

Leo Lithium – General Conditions for Purchase Order - Australia

1 Definitions and Interpretation

(a) In the Contract, unless the context requires otherwise:

'ABC Laws' has the meaning given in clause 32.

'Affiliate' has the meaning given in clause 32.

'Applicable Trade Control Laws' means any sanctions or export control Laws imposed by any country in which the Contract is being performed, the United States, the United Kingdom, the EU, any EU Member States, Switzerland, or any other country with jurisdiction over any transactions entered into in connection with the Contract.

'Authority' means any government or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

'Business Day' means a day which is not a Saturday, Sunday or a public holiday in the Jurisdiction.

'Company' means the Company entity so identified in the Purchase Order.

'Company IP' means any Intellectual Property Rights of the Company (or licensed to the Company by a third party) which the Company makes available, contributes, brings to or uses in connection with the Contract.

'Company Property' means any plant, equipment, tools, appliances, materials, drawings, data, specifications or other property and items owned by the Company or that the Company provides to the Supplier to enable it to perform the Supplier's Obligations but does not include Company IP.

'Completion' means:

- (1) the Deliverables have been supplied in accordance with the requirements of the Contract;
- (2) the Deliverables have passed all completion tests (if any) described in the Contract for the purposes of determining whether the Deliverables are Complete;
- (3) all warranties, certificates, approvals, manuals, documents and other information required under the Contract for Completion to be achieved have been supplied to the Company; and
- (4) the Supplier has fulfilled all of the other Supplier's Obligations,

in each case, to the satisfaction of the Company.

'Confidential Information' means the Contract and all information (regardless of its form) which is disclosed directly or indirectly by the Company to the Supplier or the Supplier's Personnel and all copies or reproductions of any of that information but does not include information which is or becomes public knowledge (other than by the Supplier's disclosure or breach of the Contract).

'Contamination' means the presence of a substance (whether solid, liquid or gas) in the environment:

- (1) at a concentration above that normally present in the environment in the same locality; and
- (2) which creates a risk of harm to human health or any other aspect of the environment.

'Contract' means the Purchase Order, these General Conditions for Purchase Order and any schedules (including any annexures to any schedules) attached to, or incorporated by reference in, the Purchase Order or these General Conditions.

'Date for Completion' means the date for Completion specified in the Purchase Order.

'Date of Completion' means the date by which Completion has occurred.

'Defect' in respect of a Deliverable, means any aspect of the Deliverable not in accordance with the Contract, or any damage, deficiency, fault or inadequacy in design, performance, workmanship, quality or makeup.

'Defects Liability Period' means a period of 12 months commencing on the Date of Completion or such longer period as may be specified elsewhere in the Contract, and, where relevant, any additional period of time applicable in accordance with clause 14(c)

'Deliverables' means each deliverable, including Goods or Services (or both), to be supplied by the Supplier under the Contract.

'Delivery Point' means the place identified in the Purchase Order or if no place is specified, as directed by the Company for delivery of the Goods.

'Dispute' means any disagreement in relation to the subject matter of this Contract, including a disagreement in relation to its validity, enforceability or interpretation.

'Environmental Requirements' means any of the following related to the protection of the environment, land use, planning, pollution, Contamination and the handling or disposal of substances:

- (1) Laws;
- (2) Standards and Procedures; and
- (3) directions, notices and the like issued in accordance with any of the foregoing or by any Authority.

'Force Majeure Event' means any of the following:

- (1) act of God, including cyclone, flood, earthquake, tsunami, bushfire, volcanic activity and sandstorm;
- (2) epidemic, pandemic or quarantine by order of an Authority;
- (3) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, act of terrorism, rebellion, riot, revolution, insurrection, martial law or confiscation by order of any Authority;
- (4) ionising radiations or contamination by radioactivity from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel; and
- (5) industrial action or dispute which affects the Jurisdiction generally and is not directed at the affected Party or any of its Personnel,

to the extent it:

- (6) was not caused by an act or omission of the affected Party or its Personnel;
- (7) was beyond the reasonable control of the affected Party or its Personnel; and
- (8) could not have been avoided or overcome by the affected Party or its Personnel taking reasonable precautions or steps.

'Goods' means the goods identified in the Purchase Order (if any) to be delivered by the Supplier and includes any part of the specified goods and any Variations to those goods.

'Goods and Services Tax' has the meaning set out in clause 32.

'Governing Law' has the meaning given in clause 32.

'Insolvency Event' means, in respect of the Supplier, any of the following events: appointment of an administrator, appointment of a liquidator, appointment of a provisional liquidator, appointment of a controller (including any receiver or receiver and manager), insolvency, bankruptcy, winding up, deregistration or any event analogous to these events.

'Intellectual Property Rights' means all intellectual and industrial property rights, including trade-marks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts, database rights, including any application or right to apply for registration of any of these rights.

'Jurisdiction' means the jurisdiction specified in clause 32.

'Law' means:

- (1) statutes, regulations, by-laws, ordinances, subordinate legislation and any policy enforceable under legislation;
- (2) directions, requirements or guidelines of Authorities, including statutory instruments drafted by local governments, with which the Company or Supplier is legally required to comply; and
- (3) any common or customary law and any rule or principle of equity.

'Party' means the Company or the Supplier and 'Parties' means both of them.

'Personnel' means:

- (1) in relation to the Supplier, the employees, agents or representatives of the Supplier, of any Affiliate of the Supplier or of any Subcontractor involved either directly or indirectly in the supply of the Deliverables; and
- (2) in relation to the Company the employees, agents or representatives of the Company or any Affiliate of the Company (but excludes the Supplier's Personnel).

'Policies and Procedures' means the Company's policies and procedures that are:

- (1) available on the Company's website;
- (2) provided by the Company to the Supplier in any format; or
- (3) set out or referred to in any document forming part of the Contract,

(or any combination of the above) as amended and varied from time to time.

