

TERMS AND CONDITIONS OF PURCHASE

Approved By:

BMS/Supply Chain/Policy

» Rev 3.4 – SQ/KAG
01/04/2026
Multiple Policy Changes

1. INTERPRETATION AND JURISDICTION

1.1 This Agreement is subject to the laws of the State of Queensland and the provisions of the Competition and Consumer Act 2010 (Cth). Each party to this Agreement irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and any courts which have jurisdiction to hear appeals from any of those courts (“Courts”) and waives any right to object to any proceedings being brought in those Courts. The parties exclude the application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement.

1.2 In this Agreement, unless the context otherwise requires:

- (a) “Adjustment Event” has the meaning given in the GST Act.
- (b) “Adjustment Note” has the meaning given in the GST Act.
- (c) “Agreement” has the meaning given in clause 2.1.
- (d) “Associate” has the meaning given in sections 12 and 15 of the Corporations Act 2001 (Cth).
- (e) “Business Day” means any day except a Saturday, Sunday or public holiday in Queensland.
- (f) “Claim” means any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding or other legal action, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the Purchaser or Supplier, however arising and whether ascertained or unascertained, or immediate, future or contingent.
- (g) “Commencement Date” means the date that the Purchaser issues a Purchase Order to the Supplier in accordance with clause 2.1.
- (h) “Control” has the meaning given in section 50AA of the Corporations Act 2001 (Cth).
- (i) “Date for Delivery” has the meaning given to it in the Purchase Order.
- (j) “Defective” means:
 - (i) In relation to Services, that they:
 - (A) Were not provided in a competent and efficient manner in accordance with a standard of care and diligence reasonably expected from a person experienced in undertaking such matter; and

- (ii) In relation to the Goods, that they:
 - (A) Have an error, defect or malfunction; or
 - (B) Do not conform with a sample or test goods provided by the Supplier; and
- (iii) In relation to Goods and/or Services, that they:
 - (A) Do not conform to the specifications for such Goods and/or Services;
 - (B) Are not fit for the purpose made known by the Purchaser or are not of merchantable quality;
 - (C) Do not conform with all applicable laws and third party approvals; or
 - (D) Otherwise do not comply with the requirements of this Agreement.
- (k) "Developed IP" means the Intellectual Property Rights in the Goods and/or Services and all other materials produced by the Supplier in connection with this Agreement, including any patterns, castings, designs, specifications, documentation, reports, data, concepts, know-how, information, advice, opinions, notes whether in draft or final form, in writing, provided orally, either alone or in conjunction with the Purchaser or others.
- (l) "Goods" means any tangible goods specified in the Purchase Order, provided at any time by the Supplier to the Purchaser under this Agreement.
- (m) "GST" has the same meaning as in the GST Act.
- (n) "GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (o) "Infringement Claim" means a claim by a third party that:
 - (i) The Supplier's provision of the Goods or Services to the Purchaser; or
 - (ii) The Purchaser's receipt or use of the Goods, Developed IP or the Supplier's Pre-Existing IP, Infringes the Intellectual Property Rights of any third party.
- (p) "Intellectual Property Rights" means any and all intellectual and industrial property rights throughout the world, including:
 - (i) Copyright, patents, know-how, confidential information, database rights, moral rights and rights in trademarks and designs (whether registered or unregistered);
 - (ii) Applications for registration and the right to apply for registration, for any of the above; and
 - (iii) All other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world, whether created before or after the Commencement Date and whether existing in Australia or otherwise.
- (q) "Loss" means any and all losses, liabilities, damages and claims, and any and all related costs and expenses (including any and all reasonable legal fees and reasonable costs of investigation, litigation, settlement, judgment, appeal, interest and penalties).
- (r) "Modern Slavery" has the same meaning as it has in the Modern Slavery Act 2018 (Cth).
- (s) "Patterns" has the meaning given in clause 20.
- (t) "Personnel" means any person who is an officer, employee, contractor (including subcontractor) or agent of the Supplier involved in providing the Goods and/or Services.
- (u) "PPSA" means the Personal Property Securities Act 2009 (Cth) and any regulations made under or in connection with that Act.
- (v) "PPS Register" means the register established under section 147 of the PPSA.

- (w) "Pre-Existing IP" in respect of a party means all materials owned or licensed by the relevant party as at the Commencement Date and any Intellectual Property Rights attaching to those materials.
- (x) "Prices" means the costs specified in the Purchase Order payable by the Purchaser to the Supplier in exchange for the Goods or Services.
- (y) "Proportionate Liability Scheme" means:
- (i) Part 4 of the Civil Liability Act 2002 (NSW);
 - (ii) Part 3 of the Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001(SA);
 - (iii) Part 1F of the Civil Liability Act 2002 (WA);
 - (iv) Part 9A of the Civil Liability Act 2002 (Tas);
 - (v) Part IVAA of the Wrongs Act 1958 (VIC);
 - (VI) Chapter 2, Part 2 of the Civil Liability Act 2003 (Qld);
 - (vii) The Proportionate Liability Act 2005 (NT);
 - (viii) Chapter 7A of the Civil Law (Wrongs) Act 2002 (ACT);
 - (ix) Part VIA of the Competition and Consumer Act 2010 (Cth);
 - (x) Part 7.10, Division 2A of the Corporations Act 2001 (Cth);
 - (xi) Sections 12GP - 12GW of the Australian Securities and Investment Commission Act 2001 (Cth); and;
 - (xii) Any statutory provisions which are of similar effect in any State or Territory.
- (z) "Purchase Order" means any form of order or acknowledgment from the Purchaser for the provision and supply of Goods or Services by the Supplier.
- (aa) "Purchaser" means voestalpine Railway Systems Australia Pty Ltd (ABN 71 011 073 108).
- (bb) "Purchaser Group" means, collectively, the Purchaser and each of its Related Bodies Corporate (as defined in section 50 of the Corporations Act 2001 (Cth)), and any entity that Controls, is Controlled by, or is under common Control with, the Purchaser (whether directly or indirectly), and "Purchaser Group Member" means any member of the Purchaser Group.
- (cc) "Purchaser Supplied Material" means all equipment (including tools, gauges, jigs and castings), and resources (including drawings, patterns, blueprints, specifications, process and knowhow) and any Intellectual Property Rights attached to such materials provided by the Purchaser to the Supplier in connection with this Agreement.
- (dd) "Quality Assurance Scheme" means any method of testing to verify that the Goods (or if relevant, Services) comply with the standards and requirements of any applicable standards including Australian standards and/or the International Standards Organisation ("ISO").
- (ee) "Recipient" has the meaning in clause 6.
- (ff) "Requested Patterns" has the meaning given in clause 20.
- (gg) "Services" means any services provided by the Supplier to the Purchaser in accordance with a Purchase Order and includes the provision of any other right, benefit or thing that do not constitute Goods.
- (hh) "Supplier" means the person or persons described as being the Supplier in the Purchase Order.
- (ii) "Tax Invoice" has the same meaning as in the GST Act.
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2. AGREEMENT

