

## STANDARD TERMS AND CONDITIONS OF SALE

I/We, the Buyer, agree to the following terms and conditions for the supply or purchase of Product from Freedom Fuels Australia Pty Ltd A.C.N. 093 244 761, Trinity Petroleum Services Pty Ltd A.C.N. 010 708 102 and Associated Entities:

### 1. DEFINITIONS

1.1. The meaning of the terms used in these Terms are set out below:

1.1.1. **Acceptance** means when:

1.1.1.1. Delivery is effected; and

1.1.1.2. the Buyer does not issue a Non Conformance Notice and accepts the Product;

1.1.2. **Agreement** means these Terms, any other agreement or contract between the Seller and the Buyer, Credit Application, Quote and the Invoice;

1.1.3. **Associated Entities** means all entities that are an associated entity of the Seller as defined in the Corporations Act 2001 (Cth);

1.1.4. **Australian Consumer Law** means the Australian Consumer Law as defined in the Competition and Consumer Act 2010 (Cth);

1.1.5. **Business Day** means a day, other than a Saturday, Sunday or public holiday, on which banks are open for business in Brisbane, Queensland, Australia;

1.1.6. **Buyer** means the person, organisation, corporation, business specified in the Quote or Invoice buying the Product from the Seller;

1.1.7. **Confidential Information** means:

1.1.7.1. the Agreement, the relationship between the parties and the contents of all negotiations leading to preparation of the Agreement;

1.1.7.2. any information that is disclosed to the Recipient or Recipient's Representative by or on behalf of a Disclosing Party or the Disclosing Party's Representative for the Agreement, including, but not limited to:

1.1.7.2.1. information derived or produced partly or wholly from the Confidential Information including any calculation, conclusion, summary or computer modelling;

1.1.7.2.2. any sales or customer data or business plans and forecasts of the Parties; and

1.1.7.3. any other information that would otherwise at Law be considered secret or confidential information of the Party; whether or not marked "Confidential" BUT does not include information which:

1.1.7.4. at the time of first disclosure by the Disclosing Party to the Recipient is already in the public domain;

- 1.1.7.5. after disclosure by the Disclosing Party to the other Recipient, becomes part of the public domain otherwise than by disclosure in breach of the terms of this Agreement; or
- 1.1.7.6. after disclosure by the Disclosing Party to the Recipient, is gained by the other Recipient from a third party, who is under no obligation of confidentiality to either Party;
- 1.1.8. **Credit Limit** means the limit of the credit granted to the Buyer by the Seller for the Price of Product, including GST, ordered by the Buyer and not paid for before Delivery, which may be set out in an agreement between the Buyer and the Seller or notified to the Buyer in writing by the Seller;
- 1.1.9. **Credit Application** means any request or application for a Credit Limit or credit facility in the Seller's standard form;
- 1.1.10. **Data Protection Laws** means all data protection and privacy Law, regulations and standards applicable to Personal Data, including but not limited to the Privacy Act 1988 (Cth) and any other relevant local, national and international Law;
- 1.1.11. **Delivery** means when the Product is delivered to the Buyer, whether in part or in full, and:
  - 1.1.11.1. if the Product is delivered by a delivery hose, gantry or pipeline, then when the Product passes the inlet flange of the Receiving Tank; or
  - 1.1.11.2. if the Product is delivered to the Delivery Site and is to be unloaded by:
    - 1.1.11.2.1. the Seller or the Seller's third party engaged to effect Delivery, then upon unloading the Product at the Delivery Site; or
    - 1.1.11.2.2. the Buyer, then upon the Buyer making any attempt to lift or unload the Product from the delivery method;
  - 1.1.11.3. if the Product is collected by the Buyer, whether from the Seller's site or the Seller's method of delivery, upon the Buyer making any attempt to lift or unload the Product;
- 1.1.1. **Delivery Date** means the date estimated or anticipated for Delivery;
- 1.1.2. **Delivery Site** means the location or destination of the Buyer for Delivery;
- 1.1.3. **Delivery Time** means the time or hours of time on the Delivery Date estimated or anticipated for Delivery;
- 1.1.4. **Deposit** means the deposit to be paid by the Buyer for the Order as specified in the Invoice;
- 1.1.5. **Disclosing Party** or **Disclosing Party's Representative** means the party disclosing the Confidential Information;
- 1.1.6. **Event of Default** means:
  - 1.1.11.4. a Party breaches these Terms or the Agreement and the breach cannot be remedied;
  - 1.1.11.5. a Party breaches these Terms or the Agreement and the breach is not remedied within 28 days after the other Party gives a written notice requiring the breach to be remedied;
  - 1.1.11.6. if the Buyer exceeds the Credit Limit;
  - 1.1.11.7. an Insolvency Event occurs;

- 1.1.11.8. a Party commits fraud in connection with this Agreement;
- 1.1.11.9. the Buyer fails to pay an amount due in accordance with the Payment Terms; or
- 1.1.11.10. a Party operates in a way that, in the reasonable opinion of the other Party, endangers the environment or public health and safety;
- 1.1.7. **Forecast** means the forecast of the Buyer's requirements for Product to be ordered in accordance with these Terms in a format notified by the Seller;
- 1.1.8. **Force Majeure Event** means anything outside the reasonable control of a Party, including but not limited to, acts of God, peril of the sea, fire, storm, lightening, flood, cyclone, landslide, earthquake, other adverse weather conditions, explosion, accident, national emergencies (whether in fact or Law), acts of the public enemy, war, rebellion, insurrection, sabotage, pandemic, epidemic, quarantine restriction, riots, lock-outs, strikes or other industrial disturbance, uncontrollable delays in transportation, inability to obtain necessary materials, equipment, facilities or qualified employees, breakdown of plant, machinery or equipment or the effect of any applicable Law, orders, rules or regulations;
- 1.1.9. **Government Authority** means any federal, state or local administrative, judicial, executive, legislative or other government entity, department, agency, authority or body;
- 1.1.10. **GST** means the goods and services tax under the GST Act;
- 1.1.11. **GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and includes other GST related Law;
- 1.1.12. **Inspection** means the Buyer or Seller inspecting the Product after Delivery to assess whether the Product delivered to the Buyer at the Delivery Site reasonably complies with the Order, the Invoice, the Specifications, is not defective, contaminated or is Non Conforming Product;
- 1.1.13. **Inspection Period** means within 5 Business Days after Delivery;
- 1.1.14. **Invoice** means the tax invoice issued by the Seller for:
  - 1.1.14.1. the type of Product/s that Delivery has occurred; and
  - 1.1.14.2. the quantity or volume of Product that Delivery has occurred;
  - 1.1.14.3. the Price; and
  - 1.1.14.4. the Payment Terms;
- 1.1.15. **Intellectual Property** means:
  - 1.1.15.1. the Trade Marks, trade mark rights and logos owned or licensed by the Seller;
  - 1.1.15.2. all patent rights, design rights, copyright and all other intellectual property rights, including but not limited to service marks, domain names, database rights, colour schemes, owned or licensed by the Seller;
  - 1.1.15.3. all business names, company names and other names owned or licensed by the Seller;
  - 1.1.15.4. any Confidential Information disclosed by the Seller;
- 1.1.16. **Law** means laws made by parliament (laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under

them, and consolidations, amendments, re-enactments or replacements of any of them), common law and principles of equity;

