

LYNAS CORPORATION LIMITED ABN 27 009 066 648

**Purchase Order Terms and Conditions for the Supply Of Goods and/or Services**

**PURCHASE ORDER SPECIFICS**

No.	Item	Description
1	<b>Purchase Order Number</b> (clause 33)	[#insert Purchase Order Number]
2	<b>Date of Purchase Order</b>	[#insert]
3	<b>Supply Agreement</b> (clause 33)	[Applicable / Non-applicable] [#if applicable, insert Supply Agreement details eg, parties, date and reference number]
4	<b>Supplier</b> (clause 33)	[#insert full name, ACN/ABN, company address, email]
5	<b>Buyer</b> (clause 33)	Lynas Corporation Limited (ABN 27 009 066 648) Suite 1, Level 1, 45 Royal Street, East Perth, Western Australia 6004 [#insert email]
6	<b>Fee</b> (clauses 2.1 and 33)	[#insert price]
7	<b>Performance Security</b> (clauses 3 and 33)	[#if applicable, insert form eg 2 x unconditional and irrevocable bank guarantees, amount and time for provision of security]
8	<b>Delivery Point</b> (clause 33)	[#insert site or other agreed delivery point, or the terms "otherwise as agreed in writing between the parties"]
9	<b>Delivery Date</b> (clause 33)	[#insert date/s for delivery of Goods and/or the performance of Services.]
10	<b>Supplier's delay liquidated damages liability</b> (clause 14.1)	0.1% of the Fee
11	<b>Delay liquidated damages maximum aggregate limit</b> (clauses 14.2)	5% of the Fee
12	<b>Defects Liability Period</b> (clauses 19.1 and 33)	For supply and install contracts the Defects Liability Period will be twelve (12) months dating from the time of completion of commissioning, unless otherwise agreed in writing. For supply only contracts the Defects Liability Period will be: <ul style="list-style-type: none"> <li>(a) in the case of consumables and spare parts, six (6) months from the date of despatch of the Goods from the Supplier's premises;</li> <li>(b) in the case of all other Goods, eighteen (18) months from the date of despatch of the Goods from the Supplier's premises;</li> </ul>

		in each case unless otherwise agreed in writing.
13	Description of Goods and/or Services (clause 33)	#insert

**Purchase Order Terms and Conditions for the Supply of Goods and/or Services**

**GENERAL TERMS & CONDITIONS**

**1. GENERAL**

1.1 If this Purchase Order relates to a Supply Agreement, the terms and conditions of the Supply Agreement apply to this Purchase Order. The terms of the Purchase Order will prevail to the extent of any inconsistency between the Supply Agreement and this Purchase Order, except as otherwise stated.

1.2 Subject to clause 1.1, this Purchase Order constitutes the whole of the contract for the supply by the Supplier of the Goods and/or Services described in the Purchase Order. No other terms will apply to the Purchase Order whether or not they are contained in any order acknowledgment, invoice or other document dated before or after the date of the Purchase Order, unless those terms are expressly agreed to in writing by the Buyer (**Written Agreement**).

1.3 The commencement of performance of the obligations under this Purchase Order by the Supplier will constitute deemed acceptance by the Supplier of this Purchase Order. Any failure by the Supplier to sign and return a Purchase Order will not relieve the Supplier of its obligation to perform its obligations under the Purchase Order.

1.4 The Supplier must comply strictly with the requirements indicated in the Purchase Order for delivery of the Goods and/or performance of the Services.

1.5 This Purchase Order shall also apply to sales made on the basis of a trade term including, without limitation, the *Incoterms*® 2020. Where deliveries are made on the basis of one of the *Incoterms*® 2020, those *Incoterms*® 2020 in force shall apply. In the event of an inconsistency between this Purchase Order and the trade terms, this Purchase Order shall prevail.

1.6 If there is any conflict or inconsistency between any Written Agreement, this Purchase Order and any terms contained in the Purchase Order, the conflict or inconsistency will be resolved in the following order of precedence:

- (a) the Written Agreement;
- (b) then the Purchase Order Specifics; and
- (c) then these General Terms & Conditions.

**2. INVOICING AND PAYMENT**

2.1 The fee payable by the Buyer to the Supplier for the Goods and/or Services will be the Fee set out in the Purchase Order Specifics. The Supplier shall not be entitled to any

remuneration, reimbursement or payment of any other amount in respect of the provision of the Goods and/or Services.

2.2 The Supplier shall submit an Invoice to the Buyer immediately or at least by the end of each calendar month for the Goods and/or Services supplied in that month.

2.3 The Invoice must set out:

- (a) particulars of the Supplier entity, including its company number (if applicable);
- (b) particulars of all Goods and/or Services supplied by the Supplier during the relevant period;
- (c) the amount payable (including currency) by the Buyer in respect of those Goods and/or Services and particulars of how such amount was calculated and supporting evidence;
- (d) the number of the Purchase Order and/or the Supply Agreement to which the Invoice relates; and
- (e) any further information stipulated in any Applicable Law relating to GST, or by the Buyer, to enable the Buyer to claim an input tax credit.

2.4 The Buyer will (subject to the Goods and/or Services having been satisfactorily received, or completed and accepted by the Buyer and subject to the prompt issuance of the Invoice to the Buyer) pay the amount properly invoiced by the Supplier (except to the extent that the Invoice is in dispute) within thirty (30) days after receipt of the Invoice.

