



Agreement for Supply of Goods

MMG Management Pty Ltd (**MMG**)

Full name of supplier (**Supplier**)

Contract Number

Description

Agreement Form

Contract Number	
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Between the Supplier					
	ABN: (If a company)				
And MMG	<table border="1" style="width: 100%;"> <tr> <td colspan="2">MMG Management Pty Ltd</td> </tr> <tr> <td> Level 23 28 Freshwater Place Southbank VIC 3006 Australia </td> <td style="text-align: right;">ABN: 33 115 312 680</td> </tr> </table>	MMG Management Pty Ltd		Level 23 28 Freshwater Place Southbank VIC 3006 Australia	ABN: 33 115 312 680
MMG Management Pty Ltd					
Level 23 28 Freshwater Place Southbank VIC 3006 Australia	ABN: 33 115 312 680				

1. This Agreement is constituted by the Contract Documents stated in the Schedule.
2. The Supplier must supply the Goods in accordance with this Agreement and otherwise comply with this Agreement.
3. MMG must pay to the Supplier the amounts which become payable under this Agreement and otherwise comply with this Agreement.

Executed as an agreement

The Supplier	
Signed by a duly authorised officer for and on behalf of the Supplier in the presence of the witness	
Signatory	Witness
Name of Signatory	Name of Witness
Date of Signing	

MMG Management Pty Ltd	
Signatory (Authorised Representative)	Witness
Name of Signatory	Name of Witness
Date of Signing	

Schedule

COMMENCEMENT DATE <i>(If blank, the earlier of the date the Supplier signs, or commences performance, of this Agreement)</i>	
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CONTRACT DOCUMENTS <i>(Listed in order of precedence)</i> <i>(Delete those not applicable)</i> <i>(Add any other applicable documents)</i>	Agreement Form Schedule Agreement for Supply of Goods Annexure 1 - Specification Annexure 2 – Site Details & Delivery Points Annexure 3 - Special Conditions Annexure 4 - Deed of Manufacturer's Warranty Annexure 5 - MMG Policies and Procedures Annexure 6 – Unit Price / Unit Price Variation Process
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GOODS <i>(If blank, the goods identified in the Specification)</i>	Annexure 1 - Specification
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SUPPLIER'S REPRESENTATIVE	Name:	
	Title:	
	Address for Notices:	
	Telephone:	
	Facsimile:	
	Email:	

MMG REPRESENTATIVE	Name:	
	Title:	
	Address for Notices:	
	Telephone:	
	Facsimile:	
	Email:	

TERM <i>(If blank, 12 months)</i>	
OPTION TO EXTEND TERM <i>(If blank, Yes)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
MAXIMUM EXTENDED PERIOD <i>(If blank, 2 years)</i>	
EXPIRY DATE <i>(If blank, a reasonable time from the Commencement Date)</i>	

LIQUIDATED DAMAGES <i>(If blank, clause 10.4 applies)</i>	
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WARRANTY PERIOD <i>(If blank, 12 months)</i>	<i>(Subject to review at expiry of the Term)</i>
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UNIT PRICE <i>(If blank, the Unit Prices stated in or attached to the Specification)</i>	Annexure 1 - Specification
UNIT PRICE PERIOD <i>(If blank, 12 months)</i>	
DATE FOR PAYMENT <i>(If blank, 30 days from end of month in which Acceptance of Goods occurs)</i>	
ERS SYSTEM TO APPLY	<input type="checkbox"/> Yes <input type="checkbox"/> No

SECURITY REQUIRED <i>(If blank, No)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
SECURITY AMOUNT <i>(If blank, Nil)</i>	

OWNERSHIP OF INTELLECTUAL PROPERTY <i>(If blank, Alternative 2 applies)</i>	<input type="checkbox"/> Alternative 1 - Supplier Retains - Licensed to MMG <input type="checkbox"/> Alternative 2 - MMG Acquires
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INSURANCE POLICIES REQUIRED	Minimum Amount of Coverage	Annual Increase	Period
Public Liability Policy	\$ <i>(If blank, \$20 million per event)</i>	<i>(If blank, 10%)</i>	<i>(If blank, Term plus Warranty Period)</i>
Product Liability Insurance Policy	\$ 5,000,000 <i>(If blank, \$5 million per event)</i>	<i>(If blank, 10%)</i>	<i>(If blank, Term plus 7 years)</i>
Motor Vehicle Policy	Comprehensive	Not Applicable	Term
Goods Insurance Policy	Full Value of Goods including loss or damage in transit or unloading	Not Applicable	<i>(If blank, Term)</i>
Workers' Compensation	In accordance with Legislative Requirements		
Other Policies:	\$		

APPLICABLE JURISDICTION <i>(If blank, the State of Victoria)</i>	
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Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Acceptance has the meaning provided for in clause 15.2

Agreement means this agreement, including all the Contract Documents.

Australian Resident means a resident as defined in the Income Tax Assessment Act 1936 (Cth).

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in the State or Territory named in the Schedule.

Buy-in Items means goods which the Supplier does not typically or usually supply but which the Supplier agrees to purchase on behalf of and supply to MMG.

Commencement Date means the date stated in the Schedule.

Consequential Loss means any loss or damage suffered by a party which is indirect or consequential loss or damage within the meaning of the common law or which results from a supervening event or which is by way of loss of revenue, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of interest, damage to credit rating, loss or denial of opportunity or increased overhead costs or which is suffered by a party as a result of a claim upon it by a third party (including third party claims for personal injury or damage to property).

Contract Documents means the documents described in the Schedule.

Control has the same meaning given to it in the Corporations Act 2001 (Cth);

Corporations Act means the Corporations Act 2001 (Cth).

Date for Delivery is the date stated in the relevant Purchase Order (or such other date as may be agreed or determined under clauses 8 or 9) by which Delivery of the Goods must be effected by the Supplier.

Deed of Manufacturer's Warranty means the form of warranty stated 0

Deliver means packaging, transporting and unloading the Goods.

Delivery means to Deliver the Goods to the Delivery Point.

Delivery Point is the location or address for Delivery of Goods set out in the relevant Purchase Order or as otherwise Directed by MMG.

Direct or Direction means any instruction, decision, demand or determination given by MMG or MMG Representative to the Supplier.

Electronic Means means electronic funds transfer, e-procurement, e-commerce, facsimile transmission, electronic mail or other means of electronically exchanging information, which forms part of a commercial transaction.

Goods means the goods or any of them described in the Schedule and in relation to a Purchase Order Contract means the goods specified in the relevant Purchase Order.

Goods Receipt entry (Transaction MIGO) means the data entry procedure having that name forming part of the SAP System

GST means any tax imposed under any GST Law and includes GST within the meaning of the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended.

GST Law means the GST Law as defined in the GST Act and includes any Act of the Parliament of Australia that imposes or deals with GST.

GST Related Tax Reform includes any changes, reductions or abolition of any State, Territory or Commonwealth taxes, excise, fees or imposts including, but not limited to, financial transactions tax, wholesale sales tax, stamp duty, debits tax, associated with the introduction of the GST Law.

Information means all information, documents or data however held, stored or recorded including drawings, plans, specifications, calculations reports, models, concepts, source codes, files, computerised data, photographic recordings, audio or audio visual recordings.

Insolvency Event means, in respect of a party:

- (a) if the party is an individual - where the party:
 - (i) becomes bankrupt;
 - (ii) files or is served with a petition in bankruptcy or bankruptcy notice;
 - (iii) makes an assignment for the benefit of creditors;
 - (iv) becomes bound as a debtor by any scheme of arrangement;
 - (v) executes as a debtor any deed of assignment or deed of arrangement; or
 - (vi) has a mortgagee or other creditor take possession of any asset.
- (b) if the party is a company - where the party:
 - (i) becomes insolvent;
 - (ii) enters into official management or a scheme of arrangement with creditors or any class or group of creditors;
 - (iii) has a receiver and/or manager appointed to it or any asset or undertaking;
 - (iv) has an administrator, provisional liquidator or liquidator appointed; or
 - (v) has any secured or other creditors take possession, or appoint an agent to take possession, of any asset;

Intellectual Property means all copyright, patents and all other rights throughout the world in relation to inventions, registered and unregistered trademarks (including service marks) and registered designs, whether or not in existence on the Commencement Date, and includes all original works of authorship fixed in any tangible medium of expression, including artistic, literary, musical, dramatic, pictorial, graphic, three dimensional and sculpted works.

