



# Standard Terms and Conditions for Purchase of Goods and Services

Issue: 1  
Issue Date: 11 August 08

Author: Sparke Helmore  
CMA-PUR-200

## Issue Tracking

Issue released	Date	Author	Changes
1	11 August	Richard Suter (Sparke Helmore)	Initial release

## 1 Definitions and Interpretation

1.1 Words beginning with a capital letter appearing in the Contract have the following meanings:

**“Business Day”** means a day other than a Saturday, Sunday or public holiday in the capital city of the state in which the Goods are to be delivered or the Services are to be primarily performed or 27, 28, 29, 30 or 31 December.

**“Civil Liability Legislation”** means Part 4 of the Civil Liability Act 2002 (NSW) and any legislation having the same or a similar effect in any other jurisdiction.

**“Claim”** includes any claim, notice, demand, debt, account, action, lien, cost, loss, expense, liability, litigation (including legal costs), investigation, judgment or damages of any kind, whether known or unknown.

**“Company”** means CMA Corporation Limited ACN 113 329 016.

**“Completion Date”** means the date specified in the Purchase Order or the Special Conditions when the Supplier is required to have completed performance of the Services.

**“Confidential Information”** means the terms or effect of the Contract and any other information which a party gives to another party under or in connection with the Contract that is non-public, confidential or proprietary in nature.

**“Delivery Date”** means the date specified in the Purchase Order or the Special Conditions when the Supplier is required to deliver the Goods to the Delivery Point.

**“Delivery Point”** means the place specified in the Purchase Order or the Special Conditions (if any) or if no place is specified, the location nominated by the Company, where the Supplier is required to deliver the Goods.

**“Direction”** includes any agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.

**“Goods”** means the goods specified in the Purchase Order.

**“GST”** means the same as in the GST Act.

**“GST Act”** means the *A New Tax System (Goods and Services Tax) Act 1999*.

**“Hire Equipment”** means plant or equipment (if any) identified in the Purchase Order or the Special Conditions which is provided by the Supplier to the Company on a dry hire basis.

**“Law”** includes any requirement of any statute, regulation, proclamation, ordinance, by-law or common law, present or future and whether state, federal or otherwise.

**“Payment Date”** means the last day of the month following the month in which the Company receives the Supplier’s invoice.

**“Personnel”** means employees, agents, consultants and sub-contractors but the Supplier and the supplier’s Personnel are not the Company’s Personnel.

**“Price”** means the price specified in the Purchase Order.

**“Professional Services”** means the professional services (if any) described in the Purchase Order or the Special Conditions required under the Contract.

**“Purchase Order”** means a purchase order issued by an authorised officer of the Company to the Supplier.

**“Services”** means the services specified in the Purchase Order and includes the Professional Services (if any) or the supply of Hire Equipment (if any).

**“Company Site”** means any sites or premises owned, occupied or operated by the Company.

**“Supplier”** means the supplier identified in the Purchase Order.

**“Warranty Period”** means, unless stated otherwise in the Purchase Order or the Special Conditions, the period of 18 months.



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1.2 In the Contract, unless the context indicates a contrary intention:

**(headings)** clause headings and the table of contents are inserted for convenience only and must not be used when interpreting the Contract.

**(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity.

**(natural person)** a reference to a natural person includes their personal representatives, successors and permitted assigns.

**(corporation)** a reference to a corporation includes its successors and permitted assigns.

**(including)** including and includes are not words of limitation.

**(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning.

**(singular)** the singular includes the plural and vice-versa.

**(parts)** a reference to one or more things includes each part and all parts of that thing or group of things.

**(rules of construction)** neither the Contract nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

**(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.

## 2 Contract

2.1 The Contract comprises:

- (a) the Purchase Order;
- (b) these Terms and Conditions ("**Standard Conditions**"); and
- (c) any additional terms and conditions agreed in writing between the Company and the Supplier ("**Special Conditions**").

2.2 The Special Conditions will prevail over the Standard Conditions to the extent of any inconsistency.

2.3 The Contract commences on the earlier of:

- (a) the Supplier notifying the Company that the Purchase Order is accepted; and
- (b) the Supplier delivering the Goods (in whole or in part) or commencing the provision of the Services.

