

PURCHASE ORDER - TERMS AND CONDITIONS

1. SCOPE AND APPLICATION

Application

1.1 Subject to clause 1.2, the parties acknowledge and agree that the Supplier will be taken to have accepted this Agreement and be bound to provide to the Supplies to the Company in accordance with this Purchase Order and these Purchase Order Terms and Conditions from the earlier to occur of the following events:

- (a) the Supplier returning to the Company a signed copy of this Purchase Order; or
- (b) the Supplier commencing any work in connection with the provision of the Supplies after receipt of this Purchase Order from the Company.

Separate agreement

1.2 Where this Agreement relates to Supplies the subject of an existing contract or standing offer between the Supplier and the Company, the terms of that contract or standing offer, as the case may be, will prevail.

Supplier Terms and Conditions

1.3 To the extent the Supplier's terms and conditions are provided with the Supplies (including as printed on a quote, consignment note, delivery docket, invoice or other document), those terms and conditions will be of no legal effect and will not constitute part of this Agreement, even if any representative of the Company signs such document or the document is referenced by this Purchase Order.

2. SUPPLIES

Performance and provision

2.1 The Supplier must:

- (a) provide the Supplies to the Company in accordance with:
 - (i) the Purchase Order, including any applicable timeframe and description of or specification for the Supplies as set out in the Purchase Order;
 - (ii) all Site Standards and Procedures, and Site inductions, to the extent that they are applicable to the provision of the Supplies; and
 - (iii) all lawful directions given by the Company's representative or any person authorised by Law to give directions to the Supplier;
- (b) perform its obligations under this Agreement in a professional manner, with due care and skill, and in a manner consistent with applicable industry standards;
- (c) ensure that the Supplies are fit for the purpose for which goods, equipment, materials or services of the same kind are commonly supplied or bought and for any other purpose the Company specifies in writing prior to the date of this Agreement;
- (d) ensure at all times that it will not bring any discredit or reputational risk upon the Company or cause any nuisance or disruption to the Company;
- (e) ensure that all materials and facilities owned or controlled by the Company which are utilised by the Supplier in the course of providing the Supplies will be maintained by the Supplier in good order and returned upon completion of use or otherwise upon termination in good condition, subject to fair wear and tear;
- (f) not interfere with the Company's activities at the Delivery Location(s) or the Site(s);
- (g) leave any applicable Site(s) and Delivery Location(s) in a clean and tidy state to the satisfaction of the Company;
- (h) not remove any of the Company's property from any Site or Delivery Location without the prior written consent of the Company; and
- (i) ensure that its Personnel are aware of, and comply with, the obligations set out in (a) to (h) above.

Delays

2.2 The Supplier must promptly notify the Company in writing if the Supplier becomes aware that the Supplier will be delayed in providing any items of the Supplies in accordance with the requirements of the Purchase Order.

Acceptance

2.3 The Company may, unless otherwise agreed in writing with the Supplier, accept or reject any Supplies within 21 days after they have been Delivered or provided to the Company (as the case may be).

2.4 The Company may reject any Supplies where they are Defective or if they otherwise do not comply with the requirements, description or specifications set out in the Purchase Order. If the Company rejects any Supplies the Company may, without limitation, require the Supplier to promptly provide to the Company at the Supplier's cost, replacement Supplies which comply with the requirements of this Agreement.

2.5 If the Company does not notify the Supplier of acceptance or rejection of the Supplies within the 21 day period contemplated in clause 2.3, the Company will be taken to have Accepted the Supplies on the expiry of the 21 day period.

2.6 Acceptance of the Supplies does not in any way adversely affect the Company's rights under this Agreement or otherwise.

Removal of personnel

2.7 The Company may direct the Supplier to remove any of the Supplier's Personnel from any applicable Site at the Company's reasonable discretion. If so, the Supplier must remove and provide a replacement for the relevant Personnel as soon as practicable at the Supplier's cost.

Suspension rights

2.8 The Company may cancel or suspend a Purchase Order, in whole or in part, by giving written notice to the Supplier indicating the date of cancellation or suspension, following which, the Supplier must cease the provision of Supplies and all other work related to the Supplies, and take all action in relation to the cancellation or suspension that the Company may reasonably require.

2.9 In no event will the Company be obligated to pay any bonus, damage, loss of margin or other claim asserted by the Supplier arising from or relating to the cancellation or suspension. If the suspension is not caused by an act, omission or breach of the Purchase Order by the Supplier, the Supplier may be paid as full compensation either the standby charge stated in the Purchase Order if such is stated but if not stated then reimbursement for actual direct costs reasonably incurred and verifiable by the Supplier to keep its organisation, personnel and equipment committed to the Supplies on a standby basis in which case the Supplier must minimise any such direct costs.

2.10 The Company may notify the Supplier to resume provision of the Supplies within a reasonable period of time and the Supplier must resume the Supplies within the period specified by the Company.

3. GOODS

Application

3.1 This clause 3 applies if Goods are provided by the Supplier as part of the Supplies.

Packaging

3.2 The Supplier must ensure that:

- (a) the Goods are suitably packed to avoid damage in transit or in storage.
- (b) it complies with all Laws including ensuring that any carriage of Goods by road as part of the Supplies is performed safely and in accordance with the Heavy Vehicle National Law and the associated Chain of Responsibility obligations;
- (c) any Goods supplied from overseas comply with applicable customs and quarantine laws; and
- (d) where the freight provider used is appointed by the Supplier, the Supplier must ensure the freight provider complies with all Chain of Responsibility obligations and that Chain of Responsibility compliance by the freight provider is regularly audited by the Supplier or a qualified third party.

3.3 Packages must be marked with the Purchase Order number, item number, destination, contents, quality, date and method of dispatch and weight of each package.

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Delivery

3.4 The Supplier must deliver the Goods to the Delivery Location by the Delivery Date.

Title and risk

3.5 Title in the Goods passes to the Company upon the earlier of payment of the applicable Fees or Delivery of the Goods to the Delivery Location.

3.6 Unless stated otherwise, risk for loss of or damage to the Goods passes to the Company when the Supplier has safely removed the Goods off its transporters and deposited the Goods at the Delivery Location.

Quality

3.7 Without limiting clause 2.1, the Goods must:

- (a) be new and of merchantable quality, unless otherwise specified in the Purchase Order; and
- (b) be free from defects and deficiencies in design, materials and workmanship.

OEM warranty

3.8 The Supplier must ensure the Company receives the benefit of any warranties provided by the OEM of the Goods or materials or other components which are used in the performance of the Purchase Order where title in the Goods or materials ultimately passes to the Company.

Defective Goods

3.9 If, between the date of the Purchase Order and the expiration of the Warranty Period, any of the Goods are found to be Defective, the Company may at the Company's option:

- (a) return the Defective Goods to the Supplier at the Supplier's cost and the Supplier must replace those Goods at the Supplier's cost;
- (b) reject the Defective Goods and the Supplier agrees to refund to the Company any payments made to the Supplier in respect of those Goods; or
- (c) repair or make good the Defective Goods at the Supplier's cost.

