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# Short Form Supply Agreement – Terms and Conditions

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## 1 Appointment of Supplier

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We appoint you as our supplier of the Products in accordance with the terms and conditions of this Agreement.

## 2 Supply arrangements

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- 2.1 You will supply the Products to us in accordance with the terms of this Agreement.
- 2.2 You must, in providing the Products:
- (a) use reasonable endeavours not to interfere with any of the activities conducted by us or the activities of any other person at the Site;
  - (b) comply with and ensure that your employees, agents and subcontractors comply with:
    - (i) all applicable Laws, regulations and industrial awards and agreements;
    - (ii) all safety, health and environment guidelines, rules and procedures provided to you by us; and
    - (iii) all reasonable directions and orders given by our representatives;
  - (c) deliver the Products to us by the relevant Delivery Date;
  - (d) use reasonable endeavours to ensure that the Site is left secure, clean, orderly and fit for use including by removing any packaging or containers in or on which the Products are provided; and
  - (e) use reasonable endeavours to ensure that all employees, agents and subcontractors complete our safety induction and visitors site orientation programs before commencing work at or entering the Site.
- 2.3 You will undertake all actions as required to ensure an uninterrupted supply of the Products to us.

## 3 Delivery

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- 3.1 Subject to clause 3.2, you will deliver the Products to us at the relevant Delivery Point.
- 3.2 If required from time to time by us, you will maintain sufficient stocks of the Products at the Site so as to meet our day to day requirements.
- 3.3 The Products delivered to each Delivery Point must be delivered in good condition and without damage. You will replace any damaged item of Product at no additional cost to us.
- 3.4 The Price is inclusive of the costs of delivery by you to the relevant Delivery Point.
- 3.5 Title and risk to the Products does not pass to us until:
- (a) we take delivery of the Products; and
  - (b) we inspect and accept the Products.

## 4 Your Representative

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- 4.1 You must appoint, and may replace, an employee or officer as Your Representative to manage the provision of the Products with responsibilities including:
- (a) providing reports and information to, and answering queries from, us in respect of this Agreement;
  - (b) attending meetings relating to this Agreement;
  - (c) representing you in relation to matters relating to this Agreement; and
  - (d) being available at all times to respond to directions, requests and communications from us and any relevant authority.

- 4.2 You are responsible for all acts and omissions of Your Representative under this Agreement.

## 5 Our obligations

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- 5.1 We must:
- (a) provide sufficient access to the Site for you to deliver the Products to the relevant Delivery Point;
  - (b) pay you the Price in accordance with clause 7; and
  - (c) ensure that you have reasonable access to Our Representative.
- 5.2 We have no responsibility to you or any person employed by you in respect of remuneration, annual or sick leave, long service leave, public holidays, redundancy payments or any other similar benefits under any Law.
- 5.3 We must appoint, and may replace, Our Representative for the term of this Agreement.
- 5.4 Unless this Agreement expressly provides otherwise:
- (a) any right exercisable by us may be exercised by Our Representative; and
  - (b) any consent or approval required from us may be obtained from Our Representative.

## 6 Price

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- 6.1 The Products will be supplied by you to us for the Price.
- 6.2 Unless this Agreement provides otherwise, the Price is fixed and is not subject to rise and fall.
- 6.3 Subject to clause 6.4, should any Taxes be levied on, in respect of, or in relation to, the Products these will be to your account. You will be responsible for the payment of those Taxes and will provide documentary evidence of the payment of those Taxes if payment is made on our behalf.
- 6.4 If GST is imposed on any supply made under this Agreement by one Party ("**the supplying party**") to another Party ("**the receiving party**") and the consideration payable or to be provided for the supply under any other clause in this Agreement is not expressed to be inclusive of GST the receiving party must pay, in addition to and at the same time as any GST exclusive consideration is payable or to be provided for the supply, an additional amount calculated by multiplying the value of that GST exclusive consideration (without deduction or set off) by the prevailing GST rate.
- 6.5 The receiving party is not required to pay any amount of GST to the supplying party unless the supplying party has made demand for payment by means of a Tax Invoice.
- 6.6 If the amount of GST recovered by the supplying party from the receiving party differs from the amount of GST payable at Law by the supplying party in respect of the supply, the amount payable by the receiving party to the supplying party will be adjusted accordingly.
- 6.7 Where one Party ("**payer**") is liable to reimburse another Party ("**payee**") for any expenditure incurred by the payee ("**Expenditure**"), the amount reimbursed by the payer will be the GST exclusive Expenditure plus any GST payable by the payer to the payee pursuant to clause 6.4.

