

**1 Definitions**

In this agreement, unless the contrary intention appears:

**agreement** means the agreement constituted by these General Terms and Conditions, the relevant purchase order and any special terms and conditions contained in or attached to a purchase order in accordance with these General Terms and Conditions.

**associate** means any of your advisers, agents, contractors, subcontractors, consultants, employees or officers who are working with or on, or are otherwise involved with or have access to the confidential information.

**authorised signatories** means the designated representative of each party duly authorised.

**business day** means a day other than a Saturday, Sunday or a gazetted public holiday in Western Australia.

**confidential information** means the term of this agreement including any purchasing order and all information in any form that relates, directly or indirectly, to our business or affairs or the business and affairs of any of our related bodies corporate.

**date for delivery** means the date for delivery specified in any purchase order.

**delivery point** means the delivery point specified in any purchase order.

**defective goods** means goods which are not in conformity with this agreement.

**defective services** mean services or the results of any services which are not in conformity with this agreement.

**goods** means the goods specified in this agreement (including any part of the goods specified).

**GST** has the same meaning as in the GST Act.

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

**insolvent** means, with respect to a party, that it is insolvent (as defined in the *Corporations Act 2001* (Cth)), in liquidation or provisional liquidation, receivership, bankruptcy (protective or otherwise) or under administration, unable to pay its debts as and when they fall due or otherwise insolvent, or that it has entered into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors or that any analogous event has occurred.

**intellectual property rights** includes, without limitation, all intellectual property rights including current and future registered and unregistered rights in respect of copyright, moral rights, service marks, semiconductors, performance protection, designs, circuit layouts, trade marks, know-how, confidential information, patents, inventions and discoveries and any other intellectual property rights as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967 (as amended from time to time) and includes any right to apply for the registration or renewal of such rights.

**licenses licences** means all licences, qualifications, registrations and other statutory requirements necessary for the supply of goods or services under this agreement.

**month** means a calendar month.

**party** means you or us.

**parties** means you and us.

**price** means the price specified in the purchase order, or as otherwise agreed in writing with us.

**purchase order** means the purchase order for goods and/or services issued by us to you from time to time containing amongst other things, a description of the goods and/or services and the price.

**related body corporate** has the meaning given to that term in the *Corporations Act 2001* (Cth).

**services** means the services specified in this agreement (including any part of the specified services and the results of the specified services)

**site** means any land or building that we make available to you for the purpose of performing your obligations under this agreement or any purchase order.

**taxes** means any and all present and future sales, use, personal, property, real property, value added, goods and services, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on our net income) by any government, governmental, semi governmental or other relevant authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable.

**tax invoice** has the same meaning as in the GST Act.

**warranty period** means

- (a) in respect of goods, the period of 24 months from the date of delivery or twelve months from the date of installation or initial use of the goods, whichever is the sooner; and
- (b) in respect of services, twelve months from the date on which the service is performed.

**“we” and “us”** means the entity set out in the purchase order and **“our”** has the corresponding meaning.

**you** means the person named in this agreement as the supplier of the goods or services and your has the corresponding meaning.

**2 Supply of goods and services**

- 2.1 You must supply the goods and services to us in accordance with this agreement.
- 2.2 In the event of any ambiguity or uncertainty in respect of a purchase order, such ambiguity or uncertainty must be referred to us immediately and a corrected purchase order obtained prior to delivery. Incorrect delivery in accordance with a purchase order containing an ambiguity or uncertainty shall be at your own risk as we shall make payment on our own interpretation of the ambiguous or unclear provision and may reject delivery if it is not as required by us.
- 2.3 The delivery of any goods to or performance of any services for us will constitute acceptance by you of all terms and conditions in this agreement.

**3 Conditions as to quality and description of the goods and services**

- 3.1 The goods and services must match the description (including performance criteria) in the purchase order.
- 3.2 If you gave us a sample of the goods before we issued the purchase order, the goods must correspond and perform in accordance with the sample in addition to matching the description (including any performance criteria).
- 3.3 If you provided us with a demonstration of the services before we issued the purchase order, the services must correspond in nature and quality with the services demonstrated.
- 3.4 If you showed us a result achieved by the services before we issued the purchase order, the services must correspond in quality with the services that achieved that result.

