use is unavoidable, it stores, uses and disposes of the same in accordance with the Law);
- (i) it notifies the Customer if the Supplier considers that more environmentally friendly materials, packaging or methods of manufacture exist; and
- (j) it complies with all the Customer's Policies concerning the declaration of substances; and
- (k) it immediately notifies the Customer of any breaches of applicable health, safety and/or environment Laws which impact the Work or its performance, and of the occurrence of any incident occurring in connection with the Work which is required to be notified to any regulator.

26.3. The Supplier must comply with all of the Customer's health, safety and environmental Policies. Upon providing reasonable notice, the Customer may conduct an audit of the Supplier's premises, documents and records in order to verify the Supplier's compliance with this clause 26.

26.4. The Customer may, upon reasonable notice to the Supplier, review the Supplier's compliance with this clause 26 and the Supplier shall co operate with any reasonable requests of the Customer in connection with such review. If requested by the Customer, the Supplier shall provide written certification to the Customer that it has complied with this clause 26.

- 26.5. The Supplier must ensure that Products comply with all applicable product-related Laws and that the Supplier can promptly provide the Customer with proof of such conformity upon request. If the Supplier is supplying any Products, which at the time of order are or contain substances which are subject to substance restrictions and/or information requirements imposed by applicable Law (eg REACH, RoHS or equivalent).
- 26.6. If requested by the Customer acting reasonably, the Supplier shall act as the principal contractor (as that term or its equivalent is used in the relevant work health and safety Laws in each of the States and Territories in Australia), at a Site in which case the Supplier must comply with the following:
- complete all forms and attend to all statutory requirements to ensure that it is appointed as the principal contractor;
 - pay all fees and charges payable under the applicable health and safety Laws in connection with the execution and performance of the Work;
 - comply with its obligations as principal contractor at the Supplier's own cost; and
 - accept that it is the person responsible for the Work and is doing or causing to be done, all of the Work at the Site for the purposes of the applicable health and safety Laws.
- 26.7. For any Work involving building and construction, the Supplier shall develop an occupational health and safety plan (EHS Plan) which includes, but is not limited to the following:
- organisational chart including names all key Supplier Personnel performing occupational health and safety roles on the Site;
 - detailed risk assessment for the Work and Site, including specific risk mitigation strategies for each identified risk;
 - access control plan for the Site, including detailed entry and exit protocols, personal identification and verification procedures;
 - emergency and response plans;
 - detailed Site plan; and
 - any other information the Supplier may reasonably require.
- 26.8. The Supplier shall submit the complete EHS plan to the Customer for review and approval no later than twenty (21) days prior to commencing any Work. The Customer reserves the right to request modifications to the EHS Plan to ensure it meets all applicable safety and regulatory requirements.
- 27. Corporate Responsibility in the Supply Chain**
- 27.1. The Supplier shall comply with the principles and requirements of the 'Code of Conduct for the Customer Suppliers and Third Party Intermediaries' set out in the Annexure to these Conditions ("**Code of Conduct**").
- 27.2. If requested by the Customer, the Supplier shall not more than once a year (at the Supplier's option) provide the Customer with either:
- a written corporate responsibility self-assessment in the form provided by the Customer; or
 - a written report approved by the Customer describing the actions taken or to be taken by the Supplier to ensure compliance with the Code of Conduct.
- 27.3. The Customer, and its authorised agents and representatives and/ or a third party appointed by the Customer and reasonable acceptable to the Supplier may conduct inspections (including at the Supplier's Facilities) in order to verify the Supplier's compliance with the Code of Conduct. Any inspection may only be conducted upon prior written notice by the Customer, during regular business hours, in accordance with applicable Privacy Laws and data protection Laws and shall not unreasonably interfere with the Supplier's business activities or violate any of the Supplier's confidentiality agreements with third parties. The Supplier shall reasonably co-operate in any inspections conducted. Each Party shall each bear its own expenses in connection with such inspections
- 27.4. Without limiting any other obligations in the Agreement, the Supplier undertakes to comply with all applicable provisions of the *Modern Slavery Act 2018* (Cth). If requested by the Customer, the Supplier shall provide the Customer, with any information that is required by the Customer, to enable the Customer, to make annual public reports ("**Modern Slavery Statements**") on its actions to assess and address modern slavery risks in its operations and supply chains, including details of the Supplier's supply chain, due diligence and adherence to adequate remuneration and employment conditions.
