

# PURCHASE ORDER TERMS & CONDITIONS

HIGH ARCTIC ENERGY SERVICES AUSTRALIA PTY LTD

ABN: 58 131 781 345



## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

Unless the contrary intention appears words and expressions in these Purchase Order Terms & Conditions have the following meanings:

<b>Affiliate</b>	means a related company or a related corporation as set out in the Corporations Act 2001 (Cth)	but does not include information:
<b>Agreement</b>	means the Agreement between the Company and the Supplier comprising the Purchase Order, these Terms & Conditions and the Special Conditions (if any).	(b) which is in or becomes part of the public domain other than through breach of this agreement or an obligation of confidence owed to the discloser;
<b>Business Day</b>	means a Day which is not a Saturday, Sunday, or a public holiday (for the whole Day) in the State of Queensland, Australia or Port Moresby, Papua New Guinea.	(c) which the recipient can prove by contemporaneous written documentation was already known to it at the time of disclosure by the discloser (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality) or independently developed by the recipient without reference to the Confidential Information of the discloser; or
<b>Claim</b>	means any claim, allegation, action, suit, proceeding (including proceeding for contribution or indemnity), demand, judgement, loss, expense (including economic loss, interest, and consequential loss of profit) or Liability incurred by or to or made or recovered by or against any person, howsoever arising and whether present, unascertained, immediate future or contingent.	(d) which the recipient acquires from a source other than the discloser or any of its representatives where such source is entitled to disclose it.
<b>Commissioner</b>	means the person holding office of the Commissioner of Taxation and includes any delegate thereof.	<b>Contract Representatives</b> means the representative of each Party.
<b>Companies Act</b>	means the Corporations Act 2001 (Cth) including regulations and related materials.	<b>Co-Venturers</b> means any Co-Venturers with the Company from time to time having an interest in the exploration or production licence under which work is being performed and the successors in interest of such Co-Venturers or the assignees of any interest in such Co-Venturers.
<b>Company</b>	means High Arctic Energy Services Australia Pty Ltd ABN: 58 131 781 345	<b>Customs Tax</b> means any Tax, duty, import Tax, levy or surcharge however described on or in connection with the importation or re-exportation of the Goods, or other items into Australia or any other jurisdiction.
<b>Company Group</b>	means the Company its Affiliates, its Co-Venturers and their respective Affiliates, the Company's contractors and their subcontractors of any tier, and its and their respective employees, directors, officers, directors, employees and consultants but, for the avoidance of doubt, does not include a member of the Supplier Group.	<b>Day</b> means a calendar Day.
<b>Completion</b>	means the time at which all of the following have been satisfied:	<b>Delivery Address</b> means the address specified in the Purchase Order.
	(a) if the PO is for or includes Goods, the Goods have been delivered to the Delivery Address;	<b>Documentation</b> means:
	(b) if the PO is for or includes Goods, documents and other information required under this Agreement which are, in the reasonable opinion of the Company, essential for the use, operation and maintenance of the Goods have been received by the Company;	(a) all user documentation; and
	(c) the Tests which are required under this Agreement to be carried out and passed before Completion occurs have been carried out and passed;	(b) any other documents or information set out in this Agreement.
	and	<b>Effective Date</b> means the date of the PO.
	(d) if the PO is for or includes Services, the Services have been performed and comply with clause 6.1.	<b>Fault</b> means:
<b>Confidential Information</b>	means	(a) in respect of a Good, a failure of that Good to comply with any of the warranties set out in clause 11.3 (Goods warranties); and
	(a) all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, exchanged between the Parties before, on or after the date of this Agreement relating to the business, technology or other affairs of the discloser of the information;	(b) in respect of Services, failure of the Services to comply with clause 6.1 (Service requirements).

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<b>Goods</b>	means the goods specified in the PO.	<b>Law</b>	means any order, regulation, rule, subordinate legislation, statute or other document enforceable under an order, regulation, rule, subordinate legislation or statute.
<b>Government</b>	means any Government or any governmental, local governmental, semi-governmental, public, statutory or governmental (including local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute.	<b>Loss</b>	includes any loss, liability, damage, destruction, injury, accident, Claim or cost or expense (including legal fees) incurred at any time, and any fact causing or giving rise to any loss within any previous meaning, whether directly or indirectly, actually or potentially.
<b>GST</b>	means any tax, levy, charge or impost implemented under the GST Act.	<b>Moral Rights</b>	means any moral rights including the rights described in Article 6bis of the <i>Berne Convention for Protection of Literary and Artistic Works 1886</i> (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any statute (including the <i>Copyright Act 1968 (Cwlth)</i> ) or any other law of the Commonwealth of Australia), that exist or that may come to exist, anywhere in the world.
<b>GST Act</b>	means the <i>Goods and Services Tax Act 1999 (Cth)</i> (AUS) including regulations and related materials.	<b>New Material</b>	means all material created by the Supplier in the performance of this Agreement.
<b>GST-free</b>	has a meaning equivalent to Zero-rated set out in the GST Act.	<b>Party</b>	means each of the Company and the Supplier as appropriate, and <b>Parties</b> means both of the Company and the Supplier.
<b>Income Tax</b>	means any Tax, and includes any Income Tax, capital gains Tax, additional profits Tax, carbon Tax, surface Tax, windfall profits Tax, contribution, duty, fee, group Tax, impost, levy, withholding Tax, or other charge or Tax however described.	<b>Personal Data</b>	means information relating to identifiable individuals and includes (but is not limited to) all information relating to individuals that is protected by privacy laws or data protection laws in the country where:
<b>Income Tax Act</b>	means the <i>Income Tax Assessment Act 1997 (Cth)</i> (AUS) including regulations and related materials.		<ul style="list-style-type: none"> <li>(a) the relevant individuals are located; or</li> <li>(b) the data relating to those individuals is processed.</li> </ul>
<b>Input tax credit</b>	has the meaning in the <i>Goods and Services Tax Act 1999</i>	<b>Personal Injury</b>	includes death, disease, illness and mental and bodily injury.
<b>Insolvency Event</b>	means in respect of a Party (other than for the purpose of solvent reconstruction or amalgamation):	<b>Personnel</b>	<ul style="list-style-type: none"> <li>(a) of the Company means officers, agents and employees of a member of the Company Group or any of their contractors (other than the Supplier); and</li> <li>(b) of the Supplier means officers, agents and employees of a member of the Supplier Group or any of their contractors.</li> </ul>
	<ul style="list-style-type: none"> <li>(a) a receiver, receiver and manager, liquidator, provisional liquidator, trustee, administrator, controller, inspector appointed under any companies or securities legislation, or similar official is appointed in respect of that Party or any of its property, or security over any substantial part of its assets is enforced;</li> <li>(b) the Party ceases, or threatens to cease, to carry on all or substantially all of its business, is unable to pay its debts when due, or is deemed unable to pay its debts under any Law, or makes an assignment for the benefit of, or enters into or makes any arrangement or compromise with, that Party's creditors or threatens to do so, or stops payments to its creditors generally;</li> <li>(c) a resolution is passed for the winding up of a Party (other than for the purposes of reconstructions or amalgamation on terms which have been previously approved in writing by the other Party);</li> <li>(d) the Party is, becomes, or is deemed to be insolvent;</li> <li>(e) a distress, attachment or other execution is levied or enforced upon or commenced against any substantial part of its assets and is not stayed within 14 Days;</li> <li>(f) anything having a similar effect to any of the events specified above happens under the Law of any applicable jurisdiction; or</li> <li>(g) in the event that the Party is an individual, anything having similar effect to any of the events specified above happens in respect of that individual.</li> </ul>	<b>Personnel Tax</b>	means any Tax on or in connection with compensation, emoluments, remuneration, salaries and wages or other benefits of Supplier Personnel, and includes any fringe benefits Tax, group Tax, Income Tax, levy, payroll Tax, salary and wage Tax, social security or superannuation contribution or Tax, superannuation surcharge, training levy, withholding or other charge however described.
<b>Intellectual Property Rights or IPR</b>	means all intellectual property rights at any time protected by statute or common law, including but not limited to current and future registered and unregistered rights in respect of patents, copyright, rights in circuit layouts, registered designs, trademarks, trade secrets, know-how, designs, invention and discoveries and any right to have Confidential Information kept confidential.	<b>PNG</b>	means the Independent State of Papua New Guinea.
		<b>Purchase Order</b>	or <b>PO</b> means an order for Goods and/or Services issued by the Company to the Supplier.
		<b>Recipient</b>	has the meaning in the <i>Goods and Services Tax Act 1999</i>
		<b>Relevant Laws</b>	means any statute, ordinance, code or other law including regulations under them and any code of practice, membership rules or standards issued by relevant regulators or industry bodies, whether or not having the force of law, applicable to this Agreement, the Confidential Information, the Supply, the provision of the Supply or any other obligations performed under this Agreement.
		<b>Relevant Matter</b>	<ul style="list-style-type: none"> <li>(a) performance of this Agreement and the Supply of the Goods;</li> <li>any act or omission of the Supplier, its employees or agents preparatory to or in furtherance of the activities in (a); or</li> <li>(b) any amount paid, payable, received or receivable</li> </ul>

