



# Columbit Terms and Conditions of Sale

## Equipment

In these Terms and Conditions: –

- (a) **“you”** and **“your”** refers to the purchasing party who is purchasing or requesting or offering to purchase the Goods from us, and who is stated in the Supply Documents, and includes the purchasing party’s executors, successors, administrators, managers and/or permitted assigns; and
- “we”, “us”** and **“our”** refers to Columbit Pty Limited (ACN 101 194 405) of Unit 3/38 Morley Avenue Roseberry NSW 2018 or its related body corporate (as defined in the *Corporations Act 2001* (Cth)) being the seller of the Goods.
- (b) **“Claims”** means all actions, demands, claims, prosecutions or proceedings.
- (c) **“Financing Change Statement”** has the same meaning as set out in section 10 of the PPSA.
- (d) **“Force Majeure Event”** means any event outside a party’s reasonable control which makes it impossible for a party to perform its obligations under these Terms and Conditions or Supply Documents (other than a payment obligation), and includes (without limitation):
- (i) an act of God or natural disaster, including fire, flood, lightning, earthquake, explosion, or generalised lack of availability of raw materials or energy;
  - (ii) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion or disorder, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law;
  - (iii) epidemic, pandemic (including COVID-19 and any of its strains or mutations thereof), contagious disease or quarantine restriction;
  - (iv) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property law;
  - (v) law taking effect after these Terms and Conditions are agreed to; and
  - (vi) strike, lock-out, stoppage, labour dispute or shortage.
- (e) **“Goods”** means any goods, products, equipment, spare parts, processed goods (i.e. goods used by you to manufacture other products or combined by you in or with any other products), associated services (being installation and commissioning) and any other items specified in, or supplied or to be supplied pursuant to, the Supply Documents from time to time.
- (f) **“Loss”** means all loss, damage, inconvenience, liability, expense, fee and cost (including legal costs on a full indemnity basis), whether direct, indirect, secondary, consequential or incidental, and includes where applicable, loss of business, loss of revenue, loss of profit, loss of contract, loss of production and any lost opportunity costs.
- (g) **“Order Confirmation”** means a Purchase Order acceptance or confirmation provided by us to you accepting or confirming your submitted Purchase Order, pursuant to which we will raise and issue to you a tax invoice.
- (h) **“PMSI”** means a ‘purchase money security interest’ as defined under the PPSA.
- (i) **“PPSA”** means the *Personal Properties Security Act 2009* (Cth).
- (j) **“PPSR”** means the Personal Property Securities Register.
- (k) **“Purchase Order”** means any purchase order submitted by you to us in respect of the supply of Goods by us, whether pursuant to an accepted Quotation or otherwise.
- (l) **“Security Agreement”** means a security agreement as defined under the PPSA.
- (m) **“Security Interest”** has the same meaning as set out in

section 12 of the PPSA.

(n) **“Supply Documents”** means all contracts, agreements and transactions relating to the supply of Goods by us to you, including without limitation, any Quotation, Purchase Order, Order Confirmation and other supply agreements.

(o) **“Quotation”** means any valid and unexpired Quotation issued by us to you in respect of the supply of Goods, whether accepted or not, and which refers to or attaches and incorporates these Terms and Conditions, including without limitation, any appendices and other attachments.

(p) **“Verification Statement”** has the same meaning as set out in section 10 of the PPSA.

### 1. GOODS AND SERVICES TAX (GST)

The prices quoted are exclusive of any applicable GST, and any Goods (with the exception of some food items) or services delivered will attract GST at the prevailing rate at time of delivery.

### 2. PAYMENT TERMS

2.1 Unless otherwise agreed between the parties, our default payment terms are:

- (a) 30% deposit payable within 7 days of order placement; and
- (b) 70% balance payable 14 days prior to manufacturer’s shipment date.

2.2 In relation to payment, time will be of the essence and any payment not made by the due date will accrue interest at the rate of 10% per annum, calculated on a daily basis and payable on demand. You are liable for all Losses incurred or suffered by us as a result of us enforcing our rights under this clause 2.2.

