

IDEMITSU AUSTRALIA PTY LTD
ABN 45 010 236 272

TERMS AND CONDITIONS FOR PURCHASE ORDERS

1. **INTERPRETATION**

The following definitions apply in these terms.

Anti-Bribery and Corruption Laws means any relevant trade sanctions, anti-money laundering and anti-bribery and corruption laws applicable to the Seller.

Applicable Laws mean all applicable laws, regulations, policies, industry standards and codes and all applicable requirements of any Government Agency.

APRA means the Australian Prudential Regulation Authority.

Business Day means any day other than a Saturday, Sunday or public holiday in Brisbane or 27, 28, 29, 30 and 31 December.

Buyer means Idemitsu Australia Pty Ltd
ABN 45 010 236 272.

Goods means the products specified in this Order, except in a context where "Goods" means products specified in any quotation of the Seller. The supply of Goods under the Order may include both the purchase of Goods and/or the hire of Goods, as specified in the Order.

Government Agency means a government or government department or a court, port, transport or local authority or a person (whether autonomous or not) responsible for the administration of an applicable law, in Australia or elsewhere.

GST means the goods and services tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and the related imposition Acts of the Commonwealth.

Insolvency Event means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the *Corporations Act 2001 (Cth)*) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the *Corporations Act* to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the *Corporations Act*), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

Modern Slavery has the meaning given in the *Modern Slavery Act 2018 (Cth)*.

Modern Slavery Laws means all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the *Modern Slavery Act 2018 (Cth)*.

Order means the purchase order issued by the Buyer, these terms and conditions, any specification issued by the Buyer and any other documents identified by the Buyer in the purchase order as forming part of the purchase order.

PPSA means the *Personal Property Securities Act 2009 (Cth)*.

Reputable Insurer means an insurance company:

- (a) authorised by APRA or that maintains an APRA exemption; and
- (b) having a financial performance rating of at least A- by AM Best or a financial strength rating of at least A- by Standard and Poor's (Australia) Pty Limited.

Security Interest means:

- (a) a security interest that is subject to the PPSA;
- (b) any other mortgage, pledge, lien or charge; or
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Seller means the person supplying the Goods and/or Services to the Buyer.

Services means the services specified in this Order, except in a context where "Services" means services that are specified in any quotation of the Seller.

2. **GENERAL**

2.1 Except as expressly stated in this Order, these terms apply to any agreement for the sale of Goods and/or provision of Services by the Seller to the Buyer.

2.2 The terms and conditions of this Order, any specifications agreed between the Buyer and Seller in accordance with clause 5 and any Site policies or procedures provided to the Seller at or before the time of this Order or otherwise notified to the Seller after the time of the Order, embody the entire understanding of the parties and constitutes the entire agreement by the parties. This Order supersedes any prior written or other agreement between the parties for the sale of Goods and/or provision of Services by the Seller to the Buyer. For the avoidance of doubt, nothing in this clause is intended to exclude liability for fraud or fraudulent misrepresentation or any other representation which cannot be excluded by law.

2.3 Both parties acknowledge that the Seller is not the Buyer's agent, employee, partner or joint venturer.

2.4 If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

3. **OFFICIAL PURCHASE ORDERS**

3.1 The Buyer will not be bound by any Order unless it is issued by the Buyer on its official Order form.

3.2 The Buyer may return at the Seller's expense and risk any goods delivered that are not covered by an Order or by any written variation, including any quantity of goods greater than the quantity specified in the Order.

4. **VARIATION OF PURCHASE ORDERS**

4.1 The Buyer may, acting reasonably, request the Seller to vary an Order in writing at any time (**Variation Notice**).

4.2 Upon receipt of a Variation Notice issued by the Buyer under clause 4.1, the Seller must:

- (a) inform the Buyer that it agrees to the Variation Notice; or
- (b) inform the Buyer that it does not agree to the Variation Notice (or any component of it), giving detailed reasons for the lack of agreement.

4.3 If the Buyer and the Seller are, acting reasonably and in good faith, unable to agree on the terms of the Variation Notice as proposed by the Buyer in accordance with the procedure set out above the Buyer may, at its sole