'Price' means:

- (1) where the Purchase Order states that the Price is based on a lump sum or lump sums, that lump sum or the aggregate of the lump sums;
- (2) where the Purchase Order states that the Price is based on rates, the sum ascertained by multiplying those rates by the quantities properly supplied in accordance with the Contract;
- (3) where the Purchase Order states that the Price is based on a lump sum or lump sums and rates, the aggregate of the lump sum or lump sums and the sum ascertained by multiplying the rates by the quantities properly supplied in accordance with the Contract; or
- (4) where none of paragraphs (1), (2) or (3) of this definition applies, the price for the Deliverables set out in the Purchase Order;

and in each case, is the relevant amount exclusive of any applicable Goods and Services Tax.

'Purchase Order' means the purchase order issued by the Company to the Supplier in respect of the supply of the

Deliverables, and includes any schedules, specifications or drawings that may be referred to in it or annexed to it.

'Sanctioned Country or Territory' means any country or territory against which comprehensive sanctions are imposed by any country in which the Contract is being performed, the United States, the United Kingdom, the EU, any EU Member States, Switzerland, the United Nations, or any other country with jurisdiction over the activities undertaken in connection with this Contract.

'Sanctioned Party' means any person or entity that is designated for export controls or sanctions restrictions under any Applicable Trade Control Laws and any entity 50% or more owned or controlled, directly or indirectly, by one or more of the foregoing persons or entities.

'Services' the services identified in the Purchase Order (if any) to be performed by the Supplier, and any Variations to those services.

'Services Requirements' means that:

- (1) the Services meet the requirements of the Contract; and
- (2) those tests which are required by the Contract to be carried out and passed in respect of the Services have been carried out and passed (or, where no such tests are set out in the Contract, any tests which are commonly required for services of the same nature of the Services have been carried out and passed);

in each case to the satisfaction of the Company.

'Site' means the location where the Services will be performed or the Goods will be used or stored by the Company, as set out in the Purchase Order, or as otherwise advised by the Company.

'Standards and Procedures' means the documents listed as such in the Purchase Order and any other Policies and Procedures, guidelines, rules, requirements or Site specific conditions which the Company makes available to the Supplier from time to time.

'Subcontractor' means any person engaged by the Supplier to supply all or any part of the Deliverables.

'Supplier' means the person identified as such in the Purchase Order.

'Supplier IP' means any Intellectual Property Rights of the Supplier (or Intellectual Property Rights licensed to the Supplier by a third party) which:

- (1) is in existence before the date of the Contract or comes into existence after the date of the Contract other than in connection with the Contract, the Goods or the Services; and
- (2) which the Supplier makes available, contributes, brings to or uses in connection with the Contract.

'Supplier's Obligations' means all of the Supplier's obligations under the Contract.

'Taxes' means any present or future tax, royalty, levy, impost, deduction, assessment, charge, excise, fee, withholding or duty of any nature imposed, assessed, charged, levied or collected by any Authority or other body authorised by Law except for any applicable Goods and Services Tax.

'Term' means the period from the date of the Purchase Order until the earlier of the Date of Completion and the termination of the Contract.

'Variation' means any addition, reduction or other change to any part of the Goods or Services (or both, where applicable) to be supplied or performed under the Contract which has been approved in writing by the Company.

'Variation Notice' means a notice issued by the Company under clause 22(d) directing the Supplier to carry out a Variation requested under clause 22(b).

'Variation Proposal' means a written proposal in which the Supplier, acting reasonably, sets out the Supplier's additional costs or savings and the effect, if any, on the Date for Completion (as applicable) for performing a Variation requested under clause (b).

'Work Health and Safety Requirements' means all workplace health and safety related:

- (1) Laws;
- (2) Standards and Procedures;
- (3) codes of practice;
- (4) other compliance codes;
- (5) directions on safety, approvals or notices issued in accordance with any of the foregoing or by any relevant Authority,

applicable to the Deliverables, the Site or anywhere where the Supplier's Obligations are being performed.

(b) The following rules apply unless the context requires otherwise:

- (1) specifying anything after the words 'include' or 'for example' or similar expressions does not limit what else is included;
- (2) a reference to the Contract means the Contract as amended, novated supplemented, varied or replaced from time to time;
- (3) a reference to any legislation includes all sub-ordinate legislation made under that legislation and amendments, consolidations, replacements or re-enactments of any of them;
- (4) words importing the singular include the plural (and vice versa);
- (5) a reference to 'person' includes a natural person, a corporation, an unincorporated association, an unincorporated joint venture, a partnership and an Authority;
- (6) a reference to any Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
- (7) a reference to a clause, Party, schedule or attachment is a reference to a clause, Party, schedule or attachment to the Contract;
- (8) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (9) a reference to '\$', 'AUD' or dollars is to Australian dollars, unless stated otherwise;
- (10) a reference to 'day', 'month', 'quarter' or 'year' is a reference to a calendar day, calendar month, a calendar quarter or a calendar year;
- (11) where a Party indemnifies another person, the indemnification is on a full indemnity basis; and
- (12) no rule of construction applies to the disadvantage of a Party on the basis that the Party was responsible for the preparation of the Contract or any part of it.
 - (A) Headings are for convenience only and do not affect the interpretation of the Contract.
 - (B) If there is any conflict between any of the documents comprising the Contract, the General Conditions shall take precedence over the other documents and the Company shall direct the Supplier as to the manner in which any residual conflict is to be resolved.

2 Supply of Goods and Services

The Supplier must supply the Deliverables to the Company in accordance with the Contract.