### 3. APPLICATION OF TERMS AND CONDITIONS

Unless otherwise agreed in writing by us, you acknowledge, accept and agree that you have read these Terms and Conditions and that these Terms and Conditions will apply to, and are automatically incorporated into and form part of all Supply Documents (whether provided physically, electronically or otherwise, including via hyperlink). You further acknowledge and agree that any Purchase Order submitted by you to us pursuant to an accepted Quotation which annexes these Terms and Conditions, automatically annexes these Terms and Conditions to that Purchase Order, regardless of whether we issue an Order Confirmation or not (as the case may be). All other conflicting terms and conditions or other documents not contained herein are deemed null and void.

### 4. QUOTATION VALIDITY PERIOD

Subject to the occurrence of a Force Majeure Event, or any additional duties or charges, the prices quoted are fixed for Purchase Orders placed within 30 days from the date of the Quotation only, unless otherwise specified. We reserve the right to reissue an amended Quotation prior to an Order Confirmation if the Purchase Order has been received after 30 days from date of Quotation (at which time, the price quoted may be increased), or as a result of the occurrence of a Force Majeure Event or additional duties or charges imposed prior to delivery.

### 5. EXCHANGE RATE VARIATION

The Quotation is based on an exchange rate between the currency in the country of manufacture and the Australian Dollar. We reserve the right to update the exchange rate used in the Quotation (and, accordingly, vary the price payable for the Goods), at any time prior to an Order Confirmation. Subject to the foregoing, the exchange rate used will be



that rate specified in the Quotation (the subject of an Order Confirmation) and as such, the price payable for the Goods will not vary.

## 6. PRODUCT SPECIFICATIONS

Unless otherwise agreed in writing by us, the Goods sold to you will be in accordance with the manufacturer's specifications for those Goods as at the date of the Order Confirmation, or at our option, as at the manufacturer's shipment date.

## 7. INCLUSIONS AND EXCLUSIONS

Unless specified otherwise, prices quoted do not include:

- (a) service mains and pipe work for steam cold water, chilled water or compressed air;
  - (b) any building and civil engineering work;
  - (c) off-loading and unpacking at site;
  - (d) internal transport and placement of machines;
  - (e) non-standard documentation;
  - (f) any item not specifically mentioned in the Quotation; and
  - (g) any part or service not specified,
- of which costs are payable by you.

## 8. ORDERING AND DELIVERY

8.1 The process for ordering Goods with us is as follows (in descending order):

- (a) Quotation;
- (b) Purchase Order;
- (c) Order Confirmation; and then
- (d) invoice.

8.2 A Purchase Order is only binding on us and we are only required to supply the Goods once we have provided an Order Confirmation and you have paid the first instalment of the contract price.

8.3 The delivery dates or delivery periods set out in the Supply Documents are estimates only and subject to change.

8.4 Before delivery commences, all technical and site requirements communicated to you must be negotiated and agreed. Any delay in meeting such requirements may cause a corresponding extension of the delivery period.

8.5 We reserve the right to make partial (where appropriate) deliveries pursuant to the Supply Documents and you will not be entitled to reject such delivery or any late deliveries.

8.6 We make no guarantees as to delivery to you and we will not be liable for any Loss suffered or incurred by you as a result of any late or delayed delivery.

## 9. DOCUMENTATION

The quoted price for Goods includes all standard documentation (e.g. Operator's Manual) for the Goods. Should any additional documentation be required, we would be pleased to submit a Quotation for the additional items and re-submit a revised contract price to cover those additional items.

## 10. INSTALLATION

The quoted price for Goods does not include any costs relating to unpacking, siting, assembling, installing or commissioning the Goods or such similar services associated with the Goods, unless specifically quoted for. We are fully equipped to provide this very important service, having the necessary experience and skilled personnel to carry out such work to your satisfaction. Our installation and standard labour rates are set out in the Quotation.

## 11. BREACH/ DEFAULT/ TERMINATION

11.1 We reserve the right to cancel and terminate our supply of Goods to you pursuant to the Supply Documents and all amounts owing to us are immediately due and payable, in the following circumstances:

- (a) at any time, by giving you 30 days' notice of termination in writing;
- (b) if you are in breach of any obligation under these Terms and Conditions and such breach is not remedied within 7 days of us notifying you of such breach; or

- (c) if in our reasonable opinion you will be unable to meet any payments as and when they fall due, or you become insolvent and/or an administrator, controller, receiver, liquidator or similar person is to be or has been appointed on your behalf.