## General Terms and Conditions

- 3.5 The services must be performed by appropriately qualified, competent, skilled, experienced and professional personnel and must be rendered with due care and skill.
- 3.6 The goods and services must comply with any applicable legislation and relevant standards of the Standards Association of Australia, and must be supplied with copies of all material safety data sheets for dangerous goods.
- 3.7 The goods and services must be fit for the purpose for which goods and services of the same kind are commonly supplied or bought and for any other purpose which we have made known to you.
- 3.8 The goods must be new and of merchantable quality (unless otherwise specified in the purchase order).
- 3.9 If you supply more goods than specified in the purchase order, then the excess may be returned to you at your cost.
- 3.10 Any goods are free of all encumbrances and security interests whatsoever and we have unencumbered legal title to the goods at the delivery point.
- 3.11 We have the full benefit of any manufacturer's warranties that may be applicable to the goods (and you must pursue any manufacturer's warranties on our behalf if we make such a request).

### 4 Delivery

- 4.1 Unless otherwise specified, you are responsible for ensuring that the goods are properly and safely packaged and delivered (including off-loading) to the delivery point (within the time period) specified in the purchase order. If no time period is specified in the purchase order, the order is for delivery within 24 (twenty four) hours of receipt of the purchase order.
- 4.2 If the goods or services have not been delivered within the time specified in the purchase order or this agreement, we may cancel or amend such purchase order without incurring any liability to you for damages or otherwise as a result of such cancellation or amendment, and without prejudice to our rights including the right to recover damages including (for any loss or inconvenience ) we may have suffered.
- 4.3 No deliveries will be accepted outside of the agreed delivery time. In no circumstances shall you have any claim in respect of damages or losses arising directly or indirectly from rejection by us of a delivery outside the agreed delivery time.
- 4.4 In the event that you are not in a position to comply with a purchase order whether in respect of the quantity of the goods or services, quality of the goods or services, time of delivery or otherwise, you are required to notify us immediately and delivery should not be executed before a suitable amendment to the purchase order is made and agreed in writing by us. We may in such circumstances, at our sole discretion, either cancel or amend the purchase order.
- 4.5 You must include a packing list in each package of goods delivered.
- 4.6 You must insure the goods until they are delivered to us at the delivery point.
- 4.7 You must assist us in obtaining documents and other information required for the resolution of any transport dispute.

### 5 Inspection and acceptance

- 5.1 We must have a reasonable time to inspect the goods after delivery. Payment for the goods or the signing of

delivery receipts before inspection does not constitute acceptance of the goods.

- 5.2 You must provide to us, at our request, progress reports on the performance of the services. A progress report must be detailed enough to allow us to ascertain whether the services have been delivered and/or are in conformity with this agreement.
- 5.3 At any time during the performance of the services we may inspect, require demonstration of or witness tests on the services or their results.
- 5.4 If upon inspection, demonstration of testing we find any goods to be defective goods or any services or their results to be defective services, we may:
- reject the defective goods by returning them to you;
  - reject the defective services by notifying you that we are rejecting them;
  - repair the defective goods; or
  - make good the defective services.
- 5.5 We may reject and return to you (in the case of goods) any goods and services which are not in conformity with this agreement even if we have accepted or paid for those goods or services.
- 5.6 You must reimburse us for any expenses we incur in returning or repairing defective goods and in making good defective services as contemplated by clauses 5.4 and/or 5.5.
- 5.7 You must refund to us, when requested, any payments made by us in respect of goods and services which we reject.

### 6 Performance of the services

- 6.1 You must, in performing the services:
- not interfere with any of our activities, or the activities of any other person, on our premises;
  - comply with, and ensure that your employees, agents, contractors and subcontractors comply with:
    - all applicable laws, regulations and industrial awards and agreements;
    - all safety, health and environment guidelines, rules and procedures provided to you by us;
    - the provisions of the *Mine Health and Safety Act 85 of 1996* where applicable;
    - the provisions of the *Occupational Health and Safety Act 85 of 1993*, where applicable; and
    - all lawful directions and orders given by our representatives;
  - ensure that our premises are left secure, clean, orderly and fit for immediate use;
  - ensure that your employees entering the Site undergo the necessary inductions to enter the site or delivery point, perform in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and are of such character as not to prejudice:
    - safe working practices;
    - care of property; and
    - continuity of work;

