



TERMS AND CONDITIONS OF PURCHASE

All Orders placed by Lamex or a member of the Lamex Group are subject to these Conditions.

1. Definitions

1.1 In these Conditions, the following terms have the following meaning:

Approval means any consent, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence, approval, permit, authority or exemption issued by any Government Agency.

Business Day means any day other than a Saturday, Sunday or bank holiday in Melbourne, Australia.

Conditions means these terms and conditions of purchase as set out in this document and (unless the context otherwise requires) includes any other terms and conditions agreed in writing between the Purchaser and the Supplier.

Contract means each contract for the supply and purchase of the Goods comprising:

- (a) the Purchaser's Order; and
- (b) these Conditions,

formed in accordance with clause 4.

Commencement Date means the date of commencement of the Contract as contemplated by clause 4.2.

Confidential Information means information marked as confidential or which is otherwise of a confidential nature (including, but not limited to, trade secrets and information of commercial value, technical information, price lists, data, business plans, customer information, party's operations, processes, plans, product information, know-how, designs, software and market opportunities) of a party including as communicated under or in connection with a Contract, except to the extent that such information:

- (a) is already in the public domain at the date of the disclosure; or
- (b) enters the public domain other than by a breach of an obligation of confidentiality.

Controller is the natural or legal person, public authority, agency or other body, which alone or jointly with others, determines the purposes and means of the Processing of Personal Data.

Data Protection Incident means any actual, apparent or anticipated, suspected or attempted misuse or loss of, interference with or unauthorised access to, modification of or disclosure of, Personal Data.

Data Protection Legislation means:

- (a) the GDPR Regulations;
- (b) the Privacy Act; and

- (c) any other law, ancillary rules, code of conduct, guidelines, orders, directions or other instruments made by an authority or other authorised body under any law relating to privacy, Personal Data, data protection, surveillance, direct marketing, data security or the collection, handling, storage, processing, protection, use or disclosure of Personal Data.

Data Protection Losses means all liabilities and other amounts including all:

- (a) costs including legal costs, claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages;
- (b) loss or damage of reputation, brand or goodwill;
- (c) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a relevant supervisory authority;
- (d) compensation paid to a Data Subject; and
- (e) costs of compliance with investigations by a supervisory authority.

Data Subject means the individual to whom Personal Data or Personal Information relates.

Data Subject Request means a request made by a Data Subject to exercise any rights under the GDPR Regulation.

Delivery Address means the address or addresses set out in the Contract or in the absence of a Contract, any Purchase Order.

Delivery Date the date or dates set out in the Contract or the relevant Order or if no dates are set out, within 30 days of either the Commencement Date under the Contract or in the absence of a Contract the date of the relevant Purchase Order.

Deliverables any documentation provided in connection with the Goods.

EU means the European Union.

Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including (but without limitation) strikes, blockades, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference or over-regulation by governments, civil or military authorities, political sanctions, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics, disease (human or animal) or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

General Data Protection Regulation or **GDPR Regulations** is the EU regulation that will be applied to the processing of personal data in the context of the activities of an establishment of a Controller or a Processor in the EU, regardless of whether the processing takes place in the EU or not.

Goods means the goods (and any associated services, including any instalment of the goods or any part of them) described in the Order.

Government Agency means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world and includes any self-regulatory organisation established under statute or any securities exchange.

Health Certification Destination means the country or location identified in a health certificate as the destination for the applicable Goods.

Incoterms means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the Commencement Date.

Intellectual Property Rights means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world and 'Intellectual Property Right' means any one of the Intellectual Property Rights.

Insolvency Event means any of the following events occurring in relation to a party:

- (a) an interim order is applied for or made, or a voluntary arrangement approved, or a petition for a bankruptcy order is presented or a bankruptcy order is made, or a receiver or trustee in bankruptcy is appointed over a party's estate;
- (b) a voluntary agreement or arrangement is approved or entered into, or an administration order is made, or a receiver or administrative receiver is appointed over any of a party's assets;
- (c) an undertaking or a resolution or petition to wind up a party is passed or presented (other than for the purposes of solvent amalgamation or reconstruction); or
- (d) if any circumstances arise which entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order and such petition or application is not dismissed within 30 days of being applied for or presented; and
- (e) events that are analogous to the foregoing.

Lamex means Lamex Foods Australia Pty Ltd a company registered in Australia under number Australian Company Number 668 941 133 whose registered office is at 'Hall Chadwick, Melbourne' Level 14, 440 Collins Street, Melbourne, Victoria 3000.

Lamex Group means Lamex and each of its Related Bodies Corporate, from time to time.

Law means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in any relevant jurisdiction and includes any codes of conduct or practice or similar instruments.

Order or **Purchase Order** means an order or purchase order issued by the Purchaser in respect of the Goods, and includes the Specifications contemplated by these Conditions.

Personal Data means:

- (a) any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified directly or indirectly, by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. GDPR applies to personal data such as name, sex, age, passport, ID, nationality, HR data, contact details, online purchases, credit card details, payroll, airline passenger lists, dietary preferences, airport control cameras data, hotel reservations etc. and to special categories of sensitive data such as economic, health, genetic and biometric data; and
- (b) includes Personal Information.

Personal Data Breach means any breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Protected Data.

Personal Information has the meaning given to that term in the Privacy Act.

