

THESE TERMS (**Terms**) apply to procurement of goods and services (**Items**) through a purchase order (**PO**) issued by Mutual Marketplace Pty Ltd ABN 35 615 297 820 (**MM**). The parties are MM and you the supplier (as identified in the PO) (the **Parties**). The Parties agree:

#### 1. FORMATION OF A CONTRACT

- 1.1 A PO issued by MM to You is an offer to engage You to supply the Items under these Terms.
- 1.2 Subject to clause 1.4, this Contract consists solely of the PO and these Terms. Unless otherwise agreed by the Parties, all previous negotiations and communications are superseded and any terms included with the Items are expressly excluded.
- 1.3 By accepting the PO, dispatching the Items and/or commence performance of the Items, You agree that You do so under this Contract.
- 1.4 Where a PO is issued for goods or services under an agreed master services agreement between the parties (Principal Contract), then the Principal Contract supersedes these Terms.

#### 2. PURPOSE AND INTERPRETATION

- 2.1 MM is engaged to provide services to the customer named in the PO (Customer).
- 2.2 While MM is contracting with You to acquire Items under this Contract:
  - (a) the Items will be provided to the Customer, notwithstanding that the Items will be contractually supplied to MM;
  - (b) MM enters into this Contract for the benefit of the Customer obtaining (and being able to enforce) any rights and benefits granted to MM under this Contract, including any caps and exclusions on liability in this Contract;
  - (c) the Contract is interpreted to reflect that:
    - (i) the Contract is intended to enable MM to satisfy the requirements of the Customer;
    - (ii) the Customer is authorised to provide instructions on behalf of MM regarding the Items;
    - (iii) the Customer is solely entitled to make use of and receive the benefit of the Items;
    - (iv) any references to matters concerning MM are to be taken as references to matters also concerning the Customer; and
    - (v) this clause 2 is to be given maximum effect, despite the fact that some provisions of the Contract may specifically refer to MM and/or the Customer; and
  - (d) each Party must do all things reasonably necessary to give effect to this clause 2.
- 2.3 The Parties' relationship is principal and independent contractor, and does not create any agency, partnership, joint venture, employee, employer or other joint relationship between the Parties.

#### 3. SUPPLY UNDER THESE TERMS

- 3.1 Where the Items include services, a reference to Items in the Contract includes any incidental services or functions and materials and equipment required for the proper performance and provision of the services.
- 3.2 If a statutory liability scheme applies to the Items to be supplied, You must notify MM in writing.

- 3.3 For Items that are to be manufactured, if Customer design approval is specified, You must not commence or approve manufacture in relation to those Items until are approved by the Customer.
- 3.4 You must supply the Items:
  - (a) by any dates specified in the PO; and/or
  - (b) for the period specified in the PO until the expiration of that period or until the Contract is terminated.
- 3.5 You must ship Items to the Delivery Site in accordance with packaging, shipping and delivery requirements in the PO or specified by MM.
- 3.6 You must ensure that Items are properly packed and secured in a manner to enable them to reach the Delivery Site in good condition.
- 3.7 The Items must be of merchantable quality, be fit for the purpose for which they are sought, comply with all the requirements of the Contract (including all applicable Laws), and be free from Defects and security vulnerabilities in design, performance and workmanship. Where the Items include services, the services must be provided to the standard expected of a Competent Supplier.
- 3.8 The Items must conform with the requirements detailed in the PO or associated with the PO.
- 3.9 Subject to clause 8.1(a), title to the Items will pass to MM on the earlier of delivery of the Items to the Delivery Site or payment of the applicable Fees. The Items must be appropriately marked and identified as the property of MM. Risk in the Items passes to MM upon the earlier of
  - (a) the date when the Item is first put into service by the Customer; or
  - (b) acceptance.
- 3.10 In providing the Items You will comply with all Laws and standards applicable to the supply of the Items, the Contract and relevant Policies.
- 3.11 You must, at Your cost, ensure that Your relevant officers, employees, agents or sub-contractors (Personnel) comply with any health, safety or security directions applicable to any Delivery Site.
- 3.12 If reasonably required by MM or the Customer, You must ensure, at your cost, that Your Personnel complete induction prior to first entry of the Delivery Site.
- 3.13 You must minimise disruption to the Delivery Site. Your Personnel must immediately leave the Delivery Site when directed by MM or the Customer.

