

## Goods and Installation Works Supplier Terms (FF&E)

Unless the parties have executed a written contract, these Terms apply to and govern the supply of all Goods and/or Installation Works to the Pro-invest purchaser ("**Purchaser**") from the supplier ("**Supplier**") listed on the purchase order ("**Purchaser Order**"). The Purchase Order received by the Supplier from the Purchaser will constitute an offer by the Purchaser to acquire the Goods and/or Installation Works on these Terms. A contract is made of the earlier of: (i) the Supplier commences to perform any part of this agreement; (ii) the Supplier communicates their acceptance within 5 Business Days; or (iii) 5 Business Days has lapsed following the date of the Purchase Order. Each Purchase Order will constitute a separate contract for the particular Goods and/or Installation Works on these Terms.

Unless expressly agreed in writing by the Purchaser, these Terms take precedence over any other terms and conditions, and any other terms and conditions proposed or issued by the Supplier shall have no effect. Unless otherwise agreed in writing, the Purchaser's tender (if any), the Purchaser's standard Purchase Order form, the Supplier Details and these Terms constitute the entire agreement between the Purchaser and the Supplier for each Purchase Order.

### 1. DEFINITIONS

In this Agreement, the following words and phrases have the following meanings unless the context requires otherwise:

"**Business Day**" means a day in the State or Territory where the Goods are to be delivered that is not a Saturday, Sunday or Public Holiday and on which banks are open for business generally.

"**Completion**" means the stage in the carrying out and completion of the Installation Works when:

- (a) the Installation Works are complete except for minor Defects which do not prevent the Goods from being reasonably capable of being used for their intended purpose; and
- (b) the Supplier has done everything which this Agreement requires it to do prior to Completion.

"**Connected Entity**" has the meaning given to that term in section 64B of the *Corporations Act 2001* (read as if the expression "company" in that subsection included any body corporate of any jurisdiction);

"**Contract Details**" means the contract details stated in the Purchaser's tender or as agreed between the parties.

"**Date for Completion**" means the date for Completion specified in the Contract Details.

"**Defect**" means any defect, shrinkage, fault or omission in the Installation Works including any aspect of the Installation Works which is not in accordance with the requirements of this Agreement.

"**Delivery Date**" means the date on which the Goods are to be delivered by the Supplier as specified in the Contract Details.

"**Delivery Location**" means the premises to which the Goods are to be delivered by the Supplier as specified in the Contract Details.

"**Delivery Price**" means the amount stated in the Contract Details.

"**Goods**" means each and every article or thing required to be delivered by the Supplier pursuant to this Agreement as set out in Contract Details and includes without limitation:

- (a) the Furniture Fixtures and Equipment; and

- (b) Operating Supplies and Equipment.

"**GST**" has the meaning given to that term by the *A New Tax System (Goods and Services Tax) Act 1999*.

"**Insolvency Event**" means:

- (c) a controller (as defined in section 9 of the *Corporations Act 2001* (Cth)), administrator or similar officer is appointed in respect of a person or any asset of a person;
- (d) a liquidator or provisional liquidator is appointed in respect of a person;
- (e) any application (not withdrawn or dismissed within seven days) is made to a court for an order, a meeting is convened, a resolution is passed, for the purpose of:
  - (i) appointing a person referred to in paragraph 1(c) or 1(d) of this definition;
  - (ii) winding up or deregistering a person; or
  - (iii) proposing or implementing a scheme of arrangement;
- (f) any application (not withdrawn or dismissed within seven days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
  - (i) a moratorium of any debts of a person;
  - (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
  - (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,or any agreement or other arrangement of the type referred to in this paragraph 1(f) is ordered, declared or agreed to;

- (g) as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth), a person is taken to have failed to comply with a statutory demand (as defined in the *Corporations Act 2001* (Cth));
- (h) any writ of execution, garnishee order, mareva injunction or similar order, attachment or other process is made, levied or issued against or in relation to any asset of a person;
- (i) anything analogous to anything referred to in paragraphs 1(c) to 1(h) inclusive of this definition, or which has a substantially similar effect, occurs with respect to a person under any law; or
- (j) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

**"Installation Commencement Date"** means the date specified in the Contract Details.

**"Installation Location"** means the premises at which the Goods are to be installed by the Supplier as specified in the Contract Details.