3.10 The Supplier must promptly reimburse the Company for any expenses incurred by the Company in repairing, re-performing or making good (as the case may be) any Defective Goods.

Software

3.11 If the Goods contain firmware or other embedded software (**Firmware**) or stand-alone software is provided for use in conjunction with the Goods (**Stand Alone Software**) (the Firmware and Stand Alone Software collectively being referred to herein as the "**Software**"), the Supplier grants to Company an irrevocable, paid-up, royalty free, transferable, worldwide license to use such Software in connection with the use, maintenance and sale of the Goods for the life of such Goods. If the Goods are sold or otherwise transferred by the Company to a third party, the sale or transfer of those Goods will convey to the relevant third party (and subsequent transferees of the Goods) the licence to use the Software.

3.12 The Supplier represents and warrants that the Software

- (a) has been tested in accordance with industry standards prior to deployment; and
- (b) does not contain any virus, trojan horse, worm, or other element or device that may permit unauthorized access to, or to disable, erase, or otherwise harm, any of the Company's computers, systems, software, or other information technology.

3.13 During the term of the Agreement, the Supplier must provide to the Company, free of charge and expense to the Company, reasonable and timely updates, upgrades, releases, or other adaptations or modifications of the Software that may contain, among other things, error corrections, enhancements, improvements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Software.

4. SERVICES

Application

4.1 This clause 4 applies if Services are provided by the Supplier as part of the Supplies.

Performance

4.2 The Supplier must Complete the Services by the Completion Date.

4.3 The Services must be provided from the Supplier's premises, except where:

- (a) the Purchase Order contemplates that the Services (or any part of the Services) will be provided from any Site (as set out in the Purchase Order); or
- (b) the Company authorises or reasonably directs in writing that the Services must be provided from, to or at any Site or location.

Personnel

4.4 All Services and deliverables must be provided using Personnel who are appropriately qualified, skilled and experienced.

4.5 If a swipe card facility is in operation at the Site, the Supplier will be provided with a swipe card for each of its Personnel who will work at that Site, and the Supplier must ensure that its Personnel swipe on at the start of each shift and swipe off at the end of each shift (**Swipe Card Records**) in order to provide an accurate record of hours worked on the Site.

4.6 The Supplier agrees that the Company may use Swipe Card Records to audit against amounts charged by the Supplier in respect to hours worked on Site. If the Swipe Card Records do not reconcile with the timesheets provided by the Supplier, the Swipe Card Records will be the definitive evidence of the actual hours worked on Site. Any additional amounts charged for hours worked on Site that are not evidenced by the Swipe Card Records will be treated as an overpayment to the Supplier

4.7 Any overpayment will be treated as a debt due and payable to the Company and may be deducted from monies owing to the Supplier in addition to any other remedies the Company has under the Agreement.

Defective Services or deliverables

4.8 If, between the date of the Purchase Order and the expiration of the Warranty Period, any of the Services or deliverables are found to be Defective, the Company may at the Company's option:

- (a) reject the Defective Services or deliverable and the Supplier agrees to refund to the Company any payments made to the Supplier in respect of those Services or deliverables; or
- (b) direct the Supplier to re-perform the Services at the Supplier's cost and the Supplier must promptly comply with any direction made pursuant to this clause.

4.9 The Supplier must promptly reimburse the Company for any expenses incurred by the Company in repairing, re-performing or making good (as the case may be) any Defective Services or Materials.

Scheduling of Services

4.10 The Supplier must provide the Services during the times and by the dates specified in the Purchase Order and complete the Services by the Completion Date.

4.11 If circumstances arise where the performance of the Services may interfere with the Company's use of its premises or otherwise interfere with the normal conduct of its business, the Supplier must reschedule its services to a time designated by the Company as being more convenient to the Company.

Supplier's equipment

4.12 If the Supplier utilises equipment in the provision of the Services and that equipment is lost, stolen or damaged by the Company during the provision of the Services, the maximum amount the Company is liable to pay to the Supplier is the amount of the relevant deductible under the

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applicable insurance policy (**Deductible**) not to exceed \$500,000 Australian dollars. In the event of total loss or destruction, the Deductible will be the sole compensation provided by the Company.

5. EQUIPMENT HIRE

Application

5.1 This clause 5 applies if the Company is hiring any Hired Equipment from the Supplier.

Transport and Delivery

5.2 The Supplier will, at its cost, transport the Hired Equipment to and from the Delivery Location. At the expiry of the Hire Period or termination of this Agreement, whichever is the earlier, the Company will make available at the Delivery Location the Hired Equipment for collection by the Supplier.

Pre-Hire Inspection

5.3 On Delivery of the Hired Equipment to the Delivery Location, a pre-hire inspection report will be completed by the Supplier and the Company identifying the state of the Hired Equipment, any defects and repairs to be made to the Hired Equipment (the **Pre-Hire Inspection Report**). The Pre-Hire Inspection Report is not binding on the Company.

5.4 If following receipt of the Pre-Hire Inspection Report, the Company believes that the Hired Equipment is defective, it must notify the Supplier in writing and the parties will negotiate to determine what, if any repairs need to be made and if the repairs are likely to involve any delays, an adjusted commencement of the Hire Period. The cost of carrying out any repairs to the Hired Equipment, including any transport costs, will be borne by the Supplier. If the Supplier and the Company cannot agree on the repairs to be made to the Hired Equipment within 5 Business Days of receipt of the notice given under this clause, the Company may terminate this Agreement by notice in writing to the Supplier and no Fee will be payable by the Company.

5.5 As soon as the Supplier has performed any agreed actions under clause 5.4, the Company will be entitled to a further inspection at its request and may issue a further notice under clause 5.4. If the Company does not issue a notice under clause 5.4, or a further notice under this clause, the Company will be deemed to have taken possession of the Hired Equipment subject to the terms of the Purchase Order.

Hired Equipment Condition Report

5.6 Within 5 Business Days of the Company taking possession of the Hired Equipment, the Company may provide the Supplier with a Hired Equipment condition report identifying any existing defects in the Hired Equipment that were not identified in the Pre-Hire Inspection Report (**Hired Equipment Condition Report**).

5.7 The Supplier must, at its cost, promptly rectify any defects identified in any Hired Equipment Condition Report provided by the Company to the Supplier pursuant to clause 5.6.

Operating the Hired Equipment

5.8 Unless otherwise specified the Company will provide personnel and full supervision of them (where applicable) to operate the Hired Equipment at its cost.

Approvals

5.9 The Supplier will obtain all Approvals necessary to allow the Hired Equipment to be hired. The Company must obtain and maintain all Approvals necessary to allow specific use of the Hired Equipment for the Company's purposes.

Maintenance of the Hired Equipment

5.10 The Company will at its cost:

- (a) clean, lubricate and maintain the Hired Equipment in good condition and in accordance with operating and maintenance instructions issued by the Supplier, or if these are not issued by the Supplier, then the OEM's instructions and specifications; and
- (b) carry out any Minor Repairs.

