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These Terms & Conditions relate to the following A.G. Coombs Group businesses

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A.G. Coombs Servicing Pty Ltd  
ACN 053 933 056 ABN 57 053 933 056  
2/435 Williamstown Road, Port Melbourne Victoria 3207 Australia

A.G. Coombs (NSW) Pty Ltd  
ACN 130 239 768 ABN 60 134 239 768  
16/4 Avenue of the Americas, Newington NSW 2127 Australia

A.G. Coombs (QLD) Pty Ltd  
ACN 134 239 777 ABN 62 134 239 777  
Level 1 North Tower,  
540 Wickham Street Fortitude Valley Queensland 4006 Australia

Walker Fire Protection Pty Ltd  
ACN 006 028 673 ABN 21 006 028 673  
6/273 Williamstown Road, Port Melbourne Victoria 3207 Australia

Integrated Technical Management Pty Ltd  
ACN 105 075 858 ABN 96 105 075 858  
2/435 Williamstown Road, Port Melbourne Victoria 3207 Australia

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## 1. DEFINITIONS

In these Terms and Conditions:

**"A.G. Coombs"** means the A.G. Coombs company named in any Purchase Order and, where no company is identified on the Purchase Order, means A.G. Coombs Servicing Pty Limited ABN 57053 933 056.

**"Agreement"** means the Purchase Order, these Terms and Conditions, and any documents identified in the Purchase Order or these Terms and Conditions.

**"Building Code"** means the requirements under the *Code of Tendering and Performance of Building Work 2016* and the requirements of any code governing building by any State or Territory.

**"Business Day"** means a day that is not a Saturday or Sunday or a public holiday, bank holiday or special holiday in the place where the A.G. Coombs office issuing this order is located.

**"Claim"** means any entitlement, claim, action, proceeding, suit, cause of action, defence, set-off or demand under, arising out of, or in any way in connection with the Agreement, the supply of Goods or Services or either party's conduct under or before the Agreement, whether at law (including breach of contract) or in equity (including restitution and quantum meruit), by statute, in tort (including negligence) or otherwise, including any entitlement, claim, action, proceeding, liability, suit, cause of action, defence, set-off or demand for the payment of money (including damages), an adjustment to the Price, or delay, disruption, acceleration or other time-based claim.

**Corporations Act** means the Corporations Act 2001 (Cth).

**"Defective"** means Supplies (or any aspect of them) which are do not comply with all requirements of the Purchase Order or these terms or which are damaged, deficient, faulty, inadequate or incomplete.

**"Delivery Date"** means the date that the Supplier is required by A.G. Coombs to deliver the Goods or provide the Services, and which may be specified in the Delivery Schedule or a Purchase Order, whether it is a single date or delivery schedule provided by A.G. Coombs.

**"Delivery Schedule"** means a delivery schedule provided by A.G. Coombs or as agreed between the parties.

**"Goods"** means any goods, if any, described in the Purchase Order.

**"Heavy Vehicle"** has the meaning given in the Heavy Vehicle Law.

**"Heavy Vehicle Law"** means any laws, approvals, principles of law or equity established by decisions of Australian Courts or requirements of persons with obligations relating to Heavy Vehicles (including any which may be introduced after the date of this Agreement), including, as applicable, the Heavy Vehicle National Law 2012 (QLD), the Heavy Vehicle (Adoption of National Law) Act 2013 (NSW), and the Heavy Vehicle National Law Application Act 2013 (VIC).

**"Heavy Vehicle Requirements"** means any Heavy Vehicle Law and the requirements of industry standards, codes, practices and guidelines and any other provision of the Agreement relating to the operation of Heavy Vehicles.

**"Insolvency Event"** includes a situation where the Supplier becomes insolvent, commits an act of bankruptcy, enters into administration, appoints a liquidator, receiver, manager or controller, makes a statement or conducts itself in a manner from which it may reasonably be deduced that it is insolvent or is seeking to take advantage of the safe harbour against insolvent trading available under Division 3, Part 5.7B of the *Corporations Act 2001* (Cth), stops or suspends (or threatens to stop or suspend) payment, or anything analogous to these events.

**"Payment Legislation"** means, as applicable, the *Building and Construction Industry Security of Payment Act 1999* (NSW), *Building Industry Fairness (Security of Payment) Act 2017* (QLD) and *Building and Construction Industry Security of Payment Act 2002* (VIC).

**"Personnel"** means the employees, agents, contractors, suppliers and consultants of a party (excluding the other party).

**"Policies"** means all policies of A.G. Coombs which are applicable in connection with the Works, including any which are made available (publicly published or otherwise), including on A.G. Coombs's website or as notified to the Supplier from time to time.

**"Price"** means the price set out in the Purchase Order for the Supplies which is exclusive of GST but inclusive of all other costs and charges.

**"Purchase Order"** means any purchase order for the Supplies issued by A.G. Coombs to the Supplier from time to time containing, amongst other things, a description of the Supplies.

**"Proportionate Liability Legislation"** means, as applicable, Chapter 2, Part 2 of the *Civil Liability Act 2003* (QLD), Part 4 of the *Civil Liability Act 2002* (NSW) or Part IVAA of the *Wrongs Act 1958* (VIC).

**"Related Body Corporate"** has the meaning given in s 9 of the Corporations Act.

**"Services"** means any services, if any, specified in the Purchase Order.

**"Site"** means any place where the Supplies are to be performed which is not controlled by the Supplier.

**"Site Works"** means part of the Supplies which the Supplier is required to carry out at the Site.

**"Supplies"** means the Goods and/or Services to be supplied to A.G. Coombs by the Supplier.

**"Supplier"** means the party (including an individual, firm or corporate entity) named in the Purchase Order.

**"Specifications"** means specifications relating to Supplies, including, without limitation, the design, composition, manufacture, processing, production, testing, quality, performance, packaging, packing and supply of the Supplies.