- discretion terminate the Order.
- 4.4 If the Seller informs the Buyer that it agrees to the Variation Notice in accordance with clause 4.2(a) or the parties subsequently agree on amendments to the Variation Notice, the variation will be implemented once a revised Order is issued by the Buyer which shall incorporate the agreed terms of the variation (**Variation**).
- 4.5 The Seller may claim any reasonable additional costs incurred as a result of the Buyer issuing a revised Order in accordance with the Variation, or claim any reasonable variation to the date for the delivery of the Goods or the completion of the Services needed as a result of the Buyer's variation, but any claim must be made in writing (accompanied with evidence, satisfactory to the Buyer, acting reasonably, of the costs incurred in respect of any claim in relation to additional costs) within 14 days (or such other period as the parties may agree) after the Variation, is accepted.
5. **STATUTORY REQUIREMENTS AND SPECIFICATION**
- The Seller must ensure that the Goods and/or Services and their design, performance, fabrication, testing, packaging, loading on transport, delivery (and installation and commissioning when specified) are in accordance with the Buyer's specifications (if any, as communicated to the Seller at or prior to the date of the Order, the Seller's own standard specifications for the Goods and/or Services and with all Applicable Laws and all applicable requirements of any Government Agency.
6. **PRICE AND PAYMENT**
- 6.1 Subject to clause 4.3, the price shown in an Order is fixed and firm.
- 6.2 All prices are in Australian dollars.
- 6.3 All prices are inclusive of GST (unless the Order states that the price is exclusive of GST).
- 6.4 The Seller must address invoices as shown on the Order.
- 6.5 The Seller must state in the invoice:
- (a) the Order number;
 - (b) the invoice number;
 - (c) description of the Goods and/or Services provided;
 - (d) price for the Goods and/or Services provided;
 - (e) the GST exclusive price for the Goods and/or Services, the total amount of GST payable, and the GST inclusive price for the Goods and/or Services;
 - (f) that the invoice is a valid tax invoice for GST purposes under the GST Law; and
 - (g) any other details the Order requires to be stated in the invoice.
- 6.6 The Seller must provide the Buyer with satisfactory evidence to enable the Buyer to verify the amount of the invoice (including any information reasonably requested by the Buyer).
- 6.7 Subject to clause 6.8, the Seller may only submit an invoice to the Buyer on:
- (a) the delivery of the Goods in accordance with the Order;
 - (b) (unless the Order states that progress payments are to be made) the completion of the Services or if the parties otherwise agree, on the last Business Day of each calendar month for Services performed by the Seller in that month; or
- (c) where progress payments are to be made for the provision of Services, on the last Business Day of each calendar month for Services performed by the Seller in that month.
- 6.8 If applicable, the Buyer and the Seller agree that the date prescribed by this clause 6.8 as the date on which the Seller may serve its invoice:
- (a) is, for the purposes of section 70 of the *Building Industry Fairness (Security of Payment) Act 2017* (QLD), the reference date (as defined in section 67 of that Act; and
 - (b) is the date prescribed for the purposes of clause 13(1B) of the *Building and Construction Industry Security of Payment Act 1999* (NSW).
- 6.9 If the Goods and/or Services provided by the Seller comply with the Order and an invoice has been prepared and submitted in accordance with the Order, the Buyer must pay each invoice within 30 days from the date of invoice, except where the Buyer disputes the invoice in which case the Buyer will pay the undisputed part of the relevant invoice (if any) and dispute the balance in accordance with clause 29. A dispute in respect of an invoice must be made within 10 Business Days of the date that the relevant invoice is served on the Buyer. If the resolution of the dispute determines that the Buyer is to pay an amount to the Seller, the Buyer will pay that amount to the Seller within 30 days of the date of the determination.
- 6.10 Unless otherwise specified, the price includes one set of standard instructions. The Seller must on request by the Buyer supply further copies of instructions and certified outline drawings for the Goods and/or Services on payment of the Seller's reasonable copying charges.
- 6.11 The price is inclusive of all costs incurred by the Seller in the supply of the Goods and/or Services including all charges for packing, packaging, storage, insurance, transit and delivery of the Goods in accordance with the terms of this Order and the cost of any items used or supplied in conjunction with the Services.
- 6.12 The Buyer's communication to the Seller that it disputes an invoice submitted by the Seller shall be taken to be the payment schedule for the purpose of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) or the *Building and Construction Industry Security of Payment Act 1999* (NSW), as applicable (whether or not it is expressly stated to be a payment schedule).
7. **INSPECTION DURING MANUFACTURE**
- 7.1 The Seller must supply manufacturing schedules and progress reports to the Buyer at the cost of the Seller as requested by the Buyer.
- 7.2 The Buyer may itself or through an agent:
- (a) inspect all or part of work specified in an Order (including any work sub-contracted by the Seller) prior to and during manufacture of Goods until final acceptance of Goods by the Buyer; and
 - (b) instruct the Seller to remedy any defect, error or omission in any work that the Buyer, acting reasonably, considers is not satisfactory or does not comply with the terms of this Order, and if the Seller fails to do so in a reasonable time period, reject such work.
8. **PACKAGING AND LABELLING**
- 8.1 The Seller must ensure that, and is liable for any loss or damage caused if it does not ensure that:
- (a) Goods are suitably packed to avoid damage during loading, transit, delivery, unloading or storage, having regard to the road and climatic

