

General Terms & Conditions

1 Definitions

In this Agreement, unless the contrary intention appears:

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

Associate means any of your advisers, agents, contractors, subcontractors, consultants, employees or officers who are working with or on, or are otherwise involved with the provision of the Goods and/or Services.

Authorised Signatories means the designated representative of each Party duly authorised.

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

Confidential Information means any and all information in any form that relates, directly or indirectly, to our business or affairs or the business and affairs of any of our Related Bodies Corporate and Confidential Information includes a Confidential Memorandum.

Confidential Memorandum means any correspondence, note, memorandum, record, report, financial information, interpretation, forecast, analysis, calculation, assessment, survey, business plan, study, process, drawing, specification, formula, circuit layout, computer program, computer record, material or any other means by which information may be stored or reproduced, which contains, reproduces, is based upon, utilises or relates to the Confidential Information.

Defective Goods means goods which are not in conformity with this Agreement.

Defective Services mean Services or the results of any Services which are not in conformity with this Agreement.

Goods means the goods you agree to provide to us as specified in this Agreement (including any part of the goods specified).

GST has the same meaning as in the GST Act.

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

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

Intellectual Property Rights includes, without limitation, all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, know-how, Confidential Information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Licenses means all licences, qualifications, registrations and other statutory requirements necessary for the supply of Goods and/or Services under this Agreement.

month means a calendar month.

Party means you or us and **Parties** means you and us.

Price means the price specified in the Purchase Order, or as otherwise agreed with us.

Purchase Order means the Purchase Order for Goods and/or Services issued by us to you from time to time containing amongst other things, a description of the Goods and/or Services and the Price.

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth).

Related Entities has the same meaning as is given to the term in the *Corporations Act 2001* (Cth).

Services means the services agreed to be provided to us and specified in this Agreement (including any part of the specified services and the results of the specified services).

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

Tax Invoice has the same meaning as in the GST Act.

you means the person named in this Agreement as the supplier of the Goods and/or Services and "your" has the corresponding meaning.

Warranty Period means

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

we and **us** means the entity set out in the Purchase Order and any of our Related Bodies Corporate which elect to take the benefit of this Agreement in accordance with clause 21.1 and “our” has the corresponding meaning.

2 Supply of Goods and/or Services

- 2.1 You must supply the Goods and/or Services to us in accordance with this Agreement.
- 2.2 In the event of any ambiguity or uncertainty in respect of a Purchase Order, such ambiguity or uncertainty must be referred to us immediately and a corrected Purchase Order obtained prior to delivery. Incorrect delivery in accordance with a Purchase Order containing an ambiguity or uncertainty will be at your own risk as we will make payment on our own interpretation of the ambiguous or unclear provision and may reject delivery if it is not as required by us.

3 Conditions as to quality and description of the Goods and/or Services

- 3.1 The Goods and/or Services must match the description (including performance criteria) in the Purchase Order.
- 3.2 If you gave us a sample of the Goods before we issued the Purchase Order, the Goods must correspond with the sample in addition to matching the description.
- 3.3 If you provided us with a demonstration of the Services before we issued the Purchase Order, the Services must correspond in nature and quality with the Services demonstrated.
- 3.4 If you showed us a result achieved by the Services before we issued the Purchase Order, the Services must correspond in quality with the Services that achieved that result.
- 3.5 The Services must be performed by appropriately qualified, competent, skilled, experienced and professional personnel and must be rendered with due care and skill.
- 3.6 The Goods and/or Services must comply with any applicable legislation and relevant standard of the Standards Association of Australia, and must be supplied with copies of all material safety data sheets for dangerous goods.
- 3.7 The Goods and/or Services must be fit for the purpose for which goods or services of the same kind are commonly supplied or bought and for any other purpose which we made known to you.
- 3.8 The Goods must be new and of merchantable quality (unless otherwise specified in the Purchase Order).
- 3.9 If you supply more Goods than specified in the Purchase Order, then the excess may be returned to you at your cost.

