

## 1. DEFINITIONS AND INTERPRETATION

- 1.1 In these terms and conditions ("Terms"), the following words shall, unless the context requires otherwise, have the following meanings:

**Applicable Data Protection Laws** means all applicable data privacy and protection laws, statutes, regulations, orders, regulatory guidance, standards, directions, codes or other similar regulatory instrument issued, including the General Data Protection Regulation ((EU) 2016/679) (the GDPR), the Australian Privacy Act 1988 (Cth) and the New Zealand Privacy Act 2020, in each case as amended, consolidated, re-enacted or replaced from time to time.

**Applicable Tax** is defined in Clause 8.1.1.

**Business Day** means any day, other than a Saturday, Sunday or public holiday in Australia and/or New Zealand.

**Confidential Information** means the contents of the Purchase Order and these Terms and all information in whatever form received or obtained by a Party (the **Receiving Party**) or any other member of its Group from, or on behalf of, another Party (the **Disclosing Party**) or any other member of its Group as a result of, or in connection with, the Purchase Order or these Terms (including any reports, summaries or analyses to the extent prepared from such information), excluding any information which:

- (a) was in the possession of the Receiving Party or any other member of its Group prior to the disclosure by the Disclosing Party or any other member of its Group and acquired on a non-confidential basis from sources other than the Disclosing Party or any other member of its Group;
- (b) is in the public domain otherwise than as a result of a breach of these Terms by the Receiving Party;
- (c) is required to be disclosed by law or regulation, by any regulatory authority or body or pursuant to a court order; or
- (d) the Parties have otherwise expressly agreed may be disclosed (subject to any terms and conditions governing any such disclosure).

**Company** means the CooperVision entity referenced in the Purchase Order.

**Company Materials** is defined in Clause 2.8.

**Contract** means the contract between the Company and the Supplier for the sale and purchase of the Goods and/or supply of the Services in accordance with the Purchase Order and these Terms.

**Delivery Date** means the date specified in the Purchase Order for delivery of the Goods or any agreed Milestone or, if no such date is specified, within two (2) days of the date of the Purchase Order.

**Force Majeure Event** means any event or circumstance which is beyond the reasonable control of the affected Party, including, but not limited to, flood, lightning, subsidence, terrorist act, fire, war, failure or shortage of power supplies, acts of government or industrial action of any kind.

**Goods** means any goods, materials, machinery, equipment and any other items of any kind to be supplied by the Supplier pursuant to the Purchase Order including any to be supplied as part of the Services.

**Group** means in relation to a company, that company and any parent undertaking of that company and all subsidiary undertakings of that company and its parent undertaking.

**Intellectual Property Rights** means patents, trade marks, service marks, logos, get-up, trade names, internet domain names, rights in designs, copyright (including rights in computer software) and moral rights, database rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered, and all rights or forms of protection having equivalent or similar effect anywhere in the world and registered includes registrations and applications for registration.

**Loss** means any liability, damages, losses, costs, claims or expenses (including reasonable legal expenses) of any kind.

**Milestone** means a date by which a part or all of the Services are to be completed or the Goods delivered, as set out in the Purchase Order or as otherwise agreed by the Parties in writing.

**Parties** means the Company and the Supplier and each of them a **Party**.

**Payment Due Date** means 75 days after the date of invoice or, if such date

is not a Business Day, the next following Business Day, unless otherwise agreed in writing between the Company and Supplier.

**Personnel** means any directors, employees, agents, contractors and/or sub-contractors of the relevant Party. **Price** means in respect of:

- (a) **Goods**: the price for the Goods as set out in the Purchase Order.
- (b) **Services**: the fees for the Services as set out in the Purchase Order.

**Purchase Order** means the Company's purchase order incorporating these Terms and by which the Goods or Services are ordered by the Company.

**Services** means any services to be performed by the Supplier pursuant to these Terms as stated in the Purchase Order.

**Supplier** means the person, firm or company that supplies Goods or Services to the Company under these Terms and as set out in the Purchase Order.

**Supplier Code of Conduct** means the Supplier's Code of Conduct available at <https://coopervision.com/about-us/supplier-code-of-conduct>.

