

**PURCHASE ORDER TERMS AND CONDITIONS** MLG Oz Pty Ltd  
(ABN 53 102 642 366)

1. DEFINITIONS

The following words will, unless the context otherwise requires, have the following meanings:

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

**"Products"** means the goods, chattels, plant, equipment, machinery, or stores (including any part of the Products specified) the subject of the Purchase Order.

**"Services"** means any labour or other services provided by the Seller to the Buyer (other than Products) under the Purchase Order.

**"Buyer"** means the company named on the face of the Purchase Order as the Buyer.

**"Confidential Information"** means any and all information in any form that relates, directly or indirectly, to the Buyer's business or affairs, including but not limited to information regarding the Buyer's fuel usage and location of its trucks and loads shared through MT Data and Prism in relation to Services.

**"Defective Products"** means Products 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.

**"GST Act"** means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and all associated legislation and regulations.

**"GST"** means tax imposed under the GST Act.

**"Purchase Order"** means a purchase order for Products and/or Services issued by the Buyer to the Seller from time to time containing amongst other things, a description of the Products and/or Services and the purchase price and to which these Terms are appended.

**"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 creditors or any analogous event.

**"Intellectual Property"** includes, without limitation, all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, 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.

**"Seller"** means the person, firm or corporation to whom the Purchase Order is addressed.

**"Terms"** means these terms and conditions.

2. ENTIRE TERMS

(1) Subject to any separate written supply agreement between the Buyer and the Seller relating to the Products and/or Services expressly referred to in the Purchase Order, when properly signed by or for and on behalf of the Buyer, the Purchase Order together with all documents attached to it or incorporated by reference in it (including these Terms) constitute the entire agreement between the Buyer and the Seller for the supply of the relevant Products and/or Services and will supersede all conditions contained in the Seller's estimate or tender and apply to the exclusion of any terms incorporated in any invoice, delivery docket or other document provided by the Seller.

(2) No terms or conditions stated by the Seller in accepting or acknowledging the Purchase Order, or conditions contained in, or relating to any other documents, including any of the Seller's documents, will be binding on the Buyer unless accepted in writing by the Buyer and are otherwise expressly excluded.

3. ASSIGNMENT AND SUBCONTRACTING

(1) The Seller must not assign the Purchase Order or any part of it without the Buyer's prior written consent (which may not be unreasonably withheld).

(2) The Seller must not sub-contract the Seller's obligations under this Agreement without the Buyer's prior written consent. The Buyer's consent will be conditional upon the sub-contract including provisions that the sub-contractor must:

(a) comply with all relevant terms of this Agreement including, without limitation, the confidentiality obligations in clause 26;

(b) not assign or sub-contract without the Buyer's written consent; and

(c) effect and maintain insurance on the same terms as are required under this Agreement.

(3) The Seller is responsible for the acts and omissions of its contractors and their subcontractors as if they were acts or omissions of the Seller.

4. CORRESPONDENCE AND DOCUMENTATION

All correspondence must be in the English language. The order number shown on the face of the Purchase Order must be shown on all documents including, but not limited to, invoices, communications, packing lists, delivery docket, waybills and bills of lading. All documentation and correspondence must be transmitted to the Buyer's address specified in the Purchase Order.

5. SUPPLY OF PRODUCTS AND SERVICES

(1) The Seller must supply the Products and Services to the Buyer in accordance with this Agreement.

(2) In the event of any ambiguity or uncertainty in respect of a Purchase Order, such ambiguity or uncertainty must be referred to the Buyer immediately and a corrected Purchase Order obtained prior to delivery. Incorrect delivery in accordance with a Purchase Order containing an ambiguity or uncertainty shall be at the Seller's risk and the Buyer shall make payment on the Buyer's own interpretation of the ambiguous or unclear provision and may reject delivery if it is not as required by the Buyer.

6. QUALITY AND QUANTITY

(1) The Products and/or Services delivered by the Seller:

(a) must conform precisely in quality, quantity, specification and description (including performance criteria) with the Purchase Order and any plans or specifications provided by the Buyer; and

(b) must comply with any applicable laws and standards laid down by any Standards Association of Australia, Local Authority, Regulating or Supply Board and/or any other body or association establishing conditions of quality or merchantability in relation to the Products or Services.

(2) If the Supplier:

(a) gives the Buyer a sample of the goods before the Buyer issued the Purchase Order, the Products must correspond with the sample in addition to matching the description.

(b) provides the Buyer with a demonstration of the Services before the Buyer issued the Purchase Order, the Services must correspond in nature and quality with the Services demonstrated.

