

Terms of Purchase

VERSION DATE 18.12.2015

SIA ABRASIVES AUSTRALIA PTY LTD ABN 16 005 616 302
of 958 Stud Road, Rowville, Victoria 3178

(referred to as the "Company")



1. General

- 1.1 These terms and conditions of Purchase (**Terms**) apply to the supply of goods or services to the Company by the supplier (**Supplier**).
- 1.2 Variations to these Terms, or other terms offered by the Supplier and contained in any quotation or invoice or other document issued by the Supplier which differ from these Terms, are only incorporated into any contract for the supply of goods or services to the Company if accepted by the Company in writing. Acceptance of goods or services or payment for them by the Company will not be deemed acceptance of any such additional or varied terms issued by the Supplier.

2. Quotations

All quotations and cost estimates provided by the Supplier are binding and may not be amended unless agreed in writing by the parties.

3. Ordering

- 3.1 Each order from the Company constitutes an offer by the Company to purchase goods or services from the Supplier subject to these Terms. An order from the Company may be constituted by a formal written purchase order or by a delivery schedule or call off (in respect of the period which is specified to be binding by the Company in, or in relation to, such delivery schedule or call off) (**Order**). If there is any inconsistency between any express term contained in the Order and these Terms, the terms of the Order prevail.
- 3.2 The Supplier is deemed to accept the Company's Order placed subject to these Terms if the Supplier does not refuse or reject the Order in writing within 5 days of the date stipulated on the Order, or if the Supplier performs any part of the Order before that time.
- 3.3 Without liability, the Company may vary or cancel all or any part of an Order by giving notice in writing to the Supplier at any time prior to delivery. The Company will endeavour to minimise the extent of any cancellation (but without liability for any failure).
- 3.4 All Orders and variations to Orders must be in writing. Where it is agreed that the Company may place Orders by electronic data interchange (**EDI**), EDI Orders (and variations thereto) shall conform to agreed EDI procedures. Unless otherwise agreed in writing, the Company's EDI Trading Terms (Purchase) located at [sia AU&NZ Terms of Purchase](#) will apply.
- 3.5 The Supplier acknowledges and agrees that the Company has not made any representations or warranties that the Company will purchase a minimum amount of goods or services at any time from the Supplier or that the Company will exclusively purchase the goods or services from the Supplier.

4. Prices Applicable to Order

Unless otherwise specified in the Order or agreed by the parties in writing (for example, pursuant to a scheduling agreement), prices are:

- (1) as stated on the Order;
- (2) (in the case of domestic deliveries) "Delivered At Place" (DAP, as defined in Incoterms 2010) or (in the case of international deliveries) "Delivered Duty Paid" (DDP, as defined in Incoterms 2010) to the named place of destination;
- (3) exclusive of goods and services tax (**GST**);
- (4) inclusive of all packaging and packing costs; and
- (5) inclusive of any other applicable taxes, duties, levies, charges and costs.

5. Delivery and Delivery Requirements

- 5.1 The Supplier must deliver the goods or services at the time and in the quantities and manner specified in the Order.
- 5.2 Unless specified in the Order or agreed by the parties in writing, delivery occurs in accordance with the Incoterms 2010 provisions for "Delivered At Place" (DAP) (for domestic deliveries) or "Delivered Duty Paid" (DDP) (in the case of international deliveries) to the named place of destination.
- 5.3 If the Supplier anticipates being unable to comply with delivery dates or deadlines, or to supply agreed quantities or quality of goods or services, whether due to circumstances beyond the Supplier's control or for any other reason, the Supplier must immediately notify the Company's ordering department giving full details. The Supplier acknowledges and agrees that the delivery of goods or services by instalments is not permitted unless otherwise agreed by the Company. The Company may, at its discretion, extend the delivery date, agree to delivery by instalments or cancel the Order.
- 5.4 Notwithstanding the preceding clause, time is of the essence for all of the Supplier's obligations under these Terms.
- 5.5 Without prejudice to the Company's rights under clause 3.3, if the Supplier fails to effect delivery of all or part of the goods or services the subject of the Order by the due date for delivery for any reason (other than due to a Force Majeure Event under clause 18), the Company may, on giving written notice and without affecting the Company's other rights:

- (1) cancel the Order;

- (2) obtain replacement goods or services from a third party; and/or
- (3) claim reimbursement of additional costs arising from the Supplier's failure to comply with the delivery instructions and damages for breach of contract (including any liability, loss, damage or cost incurred by the Company as a consequence of stoppage of any of the Company's factory operations or the factory operations of the Company's customers).

