

TERMS AND CONDITIONS OF PURCHASE

Approved By:

BMS/Logistics/Policy

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1. INTERPRETATION JURISDICTION

- 1.1 This Agreement is subject to the laws of the State of Queensland and the provisions of the Competition and Consumer Act 2010 (Cth). Each party to this Agreement irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Queensland and any courts which have jurisdiction to hear appeals from any of those courts (“Courts”) and waives any right to object to any proceedings being brought in those Courts.

1.2 In this Agreement, unless the context otherwise requires:

- (a) “Agreement” has the meaning given in clause 2.1.
- (b) “Associate” has the meaning given in sections 12 and 15 of the Corporations Act 2001 (Cth).
- (c) “Business Day” means any day except a Saturday, Sunday or public holiday in Queensland.
- (d) “Claim” means any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding or other legal action, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the Purchaser or Supplier, however arising and whether ascertained or unascertained, or immediate, future or contingent.
- (e) “Commencement Date” means the date that the Purchaser issues the Purchase Order to the Supplier in accordance with clause 2.1.
- (f) “Control” has the meaning given in section 50AA of the Corporations Act 2001 (Cth).
- (g) “Date for Delivery” has the meaning given to it in the Purchase Order.
- (h) “Defective” means:
 - (i) In relation to services, that they:
 - (A) Were not provided in a competent and efficient manner in accordance with a standard of care and diligence reasonably expected from a person experienced in undertaking such matter ands;
 - (ii) In relation to the Goods, that they:
 - (A) Have an error, defect or malfunction; or
 - (B) Do not conform with a sample or test goods provided by the Supplier; and
 - (iii) In relation to Goods and services, that they:
 - (A) Do not conform to the specifications requested by the Purchaser;
 - (B) Are not fit for the purpose made known by the Purchaser or are not of merchantable quality;
 - (C) Do not conform with all applicable laws and third party approvals; or
 - (D) Otherwise do not comply with the requirements of this Agreement.
- (i) “Developed IP” means the Intellectual Property Rights in the Goods and all other materials produced by the Supplier in connection with this Agreement, including any patterns, castings, designs, specifications, documentation, reports, data, concepts, know-how, information, advice, opinions, notes whether in draft or final form, in writing, provided orally, either alone or in conjunction with the Purchaser or others.
- (j) “Goods” means any goods and, where relevant, any service or works specified in the Purchase Order.

- (k) "GST" has the same meaning as in the GST Act.
- (l) "GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (m) "Infringement Claim" means a claim by a third party that:
 - (i) The Supplier's provision of the Goods to the Purchaser; or
 - (ii) The Purchaser's receipt or use of the Goods, Developed IP or the Supplier's Pre-Existing IP, Infringes the Intellectual Property Rights of any third party.
- (n) "Intellectual Property Rights" means any and all intellectual and industrial property rights throughout the world, Including:
 - (i) Copyright, patents, know-how, confidential information, database rights, moral rights and rights in trademarks and designs (whether registered or unregistered);
 - (ii) Applications for registration and the right to apply for registration, for any of the above; and
 - (iii) All other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world,

Whether created before or after the Commencement Date and whether existing in Australia or otherwise.

