

## Purchase Terms & Conditions

### 1. Definitions

In these Terms and Conditions:

- (a) "**ACDC**" means the Australian Commercial Disputes Centre.
- (b) "**Act**" means the *Corporations Act 2001 (Cth)*.
- (c) "**Fenner Dunlop**" means Fenner Dunlop Australia Pty Ltd ABN 23 080 570 574.
- (d) "**Fenner Dunlop Tools**" means any tooling, dies, gauges, jigs, fixtures, moulds, equipment, patterns and other facilities supplied by Fenner Dunlop or its Related Body Corporate, either directly or indirectly, to Supplier or paid or to be paid for by Fenner Dunlop or its Related Body Corporate.
- (e) "**Force Majeure**" means an act of God, a strike, a lockout, act of public enemy, civil commotion, war, blockade, riot, state of emergency, lightning, fire, storm, flood, washout, explosion, Government restraint, or any form or Government intervention and any other cause which is not within the control of the party alleging it.
- (f) "**Goods**" means the products specified in the Purchase Contract.
- (g) "**GST**" and "**Tax Invoice**" will have the meaning attributed to those terms in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- (h) "**INCOTERMS**" means the standard accepted commonly used trade Terms and Conditions utilised in international trade as published by the International Chamber of Commerce and entitled "Incoterms 2000".
- (i) "**Insolvency Event**" means in respect of Supplier death, liquidation, provisional liquidation, voluntary administration, compromise, arrangement, amalgamation, administration, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, the appointment of a receiver, the inability of Supplier to pay its debts when they fall due, bankruptcy or the filing for bankruptcy under Chapter 11 of the United States Bankruptcy Code or any event that is analogous to the aforementioned events under any Law.
- (j) "**Intellectual Property Rights**" means patents, design rights, copyrights, trademarks and service marks (whether registered or not and applications for any of the foregoing) know-how and rights of a like nature throughout the world.

(k) "**Law**" means any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future and whether state, federal or otherwise.

(l) "**Material Adverse Change**" means any change to the circumstances of Fenner Dunlop (beyond the reasonable control of Fenner Dunlop) which Fenner Dunlop believes has a material adverse impact on the ability of Fenner Dunlop to utilise the Goods and/or Services. A Material Adverse Change includes, but is not limited to, the cancellation or variation of an order for products or services, into which the Goods and/or Services have been incorporated, by an entity to which Fenner Dunlop supplies the said products or services.

(m) "**Purchase Contract**" means the purchase contract issued by Fenner Dunlop and accepted by Supplier stipulating the Goods and/or Services to be supplied, the agreed price for the Goods and/or Services and other details relevant to the supply of the Goods or the performance of the Services. The Purchase Contract includes any document sent by Fenner Dunlop to Supplier stipulating the quantity and timing of the delivery of the Goods or the performance of the Services. The Purchase Contract includes and is subject to these Terms and Conditions.

(n) "**Related Body Corporate**" has the same meaning as this term has under the Act.

(o) "**Rules**" means the rules for Domestic Arbitration prescribed by the ACDC.

(p) "**Services**" means the services (if any) specified in the Purchase Contract.

(q) "**Supplier**" means the seller of the Goods and/or Services specified in the Purchase Contract.

(r) "**Technical Materials**" means all plans, designs, drawings, engineering information, data, specifications, reports, accounts and other material of a technical nature.

(s) "**Tender**" means any document, drawing, specification or design issued by Fenner Dunlop pursuant to which Fenner Dunlop has agreed to purchase the Goods and/or Services from Supplier as described in the Purchase Contract. This includes, but is not limited to, documents, drawings, specifications or designs of an entity to which Fenner Dunlop supplies products.

(t) "**Tender Documents**" means the documents applicable to the Tender.

(u) "**Terms and Conditions**" means these "**Terms and Conditions of Purchase Contract**".

(v) The terms "**EXW**", "**FCA**", "**FAS**", "**FOB**", "**CFR**", "**CIF**", "**CPT**", "**CIP**", "**DAF**", "**DES**", "**DEQ**", "**DDU**" and "**DDP**" have the meaning these terms are given in the INCOTERMS.