3 Supplier's obligations

- (a) The Supplier must, and must ensure that all Supplier's Personnel, in performing the Supplier's Obligations:
 - (1) comply with all applicable Laws, applicable Policies and Procedures, and any reasonable instructions given by the Company;
 - (2) not interfere with the Company's activities or the activities of any other person at the Delivery Point or any place where the Supplier provides the Services;
 - (3) carry out and perform the Supplier's Obligations in a safe manner and in a way which does not prejudice safe working practices, safety and care of property or continuity of work;
 - (4) unless otherwise set out in the Contract, supply all plant, resources and equipment necessary to perform the Services; and
 - (5) provide all such information and assistance as the Company reasonably requires.
- (b) The Supplier must, if requested by the Company in writing, ensure that any Supplier Personnel that, in the Company's reasonable opinion:
 - (1) has engaged in illegal, fraudulent or negligent conduct;
 - (2) has performed the Supplier's Obligations whilst under the influence of alcohol or illegally obtained drugs;
 - (3) does not satisfy, or has not acted in a manner which satisfies, the standards required by clause 7; or
 - (4) is otherwise a risk to the safety of any person, property or the environment,has no further involvement in the performance of the Supplier's Obligations and is promptly removed from the Site.
- (c) The Supplier acknowledges that the Company may carry out random drug and alcohol tests at the Site and that if at any time, any Supplier Personnel are found to be under the influence of drugs or alcohol, the Company may deny them access to, or remove them from, the Site.
- (d) The Company is not liable to the Supplier for any loss or claim arising from the removal of any Supplier Personnel under this clause 3 and to the extent permitted by law, the Supplier:
 - (1) waives all rights of recourse against the Company in respect of; and
 - (2) indemnifies the Company from and against, any such loss or claim.
- (e) The Supplier's Personnel will not under any circumstances be considered employees, agents or contractors of the Company. The Company has no responsibility to pay any amounts to or for the benefit of the Supplier's Personnel. The Supplier indemnifies the Company against any claim by any of the Supplier's Personnel arising out of or in connection with this Contract, including for non-payment by the Supplier, and for any loss incurred by the Company should any of the Supplier's Personnel be considered an employee, agent or contractor of the Company.

4 Time for performance

- (a) The Supplier must:
 - (1) perform the Supplier's Obligations diligently, with due expedition and without delay; and
 - (2) achieve Completion by the Date for Completion.
- (b) The Company is not obliged to accept delivery of the Goods to the Delivery Point prior to the Date for Completion.
- (c) If the Supplier considers that the Date for Completion has been, or is likely to be, delayed, the Supplier must immediately give the Company notice of the delay, including details of the nature, cause and the likely extent of the delay.

5 Site

- (a) The Company grants to the Supplier a non-exclusive and non-assignable licence to access the Site during the Term to perform the Supplier's Obligations in accordance with the Contract.
- (b) The Supplier is responsible (at its own cost) for:
 - (1) obtaining access to any land required to perform the Deliverables in addition to the Site; and
 - (2) constructing any works or taking any other action required for the Supplier or Supplier Personnel to be physically able to access the Site.
- (c) The Supplier must comply, and must ensure that the Supplier's Personnel comply, with:
 - (1) the Company's rules, procedures and practices as advised to the Supplier from time to time;
 - (2) the site requirements for the Site that the Company advises the Supplier of from time to time, including completion of a Site induction (at the Supplier's cost); and
 - (3) any direction of the Company relating to those site requirements.
- (d) Where the Services involve Site based performance:
 - (1) the Company makes no representation and gives no warranty in relation to the Site conditions, or the adequacy or suitability of the Site conditions for the performance of the Services;
 - (2) the Supplier warrants that before the date of the Purchase Order, the Supplier has:
 - (A) had access to the Site; and
 - (B) carried out its own inspections of the Site and conducted its own enquiries in order to establish, understand and satisfy itself as to the nature and status of all risks and contingencies associated with the Site, and the location and extent of Services on the Site, or has chosen not to carry out any inspections or conduct its own enquiries.
 - (3) the Supplier acknowledges that there will be no adjustment to the Price or Date for Completion nor will the Supplier have any other claim against the Company for any loss or damage, arising out of or in connection with the Site conditions, except as expressly permitted in the Contract.

6 Receipt, inspection and acceptance of Goods and Services

- (a) The Supplier must allow the Company or a representative of the Company, at all reasonable times, to inspect, examine, review and witness tests of the Deliverables (and must give the Company sufficient prior notice of any such tests), or the performance of the Services, and to carry out site inspections

at the Supplier's premises or wherever the Goods are stored or in the course of manufacture.

- (b) The Supplier must deliver the Goods in full to the Delivery Point and perform the Services (as applicable) in accordance with the Contract, including at the times stated in the Contract.
- (c) Acceptance of the Deliverables occurs on the earlier of:
 - (1) the date that a representative of the Company notifies the Supplier in writing that the Deliverables have been accepted; or
 - (2) in the case of Goods, the lapse of 14 days after delivery of the Goods to the Delivery Point without the Company notifying the Supplier in writing that the Goods have been rejected.
- (d) If the Company notifies the Supplier in writing that the Goods have been rejected prior to the expiry of the period specified in clause 6(c)(2), the Supplier must, at its cost (including costs of collection and redelivery if applicable), promptly rectify or replace the Goods so that the requirements of the Contract are met. The Company has no liability to pay for Goods that are subject to a notice of rejection.
- (e) Signed delivery documents in respect of Goods delivered are only confirmation of the number of packages or cartons delivered and will not constitute acceptance by the Company of the Goods.
- (f) The Supplier must, where it is required to perform (or re-perform) any Services under the Contract, give notice to the Company when, in its opinion, the Services are complete and meet the Services Requirements.
- (g) If the Company considers that the Services do not meet the Services Requirements, the Company may issue a notice to the Supplier following receipt of a notice from the Supplier under clause 6(f), stating the reasons why the Services do not meet the Services Requirements.
- (h) Following receipt of a notice from the Company pursuant to clause 6(g), the Supplier must, at its cost, re-perform the Services, or that part of the Services that do not meet the Services Requirements, until the Services Requirements are met. The Company has no liability to pay for Services that are subject to a notice from the Company pursuant to clause 6(g) until those Services meet the Services Requirements.
- (i) Acceptance of the Deliverables by the Company does not constitute approval of the Deliverables or prejudice any claim the Company may have in connection with the Deliverables.