- 1.2 If there is any conflict between these Terms and the terms of a Purchase Order, the terms of the Purchase Order shall prevail.
- 1.3 In these Terms, unless the context otherwise requires:
  - 1.3.1 any reference to a person includes any individual, firm, company or other legal entity; and
  - 1.3.2 any reference to a statute or statutory provision shall include references to that provision as from time to time modified, amended, replaced, re-enacted or consolidated.
- 1.4 The headings in these Terms are for convenience only and shall not affect the interpretation of these Terms.
- 1.5 The words "other", "include" and "including" shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. SUPPLY OF GOODS AND SERVICES

- 2.1 To purchase Goods and / or Services the Company shall submit a Purchase Order to the Supplier. The Purchase Order constitutes an offer by the Company to purchase the Goods or Service subject to these Terms.
- 2.2 The Supplier shall notify the Company within two (2) Business Days of receipt of a Purchase Order if it is unable to provide the Goods or perform the Services.
- 2.3 Subject to Clause 2.2, the Purchase Order shall be deemed accepted by the Supplier on the earlier of:
  - 2.3.1 the Supplier issuing written acceptance of the Purchase Order; or
  - 2.3.2 the Supplier doing any act consistent with fulfilling the Purchase Order, at which point the Contract shall come into existence.
- 2.4 If the Supplier is unable or unwilling to fulfil the Purchase Order (in full) by the Delivery Date, then without prejudice to any other rights or remedies the Company may have, the Company may cancel the Purchase Order and obtain those Goods or Services that are the subject of the rejected Purchase Order from an alternate supplier.
- 2.5 By accepting the Purchase Order, the Supplier agrees to the terms of the Supplier Code of Conduct, as applying when the Purchase Order was submitted by the Company.
- 2.6 To the fullest extent permitted by law, and subject to Clauses 7.2, 7.5 and 12.4, these Terms apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by applicable laws, regulations, trade custom, practice or course of dealing.
- 2.7 No variation to these Terms shall be binding unless expressly agreed in writing by the Company.
- 2.8 The Supplier acknowledges that all materials, equipment and tools, drawings, specifications, and data supplied by the Company to the Supplier (**Company Materials**) and all rights in the Company Materials are and shall remain the exclusive property of the Company. The Supplier shall keep the Company Materials in safe custody at its own risk, maintain them in good condition until returned to the Company and not dispose or use the same other than in accordance with the Company's written instructions or authorisation.

### 3. SPECIFICATION AND INSPECTION OF GOODS / QUALITY OF THE GOODS

- 3.1 The Supplier shall deliver the Goods as set out in the Purchase Order.
  - 3.2 The Company may at any time inspect and test the Goods and materials used in the manufacture of the Goods. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.
  - 3.3 If following such inspection or testing the Company considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at Clause 3.6, the Company shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
  - 3.4 The Company may conduct further inspections and tests after the Supplier has carried out its remedial actions.
  - 3.5 The Supplier shall ensure that documentation is provided with the Goods as specified in the Purchase Order and that it is suitable, appropriate and adequate for their use and does not contain any material omissions, discrepancies, ambiguities or inconsistencies.
  - 3.6 The Supplier warrants that the Goods will:
    - 3.6.1 correspond with their description and any applicable specification;
    - 3.6.2 be of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier by the Company expressly or by implication, and in this respect the Company relies on the Supplier's skill and judgement;
    - 3.6.3 be free from defects in design, material, fabrication and workmanship;
    - 3.6.4 conform to any samples, drawings, descriptions or specification provided to the Company by the Supplier or as set out in the Purchase Order; and
    - 3.6.5 comply with all statutory requirements and regulations relating to the manufacture, sale or use of the Goods.
  - 3.7 Unless the Company has agreed otherwise in writing, if delivery is made in excess of the quantity of Goods required by the Purchase Order then, at the request of the Company the Supplier shall arrange for collection, at the Supplier's own cost, of such excess. Any excess shall be and shall remain at the Supplier's risk and shall be returnable at the Supplier's expense.
- ### 4. DELIVERY OF GOODS, RISK AND PROPERTY
- 4.1 Unless otherwise agreed in writing, the Supplier shall deliver the Goods on or by the Delivery Date or any Milestone.
  - 4.2 The Supplier shall, unless otherwise instructed by the Company, deliver the Goods in an undamaged condition and labelled or marked in accordance with the Company's instructions and any applicable regulations, to the address specified in the Purchase Order (the **Delivery Address**).
  - 4.3 Delivery shall be made only during the Company's usual business hours.
  - 4.4 The Company shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not any Goods are **accepted by the Company**.
  - 4.5 The Supplier shall off-load the Goods at the Delivery Address at its own risk. Delivery of the Goods shall be completed on the completion of off-loading the Goods at the Delivery Address (**Delivery**).
  - 4.6 Title to:
    - 4.6.1 the Goods shall pass to the Company on Delivery (unless payment for the Goods is made prior to Delivery, when it shall pass to the Company once payment has been made and the Goods have been appropriated to the Contract); and
    - 4.6.2 raw materials for the Goods and / or Services shall pass to the Company on the earlier of payment for the raw materials by the Company or Delivery.
  - 4.7 The Goods and any raw materials shall remain at the risk of the Supplier and shall not pass to the Company until the Goods have been accepted (or deemed accepted pursuant to Clause 5.1). Notwithstanding risk remaining with the Supplier, the Company shall use reasonable efforts to keep the Goods secure against unauthorised access or damage.
  - 4.8 In the event that there is a delay in the delivery of the Goods, save where