**"Terms and Conditions"** means these terms and conditions.

**"Warranty Period"** means, unless another Warranty Period is stated in the Agreement or Purchase Order, the period of 12 months commencing on the date of delivery of Goods or 12 months from the date on which Services are completed, whichever is the later.

## 2. APPLICATION OF THESE TERMS AND CONDITIONS

2.1 This Agreement comprises the Purchase Order, these Terms and Conditions and the documents identified in the Purchase Order or Terms and Conditions. Where there is any conflict, ambiguity or discrepancy in the documents forming the Agreement, the Supplier shall allow for the highest quality or quantum of goods and materials or workmanship expressed in those documents. If this does not resolve the conflict, A.G. Coombs will direct the Supplier as to the interpretation and the Supplier must comply with the direction and will not be entitled to any Claim as a result of the direction.

2.2 Any terms and conditions provided by the Supplier (including as printed on consignment notes or other documents), are of no legal effect and will not constitute part of, or supersede, this Agreement (even if any representative of A.G. Coombs signs those terms and conditions or annexes the terms and conditions to this Purchase Order).

- 2.3 These Terms and Conditions, along with any Purchase Order, constitute the agreement between the Parties as at the date of this Agreement. Any special conditions in the Purchase Order or addendum are inconsistent with these Terms and Conditions in which case the special conditions will prevail.
- 2.4 Any amendment to the scope of the Supplies or the terms and conditions of any Purchase Order must be in writing and signed by an authorised representative of A.G. Coombs.
- 2.5 The Services cannot be subcontracted to a third party without the written approval of A.G. Coombs. A.G. Coombs reserves the right, in its absolute discretion, not to approve a subcontractor or sub-supplier proposed or appointed by the Supplier.
- 2.6 Despite any other provision of this Agreement, the Supplier shall not be entitled to any Claim (including for a variation) for the performance of incidental tasks or tasks that can be reasonably inferred as necessary to safely and effectively complete the Supply.
- 3. WARRANTIES**
- 3.1 The Supplier warrants to A.G. Coombs that:
- It has the skill and expertise to provide the Goods or Services;
  - Any individual employed, subcontracted by or otherwise engaged by the Supplier in respect of the Supplier will have all necessary licences, permits, qualifications, certificates or similar required to provide the Supplies;
  - The Services will be carried out:
    - With skill and expertise, in a proper and workmanlike manner and so as to be fit for any purpose reasonably known to the Supplier; and
    - Using materials which (unless expressly stated otherwise) comply with the requirements of this Agreement and are new, of merchantable quality and fit for the purpose for which they are used;
  - The Goods or Services will comply with all laws, regulations, licences, permits, approvals, Australian Standards, Building Codes and any other legal requirements;
  - In delivering the Goods or providing any Services it will comply with all laws, regulations, licences, permits, approvals, Australian Standards, Building Codes and any other legal requirements and will maintain adequate records of such compliance;
  - It has accepted and allowed for in the Price all risks relevant to providing the Goods or Services except as otherwise specifically provided for in this Agreement; and
  - It has thoroughly examined any document provided by A.G. Coombs and made its own enquiries so as to satisfy itself of the information contained in any such document.
- 3.2 The Supplier must perform its obligations in an expeditious and economical manner using the degree of skill, care, diligence, prudence and foresight that would be expected from a skilled and experienced supplier with adequate resources engaged in the activity.
- 3.3 The Supplier retains full responsibility for compliance with this Agreement notwithstanding any review or comment by A.G. Coombs on documents or designs prepared by the Supplier.
- 4. SITE WORKS**
- 4.1 The Supplier must make it itself aware of, and comply with, any conditions or requirements applicable to any Site Works including, without limitation, induction procedures, identity or security checks, access requirements, supervision procedures, use of equipment, handling of hazardous substances, isolation and operational requirements, sign in procedures or similar.
- 4.2 Despite any other provision of this Agreement, the Supplier shall not be entitled to any Claim (including for a variation) for any changes to the hours of work or the directions of A.G. Coombs on the availability of access to the Site, except to the extent that a direction of A.G. Coombs has a material impact on the Site Works, which impact could not reasonably have been anticipated by the Supplier prior to entry into the Agreement and the Supplier cannot otherwise avoid or mitigate the impact (including by reprogramming the Site Works).
- 4.3 The Supplier shall not be entitled to any additional time or cost by reason of any unexpected conditions of matters (including latent conditions) relating to the Site and shall have no other Claim, unless expressly stated to the contrary elsewhere in this Agreement.
- 4.4 The Supplier is required to ensure its employees, workers and contractors have completed the 'A.G. Coombs Rapid Induct induction' and uploaded appropriate licences and qualifications.
- 4.5 Where directed by A.G. Coombs, the Supplier must complete a Safe Work Method Statement (**SWMS**) or equivalent in respect of any Site Works. SWMS for site activities that are defined as High Risk Works under the relevant state OH&S Legislation must include elements detailed in the SWMS Checklist Form 3.0.2-05(F). A copy must be provided to A.G. Coombs prior to works proceeding.
- 4.6 Upon completion of any Site Works the Supplier must:
- Contact the A.G. Coombs Group National Customer Service Centre (**NCSC**) to confirm completion of the Site Works;
  - Lodge a service report with the NCSC within 48 hours of completion of the Site Works.
- 4.7 The Supplier shall to the reasonable satisfaction of A.G. Coombs and/or the owner or occupier of the Site regularly clean up and remove from the Site all rubbish and debris arising out of the Site Works. The Supplier may only locate bins or other receptacles on Site with the approval of the owner or occupier of the Site.
- 4.8 The Supplier will comply with any reasonable direction of the owner or occupier of the Site. If the Supplier fails to do so within a reasonable time after receiving the direction, the Supplier indemnifies A.G. Coombs for any reasonable costs incurred by it in complying with the direction.
- 4.9 All costs associated with complying with any requirements applicable to the Site are included in the Price.
- 5. DELIVERY**
- 5.1 The Supplier shall deliver Goods or Services:
- To the place or places nominated in the Purchase Order or as otherwise directed by A.G. Coombs;
  - On the Delivery Date and in accordance with the Delivery Schedule or otherwise as reasonably directed by A.G. Coombs.
- 5.2 Goods delivered must include a clearly visible delivery docket providing details of the Supplies and the Purchase Order number.
- 5.3 The Supplier must at its cost:
- Arrange suitable transport, including packing, for any Goods;
  - Notify A.G. Coombs of shipping, delivery and routing information upon dispatch of the Goods;
  - Store Goods if delivered prior to the dates required by the Delivery Schedule or Purchase Order;
  - Make suitable arrangements for hoisting, off-loading or otherwise removing the Goods from transport at the place or places nominated in the Purchase Order.
- 5.4 Goods delivered to a third party or goods delivered without acknowledgement of receipt are deemed not to have been delivered to or accepted by A.G. Coombs.
- 6. TIME FOR PERFORMANCE**
- 6.1 The Supplier shall comply with the Delivery Schedule or any Delivery Date. If there is no Delivery Date, the Supplier shall deliver the Supplies as soon as is reasonably practicable. Time is of the essence for delivery of the Supplies.