(c) shows the Buyer a result achieved by the Services before the Buyer issued the Purchase Order, the Services must correspond in quality with the services that achieved that result.

(3) If the Supplier supplies more Products than specified in the Purchase Order, then the excess may be returned to the Seller at the Seller's cost.

(4) The Services must be performed by appropriately qualified, competent, skilled, experienced and professional personnel and must be rendered with due care and skill.

(5) The Products and Services must be fit for the purpose for which goods and services of the same kind are commonly supplied or bought and for any other purpose which we made known to you.

(6) The Products must be new and of merchantable quality (unless otherwise specified in the Purchase Order).

7. INVOICING AND PAYMENT

(1) Unless otherwise provided in the Purchase Order, the Seller must submit invoices to the Buyer (no earlier than) as follows:

(a) after completion of delivery of all the Products, unless the Buyer specifically agrees to make a partial or full upfront down payment in which case the invoice should reflect the amount as agreed regarding payment 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 the Seller in that month or that period (as the case may be). An invoice must not be submitted by the Seller for Services yet to be provided.

To avoid doubt, where the Purchase Order extends over a period of more than one calendar month in which case the Seller may invoice the Buyer at the end of each month for the Products and/or Services delivered to the delivery point or specified in the Purchase Order (but not for Products in transit or incomplete Products) during the month.

(d) Invoices must:

(i) be in a form approved by the Buyer;

(ii) show the order number;

(iii) show the place where the Products were delivered and be accompanied by a signed copy of the delivery docket or specify the nature and extent of the Services provided;

(iv) show whether there are any (and if so the respective amounts of) sales tax, customs duty, excise or other similar taxes or charges applicable to the Purchase Order; and

(v) satisfy the requirements for a "tax invoice" under the GST Act if the supply of the Products and/or Services is a "taxable supply" under the GST Act.

(e) Payment will be made by the Buyer 30 days after the end of the month following the month in which the Buyer receives the Seller's invoice complying with the requirements of clause 7(1)(d), provided the Products and/or Services have been accepted by the Buyer and nothing is in dispute or by earlier payment date where the Purchase Order specifies an applicable discount for early payment and the earlier payment date. Payment will be made by electronic funds transfer in most cases, or cheque/credit card in exceptional circumstances. Any settlement or other discounts applicable will be deducted from the amount due to the Seller.

(f) The Buyer may withhold payment, without loss of settlement or other discounts if the Seller's invoice does not comply with clause 7(1)(b) or the relevant invoice and related delivery docket do not agree or there is any error in or omission from the relevant invoice or related delivery docket or in relation to any disputed amount.

(g) Periods applying to discounts will run from the date the Buyer receives a correct invoice complying with clause 7(1)(b) and supporting proof of delivery.

(2) Where the terms of payment are specified in the Purchase Order, payments will be made in accordance with those terms.

(3) The Buyer will not be obliged to pay an invoice which the Seller submitted more than 180 days after the dates set out in this clause 7, unless the Seller can show reasonable cause for such delay.

(4) The Buyer may reduce any payment due to the Seller under this Agreement by any amount for which the Seller liable to the Buyer, including costs, charges, damages and expenses. This does not limit the Seller's right to recover those amounts in other ways.

(5) If the Purchase Order involves the supply of Services on a cost plus or per hour basis, the Buyer has the right to conduct an audit of the basis of the Seller's charges using the Seller's records. This right continues for twelve months after the Buyer pays the relevant invoice.

8. PRICE

Unless otherwise provided in the Purchase Order, the purchase price stated in the Purchase Order:

(1) is firm and is not subject to escalation;

(2) includes all costs of producing and supplying the Products and Services (including without limitation costs incurred because of delivery, insurance, packing and packaging of the Products in accordance with the applicable delivery and packaging instructions set out in the Purchase Order);

(3) unless customs duty, excise and other like charges are separately stated on the Purchase Order, includes customs duty, excise and other like charges (any reduction or refunds of customs duty or excise will be to the benefit of the Buyer);

(4) if the Buyer's sales tax exemption number is stated on the Purchase Order, does not include any amount in respect of sales tax (and the Seller warrants to the Buyer accordingly);

(5) if the supply of the Products and/or Services is a "taxable supply" under the GST Act is exclusive of any GST.

(6) The purchase price may not be increased without the Seller's prior consent. The Buyer has the right to refuse to give its consent.

(7) In the event that the purchase price reflected in the Purchase Order is incorrect, the Seller must notify the Buyer and ensure that an amended Purchase Order reflecting the correct purchase price is obtained prior to delivery. Payment shall be made as per the purchase price reflected on the copy of the Purchase Order in the Buyer's possession.

