

General terms and conditions of sale

Goods and Services are sold and supplied by eLumina Global on the following terms and conditions unless otherwise expressly agreed in writing between eLumina Global and the Purchaser.

1. DEFINITIONS

1.1 “Vendor” means eLumina Global Pty Ltd ACN 669 469 489.

1.2 “Purchaser” means the person or entity to whom the Vendor supplies Goods and/or Services.

1.3 “Goods” means the goods, equipment, material and/or chattels supplied by the Vendor to the Purchaser as indicated in an Order.

1.4 “Commencement Date” means the commencement date of the Contract of which these terms and conditions form part.

1.5 “Contract Works” means, where the additional clauses E1 to E7 apply, the installation of the Goods and the erection of other works (if any) to be carried out by the Vendor at the Site.

1.6A “Contract” means each separate contract between the Vendor and the Purchaser pursuant to which Goods and/or Services are supplied by the Vendor to the Purchaser, as constituted under clause 2.

1.6B “Contract Price” means the price payable by the Purchaser to the Vendor for the Goods and/or Services as specified in the relevant Order.

1.6C “Date for Delivery” means the date specified in the Order.

1.6D “defect” means any aspect (including any defect, fault, failure, deficiency, omission, error or non-conformance) of the Goods or any part thereof which is not in accordance with the Order or any failure to satisfy any performance specification or performance criteria included in the Order, and defective has the corresponding meaning.

1.6E “delivery” means delivery of the Goods in accordance with the Order by the Vendor to the Delivery Place (and deliver and delivered have corresponding meanings).

1.6F “Delivery Place” means the place specified in the Order.

1.7 “day” or “days” means calendar days unless stated otherwise.

1.8 “Intellectual Property Rights” means all intellectual and industrial property rights, conferred

by statute, at common law, in equity or otherwise, including copyright and neighbouring rights, all rights in relation to inventions, patents, plant varieties, trademarks, designs, circuit layouts, know how, brand names, domain names, product names and trade secrets (whether or not registered or capable of registration and including any right to apply for registration under a statute in respect of those or like rights).

1.9 “Order” means the Purchaser Order issued by the Purchaser.

1.10 “PPS Act” means the Personal Property Securities Act 2009 (Cth) as amended from time to time.

1.11 “Services” means the services supplied by or on behalf of the Vendor to the Purchaser as specified in the Order, including any part of the specified services.

1.12 “Site” means, if the additional clauses E1 to E7 apply, the location notified by the Purchaser where the Vendor is required to carry out the Contract Works.

1.13 “Insolvency Event” means, in relation to a party, when:

(a) an application is made to a court for an order, or an order is made, that the party be wound up;

(b) a liquidator, administrator, trustee administrator, receiver or receiver and manager is appointed in relation to the party or any of its assets; or

(c) the party becomes bankrupt, goes into liquidation (whether voluntary or compulsory), enters administration, offers to make or enters into any arrangement or composition with any of its creditors or is, or is deemed to be, insolvent within the meaning of the Corporations Act 2001 (Cth).

1.14 “Force Majeure Event” means a circumstance beyond the reasonable control of the parties (other than the payment of money) which results in a party being unable to observe or perform an obligation under a Contract, including:

(a) natural disasters, lightning strikes, earthquakes, floods, storms, explosions and fires;

(b) epidemics and pandemics and any restrictions imposed by any government authority in connection therewith;

(c) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and

(d) strikes, blockades and analogous industrial actions.

1.15 “Conditions” means these terms and conditions of sale.

1.16 “Quotation” means a written quotation by the Vendor to the Purchaser for Goods and/or Services (including any specification for the Goods and/or Services referred to in the Quotation and any Special Conditions).

1.17 “Special Conditions” means any special terms and conditions identified as such and set out in the Quotation.

2. GENERAL

2.1 These terms form part of any quotation or Contract to which they are attached, and any Goods to be supplied, or supplied, by the Vendor will be or are supplied subject to these terms.

2.2 If there is any inconsistency or variance between the provisions of any Order and these terms then these terms shall prevail to the extent of the inconsistency or variance PROVIDED SUCH THAT any Contract between the Vendor and the Purchaser shall be subject to these terms unless and to the extent only that the parties expressly agree in writing to any variation thereof.