2.4 The Supplier must notify the Company of any error in the Purchase Order by 5.00pm (at the location of the Company office from which the Purchase Order is issued) on the Business Day immediately following its receipt or before the commencement of the Contract in accordance with clause 2.3, whichever occurs first.

2.5 Any proposal by the Supplier to provide the Goods or perform the Services which purports to include terms not expressly included in the Contract is deemed to be a proposal to provide the Goods and perform the Services exclusively on the basis of the Contract.

## 3 Goods and Services

The Supplier will:

- (a) supply the Goods to the Company; and
- (b) provide the Services to the Company, in accordance with the Contract.

## 4 Price

4.1 The Supplier must supply the Goods and perform the Services for the Price.

4.2 Unless otherwise stated in the Purchase Order, the Price includes any local and foreign duties and taxes (other than GST), freight, insurance, packaging and delivery, shipping costs and any other costs associated with or necessary for the supply and delivery of the Goods or the performance of the Services.

4.3 If the Price is based on a list price published by the Supplier ("**List Price**"), whether or not the Company is entitled to a discount on the List Price, the Supplier must give the Company not less than 2 months prior written notice of any increase to the List Price. In any event, unless the Contract provides otherwise, no increase in the List Price will affect the Price stated in the Purchase Order.

## 5 Invoicing and Payment

5.1 The Supplier may issue an invoice to the Company at or after the delivery of the Goods or the performance of the Services in accordance with the Contract.



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- 5.2 Each invoice issued by the Supplier must include the Company's Purchase Order number.
- 5.3 Any invoice issued by the Supplier to the Company must be a valid tax invoice in the form required under the GST Act.
- 5.4 Unless otherwise specified, amounts otherwise payable under the Contract do not include GST. The Company will pay to the Supplier the amount of GST for which the Supplier becomes liable for any supply the Supplier makes to the Company under the Contract, provided that payment claims rendered by the Supplier comply with all relevant GST Laws and are sufficient to allow the Company to claim any input tax credits which may be available to it.
- 5.5 The Company will pay the amount due under the invoice no later than the Payment Date. The amount which will be paid by the Company is the amount the Company considers to be payable under the Contract. This may not necessarily be the same as the amount claimed by the Supplier.
- 5.6 The Company may deduct from an amount payable to the Supplier under the Contract any amount that is, or in the opinion of the Company is likely to become, payable to the Company under the Contract or otherwise.
- 5.7 Payments by the Company are on account only and do not evidence the Company's acceptance of the Goods or the Services.
- 5.8 The prices will not be adjusted for rise and fall unless the Contract expressly states that the prices are subject to rise and fall.
- 5.9 The Supplier must provide the Company with written details of a bank account to enable the Company to make payments under the Contract to that account by electronic funds transfer.
- 5.10 The Company may require as a condition precedent to payment of an invoice, a statutory declaration that the Supplier has made all payments due to its Personnel and has paid all payroll tax and premiums.

## 6 Packaging and Labelling

- 6.1 The Supplier must properly pack and protect the Goods to prevent damage during transit and to ensure safe arrival at the Delivery Point.
- 6.2 The packaging, labelling and transport of the Goods must comply with all laws of any jurisdiction and, where applicable, with appropriate Australian and other standards including Australian Standard AS1216-Class Labels for Dangerous Goods.
- 6.3 The Supplier must ensure that the Goods (and each sub-package of the Goods) are clearly marked to their ultimate destination. Each sub-package must be marked with the product description and quantity of the Goods contained in it. The Supplier must enclose one copy of the packing list within each sub-package.
- 6.4 The Supplier must (at the Company's cost except to the extent included in the Price) comply with all additional packing and labelling requirements specified by the Company from time to time.
- 6.5 The Supplier must provide to the Company with each delivery of Goods a dispatch note which includes:
  - (a) the date of delivery;
  - (b) the contents of the delivery;
  - (c) the Company's Purchase Order number;
  - (d) the location of the delivery; and
  - (e) any variance from the Purchase Order requirements.