Legislative Requirements includes each of the following as enacted, amended or repealed from time to time:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards, proclamations, of:
 - (i) the Commonwealth of Australia;
 - (ii) the State or Territory in which the Goods or any part of the Goods is being carried out; or
 - (iii) any local government authorities;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the performance of work the subject matter of this Agreement;
- (c) Federal or State awards, or enterprise agreements;

- (d) MMG Policies and Procedures; and
- (e) any fees and charges payable in connection with the foregoing.

Liquidated Damages means the amount stated in the Schedule that the Supplier must pay to MMG for each day that the Delivery of the Goods extends beyond the Date for Delivery.

MSDS means Material Safety Data Sheet and should (at a minimum) explain the physical properties, hazards to personnel, fire and explosion potential, safe handling recommendations, health effects, fire fighting techniques, reactivity, and proper disposal regarding the Goods.

MMG means the MMG entity as stated in the Agreement Form

MMG Group means the consolidated entity of which MMG Management Pty Ltd is the ultimate holding company as at the date of this Agreement.

MMG Policies and Procedures includes any policy, procedure, publication or guideline of MMG (as amended from time to time) that is:

- (a) specifically identified as such in Annexure 5 - MMG Policies and Procedures;
- (b) the subject of a Direction; or
- (c) publicly available and relevant to the Goods or this Agreement.

MMG Representative means the person named in the Schedule with respect to this Agreement or as named in a Purchase Order with respect to a Purchase Order Contract.

Non-contract Items means goods which are usually or typically supplied by the Supplier but which are not listed in Annexure 1 - Specification.

Purchase Order means an order to the Supplier, whether on paper or by Electronic Means.

Purchase Order Contract means the contract created in accordance with clause 3 of this Agreement.

Purchase Order Special Conditions means any additional conditions set out in a Purchase Order, which will form part of a Purchase Order Contract.

Purchase Price means the sum ascertained by multiplying the Unit Price for the appropriate category of Goods by the number of units to be Delivered and accepted under a Purchase Order Contract.

Quality Assurance Certification has the meaning stated in clause 14.1.

SAP System means the computer software programs owned or licensed by MMG which is an ordering, logistics and sales invoicing system, consisting of a set of instructions or statements in machine readable form, including manuals and revisions, enhancements, updates, new versions and new releases of and functional changes to the computer software program or parts of it.

Schedule means the Schedule to this Agreement.

Security means the security required under clause 7.2.

Site means the premises at which the Delivery Point is situated, as detailed in Annexure 2 – Site Details & Delivery Points.

Special Conditions means the Special Conditions stated in Annexure 3 - Special Conditions and which will form part of a Purchase Order Contract under clause 3.

Specification means the specification in Annexure 1 - Specification.

Standards means all standards, specifications, requirements and rules issued by the various worldwide standards association bodies and identified by the abbreviations assigned to each of those standards and includes the standards and testing requirements stated in the Specification.

Sub-Supplier means a person who provides goods and services to the Supplier.

Supplier's Representative means the person named in the Schedule with respect to this Agreement or as named in a Purchase Order with respect to a Purchase Order Contract.

Tax means all forms of taxes, duties, imposts, charges, withholdings, rates, levies or other governmental impositions of whatever nature and by whatever authority imposed, assessed or charged together with all costs, charges, interest, penalties, fines, expenses and other additional statutory charges, incidental or related to the imposition and **Taxation** has a corresponding meaning.

Tax Invoice has the same meaning as in the GST Act.

Term means the term of this Agreement stated in the Schedule, any extended Term or such further period of time as is mutually agreed in writing between the Parties.

Unit Price means, for each type of Goods to be supplied by the Supplier, the price per item of Goods stated in the Schedule.

Warranty Period means, for each item of Goods supplied by the Supplier, the period stated in the Schedule, commencing from Acceptance of the relevant Goods in accordance with clause 14.1(c).

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (d) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (e) a reference to a party is to a Party to this Agreement, and a reference to a party to a document includes the party's officers, employees, executors, administrators, successors and permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (i) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (j) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (k) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Agreement or any part of it; and
- (l) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

MMG rights under this Agreement are in addition to, and do not limit, MMG rights otherwise at law or in equity (including pursuant to any Legislative Requirement).

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

2. Term of Agreement

2.1 Term

Subject to clause 2.3 this Agreement operates for the Term and the Supplier makes a standing offer to supply and Deliver the Goods for the applicable Unit Price during the Term in accordance with this Agreement.

2.2 Extension of Term

- (a) If stated in the Schedule, MMG may extend the Term for the period stated in the Schedule provided MMG gives the Supplier written notice of its intention to do so at least 30 days before the end of the applicable Term.
- (b) If the Term of this Agreement is extended in accordance with clause 2.2(a), this Agreement continues in force for the duration of the extended Term.

2.3 Single Supply

If the Schedule states that a Term is not applicable to the Supplier, the Supplier agrees to supply and Deliver the Goods to MMG for the Unit Price in accordance with this Agreement (including the procedure contemplated under clauses 3 and 4).

3. Formation of Purchase Order Contract

3.1 Delivery of Purchase Order

If MMG requires the Supplier to supply Goods, it must deliver to the Supplier a Purchase Order.

3.2 Purchase Order Contract

A Purchase Order Contract will be formed on the earlier of a Purchase Order being received or being deemed to have been received by the Supplier.

3.3 Purchase Order Special Conditions

- (a) MMG may include Purchase Order Special Conditions in a Purchase Order.
- (b) If the Supplier rejects the Purchase Order Special Conditions, the Supplier must give notice to MMG. If the Supplier does not give notice within 48 hours after the Purchase Order is received or deemed to have been received, the Supplier will be deemed to have accepted the Purchase Order Special Conditions.
- (c) Where a Purchase Order contains Purchase Order Special Conditions (other than those stated in Annexure 3 - Special Conditions), a Purchase Order Contract incorporating those Purchase Order Special Conditions will be formed if:
 - (i) the Supplier notifies MMG that it accepts the Purchase Order;
 - (ii) the Supplier is deemed by this clause to have accepted the Purchase Order; or
 - (iii) the Supplier Delivers the Goods in accordance with the Purchase Order.

3.4 Electronic Means

The Supplier acknowledges that MMG may implement a system of delivering Purchase Orders by Electronic Means.

4. Documents Forming a Purchase Order Contract

4.1 Documents

A Purchase Order Contract consists of:

- (a) the terms of this Agreement which will be construed so as to apply to the Purchase Order Contract;
- (b) the Purchase Order;
- (c) any Purchase Order Special Conditions; and
- (d) any document or provision that the documents referred to in paragraphs (a) - (c) expressly incorporate as part of this Agreement.

4.2 Effect of Termination

Despite any other provision of this Agreement, the termination of a Purchase Order Contract will not operate to terminate this Agreement and the termination of this Agreement will not operate to terminate any Purchase Order Contract.

5. Inconsistency

Where there is an inconsistency in or between any of the Contract Documents or any Purchase Order Contract, the inconsistency will be resolved by applying the provision or interpretation that imposes the higher standard or obligation on the Supplier. The Supplier will not be entitled to any additional payment as a consequence.

6. MMG Not Bound to Order

MMG is not obliged to give any Purchase Order to the Supplier or to order any minimum quantity of Goods from the Supplier. MMG may at any time call for proposals or tenders for, or purchase Goods or goods similar to the Goods in any other way from any person, and MMG will not be liable in any circumstances to make any payment to the Supplier in respect of loss of prospective profits or any other loss or expense whatsoever incurred by the Supplier.

7. Security

7.1 Provision of Security

If stated in the Schedule, the Supplier must provide Security to MMG in the amount stated in the Schedule.