5.11 The Company will take reasonable care of the Hired Equipment whilst the Hired Equipment is in its care, custody and control.

5.12 If the Hired Equipment is lost, stolen or damaged by the Company during the Hire Period, the maximum amount the Company is liable to pay to the Supplier is the amount of the relevant deductible under the applicable insurance policy (**Deductible**) not to exceed \$500,000 Australian dollars. In the event of total loss or destruction, the Deductible will be the sole compensation provided by the Company for the loss or destruction and no further rental payments are payable by the Company from the date of total loss or destruction.

Servicing and Major Repairs

5.13 The Supplier must, at its cost, carry out all scheduled servicing (as set out in the Purchase Order or otherwise agreed between the parties in writing) of the Hired Equipment during the Hire Period. The Supplier will also be responsible for any incidental costs (including transport costs for the Hired Equipment and spare parts to and from the relevant Site). The applicable Fees are not payable by the Company for any period of scheduled servicing.

5.14 The Supplier will promptly notify the Company if a Major Repair is required.

5.15 The Supplier must carry out all Major Repairs to the Hired Equipment during the Hire Period. Except where the Major Repair is a result of the Company's Misuse or due to Excessive Wear and Tear:

- (a) the Supplier will bear the cost of carrying out all Major Repairs;
- (b) if the Supplier cannot repair an item of Hired Equipment in a timeframe acceptable to the Company, the Supplier must supply to the Company a replacement item of Hired Equipment, at the cost of the Supplier (including the cost of transporting the replacement Hired Equipment to the relevant Site); and
- (c) the Fees are not payable by the Company for the period the Hired Equipment is unavailable for use at the relevant Site due to a Major Repair.

Post-Hire Inspection

5.16 As soon as reasonably practicable after the end of the Hire Period, the Hired Equipment will be inspected at the relevant Site. The Supplier must provide the Company with reasonable notice in writing as to the timing of this meeting under this clause.

5.17 The Supplier must substantiate to the satisfaction of the Company any repairs for which the Supplier believes the Company is responsible. The Company will not be liable for costs of Fair Wear and Tear.

5.18 Subject to the provisions of the Purchase Order, the Company must return the Hired Equipment to the Supplier at the Delivery Location in good working order (except for any Fair Wear and Tear).

6. GOODS AND SERVICE TAX (GST)

Definitions

6.1 In this clause 6, "Supplier" has the meaning given in clause 6.2 and the terms, "GST", "GST law", "Supply" and other capitalised terms used but not otherwise defined in this clause 6 have the meanings given to them by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time) or any replacement or other relevant legislation and regulations, except that "GST law" also includes any other legislation enacted to validate, recapture or recoup tax collected as GST.

Consideration does not include GST

6.2 Unless otherwise stated, all amounts payable (including non-monetary consideration) by the recipient of a Supply (Recipient) to the party making the Supply (**Supplier**), howsoever described in this Agreement do not include GST.

Recovery of GST

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- 6.3 If a Supply under this Agreement is subject to GST, the Recipient must pay to the Supplier an additional amount equal to the amount payable in relation to that Supply multiplied by the prevailing GST rate.
- Time and place of payment**
- 6.4 The additional amount under clause 6.3 is payable at the same time as the amount payable in relation to the Supply is payable or to be provided. Any additional amount payable in accordance with clause 6.4 need not be paid until the Supplier provides a Tax Invoice to the Recipient.
- Variations**
- 6.5 If the amount of GST paid is more than is required under the GST law the Supplier must refund the excess amount to the Recipient. If the amount of GST paid is less than is required under the GST law, the Recipient must pay the Supplier the difference. For the purposes of calculating further variations under this clause 6, any additional amount referred to in clause 6.3 is taken to be amended by the amount of any earlier variation made under this clause.
- Reimbursement**
- 6.6 If a party to this Agreement is entitled to be reimbursed or indemnified for a cost incurred by a party in accordance with this Agreement, the amount of the reimbursement or indemnity will not exceed the GST exclusive cost of the amount. For the avoidance of doubt, the amount of any reimbursement or indemnity does not include any amount attributable to GST for which the party seeking reimbursement is entitled to an Input Tax Credit.
- GST Groups**
- 6.7 If a party to this Agreement is a member of a GST Group, references to GST which the party must pay, and to Input Tax Credits to which the party is entitled, include GST which the representative member of the GST Group must pay and Input Tax Credits to which the representative member is entitled.
- 7. FEES AND INVOICES**
- Fees**
- 7.1 Subject to the terms of this Agreement, the Company must pay the Supplier the Fees for the Supplies provided by the Supplier to the Company, and which comply with the terms of this Agreement. The Fees shall be the total charges payable by the Company for the provision of the Supplies. Without limiting the foregoing, no additional charges, fees or expenses will be paid to the Supplier on account of new or existing or increased government levies or charges applicable to the Supplies.
- 7.2 Payment of the Fees in relation to any Supplies does not constitute the Company's Acceptance of the Supplies.
- Taxes**
- 7.3 The Supplier will at all times remain responsible for making, and hereby indemnifies the Company against, all necessary deductions in respect of personnel who will be performing any Services including any legislation concerning income, payroll or fringe benefits tax, superannuation, workers' compensation or leave entitlements. The Supplier acknowledges that the Company may deduct from the Fees any amounts for which the Company has been indemnified under this clause.
- Invoicing requirements**
- 7.4 The Supplier must invoice the Company for the Fees at the dates or intervals set out in the Purchase Order, or as otherwise agreed in writing between the parties.
- 7.5 Each invoice must be sent by email to the Company to the email address listed on the cover sheet, in the format required by the Company and must include the following details:
- (a) a reference to the Purchase Order and the relevant contract (if any) including the line item numbers on the Purchase Order and the contract number;
 - (b) a detailed description of the Supplies which have been provided and the relevant quantity, including the Delivery Date for the Supplies;
 - (c) an individual reference number for the Company to quote with remittance of payment;
 - (d) the price relating to the Supplies provided, broken down to reflect the same price components on the Purchase Order;
 - (e) the amount of any applicable GST;
 - (f) Company operation and Site; and
 - (g) Company contact name.
- 7.6 The Supplier must provide the Company with all relevant records to calculate and verify the amount set out in its invoice.
- Disputes**
- 7.7 The Company is not obliged to approve an invoice submitted in accordance with clause 7.4 and may withhold money due to the Supplier under this Agreement if the Supplies (or any part of them) are Defective.
- Payment term**
- 7.8 Subject to clause 7.7 and 7.10, the Company will, unless stated otherwise, pay all valid tax invoices that comply with clause 7.5 within 30 days of receipt of a valid tax invoice.
- 7.9 Where the Company disputes the invoice:
- (a) the Company may withhold payment of that part of the invoice in dispute pending resolution of the dispute; and
 - (b) if the resolution of the dispute determines that the Company must pay an amount to the Supplier, the Company must pay that amount within 14 days of resolution of that dispute.
- Set off**
- 7.10 The Company may reduce any payment due to the Supplier under this Agreement by any amount which the Supplier must pay the Company, including costs, charges, damages and expenses and any debts owed by the Supplier to the Company on any account whatsoever. This does not limit the Company's right to recover amounts due to it in other ways.
- Erroneous payment**
- 7.11 The parties agree that if:
- (a) a Disaster occurs, or the Supplier's Systems are affected by any unauthorised access (including phishing attacks that might affect the email accounts of the Supplier's Personnel) or any virus, trojan horse, worm or other malware (**Relevant Event**);
 - (b) as a result or consequence of the Relevant Event, the Company pays any amount, fee or charge due or payable to the Supplier under this Agreement to any third party instead of to the Supplier (including where the Company is deceived into doing so) (**Relevant Amount**); and
 - (c) the Company provides the Supplier with reasonable evidence that the Relevant Amount has been paid to a third party as contemplated in clause 7.11(b) above,
- then:
- (d) the Relevant Amount will be deemed to have been paid to the Supplier; and
 - (e) the Company is not obliged or liable to pay the Relevant Amount to the Supplier.
- 8. CONFIDENTIAL INFORMATION, PRIVACY AND INTELLECTUAL PROPERTY**
- Confidentiality**
- 8.1 The Supplier must:

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- (a) keep confidential all non-publicly available information or any personally-identifying information disclosed or made available to the Supplier by the Company or any of Company's affiliates or otherwise obtained by the Supplier in connection with this Agreement (**Company Information**) and
- (b) not disclose any Company Information to any person, other than:
- (i) to those of its Personnel that:
 - (A) will be directly concerned with performance under this Agreement; and
 - (B) are subject to the same confidentiality obligations as set forth herein; or
 - (ii) to any government, any agency or department thereof, or any stock exchange, to the extent required by law, provided the Supplier immediately notifies the Company of such requirement and the terms thereof prior to such disclosure so that the Company may seek an appropriate protective agreement or order prior to the disclosure.
- 8.2 The Supplier agrees that:
- (a) Company or any of Company's affiliates remains the sole and exclusive owner of all right, title, and interest in the Company Information and the Supplier will not use any Company Information for any purpose other than as authorised under by this Agreement, without the express, prior written consent of the Company; and
 - (b) the Company Information shall be considered commercial secrets qualified for protection under applicable law.
- 8.3 The Supplier must return all copies (in any medium recorded) of the Company Information to the Company immediately upon written request from the Company.
- 8.4 The Supplier must:
- (a) provide written notice promptly and without delay to the Company if there has been an actual or a reasonably suspected breach of confidentiality of any of the Company Information in the possession, custody, or control of the Supplier or its Personnel; and
 - (b) at its own cost, cooperate as requested by the Company in connection with an actual or reasonably suspected breach of confidentiality (including internal investigations or enquiries or those conducted by a regulator) and in relation to any data breach notification requirements.
- 8.5 The Supplier must not, and must ensure that its Personnel do not, remove any Company Information (or any document or material containing Company Information) from any site or premises owned or operated by the Company.
- Privacy**
- 8.6 The Supplier must:
- (a) if it is an entity regulated under the Privacy Act, the Supplier must comply with the Privacy Legislation in relation to any Personal Information provided or made available to it by the Company; or
 - (b) if it is not an entity regulated under the Privacy Act:
 - (i) comply with the Privacy Act as if it were an entity regulated under the Privacy Act, in relation to any Personal Information provided or made available to it by the Company; and
 - (ii) not do any act or engage in any practice, or omit to do any act or engage in any practice, in relation to any Personal Information provided or made available to it by the Company, that would result in a breach of the Privacy Act if the Privacy Act applied to those things done, engaged in or omitted to be done by the Supplier.
- 8.7 Unless otherwise required by law or set out herein, the Company controls any public notifications in relation to data breaches.
- Security**
- 8.8 The Supplier must take all necessary steps, and implement and maintain up-to-date commercially reasonable measures, to ensure that the Personal Information, Confidential Information and other material provided or made available to the Supplier by the Company is securely stored and is protected against misuse, corruption, loss, or any unauthorised access, modification, interference, deletion or disclosure.
- Intellectual property**
- 8.9 The Company (or its licensor(s), as applicable) retain at all times all Intellectual Property Rights in any material, information, data, document, software or other intellectual property provided or made available by the Company to the Supplier (**Company IP**). All Intellectual Property Rights in any enhancement or modification of or to any Company IP vests in the Company (or its licensor(s), as applicable) immediately from creation. The Supplier assigns to the Company any and all Intellectual Property Rights it may have in or to such enhancement or modification.
- 8.10 The Supplier must not, without the prior written consent of the Company, use or allow the use of, whether in writing or in oral form, the Company's names, trademarks, logos, publications, photographs of the Company's facilities or equipment, or the Supplier and the Company's business relationship in connection with marketing or business activity.
- 8.11 All Intellectual Property Rights (including rights pertaining to Confidential Information) associated with the Materials shall immediately be assigned to and vested solely in the Company as such rights are created. The Supplier shall execute all documents and do all acts and things required by the Company for the purposes of giving effect to this clause.
- 8.12 The Company acknowledges that, notwithstanding clause 8.11, the vesting in title in the Materials does not affect the Intellectual Property Rights in any pre-existing material (including but not limited to software, documentation and data which is incorporated into the Materials). In such circumstances, the Supplier grants to the Company a non-exclusive, perpetual, irrevocable and non-transferable licence to use such pre-existing materials in connection with the Materials.
- 8.13 The assignment under clause 8.11 extends to all Materials, whether created by or on behalf of the Supplier or any person under any contract involving the Supplier. For the avoidance of doubt, such assignment to the Company extends to any and all of the following subject matter, namely:
- (a) which is incidental to the Materials;
 - (b) which is based on the Materials;
 - (c) would, if exploited, be competitive with the Materials;
 - (d) is created using any of the Company's facilities or resources;
 - (e) has been developed as a result of information learned by the Supplier (or by any person under any contract involving the Supplier) as a result of this Agreement; or
 - (f) improves on or extends the field in which works or concepts embodied in the Materials may conceivably be applied by the Company.
- 8.14 Immediately on creation of anything in which Intellectual Property Rights are to be owned by the Company under clause 8.11, the Supplier must inform the Company, providing such details and reproductions (and in such form and on such media) as the Company requests.
- Materiality and breach**
- 8.15 Any breach of this clause 8 will be deemed to be a material breach of this Agreement.

