

Terms and Conditions in the Supply of Goods

Pan Australis Pty Ltd (Supplier)

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Schedule 1	Details	Error! Bookmark not defined.

Supply of Goods Agreement

Details

Date:
10th November
2022

Parties

Name	Pan Australis Pty Ltd	
Description	Supplier	
Notice Details	Address	2200 Logan Wedderburn Road, Logan VIC 3475
	Email	leigh@panaustralis.com
	Attention	Leigh Sutton

Name	The party whose name and address are set out in this sales invoice
Description	Purchaser

Background

The Supplier and the Purchaser have agreed that the Supplier will supply the Goods to the Purchaser on the terms and conditions set out in this Agreement.

By agreeing to the purchase of this product/products from the Supplier, the Purchaser states that they or their representative/s have read and fully understood these Terms and Conditions set out in this Agreement.

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, unless the context requires otherwise:

Business Days means any day other than Saturday, Sunday or any public holiday in Victoria.

Commencement Date means the date set out in the Sales Invoice;

Confidential Information means any information related to the Purchaser or its Related Bodies Corporate that is acquired by the Supplier or Supplier Personnel in the course of the Supply, including the results of any investigations or inquiries carried out or reports and recommendations made under this Agreement, whether the information is acquired before or after the Commencement Date;

Consequential Loss means:

- (a) loss of income, loss of revenue, loss of profit, loss of financial opportunity loss of investment return, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use, loss of production or failure to realise anticipated savings (whether the loss is direct or indirect);

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- (b) increase in direct or indirect financing costs;
- (c) any Loss that is:
 - (i) not a Loss that may fairly and reasonably be considered to arise naturally (being according to the usual course of things) from the breach or relevant matter; or
 - (ii) not fairly and reasonably contemplated by both the Seller and the Buyer at the date of this agreement as the probable result of the breach or relevant matter,

whether present or future, fixed or unascertained, actual or contingent.

Consideration has the meaning given in the GST Act;

Delivery Point means the delivery point set out in the Sales Invoice;

Force Majeure means an event or cause outside the reasonable control of the affected party (other than an obligation to pay money) and includes, but is not limited to:

- (a) an act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone, landslide or adverse weather conditions;
- (b) a strike, lockout or other labour difficulty;
- (c) an act of public enemy, war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
- (d) the effect of any applicable laws, orders, rules or regulations of any government or other competent authority; or
- (e) an embargo, inability to obtain any necessary materials, equipment, facilities or qualified employees, power or water shortage, lack of transportation;

Goods means the goods supplied by the Supplier to the Purchaser under this Agreement, as described the Sales Invoice;

Governmental Agency means a government department or a governmental, semi-governmental or judicial entity or authority, and includes the Australian Taxation Office, the Territory Revenue Office and the State Revenue Office of Victoria;

GST has the meaning given in the GST Act;

GST Act means the *A New Tax System (Goods and Supply of Goods Tax) Act 1999* (Cth);

Input Tax Credit has the meaning given in the GST Act;

Intellectual Property Rights means all rights (including moral rights) conferred by Laws in relation to intellectual property, and all other intellectual property rights as defined by Article 2 of the World Intellectual Property Organization Convention of July 1967;

Law means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation;

Liabilities means any actions, claims or demands (including the cost of defending or settling any actions, claims or demands) instituted against a person, or any charges, costs, expenses, losses, damages or other liabilities suffered or incurred by a person;

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Loss means any losses, liabilities, damages, costs, charges and expenses and includes Taxes.