2.3 If one or more clauses of these terms or any provisions included in any quotation or Contract arising between the Vendor and the Purchaser is declared legally invalid the remainder of these terms and any such provisions shall be in no way affected.

2.4 These terms shall apply to any separable portion of any quotation or Contract arising between the Vendor and the Purchaser and to the Goods or Services supplied thereunder.

2.5 To the fullest extent permitted at law, no warranties expressed or implied by law, trade custom or otherwise and no representations, descriptions, conditions or statements are binding on the Vendor unless set out in these terms or expressly incorporated into these terms by reference by the Vendor in writing.

2.6 These Conditions bind the Purchaser even if the Vendor or the Purchaser does not sign them promptly or at all.

3. QUOTATION AND OFFER TO PURCHASE

3.1 The Vendor’s quotation is an offer to the Purchaser to sell Goods and/or Services subject to

these terms. The Vendor must not make alterations to its quotation for a period of 30 days commencing on the date the Vendor issues the quotation to the Purchaser, however, may at any time thereafter make alterations to its quotation before the Purchaser’s issuance of an Order.

3.2 Notwithstanding that a quotation has been made no Contract exists between the Vendor and the Purchaser until an authorized representative of the Vendor provides written acceptance of the Purchaser’s Order.

3.3 The Vendor may accept or refuse an Order in whole or in part. Any Order or part of an Order not accepted by the Vendor will be regarded as having been refused by the Vendor.

3.3 Notwithstanding any stipulation or implication in the Contract, the Vendor reserves the right to obtain such Goods or any part thereof from any factory or works in the Vendor’s organization, including any subsidiary or affiliate thereof, subject to the Vendor’s compliance with the Contract.

3.4 Prices included in the Vendor’s quotation are based upon the quantities of Goods and description of the Services referred to in the quotation. Should the Purchaser offer to purchase a quantity of Goods or type of Services which is at variance with that referred to in the quotation, the Vendor reserves the right to amend the price quoted for such Goods and/or Services in which case the process in clauses 3.1-3.3 shall be repeated.

3.5 The quotation remains open for acceptance for a period of thirty (30) days from the date of the quotation unless an alternate period is agreed by the parties.

4. GENERAL

4.1(a) The Vendor must supply the Goods, and any Services and Contract Works, in accordance with the terms and conditions of the Contract.

(b) The Purchaser will pay to the Vendor the Contract Price set out in the applicable Order, in accordance with the terms and conditions of the Contract.

Drawings

4.2 After Acceptance of the Purchaser’s Order, the Vendor shall at the Purchaser’s request provide to the Purchaser such drawings relating to the Goods the subject of the Contract arising between the Vendor and the Purchaser as are in the Vendor’s opinion reasonable and necessary but all and any Intellectual Property Rights in the drawings shall remain vested in the Vendor.

Confidential Information

4.3 All information relating to patents, designs, other intellectual property, drawings, specifications, computer programs, information, samples and the like provided by the Vendor shall be regarded as confidential and shall not be copied or disclosed by the Purchaser to a third party or otherwise without the Vendor's prior written consent and shall only be used pursuant to the Contract for which they are provided.

Sufficient Information to be Provided

4.4 The Purchaser shall be responsible for, and warrant, the accuracy of the information it provides.

Purchaser's Approval of Drawings, etc.

4.5 Any drawings or other information requiring the Purchaser's approval shall be approved, amended or rejected and returned by the Purchaser to the Vendor within 14 days of the date of receipt by the Purchaser of such drawings or other information or such other period as may be agreed in writing by the Vendor and the Purchaser. Any delay beyond such 14-day period or such other period agreed to shall constitute grounds for extension of the Contract period in which the Vendor is to perform its obligations under clause 6.3 of these terms.

Incorrect Information

4.6 The Purchaser shall be responsible for and bear the cost of any alteration to Goods and/or Services supplied by the Vendor arising from any discrepancy, error or omission in any drawing, specification or other information supplied by the Purchaser.

Responsibility for licenses, approvals etc

4.7 Unless otherwise agreed in writing it shall be the responsibility of each party to obtain and provide any licences, access, approvals or permits as necessary for performance of its obligations in any Contract arising between the Vendor and the Purchaser.