- 5.6 The Supplier must ensure that the goods are packed, labelled, marked and loaded in accordance with the Order and any other instructions provided by the Company, or are otherwise suitably packed and handled, and comply with all requirements of the carrier to ensure no damage occurs to the goods whilst in transit.
- 5.7 Except where otherwise agreed, the Company is not obliged to return any packaging or packing materials for the goods.

6. Inspection and Acceptance of Goods and Services

- 6.1 The Company shall not be considered to have accepted goods and services prior to fully inspecting them on or after delivery for compliance with the Order and these Terms. The Company will seek to inspect delivered goods or services as soon as practicable in the normal course of business. If a more thorough inspection of goods or services is required on receipt as a result of unsatisfactory delivery (as determined by the Company), the cost of this is to be borne by the Supplier. Quantities, weights, dimensions, quality, conformity to specifications and fitness for purpose of the goods or services ascertained by the Company in the course of inspection will be final for the purposes of acceptance or rejection of the goods or services.
- 6.2 The Company's right to reject goods or services after inspection and to enforce its rights under clauses 11.3 or 17 is not waived by acceptance of delivery or supply prior to inspection. Neither will acceptance of defective or overdue goods or services be deemed to constitute a waiver of any of the Company's other rights under these Terms.

7. Risk and Title

- 7.1 Goods remain at the Supplier's risk until such time as risk transfers to the Company in accordance with the applicable Incoterm under clause 5.2, or in the event alternative delivery arrangements are agreed, until the Company's representative takes physical possession of the goods at the nominated place of delivery.
- 7.2 Title to goods or services passes on delivery of goods or services to the Company in accordance with clause 5.
- 7.3 The Supplier acknowledges that the sale of the goods and services to the Company is in the Supplier's ordinary course of business.

8. Conditions of Payment

- 8.1 A separate invoice must be sent to the Company at the address provided by the Company and must not be sent before delivery of the goods or services in accordance with clause 5.
- 8.2 Unless otherwise agreed or stated on the Order, payment of invoices will be made within 30 days (in the case of domestic deliveries) and 120 days (in the case of international deliveries) of the end of the month in which the invoice is issued to the Company. Payment of invoices does not affect the Company's right to dispute invoices or to make claims against the Supplier in respect of goods or services. Payment for goods or services does not constitute acceptance of such goods or services. Payment is contingent upon the Supplier providing the Company with a valid tax invoice and an adjustment note or debit note if any adjustment event occurs.
- 8.3 If the Company disputes any amount shown on an invoice, it will notify the Supplier of such dispute and pay the undisputed amount in accordance with clause 8.2.

9. GST

- 9.1 In clauses 8 and 9, the expressions '**supply**', '**taxable supply**', '**GST**', '**tax invoice**', '**adjustment event**', '**adjustment note**', '**debit note**', '**consideration**' and other expressions defined in A New Tax System (Goods and Services Tax) Act 1999 (**GST Act**) and the Goods and Services Tax Act 1985 (**NZ GST Act**) have the meanings given to those expressions in the GST Act and the NZ GST Act, as applicable.
- 9.2 For the purposes of the NZ GST Act, '**adjustment event**' means any one or more of the events listed in section 25(1)(a) to (c) of the NZ GST Act.
- 9.3 If by reason of the occurrence of an adjustment event or for any other reason whatsoever, the amount of GST paid or payable by the Supplier on any taxable supply the Supplier makes to the Company is less than the amount of GST identified on any tax invoice for that supply or otherwise as may be determined by the Company (**GST Overpayment**) the Supplier must pay to the Company by way of refund the amount of the GST Overpayment on the first to occur of:
 - (1) the Supplier becoming aware of the occurrence of a GST Overpayment; or
 - (2) the receipt by the Supplier of any refund of GST paid by the Supplier.