- 1.1.17. **Leadtime** means the time from placing an Order until the Product/s are ready to be freighted, shipped, carried or available for Delivery as notified by the Seller;
- 1.1.18. **Non Conforming Product** means Product delivered that does not reasonably comply with the Order, the Invoice, the Specifications, are defective or contaminated, including the quantity and quality of the Product;
- 1.1.19. **Oilcode** means the *Competition and Consumer (Industry Codes – Oil) Regulations 2017*, as amended from time to time and any other regulations prescribed as mandatory code governing the petroleum marketing industry;
- 1.1.20. **Order** means an order placed by the Buyer to buy the Product and for the Product to be delivered by the Seller to the Buyer setting out:
  - 1.1.20.1. The type of Product;
  - 1.1.20.2. the quantity or volume of Product;
  - 1.1.20.3. the Delivery Site;
  - 1.1.20.4. the Delivery Date the Buyer requests for the Order to be delivered; and
  - 1.1.20.5. any instructions for Delivery;
- 1.1.21. **Parties** or **Parties** means both the Seller and the Buyer;
- 1.1.22. **Payment Terms** means the terms of how the Price is to be paid by the Buyer to the Seller set out in the Agreement, Invoice or as notified by the Seller to the Buyer in writing;
- 1.1.23. **Personal Data** means any information relating to an identified or identifiable individual or natural person in accordance with Data Protection Laws;
- 1.1.24. **PPSA** means the Personal Property Securities Act 2009 (Cth) and any similar Law, regulation or rules in relation to security of interest in personal property that applies or may apply in any region, state, county or country that the Buyer is domiciled in, conducts business in or in which these Terms or the Agreement apply;
- 1.1.25. **PPSR** means any register established by the PPSA;
- 1.1.26. **Prescribed Terms** means any terms, conditions, guarantees or warranties which the Law expressly provides may not in respect of these Terms and the Agreement be excluded, restricted or modified, or may be excluded, restricted or modified only to a limited extent, including any guarantee (if any) applying to the supply of Product under the Australian Consumer Law or consumer protection Law in other regions, states, counties or countries;
- 1.1.27. **Price** means the total purchase price for the Product/s or Order as set out in the Invoice;
- 1.1.28. **Privacy Policy** means the Seller's Privacy Policy displayed on the Seller's website at [Privacy | Freedom Fuels](http://www.freedomfuels.com.au/privacy) ([www.freedomfuels.com.au/privacy](http://www.freedomfuels.com.au/privacy));
- 1.1.29. **Product** or **Products** or **Product/s** means the product or products to be supplied by the Seller to the Buyer as set out in the Invoice;
- 1.1.30. **Product Recall** means suspending from supply, recalling or withdrawing Product/s from the marketplace on the direction of the Seller, the Seller's supplier or any Government Authority for any reason, including a breach of an applicable Law, regulation, standard or code;

- 1.1.31. **Quote** means an estimate of Price for the Buyer to buy the Product;
- 1.1.32. **Quote Period** means the period of 7 days from the date of the Quote or as set out in the Quote or otherwise notified by the Seller;
- 1.1.33. **Receiving Tank** means the Buyer's tank to receive Delivery, hold and store the Product;
- 1.1.34. **Recipient** or **Recipient's Representative** means the party receiving the Confidential Information;
- 1.1.35. **SDS** means the safety data sheet issued by the Seller;
- 1.1.36. **Security** means the form of security set out in the Agreement or in written notice by the Seller to the Buyer and in a form acceptable by the Seller;
- 1.1.37. **Seller** means Freedom Fuels Australia Pty Ltd A.C.N. 093 244 761 and Trinity Petroleum Services Pty Ltd A.C.N. 010 708 102 and Associated Entities;
- 1.1.38. **Specifications** means the standard descriptions and specifications for the Product as detailed in the *Fuel Quality Standards (Automotive Diesel) Determination 2019*, made under the *Fuel Quality Standards Act 2000* (Cth) as amended and replaced;
- 1.1.39. **Terms** means these Terms and Conditions of Sale; and
- 1.1.40. **Trade Marks** means all of the registered and unregistered trade marks, names, brands, logos, slogans and signs owned or licensed by or relating to the Seller, its businesses and the Product/s.
- 1.2. In these Terms, unless the context otherwise requires, references to:
  - 1.2.1. headings are inserted for convenience only and do not affect the interpretation of these Terms;
  - 1.2.2. Law or provisions of Law include changes or re-enactments of the Law and statutory instruments and regulations issued under the Law;
  - 1.2.3. the singular include the plural and vice versa;
  - 1.2.4. a person includes an individual and corporation and vice versa;
  - 1.2.5. grammatical forms of defined words or phrases have corresponding meanings;
  - 1.2.6. a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day, and otherwise, time is a reference to time in Brisbane, Queensland;
  - 1.2.7. an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia unless otherwise stated;
  - 1.2.8. the words "include", "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
  - 1.2.9. anything that is to be done on a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next Business Day;
  - 1.2.10. a Party are intended to bind their executors, administrators and permitted transferees; and
  - 1.2.11. anything, including any amount, is a reference to the whole and each part of it.

## 2. AGREEMENT

- 2.1. The Seller agrees to sell the Product to the Buyer and the Buyer agrees to buy the Product from the Seller on these Terms.
- 2.2. The Agreement is formed when the Buyer places an Order for Product and the Seller accepts the Order.
- 2.3. In the event of any conflict or inconsistency between these Terms, any other agreement or contract between the Seller and the Buyer and the Invoice, the order of precedence is:
  - 2.3.1. agreement or contract between the Seller and the Buyer, then;
  - 2.3.2. Credit Application, then;
  - 2.3.3. these Terms, then;
  - 2.3.4. Invoice, then;
  - 2.3.5. the Buyer's terms, if any.

