



PROTECH POWER Pty Ltd

STANDARD TERMS AND CONDITIONS

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Protech Power Pty Ltd Standard Terms and Conditions

1. Definitions and Interpretation

1.1 Definitions

In these Standard Conditions, the following terms have the meanings set out below:

Business Day means a day on which banks are open for business in the place in Brisbane, Queensland, Australia.

Claim means any action, suit, proceeding or demand of any kind.

Company means Protech Power Pty Ltd ACN 076 427 542 or the Party (as identified in the Quotation) responsible for supplying the Services and/or supplying the Goods (as the case may require).

Company Representative means the representative of the Company identified in the Quotation.

Confidential Information means the Contract and any information (in whatever form) or Documentation of a confidential nature (or which the Company or its Personnel ought reasonably to know to be confidential) which relates to the business, affairs or activities of the Customer or an End User (including in relation to the Services) and which:

- (a) is disclosed to the Customer or its Personnel by or on behalf of the Company;
- (b) is generated by the Company or its Personnel in supplying the Services; or
- (c) otherwise comes to the knowledge of the Customer or its Personnel.

Contract means the following documents:

- (a) any 'special conditions' described as such in a Quotation;
- (b) these Standard Conditions of Supply;
- (c) a Quotation; and
- (d) attachments.

Contract Price means the amount payable (excluding Indirect Transaction Taxes payable in accordance with clause 9) by the Customer to the Company in relation to the Services and/or Goods as set out in a Quotation.

Corporations Act means the Corporations Act 2001 (Cth).

Customer means the customer named in the Quotation.

Customer Representative is, initially, as defined in the Quotation and includes:

- (a) such other person as the Customer may, in writing, substitute for that representative; or
- (b) any person authorised by that representative to perform any of that representative's powers, duties, discretions or authorities.

Defects Liability Period means (as applicable) the period identified as such in the Purchase Order or, where such period is not identified in the Purchase Order, the period of 1 year following the receipt of any particular Goods by the Company.

Delivery Date means the date/s specified in the Quotation for delivery of each of the Services and the Goods (where applicable).

Delivery Point means the place/s identified in the Quotation for delivery of each of the Goods (where applicable).

Dispute means any dispute, question or difference of opinion between the Company and the Customer arising out of or under the Contract.

Documentation includes plans, designs, drawings, calculations, engineering information, data, specifications, sketches, notes, samples, reports, maps, accounts, operating manuals, training materials and any other material specified in the Contract (and whether embodied in tangible or electronic form).

End User means an entity identified in the Contract (or notified to the Company by the Customer) to whom the Customer provides goods and/or services comprising or derived from, in whole or in part, the Services.

Excise Duties means any tax imposed, claimed, levied or assessed by or payable to any Government Agency in relation to the production or manufacture of Goods.

Facilities means any accommodation, sustenance, transportation, medical or toilet facilities.

Force Majeure means an event or cause which is beyond the control of the Party claiming force majeure, not able to be overcome by the exercise of reasonable care, proper precautions and the consideration of reasonable alternatives with the intention of avoiding the effects of the force majeure by that Party, and which could not have been reasonably foreseen, and includes (subject to satisfying the requirements of the foregoing):

- (a) an act of God (other than adverse weather);
- (b) cyclones, fire, flood; or
- (c) acts of war, acts of public enemies, terrorist acts, riots or civil commotions.

Goods means the goods (if any) identified in the Quotation that are to be supplied by the Company and, where applicable, includes any other goods associated with the supply of the Services.

Government Agency means any government or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

HSE Management Plan(s) means health, safety and environmental management plan(s).

HSE Policies and Standards means the Customer's health, safety and environmental policies and associated standards applicable from time to time.

Indemnified Parties means the Company and its Personnel.

Indirect Transaction Taxes means any value added tax, goods and services tax or similar tax including, without limit, sales, use or consumption taxes, imposed, claimed, levied or assessed by, or payable to, any Government Agency, but does not include any related penalty, fine or interest thereon.

Input Tax Credit means any entitlement to a credit for, or offset against, reduction in or refund of, Indirect Transaction Taxes, in relation to any acquisition or the receipt of any supply.

Intellectual Property Rights means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registerable), rights in relation to registered or unregistered trademarks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral

rights and similar non-assignable personal rights of authors and producers.

Liabilities means damages, Claims, losses, liabilities, costs and expenses of any kind.

