

Purchase Order Terms and Conditions

Supply of Goods and/or Services

1. DEFINITIONS

In the Contract:

Background IP means any Intellectual Property Rights of the Supplier (or licensed to the Supplier by a third party) which were in existence before the date of the Contract or which come into existence after the date of the Contract other than in connection with the Contract.

Contract means these terms and conditions for the supply of Goods and/or Services and the Purchase Order.

Delivery Address means the place for delivery of the Goods or performance of the Services as specified on the Purchase Order.

Delivery Date means the date on which the Goods must be delivered by or the Services must be performed by as specified on the Purchase Order.

Excluded Loss means all loss which is indirect, remote or unforeseeable loss and any loss of revenue and profit (or anticipated profit); loss or denial of opportunity; loss of access to markets; loss of goodwill; loss of business reputation; increased overhead costs and any failure to achieve any actual or anticipated saving in respect of any cost or expense, whether or not such losses, damages, costs, expenses or liabilities were foreseeable at the date of the Contract.

Good Industry Practice means the practices, methods and acts engaged in or approved by an organisation who, in the conduct of its undertaking, exercises that degree of diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced professional contractors engaged in the same type of undertaking under the same or similar circumstances and conditions and in accordance with generally accepted industry and professional standards and practices.

Goods means the goods to be supplied by the Supplier as described in the Purchase Order.

GST has the meaning given to that term in the GST Act.

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

Intellectual Property Rights and **Intellectual Property** means all copyright and analogous rights (including moral rights), all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets), know-how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields, including (a) all rights in all applications to register these rights; and (b) all renewals and extensions of these rights.

Insolvent and **Insolvency** has the meaning given to it in the *Corporations Act 2001* (Cth).

Invoice has the meaning given in clause 11(a).

Legislation means:

- (a) any Act of Parliament in any Australian jurisdiction (including the Commonwealth) for the time being in force and all proclamations, regulations, by-laws, orders, notices, rules of court, town planning schemes, resolutions or other instruments made under any or by the authority of any such Act of Parliament or written law and having legislative effect; and
- (b) all licences, qualifications, registrations and other statutory requirements necessary for supply of the Goods and/or performance of Services under the Contract.

Modern Slavery is as defined in the *Modern Slavery Act 2018* (Cth).

Notice Period has the meaning given in clause 22(b).

Personnel means:

- (a) in relation to Thunderbird, any of its directors, officers, employees, contractors, agents or representatives; and

- (b) in relation to the Supplier, any of its directors, officers, employees, suppliers, subcontractors, their subcontractors, agents and representatives involved either directly or indirectly in the provision of the Goods and/or Services.

Price means the price as set out in the Purchase Order.

Purchase Order means the order placed by Thunderbird or an authorised representative of Thunderbird with the Supplier that incorporates these terms and conditions for the supply of Goods and/or Services in accordance with the Contract.

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

Sanctioned Country or Territory means any country or territory against which comprehensive sanctions are imposed by the United States, the United Kingdom, the United Nations, the European Union, any European Union member states, Australia, Switzerland or any other country with jurisdiction over the activities in connection with the Contract, and currently includes Cuba, Iran, North Korea, South Sudan, Syria and the Crimea.

Sanctioned Party means any person or entity or vessel that is listed on, or owned, or controlled by a person (including an entity that is 50% or more controlled or owned, directly or indirectly by a Restricted Party) listed on the U.S. of Specially Designated Nationals and Blocked Person List maintained by the U.S. Treasury Department's Office of Foreign Assets Control or any similar restricted party or sanctions list maintained by the United States, the United Kingdom, the United Nations and the European Union, Australia, Canada or any other relevant government.

Scope of Work means the scope of the Services to be performed or the Goods to be supplied as specified in the Purchase Order.

Security Interest means any lien, mortgage, encumbrance, charge or security interest within the meaning of the *Personal Property Securities Act 2009* (Cth) or other third party right or claim.