such a delay is agreed in writing in advance with the Company or is as a result solely of the acts or omissions of the Company, such delay shall be deemed to be a breach entitling the Company to terminate the Contract in accordance with Clause 13.2.1.

- 4.9 **NEW ZEALAND ONLY.** If the Goods are to be delivered by instalments, the Contract will be treated as a single contract and not several, and failure by the Supplier to deliver any one instalment on time, or at all, shall entitle the Company at its option to treat the whole contract as repudiated.

### 5. ACCEPTANCE OF GOODS

- 5.1 The Company shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following delivery (or, in the case of latent defects, until a reasonable period after the defect has become apparent). Actual acceptance of the Goods by the Company shall be without prejudice to the terms of Clause 10 which shall apply in respect of any Goods that are found to be non-compliant with the Contract in a material respect.

### 6. REQUIREMENTS FOR CERTAIN GOODS

- 6.1 For Goods or components of Goods whose shelf life is limited, the Supplier shall provide the Company with the following:
  - 6.1.1 storage instructions required for the preservation of the Goods;
  - 6.1.2 shelf life from the date of manufacture; and
  - 6.1.3 date of expiration which shall appear clearly and indelibly on the packaging of the Goods.
- 6.2 The Supplier shall only deliver Goods whose residual shelf life is at least equal to 80% of the total shelf life of the Goods.
- 6.3 The Supplier will promptly inform the Company in writing of any dangers and special instructions relating to the handling, storage, safe use, transportation or disposal of Goods of a hazardous nature (including any new information concerning these matters which from time to time becomes available).

### 7. SERVICES

- 7.1 The Supplier shall provide the Services to the Company (and such other members of the Company's Group as the Company may from time to time direct) subject to, and in accordance with, the Contract.
- 7.2 The Supplier will:
  - 7.2.1 perform the Services promptly in accordance with the Purchase Order, these Terms and any specification and with reasonable skill, care and diligence in accordance with good industry practice;
  - 7.2.2 confine its activities to the area of the Company's site where the Services are to be performed (**Premises**) as necessary to perform the Services and keep to the minimum any inconvenience particularly as to noise, dust, rubbish and debris and following performance of the Services clear all unwanted materials and debris from the Premises and leave the same clean and fit for occupation to the Company's satisfaction;
  - 7.2.3 visit the Premises and be satisfied as to the extent and nature of the operations to carry out the Services;
  - 7.2.4 comply with all security, emergency, fire, parking, unloading and other requirements of the Company;
  - 7.2.5 employ in connection with the Services only persons who are suitably experienced, skilled and qualified and supply to the Company (and keep up to date) a list of those persons so employed;
  - 7.2.6 undertake all necessary safety precautions and provide necessary warning notices;
  - 7.2.7 ensure that its Personnel employed in connection with the Services take all due care for their safety while on the Premises and comply with all applicable laws relating to safety, health and welfare of persons including the New Zealand Health and Safety at Work Act 2015, and in accordance with the Company's internal policies, copies of which are available on request;
  - 7.2.8 perform the Services in a timely and professional manner using appropriately qualified and trained personnel;
  - 7.2.9 comply strictly with the times in the Purchase Order for provision of the Services and any restrictions on working hours required by the Company;