Personnel of a person means:

- (a) the officers, employees, contractors (including subcontractors) and agents of the contractors of that person or any of its Related Entities; or
- (b) the officers, employees, contractors (including subcontractors) and agents of the contractors of that person or any of its Related Entities, or any person that forms part of that person's supply chain.

Price means the price of the Goods.

Privacy Act means the *Privacy Act 1988* (Cth).

Policies means all of the Lamex Group policies from time to time, including without limitation those on health and safety, corporate social responsibility, data privacy and antislavery.

Process means any operation or set of operations which is performed on personal data or on sets of personal data, if automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. **Processing** and **Processes** have the corresponding meaning.

Processor means the natural or legal person, public authority, agency or other body which processes data on behalf of the Controller.

Protected Data means Personal Data received from or on behalf of the Purchaser, or otherwise obtained, in connection with the performance of the Supplier's obligations under any Contract.

Purchaser means Lamex or a member of the Lamex Group, as applicable.

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

Related Entity for an entity, means any other entity that Controls, is Controlled by, or is under common Control with, that entity.

Services means any services to be provided by the Supplier under any Contract.

Specifications includes, in relation to Goods, any grades, quality, quantities, and any written specifications agreed between the parties from time to time.

Supplier means the entity named as the supplier in the Contract or in the absence of a Contract, named in the relevant Purchase Order.

Tax Evasion Law means any applicable law which has the objective of limiting and preventing tax evasion and other related financial crimes.

1.2 Interpretation

In these Conditions:

- (a) any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time;
- (b) the headings in these Conditions are for convenience only and shall not affect their interpretation;
- (c) in these terms, any reference to the Supplier's quotation, specification, price list or like document shall be solely for the purpose of describing the Goods to be supplied or purchased and do not impute any additional term to the Contract;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- (e) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, these Conditions and a reference to these Conditions includes any clause, annexure, exhibit and schedule;
- (f) unless the content otherwise requires, any terms or expressions which are defined in or given a particular meaning by the provision of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions then these Conditions prevail;
- (g) words in the singular shall include the plural and vice versa;
- (h) a reference to one gender shall include a reference to all other genders;
- (i) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any Government Agency (whether or not having a separate legal personality);
- (j) a reference to a party to any document includes that party's successors and permitted assigns;
- (k) a reference to time is to time in Melbourne, Victoria;
- (l) an obligation in these Conditions on a person not to do something includes an obligation not to agree or allow that thing to be done;
- (m) a provision of these Conditions may not be construed adversely to a party solely on the ground that the party (or that party's representative) was responsible for the preparation of these Conditions or the preparation or proposal of that provision;
- (n) a reference to a statute, statutory provision or any subordinate legislation made under a statute is to such statute, provision or subordinate legislation as amended or re-enacted from time to time whether before or after the date of these Conditions and, in the case of

a statute, includes any subordinate legislation made under the statute whether before or after the date of these Conditions;

- (o) a reference to '\$', 'A\$', 'AUD', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia;
- (p) a reference to a document (including a Contract) includes all amendments or supplements to, or replacements or novations of, that document; and
- (q) any phrase introduced by the terms including, include, in particular, or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. **Standing offer**

The Supplier offers to supply the Goods to the Purchaser and the Purchaser agrees to purchase the Goods, on the terms of each Contract.

3. **No subsequent terms**

Except for any variation under clause 7 or as agreed by the parties from time to time, the parties acknowledge and irrevocably agree that the Contract excludes all other terms and conditions, including any subsequent terms and conditions applied by a party in connection with the Goods or subject matter of an Order.

4. **Offers and formation of the Contract**

4.1 The Purchaser may, from time to time:

- (a) receive an offer from the Supplier to sell certain Goods to the Purchaser, on the Specifications offered by the Supplier or agreed by the parties;
- (b) request the Supplier provide the Purchaser with a quotation for Goods, including such Specifications as the Purchaser may require; or
- (c) provide the Supplier with an Order for Goods on Specifications required by the Purchaser,

which will, as applicable, on receipt of the relevant offer, quotation or Order, constitute an offer by the Supplier to sell, or an offer by the Purchaser to purchase, as applicable, the Goods the subject of the offer, quotation or Order, subject to and on the terms of these Conditions.

4.2 Separate agreements will be formed between the Purchaser and the Supplier for the provision of Goods on:

- (a) in the case of an offer or quotation provided by the Supplier under clauses 4.1(a) or 4.1(b), when the Purchaser accepts the offer or quotation in writing, which must be within a period of 30 days after the Supplier gives the Purchaser the offer or quotation, as applicable; or
- (b) in the case of any Order submitted by the Purchaser as contemplated by clause 4.1(c), on confirmation of the Order by the Supplier in writing (including electronically and automatically),

(Commencement Date).

- 4.3 Notwithstanding clauses 4.1 and 4.2, the Supplier will accept an Order subject to the terms of these Conditions, upon the earlier of:
- (a) the Supplier returning to the Purchaser acknowledgement of an Order or these Conditions to which the Order is attached;
 - (b) the Supplier delivers (or procures the delivery of) the Goods contemplated in an Order to the Delivery Address; or
 - (c) five Business Days from the time the Supplier receives an Order from the Purchaser and the Supplier has not responded or rejected the Order.