#### 4. GST EXCLUSIVE

- 4.1 The Fees include any costs, expenses, imposts, duties and taxes other than GST as may apply.
- 4.2 To the extent that the supply of the Items is a Taxable Supply, MM will pay an amount equal to the GST on the Fees for that Item.

#### 5. INVOICE PROCESS

- 5.1 After delivery and acceptance of the Items, or when otherwise specified by MM, You must submit a valid Tax Invoice addressed to MM to [invoices@mmpl.com](mailto:invoices@mmpl.com) for the Fees in accordance with this clause 5.
- 5.2 You must itemise expenses, include receipts, and where applicable include a Subcontractor's statement.

- 5.3 All Tax Invoices must list the PO reference number.
- 5.4 MM must pay You within 30 days of receipt of a valid Tax Invoice. Payment is in Australian dollars unless the PO specifies another currency.
- 5.5 If MM is obliged to make any deduction or withholding payment on account of the applicable tax in connection with the PO, MM will withhold the relevant amount from the gross amount due to You. MM will have no obligation to pay any additional amount to You in relation to the withheld amount.

#### **6. TERMINATING BY NOTICE OR WHEN THERE IS DELAY**

- 6.1 You acknowledge that time is of the essence in effecting delivery of the Items.
- 6.2 You must urgently notify MM of any anticipated delay and provide MM with information regarding the delay's cause, proposed mitigation and an alternative delivery date. If that alternative delivery date is not acceptable to MM, then MM may (without prejudice to any other rights) direct You to cease supply of the Item without incurring any Supply Costs. If MM forms a reasonable view that the delay has been caused by Your negligence, MM will not be liable for any costs associated with the Items impacted by the delay.
- 6.3 If supply of Items is delayed for more than 7 days past the delivery date set out in the PO then MM may, acting reasonably and by notice in writing, immediately terminate supply of the Items without incurring any Supply Costs.
- 6.4 MM may, by giving You at least 7 days' written notice, suspend or stop the supply of Items without incurring any Supply Costs, except in relation to any amount that has been incurred for that part of the Items performed to the date of the notice.

#### **7. TERMINATING FOR BREACH OR INSOLVENCY**

- 7.1 Subject to clause 6, MM may terminate the Contract with immediate effect if You have failed to perform or observe any of your obligations under the Contract where:
  - (a) the failure is capable of remedy and:
    - (i) MM gave You notice detailing the breach, seeking remediation and noting failure to remedy may result in termination of supply under the Contract; and
    - (ii) You fail to remedy such breach within 10 Business Days after receiving the above notice; or
  - (b) the failure is incapable of remedy, by MM giving written notice of termination.
- 7.2 If a Party is subject to an Insolvency Event the other Party may, by notice, terminate the Contract with immediate effect.
- 7.3 If clause 7.1, 7.1(b) or 7.2 applies, Your sole and exclusive remedy is limited to payment for the Items properly delivered but not paid for by MM up to and including the date of termination, provided that You have done all things reasonably necessary to mitigate Your Loss arising from such termination. MM will not be liable to pay You any Supply Costs and MM is released to the extent allowed under Law from any damages, reimbursement or compensation or for any Items supplied or performed after the date of termination.
- 7.4 Termination does not affect accrued rights of a Party

or beneficiary under the Contract.

#### **8. DELIVERY AND ACCEPTANCE PROCESS**

- 8.1 Items delivered are subject to inspection and acceptance by the Customer. If the Customer acting reasonably rejects an Item for a Defect, MM or the Customer must issue a notice to You within 30 days of receipt of the Item, setting out the Defect. Upon rejection of the Items:
  - (a) You must arrange at your cost to remove the rejected Item from the Delivery Site within a reasonable time; and
  - (b) title and risk in that Item reverts to You when collected by You, or when that Item is delivered to a carrier for return to You;
  - (c) At MM's election, You must either arrange for the Items to be re-supplied at Your cost (subject to the same right of rejection) and as soon as possible or at a time to specified by the Customer, or reimburse or credit MM for any Fees paid for the rejected Items.
- 8.2 Where an Item is equipment supply or software development, the Customer is entitled to inspect the Items and, at the Customer's request, witness performance tests on the Items. You must allow or arrange Customer access at any reasonable time for inspection and/or performance testing. You must make such access a condition of any subcontract.