- and
- 7.2.10 perform the Services in compliance with all applicable laws, regulations, guidance and codes of practice.
- 7.3 Where the Supplier has provided a demonstration of the Services, the Services shall correspond in nature and quality with such demonstration.
- 7.4 The performance of the Supplier will be evaluated in accordance with any criteria set out in the Purchase Order.
- 7.5 Nothing in these Terms shall operate to exclude any warranty, guarantee or condition on the part of the Supplier as to the quality, fitness for purpose or any other matter implied by or provided for under statute, common law, custom or trade, all of which warranties, guarantees and condition shall accordingly apply.
- 7.6 Any items supplied in conjunction with the Services shall be considered Goods for the purpose of these Terms.

## **8. PRICE**

- 8.1 The Price of the Goods or Services shall be as stated in the Purchase Order and, unless otherwise so stated, shall be:
- 8.1.1 exclusive of any applicable Goods and Services Tax (**Applicable Tax**) (which shall, if required, be payable by the Company at the appropriate rate subject to receipt of a valid Applicable Tax invoice from the Supplier) at the same time as payment is made of the sum to which the Applicable Tax relates; and
- 8.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than Applicable Tax.
- 8.2 No variation in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Company.
- 8.3 Unless otherwise agreed in writing by the Company, the Price of the Services shall include all expenses incurred in connection with the Services and the cost of any equipment supplied in connection with the Services.
- 8.4 Unless otherwise agreed in writing, all amounts payable under a Purchase Order shall be paid in local currency.

## **9. PAYMENT TERMS**

- 9.1 The Supplier may invoice the Company on or at any time after:
- 9.1.1 delivery of the Goods or performance of the Services; or
- 9.1.2 if progress payments are to be made, at the end of the relevant period; or
- 9.1.3 completion of a Milestone.
- 9.2 Each invoice shall quote the Purchase Order number, clearly identify the Goods or Services against which the invoice has been produced and be accompanied by all records necessary to enable the Company to calculate and/or verify the amount invoiced.
- 9.3 Unless otherwise stated in the Purchase Order the Company shall pay all undisputed invoices on or before the Payment Due Date. Time for payment shall not be of the essence.
- 9.4 The Company shall be entitled to set off against the Price any sums owed to the Company by the Supplier or any sums to be deducted from the Price under these Terms.
- 9.5 The Supplier is not entitled to suspend provision of the Goods or Services as a result of any sums being outstanding.

## **10. REMEDIES**

- 10.1 Without prejudice to any other right or remedy, and subject to Clause 12.4, if the delivery of Goods or the provision of Services by the Supplier does not materially comply with these Terms, or if the Supplier fails in a material respect to comply with these Terms then the Company shall be entitled to do any one or more of the following at the Company's reasonable discretion:
- 10.1.1 In relation to the supply of Goods:
- (a) to terminate the Contract;
- (b) reject the Goods (in whole or in part), in which case the Supplier shall at its risk and expense collect the Goods and the Supplier shall refund the Price which has been paid in respect of the rejected Goods;

- (c) at the Company's option, to give the Supplier the opportunity to remedy any defect in the Goods or to supply replacement Goods free of charge within 5 Business Days of being notified of such rejection and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- (d) In the event that the Price of the relevant defective Goods is not refunded, or the Goods are not repaired or replaced, to require the Supplier to issue a credit note for the Price of all or part of the relevant Goods involved;
- (e) to refuse to accept any further delivery of the Goods which the Supplier attempts to make but without any liability to the Supplier;
- (f) to recover from the Supplier any reasonable costs incurred by the Company in obtaining substitute goods from a third party; and /or
- (g) to claim damages for any other costs, Loss or expenses incurred by the Company which are reasonably attributable to the Supplier's failure to carry out its obligations under the Contract.