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	under this Agreement.	
	(c) compensation, salaries, wages or other benefits paid or provided to the Supplier's personnel, servants or agents or those of any member of the Supplier Group, as well as any property or equipment.	
<b>Supplier</b>	means Supplier as defined in the Purchase Order.	
<b>Supplier Group</b>	means the Supplier, its subcontractors of any tier, its and their respective Affiliates and its and their respective directors, officers, employees and consultants.	
<b>Services</b>	means all work and Services to be carried out by the Supplier in accordance with this Agreement and as generally described in the PO, including the particulars and details not expressly defined but which are necessary for, and customarily provided in, performance of work and Services of this or a similar nature and all other related Services required by the Company.	
<b>Special Conditions</b>	means those special conditions as attached to the PO.	
<b>Specifications</b>	means:	
	(a) any specifications included or referred to in the PO, that specifies the quality, functionality, performance, testing or other criteria; and	
	(b) the Supplier's published specifications for the Goods.	
<b>Supply</b>	means the performance of the Services and supply of the Goods by the Supplier under this Agreement.	<b>2 TERM</b>
<b>Tax</b>	means any and all taxes, fees, withholdings, imports, levies, duties or other charges of any nature whatsoever or whensoever and includes Customs Tax, GST, Income Tax, Personnel Tax including any equivalent successor Tax and in each case as well as any additional Tax, fine, interest or penalty however described.	This Agreement will take effect on and from the Effective Date and will continue in full force and effect until Completion occurs or until otherwise terminated in accordance with these Terms & Conditions.
<b>Tax Invoice</b>	has the meaning in the <i>Goods and Services Tax Act 1999</i>	<b>3 GOODS</b>
<b>Tax Law</b>	means a Law relating to a Tax.	This clause only applies if the PO is for, or includes Goods.
<b>Taxable Supply</b>	has the meaning in the <i>Goods and Services Tax Act 1999</i>	<b>3.1 Protection of Goods</b>
<b>Taxing Authority</b>	means a Government authority that collects or imposes a Tax or administers a Tax Law.	The Supplier must properly pack and package the Goods in accordance with industry best practice and packaging must be fit for purpose and sufficiently strong to withstand rough handling from the Supplier's point(s) of issue, and while in transit, stowage & storage, to final delivery to the Company to prevent deterioration or damage to the Goods. The Supplier must provide all Documentation relating to the Goods (including the packing list which must be included in each box or individual unit of packing). A copy of all documents must be in a sealed transparent weatherproof document folder attached to the outside of the package or packaging.
<b>Terms &amp; Conditions</b>	means these Terms and Conditions which are applicable to the Purchase Order.	<b>3.2 Packing Materials</b>
<b>Tests</b>	means all Tests to determine that those Goods comply with the Specifications and <b>Testing</b> means the carrying out of the Tests.	<ul style="list-style-type: none"><li>(a) Goods required to be shrink-wrapped will be done so using 'Tropical Strength' shrink-wrapping.</li><li>(b) All packing material must comply with all relevant statutory requirements and regulations. The Supplier will indemnify the Company against all Claims suffered or incurred by it as a result of such packing material not so complying</li></ul>
<b>Third Party</b>	means any person who is not a member of either the Company Group or the Supplier Group.	<b>3.3 Hazardous Materials</b>
<b>Warranty Period</b>	means 12 months from the date of delivery of the Goods or provision of the Services or such other period as may be specified in the Purchase Order.	<ul style="list-style-type: none"><li>(a) The Supplier must advise the Company of any hazard inherent in the Goods ordered and provide information (such as those required on chemicals), in respect of safety, environmental and health hazards, including:<ul style="list-style-type: none"><li>(i) toxicity;</li><li>(ii) flammability; and</li><li>(iii) reactivity and corrosiveness</li></ul>together with handling and storage requirements, action to be taken in case of fire or spillage, and health precautions to be</li></ul>
<b>Zero-rated</b>	means "zero-rated supply" as set out in Division 6 of the GST Act and includes GST-free.	