9. DATABREACH, SECURITY AND DISASTER MANAGEMENT

Data breach

- 9.1 If the Supplier becomes aware of a Data Breach, the Supplier must:
- (a) notify the Company in writing as soon as it becomes aware of that Data Breach;
 - (b) as soon as reasonably practicable, undertake an investigation to determine the extent to which the Data Breach concerns any Company Personal Information and provide the results of the investigation to the Company in writing (including the details of, and the circumstances giving rise to, the Data Breach and any additional information requested by the Company in relation to the Data Breach); and

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- (c) immediately take all necessary steps to:
- (i) remedy that Data Breach and prevent or mitigate any consequences, including any serious harm (as referred to in the Privacy Act), to any affected individuals; and
 - (ii) comply with all directions of the Company in relation to the Data Breach in respect of the Company Personal Information.
- 9.2 In respect of any Data Breach concerning any Company Personal Information, and without limiting each party's obligations under the Privacy Laws, including in respect of Divisions 2 and 3 of Part IIIC of the Privacy Act, the parties agree that the Company will have sole control over:
- (a) determining whether that Data Breach amounts to an Eligible Data Breach;
 - (b) carrying out any assessment of a suspected Eligible Data Breach required by the Privacy Act;
 - (c) preparing any statement of notification required by the Privacy Act; and
 - (d) carrying out any notification required by the Privacy Act,
- and the Supplier must cooperate with the Company in connection with the activities contemplated in this clause 9.2.
- Security and disaster management**
- 9.3 The Supplier must:
- (a) patch any of its System elements that store or process any Company Data or that connects to the Company's systems as soon as reasonably practicable after a security patch becomes available; and
 - (i) implement, maintain and enforce appropriate and industry best security procedures and safeguards in order to protect:
 - (ii) the Supplier's Systems from unauthorised access or from being affected by any virus, trojan horse, worm or other malware; and
 - (iii) any Company Data in the Supplier's possession and control against any misuse, loss, interference, unauthorised access, modification or disclosure.
- 9.4 If any Company Data is lost, damaged, corrupted or otherwise unable to be accessed as a result of any act or omission by the Supplier or its Personnel, the Supplier must take all measures available to the Supplier to immediately recover and restore that Company Data.
- 9.5 The Supplier must:
- (a) maintain business continuity and disaster recovery procedures designed to protect the Supplier's ongoing ability to comply with its obligations under this Agreement, and to ensure all Company Data in the possession or under the control of the Supplier is backed-up and can be recovered in the event of a Disaster (DR Procedures);
 - (b) regularly, and at least once per calendar year, test and update the DR Procedures;
 - (c) ensure that its DR Procedures are kept fully operational, current and developed so that they are consistent with ISO 22301 and ISO 27031; and
 - (d) if a Disaster occurs, promptly implement the DR Procedures.
- 9.6 Clause 9 above survives termination or expiry of this Agreement.
- 10. OH&S AND COMPLIANCE WITH LAWS**
- Occupational Health and Safety**
- 10.1 The Supplier is responsible for the health and safety of the Supplier's Personnel at all times. The Supplier's obligations under this clause are not affected in any way by any supervision, oversight, direction or assistance provided by the Company.
- 10.2 The Supplier must, when providing the Supplies:
- (a) comply with the Company's Safety and Health Management System in place at the Site;
 - (b) ensure that the Supplier's employees, agents and suppliers entering any Site or Delivery Location perform their tasks in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and are of such character as not to prejudice:
 - (i) safe working practices;
 - (ii) safety and care of property; or
 - (iii) continuity of work; and
 - (c) provide all such information and assistance as the Company reasonably requires in connection with any statutory or Health and Safety investigation in connection with the provision of the Supplies.
- Compliance with laws**
- 10.3 The Supplier must comply, and must ensure that its Personnel comply, with all applicable Laws when providing the Supplies and otherwise performing its obligations in connection with this Agreement.
- 10.4 On request by the Company, the Supplier must provide to the Company and its Personnel any information and assistance required to identify, evaluate, implement and report on any matter required by Law, including:
- (a) producing written reports;
 - (b) collecting data; or
 - (c) monitoring or metering,
- in respect of anything used, produced or created in connection with the performance of the Supplier's obligations under the Purchase Order
- 11. INDEMNITIES AND INSURANCE**
- General indemnities**
- 11.1 The Supplier indemnifies the Company Group and its Personnel against liability, loss, damage, cost, charge or expense suffered or incurred by any Indemnified Party arising from:
- (a) any Disaster or Relevant Event;
 - (b) a breach of clause 18 (modern slavery obligations);
 - (c) any personal injury, disease or illness suffered by, or the death of, any person engaged by the Supplier to provide the Supplies under the Purchase Order;
 - (d) personal injury, disease, illness suffered by or death of any person to the extent caused, or contributed to, by any unlawful or negligent act or omission of the Supplier or the Supplier's Personnel, except to the extent that the indemnity under clause 11.1(a) applies;
 - (e) physical loss of or damage to property of the Company Group or of any third party to the extent caused, or contributed to, by any unlawful or negligent act or omission of the Supplier or the Suppliers Personnel, or by any Defective Goods;
 - (f) any Claim made by any subcontractor of the Supplier arising directly or indirectly out of, or in connection with this Agreement or any contract between a subcontractor and the Supplier (**Subcontract**), and caused or contributed to by the Supplier's unlawful or negligent act or omission or the Supplier's breach of any Subcontract;
 - (g) any Claim made in connection with the Supplier failing to hold insurances required by this Agreement;
 - (h) any interest in or right over, or any alleged interest in or right over, (whether by encumbrance, lien, charge, mortgage or any other interest (including any security interest) or right recognised by the law of any relevant jurisdiction) any goods that the Supplier does or seeks to sell, transfer, lease, licence or otherwise dispose of to the Company;
 - (i) any Claim by a third party that the provision of the Supplies or Materials to, or the use of the Supplies or Materials by, the Company Group infringes the Intellectual property Rights of any person (**IP Claim**); and
 - (j) any criminal or fraudulent act or omission, or Wilful Misconduct of the Supplier or the Suppliers Personnel,

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provided that the Supplier's liability to indemnify the Company Group will be reduced proportionately to the extent the liability, loss, damage, cost, charge or expense is caused, or contributed to by, any unlawful or negligent act or omission of the Indemnified Parties.

11.2 The Supplier agrees to pay amounts due under this indemnity on demand from the Company.

Third party IP Claims

11.3 The indemnity referred to in clause 11.1(i) applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.

11.4 Without prejudice to the Company's right to defend a claim alleging such infringement, the Supplier shall, if requested by the Company, but at the Supplier's expense conduct the defence of any IP Claim. The Supplier must observe the Company's directions relating in any way to that defence or to negotiations for settlement of the IP Claim.

11.5 Without limiting the generality of the foregoing clauses, in the event of an IP Claim, the Supplier must at its sole expense and at the Company's request:

- (a) modify the Supplies or Materials in order to avoid continuing infringement;
- (b) procure for the Company the right to continue the use or possession of the infringing Supplies or Materials; or
- (c) if the solutions in either of the pre-ceding paragraphs cannot be achieved, remove the Supplies or Materials.

