

Annexure A Definitions

1.1 In these Terms:

Acceptance of Order	means the email or other written communication from the Supplier to the Customer confirming that the Supplier will supply the Goods identified in the Customer's Order, on these Terms and subject to any Special Conditions.
Australian Consumer Law or ACL	means Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth) and any equivalent state or territory legislation.
Authorised Representative	means a director or other senior representative from each party with authority to settle the dispute in question.
Business Day	means a day (other than a Saturday, Sunday or public holiday) when banks in Melbourne are open for business.
Collection	means the Supplier making the Goods available for collection by the Customer on the Collection Date, in accordance with clause 7 herein and Collected has the corresponding meaning.
Collection Date	means the date for Collection to be advised by the Supplier to the Customer in accordance with clause 7.1.
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) known to the Customer and concerning the Supplier or the Goods and communicated to the Customer by the Supplier, except to the extent that such information: <ul style="list-style-type: none"> (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.
Consignment	means any batch, part, grouping, selection or portion of the Goods that may form part of the Customer's Order.
Contract	means the sales contract between the Supplier and the Customer for the sale and purchase of the Goods comprising: <ul style="list-style-type: none"> (a) the Order; (b) the Acceptance of Order;

- (c) the Specification (if any); and
 - (d) the Special Conditions (if any),
- which incorporate these Terms.

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.
Consent of the Data Subject	means any freely given, specific, informed and unambiguous indication of the Data Subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her.
Customer	means the person who purchases the Goods from the Supplier.
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: <ul style="list-style-type: none">(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: <ul style="list-style-type: none">(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 or Government Agency.
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	means delivery of Goods to the Customer on the Delivery Date, in accordance with clause 7 herein and Delivered has the corresponding meaning.

Delivery Date	means the date for Delivery, to be advised to the Customer in accordance with clause 7.1.
EU	means the European Union.
Event of Default	means any of the events detailed in clause 14.1.
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 Regulation	is the new 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 Union, regardless of whether the processing takes place in the EU or not.
Goods	means the goods which Supplier is to supply to Customer in accordance with these Terms and as described in the Contract (and which may comprise multiple Consignments).
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.
GST	has the meaning given to that term in the GST Act or any replacement or other relevant legislation and regulation.
GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Incoterms	means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made.
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.

Licence	means any consent, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence, approval, permit, authority or exemption issued by any Government Agency required for the importation of the Goods to Australia.
Location	means the location set out in the Contract or such other location as the parties may agree to which the Goods are to be delivered by the Supplier or collected by the Customer, as the case may be.
Loss	means any losses, liabilities damages, costs, charges or expenses (including lawyer's fees and expenses on the solicitor/client basis), whether direct or indirect and which includes any fines or penalties.
Order	means an offer from the Customer to purchase Goods from the Supplier: <ul style="list-style-type: none">(a) in the form and containing such detail as required by the Supplier;(b) in the manner made available by the Supplier to the Customer to submit an order, from time to time; or(c) as otherwise agreed between the Customer and the Supplier from time to time, including verbally, and Ordered has the corresponding meaning.
Packing	means the packing of the Goods or other tasks or activities performed by the Supplier (or any of its agents) to pack the Consignments or Goods, as specified in an Order.
Payment	as defined in clause 6.2.
Payment Terms	means the terms of payment for the Goods described in clause 6.
PPSA	means the <i>Personal Property Securities Act 2009</i> (Cth).
Personal Data	means: <ul style="list-style-type: none">(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.

Price Increase Event has the meaning given to that term in clause 5.5.

Price Terms means the terms of the Price of the Goods described in clause 5.

Privacy Act means the *Privacy Act 1988* (Cth) and the 'Australian Privacy Principles' in that Act.

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.

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 Supplier, or otherwise obtained, in connection with the performance of the Customer's obligations under any Contract.

Quantity means the amount of Goods Ordered.

Related Entity means a related body corporate (as defined in the *Corporations Act 2001* (Cth)).

Sale of Goods Act means, as applicable, the:

- (a) *Sale of Goods Act 1923* (NSW);
- (b) *Goods Act 1958* (Vic);

- (c) *Sale of Goods Act 1896* (Qld);
- (d) *Sale of Goods Act 1895* (SA);
- (e) *Sale of Goods Act 1895* (WA);
- (f) *Sale of Goods Act 1896* (Tas);
- (g) *Sale of Goods Act 1954* (ACT; or
- (h) *Sale of Goods Act 1972* (NT).

Shipment Details	includes the date and any other details relating to a Delivery or Collection (as the case may be) set out in the Contract.
Special Categories of Data	is racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, health data or data concerning the person's sex life or sexual orientation.
Special Conditions	means any additional terms or conditions expressly agreed by the parties and set out in an Acceptance of Order or Specification.
Special Location	as defined in clause 7.6.
Specification	means the detailed specification of the Goods as agreed by the parties, subject always to the provisions of clause 3.2.
Supplier	Lamex Foods Australia Pty Ltd.
Supplier Warranty	as defined in clause 9.1.
Tax Evasion Law	means any applicable law which has the objective of limiting and preventing tax evasion and other related financial crimes.
Terms	means these terms and conditions of sale, as amended from time to time in accordance with clause 20.20.
Territory	means the State or Territory within Australian where the Goods will be Collected or Delivered.
Vessel/Carrier	means the type of container or method of transport used to transport the Goods.