Party means a party to the Contract.

Personal Information has the meaning given in the Privacy Act.

Personal Information means the Personal Information that one party transfers to the other party from time to time in connection with the Contract.

Personnel means:

- (a) in relation to the Company, any of its employees, agents and representatives; and
- (b) in relation to the Customer or an End User any of its past or present officers, employees, agents or representatives.

Privacy Act means the Privacy Act 1988 (Cth).

Process means collect, hold, use, transfer, destroy and any other dealing.

Protech Power means the Company and:

- (a) any Related Body Corporate of the Company;
- (b) any unincorporated Joint Venture in which the Company or any Related Body Corporate of the Company has a participating interest of not less than 50 percent; and
- (c) any body corporate or unincorporated Joint Venture managed by the Company or any Related Body Corporate of the Company.

Quotation means an individual quotation issued by the Company to the Customer in respect of the supply of Services or the provision of Goods which shall be subject to the terms of the Contract and includes, where applicable, a variation in accordance with clause 8.

Related Body Corporate has the meaning given in the Corporations Act.

Services means the work identified in the Quotation to be supplied by the Company (and includes any supply of any incidental goods not specified but otherwise required in accordance with the Contract). Such work may include (but is not limited to) induction, training, design, modelling, construction, erection, demolition, excavation and tunnelling, installation, earthworks, transportation, electrical works, commissioning, testing, compliance, audit, repair, maintenance, remediation, hire and/or operation of machinery.

Site means the Customer's premises or such other location specified.

Specifications means the specifications for the Services and any modification of those specifications.

Tax or Taxes means, unless the contrary intention is expressed, any and all taxes, including, without limitation, Indirect Transaction Taxes, excise, stamp, documentary, customs, import/export, payroll, personal, property, real property, interest equalisation, business, occupation, turnover, income, corporation, capital, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed by any Government Agency or otherwise payable.

Tax Invoice means an invoice or other document, including, without limit, a credit note or debit note, in a form that is valid under the applicable law of the jurisdiction in which a liability to pay

Indirect Transaction Taxes is imposed, claimed, levied or assessed, which must be held by a person for that person to be able to claim Input Tax Credits.

Term is defined in clause 5.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) The meaning of general words is not limited by specific examples introduced by "including" or "for example".
- (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes all of them.
- (f) A reference to a person or a Party includes a reference to that person's or Party's executors, administrators, successors, substitutes (including persons taking by way of novation), assigns (in the case of a person) and permitted assigns (in the case of a Party).
- (g) A reference to an Act or legislation, includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (h) A reference to "use", in the context of dealing with Intellectual Property Rights, includes using, exploiting, copying, adapting, creating derivative works, developing, modifying, disclosing and communicating.
- (i) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.

2. Precedence of Documents

2.1 Precedence of Contract documents

If there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in the definition of Contract.

2.2 Entire agreement

- (a) The Contract contains the entire agreement between the Customer and the Company with respect to its subject matter and supersedes all prior communications and negotiations between the Customer and the Company in this regard, unless those communications expressly form part of the Contract.
- (b) No terms or conditions submitted by the Customer that are in addition to, different from or inconsistent with those contained herein, including, without limitation, the Customer's printed terms and conditions and any terms and conditions contained in any Customer's order acknowledgment, confirmation, acceptance, bill of lading or other instrument, shall be binding upon the Company unless specifically and expressly agreed to in writing and signed by a duly authorised representative of the Company.

2.3 Amendment to be in writing

No amendment or variation of the Contract is valid or binding on a Party unless made in writing and signed by the Company and the Customer, as the case may be.

3. Supply by Company and Subcontracting

3.1 The Company must supply the Goods and the Services in a timely manner in accordance with the terms of the Contract and in consideration of the payment of the Contract Price by the Customer.

3.2 The Company may subcontract any aspect of providing the Goods and/or Services and the Customer hereby consents to such subcontracting.