Payment Period means the period stated in the Sales Invoice, for which payment is invoiced;

Personnel means the directors, officers, employees, suppliers/subcontractors and agents of the Supplier or the Purchaser or their respective Related Bodies Corporate as this Agreement requires;

Pollution means any hazardous substance, pollutant or contaminant regulated by any applicable Governmental Agency and also any other contamination or pollution;

Prices means the prices payable by the Purchaser for the Goods, specified in the Sales Invoice;

Purchase Order means individual purchase orders as may be issued by the Purchaser to the Supplier for the supply by the Supplier to the Purchaser of the Goods;

Related Bodies Corporate has the meaning given to it by section 50 of the *Corporations Act 2001* (Cth);

Representative means the person or persons or Company named, who have been nominated by the parties as their representatives for the purposes of this Agreement in accordance with clause 20;

Site means the Purchaser's mine site located at the address stated in the Sales Invoice;

Specifications means the specifications for the Goods provided by the Supplier to the Purchaser.

Statutory Payment means any payment that the Supplier is required to make in respect of Supplier Personnel under any Law, including workers' compensation insurance payments and superannuation contributions;

Supplier means the person or entity identified in the parties' section and, where the context permits, also includes the Supplier Personnel;

Supplier Personnel means:

- (a) any of the Supplier's employees, officers, subcontractors or agents; and
- (b) any of the employees, officers, contractors or agents of the subcontractors.

Supply means the supply of Goods by the Supplier under and in accordance with this Agreement;

Tax means any tax, levy, impost, deduction, charge, rate, duty, compulsory loan or withholding that is levied or imposed by any Law and any related interest, penalty, charge, fee or other amount, and includes income tax payable under the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth) and payroll tax payable under the relevant payroll tax act;

Taxable Supply has the meaning given in the GST Act;

Tax Invoice has the meaning given in the GST Act;

Term means the term of this Agreement as contemplated by clause 2;

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User Manuals means the user manuals for the Goods provided by the Supplier to the Purchaser.

1.2 Interpretation

The following rules apply unless the context requires otherwise:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) a gender includes all genders;
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to:
 - (i) a person includes a firm, an unincorporated association, a corporation and a government or statutory body or authority;
 - (ii) a party includes its legal personal representatives, successors and permitted assigns;
 - (iii) an agreement or document is to the agreement or document as amended, varied, supplemented, novated or replaced;
 - (iv) legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
 - (v) a right includes a benefit, remedy, discretion, authority or power;
 - (vi) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vii) a clause or Schedule is a reference to a clause of, or Schedule to, this Agreement; and
 - (viii) a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, joint and several.
- (f) The meaning of general words is not limited by specific examples introduced by "including" or "for example" or similar expressions.
- (g) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or any part of it.

1.3 Order of Precedence

If there is any conflict, ambiguity, inconsistency or discrepancy between any term in the documents comprising this Agreement, the order of precedence shall be these general conditions of the parties named on the Sales Invoice.

2. TERM

This Agreement commences on the Commencement Date and terminates on the Termination Date.

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3. NATURE OF CONTRACT

3.1 Supplier to Supply Goods

- (a) During the Term of this Agreement, the Supplier must supply the Goods in accordance with this Agreement.
- (b) The Purchaser may order Goods by completing and forwarding a Purchase Order to the Supplier.

3.2 Quantities

- (a) Any quantities set out in this Agreement are estimated quantities only.
- (b) Except as may be otherwise provided in this Agreement, the Purchaser shall not be liable for any variance between the quantities of anything provided for in this Agreement and the actual quantities required from time to time and specified in writing by the Purchaser.

4. PAYMENT FOR SUPPLY OF GOODS

4.1 Prices

The Purchaser must pay the Supplier the Prices for the Goods supplied by the Supplier to the Purchaser in accordance with this Agreement.

4.2 Invoice to be Rendered by Supplier

- (a) The Supplier must deliver invoices to the Purchaser within ten days after the end of each Payment Period, setting out the Prices payable in respect of Goods provided by the Supplier to the Purchaser.
- (b) The invoice must detail the Goods provided and the Supplier's calculation of the amounts shown in the invoice.

4.3 Payment by Purchaser

The Purchaser must pay to the Supplier the amount specified in each invoice within thirty days from the end of the month in which the Goods were delivered or services were provided by the Supplier to the Purchaser.