## 7 Delivery, Risk and Title

- 7.1 The Supplier must deliver the Goods in accordance with any delivery instructions specified in the Purchase Order to the Delivery Point by the Delivery Date.
- 7.2 The Supplier must notify the Company immediately the Supplier become aware that the Goods (or part of the Goods) will not be delivered to the Company by the Delivery Date. If the Goods (or part of the Goods) are not delivered to the Company by the Delivery Date or any alternative date agreed by the Company, the Company may, without prejudice to any other remedy available to the Company, immediately terminate the Contract by written notice to the Supplier.
- 7.3 Title to the Goods will pass from the Supplier to the Company upon the first to occur of:
  - (a) delivery at the Delivery Point;
  - (b) payment of any deposit for the supply of the Goods; or
  - (c) payment to the Supplier of the Price for the Goods.



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- 7.4 Title to Hire Equipment remains with the Supplier at all times.
- 7.5 Risk in the Goods will pass from the Supplier to the Company upon delivery at the Delivery Point.

## 8 Performances of Services

- 8.1 The Supplier must perform the Services in accordance with the Contract by the Completion Date.
- 8.2 The Supplier must perform the Services diligently, expeditiously and conscientiously in a proper and workmanlike manner.
- 8.3 The Supplier must comply with all reasonable verbal and written Directions of the Company in the performance of the Services.
- 8.4 The Company may direct the Supplier to remove a person from the performance of the Services if the Company considers the person to be guilty of misconduct, incompetent or negligent.
- 8.5 The Supplier warrants that the Supplier has the materials, personnel and resources to properly perform the Services and that all persons performing the Services are suitably trained, experienced and qualified to do so.
- 8.6 The Supplier must ensure the terms of employment for all persons performing the Services comply with the relevant Law or workplace agreement governing their employment and must, at the Company's request, provide evidence of compliance with this clause.
- 8.7 The Supplier must notify the Company immediately the Supplier becomes aware that the Services (or part of the Services) will not have been performed by the Completion Date. If the Services (or part of the Services) are not performed by the Completion Date, the Company may, without prejudice to any other remedy, immediately terminate the Contract.
- 8.8 The Supplier must not sub-contract the Services or parts of the Services without the prior written consent of the Company.

## 9 Inspection

- 9.1 The Company may, subject to giving the Supplier reasonable prior notice, access and inspect any of the Goods and the processes under which they are being manufactured at any reasonable time before delivery.
- 9.2 The Supplier must ensure that the Company has access to the Goods at all reasonable times before delivery and must provide all facilities necessary for the accessing and inspection of the Goods at the Supplier's premises or wherever the Goods are stored or are in the course of manufacture.

## 10 Safety

- 10.1 The Supplier must comply with all Laws and all occupational health, safety and environmental requirements of the Company relating to the Contract.
- 10.2 If requested by the Company, the Supplier and each of the Supplier's Personnel who require access to a Company Site, must undertake, at the Supplier's expense, a site induction prior to performing the Services at a Company Site.
- 10.3 The Company may require any persons employed or engaged by the Supplier to be accompanied by an employee, contractor or agent of the Company whilst on a Company Site.
- 10.4 The Supplier must provide all safety devices or warnings which may be necessary or desirable for ensuring the protection of persons performing the Services or which are reasonably required by the Company.
- 10.5 The Supplier must notify the Company immediately the Supplier become aware of any matters which may affect the safety of persons delivering the Goods or performing the Services or of any other persons on a Company Site.

## 11 Hazardous Substances

- 11.1 The Supplier must, prior to delivering the Goods or performing the Services, notify the Company if any Goods or any goods, materials or substances to be used in the performance of the Services contain asbestos or any other hazardous substance and if so, provide to the Company a Material Safety Data Sheet for those hazardous substances.
- 11.2 The Company may cancel any Purchase Order within 7 days of being notified by the Supplier that the Goods or any goods, materials or substances to be used in performance of the Services contain asbestos or any other hazardous substance.