7 Work Health and Safety Requirements and Environmental Requirements

- (a) The Supplier and Company acknowledge that the health and safety of all persons affected by the Deliverables is, at all times, the paramount consideration in the performance of the Supplier's Obligations.
- (b) The Supplier must provide all things and take all necessary measures to protect:
 - (1) the health, safety and welfare of all Personnel involved in the supply and performance of the Supplier's Obligations, including Company's Personnel, Supplier's Personnel and third parties; and
 - (2) the environment.
- (c) The Supplier must comply with, and ensure the Supplier's Personnel comply with:
 - (1) all Work Health and Safety Requirements; and
 - (2) all Environmental Requirements.

- (d) The Supplier must, and must ensure the Supplier's Personnel:
- (1) provide appropriate information, training, instruction and supervision to all persons employed or engaged by it, or on behalf of it, as is necessary to provide the Deliverables safely and in accordance with Work Health and Safety Requirements;
 - (2) have systems in place to identify, assess and eliminate risks and hazards at the premises at which it undertakes the Supplier's Obligations, which meet the Work Health and Safety Requirements;
 - (3) ensure that, where work health and safety risks and hazards cannot be eliminated, the risks and hazards are adequately controlled in a way which meets the Work Health and Safety Requirements;
 - (4) transport, store, use and dispose of hazardous substances in a way which:
 - (A) minimises the risk of Contamination, pollution and harm to the environment; and
 - (B) complies with all Environmental Requirements; and
 - (C) do not Contaminate, pollute or harm the Site (where applicable) or the environment; and
 - (5) ensure that the health and safety of other persons is not put at risk in connection with the performance of the Supplier's Obligations.
- (e) The Supplier must at all times when on Site, immediately report to the Company any health, safety, or environmental incidents of any kind, including potential incidents and any damage to property and any breach of any applicable Law relating to the Site.
- (f) The Supplier must clean up at its own cost any damage to the environment at a Site caused by the Supplier or its Personnel in connection with the performance of the Supplier's Obligations.
- (g) Nothing in this clause 7 or elsewhere in this Contract in any way limits or excludes the obligations the Supplier has under Work Health and Safety Requirements.

8 Industrial relations

The Supplier is responsible for:

- (a) all industrial relations and employee relations management relating to the Supplier's Obligations;
- (b) all time and cost implications arising out of or in connection with the management of all industrial relations matters or industrial actions relating to the Supplier's Obligations; and
- (c) using reasonable endeavours to maintain a harmonious industrial environment at the Site.

9 Company Property

- (a) The Supplier must not use any of Company Property, or remove Company Property from the Site, without the Company's prior written consent.
- (b) Company Property must only be used for the purposes of performing the Supplier's Obligations, and must be maintained and used in accordance with the manufacturer's specifications and operating instructions.
- (c) The Supplier bears the risk of Company Property from the time it is supplied by the Company to the Supplier until it is returned into the custody and control of the Company, unless such Company Property is incorporated into the Deliverables, in which case risk in that Company Property passes to the Company on the Date of Completion.

10 Packaging and marking

- (a) The Supplier must ensure that the Goods are suitably packed to both avoid damage in transit or in storage and facilitate inspection and repacking for on-forwarding and storage.
- (b) All Goods, delivery notes and other relevant documents must be clearly marked with the number of the Purchase Order pursuant to which those Goods were ordered and the Delivery Point.
- (c) Failure to comply with this clause 10 entitles the Company to reject the Goods and return them to the Supplier at the Supplier's expense.

11 Product Information

Prior to delivery, or within the packaging of the Goods at the time of delivery, of any Goods, the Supplier must provide to the Company all safety information, instruction manuals and other necessary or relevant data relating to the Company's use of the Goods, including material safety data sheets.

12 Risk and title

- (a) Title to the Goods will pass from the Supplier to the Company upon the earlier of:
 - (1) payment of the Price; and
 - (2) the Goods being delivered to the Delivery Point.
- (b) The Supplier bears all risk in the Goods until acceptance of the Goods occurs in accordance with clause 6(c), at which time risk passes to the Company.
- (c) The Supplier warrants that title in the Goods will be transferred to the Company in accordance with clause 12(a) without any liens, charges, security interests or encumbrances.
- (d) If the Company notifies the Supplier in writing that the Goods have been rejected prior to the expiry of the period specified in clause 6(c)(2), then risk does not pass to the Company until the Supplier rectifies or replaces the Goods in accordance with clause 6(d).

13 Quality of Goods and Services

- (a) The Supplier must ensure that:
 - (1) the Deliverables conform to the description and standards specified in the Contract;
 - (2) the Deliverables are fit for their intended purpose as stated in, or as reasonably ascertainable from, the Contract and to the extent that the Deliverables include design Services, the works being designed will be fit for their intended purpose as stated in, or as reasonably ascertainable from, the Contract;
 - (3) if the Supplier gave the Company samples of the Goods, demonstrations of the Services, or represented that a result could be achieved by the Services before the Company entered into the Contract - the relevant Deliverables correspond in nature and quality with the samples and demonstrations (as applicable) or the Services achieve that result (as the case may be); and
 - (4) any Goods are new and of merchantable quality.
- (b) The Supplier warrants that the Supplier's Personnel engaged in the supply of the Deliverables have all the necessary skills, training and qualifications to ensure full and proper supply of the Deliverables in accordance with the Contract.