#### **9. MANAGING A DEFECT**

- 9.1 Notwithstanding clause 6.3, the Defect Period for an Item, subject to clause 9.4, is the longer of:
  - (a) 12 months from the date when the Item is first put into service by the Customer;
  - (b) 24 months from date of delivery of the Item; or
  - (c) any other warranty applying to the Item provided by the Supplier or manufacturer of such Item, **(Defect Period)**.
- 9.2 If there is a Defect in the Defect Period, You must, at your cost, do all things necessary to remedy the Defect, and must reimburse MM for any Loss incurred in connection with the Defect, including the cost of MM remedying the Defect if You do not do so within a reasonable period following notice of the Defect.
- 9.3 If MM reasonably determines that a Defect cannot adequately be remedied, then MM may elect to:
  - (a) accept the non-conforming Items with an adjustment in the Fees as agreed with the Supplier, or
  - (b) direct that the defective Items be removed and re-supplied at Your expense, or
  - (c) be reimbursed or credited for any amount of Fees paid for the Items the subject of a Defect.
- 9.4 A new Defect Period will apply to remedial work for a period of 12 months from its completion or until expiry of the Defect Period specified in clause 9.1, whichever is the later.
- 9.5 You must notify the Customer of any open source software incorporated in the Items.
- 9.6 Where the Items incorporate computer software, You warrant that:
  - (a) the software is free from viruses, trojan horses, bugs, worms or any other malicious code or

defects that are intended to, or do, damage or interfere with the proper working of the software; and

- (b) any software maintenance, upgrade, patch or fix supplied for the software will comply with subparagraph (a) above, and will be compatible with the existing version of the software.

9.7 You must:

- (a) ensure that You do not code, introduce or permit or enable the introduction of any Harmful Code into any Information Asset, systems of MM or the Customer or systems used by You to provide the Items;
- (b) If Harmful Code is introduced contrary to clause 9.7(a), You must:
  - (i) immediately notify the Customer and provide the Customer with all information reasonably requested in relation to the Harmful Code, its manner of introduction and the effect the Harmful Code has or is likely to have; and
  - (ii) without limiting Your other obligations under the Contract, if requested by the Customer, take all necessary remedial action to eliminate the Harmful Code and use Your best efforts to prevent re-occurrence and restore the affected Information Assets or systems, the cost of which will be borne:
    - A. by You where the Harmful Code was introduced by You or is as a result of Your failure to comply with the Contract; or
    - B. by MM in all other situations on a time and materials basis, unless there is an existing charging basis under another Fee, in which case those Fees will apply; and
  - (iii) if the Harmful Code causes a loss of operational efficiency or loss of data, assist the Customer to the same extent as set out in paragraph 9.7(ii) to mitigate the effect of the Harmful Code and assist the Customer to recover efficiency and/or data.

## 10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 You warrant that the supply and use of the Items by a MM Group Member will not infringe any Intellectual Property Rights.
- 10.2 Where Intellectual Property Rights are made available to You by MM and/or the Customer (User IP), You may use that User IP for the sole purpose of provisioning an Item under the Contract.
- 10.3 If Intellectual Property Rights are created or invented as a result of the Contract:
  - (a) those Intellectual Property Rights vest in the Customer or as MM otherwise directs; and
  - (b) You consent to any act or omission by MM and/or the Customer in using the Intellectual Property Rights that might otherwise breach the individual's Moral Rights, and must procure the same from Your relevant Personnel.
- 10.4 You must (and must ensure Your relevant Personnel) sign all documents and do anything else required to give effect to the benefit of the supply of Items under the Contract.

## 11. INSURANCE

- 11.1 You must hold and maintain throughout the Contract statutory workers compensation insurance and public liability insurance to cover Loss of whatsoever kind or nature which MM Group may suffer or incur as a result of or in connection with any Claim brought by any person including the Supplier's Personnel.
- 11.2 Unless otherwise specified in the PO and subject to any statutory liability scheme as notified to MM, You must hold:
  - (a) public liability insurance cover for not less than \$20,000,000 per occurrence;
  - (b) where You use a motor vehicle for providing the Items, motor vehicle third party property damage with an indemnity of not less than \$5,000,000 for any one occurrence;
  - (c) where an Item includes professional or consulting services, professional indemnity insurance cover for not less than \$20,000,000 per occurrence; and
  - (d) cyber insurance, including cover for employee dishonesty and computer crime, for not less than \$10,000,000 per claim and in the annual aggregate.
- 11.3 Upon request, You must provide certificates of currency for the insurances required above.