5. **Provision of Goods**

5.1 The Supplier must supply the Goods:

- (a) in the quantities and at the quality specified in the Contract;
- (b) strictly in accordance with the Specifications;
- (c) together with all Approvals required by law for the importation or delivery of the Goods to the Purchaser and subsequent resale of the Goods by the Purchaser (if applicable); and
- (d) in accordance with the description of the Goods specified in the Contract.

5.2 Title to, and risk in, the Goods the subject of a Contract passes to the Purchaser on the later of:

- (a) the date on which the Purchaser pays the Supplier for the relevant Goods; or
- (b) the date on which the Goods are delivered to the Purchaser under the Contract.

5.3 Without limiting clauses 5.1 and 5.2, to the extent that there are any variances in the Goods (including of the Specifications, description, quantity, price or delivery schedule of the Goods) then the Purchaser may reject the non-compliant Goods, such that unless otherwise agreed in writing by the parties:

- (a) the Purchaser will not be liable to pay for any Goods delivered by the Supplier;
- (b) the Supplier must collect the relevant Goods from the Purchaser, at its cost.

6. **Price**

(a) The Price, Delivery Date and Delivery Address are as stated in the Contract. Unless expressly otherwise provided in the Contract, the Price includes:

- (i) all costs of the Supplier to comply with the terms and conditions of the Contract, including timely delivery;
- (ii) any and all taxes, including sales, use, excise, value added, or other taxes; and
- (iii) fees, duties, or other governmental impositions on the sale of the Goods covered by the Contract.

(b) To the extent permitted by Law, if the Purchaser is required to pay any taxes or other impositions, the Supplier will promptly reimburse Purchaser by issuing the Purchaser an invoice in accordance with clause 10.

7. Variations, agreed termination and returns

7.1 At any time prior to delivery, the Purchaser may by written notice to the Supplier, request:

- (a) variations to a Contract, including to decrease Goods, omit Goods, or increase Goods or vary the Specifications pertaining to the Goods (including so as to change quantities, specifications (including the Specifications), packaging, delivery dates, place of delivery, method of delivery, and other descriptions relating to the products and services); or
- (b) terminate the Contract, in whole or in part.

7.2 At any time after delivery of the Goods, the Purchaser may request to return the Goods to the Supplier, for any reason.

7.3 Where the Purchaser requests to:

- (a) vary the Goods the subject of the Contract as contemplated by clauses 7.1, the requested variation will be binding on the Supplier with respect to the Contract, provided that if any variation causes an increase or decrease in the cost or time required for the Supplier's performance, the Supplier and the Purchaser must, in good faith, negotiate a reasonable adjustment to the Price payable under the Contract; and
- (b) return the Goods the subject of a Contract as contemplated by clause 7.2, the Supplier must:
 - (i) use its best efforts to accommodate the Purchaser's requested return of the Goods; and
 - (ii) to the extent reasonable in the circumstances, refund the Purchaser for amounts paid by the Purchaser on account of the Goods, less the Supplier's direct shipping costs and administrative costs associated with the return of Goods.

7.4 The Supplier acknowledges and agrees that:

- (a) the Purchaser may incur liability to third parties in connection with the supply of Goods under a Contract;
- (b) the Specifications and quantity of the Goods under a Contract may be essential to the Purchaser to fulfil the Purchaser's obligations to third parties;
- (c) the Supplier must request the Purchaser to vary the Goods or Specifications the subject of a Contract or terminate a Contract, to the extent that the variation or termination does not prejudice the Purchaser's third party obligations, the Purchaser must agree to the variation or termination.

7.5 Where the Purchaser terminates the Contract as contemplated by clause 7.1(b), except as otherwise agreed by the parties, the Purchaser will be liable to pay to the Supplier its direct costs for Goods that are work in progress as at the time of termination to the extent the Goods cannot otherwise be sold by the Supplier to a third party.

7.6 Where the Purchaser suffers loss or damage in connection with the termination by the Supplier as contemplated by clause 7.4(c), the Supplier must pay the Purchaser such loss or damage incurred by Purchaser as a result of such termination, including in connection with its third party obligations.

8. Representations and Warranties

8.1 Performance and conduct warranties

The Supplier warrants that:

- (a) its performance under each Contract, and the Goods provided under each Contract, will:
 - (i) comply in all respects with all applicable Laws; and
 - (ii) include all Approvals required for the importation and delivery to the Purchaser (or its nominee) and resale of the Goods by the Purchaser (or its nominee);
- (b) for the supply of Goods under each Contract, the Supplier will comply with all applicable food safety Laws and manufacturing requirements and maintains all required licenses, registrations, and approvals for the products identified in the Contract to be imported into the country as identified as the Health Certificate Destination in the Contract;
- (c) the Supplier carries all certifications/registrations for its food facilities as applicable, and their equivalent governing bodies in the country identified as the Health Certificate Destination in the Contract, as required by Law;
- (d) the Supplier will comply with all inspection requests, and adhere to all safety requirements, of the Purchaser and any Governmental Agency which has jurisdiction over the Goods and services; and
- (e) the procedures by which the Supplier was approved as a vendor to and by the Purchaser will be followed unless otherwise agreed to in writing by the parties.