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## 12 General Obligations

- 12.1 The Supplier must not interfere with or disrupt the work of the Company or any of its Personnel except to the minimum extent necessary for the proper performance of the Contract.
- 12.2 The Supplier must:
- (a) not damage any property on or near the Company Sites and make good loss or damage caused to any Company or third party property by the Supplier;
  - (b) keep each Company Site on which the Supplier performs the Services clean and tidy to the maximum extent possible in performing the Services; and
  - (c) only enter and remain on any Company Site during the working hours specified by the Company and only for the purposes of performing the Contract.
- 12.3 On delivery of the Goods or completion of the performance of the Services or on earlier termination of the Contract, the Supplier must promptly:
- (a) deliver to the Company all materials, documentation and things produced by the Supplier in the performance of the Contract; and
  - (b) return to the Company all materials, documentation and things provided to the Supplier by the Company for the performance of the Contract.

## 13 Suspension, Variation and Cancellation of Contract

- 13.1 The Company may direct the Supplier to suspend the whole or any part of the performance of the Services or the supply of the Goods for any reason for a period nominated by the Company. If the suspension is directed because of a default or act or omission by the Supplier or the Supplier's Personnel, the Supplier is not entitled to make a Claim against the Company for any additional costs, losses or damages the Supplier may incur or sustain in connection with the suspension. In other circumstances, subject to clause 13.2, if the suspension causes the Supplier to incur additional costs, the Company will compensate the Supplier for any reasonable costs incurred as a consequence of the suspension but the Supplier must use its best endeavours to minimise the amount of such costs.
- 13.2 Despite clause 13.1, the Supplier will not be entitled to make any Claim for additional costs incurred during the first 30 days of the period of suspension in relation to any Goods which at the time of the suspension have not been despatched from the Supplier's premises.
- 13.3 Any modification or variation of the Contract will not apply unless expressly agreed in writing by the Company.
- 13.4 The Company may Direct the Supplier to vary the Services including:
- (a) increasing or omitting part of the Services; or
  - (b) carrying out additional work,
- but must not Direct a variation which constitutes a fundamental change to the nature of the Services.
- 13.5 If the proposed variation involves only the omission of part of the Services or part of the Goods and no additional or alternative Goods or Services, the provisions of clauses 13.8 and 13.9 will apply to the exclusion of clause 13.6.
- 13.6 The Company will determine the value of a variation under clause 13.4 acting reasonably and after taking into account applicable rates and prices in the Contract and the Supplier's views on the value of the variation.
- 13.7 Subject to clauses 13.8 and 13.9, the Company may, at any time prior to the delivery of the Goods or the provision of the Services, cancel the Contract in whole or in part by notice in writing to the Supplier without cost or penalty.



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- 13.8 Upon receipt of a notice of cancellation under clause 13.7, or if clause 13.5 applies, a variation direction under clause 13.4, the Supplier must:
- (a) immediately stop production of the Goods and performance of the Services to the extent specified in the notice and, where relevant, Direct any subcontractors to stop performance;
  - (b) use its best endeavours to minimise the amount of any costs, expenses, losses or damages incurred as a result of the cancellation;
  - (c) settle any outstanding accounts with the Supplier's sub-contractors; and
  - (d) deliver to the Company all finished Goods, and, if requested by the Company, any partially completed Goods and raw materials.
- 13.9 Following cancellation under clause 13.7, or if clause 13.5 applies, receipt of a variation direction under clause 13.4, the Company must:
- (a) pay the Supplier for all Goods delivered and all Services performed in accordance with the Contract up to the time of termination;
  - (b) subject to the Supplier transferring title to the Company, pay the Supplier for any partially completed Goods and raw materials delivered to the Company at the Company's request; and
  - (c) if the Contract requires the Supplier to manufacture or fabricate Goods to the specifications or other special requirements of the Company, the Company must, to the extent covered by a payment under paragraphs (a) or (b), pay the Supplier the reasonable actual and direct costs incurred by the Supplier in manufacturing or fabricating the Goods up to and including the date of cancellation of the Contract by the Company.