- (e) leave the site secure, clean, orderly and fit for immediate use having regard to the condition of the site immediately prior to the delivery of goods or the performance of services;
- (f) cooperate with any other contractor engaged by us;
- (g) access the site only through access points designated by us;
- (h) not interfere with the occupation of land adjacent to the site, or normal access to, from or within that land by third parties;
- (i) not bring onto or use on the site any dangerous substances or carry out any dangerous or reckless activities on Site, without first obtaining our written consent;
- (j) advise us of any special equipment you or any subcontractor will use on the site, such as cutting or drilling equipment or any other equipment that is not used in the ordinary course of business;
- (k) take all proper precautions when using dangerous substances or special equipment or carrying out dangerous activities;
- (l) use your best endeavours to minimise nuisance or disturbance or special equipment or carrying out dangerous activities;
- (m) coordinate the timing of its activities with us; and
- (n) comply with all directions given by us relating to the site or activities carried out on the site.

## 7 Title and risk

- 7.1 Title to the goods passes to us once we take delivery of the goods.
- 7.2 Risk in the goods passes to us once we have inspected and accepted the goods in writing.
- 7.3 You warrant that:
  - (a) you have complete ownership of the goods free of any liens, charges, encumbrances or any other security interest and will provide the goods to us on that basis; and
  - (b) we will be entitled to clear, complete and quiet possession of the goods.

## 8 Price

- 8.1 We agree to pay you the price in accordance with this agreement for the goods and/or services.
- 8.2 The price is inclusive of all costs incurred by you in supply of the goods and performance of the services including all charges for packaging, packing, insurance and delivery of the goods in accordance with this agreement and the cost of any items used or supplied in conjunction with the services. The price is also inclusive of all duties and taxes except GST.
- 8.3 The price may not be increased without our prior written consent. We have the right to refuse to give our consent to such a request.
- 8.4 In the event that the price reflected in the purchase order is incorrect, you must notify us and ensure that an amended purchase order reflecting the correct price is obtained prior to delivery. Payment shall be made based on the price set out in the copy of the purchase order retained by us.

## 9 Invoicing and payment

- 9.1 You must submit invoices to us, no earlier than (as applicable):
  - (a) upon delivery and acceptance as set out in clause 7.1 of the goods, unless we specifically agreed to make an upfront payment in which case the invoice should reflect the amount we agreed to pay upfront;
  - (b) at the completion of the services, unless the purchase order states that progress payments are to be made; and
  - (c) where progress payments have been agreed in writing to be made for the provision of services, at the end of each month (or other period specified in this agreement) for services performed by you in that month or that period (as the case may be).

An invoice may not be submitted by you for services yet to be provided.
- 9.2 When submitting your invoice under clause 9.1 you must provide us with all relevant records to enable us to calculate and verify the amount of the invoice, including, without limitation, purchase order number, line item number, part number and description of goods and services.
- 9.3 Subject to clause 16.3, we will pay all invoices rendered to us by you under clause 9.1, 45 days from the month end of the date of the invoice, except where we dispute the invoice, in which case:
  - (a) we will pay the undisputed part of the relevant invoice (if any) and dispute the balance; and
  - (b) if the resolution of the dispute determines that we are to pay an amount to you, we will pay that amount upon resolution of that dispute.
- 9.4 No interest or any other monies will be payable by us in respect of any invoice rendered to us by you under clause 9.1 which remains due and payable and unpaid.
- 9.5 We will not be obliged to pay an invoice which you submitted more than 180 days after the dates set out in clause 9.1, unless you can show reasonable cause for such delay.
- 9.6 We will not be obliged to pay an invoice which does not refer to the relevant, valid purchase order number issued by us.
- 9.7 We may reduce any payment due to you under this agreement by any amount for which you are otherwise liable to us, including costs, charges, damages and expenses. This does not limit our right to recover those amounts in other ways.
- 9.8 Unless otherwise agreed, any money payable to you is to be paid in Australian currency.
- 9.9 If the purchase order involves the supply of services on a "cost plus" or "per hour" basis we have the right to conduct an audit of the basis of your charges using your records. This right continues for twelve months following the date on which we pay the relevant invoice.