- 6.2 If the Supplier does not provide the Goods or Services by the Delivery Date, A.G. Coombs may:
- Set off against the Price any costs (including any liquidated damages) incurred by A.G. Coombs as a consequence of the Supplier's late supply;
  - Require the Supplier to expedite delivery by alternative forms or modes of transport;
  - Require the Supplier to deliver available Supplies in part;
  - Reduce the scope of Supplies to be delivered; and/or
  - Terminate the Agreement by written notice to the Supplier.
- 6.3 If A.G. Coombs reduces the scope of the Supplies A.G. Coombs shall have no liability to the Supplier for the Goods or Services it no longer requires, or, where it terminates the Agreement under the preceding clause, no liability whatsoever.
- 6.4 Immediately upon it becoming apparent that the Supplier will be delayed in delivering the Supplies, the Supplier shall advise A.G. Coombs in writing as to the cause and likely duration of the delay.
- 7. TITLE AND RISK**
- 7.1 Title in and ownership of any Goods passes to A.G. Coombs upon the earlier of payment of the Price or delivery of the Goods in accordance with this Agreement.
- 7.2 Risk in any Goods passes to A.G. Coombs when the Goods are delivered in accordance with the Purchase Order and accepted by A.G. Coombs.
- 7.3 The Supplier warrants it has a clear and unencumbered title to any Goods.
- 7.4 The Supplier indemnifies A.G. Coombs from any claim, liability, loss, damage or expense including legal costs on an indemnity basis from any third party claiming a proprietary interest in Goods or to remove or manage the interests of the Supplier or any third party on the Personal Property Securities Register.
- 8. PRICE**
- 8.1 The Price is a fixed price for the Goods or Services and includes, without limitation, all taxes, duties, imposts, delivery, packing, storage and insurance connected with the Goods or Services. The Price may only be adjusted in accordance with these Terms and Conditions.
- 8.2 A.G. Coombs must pay the Supplier the Price for the Goods or Services in accordance with these Terms and Conditions.
- 8.3 Without limiting A.G. Coombs's rights under the Agreement, A.G. Coombs may set off against and deduct from any monies due to the Supplier, any debt, costs, damages, loss or expense due to or claimed by A.G. Coombs from the Supplier or which is the subject of a bona fide Claim by A.G. Coombs against the Supplier (whether liquidated or otherwise) arising from or in connection with the Agreement or the supply of Goods and/or Services. Nothing in this Clause 8.3 shall affect the right of A.G. Coombs to recover from the Supplier the whole of such moneys or any balance that remains owing.
- 9. PAYMENT**
- 9.1 Subject to Clause 9.2, unless the Purchase Order expressly states otherwise, the Supplier may only claim payment for the Services on the date when the Services are complete.
- 9.2 If the Supplier is entitled, either by the Purchase Order or by law, to claim payment progressively the Supplier may only make a claim for payment on the 25th day of each month in which the Services are provided and on the date when all the Services are complete. Each of these dates is a reference date. Any progressive claim received on a date other than 25th of the month will be deemed to be the Supplier's claim made on the next occurring reference date. Any other claim for payment received prior to the date when all the Goods or Services have been delivered or supplied is invalid.
- 9.3 Any claim for payment must include:
- Details of the Supplies including details of any Purchase Order;
  - A copy of any SWMS or equivalent relevant to the Supplies;
  - A copy of the Service Report provided to the NCSC; and
  - A valid tax invoice identifying the Supplier's ABN.
- 9.4 A.G. Coombs will assess any claim for payment and may provide the Supplier with a schedule setting out any part of a claim which is disputed, within:
- If the Payment Legislation applies and the Site is in Queensland or New South Wales, 15 Business Days;
  - If the Payment Legislation applies and the Site is in Victoria, 10 Business Days; or
  - If (a) and (b) above do not apply, within 30 Business Days.
- 9.5 In assessing a claim for payment A.G. Coombs shall have regard to (without limitation):
- The Price;
  - The provisions of this agreement and any Purchase Order applicable to the Supplies.
- 9.6 A.G. Coombs will pay the assessed or claimed amount (as the case may be):
- In accordance with any time for payment specified in the Purchase Order;
  - If no time for payment is specified 45 days from the end of the month in which the claim is received; or
  - Within such lesser period as may be prescribed by law,
- 9.7 Any payment made by A.G. Coombs is on account only and does not constitute an acceptance by A.G. Coombs that the Supplies comply with the Agreement.
- 10. PAYMENT LEGISLATION**
- 10.1 The Supplier must promptly and without delay give A.G. Coombs a copy of any written communication of whatever nature in relation to any Payment Legislation (excluding any 'payment claims' or 'payment schedules' as defined under any Payment Legislation) which the Supplier receives from a secondary subcontractor.
- 10.2 If the Supplies are carried out in:
- Victoria, and the Supplier makes a payment claim to A.G. Coombs under the Payment Legislation and the Supplier applies for adjudication of the payment to be made, the authorised nominating authorities for the purposes of section 18(4) of that legislation are Resolution Institute, RICS Dispute Resolution Service and Rialto Adjudications Pty Ltd; or
  - New South Wales, and the Supplier makes a payment claim under the Payment Legislation and the Supplier applies for adjudication of the payment to be made under the Payment Legislation, the Supplier agrees that the nominating authority for the purposes of the Payment Legislation is the Resolution Institute.
- 10.3 Despite any other provision of the Agreement, A.G. Coombs may, in its absolute discretion, pay out of any moneys due or to become due to the Supplier any moneys owing by the Supplier to any secondary subcontractors or workers in relation to the Supplies and any payment under this clause shall be deemed to have been paid to the Supplier under the Agreement.
- 10.4 To the extent permitted by Payment Legislation, the Supplier indemnifies A.G. Coombs against any Claim, loss, expense or damage of any nature, including financial loss and lawyers' fees and expenses on an indemnity basis, suffered or incurred by A.G. Coombs arising out of:
- Direct payment by A.G. Coombs to a secondary subcontractor under Clause 10.3;
  - A suspension by the Supplier or a secondary subcontractor of work, which forms part of the Supplies, under the Payment Legislation; and
  - A failure by the Supplier to comply with Clause 10.