8.2 Goods warranties

The Supplier represents and warrants to the Purchaser that the Goods the subject of each Contract:

- (a) will be in conformity with the Contract;
- (b) are of merchantable quality, are strictly of the kind and quality described in a Contract, are free from defects, and conform, in all respects, to the Specifications;
- (c) are owned by the Supplier or will at the time of supply to the Purchaser be owned by the Supplier;
- (d) are free from any liens, charges or encumbrances including all security interests under the *Personal Property Securities Act 2009* (Cth) and will be supplied to the Purchaser on that basis;
- (e) comply with all applicable Laws;
- (f) are fit for the purpose for which goods of the same kind are commonly supplied and any particular purpose known to the Supplier for which Purchaser intends to use the Goods;
- (g) are supplied for a Price that is no less favourable than the Price paid by other purchasers of similar Goods in similar circumstances; and
- (h) where supplied to the Purchaser, do not breach any intellectual property rights of any other purpose;

- (i) are food grade and fit for human consumption in accordance with all applicable Laws, including without limitation the Laws of the country identified as the Health Certificate Destination in the Contract;
- (j) the Goods are not adulterated or misbranded within the meaning of the state and local Laws, and the Laws of the country identified as the Health Certificate Destination in the Contract;
- (k) the Goods conform to any statements made on the containers or labels or advertising material or pamphlets for such Goods, and that the Goods will be adequately contained, packaged, marked and labelled, in sanitary, food-safe containers;
- (l) comply with all applicable Laws that govern the production, labelling, manufacturing, or testing specifications for the product or warnings with respect to contents or in relation to product safety, environmental protection, human health, labour, industry, and sale of the product state and local Laws, and the Laws of the country identified as the Health Certificate Destination in the Contract;
- (m) the Goods are processed, packed, stored, and transported under clean and sanitary conditions, in compliance with all state and local regulations, and the Laws of the country identified as the Health Certificate Destination in the Contract;
- (n) to the extent they have been the subject of pesticide applications and contain pesticide residues comply with the Laws of the country identified as the Health Certificate Destination in the Contract, and that Supplier will conduct all necessary testing or activities required for such approvals;
- (o) to the extent the Goods are frozen meat or poultry, that the Goods are the fresh frozen product of animals slaughtered not more than 90 days prior to delivery under the Contract and will pass sanitary inspection of the applicable Government Agency or other competent authority in the country identified as the Health Certificate Destination in the Contract;
- (p) to the extent the Goods are perishable agricultural commodities, that the Goods sold are produced from the most recent crop cycle, and shipped within 2 months of the processing/fill date, unless otherwise agreed to in writing by the parties; and
- (q) conform, in all respects, to samples provided by the Supplier to the Purchaser (if any).

8.3 Service warranties

- (a) All Goods or Services provided by the Supplier under this Contract will be performed by the Supplier in accordance with the Specifications, drawings, samples, and any other description furnished or provided by the Purchaser.
- (b) Without limiting clause 8.3(a) any Services will be performed in accordance with best industry practice.
- (c) To the extent permitted by Law, the Supplier will re-execute, re-perform, replace or re-supply, at its own cost and expense, any defective or unsatisfactory Goods or Services.
- (d) The Supplier must promptly notify the Purchaser of any changes in the production processes or conditions relating to the Supplier or the Goods, including any change in any approval, licence or certification that the Supplier is required to hold and maintain to provide the Goods or any Services in accordance with a Contract.

- (e) The Supplier must promptly inform the Purchaser of any incidents or emergency situations which may affect the Goods or any other products purchased, or Services received, by the Purchaser.

8.4 Continuing obligation

- (a) The warranties set forth in this clause 8 are conditions to this Contract and are in addition to all other warranties, express or implied at Law.
- (b) Delivery, inspection, acceptance or use of the Goods does not affect the Supplier's obligations under a Contract, and the warranties in clause 8 survive inspection, test, acceptance, payment, and use.
- (c) To the extent that such warranties are capable of being assigned, the Purchaser assigns all warranties to a Related Entity, its successors, assigns, customers, users of the Goods and products, and any third party injured in person or property by reason of any breach of such warranties. The Supplier expressly permits Purchaser's assignment of the warranties in clause 8 to such persons.
- (d) Notwithstanding any other provisions in the Supplier's forms, documents or other materials, the warranties in clause 8 shall control to the extent that this may conflict with any warranty or limitation set forth in Supplier's forms, documents or other materials.

8.5 Breach of warranty

- (a) To the extent permitted by Law, any Goods that are supplied by the Supplier that are in breach of the warranties set forth in clause 8, the Purchaser may:
 - (i) require the Supplier to collect, at Supplier 's expense, all or any portion of the Goods previously shipped, whether defective or not and whether previously accepted or not;
 - (ii) require the Supplier to replace the Goods at the Supplier's expense or otherwise obtain substitute Goods at the Supplier's expense; and
 - (iii) retain possession of the Goods and repair those Goods at the Supplier's expense.

9. **Specifications**

- 9.1 The quantity, quality and description of the Goods must, subject to these Conditions, be as specified in the Order and/or in any applicable Specification supplied by the Purchaser to the Supplier or otherwise agreed in writing by the Purchaser.
- 9.2 Any Specification supplied by the Purchaser to the Supplier, or specifically produced by the Supplier for the Purchaser, in connection with the Contract, together with the copyright, design rights or any other Intellectual Property Rights in the Specification, shall be the exclusive property of the Purchaser.
- 9.3 The Supplier shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Supplier, or as required for the purpose of the Contract.