## 2. General

(a) These Terms and Conditions override any inconsistent terms and conditions in any document or communication used by Supplier in relation to the supply of Goods and/or Services (including any terms and conditions that may be printed on the underside of or attached to an invoice or delivery docket provided by Supplier) or that form part of the Purchase Contract.

(b) If the Purchase Contract refers to a Tender the Tender Documents will form part of the Purchase Contract. Where the terms of the Tender Documents and these Terms and Conditions are inconsistent these Terms and Conditions will prevail.

(c) If any INCOTERM is nominated in the Purchase Contract, the terms of INCOTERMS applies except as otherwise provided or as inconsistent to these Terms and Conditions.

## 3. Acceptance

If written acceptance of the Purchase Contract is not provided by Supplier to Fenner Dunlop, either oral acceptance or the commencement of supply of Goods and/or Services by Supplier will constitute acceptance by Supplier of the terms of the Purchase Contract, including these Terms and Conditions.

## 4. Price

(a) The price of the Goods and/or Services is fixed in accordance with the prices listed on the Purchase Contract and is not subject to increases in price without Fenner Dunlop's prior approval in writing. Unless an INCOTERM to the contrary is agreed to by the parties and nominated on the Purchase Contract, the price of the Goods includes the cost of packaging, storage, insurance, delivery to the destination stated in the Purchase Contract and the off-loading of the Goods by Supplier at the point of destination.

(b) The Price includes any applicable GST. Where GST is payable either:

(1) Supplier must provide Fenner Dunlop with a Tax Invoice that complies with all requirements in the GST Act at or before the time for payment; or

(2) Fenner Dunlop may require Supplier to accept a Recipient Created Tax Invoice (as provided for in the GST Act) as created by Fenner Dunlop.

(c) Supplier must submit monthly itemised invoices to Fenner Dunlop in a form approved by Fenner Dunlop. Unless otherwise stated on the face of the Purchase Contract, Fenner Dunlop will have at least 60 days from the end of the month in which the invoice is received in which to pay Supplier the invoiced amount. Fenner Dunlop may withhold any amount that it disputes in good faith until the dispute has been resolved. Fenner Dunlop will not be required to pay the Supplier until the Supplier has provided a valid Tax Invoice which complies with the requirements of this **clause 4**.

- (d) No interest is payable on the late payment of any amounts by Fenner Dunlop.
- (e) Fenner Dunlop may set-off any amounts payable by Supplier pursuant to **clauses 8.3 and 11** against any amounts payable to Supplier.
- (f) Fenner Dunlop will be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier.
- (g) In the case of an ongoing arrangement between Fenner Dunlop and the Supplier with respect to the supply of Goods or Services, Fenner Dunlop will be entitled to seek quotes from other third party providers of equivalent goods or services at least once in any 12 month period during the term of the arrangement and, if requested by Fenner Dunlop, the Supplier agrees to adjust the prices charged to Fenner Dunlop under these Terms and Conditions and a relevant Purchase Contract to prices that are equal to or more favourable to Fenner Dunlop than those offered by the relevant third party providers.

## **5. Delivery and performance**

- (a) Time is of the essence in relation to the delivery of Goods and/or performance of the Services and deliveries of the Goods and/or completion of the Services must be made both in the quantities, manner and at times specified in the Purchase Contract. In respect of any Goods provided under a Purchase Contract, delivery should be made to the location nominated in the Purchase Contract or such other place nominated by Fenner Dunlop by providing Supplier at least 12 hours notice of any change of delivery location. Unless otherwise agreed, deliveries will only be accepted by Fenner Dunlop during its normal business hours at the delivery location.
- (b) Supplier agrees that, in respect of any Goods, the cost of delivery is determined according to the INCOTERM nominated on the Purchase Contract, and if no INCOTERM has been nominated, delivery will be DDP.
- (c) If delivery of Goods and/or completion of Services is not made by the date specified in the Purchase Contract, or within a reasonable time if no date is specified, Fenner Dunlop will be entitled to refuse delivery of the Goods or completion of the Services and may terminate the contract in respect of:
- (1) the Goods undelivered or delivered late and of any Goods already delivered under this contract which cannot be effectively and commercially used by Fenner Dunlop by reason of the non-delivery or late delivery of the first mentioned Goods; and
  - (2) the Services which are not completed or a completed late and of any part of the Services performed but which cannot be effectively or commercially used by Fenner Dunlop by reason of the failure to complete or late completion of the first mentioned Services.
- (d) Without limiting the generality of **clause 13**, upon termination according to **clause 5(c)** Fenner Dunlop is entitled to:

(1) return to Supplier, at Supplier's risk and expense any Goods detailed in **clause 5(c)** and to recover from Supplier any money paid by Fenner Dunlop in respect of such Goods, and Goods already delivered but which cannot be effectively and commercially used due to non-delivery or late delivery of other Goods;

(2) recover from Supplier any money paid by Fenner Dunlop in respect of Services detailed in **clause 5(c)**, and Services already completed but which cannot be effectively and commercially used due to the failure to complete or late completion of other Services; and

(3) recover from Supplier any additional expenditure reasonably incurred by Fenner Dunlop in obtaining other goods or services in replacement of the Goods and/or Services detailed in **clause 5(c)** and any other damages and losses incurred by Fenner Dunlop arising from late or non-delivery of Goods or non-performance of Services or any part thereof.

(e) A notice of shipment must be sent by Supplier to Fenner Dunlop at the time the Goods are shipped, which must state the description of the Goods, the reference number of the Purchase Contract, the name of the vessel, the port of shipment or delivery, shipping route, the quantity loaded, the invoice amount and other particulars from time to time as requested by Fenner Dunlop.

(f) Supplier must ensure that the Goods are suitably packed or otherwise prepared for shipment so as to secure the lowest transportation and insurance rates and in accordance with the carriers' requirements.

(g) The packing and marking of the Goods must comply with the Law of Australia and any country from which the Goods are to be exported and in accordance with the instructions of Fenner Dunlop.

(h) All documents related to the shipping of the Goods must be provided to Fenner Dunlop at the time that the Goods depart the port of export including, without limitation:

(1) the bills of lading;

(2) certificate of insurance;

(3) packing declaration;

(4) declarations to customs and quarantine authorities;

(5) evidence of payment of all customs duties and other charges; and

(6) certificate of origin of the Goods.

(i) If Supplier considers Goods cannot be delivered or Services cannot be performed on time in accordance with Fenner Dunlop's Purchase Contract, Supplier must notify Fenner Dunlop immediately and give to Fenner Dunlop an estimate of the period of delay and details of the



steps which Supplier proposes to take to minimise the delay. Supplier must comply with Fenner Dunlop's reasonable instructions in order to minimise the delay.

## 6. Warranties

6.1 (a) These Terms and Conditions are additional to all warranties, conditions and undertakings express or implied by the *Competition and Consumer Act 2010* (Cth) or any other Law or as set out in the Tender Documents (if applicable).

(b) Supplier warrants that all Goods and/or Services meet the description; specification drawings, data or samples and quality standards provided by Supplier or set out in the Purchase Contract or other document issued by Fenner Dunlop or its representatives to Supplier regarding Fenner Dunlop's requirements for the Goods and/or Services including, without limitation, the Tender Documents. Any in-progress inspection by Fenner Dunlop's employees or agents or other representative does not affect this warranty.

(c) Supplier warrants that the Goods are new, of good title, of merchantable quality, made of good materials and workmanship, free from defects, encumbrance, lien or security interest and comply with all applicable laws, legislation, regulation and codes.

(d) Supplier warrants that all Goods are fit for the purpose for which goods of the same kind are commonly supplied and any purpose which Fenner Dunlop or its representatives make known to Supplier, and must be accompanied by any necessary instructions, technical documents, operating and service manuals and any applicable warranties. If a standard of performance is specified Supplier warrants that Goods will be capable of such performance.

(e) The Goods must carry any applicable manufacturer's warranty which passes on to any buyer or customer from Fenner Dunlop without liability to Fenner Dunlop. Supplier must assign to Fenner Dunlop at the request of Fenner Dunlop the benefit of any warranty or guarantee that Supplier has received from any supplier (whether under contract or by implication or operation of law).