5. INSPECTIONS AND TESTS

5.1 Where inspections and tests are performed, they will be undertaken in accordance with the Vendor's standard practice (including standard test documentation) attached to the Order and will be carried out at the place of manufacture or elsewhere at the Vendor's sole discretion. Such inspections and tests, together with any additional tests as may be specified in the Order, are the only inspections and tests included in the Contract Price. Should any non-standard additional or further inspection or tests be required by the

Purchaser the additional cost will be added to the Contract Price and the Date for Delivery extended (if required).

5.2 Where the carrying out of an inspection or witnessed test has been agreed to, the Vendor shall give the Purchaser seven days' notice that the Vendor is ready to carry out such inspection or witnessed test, and if the Purchaser is absent from a duly notified inspection or witnessed test then such inspection or witnessed test shall be deemed to have been undertaken in the Purchaser's presence and the results of the test must be notified to the Purchaser. Completion of the tests in the absence of the Purchaser will entitle the Vendor to payment of the applicable test or milestone payment if the results show that the Goods have passed the test.

6. TIME/DATE FOR SUPPLY

Quoted Time

6.1 The Supplier must Deliver the Goods to the Delivery Place by the Date for Delivery.

Liquidated Damages for Delay

6.2 If the Goods are not delivered, and if any Services and Contract Works (if applicable) are not completed, by the Date for Delivery, the Vendor is liable to the Purchaser for liquidated damages at the rate of 0.5% of the price for the Goods (or Services or Contract Works (if applicable)) that have not been delivered or completed per week for every completed week after the Date for Delivery up to and including the date the Goods are delivered, or Services and Contract Works (if applicable) are completed, up to a maximum of 5% of the price for the Goods (or Services or Contract Works (if applicable)) that have not been delivered or completed.

Payment of liquidated damages shall be in full satisfaction of and the Vendor's total financial liability arising from such delay.

Extension of Time

6.3 The Date for Delivery shall be extended in respect of any delay caused by an act or omission of the Purchaser or an event specified in clause 6.4.

6.4 The Vendor shall not be liable to the Purchaser for any failure to meet any obligation under any Contract arising between the Vendor and the Purchaser to the extent that such failure is caused by a Force Majeure Event.

7. PACKING

Unless otherwise stipulated in writing by the Vendor any packing which may be provided by the Vendor

is not returnable and must be disposed of by the Purchaser. Where such stipulation is made the packing remains the property of the Vendor and must be returned to the Vendor's source of supply carriage paid by the Purchaser.

8. POINT OF DELIVERY

Delivery

8.1 Unless stated otherwise in any Order, delivery of Goods to the Delivery Place, excluding unloading at the Delivery Place, shall constitute delivery by the Vendor to the Purchaser subject to the Goods being in accordance with the Order.

Damage or Loss in Transit

8.2 Where damage to the Goods during delivery is the Vendor's responsibility, the Vendor shall promptly repair or replace free of charge the Goods damaged during transportation to the Delivery Place.

Shortages in Delivery

8.3 Any claims for shortages in deliveries shall be notified in writing to the Vendor within 7 days of receipt of such delivery.

Storage

8.4 Storage of the Goods by the Vendor will be at the reasonable expense of the Purchaser after the scheduled delivery time, if the Purchaser fails to take delivery at the schedule delivery time or otherwise changes the schedule delivery time through no fault of the Vendor.

Cost

8.5 Unless otherwise specified in the Order, all freight and transport costs of the Goods to the Delivery Place are at the Vendor's cost.

Returns

8.6 No Goods may be returned to the Vendor for a change of mind without the prior written approval of the Vendor. Any return of Goods will be at the discretion of the Vendor.

8.7 If the Vendor agrees to a return of Goods for a change in mind, the Vendor will be entitled to charge a handling fee of up to 10% of the price of the Goods to cover the Vendor's reasonable costs and in addition the cost of any repairs if the Goods are returned damaged.

9. RISK AND PROPERTY

Risk

9.1 Risk in Goods the subject of any Contract between the Vendor and the Purchaser shall remain with the Vendor until the delivery of such Goods by the Vendor to the Delivery Place and thereafter risk of damage, loss or deterioration of

the Goods from any cause whatsoever shall pass to the Purchaser.