Site means the Delivery Address.

Supplier means the entity to which the Purchase Order is issued and which is named as Supplier on the Purchase Order.

Services means the services to be supplied by the Supplier as described in the Purchase Order.

Thunderbird means:

- (a) Thunderbird Operations Pty Ltd ACN 611 351 743; or
- (b) Kimberley Mineral Sands Pty Ltd ACN 623,201,507; and
- (c) any Related Body Corporate of either entity stated in sub paragraph (a) or (b).

Thunderbird's Property means any plant, equipment, tools, appliances or other property and items that Thunderbird provides to the Supplier to enable it to perform its obligations under the Contract.

Thunderbird's Representative means the person appointed by Thunderbird to act on its behalf in relation to the Contract as notified to the Supplier.

Variation means any addition, reduction or change to the Scope of Work.

Variation Proposal means a written proposal provided by the Supplier addressing the particulars of any Variation.

Warranty Period means the period of 24 months for Goods and 12 months for Services commencing on the date of supply of the Goods, or the date of the performance of the Services.

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2. THE CONTRACT

- (a) The Contract is formed if Thunderbird provides a Purchase Order to the Supplier and the Supplier accepts a Purchase Order or provides the Goods and/or commences providing the Services.
- (b) The parties intend to contract for the supply of Goods and/or Services only on the terms of the Contract. If the Supplier provides terms and conditions (including, without limitation, those printed on a quotation, consignment note, correspondence or other document) with or in connection with the supply of Goods and/or Services described in the Purchase Order, whether before or after the supply of the Goods and/or Services, they will be of no legal effect and will not constitute part of the Contract (even if any representative of Thunderbird signs the document or the terms and conditions comprised in the relevant document).
- (c) In the event of inconsistency, the order of precedence of documents comprising the Contract is:
 - (i) the Purchase Order including any 'Special Conditions' stated on the Purchase Order; and
 - (ii) these terms and conditions.
- (d) The Contract continues until the Goods are supplied and/or the Services are performed in accordance with the Contract unless terminated earlier in accordance with the Contract.

3. SUPPLY OF GOODS AND/OR PERFORMANCE OF SERVICES

- (a) In consideration of payment of the Price by Thunderbird, the Supplier agrees to supply and deliver the Goods to, and/or perform the Services at, the Site, by the Delivery Date in accordance with the Contract.
- (b) The Supplier must supply and maintain, at its cost, everything the Supplier requires to supply the Goods and/or perform the Services in accordance with the Contract, including, but not limited to, all personnel, goods, tools, equipment, materials, authorisations and insurance required to be effected and maintained in accordance with clause 16.
- (c) The Supplier agrees to notify Thunderbird if it finds any errors, omissions or inconsistencies in information provided by Thunderbird. Except as prescribed by Legislation, Thunderbird gives no representation or warranty of accuracy, sufficiency or otherwise in relation to information provided to the Supplier and disclaims all responsibility for such information.

4. WARRANTIES

- (a) The Supplier warrants that the Goods and Services will:
 - (i) be of merchantable quality and free from defects;
 - (ii) be new, as at the Delivery Date (unless otherwise specified in the Contract);
 - (iii) be manufactured strictly in accordance with any manufacturing drawings, Scope of Work or descriptions set out in the Purchase Order ;
 - (iv) be supplied in accordance with Good Industry Practice;
 - (v) be of the same nature and quality as the sample or demonstration given, if the Supplier gave Thunderbird a demonstration or sample of the Goods or Services;
 - (vi) be fit for the specific purpose for which those Goods and/or Services are intended to be used as specified in the Purchase Order, or if no purpose is specified, for the purpose for which those Goods and/or Services would ordinarily be used;