4.4 No set off

The Purchaser has no right to set off, deduct or withhold any moneys that it may be or become liable to pay under this Agreement against any moneys that the Supplier may be, or become, liable to pay to the Purchaser whether under this Agreement or otherwise.

5. SUPPLY OF GOODS

5.1 Standard of Goods

The Supplier must ensure that the Goods:

- (a) are new, unencumbered;
- (b) meet the Specifications;

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- (c) do not infringe the Intellectual Property Rights of a third party; and
- (d) are suitably packed, marked and transported.

5.2 Permits and Authorisations

At all times during the Term of this Agreement, the Supplier and all relevant Supplier Personnel must hold such permits, licences, authorisations and accreditations as may be required for the Supplier to perform its obligations under this Agreement in compliance with all relevant Laws.

5.3 Additional Obligations

- (a) In performing its obligations under this Agreement, the Supplier must comply at all times with:
 - (i) the conditions of any permits, licences, authorisations and accreditations held by the Supplier;
 - (ii) all Laws applicable to the Goods or to the Purchaser in respect of its operations;
 - (iii) any Australian Standards applicable to the Goods;
 - (iv) the licence conditions applicable to the Purchaser's mining tenements (where relevant); and
 - (v) the Purchaser's policies, procedures, guidelines and work instructions in force from time to time during the Term as applicable to the Supply.
- (b) In order to comply with clause 5.3(a)(v), the Supplier must familiarise itself, and ensure that Supplier Personnel are familiar, with the Purchaser's policies, procedures, guidelines and work instructions, in particular those relating to health, safety and the environment.

5.4 Purchaser Responsible for Installation

Unless otherwise agreed by the Parties in writing, the Purchaser agrees:

- (a) that it is solely responsible for the installation of the Goods;
- (b) to only install the Goods under the guidance of a professional operator experienced in installing such Goods; and
- (c) to use best endeavours to ensure that the Goods installed are:
 - (i) installed in accordance with the Supplier's instructions;
 - (ii) the correct size for their intended purposes in accordance with the Supplier's instructions;
 - (iii) used for their intended purposes; and
 - (iv) used within the limits set out in the Specifications and the User Manuals.

5.5 No Exclusivity

The Supplier acknowledges that the Purchaser is not obliged to acquire any minimum quantity of the Goods from the Supplier.

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6. DELIVERY

6.1 Delivery Point

- (a) Subject to clause 6.1(b), the Supplier will deliver the Goods to the Purchaser at the Delivery Point.
- (b) The Goods delivered to each Delivery Point must be delivered in good condition and without damage caused by delivery. The Supplier will replace any damaged Goods at no additional cost to the Purchaser.

6.2 Delivery Costs

The Purchaser will be responsible for:

- (a) all freight costs in connection with delivering the Goods to the Purchaser in accordance with clause 6.1 including any costs incurred by the Supplier where the Purchaser requires the Goods to be delivered to a location that is not the Delivery Point; and
- (b) insurance for the Goods, for an amount not less than their replacement value, to cover loss of or damage to the Goods during transit and unloading at the Delivery Point.

6.3 Delivery Documentation

The Supplier will provide detailed delivery dockets with every delivery, in duplicate. One delivery docket is to be packed with the Goods, the other is to be enclosed and attached to the outside of the consignment. Each delivery docket must contain as a minimum, the following information:

- (a) Purchaser's Purchase Order number (if any);
- (b) description and quantity of Goods; and
- (c) details of any items on back order.

6.4 Co-operation with Other Suppliers

The Supplier must co-operate with and not unreasonably interfere with work or deliveries by other suppliers and the Purchaser's Personnel at the Site.

7. RISK AND TITLE

- (a) The Goods will remain at the Supplier's risk until they are delivered to, inspected by, and accepted by, the Purchaser at the relevant Delivery Point.
- (b) Title to the Goods will only pass to the Purchaser upon receipt of full payment for the Goods by the Supplier in clear and available funds.
- (c) The Purchaser must ensure that the Goods are safely stored and maintained in serviceable and resalable condition until title to the Goods has passed to the Purchaser in accordance with clause 7(b).