- (o) "Loss" means any and all losses, liabilities, damages and claims, and any and all related costs and expenses (including any and all reasonable legal fees and reasonable costs of investigation, litigation, settlement, judgment, appeal, interest and penalties).
- (p) "Patterns" has the meaning given in clause 21.
- (q) "PPSA" means the Personal Property Securities Act 2009 (Cth) and any regulations made under or in connection with that Act.
- (r) "PPS Register" means the register established under section 147 of the PPSA.
- (s) "Pre-Existing IP" in respect of a party means all materials owned or licensed by the relevant party as at the Commencement Date and any Intellectual Property Rights attaching to those materials.
- (t) "Price" means the cost specified in the Purchase Order payable by the Purchaser to the Supplier in exchange for the Goods.
- (u) "Proportionate Liability Scheme" means:
 - (i) Part 4 of the Civil Liability Act 2002 (NSW);
 - (ii) Part 3 of the Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001(SA);
 - (iii) Part 1F of the Civil Liability Act 2002 (WA);
 - (iv) Part 9A of the Civil Liability Act 2002 (Tas);
 - (v) Part IVAA of the Wrongs Act 1958 (VIC);
 - (vi) Chapter 2, Part 2 of the Civil Liability Act 2003 (Qld);
 - (vii) The Proportionate Liability Act 2005 (NT);
 - (viii) Chapter 7A of the Civil Law (Wrongs) Act 2002 (ACT);
 - (ix) Part VIA of the Competition and Consumer Act 2010 (Cth);
 - (x) Part 7.10, Division 2A of the Corporations Act 2001 (Cth);
 - (xi) Sections 12GP - 12GW of the Australian Securities and Investment Commission Act (2001 Cth and);
 - (xii) Any statutory provisions which are of similar effect in any State or Territory.
- (v) "Purchase Order" means any form of order or acknowledgment from the Purchaser for the provision and supply of Goods.
- (w) "Purchaser" means voestalpine Railway Systems Australia Pty Ltd (ABN 71 011 073 108).
- (x) "Purchaser Supplied Material" means all equipment (including tools, gauges, jigs and castings), and resources (including drawings, patterns, blueprints, specifications, process and knowhow) and any Intellectual Property Rights attached to such materials provided by the Purchaser to the Supplier in connection with this Agreement.
- (y) "Quality Assurance Scheme" means any method of testing to verify that the Goods comply with the standards and requirements of any applicable standards including Australian standards and/or the International Standards Organisation ("ISO").
- (z) "Recipient" has the meaning in clause 6.
- (aa) "Requested Patterns" has the meaning given in clause 21.

- (bb) "Supplier" means the person or persons described as being the Supplier in the Purchase Order and includes a reference to the Supplier's employees, suppliers, agents, consultants and subcontractors.
- (cc) "Tax Invoice" has the same meaning as in the GST Act.

2. AGREEMENT

- 2.1 The Agreement between the Purchaser and Supplier comprises the Purchase Order and these Terms and Conditions ("Agreement"). The Purchase Order constitutes an irrevocable offer by the Purchaser to the Supplier to supply the Goods by the Date for Delivery upon and subject to the terms of the Agreement and any other direction or instruction from the Purchaser. Such offer is capable of acceptance by the Supplier unilaterally and the Supplier is not required to communicate such acceptance to the Purchaser for it to be effective.
- 2.2 The Purchaser will not be responsible for Goods delivered or services rendered except on a properly authorised or signed Purchase Order.
- 2.3 This Agreement embodies the entire agreement between the Purchaser and Supplier and supersedes any previous negotiations, agreements, representations, warranties or statements made by or between the parties. Any Supplier terms and conditions, including terms contained in a delivery note do not form part of this Agreement or bind the Purchaser. The parties hereby expressly acknowledge and agree that the terms in this Agreement prevail over any terms and conditions of trade of the Supplier whether or not any inconsistency arises.
- 2.4 The parties also expressly acknowledge and agree to abide by the supplied voestalpine Code of Conduct for Business Partners.
- 2.5 The Purchaser may update these Terms and Conditions from time to time on the Purchaser's website. If any of the provisions of this Agreement are illegal, void or unenforceable for any reason, all other provisions which are self-sustaining and capable of separate enforcement shall to the maximum extent permitted by law, Be and continue to be valid and enforceable.

3. INVOICES

The Supplier must provide to the Purchaser an invoice in respect of the Goods which is to accompany the Goods or be mailed to the Purchaser the day following despatch of Goods or provision of services, unless otherwise arranged. The invoice must be a Tax Invoice satisfying the requirements in the GST Act.

4. PAYMENTS

Subject to clause 12, the Purchaser will pay the Price to the Supplier within 30 days end of month from the day of acceptance of the Goods and only after the Purchaser receives a correctly rendered Tax Invoice or monthly statement of accounts (whichever is applicable), unless otherwise arranged. An invoice will be deemed correctly rendered if it satisfies the requirements of the GST Act, is complete and where explanation is necessary, accompanied by documentation substantiating that the Goods were received and accepted or the services were completed.