## 7 Payment

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- 7.1 You will invoice us for Products supplied in the form we determine.
- 7.2 All invoices, Prices and payments must be stated and made in Australian dollars.
- 7.3 You may make progress claims in respect of the Price in the amounts and at the times identified in the Particulars.
- 7.4 We must make payment within 30 days after the end of the month in which the invoice was received by our nominated representative.

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# SHORT FORM SUPPLY AGREEMENT – TERMS AND CONDITIONS (CONTINUED)

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- 7.5 If we make payment within 7 days of receipt of an invoice, the Early Payment Discount applies to that invoice.
- 7.6 Without prejudice to any other rights, we may deduct from any moneys which may be, or become, payable to you under this Agreement (including security), any money which may be or become payable, from you to us under this Agreement. Nothing in this clause affects our right to recover from you the whole of the debt or any balance that remains owing after any such deduction.

## **8 Representation and Warranties**

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- 8.1 You represent and warrant that:
- (a) you have good title to, and are the sole beneficial owner of, the Products supplied to us under this Agreement;
  - (b) as at the date of this Agreement you are not aware of any claim for infringement of Intellectual Property Rights or for the breach of any obligation of confidence, arising out of the manufacture, sale or use of the Products and will immediately notify us if such a claim is made;
  - (c) you have the right, power and authority to enter into and perform your obligations in accordance with this Agreement;
  - (d) all corporate and other necessary action has been taken to authorise the signing and performance of this Agreement; and
  - (e) this Agreement is valid and legally binding on you in accordance with the terms of this Agreement.
- 8.2 You warrant that the Products:
- (a) will be free from defects in design, materials and workmanship;
  - (b) will be fit for purpose;
  - (c) will meet the relevant Specifications and Standards; and
  - (d) where not manufactured by you, will meet the current specifications of the manufacturer of the relevant Product.

## **9 Extension of time**

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- 9.1 Within 7 days of it becoming evident to you that the delivery of the Products is likely to be delayed, you must give notice to Our Representative setting out the cause of the delay and stating a reasonable period by which you believe the relevant Delivery Date should be extended.
- 9.2 You are only entitled to an extension of time for:
- (a) a delay caused by an act, omission, breach or default by us, Our Representative, or our employees, agents or other contractors;
  - (b) the execution of a variation under clause 10, except where that variation is caused by your act or omission; or
  - (c) the occurrence of any event specified in the Particulars.
- For the avoidance of doubt, the exercise by us or Our Representative of any rights or powers conferred by this Agreement, or any failure to exercise such a right or power, does not constitute an act or omission for the purposes of clause 9.2(a).
- 9.3 If Our Representative determines that the cause of delay is such as to justify an extension, Our Representative may grant you such extension as they consider reasonable.

- 9.4 Notwithstanding any other provisions of this clause 9, Our Representative may at any time make a fair and reasonable extension to the Delivery Date.
- 9.5 Where you have been granted an extension of time for a delay pursuant to clause 9.2(a) and have necessarily incurred extra cost as a direct consequence of the delay, you must give to Our Representative notice of your claim for delay costs within 7 days after our determination under clause 9.3 including all necessary particular and supporting documentation.
- 9.6 Our Representative will, subject to clause 9.9, assess and decide as soon as reasonably practicable the extra costs necessarily incurred by you.
- 9.7 You are not entitled to recover (whether pursuant to this clause 9 or otherwise) any amount representing loss of profit, contribution to head office overheads, loss of contracts or any indirect or consequential loss and damage.
- 9.8 It is a condition precedent to your entitlement to an extension of time that you submit the notice required under clause 9.1.
- 9.9 It is a condition precedent to your entitlement to recover any amount representing extra costs necessarily and reasonably incurred under clause 9.5 that you provide the notice referred to in clause 9.5.
- 9.10 The sums payable under this clause 9 are your sole entitlement to compensation for delay or disruption caused by us whether in breach of this Agreement or otherwise and are in substitution for and exclude your rights and remedies at common law (including the right to recover damages for breach of this Agreement or otherwise).