## 10 Termination

- 10.1 Either party may immediately terminate this agreement by notice in writing to the other party if the other party:
  - (a) breaches any term under this agreement and such breach is not remedied within 14 days of written notice being given to the party to remedy the breach;
  - (b) breaches any law relating to the supply of the goods or services;

## General Terms and Conditions

- (c) becomes insolvent; or
  - (d) is convicted of a criminal offence.
- 10.2 In addition to any other rights of termination available to us, we may terminate this agreement for any reason or no reason by giving one month's written notice to you. If we terminate this agreement in accordance with this clause you release us from any further liability or obligation to you in connection with such termination, save as set out in clause 10.4.
- 10.3 In addition to our termination rights under clauses 10.1 and 10.2, we may terminate this agreement with immediate effect by notice in writing to you, if any information supplied by you relating to the purchase order, your details or any other material fact, are incorrect.
- 10.4 If we terminate this agreement under clause 10.2, we shall reimburse you for all work in progress or work completed and delivered to us in accordance with clause 10.5 and reasonable pre-approved substantiated expenses incurred up to the date of the notice of termination under clause 10.2, which cannot be reversed or mitigated by you.
- 10.5 If this agreement is terminated pursuant to clauses 10.1, 10.2 or 10.3, you must cease the supply of the goods and services the subject of the relevant purchase order and immediately return to us, or destroy or delete, as we direct, all originals and copies of the confidential information in your custody, power or control, including by deleting all confidential information from any computer or other storage device into which it was programmed, recorded or stored by you or on your behalf. You must deliver all work in progress or completed items as we may request.
- 10.6 Unless expressly stated otherwise, termination for any reason or no reason does not affect the rights of a party that arise before the termination, or as a consequence of the event or occurrence giving rise to the termination, or as a consequence of the breach of any obligation under this agreement which survives termination and termination does not affect the rights a party may have under common law.
- (b) reject the defective services by notifying you that we are rejecting them;
  - (c) make good or repair the defective goods; or
  - (d) re-perform or make good the defective services.
- 12.3 At our option and request, you must:
- (a) repair free of charge or, at our option, replace free of charge any defective goods that we return to you;
  - (b) re-perform free of charge or make good free of charge any defective services that we reject; or
  - (c) reimburse us for any expenses we incur in making good any defective goods and services, during the warranty period.
- 12.4 Any:
- (a) repaired or replacement goods provided by you under this clause are subject to the same warranty as the original goods, as from the date of repair or replacement; and
  - (b) defective services that are re-performed or made good by you under this clause are subject to the same warranty as the original services, as from the date of re-performance or the date on which the defective services were made good.
- 12.5 You are not liable for any defect or fault in the goods and services that is caused by our negligence or the negligence of our employees.
- 12.6 You warrant that any information supplied by you relating to the purchase order, goods and services and your details are true and correct.
- 12.7 You must:
- (a) not infringe or contribute to the infringement of any of our intellectual property rights;
  - (b) do all things and take all action as may be necessary to preserve and protect any of our intellectual property rights that may be in your custody, possession or control; and
  - (c) not be a party, directly or indirectly, to the doing of any act, matter, commission or thing whereby any of our intellectual property rights may be endangered, jeopardised or prejudicially affected in any manner whatever.
- 12.8 The remedies provided in this clause do not exclude any other remedies provided by law.

### 11 Independent contractor

Both parties acknowledge that you are our contractor and not our agent or employee.

### 12 Warranties

- 12.1 You warrant that the goods and services will:
- (a) be free from any defect in design, performance, workmanship and makeup;
  - (b) be rendered with due care and skill and be of high quality and workmanship and otherwise satisfactory;
  - (c) be fit for the purpose intended by us and disclosed to you;
  - (d) free from any claim of any nature by any third party;
  - (e) not infringe or contribute to the infringement of any intellectual property rights; and
  - (f) without limiting the foregoing, conform with this agreement for the warranty period.
- 12.2 If, during the warranty period, we find any of the goods to be defective goods or any of the services or their results to be defective services, we may, at our option:
- (a) return the defective goods to you;

### 13 Insurance

- 13.1 You must take out and maintain at your cost:
- (a) insurance (including marine cargo) for the goods up to the time they are delivered and installed (if required) for an amount not less than their replacement value;
  - (b) comprehensive public and products liability policy to cover all sums which you may become legally liable to pay as compensation consequent upon:
    - (i) death of, or bodily injury (including disease or illness) to, any person; and
    - (ii) loss of, or damage to, property, happening anywhere in Australia arising out of or in connection with this agreement. The limit of liability provided by each policy must be not less than \$10 million for any one event and unlimited in aggregate, and such policy must include a cross liability clause;
  - (c) insurance in respect of all claims and liabilities arising, whether at common law or under statute relating to workers compensation or employer's