5. PRICE

The Price is claimable by the Supplier upon delivery of the Goods or provision of the services. Entitlement to payment is limited to the amount specified in the Purchase Order, unless extra work is approved by the Purchaser in writing before such work is commenced. Any costs associated with additional work must be shown as separate items when invoicing.

6. GST

- 6.1 Unless specified otherwise, amounts payable by a party under this Agreement have been fixed without regard to the impact of GST and are exclusive of GST.
- 6.2 If GST is or becomes payable by a party making a supply under or in connection with this Agreement, the party providing the consideration for that supply ("Recipient") must pay an additional amount equal to the GST payable on the supply unless the consideration for that supply is expressly stated to be inclusive of GST. Payment of the additional amount is conditional on prior receipt by the Recipient of a valid Tax Invoice in respect of the supply. Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.
- 6.3 Any payment or reimbursement required to be made under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- 6.4 Terms used in this clause 6 have the meanings give to those terms by the GST Act, unless the context suggests otherwise.

7. PACKING

- 7.1 Packing slips must be enclosed with shipment and/or faxed to the Purchaser following despatch of Goods. All Goods and articles shall be suitably packed or otherwise prepared for shipment and so as to secure the lowest transport and insurance rates and in accordance with carrier's requirements.
- 7.2 The Purchaser is not responsible for containers or other packing materials which are the property of the Supplier, for which the Supplier incurs a charge if not returned unless returnable articles are shown on packing slips and invoices.
- 7.3 The Supplier bears all charges and costs (including any applicable insurance premiums) associated with the Goods being transported from the Supplier to the Purchaser.

8. RISK AND TITLE

The Goods are at the Supplier's risk until such time as the Goods are actually delivered to the Purchaser including for the avoidance of doubt anytime whilst the Goods are in transit. Title to the Goods is transferred to the Purchaser upon the earlier of payment or receipt of those Goods.

9. QUANTITIES

The Goods delivered must equal exact amounts ordered unless otherwise agreed in writing by the Purchaser. The Purchaser assumes no obligation with respect to Goods shipped in excess of quantities specified herein, except in accordance with trade customs and usage. Material shipped in excess of quantity ordered may be returned at the Supplier's expense.

10. DELIVERIES

The Purchaser reserves the right to request, as necessary, amendments to its delivery schedules at any time.

11. SPECIFICATION

The specification for the Goods provided by the Purchaser, if any, shall be deemed to be part of this Agreement.

12. INSPECTION

All Goods supplied under this Agreement, whether paid for or not, shall be subject to inspection by the Purchaser within a reasonable time after delivery (or in the case of services, a reasonable time after their provision) and if such Goods are Defective or do not conform to the requirements of this Agreement the Purchaser may either reject the Goods or any of them, or retain the whole or any of them, reserving the right to damages for the Supplier's breach or a reduction in the Price (as determined by the Purchaser in its sole discretion). Payment for Goods prior to inspection is not to be construed as an acceptance of Defective Goods by the Purchaser. The Purchaser must promptly notify the Supplier of any defects detected and may return any articles so claimed to be Defective for the Supplier's account, at the Supplier's expense.

13. DEFECTIVE GOODS

13.1 If the Goods are Defective the Purchaser may, without prejudice to the Purchaser's other rights and remedies, in its absolute discretion:

- (a) accept the Goods subject to a reasonable reduction in the Price (as determined by the Purchaser);
- (b) reject the Goods;
- (c) require the Supplier to make good the Defective Goods free of charge;
- (d) require the Supplier to supply the services again; or
- (e) require the Supplier to pay the cost of having the services supplied again.

13.2 Where Goods are rejected by the Purchaser under clause 13.1(b), the Supplier will, within 7 days after receiving notification of such rejection, without prejudice to the Purchaser's other rights and remedies:

- (a) collect the Goods from the Purchaser (or in the case of services, reverse the result of the provision of services at the Purchaser's election); and
- (b) refund to the Purchaser all amounts paid by the Purchaser in respect of the Goods.

