

TRADING TERMS

1. Application of Terms

- 1.1. The terms set out in this document (**Terms**) apply in every case where Defob Pty Ltd ACN 155 478 185 as supplier (**Supplier**) provides goods or products (**Goods**) or work and services of any kind (including the provision of advice) carried out by the Supplier (**Services**) in accordance with a Purchase Order (together the **Works**) to the company placing the order or on whose behalf the order is placed (**Company**), unless otherwise agreed in writing between the Supplier and the Company (together the **Contract**).
- 1.2. Acceptance of Works by the Company or instructions received by the Supplier from the Company for the supply of Works is conclusive evidence before any court that these Terms (as varied under clause 16.13) apply and are binding on it and the Guarantors.
- 1.3. If there is any inconsistency between these Terms and the Special Conditions in the Purchase Order (**Special Conditions**) for the provision of Works, the Special Conditions prevail.

2. Independent contractor

- 2.1. For the purpose of any Services supplied by the Supplier to the Company, the Supplier is an independent contractor.
- 2.2. The Supplier is not the Company's agent in any way and has no authority to and will not purport to, represent or bind the Company in any way or do anything else that would or might obligate the Company to third parties, except as specifically provided otherwise to allow the Supplier to undertake the Services in accordance with the terms of the Contract.

3. Quotation and Orders

- 3.1. A quotation may be issued to the Company by the Supplier at the request of the Company to purchase the Goods and/or Services from the Supplier (**Quotation**).
- 3.2. A Quotation remains open for acceptance and the prices remain valid until the date specified in the Quotation, and if no date is specified, for 14 days from the date of the Quotation.
- 3.3. The quantity, quality description and specifications of the Works are as set out in the Quotation, or if no Quotation is provided in the Purchase Order.
- 3.4. Provision of a Quotation by the Supplier to the Company does not constitute a contract.
- 3.5. The Supplier may at any time, and in its absolute discretion, amend or withdraw a Quotation.
- 3.6. The Company may place an Order for the supply of Works by the Supplier:
 - (a) if a Quotation has been provided:
 - (i) by confirming the Company wishes to proceed with the Quotation in full; or
 - (ii) by confirming the Company wishes to proceed with the Quotation in part and confirming which part of the Quotation is proceeding; or

- (iii) if a Quotation has not been provided, as a stand-alone order by the Company pursuant to a Purchase Order (**Order**).
 - (b) Any Order placed by the Company with the Supplier for the supply of Works is subject to these Terms.
 - (c) If there is no Quotation any Works supplied to the Company will be invoiced by the Supplier to the Company
 - (d) The Supplier may, despite providing a Quotation and in its absolute discretion and for any reason, refuse to accept any Order that may be placed with it by the Company.
 - (e) Once the Company has placed an Order with the Supplier and the Supplier has accepted that Order in full or in part, the Company may not vary, amend or cancel the Order without the Supplier's prior written consent.
- 3.7. Unless stated otherwise, a Quotation will not include the cost of delivery of the Works and the Supplier may charge a delivery fee to deliver the Works to the Company in addition to the purchase price of the Works (**Price**) (together the **Amount Payable**).

4. Services

This clause 4 applies if the Order incorporates the provision of Services by the Supplier to the Company.

4.1. Performance of Services

The Supplier must:

- (a) perform the Services in a safe and workmanlike manner, in accordance with all applicable Law and good industry practices, and otherwise in accordance with the requirements of the Contract;
- (b) provide all personnel, materials, resources, equipment, facilities and other things necessary to perform the Services in accordance with the Contract;
- (c) ensure all equipment used by the Supplier is in good working order and suitable for use in connection with the Services;
- (d) obtain all authorisations (if any) required for the performance of the Services; and
- (e) comply with all reasonable directions given by the Company in respect of the Contract and the Services.

4.2. Completion of Services

The Supplier will supply the Services to the Company within the Term specified in the Quotation or the Purchase Order or if no Term is specified, within a reasonable time having regard to the type of Services being provided and any preparation the Supplier must undertake to supply the Services.