**"Installation Price"** means the amount stated in the Contract Details.

**"Installation Works"** means the installation of the Goods at the Installation Location in accordance with the Technical Documents and any related procurement consultancy services;

**Intellectual Property Rights** means all present and future rights conferred by statute, common law, equity or any corresponding law in or in relation to any copyright (including, but not limited to copyright in computer programs, documentation, drawings, writings and art works), trademarks, designs, all rights in relation to inventions including but not limited to patents, modifications or improvements to the same, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable. These rights include:

- (a) all rights in all applications to register these rights;
- (b) all renewals and extensions of these rights; and
- (c) all rights in the nature of these rights, such as moral rights.

**"Notice"** means any notice, demand, certification or process to be given or served under or arising out of a provision of this Agreement.

**"Representative"** means, in respect of a party, its directors, officers, employees, agents, advisors and sub-contractors.

**"Price"** means the Delivery Price and Installation Price.

**"Project"** means the project stated in the Contract Details.

**"Purchaser Contractor"** means any contractor at the Installation Location engaged by the Purchaser or any related body corporate (as that term is defined in the *Corporations Act 2001* (Cth)) of the Purchaser.

**"Purchaser's Representative"** means the person specified in the Contract Details or any other person as agreed in writing by the Purchaser and the Supplier.

**"Relevant Jurisdiction"** means the jurisdiction specified in the Contract Details or if no jurisdiction has been specified NSW, Australia.

**"Technical Documents"** means the technical documents specified in the Contract Details.

**"Time of Delivery"** means the time on the Delivery Date at which the Goods are to be delivered by the Supplier as specified in the Contract Details.

## 2. INTERPRETATION

The following rules apply in interpreting this Agreement except where the context makes it clear that the rule is not intended to apply.

- (a) The singular includes the plural and vice versa and words of one gender include the other genders.
- (b) Where a word or phrase is defined, its other grammatical forms has a corresponding meaning.
- (c) The headings to Clauses or schedules are for ease of reference only and do not form part of this Agreement or affect its interpretation.
- (d) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.
- (e) Words importing natural persons include corporations, firms, unincorporated associations, partnerships, trusts and other entities or groups recognised by law.
- (f) A reference to any legislation (including subordinate legislation) includes that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it.
- (g) A reference to any agreement or document is to that agreement or document (and where applicable, any of its provisions) as varied, amended, novated, supplemented or replaced from time to time except to the extent excluded or modified by this Agreement.
- (h) A reference to include or including means includes, without limitation or including without limitation, respectively.
- (i) If a day appointed or specified by this Agreement for the payment of any money or the doing of any act falls on a day which is not a Business Day, the day appointed or specified will be the next Business Day.

- (j) A reference to dollars or \$ is to Australian currency.
- (k) An obligation under this Agreement to do or not to do anything includes a further obligation not to permit or allow a breach of that obligation by any other person.
- (l) To the extent permitted by law all covenants and conditions prescribed or implied by law are excluded or modified when inconsistent with the terms of this Agreement.
- (m) A reference to Clauses, schedules and annexures are references to Clauses, schedules and annexures of this Agreement.

**3. PERFORMANCE**

- (a) The Supplier must supply the Goods:
  - (i) in accordance with the terms of this Agreement;
  - (ii) for the Delivery Price; and
  - (iii) by the Delivery Date.
- (b) The Supplier must carry out and complete the Installation Works:
  - (i) in accordance with the terms of this Agreement;
  - (ii) for the Installation Price; and
  - (iii) by the Date for Completion.