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8. HEALTH, SAFETY AND ENVIRONMENT

8.1 Induction Training

The Supplier and all Supplier Personnel must attend and complete such induction training programs as the Purchaser reasonably requires, at the Supplier's cost, before entering the Site to supply the Goods.

8.2 Safe Work Practices

The Supplier must ensure that all Supplier Personnel observe safe work practices that comply with:

- (a) generally accepted industry standards relevant to the Supply;
- (b) all Laws, codes of practice, WorkSafe or WorkCover guidelines, and industry guidelines and Australian Standards relevant to the Supply and to the Purchaser's activities; and
- (c) the Purchaser's reasonable requirements in relation to safe work practices, including the requirements of relevant Purchaser policies, procedures and guidelines.

8.3 Purchaser's Work Practices Prevail

The Supplier must comply with all work practices directed by the Purchaser in accordance with clause 8.2(c), in preference to the work practices ordinarily adopted by the Supplier, if there is any inconsistency between the Purchaser's requirements and the Supplier's ordinary work practices.

8.4 Occurrence of incidents relating to Product

- (a) The Purchaser must notify the Supplier immediately or in any event within 24 hours following any incident relating to the Goods which resulted in, or had the potential to result in, injury or damage to any person or property or a breach of any Law applicable to the Purchaser's operation including where the Goods have not performed in accordance with the Specifications.
- (b) Where the Purchaser has reported an incident to the Supplier in accordance with clause 8.4(a), the Purchaser must provide the Supplier, its Personnel or any other person requested by the Supplier with all reasonable access to the site of the incident and must assist the Supplier, its Personnel and any other person requested by the Supplier in its investigations in relation to the incident including providing any relevant information requested by the Supplier, its Personnel or any other person requested the Supplier.

9. INSURANCE

9.1 Insurance by the Supplier

The Supplier must, at its own cost, obtain and maintain the following insurances for the Term:

- (a) **(General and Product Liability Insurance)** insurance covering all liability to pay damages or compensation arising out of any injury to or death of any person or any loss of or damage to any property, which insurance must (unless prohibited by law) provide cover in respect of each and every occurrence for an amount of not less than \$20,000,000, be unlimited as to the number of claims that can be

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made under the policy and extend to cover liability to any workers' compensation insurer or injured worker other than liability for the Supplier's own employees;

- (b) **(Worker's Compensation Insurance)** insurance covering any liability, loss, claim or proceedings, whether arising by virtue of any law relating to workers' compensation insurance, employers' liability or accident compensation legislation or under common law, in relation to the death of, or injury to, any person employed by the Supplier, which insurance must (unless prohibited by law) provide cover for an unlimited amount;
- (c) **(Motor Vehicle Insurance)** comprehensive motor vehicle insurance covering all mechanically propelled vehicles used at any time in connection with the Supply, which insurance must (unless prohibited by law) provide cover for market value and in respect of third party property damage not less than \$20,000,000 in respect of any one accident or series of accidents arising out of one event;
- (d) **(Compulsory Third Party Insurance)** any insurance that is compulsory under the laws for the time being in force under relevant Laws governing the use of motor vehicles to the extent that such vehicles are used at any time in connection with the Supply; and
- (e) **(Other)** any other insurance required by relevant Laws for the time being in force.

9.2 General Provisions as to Insurance to be Effected by the Supplier

- (a) The Supplier shall before commencing the Supply lodge with the Purchaser certificates of currency to evidence the existence of the policies required to be arranged by the Supplier in respect of such insurance.
- (b) The insurance policies referred to in clause 9.1 must:
 - (i) be taken out with reputable insurers with an S&P rating of not less than "A minus" and on terms and conditions consistent with prudent risk management practices; and
 - (ii) not be varied to the material detriment of the Purchaser, cancelled or allowed to lapse, without the prior written consent of the Purchaser.
- (c) If any of the insurance policies referred to in clause 9.1 is subject to the application of any self-insured retention, excess or deductible, the Supplier is responsible for and must bear the cost of any excess or deductible applicable to the insurances should a claim be made in connection with the Supply.