- 9.4 The Goods must be marked in accordance with the Purchaser's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition.
- 9.5 The Supplier must not unreasonably refuse to take any steps necessary to comply with any request by the Purchaser to inspect or test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch, and to provide the Purchaser with any facilities reasonably required by the Purchaser for inspection or testing those Goods.
- 9.6 If as a result of inspection or testing the Purchaser is not satisfied that the Goods will comply in all respects with the Contract (including an Order or the Specifications), and the Purchaser informs the Supplier of this fact within seven days of inspection or testing, the Supplier must take all reasonably necessary steps to ensure that the Goods comply the Contract (including an Order or the Specifications).
- 9.7 The Supplier must comply with all applicable Laws, regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods.

10. **Payment**

- 10.1 The Supplier may invoice the Purchaser on or at any time after delivery of the Goods, as the case may be, and each invoice shall quote the number of the Contract and Order.
- 10.2 Unless otherwise stated in the Order, the Purchaser shall pay the Price of the Goods within 30 days after the end of the month of receipt by the Purchaser of a proper invoice or, if later, after acceptance of the Goods in question by the Purchaser.

11. **Indemnity**

The Supplier agrees to indemnify, defend, and hold harmless the Purchaser and its agents, servants, employees, officers, directors, customers, and any other third party to whom the Purchaser may owe a similar obligation by contract, lease agreement or operation of law (herein referred to as Purchaser's Indemnitee) from and against any and all allegations, claims, demands, or other liabilities, loss, damage, fine, penalty, cost or expense (including attorney's fees) arising out of, concerning, or resulting from any non-conforming product, Good or Service provided under the Contract and any act, fault, or omission of Supplier, its agents, employees, or subcontractors in the performance of the Contract, including but not limited to:

- (a) an actual or alleged negligent act or omission, or willful misconduct of Supplier, or its employees, affiliates, agents, representatives, or any person performing services under the Contract;
- (b) any actual or alleged property damage, bodily injury, or death caused by any act or omission of Supplier, its agents, or employees; and
- (c) any actual or alleged infringement or misappropriation of any patent, or any trademark or copyright or any other Intellectual Property Rights of a third party.

12. **Insurance**

- (a) The Supplier agrees to maintain such insurance as will protect the Supplier, the Purchaser and the Purchaser's Indemnitees from any and all claims for personal injury (including death) and property damage, which may be made by or on behalf of customers of the Purchaser or the general public in connection with the Contract, the Goods or Services.

- (b) Without limiting the foregoing, the Supplier agrees to maintain product liability insurance coverage with a minimum of \$20,000,000 combined single limit, bodily injury/property damage coverage.
- (c) The Supplier must provide the Purchaser with 30 days' prior written notice of cancellation of the policy.
- (d) Upon the Purchaser's request, the Supplier shall promptly provide the Purchaser with evidence satisfactory to the Purchaser of all such insurance coverage.

13. **Inspection and Rejection of Non-Conforming Products**

- (a) The Supplier acknowledges that the Purchaser may act as a broker of the Goods and may resell the products to a third party (**Third Party Purchaser**)
- (b) The Purchaser or a Third Party Purchaser may inspect the Goods for defects or any nonconformity with the Specifications or an Order (**Non-conforming Products**).
- (c) The Supplier agrees that the Purchaser may reject the Non-conforming Products at the request of, and for the benefit of, a Third Party Purchaser.
- (d) The Supplier must not substitute Non-conforming Products or back order such products without Purchaser's or a Third Party Purchaser's prior approval.
- (e) The receipt of Goods, the inspection or non-inspection of or payment for the Goods or Services will not constitute acceptance of the Goods and will not impair the Purchaser's right to reject Non-conforming Products.
- (f) Certification of the Goods by a Government Agency or any certification authority shall not constitute proof that the Goods or any other products are sound or otherwise acceptable to the Purchaser or in accordance with the Contract.
- (g) The Purchaser may inspect the Goods at any time before or after payment (without regard to the manner of shipment or any shipping or price terms contained herein) and may reject any or all Goods or other products which are in Purchaser's judgment and sole discretion defective or non-conforming.
- (h) The Purchaser, in its sole discretion, may reject any Non-conforming Products or require price adjustments to compensate for expenses incurred by the Purchaser or a Third Party Purchaser to meet the required specifications.
- (i) In the case of full rejection, the Goods must be removed promptly. Supplier must pay or reimburse Purchaser within 30 days of being notified that the Goods are rejected in accordance with clauses 13(c) or 13(h) rejection notification for reasonable and direct expenses and damages incurred by the Purchaser in connection with Goods that are not in conformity with an Order.
- (j) Goods that have been rejected and Goods that are supplied in excess of quantities of the quantities specified in an Order may be returned to Supplier by the Purchaser (or a Third Party Purchaser) at the Supplier's expense and, in addition to the Purchaser's other rights, the Purchaser may charge Supplier all reasonable expenses of unpacking, examining, repacking and reshipping such Goods.

14. **Termination**

14.1 Termination by Purchaser prior to delivery under a Contract.

14.2 The Purchaser may terminate a Contract in whole or in part by giving the Supplier reasonable notice, in writing, prior to Supplier's shipment of the Goods and otherwise in accordance with clause 7.5. Upon receipt of such notice, the Supplier agrees to stop all work in connection with the relevant Contract except as otherwise directed by the Purchaser.