- 2.1** The Agreement between the Purchaser and Supplier comprises the Purchase Order and these Terms and Conditions ("Agreement"). The Purchase Order constitutes an irrevocable offer by the Purchaser to the Supplier for the Supplier to supply the Goods and/or deliver the Services by the Date for Delivery upon and subject to the terms of this Agreement and any other direction or instruction from the Purchaser. Such offer is capable of acceptance by the Supplier unilaterally and the Supplier is not required to communicate such acceptance to the Purchaser for it to be effective.
- 2.2** The Supplier is responsible for the delivery of Goods or rendering of Services under a properly authorised or signed Purchase Order on and from its acceptance of the relevant Purchase Order it receives from the Purchaser.
- 2.3** This Agreement embodies the entire agreement between the Purchaser and Supplier in relation to the Goods and/or Services specified in the Purchase Order and supersedes any previous negotiations, agreements, representations, warranties or statements made by or between the parties in relation to such Goods and/or Services. Any Supplier terms and conditions, including terms contained in a delivery note do not form part of this Agreement or bind the Purchaser. The parties hereby expressly acknowledge and agree that the terms in this Agreement prevail over any terms and conditions of trade of the Supplier whether or not any inconsistency arises.
- 2.4** The parties also expressly acknowledge and agree to abide by the supplied voestalpine Code of Conduct for Business Partners.
- 2.5** The Purchaser may update these Terms and Conditions from time to time on the Purchaser's website, provided that the Terms and Conditions applicable to this Agreement are those in force at the time the Purchase Order referred to clause 2.1 is issued and the Purchaser gives the Supplier reasonable prior written notice of any update. If any of the provisions of this Agreement are illegal, void or unenforceable for any reason, all other provisions which are self-sustaining and capable of separate enforcement shall, to the maximum extent permitted by law, be and continue to be valid and enforceable.

3. INVOICES

- 3.1** The Supplier must provide to the Purchaser an invoice in respect of the Goods and/or Services which is to accompany the Goods or be mailed to the Purchaser the day following despatch of Goods or provision of Services, unless otherwise arranged.
- 3.2** An invoice will be deemed correctly rendered if it:
- (a) is a Tax Invoice, where GST applies;
 - (b) is complete and specifies the Purchase Order to which it relates;
 - (c) is set out in a manner that enables the Purchaser to ascertain which Goods or Services the invoice relates to and the manner in which the Prices in the invoice have been calculated;
 - (d) the invoice contains appropriate reductions for any sums required to be reduced or offset in accordance with this Agreement; and
 - (e) where explanation is necessary, is accompanied by documentation substantiating that the Goods were received and accepted or the Services were completed (as applicable).

- 3.3 If the Purchaser disputes the amount of any invoice, the Purchaser may, acting reasonably, withhold or suspend payment of the amount in dispute until the dispute is resolved, provided that the Purchaser notifies the Supplier in writing of the nature and basis of the dispute within a reasonable time. The undisputed portion of the invoice must be paid in accordance with clause 4. The Supplier must continue to perform the relevant Purchase Order while that dispute is resolved.
- 3.4 If any part of an invoice is found to have been rendered incorrectly after payment has been made by the Purchaser, any underpayment or overpayment will be recoverable by or from the Supplier (including pursuant to clause 3.5 and 3.6), as the case may be.
- 3.5 The Purchaser may by notice to the Supplier reduce any Prices or other charges or costs payable to the Supplier under this Agreement by any fee, credit, rebate or other amount which is payable to the Purchaser under or in connection with this Agreement.
- 3.6 Unless otherwise agreed in writing, where the Supplier owes any amount to the Purchaser arising from or in connection with this Agreement, the Supplier must, at the Purchaser's selection, credit or pay that amount to the Purchaser within ten (10) Business Days of receipt of written demand from the Purchaser.
- 3.7 If, for any reason, an invoice does not contain the ABN of the Supplier, the Supplier warrants that an ABN has been provided to the Purchaser on some other documentation relating to the supply of Goods and/or Services. Or, alternatively, the Supplier does not supply any Goods and/or Services in the course or furtherance of any enterprise carried on in Australia by the Supplier.

4. PAYMENTS

Subject to clause 12, the Purchaser will pay the Prices to the Supplier:

- (a) in respect of Goods, within 30 days end of month from the day of acceptance of the Goods; or
- (b) in respect of Services, on the fixed times set out in the Purchase Order or upon the achievement of any payment milestones set out in the Purchase Order (as applicable), and only after the Purchaser receives a correctly rendered Tax Invoice or monthly statement of accounts (whichever is applicable), unless otherwise arranged.

5. PRICE

The Prices are claimable by the Supplier upon delivery of the Goods or provision of the Services. Entitlement to payment is limited to the amount specified in the Purchase Order, unless extra work is undertaken and the cost of such work is approved by the Purchaser in writing before such work is commenced. Any costs associated with additional work must be shown as separate items when invoicing. Subject to clauses 6, 7.3 and 9, the Prices include all taxes and duties applicable to the delivery of Goods or supply of Services (whether onshore or offshore).