## **10 Variations**

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- 10.1 You must not vary the Products or the timing or manner of their delivery except as directed by our Representative.
- 10.2 Our Representative may by notice direct you to alter, amend, omit, add to, re-sequence, re-schedule or otherwise vary any of the Products or the timing or manner of their delivery and you must carry out and be bound by any such variations.
- 10.3 Within 7 days of receipt of the notice referred to in clause 10.2, and before you carry out the variation, you must provide to us a reasonable estimate of the impact on the Price of such a variation.
- 10.4 No variation issued in accordance with this Agreement vitiates or invalidates this Agreement.
- 10.5 A variation may involve the omission of any Product or Products or any part or parts of any Product or Products and you acknowledge and agree that we may engage others to carry out that Product, Products, part or parts so omitted. You further acknowledge that any one or more omission will not constitute a basis to allege that we have repudiated this Agreement notwithstanding the extent or timing thereof.
- 10.6 If a variation results in a reduction of the time required for the delivery of Products, Our Representative may determine a reasonable reduction and revise the Delivery Date by notice to you.
- 10.7 The rate or price for each variation must be determined by agreement between the Parties, or in the absence of such agreement then a fair and reasonable valuation of the variation must be made by us.
- 10.8 You are not entitled to any payment (pursuant to this Agreement or otherwise at common law or equity) in relation to any variation unless you:
- (a) have been directed to carry out the variation pursuant to clause 10.2; and
  - (b) have given notice of the estimated impact of the variation on the Price in accordance with clause 10.3.

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# SHORT FORM SUPPLY AGREEMENT – TERMS AND CONDITIONS (CONTINUED)

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## 11 Liquidated Damages

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- 11.1 If you fail to deliver the Products by the relevant Delivery Date, you will be indebted to us for liquidated damages at the rate stated in the Particulars, for every day or part of a day after the Delivery Date up to and including the actual date of delivery of the Products or the date this Agreement is terminated, whichever occurs first.
- 11.2 The Parties agree that the liquidated damages in the Particulars are a fair and reasonable pre-estimate of the damages likely to be sustained by us as a result of the late delivery of the Products.

## 12 Insurance

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- 12.1 You must:
- (a) comply with all workers' compensation Laws in respect of your employees and you must obtain and maintain all insurances under and pay all amounts required by those Laws;
  - (b) effect and maintain at your own expense:
    - (i) a public liability insurance policy for not less than the amount specified in the Particulars for each claim;
    - (ii) insurance covering all Product for its replacement value whilst that Product is off Site or in store on the Site prior to delivery to us, notwithstanding that we may have paid for the Product; and
    - (iii) motor vehicle third party liability insurance in respect of all motor vehicles used at the Site in connection with this Agreement,and must note our interest under this Agreement on the public liability insurance policy; and
  - (c) upon request from us provide us with evidence of such insurance.

## 13 Indemnities

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- 13.1 You acknowledge that if you enter onto the Site you do so at your own risk. You must ensure that your employees, agents and subcontractors are also aware that they enter onto the Site at their own risk.
- 13.2 You are liable for and indemnify us against any liabilities, claims, proceedings, judgments, damages, obligations, costs and expenses of any nature, arising in any manner out of your acts or omissions, or those of your employees, agents or contractors, whether in tort, contract or otherwise, including:
- (a) personal injury or the death of any person; and
  - (b) loss of or damage to any property.
- 13.3 It is not necessary for us to incur any cost or expense or make any payment before enforcing a right of indemnity conferred by clause 13.2.
- 13.4 You must indemnify us against penalties, losses or damage to the extent incurred by us as a result of you breaching your obligations under this Agreement to comply with all applicable Laws.
- 13.5 The indemnities provided in accordance with clauses 13.2 and 13.4 survive the termination of this Agreement.