(f) Supplier warrants to Fenner Dunlop that it will provide all information required by Fenner Dunlop to report the export, import or transport of the Goods in a timely and accurate manner to enable Fenner Dunlop to observe its requirements pursuant to any Law.

(g) Supplier warrants to Fenner Dunlop that it holds good title to any Intellectual Property Rights in or associated with the Goods and/or Services and provides Fenner Dunlop, the successors, assigns, customers and users of Fenner Dunlop's products or services (incorporating the Goods and/or Services) and any Related Body Corporate of Fenner Dunlop a licence to use any Intellectual Property Rights in or associated with the Goods and/or Services.

(h) Supplier warrants to Fenner Dunlop that it holds all statutory licences, registrations, approvals, permits and authorisations as are necessary to supply the Goods and/or Services to Fenner Dunlop.

(i) Supplier warrants to Fenner Dunlop that the Supplier has the capabilities, skill, facilities and resources to perform the Services and that the Services will be provided with due care and skill.

6.2 Supplier agrees to defend, protect and completely indemnify (including legal expenses on the requisite hourly basis set by Fenner Dunlop's lawyers) Fenner Dunlop, its successor, assigns, customers and the users of Fenner Dunlop's products and/or services (incorporating the Goods and/or Services) and any Related Body Corporate of Fenner Dunlop from and against any claim arising by reason of the use of the Goods and/or Services, including all claims for actual or alleged infringement of any Intellectual Property Rights.

6.3 Without limiting the effect of **clause 8.1**, Supplier agrees to indemnify and keep indemnified Fenner Dunlop against all and any liability arising from the breach of any warranty provided pursuant to **clause 6.1**.

## **7. Inspection and return**

(a) All Goods are received and Services are performed subject to inspection within a reasonable time after delivery or completion or before delivery or completion at Fenner Dunlop's discretion irrespective of the date of payment. In respect of Goods, signed delivery dockets do not mean acceptance by Fenner Dunlop of the Goods delivered but only the number of packages or cartons delivered.

(b) Fenner Dunlop may reject any Goods or Services or parts thereof that are not in accordance with the Purchase Contract or these Terms and Conditions. Notice of rejection will be provided to Supplier in writing by Fenner Dunlop and must specify the reasons for rejection. Fenner Dunlop is entitled to return the rejected Goods to Supplier at Supplier's expense and risk.

(c) In all cases of rejection Fenner Dunlop will be entitled to require Supplier to:

- (1) replace the rejected Goods with goods which are acceptable to Fenner Dunlop;
- (2) remedy the rejected Services and/or re-perform the rejected Services in a manner which is acceptable to Fenner Dunlop; or
- (3) request repayment of any money paid to Supplier in respect of the rejected Goods and/or Services and may terminate this contract.

(d) Without limiting the generality of **clause 13**, upon termination according to this clause:

(1) Fenner Dunlop is entitled to return to Supplier at Supplier's risk and expense any Goods previously delivered to Fenner Dunlop which cannot be effectively and commercially used by Fenner Dunlop and to recover from Supplier any moneys paid by Fenner Dunlop in respect of such Goods;

(2) Fenner Dunlop is entitled to recover from Supplier any moneys paid by Fenner Dunlop in respect of Services which have been performed but which cannot be effectively and commercially used by Fenner Dunlop; and

(3) Supplier is liable for any costs, loss or damage suffered or incurred by Fenner Dunlop in relation to Goods and/or Services that are rejected including the cost of replacement goods and/or re-performance of services.

## **8. Defective goods and/or services**

8.1 Should any Goods or Services fail to conform to the warranties contained in clause 6, Fenner Dunlop will notify Supplier and Supplier must, if requested by Fenner Dunlop, indemnify Fenner Dunlop for any incidental and consequential damages cause by such non-conforming Goods or Services, including but not limited to, costs, expenses and losses incurred by Fenner Dunlop:

(a) in inspecting, sorting, repairing or replacing such nonconforming Goods or Services;

(b) resulting from production interruptions;

(c) conducting recall campaigns or other corrective services actions regardless of whether such campaigns are conducted by Fenner Dunlop or an entity that Fenner Dunlop supplies to and regardless of whether the recall campaign relates to the Goods or a product in which the Goods have been incorporated; and

(d) claims for personal injury (including death) or property damage cause by such non-conforming Goods or Services.