## 1.2 Interpretation

Unless the context requires otherwise, in these General Terms & Conditions:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) headings are used for convenience only and do not affect the interpretation of these terms and conditions;
- (d) if something is to be done on a Day which is not a Business Day

then that thing shall be done on the next or following Business Day;

- (e) the word "person" includes a natural person and anybody or entity whether incorporated or not;
- (f) A reference to dollars, [or \$] is to an amount in the currency of Australian dollars;
- (g) a reference to Kina [or PGK] is to an amount in the currency of PNG;
- (h) the words "in writing" include any communication sent by letter or facsimile transmission;
- (i) a reference to all or any part of a Law includes that Law as amended, consolidated, re-enacted or replaced from time to time;
- (j) wherever "include" or any form of that word is used it shall be construed as if it were followed by "without being limited to";
- (k) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted renamed or replaced or has its powers or functions removed (defunct body), means the agency or body which performs most closely the functions of the defunct body;
- (l) delivery terms in this Agreement are as defined in the 2010 edition of INCOTERMS, issued by the Headquarters of the International Chamber of Commerce in Paris, France; and
- (m) the provisions on the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention) do not apply to this Agreement and expressly excluded in all respects.

## 2 TERM

This Agreement will take effect on and from the Effective Date and will continue in full force and effect until Completion occurs or until otherwise terminated in accordance with these Terms & Conditions.

## 3 GOODS

This clause only applies if the PO is for, or includes Goods.

### 3.1 Protection of Goods

The Supplier must properly pack and package the Goods in accordance with industry best practice and packaging must be fit for purpose and sufficiently strong to withstand rough handling from the Supplier's point(s) of issue, and while in transit, stowage & storage, to final delivery to the Company to prevent deterioration or damage to the Goods. The Supplier must provide all Documentation relating to the Goods (including the packing list which must be included in each box or individual unit of packing). A copy of all documents must be in a sealed transparent weatherproof document folder attached to the outside of the package or packaging.

### 3.2 Packing Materials

- (a) Goods required to be shrink-wrapped will be done so using 'Tropical Strength' shrink-wrapping.
- (b) All packing material must comply with all relevant statutory requirements and regulations. The Supplier will indemnify the Company against all Claims suffered or incurred by it as a result of such packing material not so complying

### 3.3 Hazardous Materials

- (a) The Supplier must advise the Company of any hazard inherent in the Goods ordered and provide information (such as those required on chemicals), in respect of safety, environmental and health hazards, including:
  - (i) toxicity;
  - (ii) flammability; and
  - (iii) reactivity and corrosivenesstogether with handling and storage requirements, action to be taken in case of fire or spillage, and health precautions to be

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observed. A correct safety data sheet (SDS) must accompany the Goods when picked-up by the Company's nominated carrier and/or delivered to the Delivery Address.

- (b) Where applicable the International Maritime Dangerous Goods code and the UN number must be specified, along with full compliance with International Air Transport Association regulations and requirements.
- (c) The Supplier will comply with international standards of marking and labelling each package of dangerous Goods and each over pack containing dangerous Goods.

## 4 RISK AND TITLE

### 4.1 Risk and Title

- (a) Risk of loss, damage or deterioration of or to the Goods from any cause whatsoever will remain with the Supplier and will not pass to the Company until delivery of the Goods to the Delivery Address.
- (b) Title in the Goods will pass from the Supplier to the Company upon delivery of the Goods to the Delivery Address except where payment for the Goods (in whole or in part) is made by the Company prior to delivery in which event title in the Goods will pass to the Company as soon as payment is made.
- (c) If any Goods are re-taken by the Supplier, the risk of loss or damage to the Goods passes back to the Supplier upon removal from the Delivery Address.

### 4.2 Assistance

- (a) The Supplier agrees to provide the Company with all necessary assistance (including installation and testing) to ensure that the Goods are fully operational and comply with the relevant Specifications.
- (b) The Company may inspect and test the Goods upon delivery, and the Supplier must provide the Company with all reasonable assistance in inspecting and testing the Goods.
- (c) The Supplier agrees to ensure that facilities for the repair of the Goods and the supply of parts for the Goods are available for a reasonable period after delivery.

### 4.3 Non-complying Goods

- (a) Without limiting any other rights or remedies the Company may have, if there is a Fault in all or part of the Goods ("Non-Complying Goods"), the Company may, irrespective of whether it has paid for the Non-Complying Goods or not, reject the Non-Complying Goods.
- (b) If the Company rejects the Non-Complying Goods under clause 4.3(a), the Company may require the Supplier to at the Supplier's cost and at the Company's option:
  - (i) collect and replace the Non-Complying Goods;
  - (ii) collect and repair the Non-Complying Goods; or
  - (iii) collect the Non-Complying Goods, and refund to the Company all payments made by the Company to the Supplier for the Non-Complying Goods and any compensation reasonably required by the Company for the replacement of the Non-Complying Goods by another supplier, within 2 Business Days of the Company's request.

### 4.4 Further Action

- (a) In respect of each Non-Complying Good, the Company may require the Supplier to:
  - (i) conduct further investigations into the Fault found in the Non-Complying Goods and report back to the Company;
  - (ii) provide written confirmation to the Company that the Fault in the Non-Complying Goods has been rectified;
  - (iii) expressly warrant that the Fault found in the Non-

Complying Goods will not be found in any other Goods; and

- (ii) take whatever other action the Company deems reasonably necessary in relation to the Non-Complying Goods.

## 5 TESTING AND INSPECTION

- (a) Goods will be tested in accordance with the requirements of any Specifications contained in the PO or referred to in this Agreement. Testing (including the costs of testing) is the Supplier's responsibility. The test results will be promptly supplied to the Company in writing.
- (b) The Company may inspect, expedite and monitor the Goods prior to delivery of the Goods and the Supplier will give the Company access to the Supplier's premises for such purpose during normal working hours.
- (c) Any inspection by the Company will not relieve the Supplier from its obligations to comply with the requirements of this Agreement and will in no way impair the Company's right to require subsequent correction of non-conforming Goods.
- (d) The Supplier is deemed to have examined all documents furnished by the Company and any other relevant information in relation to the Goods to have fully satisfied itself regarding the conditions, risks, contingencies and other circumstances that might affect the Supply of the Goods. No increase in price will be allowed for the Supplier's failure to ensure that it is fully informed regarding this Agreement.

## 6 SERVICES

This clause only applies if the PO is for, or includes Services.