- 27.5. In addition to other rights and remedies the Customer, may have and without limiting clause 24, and without liability to the Supplier, the Customer, may terminate the Agreement by giving written notice to the Supplier with effect from the date specified in the termination notice if the Supplier breaches this clause 27. The Customer, will not exercise its right to terminate for breach of clause 27.2 or 27.3 unless the Customer, has first notified the Supplier of the breach and has given the Supplier a reasonable opportunity to remedy the breach.
- 28. Security in the Supply Chain**
- 28.1. The Supplier shall take all necessary measures to ensure security in the supply chain in accordance with the requirements of internationally recognised initiatives based on the WCO SAFE Framework of Standards (eg AEO, C-TPAT) (including implementing measures to ensure the security of: (a) all premises used in connection with the Work; (b) packaging; (c) transportation; (d) information; and (e) the Supplier's Personnel).
- 28.2. The Supplier shall protect the Products to be supplied under the Agreement against unauthorised access and manipulation.
- 28.3. The Supplier shall only engage reliable Personnel to supply the Work and shall ensure that all of the Supplier's Personnel effect equivalent security measures.
- 28.4. Without prejudice to the Customer's, other rights and remedies, the Customer, may terminate the Agreement (and cancel any associated Purchase Order) without liability if the Supplier breaches this clause 28 and the Supplier has not remedied the breach after having been given a reasonable period of time to remedy same.
- 29. Force Majeure**
- 29.1. If a Force Majeure Event prevents a Party from complying with any of its obligations under the Agreement, then it shall notify the other Party of that Force Majeure Event and shall specify the obligations which are or will be prevented from being performed. The notice shall be given within 14 days after the Party became aware (or should have become aware) of the Force Majeure Event.
- 29.2. Once a Party has notified the other Party in accordance with clause 29.1, it shall be excused from performing the affected obligations for so long as the Force Majeure Events prevents it from performing them.
- 29.3. Each Party shall:
- at all times use all reasonable endeavours to minimise any delay in the performance of the Agreement arising as a result of a Force Majeure Event; and
 - notify the other Party when it ceases to be affected by a Force Majeure Event.
- 29.4. If a Force Majeure Event prevents a Party from complying with its obligations for more than 6 months, either Party may terminate the Agreement by notice to the other Party. The accrued rights and remedies of each Party will not be affected by such termination
- 30. Cybersecurity**
- 30.1. The Supplier shall take appropriate organisational and technical measures to ensure the confidentiality, authenticity, integrity and availability of the Supplier's Operations as well as the Products and Services being supplied under the Agreement. These measures shall be consistent with good industry practice and shall include an appropriate information management system consistent with standards such as ISO/IEC 27001 or IEC 62443 (to the extent applicable).
- 30.2. If any Products contain software, firmware or chipsets, the Supplier shall:
- implement appropriate standards, processes and methods to prevent, identify, evaluate and repair any vulnerabilities, malicious code and security incidents in such Products which shall be consistent with the standards referred to in clause 30.1 (to the extent applicable);
 - continue to support and provide services to repair, update, upgrade and maintain the Products, including by providing patches to the Customer, to remedy vulnerabilities for the reasonable lifetime of the Products;
 - ensure that the Customer, is notified of any third-party software included in the Products and that such software is up-to-date at the time of delivery to the Customer,;
 - provide the Customer, with a contact for all information security related issues (available between 9am and 5pm (AEST) on Business Days);
 - provide adequate support to the Customer, if any malicious code or vulnerabilities in the Products are detected; and
 - promptly report to the Customer, all relevant information security incidents which have occurred or are suspected, and vulnerabilities discovered in any of the Supplier's Operations, Products and/or Services (if and to the extent that the Customer, is likely to be affected).
- 31. Notices**
- 31.1. Any formal notice or demand ("**Notice**") to be given or made under the Agreement:
- must refer to the Agreement and state the clause under which the Notice is given; and
 - must be given in writing and be delivered to the intended recipient by pre-paid post or by hand to the registered address of the recipient (or to such other address as notified by a Party to the other in accordance with this clause) and in the case of Notices to the Customer, must be directed to the attention of the 'Company Secretary'. the Customer, may also deliver a Notice to the Supplier by pre-paid post or hand delivery to the Supplier's Representative.
- 31.2. Day-to-day communications may be made between the Customer, and the Supplier by email.
- 31.3. Any Notice will be deemed to be delivered:
- if delivered in person, at the time of delivery; and
 - if delivered by pre-paid post, 4 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another
- 31.4. If a Notice is delivered or deemed to have been delivered on a day which is not a Business Day in the place to which the Notice is sent or is later than 4.00 pm (local time), it will be taken to have been delivered at 9.00 am (local time) on the next Business Day in that place.