- conditions through which the Goods will pass;
and
- (b) Goods are packed and transported in accordance with any applicable regulations and industry codes and any reasonable safety or environmental requirement of the Buyer.
- 8.2 The Seller must pay any increase in freight charges arising from the Seller's failure to follow any transport instruction in this Order or to properly describe the goods being transported.
- 8.3 The Seller must assist the Buyer in obtaining documents or information required for the resolution of any transport dispute.
- 8.4 Packages and loose pieces must be clearly marked as shown on the face of this Order and must indicate gross weight.
- 8.5 The Seller must label all packages in accordance with the requirements of all relevant laws.
9. **DANGEROUS GOODS**
- 9.1 When dealing with dangerous or hazardous goods that form part of the Goods, the Seller must comply with all Applicable Laws.
- 9.2 All Goods which are dangerous or hazardous Goods must be clearly marked with or accompanied by all information required by any Applicable Laws such as the UN Number, Class Number and the Packing Group and must be accompanied by the appropriate manifest and emergency procedure guide and safety data sheets.
- 9.3 If the Seller is providing any Goods that comprise an aluminium alloy component of plant or equipment that may be taken underground, the Goods must be provided with a certificate of conformity or evidence to prove the content of the alloy to demonstrate that it does not exceed the maximum content of 6% magnesium and titanium. No aluminium alloy is to be used:
- (a) on plant or equipment underground if it contains more than 6% by mass of combined magnesium and titanium; or
- (b) in the external rotating or reciprocating parts of any plant or equipment underground if it contains more than 0.6% by mass of combined magnesium and titanium.
10. **DELIVERY DOCUMENTATION**
- 10.1 The Seller must clearly mark all delivery documents with the Order number and must ensure those documents accompany the Goods to the place of delivery specified in this Order.
11. **DELIVERY AND PERFORMANCE**
- 11.1 Unless otherwise agreed by the Buyer and the Seller in writing, the Seller must deliver all Goods:
- (a) free of carriage and handling charges to the place of delivery specified in this Order; and
- (b) on the delivery date specified in this Order.
- 11.2 Unless otherwise agreed by the Buyer and the Seller in writing, the Seller must perform the Services by the date specified in this Order.
- 11.3 To the extent the Goods supplied under the Order are for hire and not for purchase, the Seller must collect the hired Goods at the location and on the date specified in the Order. Unless otherwise stated in the Order, the Seller will bear the cost of mobilisation and demobilisation of any hired Goods to and from the site or location specified in the Order.
12. **RISK AND TITLE**
- 12.1 The Goods remain at the Seller's risk until they are delivered to, unloaded and (if the Seller is responsible for installation) installed at the place for delivery, at the date and time for delivery (if applicable), specified in this Order.
- 12.2 The Seller must insure the Goods for full replacement value up until delivery or (if applicable) until they are installed at the place of delivery specified in this Order.
- 12.3 Subject to clause 12.6, full and unencumbered legal and beneficial title to the Goods passes to the Buyer on delivery.
- 12.4 Subject to clause 12.7, the Seller must not claim any Security Interest over the Goods and must defend and indemnify the Buyer against any claim of Security Interest over the Goods arising from a failure by the Seller to comply with this clause or a breach of clause 17.1(a).
- 12.5 The Seller must do all things (including executing all documents at any time) and provide all information reasonably required by the Buyer to enable the Buyer to lawfully register any charge or other interest in the Goods (including registration on the Personal Property Securities Register established under the PPSA) so as to ensure the Buyer's rights under this Order are not adversely affected.
- 12.6 The Seller must promptly do anything reasonably required by the Buyer to ensure that the Buyer's Security Interest is a perfected Security Interest and has priority over all other Security Interests. To the extent the Goods supplied under the Order are for hire and not for purchase, title in the Goods will remain with the Seller for the duration of the hire. The risk in the Goods will pass back to the Seller upon the Seller commencing collection of the hired Goods at the location and on the date specified in the Order.
- 12.7 The Buyer acknowledges and agrees that the Seller may take all necessary steps, including but not limited to registering a Security Interest under the PPSA which the Seller has over the hired Goods and the Buyer will do anything reasonably necessary to ensure that the Seller can perfect, register and enable its rights under the PPSA.
13. **PROPERTY IN GOODS PART PAID FOR**
- 13.1 If prior to delivery the Buyer:
- (a) pays to purchase Goods; or
- (b) if the Order states that progress payments are to be made, makes a part payment for the Goods,
- property in the Goods (or if the Goods are incomplete, property in the partly completed Goods and any materials and parts to be used in their manufacture or assembly and then on hand) passes to the Buyer, and the Seller must clearly mark them with the Buyer's name and the Order number.
- 13.2 If the Buyer considers that the Seller has failed, or indicated that it may be unable, to fulfil any obligation under the terms of this Order (including delivery of the Goods by the delivery date and performance of the Services by the date specified in this Order), and there is no bona fide dispute about this between the parties, the Buyer or its agent may at any time enter the Seller's land or premises and remove the Goods and any materials or parts to which the Buyer has title (subject to the Seller's reasonable site access requirements) provided that the Buyer has paid the Seller any additional expenditure reasonably incurred by the Seller which is directly attributable to the Order prior to the date any such Goods, materials or parts are removed.

14. **TIME**

- 14.1 Time is of the essence for the performance of the Order by the Seller.
- 14.2 The Seller must advise the Buyer in writing immediately if the Seller foresees any delay in performance of this Order. The Seller must take all steps (at its own cost) to minimise any delay. If the delay is caused by an act or omission of the Buyer, the Seller will be entitled to make a claim for costs incurred to minimise the delay. Any claim must be made in writing (accompanied with evidence, satisfactory to the Buyer acting reasonably, of the costs incurred) within 14 days (or such other period as the parties may agree) after the Seller incurs the costs.
- 14.3 If the Seller does not perform its obligations in a timely fashion and provided the delay is not caused by an act or omission of the Buyer, the Buyer may, in addition to any other right, require the Seller to do, at the Seller's expense, whatever is needed to ensure delivery of the Goods and/or performance of the Services on or as close to the specified date as possible, for example, by paying premium freight charges or undertaking work outside of ordinary operating hours.