**11. QUALITY**

- 11.1 The Supplies must:
- (a) Comply with the Specifications (if any);
  - (b) Match the description in the Purchase Order (if any);
  - (c) Be new and fit for any purpose specified or capable of being reasonably inferred from the Agreement or the nature of the Goods or Services being supplied; and
  - (d) Comply with all laws regulations, licences, permits, approvals, Australian Standards, Building Codes and any other legal requirements.
- 11.2 If the Supplier gave A.G. Coombs a sample of the Goods or a demonstration of the Services, the Goods or Services must be of the same nature and quality as the sample or demonstration given.
- 11.3 When required by the Purchase Order, quality assurance documentation verifying that the Supplies have been made in accordance with AS/NZS ISO 9001 or any other quality standard must be submitted to A.G. Coombs with any Supplies.
- 11.4 Any Goods or Services not provided in accordance with a specified quality standard may be accepted by A.G. Coombs, in its sole discretion, providing the Supplier can provide satisfactory documentary evidence that the Supplies have been inspected at appropriate stages. A.G. Coombs is not obliged to accept any such Goods or Services.
- 11.5 Where any part of the Goods or Services are Defective A.G. Coombs may, in its sole discretion:
- (a) Require the Supplier to remove the Defective Supplies;
  - (b) Require the Supplier to resupply the Defective Supplies;
  - (c) Instruct a third party to supply the Defective Supplies;
  - (d) Provide the Defective Goods or Services itself.
- 11.6 A.G. Coombs will be entitled to recover all costs incurred or any loss suffered as a result of exercising its rights under the preceding clause. Any such costs or losses are immediately due and payable, and A.G. Coombs may set off any such amounts against the Price.

**12. TESTING**

- 12.1 The Supplier will carry out any tests required by the Agreement at its cost. Where testing by the Supplier is required the Goods or Services are not deemed to have been accepted by A.G. Coombs until the tests are complete and testing results demonstrating compliance are provided to A.G. Coombs in writing.
- 12.2 Otherwise, A.G. Coombs may at any time test Goods or Services supplied under this Agreement. A.G. Coombs will be responsible for the costs of any testing under this clause 12.2, unless the testing reveals that the Goods or Services are Defective, in which case the costs of such testing shall be a debt due from the Supplier to A.G. Coombs. A.G. Coombs may set off such costs against any future claim by the Supplier or payment due to the Supplier.

**13. WORKERS**

- 13.1 The Supplier must ensure that all workers engaged in connection with the Goods or Services receive all allowances and entitlements in any relevant award or workplace agreement. Any costs or expenses incurred by A.G. Coombs arising from any failure to so comply shall be a debt due from the Supplier to A.G. Coombs. A.G. Coombs may set off such costs against any future Claim by the Supplier or payment due to the Supplier.
- 13.2 The Supplier must comply with the requirements of the relevant licensing board, commission, authority or association including in respect to licensing, and payment of contributions including but not limited to building and construction industry long service leave, severance, superannuation, income protection insurance contributions or others as required.

**14. OCCUPATIONAL OR WORKPLACE HEALTH & SAFETY**

- 14.1 All Supplies are to be carried out in accordance with the

current legislation and codes of practice in respect of workplace or occupational health and safety in the State or Territory where the works are being executed or performed, including (as applicable) the *Work Health and Safety Act 2011* (NSW), *Occupational Health and Safety Act 2004* (VIC) or the *Work Health and Safety Act 2011* (QLD) (**OH&S Legislation**) as well as any Site specific requirements notified by A.G. Coombs. A.G. Coombs reserves the right to terminate this Agreement where Supplies are being performed contrary to acceptable industry safety standards.

14.2 The Supplier must:

- (a) Comply at all times with the OH&S Legislation;
- (b) Do all things necessary to ensure the Supplier's personnel and any subcontractor employed by it comply with all obligations under OH&S Legislation;
- (c) Not do or omit to do anything which would cause A.G. Coombs to breach its obligations under OH&S Legislation;
- (d) Comply with all occupational health and safety policies or procedures issued or communicated to the Supplier from time to time;
- (e) Immediately notify A.G. Coombs of any accident or injury occurring in connection with the Supplies.