### 3. QUOTE, ORDER AND PAYMENT

- 3.1. The Seller may provide a Quote to the Buyer.
- 3.2. A Quote:
  - 3.2.1. is subject to these Terms;
  - 3.2.2. is not an offer by the Seller to sell the Product;
  - 3.2.3. is valid for the Quote Period and expires at the expiration of the Quote Period;  
and
  - 3.2.4. may be withdrawn by the Seller at any time during the Quote Period by notice in writing to the Buyer.
- 3.3. It is the responsibility of the Buyer to satisfy itself with the Specifications and the Buyer understands, acknowledges and accepts the Specifications.
- 3.4. If Part 2 of the Oilcode applies to these Terms and the Agreement, the Buyer acknowledges it was given the option, prior to entering into these Terms or the Agreement, of purchasing the Products at a price determined under subsection 7(3) of Oilcode.
- 3.5. The Buyer may provide a Forecast to the Seller and the Buyer acknowledges and agrees that the Seller will rely on the Forecast for the purpose of planning and arranging its resources to be able to meet the requirements of the Forecast.
- 3.6. The Buyer may place an Order.
- 3.7. The Buyer will ensure that the Order meets the minimum order quantity, order requirements, freight or shipping quantity and freight or shipping requirements notified by the Seller.
- 3.8. The Seller may accept or reject the Order by notifying the Buyer in writing as soon as reasonably practicable after receiving the Order.
- 3.9. An Order is not binding on the Seller until the Order is accepted by the Seller.
- 3.10. The Seller will issue an Invoice to the Buyer for the Order.
- 3.11. The Seller may require the Buyer to pay a Deposit upon acceptance of the Order before the Product/s are packed and are ready for Delivery.
- 3.12. The Buyer will pay to the Seller the Price in accordance with the Payment Terms.
- 3.13. If the Buyer fails to pay the Seller the Price in accordance with the Payment Terms, the Buyer will be in default of these Terms and the Agreement.

- 3.14. The Buyer will ensure it does not exceed the Credit Limit.
- 3.15. The Seller may, at any time, vary the Payment Terms or vary, suspend, terminate or withdraw the Credit Limit by written notice to the Buyer with immediate effect, where:
  - 3.15.1. the Buyer exceeds the Credit Limit; or
  - 3.15.2. the Buyer does not pay the amount due under this Agreement or within the Payment Terms; or
  - 3.15.3. the Seller reasonably believes that the ability of the Buyer to pay in accordance with the Payment Terms or the Credit Limit has materially changes since the date the Seller gave notice of the Payment Terms or Credit Limit; or
  - 3.15.4. the Seller's trade credit insurer varies, suspends, terminates or withdraws the Seller's trade credit insurance for the Buyer.
- 3.16. The Buyer acknowledges that if the Seller varies, suspends, terminates or withdraws the Credit Limit, the Agreement is not varied, suspended or terminated and the Buyer will comply with its obligations under this Agreement and will be liable for all Price which exceeds the Credit Limit.
- 3.17. The Buyer will provide financial information and documents requested by the Seller for the purpose of the Seller establishing, maintaining or varying the Credit Limit and the Seller's trade credit insurance.
- 3.18. If the total amount of all Invoices issued to the Buyer but not paid under this Agreement to the Seller at any time exceeds the Credit Limit, or if Delivery of Product to the Buyer would result in the Credit Limit being exceeded, the Seller may:
  - 3.18.1. delay or suspend Delivery of Product until the exceeding of the Credit Limit is rectified; or
  - 3.18.2. arrange Delivery of Product only on a cash on delivery basis until the exceeding of the Credit Limit is rectified; or
  - 3.18.3. require the Buyer to make immediate payment to the Seller to rectify the exceeding of the Credit Limit or to ensure that the Delivery of Product will not result in the Credit Limit being exceeded.
- 3.19. If the Buyer disputes an Invoice, wholly or in part, the Buyer shall give notice to the Seller within 3 Business Days of the date of the Invoice.
- 3.20. If the Buyer does not give notice pursuant to clause 3.19, the Buyer is deemed to have accepted the Invoice as correct.
- 3.21. The Buyer agrees to pay the Invoice in full in accordance with the Payment Terms without offset, discount or other deduction.

#### **4. DELIVERY**

- 4.1. The Buyer acknowledges that there is a Leadtime.
- 4.2. Upon the Seller accepting the Order pursuant to clause 3.8, the Seller will:
  - 4.2.1. arrange Delivery of the Product in any manner selected by the Seller; and
  - 4.2.2. notify the Buyer of the Leadtime, the Delivery Date and Delivery Time.
- 4.3. Any Delivery Date and Delivery Time provided by the Seller are an estimate only.
- 4.4. The Seller will notify the Buyer as soon as reasonably practicable of any changes to the Delivery Date or Delivery Time.
- 4.5. The Seller may suspend or delay Delivery or further Delivery, in its absolute discretion,:



- 4.5.1. until the Buyer has paid the Price in accordance with the Payment Terms;
- 4.5.2. if the Buyer has exceeded the Credit Limit;
- 4.5.3. if, in the Seller's reasonable opinion,:
  - 4.5.3.1. the Buyer is unable to pay the Price in accordance with the Payment Terms;
  - 4.5.3.2. the Buyer is in default of these Terms or the Agreement;
  - 4.5.3.3. the Delivery Site or Receiving Tank:
    - 4.5.3.3.1. is not suitable for Delivery; and/or
    - 4.5.3.3.2. does not comply with clauses 5.1.1, 5.1.2, 5.1.3, 5.1.8 and 5.1.9;
  - 4.5.3.4. the Buyer's truck or other vehicle is not safe or suitable for Delivery;
  - 4.5.3.5. an order, demand, requirement, recommendation or request by a Government Authority results in the Delivery being uncommercial or uneconomical to the Seller; or
- 4.5.4. for any reason.
- 4.6. While the Seller will use its best and reasonable commercial endeavours to effect and achieve Delivery by the Delivery Date and/or Delivery Time or a Delivery Date and/or Delivery Time requested by the Buyer,:
  - 4.6.1. the Seller does not guarantee or warrant Delivery by the Delivery Date, Delivery by the Delivery Time or a Delivery Date and/or Delivery Time requested by the Buyer;
  - 4.6.2. the Seller is not liable at all for any loss arising out of, or in connection to,:
    - 4.6.2.1. delay, suspension or termination of Delivery due to the Buyer exceeding the Credit Limit;
    - 4.6.2.2. early Delivery before the Delivery Date, Delivery Time or Delivery Date or Delivery Time requested by the Buyer; or
    - 4.6.2.3. delay in Delivery after the Delivery Date, Delivery Time or Delivery Date or Delivery Time requested by the Buyer; or
    - 4.6.2.4. demurrage costs;
    - 4.6.2.5. clause 4.5, and

the Buyer is not entitled to be compensated by the Seller for any loss or damage arising from any delay in Delivery or early Delivery.
- 4.7. If the Buyer requires the Delivery Date or Delivery Time to be extended to a later date or time:
  - 4.7.1. the Buyer must request an extension of the Delivery Date or Delivery Time at least 2 Business Days before the earlier of the Delivery Date or 2 Business Days before the estimated shipping date notified by the Seller (**Extension Request**); and
  - 4.7.2. the Seller is to give notice to the Buyer within 2 Business Days of receiving the Extension Request stating:
    - 4.7.2.1. whether the Seller approves the extension of the Delivery Date (**Extended Delivery Date**) or Delivery Time (**Extended Delivery Time**); and