- 9.4 To the extent that any supply made by the Company to the Supplier is a taxable supply, the Supplier agrees that the Company can require that the consideration for that Supply be increased by an amount equal to the consideration for the supply multiplied by the prevailing GST rate.
- 10. Set Off**
The account between the Supplier and the Company is a running account. Where any amount is payable to the Supplier by the Company or a related body corporate (as that term is defined in section 9 of the Corporations Act 2001 (Cth)) (**Related Company**) of the Company under any agreement, the Company may set such amount off against any amount owed by the Supplier or a Related Company of the Supplier to the Company or any Related Company of the Company, and continue to do so until such time as the amount outstanding from the Supplier has been paid in full.
- 11. Warranty**
- 11.1 The Supplier warrants and represents that:
- (1) the Supplier has the right to sell the goods free from all encumbrances including any mortgage, charge (whether fixed or floating), pledge, lien or other security interests under the Personal Property Securities Act 2009 (Cth) (**PPSA**) or the Personal Property Securities Act 1999 (NZ) (**NZ PPSA**) as applicable, and ownership of the goods will transfer to the Company free of all such encumbrances and that the Company will enjoy quiet possession of the goods or services;
 - (2) the goods will be of acceptable quality and fit for any purpose which the Company makes known to the Supplier (whether expressly or impliedly) or for which the goods are commonly supplied or used;
 - (3) the goods will be free from defects in design, material and workmanship;
 - (4) the goods or services will comply and will be provided strictly in compliance with the Order and these Terms and any specifications (if any) provided by the Company from time to time prior to placing its Order, including any procedure or norm of the Company or any of its Related Companies;
 - (5) the Supplier will provide adequate information relating to the goods or services and to the use of the goods or of the results of the services;
 - (6) where the goods or services are supplied by reference to a sample, the goods or services will correspond with the sample;
 - (7) the goods or services will comply with all applicable laws in Australia and New Zealand (and any other agreed destination country in which the goods or services are intended to be used, on-supplied or, in the case of goods, incorporated or assembled into or onto other goods (**Other Goods**), as well as any relevant laws in the place of manufacture or place of performance of the services, including in relation to:
 - (a) their safety, manufacture, packaging, labelling, transportation and sale;
 - (b) the nature, substance, quality, weight and measurement of the goods; and
 - (c) the services;
 - (8) the operation of the Supplier's business complies with all laws, including laws relating to employment, the environment and health and safety, bribery and corruption;
 - (9) the Supplier's actions or omissions will not cause the Company to breach any applicable laws;
 - (10) the services will be provided with due care and skill and in a timely, professional manner and in accordance with the Company's reasonable directions; and
 - (11) the goods or services will not infringe the intellectual property rights of a third party.
- 11.2 The warranties in clauses 11.1(2), 11.1(3) and 11.1(4) will, unless otherwise agreed by the parties, apply for a period of 12 months (in the case of abrasive and related consumable products) and 24 months (in the case of other products):
- (1) where the Company is the end user, from the date of supply to the Company; or
 - (2) where the Company is not the end user but on-sells the goods or incorporates them into or assembles them onto other goods which it sells, from the date of delivery to the end user of the goods or the final product into or onto which the goods have been incorporated or assembled.
- 11.3 The Supplier warrants also that, in terms of shelf life, the goods shall meet the warranties in clauses 11.1(2), 11.1(3) and 11.1(4) for at least 6 months from the date of delivery to the Company (or such other period as may be specified in any applicable procedure of the Company (or any of its Related Companies) of which the Supplier has been notified in writing prior to placement of the Order).
- 11.4 In the case of goods re-supplied by the Company to end users, the Supplier warrants that the goods meet applicable consumer guarantees in Schedule 2 of the Competition and Consumer Act 2010 (Cth) and the corresponding provisions of the applicable state Fair Trading Acts (Australian Consumer Law or 'ACL') or under the Consumer Guarantees Act 1993 (NZ) (CGA) as applicable, and any warranty against defects provided with respect to the goods meets the ACL or CGA requirements as applicable.
- 11.5 If goods or services delivered to the Company are not in accordance with the Order or these Terms, the Company may, without affecting the Company's other rights, require from the Supplier, at the Company's option and the Supplier's cost:
- (1) replacement or re-supply of the goods or services and return of any defective goods;
 - (2) supply of equivalent goods or services and return of any defective goods;
 - (3) repair of the goods or payment of the cost of repairing the goods;
 - (4) payment of the cost incurred by the Company replacing or acquiring equivalent goods or services;
 - (5) reduction of the purchase price; or
 - (6) recall of the goods and a refund of any part of the purchase price paid.