14.3 To the extent permitted by law, the Supplier indemnifies A.G. Coombs from and against all Claims arising out of or in connection with any failure of the Supplier to comply with its obligations pursuant to this clause.

14.4 The Supplier shall carry out the works in a safe and satisfactory manner in compliance with all relevant laws, regulations, licences, permits, approvals, Australian Standards, Building Codes and any other legal requirements in connection with health and safety.

14.5 Where the Supplier is providing Services and A.G. Coombs does not have control of the place where the Services are to be carried out the Supplier accepts that it has management and control of those places where the Services are to be carried out during the period within which the Services are carried out.

14.6 The Supplier must complete any checklist provided by A.G. Coombs prior to commencement of any Services which checklist is to be updated as necessary and, in any event, no less than annually.

14.7 The Subcontractor is required to be approved under A.G. Coombs' Pre-Qualification System and maintain such approval for the duration of the works as notified by the Contractor to the Subcontractor from time to time). The Subcontractor is required to ensure its Personnel have completed the A.G. Coombs' Rapid Induct induction and uploaded appropriate licences and qualifications.

**15. DRAWINGS**

15.1 If certified drawings or other documents are required under the Agreement, the Supplier shall supply certified drawings or documents to A.G. Coombs within 14 days of receipt of the Purchase Order or such longer period set out in the Purchase Order.

15.2 A.G. Coombs is not required to check any documents or drawings provided for compliance with this Agreement.

15.3 A.G. Coombs may review such documents or drawings and may comment on the documents or drawings. The Supplier shall remain responsible for compliance with this Agreement notwithstanding any review, comment or acknowledgement by A.G. Coombs.

**16. WARRANTY PERIOD**

16.1 If, during the Warranty Period, any of the Goods are found to be Defective, A.G. Coombs may, or may by written notice require the Supplier to:

- (a) Return the Defective Goods to the Supplier at the Supplier's cost;
- (b) Reject the Defective Goods;
- (c) Repair, make good or re-perform the Defective Goods.

16.2 The Supplier must:

- (a) Comply with any notice given by A.G. Coombs under this clause within the time specified within the notice or where no time is specified within a reasonable time; and
- (b) Reimburse A.G. Coombs for any expenses incurred in repairing, re-performing or making good including labour cost (as the case may be) any Defective Goods.

16.3 The Supplier must assign the benefits of any warranties provided by manufacturers of the Supplies to A.G. Coombs or any third party at A.G. Coombs's request.

16.4 The foregoing warranties shall inure to the benefit of, and be enforceable by, A.G. Coombs, or any third party assignee.

**17. INDEMNITIES**

17.1 The Supplier must indemnify A.G. Coombs and its Personnel from and against all costs, expenses or damages from all Claims arising out of or in connection with:

- (a) Injury to or death of any person, including the Supplier's employees, agents, suppliers or subcontractors, except to the extent the claim for such injury or death arises solely as a result of the negligence of A.G. Coombs or a breach by A.G. Coombs of the Agreement;
- (b) Damage to or destruction of any property including property belonging to or under the possession or control of the Supplier, except to the extent the claim for such damage or destruction arises solely as a result of A.G. Coombs's negligence or breach by A.G. Coombs of the Agreement;
- (c) Alleged or actual infringement of any intellectual property or patents; and
- (d) Failure by the Supplier to comply with any legal or regulatory requirement and the payment of any taxes required at law or in accordance with this Agreement.

**18. INSURANCE**

18.1 The Supplier must obtain and maintain the following insurances:

- (a) Materials, plant and equipment insurance, including all constructional plant and equipment for not less than full replacement value;
- (b) Transit (all risk) insurance covering transit, loading and unloading of any Goods for not less than full replacement value;
- (c) Workers compensation and employer's liability insurance, covering all Claims and liabilities in respect of any statutory or common law liability for the death, injury or illness of or to any person employed by (or deemed to be employed by), the Supplier;
- (d) Public, third party risk, products liability and contract works insurance for an amount not less than \$20,000,000 for any one occurrence;
- (e) Insurances as specified by A.G. Coombs in the Purchase Order or, where not specified, in accordance with usual industry standards, and to the extent that A.G. Coombs is indemnified against any and all claims which may arise consequent upon completing the work contained in this order; and
- (f) Any other insurance which is required by law for the time being in force in the state of where the Goods or Services are to be provided.

18.2 The Supplier must provide details of its insurances. Failure to comply with this requirement may result in payments being withheld until satisfactory evidence of such insurance is provided. If evidence of the insurances is not provided, A.G. Coombs may obtain the insurances on behalf of the Supplier and recover the costs of the insurance from the Supplier.

**19. JURISDICTION**

19.1 The Purchase Order shall be governed by and construed with reference to the laws in the state where the Purchase Order was issued. The parties submit to the non-exclusive jurisdiction of the courts of that state.

**20. DISPUTE RESOLUTION**

20.1 If a dispute or difference arises between A.G. Coombs and the Supplier in respect of any fact, act, matter or thing arising out of or in any way connected with the Agreement and one party requires the dispute or difference to be resolved, then that party shall promptly give the other party a written notice giving details of the dispute.

20.2 Within 10 Business Days of a party receiving a notice under clause 20.1, A.G. Coombs and the Supplier and/or their delegates must meet and attempt to resolve the dispute in good faith.

20.3 If the dispute is not resolved within 10 Business Days of the meeting referred to in clause 20.2, and in any event within 25 Business Days of the notice referred to in clause 20.1, then either party may proceed to litigation.

**21. CANCELLATION/TERMINATION**

21.1 A.G. Coombs may cancel all or any part of the Supplies at any time or terminate this Agreement for any reason (and without any obligation to provide any reason), and at any time by giving notice to the Supplier.

