

## AGREED TERMS & CONDITIONS

### 1. Defined terms and interpretation

#### 1.1. Defined terms

In this document terms have the meanings given to them in the Agreement Details section, and:

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Brisbane, Queensland.

**Claim** means any claim, proceedings, cause of action or demand, including under common law or under statute, and whether it is present or future, fixed or unascertained, actual or contingent.

**Confidential Information** means the following, whether or not in material form: all information (including information related to Supplier IPR and Customer IPR) disclosed or made available by or on behalf of a party to the other party (including all information disclosed prior to the date of this document); that part of all notes and other records prepared by a party based on, or incorporating, any confidential information (including Supplier IPR or Customer IPR); and the nature of any proposed transaction between the parties (including that the parties have entered into negotiations or discussions in relation to the proposed transaction) and the terms and existence of this document.

**Corporations Act** means Corporations Act 2001 (Cth).

**Customer IPR** means all Intellectual Property Rights of which the Customer is the owner or licensee, and which are disclosed or provided to the Supplier.

**Delivery** means completion of delivery of an Order in accordance with clause 7.5(a)

**Delivery Date** means the date by which an Order is to be ready for collection as specified in the Delivery Schedule or pursuant to clause 7.2 (as applicable).

**Delivery Location** means the Delivery Location set out in the Details.

**Delivery Schedule** means the delivery schedule set out in the Agreement Details.

**Disclosing Party** has the meaning given to that term in clause 15.1(a).

**Dispute** has the meaning given to that term in clause 19(a).

**Dispute Notice** has the meaning given to that term in clause 19(b).

**Force Majeure Event** means an act of God, national emergency, terrorist act, sabotage, flood, storm, earthquake, fire, explosion, civil disturbance, insurrection, riot, war, industrial action, pandemic, or global health event.

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

**Improvement** means any improvement, development, enhancement, modification or derivative of a party's IPR.

**Independent Expert** means an expert appointed pursuant to clause 17.

**Initial Forecast** has the meaning given to that term in clause 4.1(a).

**Insolvency Event** means any of the following events concerning a party, unless the events take place as part of a solvent reconstruction, amalgamation, merger or consolidation on terms approved by the

other party before it takes place and the implementation of the reconstruction, amalgamation, merger or consolidation complies with the terms of the approval: if an application is filed for the winding up of the party or any of its subsidiaries and the application is not dismissed or withdrawn within 15 Business Days of that application being filed; if a receiver, receiver and manager, controller (as defined in section 9 of the Corporations Act), or similar person is appointed to, or the holder of a Security Interest takes (or appoints an agent to take) possession of, or takes steps to exercise a power of sale in respect of any property of the party or any of its Subsidiaries; if a provisional liquidator is appointed to the party or any of its Subsidiaries; if the party or any of its Subsidiaries: is placed into administration (as defined in section 9 of the Corporations Act) or enters into a deed of company arrangement (as defined in section 9 of the Corporations Act); or any other person takes any step towards placing the party or any of its Subsidiaries into administration or towards entering into a deed of company arrangement; without the written consent of the relevant counterparty, suspends payments of its debts other than as the result of a failure to pay a debt or claim which is the subject of a genuine dispute; ceases or threatens to cease to carry on all or a material part of its business; is or states that it is unable to pay its debts as and when they fall due and payable; or is taken to fail to comply with a statutory demand under section 459F of the Corporations Act.

**Intellectual Property Rights or IPRs** includes patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, any rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.

**Month** means a calendar month

**Order** means an order for Product submitted by the Customer in accordance with clause 5 and where an Order is to be delivered in several parts, each part Delivery shall constitute a separate Order as the context so requires.

**Order Form** means a proposed order for Product issued by the Customer to the Supplier in the form set out in Annexure A.

**Preliminary Works** means any works to be undertaken by the parties to facilitate the integration of the Product into the Customer's products, and includes the works described in item 3 of the Details.

**Price** the price of the Product as contained in the Agreement Details.

**Product** means the product set out in the Details and, where the context requires, the Product ordered by and supplied to the Customer.

**Quarter** means a period of three months with the first quarter commencing on the first day of the month following the date of this document;

**QCS** has the meaning given to that term in clause 7.1(b).

**Recipient** has the meaning given to that term in clause 15.1(a).

**Related Body Corporate** has the meaning given to that term in the Corporations Act.

**Specification** means the specification of the Product set out in the Details.

**Stock Exchange** means ASX, TSX, TSXV, CSE or another stock exchange operating under an Australian market licence (as defined in the Corporations Act).