## 14 Warranties

- 14.1 The Supplier warrants that the Supplier is the sole legal and beneficial owner of the Goods free from all mortgages, charges, encumbrances, liens or other third party rights or claims.
- 14.2 The Supplier warrants that the Goods will be new and unused and will comply with all specifications, drawings, samples or other descriptions provided by the Company to the Supplier and any other requirements specified in the Contract.
- 14.3 The Supplier warrants that the Goods and the Services when completed will be free from defects in design, workmanship and materials for the duration of the Warranty Period from the date of delivery of the Goods to the Delivery Point or the completion of the performance of the Services and that the Goods and Services will be fit for any purpose made known by the Company to the Supplier.
- 14.4 If the Supplier needs to repair or replace the Goods or re-perform the Services during the Warranty Period because they do not comply with the Contract, the Warranty Period commences again from the time when the Goods are repaired or replaced or the Services are re-performed.
- 14.5 Nothing in the Contract is meant to exclude any condition, warranty, guarantee, right or remedy implied by any Law for the benefit of a purchaser (whether of goods or of services) including the *Trade Practices Act 1974 (Cth)*.
- 14.6 The Supplier must ensure that the Company obtains the benefit of any warranties provided by manufacturers of the Goods or of materials or other components which are used in the performance of the Services where ownership of those materials or components ultimately vests in the Company.
- 14.7 The Supplier acknowledges that, in entering into the Contract, the Supplier has not relied on any term, condition, warranty, undertaking, inducement or representation made by or on behalf of the Company which is not expressly stated in the Contract.



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## 15 Professional Services

- 15.1 This clause 15 applies only if the Contract includes the supply of Professional Services.
- 15.2 The Supplier must ensure all Professional Services are carried out to a professional standard and in accordance with all Laws.
- 15.3 The Supplier acknowledges the Company is relying on the professional judgement and skill of the Supplier's Personnel in performing all Professional Services.
- 15.4 Any Direction by the Company, including approval or review, in relation to any Professional Services, is for contract management purposes only and does not relieve or reduce the Supplier's obligations or liability:
- (a) under the Contract; or
  - (b) as a provider of professional services to the Company, owing a duty of care to the Company, except as set out in clause 15.6.
- 15.5 If the Company Directs an amendment to any part of the Professional Services, and the Supplier or the Supplier's Personnel do not, in their professional and reasonable opinion, agree with that Direction, the Supplier must note its objection to the Company in writing within 2 Business Days of the Direction, setting out:
- (a) the reasons the Supplier does not agree with the Direction; and
  - (b) proposing additional or alternate measures which could be reasonably implemented together with the Company's Direction which, in the Supplier's professional opinion, remedy the reasons the Supplier or the Supplier's Personnel do not agree with the Direction and render that part of the Professional Services suitable for its purpose.
- 15.6 If the Company does not:
- (a) amend a Direction objected to by the Supplier; or
  - (b) adopt reasonable alternate measures in accordance with clause 15.5,
- the Supplier is not liable for the Professional Services in accordance with clause 15.2 and 15.3 but only to the extent the unsuitability or failure of the Professional Services arises as a direct result of the Direction of the Company.

## 16 Indemnities

- 16.1 The Supplier indemnifies the Company and the Company's Personnel from and against all Claims for:
- (a) injury or death to any of the Supplier's Personnel;
  - (b) damage or destruction of any property belonging to the Supplier or in the Supplier's possession or under the Supplier's control;
  - (c) the Company being unable to meet its obligations to a third party which obligation it assumed in reliance upon the Supplier being able to perform its obligations under the Contract as a result of the Supplier failing for any reason to perform its obligations under the Contract;
  - (d) injury to or death of any person (including the Company's Personnel) or damage to or destruction of any property (including the Goods or any property of the Company or any of the Company's Personnel) caused by the negligent or unlawful act or omission or wilful misconduct of the Supplier or the Supplier's Personnel or a breach of the Contract by the Supplier;
  - (e) a failure by the Supplier or the Supplier's Personnel to comply with any Law; and
  - (f) without limiting sub-clauses (a) to (d) above, a breach by the Supplier or the Supplier's Personnel of any of the Supplier's obligations under the Contract or the negligence of the Supplier or the Supplier's Personnel in connection with the performance of the Contract,
- except to the extent the Claim arises as a direct result of the negligent or unlawful act or omission or wilful misconduct of the Company or the Company's Personnel or a breach of the Contract by the Company.
- 16.2 The indemnities in the Contract are continuing obligations, independent of the other obligations of the parties under the Contract and continue after the Contract ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under the Contract.