32. General

- 32.1. The Agreement may only be varied or amended in writing signed by both Parties
- 32.2. If the whole or any part of the Agreement is or becomes or is held to be illegal invalid or unenforceable, then the whole and each part of the clauses of the Agreement shall (to the extent necessary to avoid such illegality invalidity or unenforceability) be interpreted read down or severed without affecting the operation of the remaining clauses
- 32.3. The Supplier shall not, without the prior written consent of the Customer,, assign or otherwise transfer the Agreement (or any part of it) to a third party. A change in control of the shareholding of the Supplier will be a deemed assignment for the purposes of this clause. the Customer, may at any time assign or otherwise transfer the Agreement (in whole or part) and must, within a reasonable time after doing so, notify the Supplier
- 32.4. Unless otherwise agreed between the Parties, the Agreement shall be governed by and construed in accordance with the Laws of the State of Victoria, Australia. Subject to clause 25, the Parties irrevocably submit to the exclusive jurisdiction of the courts of that State and to the appeal courts from them
- 32.5. Unless otherwise provided in the Agreement, the rights, powers and remedies provided to the Customer, under the Agreement are cumulative with and not exclusive of the rights, powers or remedies independently provided by Law
- 32.6. The provisions of the Agreement remaining to be performed or capable of having effect after termination or expiry remain in full force and effect notwithstanding such termination or expiry. Termination or expiry of the Agreement (however occurring) shall be without prejudice to any rights or obligations of the Parties arising on or prior to the date of termination or expiry
- 32.7. Any consent or approval by the Customer, required under the Agreement may be given or withheld by the Customer, in its absolute discretion unless the Agreement states otherwise. The Customer may impose conditions upon the grant of any such consent or approval
- 32.8. The Agreement constitutes the entire agreement between the Parties as to its subject matter and the Parties acknowledge that there are no other understandings, agreements, or representations whether express or implied in any way relating to its subject matter
- 32.9. No right under the Agreement shall be deemed to have been waived by the Customer, unless the waiver is in writing. Any such waiver will not prejudice the Customer's ' rights in respect of any subsequent breach by the Supplier
- 32.10. Subject to any contrary provisions in the Agreement, the Agreement shall be binding upon respective successors, substitutes and permitted assigns of the Parties
- 32.11. The Supplier shall not make or cause to be made any public announcement or provide any information to the media of, or in relation to the Agreement without the prior written consent of the Customer, (except as required by Law or by the rules of any recognised stock exchange to which the Supplier or a Related Body Corporate of the Supplier is subject, in which case the Supplier shall first give the Customer, a reasonable opportunity to review such announcement or information). The Supplier shall notify the Customer, immediately if the Supplier or any of the Supplier's Personnel are contacted by any media representative in relation to any aspect of the Agreement (including the Work supplied under it).
- 32.12. If a payment or any other act is required to be made or done on a day which is not a Business Day, the payment or act shall be made or required to be made on the next Business Day
- 32.13. The Supplier shall promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by the Agreement
- 32.14. Each Party shall pay its own legal costs of or incidental to the negotiation of the Agreement
- 32.15. The Purchase Order may include or refer to special conditions which override, exclude or modify these Conditions. If there is any ambiguity or inconsistency between any constituent parts of the Agreement, the following order of precedence shall apply to resolve the ambiguity or inconsistency:
 - (a) any special conditions contained or referred to in the Purchase Order;
 - (b) the other terms of the Purchase Order;
 - (c) these Conditions; and
 - (d) all other documents attached by the Customer, or which the Customer, agrees are incorporated into the Agreement by reference (with (a) having the highest priority).