14. CANCELLATION

- 14.1** An order may be wholly or partially cancelled by the Purchaser in the event of the Supplier at any time failing or being unable to comply with any of the terms, conditions or warranties express or implied in this Agreement. In the case of any unforeseen contingency causing stoppage or delay in production, the Purchaser reserves the right at its option to suspend, modify or cancel the order.
- 14.2** On the cancellation of an order, all Goods and materials comprised or mentioned therein, whether wholly or partly manufactured and all Purchaser Supplied Materials then in possession of the Supplier shall, at the option of the Purchaser, be delivered or provided by and at the cost of the Supplier to such person or persons as the Purchaser shall direct.
- 14.3** The Purchaser must inspect any partly or wholly manufactured Goods (or services provided) received pursuant to this clause and notify the Supplier if it intends to retain or reject those Goods or services. Where the Purchaser elects to retain the Goods or services, the Purchaser will, in its sole discretion, determine a reasonable price for those Goods or services and confirm such price in writing to the Supplier. Payment of the price will be made in accordance with clause 4. Where the Purchaser elects to reject the Goods, it will return the Goods to the Supplier at the Suppliers' cost and the Supplier will not be entitled to any payment in respect of the Goods. Where the Purchaser elects to reject the services, it will reverse the product of the services at the Suppliers' cost and the Supplier will not be entitled to any payment in respect of the services.

15. EXCLUSION OF PROPORTIONATE LIABILITY

- 15.1** To the extent permitted by law, each of the Proportionate Liability Schemes is excluded in relation to all and any rights, obligations or liabilities of either party under the Agreement or in relation to any Claim whether those rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- 15.2** Without limiting clause 15.1, the rights, obligations and liabilities of the Purchaser and the Supplier under the Agreement or in relation to any Claim with respect to proportionate liability are as specified in this Agreement and not otherwise, whether those rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.
- 15.3** To the extent permitted by law:
- (a) the Supplier must not seek to apply a Proportionate Liability Scheme in relation to any Claim by the Purchaser against the Supplier (whether in contract, tort or otherwise); and
 - (b) if any of the provisions of a Proportionate Liability Scheme are applied to any Claim by the Purchaser against the Supplier (whether in contract, tort or otherwise), the Supplier will indemnify the Purchaser against any Loss that forms part of a claim by the Purchaser against the Supplier which the Purchaser cannot recover from the Supplier because of the operation of the relevant Proportionate Liability Scheme.

16. DAMAGES

In the event the Supplier fails to deliver or provide the Goods by the Date for Delivery or the Goods provided are Defective, the Supplier agrees to pay for any Loss sustained by the Purchaser arising out of or in connection with the Supplier's breach.