## 12. LIMITATION OF LIABILITY

- 12.1 Subject to clause 12.3, a Party will not be liable to another for any loss of actual or anticipated profits or revenue, loss of reputation, loss of business opportunity, business interruption, or any other consequential, indirect or special damages in connection with any breach of the Contract.
- 12.2 Unless prohibited by Law, MM's aggregate liability to You arising out of or in connection with the Contract (whether under contract, in tort, under statute or otherwise at law or in equity) is limited to the outstanding Fees payable by MM under the Contract or the Fees paid to You during the prior 12-month period under the Contract, whichever is greater.
- 12.3 Nothing in the Contract limits or excludes Your liability:
  - (a) under an indemnity in the Contract; or
  - (b) for Your breach of Your confidentiality, privacy, or data security obligations.

## 13. INDEMNITY

- 13.1 To the extent permitted by Law, You indemnify and holds harmless each MM Group Member against any Loss or Claim arising under or in connection with:
  - (a) injury, illness, or death of any person caused or contributed to by a Supplier Responsible Party;
  - (b) damage to or loss of real or personal property belonging to any entity caused or contributed to by a Supplier Responsible Party;
  - (c) any Claim or allegation by a third party arising in connection with the Items;
  - (d) fraud, criminal conduct, or breach of any Law by a Supplier Responsible Party; or
  - (e) wilful default, or recklessness of a Supplier Responsible Party.
- 13.2 The indemnities in the Contract will be reduced proportionately to the extent that the Loss or Claim



was caused or contributed to by any breach of the Contract by the MM Group or any unlawful or negligent act or omission by the MM Group.

- 13.3 If the MM Group suffers or incurs any Loss which You have indemnified the MM Group against pursuant to clause 13.1, You must diligently and in good faith take all action to make and pursue a claim for indemnity under Your insurances pursuant to clause 11.

#### 14. CONFIDENTIALITY

14.1 In this clause 14:

- (a) Discloser means, subject to clause 14.2, a Party who discloses Confidential Information to the Recipient; and
- (b) Recipient means, subject to clause 14.2, the Party that receives Confidential Information of the Discloser.

14.2 Where Your Confidential Information is disclosed to MM, it is deemed to have been disclosed to the Customer for the purposes of the Contract. Where Confidential Information belonging to the Customer is disclosed to You, it is deemed to have been disclosed to You by MM.

14.3 The Recipient must ensure that all Confidential Information of the Discloser is treated as confidential and not disclosed to any person(s) or used other than for the purposes of performing the Recipient's obligations or exercising the Recipient's rights under the Contract, and must return all Confidential Information immediately upon request by the Discloser.

14.4 The Recipient may only disclose Confidential Information of the Discloser:

- (a) to its Personnel (and in the case of MM, to the Customer and the Customer's Personnel) who need to know such Confidential Information (in connection with the Recipient's right to use as provided for in clause 14.3);
- (b) to the extent required by Law, or in order to comply with the rules of any stock exchange or as required by any Government Authority, provided that the Recipient discloses no more than the minimum amount of Confidential Information required to satisfy such Law, rule or Government Authority, and before disclosing any Confidential Information, has provided a reasonable amount of notice to the Discloser, has used all reasonable endeavours to delay or avoid disclosure, and has otherwise used all reasonable endeavours to maintain confidentiality in such Confidential Information; or
- (c) with the prior written consent of the Discloser.

14.5 If a Party discloses Confidential Information under clause 14.4, that Party must ensure that the person to whom the information is disclosed (Secondary Recipient) complies with obligations of confidence no less stringent than those under this clause 14. A breach of the obligations under this clause 14 by a Secondary Recipient is deemed to be a breach by the Discloser.

14.6 Each Party will notify the other (which for MM includes also notifying the Customer) of any suspected or actual breach of this clause 14, take all reasonable steps required to prevent or stop the breach, and at

the Discloser's request assist the Discloser in connection with any action or investigation regarding any possible or actual unauthorised disclosure.

#### 15. PRIVACY

15.1 You agree to be bound by, and will comply with, the requirements of the Privacy Law. You must obtain written consent from MM prior to any MM Personal Information being disclosed overseas.