**Subsidiary** has the meaning given to that term in the Corporations Act.

**Supplier IPR** means all: Intellectual Property Rights used for the manufacture of the Product that originate from or are created by the Supplier, including all IPR in the manufacturing, packaging, warehousing, transporting and selling the Product; and methods, techniques, discoveries, inventions (whether patentable or not), formulae, formulations, technical and product specifications, equipment descriptions, plans, layouts, drawings, computer programs, assembly, quality control, installation and operating procedures, operating manuals, technical and marketing information, designs, data, know-how and other information that originate from or are created by the Supplier and that relate to the manufacturing, packaging, warehousing, transporting or selling of the Product.

**Supply Commencement Date** means the Supply Commencement Date set out in the Details.

**Term** means the period commencing on the date of this document and ending on the earlier of the end of the period set out in the Agreement Details; or if this document is terminated earlier as provided herein, the date of termination.

**Total Purchase Amount** means the total amount of Product the subject of an Order as set out in the Agreement Details.

#### 1.2. Interpretation

In this document:

- (a) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (b) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (e) a reference to this document includes the agreement recorded by this document;
- (f) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

- (g) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;
- (h) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (i) Where an expression is followed by '(Incoterms 2020)', this document is governed by Incoterms 2020 in respect of the interpretation of that expression;
- (j) a reference to '\$' or 'dollar' is to Australian currency;
- (k) and the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', or 'for example' (or similar phrases) do not limit what else might be included.

## 2. Contract documents

The following documents will form the agreement between the parties:

- (a) the Details;
- (b) the Annexures to this document;
- (c) these agreed terms,

and any ambiguity or discrepancy in the documents will be resolved and interpreted according to the same order of preference as the documents are listed above, with the documents higher in the list having higher priority.

## 3. Supply of Product

### 3.1. Preliminary Work

- (a) The parties agree to collaborate in good faith to undertake the Preliminary Works.
- (b) **The Supplier** will undertake the Preliminary Works using qualified personnel in a professional manner and provide non-commercial quantities and samples of Products without charge for the purposes of undertaking the Preliminary Works.
- (c) **The Customer** will:
  - (i) provide all necessary information reasonably required by the Supplier with respect to the Preliminary Works; and
  - (ii) carry out any agreed preparations and provide sufficient quantities of its products to allow the Supplier to undertake the Preliminary Works.

### 3.2. Supply of Products

The Supplier agrees to supply to the Customer from the Supply Commencement Date such quantities of the Product as set out in the Agreement Details, in accordance with and subject to the terms of this document.

## 4. Forecasts and notification of changes

### 4.1. Forecast

- (a) Forecasts during the Term, the Customer shall give the Supplier not less than 30 days before the beginning of each quarter, a forecast of the amount of Product it expects to purchase during that quarter. The parties agree will agree an

initial forecast on or about the date of this document (**Initial Forecast**) shall form the forecast for the first quarter.

- (b) Forecasts shall be given in writing or, if given orally, shall be confirmed in writing within two Business Days. The Customer shall act in good faith when forecasting its requirements for the amount of Product.
- (c) Forecasts provided under this clause 4 shall not constitute Orders.

### 4.2. Supplier notifications

If the Supplier anticipates that it will be unable to meet the Customer's forecasted requirements provided in accordance with this clause 4 the Supplier shall inform the Customer in writing as soon as practicable.

### 4.3. Customer notifications

If the Customer anticipates that it is reasonably likely that it requires a change to any forecast the Customer shall immediately inform the Customer in writing.

## 5. Orders

### 5.1. Orders

- (a) The Customer shall deliver an Order Form for each proposed Order.
- (b) Orders must not be materially inconsistent with the terms set out in the Details except where agreed between the Parties.

### 5.2. Details of Order

Each Order Form shall:

- (a) be given in writing or, if given orally, shall be confirmed in writing within two Business Days;
- (b) specify the Total Purchase Amount of Product ordered;
- (c) set out the proposed Delivery Schedule for delivery of the Product; and
- (d) contain such other proposed terms to attach to the Order.