2.5 Failure by the Buyer to pay the amount payable at the time due shall not be grounds to invalidate or terminate this Purchase Order nor entitle the Supplier to the payment of any interest charge.

2.6 The Buyer may deduct from such amount as may be due and payable by the Buyer pursuant to this Purchase Order, any amounts payable by the Supplier to the Buyer.

2.7 The failure of the Supplier to comply with the requirements set out in clauses 2.1 to 2.3 may result in the Invoice being returned by the Buyer and a delay in payment of the Invoice.

**3. PERFORMANCE SECURITY**

3.1 The Supplier shall obtain and deliver to the Buyer the Performance Security for the benefit of the Buyer by the time set out in the Purchase Order Specifics.

3.2 If the form of Performance Security specified in the Purchase Order Specifics is:

- (a) a bank guarantee or undertaking, that guarantee

- or undertaking must be unconditional and otherwise in a form and on terms approved by the Buyer; or
- (b) a parent company guarantee, that guarantee must be in a form and on terms approved by the Buyer.
- 3.3 The Buyer may have recourse to the Performance Security to recover any or all of:
- (a) any debt or other moneys due from the Supplier to the Buyer; or
- (b) any Claim that the Buyer may have against the Supplier, whether for damages (including liquidated damages) or otherwise;
- (c) amounts as otherwise specified in this Purchase Order.
- 3.4 Nothing in this clause 3 will affect the right of the Buyer to recover from the Supplier the whole of any debt, money or Claim (or any balance that remains) after the recourse to the Performance Security, deduction or set off any amount in accordance with this Purchase Order or call on any Performance Security provided or procured by the Supplier under this Purchase Order.
- 3.5 If the Buyer has recourse to the Performance Security or the Performance Security otherwise does not meet the Buyer's entitlement to Performance Security under this clause 3, then the Buyer may require the Supplier to provide further security that complies with this clause 3 and (other than in the case of Performance Security which is a parent company guarantee) for an amount equivalent to the amount called on by the Buyer.
- 3.6 The Buyer is not obliged to pay the Supplier interest on any Performance Security or the proceeds of Performance Security if it is converted to cash.
- 3.7 The Buyer is not liable for any losses incurred or suffered by the Supplier in relation to the conversion of any Performance Security provided under this Purchase Order, unless the Buyer acts in breach of this Purchase Order in converting that Performance Security to cash.
- 3.8 The Buyer does not hold any Performance Security or the proceeds obtained pursuant to clause 3.3 on trust for the Supplier.
- 3.9 The Buyer's entitlement to the remaining Performance Security ceases on the later of:
- (a) 40 days after the end of the last Defects Liability Period; or
- (b) the resolution of any bona fide Claim by the Buyer (whether liquidated or otherwise),

and the Buyer must return the Performance Security within 14 days of the date that its entitlement ceases.

#### 4. ASSIGNMENT AND SUBCONTRACTING

- 4.1 The Supplier must not, without the prior written consent of the Buyer, assign or subcontract any portion of this Purchase Order. The Buyer may in its absolute discretion refuse to consent to or approve the Supplier's request without giving reasons and may give that consent or approval on whatever terms and conditions it may in its absolute discretion think appropriate.
- 4.2 The Supplier acknowledges that no permitted assignment or sub-contracting under clause 4.1 in any way relieves the Supplier from the performance of any of its obligations under this Purchase Order.
- 4.3 The Buyer may at any time at its absolute discretion assign any of its rights or obligations under this Purchase Order.

#### 5. INDEMNITY

- 5.1 The Supplier indemnifies the Buyer and its directors, officers, employees and agents in respect of all losses, damages, fines, penalties, costs, expenses or other liabilities incurred by or awarded against them in connection with:
- (a) loss of or damage to property (including the Buyer's property), death or personal injury of any person;
- (b) claims by third parties; and
- (c) fines, penalties and other sanctions imposed by a court, tribunal, regulator or other governmental authority under Applicable Laws,
- caused or contributed to by the Supplier or Supplier Personnel or by any breach of this Purchase Order or if a Supply Agreement applies, the Supply Agreement, by the Supplier (including breach of warranty), except to the extent that such loss, damage, death, injury, claim, fine, penalty or other sanction has been caused or contributed to by the wilful default or unlawful or negligent act or omission of the Buyer.
- 5.2 Except as set out in clause 5.3, neither party shall be liable to the other for special, incidental, indirect, punitive, aggravated or consequential damages (including, but not limited to, loss of profits, loss of reputation, loss of revenue, loss of production, loss or denial of opportunity and/or loss of goodwill) arising out of the supply, sale or use of the Goods and/or Services.
- 5.3 Nothing in clause 5.2 excludes or limits the Supplier's liability:
- (a) to indemnify the Buyer under clause 5;
- (b) for delay liquidated damages or general law

damages payable pursuant to clause 14; or

- (c) to the extent that the Supplier is required by this Purchase Order to procure and maintain insurance in respect of that liability.