Preservation of Property Rights

9.2 Notwithstanding that risk in any Goods the subject of a Contract between the Vendor and the Purchaser may in whole or in part be with the Purchaser, title and property in such Goods shall remain with the Vendor until paid for in full by the Purchaser. Prior to the passing of property in such Goods they may not be resold, pledged or, subject to clauses 9.3 to 9.6 below, given in security by the Purchaser in any circumstances whatsoever.

Purchase Money Security Interest

9.3 By placing an Order for the Goods, the Purchaser acknowledges, accepts and agrees that this Contract creates a purchase money security interest (as that term is defined in the PPS Act) in the Goods as commercial property and, for avoidance of doubt, the proceeds of sale of the Goods. The Purchaser must, promptly upon request by the Vendor, sign any documents (including any new agreements), provide all necessary information and do anything else required by the Purchaser to ensure that the security interest is a perfected purchase money security interest (as that term is defined in the PPSA).

9.4 Until payment to the Vendor has been made in full for the Goods, the Purchaser acknowledges and agrees that in relation to Goods that are inventory, the Purchaser will not allow any security interest to arise in respect of the Goods unless the Vendor has perfected its purchase money security interest.

9.5 Until payment to the Vendor has been made in full for the Goods, the Purchaser acknowledges and agrees that in relation to Goods that are inventory, the Purchaser will not allow any non-purchase money security interest to arise in respect of the Goods unless the Vendor has perfected its purchase money security interest prior to the Purchaser's possession of the Goods.

9.6 The terms "Security Interest", "Proceeds" and "Purchase Money Security Interest" used in clauses 9.3-9.5 have the respective meanings given to those terms in the PPS Act. To the extent permitted by law, the parties agree to contract out of sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act.

10. PRICES AND CONTRACT PRICE ADJUSTMENT

Price Basis

10.1 Unless otherwise expressly stated, the Contract Price is exclusive of any freight, delivery, cartage, packing, crating, handling, storage or export charges, insurances, customs duty, GST or similar taxes and the Purchaser is liable for these in addition to the Contract Price.

GST

10.2 GST means any tax, levy, charge or impost implemented under the A New Tax System (Goods and Services Tax) Act (the "GST Act") or any Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act.

10.3 If the Vendor becomes liable to pay GST in respect of the sale or supply of the subject matter of this Contract, the Contract Price payable under this Contract will be increased so that after payment of the GST by the Vendor, the nett amount retained by the Vendor is the same as before GST applied.

10.4 If the Vendor becomes liable to pay GST, the Vendor will notify the Purchaser of the amount of GST to be paid and will provide the Purchaser with the appropriate invoice including a reference to the applicable amount of GST.

10.5 The Purchaser shall pay that invoice pursuant to the terms and conditions of this Contract.

Cost of Delay or Variation

10.6 Where in respect of any contract between the Vendor and the Purchaser work is delayed by the act or omission of the Purchaser and for which the Date for Delivery is extended in accordance with clause 6.3, the Vendor shall notify the Purchaser of any reasonable and direct additional costs which will be incurred as a result of such delay, which additional costs shall be to the account of the Purchaser.

10.7 The Purchaser is entitled to make variations to the Order including an increase or reduction of scope of supply, character, quality, nature or design as well as change of delivery time, provided that such variations are within what the parties could reasonably expect when entering the Contract and that the variation shall not be greater than 15% of the value of the original Order. The variation will be formalized by the Vendor's issuance of a written variation order, as agreed by the parties.

Costs of Complying with Regulations

10.8 If the costs to the Vendor of performing its obligations under any Contract between the Vendor and the Purchaser shall be varied by reason of the creation or amendment after the date of the Order of any law or of any order, regulation or by-law having the force of law or any applicable standard, the costs incurred by the Vendor shall be added to the Contract Price.

Cost

10.9 For the purpose of Clause 10 of these terms the expression 'cost' is deemed to include overheads and interest paid by the Vendor.

11. PAYMENT

Payment Due

11.1 Unless otherwise agreed in writing by the Vendor and the Purchaser payment shall be due as follows:

- (i) 20% of the Contract Price, on lodgement with the Vendor of the Purchaser's Order;
- (ii) within 30 days of receipt by Purchaser of the Vendor's written periodic invoices totalling 70% of the Contract Price;
- (iii) subject to clause 11.2 of these terms, the remaining 10% of the Contract Price, on delivery; and
- (iv) as to any additional costs incurred by the Vendor for the Purchaser's account in accordance with these terms, within 30 days of the Purchaser's receipt of the Vendor's invoice in respect of such costs.