14.3 The Purchaser is entitled to terminate the Contract without liability to the Supplier by given notice to the Supplier at any time if:

- (a) the Supplier commits any breach of the Contract with the Supplier provided that if the breach was remediable the Purchaser gave to the Supplier notice of such breach which was not remedied within 20 Business Days of the date of such notice; or
- (b) the Supplier is the subject of an Insolvency Event; or
- (c) the Supplier ceases or threatens to cease to carry on trading.

14.4 The Supplier may terminate a Contract if:

- (a) if the Purchaser is the subject of an Insolvency Event;
- (b) the Purchaser commits a material breach of this Contract which is not capable of remedy; or
- (c) the Purchaser commits a material breach of this Contract which is capable of remedy and fails to remedy the breach within 20 Business Days of receiving notice requiring it to do so.

15. **Time**

(a) The Supplier acknowledges that:

- (i) the Goods are purchased for resale and that Purchaser has promised deliveries to its customers based on the Delivery Date(s) specified in an Order; and
- (ii) time is of the essence for each Purchase Order for the delivery of Goods.

If deliveries are not made by the date(s) specified in the applicable Purchase Order, the Purchaser reserves the right without liability and in addition to its other rights and remedies in these Conditions to terminate the Contract by notice as to Goods not yet received and to purchase substitute items elsewhere and the Supplier agrees to indemnify the Purchaser for any loss incurred.

- (b) If the Goods are to be delivered by instalments, the Contract will be treated as a single contract and not severable.
- (c) The Supplier must supply the Purchaser with any reasonable instructions or other information to enable the Purchaser to accept delivery of the Goods.
- (d) If the Goods are not delivered on the due date specified in a Contract then, without prejudice to any other remedy, and to the extent specified in a Contract, liquidated damages will apply.

- (e) Where liquidated damages are included in a Purchase Order, the parties acknowledge and agree that the liquidated damages contemplated by that Purchase Order represent a genuine pre-estimate of the loss the Purchaser may suffer as a result of the Goods not being delivered by the due date, including having regard to its commitments to third parties.

16. Confidential Information

- (a) Each party must not disclose to any person any Confidential Information disclosed to it by the other party concerning the business or affairs of the other party or of any Related Entity, except as permitted by clause 16(b).
- (b) Each party may disclose the other party's Confidential Information:
 - (i) to its employees, officers, agents, consultants or sub-contractors (**Representatives**) who need to know such information for the purposes of carrying out the party's obligations under this Contract, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in clause (a) as if they were a party to this Contract. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and
 - (ii) as may be required by law, court order or any governmental or regulatory authority.
- (c) Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in these Terms are granted to the other party or to be implied from these Terms.

17. Vendor Authorisation

- (a) The Supplier acknowledges that it has been approved by the Purchaser as an authorised vendor pursuant to a vendor approval process.
- (b) To the extent that the Supplier intends to make any changes to its operations that differ from the operations upon which the Supplier was approved as an authorised vendor, the Supplier will promptly inform the Purchaser of such change and obtain written approval from Purchaser prior to making such change.

18. Audit/Inspection

- (a) The Purchaser and its third-party designee shall have the right to audit and inspect the records and facilities of Supplier and Supplier's agents, representatives and subcontractors used in performance of the Contract or relating to the Goods to the extent reasonably necessary to determine Supplier's compliance with the Contract.
- (b) The Supplier will provide the Purchaser or its third-party designee conducting the audit or inspection with reasonable assistance, including without limitation access to buildings, appropriate Personnel, and work space. The Purchaser's audit/inspection, or failure to conduct any audit or inspection, will not release Supplier from any of Supplier's obligations, representations, or warranties.

19. **Data Protection**

19.1 To the extent that Personal Data is Processed by the Supplier or the Supplier's Personnel under or in connection with the Contract, the Supplier shall, and shall procure that the Supplier's Personnel shall:

- (a) only Process the Personal Data to the extent required to provide the Goods (or associated services) in accordance with the terms of the Contract or otherwise in accordance with documented instructions of the Purchaser from time to time;
- (b) not otherwise modify, amend or alter the contents of the Personal Data or disclose or permit the disclosure of any of the Personal Data to any third party, unless specifically authorised to do so in writing by a Director of the Purchaser;
- (c) implement appropriate technical and organisational measures to:
 - (i) protect Personal Data against unauthorised or unlawful Processing and against accidental or unlawful loss, destruction, damage, alteration or disclosure;
 - (ii) comply with Data Protection Legislation; and
 - (iii) ensure the protection of the rights of the Data Subject;
- (d) ensure that all Supplier's personnel engaged in the provision of the Goods (or associated services) have entered into confidentiality agreements with the Supplier and shall further ensure that such Personnel are made aware of and observe the Processor's obligations under the Contract with regard to the security and protection of Personal Data;
- (e) Process the Personal Data in accordance with the Data Protection Legislation and not do or permit anything to be done which causes the Purchaser in any way to be in breach of the Data Protection Legislation;
- (f) provide written evidence of the Supplier's compliance with Data Protection Legislation as may be requested by the Purchaser from time to time;
- (g) co-operate and assist, as requested by the Purchaser, and put appropriate technical and organisational measures in place to enable the Purchaser to comply with any exercise of rights by a Data Subject under Data Protection Legislation;
- (h) not Process the Personal Data anywhere outside the European Economic Area (**EEA**) or the Territory without the prior written consent of the Purchaser;
- (i) at the request of the Purchaser or any competent regulatory or supervisory authority, submit for audit the Processing activities and related facilities carried out pursuant to the contract, which shall be carried out by the Purchaser, its authorised representatives (bound by a duty of confidentiality) and/or representatives of the relevant regulatory or supervisory authority;