### 6.1 Service Requirements

The Supplier must:

- (a) ensure that the Services meet the relevant Specifications;
- (b) the Services are performed:
  - (i) with due care and skill;
  - (ii) in accordance with all Relevant Laws; and
  - (iii) in accordance with industry best practice.

### 6.2 Location of Services

The Supplier must provide the Services only at the Delivery Address unless otherwise agreed in writing by the Company.

## 7 DELAY

### 7.1 Timing

Subject to this clause 7 (Delay), the Supplier must provide the Supply in accordance with any timing requirements set out in this Agreement.

### 7.2 Notification of Delay

If the Supplier becomes aware of a delay in meeting a timeframe set out in this Agreement, the Supplier must immediately notify the Company in writing of the details of the possible delay, the cause of such delay and the period of any requested extension.

### 7.3 Extension

The Company, at its sole discretion, may:

- (a) approve the extension requested by the Supplier under clause 7.2 (Notification of delay);
- (b) reduce the quantity of goods or services covered by this Agreement, and/or;
- (c) terminate this Agreement

in each case without liability for any action. Company must grant a reasonable extension of time if the delay is due to:

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- (a) a failure by the Company to carry out any tasks or requirements assigned to it under this Agreement (but not including any such failures which result from a prior failure of the Supplier to meet its obligation); or
- (b) a Force Majeure Event.

## 7.4 Failure to Notify

If the Supplier does not notify the Company as required by clause 7.2 (Notification of delay) then:

- (a) no extension of time will be made (unless by the Company under clause 7.3 (Extension));
- (b) the Supplier must perform its obligations according to the timeframe required under this Agreement; and
- (c) any principle of law or equity (including the "prevention principle") which might otherwise render the required timeframe for performance immeasurable and agrees compensation unenforceable, does not apply.

## 8 SUBCONTRACTING

### 8.1 Consent

The Supplier may not subcontract any of its obligations under this Agreement without the written consent of the Company which may be given on conditions and which may be withdrawn by the Company on reasonable grounds without liability.

### 8.2 Responsibility for Subcontractors

- (a) The Supplier must ensure that each subcontractor:
  - (i) has the skills, resources and experience to carry out the work contracted to it; and
  - (ii) complies with all relevant terms of this Agreement.
- (b) The Supplier is responsible for all acts and omissions of its subcontractors as if they were those of the Supplier.

## 9 PRICES AND PAYMENT

- (a) Subject to the provision of the Goods and or Services to the satisfaction of the Company and otherwise in accordance with this Agreement, the Company will pay the Supplier the sum price as specified in the Purchase Order (Fee).
- (b) All prices are fixed and not subject to any variation, including but not limited to, variations in the cost of labour, materials or exchange rates, unless otherwise provided for in the Special Conditions or in this Agreement.
- (c) The Company will not be liable to pay the Supplier any compensation, reimbursement of expenses, Fees or any other payment whatsoever, other than the Fee.
- (d) Unless specified otherwise in this Agreement, an invoice will be submitted to the Company for payment upon Completion occurring.
- (e) The invoice will include the Agreement and or PO number. All invoices will be in such detail as may be requested by the Company.
- (f) All undisputed and approved invoices will be paid by the Company in accordance with the payment term outlined in the PO.
- (g) Payment of any invoice does not prejudice the right of the Company to claim reimbursement of any charge found to be invalid in whole or in part at a later date.
- (h) If the Company in good faith disputes whether the whole or part of an invoice submitted by the Supplier is payable, the Company:
  - (i) may withhold the disputed amount of that invoice; and

- (ii) will give written notice to the Supplier, within 10 Business Days after receiving the invoice, of the amount disputed and reasons for the dispute.
- (i) Upon resolution of the disputed items in an invoice, the Supplier will issue a revised invoice to the Company specifying the agreed amount to be paid. The Company will pay the agreed amount for that invoice within 30 Days from the date the Parties resolved the dispute.
- (j) If the Company and Supplier are unable to resolve any disagreement between them regarding the amount disputed within 5 Business Days of the Supplier receiving the Company's notice under clause 9(h)(ii), either Party may invoke the dispute resolution process in clause 13.
- (k) Without limiting the Company's rights under any other provisions of this Agreement, all monies due from the Supplier to the Company hereunder, may be deducted by the Company from any monies due or to become due by the Company to the Supplier.
- (l) The following documents will be submitted to the Company with the Supplier's invoice:
  - (i) original and one copy of bill of lading/bill of consignment (as applicable);
  - (ii) original of Supplier's commercial invoice;
  - (iii) original of Supplier's packing list; and
  - (iv) original materials certificates and inspection release certificates.

## 10 CHANGES

The Company may make changes in drawings, Specifications, quantities, delivery schedules, or methods of shipment or packaging for any of the Goods at any time. If such changes result in an increase or decrease in the price, it shall be adjusted accordingly. If the Parties are unable to agree on the amount of the adjustment, the Company acting reasonably will determine the amount of the adjustment.

## 11 WARRANTY

### 11.1 Mutual Warranties

The Company and the Supplier each warrant that:

- (a) it is validly existing under the laws of the place of its incorporation and has the power and authority to carry on its business; and
- (b) it has the power to enter into and perform its obligations under this Agreement.

### 11.2 General Supplier Warranties

The Supplier warrants and represents to the Company in respect of this Agreement that:

- (a) this Agreement has been duly executed by the Supplier and is a legal and binding Agreement of the Supplier enforceable against it in accordance with the terms of this Agreement;
- (b) by entering into and performing its obligations under this Agreement it has not breached and will not:
  - (i) be in breach of any Relevant Law;
  - (ii) infringe any person's rights (including Intellectual Property Rights); or
  - (iii) constitute a misuse any person's Confidential Information.
- (c) each Good and their use or exploitation in any manner (except in breach of any restrictions set out in this Agreement), does not and will not:
  - (i) be in breach of any Relevant Law;
  - (ii) infringe any person's rights (including Intellectual Property Rights); or
  - (iii) constitute a misuse of any person's Confidential Information.

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- (d) use or exploitation of the New Materials in any manner does not, and will not, infringe any person's rights (including Intellectual Property Rights and Moral Rights);
- (e) there is no current, pending or threatened litigation, arbitration, investigation, inquiry or proceeding in which it is involved or that may have a materially adverse effect on its ability to perform its obligations in accordance with this Agreement;
- (f) the Supplier holds all licences, approvals, permits, consents and rights to enter into this Agreement and perform the obligations under it;
- (g) all information which it has, or which any of its personnel or representatives have provided to the Company or any representative of the Company prior to the date of execution of this Agreement is true and correct in every respect and is not misleading or deceptive;
- (h) it has disclosed in writing to the Company prior to the date of execution of this Agreement any matters relating to the commercial, technical or financial capacity of the Supplier that might materially affect the Supplier's ability to perform any of its obligations under this Agreement; and
- (i) the Supplier will not accept or give any secret commission or benefits of any kind in connection with the Goods or Services.