6. GST

- 6.1 Unless specified otherwise, amounts payable by a party under this Agreement have been fixed without regard to the impact of GST or other taxes and are exclusive of GST and any other taxes.
- 6.2 If GST is or becomes payable by a party making a supply under or in connection with this Agreement, the party providing the consideration for that supply ("Recipient") must pay an additional amount equal to the GST payable on the supply ("GST Amount") unless the consideration for that supply is expressly stated to be inclusive of GST. Payment of any GST Amount is conditional on prior receipt by the Recipient of a valid Tax Invoice in respect of the supply. Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.
- 6.3 If an Adjustment Event occurs in relation to a supply under this Agreement, the Recipient must be issued an Adjustment Note by the party making the supply as required by law.
- 6.4 Any payment or reimbursement required to be made under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- 6.5 Except as set out in this clause 6 in respect of GST, all taxes in connection with this Agreement will be borne by the Supplier and will not cause any increase to the Prices.
- 6.6 Terms used in this clause 6 have the meanings given to those terms by the GST Act, unless the context suggests otherwise.

7. PACKING

- 7.1 Packing slips must be enclosed with shipment and/or emailed to the Purchaser following despatch of Goods. All Goods and articles shall be suitably packed or otherwise prepared for shipment and so as to secure the lowest transport and insurance rates and in accordance with carrier's requirements.
- 7.2 The Purchaser is not responsible for containers or other packing materials which are the property of the Supplier, for which the Supplier incurs a charge if not returned, unless returnable articles are shown on packing slips and invoices.
- 7.3 The Supplier bears all charges and costs (including any applicable insurance premiums) associated with the Goods being transported from the Supplier to the Purchaser.

8. RISK AND TITLE

The Goods are at the Supplier's risk until such time as the Goods are actually delivered to the Purchaser, including (for the avoidance of doubt) any time whilst the Goods are in transit. Title to the Goods is transferred to the Purchaser, free from any encumbrances, upon the earlier of payment or receipt of those Goods.

9. QUANTITIES

The Goods delivered must equal exact amounts ordered, unless otherwise agreed in writing by the Purchaser. The Purchaser assumes no obligation with respect to Goods shipped in excess of quantities specified herein, except in accordance with trade customs and usage. Material shipped in excess of quantity ordered may be returned by the Purchaser (at the Supplier's expense).

10. DELIVERIES

The Purchaser reserves the right to request, as necessary, reasonable amendments to delivery schedules of the Goods and/or Services as set out under the Purchase Order at any time, provided that the Purchaser gives the Supplier reasonable prior written notice of any such amendment.

11. SPECIFICATIONS

The specifications for the Goods or Services in or attached to the Purchase Order provided by the Purchaser, if any, shall be deemed to be part of this Agreement. The Supplier must provide Goods or deliver Services to the Purchaser in accordance with such specifications.

12. INSPECTION

12.1 All Goods supplied under this Agreement, whether paid for or not, shall be subject to inspection by the Purchaser within a reasonable time after delivery (or, in the case of Services, review or assessment of the Services a reasonable time after their provision) and if such Goods or Services are Defective, then the Purchaser may either reject or retain any of such Goods or Services in accordance with clause 13, reserving the right to damages for the Supplier's breach or a reduction in the Prices (as determined by the Purchaser acting reasonably). Payment for Goods or Services prior to inspection is not to be construed as an acceptance of Defective Goods or Services by the Purchaser. The Purchaser must promptly notify the Supplier of any Defects detected and may return any articles so claimed to be Defective for the Supplier's inspection (at the Supplier's expense).

12.2 Nothing in this clause 12 will limit or prejudice the Purchaser's rights in respect of Goods and/or Services being Defective in a manner which was not reasonably discoverable upon inspection or review (a "Latent Defect"). The Purchaser's rights under clause 13 shall apply to any Latent Defect discovered within 24 months of delivery of the relevant Goods or completion of the relevant Services, and the Purchaser shall notify the Supplier promptly upon becoming aware of any such Latent Defect.

13. DEFECTIVE GOODS OR SERVICES

13.1 If the Goods or Services are Defective the Purchaser may, without prejudice to the Purchaser's other rights and remedies, in its absolute discretion:

- (a) accept the Goods or Services subject to a reasonable reduction in the Prices (as determined by the Purchaser acting reasonably);
- (b) reject the Goods or Services;
- (c) require the Supplier to make good the Defective Goods free of charge;
- (d) require the Supplier to supply the Services again; or
- (e) require the Supplier to pay the cost of having the Services supplied again.

13.2 Where Goods or Services are rejected by the Purchaser under clause 13.1(b), the Supplier will, within 7 days after receiving notification of such rejection, without prejudice to the Purchaser's other rights and remedies:

- (a) collect the Goods from the Purchaser (or in the case of Services, where possible, reverse the result of the provision of Services at the Purchaser's election); and
 - (b) refund to the Purchaser all amounts paid by the Purchaser in respect of the Goods or Services.
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- 13.3** Without prejudice to the Purchaser's other rights and remedies under this Agreement or at law, and subject to clause 27, the Purchaser is entitled to recover from the Supplier any Loss incurred as a result of the supply of Defective Goods or Services. Such Loss may include, but is not limited to, the costs of labour, materials, service activities, and expenses associated with installing, removing, replacing, or returning parts to operational condition or into track.
- 13.4** Nothing in clauses 12, 13 or 14 will limit or prejudice the Purchaser's rights under Division 1 of Part 3-2 of the Australian Consumer Law (to the extent applicable).