Where the Buyer's sales tax exemption number is not stated on the Purchase Order the amount of sales tax payable by the Buyer is the amount for sales tax stated separately on the Purchase Order.

9. TAXES

(1) The Seller will co-operate fully with the Buyer in the preparation of any required documentation such that the Products carry their correct value for customs duty, excise and/or sales tax assessment.

(2) If the supply of the Products and/or Services is a "taxable supply" under the GST Act, then the Buyer must also pay, at the same time and in the same manner as the purchase price is otherwise payable, the amount of any GST payable in respect of that "taxable supply" the amount of which must be separately stated on the Seller's invoice.

10. DELIVERY

(1) The Products must be delivered (including off-loading) and packed in accordance with the delivery and packaging instructions set out in the Purchase Order to the place (within the time period) specified in the Purchase Order. If packaging instructions are not specified then the Products must be safely and properly packed in a suitable manner, in accordance with the requirements of the carrier (if a carrier is being used) and so that the Products will reach the ultimate destination without damage and in good working condition.

- (2) Every case, carton, box and container and each separate Products must be clearly identified as detailed in the Purchase Order. The Seller must ensure that delivery dockets detailing order number, quantity and description of the Products are attached to the Products or consignment note to accompany Products to their destination.
- (3) The Seller will be liable for all damage, loss or destruction to any Products supplied in accordance with the Purchase Order or any consequential loss, damage or destruction to any other goods or property resulting from improper packaging or handling by the Seller. All packing must be adequately designed for rough road transport including allowance for handling by craneage.
- (4) The Buyer has the right to designate the carrier or delivering agent and routing of the Products provided that it does not entail additional costs to the Seller.
- (5) Upon dispatching the Products, the Seller must immediately notify the Buyer of the date and time of dispatch, the order number, the quantity and description of the Products dispatched and the expected date and time of arrival at the delivery point specified in the Purchase Order.
- (6) The Seller will be liable for any freight costs if the Purchase Order does not specify the that the Buyer is responsible for those costs and the Seller will also be liable for any difference in freight costs arising from the Seller's failure to follow any transport instruction in the Purchase Order or non-advice to the Buyer of time of arrival.
- (7) All Products will be at the Seller's risk until delivered to the delivery point specified in the Purchase Order and accepted by the Buyer.
- (8) The Buyer and the Seller must assist each other in obtaining documents and other information desirable for the prosecution of claims against carriers.
- (9) No deliveries will be accepted outside of the agreed delivery time. In no circumstances shall the Seller have any claim in respect of damages or losses arising directly or indirectly from rejection by the Seller of a delivery outside the agreed delivery time.
- (10) In the event that the Buyer is not in a position to comply with a Purchase Order, whether in respect of the quantity of the Products or Services, time of delivery or otherwise, the Seller is required to notify the Buyer immediately and delivery should not be executed before a suitable amendment to the Purchase Order is made by the Buyer. The Buyer may in such circumstances either cancel or amend the Purchase Order.
- (11) The Seller must include a packing list in each package of Products delivered.

NOTE: Sellers failing to observe the requirements of clause 10 risk delays in payment.

#### 11. INSURANCE

- (1) Before commencing the supply of any Products or Services, the Seller must obtain and maintain until of the warranty relevant to the Products and/or Services (without limiting subclause 11(1)(f)(1)(f)):
- (a) public and products liability insurance with a limit of not less than \$10,000,000 for any one occurrence in relation to public liability and \$10,000,000 for any one occurrence and in the annual aggregate in relation to products liability;
- (b) workers' compensation and employers' liability insurance (including common law liability insurance for an amount of not less than \$50,000,000 per occurrence) or as otherwise required by law and where permitted by law, include a principal's indemnity extension at statute and common law and a waiver of subrogation in favour of the Buyer;
- (c) if Products are being supplied, goods in transit insurance covering physical loss or damage for not less than the total invoice value of the Products supplied;