7.2 Form of Security

The Security must, unless Directed otherwise, be in the form of a bank guarantee that is unlimited as to time, irrevocable, unconditional and given by an Australian bank approved by MMG.

7.3 Lodgement of Security

The Security must be lodged with MMG Representative within 5 days of the Commencement Date, failing which MMG may withhold any payment due to the Supplier until the Supplier complies with this clause.

7.4 Recourse to Security

MMG may have recourse to the Security in relation to any amounts, which MMG claims to be due from the Supplier to MMG in connection with this Agreement or otherwise.

7.5 Return of Security

Subject to clause 7.4, MMG must return the Security or so much of the Security as remains, within 14 days of the end of the Term.

8. Supply and Delivery

8.1 Delivery

- (a) The Supplier must Deliver the Goods to the Delivery Point by the Date for Delivery. All Goods Delivered to MMG must be accompanied by:
 - (i) a delivery docket detailing the Goods being Delivered,
 - (ii) MMG Purchase Order number and line item;
 - (iii) all relevant manufacturer's or supplier's instructions concerning the use of the Goods; and
 - (iv) all relevant manufacturer's or supplier's warranties in respect of the Goods.
- (b) Delivery is not complete until the Goods have been accepted in accordance with clause 15.1. Whenever possible, the Supplier must Deliver the full quantity of the Goods ordered in the Purchase Order in one Delivery.

8.2 Early Delivery

- (a) MMG is not bound to accept Delivery of Goods at a time or date that is earlier than that specified in the Purchase Order, and may elect to return those Goods to the Supplier at the Supplier's expense, or hold them at the Supplier's risk.
- (b) If MMG accepts Delivery of the Goods at a time or date that is earlier than that specified in the Purchase Order, it is not obliged to make payment for the Goods before 30 days from the relevant Date for Delivery.

8.3 Inventory

Where indicated in the Specification, the Supplier must keep sufficient inventory of Goods to meet all Purchase Orders.

8.4 Goods unavailable

If Supplier is unable to Deliver any Goods ordered by MMG pursuant to a Purchase Order:

- (a) the Supplier must immediately notify MMG in writing and advise of the date when such Goods will be available for Delivery, which date will not be more than 14 days after the Supplier received the Purchase Order;
- (b) MMG will then notify the Supplier whether MMG elects to order such Goods from an alternative source or to continue to require the Supplier to supply those Goods; and
- (c) if MMG elects to purchase the Goods from an alternative source, that part of the Purchase Order, which relates to the unavailable Goods will be deemed to be withdrawn and MMG will not be required to make any payment in relation to those Goods and the balance of the Purchase Order shall remain in full force and effect.

8.5 Delivery of unavailable Goods

If MMG requires the Supplier to supply unavailable Goods as contemplated by clause 8.4, the Supplier must Deliver those Goods by the date stated by the Supplier in its notice given under

clause 8.4(b) which date will constitute the Date for Delivery of the Goods. The exercise by MMG of any rights under clauses 8.4 or 8.5 does not in any way limit or restrict the Supplier's obligations or liabilities under clauses 9 and 10 or MMG rights against the Supplier under this Agreement.

8.6 Unloading

Unless otherwise directed, the Goods must be unloaded at the Delivery Point by the Supplier in accordance with all Legislative Requirements and any applicable MMG Policies and Procedures. The Unit Price includes all costs of Delivery of the Goods.

9. Extension of time

9.1 Notice of Delay

If the Supplier encounters events or circumstances, which have resulted in, or might reasonably be expected to result in, a delay to Delivery, the Supplier must:

- (a) immediately give a notice in writing to MMG when it is reasonably possible to assess the effect of the relevant cause on the Supplier's ability to Deliver the Goods;
- (b) use its reasonable endeavours to mitigate the consequences of any such delay or any delay which actually occurs; and
- (c) as soon as reasonably practicable, to the extent reasonably practicable remedy the cause of such delay or any delay which actually occurs and minimise its effects.

Each notice given under paragraph (a) of this clause must:

- (d) state all relevant details of the nature of the cause of the delay and the extent of the delay;
- (e) state any steps which have been taken so as to mitigate the consequences of the delay; and
- (f) state any steps, which have been taken or will be taken so as to remedy the cause or causes of the delay and minimise its effects.

9.2 MMG Rights

- (a) Upon receiving a notice in accordance with clause 9.1, MMG may, at its option:
 - (i) terminate all or any part of the Purchase Order; or
 - (ii) request the Supplier to source all or any part of the Goods from a third party.
- (b) Unless the termination or request arises as a result of an event or circumstance which would otherwise have entitled the Supplier to an extension of time under clause 9.3(a), the Supplier must bear all costs incurred in connection with the termination or request.
- (c) If the termination or request arises as a result of an event or circumstance which would otherwise have entitled the Supplier to an extension of time under clause 9.2(a), MMG must:
 - (i) in the case of a termination, pay to the Supplier an amount calculated in accordance with clause 29.1(b); or
 - (ii) in the case of a request, pay to the Supplier the reasonable costs incurred by the Supplier in complying with the request.

9.3 Extension of time

- (a) Subject to the Supplier complying with clause 9.1, the Date for Delivery will be extended commensurately with the period of any actual delay to Delivery due to the following:
 - (i) any breach of this Agreement by, or any act, default or omission of, MMG; or
 - (ii) the performance of any variation required by clause 11.

- (b) Notwithstanding that the Supplier is not entitled to an extension of time, MMG may, in its absolute discretion, at any time, by notice in writing to the Supplier, extend the Date for Delivery.

10. Liquidated Damages

10.1 Liability for Liquidated Damages

If the Supplier fails to Deliver the Goods by the relevant Date for Delivery, the Supplier must pay as a debt due to MMG Liquidated Damages in respect of the delay in Delivery calculated at the rate stated in the Schedule.

10.2 Deduction of Liquidated Damages

The amount of Liquidated Damages payable by the Supplier under this clause may be deducted by MMG from any moneys otherwise payable or to become payable by MMG to the Supplier, whether under this Agreement, any Purchase Order Contract or otherwise.

10.3 Adjustment

If, in respect of a Delivery of Goods, after the Supplier has paid or MMG has deducted Liquidated Damages, the Date for Delivery of those Goods is extended in accordance with this Agreement, MMG must, at the time of the next payment to the Supplier, repay to the Supplier any Liquidated Damages paid or deducted in respect of the period to and including the new Date for Delivery of those Goods.

10.4 General law damages

If no amount for Liquidated Damages is stated in the Schedule, or if MMG for any reason becomes disentitled to Liquidated Damages, MMG is entitled to all remedies available to it (including damages) for late Delivery from the Supplier under general principles of law.

11. Variations

11.1 Direction to vary

MMG may Direct the Supplier to vary:

- (a) the quantity of the Goods to be supplied under any Purchase Order Contract;
- (b) the specification of some or all of the Goods;
- (c) the Date for Delivery of the Goods;
- (d) the Delivery Point; and
- (e) the methodology or other circumstances of Delivery.

The Supplier must comply with any Direction given by MMG under clause 11.1.

11.2 Proposed variations

Without limiting MMG rights under clause 11.1, MMG may give the Supplier written notice of a proposed variation. The Supplier must, as soon as practicable after receiving such notice, notify MMG whether the proposed variation can be performed, together with, if it can be performed, the Supplier's estimate of:

- (a) the effect on the Date for Delivery of the Goods; and
- (b) the cost (including all time-related costs, if any) of performing the proposed variation.

The Supplier must not perform any proposed variation unless MMG gives a Direction to the Supplier under clause 11.1.

11.3 Variations for the convenience of the Supplier

If the Supplier requests MMG to direct a variation for the convenience of the Supplier, MMG may do so. The Direction must be written and may be subject to any conditions MMG considers appropriate. Unless the Direction provides otherwise, the Supplier will not be entitled to extra time or extra money.

11.4 Pricing

Suppliers must, as soon as practicable, price each variation directed by MMG by adopting the price agreed by the parties or, in the absence of agreement, applying applicable rates or prices in the Agreement. Where such rates or prices do not apply or it is not reasonable to use them, MMG must price the variation using other reasonable rates or prices.