11.2 Without limiting clause 8.4, if Goods the subject of any Contract between the Vendor and the Purchaser are in whole or in part ready for delivery to the Delivery Place and if delivery of such Goods is delayed by reason of instructions given, or lack of instructions by the Purchaser, then full payment of that part of the Contract Price outstanding shall be due and payable 14 days after notification by the Vendor to the Purchaser that such Goods are ready for delivery as though delivery had been completed in accordance with clause 8.1 of these terms.

Delay or Default in Payment

11.3 Should the Purchaser make default in respect of any payment due to the Vendor then the Vendor shall have the right, in addition to all other rights to which it is entitled under the Contract or at law, to:

- (i) charge interest on the overdue amount at three percent (3%) per annum from the due date of payment to the actual date of full

and final payment. Any payment subsequently made by the Purchaser to the Vendor shall be credited first against any interest so accrued; or

- (ii) suspend all deliveries or works and any Date for Delivery shall be extended by the period of the suspension.

An election to apply any one of the above remedies shall not preclude the Vendor from subsequently electing another of them.

11.4 If because of the Purchaser's default in payment, a solicitor or debt collector is instructed by the Vendor, the Purchaser agrees to pay the solicitor or debt collectors fees and disbursements and charge to the Vendor in full. The Vendor shall be entitled at any time to assign to any other person all or any part of the debt owing to the Vendor and notwithstanding any rule of common law or equity to the contrary, or the appointment of a liquidator, receiver and/or manager over the Purchaser and the assets thereof, and the assignee thereof shall be entitled to claim full rights of set-off or counter-claim against the Purchaser as charge holders or successors in respect of the debt or part thereof so assigned.

12. WARRANTY

12.1 The Vendor hereby warrants to the Purchaser that Goods (and/or Services and Contract Works (if applicable)) provided by the Vendor, shall be free from defects.

12.2 If the Goods (and/or Services and Contract Works (if applicable)) are not free from defects then the Vendor shall, at its sole discretion, either:

- (i) repair such Goods;
- (ii) replace such Goods with the same or equivalent Goods at the point of delivery applicable to the Contract under which such Goods were supplied to the Purchaser by the Vendor; or
- (iii) re-perform the Services or payment of the cost of having the Services supplied again;

Any removal, reinstallation and other consequential costs will be for the Purchaser's account.

12.3 Except to the extent caused by the Vendor this warranty does not apply in respect of defects due to or arising from:

- (i) incorrect or negligent handling, disregard of operating and/or maintenance instructions, overloading, unsuitable operating conditions, defective civil or building work, lightning, accident, neglect, faulty erection

(unless carried out by the Vendor), acts of God, causes beyond the Vendor's control or whilst unauthorized repairs or alterations have been carried out or non-compliance with Goods' power and grounding specifications;

- (ii) the use of goods of consumable nature; or
- (iii) fair wear and tear.

12.4 This warranty does not apply unless:

- (i) the Goods have been properly handled, located, used, maintained and stored after delivery;
- (ii) defects occur within 12 calendar months after the Goods have been delivered to the Purchaser or, if delivery was delayed for reasons beyond the Vendor's control then within 12 calendar months of the date of delivery or within 18 calendar months after the Vendor first notified the Purchaser that the Vendor was ready to deliver the Goods (whichever period expires earlier);
- (iii) defects occur within 6 calendar months after the Services have been performed;
- (iv) the Vendor is notified in writing within 7 days of the alleged defect first coming to the notice of the Purchaser;
- (v) the Purchaser returns the defective Goods to the Vendor, or if necessary, at the sole discretion of the Vendor, to the works where such Goods were manufactured or assembled, free of charge; and
- (vi) the Purchaser has fulfilled all his/its contractual obligations.

12.5 The parties agree that the Purchaser shall not make a claim against the Vendor and the Vendor shall have no further liability for or in connection with the Goods and/ or Services upon the expiry of two (2) years from the date of the end of the defects liability period in clause 12.4(ii) and (iii), and claims made after that period will be time barred absolutely.

12.6 The benefit of this Warranty is personal to the Purchaser and is non-assignable without the prior written consent of the Vendor.