- (d) motor vehicle third party property liability insurance with a limit of not less than \$10,000,000 per claim;
- (e) insurance covering physical loss or damage to the Seller's own property, equipment and materials owned, hired, leased or used by the Seller for their full replacement value;
- (f) if professional Services are being performed, obtain professional indemnity insurance with a limit of liability not less than \$5,000,000 per occurrence for a period of seven (7) years after expiry of the Warranty; and
- (g) any additional insurance required by law.
- (2) The Seller must:
- (a) pay the deductible, excess or self-insured retention in connection with any claim made in respect of any insurance policy effected under clause 10(1);
- (b) ensure that each insurance policy referred to in clause 11(1) is effected with an insurer or insurers of reputable standing and with a Standard & Poor's credit rating of no less than A;
- (c) on request, provide the Buyer with current insurance certificates from the relevant insurer or insurers or the Seller's insurance broker for each insurance policy required under clause 11(1); and
- (d) promptly and without delay notify the Buyer if an insurer gives a notice of cancellation or other notice in respect of any insurance policy;
- (e) The worker's compensation policy referred to in clause 11(1)(b) shall be endorsed (except where precluded by law) to include a Principal's Indemnity extension.
- (f) The public liability policy referred to in clause 11(1)(a) shall be endorsed to:
- (i) contain a Principal's Indemnity extension.
- (ii) extend to cover Worker to Worker injury liability risks.
- (iii) extend to cover goods in the care, custody and control for amount not less than the market value of all plant and equipment supplied by us.
- (iv) extend to include liability arising out of the use of unregistered motor vehicles.
- (g) The motor vehicle policy referred to in clause 11(1)(d) and the property, equipment and materials policy referred to in clause 11(1)(e) shall be endorsed to:
- (i) contain a Principal's Indemnity extension.
- (ii) extend to include bodily injury gap cover in respect of registered motor vehicles.

- (3) The Seller must ensure that all of the Seller's subcontractors effect and maintain insurance as required by clauses 11(1) and 11(2) (including as to amounts of insurance and type of insurance) as if they were the Seller.

#### 12. INSPECTION

- (1) The Buyer or its representative named in the Purchase Order or in a written or oral notice to the Seller will have:
- (a) have a reasonable time to inspect the Products after delivery;
- (b) full access at all reasonable times to inspect and discuss all work related to the supply of the Products or Services and, upon request, may require progress reports; and
- (c) the right to reject Services performed or being performed that does not conform to the requirements of the Purchase Order whereupon the work rejected will be re-done at no additional cost to the Buyer.
- (2) Any inspection or lack of inspection of the Products and/or Services will not relieve the Seller of any obligations and the failure to reject any work performed or being performed does not constitute approval of that work by the Buyer.

- (3) Acceptance of Products and/or Services by the Buyer is subject to inspection and testing after delivery and unpacking and, if any of the Products are to be installed or incorporated into plant or premises, subject to inspection and testing following such installation or incorporation and under operation conditions.
- (4) In every case inspection and testing must be carried out to the satisfaction of the Buyer and the Buyer will be the sole judge of whether Products or Services supplied are in accordance with the Purchase Order and are to the standard, quality and finish required.
- (5) Upon inspection, if Buyer finds any Products to be Defective Products or any Services or their results to be Defective Services, or if the Seller delivers the wrong quality or quantity of Products or Services or delivers Products or Services that do not conform to the specification or description set out in the Purchase Order, the Buyer may without prejudice to its other rights:
- (a) reject the Defective Products by returning them to the Seller;
- (b) reject in part or whole the Defective Services;
- (c) request the repair or replace the Defective Products;
- (d) issue a credit note to the Seller in relation to the Defective Products;
- (e) request that the Defective Services be made good; or
- (f) if possible, convert the Products into a condition acceptable to the Buyer,

at the Seller's expense unless the Buyer has agreed the changed quality, quantity, specification or description in writing and the Seller must reimburse the Buyer for any expenses the Buyer incurs in returning or repairing Defective Products and in making good Defective Services.

- (6) The Buyer may reject and return to the Seller (in the case of Products) any Products and Services which are not in conformity with this Agreement even if the Buyer has accepted or paid for those Products and Services.

- (7) The Seller must refund to the Buyer, when requested, any payments made by the Buyer in respect of Products and Services which the Buyer rejects.

#### 13. PERFORMANCE OF SERVICES

The Seller must, in performing the Services:

- (1) use your best endeavours not to interfere with any of the Buyer's activities, or the activities of any other person, on the Buyer's premises;
- (a) 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 the Seller by the Buyer; and
- (iii) all directions and orders given by the Buyer's representatives.
- (2) ensure that the Buyer's premises are left secure, clean, orderly and fit for immediate use.