15. **INSPECTION AND REJECTION OF GOODS AND/OR SERVICES**

- 15.1 If the Buyer pays for the Goods before they arrive at the place of delivery specified in the Order, the Goods are ordered subject to inspection by the Buyer upon arrival.
- 15.2 The Buyer must have a reasonable time to inspect the Goods after delivery and/or the Services after their performance. The signing of delivery receipts or payment of invoices before inspection does not constitute acceptance of the Goods or the Services.
- 15.3 If upon inspection the Buyer, acting reasonably, forms the view that the Goods and/or the Services do not comply in every way with the terms of this Order, the Buyer may at its option (in its absolute discretion) either:
- (a) reject the Goods; or
 - (b) require the Seller, at no cost to the Buyer, to make good within 5 Business Days of a demand, any loss, damage or defect in the Goods and/or the Services to the satisfaction of the Buyer.
- 15.4 The Seller acknowledges that:
- (a) no inspection by the Buyer during the manufacture of the Goods or prior to their dispatch will affect the Seller's warranties in respect of the Goods; and
 - (b) the Buyer is not taken to have accepted any Goods and/or Services merely because the Buyer has inspected or examined them.
- 15.5 For the avoidance of doubt, even after the Buyer has paid for any Goods and/or Services, the Buyer may claim against the Seller for unsatisfactory, defective or damaged Goods and/or Services or otherwise seek a remedy in accordance with clauses 17.2 and 17.3.
- 15.6 If there is a shortfall in the quantity of Goods delivered, the Buyer may either (in its absolute discretion):
- (a) require the Seller to credit the Buyer for the shortfall; or
 - (b) within 5 Business Days of delivery require the Seller to deliver the outstanding Goods, which the Seller must promptly do at its own cost.

16. **HIRED GOODS**

- 16.1 This clause 16 only applies to hired Goods under the Order (if any).
- 16.2 Unless otherwise specified in the Order, the Buyer will perform all daily/routine checks required for the use of hired Goods as specified in any manuals provided to the Buyer with the Goods on delivery.
- 16.3 To the extent any daily/routine checks or inspection shows any defect or failure in the Goods or a need for repair, the Buyer will notify the Seller and the Seller must promptly repair such Goods in accordance with clause 16.4.
- 16.4 Unless otherwise specified in the Order, the Seller must perform all services, maintenance and repairs of the hired Goods (or replace such Goods or parts of such Goods, to the extent necessary) to ensure the Goods are in good repair and comply with all applicable warranties in clause 17
- 16.5 All services and maintenance will be performed in accordance with any Applicable Laws at times agreed with the Buyer.
- 16.6 The hire fee for the Goods will not be payable for the period the Goods are not used by the Buyer as a result of the need for repairs or the failure of such Goods to comply with the requirements of this Order (including the applicable warranties in clause 17).
- 16.7 The Seller must collect the hired Goods from the location they were delivered to (or other location specified in the Order) at the expiry of the hire term specified in the Order at the cost of the Seller (unless otherwise specified in the Order).
- 16.8 Subject to the Seller's compliance with its maintenance and repair obligations in this clause 16, the Buyer will return the hired Goods in the condition they were delivered in, subject to fair wear and tear.

17. **WARRANTIES**

- 17.1 The Seller represents and warrants that:
- (a) the Seller has full and unencumbered title to the Goods and that they are free from all Security Interests and other encumbrances other than any Security Interest that arises in favour of the Buyer under this document;
 - (b) the Buyer will have the right to undisturbed possession of the Goods;
 - (c) the Goods correspond to their description and to any sample or demonstration model (if applicable);
 - (d) the Goods and/or Services conform in every way with any relevant specification including (without limitation) any performance requirement for the Goods or Services identified in the specification;
 - (e) the Goods and/or Services comply with any Applicable Laws (including the Building Code of Australia and the standards of the Standards Australia) and all applicable requirements of any Government Agency;
 - (f) the Goods are of good and merchantable quality;
 - (g) the Goods are new (unless otherwise specified);
 - (h) the Goods and/or Services are free from defects in materials, workmanship and design;
 - (i) the Services and the results of the Services will be rendered with due care and skill and be of high quality and workmanship and otherwise satisfactory to the Buyer;