9.3 Responsibilities and Liabilities Unaffected

Neither the effecting of insurance by the Supplier under clause 9.1 nor any failure to effect such insurance in any way limits, reduces or otherwise affects any of the obligations, responsibilities and liabilities of the Supplier under this Agreement or under any Laws, permits, orders or codes.

10. INDEMNITY AND RELEASE

10.1 Indemnity

Subject to clause 10.2, the Supplier must indemnify and hold harmless the Purchaser from and against all Liabilities sustained or incurred by the Purchaser, its Related Bodies Corporate or their Personnel arising from any:

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- (a) breach of the Supplier's obligations under, or any warranty given by the Supplier in, this Agreement;
- (b) wilful misconduct or fraud, or any unlawful or negligent act or omission by the Supplier or Supplier Personnel in connection with this Agreement; or
- (c) personal injury, or loss of or damage to property, that is caused or contributed to by an act or omission of the Supplier or Supplier Personnel.

10.2 Exclusion

The indemnity in clause 10.1 does not apply in relation to any Liability to the extent to which the Liability is attributable to any breach of this Agreement or any unlawful or negligent act or omission on the part of the Purchaser, its Related Bodies Corporate and their Personnel.

11. PURCHASER TO NOTIFY

The Purchaser must notify the Supplier within 24 hours of receipt of the Goods if the Goods supplied are faulty or otherwise not in accordance with the Specifications.

12. TERMINATION

12.1 Immediate Termination by the Supplier

If the Purchaser has not remedied any failure or breach within 14 days after being required to do so by the Supplier in writing, the Supplier may terminate this Agreement immediately by notice to the Purchaser if:

- (a) the Purchaser remains in substantial breach of a fundamental term or requirement of this Agreement, including a failure to pay money that is properly due and owing to the Supplier;
- (b) an order is made or a resolution passed for the administration, liquidation, receivership or other winding up or dissolution of the Purchaser (other than for the purposes of amalgamation or reconstruction); or
- (c) the Purchaser is unable to pay its debts when they fall due or compound with its creditors or assign any of its assets for the benefits of creditors.

12.2 Immediate Termination by the Purchaser

If the Supplier has not remedied any failure or breach within 14 days after being required to do so by the Purchaser in writing, the Purchaser may then terminate this Agreement immediately by notice to the Supplier if:

- (a) the Supplier remains in substantial breach of a fundamental term or requirement of this Agreement, including a failure to pay money that is properly due and owing to the Purchaser;
- (b) an order is made or a resolution passed for the administration, liquidation, receivership or other winding up or dissolution of the Supplier (other than for the purposes of amalgamation or reconstruction); or
- (c) the Supplier is unable to pay its debts when they fall due or compound with its creditors or assign any of its assets for the benefits of creditors.

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13. CONSEQUENCES OF TERMINATION

13.1 Accrued Rights

Termination of this Agreement does not affect any accrued rights or remedies of either party.

13.2 Consequences

- (a) Subject to clause 13.1, the Supplier is not entitled to any compensation or damages on termination of this Agreement.
- (b) On termination of this Agreement, the Supplier must hand over to the Purchaser any keys or access cards, and any other property of the Purchaser that are or should be in the Supplier's possession, custody or control.

13.3 Continuing Clauses

Clauses 14, 17, 21, 23, 24 and this clause 13 will continue to apply after termination of this Agreement for any reason.

14. LIMITATION OF LIABILITY

14.1 Exclusion of Consequential Losses and Indemnity

Notwithstanding anything in this Agreement, express or implied, in no circumstances whatsoever, including negligence, is the Purchaser entitled to recover from the Supplier any damages for Consequential Loss.