- (vii) comply with the requirements of the Contract, any applicable Legislation and the standards of Standards of Australia Limited applicable to those Goods and/or Services;
 - (viii) not infringe the Intellectual Property Rights of any third party;
 - (ix) be free from any Security Interests, and that the Supplier has complete ownership of the Goods;
 - (x) be performed in such a way as to comply with all applicable Thunderbird policies and procedures;
 - (xi) not interfere with the activities of Thunderbird or any other person on the Site; and
 - (xii) in the case of Services, be performed safely, with all due care and diligence, in accordance with all of Thunderbird's policies and procedures, all lawful directions and orders given by any Thunderbird representative, and in a skilful and competent fashion by appropriately qualified and trained personnel.
- (b) The Supplier must obtain and pass on to Thunderbird the benefit of any manufacturer's warranty applicable to the Goods and/or Services.
 - (c) If required by Thunderbird, the Supplier must sign any documents as Thunderbird reasonably requires, in order to secure for Thunderbird, the benefit of any warranty or warranties in clause 4(b).
 - (d) This clause 4 survives termination or expiry of the Contract.

5. INSPECTION

- (a) The Supplier must keep Thunderbird's Representative fully informed of all aspects of the provision of the Goods and/or Services.
- (b) Subject only to providing reasonable notice, at any time during the supply of the Goods and/or Services Thunderbird may inspect, examine, review and witness test the Goods and/or Services or their results at the Site, the Supplier's premises, at any premises where Goods or materials are being stored, or at the premises of a subcontractor of the Supplier.

6. DEFECTIVE GOODS OR SERVICES

- (a) Without affecting any other right or remedy of Thunderbird, if, during the Warranty Period, any of the Goods and/or Services do not comply with the Contract, or are otherwise defective, whether or not Thunderbird has already accepted the Goods and/or Services in accordance with clause 7, the Supplier must:
 - (i) repair the Goods or re-perform or make good the defective Services;
 - (ii) remove the Goods from the Site and deliver replacement Goods to the Site; or
 - (iii) un-install the Goods, remove them from the Site, make good any damage to the Site and deliver replacement Goods to the Site,or, if Thunderbird so requires, instead of delivering replacement Goods or re-performing the Services refund all money paid by Thunderbird in respect of the defective Goods or Services. Thunderbird has the same rights in respect of replacement or repaired Goods and re-performed Services, as it had in respect of the Goods and/or Services which were originally supplied.
- (b) If the Supplier fails to do any of the things notified by Thunderbird under this clause within 7 days of receiving the notice, Thunderbird may do those things or have them done by a third party at the expense of the Supplier.

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(c) This clause 6 survives termination or expiry of the Contract.

7. VARIATION TO SCOPE OF WORK

- (a) Thunderbird may by written notice direct a Variation and the Supplier must perform and be bound by such Variation. Thunderbird is not obliged to request a Variation Proposal in accordance with this clause 7.
- (b) Thunderbird may request that the Supplier prepares a Variation Proposal in accordance with this clause 7. The Supplier must as soon as practical (but no later than 7 days) after receiving such request, submit the Variation Proposal to Thunderbird addressing the effect on and value of the proposed Variation.
- (c) The Supplier may initiate and submit a Variation Proposal to Thunderbird. Following receipt of a Variation Proposal under this clause, Thunderbird may either:
 - (i) direct the Supplier to perform the Variation in accordance with the Variation Proposal; or
 - (i) advise that it does not wish to proceed with the Variation.
- (d) If Thunderbird directs the Supplier to perform a Variation under this clause 7, Thunderbird will reimburse the Supplier for its costs actually, reasonably and properly incurred as a result of the Variation.