### 5.3. Acceptance

- (a) Within 5 Business Days' receipt of an Order Form, the Supplier must:
  - (i) confirm if it is capable of fulfilling the Order; and if so
  - (ii) notify the Customer of the Price with respect to the Order; and
  - (iii) identify any changes to any proposed terms attached to the Order and any additional terms required,

and such information together with the details in the Order Form (as amended) will be provided in writing to the Customer in the form of a Supply Agreement.

- (b) Each Agreement Detail shall be deemed to be a separate offer by the Supplier to supply Product on the terms of this document.
- (c) If the terms of the Agreement Details are acceptable to the Customer, the Customer shall countersign and return a copy of the Agreement to the Supplier.
- (d) No Order shall be deemed to be binding on the parties until the Customer has signed an Agreement or (if earlier and provided the

Customer has not withdrawn the Order Form) the Supplier notifies the Customer that the Order has been despatched.

- (e) An Order will become binding on the parties once the Agreement has been accepted by the Customer in accordance with clause 5.3(d).

## 6. Quality and packaging

### 6.1. Quality

- (a) The Product supplied to the Customer by the Supplier under this document will:
  - (i) conform to the Specifications and any other terms set out in the Agreement Details;
  - (ii) be of satisfactory quality and fit for any purpose held out by the Supplier; and
  - (iii) comply with all applicable statutory and regulatory requirements.
- (b) Except as set out in this document, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this document.

### 6.2. Packaging

The Supplier shall ensure that the Product is properly packed and secured and that the Product reaches its destination in good condition.

## 7. Delivery

### 7.1. EXW Delivery Location

- (a) All Product is sold on an ex works EXW (Incoterms 2020) basis to be made available for collection at the Delivery Location, and accordingly, the Customer is responsible for arranging and paying all costs of loading, transport and associated insurance.
- (b) The Supplier may deliver to the Customer a quality control sheet (**QCS**) in relation to an Order, within 7 days of receipt of a written request from the Customer.

### 7.2. Time of delivery

- (a) The Supplier shall use its best endeavours to make available each Order to the Delivery Location on or before the Delivery Date.
- (b) Delivery of an Order shall be completed upon it being made available for collection at the Delivery Location.

### 7.3. Instalments

The Supplier may make Orders available for collection by instalments, which may be invoiced and paid for separately. References in this document to Orders shall, where applicable, be read as references to instalments.

### 7.4. Delays

Delays in the Order being made available for collection shall not entitle the Customer to:

- (a) refuse to take delivery of the Order; or
- (b) claim damages; or
- (c) terminate this document, subject always to clause 16.2(c) and clause 16.2(e),

and the Supplier shall have no liability for any failure or delay in delivering an Order to the extent that such

failure or delay is caused by the Customer's failure to comply with its obligations under this document.

## 7.5. Failure to accept delivery

If the Customer fails to accept delivery of an Order on the Delivery Date, then, except where such failure or delay is caused by the Supplier's failure to comply with its obligations under this document:

- (a) delivery of the Order shall be deemed to have been completed at 9.00am on the Delivery Date; and
- (b) the Supplier shall store the Order until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

## 7.6. Short and Over Orders

The parties agree that if, in respect of an Order, the Supplier delivers up to and including 5% more or less than the quantity of Product ordered, the Customer shall not be entitled to reject the Order, but a pro rata adjustment shall be made to the Order invoice.

## 7.7. Packaging material

Reusable bulk packaging materials shall remain the Supplier's property and the Customer shall return such used materials to the Delivery Location at its own expense upon the Supplier's request, provided that the Supplier makes such request within three months of the original delivery of the relevant Product.

## 8. Acceptance and Defective Product

### 8.1. Rejection of Product

- (a) The Customer may reject any Product delivered to it that does not comply with clause 6.1, provided that notice of rejection is given to the Supplier:
  - (i) in the case of a defect that is apparent on normal visual inspection or the QCS is inconsistent with the Order Specifications, within five Business Days of Delivery;
  - (ii) and in the case of a latent defect, within 5 Business Days of the latent defect having become apparent.
- (b) If the Customer fails to give notice of rejection in accordance with clause 8.1(a), it shall be deemed to have accepted such Product.
- (c) If the Customer rejects Product under clause 8.1(a), then the Supplier shall at its option:
  - (i). replace the rejected Product; or
  - (ii). repay the price of the rejected Product in full,

and on complying with its obligations under this clause, the Supplier shall have no further liability to the Customer in respect of the rejected Product's failure to comply with clause 6.1.

