

**SWIRE MLI PURCHASE ORDER TERMS AND CONDITIONS**
**1. Term**
**1.1. Commencement**

These Terms and Conditions commence on the date an Accepted Purchase Order is received by the Supplier and continue until the Products the subject of that Accepted Purchase Order are deemed to have been accepted by Swire MLI (or the Terms and Conditions are otherwise terminated in accordance with clause 25).

**2. Supply of Products**
**2.1. Agreement**

The Supplier agrees to supply to Swire MLI, and Swire MLI appoints the Supplier to supply to Swire MLI, the Products on the terms set out in the Accepted Purchase Order.

**2.2. No exclusivity**

- (a) The rights granted to the Supplier under these Terms and Conditions are non-exclusive and the Supplier acknowledges and agrees that nothing in these Terms and Conditions is intended to restrict Swire MLI's ability to procure some or all of the Products (or Products similar to the Products) from any other person.
- (b) There are no minimum purchasing requirements under these Terms and Conditions. Swire MLI does not give any warranties or make any representations about the quantity or value of Products to be acquired by Swire MLI under these Terms and Conditions.

**2.3. Provision of Products to Group companies**

Swire MLI holds the rights under these Terms and Conditions for each member of the Group that is not a party to these Terms and Conditions, but which submits a Purchase Order to the Supplier as agent of and trustee for such entities.

**3. Provision of Services in conjunction with Products**

If the Supplier is required to provide Services in conjunction with the supply of the Products under an Accepted Purchase Order, then:

- (a) the quantity, description of and any specifications for the Services (and subject to clause 3(b), the quality of the Services) will be as set out in the Purchase Order;
- (b) the Supplier warrants, and it is a condition of these Terms and Conditions, that:
  - (i) it possesses the necessary skills or technical knowledge to perform the Services set out in any Accepted Purchase Order;
  - (ii) the Services are reasonably fit for the purposes set out in any Accepted Purchase Order, or of which the Supplier is (or should reasonably be) aware;

- (iii) it will perform the Services

- (A) expeditiously and will comply with all applicable service levels and timing requirements set out in any Accepted Purchase Order, or of which the Supplier is (or should reasonably be) aware, or if no timeframes are set out in the Purchase Order, in a reasonable period of time;
- (B) with due care and skill, and at a level equivalent to industry best standards and practices;
- (C) in accordance with any reasonable policies and directions of Swire MLI of which the Supplier was notified before acceptance of the Purchase Order; and
- (D) in accordance with all applicable Laws;

- (c) it will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the Services; and
- (d) it has, or will have at the relevant time, the resources, capacity, expertise and ability in terms of equipment, software, know-how and Personnel to provide the Services as required by these Terms and Conditions.

**4. Subcontracts**
**4.1. Supplier may sub-contract**

The Supplier may engage or employ any person, sub-contractor or agent (**Sub-contractor**) to provide any of the Products under the Accepted Purchase Order with the prior written consent of Swire MLI (with such consent not to be unreasonably withheld or delayed).

**4.2. Supplier remains liable**

Where the Supplier engages a Sub contractor to deliver some or all of the Products in accordance with clause 4.1, the Supplier:

- (a) is not relieved of any of its liabilities or obligations under these Terms and Conditions; and
- (b) is liable to Swire MLI for the acts, defaults and omissions of the Sub-contractor, or any of the Sub-contractor's Personnel, as if they were the acts, defaults or omissions of the Supplier.

**5. Specifications**
**5.1. Details**

The quantity, quality and description of the Products supplied under an Accepted Purchase Order must comply with the details specified in:

- (a) the relevant Purchase Order;
- (b) any applicable plans, drawings, data, descriptions, samples or other specifications provided by Swire

MLI to, and approved in writing by, the Supplier (**Specifications**); and

- (c) any other specification or requirement of Swire MLI (or otherwise agreed to by the parties) from time to time.

## 5.2. Ownership of specifications

- (a) All Specifications (together with any Intellectual Property Rights in them) supplied by Swire MLI to the Supplier in connection with these Terms and Conditions and any Purchase Order:
- (i) are the exclusive property of Swire MLI; and
  - (ii) constitute Confidential Information of Swire MLI.
- (b) All Specifications (together with any Intellectual Property Rights in them) that are used by the Supplier in connection with the Accepted Purchase Order and were not supplied by Swire MLI to the Supplier:
- (i) are the exclusive property of the Supplier;
  - (ii) constitute Confidential Information of the Supplier; and
  - (iii) may be used by Swire MLI in accordance with the terms set out in clause 18.2.

## 6. Orders

### 6.1. Purchase Order

Swire MLI must order Products by completing a Purchase Order and forwarding it to the Supplier.

### 6.2. Form of Purchase Order

A Purchase Order from Swire MLI to the Supplier must be in writing and must specify:

- (a) the date the order is placed;
- (b) full details of the Product required and its required quantity;
- (c) the desired date for supply of the Products or period within which they are to be provided, which must not be less than 5 Business Days (unless Swire MLI has expressed the products or services are required in an urgent timeframe) after the date the Purchase Order is placed with the Supplier;
- (d) the details of the Location; and
- (e) any other relevant instruction(s) or information.

### 6.3. Acceptance of Purchase Orders

- (a) The Supplier is deemed to have accepted a Purchase Order if it does not reject the Purchase Order within 3 Business Days of its receipt.
- (b) Any acceptance of a Purchase Order must be for the whole supply set out in the Purchase Order. The Supplier may only partially accept a Purchase Order if permitted to do so by Swire MLI.

### 6.4. Unfilled orders

If the Supplier is, or expects to be, unable to satisfy a Purchase Order placed by Swire MLI, whether before or after the Supplier has accepted that Purchase Order:

- (a) the Supplier must immediately notify Swire MLI of that fact;
- (b) Swire MLI may, at its discretion, cancel the Purchase Order with immediate effect (and without liability for any costs associated with the Purchase Order); and
- (c) Swire MLI may then engage an alternative provider to provide the Products the subject of that Purchase Order.

### 6.5. Cancellation of Purchase Order

- (a) Subject to clauses 6.5(b), 7.4 and 11.1(a)(i), Swire MLI may, no later than 5 Business Days before the date on which the Products are to be supplied, cancel all or any part of a Purchase Order placed under these Terms and Conditions by giving written notice to the Supplier to that effect.
- (b) For any Purchase Order cancelled under this clause 6.5, Swire MLI must pay to the Supplier any actual costs incurred by the Supplier (in respect of raw materials, labour costs associated with the work undertaken in respect of the relevant Purchase Order before the date of cancellation and out of pocket third party costs) solely for the purposes of discharging its obligations under an Accepted Purchase Order (**Incurred Costs**), and only to the extent such Incurred Costs:
  - (i) cannot otherwise be used by the Supplier for the purposes of fulfilling any other order for any person; and
  - (ii) can be substantiated by the Supplier to the reasonable satisfaction of Swire MLI.