8. DELIVERY AND RISK AND TITLE

- (a) The Supplier must deliver the Goods to the Site, or perform the Services by the Delivery Date and must ensure that, in the case of Goods, the Goods are suitably packed to avoid damage in transit or in storage, clearly marked for delivery and that a packing list which itemises the Goods is included in each package of Goods for delivery.
- (b) As soon as the Supplier becomes aware or reasonably expects that the Goods and/or Services will not be provided by the Delivery Date, the Supplier must immediately notify Thunderbird in writing, the reason for the delay, and the expected duration of the delay.
- (c) Thunderbird will provide the Supplier access to the Site as required to perform its obligations under the Contract.
- (d) Title in the Goods passes to Thunderbird upon payment of the Price and risk in the Goods passes to Thunderbird when the Goods are delivered to the Site.
- (e) All Goods and/or Services will be inspected by Thunderbird within a reasonable time after the Goods are delivered and/or Services are performed at the Site, but Thunderbird will not be required to accept the Goods and/or Services unless it is reasonably satisfied with them.
- (f) Thunderbird is not liable to pay for those Goods and/or Services rejected, damaged by inspection or costs associated with inspection or rejection of the Goods and/or Services.

9. MATERIALS AND EQUIPMENT

Where Thunderbird provides its own materials or equipment to the Supplier for use in connection with the supply of Goods or performance of Services:

- (a) the materials and equipment will be and will remain the property of Thunderbird;
- (b) the Supplier must keep the materials and equipment free from any Security Interests;
- (c) the Supplier must maintain all of the materials and equipment in good working order and condition (subject to fair wear and tear);

- (d) the Supplier may only use the materials and equipment solely in connection with the supply of Goods or performance of Services and must return them to Thunderbird immediately on termination or expiry of the Contract or when they are no longer required to supply the Goods or perform the Services (whichever is the earliest to occur); and
- (e) any damage to or loss of the materials or equipment will be made good at the Supplier's sole expense.

10. PRESERVATION OF RIGHTS

Neither the rejection of, or the failure of Thunderbird to in any way reject, the Goods and/or the Services, nor the acceptance of the Goods under clause 8, nor the making of any payment, will prejudice any rights Thunderbird may have against the Supplier arising in any way in relation to failure by the Supplier to provide the Goods and/or Services in accordance with the Contract or otherwise affect the Supplier's warranties, liabilities or obligations under the Contract or at law.

11. INVOICING AND PAYMENT

- (a) Upon acceptance of the Goods and/or completion of the Services, the Supplier must provide to Thunderbird a valid tax invoice (**Invoice**) for the Price, which must comply with the requirements of the GST Act and include (without limitation):
 - (i) a reference to a valid Purchase Order;
 - (ii) a detailed description of the Goods supplied and/or Services performed;
 - (iii) the Price of the Goods and/or Services, broken down to reflect any Price components on the Purchase Order;
 - (iv) if the Services are charged by time, the time spent by the Supplier's Personnel;
 - (v) the date of issue of the Invoice and the period it covers;
 - (vi) the amount of any applicable GST;
 - (vii) a Thunderbird contact name, the Site and Delivery Date; and
 - (viii) an individual reference number for Thunderbird to quote with remittance of payment.
- (b) Thunderbird will pay each Invoice that complies with clause 11(a) within 30 days from the receipt of Invoice by Thunderbird unless otherwise stated on the Purchase Order, except:
 - (i) without limiting any other right or remedy, Thunderbird may withhold payment of the amount in dispute where Thunderbird disputes the Invoice until the dispute is resolved in accordance with clause 19;
 - (ii) Thunderbird is not obliged to pay any amount on the Invoice if the Goods or Services (or any part of them) are defective or it has any other claim in relation to them; and
 - (iii) Thunderbird may reduce or withhold any payment due to the Supplier by any amount which the Supplier must pay Thunderbird, including costs, losses, charges, damages and expenses and any debts owed by the Supplier to Thunderbird on any account whatsoever. This does not limit Thunderbird's right to recover those amounts in any other way.

12. ASSIGNMENT AND SUBCONTRACTING

- (a) The Supplier must not, without the prior written consent of Thunderbird, assign, transfer, charge or otherwise dispose of, any or all of the Supplier's rights or obligations under the

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Contract or subcontract all or part of the supply of Goods and/or performance of Services to any other party.