### General Terms and Conditions

- liability, from any accident or injury to any person employed by you in connection with this agreement, and you must ensure that all subcontractors are similarly insured in respect of their employees. This insurance must be in compliance with the laws of the relevant jurisdiction in which the services are to be carried out;
- (d) a policy of insurance against any and all liability, loss and damage of any kind whatsoever (including consequential loss) arising directly or indirectly from the use, non-use, failure, breakage or any other act, omission or matter arising in respect of any plant, equipment, tools, appliances or other property owned, rented or hired by you to give effect to the supply of goods and services;
- (e) professional indemnity insurance with a limit of liability of not less than \$5 million, in respect of the performance of the services in connection with this agreement. The policy must be maintained by you for a period of at least 3 years after the termination of this agreement; and
- (f) other insurances required by law or reasonably required by us.
- 13.2 Save as otherwise agreed by us, you must ensure that all policies of insurance required to be taken out by you include us as a named co-insured and include primary and non-contributory, cross-liability, waivers of subrogation and non-vitiating clauses, and such other clauses as may reasonably be required by us.
- 13.3 Insurances required under this clause 13.3 must:
- (a) name us as principal;
- (b) include a cross liability clause in which the insurer accepts the term “insured” as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them;
- (c) include a waiver of subrogation in which the insurer agrees to waive all rights of subrogation or action against the principal;
- (d) contain a provision that failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance of any other insured;
- (e) the policies contain provisions to the effect that a notice of disclosure to the insurer by one insured party is deemed to be notice or disclosure by all insured parties; and
- (f) the policies contain provisions to the effect that whenever you fail to renew the policy or pay the premium or a premium element in full when due, the insurer is required to forthwith promptly provide notice in writing to the principal of your default and in any event at least 21 days prior to issuing a notice of cancellation.
- 13.4 Insurance required under clause 13.3 must contain:
- (a) a principal's indemnity extension for both statutory liability and common law liability in favour of us and our respective officers and employees; and
- (b) a waiver of subrogation in favour of us and our respective officers and employees
- 13.5 Insurance companies providing coverage must be licensed under any applicable legislation or otherwise approved by us.
- 13.6 You must notify us immediately of any cancellation of a relevant insurance policy and of any change to the policy which affects our interests.
- 13.7 If any event occurs which may give rise to a claim involving us under any policy of insurance to be taken out by you under this clause, then you must:
- (a) notify us within 14 days of that event; and
- (b) ensure that we are kept fully informed of any subsequent actions and developments concerning the relevant claim.
- 13.8 At our request, you must provide us with copies of any insurance policies and certificates of currency in respect of the insurances required by this clause 13.1.
- 13.9 We have the right to take out and maintain any policy of insurance required by this clause if you fail to do so. You agree to reimburse us for any expenses we incur in taking out and maintaining any policy of insurance under this clause 13.1.
- 13.10 You must notify the insurer at or before the commencement of any insurance policy which you effect under this agreement of your entitlement to an input tax credit for any premium paid for that policy and provide to us written proof that you have informed the insurer of your entitlement to an input tax credit for any premium paid for that policy.
- 13.11 You warrant that you have informed the insurer of the extent, or change in the extent, of your entitlement to an input tax credit for the last premium you paid at or before the time of first making any subsequent claim under the insurance policy.
- 13.12 You must promptly provide written proof to us that you have complied with subclause 13.8.
- 13.13 With respect to every insurance policy referred to in this clause 13, whether effected before or after the date of this agreement, you must keep under review the extent of your entitlement to an input tax credit for the last premium paid.

### 14 Liability and indemnities

- 14.1 You acknowledge that if you enter our premises, you do so at your own risk. You must ensure that your employees, agents, contractors and subcontractors are also aware that they enter our premises at their own risk.
- 14.2 You agree to indemnify and keep us, our subcontractors and our personnel indemnified from and against all claims, proceedings, expenses, costs (including legal costs on a solicitor and own client basis), damages, losses and other liabilities of any kind arising directly or indirectly from a breach of any term or condition of this agreement by you.
- 14.3 For the purpose of section 11 of the *Property Law Act 1969 (WA)*, you intend to confer a benefit on each member of our personnel and each sub-contractor in each indemnity given by you in favour of us in this agreement and we hold the benefit of each of those indemnities on trust for the benefit of each member of our personnel and each sub-contractor.
- 14.4 You are liable for and must indemnify us and keep us indemnified from and against any liability and any loss or damage of any kind whatsoever, arising directly or indirectly from:
- (a) any breach of any provision of this agreement by you, including your failure to maintain the insurances required under clause 13 or a repudiation by an insurer of a claim arising from an insurance covered under clause 13, due to your acts or omissions;