### **10.1.2 In relation to the provision of Services:**

- (a) to terminate the Contract;
- (b) to require the Supplier to re-perform the relevant part of the Services in a timely manner without further charge to the Company;
- (c) to make good the defective Services (in whole or part), in which case the Supplier shall reimburse the Company for any reasonable expenses it incurs in making good such defective Services;
- (d) to refuse to accept any further performance of the Services which the Supplier attempts to make but without any liability to the Supplier;
- (e) to recover from the Supplier any reasonable costs incurred by the Company in obtaining substitute services from a third party; and / or
- (f) to claim damages for any other costs, Loss or expenses incurred by the Company which are reasonably attributable to the Supplier's failure to carry out its obligations under the Contract.

## **11. INTELLECTUAL PROPERTY**

### **11.1 The Supplier warrants that:**

- 11.1.1 it has, and shall at its own cost ensure that it maintains, all necessary rights and licences to any Intellectual Property Rights subsisting in any matter, thing or process used or to be used by it in providing the Goods or Services to the Company under these Terms, including all rights to grant the licences to the Company set out in this Clause 11; and
- 11.1.2 the supply and use by the Company of the Goods and the performance of the Services will not infringe any third party Intellectual Property Rights or other proprietary rights or infringe any other rights or laws.
- 11.2 Where the Supplier or any sub-contractor owns the Intellectual Property Rights in any of the Goods, then the Supplier shall procure the grant to the Company of a non-exclusive and royalty-free right to use such component, its design and the information relating to it, in order to use the Goods.
- 11.3 Any information or other material relating to the Goods or Services which is supplied by the Company to the Supplier and all Intellectual Property Rights therein shall remain the sole property of the Company, and shall be returned to the Company forthwith upon the Company requesting the same.
- 11.4 Ownership of any Intellectual Property Rights in any specification or matter which may arise or are created by or on behalf of the Supplier or any of its Personnel for the Company in connection with performing a Purchase Order shall vest automatically in and be the exclusive property of the Company and the Supplier hereby assigns to the Company all such Intellectual Property Rights, both present and future with full title guarantee. The Supplier shall not disclose to any third party or use any such material except to the extent that it is or becomes public knowledge through no fault of the Supplier, or as required for the purpose of these Terms.
- 11.5 The Company grants the Supplier a non-exclusive, non-transferable and royalty-free licence to use the Intellectual Property Rights referred to in Clauses 11.3 and 11.4 solely to the extent necessary to enable the Supplier to perform its obligations under these Terms. Such licence shall cease upon the earlier of termination of these Terms or completion of the

Purchase Order.

## 12. LIABILITY AND INDEMNITY

- 12.1 The Supplier shall be liable for, and shall indemnify the Company from and against any Loss suffered or incurred by the Company or a member of the Company Group arising directly or indirectly from:
- 12.1.1 any material breach of any warranty or undertaking or any other provision of these Terms by the Supplier;
- 12.1.2 any claim made by a third party that: (i) the possession, ownership or use of the Goods by the Company or Supplier; or (ii) the receipt or use of the Services by the Company or the Supplier (including, without limitation, any claim made by a third party that, inter alia, the possession, ownership, use, adoption or development by the Company of any Intellectual Property Rights referred to in Clause 11) infringes the Intellectual Property Rights of any third party (provided that the Supplier will not be required to indemnify the Company where the Company's possession, ownership or use of the Goods, or its receipt or use of the Services, does not conform with the rights granted to it under these Terms);
- 12.1.3 any claim made against the Company and/or such member of its Group by any of the Supplier's Personnel in respect of act or omission of the Supplier in connection with the Services;
- 12.1.4 any negligence the Supplier and/or any of its Personnel in designing, manufacturing, and/or delivering the Goods or providing the Services;
- any fine, penalty or other sanction imposed on the Company for failure of the Goods to comply with, any applicable law, regulation, guidance or code of practice (including any liability under the i) **Australia**: the Australian Consumer Law set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth); and (ii) **New Zealand**: Consumer Guarantees Act 1993 (NZ) and the Fair Trading Act 1985 (NZ) (for Goods and/or Services supplied in New Zealand), to the extent that such failure is caused or contributed by an act or omission of the Supplier; and
- 12.1.5 any penalty imposed on the Company and/or such member of its Group for breach by the Supplier or, or failure by the Supplier to comply with any applicable law, regulation, guidance or code of practice in connection with the performance of the Services.
- 12.2 To the maximum extent permitted under applicable laws, and without prejudice to Clauses 12.1 and 12.3:
- 12.2.1 neither Party shall be liable to the other Party (whether such liability arises in contract, tort (including negligence) or otherwise) for:
- (a) any indirect, special or consequential damages, loss, costs, claims or expenses of any kind; and/or
- (b) any Loss arising from a failure or delay in performing its obligations under the Contract to the extent that such failure or delay was caused by an act or omission of the other Party or any member of the other Party's Group;
- 12.2.2 to the extent permitted by applicable law, and subject to Clause 12.4, the total liability of a Party in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall not exceed the value of the Contract.
- 12.3 To the maximum extent permitted under applicable laws, the exclusions and limitations of liability in these Terms shall not apply in respect of any Loss suffered by any person arising out of:
- 12.3.1 a breach by the Supplier of Clause 11;
- 12.3.2 the fraud and/or fraudulent misrepresentation of the Party seeking to rely on the exclusion or limitation; and
- 12.3.3 death or personal injury resulting from negligence on the part of the Party seeking to rely on the exclusion or limitation.
- 12.4 The limitations and exclusions on each party's liability in the Contract are made to the full extent permitted by law. Nothing in the Contract excludes any right or remedy which cannot be excluded, restricted or modified under law (**Non-Excludable Rights**).
- 12.5 In Australia, the Company holds the benefit of each indemnity, promise and obligation in the Contract that benefits it or any member of the Company Group (or their Personnel) on the Company's own behalf and