4 Delivery

- 4.1 Unless otherwise specified, you are responsible for ensuring that the Goods are properly and safely packed and delivered (including off-loading) to the place (within the time period) specified in the Purchase Order. If no time period is specified in the Purchase Order, the order is for delivery within 24 hours of receipt of the Purchase Order.
- 4.2 If the Goods and/or Services have not been delivered by the time specified in the Purchase Order or this Agreement, we may cancel or amend that Purchase Order without incurring any liability to you for damages or otherwise as a result of such cancellation or amendment, and without prejudice to our rights including the right to recover damages we may have suffered.
- 4.3 No deliveries will be accepted outside of the agreed delivery time. In no circumstances will you have any claim in respect of damages or losses arising directly or indirectly from rejection by us of a delivery outside the agreed delivery time.
- 4.4 In the event that you are not in a position to comply with a Purchase Order whether in respect of the quantity of the Goods and/or Services, time of delivery or otherwise, you are required to notify us immediately and delivery should not be executed before a suitable amendment to the Purchase Order is made by us. We may in such circumstances either cancel or amend the Purchase Order.
- 4.5 You must include a packing list in each package of Goods delivered.

5 Inspection and acceptance

- 5.1 We must have a reasonable time to inspect the Goods after delivery. Payment for the Goods or the signing of delivery receipts before inspection does not constitute acceptance of the Goods.
- 5.2 You must provide to us, at our request, progress reports on the performance of the Services. A progress report must be detailed enough to allow us to ascertain whether the Services are in conformity with this Agreement.
- 5.3 At any time during the performance of the Services we may inspect or witness tests on the Services or their results.
- 5.4 If upon inspection we find any Goods to be Defective Goods or any Services or their results to be Defective Services, we may:
 - (a) reject the Defective Goods by returning them to you;
 - (b) reject the Defective Services by notifying you that we are rejecting them;

- (c) repair the Defective Goods; or
- (d) make good the Defective Services.

- 5.5 We may reject and return to you (in the case of Goods) any Goods and/or Services which are not in conformity with this Agreement even if we have accepted or paid for those Goods and/or Services.
- 5.6 You must reimburse us for any expenses we incur in returning or repairing Defective Goods and in making good Defective Services.
- 5.7 You must refund to us, when requested, any payments made by us in respect of Goods and/or Services which we reject.

6 Performance of the Services

- 6.1 You must, in performing the Services:
- (a) use your best endeavours not to interfere with any of our activities, or the activities of any other person, on our premises;
 - (b) comply with, and ensure that your employees, agents, contractors and subcontractors comply with:
 - (i) all applicable laws, regulations and industrial awards and agreements;
 - (ii) all safety, health and environment guidelines, rules and procedures provided to you by us; and
 - (iii) all directions and orders given by our representatives; and
 - (c) ensure that our premises are left secure, clean, orderly and fit for immediate use.
- 6.2 You warrant that you and all Associates have all necessary qualifications and requisite skills to carry out the Services.

7 Title and risk

- 7.1 Title to and risk in the Goods does not pass to us until:
- (a) we take delivery of the Goods; and
 - (b) we inspect and accept the Goods.
- 7.2 You warrant that:
- (a) you have complete ownership of the Goods free of any liens, charges and encumbrances and will provide the Goods to us on that basis; and
 - (b) we will be entitled to clear, complete and quiet possession of the Goods.

8 Site rules

- 8.1 Prior to providing any Services at our site or premises, you must ensure that all Associates, employees, agents, contractors and subcontractors required to work on the site or premises under this Agreement have attended the appropriate inductions (as specified by us).
- 8.2 During performance of the Services at our site or premises you must comply and you must ensure that your employees, agents, contractors and subcontractors must comply with all of our procedures, regulations and Site Rules and Regulations (as notified by us).

9 Price

- 9.1 We agree to pay you the Price in accordance with this Agreement for the Goods and/or Services.
- 9.2 The Price is inclusive of all costs incurred by you in supply of the Goods and performance of the Services including all charges for packaging, packing, insurance and delivery of the Goods in accordance with this Agreement and the cost of any items used or supplied in conjunction with the Services. The Price is also inclusive of all duties and taxes except GST.
- 9.3 The Price may not be increased without our prior consent. We have the right to refuse to give our consent.
- 9.4 In the event that the Price reflected in the Purchase Order is incorrect, you must notify us and ensure that an amended Purchase Order reflecting the correct Price is obtained prior to delivery. Payment must be made as per the Price reflected on the copy of the Purchase Order in possession by us.

10 Invoicing and payment

- 10.1 You must submit invoices to us, no earlier than (as applicable):
- (a) upon delivery and acceptance as set out in clause 7.1 of the Goods, unless we specifically agreed to make a partial or full upfront down payment in which case the invoice should reflect the

amount we agreed to pay upfront;

- (b) at the completion of the Services, unless the Purchase Order states that progress payments are to be made; and
- (c) where progress payments are to be made for the provision of Services, at the end of each month (or other period specified in this Agreement) for Services performed by you in that month or that period (as the case may be).

An invoice may not be submitted by you for Services yet to be provided.