8.2 If Supplier becomes aware of any matter which may affect the Goods or Services or Fenner Dunlop's use of the Goods or Services, Supplier must notify Fenner Dunlop in writing immediately of the matter giving full details of all relevant information. This includes anything which may affect the composition, characteristics or Fenner Dunlop's use of the Goods or Services, the health, hygiene or safety of any person and Suppliers', Fenner Dunlop's or the Good's compliance with any Law, standard or code of practice.

8.3 Fenner Dunlop may set-off the amounts owing under **clause 8.1** against any amounts otherwise payable by Fenner Dunlop to Supplier.

## **9. Tooling to remain Fenner Dunlop's property**

(a) The Fenner Dunlop Tools remain Fenner Dunlop's property whether during or after the termination of the Purchase Contract.

(b) Supplier must keep the Fenner Dunlop Tools in good condition and when necessary repair the Fenner Dunlop Tools at its own expense.



(c) Supplier agrees that it will not use any Fenner Dunlop Tools for any purpose other than to supply Goods and/or Services to Fenner Dunlop and will return and deliver up the Fenner Dunlop Tools following the expiry or termination of the Purchase Contract.

(d) Without limiting the generality of **Clause 16**, Fenner Dunlop retains all Intellectual Property Rights in Fenner Dunlop Tools.

## **10. Changes, Cancellation and Variations**

(a) Fenner Dunlop may at any time direct Supplier in writing to change the Goods and/or Services or any aspect of the supply of the Goods and/or Services. Supplier's obligation to supply the Goods and/or Services following such a change will be subject to the parties agreeing upon the applicable prices, rates or charges acting reasonably and with reference to the prices, rates and charges set out in the Purchase Contract.

(b) Fenner Dunlop may cancel or vary the Purchase Contract (in whole or part) at any time in response to a legitimate business need of Fenner Dunlop including, without limitation, a Material Adverse Change. Fenner Dunlop must give Supplier written notice of such cancellation or variation and must pay Supplier for all Goods delivered and/or Services performed up to the date of cancellation or variation. Unless otherwise agreed, Fenner Dunlop must also purchase Goods and/or Services which have actually been provided by Supplier but not delivered or completed by Supplier and work in progress and other materials produced or acquired by Supplier to manufacture the Goods or perform the Services but only to the extent to which such items cannot be used by Supplier producing goods and/or services for itself. Save as expressly set out in this clause, Fenner Dunlop will have no liability to Supplier for cancelling or varying the Purchase Contract.

(c) To the extent Fenner Dunlop provides Supplier with forecasts of the Goods or Services that Fenner Dunlop may order from the Supplier, the Supplier acknowledges and agrees that such forecasts are estimates only, are not binding on Fenner Dunlop and are subject to change but the Supplier must, at all times, be able to meet the forecasts by maintaining sufficient stocks of the Goods and being prepared to perform the Services as required by the forecasts.

## **11. Deduction & Set-Off**

Fenner Dunlop may deduct or set-off against any amount payable to Supplier any amount payable by Supplier to Fenner Dunlop, including but not limited to any amount due by Supplier for Goods or Services rejected by Fenner Dunlop or for warranty claims made by Fenner Dunlop or by its customers that relate to the Goods or Services.

## **12. Notification of certain events**

Supplier must promptly notify Fenner Dunlop in writing if any of the following events occur or is likely to occur to Supplier:

(a) a change in trade name, or place of business;

- (b) change in the ownership or control of Supplier;
- (c) the sale or transfer of all or any part of Supplier's business;
- (d) the acquisition by any competitor of Fenner Dunlop of any interest of any kind in the ownership of Supplier;
- (e) an Insolvency Event concerning Supplier or a Related Body Corporate; and
- (f) any other matter or thing which may affect Supplier's ability or capacity to supply the Goods to or perform the Services for Fenner Dunlop.