### 11.3 Goods Warranties

- (a) If the Supply is or includes a supply of Goods, then the Supplier warrants that the Goods will:
  - (i) meet the description and Specifications applicable to the Goods under the relevant PO;
  - (ii) be of good quality, fit for purpose and free from defects and omissions in material, design or workmanship;
  - (iii) upon title passing to the Company, be unused and free from any charge or encumbrance (including any security interests); and
  - (iv) comply with all Relevant Laws.
- (b) Documentation will be in English, complete, up to date, accurate and suitable for the Company and its Personnel to use, operate or maintain the Goods.

### 11.4 Warranties Conferred by Law

Without limiting the operation of any other provision of these Terms & Conditions, the Company is entitled to the benefit of all warranties conferred by Law and the operation of any such warranty for the benefit of the Company may not be excluded by the Supplier.

### 11.5 Supplier's Acknowledgements

The Supplier acknowledges and agrees that:

- (a) it has evaluated all aspects of this Agreement and has the capability and expertise to provide the Supply;
- (b) it has obtained all information necessary to enable it to understand the Company's requirements;
- (c) it has satisfied itself as to the availability and suitability of materials, labour and the resources to provide the supply and all related services as required under this Agreement;
- (d) the Company makes no representation or warranty, express or implied, as to the accuracy or completeness of any information or data or statement given or made to the Supplier. The Supplier is responsible for forming its own independent judgements, interpretations, conclusions, and deductions about any information or data provided by the Company.

### 11.6 Warranty Period

The Supplier must correct or remedy all Faults in the supply of Goods and/or Services during the Warranty Period at no additional charge to the Company.

## 12 INDEMNITY AND INSURANCE

### 12.1 Indemnity

The Supplier is responsible for and indemnifies each member of the Company Group from and against all losses, damages, liabilities, claims and expenses (including legal costs) incurred by a member of the Company Group arising out of or in connection with:

- (a) a Claim which would, if true, constitute a breach of any of the warranties in clauses 11.2(b), 11.2(c) or 11.2(d);
- (b) any Personal Injury to any person and any Loss of property of the Company Group or a Third Party, to the extent that the Personal Injury or Loss or property is caused or contributed to by the tortious act or omission or statutory breach of a member of the Supplier Group;
- (c) any breach of clause 17 (Confidentiality).

### 12.2 Notification of a Claim

The Company will notify the Supplier in writing on becoming aware of any Claim which might give rise to an indemnity by the Supplier under clause 12.1 (Indemnity).

### 12.3 Conduct of Defence

Without prejudice to the Company's rights to defend a Claim in respect of which it wishes to exercise its rights in clause 12 (Indemnity and Insurance), the Supplier will, if requested by the Company, conduct the defence of such a Claim at the Supplier's expense.

### 12.4 Other Obligations

If the Supplier takes control of the defence or any related settlement of a Claim notified under 12.2 (Notification of a Claim), then the Supplier will:

- (a) consult with the Company on any decision to defend the Claim and the conduct of the defence;
- (b) keep the Company informed of all developments relating to the Claim;
- (c) observe the Company's reasonable directions relating in any way to the defence or to negotiations for settlement of the Claim;
- (d) notify the Company in writing prior to making or accepting any offer of settlement in respect of a Claim; and
- (e) not compromise or settle a Claim without the Company's prior written consent.

### 12.5 Company's Obligations

In respect of any Claim notified under clause 12.2 (Notification of a Claim), the Company will at the Supplier's expense, provide the Supplier with reasonable assistance in conducting the defence of the Claim.

### 12.6 Insurance

- (a) The Supplier will, during the term of this Agreement, take out and maintain at its own expense the following insurances or that are required by applicable Law:
  - (i) all risks insurance to the full replacement value of the Goods;
  - (ii) Third Party legal Liability insurance covering bodily injury, sickness or death and loss of or damage to property for each Claim or series of Claims arising out of any one incident; and
  - (iii) any other insurances that a reasonable and prudent person engaged in the Supply of the relevant Goods would effect and maintain.
- (b) If a policy is a "claims made" or "claims made and notified" policy, the Supplier agrees to keep it or a "tail out" policy satisfactory to the Company in place for three years after the later of termination or expiration of this Agreement.

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- (c) The Supplier shall not insure shipments for the Company's account without the Company's express written instructions.
- (d) The taking out of insurance under this Agreement does not relieve the Supplier of any of its obligations or liabilities under this Agreement or otherwise at Law.
- (e) The insurances referred to in clause 12.2(a) shall:
  - (i) name the Company Group as an additional insured party relative to this Agreement;
  - (ii) be taken out with an independent and reputable insurer;
  - (iii) contain cross Liability and a waiver of insurers' rights of subrogation against each member of the Company Group; and
  - (iv) prior to commencing the Supply of the Goods or at the request of the Company, produce evidence to the satisfaction and approval of the Company of the insurances required to be effected.

## 13 DISPUTES

Either Party may give written notice of a dispute to the other Party ("Dispute Notice"). A Party giving a Dispute Notice agrees to provide details of the history and circumstances of the dispute and give reasons for why the Party is disputing the issue.

At the expiration of five (5) Business Days from the date of the Dispute Notice, unless the dispute has otherwise settled, the dispute may be submitted to the dispute resolution process as follows:

- (a) the dispute will be referred initially to the Parties' respective Contract Representatives. The Contract Representatives will attempt to settle the dispute within 5 Business Days of the referral;
- (b) if the Parties' Contract Representatives are unable to resolve the dispute within those 5 Business Days, or other such period as is agreed, the dispute will be referred to the Parties' respective senior management at a level deemed appropriate by each Party given the nature of the dispute.

Notwithstanding the existence of a dispute, each Party will continue to perform its obligations under this Agreement, unless such obligations form the basis of the dispute, in which case such obligations (including disputed payments) are suspended until such time as the dispute is resolved.

## 14 DEFAULT, SUSPENSION AND TERMINATION

### 14.1 Suspension by the Company

The Company may, at any time, suspend this Agreement for any reason whatsoever. Upon receipt of a notice of suspension, the Supplier must cease the Supply of the Goods or Services in accordance with the directions received and must immediately recommence the Supply of Goods or Services when written directions to do so are received by the Company.