**6. INSURANCE**

6.1 Where the Supplier is required to perform any Services on the Buyer's Premises or where the Supplier will be present on the Buyer's Premises, the Supplier will at its own expense procure and maintain the following minimum insurances:

- (a) **Worker's compensation insurance:** The Supplier must insure its liability against all claims in respect of death, injury or occupational disease of any person employed or deemed to be employed by the Supplier which arises out of, or is caused by, the supply or non-supply of the Goods and/or Services by the Supplier (**Employee Claims**), and the insurance must:

- i. comply with all statutory requirements including providing any compulsory statutory workers' compensation benefits;
- ii. provide common law liability to a limit of not less than \$50,000,000.00 in relation to any

one occurrence and unlimited as to the number of occurrences; and

- iii. be extended to indemnify the Buyer as principal for Employee Claims;

- (b) **Public and product liability insurance:** The Supplier must insure against any claim in respect of:

- i. loss or destruction of, or injury or damage to, or loss of use of any real or personal property of; and/or
- ii. any personal injury to or death of, any person that arose out of, or was caused by, any act or omission of, or the supply or non-supply of the Goods and/or Services by the Supplier or the Supplier Personnel (**Third Party Claims**),

and the insurance must:

- iii. provide general and public liability to a limit of not less than \$20,000,000.00 in respect of any one claim and unlimited as to the number of claims; and
- iv. include the Buyer as an additional insured with respect to the liability incurred as a result of the acts or omissions of the Supplier;

- (c) **Motor vehicle third party property**

**insurance:** The Supplier must ensure that all motor vehicles used or brought onto the Buyer's Premises are kept licensed in accordance with all Applicable Laws and insured against Third Party Claims under a comprehensive motor vehicle third party liability policy. The limit of liability shall be not less than \$10,000,000.00 for any one occurrence and unlimited as to the number of occurrences;

- (d) **Professional indemnity insurance:** Where the Services include professional services as nominated in this Purchase Order, the Supplier must take out professional indemnity insurance in respect of the supply of the Services to cover for liability to a limit of not less than \$2,000,000.00 in relation to any one claim;

- (e) **Equipment insurance:** The Supplier must insure all items of equipment that the Supplier brings onto the Buyer's Premises for an amount of not less than its full replacement value (unless otherwise insured) to the satisfaction of the Buyer (acting reasonably); and

- (f) Any other insurances required by law or as reasonably directed by the Buyer.

6.2 The Supplier shall before supplying the Goods and/or Services lodge with the Buyer certificates of currency to evidence the existence of the policies required to be arranged by the Supplier.

6.3 If the Supplier fails to:

- (a) effect or maintain any of the insurances required by the Buyer as specified in this clause, or
- (b) have any subcontractor effect or maintain any insurances,

then the Buyer may at the Supplier's cost:

- (c) effect and maintain that insurance;
- (d) pay the necessary premiums; and
- (e) recover from the Supplier the amount paid under this clause,

until the Supplier has complied with its obligations under this clause and the Supplier must reimburse the Buyer such costs on demand from the Buyer.

**7. SUPPLY AND QUALITY OF GOODS AND/OR SERVICES**

7.1 The Supplier must:

- (a) perform the Services and deliver the Goods in accordance with this Purchase Order with due expedition and without delay;

- (b) deliver the Goods to the Delivery Point by the Delivery Date; and
- (c) perform the Services by the Delivery Date.

7.2 The Supplier must:

- (a) obtain, and/or procure that the Supplier Personnel obtain, all applicable permits, licences, exemptions, consents and approvals required for the Supplier or the Supplier Personnel (as the case may be) to supply the Goods and/or Services;
- (b) co-operate with staff, contractors and other persons providing Goods and/or Services to the Buyer and must immediately bring to the attention of the Buyer any conflict which may exist between the Supplier and any other such person;
- (c) comply with, and ensure that the Supplier Personnel comply with, the Buyer's policies and rules, all Applicable Laws, good industry practice, and any lawful direction by the Buyer or its Related Bodies Corporate in respect of the supply of Goods and/or Services including, without limitation, safety, health and environment matters; and
- (d) take reasonable steps at reasonable times to verify that no member of the Supplier Personnel engaged in the supply of the Goods and/or Services:
  - i. is an unlawful non-citizen; or
  - ii. holds a visa that prohibits or restricts him or her from performing that work.

7.3 If requested by the Buyer, the Supplier must provide the Buyer with evidence of compliance with its obligations under clause 7.2(a) including, without limitation, copies of all Verification of Competency certificates.

7.4 The Supplier shall employ or cause to be employed in, upon or about the supply of the Goods and/or Services only such persons as are appropriately qualified, competent, skilled and experienced in their respective trades and callings to the degree ordinarily and reasonably expected.

7.5 If any of the Supplier Personnel do not comply with clause 7.2(c) whilst they are on the Buyer's Premises, then, upon request by the Buyer, the Supplier must remove the relevant Supplier Personnel responsible for the non-compliance from the Buyer's Premises.

**8. ACCEPTANCE AND REJECTION OF GOODS**

8.1 The Buyer has the right to reject all or any of the

Goods supplied to the Buyer if:

- (a) the Buyer identifies (acting reasonably) that there are any defects or omissions in any of the Goods; and
- (b) the Goods have not been accepted in accordance with clause 8.3.

8.2 To the extent that the Buyer rejects all or any Goods under clause 8.1, without limiting clause 18.3:

- (a) the Supplier's obligation to supply those Goods will be treated as not being satisfied;
- (b) title and risk in the rejected Goods will remain with, or revert to, the Supplier;
- (c) the Supplier must not replace the rejected Goods unless it receives instructions from the Buyer to do so;
- (d) any monies paid by the Buyer to the Supplier in respect of rejected Goods prior to their being rejected must be repaid immediately; and
- (e) the Supplier must collect the Goods at its own cost and at a time convenient to the Buyer.