on trust for each of those persons.

## 13. TERMINATION

- 13.1 The Contract shall commence on acceptance of the Purchase Order in accordance with Clause 2.3 and shall continue in full force and effect until the Goods and/or Services have been provided or until terminated in accordance with this Clause.
- 13.2 Without prejudice to its other rights and remedies, either Party may, with immediate effect, terminate the Contract forthwith by notice in writing to the other Party if:
- 13.2.1 the other Party commits an irremediable breach of any term of the Contract;
- 13.2.2 the other Party commits a breach of the Contract which is capable of remedy but fails to remedy such breach within 10 Business Days of receipt of notice from the non-breaching Party notifying it of the breach and requiring it to be remedied;
- 13.2.3 the other Party commits the same or substantially similar breaches of its obligations under the Contract 3 times or more in any period of 4 consecutive months;
- 13.2.4 the other Party ceases trading or is unable to pay its debts as they fall due or a petition is presented or meeting convened for the purpose of winding up the other Party or the other Party becomes subject to an administration order or enters into liquidation (otherwise than for the purpose of amalgamation or reconstruction), whether compulsorily or voluntarily, or compounds with its creditors generally or has a receiver appointed of all or any part of its assets; or the other Party ceases or threatens to cease, to carry on business; or a Party reasonably believes that any of the above events is about to occur in relation to the other Party;
- 13.2.5 a Party affected by a Force Majeure Event, and such event continues for a period of 20 Business Days or more.
- 13.3 For the purpose of Clause 13.2.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).
- 13.4 The Company may cancel a Purchase Order in whole or in part for the Goods or Services at any time by giving written notice to the Supplier and:
- 13.4.1 the Supplier shall stop all work on the Purchase Order;
- 13.4.2 the Parties shall (save in respect of the provisions of these Terms dealing with ownership of Intellectual Property Rights and the protection of Confidential Information, and save as provided in the remaining part of this Clause 13.4) have no further obligation to each other in respect of the elements of the Goods or Services cancelled;
- 13.4.3 the Company's liability for the cancelled items shall be limited to the Company paying to the Supplier those elements of the Price attributable to the Goods or Services in respect of which the Company has exercised its right of cancellation, less the net savings of cost which the Supplier can reasonably make in respect of the cancelled items, including through redeployment of Personnel, cancellation of sub-contracted orders and re-use of components and other elements of the Goods or Services, and any remaining costs which the Supplier cannot mitigate shall be justified by the Supplier to the Company's reasonable satisfaction in a schedule of costs. Any such payment shall not include loss of anticipated profits or any consequential loss;
- 13.4.4 the total Price of all deliverables which have not been cancelled, and which remains payable subject to the terms of these Terms, shall be reduced to reflect those elements of the Price attributable to the Goods or Services in respect of which the Company has exercised its right of cancellation; and
- 13.4.5 the Supplier shall repay a proportionate element of any pre-payments made by the Company to the extent that they exceed sums due under Clause 13.4.3 above.
- ## 14. CONSEQUENCES OF TERMINATION
- 14.1 On termination or expiry of the Contract, the Supplier shall immediately return all Company Materials. If the Supplier fails to do so, then the Company may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely

responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

14.2 The expiry or termination of the Contract (howsoever caused) shall be without prejudice to:

14.2.1 any other rights which either Party may have under or in connection with the Contract;