- (b) The Supplier is liable to Thunderbird for the acts and omissions of any subcontractor as if they were acts and omissions of the Supplier.

13. INDEMNITY

- (a) The Supplier indemnifies, and keeps indemnified, Thunderbird, and the directors, officers, employees, agents and contractors of Thunderbird, from and against any loss, liability, cost, damage or expense suffered or incurred arising from or in connection with the supply of Goods or the performance of the Services including, without limitation:
- (i) the breach of any of the Supplier's obligations, warranties or representations under the Contract;
 - (ii) the misconduct or negligent act or omission of the Supplier or its contractors, employees, officers, agents or invitees, in the provision of the Goods or the performance of the Services;
 - (iii) the loss of, or any damage to, any property of any person;
 - (iv) the death of, or injury to any person; and
 - (v) the breach of the Intellectual Property Rights of any third party.
- (b) The Supplier's liability to indemnify Thunderbird, and the directors, officers, employees, agents and contractors of Thunderbird under clause 13(a) will be reduced to the extent that the loss, liability, cost, damage or expense is directly caused by the negligent act or omission of Thunderbird or the directors, officers, employees, agents and contractors of Thunderbird.
- (c) The rights and obligations under this clause 13 continue after termination or expiry of the Contract.
- (d) To the maximum extent permitted by law, but subject to clause 13(e), neither party will be liable to the other for any Excluded Loss.
- (e) The exclusion of liability in clause 13(d) does not apply in relation to liability of the Supplier in respect of:
- (i) the injury or death of any person;
 - (ii) any claims by a third party including any claims for breach of a third party's Intellectual Property Rights;
 - (iii) any act or omission of fraud, dishonesty, wilful misconduct or misrepresentation of the Supplier;
 - (iv) any penalty imposed for breach of Legislation in connection with the supply of the Goods and/or Services by the Supplier; or
 - (v) any loss that is recoverable under a policy of insurance required to be effected by the Supplier under this Contract.

14. TERMINATION

- (a) A party may immediately terminate the Contract by notice in writing to the other party if the other party:
- (i) breaches a material term under the Contract and such breach is not remedied within 14 days of notice being given to the party to remedy the breach (unless such breach is not able to be remedied);
 - (ii) breaches any Legislation relating to the supply of the Goods and/or Services;

(iii) becomes Insolvent; or

(iv) or its Personnel commits an act of gross negligence, wilful misconduct or fraud.

- (b) In addition to any other rights of termination available to Thunderbird, Thunderbird may terminate the Contract in its absolute discretion without cause, by giving 14 days' written notice to the Supplier, in which case, subject to Thunderbird being reasonably satisfied that the Supplier has complied with its obligations under the Contract, Thunderbird will pay the Supplier:
- (i) amounts that are properly due and payable to it for the Goods supplied and/or Services performed prior to the date of termination, and not included in any previous payment by Thunderbird;
 - (ii) the cost of materials reasonably ordered by the Supplier for the purposes of providing the Goods and/or Services prior to the date of termination, which the Supplier is legally liable to accept and cannot otherwise utilise, but only if the materials become the property of Thunderbird upon payment; and
 - (iii) all direct, verifiable and reasonable expenses incurred up to the date of the notice of termination, incurred in compliance with the Contract, and which cannot be reversed or mitigated by the Supplier applying its best efforts.
- (c) If the Contract is terminated pursuant to clauses 14(a) or 14(b), the Supplier must:
- (i) cease the supply of the Goods and/or Services the subject of the Purchase Order;
 - (ii) take such action as is necessary or as Thunderbird directs, for the transfer, protection and preservation of Thunderbird's Property; and
 - (iii) take such action as is necessary or as Thunderbird directs, for the transfer, protection and preservation of the Goods and/or Services in progress or completed.
- (d) Unless expressly stated otherwise, termination of the Contract in accordance with this clause 14 does not affect the rights or obligations of a party which have accrued prior to termination.
- (e) The Supplier may terminate the Contract with 14 days prior written notice to Thunderbird if Thunderbird fails to make a payment due in accordance with clause 11(b) (that is not the subject of a bona fide dispute) and provided that the Supplier has delivered a notice of default to Thunderbird in accordance with clause 14(a) and Thunderbird fails to remedy the non-payment within a further 30 days.