8.3 Subject to clause 8.2(b) and without limiting the Buyer's rights under clause 18.3, all Goods will be accepted by the Buyer, on the earlier of the time when:

- (a) the Buyer has had a reasonable opportunity to inspect the Goods after delivery, is satisfied with the Goods and has not rejected the Goods under clause 8.1; and
- (b) the Buyer indicates to the Supplier in writing that the Buyer accepts the Goods.

**9. RISK, TITLE AND INSPECTION**

9.1 Subject to clause 8.2(b), title to and property in the Goods passes to the Buyer on payment of the price or delivery of the Goods to the place noted in the Purchase Order (whichever occurs first). The Supplier warrants that full, clear and unrestricted title will be given to the Buyer clear of any encumbrances.

9.2 Subject to clause 8.2(b), risk in the Goods remains with the Supplier until delivery or acceptance at the Delivery Point.

9.3 Payment for the Goods and/or Services before inspection does not constitute acceptance of them. All monies paid by the Buyer to the Supplier prior to delivery, inspection and acceptance of the Goods will be deemed to have been paid on account and conditional upon, and subject to, the Goods being free of any defect or omission and acceptance of the Goods.

## 10. PACKAGING AND DOCUMENTATION

- 10.1 The Goods must be adequately and safely packaged by the Supplier according to the requirements (if any) detailed in the Purchase Order (or if there is a Supply Agreement, the Supply Agreement). If there are no such requirements detailed, the Goods must be packed in a manner that is consistent with all Applicable Laws and with good industry practice having regard to methods of carriage and handling and to the weather conditions through which they will pass whilst being transported to the Delivery Point.
- 10.2 Without limiting its obligations under clause 10.1, the Supplier must ensure that the Goods are properly preserved for transport and storage, having regard to the nature of the Goods, the expected length of inactivity of the Goods, and the amount of time required to restore the Goods to service.
- 10.3 If the Goods deteriorate or suffer damage (including rust or corrosion) prior to their delivery to the Buyer's premises, then, without prejudice to the Buyer's rights under any other provision of this Purchase Order, the Supplier must promptly repair or replace the Goods, at the Buyer's request.
- 10.4 The Supplier will:
- (a) submit one copy of each Invoice or credit note in relation to each Purchase Order; and
  - (b) mark the number of the Purchase Order and the relevant destination of the Goods on the Goods, and on all shipping notices, bills of lading, tax invoices, packing slips, cart notes and other documents.

## 11. DISPUTES

- 11.1 If a dispute or difference arises between the Supplier and the Buyer in respect of any fact, matter or thing arising out of, or in any way in connection with the Goods and/or Services or this Purchase Order (**Dispute**), the Dispute must be determined in accordance with the procedure in this clause 11.
- 11.2 Where a Dispute arises, either party may give a notice to the other party specifying:
- (a) the Dispute;
  - (b) particulars of the party's reasons for being dissatisfied; and
  - (c) the position that the party believes is correct.
- 11.3 If a notice of Dispute is given under this clause 11, then the Dispute is to be referred to senior representatives of the parties, who must meet and undertake genuine and good faith negotiations with a view to resolving the Dispute within thirty

(30) days after the date of the notice of Dispute.

- 11.4 If the representatives cannot resolve or agree upon a procedure to resolve the dispute or difference within the time specified in clause 11.3, either party may commence legal proceedings in an appropriate court to resolve the dispute or difference.
- 11.5 Notwithstanding any Dispute, the Supplier shall continue to supply the Goods and/or Services in accordance this Purchase Order without prejudice to its position in respect of such Dispute.
- 11.6 Nothing in this clause 11 will prejudice the right of a party to seek urgent injunctive, interlocutory or declaratory relief.

## 12. TERMINATION

- 12.1 The Buyer may, for its own convenience, terminate this Purchase Order by giving 30 days' notice in writing to the Supplier
- 12.2 Either party may terminate this Purchase Order (without prejudice to any other rights) immediately by notice in writing to the other party if:
- (a) that other party is in breach of a material term of this Purchase Order and has failed to remedy that breach within fourteen (14) days after receiving written notice from the first party specifying the breach and requiring its remedy; or
  - (b) that other party commits an act of bankruptcy or insolvency or makes or endeavours to make any scheme of arrangement with its creditors, or if any order appointing a receiver, receiver and manager or administrator or for the winding up of that other party (whether voluntary or otherwise) is made in any court of competent jurisdiction.
- 12.3 If the Purchase Order is terminated in accordance with this clause 12, then:
- (a) in relation to Services, the Supplier is only entitled to reasonable reimbursement of its costs for the Services actually performed up until termination and the Supplier is not entitled to payment for any unperformed Services or for anticipated revenues or lost profits; and
  - (b) in relation to Goods:
    - i. if the Goods to be supplied under this Purchase Order are of standard stock of the Supplier, the Supplier is only entitled to payment for the Goods shipped prior to termination; or
    - ii. if the Purchase Order requires Goods to be manufactured or fabricated to the specification of the Buyer, the Supplier shall stop work under the Purchase Order, except

as may be otherwise directed by the Buyer, and the Buyer will pay to the Supplier an amount equal to:

- (A) the costs actually incurred by the Supplier in the manufacture or fabrication of the Goods prior to termination; plus
- (B) five percent (5%) of the amount calculated in clause 12.3(b)ii (A).