#### 14. TIME

Time is of the essence regarding the Seller's obligations. The Seller must complete delivery of the Products and/or Services to the delivery point specified in the Purchase Order within the time(s) stated in the Purchase Order. If no time period is specified in the Purchase Order, the order is for delivery within 24 (twenty-four) hours of receipt of the Purchase Order. Extension of time may be granted at the sole discretion of the Buyer. If the Buyer grants an extension of time in respect of the Purchase Order, time will remain of the essence in respect of the extended time. If the Seller is unable to make delivery within the time stipulated in the Purchase Order or within any extension of time granted by the Buyer, the Buyer will, unless the delay results from the Buyer's own act or omission, be at liberty either:

- (1) to cancel the Purchase Order without prejudice to any right or remedy which has accrued or may thereafter accrue to the Buyer;
- (2) to amend such Purchase Order without prejudice to any right or remedy which has accrued or may thereafter accrue to the Buyer; or
- (3) to make special arrangements for transport to the Buyer's site at which the Products are required; and,

the Buyer may deduct from amounts payable to the Seller the transport and related expenses incurred over and above those which would have been incurred had delivery not been delayed.

#### 15. CANCELLATION

- (1) If the Products are standard stock items, the Buyer at its option may at any time cancel the Purchase Order in respect of any Products not then delivered or in transit without further obligation.

- (2) If the Products are manufactured or fabricated to the specifications of the Buyer then at any time prior to completion of the work to be performed, the Buyer may at its option cancel the Purchase Order upon written notice to the Seller and upon the effective date of the cancellation (being the date of the Buyer's notice or the later date (if any) specified in that notice), the Seller must stop all work pertaining to the Purchase Order (except as otherwise directed by the Buyer), must not place any further order in connection with the Purchase Order made, must preserve and protect all materials acquired, work in progress and finished Products connected with the Purchase Order at its own premises or its subcontractors premises pending the Buyer's instructions and must dispose of the same as the Buyer instructs. Upon cancellation directly referable to the Purchase Order under this clause 15(2) the Buyer will pay to the Seller the reasonable costs and expenses of the Seller, as determined by the Buyer. The Seller must provide to the Buyer all documentation that the Buyer requires to verify the Seller's costs and expenses. Upon payment under this clause 15 any Products and uncompleted portions of the work and materials acquired by the Seller for incorporation into the Products will be the property of the Buyer and subject to its disposition. Notwithstanding anything contained in this clause 15(2) the Seller will not be entitled to any anticipatory profits or any damages caused by the cancellation.

- (3) Nothing contained in this clause 15 will affect the Buyer's right to terminate the Purchase Order on account of a default by the Seller under any of the terms and condition applicable to the Purchase Order or to pursue remedies as provided by law for such default.

#### 16. TERMINATION FOR DEFAULT

- (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 Products or Services;
- (c) becomes Insolvent; or
- (d) is convicted of a criminal offence.

- (2) In addition to any other rights of termination available to the Buyer, to the Buyer may terminate this Agreement by giving one month written notice to the Seller. If the Buyer terminates this Agreement in accordance with this clause the Seller releases the Buyer from any further liability or obligation to the Seller in connection with such termination, save as to the Buyer's obligation to reimburse the Seller for work in progress.

- (3) If the Buyer terminates this Agreement under clause 16(2), the Buyer shall reimburse the Seller for all work in progress or work completed and delivered to the Buyer and reasonable

expenses incurred up to the date of the notice of termination under clause 16(2), which cannot be reversed or mitigated by you applying best efforts.

(4) If this Agreement is terminated pursuant to clauses 16(1) and 16(2), the Seller must cease the supply of the Products and Services the subject of the relevant Purchase Order and immediately return to the Buyer, or destroy or delete, as the Buyer directs, 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. The Seller must deliver all work in progress or completed items as the Buyer may request.

(5) 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.

#### 17. WAIVER

No waiver of any breach of any term or condition applicable to the Purchase Order will constitute a waiver of any other breach of that term or condition or of any other term or condition.

#### 18. WARRANTY

(1) The Seller warrants that the Products including all relevant materials:

- (a) conform to the description set out in the Purchase Order and any applicable specifications;
- (b) comply with all applicable Australian Federal, State and laws, ordinances and regulations;
- (c) are new (unless otherwise specified);
- (d) are of good merchantable quality and fit for the known purpose for which they are sold;
- (e) are not Defective Products;
- (f) are of current manufacture; and
- (g) are free from all liens, restrictions, reservations, security interests, charges and encumbrances of any kind and the Seller is entitled to clear, complete and good marketable title to and property in them.