## 7. Supply of Products

### 7.1. Delivery

- (a) The Supplier must deliver the Products using the delivery method set out in the Accepted Purchase Order to the Location specified on the Accepted Purchase Order.
- (b) If Swire MLI directs the Supplier in writing to change the Delivery Date, Location or any other arrangements relating to the delivery of the Products, then the Supplier must use all reasonable efforts to comply with this direction, provided Swire MLI agrees to pay any additional costs in complying with this direction.
- (c) Unless Swire MLI otherwise specifies in the Accepted Purchase Order, the Supplier must deliver the full quantity of Products ordered in the Accepted Purchase Order in one delivery. If a delay is not advised and accepted prior to requested delivery, liquidated damages may be payable.

(d) If the quantity of Products delivered is greater than that set out in the relevant Accepted Purchase Order, Swire MLI may return to the Supplier, or demand in writing that the Supplier collect from Swire MLI, any excess quantities of the Products at the Supplier's sole risk and expense. The Supplier will bear the risk of any loss or damage to excess quantities of the Products from the time of any return or demand and must collect any excess quantities of the Products from Swire MLI as soon as possible after receiving Swire MLI's demand.

## 7.2. Acceptance

- (a) Swire MLI will not be deemed to have accepted any Products or Services until Swire MLI has had a reasonable time to inspect the Products after delivery and to inspect and test the results of any Services after performance so that it may determine whether it intends to reject the Products under clause 7.3.
- (b) Payment for the Products and any Services or the signing of delivery receipts before inspection does not constitute acceptance of the Products or the Services.
- (c) Swire MLI's inspection, testing or acceptance of some or all of the Products or Services does not in any way:
- (i) change or affect the Supplier's obligations under these Terms and Conditions; or
  - (ii) affect Swire MLI's rights to claim for any damage or loss Swire MLI may suffer because of the Supplier's breach of warranty or failure to fulfil any of the Supplier's other obligations under these Terms and Conditions.
- (d) If Swire MLI decides to accept some Products or some Services from the Supplier which do not comply with the terms of these Terms and Conditions, that decision does not bind Swire MLI to accept future deliveries of Products or the future performance of Services which do not comply with the terms of these Terms and Conditions.

## 7.3. Defective Products

- (a) Swire MLI may, by written notice to the Supplier, reject any Products which are, at the time of delivery, damaged or defective or which in Swire MLI's reasonable opinion fail to comply with the terms of the relevant Purchase Order or these Terms and Conditions.
- (b) Within 2 Business Days after receiving a notice under clause 7.3(a), the Supplier may give written notice objecting to any rejection of Products, in which case the matter must be resolved by expert determination under clause 27.3. If the Supplier does not give notice under this clause 7.3(b) within 2 Business Days, it will be deemed to have accepted the rejection.

- (c) Without limiting Swire MLI's other rights and remedies under these Terms and Conditions, if Products are rejected and the Supplier accepts the rejection of any Products, or an expert determines under clause 27.3 that the rejection complied with these Terms and Conditions, then at Swire MLI's option and request, the Supplier must:
- (i) refund to Swire MLI any payments made by Swire MLI in respect of any rejected Products and collect the rejected Products within a reasonable time. If the Supplier does not collect the rejected Products within a reasonable time, Swire MLI may return the rejected Products to the Supplier at the cost of the Supplier; or
  - (ii) make good free of charge any rejected Products.

## 7.4. Variations to Products

- (a) If Swire MLI requires a change to the Products or the Specifications (**Variation**), Swire MLI must provide the Supplier with a written request detailing the nature and scope of the Variation.
- (b) Within 3 Business Days after receiving a request for a Variation from Swire MLI under clause 7.4(a), the Supplier must provide Swire MLI with a quote to implement the Variation (**Variation Quote**), which must contain:
- (i) details of the Variation to be implemented by the Supplier;
  - (ii) any changes to the Price and other consequential changes as a result of the Variation; and
  - (iii) a timetable for implementing the Variation, together with an appropriate extension of time for the performance of any associated obligations under these Terms and Conditions or any Accepted Purchase Order.
- (c) Swire MLI must inform the Supplier in writing within 5 Business Days of receipt of a Variation Quote if it accepts the Variation Quote.
- (d) If Swire MLI accepts the Variation Quote, then the parties must promptly execute written amendments to:
- (i) any relevant Accepted Purchase Order according to that Variation Quote; and
  - (ii) these Terms and Conditions to reflect the terms of the Variation Quote.
- (e) If Swire MLI does not accept the Variation Quote, then:
- (i) subject to the cancellation of any Accepted Purchase Orders under clause 6.5, the parties must continue to perform their respective obligations under these Terms and Conditions

and all relevant Accepted Purchase Orders without any change; and

- (ii) Swire MLI may obtain its requirements for any Products affected by a Variation from a third party instead of the Supplier.

## 8. Product recalls

### 8.1. Product recall notice

- (a) The Supplier or Swire MLI (as the case requires) must notify the other party immediately in writing after becoming aware of any Products which:
  - (i) do not conform with the Specifications; or
  - (ii) are required to be recalled or withdrawn from the marketplace on the order or direction of any Government Agency because of a breach of the applicable standard or code issued by Standards Australia (or any applicable foreign or international standard or code), any other standard or code set out in the Accepted Purchase Order or the Law.
- (b) In the event of a recall or withdrawal of Products being required, Swire MLI may, by notice in writing to the Supplier, vary any Accepted Purchase Order so far as it relates to the relevant Products.

### 8.2. Recalls of Products by the Supplier

If the Supplier decides to recall a Product, the Supplier must:

- (a) immediately notify Swire MLI in writing of its decision;
- (b) take all reasonable steps to effect the recall; and
- (c) reimburse the reasonable costs of recall incurred by Swire MLI.

### 8.3. Product recall indemnities

To the extent that a recall:

- (a) results either from the Supplier having supplied Products which do not conform with the Specifications, or from any other breach of the warranties set out in clause 21.2; or
- (b) was requested by the Supplier under clause 8.2 in circumstances where the recall was not reasonably necessary or appropriate having regard to clause 8.1(a)(ii),

then, subject to clause 8.4, the Supplier must indemnify Swire MLI against, and hold it harmless from, all Liabilities (including any costs of that recall) incurred or suffered by Swire MLI and all Claims made against Swire MLI as a result.