- 11.6 If Other Goods require repair or replacement as a result of the goods being defective the Company may, in addition to its rights above, require the Supplier to pay for the cost of replacement or repair of the Other Goods.
- 11.7 Where, in the Company's reasonable opinion, it is necessary to do so avoid imminent danger or excessive loss or damage, the Company may rectify deficiencies ascertained by it in the course of inspection of goods in accordance with clause 6 at the Supplier's expense.
- 12. Performance of Services on Site**
Persons, who perform services at the Company's sites pursuant to these Conditions, must comply with the Company's policies (as advised to the Supplier) and instructions given by the Company or its representatives. The Company's liability to the Supplier or the Supplier's Personnel (as defined in clause 13.1(1) for injury or death suffered in the course of performance of the services is limited to the extent this is directly caused by the Company's negligent act or omission. The Supplier indemnifies the Company against any liabilities, losses, costs or damage incurred by the Company, including as a result of claims by third parties, in connection with any adverse environmental event caused on site resulting from the Supplier's acts or omissions, including those of the Supplier's Personnel, in the performance of services.
- 13. Health, Safety and the Environment**
- 13.1 The Supplier shall comply with all relevant laws (including regulations, codes of practice and where relevant, Australian and New Zealand standards or other standards applicable in the place of manufacture of the goods or of performance of the services) which govern:
- (1) employment of employees and engagement of contractors and subcontractors, and persons working under other arrangements including but not limited to volunteers, interns and work experience students (each of which persons mentioned in this clause are referred to as **Personnel**);
 - (2) protection of the environment; and
 - (3) work health and safety.
- 13.2 The Supplier shall have in place adequate systems of work and policies to ensure that it meets its obligations in relation to the matters outlined in clauses 13.1(1) to (3) above.
- 14. Provision of Materials, Equipment and Data**
- 14.1 Materials, components, containers and special packaging provided by the Company to the Supplier (**Materials**) remain the Company's property (unless the Company agrees to sell the Materials to the Supplier separately, in which case this clause 14.1 will not apply), and may only be used in accordance with their intended purpose of supply to the Company in accordance with these Terms. Any surplus or scrap Materials must be returned to the Company without delay. Materials must not be incorporated into any goods manufactured by the Supplier or any third party unless the Company agrees in writing.
- 14.2 All tools, gauges, jigs and other equipment provided by the Company to the Supplier (**Equipment**) and drawings, models, samples, blueprints, specifications and other data provided by the Company to the Supplier (**Data**) remain the Company's property.
- 14.3 Unless otherwise agreed in writing with the Company, all Materials, Equipment and Data must be returned to the Company (together with all copies) within 12 months of the date the Materials, Equipment or Data is provided to the Supplier or the cancellation of the Order pursuant to which the Materials, Equipment or Data was provided to the Supplier. The Supplier must not provide any Materials, Equipment or Data (or copies of Materials, Equipment or Data) or any products comprising the Materials or Equipment and Data to a third party without the Company's prior written consent.
- 14.4 All Materials and Equipment and Data must be kept secure, maintained and kept in good working order and condition. The Supplier agrees to replace any Materials and Equipment and Data that are damaged, lost, rendered unusable or destroyed without cost to the Company.
- 14.5 The Supplier must ensure that the Supplier and its Personnel do not copy, reverse engineer, destroy, encumber, misuse, part with possession of or modify any Materials, Equipment or Data.
- 14.6 The Company may at any time inspect at the Supplier's premises: (a) the Materials, Equipment or Data; (b) the goods being supplied to the Company (or components of the goods); and/or (c) the processes of manufacture and packing, labelling or storage of such goods. If the Supplier fails to return any Materials, Equipment or Data when due, the Company may, without notice, enter any premises where it suspects the Materials, Equipment or Data may be located and remove the Materials, Equipment or Data, or any goods that are the Company's property, without committing a trespass, even though they may have been attached to other goods or land not the property of the Supplier, and for this purpose the Supplier irrevocably licenses the Company to enter such premises and also indemnifies the Company from and against all loss suffered or incurred by the Company as a result of exercising its rights under this clause. The Supplier must provide all reasonable assistance to the Company in such inspections and recovery.
- 15. Confidentiality**
- 15.1 The Supplier must ensure that the Supplier and its Personnel do not provide or disclose any Data or other information provided by the Company to the Supplier or these Terms (**Confidential Information**) unless:
- (1) the information is in the public domain (other than by reason of a breach of these Terms);