## General Terms and Conditions

- (b) the illness, injury or death of any of your employees, agents, contractors or subcontractors arising out of or in connection with this agreement;
  - (c) any loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by:
    - (i) the goods or services; or
    - (i) the entry onto, and the activities undertaken on and in, our premises by you or your employees, agents, contractors or subcontractors;
  - (b) any criminal act, fraud, negligence or wilful act or omission by you or any of your employees, agents, contractors or subcontractors in connection with this agreement;
  - (c) any claim made against us by any of your employees, agents, contractors or subcontractors in respect of any relevant legislation concerning income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal;
  - (d) any penalty imposed for breach of an applicable law in connection with the supply of the goods or performance of the services by you;
  - (e) loss or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by you and used in relation to this agreement; and
  - (f) any claim that the goods, the services or the results of the services, anything you do in supplying us with the goods or the services, or our use of the goods or the results of the services infringes or allegedly infringes the intellectual property rights of any person.
- 14.5 Every exemption, limitation, defence, immunity or other benefit contained in this agreement to which we are entitled, will extend to protect, each of our employees, agents, contractors and subcontractors (excluding you, your employees, agents, contractors and subcontractors) and our related bodies corporate and their respective employees, agents, contractors and subcontractors (excluding you, your employees, agents, contractors and subcontractors).
- 14.6 Your obligations under the indemnities in this Agreement are primary to the insurances.
- 14.7 No indemnity in this Agreement is waived by approval of any insurance policy.
- 14.8 Your indemnities under this Agreement apply to the full extent of the loss and damaged suffered by us and our employees and representatives and in respect of any shortfall in proceeds of insurance, deductibles or withholding under any insurance policy.
- 14.9 It is not necessary for us to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.
- 14.10 Neither party is liable to the other party in any circumstances for any indirect, economic, special or consequential loss or damage, in contract, in tort (including negligence), under statute or otherwise, including but not limited to loss of revenue, loss of production or loss of profit (whether direct or indirect).
- 14.11 This clause 14 and each indemnity in this agreement is a continuing obligation separate and independent from your other obligations and survives termination or expiry of this agreement.

## 15 Confidentiality

### 15.1 You must:

- (a) keep any and all confidential information secret and strictly confidential;
- (b) not, except as permitted by this agreement, disclose or permit to be disclosed to any person the confidential information, any opinion in respect of the confidential information;
- (c) not create or permit to be created any confidential information except if that creation is solely for the purpose of supplying of the goods or services under this agreement;
- (d) keep the confidential information secure and protected from any use, disclosure or access which is inconsistent with this agreement; and
- (e) immediately notify us of any potential, suspected or actual unauthorised use, copying or disclosure of any confidential information or any other breach of the confidentiality provisions of this agreement.

### 15.2 You must:

- (a) before disclosing any confidential information to any associate, inform us of the name and address of that associate to whom it is to be disclosed;
- (b) ensure that each such associate is made fully aware of your confidentiality obligations under this agreement;
- (c) procure that your associates (whether or not still an associate) strictly observe your obligations under this agreement as if those obligations were imposed directly on the associates; and
- (d) give us all assistance we require to take any action or bring any proceedings for a breach of this clause.

### 15.3 You:

- (a) may only disclose and allow access to the confidential information to those of your associates who require access to the confidential information for the purpose of the supply of goods and/or services in accordance with this agreement and not for any other purpose;
- (b) may use the confidential information only for the purpose of the supply of goods and/or services in accordance with this agreement and not for any other purpose;
- (c) may create or cause or permit to be created any confidential information only if that creation is solely for the purpose of the supply of goods and/or services in accordance with this agreement;
- (d) must not make use of the confidential information to our commercial, financial or competitive disadvantage or detriment; and