- 10.2 When submitting your invoice under clause 10.1 you must provide us with all relevant records to enable us to calculate and verify the amount of the invoice, including Purchase Order number, line item number, part number and description of the Goods and/or Services.
- 10.3 Subject to clause 18.3, we will pay all invoices rendered to us by you under clause 10.1, 30 days from the month end of the date of the invoice, except where we dispute the invoice, in which case:
 - (a) we will pay the undisputed part of the relevant invoice (if any) and dispute the balance; and
 - (b) if the resolution of the dispute determines that we are to pay an amount to you, we will pay that amount upon resolution of that dispute.
- 10.4 No interest or any other monies will be payable by us in respect of any invoice rendered to us by you under clause 10.1 which remains due and payable and unpaid.
- 10.5 We will not be obliged to pay an invoice which you submitted more than 180 days after the dates set out in clause 10.1, unless you can show reasonable cause for such delay.
- 10.6 We may reduce any payment due to you under this Agreement by any amount for which you are liable to us, including costs, charges, damages and expenses. This does not limit our right to recover those amounts in other ways.
- 10.7 Unless otherwise agreed, any money payable to you is to be paid in Australian currency.
- 10.8 If the Purchase Order involves the supply of Services on a cost plus or per hour basis we have the right to conduct an audit of the basis of your charges using your records. This right continues for twelve months after we pay the relevant invoice.

11 Termination

- 11.1 Either Party may immediately terminate this Agreement by notice in writing to the other Party if the other Party:
 - (a) breaches any term under this Agreement and such breach is not remedied within 14 days of notice being given to the Party to remedy the breach;
 - (b) breaches any law relating to the supply of the Goods and/or Services;
 - (c) becomes Insolvent; or
 - (d) is convicted of a criminal offence.
- 11.2 In addition to any other rights of termination available to us, we may terminate this Agreement by giving one month written notice to you. If we terminate this Agreement in accordance with this clause 11.2 you release us from any further liability or obligation to you in connection with such termination, save as set out in clause 11.4.
- 11.3 In addition to clauses 11.1 and 11.2, we may terminate this Agreement with immediate effect by notice in writing to you, if any information supplied by you relating to the Purchase Order, your details or any other material fact, are incorrect.
- 11.4 If we terminate this Agreement under clause 11.2, we must reimburse you for all work in progress or Goods and/or Services completed and delivered to us in accordance with clause 7.1 and expenses incurred up to the date of the notice of termination under clause 11.2, which cannot be reversed or mitigated by you applying best efforts.
- 11.5 If this Agreement is terminated pursuant to clauses 11.1, 11.2 or 11.3, you must cease the supply of the Goods and/or Services the subject of the relevant Purchase Order and immediately return to us, or destroy or delete, as we direct, all originals and copies of the Confidential Information in your custody, power or control, including by deleting all Confidential Information from any computer or other storage device into which it was programmed, recorded or stored by you or on your behalf. You must deliver all Goods and/or Services in progress or completed as we may request.
- 11.6 Unless expressly stated otherwise, termination for any reason does not affect the rights of a Party that arise before the termination, or as a consequence of the event or occurrence giving rise to the termination, or as a consequence of the breach of any obligation under this Agreement which survives termination and termination does not affect the rights a Party may have under Common Law.

12 Independent contractor

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

13 Warranties

- 13.1 You warrant that the Goods or Services will:
 - (a) be free from any defect in design, performance, workmanship and makeup;

- (b) be rendered with due care and skill and be of high quality and workmanship and otherwise satisfactory;
 - (c) be fit for the purpose intended by us and disclosed to you;
 - (d) free from any claim of any nature by any third party;
 - (e) not infringe or contribute to the infringement of any Intellectual Property Rights; and
 - (f) without limiting the foregoing, conform with this Agreement for the Warranty Period.
- 13.2 If, during the Warranty Period, we find any of the Goods to be Defective Goods or any of the Services or their results to be Defective Services, we may, at our option do one or more of the following:
- (a) return the Defective Goods to you;
 - (b) reject the Defective Services by notifying you that we are rejecting them;
 - (c) make good the Defective Goods; or
 - (d) re-perform or make good the Defective Services.
- 13.3 At our option and request, you must:
- (a) repair free of charge or, at our option, replace free of charge any Defective Goods that we return to you;
 - (b) re-perform free of charge or make good free of charge any Defective Services that we reject; or
 - (c) reimburse us for any expenses we incur in making good any Defective Goods and/or Services, during the Warranty Period.
- 13.4 Any:
- (a) repairs or replacement Goods provided by you under this clause 13 are subject to the same warranty as the original Goods, as from the date of repair or replacement; and
 - (b) Defective Services that are re-performed or made good by you under this clause 13 are subject to the same warranty as the original Services, as from the date of re-performance or the date on which the Defective Services were made good.
- 13.5 You are not liable for any defect or fault in the Goods and/or Services that is caused by our negligence or the negligence of our employees.
- 13.6 You warrant that any information supplied by you relating to the Purchase Order, Goods and/or Services and your details are true and correct.
- 13.7 You must:
- (a) not infringe or contribute to the infringement of any of our Intellectual Property Rights;
 - (b) do all things and take all action as may be necessary to preserve and protect any of our Intellectual Property Rights that may be in your custody, possession or control; and
 - (c) not be a party, directly or indirectly, to the doing of any act, matter, commission or thing whereby any of our Intellectual Property Rights may be endangered, jeopardised or prejudicially affected in any manner whatsoever.
- 13.8 The remedies provided in this clause 13 do not exclude any other remedies provided by law.