11.5 Non-contract Items and Buy-in Items

- (a) MMG may, in a Purchase Order or otherwise, require the Supplier to supply Non-contract Items or Buy-in Items.
- (b) The price for any MMG Non-contract Items or Supplier Buy-in Items will be determined as follows:
 - (i) Non-contract Items - MMG must pay to the Supplier the Supplier's purchase price (less any discount received from a Sub-Supplier) plus an agreed mark up. This agreed mark up % is listed in Annexure 1 - Specification; and
 - (ii) Supplier Buy-in Items - subject to paragraph (c)(i) below, MMG must pay to the Supplier the net cost (after the deduction of any applicable Sub-Supplier discounts) to purchase the Buy-in Item together with the agreed mark up for Buy-in Items included in Annexure 1 - Specification.
- (c) The Supplier must provide to MMG the following:
 - (i) Non Contract items – Supplier must provide, on request, details of the Supplier's net purchase price for the Item for audit purpose; and
 - (ii) Supplier Buy-in Items – Supplier must provide three quotations, on request, from Sub-Suppliers for the purchase of the Supplier Buy-in Items for audit purpose.
- (d) The net cost of the Buy-in Item for the purposes of paragraph (c)(ii) will not exceed the amount of the lowest quote for the Buy-in Item.

12. Inspection and Testing

12.1 Inspection

- (a) MMG may inspect the Goods prior to Delivery. The Supplier must ensure that MMG is permitted to attend at any premises where the Goods are being manufactured or stored for the purpose of carrying out an inspection. The Supplier must cooperate with MMG in respect of such an inspection and provide MMG with access to such premises for such purpose.
- (b) MMG is not obliged to inspect the Goods prior to Delivery.
- (c) Inspection of the Goods will not relieve the Supplier of any obligations that it has under this Agreement in relation to the Goods.

12.2 Testing

- (a) MMG may test the Goods at any time to determine whether they comply with this Agreement and the Purchase Order Contract. The Supplier must ensure that MMG is permitted to attend at any premises where the Goods are being manufactured or stored for the purpose of performing testing. MMG may test the Goods by the means specified in the Specification or by other means that MMG considers appropriate, including selection of samples for testing and analysis.
- (b) MMG is not obliged to test the Goods. The Supplier must perform the tests required by this Agreement or Directed by MMG.
- (c) Testing of the Goods will not relieve the Supplier of any obligations that it has under this Agreement in relation to the Goods.

12.3 Test Results

The Supplier must provide MMG with copies of the results of any tests performed by the Supplier or anyone on the Supplier's behalf in connection with the Goods.

12.4 Cost of testing

Unless otherwise stated in this Agreement or the Purchase Order, MMG must bear the costs of any testing conducted by MMG unless the Goods fail such tests in which case the Supplier must pay:

- (a) the cost of such tests as incurred by MMG; and
- (b) the costs of any further tests MMG reasonably requires to be assured that the Goods comply with this Agreement and the Purchase Order.

13. Hazardous materials

13.1 Compliance with Legislative Requirements

The Supplier warrants that the transport and storage of all chemicals, chemical substances and other hazardous materials and dangerous goods supplied under this Agreement will comply with all Legislative Requirements.

13.2 Materials Safety Data Sheet

- (a) The Supplier must provide MMG with the relevant materials safety data sheet (MSDS) for all chemicals, chemical substances and other hazardous goods supplied under this Agreement.
- (b) No chemical, chemical substance or other hazardous goods must be brought on the Site until the relevant MSDS has been lodged with MMG.

14. Legislative Requirements, Standards and Quality Assurance

14.1 Compliance

The Supplier must in carrying out this Agreement and a Purchase Order Contract comply with:

- (a) all Legislative Requirements;
- (b) all relevant Standards; and
- (c) any certification, approval or registration concerning assurance of the quality of the Supplier's systems, procedures, processes, business practices and production (Quality Assurance Certification) that the Supplier is required by this Agreement to hold or which the Supplier held at the Commencement Date.

15. Acceptance of Goods

15.1 Compliance

MMG may require the Supplier to provide evidence, acceptable to MMG, that the Goods are in accordance with this Agreement. The Supplier must provide such evidence in response to such a request. This evidence must be provided within the time prescribed in the request or such longer time as may be agreed. The production of evidence by the Supplier will not relieve the Supplier of any obligations that it has under this Agreement in relation to the Goods.

15.2 Requirements for acceptance

The Goods will be deemed to be accepted by MMG when MMG Representative completes the Goods Receipt entry (Transaction MIGO) in the SAP System.

15.3 Title and risk

Subject to clause 15.4, title to and property and risk in the Goods passes to MMG upon Acceptance.

15.4 Goods held on consignment

If MMG specifies in a Purchase Order that Goods are to be held on consignment by MMG, title to those Goods passes to MMG when the Goods are removed from stock held on consignment and used or applied by MMG.

16. Rejection

16.1 MMG may reject

If MMG reasonably determines that:

- (a) the Goods do not comply with this Agreement or the Purchase Order Contract; or
- (b) the Supplier has breached any of terms of this Agreement or the Purchase Order Contract,

MMG may reject the Goods by giving a written rejection notice to the Supplier. A determination by MMG in accordance with this clause 16.1 is final and binding on the Supplier.

16.2 Possession of Goods after rejection

If Goods are rejected by MMG, it may, at the Supplier's cost, store the Goods for a maximum period of 30 days after the date of the rejection notice and, if the Supplier does not repossess the Goods within the 30 day period, MMG will be entitled to sell or otherwise dispose of the Goods at the Supplier's cost.

16.3 Reimbursement of MMG costs

MMG may, by notice in writing, require the Supplier to reimburse MMG any costs or expenses incurred by MMG as a consequence of the rejection of the Goods. A reimbursement notice that is served in accordance with this clause 16.3 is conclusive evidence of the costs and expenses incurred by MMG, and the Supplier must reimburse MMG for those costs and expenses within 21 days of the date of the notice.

16.4 Rights preserved

MMG right to reject the Goods or otherwise claim against the Supplier for Goods that do not comply with this Agreement or the Purchase Order Contract is not limited or precluded by acceptance of the Goods or by payment of any money to the Supplier.

17. Return of Goods

17.1 Excess Goods

MMG is not required to accept any Goods that are Delivered in excess of the quantities stated in the Purchase Order. The Supplier must reimburse the cost of any demurrage, freight, cartage, haulage and other such costs incurred by MMG in returning excess Goods.

17.2 Incorrectly ordered Goods

MMG may return any Goods that have been incorrectly ordered by MMG. MMG must pay all freight costs and handling charges associated with effecting the return of such Goods.

17.3 Consignment

On the expiration or termination of this Agreement, MMG may either purchase or return to the Supplier, in part or whole, any Goods held on consignment where title has not passed to MMG. MMG must pay all freight and handling costs associated with effecting the return of such Goods except where this Agreement is terminated by request, or due to default, of the Supplier, in which case all freight and handling costs must be borne by the Supplier.

18. Warranty Period

- (a) Without limiting any other warranty, whether expressed in this Agreement or implied by statute or generally at law:
 - (i) if any defect (fair wear and tear excepted) appears in the Goods within the Warranty Period, MMG may Direct the Supplier to promptly remedy such defect at its cost by either repairing or replacing the defective Goods, such election being at the sole discretion of MMG; and
 - (ii) the Supplier must, where the Specification so provides, obtain for MMG the benefit of any manufacturer's warranty or a Deed of Manufacturer's Warranty in accordance with Annexure 4 - Deed of Manufacturer's Warranty.
- (b) If the Supplier does not remedy a defect in the Goods within the time Directed by MMG Representative (or, if no time is stated, within 14 days of being notified of the defect) MMG may engage others to repair or replace the Goods. The reasonable costs incurred by MMG in doing so, together with any loss or damage suffered by MMG as a result of the engagement of others, will be a debt due from the Supplier to MMG.

19. Intellectual Property

19.1 Warranty by Supplier

The Supplier warrants that it is entitled to use any Intellectual Property, which is or may be used by it in connection with the supply of Goods under this Agreement or any Purchase Order Contract.