### 8.4. Exceptions and mitigation

- (a) Any amount claimed by Swire MLI under an indemnity in clause 8.3 will be proportionately reduced to the extent that:
  - (i) the Supplier or any third party contributed to the loss through any default or negligence; or

- (ii) any loss suffered is recoverable under any insurance policy held by Swire MLI.

- (b) In carrying out the recall, the Supplier must:
  - (i) recall or withdraw the Products under the Law;
  - (ii) use its best efforts to conduct the recall or withdrawal in a cost-effective way so as to mitigate Swire MLI's loss; and
  - (iii) give Swire MLI reasonable written notice of any claim under clause 8.3 and sufficient opportunity to rectify any breach.

## 9. Price for Products

### 9.1. Price

- (a) Subject to clauses 9.2 and 16, Swire MLI must pay to the Supplier the price specified on the purchase order for all Products that are delivered to, and accepted (or taken to be accepted) by, Swire MLI.
- (b) Unless otherwise set out in an Accepted Purchase Order, the Price is inclusive of
  - (i) all costs relating to the packaging, packing, labelling, insurance, transportation and delivery of the Products; and
  - (ii) the cost of the Services (if any) to be provided with the Products and any items used or supplied in conjunction with the Products.

### 9.2. Price review

If the price on the purchase order is deemed incorrect, the Supplier has 2 Business days to advise a price review. If there is no price review within 2 Business days of the order being received the price on the purchase order will be deemed correct.

## 10. Invoicing and payment

### 10.1. Invoicing

- (a) For any given Accepted Purchase Order, the Supplier must provide to Swire MLI on delivery of the relevant Accepted Purchase Order, an invoice for the price of those Products (**Invoice**).
- (b) Each Invoice must be in a form and substance that will constitute a tax invoice (as defined in the GST Act).
- (c) Each Invoice must be accompanied by all records reasonably requested by Swire MLI to enable Swire MLI to calculate or verify the amount of the Invoice.

### 10.2. Payment

Swire MLI must pay the Supplier the amount set out in each Invoice within 30 days of the end of the month in which the relevant Invoice was issued to Swire MLI by the Supplier.

### 10.3. Disputes

If Swire MLI in good faith disputes whether the whole or part of an Invoice submitted by the Supplier is payable:

- (a) Swire MLI must pay the undisputed amount of the Invoice by the due date for payment;
- (b) Swire MLI must give written notice to the Supplier within 10 Business Days after receiving the Invoice, of the amount disputed and reasons for the dispute;
- (c) if the parties are unable to resolve any dispute between them regarding the amount invoiced within 5 Business Days of the Supplier receiving Swire MLI's notice under clause 10.3(b), they must (at either party's request) invoke the dispute resolution process in clause 27;
- (d) the parties must comply with all other obligations under these Terms and Conditions until the dispute is resolved; and
- (e) if it is agreed or determined that Swire MLI owes the Supplier more than the amount paid under clause 10.3(a), then it must pay the additional amount to the Supplier within a further 5 Business Days of the date on which that agreement or determination is made.

#### 10.4. Permitted set-off

Swire MLI may set off any payment it owes to the Supplier against any amount owed to Swire MLI by the Supplier (including under any indemnity).

### 11. Supplier's general obligations

#### 11.1. Obligations

The Supplier must:

- (a) if it becomes aware of any matter which may change the nature, scope or timing of delivery of any Products:
  - (i) provide Swire MLI with reasonable written notice in relation to the change (in which case Swire MLI may cancel the relevant Accepted Purchase Order in accordance with clause 6.5);
  - (ii) at its expense apply for and maintain any and all Authorisations required by Law in order for the Supplier to comply with its obligations under these Terms and Conditions; and
- (b) supply, at its own expense, all labour, plant, equipment, tools, appliances or other property and items required to fulfil its obligations under these Terms and Conditions.

#### 11.2. Supplier's Representative

- (a) The Supplier may appoint an employee, or officer of the Supplier (or any employee or officer of a Related Body Corporate of the Supplier) as its representative (**Supplier's Representative**).
- (b) The Supplier's Representative as at the date of the Accepted Purchase Order is the person notified by the Supplier to Swire MLI in that Accepted Purchase Order.
- (c) The Supplier's Representative is responsible for the:

- (i) day to day performance of the Supplier's obligations under the Agreement; and
  - (ii) supervision of any person employed or otherwise engaged by the Supplier to perform the Supplier's obligations under the Agreement.
- (d) The Supplier's Representative must be available for contact by Swire MLI during standard business hours on any given Business Day.
  - (e) Any direction, instruction, notice, determination, approval or other communication made or given by the Supplier's Representative is deemed as given by the Supplier.

### 12. Swire MLI's general obligations

- (a) Swire MLI must:
  - (i) endeavour to provide the Supplier with all instructions, documentation and technical information (**Instructions**) that Swire MLI considers necessary (acting reasonably and in good faith) for the Supplier to supply any Products; and
  - (ii) co-operate fully with the Supplier and its Personnel and provide adequate facilities on the Location and all reasonable assistance to enable the Supplier to perform its obligations under these Terms and Conditions.
- (b) Notwithstanding clause 12(a), the Supplier acknowledges and agrees that Swire MLI will not be liable to the Supplier for any Claim arising out of or in any way in connection with:
  - (i) the provision of, or the purported reliance upon, or use of the Information; or
  - (ii) a failure by Swire MLI to provide any Information to the Supplier at any time.

### 13. Conflicts of interest

- (a) The Supplier warrants that neither it, nor any of its Related Entities, have any vested commercial, personal or other interests (beyond ordinary commercial interest) in connection with these Terms and Conditions (**Conflict**). If any Conflict is discovered or arises, the Supplier must immediately notify Swire MLI in writing providing details of the Conflict and any action that has, or will be, taken to cure the Conflict.
- (b) Upon being notified or becoming aware of a Conflict, an Event of Default is considered to have occurred in respect of the Supplier, and Swire MLI may:
  - (i) direct the Supplier to take any actions it prescribes (in good faith and acting reasonably) to cure the Conflict; or

- (ii) terminate this Accepted Purchase Order in accordance with clauses 25.2 and 25.3.

#### 14. No agency

The Supplier is not authorised or permitted to:

- (a) act as agent for Swire MLI in any capacity and for any purpose, and must not enter into any contract and/or provide any warranty or representation on behalf of Swire MLI; or
- (b) access or enter in any other storage and retrieval system or medium, in the Supplier's (and any of its Related Entities') possession or control (except with Swire MLI's prior written consent).