- 4.7.2.2. the reasonable charges, costs, expenses, losses or interest incurred by the Seller as a result of the Extension Request, Extended Delivery Date or Extended Delivery Time that are to be paid by the Buyer as result of the Extended Delivery Date or Extended Delivery Time, including, but not limited to,
- 4.8. If the Seller does not approve the Extension Request pursuant to clause 4.7.2:
  - 4.8.1. the Delivery Date or Delivery Time is to remain unchanged; and
  - 4.8.2. the Seller will arrange Delivery of the Product in accordance with the Order and the Agreement.
- 4.9. The Seller reserves the right to deliver the Product in an Order by instalments.
- 4.10. If the Seller delivers the Product in an Order by instalments, the Buyer shall not be entitled to:
  - 4.10.1. terminate or cancel the Order or Agreement; or
  - 4.10.2. recover from the Seller any claim, loss or damage howsoever arising by the Seller delivering the Product/s in an Order in instalments.
- 4.11. The quantity or volume of the Product delivered to the Buyer will be measured at ambient temperature, unless other advised in writing by the Seller.
- 4.12. If the Buyer does not take or accept Delivery or does not provide the Seller with proper instructions for Delivery, the Buyer is to pay all reasonable costs incurred by the Seller as a result of the Buyer not taking or accepting Delivery, such as, but not limited to, freight, storage, insurance and other costs.
- 4.13. The Seller may provide a delivery docket or bill of lading at the time of Delivery.
- 4.14. The Buyer must sign the delivery docket or bill of lading if requested by the Seller.
- 4.15. The delivery docket or bill of lading shall be conclusive evidence of Delivery being effected, whether signed or unsigned by the Buyer.

## 5. BUYER'S OBLIGATIONS

- 5.1. The Buyer will:
  - 5.1.1. comply with all applicable Law and the policies, standards and other requirements of any Governmental Authority in relation to the unloading, discharge, storage, handling or use of the Product/s supplied under these Terms and the Agreement;
  - 5.1.2. ensure the Delivery Site, the Receiving Tank and ancillary facilities are suitable for Delivery and complies with:
    - 5.1.2.1. all relevant and applicable Law, regulations, standards and requirements, including environmental, health and safety requirements; and
    - 5.1.2.2. the Seller's reasonable requirements in relation to environmental protection, health and safety, maintenance and other standards and ancillary requirements, as notified to the Buyer;
  - 5.1.3. ensure that the Seller will have access to and use of facilities at the Delivery Site as the Seller deems necessary to effect Delivery safely;
  - 5.1.4. allow a reasonable time for the Seller to effect Delivery;

- 5.1.5. take Delivery on the Delivery Date, at the Delivery Time as notified by the Seller and in accordance with the Seller's directions;
- 5.1.6. ensure there is sufficient ullage and secondary spill containment for the Product, if needed;
- 5.1.7. ensure that Delivery is able to be effected promptly upon the Seller's method of delivery arriving at the Delivery Site;
- 5.1.8. ensure that the Seller's method of delivery will be able to safely and promptly access, use and depart the Delivery Site, including between the public roadway and the actual point of unloading;
- 5.1.9. provide all necessary equipment and competent personnel for the Delivery, if required by the Seller;
- 5.1.10. provide a copy of the SDS and any other health, safety and environmental information to relevant third parties if required;
- 5.1.11. fully cooperate with the Seller in any Product Recall or consumer protection investigation in relation to the Product.

## **6. RISK, TITLE AND OWNERSHIP**

- 6.1. Risk in the Product:
  - 6.1.1. remains with the Seller up to Delivery;
  - 6.1.2. passes to the Buyer upon Delivery.
- 6.2. For the purpose of this clause,:
  - 6.2.1. the Seller will maintain appropriate insurance for the Product, public liability and may maintain trade credit insurance with a reputable insurer; and
  - 6.2.2. the Buyer shall within 2 Business Days do anything reasonably required by the Seller or the Seller's insurer to maintain insurances in accordance with this clause.
- 6.3. Title in the Product passes from the Seller to the Buyer upon the later of:
  - 6.3.1. payment for all amounts owing by the Buyer to the Seller being received by the Seller; or
  - 6.3.2. Acceptance.
- 6.4. If Delivery occurs before title in the Product passes to the Buyer:
  - 6.4.1. the Buyer must ensure the Product is properly stored and adequately insured;
  - 6.4.2. the Buyer grants to the Seller a right to enter any premises, location or building occupied by the Buyer or where the Product is located for the purpose of retaking possession of the Product;
  - 6.4.3. a security interest is created in accordance with clause 9 and clause 9 applies;
  - 6.4.4. and if the Buyer sells or purports to sell any of the Product in which title has not yet passed to the Buyer, then:
    - 6.4.4.1. the Buyer does so as a fiduciary and trustee for the Seller;
    - 6.4.4.2. the proceeds of the sale of the Product are the property of the Seller to the extent of any money owed to the Seller by the Buyer and are to be held on trust for the Seller; and
    - 6.4.4.3. the Buyer must account to the Seller for that portion of the proceeds of sale of the Product on demand.