### 14.2 Termination by Supplier

The Supplier may, without prejudice to any other rights or remedies, terminate this Agreement if:

- (a) the Company defaults in the due payment of any undisputed moneys payable to the Supplier for a continuous period of 21 Days following written notice; or
- (b) if an Insolvency Event occurs in respect of the Company.

### 14.3 Termination by the Company

- (a) The Company may terminate this Agreement in whole or at the Company's discretion, in part, without cause.
- (b) The Company may terminate this Agreement in whole or at the Company's discretion, in part, immediately by notice to the Supplier if:

- (i) the Supplier commits a breach of this Agreement and:
  - (A) the breach is incapable or remedy; or
  - (B) the breach is capable of remedy and the Supplier does not remedy the breach within 7 Business Days of the Company's notice of breach;
- (ii) the Supplier regularly or habitually commits breaches of the same provision of this Agreement whether or not they are remedied, or commits a significant number of breaches which are not remedied and collectively constitute a material breach;
- (iii) an Insolvency Event occurs in respect of the Supplier; or
- (iv) the Company has an express right to do so under any provision of this Agreement.

### 14.4 Termination Payment

The Upon termination or expiry of this Agreement for any reason:

- (a) the Supplier agrees to reimburse the Company for any amounts paid by the Company for any supply of Goods or Services which has not been provided to the Company in accordance with the terms of this Agreement; and
- (b) the Company agrees to pay the Supplier all amounts that are due and owing to the Supplier up to the termination date, but not any other amounts that would or may be payable if this Agreement had continued.

### 14.5 Other Consequences

The Upon termination or expiry of this Agreement for any reason:

- (a) the Supplier will at its own cost deliver to the Company (and not retain any copies of) Confidential Information of the Company and other property of the Company identifiable or designated as Company property (including documents, data, records, registers, files, security packets, stationery, cheques and agreements) in the possession or control of the Supplier; and
- (b) the Company may acquire all or part of the Supply from another supplier and the Supplier agrees to do all things, execute all documents and provide the Company with all assistance and information that the Company considers necessary or desirable to:
  - (i) enable the Supply to be provided by another supplier; and
  - (ii) ensure an orderly and smooth transition of the provision of the Supply from it to the other supplier.

### 14.6 Partial Termination

If this Agreement is terminated in part, then:

- (a) clauses 14.4 (Termination payment) and 14.5 (Other consequences) will apply in respect of that terminated part only; and
- (b) the Supplier must continue to perform this agreement in respect of the other parts which have not been terminated.

### 14.7 Survival

The Termination of this Agreement will not affect clauses 9(g), 11, 12, 13, 16, 17 and 21 or any other provisions of this Agreement which are intended to continue after termination and will also be without prejudice to any Claim by either Party against the other Party arising out of any breach or non-performance by that Party of any obligations assumed by or imposed on that Party under this Agreement at any time prior to termination.

## 15 FORCE MAJEURE

- (a) A Party does not breach this Agreement and is not liable to the other Party for a delay or failure to perform an obligation to the extent that it results from a Force Majeure Event.

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- (b) The Party affected by a Force Majeure Event must notify the other Party of the Force Majeure Event as soon as reasonably practicable and must take all reasonable steps to limit the effect of the Force Majeure Event.
- (c) If a Force Majeure Event occurs and its effect continues for a period of more than 10 Business Days, the Company may terminate this Agreement in whole or in part at any time by giving written notice to the Supplier.

### 16 TAXES, DUTIES AND ASSESSMENTS

#### 16.1 General

- (a) Except as expressly provided otherwise in this Agreement, the Supplier will be liable for and pay when due any and all Tax on account of, or resulting from, a Relevant Matter.
- (b) The Supplier will defend and indemnify every member of the Company Group from and against any and all Claims for Tax on account of, or resulting from, a Relevant Matter, including any arising from the Supplier's actions or omissions as well as any Tax imposed as a consequence of receiving payment under this indemnity.
- (c) The Company may deduct from money due to the Supplier any such amount the Company is required by Law to pay on the Supplier's behalf. Payment of an amount so deducted to the Government or authority entitled thereto will be deemed payment duly made to the Supplier.

#### 16.2 Compliance with Laws and Maintenance of Tax Records

- (a) The Supplier will comply on a timely basis with each applicable Tax Law including filing all registrations, submitting all Tax returns, and taking all actions necessary to make its Tax payments. The Supplier will provide written proof of all registrations required by this clause on a timely basis if requested by the Company.
- (b) The Supplier will maintain sufficient records to substantiate any Tax, Customs Tax, charge or fee, indemnity or other payment which may affect the Company's obligations and which are the responsibility of or reimbursed to the Supplier under this Agreement.
- (c) The Supplier will provide at the Company's request and in the format reasonably required by the Company all schedules, summaries or other data available to the Supplier or its subcontractors required by the Company to prepare any Tax return, refund, Claim or credit or for use in any audit in connection with this Agreement.

#### 16.3 GST and Similar Taxes

- (a) Except as expressly provided otherwise in this Agreement, where GST is or becomes payable on or in respect of a Taxable Supply the consideration for that supply will be considered exclusive of GST and the Supplier may recover from the Recipient an additional amount equal to the consideration multiplied by the rate of GST, provided that at or before the time of payment the Supplier will provide to the Recipient a valid Tax Invoice or other document in respect of the supply or the adjustment event.
- (b) Notwithstanding the generality of paragraph 16.3(a) GST will not be paid or payable where a supply is GST-free or Zero- rated according to the Law of the applicable jurisdiction. The Supplier will diligently Claim entitlement to any exemption, concession or reduction of GST otherwise payable.
- (c) GST payable if any will be separately itemised or identified on the Tax Invoice, collected by the Supplier and paid over to the Government or Taxing Authority entitled thereto in accordance with the Law of the appropriate jurisdiction.
- (d) Where an amount of GST in paragraph 16.3(a) payable in Australia is expressed in a currency other than AUD that amount will be translated to AUD in a manner approved by the Commissioner and the translation rate or translated amount will be specified in the Tax Invoice provided to the Recipient.

- (e) Where any amount, consideration, price or payment under this Agreement is determined by reference to a cost or liability incurred by a Party (reimbursable expense) that amount, consideration, price or payment will be the actual amount incurred by such Party less the amount of any GST Input tax credit which such Party, an agent, related entity, representative, group member or joint venture operator is entitled in respect of that cost or liability. The relevant Party or other entity will diligently Claim such entitlement.
- (f) A term or word relating to GST not separately defined elsewhere herein will have the meaning set out in the GST Act.