17. PURCHASER SUPPLIED MATERIAL

- 17.1** The Purchaser may, from time to time, provide the Supplier with possession of the Purchaser Supplied Material for the purpose of manufacturing the Goods.
- 17.2** The Supplier must inspect the Purchaser Supplied Material upon delivery, satisfy itself as to the suitability and quality of the Purchaser Supplied Material, and notify the Purchaser if the Purchaser Supplied Material is not suitable for use in connection with manufacturing the Goods (or, if relevant, providing the services).
- 17.3** Despite the Supplier having possession of any Purchaser Supplied Material, ownership of that material will, at all times, remain with the Purchaser.
- 17.4** The Purchaser Supplied Material must not be used by the Supplier otherwise than for the manufacture and provision of the Goods for the Purchaser. The Supplier has no claim to, or rights in respect of, the Purchaser Supplied Material, including no right to assert any security interest over it.
- 17.5** The Supplier irrevocably grants to the Purchaser, its agents and servants, an unrestricted right and licence, without notice, to enter the premises occupied by the Supplier to identify and remove any Purchaser Supplied Material and any other property that the Purchaser has an interest in at its option without in anyway being liable to the Supplier or any persons claiming through them.
- 17.6** The Supplier agrees to keep safe custody of all Purchaser Supplied Material such that it will be in good condition and readily identified as the Purchaser's property at all times. The Supplier must not, or allow any other person to, copy, replicate or reverse engineer any Purchaser Supplied Material (other than as is necessary for the manufacture and supply of the Goods to the Purchaser).
- 17.7** Any Purchaser Supplied Material in the Supplier's possession is at the Suppliers risk. The Supplier is responsible for the cost of replacing any Purchaser Supplied Material that is lost, partly damaged or wholly destroyed while in the Supplier's possession, to the satisfaction of the Purchaser.
- 17.8** The Supplier is responsible for ensuring that all Purchaser Supplied Material is suitable for manufacturing the Goods and will produce Goods strictly in accordance with any Purchaser Supplied Material for such Goods.
- 17.9** The Purchaser will not be liable to the Supplier in contract, tort, equity, under statute or otherwise arising from or in connection with the Purchaser Supplied Material, and the Supplier will not be entitled to any extension of time to the Date for Delivery, adjustment to the Price or other claim arising from or in connection with the Purchaser Supplied Material.

18. INTELLECTUAL PROPERTY AND COPYRIGHT

- 18.1** Each party retains ownership of its Pre-Existing IP and nothing in this Agreement transfers ownership or assigns any Pre-Existing IP of a party to the other party.
- 18.2** The Purchaser grants to the Supplier a non-exclusive, non-transferable, non-sublicensable, limited licence to use the Purchaser Supplied Material and any Developed IP solely to the extent necessary to provide, produce or manufacture the Goods in accordance with this Agreement.
- 18.3** The Purchaser will be the sole and exclusive owner of all Developed IP.

- 18.4** Subject to clause 18.1, the Supplier assigns to the Purchaser all right, title and interest (including all Intellectual Property Rights) in the Developed IP (including as a present assignment of future copyright). The Supplier must do all things necessary to vest title or procure the vesting of title in all Intellectual Property Rights in the Purchaser without the need for further consideration.
- 18.5** To the extent that any Pre-Existing IP of the Supplier is incorporated in the Developed IP, the Supplier grants to the Purchaser a perpetual, irrevocable, transferable, sublicensable, worldwide and royalty-free licence to use, copy, modify, adapt and exploit such Pre-Existing IP in order to use, enjoy the benefit of and exploit the Developed IP.
- 18.6** The Supplier must procure the irrevocable consent of its personnel as necessary to enable the Purchaser to do any act or omission that might otherwise infringe the moral rights of such personnel under the Copyright Act (1968 (Cth)).

19. INFRINGEMENT CLAIMS

The Supplier will indemnify, hold harmless and defend the Purchaser from and against any and all claims, actions, proceedings, damages, losses, liabilities, costs, charges, expenses (including reasonable legal costs and expenses on a solicitor and client basis), outgoings or payments paid, suffered or incurred by the Purchaser arising from, out of or in connection with an Infringement Claim except where the Infringement Claim directly arises out of, or results from, the Supplier's use of the Purchaser Supplied Material in accordance with this Agreement.

20. CASTINGS

- 20.1** Any supply or manufacture of castings is governed by the provisions of the Agreement including the provisions with respect to Purchaser Supplied Material set out in clause 17.
- 20.2** If the Supplier is manufacturing castings, the Supplier must ensure that the castings are:
- (a) sound and clean;
 - (b) free from porosity and all other defects;
 - (c) without holes or cracks;
 - (d) conforming to the appropriate standard of microstructure relevant to the product;
 - (e) true to the shape and dimensions provided by the Purchaser or if none are provided, that are reasonably required;
 - (f) properly dressed and fettled;
 - (g) manufactured or supplied (as relevant) in accordance with drawings and/or specifications provided by the Purchaser;
 - (h) unaffected by an explosive depth hardening process;
 - (i) conforming to non-destructive testing;
 - (j) compliant with any other condition or test as the Purchaser may from time to time require; and
 - (k) of the appropriate standard specific to the Purchaser.
- 20.3** 20.3 The Purchaser reserves its rights to not accept the castings manufactured or supplied (as relevant) if they do not comply with clause 20.2.
- 20.4** 20.4 Certificates from any testing performed in connection with clause 20.2 are to be supplied to the Purchaser by the Supplier no later than at the time of delivery of the Goods or provision of the services, or otherwise as and when directed by the Purchaser.