14.2.2 any liabilities accrued prior to the date on which the expiry or termination takes effect; and

14.2.3 any rights or obligations which are expressly stated to survive, or which by their nature survive, expiry or termination of these Terms. These shall in all cases include Clauses 10 to 12 (inclusive), 14, 17, 18 and 19 to 22 (inclusive).

#### **15. FORCE MAJEURE**

15.1 Events not covered by Force Majeure shall include, but not be limited to, industrial action of the Supplier's employees, shortage of raw materials, default of any sub-contractors or third party suppliers.

15.2 The affected Party shall not be under any liability to the other Party or any other member of the other Party's Group for any failure or delay in performing the Contract or any part of it to the extent that such failure or delay is caused by a Force Majeure Event and shall be entitled to a reasonable extension of time for performing its relevant obligations.

15.3 The affected Party shall:

15.3.1 within two Business Days of a Force Majeure Event occurring, provide the other Party with full written details of the nature and extent of the Force Majeure Event in question, including the affected Party's best estimate of the likely extent and duration of its inability to perform its obligations under the Contract as a result of such Force Majeure Event, and, thereafter, promptly provide any further information which the other Party reasonably requires;

15.3.2 use all reasonable endeavours to avoid or minimise the consequences of the Force Majeure Event in question and carry out its obligations and duties in such other ways as may be reasonably practicable; and

15.3.3 use all reasonable endeavours to bring the Force Majeure Event in question to a close as soon as reasonably practicable.

#### **16. ACCESS TO INFORMATION AND AUDIT OF QUALITY SYSTEMS**

16.1 The Supplier shall allow the Company, its representatives or authorised agents to have access to the Supplier's premises at all reasonable times in order to audit and take copies of the Supplier's books and records related to the Contract:

16.1.1 in order to fulfil any legally enforceable request by any regulatory body;

16.1.2 to monitor quality management systems;

16.1.3 for the purpose of ascertaining whether the Supplier is complying, or has complied, with these Terms, and the Supplier shall grant access to all documents and information held and / or kept by the Supplier in relation to the Contract, whether electronically (and in such case in machine-readable form and format) or otherwise.

#### **17. CONFIDENTIALITY**

17.1 Each Party undertakes that it will use Confidential Information disclosed to it only for the purposes of these Terms and will not disclose any Confidential Information to any person other than to its Personnel and/or professional advisors (but in each case solely in connection with these Terms and subject to them, in each case, being placed under obligations of confidentiality and non-use equivalent to those in these Terms) or otherwise in accordance with these Terms.

#### **18. DATA PROTECTION**

18.1 Each Party ensures to act in full compliance with all Applicable Data Protection Laws, when collecting, processing or storing personal data under these Terms.

18.2 For the purposes of these Terms, all references to "personal data" shall also refer to "personal information"; and "personal data" or "personal information" or their logical equivalents in the Applicable Data Protection Laws shall have the meaning as ascribed to them in the Applicable Data Protection Laws (as applicable). The term "Company Personal Data" shall

mean any information relating to an identified or identifiable natural person ("data subject") obtained by the Supplier in connection with this Agreement.

18.3 Insofar as the Supplier collects, processes, or stores any Company Personal Data, Supplier shall:

18.3.1 only process the Company Personal Data on the documented instructions of Company to perform its obligations under these Terms, including with regard to transfers of Company Personal Data to a third country or an international organisation;

18.3.2 immediately inform Company if, in Supplier's opinion, Company's instruction breaches the Applicable Data Protection Laws;

18.3.3 at Company's request, provide to Company such reasonable assistance as is reasonably necessary to ensure that Company complies with the Applicable Data Protection Laws;

18.3.4 ensure that appropriate technical, organisational and contractual measures are in place to safeguard against the unauthorised or unlawful processing of the Company Personal Data and against accidental loss or destruction of, or damage to, the Company Personal Data and such measures shall, at a minimum, meet the requirements of the Applicable Data Protection Laws;