12.4 Upon termination of this Purchase Order, the property in any materials appropriated to the manufacture or fabrication of Goods shall vest in the Buyer, who shall be entitled to immediate possession thereof.

12.5 Upon termination of this Purchase Order under this clause 12 or clause 25 or, if a Supply Agreement applies, in accordance with the Supply Agreement, the Supplier will have no further rights or Claims against the Buyer other than as set out in this clause 12, however termination will be without prejudice to any rights which either party may have against the other arising out of or connected with this Purchase Order prior to the date of termination.

12.6 Any termination under this clause 12 will not prejudice any right of the Buyer to recover from the Supplier damages for any breach and will not affect the indemnities given in this Purchase Order which indemnities will survive termination of this Purchase Order.

### 13. INSPECTION OF WORK AND RECORDS

13.1 The Buyer and its representatives shall have full and free access to the shops, factories or other places of business of the Supplier and its subcontractors at all reasonable times and with reasonable prior notice, in order that the Buyer may inform itself as to the general conditions and progress of the work covered by this Purchase Order and to witness any tests which may be required under this Purchase Order. No inspection by the Buyer shall be deemed to be an acceptance of the conditions then prevailing nor detract from the Buyer's right to reject Goods and/or Services not in accordance with this Purchase Order.

13.2 When requested by the Buyer, the Supplier will issue to the Buyer regular reports on the progress of the work.

13.3 The Supplier will maintain proper records relating to this Purchase Order for a period that is consistent with good industry practice and will make these available for inspection by the Buyer where reasonably required by the Buyer.

### 14. DELAYS AND EXTENSIONS OF TIME

14.1 If the Supplier fails to deliver the Goods and/or perform the Services as the case may be by the Delivery Date, subject

to clause 14.2, the Supplier shall be liable to pay to the Buyer delay liquidated damages equal to the rate set out in the Purchase Order Specifics per day for every day on and from the Delivery Date up until the day on which the Goods and/or Services are actually provided or supplied (as the case may be). The Buyer may recover all liquidated damages payable under this clause 14.1 as a debt immediately due and payable by the Supplier.

14.2 The Supplier's liability for delay liquidated damages for a failure to achieve delivery of the Goods and/or performance of the Services by the Delivery Date shall be subject to a maximum aggregate limit, as set out in the Purchase Order Specifics.

14.3 The parties acknowledge and agree that the liquidated damages payable under this clause 14:

- (a) have been the subject of negotiation between the parties;
- (b) are a reasonable and genuine pre-estimate of the loss and damage that the Buyer will suffer if the Supplier fails to deliver the Goods and/or perform the Services by the Delivery Date; and
- (c) are not a penalty.

14.4 If clause 14.1 is found for any reason to be void or unenforceable, then the Buyer is entitled to recover damages under general law from the Supplier for the Supplier's failure to deliver the Goods and/or perform the Services by the Delivery Date, limited to the liquidated damages that the Buyer would otherwise have been entitled to recover from the Supplier.

14.5 The Supplier must, within 14 days of becoming aware of any matter which does or may delay the delivery of the Goods and/or the performance of the Services, give written notice to the Buyer with:

- (a) detailed particulars of any delay to performance of the Purchase Order;
- (b) details of the cause of that delay;
- (c) the Supplier's steps taken to minimise the effect of that delay; and
- (d) if the delay is caused by a Qualifying Event:
  - i. details of the effect on the Supplier's ability to achieve performance of the Purchase Order; and
  - ii. the extension of time claimed, including details of why the Qualifying Event actually caused the delay.

14.6 The Supplier is entitled to an extension of time to the Delivery Date in accordance with clause 14.7, if:

- (a) the Services will not be completed or the Goods will



not be delivered to the Delivery Point by the Delivery Date as a result of one or more Qualifying Events;

- (b) the Supplier gives the Buyer a notice under clause 14.5 within the required timeframe; and
- (c) the Supplier has taken all reasonable steps to preclude the occurrence or minimise the extent and consequences of the delay, including rescheduling, reprogramming, expediting and adjusting the sequence of activities.

14.7 The Buyer will assess the Supplier's claim for an extension of time in respect of a Qualifying Event within twenty (20) days after receipt by the Buyer of a notice under clause 14.5 and will determine such extension(s) of time (if any) to the Delivery Date as the Buyer considers reasonable in the circumstances.

14.8 An extension of time granted under clause 14.7 is the Supplier's sole entitlement to compensation for or in connection with any delay to the supply and delivery of the Goods and/or the performance of the Services. The Supplier acknowledges and agrees that it will have no entitlement to be paid compensation or monies arising out of or in relation to any exclusion, suspension, delay or disruption (including a Qualifying Event).

14.9 Where more than one event causes concurrent delays and the cause of at least one of those events (but not all of them) is not a Qualifying Event, then to the extent that the delays are concurrent, the Supplier will not be entitled to an extension of time.

14.10 The Buyer may (in its absolute discretion) grant an extension of time for performance of this Purchase Order for delays caused by events outside the control of the Supplier.

## 15. SUSPENSION

15.1 The Buyer shall have the right, by notice in writing to the Supplier, to suspend this Purchase Order or any part thereof to the extent detailed in the notice, to suit the convenience of the Buyer.

15.2 If the Buyer suspends this Purchase Order or any part thereof under clause 15.1, the Supplier shall be reimbursed for all Goods satisfactorily completed and/or Services satisfactorily performed up to the date of suspension and for any other direct costs reasonably incurred by the Supplier in complying with the Buyer's instructions to suspend the this Purchase Order.