21. PATTERNS

The Supplier:

- (a) will ensure that any patterns or moulds that the Supplier is asked by the Purchaser to manufacture (at the cost of the Purchaser) (the “Requested Patterns”) will be manufactured in compliance with the drawings and specifications provided by the Purchaser to the Supplier for that Requested Pattern;
- (b) agrees and acknowledges that the Requested Patterns and any patterns or moulds that form part of the Purchaser Supplied Material (together, the “Patterns”) will at all times be the property of the Purchaser;
- (c) agrees and acknowledges that the Patterns are governed by the Agreement and must comply with clause 17;
- (d) must not, or allow any other person to, copy, replicate or reverse engineer any Requested Patterns (other than as is necessary for the manufacture and supply of the Goods to the Purchaser);
- (e) will keep safe custody of all Patterns such that they will be
 - (i) in secure, weatherproof and appropriate storage conditions;
 - (ii) in good condition; and
 - (iii) readily identified as the Purchaser’s property at all times;
- (f) will not relinquish control of (or otherwise deal with) any Patterns without the prior written consent of the Purchaser;
- (g) will (upon request by the Purchaser) promptly deliver the Patterns to the Purchaser clean and free from any defects whatsoever; and
- (h) irrevocably grants to the Purchaser, its agents and servants, an unrestricted right and licence, without notice, to enter the premises occupied by the Supplier to identify and remove any Patterns and any other property that the Purchaser has an interest in at its option without in anyway being liable to the Supplier or any persons claiming through them.

22. ASSIGNMENT

This Agreement is not assignable by the Supplier. Any change in control of the Supplier or the sale of substantially all of the Supplier’s assets is deemed an assignment for the purpose of this Agreement. The Supplier shall not, without the previous approval in writing of the Purchaser, which approval must not be unreasonably withheld, enter into any sub-contract for the performance of any or all of the work required to be done under each Agreement or any part thereof. The Supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under this Agreement and will be liable for all acts and omissions of a subcontractor as though they were the actions of the Supplier itself. The Purchaser may assign the benefit of this Agreement at any time by providing notice in writing to the Supplier.

23. SUBSTITUTION

Substitution of Goods or part numbers will not be acceptable without written approval of the Purchaser prior to delivery.

24. TEST CERTIFICATES

Failure to supply test certification in compliance with the Quality Assurance Scheme will deem this Agreement incomplete and no payment will be made until the certification is received and accepted by the Purchaser. The Supplier must provide verification of current ISO certification annually to the Purchaser.

25. WARRANTIES

25.1 The Supplier represents and warrants that:

- (a) it has complied with its obligations under this Agreement;
- (b) the Goods are new and fit for the purpose for which they have been designed/purchased;
- (c) the Goods conform in all respects with the specification (if any);
- (d) the Goods are free from defects, including in design, workmanship or material;
- (e) the Goods are of merchantable quality;
- (f) it knows the Purchaser's intended use and warrants that all Goods covered by this Agreement have been selected, designed, manufactured or assembled by the Supplier based on the Purchaser's stated use and will be fit and sufficient for the particular purposes intended by the Purchaser or its customer;
- (g) it has the right to sell and transfer title to and property in the Goods;
- (h) on delivery, it is able to pass clear title in the Goods to the Purchaser and the Goods are not the subject of a security interest to which the PPSA applies; and
- (i) the period of warranty, unless otherwise agreed by the Purchaser, is a twenty-four (24) month period commencing on the in-service date, being the date on which the Supplier places the Goods into track. Any fault within the nominated warranty period shall be made good by the Supplier.