14 Insurance

- 14.1 You at your own expense must procure and maintain the insurances set out in this clause 14.
- 14.2 **(Workers compensation)** You must:
- (a) insure and keep insured against all claims and liabilities, whether arising in common law or under any statute arising out of death of, or injury to, persons employed (or deemed to be employed) by you in connection with the Services; and
 - (b) provide common law liability cover for an amount not less than \$50,000,000 in relation to any once occurrence and unlimited as to the number of occurrences.
- 14.3 The workers compensation and employers liability insurance must:
- (a) comply with all statutory requirements including providing compulsory statutory workers compensation benefits;
 - (b) include an indemnity extension under both the *Workers Compensation and Injury Management Act 1981 (WA)* and at common law, in favour of us, our Related Entities, and our respective employees;
 - (c) include a waiver of subrogation in favour of the us, our Related Entities, and our respective employees; and

(d) include an industrial disease common law extension.

14.4 **(Public and products liability)** You must:

(a) maintain public and products liability insurance covering legal liability to pay compensation for:

- (i) bodily injury, death, sickness or disease to any person; and
- (ii) loss, destruction or damage to real or personal property (including resultant loss of use),

arising directly or indirectly from the Services performed by you or any Associate.

14.5 The public and products liability policy must:

(a) include a minimum policy limit of \$50,000,000 for any one occurrence (and in the aggregate with respect to products liability);

(b) include products liability coverage for the supply, sale, or distribution of products associated with the Services;

(c) include an indemnity extension indemnifying us, our Related Entities, and our respective employees;

(d) include a cross liability clause which confirms:

- (i) insurers accept the term "Insured" as applying to each of the parties constituting the Insured as if a separate policy of insurance had been issued to each of them (subject always to the overall limit of liability not being increased); and
- (ii) that a failure by any Insured party to observe and fulfil the terms and conditions of the policy will not prejudice the rights of any other Insured party to claim under the policy;

(e) extend to cover goods in your physical and legal control;

(f) extend to cover liability in respect of third party property damage or personal injury arising from the use of unregistered plant and equipment; and

(g) where applicable, extend to cover liability in respect of all activities underground.

14.6 **(Plant and equipment)** You must maintain insurance in respect of all plant, equipment and other property:

(a) owned, operated or controlled by you or any Associate; or

(b) for which you are responsible which you bring to, or use on, our site or premises, including transit risk; or

(c) at other places where the Services are performed,

for not less than the market value of the plant and equipment.

14.7 The plant and equipment insurance policy must:

(a) include legal liability coverage for road registered plant and equipment to a limit of not less than \$30,000,000 for any one occurrence and unlimited as to the number of occurrences in any one period of insurance;

(b) include an indemnity extension indemnifying us, our Related Entities and our respective employees;

(c) include a cross-liability clause which confirms:

- (i) insurers accept the term "Insured" as applying to each of the parties constituting the Insured as if a separate policy of insurance had been issued to each of them (subject always to the overall limit of liability not being increased); and
- (ii) that a failure by any Insured party to observe and fulfil the terms and conditions of the policy will not prejudice the rights of any other Insured party to claim under the policy;

(d) include a blanket waiver of subrogation of your rights in favour of us, our Related Entities, and our respective employees; and

(e) where applicable, extend to cover plant and equipment whilst underground.

14.8 **(Motor vehicle and third party liability)** You must maintain comprehensive motor vehicle insurance in respect of all vehicles:

(a) owned, operated, leased, hired, or controlled by you or any Associate; and

(b) registered, or required to be registered, in accordance with the law,

which are used (or to be used) on any road at any time in connection with the Services.