4. Company's Warranties

4.1 Company's warranties

The Company warrants that:

- (a) all of the Services will be provided in an efficient manner in accordance with all applicable legislation and laws or regulations;
- (b) all of the Services will be in accordance with any applicable standards set by the Standards Association of Australia;
- (c) in relation to the supply of the Services:
 - (i) the Company and its Personnel will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the supply of comparable work; and
 - (ii) any equipment used on Site by the Company will be in safe working condition, will comply with all legislation which is applicable to such equipment and will be operated by suitably qualified and competent Personnel, to the satisfaction of the Customer; and
- (d) in relation to the provision of Goods:
 - (i) the Goods will be of merchantable quality;
 - (ii) the Goods will be free from defects in design, materials and workmanship, and suitable for the relevant purpose of those Goods; and
 - (iii) the Company has good and marketable title to the Goods and the Customer will receive title to the Goods free of any charge or encumbrance;

4.2 The Customer warrants all information and materials forming part of the offer or tender (if any) are true and correct in every respect and are not misleading or deceptive, and the Customer has not withheld from the Company any information concerning the Customer, its experience or expertise which might reasonably be supposed to be material to the Company in determining whether or not to provide the Services and/or Goods or the price at which or the terms on which the Company would be prepared to provide the Services and/or Goods.

5. Term

5.1 The Contract will commence on the earlier of the date of acknowledgement of receipt of the Quotation by the Company or the date the Company commences to supply the Services or supply the Goods, and will remain in force, unless terminated earlier in accordance with the Contract, until the completion by the Company of all of its obligations under the Contract (Term).

6. Representatives

6.1 Supply

The Goods and Services must be supplied by the Company in accordance with the Contract and in accordance with any reasonable directions of the Customer Representative pursuant to the provisions of the Contract.

6.2 Customer Representative

The Customer Representative is responsible for giving directions for and on behalf of the Customer as provided in the Contract.

6.3 Company Representative

(a) The Company Representative is responsible for liaising with the Customer Representative in relation to any of the matters referred to in clause 6.2, and the Company Representative will have full power to legally bind the Company in respect of all matters arising out of the Contract.

(b) Any direction which the Customer Representative gives to a Company Representative is deemed to have been given to the Company for and on behalf of the Customer and the Company must comply with that direction accordingly.

(c) Either Party may from time to time revoke the appointment of its representative and appoint another person as its representative, and that Party must give notice of such revocation and appointment to the other Party.

7. Delivery, Title and Risk

7.1 Delivery

The Company must deliver the Goods and/or Services (if applicable) to the Delivery Point.

7.2 Title

Full unencumbered title to each of the Goods will pass to the Customer upon the Customer making payment in full to the Company for each of the Goods.

For the sake of clarity, title will pass for each individual Good at the relevant time.

7.3 Risk

Risk in each of the Goods will remain with the Company until its delivery to the Customer Representative or to the Delivery Point.

8. Contract Price

8.1 Contract Price to be exclusive

The Contract Price means the aggregate amount payable (excluding Indirect Transaction Taxes payable in accordance with clause 10) by the Customer to the Company in relation to the Services and/or Goods pursuant to clauses 3.1 and 100.

8.2 Variation

(a) The Company agrees to supply the services to the Customer in accordance with this agreement at the Contract Price.

(b) The Company may vary the Contract Price if:

(i) a review of the Contract Price is undertaken by the Company; and

(ii) the Company is able to substantiate with reasonable documentary evidence the genuine

increased cost to the Customer.

(c) The review of the Contract Price contemplated in clause 8.2(b)(i) can take place in relation to each of the following components:

- (i) raw materials;
- (ii) freight;
- (iii) labour and overheads; and
- (iv) fluctuation in the currency exchange rate.

8.3 Expenses

Unless otherwise agreed in writing:

- (a) the Customer will bear all delivery, travel, accommodation, office stationery, computer storage, media and related expenses reasonably incurred by the Company in connection with a Quotation; and
- (b) any third party costs incurred by the Company in the course of performing the Services and/or providing the Goods may be billed to the Customer, unless specifically otherwise provided for in the Quotation.

8.4 Currency fluctuations

- (a) Without limiting clause 8.2(c), where the Contract Price is specified to be in AUD, the Company reserves the right to issue a revised Contract Price where there is a depreciation of 10% or more of the AUD against the relevant overseas currency from where the Goods are imported by the Company, when measured against the daily foreign exchange rate available to the Company.
- (b) The Company may issue a revised Contract Price at any time from the date of this agreement to the date of actual full payment for the Goods by the Customer.
- (c) If the Company exercises its rights under this clause 8.24, it will give the Customer seven (7) days from notification of the revised Contract Price to exercise a right to cancel this agreement in relation to the purchase of the Goods only, without penalty.