- (2) the disclosure is approved by the Company in writing; or
(3) the disclosure is required by law.
- 15.2 Confidential Information may only be disclosed to and used by the Supplier's Personnel who have a need to know (and only to the extent that each has the need to know) for the purpose of the Supplier fulfilling the Supplier's obligations under these Terms. The Supplier agrees to maintain adequate security measures to safeguard any Confidential Information from access or use by any unauthorised person. The Supplier must, on becoming aware of any breach of confidentiality, immediately inform the Company, investigate the breach and report to the Company as to the outcome of the investigation.
- 15.3 The Supplier agrees that the Company may use and/or disclose information provided by the Supplier to register any security interest granted under these Terms on public registers including the personal property securities register in any relevant country. This may include disclosure of information of the Supplier that is not publicly available (including the existence of or contents of these Terms). Such disclosure is authorised to the extent necessary in connection with an exercise of rights under these Terms or a transfer or other dealing with rights or obligations under these Terms, or to officers, employees, agents, contractors, legal and other advisors and auditors of the Company, or in accordance with the consent of the Supplier (not to be unreasonably withheld) or as required by any law (other than section 275(1) of the PPSA unless section 275(7) of the PPSA applies) or as required by any stock exchange or rating agency.
- 16. Intellectual Property**
- 16.1 Where the Supplier accepts an offer or Order from the Company for the development by the Supplier of goods or of other work product through the performance of services, the Supplier agrees to and hereby assigns to the Company, or agrees to procure the assignment to the Company, all rights to or interests in any intellectual property developed by the Supplier, the Supplier's Personnel in the course of developing the goods or providing the services, effective on creation. If requested by the Company, the Supplier shall do all things reasonably necessary to assist the Company, at the Company's cost, to obtain the relevant patent, copyright or other intellectual property rights in the Company's name, anywhere in the world.
- 16.2 Any intellectual property existing in or in relation to any Equipment and Data remains the Company's sole property.
- 16.3 The Supplier acknowledges that the Company owns or licenses a number of registered trade marks and other marks, brands and logos (**Trade Marks**). Goods which bear the Company's Trade Marks or produced pursuant to or with designs owned by or licensed to the Company or the Company's Materials, Equipment or Data must only be sold to the Company. Where goods have been rejected or not taken up by the Company, the Supplier must obtain the Company's written consent to sell such goods to a third party. If such consent is given, the Supplier must remove all references to the Company's Trade Marks from those goods before they are offered for sale.
- 16.4 The Supplier shall not use any Trade Mark or any other promotional material of the Company or its Related Companies without the Company's prior written consent.
- 16.5 The Supplier must comply with the Company's directions and policies in relation to the Trade Marks, as published at [sia AU&NZ Terms of Purchase](#) from time to time.
- 16.6 The Supplier shall not use, or apply to register, a trade mark, business name, company name or domain name which incorporates any Trade Marks, or any substantially identical or misleadingly similar words.
- 16.7 The Supplier shall not, and shall ensure that the Supplier's Personnel do not:
- (1) disparage the Company or any of the Company's Trade Marks, products or services; or
 - (2) do anything likely to damage the Company's reputation or any of the Company's Trade Marks, products or services.
- 17. Cancellation**
- 17.1 Without limitation to the Company's rights under clause 3.3, the Company may terminate, cancel or suspend an Order (with or without prior notice as the Company may determine in the Company's sole discretion) if:
- (1) the Supplier breaches or repudiates these Terms or that (or any other) Order including any warranty or representation;
 - (2) the Supplier fails to meet quality requirements so as to endanger the timely and proper performance of any Order;
 - (3) the Supplier defaults in paying any sums due to the Company under these Terms;
 - (4) as assessed by the Company in the Company's sole discretion, the Supplier's financial or other condition or progress in relation to an Order may endanger the timely and proper performance of any Order;
 - (5) the Supplier is an individual and becomes insolvent, bankrupt, commits any act of bankruptcy, compounds with or enters into any compromise or arrangement with its creditors or if a mortgagee takes possession of any of the Supplier's assets;
 - (6) the Supplier is a company and has a provisional liquidator, liquidator, receiver, receiver and manager, trustee for creditors or in bankruptcy, administrator or analogous person appointed to it or its property, or if a mortgagee takes possession of any of the Supplier's assets;
 - (7) if the Supplier or any of the Supplier's Personnel:
 - (a) are charged with any criminal offence in relation to bribery or corruption; or
 - (b) act in a manner which in the Company's reasonable opinion, brings the Company into disrepute; or
 - (c) act dishonestly, fraudulently or illegally; or