14.9 The motor vehicle insurance policy must:

- (a) include coverage for liability in respect of third party property damage or personal injury to a minimum limit of \$30,000,000;
 - (b) provide cover for material damage to all vehicles for not less than their market value;
 - (c) include an indemnity extension indemnifying us, our Related Entities, and our respective employees;
 - (d) include a cross liability clause which confirms:
 - (i) insurers accept the term "Insured" as applying to each of the parties constituting the Insured as if a separate policy of insurance had been issued to each of them (subject always to the overall limit of liability not being increased); and
 - (ii) that a failure by any Insured party to observe and fulfil the terms and conditions of the policy will not prejudice the rights of any other Insured party to claim under the policy;
 - (e) include a waiver of subrogation in favour of us, our Related Entities and our respective employees;
 - (f) where applicable, extend to cover motor vehicles while underground; and
 - (g) include bodily injury gap coverage arising from the use of registered motor vehicles not otherwise covered by compulsory third party insurance.
- 14.10 **(Professional indemnity)** If you are providing Services, you must maintain professional indemnity insurance covering liability arising from an act, error or omission by you and any Associate in relation to the performance of professional activities, services and duties in connection with the Services.
- 14.11 The professional indemnity policy must:
- (a) include a minimum policy limit of \$10,000,000 for any one claim and \$10,000,000 in the aggregate for all claims arising from the same event or related and similar events;
 - (b) include an automatic reinstatement of the policy limit;
 - (c) include an 'unlimited' retroactive date; and
 - (d) remain in force for a minimum of seven years after the Services are completed under this Agreement.
- 14.12 **(Industrial disease)** You must maintain an industrial disease insurance policy:
- (a) as issued by the Insurance Commission of WA; and
 - (b) in accordance with the provisions of the *Workers Compensation and Injury Management Act 1981* (WA).
- 14.13 **(Travel, medical and evacuation)** You must maintain travel, medical and medical evacuation insurance for your employees and Associates travelling on an assignment as part of your activities, Services, or project, including visits to our site or premises.
- 14.14 **(General requirements)** General requirements as to the insurances to be effect by you:
- (a) You must ensure that every subcontractor engaged by you maintains insurance in the same manner as you.
 - (b) You must before commencing the provision of Goods and/or Services, lodge with us certificates of currency to evidence the existence of the policies required to be arranged by you and your subcontractors in respect of such insurance.
 - (c) The insurances arranged by you and your subcontractors must:
 - (i) be underwritten by a reputable insurer;
 - (ii) be subject to approval by us as to the adequacy and terms of insurance protection required and their continued existence;
 - (iii) be governed by the law of Western Australia;
 - (iv) not be materially altered, cancelled or permitted to lapse by, or on your behalf, without our prior approval, and you must provide all such documentation, information and assistance as may be required by us in this regard.
 - (d) The sole responsibility for ensuring that insurance to be arranged by you and any subcontractor is actually effected and at all times remains current, will at all times remain with you.
 - (e) No approval by us as to the adequacy in terms of insurance protection nor sighting by us of certificates of currency or copies of policies will be taken as a representation by us, that such insurance is adequate or be raised or pleaded in bar to any action against you for default in performing in any of the requirements under this clause 14.
 - (f) You must at all times be responsible for complying with and abiding by the terms and conditions of the insurances arranged by you and for the payment of all excesses or deductibles under the terms of such insurances.

- (g) You must immediately advise us of any change or cancellation of any insurance referred to in this clause 14.
- (h) The effecting of insurance as required under this clause will not in any way limit the obligations or responsibilities of you under this Agreement.
- (i) If you fail to effect or to keep in force any of the insurances which it is required by this Agreement to effect, we may, but will not be obliged to:
 - (i) effect and keep in force any such insurance and pay such premiums as may be necessary for that purpose; and
 - (ii) recover as a debt due from you the amount so paid; or
 - (iii) refuse payment upon any certificate or claim until the insurance policies and receipt for payment of premiums are made available for inspection by us.