15.3 The Buyer may, by further notice, instruct the Supplier to resume the performance of this Purchase Order to the extent specified and the Supplier shall so resume as soon as reasonably practicable subject to the operational circumstances and commitments of the Supplier prevailing

at that time.

If the period of any suspension exceeds one hundred and twenty (120) days, the Supplier may serve a notice on the Buyer requiring permission within fourteen (14) days from the receipt of such notice to proceed with the performance of this Purchase Order or that part thereof subject to suspension. If within the said fourteen (14) days the Buyer does not grant such permission, the Supplier, by a further notice, may terminate this Purchase Order and clause 12.3 to 12.6 will apply.

## 16. DESIGN, DATA, DRAWINGS AND BILLS OF MATERIAL

16.1 The Supplier will submit to the Buyer drawings, design calculations, material safety data sheets (**MSDS**), wiring diagrams, spares lists, bills of material, code certificates, manufacturing reports, installation operation and maintenance manuals and any such other information or data (as applicable) as the Buyer may reasonably request or require.

16.2 The Buyer's approval or otherwise of the Supplier's drawings will be signified by the return to the Supplier of one copy suitably endorsed. If the Buyer does not approve or only gives qualified approval to such drawings, the Supplier will submit amended drawings to the Buyer.

16.3 Subject to clause 16.4, where the Buyer has approved drawings in accordance with this clause 16, the Supplier must manufacture or supply Goods in accordance with the drawings approved by the Buyer.

16.4 The Buyer's approval of the drawings will in no way relieve the Supplier of the responsibility for the correctness of the drawings or for errors in the manufacture or supply of those drawings. Such approval is given as approval in principle only and is not to be construed as meaning approval of the Supplier's design in detail.

## 17. CONFIDENTIALITY

17.1 The parties must keep confidential all information of a confidential or commercially sensitive nature of the other party acquired as a result of or in connection with this Purchase Order (and if a Supply Agreement applies, the Supply Agreement).

17.2 Clause 17.1 does not apply to:

- (a) information after it becomes generally available to the public other than as a result of the breach of this clause 17.1 or any other obligations of confidence imposed on the receiving party;
- (b) the disclosure of information in order to comply with any Applicable Law or legally binding order of any court, government agency or

recognised stock exchange, provided that prior to such disclosure the party proposing to disclose the information gives notice to the other party with full particulars of the proposed disclosure; or

- (c) the disclosure with the prior written consent of the party to whom the information belongs to.

17.3 The Supplier shall not advertise, publish or release, except as required by law, information or statements to the media or the public concerning this Purchase Order or the operations of the Buyer, without the prior written agreement of the Buyer.

**18. WARRANTIES**

18.1 The Supplier warrants that:

- (a) in the case of Goods:
- i . they must match the description in the Purchase Order;
  - ii . they are new, of merchantable quality and free from defect or fault;
  - iii . they must be fit for their intended purpose;
  - iv . workmanship and materials used by the Supplier, and Goods supplied pursuant to this Purchase Order, will be in strict accordance with drawings, specifications, samples, relevant Australian standards and codes, good industry practice and Applicable Laws;
  - v . the Buyer will have the full benefit of any manufacturer's warranties;
  - vi . the Goods and their use by the Buyer will not infringe any Intellectual Property Rights and the Supplier agrees to indemnify the Buyer against all costs and liabilities resulting from any infringement or alleged infringement;
  - vii . the Goods will be capable of operating satisfactorily and safely in the environment to which they will be exposed; and
- (b) in the case of Services:
- i . they must match the description in the Purchase Order;
  - ii . they will be provided to standards of skill and care normally exercised by qualified and experienced professional or tradespersons in the performance of

similar services;

- iii . they are free from defect or fault; and
- iv . they will comply with relevant Australian standards and codes, good industry practice and Applicable Laws.

18.2

18.3 Without limiting any other remedies available to the Buyer, if, in the reasonable opinion of the Buyer, any part of the Goods and/or Services, are not in accordance with the requirements of this Purchase Order (including, without limitation, the warranties in clause 18.1), the Supplier must, at the Buyer's discretion, promptly re-supply or remedy the Goods and/or Services to the Buyer's reasonable satisfaction and at no additional cost to the Buyer. If the Supplier fails to make good the defective Goods and/or Services within the period stipulated by the Buyer, the Buyer may itself at its discretion have the defective Goods and/or Services re-supplied or remedied at the Supplier's cost.

**19. DEFECTS LIABILITY PERIOD**

19.1 The Defects Liability Period will commence from the time that the Goods have been delivered and/or the Services have been completed, unless otherwise agreed in writing.

19.2 As soon as reasonably practicable after being given written notice by the Buyer during the Defect's Liability Period that the Buyer considers (acting reasonably) that there are any defects or omissions in any of the Goods and/or Services, the Supplier will rectify such defects or omissions at its own cost. If the Supplier fails to make good the defective Goods and/or Services within the period stipulated by the Buyer, the Buyer may itself make good the defective Goods and/or Services at the Supplier's cost and the Supplier must reimburse such costs on demand from the Buyer.