- (c) The Supplier must ensure that the Company has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Supplier must, at its cost, pursue any manufacturer's warranties on the Company's behalf if the Company requests).

14 Defects

- (a) At any time following delivery of any Goods or performance of Services, and prior to the expiry of the Defects Liability Period, the Supplier must, at its cost and at the Company's direction, promptly rectify all Defects (other than a Defect caused by the negligence of the Company).
- (b) If the Company directs the Supplier to rectify a Defect and the Supplier fails to rectify that Defect within a reasonable time specified by the Company:
- (1) the Company may, without prejudice to any other rights the Company may have against the Supplier, rectify or engage another contractor to rectify the Defect; and
 - (2) the rectification costs incurred by the Company will be a debt due and payable on demand from the Supplier to the Company.
- (c) Where any Defect has been rectified under the Contract, the rectification work will be subject to an additional Defects Liability Period commencing on the date the relevant rectification works are completed.
- (d) Nothing in this clause 14 prejudices any other right that the Company may have against the Supplier arising out of the failure of the Supplier to supply the Goods or perform the Services in accordance with the Contract.

15 Price

- (a) In consideration of the Supplier supplying the Deliverables, the Company must pay the Supplier the Price.
- (b) The Price is inclusive of all expenses and costs (including Taxes) relating to the Supplier's performance of the Supplier's Obligations, including packaging, freight, delivery, insurance, the cost of any miscellaneous services, compliance with the Contract and no additional amounts will be payable by the Company.

16 Payment

- (a) Subject to clause 16(b), on or promptly after the Date of Completion, the Supplier must submit an invoice to the Company for the amount due to the Supplier under the Contract.
- (b) If the Purchase Order specifies that the Supplier may submit interim invoices to the Company, or the Company otherwise agrees thereto in writing, the Supplier may submit interim invoices as so specified or agreed, as applicable.
- (c) An invoice must include:
- (1) the Purchase Order number;
 - (2) a description of the Goods delivered (if any), including the quantity of Goods and the date of delivery;
 - (3) a description of the Services performed (if any);
 - (4) the amount being claimed for the Goods and the Services (as applicable);
 - (5) the amount of any applicable Goods and Services Tax which under the Contract forms part of the Price;
 - (6) proof of delivery of the relevant Goods or completion of the relevant Services; and
 - (7) any further information reasonably requested by the Company.
- (d) Subject to clause 17, the Company must pay to the Supplier the amount of an invoice which complies with clause 16(c) by

the end of the month following the month in which the invoice was received unless another time for payment of the invoice is specified in the Purchase Order.

- (e) Payment under this clause 16 will not be taken as proof or admission that all, or any part of, the Goods or the Services have been delivered or performed (as the case may be) to the satisfaction of the Company, but will be taken to be payment on account only.

17 Set-off

The Supplier agrees that the Company may:

- (a) deduct from monies due to the Supplier:
- (1) any money due or which may become due from the Supplier to the Company under, or in connection with, the Contract and any monies which the Company is required by applicable Law or the Contract to deduct or withhold (and if the precise amount of the deduction is not known – the Company's estimate thereof which is to be adjusted when known);
 - (2) any previous overpayments to the Supplier; and
- (b) withhold payment of any amounts payable under the Contract pending resolution of any Dispute.

18 Taxes

The Supplier must pay, or reimburse the Company for, any of the following and any interest, fine, penalty, charge, fee or other amount imposed on or in relation to the following:

- (a) any Tax on revenue or income received by the Supplier;
- (b) any Tax on anything exported or imported in the supply of the Deliverables;
- (c) any Tax relating to the Supplier's Personnel; and
- (d) any other Tax which the Supplier or the Supplier's Personnel is liable for under any applicable Laws, including as a result of or in connection with its performance of the Contract.

19 Assignment and subcontracting

- (a) The Supplier must not assign or novate the Contract, or assign any other right, benefit or interest under the Contract to any person without the prior written consent of the Company.
- (b) The Supplier must not, without the prior written consent of the Company, subcontract any of the Supplier's Obligations. Any consent to subcontract does not relieve the Supplier from any liability or obligation under the Contract.
- (c) The Supplier is liable to the Company for the acts and omissions of any Subcontractor, its personnel and the Supplier's Personnel as if they were acts or omissions of the Supplier.
- (d) The Company may assign all or any of its rights or obligations under the Contract, or novate the Contract, to an Affiliate or another person and the Supplier irrevocably consents to such assignment, delegation or novation. The Company must give notice to the Supplier as soon as practicable after the assignment or novation and the Supplier agrees to execute any document reasonably required to give effect to the assignment or novation.

20 Supplier's insurance

- (a) Unless the Company agrees otherwise in writing, the Supplier must (at its own cost) effect and maintain with a

reputable insurer and on terms consistent with prudent risk management:

- (1) the insurances specified in clause 32; and
 - (2) any additional insurance required by applicable Law or reasonably requested by the Company.
- (b) The Supplier must provide to the Company, within 3 Business Days of a written request, certificates of currency for each of the insurance policies required under this clause 20.
- (c) Subject to clause 19(b) if the Supplier subcontracts any part of the Supplier's Obligations, then the Supplier must ensure that every Subcontractor effects and maintains insurances required under this clause 20, as appropriate for the work being performed by that Subcontractor, before the Subcontractor commences any of the Supplier's Obligations.
- (d) If the Supplier fails to comply with any of its obligations under this clause 20, the Company may, by notice in writing to the Supplier, immediately suspend the Contract or refuse payment of any amount due to the Supplier until evidence of insurance required by this clause 20 is produced to the Company.