19.2 The Supplier shall notify the Purchaser as soon as reasonably practicable and in any event within 24 hours of:

- (a) any legally binding request for disclosure of Personal Data by a law enforcement or other competent authority, unless prohibited by law from doing so;
- (b) any request received directly from a Data Subject without responding to that request, unless required by law or it has been otherwise authorised by the Purchaser to do so;

- (c) receiving any correspondence, notice or other communication whether orally or in writing from the Information Commissioner's Office (**ICO**), any other relevant data protection regulator or any other regulator or person, relating to the Personal Data; and
- (d) becoming aware of a breach of the provisions of this condition.

19.3 Without prejudice to any other provision of the Contract, the Purchaser may, on reasonable notice request a detailed written description of:

- (a) the technical and organisational method employed by the Supplier and any sub-Processors (if any) for the processing of Personal Data;
- (b) the processing activities carried out by the Supplier on behalf of the Purchaser containing at least the amount of details required by article 30(2) of the GDPR.

Within 10 days of receipt by the Supplier of the Purchaser's written request, the Supplier shall deliver a written report to the Purchaser in sufficient details that the Purchaser can reasonably determine whether or not any applicable Personal Data is being or has been processed in compliance with the Data Protection Legislation.

19.4 Without prejudice to the other provisions of this condition, if the Supplier or any member of the Supplier's personnel becomes aware of any Data Protection incident, the Supplier shall promptly (but in any event within 24 hours of discovery) notify the Purchaser. The Supplier shall, at no additional cost to the Purchaser, provide the Purchaser with all resources, assistance and co-operation as are required by the Purchaser for the Purchaser to notify the ICO and any other relevant data protection regulator of such Data Protection Incident and for the Purchaser to provide such reports or information as may be requested by them in relation to such Data Protection Incident and for the Purchaser to notify the relevant data subjects of such Data Protection incident, as applicable.

19.5 The Supplier shall, at no additional cost to the Purchaser, provide the Purchaser with all resources and assistance as required by the Purchaser for the Purchaser to discharge its duties pursuant to articles 35 and 36 of the GDPR, including but not limited to, promptly at the request of the Purchaser providing information in respect of any data protection impact assessment with the Purchaser conducts.

19.6 Where the Supplier sub-contracts any of its obligations under this condition, with the consent of the Purchaser, it shall do so only by way of written agreement with the sub-Processor, which imposes the same obligations on the sub-Processor as are imposed on the Supplier under this condition. The Supplier shall inform the Purchaser of any sub-Processors in advance. In any event, the Supplier shall be liable for the acts and omissions of its agents, personnel and sub-Processors as if they were its own acts and omissions.

19.7 On expiry or termination of each Contract, the Supplier shall immediately cease Processing the Personal Data and arrange for the prompt and safe return or the destruction of all the Personal Data with all copies in its possession or control and certify that such destruction or return has taken place.

20. **Anti-bribery and Corruption**

The Supplier must:

- (a) comply with all applicable laws, statutes and regulations relating to anti-bribery and corruption, including the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and the *Criminal Code Act 1995* (Cth);

- (b) have and maintain in place its own policies and procedures to ensure compliance with all applicable laws, statutes and regulations relating to anti-bribery and corruption;
- (c) implement due diligence procedures for its own suppliers, subcontractors and other participants to ensure that there is no bribery or corrupt business practices in its supply chains;
- (d) represent, warrant and undertake that neither the Supplier nor any of its officers, employees, subsidiaries, affiliates or other persons associated with it:
 - (i) has been convicted of any offense relating to bribery or corrupt business practices;
 - (ii) has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with bribery or corrupt business practices;
- (e) notify the Purchaser as soon as it becomes aware of any actual or suspected bribe or corrupt business practice within its operations or its supply chain, including any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body; and
- (f) promptly report to the Purchaser any request or demand for any undue financial or other advantage of any kind received by the Supplier or if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier.

21. **Modern Slavery**

The Supplier shall:

- (a) comply with all applicable laws, statutes and regulations relating to slavery, involuntary servitude, debt bondage, forced labour or human trafficking (**Modern Slavery**) including the *Modern Slavery Act 2018* (Cth) and take reasonable steps to ensure that there are no Modern Slavery issues in the Supplier's supply chains or in any part of their business;
- (b) have and maintain in place its own policies and procedures to ensure compliance with all Modern Slavery laws, statutes and regulations;
- (c) implement due diligence procedures for its own suppliers, subcontractors and other participants to ensure that there are no Modern Slavery issues in its supply chains;
- (d) represent, warrant and undertake that it conducts its business in a manner that is consistent with the principles of the *Modern Slavery Act 2018* (Cth) and that neither the Supplier nor the any of its officers, employees, subsidiaries, affiliates or other persons associated with it:
 - (i) has been convicted of any offence relating to Modern Slavery; and
 - (ii) has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental administrative or regulatory body regarding any offence or alleged offence of or in connection with Modern Slavery;

- (e) notify the Purchaser as soon as it becomes aware of any actual or suspected Modern Slavery in the supply chain, including any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body; and
- (f) maintain a complete and accurate set of records to trace the supply chain of all goods and services provided to the Purchaser.