1.2 Interpretation

In these Terms:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of these Terms;
- (b) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- (c) 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 Terms and a reference to these Terms includes any clause, annexure, exhibit and schedule;

- (d) 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 Terms, but if there is any conflict between the provisions of Incoterms and these Terms, these Terms prevail;
- (e) words in the singular shall include the plural and vice versa;
- (f) a reference to one gender shall include a reference to all other genders;
- (g) 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);
- (h) a reference to a party to any document includes that party's successors and permitted assigns;
- (i) a reference to time is to time in Melbourne;
- (j) an obligation in these Terms on a person not to do something includes an obligation not to agree or allow that thing to be done;
- (k) a provision of these Terms 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 Terms or the preparation or proposal of that provision;
- (l) 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 Terms and, in the case of a statute, includes any subordinate legislation made under the statute whether before or after the date of these Terms;
- (m) a reference to '\$', 'A\$', 'AUD', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia;
- (n) except for the purposes of clause 20.11, a reference to writing or written includes faxes and email;
- (o) a reference to a document (including a Contract) includes all amendments or supplements to, or replacements or novations of, that document; and
- (p) 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. General

- 2.1 These Terms include all those statutory rights conferred on the Customer which the Supplier is not capable of excluding, restricting or modifying, including statutory rights conferred on the Customer under the Australian Consumer Law.
- 2.2 Subject to clause 2.1, these Terms:
 - (a) are incorporated into each Contract; and
 - (b) except for any Special Conditions, apply to the exclusion of:
 - (i) any other terms or conditions of supply, including:

- (A) those contained or referred to in any communication from the Customer;
 - (B) as implied by trade, custom or practice or course of dealing; and
 - (C) any terms or conditions, consumer guarantees and protections capable of being excluded at law; and
- (ii) all other documents, prior discussions, representations, understandings, arrangements (written or oral, express or implied) and other representations (contractual or otherwise), whether or not endorsed or delivered with or referred to in any Order, Contract or other documents delivered by the Customer to the Supplier.
- 2.3 In entering into a Contract, the parties represent and warrant to each other that no other terms or conditions apply to the Contract other than those terms and conditions comprised in the Contract, as defined or as agreed between the parties in writing.
- 2.4 In the event of any inconsistency between these Terms and any other express terms of the Acceptance of Offer, Specification or Special Conditions comprising the Contract, then the provisions of those documents prevail to the extent of the inconsistency, in the order that they are listed in this clause.

3. Orders and Contracts

- 3.1 Each Order placed by Customer is an offer by the Customer to purchase the Goods in accordance with these Terms. The Customer is responsible for ensuring that the terms of the Order. The Customer may provide any preferred Specifications for the Goods, at the time of placing an Order.
- 3.2 Where the Supplier is unable to provide Goods in accordance with the Customer's preferred Specifications, the Supplier will provide the Supplier's Specifications for the Goods that it can provide to the Customer. The Customer will have [one week] in which to accept or propose variations to the Supplier's Specification, provided that if the Customer does not respond within this period:
- (a) with reasonably sufficient detail as to its requirements for the Specifications; or
 - (b) at all,
- then the Specification as provided by Supplier will be the agreed Specification for the purposes of the Contract.
- 3.3 Following the receipt by Supplier of the Order and, where applicable, the Specification as agreed or determined under clause 3.2, the Supplier shall send to the Customer the Acceptance of Order and the Contract is formed at the time that the Supplier sends the Acceptance of Order to the Customer. The Supplier may, but is not required to, issue a copy of the Contract to the Customer. The Contract shall constitute the basis upon which the Goods will be supplied.
- 3.4 All Orders and Contracts (including the Price and Quantity contained in those applicable Orders and Contracts) are subject to, and conditional on, the Supplier obtaining a Licence for the importation of the Goods to the Territory from the relevant Government Agency, to the extent that a Licence is required for the sale of the Goods. If a Licence is required and cannot be obtained by the Supplier to permit the Supplier to supply all or part of the Goods (including any Consignment) to the Customer in the Territory, then the Supplier may, without liability to the Customer, and by reasonable notice to the Customer:
- (a) terminate the Contract; or

- (b) the parties may agree to adjust the Price and Quantity of the Goods that are the subject of the Contract which are Goods that can be supplied by the Supplier to the Customer.
- 3.5 The Customer must:
- (a) take Delivery of the Goods on the Delivery Date; or
 - (b) Collect the Goods within 5 Business Days of the date they are made available for Collection.
- 3.6 If Supplier obtains the Licence contemplated by clause 3.4 or the Goods the subject of the Contract and incurs any expense and the Customer fails to take Delivery or Collect the Goods under clause 3.5, then:
- (a) the Customer acknowledges that the Supplier may incur Losses, including for storage, warehousing, delivery and re-delivery, that it would not otherwise incur; and
 - (b) in mitigation and consideration of the additional services or activities that may be provided by the Supplier as contemplated by clause 3.6(a) and, in addition to the amounts required to be paid by the Customer to the Supplier under the Contract, the Customer must pay to the Supplier the following amounts within 14 days written notice from the Supplier to do so:
 - (i) the actual Losses suffered or incurred by the Supplier in connection with the Customer's breach of clause 3.5, including on account of any loss of profit by the Supplier on the Contract or in connection with the Losses arising from the delivery, re-delivery or the warehousing of Goods or the Licence, failure to sell the Goods ordered to another person; and
 - (ii) an administrative fee (if any) notified by the Supplier from time to time at the time of the Supplier's acceptance of the Customer's Order, or as otherwise agreed with the Customer, on account of management time associated with the delivery, re-delivery, warehousing or other action taken by the Supplier with respect to the Goods.
- 3.7 It is acknowledged by the parties that, in certain circumstances:
- (a) the Supplier may be instructed by the Customer (or the Customer's Personnel) to Deliver the Goods to, or make them available for Collection by, a third party processor who will process the Goods on behalf of the Customer in circumstances where the Customer will remain directly liable to the Supplier for the Price of the Goods; or
 - (b) the Supplier may be instructed by the Customer (or the Customer's Personnel) to Deliver the Goods to, or make them available for Collection by, a third party processor who will process the Goods on behalf of the Customer in circumstances where the third-party processor will be invoiced for, and discharge, the Price of the Goods.
- 3.8 To the extent that the Customer (or the Customer's Personnel) make a request under clauses 3.7(a) or 3.7(b), which the Supplier will use all its reasonable endeavours to achieve, the Customer shall remain primarily liable to take Collection or receive Delivery, and pay for the Goods, under the Contract.