Exclusion of UN Convention

12.7 To the fullest extent permitted by law the parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

13. LIABILITY AND INDEMNITY

13.1 Notwithstanding anything else contained in this Contract to the contrary, the Vendor shall not be liable (to the fullest extent permitted at law) whether by way of indemnity, guarantee, or by reason of any breach of contract, or of statutory duty or by reason of tort (including but not limited to negligence) or any other legal principle or doctrine under or in connection with the Contract for:

- (i) any loss of profits, loss of use, loss of revenue or loss of anticipated savings or for any financial or economic loss (whether direct or indirect) or for any consequential or indirect loss or damage whatsoever; or
- (ii) any other amount which in aggregate with any other liability (being any past, present or future liability) to which this clause applies, that exceeds 100% of the Contract Price.

This clause shall survive termination of this Contract.

13.2 The Purchaser indemnifies the Vendor and the Vendor's representatives (each an "indemnified party" in this clause 13.2) against all loss, damage, costs and expenses suffered or incurred by an indemnified party caused by a negligent act or omission of the Purchaser or the Purchaser's representatives which, if done or omitted to be done by the Purchaser or the Purchaser's representatives, would constitute a failure to comply with the Purchaser's obligations under the Contract, with such debt arising from this indemnity to be immediately due and payable to the Vendor on demand.

13.3 The Purchaser acknowledges and agrees that such loss, damage, costs and expenses suffered or incurred by the Vendor as referred to in clause 13.2 may be an insufficient remedy for any actual or threatened breach of the Contract by the Purchaser or any of the Purchaser's representatives, and, without prejudice to any other rights and remedies otherwise available to the Vendor, the Purchaser agrees to the granting of equitable relief and remedies in favour of the Vendor without proof of actual liquidated damage or equitable loss.

14. INTELLECTUAL PROPERTY RIGHTS

14.1 Each party acknowledges and agrees that the other party owns and retains all the rights, interest and title to the Intellectual Property Rights owned, created, written or otherwise brought into existence by or on behalf of that other party.

14.2 The Purchaser warrants that any designs, drawings or instructions furnished or given by him/it to the Vendor shall not be such as to cause the Vendor to infringe any Letters Patent, registered design, trademark or copyright or other intellectual property right, and the Purchaser hereby indemnifies the Vendor and agrees to keep the Vendor indemnified against any costs which may arise against or be incurred by the Vendor by reason of any such infringement.

14.3 Without limiting clause 14.1, ownership of Intellectual Property Rights (other than third party Intellectual Property Rights) associated with the Services, Contract Works and the Goods and any documentation provided by the Vendor pursuant to these terms is vested and shall remain vested in the Vendor. The Vendor grants the Purchaser a royalty free, non-exclusive, non-transferable, perpetual (subject to compliance with the terms of the license) license to use all Intellectual Property Rights associated with the Contract Works and the Goods and any documentation provided pursuant to these terms for the installation, use, support, repair, or maintenance of the Contract Works and the Goods.

15. TERMINATION

15.1 If the Purchaser breaches any material term of this Contract, or suffers an Insolvency Event, the Vendor at its sole discretion may give notice in writing to the Purchaser and after 14 days from the date of such notice may, if the Purchaser has not remedied the default to the reasonable satisfaction of the Vendor, suspend or terminate such Contract. If the Contract is so terminated the Vendor may enter any premises owned or occupied by the Purchaser or on which the Goods are situated at any time to uplift or take possession of the Goods or any part of the Goods and for the purpose thereof enter upon any premises where such Goods are stored or reasonably thought to be stored and dispose of them in its own interest without prejudice to any claim it may have for damages for any loss resulting from such disposal and may retain any security or monies held or paid by the Purchaser in relation to such Contract and apply such security or monies against assessed loss or damage incurred by it in relation to such default.

15.2 If the Vendor breaches any material term of this Contract, or suffers an Insolvency Event, the Purchaser at its sole discretion may give notice in

writing to the Vendor and after 14 days from the date of such notice may, if the Vendor has not remedied the default to the reasonable satisfaction of the Purchaser, suspend or terminate the Contract. The Purchaser shall remove the suspension if the Vendor remedies the breach.