22. **Tax Evasion**

The Supplier must:

- (a) comply with Tax Evasion Laws and take reasonable steps to ensure that there are no criminal finances issues in the Supplier's supply chains or in any part of their business;
- (b) have and maintain in place its own policies and procedures to ensure compliance with all Tax Evasion Laws, statutes and regulations;
- (c) implement due diligence procedures for its own suppliers and customers, sub-contractors and other participants to ensure that there are no tax evasion issues in its supply chains:
- (d) represent, warrant and undertake that it conducts its business in a manner that is consistent with the principles of the applicable Tax Evasion Law and that neither the Supplier nor the any of its officers, employees, subsidiaries, affiliates or other persons associated with it:
 - (i) has been convicted of any offence relating to tax evasion; and
 - (ii) has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental administrative or regulatory body regarding any offence or alleged offence of or in connection with tax evasion;
- (e) notify the Purchaser as soon as it becomes aware of any actual or suspected tax evasion in the supply chain, including any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body; and
- (f) keep books and records of all financial transactions and expenditures in connection with their contracts.

23. **Dispute Resolution**

23.1 Each party shall at all times act in good faith towards the other and shall use all reasonable endeavours to ensure that the terms of Contract are observed. In circumstances where a dispute arises in connection with the Contract then the Authorised Representatives will within 10 Business Days of a written request from one party to the other meet in good faith to resolve the dispute and will exchange written statements with the other party setting out the reason for their disagreement and within a further 10 Business Days thereafter meet in a good faith effort to resolve the dispute.

23.2 If the dispute is not resolved at that meeting then either party may refer the dispute to the Resolution Institute ABN 69 008 651 232 (**RI**) for mediation. The parties will endeavour to settle it by mediation in accordance with the RI Mediation Rules 2016 (as amended or updated from time to time). Unless otherwise agreed between the parties, the mediator will be appointed by RI. To initiate the mediation, a party must give notice in writing (**ADR Notice**) to the other party to the dispute requesting the meditation. A copy of the dispute should be sent to RI. The parties will

cooperate so as to procure, so far as reasonably possible, that the mediation will start not later than 30 Business Days after the date of the ADR Notice unless otherwise agreed by the parties.

23.3 Neither party may instigate litigation or proceedings against the other party until the mediation process has concluded. Each party shall bear its own costs of such mediation.

24. **Order of precedence**

If there is any inconsistency between the Order and these Conditions, the inconsistency must be resolved by applying the following order of precedence:

- (a) the terms of the Order, including the Specifications; and
- (b) these Conditions.

25. **General**

25.1 The Contract is personal to the Supplier and the Supplier must not assign, subcontract or transfer or purport to assign, subcontract or transfer to any other person any of its rights or subcontract any of its obligations thereunder except with the prior written consent of the Purchaser.

25.2 In the event that the Purchaser consents to any such assignment, transfer or subcontracting, the Supplier shall remain responsible to the Purchaser for the due and proper performance of its obligations under the Contract by such assignee, transferee or sub-contractor. the Purchaser will only consider consenting if such assignee, transferee or sub-contractor has signed a contract on terms no less onerous than these Conditions.

25.3 Any notice required or permitted to be given by either party to the other under the Contract shall be in writing addressed to that other party at its principal place of business as described in an Order.

25.4 The parties to a Contract as independent contractors and nothing in the Contract shall be construed as a relationship of employment, agency, partnership or joint venture. The Supplier, for the avoidance of doubt, is solely liable for and in relation to any agreements it may enter into with third parties in connection with its provision of the services.

25.5 The Contract (including these Conditions) sets out the entire understanding between the parties and there are no representations, promises, terms or conditions or obligations, oral or written, expressed or implied, relating to its subject matter other than those contained or referred to herein. No terms or conditions endorsed on, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of a Purchase Order, invoice, and specification of similar document will be valid or binding upon the Purchaser in relation to the subject matter of these Conditions.

25.6 Each Party agrees that in performing their obligations under the Contract or the Purchase Order, it shall comply with the provisions of the Data Privacy Legislation.

25.7 The rights and remedies provided to the Purchaser are cumulative and in addition to any other rights and remedies provided at law or in equity.

25.8 No waiver of any provision of or default under these Conditions will affect a party's rights thereafter to exercise any right or remedy in the event of any other default whether or not similar. No waiver shall in any event be effective unless in writing and signed by the party waiving its right.

25.9 These Conditions and any Contract shall be governed by the laws of Victoria, Australia and the parties submit to the exclusive jurisdiction of the courts of Victoria, Australia.

25.10 The Purchaser may amend these Terms from time to time by posting updated versions on its website. The Supplier may accept any updated or amended Terms by:

- (a) performing an act that is done with the intention of adopting or accepting the amended or updated Terms, including continuing to order Goods after receiving the Terms or the publication of an amended version of them by the Purchaser; or
- (b) by oral acceptance.