4. The Goods

- 4.1 All descriptions and illustrations contained in any Supplier catalogue, price list, advertisement, or otherwise communicated to the Customer are produced for the sole purpose of giving an approximate description or general idea of the Goods, may vary from the actual Goods, and do not:

- (a) form part of the Contract in any way or have any contractual force; or
 - (b) to the extent permitted by law, give rise to any right on the part of the Customer.
- 4.2 If a sample of Goods was exhibited to and inspected by the Customer, it is hereby agreed that such samples were so exhibited and inspected solely to enable the Customer to judge for itself the quality of the Goods and not so as to constitute a sale by sample.
- 4.3 Unless otherwise agreed between the Supplier and the Customer, the Customer acknowledges and agrees that:
- (a) the Supplier may deliver the Goods stipulated in the Contract within a tolerance of plus or minus 5% on the volume or value of the Goods so stipulated in the applicable Order (**Goods Tolerance**); and
 - (b) the Customer accepts such increased or reduced (as the case may be) quantity delivered in satisfaction of the Contract. The amount payable by the Customer with respect to the Goods will be adjusted on a pro-rata basis to reflect the Goods actually delivered to the Customer.

The Supplier must provide the Customer with reasonable notice to the extent that any Goods under a Contract are increased in accordance with clause 4.3. To the extent the volume or value of the Goods exceed the Goods Tolerance:

- (c) the Customer must promptly inform the Supplier of the excess amount of Goods;
- (d) the parties may agree for:
 - (i) the excess amount to either be retained by the Customer or returned to the Supplier;
 - (ii) the excess Goods to be returned to the Supplier; or
 - (iii) the amount payable by the Customer under the Contract or any subsequent Contract to be adjusted on account of the excess Goods.

5. Price

- 5.1 Prices quoted by Supplier before the Acceptance of Order shall not be capable of acceptance by the Customer and may be withdrawn by Supplier at any time prior to the time stipulated in clause 3.4.
- 5.2 Subject to these Terms, the Price of the Goods together with the Price Terms (as that term is defined in the Incoterms) and payment terms set out in a Contract or an invoice issued under a Contract shall each be set out in the Contract and are exclusive of GST. The Customer must, on receipt of a valid invoice from the Supplier, pay to the Supplier the Price and such additional amounts in respect of GST as are chargeable on the supply of the Goods.
- 5.3 Where Packing, carriage, insurance, storage or other charges are shown on a tax invoice or listed in a Contract separately from the Price, they are payable by Customer at the same time and on the same terms as the Price and are exclusive of GST.
- 5.4 Where the Customer requests the Supplier to produce or procure Customer specific Packing for use in relation to the Goods then the Customer agrees to pay to and indemnify the Supplier, and the Supplier will invoice the Customer for, an amount on account of the Supplier's margin and the Supplier's actual costs of the Packing, including on account of Packing which has been reasonably

produced or procured by Supplier on behalf of Customer but which remains unused as at the date of termination of the Contract.

- 5.5 The Supplier may increase the price of the Goods by notice to the Customer where the Supplier's costs in supplying the Goods increases for a reason beyond the Supplier's control (including as a result of a Force Majeure Event, foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs) (**Price Increase Event**).
- 5.6 Any price increase under clause 5.5:
- (a) must be on reasonable written notice, which must, in any event, not be less than 5 Business Days' before Delivery or Collection of the Goods; and
 - (b) must not exceed the aggregate of:
 - (i) the actual increased cost to the Supplier relating to the Goods including on account of any increase in the cost of a Licence; and
 - (ii) such further amount as is necessary to cause the Supplier to achieve the original margin on the Contract the Supplier expected to receive on entry into the Contract, as if the Price Increase Event had not occurred.
- 5.7 The Customer acknowledges and agrees that it will be responsible for, and must pay to, the Supplier, such additional reasonable amounts that arise from or in connection with:
- (a) any request by the Customer to change the Delivery or Collection Date, quantities, Specification or types of Goods Ordered; or
 - (b) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

6. Payment

- 6.1 The Supplier may invoice the Customer for the Goods on or at any time after the completion of Delivery or Collection, unless otherwise agreed in the Contract.
- 6.2 The Customer shall pay the relevant invoice in full and in cleared funds on the payment date set out in the invoice issued by the Supplier or in accordance with the Payment Terms set out in the Contract, as applicable (**Payment**). Payment shall be made to the bank account nominated in writing by the Supplier or by such other means as the Supplier nominates from time to time.
- 6.3 To the extent that the Customer, acting reasonably and in good faith, disputes an invoice or part of an invoice, the Customer must pay:
- (a) the undisputed amount by the due date; and
 - (b) the balance, as agreed by the parties or, failing agreement, as determined by Court process, within 5 business days of being determined.
- 6.4 Where Goods are sold as part of a Consignment the volume of such Consignment shall be agreed by the parties in the applicable Order.
- 6.5 Where Orders are to be delivered by Consignments, each Consignment will be invoiced by the Supplier separately and must be paid for by the Customer separately in accordance with the requirements in clauses 6.1 and 6.2.