## 7. CONFORMING PRODUCT – QUANTITY AND QUALITY

- 7.1. The Seller will supply Product in the quantity and quality set out in the Order or Invoice and that conforms with the Specifications.
- 7.2. Upon Delivery, the Buyer will carry out an Inspection of the Product within the Inspection Period. The Buyer must act reasonably in the Inspection.
- 7.3. If, as a result of the Inspection, the Buyer considers that the Product is Non Conforming Product, the Buyer must:
  - 7.3.1. give written notice to the Seller (**Non Conformance Notice**) within the Inspection Period that:
    - 7.3.1.1. the Buyer considers that the Product is Non Conforming Product;
    - 7.3.1.2. the reason the Buyer is not satisfied with the Product and considers the Product to be Non Conforming Product;
    - 7.3.1.3. the Buyer accepts or does not accept the Product; and
    - 7.3.1.4. retain a sample of the Non Conforming Product in accordance with industry standard and customary methods and provide to the Seller for the Seller to test and analyse;
  - 7.3.2. use reasonable endeavours to minimise any loss or damage arising from the Product that it considers may be Non Conforming Product;
  - 7.3.3. promptly deal with any complaint or claim in relation to the Product in a way that will not result in the Seller incurring any liability;
  - 7.3.4. not admit liability on behalf of the Seller to any complaint or claim in relation to the Product without the Seller's prior written consent; and
  - 7.3.5. not resolve or settle any complaint or claim in relation to any Product which may result in the Seller incurring any liability, without the Seller's prior written consent.
- 7.4. If the Buyer issues a Non Conformance Notice:
  - 7.4.1. the Buyer will allow the Seller or an independent party the opportunity to carry out an Inspection within a reasonable time after Delivery;
  - 7.4.2. the cost of the Inspection by the Seller or independent party is to be paid by:
    - 7.4.2.1. the Seller, if, following the Inspection, the Seller or the independent party declares that the Product is Non Conforming Product; or
    - 7.4.2.2. the Buyer, if, following the Inspection, the Seller or the independent party declares that the Product is not Non Conforming Product and does satisfy Specifications, the Order, is not defective and has not been damaged or lost in transit.
- 7.5. If, following the Inspection, the Seller or the independent party declares that the Product is Non Conforming Product:
  - 7.5.1. the Seller will negotiate in good faith with the Buyer to remedy the issue pursuant to clause 12; and
  - 7.5.2. if the negotiation pursuant to clause 7.5.1 does not reach an agreement between the Buyer and the Seller, the Seller will:
    - 7.5.2.1. arrange for the Product to be returned to the Seller as soon as possible or disposed of, at the Seller's discretion; and

- 7.5.2.2. the Seller's liability in relation to Non Conforming Product is limited to:
    - 7.5.2.2.1. replacing the Product; or
    - 7.5.2.2.2. refunding the Price to the Buyer,
- except to the extent the Non-Conforming Product arises out of or in connection with the Buyer's actions or omissions.
- 7.6. Despite clauses 7.3, 7.4 and 7.5, the Buyer will pay the Price in accordance with the Payment Terms without offset, discount or other deduction, except where both Parties agree otherwise.
- 7.7. If the Buyer does not issue a Non Conformance Notice within the Inspection Period, it is deemed:
  - 7.7.1. Acceptance; and
  - 7.7.2. that the Product satisfies the Order, the Invoice, the Specifications, is free from defect and contamination and is not Non Conforming Product.

## 8. GOODS AND SERVICES TAX, DUTIES, CHARGES AND COSTS

- 8.1. If the supply of the Product is a taxable supply pursuant to the GST Act or any other value added taxation Law or regulation, duties, charges or other fees applies to the supply of the Product, the Buyer will be responsible for paying GST and other value added taxation, duties, charges or other fees that may apply in addition to the Price to the Seller.

## 9. SECURITY AND PPSA

- 9.1. In this clause, all words or expressions that are defined in the PPSA have the same meaning as given to them in the PPSA.
- 9.2. The Buyer will:
  - 9.2.1. deliver the Security on terms acceptable to, and in a form and manner required by, the Seller, to the Seller before the start date of the Agreement, as security for the Buyer's obligations under the Agreement;
  - 9.2.2. provide an updated, varied or additional Security to the Seller within 5 business days upon request by the Seller in circumstances where:
    - 9.2.2.1. the Buyer has failed to pay any amount due under this Agreement;
    - 9.2.2.2. the Credit Limit is exceeded by the Buyer;
    - 9.2.2.3. the Seller notifies the Buyer in writing that the Seller agrees to increase the Credit Limit upon the Buyer's request;
  - 9.2.3. provide all information and documents reasonably necessary by the Seller to maintain the Seller's trade credit insurance that may apply to the Buyer.
- 9.3. The Buyer acknowledges and agrees that these Terms and the Agreement constitute a security agreement for the purposes of the PPSA and creates a security interest in all Product and all sale proceeds received by the Buyer for all Product, that have previously been supplied and that will be supplied in the future by the Seller to the Buyer to secure all amounts owed by the Buyer to the Seller.
- 9.4. The Buyer will, and undertakes to,:

- 9.4.1. promptly sign any documents and provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to:
  - 9.4.1.1. register a security interest on the PPSR;
  - 9.4.1.2. register any other document required to be registered by the PPSA; or
  - 9.4.1.3. correct a defect in a statement referred to in clause 9.4.1.1 or 9.4.1.2;
- 9.4.2. indemnify, and upon demand reimburse, the Seller for all expenses incurred, including legal costs and expenses on a solicitor's client basis, and associated with:
  - 9.4.2.1. registering a financing statement or financing change statement on the PPSR or releasing any Product charged and registered on the PPSR;
  - 9.4.2.2. enforcement or attempted enforcement of any security interest granted to the Seller by the Buyer;
- 9.4.3. not register a financing change statement in respect of a security interest without the prior written consent of the Seller;
- 9.4.4. not register, or permit to be registered, a financing statement or a financing change statement in relation to the Product in favour of a third party without the prior written consent of the Seller;
- 9.4.5. immediately advise the Seller of any material change in its business practices of selling the Product which would result in a change in the nature of proceeds derived from such sales.
- 9.5. The Buyer waives their right to receive notices under the PPSA.
- 9.6. The Buyer consents and appoints the Seller to be an interested person and authorised representative for the purposes of the PPSA.
- 9.7. The Parties agree that, for the purposes of sections 115(1) and 115(7) of the PPSA and to the extent permitted by Law,:
  - 9.7.1. the Seller is not required to comply with sections 95, 118, 121(4), 125, 130, 132 (and particularly sections 132(3)(d) and 132(4)), 135 and 137(3); and
  - 9.7.2. section 142 and 143 are excluded.
- 9.8. The Buyer must unconditionally ratify any actions taken by the Seller under this clause 9.
- 9.9. Subject to any express provisions to the contrary nothing in these Terms and the Agreement is intended to have the effect of contracting out of any of the provisions of the PPSA.