16. SERVICE OF NOTICES

For the purpose of service of any document or notice in connection with any Order or Contract it shall be sufficient for either party to forward such document or notice by first class surface mail if within Australia or first class air mail beyond Australia, with appropriate postage prepaid to the last known address of the other party and shall be deemed to have been received by the other party on the third business day following the date of posting. Notices may be sent by electronic mail and shall be deemed to have been received by the other party the next business day after sending unless the sender receives a bona fide delivery failure notice.

17. CODE OF CONDUCT/BUSINESS ETHICS

17.1 Each party hereby warrants that he will not, directly or indirectly, and it has no knowledge that other persons connected with his business will, directly or indirectly, make any payment, gift or other commitment to any person including without limitation directors and employees of the other party or any other party in a manner contrary to applicable laws (including but not limited to the U.S. Foreign Corrupt Practices Act and, where applicable, legislation enacted by member States and signatories implementing the OECD Convention Combating Bribery of Foreign Officials), policies or standards of conduct, for the purposes of obtaining or facilitating the party's activities under this Contract.

17.2 Nothing in this Contract shall render a party liable to reimburse the other party for any such consideration given or promised.

17.3 The Purchaser herewith acknowledges and confirms that he has received a copy of the Vendor's Code of Ethics or has been provided information on how to access the Code of Ethics online. Each party hereby warrants to fully comply with such Code of Ethics.

17.4 Each party shall always comply with all relevant laws, regulations, ordinances and rules having the force of law relating to its obligations under the Contract.

18. DISPUTE RESOLUTION

18.1 If there is a dispute between the parties arising out of, or in connection with, this Contract, neither of the parties is to commence any proceedings relating to that dispute until the following procedure has been complied with:

- (i) the party claiming a dispute has arisen must give written notice to the other party specifying the nature of the dispute (Dispute Notice) which:
 - (1) states that it is a Dispute Notice under this clause;
 - (2) identifies the dispute; and
 - (3) states the alleged relevant facts that are relied on;
- (ii) Within 5 Business Days of a Dispute Notice being received by a party, or such longer period as the parties may agree in writing, a senior representative (such as the CEO) of each party must meet and will endeavour, in good faith, to:
 - (1) resolve the whole of the dispute or as much of the dispute as possible; and
 - (2) to the extent the dispute is not wholly resolved, decide what process will be used to resolve the dispute or the remaining matters that are not agreed.

18.2 Any agreement reached at a meeting pursuant to this clause 18 must be in writing and signed by both parties.

18.3 If a dispute has not been resolved within 30 Business Days after receipt of the relevant Dispute Notice, then either party may (subject to any agreement to the contrary) issue proceedings to have the dispute determined, whether any negotiation process has commenced or concluded.

18.4 A party seeking urgent interlocutory relief may, by notice to the other party, elect not to comply with the provisions of this clause, but only to the extent of the relief sought, and only for the period required to dispose of the application for interlocutory relief.

18.5 Pending resolution of the dispute, this Contract will remain in full effect without prejudicing the parties' respective rights and remedies.

19. GENERAL

19.1 Severance

If any provision of this Contract or the conditions is declared by a judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, or indications to that effect are received by either of the parties from any

competent authority, that provision will be severed from this Contract and the remaining provisions of this Contract will remain in full force and effect.

19.2 Whole Agreement

Each party acknowledges that this Contract contains the whole agreement between the parties in relation to the subject matter of their dealings and it has not relied upon any oral or written representation made to it by the other party, or its employees or agents, and has made its own independent investigations into all matters relevant to the subject matter of their dealings.

19.3 Supersedes prior Agreement

This Contract supersedes any prior agreement between the parties whether written or oral and any such prior agreements are cancelled as at the Commencement Date but without prejudice to any rights which have already accrued to either of the parties.

19.4 Change of Address

Each of the parties will give notice to the other of the change or acquisition of any postal or e-mail address or telephone, fax or similar number at the earliest possible opportunity but in any event within forty-eight (48) hours of such change or acquisition.

19.5 Interpretation

- (i) Headings contained in this Contract are for reference purposes only and will not be deemed to be any indication of the meaning of the clauses and sub clauses to which they relate.
- (ii) In this Agreement, the singular includes the plural and vice versa, and each gender includes every other gender.