#### 15. Confidentiality

##### 15.1. Obligations of confidentiality

Each party (**Receiving Party**) receiving, possessing or otherwise acquiring Confidential Information of any other party (**Disclosing Party**) acknowledges that the Disclosing Party's Confidential Information is the property of, confidential to or a trade secret of the Disclosing Party. Subject to clause 15.2, the Receiving Party must:

- (a) keep the Disclosing Party's Confidential Information confidential and not directly or indirectly disclose, divulge or communicate that Confidential Information to, or otherwise place that Confidential Information at the disposal of, any other person without the prior written approval of the Disclosing Party;
- (b) take all reasonable steps to secure and keep secure all the Disclosing Party's Confidential Information coming into its possession or control; and
- (c) only use the Confidential Information of the Receiving Party to the extent necessary to perform its obligations under this Accepted Purchase Order.

##### 15.2. Exceptions

The obligations of confidentiality under clause 15.1 do not apply to any information that:

- (a) is or becomes generally available to the public (other than by reason of a breach of these Terms and Conditions); or
- (b) is required to be disclosed by any applicable Law;
- (c) if the Supplier is the Disclosing Party, is required to be provided to Swire MLI, and which Swire MLI is required to provide on to a third party, in order to comply with, or meet, its requirements under the MSA.

##### 15.3. Return or destruction of Confidential Information

On the termination of this Accepted Purchase Order for any reason, the Receiving Party must:

- (a) cease using all Confidential Information;
- (b) deliver all documents and other materials in its possession or control containing, recording or constituting the Confidential Information or, at the Receiving Party's option destroy, and certify in

writing to the Disclosing Party that it has destroyed, those documents and materials (other than any Confidential Information which is the board papers, executive papers or other executive committee minutes of the Receiving Party); and

- (c) for Confidential Information stored electronically (other than any Confidential Information which is the board papers, executive papers or other executive committee minutes of the Receiving Party), permanently delete the Confidential Information from all electronic media on which it is stored, so that it cannot be restored, and certify in writing to the Disclosing Party that it has done so,

#### 16. GST

##### 16.1. Interpretation

In this clause 16:

- (a) terms or expressions which have a defined meaning in the GST Act have the same meaning as in the GST Act; and
- (b) any reference to a party includes the representative member of a GST group of which that party is a member.

##### 16.2. Payment of GST

- (a) If GST is payable on any supply made under these Terms and Conditions, the recipient must pay to the supplier an additional amount (**GST Amount**) equal to the GST payable on that supply at the same time as the consideration for the supply is to be paid or provided.
- (b) Clause 16.2(a) does not apply to the extent that:
- (i) the consideration for the supply is stated to include GST; or
- (ii) GST on the supply is reverse charged and payable by the recipient.

##### 16.3. Tax invoice

The recipient need not pay the GST Amount until it has received a tax invoice or adjustment note, as the case may be.

##### 16.4. Adjustment events

If an adjustment event arises in relation to a supply made under this Accepted Purchase Order, the GST Amount must be adjusted to reflect that adjustment event. A corresponding payment must be made by the supplier to the recipient or by the recipient to the supplier, as the case may be.

##### 16.5. Calculation of amounts

If this Accepted Purchase Order requires an amount to be calculated by reference to another amount (**Reference Amount**) that will be:

- (a) received for a taxable supply; or
- (b) paid for a creditable acquisition,

then the Reference Amount must be reduced so as to exclude any part of the Reference Amount paid or received on account of GST, as the case may be.

#### 16.6. Reimbursement and indemnity payments

If this Accepted Purchase Order requires a party to reimburse or indemnify another party for a cost or expense, the amount of the cost or expense must be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified is entitled for that cost or expense.

#### 17. Privacy

In performing obligations under this Accepted Purchase Order, the parties must, and must ensure each of their respective employees, agents, sub-contractors or representatives:

- (a) comply with Privacy Laws;
- (b) not do, nor omit to do anything with Personal Information that will cause the other party or any of its related parties to breach any Privacy Law;
- (c) only use and disclose Personal Information for the purpose of performing obligations under this Accepted Purchase Order; and
- (d) not disclose Personal Information except:
  - (i) to their respective employees, agents, sub-contractors or representatives to the extent necessary to perform their obligations under this Accepted Purchase Order;
  - (ii) as required by Law, subject to (to the extent practicable) a party giving notice to the other party as soon as practicable if it becomes aware that such a disclosure may be required; or
  - (iii) with the other party's prior written consent.

#### 18. Intellectual Property Rights

##### 18.1. Ownership of the Supplier's IP Rights

Swire MLI acknowledges the Supplier's title to and interest in the Supplier's IP Rights.

##### 18.2. Licence to use Supplier's IP

The Supplier grants Swire MLI a non-exclusive, non-transferable, royalty free, perpetual licence to use, reproduce, copy and modify any Supplier's IP Rights to the extent necessary for its reasonable use and benefit of the Products provided in connection with this Accepted Purchase Order.

##### 18.3. Swire MLI Materials

The Swire MLI Materials remain the property of Swire MLI and the Supplier acknowledges that nothing in these Terms and Conditions will be construed as transferring or creating any proprietary right, title or interest in any of Swire MLI Materials (including in respect of all associated Intellectual Property Rights) in favour of the Supplier.

##### 18.4. Licence to use Swire MLI Materials

Swire MLI grants to the Supplier a non-exclusive, non-transferable, royalty free licence to use, reproduce, copy and modify any Intellectual Property Rights relating to the Swire MLI Materials solely and only to the extent necessary for the purposes of providing Products under this Accepted Purchase Order. The Supplier must not reproduce, use, or otherwise deal with the Swire MLI Materials, or allow any other person to do the same, for any other purposes.

##### 18.5. Third party Intellectual Property Rights

If the Supplier incorporates or uses third party Intellectual Property Rights as part of the delivering the Products, then it is the sole responsibility of the Supplier to ensure it has procured all necessary permission and/or licences from the relevant third party to use (and, if applicable, for Swire MLI to use) such third party Intellectual Property Rights and to sublicense those rights to Swire MLI to the extent necessary for Swire MLI to enjoy the rights and benefits under these Terms and Conditions.

#### 19. Title and Risk

##### 19.1. Title

Title and risk in the Products will pass to Swire MLI (free from Encumbrances) from the Supplier on delivery of the Products to the Location.

##### 19.2. Risk

The Products are at the Supplier's risk and in its custody, and the Supplier is fully responsible for the Products:

- (a) from the time that the Supplier accepts and receives the Products by itself or its sub-contractors or agents; and
- (b) until the Products have been surrendered by the Supplier to Swire MLI or such other person nominated by Swire MLI to take delivery of the Products.

#### 20. Insurance

- (a) The Supplier must obtain and maintain, with a reputable insurer, insurance against losses and damages which are the result of an act, fault or negligence of the Supplier and which relate to this Accepted Purchase Order, including:
  - (i) professional indemnity for not less than \$10,000,000 per claim;
  - (ii) public liability, personal injury, and property damage for not less than \$20,000,000 per claim; and
  - (iii) workers' compensation and any other applicable insurances relating to the provision of the Services as required by Law.