14.2 Limitation of Liability

To the maximum extent permitted by law and without limiting the operation of clause 14.1 or any other provision of this Agreement which limits the Supplier's liability, the Purchaser shall at all times be limited, in aggregate, to recovery from the Supplier for damage or loss, including damage to or loss of property, and injury to or death of persons, the payment received by the Supplier under this Agreement in the preceding 12 months before the date of the relevant claim.

14.3 Supplier Not Responsible

The Purchaser agrees that the Supplier will not be responsible for any Liability, loss or damage suffered by the Purchaser (including through incorrect installation or handling) in relation to the Goods following the passing of risk to the Purchaser in accordance with clause 7(a).

14.4 Supplier Not Responsible for Unforeseen Ground Movement

Notwithstanding any other provision in this Agreement, the Purchaser agrees that the Supplier will not be responsible for any Liability, loss or damage suffered or expense incurred by the Purchaser in relation to any unforeseen ground movement caused by water, ground tremors or abnormal structural deformation of the rock strata.

14.5 Indemnity for Unforeseen Ground Movement

The Purchaser agrees to indemnify and hold the Supplier harmless from and against all Liabilities sustained or incurred by the Supplier, its Related Bodies Corporate or the Supplier Personnel arising from or in connection with any unforeseen ground movement caused by water, ground tremors or abnormal structural deformation of the rock strata.

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15. SITE SECURITY

15.1 No Photographs

The Supplier shall not take or permit to be taken photographs or sketches of the Site or any part of the Purchaser's premises or operation except where such are necessary for the performance of this Agreement.

15.2 Inspection

The Purchaser may request access to the Supplier's on-site premises and vehicles for inspection at any time.

16. INTELLECTUAL PROPERTY

- (a) All intellectual property including patentable inventions, non-patentable processes or know how, designs, copyright, systems software or hardware created by the Supplier exclusively for and during the Supply shall be the sole property of the Supplier. The Supplier shall, whether or not requested to do so by the Purchaser, provide all documents or property of any type containing such intellectual property to the Purchaser as soon as practicable during or after the completion of the Supply or upon termination of this Agreement.
- (b) The Purchaser warrants that it will not:
 - (i) dispute or challenge any Intellectual Property Rights of the Supplier in the Goods;
 - (ii) apply for the registration in any jurisdiction of any Intellectual Property Right identical or similar to the Goods; or
 - (iii) decompile, disassemble, reverse assemble, reverse compile, reverse engineer, translate or in any manner attempt to derive any, or any material part of the Goods.

17. CONFIDENTIAL INFORMATION

17.1 Use

Except as permitted or required by this Agreement, each party must not use any of the other party's Confidential Information.

17.2 Disclosure

Except as permitted or required under this Agreement, each party must not disclose to any other person any of the other party's Confidential Information provided that each party may disclose the Confidential Information of the other party:

- (a) when required to do so by law or any regulatory authority, including any stock exchange on which it or any of its Affiliates is listed; and
- (b) to its Personnel and advisors whose duties reasonably require such disclosure, on condition that the party making such disclosure ensures that each such person to whom such disclosure is made is informed of the obligations of confidentiality and remains responsible for the compliance of each such person with this clause.

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17.3 Notice of breach or disclosure required by law

If either party becomes aware of a breach of this clause 17, including a breach of duty by its Personnel with respect to the other party's Confidential Information, it must give a notice to the other party as soon as it becomes aware of the breach.

18. TAXES AND STATUTORY PAYMENTS

18.1 Supplier responsible for Taxes and Statutory Payments

Subject to clause 19, the Supplier is responsible for the payment of all Taxes applicable to the Goods and for the payment of all Taxes and Statutory Payments in respect of Supplier Personnel.

18.2 Indemnity

The Supplier must indemnify and hold harmless the Purchaser, its Related Bodies Corporate and their Personnel against any liability to pay Taxes or make Statutory Payments and any other Liability that may arise from or in connection with:

- (a) the engagement of the Supplier under this Agreement; or
- (b) the Supplier failing to comply with clause 10.1.