4.3. Subcontracting of Services

- (a) The Supplier may, without the Company's prior approval, subcontract or appoint an agent or

representative to perform any part of the Services on behalf of the Supplier.

- (b) The Supplier must provide sufficient competent, experienced and appropriately qualified personnel (including subcontractors) to ensure performance and completion of the Services in accordance with the provisions of the Contract.
- (c) The Supplier must ensure that all persons involved in the performance of the Services, at all times, hold the appropriate work permits, travel permits, employment passes, visas, licences, registrations and any other documents or permissions required for those individuals to lawfully perform the Services.

5. Delivery of Goods

- (a) This clause 5 applies if the Supplier is providing Goods to the Company.
- (b) The Supplier may state the estimated delivery date of the Goods in the Quotation or the Purchase Order, which date may be varied by the Supplier by prior written notice to the Company (**Estimated Delivery Date**).
- (c) The Supplier shall make all reasonable efforts to deliver the Goods on the Estimated Delivery Date but shall not be responsible for any consequential, indirect or other loss incurred as a result of any failure by the Supplier to do so.
- (d) Where the Estimated Delivery Date is not stated in the Quotation or the Purchase Order, the Supplier shall deliver the Goods within a reasonable time of an Order being placed.
- (e) The Supplier may deliver the Goods by instalments. Each instalment will be separately invoiced to the Company in accordance with these Terms.
- (f) Any failure or inability by the Supplier to deliver the Goods on the Estimated Delivery Date shall not confer any right on the Company to cancel or terminate the Contract, or to refuse to accept delivery of the Goods or to claim damages from or bring any other action against the Supplier.

6. Payments by the Company

- 6.1. The Company must pay the Amount Payable on or before the due date for payment shown on the invoice or statement (**Due Date**), which is 30 days from the date of the invoice or statement unless otherwise stated.
- 6.2. An Amount Payable by the Company under these Terms must be paid without deduction, retention or set-off of any kind and for any reason.
- 6.3. The Supplier may, in its sole discretion, require the Company to provide a deposit which if requested, is payable immediately upon the Company placing an Order with the Supplier.
- 6.4. The Supplier may appropriate any money paid to it by the Company in such manner and at such times as the Supplier, in its absolute discretion, determines.
- 6.5. The amount stated in a certificate signed by the Supplier's duly authorised representative or solicitor as being due and payable by the Company to the Supplier under these Terms is prima facie evidence that such amount is owing.
- 6.6. The Supplier may, at its discretion, apply a credit balance in any of the Company's trading accounts with the Supplier towards satisfaction of a debit balance in any of the Company's other trading accounts.

- 6.7. Payment by cheque or other negotiable instrument is not deemed to be payment of any money payable until the cheque or other negotiable instrument is met on first presentation for payment.

7. Retention of Title

- 7.1. Title to all Goods purchased by the Company that have not been paid for (**Bailed Goods**) remains with the Supplier until they are paid for in full.
- 7.2. The Company must hold all Bailed Goods in the possession of the Company:
 - (a) as fiduciary, bailee and agent for the Supplier; and
 - (b) in such a manner that the Bailed Goods remain clearly identifiable and are able to be matched to specific invoices.
- 7.3. The Company is authorised to sell the Bailed Goods in the ordinary course of its business, but only until notified in writing to the contrary by the Supplier or the occurrence of any event listed in clause 7.4.
- 7.4. If the Company or any person who has guaranteed the due payment of the Company's debts to the Supplier:
 - (a) becomes an 'externally-administered body corporate' within the meaning of the *Corporations Act 2001*;
 - (b) has any step taken for its winding up or dissolution;
 - (c) holds a meeting of directors which considers a resolution that an administrator should be appointed;
 - (d) is insolvent within the meaning of the *Corporations Act 2001*, or is taken or presumed to be insolvent;
 - (e) commits an 'act of bankruptcy' within the meaning of section 40 of the Bankruptcy Act 1966, as amended from time to time;
 - (f) has distress, attachment or other execution levied or enforced over any of its property;
 - (g) fails to pay the entire Amount Payable in accordance with these Terms;
 - (h) breaches any other provision of these Terms or any other agreement with the Supplier; or
 - (i) if, without the prior consent of the Supplier, there is a change in control of the Company (as defined in the *Corporations Act 2001*) or the Company's business is sold to another person,

the Company must immediately notify the Supplier and the Supplier may, at its election and without prejudice to other rights which the Supplier may have:

 - (j) declare the Amount Payable immediately due for payment; and
 - (k) enter the premises at which the Bailed Goods are kept (**Premises**) and remove the Bailed Goods from the Premises.
- 7.5. The Supplier may sell or otherwise dispose of any Bailed Goods recovered by the Supplier under this clause 7 in its absolute discretion and on its own account, without limitation to any other rights which the Supplier may have.
- 7.6. The Company indemnifies the Supplier and every person acting on the Supplier's behalf against any loss, damage, liability or expense incurred or sustained as a result of the reasonable exercise by the Supplier of its rights under this clause 7.

- 7.7. This clause 7 is for the benefit of the Supplier, and the Supplier may waive the benefit of this clause by giving notice in writing to the Company at any time.
- 7.8. Despite the other provisions of this clause 7 and without its rights in any way, the Supplier may take any action it deems necessary, including legal proceedings to recover any Amount Payable as a liquidated debt.
- 7.9. The Company acknowledges and agrees:
- (a) that, subject to clause 8.3, the Company must not sell, transfer, encumber or otherwise deal with any Bailed Goods without the prior written consent of the Supplier, which consent the Supplier may withhold in its absolute discretion;
 - (b) that to the extent to which the money owing by the Company to the Supplier under the Contract represents all or part of the Price, that security interest will be a purchase money security interest;
 - (c) to execute any documents and provide all relevant information and full cooperation to the Supplier to ensure the Supplier has a first ranking perfected security interest in the Bailed Goods under the Personal Property Securities Act 2009 (Cth) (**PPSA**);
 - (d) not to change the Company's name or contact details (including address) without the Supplier's prior written consent; and
 - (e) that the Supplier may register any financing statement, financing change statement or other documents and do all other things which are necessary or desirable to perfect and maintain the Supplier's security interest under these Terms, to preserve its interest in the Bailed Goods and to realise the Supplier's security interest with the agreed priority, at the Company's expense.
- 7.10. Clauses 13.5 to 13.8 inclusive of these Terms apply to the security interest referred to in this clause 7.

8. Risk in Goods and Company Obligations

- 8.1. All Goods purchased by the Company are at the risk of the Company from the time the Goods are delivered to the Company or its nominated agent. Delivery is deemed to occur when the Goods are delivered to the carrier, whether the Supplier arranges, procures or effects the transport of the Goods at the request of the Company or otherwise.
- 8.2. The Company must inspect all Goods delivered to the Company or its nominated agent within 48 hours of delivery to the relevant Premises (**Inspection Period**) in order to ensure that Goods delivered are as ordered by the Company and are not delivered in a damaged state. The Company must notify the Supplier within the Inspection Period if Goods are found to be other than as ordered by the Company or have been delivered in a damaged state.
- 8.3. Subject to clause 10.1(e) if the Company has not notified the Supplier within the Inspection Period that Goods delivered were not as ordered by the Company, or that Goods were delivered in a damaged state, then the Goods will be deemed to have been delivered in good condition and as ordered by the Company.
- 8.4. Goods supplied by the Supplier are taken to be resold by the Company in the same consequential order as the Goods have been supplied by the Supplier. All Goods of the same type as the Bailed Goods will be deemed to have been supplied by the Supplier unless the Company

proves to the contrary at the time the Supplier claims to be entitled to possession of such Goods.

- 8.5. To the extent permitted by law, if the Company is in breach of these Terms, the Supplier may (without prejudice to any other rights) repossess the Bailed Goods and the Company licences the Supplier and its employees and agents enter its premises at any time without notice for such purpose, with all related costs of the Supplier to be paid by the Company on demand.