21.2 If A.G. Coombs exercises its rights under Clause 21.1, A.G. Coombs will only be liable for Supplies performed to the date of termination and the costs of Goods not prematurely ordered by the Supplier, which cannot reasonably be returned or restocked, and which are delivered to A.G. Coombs, where the Supplier is not otherwise in breach of this Agreement or subject to an Insolvency Event, in the amount of:

- (a) For Goods which cannot reasonably be returned or restocked, the lesser of:
  - (i) The Supplier's actual price for raw materials, components, work in progress and any finished units on hand at the time of such cancellation that are attributable to the cancelled portion of the Purchase Order; or
  - (ii) The Price per finished unit, after giving effect to any discount A.G. Coombs would otherwise be entitled to, for the cancelled portion of the Purchase Order.
- (b) For cancellation of Services, the lesser of:
  - (i) The Supplier's actual cost of the services rendered prior to termination; or
  - (ii) The Price for the Services cancelled. If any hourly or other time-based rate for Services is specified in the Purchase Order, such rate will be used in determining the Supplier's actual costs. In no case shall A.G. Coombs be liable for the Supplier's lost profits as a result of such cancellation.

21.3 In no case shall A.G. Coombs be liable for the Supplier's lost profits as a result of cancellation or termination under Clause 21.1.

21.4 If A.G. Coombs terminates, or purports to terminate, under the Agreement or otherwise at law and it is subsequently held to be invalid, void or otherwise unenforceable, or the Supplier terminates this Agreement and the Supplier elects to treat the Agreement as at an end or the Supplier terminates this Agreement at common law, then A.G. Coombs will be deemed to have terminated for convenience under Clause 21.1 as at the same date and time as the original notice of termination.

21.5 Upon receipt of a cancellation or termination notice under Clause 21.1, the Supplier will, unless otherwise directed, cease work and follow A.G. Coombs's directions as to disposal of work in progress and finished goods.

21.6 The rights set out in this clause comprise the Supplier's sole entitlements upon cancellation of the Purchase Order or termination of the Agreement. The Supplier releases A.G. Coombs from any and all other Claims.

21.7 If the Supplier is subject to an Insolvency Event or in breach of this Agreement, A. G. Coombs may:

- (a) Terminate this Agreement; or

- (b) Take the whole or any part of the supply of the Goods or Services out of the hands of the Supplier and complete the supply (either itself or through another party) and all costs and damages arising from or in connection with such engagement will be a debt due and owing by the Supplier to A.G. Coombs,
- (c) and the Supplier shall be responsible for, and shall indemnify A. G. Coombs against, any damages, costs (including, without limitation, legal fees on a solicitor own client basis), losses and expenses incurred by A.G. Coombs as a result of the breach.

## 22. GOODS AND SERVICES TAXES (GST)

- 22.1 For the purposes of this Clause the following expressions shall have the following meanings:
- (a) GST - means any tax imposed on the supply of goods or services which is imposed or assessed under GST Legislation.
- (b) GST Legislation - means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and all related ancillary legislation which provides for a broad based consumption tax on the supply of Goods and Services which becomes operative in respect of the provisions of this Agreement.
- 22.2 If this Agreement or any supply under or in respect of this Agreement becomes subject to GST, and if the recipient of the consideration is liable to GST in relation to any supply under this Agreement, the parties agree that the amount payable for any supply under or in respect of this Agreement by any party shall be adjusted by the amount of the GST.
- 22.3 Each party agrees to do all things, including providing invoices or other documentation in such form and detail that may be necessary to enable or assist the other party/ies to claim or verify any input tax credit, set off, rebate or refund in relation to any GST payable under this Agreement or in respect of any supply under this Agreement.
- 22.4 As required by any applicable legislation, where identifiable cost savings are realised by virtue of the enactment of the GST Legislation, those cost savings will be reflected in the calculations of the consideration under this Agreement.

## 23. CONFIDENTIAL INFORMATION

- 23.1 Confidential Information is, and at all times will remain, the property of the disclosing party. The parties will:
- (a) Maintain the confidentiality of each other's Confidential Information and not disclose it to any third party, except as authorised by the original disclosing party in writing;
- (b) Restrict disclosure of, and access to, Confidential Information to Personnel who have a "need to know" in order for the party to perform its obligations or exercise its rights under this Agreement, and who are bound to maintain the confidentiality of the Confidential Information by terms of nondisclosure no less restrictive than those contained herein;
- (c) Handle Confidential Information with the same degree of care the receiving party applies to its own confidential information, but in no event, less than reasonable care;
- (d) Use Confidential Information only for the purpose of performing, and to the extent necessary, to fulfil their respective obligations under this Agreement; and
- (e) Promptly notify each other upon discovery of any unauthorized use, access, or disclosure of the Confidential Information, take reasonable steps to regain possession and protection of the Confidential Information, and prevent further unauthorized action or breach of this Agreement.
- (f) Safeguard any physical key, ID card or computer, network account that enables access to the Companies information. The Supplier may not facilitate another's illegal access to the Suppliers systems or compromise the integrity of the systems information by sharing passwords, or other access information or devices.

## 24. HIRE TOOLS AND EQUIPMENT

- 24.1 Where tools or equipment are to be provided on hire as part

of this Agreement such tools and equipment must be checked, tested and tagged to relevant standards by the Supplier prior to their use on Site.

- 24.2 Where A.G. Coombs reasonably believes that tools or equipment do not comply with relevant standards or there is a concern that the tools or equipment are unsuitable or do not meet relevant safety, quality or other standards the Supplier will remedy the non-compliance at no cost to A.G. Coombs.