8.5 Custom Import Duties

- (a) Unless otherwise specified, the Contract Price is exclusive of any custom import duties payable by the Company in respect of import of any Goods by the Company into Australia.
- (b) If the Contract Price is specified to be inclusive of any such custom import duties for Goods supplied by the Company then if there is any change in the dutiable classification or effective rate of the applicable custom import duties the Contract Price will be adjusted to pass through the effect of the change to the Customer and the Customer must pay the adjusted Contract Price.

8.6 Greenhouse gas emissions

The Company is entitled to be reimbursed by the Customer for any amount that the Company pays or is liable to pay as a result of the Company, or a Related Body Corporate of the Company, being required by a law to surrender tradeable permits or to pay a Tax as a consequence of:

- (a) the emission of greenhouse gases in the course of supplying the Services or producing any Goods supplied under the Contract; or

(b) supplying the Services and/or Goods.

9. Taxes

9.1 Taxes (including Indirect Transaction Taxes)

(a) All amounts payable under or in connection with the Contract, (including any amount by way of reimbursement, indemnity, damages or otherwise) are exclusive of Indirect Transaction Taxes, unless expressed otherwise in the Quotation or special conditions.

(b) If Indirect Transaction Taxes are payable on a supply, transfer or sale (supply) made under or in connection with the Contract, and if the Company is liable, under an applicable law, to pay or collect and remit, the Indirect Transaction Taxes to the appropriate Government Agency, the Customer shall pay to the Company an additional amount equal to the Indirect Transaction Taxes payable by the Company in respect of the supply. The Customer must pay the additional amount to the Company on the date when the Contract Price (or part thereof) is provided to the Company (subject to a Tax Invoice being received prior to payment date). This subclause does not apply to the extent that the consideration for the supply is expressed to be inclusive of Indirect Transaction Taxes.

(c) The Company shall ensure that each invoice it presents to the recipient in respect of any Indirect Transaction Taxes is a Tax Invoice.

(d) Any reference in:

(i) the Contract to a cost, expense or other liability (Cost) incurred by a Party; or

(ii) the calculation of consideration or of any indemnity, reimbursement or similar amount to a Cost,

must exclude the amount of any Input Tax Credit entitlement of that Party in relation to that Cost.

(e) Each Party will take all reasonable steps to cooperate with and provide all necessary assistance to the other Party to ensure, so far as possible, that the Taxes treatment is accepted by the relevant Government Agency, including the provision of invoices, proof of payment, proof of source and/or origination and other documentation for this purpose.

9.2 Withholding Taxes

(a) If a Party (payer) is required by any applicable law to make a deduction or withholding from a payment to the other Party (payee) for or on account of any Taxes, the payer is entitled to make that deduction or withholding unless the payee provides the payer with valid documentation (received prior to the date when the payment is to be made) showing to the satisfaction of the payer that an exemption applies. If the payer is required by law to deduct or withhold, then the payer shall use its best endeavours to furnish the payee with all receipts, proof of payment and other relevant documentation for all deductions and withholding Taxes so paid to the relevant Government Authority. For the avoidance of doubt, the payer will not be liable to pay any amount to the payee on account of an amount deducted or withheld in accordance with this clause.

(b) Where a payment is made without a deduction or withholding for or on account of Taxes and such a deduction or withholding was required by any applicable law, the payee shall reimburse the payer for, or otherwise pay to the payer, the amount that should have been withheld or deducted within 14 days of receiving an official receipt (or certified copy) or other documentation

evidencing the amount that was required to have been withheld or deducted.

9.3 Customs and Excise Duties

Where the Customer acquires Goods and the Company is the importer, the Customer will:

- (a) be responsible for, and remit payment of, all Customs Duties assessed by or payable to any Government Agency, as well as any other foreign shipping charges; and
- (b) use its best endeavours to ensure that any Goods are imported free of Customs Duties, including, without limit, through the use of applicable bilateral free trade agreements (or the equivalent).

9.4 Survival

This clause will continue to apply after expiration or termination of the Contract.

10. Payments to Company

10.1 Method of payment

Unless otherwise provided in the Contract, all payments required to be made to the Company by the Customer pursuant to the Contract in relation to the supply of the Services and/or Goods must be made in the currency specified in the Quotation by electronic funds transfer into the Company's nominated bank account. If no currency is specified then it shall be treated as Australian Dollars unless proven to the contrary.