15.2 You must:

- (a) establish, maintain, and comply with administrative, physical and information safety and security procedures, controls and safeguards including an information security environment and an information security capability, that appropriately reflects and is commensurate with the size and extent of threats to the Information Assets and enables the continued sound operation of the Customer;
- (b) do all things that a reasonable and prudent entity would do to ensure that all MM Personal Information accessed, received by or held by You is protected at all times by appropriate physical, technical, and managerial procedures from misuse, interference, loss, and unauthorised access, modification, or disclosure;
- (c) comply with all security regulations or procedures or directions as are specified in the Contract or given by the Customer from time to time and answer the Customer's questions regarding any aspect of security of, or access to, the MM Personal Information provided to You by the Customer; and
- (d) only use or disclose MM Personal Information obtained from the Customer, MM or any MM Group Member for the purpose for which it was provided or accessed under the Contract.

15.3 In this clause 15, **Data Security Incident** means:

- (a) You receive a complaint in relation to the handling of MM Personal Information by You, a breach or alleged breach of the Contract, or a breach of the Privacy Laws, or a breach or alleged breach of the Privacy Laws relating to the handling of MM Personal Information; or
- (b) You become aware of any actual or suspected:
  - (i) action taken through the use of digital devices, interfaces or computer networks that results in (or could result in) an actual or potentially adverse effect on any of Your or a MM Group Member's information technology systems or any of Your third-party service providers or contractors (or their respective information technology systems) or Information Assets (including MM Personal Information) residing on that system;
  - (ii) breach of clause 15 or Privacy Laws; or
  - (iii) unauthorised access to, disclosure of or use by a third party of MM Personal Information or actual or suspected loss, misuse, damage or destruction by any person of MM Personal Information, or other actual or suspected "eligible data breach" or similar expression as

may be defined in the Privacy Law from time to time.

15.4 If You experience a Data Security Incident, You must:

- (a) notify the Customer by telephone and in writing immediately (and no longer than 12 hours after becoming aware of the complaint or the actual or suspected Data Security Incident); and
- (b) comply with any directions issued by the Customer in connection with the Data Security Incident, including in relation to:
  - (i) notifying the Australian Cyber Security Centre, the Office of the Australian Information Commissioner or any other relevant body, and any affected individuals, as required by the Customer;
  - (ii) coordinating with the Customer and MM Group to investigate the Data Security Incident including obtaining evidence about how, when and by whom Your, MM Group Member's or other person's information technology system and/or the MM Personal Information has or may have been compromised or lost, providing it to the Customer on request as soon as practicable, and preserving and protecting that evidence for a period of up to 12 months;
  - (iii) implementing any mitigation strategies to remedy the cause of the Data Security Incident and reduce the impact of the Data Security Incident or the likelihood or impact of any future similar incident; and
  - (iv) preserving and protecting MM Personal Information (including as necessary reverting to any backup or alternative site or taking other action to recover MM Personal Information).

15.5 With respect to giving notice of a Data Security Incident to third parties, You agree that:

- (a) except where required by Law, You will not inform any third party of any incident without first obtaining the Customer's prior written consent, other than:
  - (i) to inform a complainant who has made a complaint to You that the matter has been forwarded to the Customer's Privacy Officer; or
  - (ii) where the Customer has not made required notifications (under the Privacy Law) on Your behalf in a timely manner. Before notifying third parties of the Data Security Incident, You must provide the Customer with notice of Your intention to do so under this clause, and must provide the Customer with a reasonable opportunity to make this notification;
- (b) the Customer will (other than in respect of a notification which You are mandatorily required by Law to provide to a third party) have the sole right to determine:
  - (i) whether notice of the Data Security Incident is to be provided to any individuals, regulators, law enforcement agencies, credit reporting bodies or others as required by Law or otherwise in the Customer's discretion;

(ii) whether You or the Customer gives such notice; and

(iii) the contents of such notice, whether any type of remediation may be offered to affected persons, and the nature and extent of any such remediation.

15.6 You must ensure that:

- (a) all subcontracts and other supply chain arrangements, which may allow or cause third parties to have access to MM Personal Information, contain no provisions that are inconsistent with clauses 15.2, 15.3 or 15.4; and
- (b) all Personnel and any Subcontractors who have access to MM Personal Information comply with clauses 15.2, 15.3 and 15.4.