- (d) act in a manner that constitutes a contravention of any applicable law, regulation, code of practice or standard governing occupational health and safety or the environment which exists in Australia, New Zealand or other place of manufacture or place of performance of the services.
- 17.2 Upon termination or cancellation of any Order, the Supplier agrees to:
- (1) immediately cease all work on the Order. If the Company requests that the Supplier transfer to the Company title and deliver to the Company all or any finished, unfinished goods or materials purchased by the Supplier to complete the Order which cannot be used for other customers, the Company agrees to pay the Supplier for the finished goods delivered to the Company that comply with the Order, the reasonable pro rata price of unfinished goods and the cost of such materials; and
 - (2) if requested by the Company, fully co-operate in the transition of supply to a new supplier and promptly provide all Materials, Equipment and Data, as well as other information reasonably requested by the Company.
- 18. Force Majeure**
- Neither party is liable to the other for any failure to deliver or accept goods or services as a result of any acts of God, war, embargo, fire, flood or other natural disasters, industry or state wide industrial disputes, public disturbances, actions or inactions of public authorities or other circumstances provided that in any case that event is not a party's fault and is outside its control (**Force Majeure Event**). The Company may partially or completely withdraw an Order in accordance with clause 3.3 before delivery or make alternative arrangements for the supply of goods or services from a third party without liability to the Supplier.
- 19. Indemnity and Liability**
- 19.1 Without limitation to any other right the Company may have under these Terms, the Supplier agrees to indemnify the Company against all claims, suits, actions, demands, loss, costs, liabilities, expenses (including legal expenses on a full indemnity basis), judgments and awards (**Costs**) made against or incurred by the Company arising from a breach of warranty, representation or a term of these Terms or of any Order. In the case of defects or faults in goods supplied by the Supplier, this includes any costs or liabilities incurred by the Company for transport, carriage, labour costs, assembly and disassembly costs, costs of material and costs of incoming goods control.
- 19.2 The Company is not liable for any indirect, punitive or consequential expense, loss or damage, penalties, interest, loss of profits, revenue, savings, expectation or opportunity, lost production, product development and engineering costs, tooling, administrative costs or similar losses in connection with these Terms or an Order or claims for similar losses by the Supplier's Personnel, including as a result of negligence by the Company and Personnel.
- 20. Recall**
- 20.1 Without limitation to any other right the Company may have under these Terms, if any goods supplied by the Supplier fail to comply with the warranties in clause 11.1 and this necessitates a recall of any product incorporating the defective goods, whether such recall be made by the Company or any other party, the Supplier shall indemnify the Company against all Costs incurred directly or indirectly by the Company as a consequence of any such recall.
- 20.2 For the purpose of clause 20.1, Costs include any costs, damages or other monies paid or payable by the Company to any customer, end user or other party as a result of or in connection with such recall.
- 21. Export Control and Customs**
- 21.1 The Supplier shall comply with all applicable export control, customs and foreign trade regulations (**Foreign Trade Regulations**). The Supplier shall advise the Company in writing within two weeks of receipt of the Order - and in case of any changes without delay - of any information and data required by the Company to comply with all Foreign Trade Regulations in case of export and import as well as re-export, including without limitation, all applicable export list numbers, and details of country of origin of the goods and of the components thereof, including technology and software.
- 21.2 The Company's obligation to fulfil these Terms is subject to the proviso that the fulfilment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions.
- 22. Insurance**
- 22.1 The Supplier must take out and maintain an annual products liability policy of insurance containing no unusual exclusions and covering all warranties in respect of the goods under these Terms and fully indemnifying the Company against liability for and as a result of property damage, personal injury or death arising directly or indirectly out of goods manufactured, distributed and sold by the Supplier with an annual cover of not less than AUD\$20 million per occurrence and in the aggregate.
- 22.2 The Supplier must take out and maintain an annual public liability policy of insurance containing no unusual exclusions) and fully indemnifying the Company against liability for personal injury or death and property damage for not less than AUD \$20 million per occurrence.
- 22.3 Where the Supplier is not the manufacturer of the goods, the Supplier must also ensure that the manufacturer of the goods has the insurance cover set out in clause 22.1.
- 22.4 In the case of provision of professional advice or professional services, where required by the Company, the Supplier will take out and maintain professional indemnity insurance of no less than AUD\$5 million in the aggregate.
- 22.5 The Supplier is responsible for insuring goods against loss or damage until property in them has passed to the Company.
- 22.6 The Supplier will arrange insurance cover at full replacement value in