10.2 Tax Invoices

(a) The Company must, unless otherwise agreed with the Customer, render a Tax Invoice to the Customer in relation to the supply of the Services or Goods weekly, fortnightly or at the end of each month during the period in which the Services or Goods are supplied and calculated by reference to the prices, fees or other amounts specified in the Quotation.

(b) A Tax Invoice must contain the following information:

- (i) the number of the Quotation to which the Tax Invoice relates; and
- (ii) the purchase order or contract number if applicable; and
- (iii) a description of the Services and/or Goods provided in the period covered by the Tax Invoice.

10.3 Payment of Tax Invoices

Subject to clauses 10.4 and 16.2(b), the Customer must pay to the Company the amount shown on the Tax Invoice within 30 days following the end of the month in which the Tax Invoice is received (or such other period as agreed between the parties in writing).

10.4 Disputed Tax Invoices

If the Customer disputes any amount shown on a Tax Invoice, it will notify the Company within a reasonable time and in the notice will specify why it disputes any amount.

10.5 Errors or exceptions in invoicing

Without limiting clause 10.3, if the Company discovers or is advised of any errors or exceptions relating to its invoicing for the Services, the Company and the Customer will jointly review the nature of the errors or exceptions, and, if appropriate, take prompt corrective action and the relevant person shall adjust the relevant Tax Invoice or refund overpayments or pay shortfalls.

11. Packing, Despatch and Transport

11.1 Where Customer to arrange transport

If, pursuant to the terms of the Contract, the Customer is obliged to arrange transport of all or some of the Goods, then the Company must notify the Customer Representative of the details of those Goods ready for despatch in sufficient time to enable transport to be arranged.

11.2 Notification of despatch dates

The Company must notify the Customer Representative promptly of the date of despatch of each item and the estimated date of arrival at the Delivery Point.

12. Health, Safety and Environment

12.1 Application of clause

This clause 1212 applies to the extent the Company or any of its Personnel are required to be on, or near the vicinity of, the Site for the purposes of the Services.

12.2 Company acknowledgement

The Company acknowledges that there is a direct relationship between the Customer's health, safety and environmental performance and the success of the Customer's business.

12.3 Compliance with health, safety and environmental laws, policies and standards

The Company agrees to comply, and to ensure that its Personnel comply, with:

- (a) the Customer's HSE Policies and Standards; and
- (b) all relevant health, safety and environmental legislation and laws in force from time to time.

13. Access to Site

13.1 Access

Without limiting this clause 13, the Customer will grant to the Company access to the Site on and from the date of the Contract, or such other date as stipulated in the Contract, and the Company must give the Customer Representative reasonable notice before commencing the Services on the Site.

13.2 Company obligations

(a) Prior to commencement of the Services on the Site, the Company must notify the Customer Representative of its normal times and periods of work and must give the Customer Representative at least 24 hours' notice of any alteration in its working hours or periods of work.

(b) The Company must at all times consult with the Customer Representative and obtain 2 days' prior written approval for any action likely to interfere with the Customer's operations. The Customer Representative must reply to any such request within a reasonable period of time.

13.3 Right to deny access

If the Company or its Personnel fail to comply with any of the requirements of clause 122 or this clause 133, then the Customer Representative may in its discretion deny that person or those persons access to the Site or permit such access subject to terms and conditions the Customer Representative thinks appropriate.

13.4 No exclusive possession

The Company acknowledges that nothing in the Contract confers on it exclusive possession of the Site and that it will only be granted access to the Site to the extent necessary or incidental for the

supply of the Services.

14. Force Majeure

14.1 Notice of Force Majeure

A Party will not be liable for any delay or failure to perform any of its obligations under the Contract (other than an obligation to pay money) if as soon as possible after the beginning of the Force Majeure affecting the ability of the Party to perform any of its obligations under the Contract, it gives a notice to the other Party that complies with clause 14.2.

14.2 Force Majeure notice

A notice given under clause 14.1 must:

- (a) specify the obligations the Party cannot perform;
- (b) fully describe the Force Majeure;
- (c) estimate the time during which the Force Majeure will continue; and
- (d) specify the measures proposed to be adopted to remedy or abate the Force Majeure.

14.3 Obligation to remedy and mitigate

The Party that is prevented from carrying out its obligations under the Contract as a result of Force Majeure must:

- (a) remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible; and
- (b) take all action reasonably practicable to mitigate any Liabilities suffered by the other Party as a result of its failure to carry out its obligations under the Contract.