15 Liability and indemnities

- 15.1 You acknowledge that if you enter our premises, you do so at your own risk. You must ensure that your employees, agents, contractors and subcontractors are also aware that they enter our premises at their own risk.
- 15.2 You are liable for and must indemnify us and keep us indemnified from and against any liability and any loss or damage of any kind whatsoever, arising directly or indirectly from:
- (a) any breach of any provision of this Agreement by you, including your failure to maintain the insurances required under clause 14 or a repudiation by an insurer of a claim arising from an insurance covered under clause 14, due to your acts or omissions;
 - (b) the illness, injury or death of any of your employees, agents, contractors or subcontractors arising out of or in connection with this Agreement;
 - (c) any loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind caused or contributed to by:
 - (i) the Goods or the Services; or
 - (ii) the entry onto, and the activities undertaken on and in, our premises by you or your employees, or Associates;
 - (d) any criminal act, fraud, negligence or wilful act or omission by you or any of your employees, or Associates in connection with this Agreement;
 - (e) any claim made against us by any of your employees, or Associates in respect of any relevant legislation concerning income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal;
 - (f) any penalty imposed for breach of an applicable law in connection with the supply of the Goods or performance of the Services by you;
 - (g) loss or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by you and used in relation to this Agreement; and
 - (h) any claim that the Goods, the Services or the results of the Services, anything you do in supplying us with the Goods or the Services, or our use of the Goods or the results of the Services infringes or allegedly infringes the Intellectual Property Rights of any person.
- 15.3 Every exemption, limitation, defence, immunity or other benefit contained in this Agreement to which we are entitled, will extend to protect, each of our employees, agents, contractors and subcontractors (excluding you or any Associates) and our Related Bodies Corporate and their respective employees, agents, contractors and subcontractors (excluding you or any Associates).
- 15.4 Each indemnity in this Agreement is a continuing obligation separate and independent from your other obligations and survives termination or expiry of this Agreement.
- 15.5 It is not necessary for us to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.
- 15.6 Subject to clause 15.7, neither Party is liable to the other Party under or in connection with this Agreement, any applicable law, at Common Law, in equity, restitution or otherwise for loss of use, loss of revenue, loss of profit, loss of product or production, business interruption, loss of business opportunity, loss of savings, loss of use of capital or loss of goodwill (together **Indirect Loss**) arising out of or in connection with this Agreement in each case whether or not foreseeable at the date of execution of this Agreement or at any time.
- 15.7 Clause 15.6 does not apply in relation to any Indirect Loss suffered by us that:
- (a) is an insured liability that is recovered under the terms of any policy of insurance required to be effected and maintained by you under this Agreement; or
 - (b) would have been an insured liability recoverable under any policy of insurance which you were obliged to effect and maintain under the Agreement but failed to do so.
- 15.8 This clause 15 survives termination or expiry of this Agreement.

16 Confidentiality

- 16.1 You must:
- (a) keep the Confidential Information secret and strictly confidential;

- (b) not, except as permitted by this Agreement, disclose or permit to be disclosed to any person the Confidential Information, any opinion in respect of the Confidential Information;
- (c) not create or permit to be created any Confidential Information except if that creation is solely for the purpose of supplying of the Goods and/or Services under this Agreement;
- (d) keep the Confidential Information secure and protected from any use, disclosure or access which is inconsistent with this Agreement; and
- (e) immediately notify us of any potential, suspected or actual unauthorised use, copying or disclosure of any Confidential Information.

16.2 You must:

- (a) before disclosing any Confidential Information to any Associate, inform us of the name and address of that Associate to whom it is to be disclosed;
- (b) ensure that each such Associate is made fully aware of your confidentiality obligations under this Agreement;
- (c) procure that all Associates (whether or not still an Associate) strictly observe your obligations under this Agreement as if those obligations were imposed directly on the Associates; and
- (d) give us all assistance we require to take any action or bring any proceedings for a breach of this clause 16.

16.3 You:

- (a) may only disclose and allow access to the Confidential Information to those Associates who strictly need to know the Confidential Information for the purpose of supplying of the Goods and/or Services in accordance with this Agreement and not for any other purpose;
- (b) may use the Confidential Information only for the purpose of supplying of the Goods and/or Services in accordance with this Agreement and not for any other purpose;
- (c) may create or cause or permit to be created any Confidential Information only if that creation is solely for the purpose of supplying of the Goods and/or Services in accordance with this Agreement;
- (d) must not make use of the Confidential Information to our commercial, financial or competitive disadvantage or detriment; and
- (e) must not directly or indirectly attempt to reverse engineer, decrypt, disassemble, decompile, decipher, re-create or reconstruct in any way any Confidential Information except for the purpose of supplying of the Goods and/or Services in accordance with this Agreement.