25.2 In addition to the representation and warranties contained in clause 25.1, the Supplier represents and warrants that it will provide services:

- (a) in a competent and efficient manner in accordance with a standard of care and diligence reasonably expected from a person experienced in undertaking such matters; and
- (b) in compliance with all applicable laws and third party approvals.

25.3 The Supplier is taken to repeat the representations and warranties in this clause 25 each time it accepts any Purchase Order.

26. INSURANCE

26.1 The Supplier must effect (before commencing manufacture of the Goods or provision of the services) and maintain while the Supplier continues to have any obligations under this Agreement the following insurances, and must provide the Purchaser with evidence, satisfactory to the Purchaser, of the currency of the following insurances within 7 days of any request by the Purchaser:

- (a) public and product liability insurance on an occurrence basis which extends cover to the Purchaser for vicarious liability arising from the acts or omissions of the Supplier in connection with this Agreement and which includes as an insured any subcontractor of the Supplier in respect of work undertaken in connection with a Purchase Order, in the amount of not less than \$10,000,000 for any one loss or occurrence (and in the aggregate in respect of product liability but unlimited in the aggregate in respect of public liability) or such other amount as required by the Purchaser from time to time;
- (b) if Goods are to be provided: property insurance covering damage to, or loss or destruction of, property in the custody or control of the Supplier which extends to cover the full value (subject to the policy deductible) of the Goods and any Purchaser Supplied Material up until the time that the Goods are delivered to the Purchaser and any Purchaser Supplied Material not incorporated into the Goods is returned to the Purchaser's possession; and
- (c) if services are to be provided: professional indemnity insurance or errors and omissions insurance which:
 - (i) covers liability arising out of acts or omissions of the Supplier and its subcontractors, or anyone engaged by the Supplier or its subcontractors, in connection with the services, with a limit of indemnity not less than \$10,000,000 for any one claim and in the aggregate;

- (ii) does not contain an exclusion for risk assumed under contract; and
- (iii) remains in force for a period of not less than 7 years after all of the Supplier's obligations under this Agreement have been discharged.

26.2 The Supplier must not engage any subcontractor in connection with a Purchase Order unless satisfied on a reasonable basis that the subcontractor is adequately insured in respect of:

- (a) if Goods are to be provided: property in the custody or control of the subcontractor; and
- (b) if services are to be provided: liability arising out of acts or omissions of the subcontractor, or anyone engaged by the subcontractor, in connection with the services.

27. LIABILITY

The Supplier agrees to indemnify and keep indemnified and hold harmless the Purchaser against any action, loss, cost, claim or damage that may be brought against or suffered by the Purchaser, for any breach of this Agreement by, or negligence of, the Supplier.

28. EVENT OF DEFAULT

Each of the following is an "Event of Default", namely if the Supplier:

- (a) breaches any term of this Agreement which is not capable of remedy;
- (b) breaches any term of this Agreement, which is capable of remedy, but fails to remedy the breach within 10 Business Days after receiving notice from the Purchaser to do so;
- (c) comes under the Control of a person (acting alone or together with its Associates) who did not Control the Supplier on the Commencement Date;
- (d) is subject to an application for its winding up or bankruptcy;
- (e) has a receiver or provisional liquidator appointed to manage its affairs;
- (f) has an administrator appointed to begin any process of managing its affairs or has an inspector appointed to investigate its affairs; or
- (g) becomes insolvent, bankrupt, fails to comply with a statutory demand, enters into a scheme or arrangement with its creditors, has an administrator or receiver appointed, has a writ of execution, mareva injunction or similar order made against it or any of its assets, has a liquidator appointed or has an application made to court (or passes a resolution) for its winding up or is subject to anything analogous.

29. TERMINATION

29.1 If an Event of Default occurs, the Purchaser may:

- (a) terminate this Agreement with immediate effect;
- (b) enforce performance by proceeding by appropriate Court action, enforce performance by the Purchaser of the Agreement or recover damages for the breach concerned.