9. Variations

- 9.1. The Company may issue instructions to the Supplier at any time to make any variations to the Work (including any additions or reductions to the scope of Work).
- 9.2. Any additional payment payable to the Supplier as a result of any variation will be valued at the appropriate rates and prices included in the Contract or, in the absence of any appropriate rates and prices, the Supplier will provide the Company with a quotation for the variation. Upon approval of the quotation by the Company, the Supplier will proceed with the requested variation to the Works.
- 9.3. The Supplier acknowledges that it is not entitled to any additional payment if the Company requests the Supplier to perform remedial work due to any defect or if the relevant variation is due to any default on the part of the Supplier.

10. Liability

- 10.1. Works supplied by the Supplier are deemed to be defective if the Works:
- (a) are not of merchantable quality;
 - (b) are not fit for any purpose for which they are acquired by Company;
 - (c) do not conform to any sample, specification or other description given to the Supplier by the Company in relation to the Works;
 - (d) in respect of Services, are not of a reasonable standard, quality, value or grade; or
 - (e) do not comply with any consumer guarantee or implied warranty applicable to the supply of the Works which cannot be excluded (including under the CCA).
- 10.2. When the Works are defective (as defined in clause 10.1) the Supplier may, at its option elect to:
- (a) replace the Works; or
 - (b) repair the Works or reimburse the Company for the cost of repairing the Works; or
 - (c) in the case of Services, re-supply the Service(s); or
 - (i) If payment of the Price for the Works:
 - (A) has not been made by the Company – release the Company from any obligation to pay the Price; or
 - (B) has been made by the Company – refund the Price to the Company, subject to the Company, where applicable, first restoring the unencumbered ownership of the Works to the Supplier; and
 - (ii) in any case, reimburse to the Company any cost incurred by the Company in transporting the Works back to the Supplier.

- (d) To the extent permitted by Law and other than any remedies the Company may have under the Competition and Consumer Act 2010 (Cth) (**CCA**), the sole remedies of the Company under or in relation to the Contract or the supply of Works under the Contract, whether in contract, in tort (including the law of negligence), under statute or otherwise, are only as specified in these Terms and Conditions and are subject to the following limitations:
- (i) The Supplier, and the Supplier's officers, employees and agents, will not have any liability or other obligation to any person or other entity, including the Company, arising out of, or in any way directly or indirectly connected with, the matters referred to in clause 10.1 except to comply with its obligations (subject to the other provisions and limitations in this clause 10) under clause 10.2;
 - (ii) all conditions, warranties and other terms pertaining to the condition or quality of Works are excluded to the extent permitted by law (including the CCA);
 - (iii) the Company must not make any claim or demand, or take any action or other proceeding against the Supplier, or any of the Supplier's officers, employees or agents, for any loss of profits, loss of revenue, loss of anticipated savings, loss or corruption of data, loss of contract or opportunity, loss of goodwill or any indirect, special or consequential loss or damage of any nature arising out of, or in any way directly or indirectly related to these Terms and/or the supply of Works under them including in relation to any of the matters referred to in clause 10.1; and
 - (iv) To the extent permitted by law, the Supplier's total liability for any claim under or in relation to the Contract and/or the supply of Works under the Contract is limited to the price paid by the Company for the Works the subject of the claim.

11. Indemnity

- 11.1. To the fullest extent permitted by law, the Company indemnifies the Supplier from and against all claims, demands, actions, suits or liability in respect of any loss or damage incurred or suffered by the Company, its agents, employees, representatives or contractors and associated with:
- (a) the collection, transport or delivery of the Works to the Company;
 - (b) where applicable, the installation of the Works at the Delivery Address or an alternative location; and
 - (c) the Company's possession, operation and/or use of the Works.
- 11.2. This indemnity is a continuing obligation and survives the termination or expiration of the Contract.

12. Interest and Enforcement Costs

- 12.1. If any Amount Payable is not paid by the Due Date in accordance with these Terms, the Supplier may charge and recover interest on the outstanding amount at a rate of 10% per annum, as determined and calculated by the Supplier, in its discretion.

- 12.2. If the Company breaches its obligations under these Terms, the Company must immediately pay to the Supplier on demand, all costs and expenses incurred by the Supplier in the enforcement of these Terms including, without limitation, costs and expenses including legal costs (on a full indemnity basis) freight costs, storage costs, electricity and telephone charges (except to the extent such costs and expenses directly result from the Supplier's breach of these Terms). The Company authorises the Supplier to debit any trading account held by the Company (**Trading Account**) with such costs and expenses.