16.4 You acknowledge that:

- (a) the Confidential Information is our valuable and proprietary information;
- (b) this Agreement does not convey any proprietary or other interest in the Confidential Information to you or any Associate;
- (c) the Confidential Information will not be regarded as being in the public domain by reason only that part of it is public or that information is publicly available which together with other information could be used to produce any Confidential Information;
- (d) damages may not be a sufficient remedy for us for breach of this clause 16 by you and that, subject to the court's discretion, we are entitled to specific performance or injunctive relief (as appropriate) for any breach or threatened breach of this clause 16; and
- (e) your obligations in this clause 16 apply irrespective of the method of disclosure of the Confidential Information, whether in writing, in computer software, orally, by demonstration, description, inspection or otherwise.

16.5 The obligations in respect of the Confidential Information imposed on you by this Agreement do not apply to any Confidential Information that:

- (a) subject to paragraph 16.4(c), is lawfully in the public domain;
- (b) after disclosure to you becomes part of the public domain otherwise than as a result of the wrongful act by you or any Associate;
- (c) is received by you from a third party legally entitled to possess that information and provide it to you; or
- (d) you or any Associate is required to disclose by law or court order or by any government or governmental agency, authority or body, provided that you must first notify, and consult with, us before making any such disclosure and ensure that the disclosure is the minimum required to comply with the applicable law or order.

16.6 If requested by us at any time, you must immediately return to us, or destroy or delete, as we direct, all originals and copies of the Confidential Information in your custody, power or control, including by deleting all Confidential Information from any computer or other storage device into which it was programmed, recorded or stored by or on your behalf.

16.7 You are liable for and must indemnify us in respect of any claim, action, damage, loss, cost, charge and expense which we suffer, incur or are liable for in respect of:

- (a) any breach of this clause 16 by you including any failure by you to ensure compliance by any Associate in accordance with clause 16; or
- (b) any infringement of our rights in respect of the Confidential Information, by you or any Associate.

16.8 This clause 16 survives termination or expiry of this Agreement.

17 Price Sensitive Information

- 17.1 You acknowledge that in the course of providing the Goods and/or Services you may receive Confidential Information, including information which a reasonable person would expect to have a material effect on the price or value of our securities, and the expression "material effect on the price or value" will have the meaning given under section 1042D of the *Corporations Act 2001* (Cth) (**Price Sensitive Information**) affecting us and our clients.
- 17.2 Any disclosure, communication, use or misuse of Price Sensitive Information may have very serious implications for us and you and any of your subcontractors, employees or Associates, including contravention of investigation by the Australian Securities and Investments Commission, possible criminal prosecution and possible civil actions against you and any Associates.
- 17.3 You acknowledge that we have the right to terminate this Agreement without notice if you or any Associate discloses, communicates, uses or misuses Price Sensitive Information without the prior written consent of our board of directors except to the extent that you or any Associate is required by law to disclose, communicate or use it.

18 Taxes

- 18.1 Unless otherwise expressly provided in this Agreement, you must pay all Taxes including sales tax, payroll tax, levies, duties and assessments due in connection with the Goods and/or Services.
- 18.2 If any supply made under this Agreement is or becomes subject to GST, the Party to whom the supply is made (**Recipient**) must pay to the Party making the supply (**Supplier**), as consideration in addition to any consideration payable or to be provided elsewhere in this Agreement, subject to issuing a Tax Invoice, an additional amount on account of GST, such amount to be calculated by multiplying the consideration by the applicable rate of GST.
- 18.3 Any amount in respect of GST payable under clause 18.2 must be paid to the Supplier on or before the last Business Day of the month following the month in which the Recipient receives the Tax Invoice.
- 18.4 If any Party is required to reimburse or indemnify the other Party for a cost, expense or liability (**Cost**) incurred by the other Party, the amount of that Cost for the purpose of this Agreement is the amount of the Cost incurred less the amount of any credit or refund of GST to which the Party incurring the Cost is entitled to claim in respect of the Cost.
- 18.5 This clause 18 survives termination or expiry of this Agreement.

19 Assignment and subcontracting

- 19.1 Subject to clause 19.2, neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party (which may not be unreasonably withheld).
- 19.2 We have the right to assign any or all of our obligations or rights under this Agreement at any time to any one of our Related Bodies Corporate.
- 19.3 You may not subcontract your obligations under this Agreement without our prior written consent. Our consent will be conditional upon the subcontract including provisions that the subcontractor must:
- (a) comply with all relevant terms of this Agreement including, without limitation, the confidentiality obligations in clause 16;
 - (b) not assign or subcontract without our written consent; and
 - (c) effect and maintain insurance on the same terms as you are required to in this Agreement.