**4. APPLICATION OF TERMS**

- (a) The terms of this Agreement apply instead of:
  - (i) any terms set out on or referred to in any invoice, delivery docket or other document delivered to the Purchaser by the Supplier in connection with the supply of the Goods; and
  - (ii) any terms set out or referred to in any contract, credit application or other document previously signed by the Purchaser in connection with the supply of any goods by the Supplier.
- (b) For the purposes of Clause 4(a)(i), signature by the Purchaser of any such invoice, delivery docket or other document is not acceptance of any terms contained or referred to in it. Where applicable, signature only acknowledges delivery.

**5. WARRANTIES**

The Supplier warrants at the time of entering into this Agreement that:

- (a) it is the legal and beneficial owner of the Goods;

- (b) it has the right to sell the Goods;
- (c) the Purchaser will have and enjoy quiet possession of the Goods;
- (d) the Goods are free of encumbrance;
- (e) if the Goods are sold by description, they will correspond with the description;
- (f) if the Goods are sold by sample, they will correspond with the sample;
- (g) the Goods are fit for their intended purpose including without limitation fit for the Project;
- (h) the Goods are new and of merchantable quality, unless otherwise stated in this Agreement;
- (i) the Goods are free from any defects in design, material and workmanship;
- (j) the Goods comply with all applicable laws;
- (k) the Goods are of the quality required by relevant industry standards and industry best practice; and
- (l) use of the Goods will not cause environmental harm.

**6. Variations**

- (a) The Purchaser shall at any time be entitled to vary the Goods and Installation Works to be supplied by way of increase, decrease, omission or change by giving notice in writing to Supplier and the Supplier shall acknowledge receipt thereof and shall promptly comply with the same.
- (b) No variations to the Goods and/or Installation Services to be supplied pursuant to this Agreement shall validate or invalidate the Agreement.
- (c) The Purchaser shall be responsible for the Supplier's reasonable costs (if any) incurred in carrying out any variation to the Goods and/or Installation Works and these costs must be agreed to in writing in advance by the Purchaser and be added to the Price as and when they incurred, and shall be paid for by the Purchaser in accordance with the provisions of this Agreement, or deducted, as the case may be. The valuation of variations shall be based on equivalent rates set out in the purchase order wherever possible or otherwise as agreed with the Purchaser. Further any claim for a variation shall detail the cost of the goods sufficient for assessment by the Purchaser.

**7. DELIVERY**

- (a) The Supplier must:
  - (i) comply with the Purchaser's delivery instructions, including instructions as to:

- (A) the Delivery Date, the Time of Delivery and the Delivery Location; and
  - (B) the authorised recipient for the Goods;
  - (C) all directions and orders given by the Purchaser's Representative; and
- (ii) safely and securely pack and prepare the Goods for shipment;
  - (iii) ensure that the Goods are adequately labelled for identification purposes, with such labels clearly displaying:
    - (A) the date that the Goods were ordered;
    - (B) the address of the Delivery Location;
    - (C) the name of the Purchaser's Representative at the Delivery Location;
  - (iv) if requested by the Purchaser, remove and safely dispose of all packaging after delivery at no additional cost to the Purchaser;
  - (v) when delivering the goods, obtain acknowledgement of delivery from the Purchaser's Representative on a delivery docket which describes the Goods; and
  - (vi) give the Purchaser's Representative a copy of the delivery docket when delivering the Goods.
- (b) The Supplier must not:
- (i) deliver the Goods by instalments, unless approved by the Purchaser; or
  - (ii) leave the Goods unattended at the Delivery Location.
- (c) In delivering the Goods, the Supplier must:
- (i) use its best efforts not to interfere with any of the Purchaser's activities, or the activities of any other person at the Delivery Location;
  - (ii) be aware of, comply with, and ensure that the Supplier's agents, employees and contractors comply with:
    - (A) all applicable laws;
    - (B) all safety, health and environment guidelines, rules and procedures applicable
8. **TITLE AND RISK**
- (a) Title in the Goods passes to the Purchaser on payment of the Supply Price.
  - (b) Risk in the Goods passes to the Purchaser on Completion.
9. **INSPECTION AND TESTING**
- (a) The Purchaser may inspect and test the Goods:
    - (i) during manufacture, if the Supplier or a contractor of the Supplier is manufacturing them; and
    - (ii) prior to delivery, at the Supplier's premises.
  - (b) If the Purchaser requires the Supplier to submit samples of the Goods, the Supplier must not proceed to bulk manufacture of the Goods until the Purchaser has both:
    - (i) approved the samples of the Goods in writing; and
    - (ii) authorised the Supplier to proceed with bulk manufacture of the Goods in writing.
10. **DEFECTIVE OR INSUFFICIENT GOODS**
- (a) If any Goods supplied to the Purchaser:
    - (i) are damaged, defective or otherwise not in accordance with this Agreement; or
    - (ii) have not been supplied in the quantity requested in this Agreement,
 then:
    - (iii) the Purchaser may, at its election in writing to the Supplier, reject all or some of the Goods;
    - (iv) the Supplier must, if requested by the Purchaser in writing, remove the rejected Goods from the Delivery Location at no cost to the Purchaser; and
    - (v) the Supplier must, if requested by the Purchaser in writing:

- (A) repair or replace the rejected Goods at no additional cost to the Purchaser; or
  - (B) refund any payment for the rejected goods.
- (b) If the Supplier does not comply with Clause 10(a) within the time notified by the Purchaser in writing:
- (i) the Purchaser may repair or replace the damaged or defective Goods itself (or engage a third party to do so); and
  - (ii) the Supplier must reimburse the Purchaser for any expenses incurred in repairing or replacing any damaged or defective Goods.
- (c) This Clause 10 is without prejudice to any other rights the Purchaser may have against the Supplier for breach of this Agreement.
- (d) If the Purchaser rejects any Goods under this Clause 10:
- (i) the Purchaser is not obliged to pay for them; and
  - (ii) if title and risk had already passed to the Purchaser, title and risk in those Goods immediately passes back to the Supplier.

**11. INFORMATION AND MANUFACTURE**

The Supplier warrants that:

- (a) all information contained in its catalogues, price lists, brochures and advertising material is accurate and correct;
- (b) the Goods are manufactured in a manner which will not cause environmental harm; and
- (c) the Goods are manufactured in a workplace which complies with all laws and the requirements of all Authorities.

**12. COMPLIANCE WITH LAWS**

The Supplier must comply with all laws applicable to:

- (a) the manufacture, sale, delivery, labelling and quality of the Goods; and
- (b) the conduct of the Supplier's business.

**13. INSTALLATION**

(a) The Supplier must:

- (i) commence the Installation Works at the Installation Location on the Installation Commencement Date;

- (ii) regularly and diligently progress the execution of the Installation Works;
- (iii) achieve Completion by the Date for Completion; and
- (iv) ensure that when the Installation Works achieve Completion, they are reasonably capable of being used for the intended purpose.

(b) In carrying out and completing the Installation Works, the Supplier must:

- (i) use its best efforts not to interfere with any of the Purchaser's activities, or the activities of any other person at the Installation Location, including any Purchaser Contractor;

(ii) execute the Installation Works in accordance with:

- (A) this Agreement, including the Technical Documents; and
- (B) all applicable laws;

(iii) be aware of, comply with, and ensure that the Supplier's agents, employees and contractors comply with:

- (A) all applicable laws;
- (B) all safety, health and environment guidelines, rules and procedures applicable to the Installation Location; and
- (C) all directions and orders given by the Purchaser's Representative.

(c) The Supplier must co-operate with any Purchaser Contractor to ensure:

- (i) the co-ordination of the Installation Works with the carrying out and completion of the work of any Purchaser Contractor; and
- (ii) compliance with timeframes, programs and schedules established for completion of the work of any Purchaser Contractor.