- 6.6 If the Customer fails to pay any invoice within 10 Business Days of the due date for payment, then the Supplier may charge interest to the Customer on the amount overdue calculated on a daily basis at the rate of 1% per month and without prejudice to any other rights of Supplier. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer must pay the interest together with the overdue amount.
- 6.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).
- 6.8 The Supplier may at any time, without limiting any other rights or remedies it may have, set off against any amount due from the Customer to the Supplier:
- (a) any amount owing by the Supplier to the Customer for any goods or services supplied by the Customer to the Supplier from time to time;
 - (b) any sums due from the Supplier to the Customer in respect of credit notes issued by the Supplier from time to time; and
 - (c) any sums received by the Supplier from the Customer where the Customer has failed to identify the invoice(s) against which the payment is being made, in which event the Supplier shall apply such sums against the outstanding invoices due from that Customer in chronological order (oldest to newest).
- 6.9 Unless otherwise agreed by the parties, Payment under a Contract is a condition precedent for any future Deliveries of Goods to the Customer under that or any other Contract.
- 6.10 Notwithstanding the preceding provisions of this clause 6, upon the occurrence of an Event of Default, or the termination of a Contract (except where this Contract has been terminated under clause 14.3), or the non-payment of any invoice on the due date for payment (except where such invoice is disputed in good faith), any period of credit permitted to Customer under any Contract shall cease to apply.
- 6.11 The fulfillment of any Contract by the Supplier shall be conditional upon satisfactory results of credit checks on Customer, whilst each Collection or Delivery of Goods shall be conditional on the creditworthiness of the Customer remaining satisfactory.
- 6.12 The Supplier may, acting reasonably, require the Customer to make payment in advance, suspend or terminate any Contract without liability in the event that:
- (a) the Customer's creditworthiness is adversely affected or deteriorates; or
 - (b) the Customer fails to supply to the Supplier or to its agent's satisfactory credit information when requested to do so.
- 6.13 In the event of such failure to supply information or deterioration of the Customer's credit rating then any period of credit extended to the Customer by the Supplier may, at the sole discretion of the Supplier, be withdrawn or reduced.

7. Delivery/Collection

- 7.1 Once the Supplier is in a position to arrange for the Goods to be collected or delivered (as the case may be), but subject always to the provisions of clause 7.2, the Supplier shall notify the Customer of the Collection Date or Delivery Date as soon as reasonably practicable thereafter and shall in any event provide the Customer with at least 3 Business Days' prior written notice of the proposed Collection Date or Delivery Date. Equally, as part of the Order and Acceptance of Order process,

the Customer shall provide the Supplier with at least 3 Business Days' prior written notice of its desired Collection Date or Delivery Date, which the Supplier will use reasonable endeavours to meet, provided that the Supplier shall be under no obligation to make Goods available for Collection or Delivery on that date.

7.2 Shipment Details contained in the Contract are given as an estimate only. The Supplier shall not be liable for direct or indirect Loss, damage or expense arising from any delay in Delivery or Collection of the Goods or any non-Delivery or non-Collection of Goods, including in connection with:

- (a) a Force Majeure Event;
- (b) the Customer's failure to provide the Supplier with adequate Delivery or Collection instructions or any other instructions that are relevant to the supply of the Goods; or
- (c) any other delay that is caused by the acts of the Customer.

7.3 Delays by the Supplier in Delivery or Collection do not entitle the Customer to:

- (a) refuse to take Delivery/Collection (as the case may be);
- (b) subject to clause 14:
 - (i) claim damages; or
 - (ii) terminate this Contract (subject to clause 14).

7.4 The Customer shall accept Deliveries or Collection of Goods at the Location and shall be liable for any additional costs suffered by the Supplier in the event of wrongful refusal or delay in accepting Delivery or Collection, or in failing to provide adequate premises, services or information for the Supplier to effect proper and safe Delivery or Collection, including as set out in clause 3.6.

7.5 If, 15 Business Days after the day on which the Supplier has notified the Customer that the Goods are ready for Delivery or Collection, the Customer has not accepted Delivery or Collection of the Goods or any Consignment, the Supplier may acting reasonably, resell or otherwise dispose in part or all of the Goods or any Consignment, and (after deducting reasonable storage and selling costs) may account to the Customer for any excess over the price of the Goods or any Consignment, or charge and recover the Customer for any shortfall below the Price of the Goods or any Consignment together with any Losses suffered or incurred by the Supplier in connection with the resale or disposal of the Goods.