19. GOODS AND SERVICES TAX

19.1 GST to be Added to Amounts Payable

The parties acknowledge that all Consideration payable under this Agreement is expressed on a GST exclusive basis, unless expressly stated otherwise. If GST is payable in relation to a Taxable Supply, the Consideration to be provided for that Taxable Supply will be the Consideration specified in this Agreement plus applicable GST.

19.2 Tax Invoices

The Purchaser is not required to pay any amount to the Supplier in respect of a Taxable Supply unless the Supplier has supplied the Purchaser with a Tax Invoice for that Taxable Supply.

19.3 Liability Net of GST

If an amount payable under this Agreement is calculated by reference to or relates to any Liability incurred by a party, then the Liability must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of the Liability. The party will be assumed to be entitled to a full Input Tax Credit unless it demonstrates, before the due date for payment, that its entitlement is otherwise.

20. REPRESENTATIVES

- (a) Each party acknowledges that its Representatives are authorised to act on that party's behalf for the purposes of this Agreement. A party may from time to time change its Representatives by written notice to the other party.
- (b) Each party shall ensure that their Representative acts at all times honestly, fairly and reasonably. Any notice, direction, instruction or variation given by the Representative shall be confirmed in writing within 24 hours of a verbal request.

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21. DISPUTE RESOLUTION

21.1 Intention to Settle Disputes by Discussion and Negotiation

The parties acknowledge that it is their expectation that any dispute, difference or claim arising out of or relating to this Agreement (a "**Dispute**") will be settled by discussion and negotiation between the parties.

21.2 Representative in Disputes

- (a) If a party to this Agreement claims that a Dispute has arisen under this Agreement, that party must designate a representative who will have authority to settle the Dispute and must notify the other party (in writing) of the identity of that representative and the substance of the Dispute. That representative may be the party's Representative or any other person.
- (b) If a party receives notice from the other party under clause 21.2(a), that party must designate a representative who will have authority to settle the Dispute and must notify the other party (in writing) within seven days of the identity of that representative. That representative may be the party's Representative or any other person.
- (c) The designated representatives must make all reasonable efforts to resolve the Dispute within seven days of the appointment of the last representative, following whatever investigations the designated representatives agree are appropriate.

21.3 Referral to Senior Representatives

- (a) If the designated representatives cannot resolve the Dispute in the timeframe contemplated by clause 21.2(c), the parties agree to refer the Dispute to more senior representatives of their organisations who also have authority to settle the Dispute.
- (b) Those senior representatives must make all reasonable efforts to resolve the Dispute within a further 14 days of their appointment, following whatever investigations they agree are appropriate.

21.4 Mediation

If the senior representatives cannot resolve the Dispute in the timeframe contemplated by clause 21.3(b), the parties may agree to submit the Dispute to mediation administered by the Resolution Institute Arbitration.

21.5 Arbitration

If the Dispute is not settled by mediation (or if no agreement is reached to refer the dispute to mediation within seven days after the expiry of the timeframe contemplated by clause 21.3), the Dispute shall be submitted to arbitration in accordance with, and subject to, Resolution Institute Arbitration Rules.

Unless the parties agree upon an arbitrator, either party may request a nomination from the Chair of Resolution Institution.

21.6 Legal Proceedings

If the parties fail to agree within thirty days after commencing mediation, or if a party refuses to commence mediation within fourteen days of written notice under clause 21.4, or if a party requires urgent interlocutory relief, then each party shall be free to commence

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legal proceedings in respect of the dispute on difference the subject of the notice under clause 21.2.

22. FORCE MAJEURE

22.1 Notice of Force Majeure

- (a) If a party is unable to perform or is delayed in performing an obligation under this Agreement (other than an obligation to pay money) as a result of Force Majeure, it must promptly notify the other party accordingly.
- (b) The notice must:
 - (i) set out details of the Force Majeure;
 - (ii) identify the nature and extent of the obligations affected by the Force Majeure;
 - (iii) estimate the period of time during which the affected party estimates that the Force Majeure will continue; and
 - (iv) provide details of the measures proposed to be adopted to remedy or abate the Force Majeure.