15. Indemnities

15.1 Indemnity

Subject to clause 15.2 the Customer will indemnify (and will keep indemnified) the Indemnified Parties from and against all Liabilities that any Indemnified Party suffers, sustains or incurs, arising from any one or more of the following:

- (a) the breach by the Customer or its Personnel of any of the Customer's obligations under the Contract and/or any Quotation;
- (b) any negligent act or omission or wilful misconduct by the Customer or its Personnel arising in connection with the Contract and/or any Quotation; or
- (c) any Claim made against the Customer or any of the Customer's Personnel in respect of relevant legislation concerning income tax, workers' compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal.

15.2 Exclusions

The Customer will not be liable under clause 15.1 to the extent that the Liability was caused, or contributed to, by (as the case requires) the Company's negligent acts or omissions or wilful misconduct.

15.3 Indemnity continuing

Each indemnity in the Contract is a continuing obligation separate and independent from the Company's other obligations and survives termination of the Contract.

16. Default

16.1 Default Notice

If either party breaches any term of the Contract, the innocent party may serve a notice of default (Default Notice) on the defaulting party containing the information specified in clause 16.2.

16.2 Default Notice requirements

A Default Notice must:

- (a) either require that the breach be remedied within a specified period of not less than 30 days (or a shorter period if justifiable) after service of the Default Notice on the defaulting party or state that the breach is incapable of remedy; and
- (b) state that if the breach is not remedied within the period specified in the Default Notice or is incapable of remedy, then the innocent party may by further notice to the defaulting party do one or more of the following:
 - (i) elect wholly or partly to suspend payment or the provision of Goods and/or Services under the Contract until the breach has been remedied;
 - (ii) take such action as necessary to cure the breach (the cost of such action so taken being recoverable from the defaulting party as a debt due);
 - (iii) terminate the Contract or any part of it with effect from a specified date (Cancellation Date);or
- (iv) take such other or additional action available at law.

16.3 Obligations upon termination

If an innocent party gives notice pursuant to clause 16.2(b)(iii), the Contract is terminated from the Cancellation Date and the defaulting party must:

- (a) If applicable, cease supply of the Services in accordance with, but only to the extent specified in, the Default Notice;
- (b) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of all the Goods;
- (c) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination; and
- (d) take any other action reasonably required in relation to the termination.

16.4 No prejudice

Notwithstanding the terms of any Default Notice, no action taken by a party under this clause 16 will prejudice the existence of any of its rights and remedies under the Contract which the innocent party may have at law as a result of the relevant breach.

17. Dispute Resolution

17.1 Dispute

In the event of any Dispute, a Party may give to the other Party a Dispute Notice specifying the Dispute and requiring its resolution under this clause 17.

17.2 Dispute Representatives to seek resolution

- (a) If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party must nominate one representative from its senior management to resolve the Dispute

(each, a Dispute Representative).

(b) If the Dispute is not resolved within 30 days of the Dispute being referred to the respective Dispute Representatives, then either Party may commence legal proceedings in an appropriate court to resolve the matter.

17.3 Performance of obligations during Dispute

During the existence of any Dispute, the Parties must continue to perform all of their obligations under the Contract without prejudice to their position in respect of such Dispute, unless the Parties otherwise agree.

17.4 Urgent interlocutory relief

Nothing in this clause 17.4 prevents a Party from seeking any urgent interlocutory relief which may be required in relation to the Contract.

18. Confidentiality

18.1 Obligation of confidentiality

The Parties undertake to each other and agree:

(a) to hold in strict confidence all Confidential Information and not to disclose or permit or cause the Confidential Information to be disclosed to any person other than any of its Personnel or subcontractors who require the Confidential Information for the purposes of providing the Services; and

(b) not to make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from the Confidential Information), except and solely to the extent necessary for the supply of the Services, unless the prior written consent of the other Party to do so has been obtained.

18.2 Exceptions

Clause 18.1 does not apply to:

(a) information after it becomes generally available to the public other than as a result of the breach of this clause 18 or any other obligations of confidence imposed on the Parties; or

(b) the disclosure of information in order to comply with any applicable law or legally binding order of any court, Government Agency or recognised stock exchange.

18.3 Breach of consent

The breach of any of the conditions contained in a consent granted pursuant to clause 18.1 will be deemed to be a breach of the Contract.