- (b) If requested, the Supplier must provide Swire MLI with a certificate of currency evidencing the insurances referred to in clause 20(a).

## 21. Representations and warranties

### 21.1. Representations and warranties

Each party represents and warrants that, as at the date of execution of this Accepted Purchase Order and on each day until performance of the relevant Accepted Purchase Order has been completed:

- (a) if it is a corporation, it is registered and validly existing under the laws of the jurisdiction in which it was incorporated;
- (b) it has full legal capacity and power to enter into this Agreement and to carry out the transactions that this Agreement contemplates;
- (c) all corporate action has been taken that is necessary or desirable to authorise its entry into this Agreement and its carrying out of the transactions that this Accepted Purchase Order contemplates;
- (d) it holds each Authorisation that is necessary or desirable to:
- (i) execute this Agreement and to carry out the transactions that this Accepted Purchase Order contemplates; and
  - (ii) ensure that this Agreement is legal, valid, binding and admissible in evidence, and it is complying with any conditions to which any of these Authorisations is subject;
- (e) these Terms and Conditions constitutes legal, valid and binding obligations, enforceable against it in accordance with its terms, subject to any necessary stamping or registration;
- (f) neither its execution of these Terms and Conditions, nor the carrying out by it of the transactions that this Accepted Purchase Order contemplates, does or will:
- (i) contravene any Law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
  - (ii) contravene any Authorisation;
  - (iii) contravene any undertaking or instrument binding on it or any of its property; or
  - (iv) contravene its constitution;
- (g) to its knowledge there are no actions, Claims, proceedings or investigations pending or threatened against it or by, against or before any person that may have a material effect on the subject matter of this Accepted Purchase Order;
- (h) it is not the subject of an Insolvency Event; and
- (i) it is not entering into this Accepted Purchase Order as trustee of any trust or settlement.

### 21.2. Supplier's warranties

The Supplier represents and warrants that:

- (a) all Products supplied on on the Accepted Purchase Order will, be covered under the Suppliers warranty period respective of the product. The warranty period will start the date the product is delivered to the location.
- (i) strictly comply with the relevant Specifications and the applicable Accepted Purchase Order;
  - (ii) be reasonably fit for any purpose that Swire MLI makes known to the Supplier or of which the Supplier is (or should be) aware;
  - (iii) be of acceptable quality under the Law and free from any defects;
  - (iv) not contain any foreign substance inconsistent with the relevant label or product specification or any material which has not been used, handled or stored under the Products manufacturer's guidelines or applicable industry best practice;
- (b) the benefit of any warranty or guarantee given to the Supplier by any manufacturer, importer or any Sub-contractor of all or any part of the Products will be held by the Supplier for the benefit of Swire MLI;
- (c) all Products will, at the time of delivery, be free of any Encumbrance;
- (d) none of the sale of the Products to Swire MLI, any provision of Services to Swire MLI, nor Swire MLI's use of the Products will infringe the Intellectual Property Rights of any person;
- (e) all Products will comply with the applicable standard or code issued by Standards Australia (or any applicable foreign or international standard or code) or any other standard or code set out in the Accepted Purchase Order; and
- (f) the Products (including all packaging) will, when delivered, comply with all applicable Laws.

### 21.3. Reliance on representations and warranties

Each party acknowledges that:

- (a) each other party has executed these Terms and Conditions and agreed to take part in the transactions contemplated by these Terms and Conditions in reliance on the representations and warranties that are made in this clause; and
- (b) subject to clause 21.3(a), it has exercised its independent skill and judgment and has carried out its own investigations in its decision to enter into these Terms and Conditions.

## 22. Force Majeure

### 22.1. Giving of notice

If a party to these Terms and Conditions is affected by a Force Majeure Event that party must as soon as



practicable give the other party written notice of that fact including:

- (a) reasonable particulars of the Force Majeure Event;
- (b) details of the obligations affected by it and the extent to which they are affected;
- (c) an estimate of its likely duration; and
- (d) the steps taken to rectify it.

### 22.2. Liability for force majeure

Subject to clause 22.3, if a Force Majeure Event occurs, the obligations under these Terms and Conditions of the party giving the notice are suspended, to the extent to which they are affected by the Force Majeure Event, for the duration of the Force Majeure Event.

### 22.3. Effort to overcome

A party who has given notice of a Force Majeure Event under clause 22.1 must:

- (a) use its reasonable endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as reasonably possible; and
- (b) keep the other party regularly informed as to the steps or actions being taken to achieve this.

Nothing in this clause 22.3 requires a party to settle any industrial dispute against its will.

### 22.4. Alternative arrangements

- (a) If a party fails to perform obligations because of a claimed Force Majeure Event, the other party may (but is not obliged to) make alternative arrangements for the performance of the obligation or obligations.
- (b) The party making the alternative arrangements:
  - (i) must notify the other party of the alternative arrangements; and
  - (ii) is not liable in any way to the other party in respect of the alternative arrangements.

### 22.5. Right of termination

If a Force Majeure Event continues for more than 90 consecutive days, any party to whom notice has been given under clause 22.1 may terminate this Agreement by giving reasonable notice to the other party.

## 23. Indemnity

### 23.1. Indemnity

Each party (**indemnifier**) indemnifies and must keep indemnified the other party (**indemnified**) against all Claims that may be brought against the indemnifier or which the indemnifier may pay, sustain or incur as a direct or indirect result of any breach or non-performance of these Terms and Conditions by the indemnifier. A party may enforce this right of indemnity at any time, including before it has incurred the liability, loss or costs.

### 23.2. Continuing security

The indemnity given under this clause 23 (**Indemnity**) is a continuing obligation that:

- (a) continues after the parties' other obligations under this Agreement terminate; and
- (b) is not discharged by any one payment.

## 24. Liability

### 24.1. Limitation of liability

Subject to this clause 24, a party (**First Party**) is not liable to the other party (**Second Party**) or to any other person for:

- (a) any loss or damage of any kind that is directly or indirectly caused by or results from any wrongful, willful or negligent act or omission of the Second Party or any of its Personnel; or
- (b) any Consequential Loss irrespective of whether:
  - (i) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or
  - (ii) the other person or any other person was previously notified of the possibility of the loss or damage.

### 24.2. Maximum liability

Subject to this clause 24, the maximum aggregate liability of a party for all proven losses, damages and Claims arising out of this Accepted Purchase Order, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the amount prescribed in the relevant Accepted Purchase Order.