15. TAXES

- (a) If GST is imposed on any supply made by the Supplier under or in connection with the Contract, the Supplier may (subject to the provision of the Invoice) recover from Thunderbird, in addition to the Price, an amount equal to the GST payable in respect of that supply.
- (b) The Supplier shall be solely responsible for all other taxes or levies imposed on the Supplier under law that arise out of the supply of Goods and/or performance of Services.

16. INSURANCE

- (a) The Supplier must, for so long as any obligations remain in connection with the Contract, effect and maintain, at its own expense all appropriate policies of insurance including, but

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not limited to the following unless the Purchase Order specifies otherwise (each policy to note Thunderbird's interest as a 'Principal'):

- (i) where the Services require the Supplier to provide a motor vehicle, motor vehicle insurance policy to cover third party liability for an insured sum of not less than \$20,000,000 for each claim;
 - (ii) public and products liability insurance in relation to legal liability for loss of, loss of use of, damage to or destruction of real or personal property, death or bodily injury, and disease and sickness in each case in an amount not less than an amount to \$20,000,000 for each claim, and unlimited in the amount of aggregate claims;
 - (iii) workers' compensation insurance in compliance with all applicable Legislation to cover the Supplier and each of the Supplier's employees; and
 - (iv) where the Services include design services, professional indemnity insurance in an amount not less than an amount to \$5,000,000 for each claim, such policy to be maintained for a period of 7 years after the completion of the Services.
- (b) Upon request by Thunderbird, the Supplier must provide Thunderbird with proof of insurance acceptable to Thunderbird.
- (c) The Supplier must ensure that, in relation to any insurance policy required to be maintained under clause 16(a), it:
- (i) does not do or omit to do or allow to be done, any act or omission whereby any of the insurances referred to in clause 16(a) may be prejudiced, vitiated, or rendered void or voidable;
 - (ii) does not cancel or materially vary the policy in a manner adverse to its obligations under the Contract, or allow an insurance policy to lapse, without the prior consent, in writing, of Thunderbird;
 - (iii) immediately notifies Thunderbird of any event which may result in an insurance policy lapsing or being cancelled or vitiated, rendered void or voidable;
 - (iv) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefit; and
 - (v) whenever a claim is made under any policy referred to in clause 16(a), the Supplier must pay any excess or deductible payable as a consequence.
- (d) The Supplier must ensure that any subcontractor engaged by it in relation to the Goods and/or Services effects and maintains the equivalent insurances set out in this clause 16.
- (e) If the Supplier fails to effect or maintain any insurances required by this clause 16, then Thunderbird may:
- (i) effect and maintain those insurances;
 - (ii) pay the necessary premiums; and
 - (iii) recover from the Supplier any amounts paid under clause 16(a), until the Supplier has complied with its obligations under this clause 16.

17. CONFIDENTIALITY

- (a) The Supplier must keep confidential:
- (i) any information or details relating to the Contract or Thunderbird's business affairs and operations; and

- (ii) any other information designated by Thunderbird as confidential or received by the Supplier in circumstances implying an obligation of confidentiality or reasonably expected to be confidential.
- (b) This clause 17 does not apply to:
- (i) the disclosure of information to comply with an order of a court, or if required by any Legislation, the requirements of any government agency, or stock exchange;
 - (ii) information that is already in the public domain, provided that prior to such disclosure the disclosing party gives notice to the other party with full particulars of the proposed disclosure;
 - (iii) disclosure to the Supplier's legal advisors, accountants or other professional advisers who are bound by an obligation of confidentiality.
- (c) This clause 17 shall survive termination or expiry of the Contract.