### 8.2. Dispute

If the parties dispute whether any Product complies with clause 6.1, either party may refer the matter to an Independent Expert for determination in accordance with clause 17.

## 9. Title & Risk

### 9.1. Risk

- (a) Risk of loss or damage to any Product will pass to the Customer on a EXW (Incoterms 2020) basis at the Delivery Location.

- (b) For the avoidance of doubt, the Customer is responsible for any loss or damage to the Product whilst the Product is in transit.

### 9.2. Title

- (a) Title to the Product shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for the Product.
- (b) Until Title to the Product has passed to the Customer, the Customer shall:
  - (i) hold such Product on a fiduciary basis as the Supplier's bailee;
  - (ii) store such Product separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
  - (iii) not remove, deface or obscure any identifying mark or packaging on or relating to such Product; and
  - (iv) maintain such Product in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Supplier. The Customer shall obtain an endorsement of the Supplier's interest in the Product on its insurance policy, subject to the insurer being willing to make the endorsement. On request, the Customer shall allow the Supplier to inspect such Product and the insurance policy,

but the Customer may use Product in the ordinary course of its business.

- (c) If before title to Product passes to the Customer the Customer suffers an Insolvency Event then, provided that such Product have not been resold and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up such Product and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the relevant Product is stored in order to recover them.

## 10. Product Prices

### 10.1. Determination of Product Prices

- (a) The Price for each Order is as set out in the Agreement Details.
- (b) The Price is exclusive of GST.

## 11. Terms of payment

### 11.1. Invoicing and Payment

- (a) The Supplier shall be entitled to invoice the Customer for each Order on or at any time after Delivery.
- (b) The Customer must pay invoices in full within 30 days of receipt or otherwise agreed-to terms. Payment shall be made to the bank account nominated in writing by the Supplier.

### 11.2. Failure to make payment

If a party fails to make any payment due to the other under this document by the due date for payment (due date), then, without limiting the other party's remedies under this document, the defaulting party shall pay interest on the overdue amount at the rate

of 9% per annum. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.

### 11.3. Suspension

In the event any invoice remains unpaid on the due date (except where an invoice is disputed in good faith in accordance with clause 11.4), the Supplier may suspend any further supply of Product until such invoice has been paid.

### 11.4. Disputed Invoice

If the Customer disputes any invoice or other statement of monies due, the Customer shall immediately notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the parties have not resolved the dispute within 30 days of the Customer giving notice to the Supplier, the dispute shall be resolved in accordance with clause 17. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in clause 11.1(b).

### 11.5. Effect of Termination

All payments payable to the Supplier or the Customer under this document shall become due immediately on its termination. This clause 11.5 is without prejudice to any right to claim for interest under the law or under this document.

## 12. Product use

During the Term, the Customer agrees only to use the Product as a manufacturing component in the ordinary course of its business and for no other purpose. In particular, the Customer must not re-sell the Product in the form supplied by the Supplier or in some other commoditised form without the express written consent of the Supplier.

## 13. Limitation of Liability

### 13.1. Limitation of Liability

- (a) This clause sets out the entire financial liability of the parties (including any liability for the acts or omissions of its employees, agents and subcontractors) to each other in respect of:
  - (i) any breach of this document;
  - (ii) any use made or resale of the Product by the Customer, or of any product incorporating any of the Product; and
  - (iii) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this document.
- (b) Subject to clause 13.1(c), nothing in this document will limit or exclude the liability of either party for any Claim arising from:
  - (c) death or personal injury or damage to property resulting from negligence; or
  - (d) fraud or fraudulent misrepresentation; or

- (e) the deliberate default or wilful misconduct of that party or its employees, agents or contractors.
- (f) Neither party will be liable to the other or any other person for any Consequential Loss.
- (g) As far as the law permits and unless otherwise specified in this document, all liability to a party (whether arising in contract or tort under statute or otherwise from any cause whatsoever) for any injury, loss damage, cost or expense relating to or arising from this document, except to the extent that the injury, loss, damage, cost or expense arises from the negligent act or omission of a party, is excluded.

### 13.2. Mitigation

Each party to this document must mitigate any loss it suffers as a result of the breach by the other party to this document or warranty or indemnity provided under the document.