## 25. Social Responsibility

- 25.1 A.G. Coombs has appointed the Supplier on the understanding that the Supplier shares A.G. Coombs's commitment to responsible procurement and corporate social responsibility in line with the Policies. The Supplier must comply with all Policies in supplying the Goods and/or Services, including those relating to responsible procurement, corporate social responsibility, diversity and inclusion, human rights, safety, health, fraud, bribery and corruption.
- 25.2 The Supplier must notify A.G. Coombs immediately in the event the Supplier becomes aware that the Supplier, any of its Personnel or any other person engaged by A.G. Coombs is, or is on reasonable suspicion likely to be, in breach of the Policies. The Supplier acknowledges and agrees it will cooperate with A.G. Coombs and permit A.G. Coombs or its nominee to investigate and audit compliance with the Policies, including providing full access to the Supplier's and Supplier's Personnel's records for such investigations and audits.
- 25.3 The Supplier also agrees to assist A.G. Coombs with any reasonable request of A.G. Coombs to facilitate, allow or improve A.G. Coombs's or the Supplier's compliance with any Policies, including providing additional undertakings, information or reporting in relation to the Policies (including the Indigenous Procurement Policy or any other social procurement obligations). The Supplier agrees to be bound by and implement any new requirements, as notified by A.G. Coombs from time to time in connection with the Policies.
- 25.4 The Supplier agrees that it has allowed for compliance with this clause 25 in the Price and will have no additional Claim for compliance with this clause 25 or the Policies.

## 26. Modern Slavery

- 26.1 Without limiting any other obligations under the Agreement, in performing its obligations under the Agreement, the Supplier must:
- (a) Comply with all applicable laws relating to modern slavery, including (if applicable) the *Modern Slavery Act 2018* (NSW), *Charter of Human Rights and Responsibilities Act 2006* (VIC), *Human Rights Act 2019* (QLD) and *Modern Slavery Act 2018* (Cth) (**Modern Slavery Law**);
- (b) Comply with any Policy relating to modern slavery or, if directed by A.G. Coombs, have and maintain throughout the term of this Agreement its own policies and procedures acceptable to A.G. Coombs to ensure its compliance (**Modern Slavery Policy**);
- (c) Not engage in any activity, practice or conduct that would constitute an offence under Division 270 or Division 271 of the Schedule to the *Criminal Code Act 1995* (Cth) if such activity, practice or conduct were carried out in Australia; and
- (d) include in its contracts with its direct Subcontractors and suppliers modern slavery provisions that are at least as onerous as those set out in this Clause 26.1 and ensure or require that each of its subcontractors and suppliers will comply with the Modern Slavery Policy and with all applicable Modern Slavery Law.
- 26.2 The Supplier represents and warrants:
- (a) The Supplier has completed A.G. Coombs's modern slavery due diligence questionnaire, and its responses are complete and accurate; and



- (b) Neither the Supplier nor any of its Personnel or other persons associated with it:
- (i) Has been convicted of any offence involving modern slavery; and
  - (ii) Having made reasonable enquiries, so far as it is aware, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with modern slavery.
- 26.3 The Supplier must implement due diligence Procedures for its Subcontractors and suppliers and other participants in its supply chains, to ensure that there is no modern slavery in its supply chains.
- 27. Personal Property Securities Act**
- 27.1 If A.G. Coombs determines a 'security interest' as defined in the Personal *Property Securities Act 2009* (Cth) (**PPSA**) (**Security Interest**) arises under this Agreement, then the Supplier must do anything requested by A.G. Coombs (at the Supplier's cost) including executing documents, to:
- (a) Ensure the Security Interest is registered, perfected and enforceable, including that through registration A.G. Coombs obtains the highest ranking priority possible for the Security Interest;
  - (b) Apply for, and obtain, any registration or provide notification in accordance with the PPSA; and
  - (c) Assist A.G. Coombs to exercise any right in connection with a Security Interest or the property the subject of the Security Interest.
- 27.2 The Supplier must promptly:
- (a) Notify A.G. Coombs if it is aware or becomes aware that a third party has or Claims a Security Interest over any of the Goods or Services; and
  - (b) Use its best endeavours to ensure that the third party discharges any Security Interest and removes any registration in respect of any such Security Interest.
- 28. Proportionate Liability Legislation**
- 28.1 The parties agree that the Proportionate Liability Legislation is excluded to the extent permitted by law in relation to all and any rights, obligations or liabilities of either party under the Agreement whether such rights, obligations or liabilities are sought to be enforced in contract (including under any indemnity), tort (including negligence), in equity, under statute or otherwise.
- 29. Heavy Vehicles**
- 29.1 The Supplier must ensure that all supply of Goods and Services is carried out in accordance with, and all Heavy Vehicles operated by the Supplier or Supplier's Personnel in connection with the supply of Goods or Services comply with, the Heavy Vehicle Requirements. The Supplier warrants to A.G. Coombs it has allowed for the same in developing its plans, programs and methodology for the supply of Goods and/or Services.
- 29.2 A.G. Coombs may at any time conduct its own audit of the Supplier's records for its Heavy Vehicles and compliance with Heavy Vehicle Requirements (including any safety management systems of the Supplier) and the Supplier must:
- (a) Co-operate fully with A.G. Coombs in connection with that audit (including by providing all necessary access or other information); and
  - (b) Immediately address, and ensure the Supplier's Personnel address, any issues identified by A.G. Coombs from their audit and notified to the Supplier.
- 29.3 A.G. Coombs may issue a direction at any time if it considers that the Supplier has not complied or may potentially not comply with the requirements in this Clause 29 and the Supplier must comply with such a direction. The Supplier shall have no Claim due to A.G. Coombs issuing, or failing to issue, any such direction.
- 29.4 The Supplier must immediately notify A.G. Coombs of:
- (a) Any breach or potential breach by the Supplier or any of the Supplier's Personnel of the Heavy Vehicle Requirements; or
- (b) Any notice or direction received by the Supplier or any of the Supplier's Personnel under or in connection with Heavy Vehicle Law (including by providing a copy of the notice or direction to A.G. Coombs).
- 30. Airport Requirements**
- 30.1 This Clause 30 applies to the extent that the supply of Goods or Services are to be carried out on or in the vicinity of an operational airport.
- 30.2 The Supplier acknowledges that the operating hours for the supply of Goods or Services are variable and subject to access conditions, and this has been taken into consideration in the Price.
- 30.3 The Supplier acknowledges and agrees that it must, and it must ensure its Personnel, at all times:
- 30.4 Procure, and comply with, all policies and plans in effect at the airport, including as notified by A.G. Coombs, the Principal or any other person, and including in relation to any access requirements and the procedure for obtaining, and policy for working landside and airside and holding, Aviation Security Identification Cards or Visitor Identification Cards;
- 30.5 Cooperate with any separate contractors, authorities or any other body which A.G. Coombs or the Principal identifies as a body with authority to regulate the supply of Goods or Services at the airport;
- 30.6 Comply with the International Civil Aviation Organisation's security measures, the *Aviation Transport Security Act 2004* (Cth), the *Aviation Transport Security Regulations 2005* (Cth) (**Airport Acts**) and all other applicable legislative requirements; and
- 30.7 Comply with all directions of any person nominated as the 'Airport Manager' by A.G. Coombs or the Principal, airport security personnel, and the Airport Building Controller (as defined in the Airport Acts).
- 30.8 The Supplier indemnifies A.G. Coombs for and against any Claims which arise out of, or in connection with, the Supplier's breach of this Clause 30.
- 31. Notification of Claims**
- 31.1 Without limiting any other provision of this Agreement, if the Supplier does not give to A.G. Coombs written notice of a Claim within the time specified in the Agreement or, if no time is specified, within 3 Business Days of the Supplier first becoming aware of the circumstances giving rise to the Claim or notice, A.G. Coombs shall not be liable in connection with the Claim or to any Claim arising from those circumstances and the Supplier shall be absolutely barred from proceeding with such Claim or any Claim arising from those circumstances.
- 32. Final payment claim**
- 32.1 Within 10 Business Days of the expiry of the last Warranty Period or, where there is no Warranty Period, of completion of the supply of Goods or Services, and the rectification of all defects to the satisfaction of A.G. Coombs, the Supplier shall give A.G. Coombs a written final payment claim endorsed 'Final Payment Claim', being a payment claim together with all of the claims whatsoever in connection with the subject matter of the Agreement and the Supplier shall not be entitled to any Claim in connection with the subject matter of the Agreement except as set out in the final certificate provided under Clause 34.1(a).
- 32.2 Within 10 Business Days of receipt of the final payment claim under Clause 34.1, or if no final payment claim is provided then within 10 Business Days from when the final payment claim was due under Clause 34.1, A.G. Coombs will issue to the Supplier a final certificate evidencing the moneys finally due and payable between the Supplier and A.G. Coombs on any account whatsoever in connection with the subject matter.
- 32.3 The final certificate provided under Clause 34.1(a) shall be conclusive evidence of accord and satisfaction, and in discharge of, A.G. Coombs's obligations in connection with the subject matter of the Agreement, except for fraud or dishonesty relating to the supply of Goods or Services.