22.2 Suspension of Obligations

After giving the notice required by clause 22.1, and while the Force Majeure continues:

- (a) the obligations that cannot be performed (other than an obligation to pay money) because of the Force Majeure are suspended; and
- (b) the affected party will not be responsible for any loss or expense suffered or incurred by the other party as a result of the suspension of the obligations that cannot be performed.

22.3 Remedy of Force Majeure

A party must avoid, remedy or overcome a Force Majeure event to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.

22.4 Mitigation

A party affected by a Force Majeure must take all action reasonably practicable to mitigate any loss suffered by any party as a result of the affected party's failure to carry out its obligations under this Agreement.

22.5 Extension of Term

The Term will be extended by the period of Force Majeure.

22.6 Right to Terminate

If any period of Force Majeure continues for 60 consecutive days or more, the Supplier or the Purchaser will have the right to terminate this Agreement upon 10 days' prior written notice to the other party.

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23. NOTICES

Any notice, demand or other written communication stated as being given or made under this Agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post, by hand or by email to the address or email address of the recipient set out in either party's section or the address or email address by the intended recipient to the sender;
- (c) will be taken to be given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two Business Days after the date of posting; or
 - (iii) in the case of email, at the time recorded on the delivery report by the computer system from which the email was sent,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent, or is later than 4.00pm (local time), it will be taken to have been given or made at the commencement of business on the next business day in that place.

24. GENERAL

24.1 Entire Understanding

This Agreement comprises the entire agreement of the parties and supersedes all prior agreements, negotiations and understandings between the parties, whether oral or written.

24.2 Independent Supplier

The relationship between the Purchaser and the Supplier is a relationship of Purchaser and independent supplier and nothing contained in this Agreement shall be construed so as to create a relationship of employment, agency or partnership between the Purchaser and the Supplier, or between the Purchaser and any of the Supplier Personnel.

24.3 Assignment

Each party may assign this Agreement or any part of this Agreement with the prior written consent of the other party (such consent not to be unreasonably withheld).

24.4 Severance

Any provision in this Agreement which is invalid or unenforceable, or would render this Agreement void, voidable or unenforceable, in any jurisdiction will, for the purposes of that jurisdiction, be read down, if possible, so that the provision and this Agreement are valid and enforceable, or otherwise severed to the extent of the invalidity or unenforceability, without affecting the validity or enforceability of the remaining provisions of this Agreement or of that provision in any other jurisdiction.

24.5 Amendment

No modification, variation or amendment of this Agreement is valid or binding on the parties unless it is made in writing and duly executed by each of the parties.

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24.6 Waiver

The failure, delay, relaxation or indulgence on the part of any party in exercising any power or right given to that party under this Agreement does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other exercise of any other power or right under this Agreement. A power or right may only be waived in writing, signed by the party to be bound by the waiver and any such waiver shall apply only to a particular occasion unless expressed to be continuing.

24.7 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument. This Agreement may be executed by electronic (.pdf) signature and an electronic (.pdf) signature shall constitute an original for all purposes.

24.8 Governing Law

- (a) This Agreement is governed by and must be construed in accordance with the laws for the time being in force in the State of Victoria. Each party submits to the exclusive jurisdiction of the courts of the State of Victoria.
- (b) The *United Nations Convention on Contracts for the International Sale of Goods (1980)* does not apply to this Agreement.

24.9 Further Assurances

Each party shall do, sign, execute and deliver all agreements, documents, instruments and acts necessary to effectively carry out and give full effect to this Agreement and the rights and obligations of the parties under it.

24.10 Good Faith

The parties agree to act in good faith and co-operate fully with each other in all dealings under this Agreement. This includes an undertaking by both parties to act reasonably and to do all things properly and reasonably within their power that are necessary to give effect to the spirit and intent of this Agreement.