- (j) the Seller holds and maintains all licences, approvals and permits required in order for it to supply the Goods and/or provide the Services;
- (k) the Goods and/or Services are fit for the Buyer's purpose or if the Buyer's purpose is not known, for all purposes for which the Goods and Services are commonly used;
- (l) the Goods and their packaging and labels:
- (i) are safe and are not a risk to health; and
- (ii) comply with the requirements of all Applicable Laws;
- (m) the information about the Goods given by the Seller to the Buyer at any time (for example, in manufacturer's booklets, or promotional material) is complete and accurate and is not misleading or deceptive or likely to mislead or deceive;
- (n) in entering into and performing its obligations under this document the Seller has not breached, and will not be in breach of, any Applicable Law or obligation owed to another person.
- 17.2 The Seller must, within a reasonable period notified by the Buyer, remedy any defect, error or omission in the Goods which arise within 1 year of the date that the Buyer puts the Goods into service or within 18 months of the date of delivery and/or the completion of installation of the Goods, whichever is earlier. The Seller must, within the reasonable period notified by the Buyer, remedy any defect, error or omission in the Services, which arise within the 1 year period commencing on the date of completion of the Services.
- 17.3 If the Seller fails to remedy any defect, error, omission or default in the Goods or the Services within the reasonable period specified in accordance with clause 17.2 or to the Buyer's reasonable satisfaction, the Buyer may remedy that defect, error, omission or default and any costs incurred by the Seller in doing so shall be a debt due and owing by the Seller to the Buyer.
- 17.4 This Order does not exclude or in any way limit other warranties in the terms applying to the Order or implied by law.
- 17.5 The Seller must provide or procure for the Goods and/or Services, all usual warranties and all trade warranties, and any warranties, which the Buyer specifically requests.
- 17.6 The parties agree that the provisions of the Vienna Convention on the Sale of Goods are expressly excluded from the Order and do not apply to the Order or to any materials, plant or equipment supplied as part of the Works.
18. **PERFORMANCE OF THE SERVICES**
- 18.1 The Seller must, in providing the Services or performing works in connection with the installation, fitting, delivery, hire or commissioning of the Goods:
- (a) ensure the Services or works are performed diligently, competently, with due care and skill and in a proper and professional manner;
- (b) supply all labour, tools, equipment and materials needed to complete the Services or works;
- (c) co-operate, liaise and co-ordinate the Services with the Buyer's operations and any other parties providing Goods and Services to the Buyer so as to not interfere with, impede or delay any other work in progress on the Buyer's premises or site;
- (d) indemnify the Buyer against any loss, damage, claim or liability in connection with the performance of the Services or works or the presence of the Seller's employees, contractors or agents on the Buyer's premises. However, the Seller will not be liable under clause 18.1(d) to the extent the loss, damage, claim or liability was caused, or contributed to, by the Buyer's negligent acts or omissions or the Buyer's wilful misconduct;
- (e) obtain and comply with every permit, licence and approval, and give every notice, required to comply with all Applicable Laws;
- (f) comply with, and ensure that the Seller's employees, agents and contractors comply with, all of the Buyer's site procedures (notified to the Seller at or before the time of this Order or as subsequently notified by the Buyer) including its occupational health and safety requirements (including providing safety data sheets), all applicable industrial awards and agreements and the reasonable directions and Orders of the Buyer and its authorised officers;
- (g) comply with any Applicable Laws including the Building Code of Australia, the standards of the Standards Australia and any other standard or codes which apply to the Services or the works.
- 18.2 If, and to the extent, required under the *Workplace Health and Safety Regulation 2011 (QLD)* or the *Workplace Health and Safety Regulation 2011 (NSW)* (as applicable), the Buyer appoints the Seller as the principal contractor for all work forming part of the Services to which the Regulation applies.
19. **SELLER INDEMNITY**
- 19.1 The Seller must indemnify the Buyer, its employees, agents and contractors for any loss, damage, expense, claim or liability suffered or incurred by the Buyer, its employees, agents and contractors in connection with:
- (a) a breach by the Seller of any warranty contained in clause 17.1;
- (b) a breach by the Seller or its employees, agents and contractors of any provision of this Order; and
- (c) personal injury or death or loss of or damage to any property (including loss of or damage to the Buyer's property) arising out of or as a consequence of the Seller's supply of Goods or performance of the Services under this Order,
- provided that the Seller will not be liable under clause 19(1) to the extent the loss, damage, claim or liability was caused, or contributed to, by the Buyer's negligent acts or omissions or the Buyer's wilful misconduct.
- 19.2 This clause 19 shall survive the termination or completion of this Order.
20. **TERMINATION OF ORDERS**
- 20.1 The Buyer may at its option and without prejudice to any of its other rights, by written notice to the Seller terminate the Order in respect of Goods or Services that have not yet been delivered or provided, if:
- (a) the Seller breaches any of its obligations under the Order and fails to rectify the breach within the period specified in the notice of breach from the Buyer, with such period to be determined by the Buyer acting reasonably; or
- (b) the Seller breaches any of its obligations under the Order and the breach is not capable of being rectified,
- The Seller has no claim for the price of those Goods, remaining period of hire on hired Goods and/or Services or