14. CANCELLATION

- 14.1** An order may be wholly or partially cancelled by the Purchaser in the event of the Supplier at any time failing or being unable to materially comply with any of the express terms, conditions or warranties of this Agreement, after the Purchaser provides 15 days' notice.
- 14.2** In the case of any unforeseen contingency causing stoppage or delay in production, the Purchaser reserves the right at its option to suspend, modify or cancel the order.
- 14.3** On the cancellation of an order, all Services, Goods and materials comprised or mentioned therein, whether wholly or partly manufactured or delivered and all Purchaser Supplied Materials then in possession of the Supplier shall, at the option of the Purchaser, be delivered or provided by and at the cost of the Supplier to the Purchaser's nominee(s).
- 14.4** The Purchaser must inspect any partly or wholly manufactured Goods or consider the standard of any partly or fully provided Services received pursuant to this clause and notify the Supplier if it intends to retain or reject those Goods or Services. Where the Purchaser elects to retain such Goods or Services, the Purchaser will (acting reasonably) determine a fair and reasonable price for those Goods or Services and confirm such price in writing to the Supplier. Payment of the price will be made in accordance with clause 4. Where the Purchaser elects to reject the Goods, it will return the Goods to the Supplier at the Suppliers' cost and the Supplier will not be entitled to any payment in respect of the Goods other than, where the cancellation is pursuant to clause 14.2, for the reasonable, actual costs incurred by the Supplier up to the date of cancellation as a direct result of manufacturing, procuring or supplying those Goods (not to exceed, in any event, the original agreed upon Price for such Goods and supported by reasonable documentary evidence provided by the Supplier to the Purchaser within 14 days of cancellation). Where the Purchaser elects to reject the Services, it will, if possible, reverse the product of the Services at the Suppliers' cost and the Supplier will not be entitled to any payment in respect of the Services other than, where the cancellation is pursuant to clause 14.2, for the reasonable, actual costs incurred by the Supplier up to the date of cancellation as a direct result of performing those Services (not to exceed, in any event, the original agreed upon Price for such Services and supported by reasonable documentary evidence provided by the Supplier to the Purchaser within 14 days of cancellation).

15. EXCLUSION OF PROPORTIONATE LIABILITY

- 15.1** To the extent permitted by law, each of the Proportionate Liability Schemes is excluded in relation to all and any rights, obligations or liabilities of either party under this Agreement or in relation to any Claim whether those rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

- 15.2** Without limiting clause 15.1, the parties agree that, as between them, their respective rights, obligations and liabilities under this Agreement or in relation to any Claim with respect to proportionate liability are as specified in this Agreement and not otherwise, whether those rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.
- 15.3** To the extent permitted by law, the Supplier must not seek to apply a Proportionate Liability Scheme in relation to any Claim by the Purchaser against the Supplier (whether in contract, tort or otherwise).

16. PURCHASER SUPPLIED MATERIAL

- 16.1** The Purchaser may, from time to time, provide to the Supplier the Purchaser Supplied Material for the purpose of manufacturing the Goods and/or delivering the Services.
- 16.2** The Supplier must inspect the Purchaser Supplied Material upon delivery, satisfy itself as to the suitability and quality of the Purchaser Supplied Material, and notify the Purchaser if the Purchaser Supplied Material is not suitable for use in connection with manufacturing the Goods (or, if relevant, providing the Services).
- 16.3** Despite the Supplier having possession of any Purchaser Supplied Material, ownership of that material (including Intellectual Property Rights in that material and any modifications or improvements thereof) will, at all times, remain with the Purchaser. The Supplier will, at its own cost, return all or any of the Purchaser Supplied Material to the Purchaser or its nominee promptly upon the Purchaser's request.
- 16.4** The Purchaser Supplied Material must not be used by the Supplier otherwise than for the manufacture and provision of the Goods or delivery of Services for the Purchaser. The Supplier has no claim to, or rights in respect of, the Purchaser Supplied Material, including no right to assert any security interest over it.
- 16.5** The Supplier irrevocably grants to the Purchaser, its agents and servants, a right and licence, on not less than 5 Business Days' prior written notice (or without notice in the case of an emergency or where the Purchaser reasonably believes that Purchaser Supplied Material is at risk of damage, loss or destruction), to enter the premises occupied by the Supplier during normal business hours to identify and remove any Purchaser Supplied Material and any other property that the Purchaser has an interest in, without being liable to the Supplier or any persons claiming through them.
- 16.6** The Supplier agrees to keep safe custody of all Purchaser Supplied Material such that it will be in good condition and readily identified as the Purchaser's property at all times. The Supplier must not, or allow any other person to, copy, replicate or reverse engineer any Purchaser Supplied Material (other than as is necessary for the manufacture and supply of the Goods or delivery of the Services to the Purchaser).
- 16.7** Any Purchaser Supplied Material in the Supplier's possession is at the Supplier's risk. The Supplier is responsible for the cost of replacing any Purchaser Supplied Material that is lost, partly damaged or wholly destroyed while in the Supplier's possession, to the satisfaction of the Purchaser.
- 16.8** The Supplier is responsible for ensuring that all Purchaser Supplied Material is suitable for manufacturing the Goods or delivering the Services and will produce Goods or provide Services strictly in accordance with any relevant Purchaser Supplied Material.
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- 16.9** The Purchaser will not be liable to the Supplier in contract, tort, equity, under statute or otherwise arising from or in connection with the Purchaser Supplied Material, except to the extent that any Loss is caused by the Purchaser's negligence or wilful misconduct in relation to the Purchaser Supplied Material. The Supplier will not be entitled to any extension of time to the Date for Delivery, adjustment to the Prices or other claim arising from or in connection with the Purchaser Supplied Material, unless the Purchaser Supplied Material is defective or unsuitable for its intended purpose and the Supplier has complied with its obligations under clause 16.2.