### 24.3. Liability

Without limiting the Supplier's obligations, the Supplier acknowledges that it will be liable for, and will indemnify and keep Swire MLI indemnified, from and against any Claim or Liability that Swire MLI pays, suffers, incurs or is liable for in connection with:

- (a) any breach of any warranty or any of the other terms and conditions of this Accepted Purchase Order by the Supplier or its Personnel;
- (b) any damage to the physical property of Swire MLI caused by the Supplier or the Supplier's Personnel;
- (c) any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by:
  - (i) the Products or the performance of any Services by the Supplier or its Personnel; or
  - (ii) the entry onto, or the activities undertaken on and in, Swire MLI's premises by the Supplier or its Personnel;
- (d) any loss or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by the Supplier or its Personnel and used in relation to this Accepted Purchase Order;
- (e) any breach of confidentiality or privacy obligation by the Supplier or its Personnel; and

- (f) any negligence, misconduct or wilful, reckless, malicious or fraudulent acts or omissions by the Supplier or its Personnel.

#### 24.4. Exclusion of implied warranties

Any representation, warranty, condition, guarantee or undertaking that would be implied in this Accepted Purchase Order by legislation, common law, equity, trade, custom or usage is excluded to the fullest extent permitted by Law.

#### 24.5. Non-excludable rights implied by Law

Nothing in these Terms and Conditions excludes, restricts or modifies any consumer guarantee, right or remedy conferred on a party by the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* or any other applicable Law that cannot be excluded, restricted or modified by Terms and Conditions.

#### 24.6. Liability for breach of non-excludable rights

To the fullest extent permitted by Law, the liability of the Supplier for a breach of a non-excludable consumer guarantee referred to in clause 24.5 is limited, at the Supplier's option, to:

- (a) in the case of goods including the Products, any one or more of the following:
- (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of the goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the goods repaired; or
- (b) in the case of services including the Services:
- (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

### 25. Termination

#### 25.1. Termination without cause

A party may terminate an Accepted Purchase Order at any time and without cause by giving the other party written notice within a reasonable time period.

#### 25.2. Default notice

If an Event of Default, other than an Insolvency Event, occurs in relation to a party (**Defaulting Party**), the other party (**Non-defaulting Party**) may give a notice (**Default Notice**) to the Defaulting Party specifying the Event of Default and requiring the Relevant Party to remedy the default within the period that is the greater of 5 Business Days (or such longer period as set out in the Default Notice) after the Default Notice is given to the Defaulting Party.

#### 25.3. Termination notice

If a Defaulting Party:

- (c) receives a Default Notice and does not comply with the notice within the relevant period referred to in 25.2; or
- (d) is the subject of an Insolvency Event, then subject to any stay or restriction which applies because of section 415D, 434J, 440B or 451E of the Corporations Act, the Non-defaulting Party, without limiting its other rights and remedies, may terminate this Agreement by giving to the Defaulting Party notice with immediate effect.

#### 25.4. Termination for breach of MSA

Without limiting clauses 25.2 and 25.3, if the Supplier breaches clause 28 or Swire MLI otherwise believes (acting reasonably) that the Supplier is in breach of, (or reasonably likely to breach) the MSA, then Swire MLI may terminate this Agreement (and each Purchase Order under this Agreement) immediately by notice in writing to the Supplier.

### 26. Consequences of expiry or termination

- (a) If an Accepted Purchase Order expires or is terminated in accordance with clause 25 then:
- (i) Swire MLI must pay the Fees commensurate to the Products accepted by Swire MLI in writing and accrued up to the date of termination; or
  - (ii) if Swire MLI has paid the Supplier the Fees or any part of the Fees, the Supplier must refund a pro-rated amount of that amount paid less any amount directly connected with the Products already accepted by Swire MLI and accrued up to the date of termination.
- (b) On termination of an Accepted Purchase Order, the Supplier must hand over to Swire MLI all Swire MLI Materials used or produced by the Supplier, and any other property of Swire MLI, that are or ought to be in the Supplier's possession, custody or control including any relevant Intellectual Property Rights belonging to Swire MLI.
- (c) In addition to this clause 26, clauses 15 (Confidentiality), 16 (GST), 17 (Privacy), 18 (Intellectual Property Rights), 21 (Representations and warranties), 24 (Liability), 27 (Dispute resolution), 28 (General) and 30 (Definitions and interpretation) survive expiration or termination of these Terms and Conditions or an Accepted Purchase Order (including any completed Purchase Order).

### 27. Dispute resolution

#### 27.1. Delivering a Dispute Notice

If any dispute, controversy or Claim arises between the Supplier and Swire MLI arising out of, relating to or in connection with this Agreement, including any question regarding its existence, validity or termination (**Dispute**), either party may deliver to the other party a written

notice which sets out the nature of the Dispute and the relief or remedy that the party seeks (**Dispute Notice**).

### 27.2. Parties must negotiate

During the period of 10 Business Days after delivery of the Dispute Notice, or any longer period agreed in writing by the Supplier and Swire MLI (**Initial Period**), each of those parties must use its reasonable endeavours and act in good faith to resolve the Dispute by discussion and negotiation (and such discussion and negotiation must be between executives or other senior employees or the parties).

### 27.3. Referral to expert

- (a) If the Dispute is not resolved within the Initial Period, then the Dispute must be resolved by expert determination administered by the Australian Disputes Centre (**ADC**) in accordance with the ADC Rules for Expert Determination which are operating at the time the Dispute is referred to ADC (**Rules**).
- (b) The terms of the Rules are incorporated into this Agreement.

### 27.4. Other proceedings

No party may commence any judicial proceedings in relation to the Dispute unless those proceedings are commenced for the purpose of enforcing this clause 27 or to seek interlocutory relief.

## 28. Modern Slavery

The Supplier must:

- (a) on request by Swire MLI, and by no later than 3 months after each financial year in which the Supplier has supplied Products to Swire MLI on the terms of an Accepted Purchase Order, provide to Swire MLI a notice in writing setting out all information reasonably requested by Swire MLI in order to enable Swire MLI to comply with its Modern Slavery Reporting Requirements (if any) under the *Modern Slavery Act 2018 (Cth)* (**MSA**), together with any other obligations of Swire MLI under the MSA;
- (b) procure that each member of its supply chain provides to the Supplier all information reasonably required by the Supplier (and allows the provision of such information to Swire MLI) in order to enable the Supplier to comply with clause 28(a) (and Swire MLI to meet its reporting obligations under the MSA);
- (c) ensure at all times during which it is a supplier of Products to Swire MLI, it has appropriate policies in place to educate and train its personnel as to the requirements under the MSA, and carries out all such training as a reasonably prudent person would consider to be necessary to ensure its personnel are aware of, and can comply with, the terms of the MSA; and

- (d) not do, or omit to do, anything which, in the reasonable opinion of Swire MLI, could or is reasonably likely to cause Swire MLI to be in breach of any of its obligations under the MSA (including by failing to provide or procure the provision of all information necessary to enable Swire MLI to confirm in its Modern Slavery Reporting that its supply chain is compliant with the MSA).