### 13. Termination

(a) In addition to termination rights set out elsewhere in these Terms and Conditions, Fenner Dunlop may terminate any applicable Purchase Contract by written notice to Supplier if:

(1) Supplier is in default of any of its obligations set out in the Purchase Contract (including these Terms and Conditions) that is not capable of remedy, or if capable of remedy is not remedied within 30 days of written notice by Fenner Dunlop of such default;

(2) Supplier breaches any warranties Supplier has provided under these Terms and Conditions;

(3) an event in **clause 12**, has occurred in relation to Supplier other than a change of trade name or place of business;

(4) an Insolvency Event has occurred in relation to a Related Body Corporate of the Supplier; or

(5) a Material Adverse Change has occurred in relation to Fenner Dunlop.

(b) Upon termination under this **clause 13**:

(1) Fenner Dunlop will have the right to withhold any payment for any Goods not yet delivered or Services not yet completed by Supplier;

(2) Supplier will be liable to Fenner Dunlop for any incidental or consequential losses incurred by Fenner Dunlop as a result of Supplier's default under these Terms and Conditions; and

(3) Supplier must return the Fenner Dunlop Tools and grant to Fenner Dunlop an irrevocable licence to enter Supplier's premises for the purpose of taking possession of the Fenner Dunlop Tools.

(c) Supplier does not have any claim whatsoever at law or equity against Fenner Dunlop if Fenner Dunlop cancels an order under this **clause 13** or otherwise.

#### 14. Property and risk

(a) Property and risk in the Goods will pass according to the INCOTERM elected under the Purchase Contract.

(b) Where no INCOTERM is elected under the Purchase Contract, property and risk in the Goods will pass to Fenner Dunlop upon Fenner Dunlop taking delivery of the Goods and the Goods having been inspected and accepted by an authorised representative of Fenner Dunlop. Where Goods are delivered in instalments, the property and risk in the Goods subject to a particular instalment pass to Fenner Dunlop upon delivery and acceptance of that instalment. The passing of property and risk in the Goods will be without prejudice to any right of rejection which Fenner Dunlop is entitled under these Terms and Conditions.

(c) If Fenner Dunlop pays for Goods before they are accepted, that does not constitute acceptance of the Goods but property in the Goods will nevertheless pass to Fenner Dunlop at the time such payment is made. In such circumstances, risk in the Goods will remain with the Supplier until Fenner Dunlop has inspected and accepted the Goods as contemplated under these Terms and Conditions.

#### 15. Insurance

Supplier must maintain at its sole expense insurance with reputable and financially responsible insurance companies, which adequately covers Supplier's liability against Fenner Dunlop and third parties for any incidental and consequential loss or damage arising out of or incidental to any recall campaign pursuant to defective Goods or Services or Goods or Services suspected of being defective. Fenner Dunlop is entitled to require certain insurance coverage's and amounts be taken out by Supplier. Fenner Dunlop may request to see, and Supplier will be required to produce within 48 hours, evidence that this clause has been complied with. If Fenner Dunlop consents to the Supplier using sub-contractors, such sub-contractors must hold and maintain the same insurance required under this **clause 15**.

#### 16. Intellectual Property

(a) Fenner Dunlop retains the Intellectual Property Rights in any Technical Materials provided to Supplier under the Purchase Contract.

(b) In return for the payment of the purchase price for the Goods and/or Services, the Supplier assigns to Fenner Dunlop all Intellectual Property Rights in any Technical Material created by the Supplier or on the Supplier's behalf for the purpose of the Purchase contract other than any pre-existing Intellectual Property Rights of the Supplier. The Supplier must execute, procure and deliver to Fenner Dunlop all assignments and any other documentation required by Fenner Dunlop to give effect to this **clause 16**.