**33. Assignment**

- 33.1 Neither party may assign its rights under this Agreement without the prior written consent of the other party which it may shall not be unreasonably withheld provided that the Subcontractor consents to the Contractor assigning its rights under this Agreement to a Related Body Corporate.

**34. Interpretation**

- 34.1 In this Agreement:

- (a) If any day on or by which a person must do something under this Agreement is not a Business Day, then the person must do it on or by the next Business Day;
- (b) In the construction and interpretation of this Agreement, no rule of construction or interpretation applies to A.G. Coombs's disadvantage or to the Supplier's advantage on the basis that A.G. Coombs prepared or caused this Agreement to be prepared on its behalf or because A.G. Coombs relies on a provision of this Agreement as a reason (if required) for any action or inaction on its part or to protect itself;
- (c) Wherever the words 'include', 'included' or 'including' are used in this Agreement, those words will be interpreted in all cases as if they were preceded by the further words 'but not limited to' or the appropriate grammatical derivative; and
- (d) If the Supplier is a consortium or made up of more than one person, a reference to the Supplier is a reference to both persons, an obligation of those persons is joint and several, and any reference to the Supplier is to each of those persons separately so that any promise, representation or warranty is given by each of them separately.

## Execution

EXECUTED as an agreement

**Supplier Execution** [Note: Strike through inapplicable execution clause]

If Supplier is a company with two directors or a director and company secretary:

Executed by .....

ACN..... on / /20 by:

In accordance with Section 127 of the *Corporations Act 2001* (Cth)

^ \_\_\_\_\_  
Director

^ \_\_\_\_\_  
Full name of Director

If the Supplier is a company with a sole director and secretary:

Executed by .....

ACN..... on / /20 by:

In accordance with Section 127 of the *Corporations Act 2001* (Cth)

^ \_\_\_\_\_  
Signature of witness

^ \_\_\_\_\_  
Name of witness (print)

If the Supplier is an individual:

Signed by .....

on / /20 in the presence of:

^ \_\_\_\_\_  
Signature of witness

^ \_\_\_\_\_  
Name of witness (print)

**A.G. Coombs Execution**

Executed by **INSERT BUSINESS NAME AND ABN**

on / /20 by its duly authorised officer in the presence of:

^ \_\_\_\_\_  
Signature of witness

^ \_\_\_\_\_  
Name of witness (print)

^ \_\_\_\_\_  
Director/Secretary

^ \_\_\_\_\_  
Full name of Director/Secretary

^ \_\_\_\_\_  
Signature of ..... who  
signs in the capacity of sole secretary and sole director

^ \_\_\_\_\_  
Signature of .....

^ \_\_\_\_\_  
Signature of Authorised Officer

^ \_\_\_\_\_  
Full Name of Authorised Officer

^ \_\_\_\_\_  
Office Held