## General Terms and Conditions

- (e) must not directly or indirectly attempt to reverse engineer, decrypt, disassemble, decompile, decipher, re-create or reconstruct in any way any confidential information except for the purpose of supplying of the goods and services in accordance with this agreement.
- 15.4 You acknowledge that:
- (a) the confidential information is our valuable and proprietary information;
  - (b) this agreement does not convey any proprietary or other interest in the confidential information to you or any associate;
  - (c) the confidential information will not be regarded as being in the public domain by reason only that part of it is public or that information is publicly available which together with other information could be used to produce any confidential information;
  - (d) damages may not be a sufficient remedy for us for breach of this clause 15 by you and that, subject to the court's discretion, we are entitled to specific performance or injunctive relief (as appropriate) for any breach or threatened breach of this clause 15; and
  - (e) your obligations under this clause 15 apply irrespective of the method of disclosure of the confidential information, whether in writing, in computer software, orally, by demonstration, description, inspection or otherwise.
- 15.5 The obligations in respect of the confidential information imposed on you by this agreement do not apply to any confidential information that:
- (a) subject to paragraph 15.4(c), is lawfully in the public domain;
  - (b) after disclosure to you becomes part of the public domain otherwise than as a result of a wrongful act or omission by you or your associate;
  - (c) is received by you from a third party legally entitled to possess that information and provide it to you; or
  - (d) you or your associate is required to disclose by law or court order or by any government or governmental agency, authority or body, provided that you must, to the extent permitted by law, first notify, and consult with, us before making any such disclosure and ensure that the disclosure is the minimum required to comply with the applicable law or order.
- 15.6 If requested by us at any time, you must immediately return to us, or destroy or delete, as we direct, all originals and copies of the confidential information in your custody, power or control, including by deleting all confidential information from any computer or other storage device into which it was programmed, recorded or stored by or on your behalf.
- 15.7 You are liable for and must indemnify us in respect of any claim, action, damage, loss, cost, charge and expense which we suffer, incur or are liable for in respect of:
- (a) any breach of this clause 15 by you including any failure by you to ensure compliance by your associate in accordance with clause 15; or
  - (b) any infringement of our rights in respect of the confidential information, by you or any associate.

- 15.8 This clause 15 survives termination or expiry of this agreement.

### 16 Taxes

- 16.1 Unless otherwise expressly provided in this agreement, you must pay all taxes including sales tax, payroll tax, levies, duties and assessments payable in connection with the goods and/or services.
- 16.2 If any supply made under this agreement is or becomes subject to GST, the party to whom the supply is made ("the Recipient") must pay to the party making the supply ("the Supplier"), as consideration in addition to any consideration payable or to be provided elsewhere in this agreement, subject to issuing a tax invoice, an additional amount on account of GST, such amount to be calculated by multiplying the consideration by the applicable rate of GST.
- 16.3 Any amount in respect of GST payable under clause 16.2 must be paid to the Supplier on or before the last business day of the month following the month in which the Recipient receives the tax invoice.
- 16.4 If any party is required to reimburse or indemnify the other party for a cost, expense or liability ("Cost") incurred by the other party, the amount of that Cost for the purpose of this agreement is the amount of the Cost incurred less the amount of any credit or refund of GST to which the party incurring the Cost is entitled to claim in respect of the Cost.
- 16.5 This clause 16 survives termination or expiry of this agreement.

### 17 Assignment and sub-contracting

- 17.1 Subject to clause 17.2, neither party may assign its rights or obligations under this agreement without the prior written consent of the other party (which may not be unreasonably withheld).
- 17.2 We have the right to assign any or all of our obligations or rights under this agreement at any time to any related body corporate.
- 17.3 You may not sub-contract your obligations under this agreement without our prior written consent. Our consent will be conditional upon the sub-contract including provisions that the sub-contractor must:
- (a) comply with all relevant terms of this agreement including, without limitation, the confidentiality obligations in clause 15;
  - (b) not assign or sub-contract without our written consent; and
  - (c) effect and maintain insurance on the same terms as you are required to in this agreement.

### 18 These terms are exclusive

- 18.1 By supplying the goods or services referred to in the purchase order, you agree to be bound by this agreement.
- 18.2 Except as may be specifically provided in this agreement, any terms and conditions contained in, or relating to any other documents, including any of your documents, in respect of the goods or services are hereby expressly excluded.

### 19 Other matters

- 19.1 In the interpretation of this agreement, no rule of contract interpretation applies to the disadvantage of one party on the basis that it put forward this agreement or any part of it.
- 19.2 Any of our rights under this agreement can only be waived by us in writing.