## 29. General

### 29.1. Nature of obligations

- (a) Any provision in this Agreement which binds more than one person binds all of those persons jointly and each of them severally.
- (b) Each obligation imposed on a party by this Agreement in favour of another is a separate obligation.

### 29.2. Time of the essence

In this Agreement, time is of the essence unless otherwise stated.

### 29.3. Entire understanding

- (a) This Terms and Conditions, together with each Accepted Purchase Order contains the entire understanding between the parties concerning the subject matter of the Agreement and supersedes, terminates and replaces all prior agreements and communications between the parties.
- (b) Each party acknowledges that, except as expressly stated in these Terms and Conditions, that party has not relied on any representation, warranty or undertaking of any kind made by or on behalf of another party in relation to the subject matter of this Agreement.

### 29.4. No adverse construction

No part of these Terms and Conditions is to be construed to the disadvantage of a party because that party was responsible for its preparation.

### 29.5. Further assurances

A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Agreement.

### 29.6. No waiver

- (a) A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Agreement does not operate as a waiver of that power or right.
- (b) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Agreement.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

### 29.7. Remedies cumulative

Except as set out in this Agreement, the powers, rights and remedies under these Terms and Conditions are cumulative with and not exclusive of any powers, rights and remedies provided by Law independently of this Agreement.

#### 29.8. Severability

Any provision of this Agreement, which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) be severed from this Agreement in any other case, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

#### 29.9. Successors and assigns

This Agreement binds and benefits the parties and their respective successors and permitted assigns.

#### 29.10. Assignment

Either party can assign or otherwise transfer the benefit of this Agreement with the prior written consent of the other party. An assignment under this clause 29.10 is not effective until 30 days after the assigning party has given the other party prior written notice of such assignment.

#### 29.11. Consents and approvals

Where anything depends on the consent or approval of a party then, unless this Agreement provides otherwise, that consent or approval may be given conditionally or unconditionally or withheld, in the absolute discretion of that party (unless expressly otherwise stated).

#### 29.12. No variation

This Terms and Conditions cannot be amended or varied except in writing signed by the parties.

#### 29.13. Costs

Each party must pay its own legal costs of and incidental to the preparation and completion of this Agreement.

#### 29.14. Duty

- (a) Any duty (including related interest or penalties) payable in respect of this Accepted Purchase Order or any instrument created in connection with it must be paid by the Supplier.
- (b) The Supplier indemnifies Swire MLI against all liability relating to the duty, fines and penalties.

#### 29.15. Governing law and jurisdiction

- (a) This Agreement is governed by and must be construed in accordance with the Laws of the State of Victoria, Australia.
- (b) The parties submit to the exclusive jurisdiction of the courts of the State of Victoria and the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.
- (c) Each party waives any rights to:

- (i) object to the venue of any proceedings; or
- (ii) claim that the proceedings have been brought in an inconvenient forum or that the courts of another place are a more convenient forum,
- (d) if the proceedings have been brought in a court referred to in clause 29.15(b).

#### 29.16. Notices

Any notice or other communication to or by a party under this Agreement:

- (a) may be given by personal service, post or email;
- (b) must be in writing, legible and in English addressed (depending on the manner in which it is given) as shown in the relevant Accepted Purchase Order or to any other address last notified by the party to the sender by notice given in accordance with this clause;
- (c) must be signed:
  - (i) in the case of a corporation registered in Australia, by any authorised representative or by the appropriate office holders of that corporation under section 127 of the Corporations Act; or
  - (ii) in the case of a corporation registered outside of Australia, by a person duly authorised by the sender in accordance with the laws governing the place of registration of that corporation; and
- (d) is deemed to be given by the sender and received by the addressee:
  - (i) if delivered in person, when delivered to the addressee;
  - (ii) if posted, at 9.00am on the third Business Day after the date of posting to the addressee whether delivered or not; or
  - (iii) if sent by email, on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee notified for the purposes of this clause), but if the delivery or receipt is on a day which is not a Business Day or is after 5.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Business Day.

#### 29.17. Counterparts

If this Agreement consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document. A party may sign a counterpart by executing a signature page and electronically transmitting a copy of the signed page to each other party or their authorised representative.

#### 29.18. No merger

A term or condition of, or act done in connection with, this Agreement does not operate as a merger of any of the undertakings, warranties and indemnities in this Agreement or the rights or remedies of the parties under this Agreement which continue unchanged.

#### 29.19. Operation of indemnities

Unless these Terms and Conditions expressly provides otherwise:

- (a) each indemnity in these Terms and Conditions survives the expiry or termination of this Agreement; and
- (b) a party may recover a payment under an indemnity in this Agreement before it makes the payment in respect of which the indemnity is given.

#### 29.20. No right of set-off

Unless these Terms and Conditions expressly provides otherwise, a party has no right of set-off against a payment due to another party.

#### 29.21. Relationship of parties

The relationship between the Supplier and Swire MLI for all purposes of this Agreement is that of principal and independent contractor. This Agreement is to be construed in every respect to give effect to that relationship. Nothing in this Agreement may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

### 30. Definitions and interpretation

#### 30.1. Definitions

In this Agreement, unless the context requires otherwise;

**Accepted Purchase Order** means a Purchase Order that has been accepted by the Supplier under clause 6.3;

**Agreement** means this agreement including the background, the accepted purchase order; and any annexures;

**Authorisation** means:

- (a) an authorisation, consent, right, certificate, licence, permit, declaration, exemption, notarisisation or waiver, however described (including any renewal or partial renewal); and
- (b) any authorisation or consent regarded as given by a Government Agency where, in relation to something that can be prohibited or restricted by law if the Government Agency takes action within a specified period, that period expires without that action being taken;

**Business Day** means a day which is not a Saturday, Sunday, a public holiday or a bank holiday in the State of Victoria;

**Change of Control** means in relation to a body corporate, the occurrence of an event or circumstance where a person who is not presently able to do any of the following things becomes able to do one of the following

things (whether alone or together with any Associates (as defined in the Corporations Act) and directly or indirectly or through one or more intervening persons, companies or trusts):

- (a) control the composition of more than one half of the body's board of directors;
- (b) be in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the members of the body or its ultimate holding company; or
- (c) hold or have a beneficial interest in more than one half of the issued share capital of the body or its ultimate holding company;