- for any compensation for that termination.
- 20.2 If an Insolvency Event occurs in relation to the either party, the other party may on written notice to the other party, at its option and without prejudice to any of its other rights, terminate the Order, with such termination to take effect on the date of the notice.
- 20.3 Even if clause 20.1 does not apply, the Buyer may at any time terminate any Order for Goods and/or Services by provision of at least 7 days written notice, but:
- (a) the Buyer must pay for any part of the Goods delivered, hire period that has elapsed for Goods hired and/or Services provided prior to termination and accepted by the Buyer;
 - (b) if the Seller has prior to termination shipped any Goods which have not been delivered to the Buyer at the time of termination, the Buyer may either accept delivery of those Goods, or return them to the Seller at the Buyer's expense (and the Seller has no claim for the price of those Goods or for any compensation for that termination).
 - (c) If, however, the Goods are manufactured or fabricated to the Buyer's specification or to a specification prepared by the Seller for the Buyer:
 - (i) on receiving the notice of termination, the Seller must cease manufacture in accordance with and to the extent specified in the notice and immediately do everything possible to mitigate any costs incurred; and
 - (ii) subject to the Seller complying with clause 20.3(c)(i), the Buyer must pay to the Seller any expenditure reasonably incurred by the Seller prior to the date of the termination which is directly attributable to the Buyer's Order and which the Seller is not able to recoup in some other way.
 - (d) if the Goods are unshipped at the time of termination, the Seller has no claim for the price of those Goods or for any compensation for termination, except to the extent that the Goods are manufactured or fabricated to the Buyer's specification or to a specification prepared by the Seller for the Buyer, and for those Goods:
 - (i) on receiving the notice of termination, the Seller must cease manufacture in accordance with and to the extent specified in the notice and immediately do everything possible to mitigate any costs incurred;
 - (ii) the Buyer must pay to the Seller any expenditure reasonably incurred by the Seller prior to the date of termination which is directly attributable to the Buyer's Order and which the Seller is not able to recoup in some other way; and
 - (iii) where the Buyer makes a payment under clause 20.3(d)(ii), title to and property in the parts or components for use in the Goods and/or incomplete Goods passes to the Buyer upon payment and the Seller must upon the Buyer's demand and at the Seller's cost deliver to the Buyer any such incomplete Goods..
- 20.4 If the Buyer terminates the Order, the termination is without prejudice to any rights or liabilities of the parties under the Order or at law which have accrued on or before the date of termination.
- 20.5 If the Seller does not deliver the Goods and/or perform the Services by the specified date, or supplies any Goods and/or Services, which in the opinion of the Buyer do not comply with every requirement of the terms of the Order and does not remedy the non-compliance within 5 days of the Buyer notifying the Seller of the non-compliance (or such other time period as specified by the Buyer, acting reasonably), the Buyer may purchase or hire replacement goods from a third party or engage another contractor to perform the Services and the difference (if any) between the cost of the replacement goods or services and the price of the Goods or Services (as applicable) will be a debt due and owing from the Seller to the Buyer.
- 20.6 If the Buyer is in breach of clause 6.9 and does not remedy the breach within 30 days of the Seller notifying the Buyer of the breach, the Seller may immediately terminate the Order on written notice to the Buyer. On termination under this clause, the Seller is entitled to amounts due by the Buyer to the Seller for Goods and/or Services provided prior to the date of termination.
21. **CONFIDENTIALITY AND PRIVACY**
- 21.1 Subject to clause 21.3, the Seller must:
- (a) maintain the confidentiality of every enquiry, quotation and tender concerning the supply of Goods and/or Services by the Seller to the Buyer, and of any Order; and
 - (b) not without the prior written consent of the Buyer disclose to any third party the terms of this Order or the fact that it supplies Goods and/or Services to, or has any relationship with, the Buyer or any other information that relates to the supply of Goods and/or Services to the Buyer, other than where such disclosure is to a related body corporate (as defined in the Corporations Act).
- 21.2 Subject to clause 21.3, the Buyer must:
- (a) maintain the confidentiality of any information or documents designated as confidential by the Seller; and
 - (b) obtain the Seller's permission before disclosing to any third party any information or documents described in clause 21.2(a) other than where such disclosure is to a related body corporate (as defined in the Corporations Act), to the Buyer's professional advisors (provided that the advisors are themselves required to maintain the confidentiality of the information) or where such disclosure is reasonably required in order for the Buyer to use the Goods and/or Services provided under this Order.
- 21.3 The obligations in clauses 21.1 and 21.2 do not apply to the extent that the information has become publicly available (other than arising from a breach of this Agreement) or the information is required to be disclosed by law.
- 21.4 If, as a result of this Order, the Seller or Buyer (as applicable) is able to access any information about identifiable individuals held by or on behalf of the other party, then the Seller or Buyer (as applicable) must comply with the *Privacy Act 1988* (Cth) and all other applicable privacy laws and data protection laws which may apply which regulate the collection, storage, use and disclosure of information, and must comply with any privacy policy or direction of the other party.