## 14 Audits

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- 14.1 You will provide us all reasonable access to all costs, price and volume records relating to the Products supplied under this Agreement, for the purpose of auditing and verifying invoices presented under, and other relevant costs referred to in, this Agreement.

- 14.2 If any audit reveals any error in the invoicing and amounts paid for and in respect of the Products supplied to us, then either Party as appropriate will reimburse the other for the error.

## 15 Intellectual Property

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- 15.1 We acknowledge that you remain the owner of all Background IP.
- 15.2 You grant us a non-exclusive, irrevocable, royalty free licence to use all Background IP to the extent necessary to enable us to use the Products and exercise rights in the Project IP.
- 15.3 You acknowledge and agree that all Project IP vests in us and becomes our property as and when created and you hereby assign all rights, title and interest in and to the Project IP to us (including but not limited to any Project IP created prior to or after the date of this Agreement).
- 15.4 We grant you a non-exclusive, non-transferable, revocable licence to use the Project IP for the sole purpose of providing the Products.
- 15.5 You must not disclose, reproduce, use or otherwise deal with the Project IP, or allow any other person to do the same, for any purpose other than to provide Products pursuant to this Agreement.
- 15.6 You warrant that:
- (a) the provision of the Products does not and will not infringe the rights (including, but not limited to, Intellectual Property Rights) of any third party;
  - (b) you will, at no further cost to us, procure all licences and consents to use any Intellectual Property Rights of a third party which are necessary to provide or use the Products;
  - (c) the Project IP does not and will not infringe any rights of third parties (including without limitation any Intellectual Property Rights); and
  - (d) you have the right to assign all Project IP to us in accordance with clause 15.3.
- 15.7 You agree, and you will procure the agreement of each author, that we, in our absolute discretion:
- (a) need not identify you or any author as the author of the Project IP;
  - (b) may:
    - (i) materially distort, destroy, mutilate, alter or in any other way change;
    - (ii) add to, delete from or retitle; and
    - (iii) reproduce, publish, copy or adapt,the Project IP (or a substantial part of or adaptation of it) in any way we see fit in any medium and in any context and with or without other text, data or images.
- 15.8 You agree that any subcontract you enter into in relation to this Agreement will contain a condition that the subcontractor agrees to assign to us all Intellectual Property Rights in any Project IP created by it for the purposes of this Agreement.
- 15.9 You agree to notify us as soon as you become aware of any suspected, threatened or actual infringement of any Intellectual Property Rights in the Project IP and to provide all reasonable assistance in defending against such infringement.
- 15.10 You agree to provide all reasonable assistance we may request to protect the Intellectual Property Rights in the Project IP.
- 15.11 The obligations in this clause 15 continue after this Agreement is terminated.

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# SHORT FORM SUPPLY AGREEMENT – TERMS AND CONDITIONS (CONTINUED)

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## 16 Quality, Environment and OH&S

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- 16.1 You agree that within 14 days of the date of signing of this Agreement, you will provide us with a copy of your quality assurance program and must certify that all Products supplied under this Agreement will comply with that program.
- 16.2 You agree that at all times during the term of this Agreement you will have in place appropriate environmental systems and occupational health and safety systems. The systems must, as a minimum, demonstrate compliance with the principles of management responsibility required by the governing environmental and occupational health and safety Laws in each State or Territory in which the Products are to be Supplied.