**Claim** includes a claim, notice, demand, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost (including legal costs), expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving any party (whether or not a party to this Agreement) or otherwise;

**Confidential Information** means the terms and existence of this Agreement and all information belonging or relating to a party to this Agreement, whether oral, graphic, electronic, written or in any other form, that is:

- (a) or should reasonably be regarded as, confidential to the party to whom it belongs or relates; or
- (b) not generally available to the public at the time of disclosure other than by reason of a breach of this Agreement;

**Conflict** has the meaning given in clause 13;

**Consequential Loss** means any indirect, incidental, special or consequential loss or damage, pure economic loss damages and exemplary or punitive damages, loss or damage in relation to loss of use, loss of production, loss of revenue, loss of profits or anticipated profits, loss of business, loss of business opportunity, loss of contract, loss of reputation or opportunity, business interruptions of any nature, loss of data, data corruption rectification costs or loss or damage resulting from wasted management time;

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

**Dispute** has the meaning given in clause 26.1;

**Event of Default** means, in relation to a party, the occurrence of any one or more of the following events or circumstances:

- (a) the party fails to comply with any of its material obligations under these Terms and Conditions;
- (b) an Insolvency Event occurs in relation to the party;
- (c) a Change of Control occurs in relation to a party, other than with the consent of the other party (with such consent not to be unreasonably withheld or delayed);

- (d) in relation to the Supplier, it breaches any of its additional obligations prescribed in any Special Conditions (if any);
- (e) in relation to the Supplier, it becomes subject to a Conflict in accordance with clause 13;
- (f) a notice of deregistration of the party is given under sections 601AA(5) or 601AB(5) of the Corporations Act;
- (g) any representation, warranty or statement made or repeated by the party in or in connection with these Terms and Conditions is untrue or misleading in any material respect (including by omission) when so made or repeated;
- (h) the party becomes unable to perform all of its obligations and take all actions contemplated under these Terms and Conditions;
- (i) a material provision of these Terms and Conditions that purports to impose an obligation on the party is or becomes void, voidable, illegal or unenforceable or of limited effect (other than because of equitable principles or laws affecting creditor's rights generally); or
- (j) the party ceases or threatens to cease to carry on business or a substantial part of it;

**Fees** means the fees set out in the applicable Accepted Purchase Order;

**Force Majeure Event** means any act, event or cause, other than a lack of funds, which:

- (a) directly or indirectly results in a party being prevented from or delayed in performing any of its obligations under these Terms and Conditions; and
- (b) is beyond the reasonable control of that party;

and for the avoidance of doubt, does not include any such act, event or cause that is otherwise prescribed as a force majeure event under any agreement, arrangement or understanding involving the parties or which any party to this Agreement is otherwise a party to (other than this Agreement);

**Government Agency** means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute;

**Group** means any related body corporate of Swire MLI;

**GST** has the meaning given in the GST Act;

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

**Insolvency Event** means, in respect of a party, any one or more of the following events or circumstances:

- (a) its winding up, liquidation or provisional liquidation;
- (b) the appointment of an administrator under the Corporations Act;

- (c) the appointment of a controller (as defined in the Corporations Act) or analogous person to it or any of its property;
- (d) being deregistered as a company or other body corporate or otherwise dissolved;
- (e) being unable to pay any of its debts as and when they become due and payable or being deemed to be insolvent under any Law;
- (f) seeking protection from its creditors under any Law or entering into a compromise, moratorium, assignment, composition or arrangement with, or for the benefit of, any of its members or creditors;
- (g) an analogous event or circumstance to any listed above occurs in any jurisdiction;
- (h) suspending or threatening to suspend payment of its debts as and when they become due;
- (i) ceasing or threatening to cease to carry on business; or
- (j) taking any step or being the subject of any action that is preparatory to, or reasonably likely to result in, any of the above,

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by the other party;

**Intellectual Property Rights** means all present and future intellectual and industrial property rights in the Products conferred by Law and wherever existing, including:

- (a) patents, designs, copyright, rights in circuit layouts, plant breeder's rights, trademarks, know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- (b) any application or right to apply for registration of any of these rights;
- (c) any registration of any of those rights or any registration of any application referred to in paragraph (b); and
- (d) all renewals and extensions of these rights;

**Law** means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by-laws of the Commonwealth of Australia, or any State or Territory of the Commonwealth of Australia or a Government Agency; and
- (c) requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a Government Agency that have the force of law;

**Location** means the building, land or property at which the Products are to be delivered, as specified in the Accepted Purchase Order;

**MSA** has the meaning given in clause 28;

**Personal Information** has the same meaning given in the Privacy Laws;

**Personnel** means the employees, officers, agents and contractors of a person;

**Privacy Laws** means any applicable law, statute, regulation, ordinance, code, standard or requirement of any government, governmental or semi-governmental body which relates to privacy, and includes the *Privacy Act 1988 (Cth)* (including the "Australian Privacy Principles") and the *Spam Act 2003 (Cth)*;

**Products** means the "Products" set out in the relevant Accepted Purchase Order;

**Purchase Order** means an order for Products in the form referred to in clause 6.2 and includes any standard terms and conditions that may accompany the order;

**Related Body Corporate** has the meaning given to it in the Corporations Act;

**Related Entity** has the meaning given to it in the Corporations Act;

**Specifications** has the meaning given in clause 5.1(b);

**Sub-contractor** has the meaning given in clause 4.1;

**Supplier's IP Rights** means all Intellectual Property Rights in the processes and procedures used in the delivery of the Products (excluding any Intellectual Property Rights in any Swire MLI Materials); and

**Swire MLI Materials** means all instructions, documents and technical information (including plans, drawings, data, descriptions, samples or other specifications) provided by Swire MLI to the Supplier for the purposes of the Products being provided under this Agreement.

### 30.2. Interpretation

In this Agreement, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) the headings are used for convenience only and do not affect the interpretation of these Terms and Conditions;
- (d) other grammatical forms of defined words or expressions have corresponding meanings;
- (e) a reference to a document is to that document as amended, novated, supplemented, extended or restated from time to time;
- (f) a reference to a party is to a party to this Agreement and includes that party's executors, administrators, successors, permitted assigns and permitted substitutes;
- (g) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (h) "person" includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority, and any other body or entity whether incorporated or not;
- (i) "month" means calendar month and "year" means 12 consecutive months;
- (j) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (k) a reference to a thing includes a part of that thing;
- (l) a reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- (m) "include", "for example" and any similar expressions are not used, and must not be interpreted, as words of limitation;
- (n) a reference to a time of day is to that time in the Melbourne, Victoria;
- (o) money amounts are stated in Australian currency unless otherwise specified; and
- (p) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (defunct body), means the agency or body which performs most closely the functions of the defunct body