17. INTELLECTUAL PROPERTY AND COPYRIGHT

- 17.1** Each party retains ownership of its Pre-Existing IP and nothing in this Agreement transfers ownership or assigns any Pre-Existing IP of a party to the other party.
- 17.2** The Purchaser grants to the Supplier a non-exclusive, non-transferable, non-sublicensable, limited licence to use the Purchaser Supplied Material and any Developed IP solely to the extent necessary to provide, produce or manufacture the Goods or Services in accordance with this Agreement.
- 17.3** The Purchaser will be the sole and exclusive owner of all Developed IP.
- 17.4** Subject to clause 17.1, the Supplier assigns to the Purchaser all right, title and interest (including all Intellectual Property Rights) in the Developed IP (including as a present assignment of future copyright). The Supplier must do all things necessary to vest title or procure the vesting of title in all Intellectual Property Rights in the Purchaser without the need for further consideration.
- 17.5** To the extent that any Pre-Existing IP of the Supplier is incorporated in the Developed IP, the Supplier grants to the Purchaser a perpetual, irrevocable, transferable, sublicensable, worldwide and royalty-free licence to use, copy, modify, adapt and exploit such Pre-Existing IP in order to use, enjoy the benefit of and exploit the Developed IP.
- 17.6** The Supplier must procure the irrevocable consent of its Personnel as necessary to enable the Purchaser to do any act or omission that might otherwise infringe the moral rights of such Personnel under the Copyright Act 1968 (Cth).

18. INFRINGEMENT CLAIMS

The Supplier will indemnify, hold harmless and defend the Purchaser from and against any and all Loss, outgoings or payments paid, suffered or incurred by the Purchaser arising from, out of or in connection with an Infringement Claim except where the Infringement Claim directly arises out of, or results from, the Supplier's use of the Purchaser Supplied Material in accordance with this Agreement. The procedures set out in clauses 27.6 to 27.8 apply to any Infringement Claim as if it were a Claim referred to in those clauses, and the Purchaser must take reasonable steps to mitigate its Loss.

19. CASTINGS

- 19.1** Any supply or manufacture of castings is governed by the provisions of this Agreement, including the provisions with respect to Purchaser Supplied Material set out in clause 16 and Developed IP set out in clause 17.

- 19.2** If the Supplier is manufacturing castings, the Supplier must ensure that the castings are:
- (a) sound and clean;
 - (b) free from porosity and all other defects;
 - (c) without holes or cracks;
 - (d) conforming to the appropriate standard of microstructure relevant to the product;
 - (e) true to the shape and dimensions provided by the Purchaser or if none are provided, that are reasonably required;
 - (f) properly dressed and fettled;
 - (g) manufactured or supplied (as relevant) in accordance with drawings and/or specifications provided by the Purchaser;
 - (h) unaffected by an explosive depth hardening process;
 - (i) conforming to non-destructive testing;
 - (j) compliant with any other condition or test as the Purchaser may from time to time require; and
 - (k) of the appropriate standard specific to the Purchaser.
- 19.3** The Purchaser reserves its rights to not accept the castings manufactured or supplied (as relevant) if they do not comply with clause 19.2.
- 19.4** Certificates from any testing performed in connection with clause 19.2 are to be supplied to the Purchaser by the Supplier no later than at the time of delivery of the Goods or provision of the Services, or otherwise as and when directed by the Purchaser.

20. PATTERNS

- 20.1** The Supplier:
- (a) will ensure that any patterns or moulds that the Supplier is asked by the Purchaser to manufacture (at the cost of the Purchaser) (the “Requested Patterns”) will be manufactured in compliance with the drawings and specifications provided by the Purchaser to the Supplier for that Requested Pattern;
 - (b) agrees and acknowledges that the Requested Patterns and any patterns or moulds that form part of the Purchaser Supplied Material (together, the “Patterns”) will at all times be the property of the Purchaser;
 - (c) agrees and acknowledges that the Patterns are governed by this Agreement and must comply with clause 16;
 - (d) must not, or allow any other person to, copy, replicate or reverse engineer any Requested Patterns (other than as is necessary for the manufacture and supply of the Goods to the Purchaser);
 - (e) will keep safe custody of all Patterns such that they will be:
 - (i) in secure, weatherproof and appropriate storage conditions;
 - (ii) in good condition; and
 - (iii) readily identified as the Purchaser’s property at all times;
 - (f) will not relinquish control of (or otherwise deal with) any Patterns without the prior written consent of the Purchaser;
 - (g) will (upon request by the Purchaser) promptly deliver the Patterns to the Purchaser clean and free from any defects whatsoever; and
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- (h) irrevocably grants to the Purchaser, its agents and servants, a right and licence, on not less than 5 Business Days' prior written notice (or without notice in the case of an emergency or where the Purchaser reasonably believes that Patterns are at risk of damage, loss or destruction), to enter the premises occupied by the Supplier to identify and remove any Patterns and any other property that the Purchaser has an interest in, without being liable to the Supplier or any persons claiming through them.

21. ASSIGNMENT

- 21.1** This Agreement is not assignable by the Supplier. Any change in control of the Supplier or the sale of substantially all of the Supplier's assets is deemed an assignment for the purpose of this Agreement.
- 21.2** The Supplier shall not, without the previous approval in writing of the Purchaser enter into any sub-contract for the performance of any or all of the work required to be done under each Agreement or any part thereof. The Supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under this Agreement and will be liable for all acts and omissions of a subcontractor as though they were the actions of the Supplier itself.
- 21.3** The Purchaser may assign the benefit of this Agreement at any time by providing notice in writing to the Supplier, provided that the assignee assumes all of the Purchaser's obligations under this Agreement.

22. SUBSTITUTION

The Supplier must not, without the Purchaser's prior written approval, substitute any Goods (including, but not limited to, changes of the quantities of Goods, the relevant specifications, or the barcode or specific numbers of Goods) to be delivered under a Purchaser Order.

23. TEST CERTIFICATES

Failure to supply test certification in compliance with the Quality Assurance Scheme applicable to Goods and/or Services will deem this Agreement incomplete and no payment will be made until the certification is received and accepted by the Purchaser. The Supplier must provide verification of current ISO certification annually to the Purchaser.

24. SUPPLY CHAIN OBLIGATIONS

- 24.1** The Supplier must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Goods and/or Services.
- 24.2** Where the operations and supply chains used in the provision of the Goods and/or Services involve subcontractors engaged by the Supplier, the Supplier's obligations to identify, assess and address risks of Modern Slavery practices extend to those contractual arrangements.