11.2 Upon termination under clause 11.1, you must allow for, if directed by us, completion of any outstanding Purchase Orders (in which case, the provisions of these Terms and Conditions will survive to the extent required for us to complete and be paid for all outstanding Purchase Orders).

## 12. RISK AND RETENTION OF TITLE

12.1 Risk of loss or damage to the Goods will pass to you when Goods are delivered to you or your authorised representative (point of delivery).

12.2 You must insure the Goods against any Loss of any kind for their full value as from the date of delivery to you. You also agree to take out and maintain any insurance we reasonably require from time to time and provide us with certificates of currency evidencing such insurance within 7 days of our request under this clause 12.2.

12.3 Notwithstanding the passing of risk pursuant to clause 12.1, you acknowledge and agree that we retain legal and equitable title and ownership to the Goods supplied to you, until all amounts due to us in respect of those Goods are paid in full.

12.4 Prior to title in the Goods passing to you, you must:

- (a) hold the Goods as our bailee and fiduciary agent and you agree to accept such appointment;
- (b) store the Goods separately from your products and any third party products, and in a manner enabling them to be identified as our Goods; and
- (c) properly protect, store and insure the Goods.

12.5 Prior to title in the Goods passing to you, you must not assign, transfer or otherwise dispose of any of the rights, obligations, benefits or burdens (or part thereof), or grant a Security Interest, in relation to the Goods without our prior written consent. Notwithstanding this, you may sell or deal with the Goods in the ordinary course of business, subject to the following conditions: -

- (a) any such sale or dealing with the Goods must be on market terms and at commercial arms' length; and
- (b) all proceeds arising from the sale of or dealing with the Goods remains our beneficial property and must be held on trust by you in a separate identifiable account on our behalf, and you must promptly account to us for those proceeds. Such proceeds are payable to us on demand.

12.6 In the event you breach these Terms and Conditions, we reserve the following rights in relation to the Goods:-

- (a) the right to demand that you immediately return the Goods to us, at your cost. If you do not return the Goods immediately or within the time specified by us, we are entitled (at any time and without further notice) to enter on your premises or such premises where the Goods are located and take all steps necessary to retake possession of the Goods;
- (b) you grant us (and any person authorised by us) an unconditional and irrevocable licence to enter on any premises where the Goods are located for the purpose of retaking possession of the Goods and thereafter storing or disposing of them (including by way of sale) as we see fit;
- (c) you are liable for all Losses incurred or suffered by us as a result of us exercising our rights under this clause 12.6; and
- (d) you will indemnify us for all Losses incurred or suffered as a result of all Claims brought by or against us in connection with us exercising our rights under this clause 12.6.

12.7 Prior to title in the Goods passing to you, for the purposes of the PPSA, you acknowledge and agree as follows:

- (a) a Supply Document constitutes a Security Agreement;
- (b) any transaction deriving from a Supply Document creates a Security Interest for the purposes of the PPSA;

- (c) you grant to us a Security Interest in the Goods (including, without limitation, a PMSI) and any sale proceeds deriving from the sale of the Goods, to secure payment of the price of the Goods, supplied from time to time;
- (d) we are entitled to register the Security Interest on the PPSR and you will not make any objection to such registration;
- (e) you must not do or permit anything to be done that may result in a Security Interest (including, without limitation, a PMSI) granted to us to rank or to be subjected to priority to any other Security Interest in favour of any other third party;
- (f) the Security Interest applies to all Goods that have previously been supplied by us and to all present and after acquired Goods;
- (g) you will assist and take all steps necessary which we may require, including without limitation, obtaining written consents, supplying information, and executing all necessary PPSR registration forms and other documents (whether on the part of you or a third party), to register and/or protect the Security Interest under the PPSA in the Goods and any sale proceeds deriving from the sale of the Goods, or to maintain the ability to claim and realise a Security Interest, including its priority, pursuant to the PPSA or by reason of the Financing Change Statement;
- (h) you will not make or register a Financing Change Statement or make an 'amendment demand' pursuant to section 178 of the PPSA in respect of the Goods, without our prior written consent; and
- (i) you waive your right under section 157 of the PPSA to receive a copy of the Verification Statement relating to the Security Interest, if registered.