(d) The Supplier has allowed in the Installation Price for the provision of all plant, equipment, materials and other work necessary for the performance of the Installation Works, whether or not expressly mentioned in the Technical Documents.

- (e) The Supplier must in performing the Installation Works use workmanship of the standard prescribed in this Agreement or, to the extent it is not so prescribed, a standard consistent with the best industry standards for work of a nature similar to the Installation Works and which is fit for the intended purpose of the Installation Works.
  - (f) The Supplier must carry out all tests required by the Technical Documents.
  - (g) The Supplier must correct all Defects at its cost.
  - (h) If the Purchaser's Representative discovers or believes there is a Defect, the Purchaser's Representative may give the Supplier an instruction requiring the Supplier to correct the Defect and specifying the reasonable time within which this must occur.
  - (i) If an instruction is given pursuant to Clause 13(h), the Supplier must correct the Defect within the reasonable time specified in the Principal's Representative's instruction.
- same meaning as in the GST Law; and
- (ii) "**GST Law**" has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.
  - (c) If GST is payable by a supplier or by the representative member for a GST group of which the supplier is a member, on any supply made under this Agreement, the recipient will pay to the supplier an amount equal to the GST payable on the supply.
  - (d) The recipient will pay the amount referred to in Clause 15(c) in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.
  - (e) The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under Clause 15(c). The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.

#### 14. PAYMENT

- (a) The Supplier must give the Purchaser's Representative invoices for payment on account of the Price and any other amounts payable by the Purchaser to the Supplier pursuant to this Agreement at the times set out in the Contract Details.
  - (b) Each invoice issued by the Supplier must contain any information required by the Purchaser.
  - (c) The Purchaser must pay an invoice issued in accordance with Clause 14(a) within 30 days after the relevant invoice is received by the Purchaser.
  - (d) The Purchaser may at any time retain, deduct, withhold or set-off from any moneys otherwise due to the Supplier from the Purchaser:
    - (i) any debt or other moneys due from the Supplier to the Purchaser; or
    - (ii) any other claim which the Purchaser may have against the Supplier.
  - (e) Payment of an invoice by the Purchaser is without prejudice to any rights the Purchaser may have against the Supplier under this Agreement or otherwise at law.
- (f) If an adjustment event arises in respect of a taxable supply made by a supplier under this Agreement, the amount payable by the recipient under Clause 15(c) will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.
  - (g) Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
    - (i) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
    - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.

#### 15. GST

- (a) In this Clause 15:
  - (i) words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the

#### 16. INDEMNITY

The Supplier irrevocably indemnifies the Purchaser and its Connected Entities and Representatives against any Loss arising as a direct or indirect result of any:

- (a) breach of any warranty, undertaking or obligation under this Agreement, including as a result of or arising out of any act or omission by the Supplier or the Supplier's Representatives;

- (b) negligence or other tortious conduct by the Supplier;
- (c) breach of confidence or other equitable wrong by the Supplier;
- (d) breach of any laws (including ordinances, regulations and by-laws) and Australian building codes and standards by the Supplier, and/or
- (e) any liability or Loss in respect of injury (including death) to any person or damage to any property arising out of or in connection with the Goods and/or Installation Works

including without limitation Loss that arises from procuring equivalent Goods and/or Installation Works from an alternate supplier, lost construction project time, regulatory investigations, liability for defects, and insurance premium excess payments. The indemnity in this clause 16 extends to all acts or omissions of the Supplier's contractors as if they were acts or omissions of the Supplier.

**17. ASSIGNMENT AND SUBCONTRACTING**

- (a) The Supplier must not:
  - (i) assign this Agreement;
  - (ii) subcontract the supply of the Goods; or
  - (iii) subcontract the Installation Works,

without the prior written consent of the Purchaser.
- (b) The Purchaser may:
  - (i) withhold its consent pursuant to Clause 17(a) in its absolute discretion; or
  - (ii) grant its consent pursuant to Clause 17(a) subject to conditions.
- (c) The Supplier will be liable to the Purchaser for the acts, defaults and omissions of any subcontractor as if they were those of the Supplier. Approval to subcontract shall not relieve the Supplier from any liability or obligation to the Purchaser under this Agreement.