#### 17. Confidentiality

Unless otherwise required by Law, Supplier must keep confidential the terms of the Purchase Contract (including but not limited to prices), these Terms and Conditions and all confidential information it receives from Fenner Dunlop or which relates to the Goods,

Services or Fenner Dunlop's business, Intellectual Property Rights or other products. Supplier must not make any public announcements or disclosure in relation to the Goods and/or Services, these Terms and Conditions or its relationship with Fenner Dunlop without Fenner Dunlop's prior written consent. The obligations of this **clause 17** continue to apply after the fulfilment of any part of the Purchase Contract or termination or cancellation of the Purchase Contract.

## **18. Force Majeure**

(a) Any delay or failure by either party to perform its obligation will be excused if, and to the extent that, it is caused by Force Majeure, provided notice of such delay or failure (including the anticipated duration of the delay or failure) is given by the affected party to the other party as soon as possible after the Force Majeure (but in no event more than 3 days thereafter).

(b) During the period of such delay or failure to perform by Supplier, Fenner Dunlop may, at its option, purchase Goods and/or Services from other sources and reduce its scheduled purchases from Supplier by such quantities, without liability to Fenner Dunlop, or have Supplier provide the Goods and/or Services from other sources in quantities and at times requested by Fenner Dunlop, and at the price set out on the Purchase Contract.

(c) In addition, Supplier, at its expense must take such actions as are necessary to ensure the supply of Goods and/or Services to Fenner Dunlop for a period of at least 30 days during any anticipated labour disruption or resulting from the expiration of Supplier's labour agreements or contracts. If requested by Fenner Dunlop, Supplier must, within 10 days, provide adequate assurances that the delay will not exceed 30 days. If the delay lasts more than 30 days, or Supplier does not provide adequate assurance that the delay will cease within 30 days, Fenner Dunlop may immediately terminate the relevant Purchase Contract without liability.

## **19. Limit of liability**

(a) The maximum liability of Fenner Dunlop to Supplier as a result of a breach of any of these Terms and Conditions by Fenner Dunlop will be limited to the amount of liquidated damages nominated on the Purchase Contract. This amount represents a genuine estimate of the maximum amount of damages Supplier will suffer in the event of default by Fenner Dunlop.

(b) Should an amount of liquidated damages not be nominated on the Purchase Contract the maximum liability of Fenner Dunlop for breach of the Purchase Contract or these Terms and Conditions will be the total price of Goods and/or Services ordered under the Purchase Contract.

(c) Fenner Dunlop will in no circumstances be liable to the Supplier, whether in contract or tort or any other basis, for any special, incidental, consequential, indirect or exemplary damages.

## **20. Compliance with Laws**

Supplier must comply at all times with all requirements of any Laws of Australia, or of the country of origin of the Goods and/or Services, applying to the Goods and/or Services including, but not limited to, the manufacture, labelling, transportation, importation, exportation, licensing, approval or certification of the Goods and/or Services and all other Laws from which liability may accrue to Fenner Dunlop from violation and Supplier agrees to defend, protect and completely indemnify (including legal expenses on the requisite hourly basis set by Fenner Dunlop's lawyers) Fenner Dunlop, its successor and assigns and any Related Body Corporate of Fenner Dunlop from and against any claim arising from any breach of this **clause 20** by Supplier.

## **21. Claims**

Any claim that Fenner Dunlop has not complied with its requirements under the Purchase Contract or these Terms and Conditions must be brought by the Supplier within a reasonable time.

## **22. Governing law**

These Terms and Conditions and any Purchase Contract is governed by the Law of the State of Victoria without giving effect to international principles of the conflict of laws and Supplier and Fenner Dunlop expressly exclude the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods with respect to sales covered by these Terms and Conditions or a Purchase Contract. Fenner Dunlop and Supplier submit to the non-exclusive jurisdiction of the Courts of Victoria.

## **23. Dispute resolution**

23.1 In the case of a dispute between the parties, the following process for resolution will be followed:

- (a) internal management conference between the parties within 14 days;
- (b) mediation within a further 14 days conducted in accordance with Guidelines for Commercial Mediation issued from time to time by the ACDC and in force at the date of the dispute;
- (c) if the party making the claim remains dissatisfied after the meeting convened under **clause 23.1** , or at any time during or at the conclusion of any mediation held pursuant to **clause 23.2**, that party may then institute proceedings against the other party.