(2) The Seller warrants that the Services must at all times:

- (a) conform with the demonstration shown (if the Seller demonstrated the Services);
- (b) be performed by competent, appropriately qualified and trained Personnel;
- (c) be carried out with due care, skill, competence and diligence in a proper workmanlike manner;
- (d) be not Defective Services;
- (e) comply with all applicable laws, regulations and industrial awards and agreements;
- (f) comply with all safety, health and environment guidelines, rules and procedures provided to the Seller by the Buyer;
- (g) comply with all directions and orders given by the Seller;
- (h) not to interfere with any of the Buyer's activities, or the activities of any other person, on the Buyer's premises; and
- (i) use tools and equipment which comply with applicable laws and are in a safe working condition.

(3) The Seller must obtain and assign to the Buyer the benefit of all warranties from its contractors, suppliers or consultants in relation to the Products and/or Services.

(4) The Seller also warrants that it will pass on to the Buyer the full benefit of any reduction of any existing taxes, duties or statutory charges (including but not limited to sales tax, fuel excise, stamp duty, financial institutions duty and debits tax, and carbon tax) subsequent to the date of the Purchase Order, by deducting the corresponding reduction to the Seller's costs resulting directly or indirectly from the tax reduction.

(5) These warranties are in addition to any other warranty contained in the Purchase Order and to any manufacturer's warranty, service guarantee or guarantee of performance. If there is any inconsistency between any implied warranty or express warranty or guarantee the most favourable to the Buyer will prevail.

(6) If there is a dispute between the parties as to allowance for or passing on of cost savings as referred to in clause 18(4) the dispute shall be resolved by an independent expert agreed on by the parties or failing agreement within 7 days of either party seeking the appointment of an expert appointed by the President of the Institute of Chartered Accountants (WA Branch). The expert must resolve the dispute acting as an expert only and not as an arbitrator. The expert's determination shall be final and binding and the purchase price shall be adjusted and the Seller shall make a refund to the Buyer in accordance with the determination. The expert's costs shall be borne as the expert determines.

#### 19. TERM OF WARRANTY

Without prejudice to clause 18, the Seller will at its own expense rectify any defect or deficiency (whether relating to quality and/or quantity) in any Defective Products and/or Defective Services within the period of the Seller's express warranty, or within 12 months from the date of completion of the Services or within 12 months from the date of delivery of the Products (as the case may be), whichever is the longer period. The Seller must make such repair or replacement within 7 days from the time of being notified of such defects, unless further time is allowed by the Buyer. This clause 19 will likewise apply to any of the Products which have been repaired or replaced until the termination of a similar period from the date of repair or replacement. At the Buyer's discretion, it may direct the Seller to refund all monies paid for the Defective Products and/or Defective Services, instead of repairing or replacing the Defective Products and/or Defective Services.

#### 20. INDEMNITY

(1) The Seller acknowledges that if the Seller enters the Buyer's premises, the Seller does so at their own risk. The Seller must ensure that the Seller's employees, agents, contractors and subcontractors are also aware that they enter the Buyer's premises at their own risk.

(2) The Seller is liable for and must indemnify and hold harmless the Buyer from and against all losses, liability, claims, causes of action and suits:

- (a) Defective Products and/or Defective Services or from failure of Products and/or Services to comply with all applicable Australian Federal and State laws, ordinances and regulations;
- (b) any breach of any provision of this Agreement by the Seller, including any failure to maintain the insurances required under clause 11 or a repudiation by an insurer of a claim arising from an insurance covered under clause 11, due to the Seller's acts or omissions;
- (c) any criminal act, fraud, negligence or wilful act or omission by the Seller or any of the Seller's employees, agents, contractors or subcontractors in connection with this Agreement;
- (d) any penalty imposed for breach of an applicable law in connection with the supply of the Products or performance of the Services by the Seller;
- (e) loss or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by the Seller and used in relation to this Agreement; and

(f) any claim that the Products, the Services or the results of the Services, anything the Seller does in supplying us with the Products or the Services, or the Buyer's use of the Products or the results of the Services infringes or allegedly infringes the Intellectual Property rights of any person.

(3) Every exemption, limitation, defence, immunity or other benefit contained in this Agreement to which the Buyer is entitled, will extend to protect, each of our employees, agents, contractors and subcontractors.

(4) Each indemnity in this Agreement is a continuing obligation separate and independent from the Seller's other obligations and survives termination or expiry of this Agreement.

(5) It is not necessary for the Buyer to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

Other than as provided for in this Agreement, neither party is liable to the other party in any circumstances for any indirect, economic, special or consequential loss or damage, in contract, in tort (including negligence), under statute or otherwise, including but not limited to loss of revenue, loss of production or loss of profit (whether direct or indirect).