### 13.3. Maximum liability

Subject to clause 13.1(b), the Supplier's total liability arising under or in connection with this document, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, will in all circumstances be limited in the aggregate to the total Price for Product ordered for the previous 12 month period.

Subject to clause 13.1(b), the Customer's total liability arising under or in connection with this document, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, will in all circumstances be limited in the aggregate as follows: for non-payment of invoices for Product purchased, to the amount unpaid, any interest due on such amount under clause 11.2 and any costs associated with the recovery of such amounts; and for any other type of liability, the total Price for Product ordered for the previous 12-month period.

### 13.4. Disclaimer regarding Preliminary Works

- (a) The Customer agrees that it is the Customer's responsibility to undertake all testing, obtain all necessary approvals and ensure compliance with all relevant laws, regulations and codes that relate to any Product to be supplied by the Supplier in accordance with this document or its integration into Customer products.
- (b) Notwithstanding clause 13.3, as far as the law permits:
  - (i) all liability to a party for any injury, loss damage, cost or expense relating to or arising from the Customer's reliance on any recommendations, findings or work product resulting from the Preliminary Works is excluded; and
  - (ii) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law in relation to any recommendations, findings or work product resulting from the Preliminary Works are excluded from this document.

## 14. Intellectual Property

### 14.1. Background IPR

- (a) The Customer acknowledges that the Supplier IPR is and remains the exclusive property of the Supplier or, where applicable, the third party licensor from whom the Supplier derives the right to use it.
- (b) The Supplier acknowledges that all Customer IPR remains the exclusive property of the Customer (or, where applicable, the third party licensor from whom the Customer derives the right to use them).

### 14.2. Preliminary Works

- (a) The Customer acknowledges that any Intellectual Property Rights created in undertaking the Preliminary Works are and shall remain the property of the Supplier and the Supplier reserves the right to use such Intellectual Property Rights and grant a licence to use such Intellectual Property Rights to any other party or parties.
- (b) The Supplier grants to the Customer a perpetual, non-exclusive, royalty-free, non-transferable right to use any Intellectual Property Rights developed during the Preliminary Works to the extent necessary to utilise the Products supplied to the Customer under this document.

## 15. Confidential Information & Announcements

### 15.1. Information to be kept confidential

- (a) Each party (a Recipient) agrees and undertakes that it will keep confidential and will not use for its own purposes and will not without the prior written consent of the other party (a Disclosing Party) disclose to any third party, any Confidential Information provided to or obtained by the Recipient prior to or after entry into this document or which may become known to the Recipient as a result of complying with the terms of this document.
- (b) Each party must:
  - (i) keep the Confidential Information and the terms of this document confidential;
  - (ii) not disclose, or cause or permit the disclosure of, the Confidential Information, except with the prior written consent of the other party or in accordance with clause 15.2;
  - (iii) not make use of the Confidential Information to the commercial, financial or competitive disadvantage or detriment of the other party; and
  - (iv) not reproduce any Confidential Information.

### 15.2. Permissible disclosure

- (a) The Recipient will not at any time, before, during or after the Term, use or disclose any Confidential Information, for any purpose other than as strictly necessary to comply with its obligations under this document and only after ensuring that any persons to whom the information is disclosed are aware of its confidential nature and the obligations restricting its use and disclosure.

- (b) The Recipient may disclose Confidential Information to its officers, employees, financiers, consultants and advisers who have a need to know (and only to the extent that each has a need to know) and are aware that the Confidential Information must be kept confidential and agrees to comply with the obligations in clause 15.1.

### 15.3. Exceptions

The obligations of confidentiality under this document do not extend to information (whether before or after this document is signed):

- (a) **(already known)** disclosed to a party, but which at the time of disclosure is rightfully known to or in the possession or control of the party, and which is not subject to an obligation of confidentiality on the party;
- (b) **(public knowledge)** that is public knowledge (except because of a breach of this document or any other obligation of confidence);
- (c) **(mandatory disclosure)** required to be disclosed:
  - (i) by any applicable law;
  - (ii) by any order of any court, tribunal, authority or regulatory body;
  - (iii) by the rules of a Stock Exchange; or
  - (iv) in the enforcement of this document;
- (d) **(prospective purchaser)** disclosed to a prospective purchaser of an interest in the Company, but only if the disclosure is made on a confidential basis;
- (e) **(IPO)** disclosed as part of an initial public offering, reverse takeover, or similar transaction effecting a listing of the shares of the Supplier on a Stock Exchange to the extent disclosure of such information is necessary to complete a disclosure document or prospectus for such listing and otherwise comply with the rules of a Stock Exchange; and
- (f) **(shareholders and investors)** disclosed to an investor of the Recipient, but only if the disclosure is made on a confidential basis.