7.6 Where the Goods are being supplied at the request of a Customer for import into a country that is not the main jurisdiction of the Supplier (a **Special Location**), then subject to any special terms agreed in writing between the Customer and the Supplier at the relevant time or otherwise reflected in the Contract:

- (a) the Customer shall be responsible for:
 - (i) informing the Supplier of all applicable laws or regulations that apply to the import of the Goods into the Special Location and for the payment of any duties thereon; and
 - (ii) ensuring the Supplier's compliance with any applicable legislation or regulations;
- (b) the Customer is responsible for all taxes, airport duties, Delivery or Collection costs and other charges arising on the delivery of the Goods to the Special Location;

- (c) the Goods shall be delivered on an uncleared c.i.f. basis (**Cost, Insurance, Freight**) to the Special Location; and
 - (d) the Customer shall be responsible for advising the Supplier in writing and within a reasonable period of time prior to proposed Delivery Date (so as to provide the Supplier with sufficient time to deal with these matters) of the labelling, health certificates and/or importation documentation that are required to be obtained by the Supplier to permit the import of the relevant Goods to the Special Location. The Customer shall also be responsible for checking and approving the labelling, health certificates and/or importation documentation so obtained by the Supplier in order to ensure that they satisfy the requirements of, and regulations within, the Special Location.
- 7.7 If an Incoterm applies, Collection or Delivery will take place in accordance with such term. The Contract shall set out the type of Vessel/Carrier to be used in connection with the Collection or Delivery of the Goods.
- 7.8 It shall be the Customer's responsibility to ensure that, in the event that the Goods are being collected by the Customer, then at the point from where the Collection of the Goods takes effect, the collection vehicle is clean, sound, fit for purpose and is set to carry the Goods at the appropriate temperature. To the extent that the Goods are being Delivered by the Supplier, then at the point of Delivery by the Supplier it shall be the Customer's responsibility to supervise the unloading process and provide adequate staff, equipment, instructions and assistance to enable the Goods to be Collected by the Customer.
- 7.9 Where Goods are sold and delivered on a c.i.f. basis the Supplier shall provide the Customer with the following documents:
- (a) an original invoice and two copies thereof;
 - (b) confirmation that insurance coverage is available;
 - (c) Bill(s) of Lading or Ship's delivery order or c.i.f. Delivery Order on Public Wharf/Warehouse (countersigned by 'Wharfingers/Warehousemen if required);
 - (d) Packing list;
 - (e) health certificate; and
 - (f) any other documents or information reasonably required by the Supplier.
- 7.10 The Customer must bear the Supplier's reasonable costs of supply to a Special Location, including the Supplier's costs in connection with clauses 7.6 to 7.9.

8. Retention of Title and Security Interest

- 8.1 Title in the Goods shall not pass to Customer until Customer has paid to Supplier any and all outstanding amounts owed to the Supplier for the Goods. Whilst the Goods remain the property of Supplier, the Customer shall be in possession of the Goods as bailee for the Supplier and the Customer shall keep them separate and identifiable and not deal with them otherwise than in the ordinary course of business.
- 8.2 Risk in the Goods shall pass to the Customer upon Collection or Delivery and the Customer must keep the Goods properly insured against 'all-risks' with an insurer of good repute for not less than their full Price from Collection or Delivery.

- 8.3 If before title to the Goods passes to the Customer an Event of Default occurs in relation to the Customer, then, without limiting any other right or remedy the Supplier may have:
- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - (b) the Supplier may at any time:
 - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 8.4 In the event that the Customer sells or transfers the Goods to a third party before legal and beneficial title has passed to it under these Terms, the proceeds of the sub-sale or transfer (or such proportion as is due to the Supplier) shall be held by the Customer on behalf of the Supplier and shall be held separately from and not be mixed with any other funds, and all monies held on the Supplier's behalf shall be identified as such.
- 8.5 The Customer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Supplier. Without prejudice to the other rights of the Supplier, if the Customer does so all sums whatever owing by the Customer to the Supplier shall become immediately due and payable.
- 8.6 If payment of any amount under any invoice is overdue by more than 14 days from the Payment Date then Supplier shall have the right to commence proceedings against the Customer for the amount outstanding, notwithstanding that property in the Goods has not yet passed to Customer.
- 8.7 For the purposes of the following clauses 8.8 to 8.10 inclusive, capitalised terms have the same meaning as those defined in the PPSA.
- 8.8 The Supplier's interest in the Goods and all proceeds is a Security Interest and each Contract is a Security Contract for the purposes of the PPSA. The Customer agrees that the Supplier may if it chooses perfect this Security Interest by registration and agree if asked to assist the Supplier with this.
- 8.9 The Customer agrees that nothing in sections 125, 130(1)(a), 142 and 143 of the PPSA applies to the Security Interest under the Contract and the Customer waives its rights to receive any notice (including notice of a verification statement) or statement of account under the PPSA unless it is required by the PPSA and cannot be excluded.
- 8.10 Any costs or Losses incurred by the Supplier associated with the registration, perfection, and or enforcement of the Security Interest (including legal fees) will be payable by the Customer.

9. Warranties (Sale of Goods)

- 9.1 Under the Australian Consumer Law consumers have certain rights which cannot be excluded, including guarantees as to the acceptable quality and fitness for purpose of goods and services. Nothing in this Contract operates to exclude, restrict or modify, or has the effect of excluding, restricting or modifying, any guarantee, condition, warranty or other term, or right or remedy, imposed or implied by statute or otherwise at law (including the ACL) and which cannot be excluded, restricted or modified.
- 9.2 The Supplier hereby warrants that the Goods, which are perishable Goods, at the date of Collection or Delivery will comply in all material respects with the Specification or otherwise agreed

in writing by the parties, will be of satisfactory quality and be fit for any purpose held out by the Supplier in the Contract (the **Supplier Warranty**).