- 24.3** The Supplier must establish and maintain a Modern Slavery Risk Management Plan in relation to its operations and supply chains and, if requested by the Purchaser, provide a copy of this plan to the Purchaser. The Modern Slavery Risk Management Plan should, at a minimum, set out:
- (a) the Supplier's steps to identify and assess risks of Modern Slavery practices in the operations and supply chains used in the performance of this Agreement;
 - (b) the Supplier's processes for addressing any Modern Slavery practices of which it becomes aware in the operations and supply chains used in the performance of this Agreement;
 - (c) the content requirements and timing of training for Personnel about Modern Slavery; and
 - (d) the mechanisms available to Personnel to handle complaints about Modern Slavery practices.
- 24.4** The Purchaser may provide comments to the Supplier in relation to the Modern Slavery Risk Management Plan, and the Supplier will promptly make any reasonable amendments required by the Purchaser and promptly resubmit the revised Modern Slavery Risk Management Plan to the Purchaser for its further review.
- 24.5** The Supplier must comply with the Modern Slavery Risk Management Plan in its performance of this Agreement. For clarity, nothing in this clause derogates from the Supplier's other obligations arising under or otherwise in relation to the provision of the Goods and/or Services.
- 24.6** If at any time the Supplier becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of this Agreement, the Supplier must as soon as reasonably practicable:
- (a) notify the Purchaser of the Modern Slavery practices and provide any relevant information requested by the Purchaser;
 - (b) take reasonable steps to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains;
 - (c) take reasonable steps to remediate any adverse impacts caused or contributed to by the Supplier from these practices, including in accordance with the Guiding Principles on Business and Human Rights; and
 - (d) provide updates to the Purchaser of its progress to address or remove these practices and remediate the adverse impacts on a regular basis and as otherwise requested by the Purchaser.
- 24.7** The Supplier must cooperate and provide reasonable assistance to the Purchaser in its compliance with Modern Slavery reporting obligations under the Modern Slavery Act 2018 (Cth), including by providing relevant information, data and documentation regarding the Supplier's operations and supply chains.
- 24.8** The Purchaser has the right to audit or inspect the Supplier's operations, records and supply chain arrangements to verify compliance with its Modern Slavery obligations within 7 days of a written request.

25. WARRANTIES

- 25.1** In addition to any rights the Purchaser may have under the Australian Consumer Law, the Supplier represents and warrants that:
- (a) it has full corporate power and authority to enter into, execute and deliver this Agreement as well as perform any obligations under this Agreement;
 - (b) the Services and the Goods, and the use by the Purchaser Group of the same, will not infringe the Intellectual Property Rights or Moral Rights of any third party;
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- (c) it has the unencumbered right to supply the Services and produce and provide the Goods free of third party rights and interests, and it will not use or incorporate third party products or services in a manner that would diminish the representations or warranties made by the Supplier, or reduce the Purchaser's rights under, this Agreement;
- (d) the Goods are new and fit for the purpose for which they have been designed/purchased;
- (e) the Goods and/or Services conform in all respects with the specification (if any);
- (f) the Goods and/or Services are free from defects, including in design, workmanship or material;
- (g) the Goods are of merchantable quality;
- (h) it knows the Purchaser's intended use and warrants that all Goods covered by this Agreement have been selected, designed, manufactured or assembled by the Supplier based on the Purchaser's stated use and will be fit and sufficient for the particular purposes intended by the Purchaser or its customer;
- (i) it has the right to sell and transfer title to and property in the Goods; and
- (j) on delivery, it is able to pass clear title in the Goods and/or Services to the Purchaser, and the Goods are not the subject of a security interest to which the PPSA applies.

25.2 In addition to clause 15, the period of warranty, unless otherwise agreed by the Purchaser, is a twenty-four (24) month period commencing on the in-service date (being the date on which the Supplier places the Goods into track on behalf of the Purchaser or the Purchaser otherwise accepts the Services). Any fault within the nominated warranty period shall be made good by the Supplier.

25.3 In addition to the representation and warranties contained in clause 25.1, the Supplier represents and warrants that it will provide Goods and Services:

- (a) in a competent and efficient manner in accordance with a standard of care and diligence reasonably expected from a person experienced in undertaking such matters; and
- (b) in compliance with all applicable laws and third party approvals.

25.4 The Supplier is taken to repeat the representations and warranties in this clause 25 each time it accepts any Purchase Order.

26. INSURANCE

26.1 The Supplier must effect with an insurer of good repute (before commencing manufacture of the Goods or provision of the Services), and maintain while the Supplier continues to have any obligations under this Agreement, the following insurances (each an "Insurance Policy"):

- (a) public and product liability insurance on an occurrence basis which extends cover to the Purchaser for vicarious liability arising from the acts or omissions of the Supplier in connection with this Agreement and which includes as an insured any subcontractor of the Supplier in respect of work undertaken in connection with a Purchase Order, in the amount of not less than \$10,000,000 for any one loss or occurrence (and in the aggregate in respect of product liability but unlimited in the aggregate in respect of public liability);
- (b) if Goods are to be provided: property insurance covering damage to, or loss or destruction of, property in the custody or control of the Supplier which extends to cover the full value (subject to the policy deductible) of the Goods and any Purchaser Supplied Material up until the time that the Goods are delivered to the Purchaser and any Purchaser Supplied Material not incorporated into the Goods is returned to the Purchaser's possession; and

- (c) if Services are to be provided: professional indemnity insurance or errors and omissions insurance which:
- (i) covers liability arising out of acts or omissions of the Supplier and its subcontractors, or anyone engaged by the Supplier or its subcontractors, in connection with the Services, with a limit of indemnity not less than \$10,000,000 for any one claim and in the aggregate;
 - (ii) does not contain an exclusion for risk assumed under contract; and
 - (iii) remains in force for a period of not less than 7 years after all of the Supplier's obligations under this Agreement have been discharged.

26.2 The Supplier must provide the Purchaser with evidence, satisfactory to the Purchaser, of the currency of each Insurance Policy within 7 days of request to do so by the Purchaser.