**20. VARIATIONS**

20.1 The Supplier must only perform Variations as directed in writing by the Buyer.

20.2 No Variation will vitiate this Purchase Order, regardless of the extent or timing of the Variation.

20.3 If the Buyer wants to vary the Goods and/or Services or any Purchase Order:

- (a) the Buyer must make a request to the Supplier in writing, setting out the proposed variations;
- (b) within fourteen (14) days after receiving the Buyer's request, the Supplier must respond in writing to the Buyer specifying what impact the proposed

variations will have on:

- i . the Fee, provided that if a schedule of rates applies under the relevant Purchase Order, the Supplier must (to the extent those rates are applicable to the work the subject of the variation) apply those rates, or otherwise take those rates into account in specifying the impact of the variation;
  - ii . the Goods and/or Services;
  - iii . the Supplier's ability to perform its obligations under the relevant Purchase Order (including its ability to deliver the Goods and/or supply the Services by the Delivery Date); and
  - iv . the Purchase Order generally,
- (c) the notice in clause 20.3(b) must include evidence supporting the impact which is specified;
  - (d) within fourteen (14) days after receiving the Supplier's response, the Buyer must give the Supplier a written notice accepting or rejecting the response; and
  - (e) the Buyer may, in its absolute discretion, direct a variation following receipt of the Supplier's response under this clause 20.3 or may elect not to direct a variation. If the response is accepted, the Buyer must prepare and provide the Variation to the Supplier for execution.
- 20.4 If the Supplier considers that a direction given by the Buyer constitutes a Variation, it must provide written notice to the Buyer before commencing any work and not more than five (5) days after the relevant direction. The Buyer will (acting reasonably) either:
- (a) confirm in writing that the direction is a Variation, in which case, clause 20.3 will apply; or
  - (b) reject the notice and the Supplier must comply with the direction without any entitlement to an extension of time or additional costs,
- 20.5 If the Supplier fails to give a notice in accordance with clause 20.4, then the Supplier will have no claim against the Buyer.
- 20.6 Any Variation in the Goods and/or Services takes effect from the date on which the Buyer directs the Variation.
- 20.7 The Supplier is not entitled to any payment in respect of loss of profit or overheads for any omitted part or

parts of the Goods and/or Services.

- 20.8 If a Variation results in a reduction of the time required for the supply of the Goods and/or Services, the Buyer may determine a reasonable reduction and revise the Delivery Date by notice to the Supplier.
- 21. INTELLECTUAL PROPERTY RIGHTS**
- 21.1 All Intellectual Property Rights belonging to a party prior to the date of the Purchase Order (and if a Supply Agreement applies, the date of the Supply Agreement) shall remain vested in that party.
- 21.2 The Supplier grants, and shall ensure that each of the sub-contractors grant, to the Buyer a royalty-free, non-exclusive, transferable, irrevocable and worldwide licence (including a right to sub-licence) to use and reproduce the Supplier's Intellectual Property Rights to the extent necessary to receive and use the Goods and/or Services.
- 21.3 The Intellectual Property Rights subsisting in the Bespoke Materials shall vest in the Buyer unconditionally and immediately on their creation.
- 21.4 The Buyer grants to the Supplier a royalty-free, non-exclusive licence (including a right to sub-licence) to use, reproduce, modify, adapt and develop the Bespoke Materials solely for the purpose of performing its obligations under the this Purchase Order.
- 21.5 The Supplier warrants that to the extent that it uses or proposes to use any Third Party Intellectual Property Rights in the provision of the Goods and/or Services, or to the extent the Buyer will use or might propose to use any Third Party Intellectual Property Rights in the use and enjoyment of the Goods and/or Services:
- (a) it has obtained, or will obtain at no further cost to the Buyer, from the relevant third party all necessary licences and consents, or assignments of, such Third-Party Intellectual Property Rights, for the Buyer to use; and
  - (b) that the Buyer will not breach any of the licences or assignments referred to in clause 21.5(a).
- 22. QUANTITY**
- 22.1 If the quantity of Goods delivered is greater than that specified in the Purchase Order, the Buyer may return to the Supplier, or demand that the Supplier collect from the Buyer any excess quantities at the Supplier's sole risk and expense. Such excess Goods must be collected as soon as possible after receiving the Buyer's demand.
- 23. PPSA**
- 23.1 Terms in this clause 23 have the same meaning as in the PPSA unless the context indicates otherwise.
- 23.2 Unless expressly permitted by this Purchase Order, the

Supplier must not, without the prior written consent of the Buyer:

- (a) create any security interest over any of the Buyer's personal property which has priority over security interests granted in favour of the Buyer; or
- (b) sell or dispose of the Buyer's personal property.

## 24. TAXES

- 24.1 The Supplier will pay all Taxes of every kind applicable to the performance of this Purchase Order and will reimburse the Buyer on demand if the Buyer pays any such Taxes except as otherwise provided in relation to GST.

## 25. ANTI-BRIBERY & CORRUPTION

- 25.1 The Buyer is committed to operating in a manner consistent with the laws of the jurisdictions in which it operates, including all laws relating to bribery and corruption.
- 25.2 The Supplier undertakes to act in accordance with the principles set out in the Buyer's anti-bribery policy (**Policy**), a copy of which is available on the Buyer's website.
- 25.3 If the Buyer believes, acting reasonably, that the Supplier is acting or has acted in a manner which is inconsistent with the Policy, the Buyer may terminate this Purchase Order (without prejudice to any other rights) immediately by notice in writing to the Supplier and clauses 12.3 to 12.6 apply.
- 25.4 If the Supplier believes, acting reasonably, that the Buyer is acting or has acted in a manner which is inconsistent with the Policy, the Supplier must report the breach or suspected breach to the Buyer's General Counsel.