## 10. PRODUCT RECALL

- 10.1. The Seller or the Buyer must notify the other Party as soon as reasonably practicable in writing after becoming aware of any need for a Product Recall.
- 10.2. A Product Recall is not to be initiated at any time without the Seller's approval.
- 10.3. If a Product Recall is required:
  - 10.3.1. the Buyer shall:
    - 10.3.1.1. not make, or authorize or cause to be made, any public announcement relating to the Product Recall unless it has the prior written consent of the Seller;

- 10.3.1.2. provide reasonable assistance to the Seller to manage and carry out the Product Recall;
- 10.3.1.3. comply with the reasonable directions and requirements of the Seller or Government Authority in relation to the Product Recall and effecting the Product Recall;
- 10.3.1.4. consult with the Seller during the Product Recall; and
- 10.3.1.5. cooperate and assist the Seller in investigating the cause of the Product Recall, if requested by the Seller;
- 10.3.2. The Seller shall:
  - 10.3.2.1. take all reasonable steps to effect the Product Recall; and
  - 10.3.2.2. reimburse the reasonable costs of the Product Recall incurred by the Buyer up to the amount recovered by the Seller's relevant insurance policy apportioned for the Buyer, upon recovery from the Seller's relevant insurer and to the extent that the Product Recall was caused by or arose out of the actions or omissions of the Seller.
- 10.4. If, after the investigation of the cause of the Product Recall, the Seller reasonably determines that the Product Recall was caused by the Buyer or any of its agents, the Buyer shall reimburse the Seller for reasonable costs and expenses relating to the replacement, retrieval, segregation, storage, transportation, destruction and/or disposal of affected Product, together with all insurance, legal and other professional costs of the Product Recall.

## 11. TRADE MARKS AND INTELLECTUAL PROPERTY

- 11.1. The Buyer acknowledges and agrees that the Seller owns or is licensed to use the Trade Marks and Intellectual Property.
- 11.2. The Buyer is not permitted to use the Trade Marks and Intellectual Property unless the Seller provides prior written consent and the Buyer uses the Trade Marks and Intellectual Property for the purposes of distributing, selling or consuming the Product/s in accordance with:
  - 11.2.1. these Terms and the Agreement;
  - 11.2.2. the prior written consent of the Seller; and
  - 11.2.3. any instructions, direction or guidelines issued by the Seller.
- 11.3. The Buyer:
  - 11.3.1. acknowledges that it has no proprietary right or interest in the Trade Marks and Intellectual Property;
  - 11.3.2. will not claim any right, title or interest in, or to, or in any way question, dispute or infringe the Trade Marks and Intellectual Property;
  - 11.3.3. shall promptly return the Trade Marks and Intellectual Property to the Seller and immediately cease use of the Trade Marks and Intellectual Property upon request by the Seller or upon termination or expiration of the Agreement;
  - 11.3.4. shall not copy or provide the Trade Marks or Intellectual Property to any third Party without the Seller's express prior written consent; and
  - 11.3.5. shall not apply to register or attempt to register anywhere in the world any trade marks or intellectual property rights that is the same, substantially or

deceptively similar to the Trade Marks and Intellectual Property, nor aid or abet anyone else to do so.

- 11.4. The Buyer acknowledges and agrees that any variation, modification, derivation or improvement made to the Trade Marks and Intellectual Property, whether attributable in whole or in part to the Buyer, will become and remain the property of the Seller, and the Buyer assigns to the Seller any intellectual property rights in the variation, modification, derivation or improvement made to Trade Marks and Intellectual Property.

## 12. CONFIDENTIALITY

- 12.1. The Confidential Information must be held confidential by the Parties.
- 12.2. The Parties must not use any or all of the Confidential Information for any purpose other than to give effect to this Agreement.
- 12.3. The Parties must not disclose the Confidential Information or grant or permit access to the Confidential Information, to any person without the prior written consent of the other Party (which will not be unreasonably withheld), except for disclosure to:
  - 12.3.1. any Associate Entity of the Party that has a clear need to use the Confidential Information and agrees to keep the Confidential Information confidential in accordance with this clause;
  - 12.3.2. any director, officer, employee, financier or adviser of the Party or of an Associated Entity of the Party, who has a clear need to use the Confidential Information and agrees to keep the Confidential Information confidential; or
  - 12.3.3. pursuant to any Law, or to any regulatory body or Governmental Authority.
- 12.4. A Party will be liable for any breach of this clause by its employees, agents or contractors.
- 12.5. The obligations of this clause survive the expiry or termination of the Agreement.

## 13. DISPUTE RESOLUTION

- 13.1. If a dispute or difference arises between the Parties and a Party requires it to be resolved, that Party must give the other relevant Party written notice identifying, and giving details of, the dispute or difference (**Dispute**).
- 13.2. Within 5 Business Days of a Party receiving the notice referred to in clause 13.1, the Managing Directors or appointed senior executives of each Party must meet and in good faith attempt to resolve the dispute or difference.
- 13.3. If the Parties cannot resolve the Dispute within 15 Business Days of the notice referred to in clause 13.1, either Party may require, by written notice, the Dispute to be referred to mediation (**Mediation**).
- 13.4. The mediator to be appointed must be agreed by the Parties within 5 Business Days of the written notice required in clause 13.3, but failing agreement, appointed by:
  - 13.4.1. if the Dispute is about a valuation, accounting or financial issue, the President of the Institute of Certified Practising Accountants; or
  - 13.4.2. otherwise, the President of the Queensland Law Society.



- 13.5. Mediation must occur within 10 Business Days of selection or nomination of a mediator, on such procedural terms as agreed or, failing agreement, as stipulated by the mediator.
- 13.6. The costs of Mediation must be shared equally by the Parties, other than their own costs of them and their advisers considering and attending.
- 13.7. Unless a Party has complied with clauses 13.1 to 13.6, that Party may not commence court proceedings or arbitration relating to a Dispute except where that Party seeks urgent interlocutory relief in which case that Party need not comply with this clause before seeking relief.
- 13.8. Despite the Dispute, the Parties will continue to perform their obligations under these Terms and the Agreement unless otherwise agreed in writing.

## 14. DEFAULT

- 14.1. If an Event of Default occurs, the non-defaulting Party may terminate the Agreement immediately by giving written notice to the defaulting Party.
- 14.2. In addition to clause 14.1, if an Event of Default occurs and unless and until the Event of Default is remedied, the Seller may, in its discretion, immediately:
  - 14.2.1. suspend performance of its obligations under these Terms and the Agreement;
  - 14.2.2. delay, suspend, stop or terminate Delivery of Product;
  - 14.2.3. vary, suspend, terminate or withdraw the Credit Limit;
  - 14.2.4. require the Buyer to pay to the Seller interest on any money not paid in accordance with the Payment Terms from the date of the money being due to be paid at a rate 2% higher than the rate charged by Westpac Banking Corporation on unsecured overdrafts in excess of \$100,000.00 at the time of the money being due to be paid;
  - 14.2.5. demand the Buyer to pay all amounts owing by the Buyer to the Seller;
  - 14.2.6. take back possession of the Product and for this purpose,:
    - 14.2.6.1. the Seller may enter the Buyer's premises or any premises the Product is stored at for the purpose of taking back possession of the Product without any claim for trespass;
    - 14.2.6.2. the Seller may, upon demand, require the Buyer to pay any other expenses, losses, damages and costs incurred by the Seller as a result of taking back possession of the Product;
  - 14.2.7. require the Buyer to pay, upon demand, any expenses, losses, damages and costs incurred by the Seller as a result of the breach or terminating these Terms, the Agreement or the Order within 5 Business Days of the breach or termination of these Terms, the Agreement or the Order; and/or
  - 14.2.8. realise the Security.