26.3 The Supplier must notify the Purchaser in writing of any Claim and any event which is likely to give rise to a Claim against the Insurance Policies for an amount of \$500,000.00 or more, within forty eight hours after it becomes aware of the Claim or event and the Supplier must:

- (a) provide such further information to the Purchaser in relation to the Claim as the Purchaser may reasonably require; and
- (b) to the extent the Claim erodes the aggregate amount on such Insurance Policy, restore the aggregate amount immediately.

26.4 The Supplier must not engage any subcontractor in connection with a Purchase Order unless satisfied on a reasonable basis that the subcontractor is adequately insured in respect of:

- (a) if Goods are to be provided: property in the custody or control of the subcontractor; and
- (b) if Services are to be provided: liability arising out of acts or omissions of the subcontractor, or anyone engaged by the subcontractor, in connection with the Services.

27. LIABILITY

27.1 Subject to clauses 27.2, 27.3 and 27.4, the aggregate liability of the Supplier to the Purchaser under or in relation to this Agreement, howsoever arising and whether for breach, in tort (including negligence) or for any other or for any other common law or statutory cause of action is, in the aggregate, limited to 2.5 times the amount paid or payable by the Purchaser under or in relation to this Agreement (where payable includes amounts which would be payable under this Agreement if it was fully and properly performed by both parties).

27.2 Clause 27.1 does not apply to liability of the Supplier:

- (a) for personal injury (whether or not resulting in death);
- (b) for loss of or damage to property;
- (c) for fraud or wilful breach of this Agreement; and
- (d) for repudiation of this Agreement.

27.3 To the maximum extent permitted by law, in no event will either party's liability to the other party, howsoever arising and whether for breach, in tort (including negligence) or for any other common law or statutory cause of action, include any liability for indirect, special or consequential loss or damage. Nothing in this clause will preclude a party from recovering any direct loss, being loss or damage which may fairly and reasonably be considered to arise naturally, in the usual course of things, from the breach or other act or omission giving rise to the relevant liability.

- 27.4** To the maximum extent permitted by law, the aggregate liability of the Purchaser and the other members of the Purchaser Group under or in relation to this Agreement, howsoever arising and whether for breach, in tort (including negligence) or for any other common law or statutory cause of action is, in the aggregate, limited to the amount paid to the Supplier by the Purchaser in the applicable 12 month period preceding the date the incident giving rise to such cause of action.
- 27.5** In addition to any indemnities contained elsewhere in this Agreement, the Supplier agrees to indemnify and keep indemnified and hold harmless the Purchaser against any Loss sustained or incurred by the Purchaser which arises out of any:
- (a) Claim in connection with the:
 - (i) death of or personal injury to any person;
 - (ii) loss of, or damage to, any property by reason of any act or omission of the Supplier or its Personnel;
 - (iii) breach of any applicable law by the Supplier or its Personnel in connection with performance of this Agreement;
 - (b) Claim brought by any third party in relation to any breach of this Agreement by the Supplier or its Personnel.
- 27.6** Without limiting the Purchaser's other rights under this Agreement or at law, if a Claim (including an Infringement Claim) by a third party is made against the Purchaser and this Agreement requires the Supplier to indemnify the Purchaser in respect of the Claim, the following procedures apply:
- (a) the Purchaser must give the Supplier prompt written notice of the Claim; and
 - (b) the Purchaser may direct the Supplier to control the defence of the proceedings relating to the Claim and negotiations for its settlement.
- 27.7** If the Purchaser directs the Supplier to control the defence of the proceedings relating to the Claim and negotiations for its settlement, the following procedures apply:
- (a) the Purchaser must provide Supplier with such assistance as the Supplier reasonably requests in conducting the defence of the Claim;
 - (b) the Supplier must:
 - (i) consult with and keep the Purchaser informed of all material matters and must comply at all times with any reasonable direction given by the Purchaser;
 - (ii) must conduct the defence of any proceedings relating to the Claim diligently, using competent counsel, with regard to the interests and reputation of the Purchaser; and
 - (iii) not settle or compromise or attempt to settle or compromise the Claim or make any admission or undertaking on behalf of the Purchaser without the Purchaser's prior written approval (acting reasonably).
- 27.8** Without limiting the Purchaser's other rights under this Agreement or at law, in the event of an Infringement Claim, the Supplier must promptly (at no cost to the Purchaser and without prejudice to the Supplier's obligations under clause 27.1):
- (a) procure for the Purchaser the right to continue to use in accordance with this Agreement any Goods or Services that are affected by such Infringement Claim; or
 - (b) replace or modify any Goods or Services that are affected by such Infringement Claim in a manner acceptable to the Purchaser (acting reasonably), ensuring that the modified or replaced Goods or Services comply with the specifications (as applicable) and there is no adverse effect on the functionality or performance of the relevant Goods or Services.

28. EVENT OF DEFAULT

Each of the following is an “Event of Default”, namely if a party:

- (a) breaches any term of this Agreement which is not capable of remedy;
- (b) breaches any term of this Agreement, which is capable of remedy, but fails to remedy the breach within 10 Business Days after receiving notice from the other party to do so;
- (c) comes under the Control of a person (acting alone or together with its Associates) who did not Control that party at the Commencement Date;
- (d) is subject to an application for its winding up or bankruptcy;
- (e) has a receiver or provisional liquidator appointed to manage its affairs;
- (f) has an administrator appointed to begin any process of managing its affairs or has an inspector appointed to investigate its affairs; or
- (g) becomes insolvent, bankrupt, fails to comply with a statutory demand, enters into a scheme or arrangement with its creditors, has an administrator or receiver appointed, has a writ of execution, mareva injunction or similar order made against it or any of its assets, has a liquidator appointed or has an application made to court (or passes a resolution) for its winding up or is subject to anything analogous.

29. TERMINATION

29.1 If an Event of Default occurs in relation to, or is committed by, the Supplier, the Purchaser may:

- (a) terminate this Agreement (together with any other agreement in existence between the Purchaser and Supplier at that time) with immediate effect on providing notice;
- (b) take appropriate Court action to enforce performance by the Supplier of this Agreement or recover damages for the breach concerned.