## 16. Term and Termination

### 16.1. Term

This document commences on the date of this document and expires at the end of the Term, provided that where the terms of any Agreement Details extend beyond the Term, the provisions of this document shall continue with respect to the Agreement Details until each party's obligations under that Agreement are fulfilled.

### 16.2. Termination for Cause

Either party may terminate this document if the other party:

- (a) breaches any provision of this document that materially prejudices the interests of the terminating party (other than with respect to payments of amounts due) and fails to remedy the breach within 45 days of receiving written notice from the terminating party in respect of the breach, including particulars of the breach;
- (b) fails to pay any amount due under this document on the due date for payment and

remains in default not less than 14 days after being notified in writing to make that payment;

- (c) the other party repeatedly breaches any of the terms of this document in such a manner to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this document;
- (d) an Insolvency Event occurs in relation to a party; or
- (e) any Force Majeure Event prevents the other party from performing its obligations under this document for any continuous period of three months.

### 16.3. Consequences of termination

On termination of this document, each party must promptly:

- (a) return to the other party all equipment, materials and property belonging to the other party that the other party had supplied to it in connection with the supply and purchase of the Products under this document or completion of the Preliminary Works;
- (b) return to the other party all documents and materials (and any copies) containing the other party's Confidential Information;
- (c) destroy and certify in writing to the party the destruction of all the other party's Confidential Information;
- (d) and on request, certify in writing to the other party that it has complied with the requirements of this clause 16.3.

### 16.4. Survival

- (a) Clauses 12, 14 15, 16, 21.8 and 22 survive termination of this document.
- (b) Termination of this document will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination.

### 17. Expert determination

Where under this document a party wishes to refer a matter to an Independent Expert, the matter will be submitted to an expert in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Expert Determination Rules.

### 18. Force majeure

If a party is wholly or partially unable to perform its obligations under this document because of a Force Majeure Event, then:

- (a) as soon as reasonably practicable after the Force Majeure Event arises, that party must notify the other party of the extent to which the notifying party is unable to perform its obligations;
- (b) and that party's obligation to perform those obligations will be suspended for the duration of the delay arising directly out of the Force Majeure Event.

### 19. Dispute Resolution

- (a) Neither party may commence court proceedings concerning any dispute between the parties arising out of or in relation to this document (**Dispute**), unless the party starting the proceedings has complied with this clause 19.

- (b) A party claiming that a Dispute has arisen must notify the other party in writing, specifying the nature of the Dispute (**Dispute Notice**).
- (c) Following the Dispute Notice being given, the CEO of both parties must endeavour in good faith to resolve the Dispute within 14 days. If the Dispute is not resolved within 14 days of the Dispute Notice being given, the parties must endeavour in good faith to resolve the Dispute by mediation as follows:
  - (i) if the parties fail to agree on the appointment of a mediator within 21 days of the Dispute Notice being given, either party may apply to the President of the Law Society of Queensland or the nominee of the President to nominate a mediator (which nomination the parties must accept);
  - (ii) if the mediator accepts the appointment, the parties must comply with the mediator's instructions;
  - (iii) if the Dispute is not resolved within 21 days of the appointment of a mediator, the mediation ceases;
  - (iv) the parties will be jointly responsible for the fees of the mediation, and each party is to bear its own costs in relation to the mediation;
  - (v) the mediation will be held in Brisbane, Queensland;
  - (vi) the parties may be legally represented at the mediation; and
  - (vii) the mediation will not be bound by the rules of natural justice and may discuss the Dispute with a party in the absence of any other party and their advisers.
- (d) Nothing in this clause 19 prevents a party from seeking urgent interlocutory relief in a court.

### 20. GST

#### 20.1. GST Definitions

Any terms capitalised in this clause 20 and not already defined in clause 1.1, have the same meaning given to those terms in the GST Act and:

- (a) **Progressive or Periodic Supply** means a Taxable Supply that satisfies the requirements of section 156-5 GST Act; and
- (b) **Supplier** means the entity making the Supply.