Insurance

11.6 The Supplier must maintain:

- (a) workers' compensation insurance as required by applicable Laws;
- (b) professional indemnity insurance for an amount of \$5,000,000 for any one occurrence, if stated in the Purchase Order;
- (c) product and public liability insurance for an amount of \$20,000,000.00 for any one occurrence, unless otherwise stated in the Purchase Order, and such insurance must:
 - (i) note the Company Group's interest on the insurance policy;
 - (ii) contain a waiver of the insurer's rights of subrogation in favour of the Company Group;
 - (iii) provide (where applicable) an indemnity for activities underground or for the use of unregistered mobile plant and equipment.
- (d) plant and equipment insurance, and transit insurance:
 - (i) if the Company or Company Group is hiring any Hired Equipment under this Purchase Order; or
 - (ii) if the Supplier is supplying equipment in order to provide the Supplies under this Purchase Order;
- (e) if the Supplier is a natural person, Temporary and Permanent Disability, Personal Sickness and Accident (including 85% Income Protection Insurance);
- (f) comprehensive motor vehicle fleet insurance in the amount of at least \$10,000,000 for any one occurrence, if the Supplier will be operating motor vehicles on Site; and
- (g) any other insurance specified on the Purchase Order that in the reasonable opinion of the Company is usually or typically provided considering the nature of the Supplies.

11.7 Any policy of insurance taken out by the Supplier pursuant to clause 11.6 that provides cover on the basis of claims made to the insurer during the period of currency must include a provision that all insured parties under the policy will be entitled to be indemnified by the insurer under that policy in respect of any claim or claims arising out of or in connection with the Agreement for a period of not less than seven (7) years from the completion date.

11.8 The Supplier shall, on request, provide the Company with a copy of the certificates of currency (or underlying insurance policy documents) as nominated by the Company for each insurance policy to be effected in accordance with this Purchase Order.

11.9 All required insurance policies will contain a waiver of subrogation by the insured and insurance company in favour of the Company Group where allowable by Law. A copy of the applicable waiver of subrogation language will be attached to or be stated on the required certificate of currency provided to the Company

12. TERMINATION

Termination rights

12.1 In addition to any other rights it may have under the Purchase Order or otherwise, the Company may immediately terminate this Agreement by notice in writing to the Supplier:

- (a) subject to any Law prohibiting or qualifying such right, if the Supplier is subject to an Insolvency Event;
- (b) if the Supplier fails to provide the Supplies by any of the dates set out in the Purchase Order;
- (c) if the Supplies provided are Defective and the Supplier fails to promptly comply with any of its obligations under clause 3.9 or 4.8;
- (d) if the Supplier breaches any of its obligations under clause 10;
- (e) if the Supplier fails to remedy a breach of any other term or condition of this Agreement within 5 Business Days of being directed in writing to do so by the Company;
- (f) if due to an unforeseeable event outside of the reasonable control of the Company, the Company is unable to provide access to the Site for a continuous period of 30 days or more; or
- (g) in its absolute discretion at any time and for any reason by giving the Supplier 14 days written notice.

12.2 If the Company issues a notice under clause 12.1(f) or 12.1(g), the Company will, subject to clauses 7.10 and 15.2, only be liable for payments to the Supplier for the Supplies provided in accordance with the Purchase Order up until the date of termination and any reasonable costs incurred by the Supplier that are directly attributable to the termination, if the Supplier substantiates these amounts to the satisfaction of the Company. The Supplier must promptly deliver to the Company any Goods and Materials that the Company has paid for under this clause. The Supplier will not be entitled to any profit anticipated on any part of the Purchase Order terminated.

Consequences of termination

12.3 Immediately upon the termination of this Agreement, the Supplier will:

- (a) cease the provision of the Supplies and, unless otherwise directed by the Company, remove all of its plant, equipment and materials from the relevant Site(s), minimising disruption and remediating any damage caused by removal;
- (b) if directed by the Company, remove the Goods (if any) from the relevant Site(s);
- (c) clean the relevant Site(s) or Delivery Location (as applicable) at which the Supplies were provided; and
- (d) provide to the Company all Confidential Information, any items in respect of which Intellectual Property Rights are held by the Company, and any property, including records or information, belonging to the Company or relating to the Supplies.

12.4 On termination of this Agreement, the Company must return the Hired Equipment to the Supplier at the relevant Delivery Location (subject to any Fair Wear and Tear) and, subject to its rights under applicable Law and clauses 7.10 and 15.2, be liable only for the Fee owing to the date of termination.

Survival

12.5 Clauses 8, 11, 12.3 and 12.4 survive termination or expiry of this Agreement.

13. FORCE MAJEURE

13.1 If a party becomes unable by reason of a Force Majeure Event to carry out an obligation under this Agreement, that party must give written notice specifying the details of the Force Majeure Event and its effect on that party's operations and performance of its obligations.