18.4 Indemnity

Without limiting clause 15, each Party indemnifies the other, and must keep them indemnified, in respect of any Liabilities incurred or sustained by them resulting from a breach of this clause 18 by that Party or its Personnel.

18.5 Additional obligations

The obligations in this clause 18 are in addition to and do not diminish the obligations of the Parties in respect of secret and confidential information at common law or under any statute or trade or professional custom or use.

18.6 Return of Confidential Information

If requested by a Party, whether prior to or after the expiry or earlier termination of the Contract, the other Party must promptly deliver all Confidential Information in their custody, possession or control.

18.7 Survival of clause

This clause 18 will survive the termination of the Contract.

19. Intellectual Property Rights

19.1 Company Intellectual Property Rights

The Customer acknowledges that the Company retains ownership of the Intellectual Property Rights of the Company used or created under or in connection with the Contract and/or in the provision of the Services. To enable the Customer to enjoy the benefit of the Services, the Company grants to the Customer a non-exclusive, non-transferable, royalty free, irrevocable and perpetual licence to use such Intellectual Property Rights for that purpose.

20. Notices

20.1 Form of Notices

Any notice, demand, consent or other communication (Notice) given or made pursuant to the Contract:

- (a) must be in writing;
- (b) must, where given by a Party, be signed or authorised by a Representative; and
- (c) may be delivered by prepaid post, by hand, by email, or by facsimile to the Party to whom the Notice is addressed at its address shown in the Contract or such other address as that Party may have notified to the other Party.

20.2 Notices deemed given

A Notice will be taken to be duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of delivery by post, 5 Business Days after the date of posting (if posted to an address in the same country) or 10 Business Days after the date of posting (if posted to an address in another country);
- (c) in the case of email, upon a 'read' receipt or unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address, 24 hours after the email was sent; or
- (d) in the case of facsimile, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of the recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or the Notice is sent or is later than 4:00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day.

21. Costs

21.1 Each Party to bear its own costs

Each Party must bear its own costs arising out of:

- (a) the negotiation, preparation and execution of the Contract; and
- (b) except as expressly provided otherwise in the Contract, any transaction contemplated by the Contract.

22. Status of Company

22.1 Independent contractor

At all times during the Term, and in the provision of the Services, the Company is an independent contractor and will not act as, or be or be regarded as, an agent or employee of the Customer, and the Supplier and its Personnel will not be entitled to any benefits which would ordinarily accrue to any employee of the Customer by virtue of their status as an employee.

23. Privacy and Data Protection

23.1 Personal information

Each Party agrees to comply with their obligations under the Privacy Act in respect of Personal Information obtained by or disclosed to them pursuant to the Contract.

23.2 Warranty

Each Party warrants to the other Party that it has complied with the Privacy Act in obtaining any Personal Information disclosed by it pursuant to the Contract.

23.3 Data protection

In addition to its obligations under the Privacy Act, the Parties agree to:

- (a) only Process the Personal Information for the purposes of the Contract;
- (b) not disclose the Personal Information to any other person without the other Party's prior written consent, unless the disclosure is required by law;
- (c) immediately notify that the disclosure of the Personal Information may be required by law;
- (d) put into place and maintain appropriate technical and organisational measures against unauthorised and/or unlawful Processing of the Personal Information;
- (e) put into place and maintain appropriate technical and organisational measures against unauthorised access, loss, destruction, misuse, modification, disclosure or damage to the Personal Information; and
- (f) take all necessary steps to ensure that its Processing of the Personal Information will be fair and lawful.

23.4 Survival of clause

This clause 23 will survive the termination of the Contract.

24. Waiver

24.1 A failure to exercise, or any delay in exercising any right, power or remedy by a Party does not operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

25. Further Assurances

25.1 Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of the Contract and

the transactions contemplated by it.

26. Severability

26.1 Severability

Any provision of the Contract which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of the Contract nor does it affect the validity or enforceability of that provision in any other jurisdiction.

26.2 Negotiation in good faith

Where a provision is prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid provision by a provision which is in accordance with the applicable law and which must be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to the Contract.

27. Governing Law

27.1 The Contract is governed by the laws of Queensland, Australia. Each Party submits to the non-exclusive jurisdiction of the Courts exercising jurisdiction in Queensland, Australia in connection with matters concerning the Contract.