## General Terms and Conditions

- 19.3 No failure to exercise and no delay in exercising any right, power or remedy under this agreement will operate as an election not to exercise that right, power or remedy. A single or partial exercise of any right, power or remedy will not preclude any other or further exercise of that right, power or remedy.
- 19.4 This agreement may not be varied except in writing signed by the authorised signatories of both parties. Any variation will only be applicable to the specific purchase order for which the terms and conditions are varied in writing and will not apply to past or future purchase orders nor oblige us to agree to such a variation for any other purchase orders.
- 19.5 We may exercise a right, remedy or power in any way we consider appropriate.
- 19.6 If we do not exercise a right, remedy or power at any time, this does not mean that we cannot exercise it later.
- 19.7 A reference to an attachment, annexure or schedule is a reference to an attachment, annexure or schedule to this agreement and a reference to this agreement includes an attachment, annexure or schedule.
- 19.8 To the extent that any inconsistency exists between this agreement and any terms and conditions as may be set out in an attachment, annexure or schedule, then the terms and conditions as set out in the body of this agreement prevail to the extent of such inconsistency.
- 19.9 The invalidity or unenforceability of one or more of the provisions of this agreement will not invalidate, or render unenforceable, the remaining provisions of this agreement.
- 19.10 Nothing in this agreement constitutes a joint venture, agency, partnership or other fiduciary relationship between the parties. At all times when performing your obligations under this agreement, you do so as an independent contractor and not an employee or agent of ours.
- 19.11 You must obtain at your own expense any necessary licences or permits and comply with applicable laws in connection with the supply of the goods and/or services to us.
- 19.12 The rights, powers and remedies provided in this agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this agreement.
- 19.13 Part 1F of the Civil Liability Act 2002 (WA) is excluded from operation with respect to any dispute, claim, action or matter under or in connection with this agreement.
- 19.14 Special terms and conditions (if any) contained in or attached to a purchase order shall be and deemed to be incorporated in this agreement as if fully set out herein and in the event that any inconsistency arises between such special terms and conditions and any other provisions of this agreement, the special terms and conditions shall prevail.
- 19.15 If a period of time is specified and dates from a given day or a day of an act or event, it is to be calculated exclusive of that day.
- senior managers for confidential resolution. If the senior managers cannot reach an amicable settlement within seven days after such referral to them, either party may refer the dispute to confidential arbitration in accordance with and subject to, the Institute of Arbitrators and Mediators Australia Rules for the Conduct of Commercial Arbitrations. Notwithstanding the existence of a dispute, each party must continue to perform the agreement. For disputes in which the quantum is less than \$50,000, arbitration shall take place using the submission of documents alone unless both parties agree otherwise.
- 20.2 Notwithstanding the institution of arbitration proceedings, either of us may approach a court of law for relief of an urgent nature in circumstances in which such relief cannot be given or cannot urgently be given by the arbitrator.
- 20.3 Intellectual property rights, including without limitation all know-how, trade secrets, patents and copyright developed in connection with the provision of services by you shall vest in us. You shall take all necessary steps to ensure that we obtain full legal title in and to such rights.
- 20.4 You will not, without our prior written consent, engage in publicity related to this purchase order, or use our name, logo, trade name, trademark, service mark, insignia or any other designation or intellectual property right of us in any manner whatsoever.
- 20.5 You will not pay any commission, fees or grant any rebates to any employee, officer or agent of us nor favour employees, officers or agents of us with gifts and entertainment without our prior written consent.
- 20.6 All notices under the agreement shall be sent to the named individuals at the respective addresses in the purchase order, or as amended by each party in writing. All such notices so addressed shall be deemed duly given:
- upon delivery, if delivered by courier or by hand (against receipt); or
  - three days after posting, if sent by certified or registered mail, return receipt requested.

## 21 Governing law and jurisdiction

- 21.1 This agreement is governed by the laws of Western Australia.
- 21.2 Each party submits to the nonexclusive jurisdiction of the courts of Western Australia.

## 20 Dispute Resolution

- 20.1 If any dispute arises with regard to any matter in connection with this agreement, we shall meet to review such dispute and to arrive at an amicable, confidential and negotiated solution with regard to it. If we are unable to negotiate and agree on an amicable settlement of the dispute, within seven days after such meeting, the dispute will be referred to our respective