### 13. WARRANTIES

13.1 We warrant all Goods supplied by us to be free of defects in materials and workmanship as at and from the date of delivery, but only to the extent of and in accordance with the manufacturer's warranty, including the manufacturer's warranty period and warranty conditions (if any). For clarity, we only pass on to you the manufacturer's warranty and do not provide any extended or additional warranty.

13.2 Our warranty obligations in all circumstances are limited to the replacement (or exchange) or repair of the defective or damaged Goods or part thereof. We will not be liable in any circumstances for:

- (a) damage, failure, fault, defect or non-conformance (collectively, "defect" or "defective") caused in whole or part by misuse, abuse, neglect, faulty, careless treatment or negligence by you or any third party, or normal wear and tear or corrosion;
- (b) failure to comply with instruction manuals;
- (c) repairs, alterations or replacements made by you or any third party;
- (d) improper use, installation and repair of the Goods by you or any third party;
- (e) defects to the Goods arising from the use of any material or product provided by you or any third party, including consumables and ingredients;
- (f) the use of the Goods for any other purposes other than its intended purpose or not in accordance with its specifications;
- (g) second hand Goods;
- (h) unsuitable buildings or structures where the Goods are stored;
- (i) defects based on specifications submitted by you or any third party;
- (j) defects caused by electrical or other overload, chemical impacts, temperatures, weather conditions or any other natural circumstances beyond our control; and
- (k) any loss caused by strike, lock out, riot, civil commotion, act of God or other like power beyond our control.

13.3 If, after reasonable time and opportunity, we are unable to rectify or repair the defective Goods for which we are responsible, you are entitled to return the Goods. Returns will only be accepted

provided that we have agreed in writing to accept the return of the Goods and you have complied with these Terms and Conditions. In the case where the Goods contain minor defects and we are unable to rectify or repair the Goods, you are entitled to a reasonable reduction of the contract price to be determined by us. Minor defect refers to any defect that does not (or does so only insignificantly) affect the operation and functions of the Goods for the intended purpose.

13.4 Notwithstanding if we are held to be responsible for any defect to the Goods during the manufacturer's warranty period, we will nevertheless be released from all warranty obligations in the following circumstances: -

- (a) you did not provide a written notice regarding the damaged or defective Goods within 7 days of delivery;
- (b) you did not grant reasonable time and opportunity for our employees, contractors or agents to do all things necessary to repair or replace the Goods; and
- (c) domestic or international laws, rules, regulations and controls make it impossible for us to carry out our warranty obligations.

13.5 You will inspect the Goods immediately upon delivery, or on completion of installation and commissioning of the Goods if undertaken by us (as applicable), and within 7 days from such delivery or installation and commissioning, give written notice to us of any matter or thing by reason where you consider that the Goods are not in accordance with the Supply Documents or are otherwise defective, failing which you will be deemed to have accepted the Goods in their condition on delivery.

13.6 Except for any conditions, warranties and/or rights:

- (a) set out in these Terms and Conditions;
- (b) expressly agreed by us in writing in any Supply Documents; or
- (c) implied by any law and which cannot be excluded,

all representations, promises, statements, warranties and conditions (whether statutory, express or implied) regarding any Goods supplied by us or on our behalf are expressly excluded.

13.7 You warrant to us that you are not (and will not be) insolvent, as defined under section 95A and 922 of the *Corporations Act 2001* (Cth) at the time of entering into these Terms and Conditions and at any time transacting under any Supply Document. You acknowledge and agree that by entering into these Terms and Conditions and transacting under any Supply Document, we have relied on your warranty under this clause 13.7 and you will indemnify us and keep us indemnified against all Loss which we suffer or incur, or in connection with a Claim made by any third party against us, as a direct or indirect result of, or in connection with, this warranty being untrue or incorrect in any respect.

### 14. LIMITS ON OUR LIABILITY

14.1 Other than as provided for in these Terms and Conditions, we will not be responsible or liable for any Loss as a result of or in connection with the use of the Goods or as a result of reliance by you or any third party on the Goods or its results.

14.2 If we are held to be liable to you in contract, in tort, under statute or otherwise for any Loss arising as a result of or in connection with these Terms and Conditions or the Supply Documents, our liability in all circumstances will be limited to and will not exceed, the aggregate total amount actually paid by you to us under the Supply Documents.