## 17 Confidentiality

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- 17.1 Each Party undertakes that it will not, either during the term of this Agreement or at any time thereafter (except in the proper course of its duties under this Agreement or as required by Law or by the other Party) disclose to any person any confidential information of or relating to the other Party of which it has become possessed as a result of this Agreement or the negotiations preceding this Agreement including, but not limited to, the terms of this Agreement.
- 17.2 Nothing in this Agreement prohibits disclosure of information which:
- (a) is in the public domain;
  - (b) after disclosure to a Party becomes part of the public domain otherwise than as a result of the wrongful act of that Party;
  - (c) is received from a third party provided that it was not acquired directly or indirectly by that third party from a Party to this Agreement; or
  - (d) is required to be disclosed by Law or any government or governmental body, authority or agency having authority over a Party.
- 17.3 The obligations of this clause 17 survive the termination of this Agreement.
- 17.4 The terms of this Agreement may be disclosed to a bona fide prospective purchaser of a Party or the business of that Party provided that such bona fide prospective purchaser agrees to keep the terms of this Agreement confidential in accordance with this clause 17.

## 18 Consequential Loss

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- 18.1 Without prejudice to any liquidated damages provisions stipulated for delay, non-performance or otherwise, neither Party (nor Our Representative) is liable to the other under this Agreement, law of tort (including negligence), statute, in equity or otherwise for any kind of indirect or consequential loss or damage arising out of or in connection with this Agreement.
- 18.2 Clause 18.1 does not limit your liability:
- (a) under clause 13.4;
  - (b) under any other provisions of this Agreement which expressly impose a greater liability; or
  - (c) in cases of fraud, wilful misconduct or illegal or unlawful acts.

## 19 Suspension and Termination

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- 19.1 We may, by notice, suspend the delivery of the Products at any time and for any reason. You must recommence the delivery of the Products by the date directed by us. You will be entitled to seek reimbursement from us for any extra costs necessarily incurred as a result of the suspension

except where the suspension was directed as a result of an act or omission of you or your employees, agents or subcontractors.

- 19.2 We may terminate this Agreement at any time and in our sole discretion by giving you 3 days prior notice.
- 19.3 We may, by notice to you, immediately terminate this Agreement if you are in breach of your obligations under this Agreement and such breach is not remedied within 7 days of the receipt of a notice from us, or if such breach is remedied but repeated at any time after the receipt of such a notice.
- 19.4 We may terminate this Agreement at any time by notice to you, without prejudice to our rights at law or otherwise, if an Insolvency Event occurs. The rights given by this clause 19.4 are in addition to any other rights and may be exercised notwithstanding that there has been no breach of this Agreement.
- 19.5 You may terminate this Agreement by notice to us if we have failed to make a payment in breach of clause 7, except with respect to any payment or portion that we dispute under clause 20.
- 19.6 Upon termination of this Agreement you must immediately:
- (a) take all available steps to mitigate any loss resulting from termination; and
  - (b) deliver to us any documentation provided to you by us or produced by you under this Agreement, whether in the course of preparation or completed by you at the date of termination, which have not been supplied to us and ensure that you are able to do so in respect of such documentation prepared by any subcontractor employed by you.
- 19.7 We may make full use of all documentation prepared by you (or any subcontractor employed by you) pursuant to and for use under this Agreement, regardless of any dispute in existence between us and you over any unpaid fees or other matter and you hereby waive any right of lien or similar right which might be alleged to otherwise attach to the same.
- 19.8 If we terminate this Agreement under clause 19.2 or you terminate this Agreement under clause 19.5, we will only be liable for payment for the Products delivered to us at the date of termination and for extra costs necessarily and reasonably incurred by you as a result of the termination under clause 19.2 or 19.5.
- 19.9 If we terminate this Agreement under clause 19.3 or 19.4, we will only be liable for payment for the Price of the Products delivered at the date of termination. The cost to us:
- (a) over and above the Price for obtaining alternative Products, including costs of acceleration or expedited methods customarily and actually performed in an attempt to mitigate any delay caused by you; and
  - (b) for reasonable charges for administering any related trade contract or consultancy agreement; and
  - (c) for legal fees associated with the termination, will be charged to you as a debt due to us.
- 19.10 It is a condition precedent to any payment to you of any outstanding amount as at the date of termination that you comply with your obligations under clause 19.6.
- 19.11 Any termination of your appointment under this Agreement will not prejudice or affect the accrued rights, claims or liabilities of either Party under this Agreement.