## 26. INDEPENDENT CONTRACTOR

- 26.1 The Supplier will be an independent contractor and shall not be considered an employee, partner or agent of the Buyer for any purpose whatsoever.

## 27. SEVERANCE

- 27.1 If any term of this Purchase Order is deemed to be unlawful or unenforceable that term will be severed from this Purchase Order and all other terms will remain in force.

## 28. WAIVER

- 28.1 Failure by the Buyer to insist on strict performance of any term or condition (including compliance with specifications detailed in the Purchase Order) will not be deemed to be a waiver of any of the Buyer's rights and remedies under this Purchase Order nor of any rights arising out of any breach or default of the Supplier.

## 29. CONFLICTS OF INTEREST

- 29.1 The Supplier must not act in a position where the Supplier's interests are in conflict with the Buyer's interests.

## 30. EXCLUSION OF VIENNA CONVENTION

- 30.1 The application of the *Sale Of Goods (Vienna Convention) Act 1986 (WA)* is excluded.

## 31. GOVERNING LAW & JURISDICTION

- 31.1 This Purchase Order and any non-contractual obligations arising out of or in connection with it are governed by the law applying in Western Australia and the Commonwealth of Australia.
- 31.2 The parties submit to the non-exclusive jurisdiction of the courts having jurisdiction in Western Australia and the Commonwealth of Australia.

## 32. INTERPRETATION

In this Purchase Order, unless a contrary intention appears:

- (a) clause headings are inserted for convenience only and will not be used in the interpretation of this Purchase Order;
- (b) a reference to a person includes a reference to an individual, firm, body corporate, an unincorporated body or other entity however constituted;
- (c) the singular will include the plural and vice versa and a reference to any gender includes all genders;
- (d) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
- (e) general words must not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;
- (f) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (g) a reference to dollars or \$ is to Australia Dollar;
- (h) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (i) a reference to a document also includes any variation, replacement or novation of it;
- (j) a reference to "law" includes common law, principles of equity and legislation (including regulations);
- (k) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (l) a period of time starting from a given day or the day

of an act or event, is to be calculated exclusive of that day; and

- (m) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day.

### 33. DEFINITIONS

In this Purchase Order unless the context otherwise requires:

**Applicable Law** means any applicable laws, regulation, regulatory policy, regulatory guideline or industry code.

**Bespoke Materials** means the concepts, operating manuals and processes, and other items in which Intellectual Property Rights subsist, which are developed by the Supplier or any of the Supplier Personnel in the performance of the Supplier's obligations under this Purchase Order.

**Buyer** means the buyer specified in the Purchase Order Specifics.

**Buyer's Premises** means premises which are owned or occupied by the Buyer or any of its Related Bodies Corporate.

**Claim** means any action, suit, claim, demand, cause of action, proceeding, notice, defunct or set-off for any present or future liability whether based on contract, equity, tort (including negligence and negligent misstatement), statute, for unjust enrichment, restitution or otherwise.

**Defects Liability Period** means the defects liability period as set out in the Purchase Order Specifics.

**Delivery Date** means the delivery date as set out in the Purchase Order Specifics.

**Delivery Point** means the delivery point as set out in the Purchase Order Specifics.

**Dispute** has the meaning given in clause 11.1 of this Purchase Order.

**Fee** means the fee described in the Purchase Order Specifics.

**Goods** means the goods described in the Purchase Order Specifics.

**GST** has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Intellectual Property Rights** means all rights in and relating to copyright, trademarks, patents, design, moral rights, database rights and any other like rights (whether registered or unregistered), including rights to registration of such rights, and rights to protect confidential

information, know-how and trade secrets and any equivalent or similar forms of protection existing anywhere in the world.

**Invoice** means a valid tax invoice submitted by the Supplier to the Buyer, which meets the requirements of clauses 2.2 and 2.3 of this Purchase Order.

**Performance Security** means the security as set out in the Purchase Order Specifics.

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

**Purchase Order** means this Purchase Order and any Purchase Order issued in connection with this Purchase Order, as supplemented, amended or varied from time to time.

**Qualifying Event** means:

- (a) any breach of this Purchase Order by the Buyer, or any act or omission by the Buyer not permitted or contemplated by this Purchase Order;
- (b) a suspension under clause 15.1 of this Purchase Order, which was not caused or contributed to by an act or omission of the Supplier or the Supplier Personnel; or
- (c) a Variation being issued under clause 20 of this Purchase Order.

**Related Body Corporate** has the meaning it has in the *Corporations Act 2001* (Cth).

**Services** means the services described in the Purchase Order Specifics.

**Supplier** means the supplier set out in the Purchase Order Specifics.

**Supplier Personnel** means the Supplier's directors, officers, employees, agents or contractors.

**Supply Agreement** means the supply agreement set out in the Purchase Order Specifics.

**Taxes** means any and all present and future sales, use, personal, property, real property, value added, goods and services, GST, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on Buyer's net income) by any government, governmental, semi-governmental or other relevant authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable.

**Third Party Intellectual Property Rights** means the Intellectual Property Rights of any third party.

**Variation** means any change to the scope of the Goods



and/or the Services, including any addition to, reduction in, omission from or change in the character, quantity or quality of the Goods and/or the Services.

**Written Agreement** has the meaning in clause 1.2 of this Purchase Order.