21 Indemnification

- (a) Subject to clauses 21(b) and (c), the Supplier indemnifies the Company, each of the Company's Personnel and each of the Company's Affiliates from and against any claims (including third party claims) and losses suffered or incurred by any of them arising out of, or in connection with, any negligent or wrongful act or omission of the Supplier or any of the Supplier's Personnel or any breach of the Contract. This indemnity will be proportionately reduced to the extent the claim or loss is caused by the negligence of the Company or the Company's Personnel.
- (b) Neither Party is liable to the other for Excluded Loss.
- (c) Despite clause 21(b), the exclusion of liability in clause 21(b) does not apply:
- (1) in respect of injury to, or illness or death of, any person;
 - (2) in respect of damage to, or loss or destruction of, any property;
 - (3) in respect of a breach of obligations under the Contract relating to Intellectual Property Rights, health and safety, the environment or confidentiality;
 - (4) to the extent the liable party recovers insurance proceeds in respect of the liability from an insurance policy required to be effected in accordance with the Contract, or would be entitled to recover insurance proceeds if it had complied with the Contract and complied with the terms of the relevant insurance policy; or
 - (5) in respect of fraud, conduct constituting a criminal offence, wilful default, wilful misconduct of the liable party or any of its Personnel.

22 Variations

- (a) The Supplier must not change the Deliverables, including an addition, reduction or omission to any part of the Deliverables except in accordance with this clause 22.
- (b) If at any time the Company notifies the Supplier that it requires a Variation, the Supplier must provide a Variation Proposal to the Company within 48 hours.
- (c) The Supplier may initiate and submit a Variation Proposal to the Company.
- (d) If the Company accepts a Variation Proposal or otherwise directs the Supplier to proceed with a Variation, the Company will issue a Variation Notice to the Supplier and:

- (1) the Supplier must then carry out the Variation;
 - (2) the Price will be adjusted by the amount, if any, set out in the relevant Variation Proposal accepted by the Company or the amount which the Company, acting reasonably, considers appropriate, if any; and
 - (3) the Date for Completion will be adjusted by the period, if any, set out in the Variation Proposal accepted by the Company or the period which the Company, acting reasonably, considers appropriate, if any.
- (e) The Supplier will not be entitled, in any circumstances, to an adjustment to the Price or any extension of time except as set out in a Variation Notice.

23 Intellectual Property Rights

- (a) Subject to clause 23(c), the Supplier IP remains vested in the Supplier and the Company IP remains vested in the Company.
- (b) The Company will own all Intellectual Property Rights that the Supplier creates in the performance of the Services and the supply of the Goods.
- (c) The Supplier grants to the Company a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable licence (with the right to grant sub-licenses on the same terms) to use the Supplier IP to the extent necessary to use the Goods and the Services (as applicable).

24 Confidentiality

The Supplier must not:

- (a) use, copy or reproduce any Confidential Information other than for the purpose of performing this Contract; or
- (b) disclose any Confidential Information other than to those Supplier's Personnel who need to know the information in order to perform the Services or deliver the Goods (provided that each such recipient agrees in writing to treat the information as confidential in the same manner as the Contractor is required to under this Contract), to the Supplier's legal advisers or where required by Law.

25 Force majeure

- (a) A Party whose performance of its non-financial obligations under the Contract is or will be affected by a Force Majeure Event must, if it wants to claim the benefit of a suspension under clause 25(b), promptly give the other Party a written claim detailing:
- (1) the nature and extent of the Force Majeure Event; and
 - (2) the effect the Party reasonably expects the Force Majeure Event will have on its obligations under the Contract.
- (b) If a Party gives notice under clause 25(a), the Party's non-financial obligations under the Contract are suspended to the extent, and for the period of time, that the Force Majeure Event prevents or delays their performance beyond a continuous 72 hour period.
- (c) As soon as a Force Majeure Event ceases to prevent or delay a Party's performance of obligations suspended under clause 25(b), the Party must notify the other Party in writing and resume performance of those obligations.
- (d) Each Party must take reasonable steps to mitigate or overcome the effects that a Force Majeure Event has on its obligations under the Contract.

26 Suspension & Termination

- (a) The Company may suspend the Contract, and end any such suspension, by notice to the Supplier at any time for any reason on at least 24 hours written notice.
- (b) The Company may terminate the Contract by notice to the Supplier:
 - (1) at any time for any reason on at least 24 hours written notice to the Supplier;
 - (2) immediately if the Supplier commits a breach of the Contract and either (A) fails to remedy that breach within the reasonable time period specified in a written notice of the breach from the Company; or (B) the Company, acting reasonably, does not believe the breach is capable of remedy; or
 - (3) immediately if an Insolvency Event occurs.
- (c) On termination of the Contract, the Supplier must:
 - (1) immediately cease performance of the Supplier's Obligations;
 - (2) promptly return to the Company any Confidential Information in the possession, custody or power of the Supplier or the Supplier's Personnel;
 - (3) promptly return to the Company any Company Property and any documents which the Company owns or in which the Company has an interest; and
 - (4) comply with the Company's directions including any direction to protect the Company Property .
- (d) If the Contract is terminated under clause 26(b)(1):
 - (1) the Company must pay the Supplier that part of the Price for any Supplier's Obligations performed prior to termination that have not already been paid by the Company; and
 - (2) the Supplier is not entitled to, and the Company is not liable for, any additional amounts whatsoever.
- (e) Subject to clause 26(c), termination of the Contract is without prejudice to the rights and obligations of the Parties under the Contract arising prior to the date the Contract is terminated or arising out of matters or circumstances occurring prior to that date.