## 15. WARRANTIES

- 15.1. The Seller warrants that:
  - 15.1.1. it has legal capacity to enter into these Terms and the Agreement;

- 15.1.2. it has the necessary permits, licences, registrations and accreditations to market, promote, distribute, sell or otherwise supply the Product/s pursuant to these Terms and the Agreement;
- 15.1.3. it will transfer good title to the Product to the Buyer;
- 15.1.4. the Product will conform to the Specifications and any relevant Law.
- 15.2. The Buyer warrants that:
  - 15.2.1. it has legal capacity to enter into these Terms and the Agreement;
  - 15.2.2. it has the necessary permits, licences, registrations and accreditations to buy the Product and to market, promote, distribute, sell or otherwise supply the Product pursuant to these Terms and the Agreement;
  - 15.2.3. the Delivery Site and Receiving Tank will be safe and suitable for Delivery and will comply with:
    - 15.2.3.1. all relevant and applicable Law, regulations, standards and requirements, including environmental, health and safety requirements; and
    - 15.2.3.2. the Seller's reasonable requirements in relation to environmental protection, health and safety, maintenance and other standards and ancillary requirements, as notified to the Buyer;
  - 15.2.4. the Seller will have access to and use of facilities at the Delivery Site as the Seller deems necessary to effect Delivery safely;
  - 15.2.5. the Seller and the method of delivery can safely access, use and depart the Delivery Site;
  - 15.2.6. that the Buyer and the Buyer's personnel and subcontractor, trucks or other vehicles or equipment, comply with relevant and applicable Law, regulations, standards and requirements, including environmental, health and safety requirements and the Seller's reasonable requirements in relation to environmental protection, health and safety, maintenance and other standards and ancillary requirements, as notified to the Buyer.
- 15.3. The Parties agree that the provisions of these Terms and the Agreement and these Terms apply to the maximum effect permitted by the Australian Consumer Law and if there is any inconsistency between the provisions of these Terms, the Agreement and the Australian Consumer Law, the provisions of the Australian Consumer Law apply to the extent of the inconsistency and to enable these Terms and the Agreement to comply with the Australian Consumer Law.

## **16. LIABILITY AND INDEMNITY**

- 16.1. To the full extent permitted by Law, the Buyer is liable for and indemnifies the Seller, including the Seller's directors, officers, agents, employees and successors and assigns, for any loss, claim, expense and damage, whether incurred by or awarded against the Seller, that the Seller sustains or incurs, arising out of or in connection with these Terms or the Agreement including, but not limited to:
  - 16.1.1. a breach of a term of these Terms or the Agreement by the Buyer;
  - 16.1.2. any breach of Law by the Buyer;

- 16.1.3. any negligent, wilful, reckless or unlawful act or omission of the Buyer or any of its personnel in connection with these Terms or the Agreement;
- 16.1.4. any injury or death to any person caused by an act or omission of the Buyer or its personnel;
- 16.1.5. any loss of or damage to real or personal property of the Seller or a third party caused or caused by an act or omission of the Buyer; and
- 16.1.6. a claim by a third party arising from any act or omission of the Buyer or any of its personnel in connection with these Terms or the Agreement,  
except to the extent that the damages are caused by any negligent, wilful, reckless or unlawful act or omission by the Seller or a material breach of a term of these Terms or the Agreement by the Seller.
- 16.2. To the full extent permitted by Law, the Seller is liable for and indemnifies the Buyer, including the Buyer's directors, officers, agents, employees and successors and assigns, for any loss, claim, expense and damage, whether incurred by or awarded against the Buyer, that the Buyer sustains or incurs, arising out of or in connection with this Agreement including, but not limited to:
  - 16.2.1. a breach of a term of these Terms or the Agreement by the Seller;
  - 16.2.2. any breach of Law by the Seller;
  - 16.2.3. the Product/s not meeting the Specifications;
  - 16.2.4. any negligent, wilful, reckless or unlawful act or omission of the Seller or any of its personnel in connection with these Terms or the Agreement; and
  - 16.2.5. any injury or death to any person caused by an act or omission of the Seller or its personnel;
  - 16.2.6. any loss of or damage to real or personal property of the Buyer or a third party caused or caused by an act or omission of the Seller; and
  - 16.2.7. a claim by a third party arising from any act or omission of the Seller or any of its personnel in connection with these Terms or the Agreement,  
except to the extent that the damages are caused by any negligent, wilful, reckless or unlawful act or omission by the Buyer or a material breach of these Terms or the Agreement by the Buyer.
- 16.3. Except as expressly set out in these Terms or the Agreement and except for liability under any Prescribed Terms, to the full extent permitted by Law, all conditions, warranties, guarantees, terms and obligations expressed or implied by Law, common law or otherwise relating to these Terms or the Agreement or to the performance of the obligations by the Seller under these Terms, the Agreement or to the Product are excluded.
- 16.4. The Seller is not liable to the Buyer or to any other person for any indirect, punitive, exemplary, incidental, special or consequential loss or damage suffered by the Buyer arising out of or in connection with these Terms, the Agreement, Quote, Order or Product, including but not limited to loss of profits or anticipated profits, economic loss, claims of customers, costs of money, loss of use of capital or revenue, loss of business opportunity, loss of data or loss or damage resulting from wasted management time irrespective of whether:
  - 16.4.1. the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or

- 16.4.2. the Buyer or any other person previously notified the Seller of the possibility of the loss or damage.
- 16.5. To the extent permitted by Law, the Seller limits its liability and indemnity to the Buyer in respect of any actions brought by a consumer of the Product in respect of loss or damage as a result of a breach of a condition or warranty implied by Law into a contract for the supply of the Product to, including a breach of any implied warranty or the Prescribed Terms,:
- 16.5.1. replacing the Product or the cost of replacing the Product; or
- 16.5.2. supplying equivalent Product to the Buyer or the cost of supplying equivalent products,
- whichever is the lowest amount and at the Seller's discretion.
- 16.6. Despite clauses 16.2, 16.3, 16.4 and 16.5, and to the extent permitted by Law, if the Seller is liable to the Buyer for any reason, the Parties agree that the liability of the Seller, howsoever arising, that in anyway relates to or in connection with these Terms or the Agreement, whether under the Law of contract, tort, the Australian Consumer Law or otherwise, including all costs and expenses, shall be limited to the value of the Product supplied to the Buyer for the month that the event that gave rise to the liability.
- 16.7. The Seller shall be under no liability to the Buyer arising out of or in connection with:
- 16.7.1. any claim or proceeding whatsoever for loss, damage or personal injury resulting from any hazards inherent in the nature of the Product;
- 16.7.2. any changes to the condition and quality of any Product arising from any act or omission following the transfer of risk in that Product, including the Buyer mixing the Product with any additives or other liquids not supplied by the Seller;
- 16.7.3. the Buyer failing to store the Product in accordance with the Law, industry standards, the Seller's instructions and in a reasonably proper manner after Delivery.