19.2 Indemnity by Supplier

The Supplier indemnifies and at all times keeps MMG indemnified against any action, claim, suit or demand, including a claim, suit or demand for or liability to pay compensation or damages and costs or expenses arising out of or in respect of any breach of any third party's intellectual property rights relating to the supply of Goods under this Agreement or any Purchase Order Contract, except to the extent that such breach is a result of the Goods being supplied in accordance with designs provided by MMG.

19.3 Ownership

1) Alternative 1

The Supplier grants to MMG a perpetual, irrevocable, royalty free, non-exclusive licence to use the Supplier's Intellectual Property in relation to the Goods and in all Information created as a result of the supply of the Goods under this Agreement or a Purchaser Order Contract.

2) Alternative 2

The ownership of all Intellectual Property in relation to the Goods and in all Information created as a result of the supply of Goods under this Agreement or a Purchase Order Contract vests on creation in MMG. The Supplier must do everything necessary to perfect such vesting. The Supplier assigns ownership of all Intellectual Property in such Information to MMG and must ensure that its employees, Sub Suppliers and agents execute all documents necessary to assign to MMG all such rights.

20. Insurance

20.1 General insurance requirements

- (a) Before the Supplier supplies any Goods under this Agreement, the Supplier must effect and maintain:
 - (i) the policies of insurance specified in the Schedule and this clause;
 - (ii) all insurances required by Legislative Requirements in order to supply the Goods;
 - (iii) such other insurances as MMG may reasonably require, on the terms reasonably acceptable to MMG.
- (b) Each policy of insurance must be effected at the Commencement Date and must:
 - (i) be for the amount of cover specified in the Schedule, increased annually by the percentage specified in the Schedule;
 - (ii) be maintained for the period specified in the Schedule;
 - (iii) cover MMG, the Supplier and all Sub Suppliers for their respective rights, interests and liabilities.

20.2 Evidence of insurance

The Supplier must produce to MMG on demand satisfactory evidence of the insurances required to be effected and maintained under this Agreement. If the Supplier fails to provide such evidence when requested, MMG will not be required to make any further payment under this Agreement until evidence is provided.

20.3 Validity of insurance

The Supplier must not do anything to make void or inapplicable any policy of insurance, which the Supplier is required to effect and maintain under this Agreement.

21. Supplier's Warranties

21.1 Warranties by Supplier

The Supplier warrants that:

- (a) it has the right to sell and transfer title to the Goods to MMG;
- (b) the Goods will:
 - (i) be free of any charge, encumbrance or any third party interest;

- (ii) (except as otherwise provided in the Specification) be new when Delivered to MMG;
- (iii) be fit for the purpose stated in the Specification or elsewhere in the Purchase Order Contract, or if no purpose is stated, the purpose for which the Goods would ordinarily be used;
- (iv) conform to the description, model number and the sample (if any) provided by the Supplier;
- (v) conform with the requirements of this Agreement and the Purchase Order Contract;
- (vi) be free from defects (including defects in design, materials, workmanship and installation); and
- (vii) be of good merchantable quality and comply with the Standards;
- (c) it will not vary the specification, design, shape, configuration or characteristics of the Goods without the written consent of MMG Representative;
- (d) where the Specification specifies trade name products, in accordance with the specifications as to the type and minimum quality of such Goods required, it will not supply substitute or equivalent Goods without the written consent of MMG;
- (e) it validly holds and will continue to hold the Quality Assurance Certification for the duration of the Term;
- (f) it has represented that it can comply with all of its obligations under this Agreement and acknowledges and agrees that MMG has relied upon such representation in entering into this Agreement;
- (g) it has:
 - (i) made proper allowance in the Unit Price for:
 - (A) all matters which might impact upon the Supplier's ability to Deliver the Goods within any particular time, cost or quality constraints; and
 - (B) all risks associated with the Delivery of the Goods;
 - (ii) informed itself as to all matters which might impact on the Delivery of the Goods;
 - (iii) obtained or will be able to obtain, all the necessary consents, permits or authorities necessary in order for the Supplier to Deliver the Goods;
 - (iv) has carefully examined the documents forming part of this Agreement and that there are no ambiguities or discrepancies in those documents;
- (h) it is not insolvent within the meaning of s.95A of the Corporations Act 2001 or otherwise and there is no unfulfilled or unsatisfied judgment or Court order outstanding against the Supplier; and
- (i) is an Australian Resident

21.2 Nature of warranties

Each warranty given in clause 21.1 must be given full effect in its own right. No individual warranty will be read down by reason of the existence, or absence of any other warranty.

22. Indemnity by Supplier

- (a) To the maximum extent permitted by law, the Supplier indemnifies MMG against all actions, claims, costs, charges, damages, expenses, liabilities, losses or damages (including legal costs on an indemnity basis whether incurred by or awarded against MMG) that MMG may incur or sustain arising out of or in connection with:

- (i) the performance by the Supplier of its obligations under this Agreement including the provision of the Goods;
 - (ii) any negligent or unlawful act or omission of the Supplier or the Supplier's employees, agents or Sub Suppliers or of any other persons for whose acts or omissions the Supplier is vicariously liable;
 - (iii) death of or injury to, or loss of or damage to any property of, any person (including existing property in or upon which the Services under the Agreement are being carried out);
 - (iv) any breach of this Agreement or any Purchase Order Contract or any Legislative Requirement by the Supplier;
 - (v) despite any inspection of the Goods by the Supplier, the Goods failing to comply with their description, identity or quality or being damaged or unfit for their purpose; and
 - (vi) any false, misleading or deceptive statement or conduct of the Supplier.
- (b) The Supplier's liability to indemnify MMG will be reduced proportionally to the extent that any negligent or unlawful act or omission of MMG contributes to the loss or liability.

23. Unit Prices

23.1 Unit Price inclusive

Unit Prices are inclusive of all costs and expenses of the Supplier whether foreseen or unforeseen, including all insurance and Taxes (other than GST) (if any), which must be paid by the Supplier.

23.2 Variation of Unit Price

Unit Prices are fixed for a period of months stated in the Schedule and thereafter may be varied at the beginning of each subsequent period. Unit Prices are to be varied in accordance with Annexure 6 – Unit Price / Unit Price Variation Process

23.3 Goods Delivered after Term

Where Goods are ordered during the Term but are Delivered outside that period, the Unit Price payable for those Goods will be the Unit Price applicable at the date of the Purchase Order.

23.4 Third parties

The Supplier must extend the Unit Prices to a third party where Directed by MMG, if that third party is either using the Goods to perform services to MMG or is a Related Body Corporate of MMG.

24. Goods & Services Tax

24.1 Interpretation

- (a) Words or expressions used in this clause which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, in the *A New Tax System (Goods and Services Tax) Regulations 1999* (Cth) or, if not so defined, then which are defined in the *Trade Practices Act 1974* (Cth), have the same meaning in this Clause.
- (b) In this clause:
 - (i) **ERS System means** the Evaluated Receipt Settlement System, the process by which MMG automatically creates an invoice at the time that Goods are accepted using the Supplier's delivery docket number as the invoice number, and then making payment to the Supplier against the ERS invoice based on the payment terms;
 - (ii) **ERS Goods** means Goods which are subject to the ERS System; and

- (iii) **RCTI** means Recipient Created Tax Invoice, being a Tax Invoice created by MMG and forwarded to the Supplier, which must be delivered to the Supplier when payments are processed by ERS.

24.2 GST Warranties

- (a) The Supplier warrants that the Supplier:
 - (i) is registered for GST when the Supplier enters into this Agreement;
 - (ii) will be so registered at the time each Purchase Order Contract is formed; and
 - (iii) will notify MMG if it ceases at any time to be registered for GST.
- (b) MMG warrants that MMG:
 - (i) is registered for GST when MMG enters into this Agreement; and
 - (ii) will notify the Supplier if it ceases to be registered for GST or if it ceases to satisfy the requirements of any determination or ruling issued by the Commissioner of Taxation relating to the issue of RCTIs.

24.3 Consideration is GST exclusive

Any consideration to be paid or provided to a party for a supply made by that party under or in connection with this Agreement is stated exclusive of GST.