13. Security Interest

- 13.1. To the extent permitted by law, the Company:
- (a) charges to the Supplier all of their present and after-acquired personal property (as defined in the Personal Property Securities Act 2009 (Cth) (**PPSA**) (**Personal Property**) and all of their present and future rights in relation to any Personal Property;
 - (b) charges as a fixed charge all of their other rights, property and undertaking of any kind and wherever situated, whether present or future including, without limitation, any interest in any real property (both legal and beneficial) (other than any Personal Property to which the PPSA applies) to the Supplier; and
 - (c) agrees to mortgage all of its present and future interests in any real property to the Supplier, on request from the Supplier,
- as a continuing security for the payment of any and all money owing by the Company and the due performance of all its other obligations to the Supplier under the Contract.
- 13.2. The Company must:
- (a) within 10 days of request from the Supplier, execute such documents as the Supplier requires to perfect the security interest, charge and mortgage; and
 - (b) pay on demand any duty (including any fines and penalties) assessed on the charge or mortgage.
- 13.3. Unless the Supplier otherwise agrees, the costs of registering a financing statement must be paid by the Company and may be debited against the Company's Trading Account.
- 13.4. The Company acknowledges that the Supplier, by virtue of the charge, has a caveatable interest in any real property of the Company which is or becomes subject to the charge and may lodge a caveat over that property.
- 13.5. The Company appoints the Supplier (and if the Supplier is a corporation, each officer of the Supplier for the time being) as its agent and authorised representative for the purpose of requesting information from other secured parties under section 275 of the PPSA.
- 13.6. Without limiting any other provision of these Terms, the Company waives its rights to receive any notice under the PPSA (including a copy of any verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.
- 13.7. If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest created under these Terms, the Company agrees with the Supplier that:
- (a) nothing in section 125, Division 6 of Part 4.3 and section 143 of the PPSA will apply to these Terms or the security interest under it; and
 - (b) it waives its rights to do any of the following:

- (i) object to the purchase of the collateral by the Supplier under section 129;
 - (ii) receive a statement of account under section 132(3)(d) following a disposal showing the amounts paid to other secured parties and whether security interests held by other secured parties have been discharged;
 - (iii) receive a statement of account under section 132(4) if there is no disposal; and
 - (iv) redeem the collateral under section 142.
- 13.8. The Company and the Supplier will not disclose information of the kind mentioned in section 275(1) of the PPSA unless required by law.

14. Attorney

- 14.1. The Company irrevocably appoints the Supplier and each of the Supplier's authorised officers, jointly and severally, to be its attorney to do any act or thing which it is required to do under these Terms.
- 14.2. The Supplier may only exercise the power set out in clause 14.1 where the Company is in breach of these Terms, the Supplier may exercise its powers even if this involves a conflict of duty and even if it has a personal interest in doing so.
- 14.3. A third party may rely on a copy of these Terms certified by a solicitor as evidence of the appointment of the Supplier as the attorney of the Company.
- 14.4. The Company must ratify all acts and things done by the Supplier and its authorised officers in the exercise of the power of attorney granted in accordance with this clause.

15. Credit Terms

The Company acknowledges and agrees that:

- 15.1. all information provided by the Company to the Supplier in connection with any application for a credit account with the Supplier is true and correct;
- 15.2. the Supplier may use all information obtained in connection with the Company to assess or re-assess the Company's credit worthiness, and for this purpose the Supplier may obtain from or supply to a credit reporting agency such information about the Company as the Supplier reasonably requires;
- 15.3. the Supplier may limit the amount of any credit available to the Company from the Supplier, or amend that limit, at any time by written notice to the Company;
- 15.4. the Supplier may refuse credit to the Company and/or cancel all credit facilities granted by the Supplier to the Company in the Supplier's absolute discretion at any time, without notice and without giving any reason; and
- 15.5. the Supplier may (at any time) do all things necessary or desirable to obtain (whether from any trade reference given by the Company, credit provider, credit reporting agency or otherwise) any information required by the Supplier to decide whether to provide (or continue to provide) credit to the Company including to assess the Supplier's credit history or credit-worthiness.