## 16. PRESS AND SOCIAL MEDIA ANNOUNCEMENTS

16.1 Unless required by Law, You will not use MM or the Customer as a reference, or make any press or other public announcements relating to the Contract without the prior written approval of MM or the Customer (whichever is relevant).

## 17. DIRECTIONS, RIGHTS AND OBLIGATIONS

17.1 Despite any other provision of the Contract to the contrary:

- (a) MM directs You to, and You must, perform or supply the Items under the Contract to the Customer;
- (b) MM may perform any of its obligations or exercise any of its rights under the Contract by having the Customer perform the obligation or exercise the right on its behalf;
- (c) Your act or omission, including any breach of the Contract or negligence in relation to the performance or failure to perform Your obligations under the Contract, may result in the Customer suffering Loss;
- (d) any Loss suffered by the Customer under or in connection with the Contract is deemed to be suffered by MM, and MM may recover such Loss from You;
- (e) You indemnify MM against the Loss referred to in clauses 17.1(c) and 17.1(d); and
- (f) MM may act in its own right and on behalf of the Customer with respect to the enforcement of any rights and remedies under the Contract.

17.2 MM, in seeking to recover Loss, may only recover for the Loss suffered by MM by virtue of the deeming provision in clause 17.1(d) and any purported double recovery for itself and the Customer is void.

17.3 You may only enforce the Contract against MM, and have no right to enforce the Contract directly against the Customer. For this purpose, any breach of the Contract caused by the Customer will be deemed to be a breach by MM.

17.4 You acknowledge and agree that the indemnity contained in clause 17.1(e):

- (a) will be read and construed and will have effect as a separate, severable and independent indemnity in respect of MM and the Customer and will be enforceable accordingly; and
- (b) is reasonable and confers a benefit on the Customer which is no more than that which is

reasonably necessary to protect the legitimate interests of the Customer insofar as they relate to the use of the provided Items.

17.5 You acknowledge that MM and the Customer operate in a highly regulated industry and agree to provide to MM and the Customer in a timely fashion any data and information in connection with the Contract and other assistance reasonably required by MM and the Customer in order for MM and the Customer to comply with their legal obligations (including under the AML/CTF Act, APRA Regulations, Modern Slavery Laws, and Privacy Laws). MM or the Customer will provide You with not less than 15 days' notice (or if any applicable Laws make 15 days' notice not practicable, notice as is reasonably possible) of:

- (a) the data, information, and assistance required; and
- (b) when that data, information, and assistance is required.

17.6 You acknowledge that MM and the Customer has the right to disclose the data and information specified in clause 17.5 and any other Confidential Information of the Supplier, to any Government Authority without prior notice to or approval by the Supplier.

17.7 The benefit of any right, including any warranty, undertaking or indemnity, in favour of a MM Group Member under the Contract is held on trust by MM and the Parties agree that:

- (a) MM may take action on behalf of the MM Group Member; and
- (b) the MM Group Member may take action to enforce any right it has under the Contract despite not being a Party.

## 18. DISPUTE RESOLUTION

18.1 A Dispute must be promptly referred in writing to a representative appointed by each Party to facilitate resolution in good faith (Dispute Notice).

18.2 If a Dispute remains unresolved for more than 40 Business Days after receipt of a Dispute Notice, then the Parties will endeavour to agree upon a procedure to resolve the Dispute (such as mediation or expert determination) before proceeding to litigation. If a Dispute remains unresolved (in whole or in part) after the expiration of 40 Business Days of receipt of the Dispute Notice and if the Parties cannot agree upon a procedure to resolve the Dispute, then either Party to the Dispute may commence legal proceedings to resolve any unresolved part of the Dispute.

18.3 This clause 18 does not prevent any Party from obtaining any injunctive, declaratory or other interlocutory relief from a court which may be urgently required in respect of a Dispute or any other matter arising under the Contract.

18.4 Subject to clause 18.3, a Party must not commence or maintain a court action or proceeding in relation to a Dispute until the Parties have complied with the dispute resolution process under this clause 18.

18.5 Notwithstanding any Dispute, You must continue to perform Your obligations under the Contract.

## 19. PERSONAL PROPERTY SECURITIES ACT

19.1 To the extent the *Personal Property Securities Act 2009* (Cth) applies to any materials or deliverables supplied by You to MM, You represent, warrant and

undertake that the supply of the materials and deliverables to MM:

- (a) does not breach any security agreement You have with a third party; and
- (b) is within the ordinary course of Your business.