9.3 Subject to clause 9.4, if:

- (a) the Customer gives notice in writing to the Supplier within three Business Days of discovery that some or all of the Goods do not comply with the Supplier Warranty;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,

then the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full or pay for the costs of having the Goods repaired or replaced.

9.4 The Supplier shall not be liable for Goods' failure to comply with the Supplier Warranty in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice that the Supplier Warranty has been breached in accordance with clause 9.3. For the avoidance of doubt, this exclusion of liability for the Supplier shall not apply where the Customer makes further use of the Goods, for example by onward supplying them to the ultimate seller thereof, prior to the Customer giving notice that the Supplier Warranty has been breached in accordance with clause 9.3;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any Specification;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
- (e) the Supplier accepts that the Goods have failed to conform with the Supplier Warranty and agrees to accept the return of the Goods for the purpose of providing the Supplier with a credit note therefor, yet the Customer fails to return the Goods in the form or manner reasonably requested by the Supplier, which shall be no more onerous than the form or manner in which they were originally supplied to the Customer (eg Goods returned block frozen when they were originally supplied to the Customer as individually quick frozen); or
- (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

9.5 The warranty contained in clause 9.2 above is given in lieu of and shall be deemed to exclude all other warranties and conditions whether express or implied whether arising by common law, statute or otherwise, to the fullest extent permitted by law, other than that relating to the title to the Goods.

9.6 Neither party shall have any liability to the other in the event of Goods infringing or being alleged to infringe the rights of any third party howsoever arising.

9.7 For the avoidance of doubt, the Supplier does not warrant in any way that the Goods are compliant with any laws or regulations outside of Australia.

10. Limitation of Liability, Indemnity and Customer's Obligations

- 10.1 If the Supplier fails to comply with a statutory guarantee which by law may not be excluded, then to the extent the law permits the Supplier to limit its liability in respect of such failure, the Supplier's liability is limited to the actions described in clause 9.3 or under the applicable statutory guarantee.
- 10.2 This clause sets out the entire financial liability of the parties (including any liability for the acts or omissions of its respective employees, agents and subcontractors) a party in respect of:
- (a) any breach of this Contract
 - (b) any use made or resale of the Goods by the Customer, or of any product incorporating any of the Goods; and
 - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Contract.
- 10.3 Nothing in this Contract shall limit or exclude the liability of either party for:
- (a) death or personal injury resulting from negligence; or
 - (b) fraud or fraudulent misrepresentation; or
 - (c) for any other liability which may not by applicable law be excluded or limited.
- 10.4 Neither party shall be liable to the other, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any loss of goodwill, loss of business, loss of business opportunity, loss of anticipated saving, loss of contract, loss of use, pure economic loss or other losses that do not arise naturally, that is, in the usual course of things from the breach, event or matter giving rise to the loss.
- 10.5 During the term of this Contract the Supplier shall maintain in force the following insurance policies for:
- (a) public liability insurance with a limit of at least \$20,000,000 in the aggregate; and
 - (b) product liability insurance with a limit of at least \$20,000,000 for claims arising from a single event or series of related events in a single calendar year.
- 10.6 Without prejudice to clauses 10.3 or 10.4, the Supplier's total liability arising under or in connection with this Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall not exceed the Price of the Consignment (or in the absence of Consignments, the Goods) from which such liability has arisen.
- 10.7 The Supplier will at the request and expense of the Customer use its reasonable endeavours to transfer to the Customer the benefit of any warranty, guarantee or undertaking given to the Supplier by any manufacturer, producer or processor of the relevant Goods.
- 10.8 A claim in respect of any defect of the Goods or any Consignment of the Goods, failure to comply with the Specification, non-Delivery or non-Collection of the Goods or any Consignment of the Goods shall not, in each case, entitle Customer to cancel or refuse Delivery or Collection of or Payment for the Goods or any Consignment of the Goods or of any other Contract.
- 10.9 The Customer hereby indemnifies and agrees to keep the Supplier fully indemnified and to hold the Supplier harmless on demand from all reasonable Losses or liabilities that result from a third party claim received by the Supplier and that arises in respect of Goods that have been purchased by the Customer from the Supplier and onward sold by the Customer to the relevant claimant, save to

the extent that such third party claim or Loss has been exclusively caused by the negligence of the Supplier or any of its employees or agents in breach of the Contract.

- 10.10 The Supplier shall notify the Customer of any third party claim that the Supplier receives and to which the indemnity provisions in clause 10.9 may apply. The Customer hereby provides the Supplier with full authority to defend, compromise or settle such third party claims so received by the Supplier and shall provide Supplier with all reasonable assistance necessary to defend such claims at the Customer's sole expense.
- 10.11 The Customer undertakes to maintain appropriate, up-to-date and accurate records to enable the prompt recall of any of the Goods or any part of them. These records shall include (without limitation) records of deliveries to customers (including details of batch numbers, delivery date or collection date, name and address of customer, and telephone number, fax number and e-mail address).
- 10.12 The Customer shall, at the Supplier's cost, give such assistance as the Supplier shall reasonably require for the purpose of recalling, as a matter of urgency, any quantities of the Goods or any of them from the retail or wholesale market where necessary.