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- 13.2 Upon service of notice pursuant to clause 13.1, the obligations of the affected party will be suspended, but only to the extent that, and for as long as, the affected party is unable by reason of the Force Majeure Event to carry out those obligations in accordance with this Agreement.
- 14. CONFLICT OF INTEREST**
- 14.1 The Supplier warrants that to the best of its knowledge no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement.
- 14.2 The Supplier must not, during the course of this Agreement, engage in any activity likely to compromise the ability of the Supplier to perform its obligations under this Agreement fairly and independently. The Supplier must immediately disclose to the Company any activity which constitutes or may constitute a conflict of interest.
- 15. AUDIT**
- 15.1 The Supplier must permit the Company and its auditors to examine, during the term of this Agreement and for six (6) years after termination or expiry of this Agreement, all books, records, supporting documents, files and correspondence of the Supplier pertaining in any way to the Supplies provided and the Fees charged by the Supplier (**Records**).
- 15.2 The Supplier will refund, and the Company may withhold payment of any invoice which is not supported by records and data required by this Agreement, or any payment which was not proper under the terms of this Agreement.
- 15.3 During the term of this Agreement, the Supplier must provide the Company, upon the Company's written request, any and all Records necessary to demonstrate compliance with this Agreement.
- 16. VARIATIONS**
- 16.1 Either party may propose a change to the Purchase Order (**Change**).
- 16.2 Changes to the Purchase Order terms will only take effect if the Company issues a new purchase order reflecting the Change.
- 16.3 The parties will not be liable to each other for any additional work undertaken or expenditure incurred unless the change is in accordance with this clause 16.
- 17. DISPUTES**
- 17.1 If a party disagrees with the other party about any matter under this Agreement (**Dispute**) then it may issue a Dispute Notice to the other party.
- 17.2 Within 5 Business Days after the date the Dispute Notice is given, a representative of each party must attempt to resolve the Dispute.
- 17.3 If not resolved then within 15 Business Days after the date the Dispute Notice is given, a senior executive officer of each party must attempt to resolve the Dispute.
- 17.4 If not resolved then within 30 Business Days after the date the Dispute Notice is given, the parties shall participate in a mediation in an attempt to resolve the Dispute, with the Chair of the Chapter of the Institute of Arbitrators and Mediators Australia in the jurisdiction of this Agreement to select the mediator to be appointed by the party that issued the Dispute Notice.
- 17.5 If the Dispute is not resolved at the mediation, any party that has complied with the provisions of this clause may, by notice in writing sent to the other party, terminate the dispute resolution process provided for in this clause and begin litigation concerning the Dispute.
- 18. MODERN SLAVERY**
- 18.1 In performing its obligations under the Agreement, the Supplier represents and warrants that they will:
- (a) comply with the Modern Slavery Laws;
 - (b) comply with the Modern Slavery Requirements;
 - (c) not engage in any activity, practice or conduct that would constitute an offence under Division 270 or Division 271 of the Schedule to the *Criminal Code Act 1995* (Cth) if such activity, practice or conduct were carried out in Australia; and
 - (d) ensure that each of its direct subcontractors and Suppliers will comply with the Modern Slavery Requirements and with all applicable modern slavery laws, statutes, regulations and codes from time to time in force.
- Due diligence**
- 18.2 The Supplier represents and warrants that at the date of this Agreement that:
- (a) its responses to the Company's modern slavery due diligence questionnaire are complete and accurate; and
 - (b) neither the Supplier nor any of its officers, employees, or other persons associated with it:
 - (i) has been convicted of any offence involving modern slavery; and
 - (ii) to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with modern slavery.
 - (c) The Supplier has implemented due diligence procedures for its direct contractors and other participants in its supply chains, to ensure that there is no modern slavery in its supply chains.
- Reports**
- 18.3 The Supplier must notify the Company as soon as it becomes aware of:
- (i) any breach, or potential breach, of the Modern Slavery Requirements; or
 - (ii) any actual or suspected modern slavery in a supply chain which has a connection with this Purchase Order.
- 18.4 The Supplier must, if requested by the Company, prepare and deliver to the Company, on a yearly basis, an annual modern slavery report setting out the steps it has taken to ensure that modern slavery is not taking place in any of its supply chains or in any part of its business.
- Record keeping and audits**
- 18.5 The Supplier must maintain a complete set of records to trace the supply chain of all Supplies provided to the Company in connection with this Purchase order.
- 18.6 The Supplier must permit the Company and its third-party representatives, upon provision of reasonable notice to enter Supplier's premises to collect records and conduct an audit on the Supplier's compliance with the obligations under this clause.
- Training**
- 18.7 The Supplier must implement a system of training for employees involved in areas of the business where there is a modern slavery risk to ensure compliance with the Modern Slavery Requirements, keep a record of the training offered and make a copy of the record available to the Company on request.
- 19. GENERAL**
- Agency and authority**
- 19.1 If the Company consists of more than one person or enters into this Agreement as agent of persons in a joint venture:
- (a) an obligation of those persons is several and those persons' liability is several in proportion to the respective interests that are disclosed from time to time by the Company (including on the Company's website); and
 - (b) a right of those persons is held severally.
- Governing law**
- 19.2 The Law applicable to this Agreement is the Law of the State in which the Site is located.

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Severability

- 19.3 Any part of this Agreement that is held to be unlawful or unenforceable by a court of competent jurisdiction is severed and the remaining provisions will continue to operate.

Notices

- 19.4 A notice given under this Agreement must be in writing addressed to the recipient at the address on the Purchase Order cover page.

Relationship

- 19.5 The Supplier is an independent contractor without any authority to bind the Company by contract or otherwise, and neither the Supplier nor its Personnel are agents or employees of the Company by virtue of this Agreement. The Supplier has sole responsibility in relation to payment, if any, of superannuation, workers' compensation and taxes incidental to employment in respect of its Personnel. Neither the Supplier nor its Personnel have, pursuant to this Agreement, any entitlement from the Company in relation to any form of employment or related benefit.

- 19.6 The Supplier and its Personnel must not approach or otherwise communicate with any Authority on behalf of the Company without first obtaining the Company's prior written consent.

Entire agreement

- 19.7 This Agreement represents the entire agreement between the Supplier and the Company in relation to the subject matter and supersedes all tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.

Assignment

- 19.8 The Supplier must not assign any of its rights, interests or obligations under this Agreement without the prior written consent of the Company.

Subcontracting

- 19.9 The Supplier must not subcontract the Supplies without the prior written consent of the Company.

Supplier Code of Conduct

- 19.10 The Supplier agrees to comply with the Company's Code of Conduct for suppliers as published (including on its website at www.peabodyenergy.com) and amended from time to time.

20. DEFINITIONS

Accept means the date the Company accepts the Supplies within the meaning of clause 2.3 or 2.5, and "Acceptance" and "Accepted" has a corresponding meaning.

Agreement means the Purchase Order together with these Purchase Order Terms and Conditions.

Approvals means any consent, authorisation, registration, filing, lodgement, notification, agreement, certificate, commission, lease, licence, permit, approval, or exemption from, by or with any Authority.

Authority means any government department, local government, government or statutory authority or any other party under a legislative requirement which has a right to impose a requirement or whose consent is required:

- (a) in connection with the operation of the Site or Delivery Location;
- (b) with respect to the hire of the Hired Equipment; or
- (c) in connection with the Supplier's performance of its obligations under this Agreement.

Business Day means any day other than any Saturday or Sunday, a public holiday at the place in which the Site or Delivery Location (as applicable) is located, or 27, 28, 29, 30 or 31 December.

Chain of Responsibility means chain of responsibility as it is used in the Heavy Vehicle National Law.

Claim includes any claim, notice, demand, debt, account, lien, liability, action, proceeding or suit (including any claim for the payment of money (including damages) or for an adjustment to the Fee, under, arising out of or in any way in connection with this Agreement.

Company means the Peabody entity named in the Purchaser Order.

Company Data means all includes Company Personal Information and any information or data of any kind that the Company provides or makes available to the Supplier in connection with this Agreement.

Company Group means the Company and its Related Bodies Corporate.

Company Information has the meaning given to it in clause 8.1.

Company Personal Information includes:

- (a) any Personal Information provided or made available to the Supplier by the Company in connection with this Agreement;
- (b) any Personal Information of the Company; and
- (c) any Personal Information of the Company's Personnel, customers or prospective customers.

Company Privacy Policy means Company's privacy policy available at www.peabodyenergy.com/Privacy or otherwise notified to the Supplier by the Company, as amended by the Company from time to time.

Complete means the completed performance of the Services and "Completion" has a corresponding meaning.

Completion Date means the date for Completion of the Services specified in the Purchase Order.

Data Breach means any event or occurrence where:

- (a) there is any misuse of, unauthorised access to, or unauthorised disclosure of, any Company Personal Information held by the Supplier; or
- (b) any Company Personal Information held by the Supplier is lost in circumstances where unauthorised access to, or unauthorised disclosure of, Company Personal Information is likely to occur.

Defective means any Supplies (or any aspect of them) which are not in accordance with the Purchase Order or which are damaged, deficient, faulty, inadequate or incomplete.

Deliver means the physical delivery of any Supplies to the Delivery Location, and "Delivery" and "Delivered" have corresponding meanings.