#### 21. INJURY

If the Seller or any employee or agent of the Seller enters upon any premises or property of the Buyer, including but not limited to delivery, construction, inspection, servicing or repairing, the Seller will indemnify and hold harmless the Buyer from and against all liability, actions, suits, claims and demands on account of personal injury including death or property loss or damage to others (including the Seller and employees, agents and invitees of the Seller and of the Buyer) arising out of or in any manner connected with the performance of such work and caused by the negligent or wilful act or omission of the Seller or an employee or agent of the Seller and the Seller will at its own expense defend any and all actions based thereon and will pay all legal costs and other costs and expenses arising therefrom. The Seller must also procure and carry the insurance of employees on such work that may be required by law. The Seller must procure and maintain such other insurance in connection with the work as the Buyer may specify.

#### 22. LIMITATION OF LIABILITY

The Buyer's aggregate liability in contract, tort or otherwise and howsoever arising out of or in connection with the provision of Products and/or Services under the Purchase Order, whether in tort (including negligence), contract or otherwise is limited to 100% of the purchase price of Products and/or Services delivered, and excludes any liability for indirect, consequential, or incidental loss (including loss of profits, lost production, loss of anticipated savings and loss of opportunity) arising from or in connection with its supply of the Products and/or Services.

#### 23. TITLE

(1) Subject always to the Buyer's right of rejection of Products, title to and property in Products delivered passes to the Buyer on delivery to the delivery point specified in the Purchase Order. The risk of loss will remain with the Seller until inspection and acceptance by the Buyer of the Products delivered.

(2) If any payment for or in respect of Products is made by the Buyer prior to delivery to the Buyer, the title to and property in the completed or partly completed Products and any materials or parts to be used in the manufacture in respect of which such payment has been made will pass to the Buyer and the same will be appropriately marked. In the case of any payment made prior to delivery, the Seller grants the Buyer the right to register a security interest for the purposes of the *Personal Property Securities Act 2009* (Cth) in respect of the relevant pre-payment for Products. The risk of loss will remain with the Seller until inspection and acceptance by the Buyer of the delivered Products.

(3) Where Products are destroyed or damaged prior to delivery the Buyer will be entitled to cancel the Purchase Order in respect of those Products without the Seller being entitled to any payment or compensation and where any payment has

been made by the Buyer in respect of those Products the Seller must immediately refund the amount paid in full.

#### 24. SUPPLY OF INFORMATION AND MANUALS

The Seller must furnish all information, materials, specifications relating to the Products, as reasonably required by the Buyer.

#### 25. HAZARDOUS OR DANGEROUS GOODS

If the Products constitute dangerous or hazardous goods, the Seller must clearly mark/label the Products with dangerous or hazardous goods information and must ensure that all applicable Federal and State Acts and Regulations and the Buyer's requirements are fully complied with and implemented, without exception. Material Safety Data Sheets must be included with each delivery docket for the Products if they constitute dangerous or hazardous goods.

#### 26. CONFIDENTIALITY

(1) The Seller 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; and

- (c) immediately notify the Buyer of any potential, suspected or actual unauthorised use, copying or disclosure of any Confidential Information.

(2) The Seller:

- (a) may only use and allow access to the Confidential Information to those who strictly need to know for the purpose of supplying of the Products and Services;

- (b) must not make use of the Confidential Information to the Buyer's commercial, financial or competitive disadvantage or detriment; and

- (c) must not directly or indirectly attempt to reverse engineer any Confidential Information.

(3) The Seller acknowledges 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 the Seller; and

- (c) damages may not be a sufficient remedy for the Buyer for breach of this clause 26 by the Seller and that the Buyer is entitled to specific performance or injunctive relief (as appropriate) for any breach or threatened breach of this clause 26.

(4) The obligations in respect of the Confidential Information imposed on the Seller do not apply to any Confidential Information that:

- (a) is law fully in the public domain;

- (b) becomes part of the public domain otherwise than as a result of the wrongful act by the Seller;

- (c) is received by the Seller from a third party legally entitled to possess that information; or

- (d) the Seller is required to disclose by law or by any governmental agency, provided that the Seller must first notify, and consult with, the Buyer before making any such disclosure.

(5) If requested by Buyer, the Seller must immediately return to the Buyer, or destroy or delete, as directed, all originals and copies of the Confidential Information.

- (6) The Seller is liable for and must indemnify the Buyer in respect of any claim, action, damage, loss, cost, charge and expense which the Buyer suffers, incurs or is liable for in respect of:
- (a) any breach of this clause 26 by the Seller; or
  - (b) any infringement of the Buyer's rights in respect of the Confidential Information, by the Seller.

This clause 26 survives termination or expiry of this agreement.