11. Force Majeure

- 11.1 The Supplier, provided that it has complied with the provisions of clause 11.2, shall not be in breach of a Contract (the **Affected Contract**) or these Terms, nor liable for any failure or delay in performance of any obligations under the Affected Contract or these Terms (and, subject to clause 11.3, the time for performance of the obligations shall be extended accordingly) arising from or attributable to a Force Majeure Event.
- 11.2 The Supplier shall not be in breach of the Affected Contract or these Terms provided that:
- (a) it promptly notifies the Customer in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and
 - (b) it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under the Affected Contract and these Terms in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 11.3 If the Force Majeure Event prevails for a continuous period of more than three months, either party may terminate the Affected Contract by giving 14 days' written notice to the other party. Such termination shall be without prejudice to the rights of the parties in respect of any breach of the Affected Contract occurring prior to such termination.

12. Confidentiality

- 12.1 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 member of its Group, except as permitted by clause 12.2.
- 12.2 Each party may disclose the other party's Confidential Information:
- (a) 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 12.1 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

- (b) as may be required by law, court order or any governmental or regulatory authority.
- 12.3 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.

13. Intellectual Property

- 13.1 The Customer acknowledges that any Intellectual Property Rights in and to the Goods and other Intellectual Property Right used in relation to the Supplier's business and the goodwill connected with that are and shall remain the Supplier's or relevant third parties' property and shall ensure for the benefit of the Supplier or those third parties.
- 13.2 The Goods are sold and/or supplied subject to the Intellectual Property Rights therein held by any third party and the Customer will accept such title to the Goods as Supplier is able to provide.
- 13.3 Customer must not, in connection with the supply of the Goods or goods materially similar thereto, in any way use the names or makes known as L&M Food, LAMEX, Lamex Australia, Lamex Agrifoods or Lamex Europe or any name which is a variation of those names or which incorporates the names L&M or Lamex except with the prior written consent of Supplier.

14. Termination

- 14.1 Without prejudice to any other rights it may have, the Supplier may, by written notice to the Customer, terminate any Contract between the Customer and the Supplier forthwith and/or immediately recover from the Customer all sums due from the Customer under any Contract with the Supplier (notwithstanding any period of credit which may have been allowed) together with any accrued interest and other legitimate charges and any loss caused to the Supplier as a result of any termination if:
- (a) any payment due by the Customer to the Supplier is overdue by more than 10 Business Days in whole or in part; or
 - (b) the Customer commits any breach of any of the Contract with the Supplier provided that if the breach was remediable the Supplier gave to the Customer notice of such breach which was not remedied within 15 Business Days of the date of such notice; or
 - (c) in respect of the Customer, 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 the Customer's estate or 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 the Customer's assets or an undertaking or a resolution or petition to wind up the Customer is passed or presented (other than for the purposes of solvent amalgamation or reconstruction) or 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 (**Insolvency Event**); or
 - (d) the Customer ceases or threatens to cease to carry on trading; or
 - (e) there is in the reasonable opinion of the Supplier, any material change in the financial status of the Customer, including but not limited to, credit status.
- 14.2 Without limiting its other rights or remedies, the Supplier may (on providing reasonable notice to the Customer) suspend provision of the Goods under a Contract or any other contract between the

Customer and the Supplier if the Customer becomes subject to any of the events listed in clauses 14.1(a) to 14.1(e) or the Supplier reasonably believes that the Customer is about to become subject to any of them.

- 14.3 The Customer may terminate this Contract by providing notice to the Supplier if:
- (a) the Supplier commits a material breach of this Contract which is not capable of remedy;
 - (b) the Supplier commits a material breach of this Contract which is capable of remedy and fails to remedy the breach within 15 Business Days of receiving notice requiring it to do so; or
 - (c) the Supplier suffers an Insolvency Event.
- 14.4 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 14.5 Notwithstanding the termination of this Contract for any reason, any sums for any reason due to Supplier hereunder at the date of termination shall remain due and payable to the Supplier by the Customer.
- 14.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

15. Dispute Resolution

- 15.1 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.
- 15.2 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 mediation. 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.
- 15.3 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.

16. Data Protection

- 16.1 To the extent that Personal Data is Processed by the Customer or the Customer's Personnel under or in connection with the Contract, the Customer shall, and shall procure that the Customer'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 Supplier 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 Supplier;
 - (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 Customer's Personnel engaged in the provision of the Goods (or associated services) have entered into confidentiality agreements with the Customer 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 Supplier in any way to be in breach of the Data Protection Legislation;
 - (f) provide written evidence of the Customer's compliance with Data Protection Legislation as may be requested by the Supplier from time to time;
 - (g) co-operate and assist, as requested by the Supplier, and put appropriate technical and organisational measures in place to enable the Supplier 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 Supplier;
 - (i) at the request of the Supplier 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 Supplier, its authorised representatives (bound by a duty of confidentiality) and/or representatives of the relevant regulatory or supervisory authority;
- 16.2 The Customer shall notify the Supplier 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 Supplier 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.
- 16.3 Without prejudice to any other provision of the Contract, the Supplier may, on reasonable notice request a detailed written description of:
- (a) the technical and organisational method employed by the Customer and any sub-Processors (if any) for the Processing of Personal Data;

- (b) the Processing activities carried out by the Customer on behalf of the Supplier containing at least the amount of details required by article 30(2) of the GDPR.