18.3.5 ensure that any of its personnel who are authorised to process the Company Personal Data are bound by a duty of confidence to maintain the confidentiality of the Company Personal Data;

18.3.6 on conclusion of the Company Personal Data processing activities contemplated by these Terms, Supplier will (as directed by Company) securely return or securely destroy the Company Personal Data and all copies held by or on behalf of Supplier, unless Supplier is required to keep such Company Personal Data for its compliance with applicable law to which Supplier is subjected to;

18.3.7 provide Company with all information reasonably requested to demonstrate compliance with this Clause 18.3 and allow for audits by Company or Company's designated auditor;

18.3.8 only engage third-party data processors of Company Personal Data if it has obtained the prior written approval of Company. In such case, Supplier confirms that it has entered or (as the case may be) will enter with the third-party data processor into a written agreement providing equivalent protection to the Company Personal Data as this Clause 18.3. Supplier shall remain fully liable for the acts and omissions of its third-party data processors;

18.3.9 inform Company without undue delay after having become aware of a personal data breach affecting the Company Personal Data; and

18.3.10 delete Company Personal Data within 90 days after the termination of Services or this Agreement, except the data that the Supplier is obliged to retain by applicable laws.

#### **19. INSURANCE**

19.1 The Supplier shall ensure that it has in place with reputable insurers (i.e. an insurance company or companies having Best Financial Performance rating of A or a minimum Financial Size Category of VIII or higher):

19.1.1 public liability insurance policies in respect of liabilities which may arise to the Company in connection with the Goods each having an insured amount of no less than AU\$7,000,000 unless otherwise agreed in writing;

19.1.2 suitable employer's liability (or worker's compensation, where applicable) insurance in respect of the Services; and

19.1.3 professional indemnity insurance or errors and omissions insurance in the amount of AU\$7,000,000 per occurrence covering all acts, errors, omissions and negligence in the performance of services.

19.2 The Supplier shall maintain such policies in full force and effect throughout the term of the Contract.

19.3 At the Company's request, the Supplier and its subcontractors shall cause their insurance carriers, brokers, or agents to issue Company certificates of insurance evidencing all insurance coverage levels required by the terms of the Agreement.

#### **20. ENTIRE AGREEMENT**

20.1 These Terms and the associated Purchase Order constitute the entire agreement between the Parties relating to its subject matter and

supersede and extinguish any prior drafts, undertakings, representations, warranties and arrangements of any nature, whatsoever, whether or not in writing relating thereto (and any terms and conditions of the Supplier whether notified by the Supplier to the Company before and/or after the date of the relevant Purchase Order).

**21. GENERAL**

- 21.1 Any amendment or variation to the Purchase Order or Terms must be in writing and signed by the Parties and expressed to be such a variation.
- 21.2 Any failure by a Party to exercise or enforce its right under the Contract shall not be a waiver of that right, nor prevent the Party from exercising or enforcing such right at a later time.
- 21.3 The Supplier shall not, without the prior written approval of the Company (such approval not to be unreasonably withheld) assign or transfer or purport to assign or transfer, mortgage, charge or subcontract any of its rights or obligations under the Contract.
- 21.4 Nothing in these Terms shall create, or be deemed to create, a partnership, a joint venture, an agency, or other relationship of employer and employee between the Parties and each Party has agreed to these Terms as an independent contractor.

- 21.5 If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part it shall, to the extent of such invalidity or unenforceability, be deemed severable, and the remaining provisions of these Terms and the remainder of the provision in question shall not be affected thereby and shall continue in full force and effect.

- 21.6 Unless expressly stated, a person who is not a party to the Contract shall not have any rights to enforce its terms.

- 21.7 Any notice, request or other communication to be made under these Terms shall be made in writing, sent by first class post and addressed to the registered office and its principal place of business, and shall be deemed received on the third Business Day after posting. The provisions of this Clause will not apply in relation to communications between the Parties that may be sent by email.

**22. GOVERNING LAW**

These Terms shall be governed by and construed in accordance with the laws of South Australia, Australia and the Parties submit to the exclusive jurisdiction of the South Australian courts (including for non-contractual disputes or claims).