18. INTELLECTUAL PROPERTY

- (a) Subject to this clause 18, all Intellectual Property Rights in the Background IP of the Supplier remain vested in the Supplier.
- (b) The Supplier grants to Thunderbird a non-exclusive, perpetual, royalty-free, irrevocable, transferable licence (with the right to assign and sub licence) to use the Background IP of the Supplier to the extent necessary to use the Goods and/or Services.
- (c) The Supplier acknowledges and agrees that all Intellectual Property created by the Supplier for the benefit of Thunderbird (whether existing or created prior to the date of the Contract or otherwise) will vest in Thunderbird, and the Supplier hereby assigns all rights, title and interest in and to the Intellectual Property to Thunderbird.
- (d) The Supplier warrants that:
- (i) use by it of any Intellectual Property Right arising from or in connection with the supply of Goods or Services will not infringe any Intellectual Property Right of any third party;
 - (ii) it will, at no further cost to Thunderbird, procure all licences and consents to use any Intellectual Property Rights of a third party which are necessary to provide the Goods and/or Services;
 - (iii) it is able to licence the Intellectual Property Rights in the Background IP of the Supplier as described in clause 18(b); and
 - (iv) use by Thunderbird (or any assignee or sub-licensee) of the Background IP of the Supplier in accordance with the Contract will not infringe any Intellectual Property Right of any third party or breach any Legislation.
- (e) This clause 18 shall survive termination or expiry of the Contract.

19. MODERN SLAVERY

- (a) Thunderbird works to comply with the requirements of the *Modern Slavery Act 2018 (Cth)* and expects the same of its contractors.
- (b) The Supplier warrants that:
- (i) it investigates the risk of modern slavery within its operations, and those of its supply chain;
 - (ii) it assesses and addresses risks regarding modern slavery, including implementing appropriate due diligence and remediation programs;

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- (iii) it will notify Thunderbird as soon as possible of any confirmed instances of modern slavery and the actions undertaken by Supplier to remedy the issue;
 - (iv) it has all the necessary processes, procedures, investigations and compliance systems in place to undertake the actions in this clause 19;
 - (v) upon request, the Supplier will provide evidence to the satisfaction of Thunderbird which validates the Supplier's compliance with this clause;
 - (vi) upon request, the Supplier will permit Thunderbird's Personnel or its nominated representative/s to undertake verification activities to validate Supplier's compliance with this clause, including access to Supplier's premises and records as required; and
 - (vii) it will include a clause similar to this clause 19 in all contracts it enters into with its suppliers.
- (c) In the event that the Supplier does not remedy, or provide an acceptable plan to remedy, any identified instances of Modern Slavery within the time frame specified by Thunderbird, Thunderbird reserves the right to terminate the Contract in accordance with clause 14(a).

20. BRIBERY AND CORRUPTION

- (a) The Supplier and its Related Bodies Corporate must not, and must procure that its Personnel do not:
 - (i) pay or accept any commissions or fees, or make or accept any payments or rebates to or from any employee or officer of Thunderbird or its Related Bodies Corporate, or favour any of those persons with gifts or entertainment of unusual or substantial value, or enter into any business arrangements with any of those persons, that would result in a detriment to Thunderbird or is contrary to fair dealing; and
 - (ii) provide or offer to provide a benefit (which is not legitimately due) to a public official (including a foreign public official) in order to retain or obtain a business advantage.
- (b) The Supplier must, and must ensure that its Personnel, immediately report to Thunderbird, and in any event within 5 Business Days, any offer, payment, rebate or other benefit, or any receipt of any payment, benefit or rebate of the kind referred to in clause 20(a).
- (c) The Supplier will implement and maintain appropriate internal controls to ensure that any payments made pursuant to or in connection with the Contract, or transactions which relate to the Contract or performance of it, are properly and accurately recorded.