27 Anti-bribery & corruption

- (a) The Supplier must:
 - (1) comply with all applicable ABC Laws;
 - (2) not engage in or tolerate any form of bribery or corruption whatsoever whether direct or indirect, including, without limitation, the making of (or authorisation of) an offer, payment or promise to pay anything of value to unlawfully influence any person, including in the form of money, property, gifts, promises to give, or anything else of value;
 - (3) not do, or omit to do, anything that may cause Company to be in breach of any applicable ABC Laws;
 - (4) from time to time, as required by Company, provide Company with such information as Company reasonably requires to satisfy it that the Supplier has complied, and is in compliance, with all applicable ABC Laws; and
 - (5) otherwise comply with the Company's Policies and Procedures relating to bribery and corruption.
- (b) The Supplier warrants on a continuing basis that neither it, nor any of its Affiliates, nor any of their respective Personnel, has breached any applicable ABC Laws in connection with this Contract, including in relation to the entry into this Contract.
- (c) The Supplier must:

- (1) maintain adequate internal controls over all transactions in relation to this Contract, or made on behalf of Company;
 - (2) properly record all transactions in relation to this Contract or made on behalf of Company; and
 - (3) maintain accurate books and records in relation to each transaction for a period of no less than 7 years from the date of such transaction.
- (d) In the event that Company reasonably believes that the Supplier has breached this clause 27, the Company may terminate this Contract at its sole discretion (without prejudice to any other remedy available to it) by written notice and the Supplier will not be entitled to receive any compensation or other remuneration in respect of the termination.

28 Sanctions

- (a) The Supplier, in connection with performing its obligations under this Contract, shall comply with Applicable Trade Controls Laws (including rules and regulations of all Authorities) and the Supplier must notify the Company if anything it is required to do under this Contract would result in the Contractor being in contravention of such laws and shall not be required to take any action, or refrain from taking any action, where doing so would be in contravention of such laws:
- (b) The Supplier shall not, without Company's prior written consent, supply to the Company any goods or services sourced in whole or in part from a Sanctioned Country or Territory; from Sanctioned Country or Territory entities, residents, or governmental entities; or from a Sanctioned Party.
- (c) The Supplier represents and warrants on a continuing basis that it:
 - (1) is not organized under the Laws of, or ordinarily resident in, a Sanctioned Country or Territory;
 - (2) is not part of the government of a Sanctioned Country or Territory, or owned or controlled by the government of a Sanctioned Country or Territory; and
 - (3) is not a Sanctioned Party.
- (d) Upon request from the Company, the Supplier will provide to the Company the export/import jurisdiction and classification of items the Supplier furnishes to the Company in connection with performing the Contract, together with all relevant supporting documents.
- (e) The Supplier will ensure that the Supplier's Personnel complies with this clause 28 and that the Supplier's contracts with Subcontractors contain equivalent provisions to this clause 28.
- (f) The Company may immediately terminate this Contract by notice in writing to the Supplier if the Supplier breaches any provision of this clause 28.

29 Modern Slavery

- (a) Without limiting any other provision of this Contract, the Supplier must:
 - (1) not engage in (and take reasonable steps to ensure that in the Supplier's operations and supply chains there are not) any activities, practices or conduct that would constitute an offence under anti-slavery and human trafficking Laws, including Modern Slavery Laws;
 - (2) maintain, keep up to date and enforce its own policies and procedures to ensure its compliance with all Modern Slavery Laws and, if

requested by Company, provide it with copies of such policies and procedures;

- (3) notify the Company as soon as reasonably practicable after it becomes aware of any actual or suspected activity, practice or conduct of the type referred to in subclause 29(a) above;
- (4) provide Company with all information and records reasonably requested by Company, in order for it to comply with its reporting obligations under Modern Slavery Laws; and
- (5) ensure that the Supplier's Personnel complies with this clause 29 and that Supplier's contracts with Subcontractors contain equivalent provisions to this clause 29.

30 General

- (a) Entire Agreement: The Contract comprises the entire agreement between the Parties and supersedes all prior contracts, arrangements, understandings or representations (if any) between the Parties in respect of its subject matter and, to avoid doubt, any terms and conditions provided by the Supplier whether together with any quotation, invoice or other document, or otherwise in connection with this Contract do not apply and are of no legal effect.
- (b) Survival: The provisions of clauses 1, 9, 12, 13, 14, 17, 18, 21, 24, 26, 30, 31 and 32 survive the termination or expiry of the Contract.
- (c) Amendment: Save as otherwise expressly provided in this Contract, this Contract may only be amended by the agreement of the Parties in writing.
- (d) Waiver: No waiver of any right of a Party under the Contract will be binding on the Party unless in writing signed by the Party.
- (e) Rights cumulative: Except to the extent that the contrary intention expressly appears, the rights and remedies of the Company provided in the Contract are cumulative and do not exclude any rights or remedies provided by any Laws.
- (f) Consent: Where the consent, approval or agreement of the Company is required under the Contract, that consent, approval or agreement may be given conditionally or unconditionally, or withheld by the Company in its absolute uncontrolled discretion, unless the Contract expressly provides otherwise.
- (g) Severability: Any provision in the Contract which is invalid or unenforceable will be ineffective to the extent only of that voidness or unenforceability without invalidating the remaining provisions.
- (h) Costs & duty: Each Party must bear its own costs arising out of the negotiation, preparation and execution of the Contract. All duty that may be payable to any Authority, including any related fines and penalties, in any relevant jurisdiction on, or in connection with, the Contract must be borne by the Supplier.
- (i) The Supplier is an independent contractor and must exercise independent control, management and supervision in the performance of the Contract. The Supplier is not the Company's agent and has no authority to bind the Company.

31 Notices

- (a) Any notice relating to the Contract must be in writing, signed by or on behalf of the sender or its agent, and either hand delivered, sent by pre-paid post or emailed to the other Party at the address or email address set out in the Purchase Order or as otherwise notified by the recipient Party.
- (b) Any notice to or by a Party is regarded as being given by the sender and received by the addressee:
 - (1) if by delivery in person, when delivered to the addressee but if the delivery is on a day that is not a

Business Day or is after 5.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day;

- (2) if by post or courier, two Business Days after (and excluding) the date of postage; or
- (3) if by email, on the first to occur of:
 - (A) the addressee confirming receipt of the email; and
 - (B) the sender receiving an automated response confirming delivery of the email to the addressee but if the delivery is on a day that is not a Business Day or is after 5.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day.