#### 20.2. GST exclusive

Except under this clause 20, the consideration for a Supply made under or in connection with this document does not include GST.

#### 20.3. Taxable Supply

If a Supply made under or in connection with this document is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:

- (a) the Recipient must pay the Supplier an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this document for that Supply; and
- (b) the Supplier must give the Recipient a Tax Invoice for the Supply.

### 20.4. Later GST change

For the avoidance of doubt, the GST payable under clause 20.3 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the Supplier is liable, however caused.

### 20.5. Reimbursement or indemnity

If either party has the right under this document to be reimbursed or indemnified by another party for a cost incurred in connection with this document, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).

### 20.6. Warranty that Tax Invoice is issued regarding a Taxable Supply

Where a Tax Invoice is given by the Supplier, the Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.

### 20.7. Progressive or Periodic Supplies

Where a Supply made under or in connection with this document is a Progressive or Periodic Supply, clause 20.3 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

### 21. General

#### 21.1. General Amendments

This document may only be amended by written agreement between all parties.

#### 21.2. Assignment and novation

Neither party may assign its rights under this document without the other party's prior written consent, provided that consent may not be unreasonably withheld where the transfer is to a Related Body Corporate of the transferor.

#### 21.3. Counterparts

This document may be signed in any number of counterparts. All counterparts together make one instrument.

#### 21.4. No merger

The rights and obligations of the parties under this document do not merge on completion of any transaction contemplated by this document.

#### 21.5. Entire agreement

- (a) Subject to clause 21.5(b), this document supersedes all previous agreements about its subject matter. This document embodies the entire agreement between the parties.
- (b) If the parties have entered into a separate Integration proposal regarding the development of necessary formulas and methodologies required to integrate the Products and their derivatives into the Customer's products, then nothing in this document overrides the terms of that document.
- (c) To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, is withdrawn and has

no effect except to the extent expressly set out or incorporated by reference in this document.

- (d) Each party acknowledges and agrees that it does not rely on any prior conduct or representation by the other party in entering into this document.

## 21.6. Further assurances

Each party must do all things reasonably necessary to give effect to this document and the transactions contemplated by it.

## 21.7. No waiver

- (a) The failure of a party to require full or partial performance of a provision of this document does not affect the right of that party to require performance subsequently.
- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under this document may only be waived in writing signed by the party granting the waiver and is effective only to the extent specifically set out in that waiver.

## 21.8. Governing law and jurisdiction

- (a) Queensland law governs this document.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.

## 21.9. Severability

- (a) A clause or part of a clause of this document that is illegal or unenforceable may be severed from this document and the remaining clauses

or parts of the clause of this document continue in force.

- (b) If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from this document in the relevant jurisdiction, but the rest of this document will not be affected.

## 21.10. Costs

Each party bears its own costs in relation to the preparation and signing of this document.

## 22. Notice

### 22.1. Method of giving notice

A notice, consent or communication under this document is only effective if it is:

- (a) in writing in English, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) given as follows:
  - (i) delivered by hand to that person's address;
  - (ii) sent to that person's address by prepaid mail or by prepaid airmail, if the address is overseas;
  - (iii) sent by fax to that person's fax number where the sender receives a transmission confirmation report from the despatching machine indicating the transmission has been made without error and showing the relevant number of pages and the correct destination fax number or name of recipient; or
  - (iv) sent by email to that person's email address.

## 22.2. When is notice given

A notice, consent or communication given under clause 22.1 is given and received on the corresponding day set out in the table below. The time expressed in the table is the local time in the place of receipt.

If a notice is	It is given and received
Delivered by hand or sent by fax	<ul style="list-style-type: none"> <li>(a) that day, if delivered by 5.00pm on a Business Day; or</li> <li>(b) the next Business Day, in any other case.</li> </ul>
Sent by email	<p>at the time of departure from the sender's mail server unless the sender receives an automated message generated by the recipient's mail server (<b>failure message</b>) that the email has not been delivered within two hours.</p> <p>For the avoidance of doubt any response generated by or at the instigation of the recipient (including an 'out of office' message) will not be a failure message.</p>
Sent by post	<p>three Business Days after posting, if sent within Australia; or</p> <p>seven Business Days after posting, if sent to or from a place outside Australia.</p>

## 22.3. Address for notices

A person's address, fax number and email address are those set out in this document, or as the person otherwise notifies the sender.