## **17. ASSIGNMENT**

- 17.1. The Buyer cannot assign, novate or sell its rights and obligations under these Terms or the Agreement to any other person, entity or organisation unless the Seller consents in writing, which consent must not be unreasonably withheld.
- 17.2. The Seller may assign or novate its rights and obligations under these Terms or the Agreement to any of its Associated Entities.

## **18. FORCE MAJEURE**

- 18.1. If a Party is wholly or partially unable to perform its obligations under these Terms or the Agreement directly or indirectly as a result of a Force Majeure Event, including but not limited to any delay in the Delivery Date, then:
- 18.1.1. as soon as reasonably practicable after the Force Majeure Event arises, that Party must notify the other Party of the extent to which the notifying Party is unable to perform its obligations under the Agreement; and
- 18.1.2. that Party may suspend or partially suspend performance of its obligations in accordance with the Agreement for the duration of the delay arising directly out

of the Force Majeure Event, up to 30 days from the termination of the Force Majeure Event.

- 18.2. The Seller is not responsible for any delay in the Delivery Date that may occur as a result of a Force Majeure Event.
- 18.3. If the performance of an obligation is delayed as a result of the Force Majeure Event beyond 60 days, either Party may terminate this Agreement immediately by giving notice to the other Party.
- 18.4. This clause does not apply to any obligation to pay money.

## 19. ANTIBRIBERY COMPLIANCE

- 19.1. The Parties agree to comply with all Law, regulations and policies relating to anti-bribery and anti-corruption to which either Party is subject to.

## 20. DATA PROTECTION LAWS

- 20.1. The Parties acknowledge that the Data Protection Laws governs the processing of Personal Data.
- 20.2. The Parties shall take all measures to ensure that the conduct and operation of its business is in compliance with Data Protection Laws.
- 20.3. The Seller will collect and deal with all Personal Data in accordance with the Privacy Policy.
- 20.4. The Buyer:
  - 20.4.1. acknowledges, agrees and accepts that the Seller may collect Personal Data of the Buyer and its affiliates for the purpose of this Agreement, including for the purpose of disclosing to third parties in the ordinary course of business, for establishing a Credit Limit, for conducting a credit history report, for the processing of complaints or debt recovery, disclosing to recipients within Australia and overseas, including Japan and Singapore; and
  - 20.4.2. consents to the Seller collecting, dealing with and disclosing Personal Data of the Buyer and its affiliates in accordance with the Data Protection Laws, the Privacy Policy and this clause 20.

## 21. MODERN SLAVERY AND HUMAN TRAFFICKING

- 21.1. The Parties agree, warrant and undertake that they shall:
  - 21.1.1. comply with all applicable modern slavery and human trafficking Law, regulations and standards in force from time to time including, but not limited to, the Modern Slavery Act 2018 (Cth) any other relevant, local, national and international Law aimed at preventing modern slavery and human trafficking; and
  - 21.1.2. take reasonable steps to ensure that there is no modern slavery and/or human trafficking in any part of their business, operations, logistics or supply chain network or any part of their sub-contractors business, operations, logistics or supply chain network;

- 21.1.3. implement due diligence procedures to identify, assess and address risks of modern slavery and/or human trafficking within any part of their business, operations, logistics or supply chain network and any part of their sub-contractors' business, operations, logistics and supply chain network;
- 21.1.4. notify each other as soon as they become aware of any actual or suspected modern slavery and/or human trafficking in their business, operations, logistics or supply chain network; and
- 21.1.5. keep records of all training offered and completed by their employees and shall make a copy of the record available to each other on request.

## **22. NOTICES**

- 22.1. A notice or communication to a Party given under or in connection with this Agreement, must be in writing and delivered by prepaid post, by hand or email to the Party's address shown in the Agreement or other address notified to the other Party.
- 22.2. A notice will be taken to be given:
  - 22.2.1. if delivered by hand, when delivered;
  - 22.2.2. if delivered by post, 2 business days after the date of posting;
  - 22.2.3. if delivered by email, 1 business day after the email is sent and a delivery failure notice is not received by the sender within 24 hours of sending the email, however, if the notice is received after 5:00m on a business day or a non-business day, the notice will be deemed to be given on the opening of business on the next business day.

## **23. APPLICABLE LAW**

- 23.1. These Terms and the Agreement are made in the State of Queensland, Australia.
- 23.2. These Terms and the Agreement are governed by and are to be construed in accordance with the Law in force in Queensland, Australia.
- 23.3. The Parties submit to the jurisdiction of the courts of Queensland, Australia.

## **24. ENTIRE AGREEMENT**

- 24.1. These Terms and the Agreement represents the entire agreement between the Parties and supersedes all prior representations, agreements, warranties, statements and understandings between the Parties.

## **25. VARIATIONS**

- 25.1. The Seller may vary these Terms at any time and any variation shall be effective from the date of the variation and may be published on the Seller's websites.

## **26. WAIVER**

- 26.1. The failure of a Party to enforce a provision or the granting of any time or indulgence will not be construed as a waiver of the provision nor of a waiver of the right of the Party at a later time to enforce the provision.
- 26.2. Any waiver must be in writing and signed by the Party to be bound.

## **27. SEVERABILITY**

- 27.1. If any part of these Terms or the Agreement is invalid or unenforceable, that part will (if possible) be read down to the extent necessary to avoid the invalidity or unenforceability, or alternatively will be deemed deleted and these Terms and the Agreement will remain otherwise in full force.

## **28. JOINT AND SEVERAL**

- 28.1. An obligation of two or more persons under these Terms or the Agreement binds them jointly and severally and every expressed or implied agreement or undertaking by which two or more persons derive any benefit in terms of these Terms and the Agreement will take effect for the benefit of those persons jointly and severally.

## **29. FURTHER ASSURANCES**

- 29.1. Each Party will sign and complete all further documents and do anything else that may be reasonably necessary to effect, perfect or complete the provisions of these Terms and the Agreement and the transactions to which it relates.