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

- 16.4 Without prejudice to the other provisions of this condition, if the Customer or any member of the Customer's Personnel becomes aware of any Data Protection Incident, the Customer shall promptly (but in any event within 24 hours of discovery) notify the Supplier. The Customer shall, at no additional cost to the Supplier, provide the Supplier with all resources, assistance and co-operation as are required by the Supplier for the Supplier to notify the ICO and any other relevant data protection regulator of such Data Protection Incident and for the Supplier to provide such reports or information as may be requested by them in relation to such Data Protection Incident and for the Supplier to notify the relevant data subjects of such Data Protection Incident, as applicable.
- 16.5 The Customer shall, at no additional cost to the Supplier, provide the Supplier with all resources and assistance as required by the Supplier for the Supplier to discharge its duties pursuant to articles 35 and 36 of the GDPR, including but not limited to, promptly at the request of the Supplier providing information in respect of any data protection impact assessment with the Supplier conducts.
- 16.6 Where the Customer sub-contracts any of its obligations under this condition, with the consent of the Supplier, 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 Customer under this condition. The Customer shall inform the Supplier of any sub-Processors in advance. In any event, the Customer shall be liable for the acts and omissions of its agents, Personnel and sub-Processors as if they were its own acts and omissions.
- 16.7 On expiry or termination of the Contract, the Customer 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.

17. Anti-Bribery and Corruption

The Customer shall:

- (a) comply with all applicable laws, statutes, rules and regulations relating to anti-bribery and corruption, including the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), *Criminal Code Act 1995* (Cth) and *Bribery Act 2010* (UK);
- (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 customers, subcontractors and other participants to ensure that there is no bribery or corrupt business practices in its supply chains;
- (d) represent and warrants that neither the Customer 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 Supplier 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 Supplier any request or demand for any undue financial or other advantage of any kind received by the Customer or if a foreign public official becomes an officer or employee of the Customer or acquires a direct or indirect interest in the Customer.

18. Modern Slavery

The Customer 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 Customer'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 customers, subcontractors and other participants to ensure that there are no Modern Slavery issues in its supply chains;
- (d) represents and warrants 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 Customer 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 Supplier 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 Supplier.

19. Tax Evasion

- 19.1 The Supplier and its subsidiaries, conduct their activities with integrity, transparency and fairness. They are committed to the prevention of the facilitation of tax evasion as they recognise the importance of fostering a positive culture of tax compliance and maintaining the confidence of staff, partner organisations, other customers, suppliers, third parties and the tax authorities.
- 19.2 The Supplier and its subsidiaries do not and will not work with others who do not share their commitment to preventing the facilitation of tax evasion.

19.3 The Customer shall:

- (a) comply with all Tax Evasion Laws and take reasonable steps to ensure that there are no criminal finances issues in the Customer'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 customers, suppliers subcontractors 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 Customer 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 Supplier 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 for such period as is required by law.

20. General

- 20.1 If any provision of these Terms (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 20.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 20.3 Customer shall not assign or transfer any Contract to which these Terms apply nor the benefit thereof to any person whatsoever without the prior written consent of the Supplier. The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under any Contract and/or these Terms by providing notice to the Customer.
- 20.4 These Terms and the Contracts entered into between the parties constitute the whole Contract between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of these Terms and the relevant Contracts.
- 20.5 Except where otherwise expressly provided in writing, a person who is not a party to these Terms shall not have any rights under or in connection with it.
- 20.6 Each party shall (at its own expense) promptly execute and deliver all such documents, and do all such things or procure the execution and delivery of all documents and doing of all such things as are required to give full effect to a Contract and the transactions contemplated by it.

- 20.7 Nothing in these Terms or any Contract is intended to, or shall be deemed constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 20.8 No party shall make, or permit any person to make, any public announcement concerning these Terms or any Contract without the prior written consent of the other party, except as required by law.
- 20.9 Any notice or other communication given to a party under or in connection with the Contract or these Terms shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail.
- 20.10 A notice or other communication shall be deemed to have been received:
- (a) if delivered personally, at the date when left at the address referred to in clause 20.9;
 - (b) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting;
 - (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed;
 - (d) or, if sent by e-mail, one Business Day after transmission.
- 20.11 The provisions of clauses 20.9 and 20.10 shall not apply to the service of any proceedings or other documents in any legal action.
- 20.12 The parties enter this Contract as independent contractors and nothing in these Terms shall be construed as a relationship of employment, agency, partnership or joint venture.
- 20.13 Each party agrees to treat as secret and confidential all and any information disclosed by the other party which is:
- (a) identified by the disclosing party as confidential; or
 - (b) by its nature evidently intended by the disclosing party to be treated as confidential.
- A party will not be in breach of this clause, however, in relation to information already in its possession or within the public domain (other than as a result of a breach of this clause), or where disclosure is required by law.
- 20.14 The Contract (including these Terms) set 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 Supplier in relation to the subject matter of these Terms.
- 20.15 Each Party agrees that in performing their obligations under the Contract or the Purchase Order, it shall comply with the Data Privacy Legislation.
- 20.16 The rights and remedies provided to each party herein shall be cumulative and in addition to any other rights and remedies provided at law or in equity.

- 20.17 The construction, validity and performance of the Contract shall be governed in all respects by the laws of Victoria, Australia.
- 20.18 The courts of Victoria, Australia shall have the exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Contract. The parties agree to submit to the jurisdiction of the Victorian courts.
- 20.19 Each party acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 20.20 The Supplier may amend these Terms from time to time by posting updated versions on its website. The Customer 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 Supplier; or
 - (b) by oral acceptance.