## 17 Insurance

- 17.1 The Supplier must maintain, and must ensure that where applicable each of the Supplier's Personnel maintains:



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- (a) workers compensation insurance as required by applicable Laws for all of the Supplier's Personnel performing any work under the Contract;
  - (b) public and product liability insurance providing a minimum indemnity limit of \$10 million for each and every claim;
  - (c) if the Contract includes the supply of Professional Services, professional indemnity insurance, on a claims incurred basis, providing a minimum indemnity limit of \$2 million for each and every claim, or such other amount as specified in the Contract;
  - (d) for any motor vehicles brought onto a Company Site, third party property damage motor vehicle insurance; and
  - (e) any other insurance specified in the Contract.
- 17.2 The Supplier must take out and maintain insurance covering the Goods and any Hire Equipment under an all risks policy for their replacement value against loss or damage, including loss or damage in transit to the Delivery Point and during unloading until risk passes to the Company.
- 17.3 The Supplier must ensure that any policies of insurance maintained by the Supplier for the purposes of the Contract names the Company as an additional insured or notes the interest of the Company.
- 17.4 The Supplier must provide such evidence as the Company reasonably requires that the Supplier and the Supplier's Personnel are insured in accordance with the Contract before the Supplier commences delivery of the Goods or performance of the Services and otherwise when requested by the Company from time to time.

## 18 Company Property

- 18.1 Any designs, materials, drawings, tools or equipment provided by the Company to the Supplier in connection with the supply of the Goods or the performance of the Services (collectively "**Company Property**") remains the property of the Company at all times.
- 18.2 The Supplier must:
- (a) not, without the prior written consent of the Company, use any Company Property for any purpose other than the performance of its obligations under the Contract;
  - (b) maintain any Company Property in accordance with good practice and the Directions of the Company;
  - (c) store Company Property in a safe and secure manner;
  - (d) allow the Company, and its representatives, to access and inspect the Company Property at all times upon reasonable notice;
  - (e) not dispose of or encumber any Company Property; and
  - (f) return any Company Property to the Company immediately upon demand by the Company.

## 19 Defective Goods or Services

- 19.1 The Company may notify the Supplier of any defect in the Goods or Services within a reasonable time of it becoming aware of the defects.
- 19.2 If any Goods or Services are defective or are not supplied or performed in accordance with the Contract, the Company may immediately terminate the Contract and the Supplier will have no claim against the Company.
- 19.3 If the Company elects not to terminate the Contract under the preceding sub-clause, the Supplier must, within 7 days of receiving notice from the Company, at the Company's option, either:
- (a) repair or rectify the defect or non-compliance in the Goods or the performance of the Services at no cost to the Company;
  - (b) replace the Goods or re-perform the Services at no cost to the Company; or
  - (c) refund any amount paid by the Company to the Supplier on account of the Price for the defective or non-compliant Goods or Services.
- 19.4 The exercise of any rights under this clause by the Company will not preclude or prejudice the exercise of any other rights, powers or remedies that may be available to the Company.



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19.5 The Company will hold any defective or non-compliant Goods for the Supplier at the Supplier's risk. If the Supplier fails to collect those Goods within a reasonable time of being requested to do so by the Company, the Company may dispose of them in whatever manner it thinks appropriate and will have no liability to the Supplier in respect of that disposal.

19.6 Without limiting any other rights or remedies of the Company, the Supplier must reimburse the Company for any costs and expenses incurred by the Supplier in returning defective Goods to the Supplier.

## 20 Breach of Contract

20.1 If the Supplier breaches the Contract, the Company may suspend payment to the Supplier until the breach is rectified to the satisfaction of the Company.

20.2 Without limiting any other provision of the Contract, the Company may terminate the Contract immediately by notice to the Supplier if the Supplier breaches the Contract and the breach is incapable of remedy or if the breach is capable of remedy and the Supplier fails to remedy the breach within 5 Business Days of receiving a notice from the Company requiring the Supplier to do so.