- 21.5 If the Seller or Buyer suffers a security breach which involves the disclosure of third-party information, whether or not that information relates to the other party, the Seller or Buyer (as applicable) must, as soon as reasonably practicable and without undue delay, provide notice to the other party of the following details:
- (a) the nature and extent of the security breach;
 - (b) the timing of the security breach;
 - (c) if the information disclosed relates to the other party, particulars of that information; and
 - (d) the measures being taken to remedy the breach and improve security.
- 21.6 This clause 21 shall survive the termination or completion of this Order.
22. **INTELLECTUAL PROPERTY RIGHTS**
- 22.1 The Seller warrants that the sale or use of any Goods and/or Services by the Buyer will not infringe or contribute to the infringement of any intellectual property rights (including rights to patents, designs, copyright, trademarks, trade names, circuit layouts or other protected right) conferred under statute, common law or equity in any country.
- 22.2 The Seller grants the Buyer an irrevocable, royalty free, non-exclusive, fully-assignable, perpetual license to use all intellectual property rights associated with the Goods and/or the Services and any documentation provided pursuant to the Order for the installation, use, support, repair, maintenance and alteration of the Goods or other works.
- 22.3 The Seller must indemnify the Buyer against any loss, claim, damage or expense arising out of or in connection with any claim by a third party that its intellectual property rights have been, or will be, infringed by the Buyer's use of the Goods and/or Services.
23. **IMPORT DUTIES**
- The Seller must pay by the due date all Australian import duties and charges (including GST) payable on the Goods or components and materials imported by it into Australia for use in manufacturing the Goods, and all special duties, such as anti-dumping duties or countervailing duties.
24. **ANTI-BRIBERY, CORRUPTION AND MODERN SLAVERY**
- 24.1 The Seller must ensure that (unless the Buyer has given its prior written consent) no person for whom the Seller is responsible:
- (a) gives or receives any commission, fee, rebate, gift or entertainment of significant cost or value in connection with the Goods and/or Services; or
 - (b) enters into any business agreement with any director, employee or agent of the Buyer, other than an agreement they make as a representative of the Buyer.
- 24.2 The Seller represents, warrants and undertakes that in the course of operating its business (including the performance of this Order) the Seller:
- (a) has complied with all Anti-Bribery and Corruption Laws and Modern Slavery Laws;
 - (b) will take reasonable steps to ensure there is no Modern Slavery in its supply chains or in its subcontractor's supply chains;
 - (c) will notify the Buyer as soon as it becomes aware of any actual or suspected Modern Slavery in a supply chain which has a connection with this Order; and
- (d) will as soon as reasonably practicable take all reasonable action to address or remove any Modern Slavery practices identified in its operations and supply chains used in the performance of this Order, including where relevant by addressing any practices of other entities in its supply chains.
25. **INSURANCE**
- 25.1 Unless stated otherwise in the Order, the Seller must, at its own cost, procure and maintain (and if applicable ensure its sub-contractors procure and maintain) the following minimum insurances with a Reputable Insurer carrying on general business in Australia:
- (a) public and products liability with a limit of indemnity of not less than \$5,000,000 for any one occurrence claim;
 - (b) workers' compensation insurance covering liability for death or injury to persons employed the Seller, including liability by statute and at common law, including where applicable the *Coal Industry Act 2001* (NSW);
 - (c) Property damage insurance covering all plant, equipment and motor vehicles owned, leased or hired by the Seller used in connection with the Order with coverage for an amount of not less than \$5,000,000 for each and every claim;
 - (d) if the Order requires the Seller to use or provide the use of motor vehicles, comprehensive motor vehicle liability insurance with coverage for an amount of not less than \$5,000,000 for each and every claim;
 - (e) if the Order requires the Seller to provide professional advice or services, professional liability insurance with coverage for an amount of not less than \$5,000,000 for each claim and every claim;
 - (f) if the Order requires the Seller to be responsible for the transport of Goods or other property owned by the Buyer, goods in transit (carrier) insurance cover for the loss or damage to such property for 100% of replacement value; and
 - (g) any other insurances required by law.
- 25.2 The Seller must ensure the insurances required by clause 25.1 are maintained for the duration of the Order and that professional indemnity insurance (if applicable) is maintained for at least 6 years after the duration of the Order.
- 25.3 At the Buyer's request, the Seller must produce certificates of currency for the insurances required by clause 25.1.
- 25.4 The Seller acknowledges and agrees that the Buyer's receipt of any documentation provided by the Seller in accordance with clause 25.2 or the Buyer allowing the Seller and/or its subcontractors to perform works on site does not constitute a waiver of the requirements set out in this clause 25.4. The Buyer's rights with respect to the Seller failing to take out the necessary insurances specified in clause 25.1 are at all times preserved.
- 25.5 The Buyer may take out and maintain any policy of insurance required by clause 25.1 if the Seller fails to do so at all, or to the level specified in connection with clause 25.1. Any cost or expense incurred by the Buyer in taking out and maintaining any policy of insurance under this clause shall be a debt due and owing by the Seller to the Buyer.

25.6 To the extent the Goods supplied under the Order are for hire and not for purchase, the Buyer will insure, and keep insured the hired Goods for their agreed market value against any risk of theft, loss and damage, while the hired Goods are at the risk of the Buyer under clause 12.

26. LIABILITY OF BUYER

26.1 Subject to clause 26.2:

- (a) the Buyer is not liable for any injury, damage or loss sustained by the Seller or by any employee, contractor or agent of the Seller on the Buyer's premises or at any place of delivery, performance or elsewhere except to the extent that the injury, damage or loss is caused or contributed to by the Buyer's negligence or wilful misconduct.
- (b) the Seller must indemnify the Buyer against, and releases the Buyer from, any claim, cost or demand in connection with any such injury, damage or loss or any injury, damage or loss in connection with the Order or the transaction contemplated by the Order, other than such injury, damage or loss that is caused or contributed to by the Buyer's negligence or wilful misconduct.

26.2 To the extent the Goods supplied under the Order are for hire and not for purchase, the Buyer indemnifies the Seller for any damage to or loss of the hired Goods resulting from the Buyer's negligence or breach of this Order but only while such Goods are at the risk of the Buyer under clause 12.

26.3 Subject to clause 26.4, the maximum liability of the Buyer under clause 26.2 is limited to the total charge for hired Goods under the Order.