respect of loss or damage to the Materials, Equipment or Data provided to the Supplier, to the extent that insurance cover can reasonably be obtained.

- 22.7 The Supplier must produce within 30 days from the date of request and on an annual basis a certificate of insurance to the Company confirming the insurances referred to above are in force.

23. Financial Information

If the Supplier defaults or suspends payments or, in the reasonable view of the Company, has payment and liquidity problems, the Supplier agrees to promptly provide such reasonable financial information in relation to its business and operations as may be reasonably requested by the Company. The Company will keep confidential any non-public information provided to the Company pursuant to this clause and only use such information for the purpose of assessing the Supplier's ongoing ability to comply with these Terms or to enforce an Order.

24. Place of Jurisdiction, Applicable Law

- 24.1 These Terms are subject to the laws of Victoria, Australia and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria (and any court which may hear appeals from those courts).
- 24.2 Application of the Hague Convention Relating to a Uniform Law on the International Sale of Goods, the UN Convention on Contracts for the International Sale of Goods or other conventions relating to the laws applicable to the sale of goods is excluded.

25. General

- 25.1 The Supplier must not assign or sub-contract all or any of its rights or obligations under these Terms in whole or in part without the Company's prior written consent.
- 25.2 The Company does not waive its rights, powers and discretions under these Terms by failing to exercise its rights, only exercising part of its rights or delaying in the exercise of its rights.
- 25.3 Any indemnity referred to in these Terms is a continuing indemnity and is in addition to any statutory rights or remedies the Company may have or exercise against the Supplier.
- 25.4 Any provision of these Terms will be read down to the extent necessary to prevent that provision or these Terms being invalid, voidable or unenforceable in the circumstances.
- 25.5 The Supplier must do all things and execute all further documents necessary to give full effect to these Terms and promptly give the Company all assistance and information (including signing any documents) as the Company requests to ensure that the Company has a perfected first ranking security interest in all Materials, Equipment or Data supplied by the Company to the Supplier (and the proceeds thereof).