33. Artificial Intelligence

- 33.1. The Supplier may use AI for the performance of the Work only with prior written consent of the Customer. When using AI, the Supplier shall:
 - (a) provide the Customer with any information that the Customer requires in connection with the use of AI, including for the purposes of regulatory product, registrations and audits;
 - (b) ensure that AI generated output does not infringe upon any third-party rights, laws or regulations;
 - (c) only use AI that: (i) does not use the input and output to train or improve the AI application; and (ii) adequately ensure the confidentiality of the input and output; and
 - (d) ensure that the Customer: (i) remains the sole owner of its information that is used as input when using the AI; and (ii) be granted the rights of any output which is generated from using AI.

33.2. The AI specific provisions of clause 33.1 shall not limit the Supplier's obligations or the Customer rights under clauses 20 and 21 of this Agreement.

33.3. If the Supplier is in breach of clause 33, it shall indemnify, defend and hold harmless the Customer, its Affiliates and customers from any damage, loss, costs and expenses suffered as a result of any such breach. The indemnity given in this clause 33.3 shall be reduced proportionately to the extent the Customer's negligent actions or omissions caused and/or contributed to the loss or damage.

34. Regulatory Compliance The Supplier shall promptly inform the Customer of the existence and substance of any inquiry or investigation related to the Products initiated by any Authority. The existence of any such enquiry shall not alone constitute a breach of this Agreement by either party or excuse any performance due under this Agreement by either party.

34.2. The Supplier shall permit all Authorities and/or the Customer the reasonable right to inspect the Supplier's facilities where the Products or any components of the Products are handled, stored, or shipped and all records related to the Products. The Supplier shall reasonably assist such the Authorities and/or the Customer with such inspections. For any inspections conducted by the Authorities, the Supplier shall promptly notify the Customer of all such inspection related to or affecting the Products and shall use reasonable efforts to provide the Customer the opportunity to be present at such inspections. The Supplier shall use reasonable efforts to provide to the Customer within five (5) days of its submission or receipt by the Supplier, a copy of all letters, documents and similar instruments related to the Products, which the Customer submits or receives from any Authorities, including all ISO audit observations and letters received from the Therapeutic Goods Administration (TGA) and documentation. The Supplier shall immediately correct any deficiencies identified by any Authority.

34.3. The Supplier shall promptly notify the Customer of any Product complaint, report or recall. The Supplier shall promptly provide to the Customer any information received by it regarding real or potential deficiencies or defects in the Products and any information that might otherwise constitute a complaint about the Products or would reasonably be considered material to the safety of them for their intended use. Each party shall reasonably cooperate with the other in sharing any information that may constitute a complaint related to the Products and shall designate a representative responsible for the exchange of such information and all other regulatory information required to be shared under this Agreement. The Supplier shall at times reasonably operate with any the Customer investigation, inspection or inquiry regarding the Products.

34.4. The Customer may declare a recall of any Products (whether such Products are standalone or have been incorporated into the Customer's products), if the Customer believes that there is a potential, significant health hazard or non-compliance with applicable Laws. The Supplier agrees to reimburse the Customer for all costs and expenses incurred or likely to be incurred as a result of any recall of the Products initiated by the Supplier and/or any Authorities.

Siemens Code of Conduct for Suppliers and Third-Party Intermediaries

This Code of Conduct defines the basic requirements placed on the suppliers and third-party intermediaries of Siemens concerning their responsibilities towards their stakeholders and the environment. The supplier and/or third-party intermediary declares herewith to:

Legal Compliance

- Comply with the laws and regulations of the applicable legal systems.

Human Rights and Labor Conditions

To ensure respect of all internationally proclaimed human rights by avoiding causation of and complicity in any human rights violations. Heightened attention shall be paid to ensuring respect of human rights of rights holders or groups of rights holders which are specifically vulnerable, such as women, children, migrant workers or of (indigenous) communities.