**18. INSURANCE**

- (a) The Supplier must effect and maintain public liability insurance for an amount not less than \$20 million and professional indemnity insurance for an amount not less than \$10 million.
- (b) The Supplier must effect and maintain works insurance for an amount not less than the amount specified in the Contract Details, or if no amount has been specified \$20 million.

- (c) The Supplier must, on the receipt of a written request from the Purchaser, give the Purchaser with a certificate of currency for any insurance policy required to be taken out in relation to this Agreement.

**19. CONFIDENTIALITY**

All information given to the Supplier in connection with this Agreement remains the property of the Purchaser and must be kept confidential and not disclosed to any other person unless necessary for supplying the Goods.

**20. ADVERTISING**

The Supplier must not, without the Purchaser's written consent, publish or advertise that the Purchaser is a customer of the Supplier. The Purchaser may withhold its consent in its absolute discretion.

**21. INTELLECTUAL PROPERTY**

- (a) The Supplier warrants that it has obtained all required licenses, consents and waivers to use, copy, amend, distribute and sublicense any documents or materials and the Intellectual Property Rights in such documents and materials it supplies to the Purchaser for re-use on the Project and for the purposes of the Installation Works. To the fullest extent permitted by law, the Supplier indemnifies the Purchaser from and against all claims, liability, loss, damages, costs and expenses, made against or suffered or incurred by the Purchaser arising out of or in connection with a breach of the Supplier's warranty under this clause 21(a).
- (b) The Supplier acknowledges and agrees that all documents and materials prepared by the Purchaser in connection with this Agreement (including the Purchaser's processes and procedures for the performance of the Installation Works) ("**Purchaser Materials**") and the Intellectual Property Rights in the Purchaser Materials are and remain the property of the Purchaser. The Supplier undertakes not to copy, circulate, use, amend or retain (whether by electronic or other means) any or all of the Purchaser Materials, other than as required for the Supplier to receive the benefit of the Services under this Agreement.
- (c) To the fullest extent permitted by law, the Supplier indemnifies the Purchaser from and against all claims, liability, loss, damages, costs and expenses made against or suffered or incurred by the Purchaser arising out of or in connection with any infringement or alleged infringement of any Intellectual Property Rights, including claims relating to or alleging:
  - (i) infringement of the Purchaser's Intellectual Property Rights in the Purchaser Materials; and

- (ii) that the Goods or any drawings, design, specifications and other documents arising from the procurement of, possession of or use of the Goods infringe any Intellectual Property Right, irrespective of whether the Intellectual Property Rights therein are owned by the original manufacturers or other parties.
- Purchaser had not previously compensated the Supplier for such costs and expense; and

(II) the incurring of, or commitment to incur, such costs and expenses was reasonably necessary for the supply of the relevant Goods; and

**22. TERMINATION FOR INSOLVENCY EVENT OR BREACH**

(a) Without prejudice to any of the Purchaser's other rights under this Agreement, the Purchaser may terminate this Agreement by notice to the Supplier if:

- (i) the Supplier breaches this Agreement and does not remedy the breach within seven days after receiving notice from the Purchaser requiring it to do so; or
- (ii) an Insolvency Event occurs to the Supplier.

(B) on account of profit and contribution to overheads foregone by the Supplier, the amount calculated at 1% of the costs and expenses referred to in Clause 23(b)(i)(A); and

(ii) must take all steps possible to mitigate the costs and expenses referred to in Clause 23(b)(i)(A).

(b) If the Purchaser terminates this Agreement under this Clause 22:

- (i) the Supplier will forfeit any right to payment of money under this Agreement ; and
- (ii) the Purchaser will be entitled to recover from the Supplier any costs, losses or damages suffered or incurred by it as a result of, arising out of, or in any way in connection with, such termination.