## 20 Dispute Resolution

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- 20.1 Each of the Parties must use their reasonable endeavours to co-operatively resolve a dispute.

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# SHORT FORM SUPPLY AGREEMENT – TERMS AND CONDITIONS (CONTINUED)

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- 20.2 If a dispute arises, the dispute must be referred to Your Representative and Our Representative for resolution.
- 20.3 If the dispute is not resolved within 10 days of such referral, the dispute must be referred to a Panel for resolution. Each Party must nominate a senior representative for the Panel within 3 days of the referral to the Panel in accordance with this clause.
- 20.4 If a dispute is referred to the Panel in accordance with clause 20.3, the Panel will meet to resolve the dispute unless the Panel agrees to resolve the dispute without the need for a meeting.
- 20.5 The Panel will determine its own procedures for meetings. Decisions of the Panel may only be made by unanimous agreement of the members of the Panel. Any decision of the Panel will be final and binding on the Parties.
- 20.6 Either Party may commence legal proceedings only if the dispute has been referred to the Panel in accordance with clause 20.3 and:
- (a) the Panel does not meet within 10 days of such referral unless the Panel decides that there is no need for a meeting in accordance with clause 20.4; or
  - (b) the Panel fails to resolve the dispute within 20 days of such referral.
- 20.7 Prior to the resolution of a dispute, the Parties must continue to perform their respective obligations under this Agreement.

## 21 Waiver and Variations

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- 21.1 A power or right created by us in accordance with this Agreement may not be:
- (a) waived except in writing signed by us granting the waiver; or
  - (b) varied except in writing signed by us.
- 21.2 The failure to exercise or delay in exercising any power or right by us does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right.

## 22 Assignment and Subcontracting

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- 22.1 You may not assign your rights under this Agreement without our prior consent.
- 22.2 We may not assign our rights and/or obligations under this Agreement without your prior consent (such consent not to be unreasonably withheld or withheld if the proposed assignee is financially and technically capable of meeting the obligations under this Agreement).
- 22.3 You may not subcontract your obligations under this Agreement unless we consent.

## 23 Notices

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- 23.1 Any notice, approval, consent or other communication in relation to this Agreement must be:
- (a) in writing;
  - (b) marked for the attention of:
    - (i) in the case of a notice to us, Our Representative; and
    - (ii) in the case of a notice to you, Your Representative; and
  - (c) left at or sent by prepaid ordinary post to the last notified address of the Party or sent by facsimile to the last notified facsimile number of the Party.

- 23.2 A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.
- 23.3 If posted in Australia, a letter is taken to be received on the third day after posting. If posted overseas, a letter is taken to be received on the seventh day after posting.
- 23.4 A facsimile is taken to be received at the time shown in a transmission report by the machine which indicates that the whole facsimile was sent.

## 24 Further Assurances

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Each Party agrees at its own expense at the request of the other Party, to do everything reasonably necessary to give effect to this Agreement and to the transactions contemplated by it, including the execution of documents.

## 25 Severability

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Any provision in this Agreement which is invalid or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent only of such invalidity or unenforceability and will not invalidate the remaining provisions of this Agreement.

## 26 Relationship between the Parties

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- 26.1 The relationship between the Parties is that of principal and independent contractor.
- 26.2 You must ensure that you do not represent yourself, and your employees, agents and subcontractors do not represent themselves, as employees or agents of us.

## 27 These terms are exclusive

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- 27.1 By executing this Agreement you agree to be bound by the terms in this Agreement.
- 27.2 Except as may be specifically provided in this Agreement, any terms and conditions contained in or relating to any other documents, including any of your documents, in respect of the Products are excluded.

## 28 Special Conditions

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- 28.1 The special conditions contained in the Particulars apply to and form part of this Agreement.
- 28.2 If there is any inconsistency between the special conditions and any of these Terms and Conditions, the special conditions will prevail.