Delivery Location means:

- (a) for Goods, the place for delivery of the Goods specified in the 'ship to' box in the Purchase Order; or
- (b) for Hired Equipment, the place where the Hired Equipment must be delivered, as set out in the Purchase Order

Delivery Date means the date for delivery of the Goods, Hired Equipment, deliverables or Materials to the Delivery Location specified in the Purchase Order.

Disaster means any event or occurrence (including any virus, cyber-attack or data breach) that:

- (a) adversely affects the Systems of the Supplier; or
- (b) results or may result in any Company Information or other data or information about the Company being used, disclosed, processed, made available or handled other than in accordance with this Agreement.

Eligible Data Breach has the meaning given by Division 2 of Part IIIC of the Privacy Act.

Excessive Wear and Tear is deterioration of the Hired Equipment in excess of Fair Wear and Tear during the Hire Period.

Fee means the price, fees or charges for the Supplies (which is exclusive of GST but is inclusive of all other costs and charges), as set out in the Purchase Order.

Fair Wear and Tear is the expected deterioration of the Hired Equipment in normal operation during its use over the Hire Period, as detailed in the Purchase Order.

Force Majeure Event means:

- (a) lightning strikes, earth quakes, landslides, floods, typhoon, drought, cyclones, storms, bush fires or any other natural disaster or other severe weather event; or

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(b) acts of terrorism, riots, civil commotion, hostilities at war (whether declared or not) or explosion, the occurrence of which could not have reasonably be controlled by the party seeking to rely on the occurrence of such an event.

Goods means the goods, if any, described on the Purchase Order.

Health and Safety means health, safety, environment and community.

Heavy Vehicle National Law means the road safety regime contained in the *Heavy Vehicle National Law Act 2012* (Qld), *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW) and similar Laws in other States.

Hired Equipment means the Supplier's equipment (including attached tools and accessories) that is hired by the Company, as listed in the Purchase Order.

Hired Equipment Condition Report has the meaning given to it in clause 5.6.

Hire Period means the period for which the Hired Equipment is hired, as specified in the Purchase Order, and which commences on the date the Hired Equipment is Delivered to the Delivery Location (except as otherwise provided in the Purchase Order).

Insolvency Event means where either party:

- (a) is (or states that it is) insolvent (as defined in the *Corporations Act 2001* (Cth));
- (b) has a Controller (as defined in the *Corporations Act 2001* (Cth)) appointed to any part of its property;
- (c) is in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration or wound up or has had a receiver or a receiver and manager appointed to any part of its property;
- (d) is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or, dissolved (other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other party to this Purchase Order);
- (e) (is taken (under section 459(F)(1) of the *Corporations Act 2001* (Cth)) to have failed to comply with a statutory demand;
- (f) is the subject of an event described in section 459(C)(2)(b) or section 585 of the *Corporations Act 2001* (Cth) (or it makes a statement from which the other party to this Agreement reasonably deduces it is so subject); or
- (g) is otherwise unable to pay its debts when they fall due.

Intellectual Property Rights means all beneficial and legal ownership and intellectual and industrial protection rights throughout the world, both present and future, including rights in respect of or in connection with any confidential information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents) trademarks, service marks and designs (whether or not now existing and whether or not registered or registrable) and includes any right to apply for the registration of such rights and all renewals and extensions.

IP Claim has the meaning given to it in clause 11.1(i).

Law means:

- (a) Commonwealth, State and local government legislation including regulations, bylaws, orders, awards and proclamations;
- (b) common law and equity;
- (c) authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals); and
- (d) guidelines of authorities with which the Supplier is legally required to comply.

Major Repairs means repairs to the Hired Equipment which:

- (a) a total supply value greater than \$500;
- (b) are to rectify a defect in, or malfunction of, the Hired Equipment that renders the Hired Equipment unsafe or unsuitable to use; or
- (c) arise out of a breakdown of the Hired Equipment.

Materials means all work product generated under the Purchase Order by the Supplier.

Modern Slavery Laws means all applicable modern slavery laws, statutes, regulation and codes from time to time in force including but not limited to the *Modern Slavery Act 2018* (Cth).

Modern Slavery Requirements means the requirements concerning modern slavery as set out in the Company's policies and procedures in order to comply with Modern Slavery Laws.

Minor Repairs means those repairs requiring components with a total supply value of less than \$500 (including consumable items) and which are not otherwise Major Repairs.

Misuse means the misuse, mishandling or faulty operation of the Hired Equipment by, or the negligent act or omission of the Company in connection with the use of the Hired Equipment.

OEM means the original equipment manufacturer of the whole or part of the Goods or Hired Equipment.

Personal Information means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not.

Personnel includes employees, agents, consultants and contractors, but:

- (a) the Company's Personnel do not include the Supplier and the Supplier's Personnel; and
- (b) the Supplier's Personnel do not include the Company or the Company's Personnel.

Pre-Hire Inspection Report has the meaning given to it in clause 5.3

Privacy Act means the *Privacy Act 1988* (Cth).

Privacy Laws means the Privacy Act, the *Spam Act 2003* (Cth), any registered APP Code that binds a party and any other laws, industry codes and policies relating to the handling of Personal Information.

Purchase Order means:

- (a) the purchase order for the Supplies issued by the Company to the Supplier containing, amongst other things, a description of the Supplies;
- (b) these Purchase Order Terms and Conditions;
- (c) any Special Conditions and Schedules; and
- (d) any other documents included in the Purchase Order by express reference.

Purchase Order Terms and Conditions means this document.

Related Bodies Corporate has the meaning provided in the *Corporations Act 2001* (Cth).

Relevant Event has the meaning given to it in clause 7.11(a).

Site means the relevant site of the Company where the Supplies will be performed or used (as applicable), as set out in the Purchase Order.

Site Standards and Procedures means the Company's Cardinal Rules, the Company standards, procedures and policies relating to safety, the environment, quality, energy, operations and purchasing and such standards, procedures and policies as notified by Company, as amended from time to time and any other guidelines, rules, requirements or Site specific conditions which the Company makes available to the Supplier from time to time.

Schedule means a schedule attached to this Agreement.

Services means the services, if any, described on the Purchase Order.

Special Conditions means the terms and conditions named as Special Conditions in the Purchase Order;

Supplier means the entity to which the Purchase Order is addressed.

Supplies includes Goods, Services (including deliverables and Materials) and Hired Equipment, as set out in the Purchase Order

System means include IT infrastructure, devices, software and systems (including email accounts and online platforms and services).

Warranty Period means:

- (a) with respect to Goods, deliverables or Materials, the period of 12 months commencing on the date the Goods are Accepted; and

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(b) with respect to Services, 12 months from the date on which the Services are Completed.

Wilful Misconduct means conduct in connection with the provision of the Supplies which was:

- (a) done (or omitted to be done) deliberately or wilfully to cause loss or damage;
- (b) done (or omitted to be done) with an intent to cause harm; or
- (c) done (or omitted to be done) with reckless disregard of the rights of others and with the knowledge that loss or damage would most likely result.