(c) The amounts to which the Supplier is entitled under Clause 23(b) shall be in full satisfaction and compensation of the Supplier in relation to the termination of this Agreement and the Supplier shall have no further entitlement as a consequence of the termination under this Clause 23.

(d) This Clause 23 will survive the termination of this Agreement.

**23. TERMINATION FOR CONVENIENCE**

(a) The Purchaser may at any time for its sole convenience, and for any reason, by written notice to the Supplier terminate this Agreement effective from the time stated in the Purchaser's notice or if no such time is stated, at the time the notice is given to the Supplier.

(b) If the Purchaser terminates this Agreement under this Clause 23, the Supplier:

(i) will be entitled to payment of the following amounts as reasonably determined by the Purchaser:

(A) all costs and expenses incurred before, or that were unavoidable at, the date of termination of this Agreement which relate to the supply of Goods ordered by the Purchaser under this Agreement, provided that:

(I) at the date of termination, the

**24. AMENDMENT**

No agreement or understanding varying this Agreement is binding unless such variation is in writing and is signed by both the Purchaser and the Supplier.

**25. WAIVER**

The failure of either party to exercise any right arising as a result of a breach by the other will not waive that right, nor will any practice developed between the parties waive or lessen their rights under the this Agreement.

**26. GOVERNING LAW**

This Agreement is to be construed in accordance with the laws in force in the Relevant Jurisdiction.

**27. JURISDICTION**

(a) This Agreement is governed by and is to be construed in accordance with the laws applicable in the Relevant Jurisdiction.

(b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Relevant Jurisdiction and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.



- (c) It is agreed that, to the extent permitted by law, the operation of any applicable legislation which applies to apportion liability between parties (Proportionate Liability Legislation) is excluded in relation to all and any rights, obligations and liabilities arising under or in relation to this Agreement howsoever such rights, obligations or liabilities are sought to be enforced.
28. **NOTICES**
- 28.1 **General**
- Any Notice must be in writing, in English and may be given by an agent of the sender.
- 28.2 **How to give a communication**
- In addition to any other lawful means, a Notice may be given by being:
- (a) delivered by hand to the current address for Notices of the Purchaser or the Supplier;
- (b) if the current address for Notices of the Purchaser or the Supplier is in Australia, sent to that address by pre-paid ordinary mail;
- (c) if the current address for Notices of the Purchaser or the Supplier is outside of Australia, sent to that address by pre-paid airmail; or
- (d) sent by facsimile transmission to the current fax number for Notices of the Purchaser or the Supplier.
- 28.3 **Particulars for delivery of notices**
- (a) The particulars for delivery of Notices are initially set out in the Contract Details.
- (b) The Purchaser or the Supplier may change their particulars for delivery of
- Notices by giving written notice to the other.
- 28.4 **Notices given by delivery**
- Subject to Clause 28.7, a Notice is given if delivered by hand to the party's current address for Notices.
- 28.5 **Notices given by post**
- Subject to Clause 28.7, a Notice is given if sent by:
- (a) pre-paid ordinary mail to an address within Australia, three Business Days after posting; or
- (b) pre-paid airmail to an address outside Australia 10 Business Days after posting.
- 28.6 **Notices given by fax**
- (a) Subject to Clause 28.7, a Notice is given if sent by facsimile transmission when the sender's fax machine produces a report that the facsimile transmission was sent in full to the addressee.
- (b) The report referred to in Clause 28.6(a) is conclusive evidence that the addressee received the Notice in full at the time and on the date indicated in that report.
- 28.7 **After hours communications**
- If a Notice is given:
- (a) after 5.00 p.m. in the place of receipt; or
- (b) on a day which is not a Business Day,
- that Notice is taken as having been given at 9:00 a.m. on the next Business Day.
29. **UN CONVENTION NOT APPLICABLE**
- The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.