23.2 For the purposes of **clause 23.1**:

- (a) the language of the dispute resolution will be English;
- (b) the venue of the dispute resolution will be Australia;
- (c) each party will bear their own costs and one-half of the costs of any mediation;



(d) each party is entitled to legal representation at all stages; and

(e) the process set out in **clause 23.1** will not exclude the rights of the parties to seek urgent interlocutory relief.

23.3 This **clause 23** does not constitute an arbitration agreement within the meaning of the *Commercial Arbitration Act 2011* (Vic).

## 24. Assignment

(a) Fenner Dunlop is entitled to assign any rights, benefits or duties under the Purchase Contract to a Related Body Corporate without requiring the consent of Supplier.

(b) Supplier will not assign or delegate its rights or obligations under the Purchase Contract without the prior written consent of Fenner Dunlop. For these purposes any change to the directors or shareholders of Supplier from the date of the relevant Purchase Contract will require the prior written consent of Fenner Dunlop.

## 25. Rights are cumulative

The rights of Fenner Dunlop under these Terms and Conditions are cumulative and additional to any other rights Fenner Dunlop may have at Law or in equity.

## 26. Severability

If any term or condition or part of these Terms and Conditions is illegal, unenforceable or invalid, those Terms and Conditions or part of the Terms and Conditions are to be treated as removed from these Terms and Conditions, but the rest of these Terms and Conditions are not affected.

## 27. Waiver

Fenner Dunlop will not be deemed to have waived any of its rights or remedies under these Terms and Conditions or at Law by allowing any time or indulgence or by not exercising any right or remedy arising out of any default by Supplier.

## 28. Variation and replacement

(a) No variation of the Purchase Contract (other than in accordance with **clause 10**) will be of any force unless it is in writing and signed by both parties.

(b) Fenner Dunlop may at any time replace or amend these Terms and Conditions, such replacement to be effective from the date specified by Fenner Dunlop in its notice to Supplier advising of the replacement or amendment.

## 29. Further assurances

Supplier must do everything reasonably requested by Fenner Dunlop to give effect to these Terms and Conditions and any relevant Purchase Contract and the transactions contemplated by them.

### **30. Other suppliers**

(a) Nothing in these Terms and Conditions will in any way limit the ability of Fenner Dunlop to obtain goods or services which are equivalent to the Goods or Services from other suppliers.

(b) Unless otherwise agreed under a Purchase Contract, Fenner Dunlop will be under no obligation to submit orders for Goods or Services to, or purchase Goods or Services from, the Supplier.

### **31. Sub-contracting**

The Supplier must not sub-contract the performance of any of its obligations under these Terms and Conditions or the Purchase Contract to any other party without the prior written consent of Fenner Dunlop.

### **32. Anti-bribery laws**

The Supplier must:

(a) comply with all laws relating to anti-bribery and anti-corruption and all policies of Fenner Dunlop relating thereto as notified to the Supplier from time to time and not contravene any such law or policy;

(b) promptly notify Fenner Dunlop if any request or demand for financial or other advantage of any kind is received by the Supplier in connection with the provision of the Goods or Services or if any foreign public official is appointed as an officer or employer of or acquires an interest in the Supplier;

(c) have and enforce as appropriate its own policies and procedures to ensure compliance with this **clause 32**; and

(d) ensure that any person for whom the Goods or Services are to be provided complies with this **clause 32**.

### **33. Access and Safety**

If the Supplier is required to enter the premises of Fenner Dunlop in order to deliver the Goods or Services:

(a) Fenner Dunlop will not be responsible for any damage done to the Supplier's property or that of the Supplier's employees or representatives or for any personal injury sustained by any of the Supplier's employees or representatives occurring on Fenner Dunlop's premises;



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ABN: 23 080 570 574**

(b) the Supplier unconditionally and irrevocably releases Fenner Dunlop from that responsibility and agrees to indemnify Fenner Dunlop against any loss which Fenner Dunlop or any of its Related Bodies Corporate suffer as a result of any third party bringing an action in respect of such circumstances.