14.3 If we breach these Terms and Conditions or the Supply Documents or any applicable consumer guarantee under the *Competition and Consumer Act 2010* (Cth) ("**CCA**") or are negligent, our liability is limited in all cases and at our discretion to: -

- (a) the replacement (or exchange) of the Goods involved or the supply of an equivalent product;
- (b) the repair of the Goods (including the costs associated with the repair);
- (c) the payment of the cost of replacing the Goods or supplying an equivalent product; or
- (d) the payment of the cost of having the Goods repaired; and



- (e) if the breach relates to installation services or any other service, supplying the service again or payment of the cost associated with supplying the service again.

14.4 The provisions of this clause 14 will not apply to the extent that their application is prevented by CCA.

14.5 If you have not given us written notice of the defective Goods within 7 days of delivery, you are prohibited from commencing any Claim against us and we will have no liability for any Loss as a result of or in connection with those defective Goods.

14.6 Any Claim made in connection with these Terms and Conditions must be commenced within 12 months of the cause of action arising.

14.7 We will not be responsible or liable for:

- (a) any act, omission, negligence or default of our contractors (if any) or third-party products or services;
- (b) any bodily injuries, material damage, economic losses or any other special, consequential or indirect losses of any nature whatsoever or howsoever;
- (c) any delay in performing an obligation if such delay is caused by you or if the delay occurs in circumstances beyond our control; and
- (d) any Claims that arise as a direct result of the enactment or amendment of any law, a change in the judicial or administrative interpretation of any law, or a change in, or withdrawal of, the practice or policy of any government agency.

14.8 We will not be responsible or liable to you or the final consumer (where applicable) in instances where the Goods do not meet the consumer guarantees under the CCA due to: -

- (a) any act, default or omission of, or representation made by, a third party other than our employees or agents;
- (b) you charging a higher price than the recommended retail price for the Goods involved;
- (c) any circumstances or instances occurring beyond our control after the Goods have been released from our care and possession; and
- (d) you or the final consumer (where applicable) being aware of or ought reasonably to have been aware of the defective Goods at the time of delivery or purchase.

14.10 We will not be responsible or liable for any failure to perform or delay in performance of any of our obligations where such failure or delay is due to a Force Majeure Event.

## 15. IMPLIED TERMS

15.1 You acknowledge and agree that all warranties expressed or implied by statute, common law, equity or otherwise are to the fullest extent permitted by law expressly excluded, and you accept that:

- (a) the Goods are supplied to you on an "as is" basis;
- (b) we warrant only to supply the Goods with reasonable care and skill;
- (c) we make no express or implied representation or warranty that the Goods supplied are fit for purpose and of a merchantable quality; and
- (d) we make no express or implied representation or warranty that the Goods will not cause harm or injury to any person who uses or otherwise comes in contact with the Goods, whether directly or indirectly.

15.2 Clause 15.1 is subject only to your rights contained in the CCA or any other equivalent or similar federal or state legislation, which cannot be lawfully excluded, restricted or modified.

15.3 We are not liable to you for any Loss which you may suffer or incur or are liable for as a result of or in connection with the use of the Goods.

## 16. PRIVACY

16.1 You acknowledge and agree for us to obtain a credit report from a credit reporting agency containing credit information about you and/or the guarantors (if any) in relation to any credit provided by us. You hereby consent for us to exchange your information with those credit providers specified in your credit application or otherwise in a credit report issued by the credit reporting agency for the following purposes:

- (a) to assess your application for credit including yours (or the guarantors) credit rating and status;

- (b) to notify any credit providers of an application for credit; and
- (c) to ascertain your credit worthiness with other credit providers.

16.2 You agree that your personal data may be used or retained by us for the purposes of verifying your credit status with credit suppliers and agencies, and assisting with the daily operations of your account in relation to the Goods.

## 17. INDEMNITY

You and the guarantors (if any) indemnify us and our related bodies corporate, shareholders, officers, directors, employees, contractors, agents and assignees from and against any and all Claims or Losses, that we or our related bodies corporate, shareholders, officers, directors, employees, contractors, agents and assignees suffer or incur, as a result of or in connection with:

- (a) your relations with your suppliers, customers or any third parties and affiliates;
- (b) any breach of these Terms and Conditions and/or any Supply Documents by you; or
- (c) any act, omission, negligence or default by you or your related bodies corporate, shareholders, officers, directors, employees, contractors, agents and assignees,

except to the extent that such Claims or Losses are directly caused by us (and in such cases, reduced proportionately).