32 Jurisdiction Specific Provisions

- (a) Definitions:
 - (1) '**ABC Laws**' means any anti-corruption Laws that are applicable to any of the Company, the Supplier or this Contract, including Australian Criminal Code 1995 (Cth);
 - (2) '**Affiliate**' means a Related Body Corporate.
 - (3) '**Goods and Services Tax**' or '**GST**' means the goods and services tax levied or imposed under the GST Law.
 - (4) '**Governing Law**' means the Laws of Western Australia.
 - (5) '**GST Law**' has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)
 - (6) '**Jurisdiction**' means Western Australia.
 - (7) '**PPSA**' means the Personal Property Securities Act 2009 (Cth).
 - (8) '**Related Body Corporate**' has the same meaning as that expression has in the Corporations Act 2001 (Cth).
 - (9) '**Security Interest**' means a security interest as defined in the PPSA.
- (b) GST
 - (1) In this clause 32, words defined in the GST Law have the same meaning in this clause unless specifically defined in this clause.
 - (2) Except as expressly otherwise provided, all charges and amounts payable by one Party to another under the Contract are stated exclusive of GST.
 - (3) If the Supplier will be making taxable supplies under this Contract, the Supplier must be registered for GST by the date of execution of this Contract by the Supplier.
 - (4) In respect of each taxable supply under or in connection with the Contract:
 - (A) The supplier will be entitled to charge the recipient for any GST payable by the supplier in respect of the taxable supply;
 - (B) The supplier must provide a valid tax invoice to the recipient containing the particulars required by the GST Law. The recipient is not obliged to pay the GST unless and until the recipient has received a tax invoice (or an adjustment note) for that supply;

- (C) The recipient must, following receipt of a valid tax invoice, pay to the supplier the amount of the GST at the same time as the relevant charge applicable to the supply becomes payable under the Contract;
- (D) If the actual GST liability of the supplier differs from the GST paid by the recipient, the supplier will promptly create an appropriate valid adjustment note, and the recipient will pay to the supplier any amount underpaid, or the supplier will refund to the recipient any amount overpaid, as applicable; and
- (E) If any party is entitled to payment of any costs or expenses by way of reimbursement or indemnity, the payment must exclude any part of that cost or expense which is attributable to GST for which that party or the representative member of any GST group of which that party is a member is entitled to an input tax credit.
- (c) Encumbrances
- The Supplier must not register, or procure the registration of, a Security Interest in, or otherwise encumber or claim any interest in, any Goods or property of the Company unless it obtains the Company's prior written consent.
- (d) Insurance
- For the purposes of clause 20, the insurances which the Supplier must procure are as follows:
- (1) If the Supplier will be bringing any plant, materials or equipment on Site - plant and equipment insurance covering the Supplier's materials, plant and equipment (if any) whilst on Site or in transit to and from Site, for their full replacement value and which includes a principal's indemnity extension and waiver of subrogation against the Company and its Affiliates;
- (2) motor vehicle insurance covering all mechanically propelled motor vehicles that are registered or capable of being registered and are at any time used in connection with the Contract, including:
- (A) insurance that is compulsory by applicable Laws governing the use of motor vehicles and liability for personal injury and death;
- (B) third party liability insurance for an amount of not less than \$30,000,000 and which otherwise complies with all statutory requirements concerning the arrangement of compulsory motor vehicle third party liability insurance;
- (3) workers' compensation insurance and employer's liability insurance which complies with applicable Laws, including cover for common law liability and, for employer's liability, for an amount not less than \$50,000,000 which covers Subcontractor personnel who are deemed to be employees of the Supplier and which includes a principal's indemnity extension and waiver of subrogation against the Company and its Affiliates where available
- (4) public and/or product liability insurance as follows:
- (A) public liability insurance for an amount of not less than \$20,000,000 in respect of each and every claim, unlimited as to the number of occurrences; and
- (B) if the Supplier is supplying Goods under the Contract, products liability insurance for an amount of not less than \$20,000,000 per claim and in the annual aggregate,
- (C) which covers liability for the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with the Contract;
- (D) which also covers Company Property whilst in the care, custody or control of the Supplier; and
- (E) which includes a cross liability clause, principal's indemnity extension and waiver of subrogation against the Company and its Affiliates.
- (5) If under the Contract the Supplier is providing professional services to the Company - professional indemnity insurance of not less than \$5,000,000 for each claim and in the aggregate which must be maintained for a period of at least 7 years after the Date of Completion or the earlier termination of the Contract.
- (e) Governing Law
- The Contract is governed by the Governing Law and, subject to clause 32(f), each Party irrevocably submits to the non-exclusive jurisdiction of the courts of the Governing Law.
- (f) Disputes
- (1) Neither Party may commence any action, bring any proceedings pursuant to clause 32(e), except proceedings seeking urgent interlocutory, interim or equitable relief, in respect of a Dispute until they have complied with the dispute resolution process in accordance with this clause 32(f).
- (2) If any Dispute arises between the Parties, either Party may give written notice of the Dispute to the other Party.
- (3) A senior representative of each of the Parties will meet or confer for the purpose of endeavouring to resolve the Dispute within 14 days after the service of the notice provided under clause 32(f)(2).
- (4) If the Dispute is not resolved within 21 days after the service of the notice provided under clause 32(f)(2) then either Party may commence proceedings pursuant to clause 32(e).
- (5) The Supplier must continue to perform its obligations under the Contract notwithstanding the existence of any one or more Disputes.