## 21 Insolvency

Either party may terminate the Contract immediately by notice to the other party (**Insolvent Party**) if:

- (a) the Insolvent Party is a company and the Insolvent Party has become an externally administered body corporate or a person becomes a controller of the Insolvent Party's property (as those terms are defined in section 9 of the *Corporations Act 2001*);
- (b) the Insolvent Party is a person and a judgment is entered against the Supplier in any court in any jurisdiction, the Insolvent Party become the subject of any bankruptcy petition or the Insolvent Party commits an act of bankruptcy or is made bankrupt; or
- (c) the Insolvent Party is unable to pay its debts when they are due.

## 22 Dispute Resolution

22.1 The parties will attempt to resolve disputes arising under the Contract promptly by negotiation in good faith before referring the dispute to conciliation or arbitration or commencing court proceedings. Senior personnel nominated by each party will attempt to resolve the dispute.

22.2 The parties must continue to perform their obligations under the Contract in spite of a dispute.

## 23 Confidentiality

23.1 Each party must not, without the prior written consent of the other party, disclose to any person any Confidential Information except any Confidential Information that is:

- (a) in, or comes into, the public domain other than as a result of a breach of this clause;
- (b) required to be disclosed by Law or by order of a Court; or
- (c) to be disclosed to legal or other advisors of a party for the purpose of advice in relation to the Contract.

23.2 Prior to disclosing any Confidential Information as permitted under the previous sub-clause, a party will notify the other party of the proposed disclosure and will provide a copy or particulars of the Confidential Information to be disclosed.

## 24 Intellectual Property

24.1 If the Supplier is the manufacturer of the Goods and the Goods are required to be manufactured or fabricated to the Company's specifications or special requirements (and are not standard stock goods), the Company will be entitled to all intellectual property rights that arise as a result of, or in the course of, the design and manufacture of the Goods.

24.2 The Company will be entitled to all intellectual property rights that arise as a result of, or in the course of, the performance of the Services.

24.3 The Supplier must execute and deliver to the Company any deeds, agreements or other documents which the Company may reasonably require to transfer or assure to the Company any intellectual property rights to which the Company is entitled under the Contract.



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24.4 The Supplier indemnifies the Company against all loss, cost, expense or damage suffered or incurred by the Company as a result of the Goods or the Services infringing the intellectual property rights of any person.

## 25 Joint and Several Liability

If the Supplier comprises two or more persons, each of the persons is jointly and severally liable for the obligations and liabilities of the Supplier under the Contract.

## 26 Stamp Duty

The Supplier must pay any stamp duty on or relating to the Contract.

## 27 No Assignment

The Supplier may not assign or encumber a right or interest under the Contract without the prior written consent of the Company.

## 28 Notices

28.1 A notice given to the Supplier under the Contract must be addressed to the address shown in the Purchase Order or to the address last notified by the Supplier to the Company as the Supplier's address for the purpose of the Contract.

28.2 A notice to be given to the Company under the Contract must be addressed to the address shown in the Purchase Order or to the address last notified by the Company to the Supplier as the Company's address for the purpose of the Contract.

28.3 Notices given under the Contract must be in writing signed by an authorised representative of the sender.

28.4 Notices are taken to have been given or made (in the case of delivery in person or by fax or post) when delivered, received or left at the address of the receiver.

## 29 No waiver

29.1 A failure, delay, relaxation or indulgence of a party in exercising any power, right or remedy conferred upon that party under the Contract does not operate as a waiver of that power, right or remedy.

29.2 A single or partial exercise of any power, right or remedy does not preclude any other or future exercise of any other power, right or remedy under the Contract.

29.3 A waiver of a breach of the Contract or any power, right or remedy arising under the Contract must be in writing signed by the party granting the waiver.

## 30 Survival

The warranties, indemnities and confidentiality obligations in the Contract survive rescission, termination or completion of the Contract and do not merge on completion of any transaction under the Contract.

## 31 Governing Law

The Contract is governed by the law of the state or territory of Australia to which the Goods are being delivered or in which the Services are being provided, and where there is more than one such state or territory, the state or territory in which the greatest value of the Goods or Services (by reference to the Price) are to be delivered or provided.

## 32 Civil Liability Legislation

32.1 To the extent permitted by Law, the operation of the Civil Liability Legislation in relation to any rights, obligations or liabilities under or in connection with the Contract is excluded.