## 29 Governing Law and Jurisdiction

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- 29.1 This Agreement and the transactions contemplated by this Agreement are governed by the law in force in Western Australia.
- 29.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and the courts of appeal from them for determining any dispute concerning this Agreement or the transactions contemplated by this Agreement.

## 30 Definition and interpretation

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- 30.1 In this Agreement unless the contrary intention appears:
- Agreement** means the agreement comprising the Particulars, these Terms and Conditions and any Schedules or Annexures.
- Background IP** means your Intellectual Property Rights which:

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# SHORT FORM SUPPLY AGREEMENT – TERMS AND CONDITIONS (CONTINUED)

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- (a) are in existence at the date of this Agreement; or
- (b) come into existence after the date of this Agreement otherwise than in connection with this Agreement.

**Delivery Dates** means the delivery dates for the Products as specified in the Particulars.

**Early Payment Discount** means the percentage discount on the relevant invoice, as stated in the Particulars.

**GST** has the meaning given in the GST Law.

**GST Law** has the same meaning as in the A New Tax System (Goods & Services Tax) Act 1999 (Cwlth).

**Insolvency Event** means:

- (a) your board passes a resolution under section 436A of the *Corporations Act 2001* (Cth);
- (b) you are placed into administration pursuant to Part 5.3A of the *Corporations Act 2001* (Cth);
- (c) a deed of arrangement is entered in respect of you;
- (d) an application is made to a court for your winding up;
- (e) you resolve that you be wound up voluntarily;
- (f) a winding up order is made in respect of you;
- (g) a receiver or receiver and manager is appointed to you;
- (h) a court orders that there be a meeting of your creditors or members for any purpose related to Part 5.1 of the *Corporations Act 2001* (Cth);
- (i) a mortgagee takes possession of any of your assets; or
- (j) you inform us or any of your creditors, that you are insolvent.

**Intellectual Property Rights** includes without limitation the protected rights attaching to inventions, patents, registered designs, trade marks, copyright, circuit layouts and confidential information.

**Law** means any statute, decree, circular, rule or regulation by any government authority, whether now or at any time in future in effect.

**Our Representative** means the representative nominated in the Particulars.

**Panel** means the panel established in accordance with clause 20.3 which consists of a nominated senior representative of each of the Parties.

**Parties** means the parties to this Agreement.

**Price** means the price for the Products as specified in this Agreement.

**Products** means the products as specified in this Agreement.

**Project IP** means all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purposes of or in connection with the provision of the Products or this Agreement (including without limitation all Intellectual Property Rights in the technical materials provided by us to you).

**Site** means the site at which we undertake our operations, as specified in the Particulars.

**Specifications** means the specifications in relation to the Products as specified in this Agreement.

**Standards** means the standards in relation to the Products as specified in this Agreement.

**Taxes** means taxes (including GST), levies, imposts, deductions, charges, withholdings and duties (including stamp and transaction duties), together with any related interest, penalties, fines and other statutory charges.

**Tax Invoice** has the same meaning as in the GST Law.

**we** and **us** and **our** means Karara Mining Limited (ABN 68 070 871 831).

**you** and **yours** means the person named in the Particulars as the Supplier.

**Your Representative** means your representative appointed for the purpose of clause 4. Your Representative, as at the commencement of this Agreement, is nominated in the Particulars.

30.2 In this Agreement unless the contrary appears:

- (a) a reference to this Agreement or another instrument includes any variation or replacement of either of them;
- (b) the singular includes the plural and vice versa;
- (c) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (d) a reference to a person includes a reference to the person's executives, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
- (e) if a period of time is specified and dates from a given day or the day of an actual event, it is to be calculated exclusive of that day;
- (f) a reference to a clause is a reference to a clause in this Agreement
- (g) a reference to a third person or a third party is a reference to a person who is not a party to this Agreement; and
- (h) a reference to "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency.

30.3 In the event that there is any inconsistency or ambiguity between the Particulars and these Terms and Conditions, the Particulars will prevail to the extent of such inconsistency or ambiguity (other than in relation to indemnity matters).

30.4 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.