19.6 Warranties by the Parties

- (i) Each of the parties warrants that it has the power to enter this Contract and has obtained all necessary resolutions and approvals to do so.
- (ii) The Purchaser warrants that:
 - (1) when entering this Contract, it is not acting as the agent of any other person, company or other organization; and
 - (2) the Goods will not be used by the Purchaser for personal, domestic or household purposes.

19.7 No Partnership

The parties are not partners or joint ventures.

19.8 Right to Assign

This Contract and all rights under it may be assigned or transferred by either party with the prior

written consent of the other party, which shall not be unreasonably withheld.

19.9 Proper Law and Jurisdiction

These terms and conditions are governed by and construed with reference to the laws for the time being in force in the State of Queensland. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the State of Queensland, and of any courts that have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

19.10 Rights Cumulative

All rights granted to the parties are cumulative and no exercise by either of the parties of any right under this Contract will restrict or prejudice the exercise of any other right granted by this Contract or otherwise available to the parties.

19.11 Waiver

The failure by a party to enforce at any time or for any period any one or more of the terms or conditions of this Contract is not a waiver of them or of the right at any time subsequently to enforce all terms and conditions of the Contract.

19.12 Costs

Each of the parties will pay the costs and expenses incurred by it in connection with the Contract.

ADDITIONAL CLAUSES IF THE VENDOR IS RESPONSIBLE FOR ERECTION/INSTALLATION

E1 ACCESS TO AND POSSESSION OF THE SITE

The Purchaser will provide timely and suitable access to and possession of the Site for such periods as is reasonably required to perform the Contract Works, proper foundations to receive the Goods as and when delivered, adequate craneage, lifting tackle and scaffolding and suitable protection for the plant from time of delivery until the time of Taking Over.

E2 SITE FACILITIES

The Purchaser will be responsible for providing and maintaining proper fencing, lighting, guarding and watching of all the Contract Works comprised in the Contract Works until Taken Over and the proper provision during a like period of temporary roadways, foot ways, guards and fences as far as they may be necessary by reason of the Contract Works for the accommodation and protection of the owners and occupiers of adjacent property, public and others.

The Purchaser will provide without cost to the Vendor such supplies of electricity, water and gas as may be necessary for the purposes of the Contract Works on Site.

E3 TESTS ON SITE

Where the Contract requires the Vendor to carry out tests on Site, the Purchaser will provide when requested, free of charge, such labour, materials, electricity, gas, fuel, water, stores, apparatus, instruments or other items as may be required from time to time and as may be reasonably demanded to carry out such tests of the plant or workmanship in accordance with this Agreement. Site tests shall be carried out within one (1) month after completion of erection. The Vendor will give the Purchaser twenty four (24) hours' notice of the date on which tests will be carried out. If the Purchaser fails to attend on that date, unless otherwise arranged, the Vendor will proceed with the tests which shall be deemed to have taken place in the Purchaser's presence such that the outcome of the test will be deemed to be accepted by the Purchaser.

Where the results of such tests do not fall within any guarantees specified, the Vendor reserves the right to repeat the tests within fourteen (14) days after the date when the plant is ready for retest.

E4 TIME OF TAKING OVER

The Contract Works shall be deemed to have been taken over by Purchaser when erection has been completed or on completion of tests on site under clause E4 when these are included or one calendar month after it shall have been put into commercial use (whichever may be the earlier). The time of taking over shall not be delayed on account of additions, minor omissions, or minor defects, which do not materially affect the commercial use of the Contract Works.

E5 EXTRA COSTS

Any agreement by the Vendor to undertake Contract Works assumes that all civil work or other preparatory work for which the Purchaser is responsible has been completed and that the installation can be carried out with continuity during normal working hours. Should the Vendor incur extra costs or other expenses including reasonable overheads because of interruptions, delays, overtime, unusual hours, mistakes, or work for which the Vendor is not responsible under this Agreement, such extra cost, expense or reasonable overhead will be added to the price to be paid to the Vendor by the Purchaser, it being agreed, however, that overtime or unusual hours shall not be worked except with the prior arrangement of Purchaser's representative.

E6 TIME OF COMPLETION

For Contracts including erection, the Date for Delivery shall include the addition of the period of time set out in the Contract for erection or any agreed extension thereof.

E7 APPROVALS BY AUTHORITIES

The Purchaser shall obtain all such permits, consents or approvals as required by law for on in connection with the execution of the Contract Works and pay all fees therefore.