## 18. EXCLUSION OF CONSEQUENTIAL LOSSES

Except where otherwise stated, neither party will have any liability to each other for fines, penalties, taxes (except GST) and any exemplary, aggravated or punitive damages, liquidated damages or any consequential loss, whether direct or indirect, including but not limited to the loss of revenue, loss of profits, loss of business opportunity, loss of contract and loss of production.

## 19. GUARANTEES

19.1 Each of your directors ("Guarantors") (if applicable) gives a guarantee and indemnity in favour of us in consideration of us supplying the Goods under these Terms and Conditions and the Supply Documents and will, if required by us, execute a Deed of Guarantee and Indemnity documenting the same.

19.2 Each Guarantor unconditionally and irrevocably guarantees to us the due and punctual performance by you of your obligations (including the obligation to pay) under these Terms and Conditions and the Supply Documents.

19.3 The Guarantor unconditionally and irrevocably indemnifies us against all Losses suffered or incurred by us as a result of or in connection with your breach of these Terms and Conditions and the Supply Documents.

## 20. INTELLECTUAL PROPERTY RIGHTS

20.1 All drawings, specifications and other documents that have been, and are still to be prepared and provided by us in connection with the Supply Documents, remain our property (or the manufacturer's property, as the case may be) and are protected by copyright law.

Additionally, we will be entitled to and will not be prevented from using or developing concepts, applications or processes that have resulted from the supply of the Goods under the Supply Documents, unless there is a prior agreement the contrary.

20.2 You will be granted a non-exclusive, royalty free, non-transferrable, revocable licence for the use of our intellectual property with respect to the Goods and its intended purpose.

20.3 The following intellectual property rights are hereby expressly excluded: -

- (a) any packaging produced with the Goods;
- (b) any third-party approvals necessary for the use and operation of the Goods within the jurisdiction where the Goods are operated; and
- (c) any liability for any infringement of third party rights based on modifications to the Goods made by you or any other third party without our prior approval or instruction.

20.4 In the event that we are held responsible for an intellectual property infringement, our obligations are limited to the provision of



the right of a continuous use of the modification of the Goods in a reasonable manner in order to avoid the infringement.

20.5 We will be expressly released from our infringement obligations in the following circumstances:

- (a) you grant us no reasonable time to execute the necessary steps for the provision of the right of a continuous use of modification of the Goods;
- (b) execution of any of our infringement obligations is impossible due to domestic or international laws, rules, regulations and controls; and
- (c) there is no immediate notification by you of our intellectual property infringement.

20.6 If we are held responsible for an intellectual property infringement of a third parties' rights, your rights will be limited to the following:

- (a) in the event where provision of a continuous use or reasonable modification turns out to be economically unreasonable, cannot be realised in a reasonable period or will be impossible due to any domestic or international laws, rules, regulations and controls, both parties will have the right to cancel the Supply Documents; and
- (b) in the event of minor restrictions in the intended use of the Goods based on such intellectual property infringement including restrictions that do not (or does so insignificantly) affect the operation of Goods in commercial operations or for the intended purpose, your rights will be limited to a reasonable reduction of the contract price to be determined by us.

## 21. CANCELLATION OF YOUR ORDER

21.1 We are entitled to cancel any Supply Document or delivery of the Goods at any time before the Goods are delivered, whether or not a Force Majeure Event has occurred, by giving written notice to you. We will not be liable for any Loss suffered or incurred by you as a result of or in connection with such cancellation.

21.2 You may only cancel the Purchase Order in the event of a Force Majeure Event (as determined by us, acting reasonably) if you pay to us the amount we advise to you as our reasonable estimate of the aggregate of: –

- (a) the Goods (whether complete or incomplete, in whole or in part) manufactured or delivered pursuant to the Supply Documents;
- (b) the value of any services performed by us;
- (c) any Losses incurred by us due to the cancellation as at to the date of cancellation, and
- (d) all employee and contractor expenses relating to the Supply Documents as at to the date of cancellation.