#### 16.4 Withholding

- (a) The Company will not be liable to the Supplier for any sum otherwise payable to the Supplier which the Company has withheld from payment or paid to the Taxing Authority entitled thereto in accordance with any Law or regulation imposed by the Government or applicable Taxing Authority. Payment of an amount so withheld to the appropriate Government or Taxing Authority will be deemed payment duly made to the Supplier. Production of any notice of payment, remittance advice or receipt or any duplicate or facsimile will be conclusive proof of such payment as between Company and the Supplier.
- (b) The Supplier will obtain from the Government or applicable Taxing Authority any receipt for or annual assessment of payment of Tax under this clause 16.4.
- (c) The Supplier will defend, indemnify and hold harmless the Company from and against any fine, penalty, interest and similar charge which may be attributed to, be imposed on or asserted against the Company by reason of a failure or an alleged failure of the Supplier to comply fully with the withholding Tax requirements of the Law.
- (d) The Supplier will withhold, pay and report to the applicable Taxing Authority any Tax required by an applicable Law to be withheld or paid by, for or on account of subcontractors.

#### 16.5 Customs Tax

- (a) Imports
  - (i) The Supplier will import all items (Items) which are not already in the applicable jurisdiction and which it is required to furnish for its performance of this Agreement subject to all provisions which grant the Supplier an exemption from or reduction of any local Customs Tax or other charges on such items (collectively and individually referred to as Exemption). The Supplier will not perform or omit any act which is prejudicial to such exemption. The Supplier will be responsible for obtaining permits and licenses and clearing customs for such items. All other charges related to routine port clearances such as pilotage, agent fees, handling charges and port dues will be for the Supplier's account. All temporary export bonds will be administered by and at the sole cost of the Supplier.
  - (ii) For the purposes of this clause 16.5, Items includes:
    - (A) Supplier equipment, including associated consumables;
    - (B) materials, equipment, consumables, spare parts, construction equipment or anything else necessary to effect rework, repairs or replacements under warranty or guarantee or due to any act, omission or default of any member of the Supplier Group and during the Warranty Period; and
    - (C) personal effects of Supplier Personnel
- (b) Exemptions and refunds
  - (i) The Supplier will apply for all exemptions or refunds of Customs Tax for which it is entitled to Claim reimbursement from the relevant Taxing Authority and will apply for all rebates and remissions to which it is, or may become, entitled. If any such duties or charges were paid, borne or reimbursed by the Company, upon receipt of a refund, credit or setoff, the Supplier

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will immediately reimburse the Company accordingly for the full amount of such refund, credit or setoff.

(ii) The Supplier will pay all costs, fees, charges or expenses relating to or resulting from obtaining exemptions, rebates, refunds, credits or setoffs or other privileges.

**(c) Reimbursement**

Where an Exemption is not available, through no fault of the Supplier, then the Company will reimburse the Supplier for the actual documented cost of any Customs Tax other than GST for the items which are paid by the Supplier to a duly authorised representative of the relevant Taxing Authority having jurisdiction over this Agreement provided the Company has approved such costs in advance and payment of such costs by the Supplier is substantiated with each invoice.

**(d) Re-export of Supplier equipment and materials**

If the Exemption for the items includes the obligation to re-export, the Supplier will diligently comply with such obligation.

**(e) Export licences**

The Supplier will obtain all required export licences from the country or export and/or country of origin of equipment, materials, supplies and technical data exported by the Supplier.

**(f) Indemnification**

If the Supplier's action or failure to diligently act pursuant to this clause 16.5 results in the Company not receiving the full benefit of or otherwise prejudices any available Exemption, or results in failure to obtain the required customs clearance or import/export licences, the Supplier will reimburse the Company for and indemnify the Company against any Loss arising out of such action or failure to act, as well as any Tax imposed on the Company as a consequence of such reimbursement and indemnification.

## 16.6 Concessions and Exemptions

(a) Subject to all applicable Laws and regulations the Supplier will cooperate with the Company to correctly report the amount of any applicable Tax and the Supplier will not take any action prejudicial to obtaining an available Tax concession, exemption, reduction or saving.

(b) Where the Supplier is entitled to claim a Tax concession, exemption, reduction or saving that may affect any obligations of the Company, the Supplier will promptly notify the Company and provide Company with any exemption Documentation reasonably required by the Company.

## 16.7 Protest Rights

(a) The Supplier will promptly and timely notify the Company of any threatened, pending or actual assessment of GST or similar Tax, excise or similar Tax, or any Customs Tax or other Tax for which the Supplier may seek reimbursement from the Company.

(b) For the purposes of this clause 16.7 'promptly and timely' means advanced notice so that the Company has sufficient time and reasonable opportunity to appeal, object, protest or litigate the pending or actual assessment in an appropriate venue. At the Company's request and cost, the Supplier will immediately initiate any appeal, objection, protest or litigation in the Supplier's own name where the Supplier is the only Party that can initiate such action. The Supplier will cooperate and assist the Company in relation to any requested action.

(c) To the extent that the Supplier fails to give prompt and timely notice for any cause, the Company has no obligation to, and will not, reimburse the Supplier for that Tax or cost.

## 17 CONFIDENTIALITY

### 17.1 Treatment of Confidential Information

Each Party acknowledges that the Confidential Information of the other Party is valuable to the other Party. Each Party undertakes to keep the Confidential Information of the other Party secret and to protect and preserve the confidential nature and secrecy of the Confidential Information of the other Party.

### 17.2 Use of Confidential Information

A recipient of Confidential Information may only use the Confidential Information of the discloser for the purposes of performing such recipient's obligations or exercising such recipient's rights under this Agreement.

### 17.3 Disclosure of Confidential Information

A recipient of Confidential Information may not disclose Confidential Information of the discloser to any person except:

(a) representatives, legal advisers, auditors and other consultants of the recipient who require it for the purposes of this Agreement ("Representatives");

(b) with the prior written consent of the Discloser;

(c) if the recipient is required to do so by law or a stock exchange; or

(d) if the recipient is required to do so in connection with legal proceedings relating to this Agreement.

### 17.4 Disclosure by Recipient

A recipient disclosing information under clause 17.3(a) or 17.3(b) must ensure that persons receiving Confidential Information from it are aware it is Confidential Information and do not disclose the information except in the circumstances permitted in clause 17.3.

### 17.5 Return of Confidential Information

Subject to clause 17.6, on the request of the discloser of Confidential Information, the recipient must immediately deliver to the discloser all documents or other materials containing or referring to the discloser's Confidential Information which are:

(a) in the recipient's possession, power or control; or

(b) in the possession, power or control of persons who have received Confidential Information from the recipient under clause 17.3(a) or 17.3(b).