#### 27. INTELLECTUAL PROPERTY

- (1) The Seller warrants to the Buyer and its successors in title that the sale or use of the Products and Services will not infringe or contribute to the infringement of any Intellectual Property rights.
- (2) Each party owns and retains title to all Intellectual Property created prior to, or independently of, the purpose of supplying the Products and/or Services under the Purchase Order.
- (3) All Intellectual Property created or developed as part of, or for the dominant purpose of, supplying Products and/or Services to the Buyer vests in and becomes the property of the Buyer at the time of its creation. Upon the Buyer's request, the Seller and each of its employees and contractors involved in the supply of the Products and/or Services shall execute all documentation requested by the Buyer to further document or perfect such assignment to, and ownership by the Buyer.
- (4) To the extent reasonably necessary for supplying Products and/or Services and performing their respective obligations under or in connection to the Purchase Order, each party licences its Intellectual Property to the other.
- (5) The Seller will, at its expense, indemnify, hold harmless and defend the Buyer and its successors in title against any claim, suit or proceeding brought against the Buyer which is based upon a claim, whether rightful or otherwise, that any Products, Services, process or material, or any part thereof, furnished by the Seller under the Purchase Order, constitutes an infringement of Intellectual Property rights and the Seller will pay all damages and costs awarded against the Buyer resulting therefrom. If a court rules that any Products, Services, process or material, or any part thereof infringes any Intellectual Property rights or if an injunction is granted prohibiting their use, the Seller will at its expense, subject to the following provisions, either procure for the Buyer an irrevocable royalty-free licence to continue using the Products, Services, process or material concerned, or with the Buyer's prior written approval, replace them with substantially equal but non-infringing items or modify them so they become non-infringing, provided that no replacement or modification will in any way amend or relieve the Seller of its warranties and guarantees set forth in or applicable to the Purchase Order. This indemnity is given upon the condition that the Buyer promptly notifies the Seller of any claim or proceeding involving the Buyer in which an infringement is alleged, and the Buyer must permit the Seller to control the defence or compromise of any allegation of infringement and the Buyer must render reasonable assistance, at the Seller's cost, in the defence thereof as the Seller may require.

#### 28. GOVERNING LAW

- (1) Unless otherwise provided in the Purchase Order, the laws of Western Australia govern the Purchase Order.
- (2) Each party submits to the jurisdiction of the courts of Western Australia.

#### 29. ON SITE WORK

- (1) Where the Seller is required to undertake any activity on any premises or property of the Buyer (**Site**), the Seller must observe the Buyer's standard conditions, policies and procedures for Site work, as instructed by the Buyer and so as to satisfy the Buyer's requirements regarding fitness to work, any required medical assessment or Site induction processes.
- (2) Whilst at the Site, the Seller must not without the Buyer's written consent:
  - (a) use or allow the Site to be used by any third party for any purpose other than for the provision of the Products or Services;

- (b) interfere with any of the Buyer's activities, or any activities of any other person at the Site; or
  - (c) do or allow any act or omission at the Site which may result in the Buyer being liable for any breach of any applicable laws.
- (3) The Seller acknowledges and agrees that the Buyer and its personnel may require access to a site owned or controlled by the Seller, in connection with the provision of the Products or Services. The Seller agrees to provide the Buyer's personnel with access to such site for that purpose and will provide them access to such facilities as may be reasonably required.

#### 30. OTHER MATTERS

- (1) In the interpretation of this Agreement, 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.
- (2) 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 the Buyer to agree to such a variation for any other Purchase Order.
- (3) The Buyer may exercise a right, remedy or power in any way it considers appropriate.
- (4) If the Buyer does not exercise a right, remedy or power at any time, this does not mean that the Buyer cannot exercise it later.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) 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.
- (9) Special terms and conditions (if any) contained in or attached to a Purchase Order shall be and deemed to be incorporated in this Agreement as if fully set out herein and in the event that any inconsistency arises between such special terms and any other provisions of this Agreement, the special terms and conditions shall prevail.
- (10) Subject to any other term of this Agreement which provides for dispute resolution, if a dispute arises with a matter in connection with this Agreement, the parties shall meet to review such dispute and to arrive at an amicable and negotiated solution with regard to it. If the parties 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 the parties' respective CEO's for resolution. 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.
- (11) The institution of arbitration proceedings does not preclude either party court relief of an urgent nature which cannot be given by the arbitrator.
- (12) The Seller will not, without the Buyer's prior written consent, engage in publicity related to this Purchase Order, or use the Buyer's name or Intellectual Property in any manner