## 22. SPECIAL TERMS, ARRANGEMENTS

Any additional special terms or arrangements set out in the Supply Documents are included in these Terms and Conditions. There may also be special technical or site requirements you will need to comply with.

## 23. NOTICES

Any notice under these terms and conditions must be in writing, and may be delivered, emailed, faxed or posted to a party.

## 24. DISPUTE RESOLUTION

24.1 If a dispute arises out of or in relation to these Terms and Conditions or the Supply Documents (other than for non-payment) (**Dispute**), no party to the Dispute (**Disputant**) will start court proceedings (except proceedings seeking interlocutory relief) unless, it has complied with this clause 24.

24.2 A party claiming that a Dispute has arisen must notify each other Disputant in writing giving details of the Dispute and its proposal for a resolution.

24.3 For a 14 day period after a notice is given (**Initial Period**), each Disputant must use all reasonable endeavours to resolve the Dispute and a senior officer of each Disputant will meet within the first 7 days of that period with that aim.

24.4 If the Dispute remains unresolved at the end of the Initial Period, the Dispute will immediately be referred for expert determination by the Australian Commercial Dispute Centre (**ACDC**) in Sydney and such determination will be conducted in accordance with the ACDC rules in force at the time of referral of the Dispute.

24.5 The decision of the ACDC will be final and binding on all parties in the absence of manifest error.

24.6 Despite the existence of a dispute, each party must continue to perform its obligations under the Supply Documents.

## 25. FORCE MAJEURE EVENT

25.1 If a Force Majeure Event occurs, then the party affected will notify the other party of the nature and likely duration of the Force Majeure Event and take all reasonable steps to reduce its effect and duration, including the making of any alternative arrangements for resuming the performance of obligations which may be practicable.

25.2 If a Force Majeure Event occurs and the performance of supplying the Goods and/or services should lead to unreasonable hardship for us, the parties agree to negotiate in good faith to amend the terms of any Supply Document (including without limitation, the pricing terms).

25.3 If the Force Majeure Event continues for a period of 30 days or more, we may terminate any arrangement with you immediately, provided such Force Majeure Event is continuing at the date of termination.

25.4 Unless termination is actioned under clause 25.3, the party affected by the Force Majeure Event will notify the other party as soon as performance of its obligations under any relevant agreement with us is no longer prevented by the Force Majeure Event.

## 26. GOVERNING LAW AND JURISDICTION

These Terms and Conditions are governed by and construed in accordance with the law of New South Wales and the parties submit to the exclusive jurisdiction of the Courts of New South Wales.

## 27. ENTIRE AGREEMENT, JURISDICTION, SEVERABILITY AND WAIVERS.

These Terms and Conditions and the relevant Supply Documents constitute the entire terms of the agreement for the Goods we supply to you. If any provision of these Terms and Conditions or the Supply Documents will be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired. No failure to exercise nor any delay in exercising any right, power or remedy by us operates as

## 28. PRIORITY OF SUPPLY DOCUMENTS

In the event of conflicting provisions between any of the Supply Documents and these Terms and Conditions, the provisions will govern in the following priority:

- (a) duly executed amendments to any supply agreement between the parties (to the extent they are not superseded by a subsequent amendment);
- (b) any duly executed supply agreement between the parties;
- (c) an Order Confirmation;
- (d) a Quotation; and
- (e) these Terms and Conditions.

## 29. CHANGE IN LAW

In these Terms and Conditions and the Supply Documents, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either party, the parties will negotiate in good faith to agree such amendments to these Terms and Conditions as may be appropriate in the circumstances.



### **30. SIGNING**

A Supply Document may be executed in wet-ink or electronically, in any number of counterparts, as required by us from time to time. Any number of counterparts taken together will be constituted to form one document. If a party delivers an executed counterpart of a Supply Document by electronic means, such delivery will be deemed to be an effective delivery of an originally executed counterpart.

### **31. CONFIDENTIALITY**

Both parties acknowledge and agree that each party may obtain confidential information regarding the other's business. Both parties agree to treat all such information and the terms of any Supply Document as confidential and to take all reasonable precautions against disclosure of such information to unauthorised third parties during and after the term of any arrangement under any Supply Document.