21. TRADE CONTROLS

- (a) The Supplier must not, without the prior written consent of Thunderbird, provide to Thunderbird any:
 - (i) Goods that have been imported by a Sanctioned Party or sourced (including but not limited to any Goods that have been grown, produced, manufactured extracted or processed) in whole or part from a Sanctioned Country or Territory, or Sanctioned Party and any Goods that have entered into commerce in a Sanctioned Country or Territory;
 - (ii) Services from a Sanctioned Country or Territory origin, including but not limited to any services performed in a Sanctioned Country or Territory or outside of a

Sanctioned Country or Territory by an entity organised under the laws of a Sanctioned Country or Territory or a person ordinarily a resident of a Sanctioned Country or Territory, or Services that involve a Sanctioned Party in any respect.

- (b) A party may terminate the Contract by written notice to the other party if that other party breaches clause 21(a). If Thunderbird terminates the Contract pursuant to this clause 21(b) Thunderbird will be under no obligation to return any Goods, make any payments or pay any compensation to Supplier unless Thunderbird has received all government authorisations required to do so.

22. DISPUTES

- (a) If a dispute arises in connection with this Contract, a party must give to the other party a dispute notice specifying the dispute and requiring its resolution under this clause 22.
- (b) If the dispute is not resolved within 14 days after the notice of dispute is given to the other party (**Notice Period**), either party may refer the dispute to mediation, which is to be conducted in Perth, Western Australia. The Institute of Arbitrators Australia Rules for the Mediation of Commercial Disputes, as amended by this clause apply to the mediation, except where they conflict with this clause in which case this clause will prevail to the extent of any conflict.
- (c) If the parties have not agreed upon the mediator and the mediator's remuneration within 7 days after the Notice Period:
 - (i) the mediator is the person appointed by; and
 - (ii) the remuneration of the mediator is the amount or rate determined by, the President of the Law Society of Western Australia or the President's nominee, acting on the request of either party to the dispute.
- (d) Where the dispute is not resolved within 28 days after the appointment of the mediator, any party may after then, but not earlier, commence proceedings in any court of competent jurisdiction in Western Australia.
- (e) Despite the existence of a dispute, the Supplier must continue without delay to perform its obligations under the Contract.
- (f) This clause 22 does not prevent either party from obtaining any injunctive, declaratory or other interlocutory relief from a court, which may be urgently required.

23. COSTS

Each party will bear its own legal and other costs and expenses incurred in connection with the negotiation, preparation and execution of the Contract.

24. GOVERNING LAW

The laws of Western Australia apply to the Contract and the Courts of Western Australia have non-exclusive jurisdiction to determine any proceedings in relation to the Contract.

25. GENERAL

- (a) This Contract may only be varied by a document signed by or on behalf of each party.
- (b) Waiver of any right arising from a breach of the Contract must be in writing and executed by the party granting the waiver. Failure by Thunderbird to exercise a right, remedy or power at any time will not be construed in any way to affect the enforceability of that right, remedy or power in any other instance, or the enforceability of the Contract as a whole.

Purchase Order Terms and Conditions

Supply of Goods and/or Services

- (c) If any provision or part of a provision of the Contract is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of voidability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.
- (d) This Contract as amended or varied from time to time, and any Purchase Order issued under the Contract, represents the entire agreement between the parties and supersedes all prior arrangements whether written or oral in relation to the Goods and/or Services.
- (e) Thunderbird and the Supplier are independent contracting parties and nothing in the Contract will make either party an agent or legal representative of the other for any purpose whatsoever. Nor does the Contract grant either party any authority to assume or to create an obligation on behalf or in the name of the other party.
- (f) This Contract may be executed in counterparts. All counterparts of the Contract taken together constitute one instrument.