### 17.6 Exceptions

The obligation in clause 17.5 does not apply to:

(i) Confidential Information of the discloser that the recipient requires in order to perform its obligations under this Agreement;

(ii) board or board committee minutes or papers;

(iii) any other materials required by law to be retained by the recipient or its Representatives or retained as a result of an automated data back-up system used in the ordinary course of business to which users would not normally have access in the ordinary course of business; or

(iv) where such documents are required to be retained for the purpose of applicable professional standards, practices codes or insurance policies

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## 18 INTELLECTUAL PROPERTY

### 18.1 Ownership and Use of Intellectual Property Rights

The Parties agree that other than as provided in this clause 18, nothing in this Agreement transfers ownership in, or otherwise grants any rights in, any Intellectual Property Rights of a Party.

### 18.2 New Material

The Supplier:

- (a) assigns, and must procure that all members of the Supplier Group assign, to the Company on the later of the date of execution of this Agreement and creation all of the Intellectual Property Rights throughout the world in the New Material and will obtain any Moral Rights waivers and consents necessary to allow the Company to freely use, modify and exploit that New Material; and
- (b) will do all things necessary to effect the assignment of all Intellectual Property Rights in the New Material to the Company including executing and delivering documents.

### 18.3 Licence to New Material

The Company grants to the Supplier a non-transferable, non-exclusive, royalty-free licence for the term of this Agreement to use the New Material for the sole purpose of performing its obligations under this Agreement.

## 19 PRIVACY

- (a) Each Party agrees to comply with all applicable Laws relating to privacy and protection of any information relating to identifiable individuals (and includes all information relating to individuals) that is protected by applicable Laws that are obtained by or disclosed to them pursuant to this Agreement.
- (b) In addition to its obligations under paragraph 19(a), the Supplier agrees to:
  - (i) only collect, use, disclose or process the Company's Personal Data for the purposes of providing the Supply under this Agreement, and as directed by the Company;
  - (ii) immediately notify the Company if:
    - (A) an individual complains to the Supplier that the Company's Personal Data has been inappropriately handled; or
    - (B) the disclosure of the Company's Personal Data is or may be required by law;
  - (iii) put into place and maintain appropriate technical, physical and organisational measures to protect against the accessing, processing and disclosure of the Company's Personal Data.

## 20 CORRUPT PAYMENTS

The Supplier must:

- (a) at all times comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and improper payments including but not limited to the *Criminal Code Act 1995* (Cth) (Australia), the *Criminal Code Act 1974* (PNG) and the *Bribery Act 2010* (United Kingdom) (Relevant Requirements); and
- (b) have and maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Relevant Requirements, to ensure compliance with the Relevant Requirements, and enforce them where appropriate.

## 21 GENERAL PROVISIONS

### 21.1 Relationship of the Parties

Unless this Agreement expressly provides otherwise, nothing in this Agreement may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

### 21.2 Time of the Essence

In this Agreement, time is of the essence as it relates to the obligations or Agreements of the Supplier unless otherwise stipulated.

### 21.3 Entire Understanding

- (a) This Agreement contains the entire understanding between the Parties concerning the subject matter of the Agreement and supersedes all prior communications between the Parties.
- (b) Each Party acknowledges that, except as expressly stated in this Agreement, that Party has not relied on any representation, warranty or undertaking of any kind made by or on behalf of another Party in relation to the subject matter of this Agreement.

### 21.4 No Adverse Construction

This Agreement is not to be construed to the disadvantage of a Party because that Party was responsible for its preparation.

### 21.5 No Recovery for Consequential or Indirect Loss

Notwithstanding any other provision of this Agreement, no Party is entitled to recover any amount representing any kind of indirect or consequential loss or damage including loss of profit, loss of use, loss of contracts or loss of revenue arising out of or in connection with this Agreement.

### 21.6 Advertising, Publicity and Unauthorised Use of Company's Name

The Supplier shall not without the Company's prior and express written consent make any statement nor publish or release to any other person any photograph, advertisement, testimonial, letter of commendation or approval, or any other document or written matter which might imply the Company's approval of the products, services, actions or performance of the Supplier including information on any contract award made by the Company to the Supplier.

### 21.7 No Waiver

- (a) A failure, delay, relaxation or indulgence by a Party in exercising any power or right conferred on the Party by this Agreement does not operate as a waiver of the power or right.
- (b) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Agreement.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

### 21.8 Severability

Any provision of this Agreement which is invalid in any jurisdiction shall in relation to that jurisdiction:

- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) be severed from this Agreement in other case,
- (c) without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

**21.9 No Variation**

This Agreement cannot be amended or varied except in writing signed by the Parties.

**21.10 Governing Law and Jurisdiction**

- (a) This Agreement is governed by and shall be construed in accordance with the Laws in force in the State of Queensland, Australia.
- (b) The Parties submit to the non-exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.

**21.11 Order of Precedence and Conflict in Documents**

If any conflict exists between i) any applicable Special Conditions, the Purchase Order Terms and Conditions of Service contained herein, iii) Schedules & Exhibits iv) any purchase order or other documentation of Supplier, then the documents described in i) will take precedence over the documents described in ii), iii) and iv), and the documents described in ii) take precedence over the documents described in iii) and iv) and the documents described in iv) unless the parties have otherwise expressly agreed in writing.

**21.12 Assignment**

- (a) The Supplier may not assign this Agreement in whole or in part, or any part of the Goods without the prior written consent of the Company, which consent shall not be unreasonably withheld.
- (b) The Company has at all times the right to assign in whole or in part its right and obligations under this Agreement to its Affiliate, without the consent of the Supplier. An assignment by the Company to a person or corporation other than its Affiliate or to one of the Co-Venturers may only be made with the prior written consent of the Supplier which will not be unreasonably withheld.

**21.13 Electronic Signature**

The Supplier consents to the use of electronic signatures in the execution of this Agreement by the Company, and any other related documents requiring a signature. The Supplier agrees not to object to the admissibility of this Agreement on the grounds that it is in the form of a paper copy of a document bearing an electronic signature, or that it is not in its original form or is not an original.

**21.14 Non-Exclusivity**

Notwithstanding any term in this Agreement, the Company reserves the right to enter into any negotiations, arrangements or Agreements with any person and entity (other than the Supplier) for the purchase or Supply of the same or similar Goods or Services to the Goods or Services contained or referred to in this Agreement without being liable to Supplier in any way whatsoever. For the avoidance of doubt this Agreement does not create an exclusive relationship between the Supplier and the Company.