29.2 On termination of this Agreement, the Supplier must promptly return to the Purchaser all Purchaser Supplied Materials, any Requested Patterns and any other things given to the Supplier for the purpose of carrying out the work.

30. WAIVER

Waiver by the Purchaser of any default by the Supplier or failure by the Purchaser to terminate this Agreement or cancel any part of an order when such right arises shall not constitute waiver by the Purchaser of any rights of the Purchaser under any of the terms and conditions of this Agreement.

31. CONFIDENTIALITY

- 31.1** The Supplier shall not without first obtaining the written consent of the Purchaser, in any manner advertise or publish the fact that the Supplier has furnished or contracted to furnish to the Purchaser, the Goods, or otherwise use business relations with the ordering party for advertising or publicity purposes.
- 31.2** The Supplier has to treat any Purchaser Supplied Material in strict confidence. Any breach could incur legal action on behalf of the Purchaser.
- 31.3** The Supplier must ensure that the terms of this Agreement and any information relating to this Agreement, including discussions and negotiations leading to this Agreement are kept confidential, other than such things that are required to be disclosed by law.
- 31.4** The Supplier must ensure that the Supplier's employees, suppliers, agents, consultants and subcontractors comply with the terms of this clause.
- 31.5** The Supplier acknowledges that its obligations under this clause shall survive expiry, completion or termination of this Agreement.

32. NOTICES

- 32.1** Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement shall be given in writing.
- 32.2** Each communication (including each notice, consent, approval, request and demand) may be given by personal service, post, facsimile or email in accordance with the contact details of the Supplier and the Purchaser specified in the Purchase Order.

33. SEVERABILITY

If any one or more provisions of the Agreement should be deemed invalid or unenforceable such provision(s) shall be severed and shall be deemed to have formed no part hereof but the remaining provisions hereof shall subsist and remain enforceable unless the basic purpose of the Agreement would hereby be defeated.

34. PPSA

- (a) In this clause , “security interest”, “security agreement”, “grantor”, “secured party”, “financing statements”, “collateral”, “collateral class” and “verification statement” have the meaning given in the PPSA.
- (b) The Supplier and Purchaser each acknowledge that:
 - (i) the Agreement may create a security interest in favour of the other, being:
 - (A) in the case of the Goods and any proceeds of the Goods, a security interest with the Purchaser as grantor and the Supplier as secured party;
 - (B) in the case of the Purchaser Supplied Materials (and any proceeds of the Purchaser Supplied Materials) and any Requested Patterns, a security interest with the Supplier as grantor and the Purchaser as secured party;
 - (ii) the Agreement constitutes a security agreement; and
 - (iii) the other party may perfect its security interests by lodging one or more financing statements on the PPS Register, in each case under the collateral class “other goods” only and containing a description of the collateral that is satisfactory to the relevant grantor of that security interest (acting reasonably).
- (c) To the extent the law permits:
 - (i) the Supplier and Purchaser each waives:
 - (A) rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement); and
 - (B) any time period that must otherwise lapse under any law before the other party exercises a power given to it in relation to a security interest in favour of the other party. If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer);
 - (ii) for the purposes of sections 115(1) and 115(7) of the PPSA:
 - (A) no secured party must comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA; and
 - (B) sections 142 and 143 of the PPSA are excluded;
 - (iii) for the purposes of section 115(7) of the PPSA, neither the Supplier and Purchaser (in their capacity as a secured party) comply with sections 132 and 137(3) of the PPSA; and
 - (iv) the Supplier and Purchaser each agrees (in its capacity as grantor of a security interest) not to exercise its rights to make any request of the relevant secured party under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (d) The Supplier and Purchaser each agree (at its own cost) to promptly do anything (such as obtaining consents and signing documents) which the other party requires (acting reasonably) for the purposes of:
 - (i) ensuring that the other party’s security interest is enforceable, perfected and otherwise effective under the PPSA;
 - (ii) enabling the other party to:
 - (A) ensure that its security interest has the priority required by it; and
 - (B) exercise its rights under and in connection with the Agreement or its security interest.

ONE STEP AHEAD