24.4 Gross up of consideration

Despite any other provision in this Agreement, if a party (**'Supplying Party'**) makes a taxable supply under or in connection with this Agreement on which GST is imposed:

- (a) the consideration payable or to be provided for that supply under this Agreement but for the application of this Clause (**'GST exclusive consideration'**) is increased by, and the recipient of the supply (**'Receiving Party'**) must also pay to the Supplying Party, an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing on the date the supply is made; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplying Party by the Receiving Party without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

24.5 Reimbursements (net down)

If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

24.6 Tax Invoices

Where the Goods supplied by the Supplier are:

- (a) ERS Goods, MMG will issue RCTIs on behalf of the Supplier instead of the Supplier issuing Tax Invoices to MMG; and
- (b) non-ERS Goods, the Supplier must submit Tax Invoices in compliance with the requirements of this Agreement and the Purchase Order Contract.

24.7 Consignment Goods

Where Goods are held on consignment, MMG must, on the first working day of each month:

- (a) notify the Supplier of current consignment stock holdings and usage for the previous month; and

- (b) issue a RCTI for the Goods used by MMG during that previous month.

24.8 Requirements for Tax Invoices

Where the Supplier is required to provide a Tax Invoice to MMG, the Tax Invoice must:

- (a) comply with the requirements of the GST Law (as a Tax Invoice) and must, unless inconsistent with the GST Law, specify:
 - (i) the Supplier's Australian Business Number;
 - (ii) the Purchase Price due to the Supplier and the basis of its calculation;
 - (iii) the amount of any GST paid or payable by the Supplier with respect to the Purchase Price;
 - (iv) the date of Delivery of the Goods to which the Tax Invoice relates;
 - (v) a description (including quantity) of the Goods Delivered;
 - (vi) if a discount is applicable, the discounted Purchase Price;
 - (vii) the Supplier's address for payment; and
 - (viii) the Purchase Order number,

and

- (b) be submitted by the tenth Business Day of the month following the month in which the Goods were accepted.

25. Terms of payment

25.1 Time for payments

- (a) All payments will be made at the end of the month following the month in which Acceptance of the Goods occurs.
- (b) Where a Tax Invoice is required to be delivered by the Supplier, but has not been delivered to MMG in accordance with clause 24.8, payment in respect of the Goods the subject of such Tax Invoice will not be made until the end of the month following the month in which delivery of the Tax Invoice is delivered.

25.2 Effect of payment

The making of any payment under this Agreement or any Purchase Order Contract is not evidence or an admission that the Goods have been supplied in accordance with this Agreement or the Purchase Order Contract but is a payment on account only.

26. Set Off

Subject to clause 24.4(a), MMG may set off against any amount owing to the Supplier any amount owing, or claimed by MMG to be owing, by the Supplier to MMG, whether under this Agreement or otherwise, including any amount claimed pursuant to clause 22 of this Agreement.

27. Records and audit

- (a) The Supplier must maintain and retain for a period of not less than 7 years full and proper records of all Goods provided including all details and data used in the creation of Tax Invoices delivered.
- (b) The Supplier must provide MMG with all reasonable access during the period referred to in paragraph (a) to all of Supplier's personnel, books, records systems, procedures and correspondence relating to this Agreement, to audit and verify that charges are in accordance with this Agreement or for any other reasonable purpose.

28. Force majeure

28.1 Definition

In this clause, **Force Majeure** means war, hostilities (whether declared or not), invasion, armed conflict, act of foreign enemies, rebellion, revolution, insurrection, military or usurped power, civil war, civil commotion, act of terrorism, ionising radiations or contamination by radioactivity from any nuclear waste, from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof, aviation disasters, explosives, natural catastrophe including but not limited to earthquake, flood, subterranean spontaneous combustion and any other operation of the forces of nature of catastrophic proportion the occurrence of which could not have been reasonably foreseen by the Party seeking to rely on such occurrence.

28.2 Occurrence of Force Majeure

If an event of Force Majeure affecting a party precludes that party (**Precluded Party**) partially or wholly from complying with its obligations under this Agreement then:

- (a) as soon as reasonably practicable after that Force Majeure Event arises, the Precluded Party must notify the other party of:
 - (i) the Force Majeure Event;
 - (ii) which obligations the Precluded Party is precluded from performing (**Affected Obligations**);
 - (iii) the extent to which the event of Force Majeure precludes the Precluded Party from performing the Affected Obligations (**Precluded Extent**); and
 - (iv) the expected duration of the delay arising directly out of the event of Force Majeure;
- (b) the Precluded Party's obligation to perform the Affected Obligations will, to the Precluded Extent, be suspended for the duration of the actual delay arising directly out of the event of Force Majeure (**Actual Delay**); and
- (c) the other party's obligations to perform any obligations dependent on the Affected Obligations will be suspended until the Precluded Party resumes performance.

28.3 Obligations of Precluded Party

The Precluded Party must:

- (a) take all proper precautions and due care to avoid the Actual Delay and or failure to carry out its obligations;
- (b) attempt to mitigate the Actual Delay or failure to carry out its obligations; and

- (c) use all reasonable endeavours to minimise any loss to the other party, and upon notification in accordance with clause 28.2, the parties must consult on a basis on which to adjust their interests in a mutually satisfactory manner.

28.4 Termination for Force Majeure

- (a) If the Actual Delay is reasonably considered by either party to be incapable of resolution, then either party may terminate this Agreement immediately by giving notice to the other party.
- (b) If a party terminates this Agreement under this clause 28.4:
 - (i) the rights and obligations of the parties under this Agreement (including, but not limited to, any licence) cease; and
 - (ii) any accrued rights or remedies of a party are not affected.

29. Termination

29.1 Termination for convenience

- (a) MMG may, without cause and at any time, by giving written notice to the Supplier, terminate this Agreement, and/or any Purchase Order Contract (in whole or in part) in respect of which Goods have not been Delivered. Except as expressly provided for in paragraph (b), MMG will not be liable for any loss, damage, cost or expense suffered or incurred by the Supplier by reason of any such termination.
- (b) If MMG terminates a Purchase Order Contract otherwise than as a result of the termination of this Agreement in accordance with clauses 29.3 or clause 29.6, MMG must pay to the Supplier any costs reasonably and necessarily incurred by the Supplier:
 - (i) prior to the date of the termination notice; or
 - (ii) which the Supplier is legally bound to pay,

in relation to the manufacture of the Goods, after deducting any amount which the Supplier receives for the sale of those Goods to any third party. For the avoidance of doubt, the Supplier must use reasonable endeavours to sell the Goods to a third party if this clause 29.1 applies.

29.2 Definition

For the purpose of clauses 29.3 to 29.10 inclusive, the term Agreement includes a Purchase Order Contract.

29.3 Insolvency

Either party may immediately terminate this Agreement by written notice to the other party if the other party is affected by an Insolvency Event.

29.4 Supplier's default

If the Supplier breaches this Agreement (including any warranty) or a Purchase Order Contract, MMG may give the Supplier a written notice of default.

29.5 MMG notice to show cause

A notice of default under clause 29.4:

- (a) is a notice to the Supplier that MMG intends to terminate the Agreement for default;
- (b) must state that it is a notice under clause 29 of this Agreement;
- (c) must identify the alleged breach;

- (d) must require the Supplier to remedy the breach or, if the breach is not capable of remedy, show cause in writing why MMG should not exercise a right referred to in clause 29.6; and
- (e) must state the reasonable date and time by which the Supplier must remedy the breach or show cause (which must not be less than 7 clear days after the notice is received by the Supplier).

29.6 MMG rights

If the Supplier fails to remedy the breach or, if the breach is not capable of remedy, fails to show reasonable cause, by the stated time, MMG may, by written notice to the Supplier, terminate this Agreement.

29.7 MMG default

If MMG fails to make a payment due and payable pursuant to the Agreement or otherwise commits a substantial breach of this Agreement, the Supplier may give MMG a written notice of default.