20 These terms are exclusive

- 20.1 By supplying the Goods and/or Services referred to in the Purchase Order, you agree to be bound by this Agreement.
- 20.2 Except as may be specifically provided in this Agreement, any terms and conditions contained in, or relating to any other documents, including any of your documents, in respect of the Goods and/or Services are excluded.

21 Other matters

- 21.1 You agree that our Related Bodies Corporate may, by written notice to you, elect to take the benefit of this Agreement as if they were named as parties to it.
- 21.2 In this Agreement unless the contrary appears:
- (a) no rule of contract interpretation applies to the disadvantage of one Party on the basis that it put forward this Agreement or any part of it;
 - (b) a reference to an attachment, annexure or schedule is a reference to an attachment, annexure or schedule to this Agreement and a reference to this Agreement includes an attachment, annexure or schedule;
 - (c) if a period of time is specified and dates from a given day or a day of an act or event, it is to be calculated exclusive of that day;
 - (d) the singular includes the plural and vice versa; and
 - (e) the words "including" and "include" are a reference to "including, but not limited to".
- 21.3 Any of our rights under this Agreement can only be waived by us in writing.

- 21.4 This Agreement may not be varied except in writing signed by the Authorised Signatories of both Parties. Any variation will only be applicable to the specific Purchase Order for which the terms and conditions are varied and will not apply to past or future Purchase Orders nor oblige us to agree to such a variation for any other Purchase Orders.
- 21.5 We may exercise a right, remedy or power in any way we consider appropriate.
- 21.6 If we do not exercise a right, remedy or power at any time, this does not mean that we cannot exercise it later.
- 21.7 To the extent that any inconsistency exists between this Agreement and any terms and conditions as may be set out in an attachment, annexure or schedule, then the terms and conditions as set out in the body of this Agreement prevail to the extent of such inconsistency.
- 21.8 You must obtain at your own expense any necessary Licences or permits and comply with applicable laws in supplying the Goods and/or Services to us.
- 21.9 The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Agreement.
- 21.10 Part 1F of the *Civil Liability Act 2002 (WA)* is excluded from operation with respect to any dispute, claim, action or matter under or in connection with this Agreement.
- 21.11 Special terms and conditions (if any) contained in or attached to a Purchase Order must be and is deemed to be incorporated in this Agreement as if fully set out in this Agreement and in the event that any inconsistency arises between such special terms and conditions and any other provisions of this Agreement, the special terms and conditions will prevail.
- 21.12 If any dispute arises with regard to any matter in connection with this Agreement, we must meet to review such dispute and to arrive at an amicable and negotiated solution with regard to it. If we are unable to negotiate and agree on an amicable settlement of the dispute, within seven days after such meeting, the dispute will be referred to our respective CEO's for resolution.
- 21.13 If the CEO's cannot reach an amicable settlement within seven days after such referral to them, either Party may refer the dispute to arbitration in accordance with and subject to, the Institute of Arbitrators and Mediators Australia Rules for the conduct of Commercial Arbitrations. Notwithstanding the existence of a dispute, each Party must continue to perform the Agreement. For disputes in which the quantum is less than \$50,000, arbitration must take place using the submission of documents alone unless both Parties agree otherwise.
- 21.14 Notwithstanding the institution of arbitration proceedings, either of us may approach a court of law for relief of an urgent nature in circumstances in which such relief cannot be given or cannot urgently be given by the arbitrator.
- 21.15 Intellectual Property Rights, including without limitation all know-how, trade secrets, patents and copyright resulting from the provision of Services by you must vest in us. You must take all necessary steps to ensure that we obtain full legal title in and to such rights.
- 21.16 You will not, without our prior written consent, engage in publicity related to this Purchase Order, or use our name, logo, trade name, trademark, service mark, insignia or any other designation or Intellectual Property Right of us in any manner whatsoever.
- 21.17 You will not pay any commission, fees or grant any rebates to any employee, officer or agent of us nor favour employees, officers or agents of us with gifts and entertainment without our prior written consent.
- 21.18 All notices under the Agreement must be sent to the named individuals at the respective addresses in the Purchase Order, or as amended by each Party in writing. All such notices so addressed will be deemed duly given:
- (a) upon delivery, if delivered by courier or by hand (against receipt); or
 - (b) three days after posting, if sent by certified or registered mail, return receipt requested.

22 Governing law and jurisdiction

- 22.1 This Agreement is governed by the laws of Western Australia, Australia.
- 22.2 Each Party irrevocably submits to the exclusive jurisdiction of the courts of Western Australia and the courts of appeal from them.