16. General

16.1. Interpretation

In these Terms, unless the context otherwise requires:

- (a) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted

for it and a regulation or statutory instrument issued under it;

- (b) a reference to a party to these Terms includes the party's successors, permitted substitutes and permitted assigns and, where applicable, the party's legal personal representatives; and
- (c) a right or obligation of any two or more persons confers that right or imposes that obligation, as the case may be, on each of them severally and on any two or more of them jointly.

16.2. PPSA Defined Terms

In these Terms, the terms accession, account, collateral, financing statement, financing change statement, inventory, proceeds, purchase money security interest, secured party and security interest have the same meanings as in the PPSA.

16.3. Nature of Works

Unless otherwise advised by the Company to the contrary, the Company acknowledges that all Works will be purchased for the purpose of resupply or in connection with a business carried on by the Company with or without other persons and not for personal, domestic or household use.

16.4. Time of Essence

Time is to be of the essence insofar as it relates to the Company's obligations to the Supplier under these Terms.

16.5. Delays - Force Majeure

The Supplier is not responsible for any delay or failure of performance occasioned or caused by strikes, riots, fire, insurrection, embargoes, failure of carriers or suppliers, inability to obtain materials or transportation facilities, acts of God or of the public enemy, governmental tariffs and quotas, compliance with any law, regulation or other governmental or court order (whether or not valid), or other causes beyond the control of the Supplier, even if the cause could be alleviated by the payment of money, or the performance is prevented or delayed because of the failure by the Supplier.

16.6. No Waiver

- (a) A failure to exercise or a delay in exercising any right, power or remedy under these Terms does not operate as a waiver.
- (b) A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A waiver is not valid or binding on the party granting that waiver unless made in writing.

16.7. Assignment

The Supplier may at any time assign its rights and interests or novate its rights and obligations (in whole or in part) under these Terms. The Company must not assign its rights or obligations under these Terms without the Supplier's prior written consent, which consent may be refused or given subject to such terms and conditions as the Supplier may determine in its absolute discretion.

16.8. Severance

If any provision of these Terms or their application to any person or circumstance is or becomes invalid or unenforceable, that provision will be taken to be omitted without invalidating or modifying the remaining provisions of these Terms, which will continue in full

force and effect as if the invalid or unenforceable provision had not been included in them.

16.9. Indemnities

Each indemnity in these Terms is a continuing obligation, independent of the other obligations of the party giving it, and survives the end of these Terms or the supply arrangement between the Company and the Supplier.

16.10. Further Co-operation

The Company must do anything (including executing a document) the Supplier reasonably requires in writing to give full effect to these Terms.

16.11. Terms Binding

These Terms bind the Company both personally and as trustee of any trust of which it is trustee.

16.12. Notices

Notices in respect of these Terms may be provided to the Company by mail or facsimile to the recipient's address provided by it to the Supplier.

16.13. Variation of Terms

- (a) Where the Company requests or directs that any additional Works be supplied that are not strictly in accordance with the Quotation or an Order, then such additional Works shall constitute a variation, unless otherwise agreed between the parties.
- (b) The Supplier reserves the right to vary these Terms from time to time. It may give notice of any variation of these Terms by publishing the revised Terms on its website and may (but is not obliged to) notify the Company that it has done so on an invoice, statement or other written communication. If the Company continues to deal with and place orders for the supply of Goods with the Supplier after any such variation of these Terms, the Company is taken to have agreed to those Terms as varied and to have taken the supply of Goods on those varied Terms.
- (c) Despite clauses 16.13(a) and 16.13(b), and subject to any rights the Company might have under any relevant legislation, the Supplier reserves the right to vary the quoted price if:
 - (i) there is any movement in the cost of supplying the Goods specified in the Company's order;
 - (ii) the Goods specified in the Company's order are varied from the goods and/or services specified in the Supplier's quotation; or
 - (iii) otherwise provided for in these Terms.

16.14. Governing Law

These Terms will be construed in accordance with and governed by the laws of Western Australia.