29.8 Supplier's notice to show cause

A notice given under clause 29.7 must:

- (a) state that it is a notice under clause 29 of this Agreement;
- (b) identify the alleged breach;
- (c) require MMG to remedy the breach or, if the breach is not capable of remedy, to show cause in writing why the Supplier should not exercise a right referred to in clause 29.9;
- (d) the date and time by which MMG must remedy the breach or show cause (which must not be less than 14 clear days after the notice is received by MMG).

29.9 Supplier's rights

- (a) If MMG fails to remedy the breach or, if the breach is not capable of remedy, fails to show reasonable cause by the stated date and time, the Supplier may, by written notice to MMG, suspend delivery of any Goods under any Purchase Order Contract. The Supplier must remove the suspension if MMG remedies the breach.
- (b) The Supplier may, by written notice to MMG, terminate the Agreement, if within 28 days of the date of suspension under this clause, MMG fails:
 - (i) to remedy the breach; or
 - (ii) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the Supplier.
- (c) Damages suffered by the Supplier by reason of the suspension must be reasonably assessed by MMG, which will be moneys due and payable to the Supplier.

29.10 Termination

If the Agreement is terminated pursuant to clause 29.6 or 29.9, the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing this Agreement had the defaulting party repudiated the Agreement and the other party elected to treat the Agreement as at an end.

29.11 Dumping

MMG may terminate this Agreement or a Purchase Order Contract for default by the Supplier or suspend the procurement of Goods (including Goods which are the subject of an existing Purchase

Order) where Goods supplied by the Supplier are subject to investigation by the Anti-Dumping Authority under the *Anti-Dumping Authority Act 1988* (Cth).

30. Confidentiality, Privacy and Publicity

30.1 Information from MMG

All Information provided to the Supplier by MMG in connection with this Agreement or a Purchase Order Contract must be treated as confidential by the Supplier. In this clause 29, such Information is referred to as **Confidential Information**.

30.2 Confidentiality

The Supplier must ensure that its employees, agents, directors, partners, shareholders or consultants must not disclose to any person, any Confidential Information or Information relating to MMG which may have come to their knowledge as a result of this Agreement or a Purchase Order Contract.

30.3 Property in Confidential Information

All Confidential Information remains the property of MMG and must be returned by the Supplier to MMG on expiration or termination of this Agreement.

30.4 Use of Confidential Information

The Confidential Information supplied to the Supplier pursuant to this Agreement or a Purchase Order Contract must be used only as directed by MMG and must not be reproduced or used for any purpose other than pursuant to this Agreement or a Purchase Order Contract.

30.5 Relief

The Supplier acknowledges that MMG will be entitled (in addition to any entitlement to damages) to an injunction or other equitable relief with respect to any actual or threatened breach by the Supplier of this clause 30 and without the need on the part of MMG to prove any special damage.

30.6 Exempt Information

The Supplier's obligations under this clause will not extend to:

- (a) Information already in the public domain other than due to a breach of this Agreement by or on behalf of the Supplier; and
- (b) any disclosure required by law.

30.7 Privacy

The Supplier agrees to be bound by the provisions of the Privacy Act 1988 as amended by the Privacy Amendment (Private Sector) Act 2000 that may apply to MMG ('Code of Practice') with respect to any act done, or practice engaged in, by the Supplier for the purposes of this Agreement in the same way and to the same extent as MMG would have been bound by them had it been directly done or engaged in by MMG.

30.8 Assistance

The Supplier must provide assistance requested by MMG in relation to any proceedings MMG may take against any person for unauthorised use, copying or disclosure of Confidential Information.

30.9 Announcements

A public announcement in connection with this Agreement must be agreed by the Parties before it is made, except if required by a Legislative Requirement or a regulatory body (including a relevant

stock exchange), in which case the Party required to make an announcement must, to the extent practicable, first consult with and take into account the reasonable requirements of the other Party.

31. Relationship

The Supplier is an independent contractor and in performing this Agreement is not for any purpose a partner, joint venturer, agent or employee of MMG.

32. Subcontracting or Assignment

32.1 Subcontracting

The Supplier must not, without the prior written approval of MMG (which will not be unreasonably withheld), subcontract the performance of any part of this Agreement or any Purchase Order Contract.

32.2 Liability of Supplier unaffected

Any consent to subcontract will not relieve the Supplier from any of its liabilities or obligations under this Agreement nor create any liability or obligation on MMG. Any consent to subcontract granted by MMG may be conditional upon (without limitation) the Supplier obtaining from the subcontractor evidence of appropriate insurance and appropriate expertise and a grant of the corresponding Intellectual Property rights granted to or vested in MMG under this Agreement.

32.3 Assignment

- (a) The Supplier must not assign or transfer its rights under this Agreement without MMG prior written consent which may be granted on such reasonable terms as MMG considers appropriate.
- (b) MMG may assign or transfer its rights under this Agreement without the Supplier's consent.

33. Representatives

33.1 MMG Representative

MMG Representative, or another person nominated by MMG by notice to the Supplier, will exercise MMG functions under this Agreement. The appointment of MMG Representative does not limit MMG powers or rights under this Agreement.

33.2 Supplier's Representative

The Supplier's Representative, or another person approved by MMG, will act as the Supplier's representative under this Agreement and any direction given by MMG to the Supplier's Representative will be binding on the Supplier.

34. Service of Purchase Orders and Other Notices

34.1 Method

A Purchase Order, notice, demand, consent, approval or communication under this Agreement (Notice) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and

- (b) hand delivered or sent by prepaid post or facsimile or by Electronic Means to the recipient's address for Notices specified in the Schedule, as varied by any Notice given by the recipient to the sender.

34.2 Time of service

A Notice given in accordance with clause 34.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice; and
- (d) in the case of Electronic Means, if the receiving Party has agreed to receipt in that form under the Agreement or a Purchase Order Contract, and the message is correctly addressed to and successfully transmitted to that Party's electronic mail address (e-mail address), and acknowledgment of receipt is recorded on the sender's computer,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

35. Limitation of Liability

Despite any other provision of this Agreement and to the maximum extent permitted by Law, neither party will bear any liability to the other for any Consequential Loss howsoever arising (including in negligence or for breach of any statutory duty).

36. Disputes

36.1 Settlement of Disputes

- (a) Subject to clause 36.3, any dispute in connection with this Agreement must be notified in writing by either Party to the other Party. The notice must set out details of the dispute.
- (b) Within 14 days of delivery of the notice the Supplier's Representative and MMG Representative must meet to attempt to resolve the dispute.
- (c) If the dispute is not resolved in accordance with clause 36.1(b), or the parties do not meet in accordance with clause 36.1(b), the dispute must be referred to the senior managers of the Parties who must meet to attempt to resolve the dispute. If the dispute is not resolved by the senior managers within 28 days of delivery of the notice in clause 36.1(a) either party may refer the dispute to litigation.
- (d) No dispute may be referred to litigation before the procedures in (b) and (c) have been completed.

36.2 Performance during Dispute Resolution

The Parties must continue to perform their obligations under this Agreement despite the existence of a dispute under this clause 36.

36.3 Summary relief

Nothing in this Agreement will prejudice the right of a party to commence proceedings to enforce payment due under this Agreement or to seek injunctive or urgent declaratory relief in respect of any matter arising in connection with this Agreement.

37. Miscellaneous

37.1 Alterations

This Agreement may be altered only in writing signed by each Party.

37.2 Approvals and consents

Except where this Agreement expressly states otherwise, a Party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.

37.3 Costs

Each Party must pay its own costs of negotiating, preparing and executing this Agreement.

37.4 Stamp duty

Any stamp duty, duties or other taxes of a similar nature (including fines, penalties and interest) in connection with this Agreement or any transaction contemplated by this Agreement, must be paid by the Supplier.

37.5 Survival

The obligations of the Supplier under clauses 10,19,20,21,22,24,27,30,32 and 35 will be of a continuing nature and will survive the termination or expiration of this Agreement or a Purchase Order Contract.

37.6 Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

37.7 No merger

The rights and obligations of the Parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

37.8 Entire agreement

- (a) This Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.
- (b) Subject to paragraph (a), a Purchase Order Contract will constitute the entire agreement between MMG and the Supplier in relation to the Goods contained in the Purchase Order and any previous correspondence is expressly excluded.