26.4 Where loss or damage of the kind referred to in clause 26.2 is recoverable under the insurance policies required under clause 25.6, or would have been covered by the insurance policies required under clause 25.6, but for a wrongful or negligent act or omission of the Buyer or a breach of any of the terms of those insurance policies by the Buyer, the maximum liability of the Buyer under clause 26.2 will be the maximum amount that is recoverable under the relevant insurance policy.

27. ASSIGNMENT AND SUBCONTRACTING

27.1 The Seller must not assign, novate, transfer or otherwise deal with its rights or obligations in relation to this Order (including any part of its rights and obligations) without the prior written consent of the Buyer.

27.2 The Seller must not subcontract the whole or any part of the Services or the production, manufacture or supply of the whole or any part of the Goods without the prior written consent of the Buyer.

27.3 The Buyer's consent to the Seller subcontracting its rights or obligations does not relieve the Seller of any of its obligations under this Order.

27.4 The Buyer may dispose of, declare a trust over or otherwise create an interest in its rights under this document without the consent of any other party, and may disclose to any potential holder of the right or interest any information relating to this document or any party to it, provided that the Buyer takes reasonable steps to satisfy itself that the other party is capable of complying with the Buyer's obligations under this Order, including its obligations under clause 6, and the Buyer subsequently notifies the Seller of any disposition within a reasonable time.

28. AMENDMENT

This document can only be amended, supplemented, replaced or novated by another document signed by the parties.

29. DISPUTES

29.1 If any dispute arises in connection with this Order either party may give written notice of the dispute to the other party. A party giving written notice of the dispute must provide details of the dispute and give reasons for why the party is disputing the issue.

29.2 Within 14 days after service of a notice of dispute, the parties' respective contract representatives must attempt to resolve the dispute. If the parties' contract representatives are unable to resolve the dispute within 14 days of service of notice of dispute, the dispute must be referred to the parties' respective senior management at a level deemed appropriate by each party given the nature of the dispute provided such representative has authority to agree to a resolution of the dispute. In the event that the dispute cannot be resolved after a further 10 days or if at any time either party considers that the other party is not making reasonable efforts to resolve the dispute, either party may commence litigation proceedings or take any other action.

29.3 In the event of a dispute, the parties must continue to comply with their obligations under the Order.

29.4 Nothing in this clause 29 will prevent a party from:

- (a) instituting proceedings to seek urgent injunctive interlocutory or declaratory relief in respect of a dispute; or
- (b) commencing litigation in respect of a dispute in relation to the indemnities under this Order.

30. NOTICES

30.1 A notice, consent or other communication in connection with this Order is only effective if it is in writing, signed and either left at the addressee's address, sent to the addressee by mail or sent to the addressee by email. If it is sent by mail, it is taken to have been received 7 Business Days after it is posted. If it is sent by email, it is taken to have been received at the time shown in the delivery report generated by the sender's email system unless it was sent after 5pm, in which case the notice will be taken to be received at 9am on the following Business Day. The parties must ensure that notices issued in accordance with this clause are also copied to the email addresses of the other party's personnel involved in the administration of this Order.

30.2 The Seller's address is set out in the quotation. The Buyer may send a notice to the Seller's last known address.

31. GST ON CLAIMS

31.1 If the Seller provides a payment for or any satisfaction of a Buyer's claim or a Buyer's right to claim under or in connection with this document (for example, for a breach of any warranty or for indemnity or for reimbursement of any expense) that gives rise to a liability for GST, the Seller must pay, and indemnify the Buyer on demand against the amount of that GST.

31.2 If the Buyer has a claim under or in connection with this document for a cost on which the Buyer must pay an amount for GST, the claim is for the cost plus the amount for GST (except any amount for GST for which the Buyer is entitled to an input tax credit).

31.3 If the Buyer has a claim under or in connection with this Order whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

32. **APPLICABLE LAW**

- 32.1 The parties accept that the Order will be governed by the laws of Queensland.
- 32.2 Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Order, and waives any right it might have to claim that those courts are an inconvenient forum.

33. **WAIVER**

- 33.1 A right of the Buyer or Seller may only be waived in writing, signed by the relevant party.
- 33.2 No other conduct of the Buyer or Seller (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.
- 33.3 A waiver of a right by the Buyer or Seller on one or more occasions does not operate as a waiver of that right if it arises again.
- 33.4 The exercise of a right by the Buyer or Seller does not prevent any further exercise of that right or of any other right.

34. **AGREEMENT**

- 34.1 No terms and conditions of sale of the Seller form part of the terms and conditions on which any Goods and/or Services are provided. No terms stated by the Seller when accepting or acknowledging an Order are binding upon the Buyer unless accepted in writing by the Buyer.
- 34.2 Any right that the Buyer may have under this Order is in addition to, and does not replace or limit, any other right that the Buyer may have.
- 34.3 Any provision of this Order which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Order enforceable, unless this would materially change the intended effect of this Order.

35. **SET OFF**

Any amount due and payable by the Seller to the Buyer or any amount to be borne by the Seller in connection with this Order (including, but not limited to, under clauses 8.2, 14.3, 15.6 and 19.2) may be set off by the Buyer against any amount owing by the Buyer to the Seller, and the Buyer may recover any net amount as a debt due to the Buyer