- **Prohibition of Forced Labor**
 - Neither use nor contribute to slavery, servitude, forced or compulsory labor, suppression, exploitation, and human trafficking.
- **Prohibition of Child Labor**
 - Install no workers under the age of 15 or, in those countries subject to the developing country exception of the ILO Convention 138, install no workers under the age of 14.
 - Install no workers under the age of 18 for work which is likely to harm the health, safety, and morals.
- **Non-Discrimination and Respect for Employees**
 - Ensure equal treatment of employees, irrespective of skin color, race, nationality, ethnicity, social background, disabilities, gender, sexual identity and orientation, marital status, political or religious conviction, or age and promote equal opportunities amongst them.
 - Refuse to tolerate any unacceptable treatment of individuals such as mental cruelty, sexual harassment or discrimination including gestures, language, and physical contact, that is sexual, coercive, threatening, abusive or exploitative.
- **Freedom of Association**
 - Recognize the legal rights of workers to form or join existing trade unions and to engage in collective bargaining; neither disadvantage nor prefer members of employee organizations or trade unions.
- **Working Hours, Wages & Benefits for Employees**
 - Adhere to all applicable working-hours regulations.
 - Pay fair wages for labor and adhere to all applicable wage and compensation laws.
 - In the event of cross-border personnel deployment adhere to all applicable legal requirements, especially with regard to minimum wages.
- **Occupational Health & Safety, Security Forces**
 - Act in accordance with the applicable statutory and international standards regarding occupational health and safety and provide safe working conditions.
 - Provide training to ensure all employees installed are educated in health & safety issues.
 - Establish a reasonable occupational health & safety management system.
 - In the event of use of private or public security forces ensure that human rights of employees and other rights holders are respected (no use of unlawful physical or mental violence)
- **Grievance Mechanism**
 - Provide access to a protected mechanism for their employees to report possible violations of the principles of this Code of Conduct and ensure protection of whistleblowers or complainants against retaliation.

Environmental and Climate Protection, Protection of Natural Resources

- Act in accordance with the applicable statutory and international standards regarding the environment.
- Minimize environmental pollution and make continuous improvements in environmental protection.
- Establish a reasonable environmental management system.
- Reduce the emission of air pollutants and Greenhouse Gas (GHG), and reduce harmful soil change, water pollution and harmful noise emission to the fullest extent as possible.
- Increase energy efficiency, use renewable energy, and reduce water consumption to the fullest extent as possible.
- Cause no unlawful taking of land, forests, and waters.
- Reduce waste and ensure their proper treatment and disposal.

Fair Operating Practices

- Anti-Corruption and Bribery
 - Tolerate no form of and do not engage directly or indirectly in any form of corruption or bribery and do not grant, offer or promise anything of value to a government official or to a counterparty in the private sector to influence official action or obtain an improper advantage. This includes to renounce from giving or accepting improper facilitation payments.
- Fair Competition, Anti-Trust Laws and Intellectual Property Rights
 - Act in accordance with national and international competition laws and do not participate in price fixing, market or customer allocation, market sharing or bid rigging with competitors.
 - Respect the intellectual property rights of others.
- Conflicts of Interest
 - Avoid and/or disclose internally and to Siemens all conflicts of interest that may influence business relationships, and to avoid already the appearance thereof.
- Anti-Money Laundering, Terrorism Financing
 - Not directly or indirectly facilitate money laundering or terrorism financing.
- Data Privacy
 - Process personal data confidentially and responsibly, respect everyone's privacy and ensure that personal data is effectively protected and used only for legitimate purposes.
- Foreign Trade Regulations
 - Comply with the applicable export, import, customs, and foreign trade regulations.

Responsible Minerals Sourcing

- Take reasonable efforts to avoid in its products the use of raw materials which originate from Conflict-Affected and High-Risk Areas and contribute to human rights abuses, corruption, the financing of armed groups or similar negative effects.

Supply Chain

- Use reasonable efforts to make its suppliers comply with the principles of this Code of Conduct and check their compliance on a risk-based approach.
- Comply with the principles of non-discrimination with regard to supplier selection and treatment.

Further information under www.siemens.com/code-of-conduct