37.9 Further action

Each Party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

37.10 Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the term of this Agreement continue in force.

37.11 Waiver

A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.

37.12 Applicable jurisdiction

This Agreement is governed by the law stated in the Schedule and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

38. PAYG Withholding

38.1 Consideration exclusive of PAYG Withholding

Unless otherwise provided, any consideration to be paid or provided to a party under or in connection with this Agreement is stated prior to any tax withheld pursuant to this Clause.

38.2 No ABN Withholding

In compliance with the relevant withholding tax legislation or any ATO Public Ruling, MMG will withhold an amount of tax (currently 46.5%) from any payment it makes to the Supplier if the payment is for a supply, unless the Supplier provides to MMG an invoice or other document notifying an obligation to make a payment that quotes the Supplier's Australian Business Number (ABN) or, the Supplier meets the criteria for exemption from the No ABN Withholding requirement as contained in S12-190 of Schedule 1 of the Taxation Administration Act 1953.

38.3 Payment to Foreign Resident

- (a) In compliance with the relevant withholding tax legislation, MMG will withhold an amount of tax from any payment it makes to the Supplier if the Supplier is not an Australian Resident and the payment is of a kind specified in section 12-315(1) of Schedule 1 of the Taxation Administration Act 1953 (Cth).
- (b) The amount of tax to be withheld from such a payment will be as required by the Taxation Administration Regulations 1976 (Cth), or any other law if applicable, unless MMG is satisfied that the Supplier has been granted an exemption from withholding obligations pursuant to section 12-319 of Schedule 1 of the Taxation Administration Act 1953 (Cth).
- (c) Further, if MMG is satisfied that the Supplier has received written notice, pursuant to section 15-15 of Schedule 1 of the Taxation Administration Act 1953 (Cth), varying the amount of tax to be withheld, the amount of tax withheld by MMG from payments to the supplier will be determined in accordance with such written notice until such notice is no longer valid.
- (d) If any consideration paid to the Supplier by MMG under or in connection with this Agreement is paid free of withholding tax, and at any time after such payment, MMG becomes aware (either by notification from the Australian Tax Office or otherwise), that an amount of tax should have been withheld from such payment, MMG shall be entitled to recover from the Supplier any subsequent amount MMG may be required to pay to the Australian Tax Office

for failing to withhold (including any amounts required to be withheld). Such payments must be paid to MMG within 30 days of receipt of notice from MMG, in accordance with the payment provisions of this Agreement as set out in clause 25. For the avoidance of doubt any such amounts to be recovered from the Supplier will be exclusive of the Fee payable to the Supplier.

39. Occupational Health and Safety, and the Environment

39.1 Compliance

Without limiting any other clause in this Agreement, the Supplier must, as a minimum, comply with relevant environmental and occupational health and safety Legislative Requirements and MMG Policies and Procedures (including MMG Health and Safety Policies), which are in any way applicable to the performance of the Supplier's obligations under this Agreement (together, the "Relevant Obligations").

39.2 Information to be Provided Prior to Delivery

The Supplier must provide to MMG the information described below, prior to the first Delivery of any Goods, and must provide updated versions when the information changes.

The information provided must:

- (a) list all issues relating to the health and safety of persons who may be affected during the life cycle of the Goods, and all potentially adverse effects on the environment; and
- (b) be written in a user friendly style and format and be of sufficient detail and quality to enable those persons to undertake all relevant activities with, or uses of, the Goods without risk to health or safety or undue adverse effect on the environment.

39.3 Goods Information and Compliance

The Supplier represents and warrants that, as at the Commencement Date and at all times after the Commencement Date:

- (a) all information required by relevant environmental and occupational health and safety Legislative Requirements has been provided to MMG in relation to the Goods supplied under this Agreement and that information is accurate, complete and not in any way misleading; and
- (b) the Goods comply with all relevant regulatory requirements in Australia.

39.4 Management systems and Plans

- (a) The Supplier must, throughout the term of this Agreement:
 - (i) have in place, or can demonstrate they are working towards, an environmental management system which as a minimum demonstrates compliance with Australian/New Zealand Standard AS/NZS ISO 14001; and
 - (ii) have in place, or can demonstrate they are working towards, an occupational health and safety management system ("OH&SMS") which as a minimum demonstrates compliance with AS/NZS 4801.
- (b) MMG may, prior to or at any time during the course of the term of this Agreement request copies of the systems and plans required under this sub-clause relevant to this Agreement.

- (c) MMG reserves the right to audit the Suppliers compliance with the above management system and plans

39.5 Environmental Assessment, Management & Training

Before commencing to perform its obligations under this Agreement the Supplier must implement appropriate risk management plans in relation to all occupational health, safety and environment ("OHS & E ") risks, in accordance with all relevant industry standards to:

- (a) identify the environmental aspects and impacts, and any hazards to health or safety associated with its performance of this agreement to ensure that all potential or actual OHS & E risks have been identified; ensure that the risks associated with all of the environmental aspects and impacts, and the health and safety hazards identified pursuant to paragraph are assessed, included as part of the Supplier's procedures and effectively managed through the development and documentation of appropriate OHS & E risk management plans; and
- (b) ensure its employees, agents and sub-contractors are appropriately inducted, trained and supervised in relation to:
 - (i) the risks identified and assessed pursuant to this clause 39.5 (Environmental Assessment, Management & Training);
 - (ii) the procedures they need to follow to manage those risks; and
 - (iii) their OHS & E obligations under this agreement, including the Relevant Obligations.

39.6 Indemnity for breach of environmental Legislative Requirements

The Supplier indemnifies MMG against any Loss suffered or incurred by MMG a result of a breach by the Supplier, or its employees, agents and sub-contractors of any OHS & E Legislative Requirements in carrying out its obligations under this Agreement.

40. Import Duty and Local Supplier Participation

40.1 Local Supplier Participation

MMG prefers (wherever possible) to provide local (Australian) suppliers with a full, fair and reasonable opportunity to supply Goods in relation to the Agreement.

Notwithstanding the Subcontracting conditions set out in the Agreement, if Goods are to be supplied by a Sub-supplier to the Supplier, then the Supplier must satisfy the terms and intent of this clause, that is, local (Australian) suppliers be given a full, fair and reasonable opportunity to submit a prequalification proposal in respect of the supply of Goods.

40.2 Customs Import Duty

MMG may make applications for import duty concessions in relation to Goods procured in accordance with this Agreement.

The Supplier will provide whatever assistance and/or information in timely manner to assist in such applications as requested by MMG.

Where MMG succeeds with such applications, the Supplier will obtain duty refunds as requested by MMG and will remit the proceeds to MMG.

Annexure 1 - Specification

Insert Items, Specification and Unit Prices here

Annexure 2 – Site Details & Delivery Points

<u>Site:</u>	<u>Name:</u>	<u>Deliveries to:</u>
<i>Requires completion – Example below</i>		
<i>CEM</i>	<i>Century Limited</i>	<i>Butt Haulage (TOLL)</i>
	<i>Queensland</i>	<i>Lot 1, Sir Hudson Fysch Drive</i>
	<i>Australia</i>	<i>Cloncurry</i>
	<i>Phone: 07 4769 5571</i>	<i>Queensland 4824</i>
	<i>Fax: 07 4769 5555</i>	<i>Phone: 07 4742 1275</i>

Annexure 3 - Special Conditions

OZ Minerals to advise any generic Special Conditions that can be inserted into this precedent. The Special Conditions may also contain any project specific amendments to the Goods Agreement eg. Key Performance Indicators (KPI's) if applicable

Annexure 4 - Deed of Manufacturer's Warranty

Request from Supplier – insert if applicable

Annexure 5 - MMG Policies and Procedures

Insert other relevant Site Conditions for each Site at which Services will be performed.

Annexure 6 – Unit Price / Unit Price Variation Process

Delete if not applicable

The Unit Price will be fixed for the first **Type number of months** months of this Contract.

The Unit Price may be varied after the expiry of the **Type number** month period, only by written agreement between the two parties, as per clause 23 of this Agreement.