29.2 If an Event of Default occurs in relation to, or is committed by, the Purchaser, the Supplier may terminate this Agreement with immediate effect on providing notice.

29.3 On termination of this Agreement, the Supplier must promptly return to the Purchaser all Purchaser Supplied Materials, any Requested Patterns and any other things given by or on behalf of the Purchaser to the Supplier at any time under or in connection with the work and services contemplated under this Agreement.

30. WAIVER

30.1 Time is of the essence in respect of the Supplier's obligations under this Agreement.

30.2 No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it.

30.3 Waiver by the Purchaser of any default by the Supplier or failure by the Purchaser to terminate this Agreement or cancel any part of an order when such right arises shall not constitute waiver by the Purchaser of any rights of the Purchaser under any of the terms and conditions of this Agreement.

31. CONFIDENTIALITY

- 31.1** Except as required by law or a regulatory body (including a relevant stock exchange), the Supplier shall not without first obtaining the written consent of the Purchaser, in any manner advertise or publish the fact that the Supplier has furnished or contracted to furnish to the Purchaser, the Goods and/or Services, or otherwise use business relations with the ordering party for advertising or publicity purposes. Where an exception applies due to a requirement under law or the rules of a regulatory body (including a relevant stock exchange), the Supplier must, where practicable, give prior notice to the Purchaser of the intended announcement or other public communication and take into account any reasonable comments from the Purchaser.
- 31.2** The Supplier must keep all Purchaser Supplied Material strictly confidential and must not disclose it to any third party except as permitted by clause 31.4.
- 31.3** Subject to clause 31.4, Supplier must ensure that the terms of this Agreement and any information relating to this Agreement, including discussions and negotiations leading to this Agreement are kept confidential.
- 31.4** The Supplier may make a disclosure in relation to this Agreement:
- (a) to an employee, officer, professional adviser, banker, financier or auditor if that person reasonably requires access and is obliged to keep the information disclosed confidential on the terms of this clause;
 - (b) except as specified in clause 34(c)(iv), if disclosure is required to be made by law or the rules of a regulatory body (including any relevant stock exchange);
 - (c) if disclosure is reasonably required to enable a party to perform its obligations or enforce its rights under this Agreement;
 - (d) with the prior written consent of the other party;
 - (e) to a related body corporate on receipt of its undertaking to keep the information disclosed confidential; or
 - (f) if the terms of this Agreement have come into the public domain through no fault of the party making the disclosure.
- 31.5** The Supplier must ensure that the Supplier's employees, suppliers, agents, consultants and subcontractors comply with the terms of this clause.
- 31.6** The Supplier acknowledges that its obligations under this clause shall survive expiry, completion or termination of this Agreement.

32. NOTICES

- 32.1** Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement shall be given in writing.
- 32.2** Each communication (including each notice, consent, approval, request and demand) may be given by personal service, post, facsimile or electronically (including by email or any other agreed electronic means) in accordance with the contact details of the Supplier and the Purchaser specified in the Purchase Order.
- 32.3** For clarity, any communication given electronically will satisfy the requirement for written notice under this Agreement. This Agreement and related documents may also be executed electronically, and electronic signatures will be binding.

33. SEVERABILITY

If any one or more provisions of this Agreement should be deemed invalid or unenforceable such provision(s) shall be severed and shall be deemed to have formed, no part hereof but the remaining provisions hereof shall subsist and remain enforceable unless the basic purpose of this Agreement would hereby be defeated.

34. PPSA

- (a) In this clause, “security interest”, “security agreement”, “grantor”, “secured party”, “financing statements”, “collateral”, “collateral class” and “verification statement” have the meaning given in the PPSA.
 - (b) The Supplier and Purchaser each acknowledge that:
 - (i) this Agreement may create a security interest in favour of the other, being:
 - (A) in the case of the Goods and any proceeds of the Goods, a security interest with the Purchaser as grantor and the Supplier as secured party;
 - (B) in the case of the Purchaser Supplied Materials (and any proceeds of the Purchaser Supplied Materials) and any Requested Patterns, a security interest with the Supplier as grantor and the Purchaser as secured party;
 - (ii) this Agreement constitutes a security agreement; and
 - (iii) the other party may perfect its security interests by lodging one or more financing statements on the PPS Register, in each case under the collateral class “other goods” only and containing a description of the collateral that is satisfactory to the relevant grantor of that security interest (acting reasonably).
 - (c) To the extent the law permits:
 - (i) the Supplier and Purchaser each waives in their capacity as a grantor of any security interest granted under this Agreement:
 - (A) their right to receive any notice that is required by any provision of the PPSA (including any verification statement); and
 - (B) any time period that must otherwise lapse under any law before the other party exercises a power given to it in relation to a security interest in favour of the other party. If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer);
 - (ii) for the purposes of sections 115(1) and 115(7) of the PPSA:
 - (A) neither the Purchaser nor the Supplier must, as a secured party of any security interest granted under this Agreement, comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA; and
 - (B) sections 142 and 143 of the PPSA are excluded;
 - (iii) for the purposes of section 115(7) of the PPSA, neither the Supplier nor the Purchaser must (in their capacity as a secured party of any security interest granted under this Agreement) comply with sections 132 and 137(3) of the PPSA; and
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- (iv) the Supplier and Purchaser each agrees (in its capacity as grantor of a security interest granted under this Agreement) not to exercise its rights to make any request of the relevant secured party under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (d) The Supplier and Purchaser each agree (at its own cost) to promptly do anything (such as obtaining consents and signing documents) which the other party requires (acting reasonably) in connection with any security interest granted under this Agreement in favour of that other party for the purposes of:
 - (i) ensuring that those security interests are enforceable, perfected and otherwise effective under the PPSA;
 - (ii) enabling the other party to:
 - (A) ensure that those security interests have the priority required by it; and
 - (B) exercise its rights under and in connection with this Agreement or those security interests