## 20. MODERN SLAVERY

20.1 You acknowledge that MM and the Customer are reporting entities under the Modern Slavery Laws, and require Your assistance to ensure compliance with their legal obligations.

20.2 In performing Your obligations under the Contract, You will, and will ensure that Supplier Personnel and each of Your Related Bodies Corporate will:

- (a) not engage in Modern Slavery and comply with all Modern Slavery Laws;
- (b) implement due diligence procedures to identify and assess Modern Slavery risks and take reasonable steps to ensure that Modern Slavery risks are being addressed and mitigated in:
  - (i) Your or Supplier Personnel's supply chains or in any part of those businesses; and
  - (ii) the supply chains of the Your Related Bodies Corporate or in any part of those businesses.
- (c) comply with any reasonable requests made by MM for assistance or information relevant to MM Modern Slavery risks;
- (d) immediately notify in writing and give full particulars to MM if You become aware of any suspected or actual Modern Slavery or a breach of the Modern Slavery Laws in Your or Supplier Personnel's supply chains or operations; and
- (e) provide MM, by no later than 30 September in each year, a copy of any annual modern slavery statement You or Your Related Bodies Corporate are required to register under Modern Slavery Laws, or any modern slavery statement You otherwise produce.

20.3 You represent and warrant that neither You, the Supplier Personnel or Your Related Bodies Corporate:

- (a) have been convicted of any offence involving Modern Slavery; and
- (b) to the best of Your knowledge, having made reasonable enquiries, have not been or are not the subject of any investigation, inquiry or enforcement proceedings by any governmental or regulatory body or agency regarding any offence or alleged offence of, or in connection with Modern Slavery.

20.4 If You notify MM pursuant to clause 20.2(d), MM may in its sole discretion:

- (a) request You provide all information that MM or the Customer reasonably requires in relation to the alleged Modern Slavery breach;
- (b) request You, at Your cost, assist MM with any investigation MM wishes to conduct into the alleged Modern Slavery breach;
- (c) direct You to prepare, document and implement a corrective action plan to address any Modern Slavery, or to mitigate the risk, damage or potential damage arising from the Modern



Slavery breach;

(d) propose revised terms under which MM is prepared to continue performance of the Contract and, if those terms are not agreed within the reasonable time specified in MM's proposal, terminate the Contract by giving ten (10) days' notice in writing to You; or

(e) terminate the Contract pursuant to clause 7.

## 21. NOTICES

21.1 Any notice under the Contract must be in English and in writing.

21.2 The Parties consent to using for notifications:

(a) Your email specified on the PO and

(b) legal@mmp.com.au for MM.

Your email system must allow for delivery receipts when requested by MM.

## 22. GOVERNING LAW

The Contract is governed by the Laws of the place where the Customer has its head office (**Jurisdiction**) and each Party irrevocably submits to the exclusive jurisdiction of that place's courts of.

## 23. VARIATION

The Contract may only be amended as agreed in writing and signed by the Parties.

## 24. READING DOWN AND SEVERANCE

24.1 Any provision in the Contract which is illegal or unenforceable must be read down to the extent necessary to avoid that result, and if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of the Contract.

## 25. ASSIGNMENT, NOVATION AND SUBCONTRACTING

25.1 The PO is presented in reliance on Your expertise, and You cannot assign, novate or subcontract the performance of all or any part of Your obligations under the Contract without MM's prior written consent, which will not be unreasonably withheld, and MM or the Customer may impose reasonable conditions on any such consent.

25.2 If You subcontract all or any part of Your obligations under the Contract, You remain liable for the acts and omissions of the Subcontractor as though they were Your acts and omissions.

25.3 Despite any other provision of the Contract to the contrary, MM may at any time assign or novate the Contract or assign or dispose of any right, benefit or interest under the Contract to the Customer, or any other person or entity without Your consent.

## 26. DICTIONARY

In these Terms, unless the context requires otherwise:

**Business Day** means a day other than Saturday or Sunday or public holiday in the Jurisdiction.

**Claim** includes any claim, action, suit, cause of action, demand or proceedings for any Loss including by way of indemnity, under contract (including any breach of the Contract), in equity (including breach of an equitable duty, breach of confidentiality or breach of fiduciary duty), under statute (including breach of statutory duty) (to the maximum extent possible), in tort (including for negligence or negligent misrepresentation) or otherwise (including in

restitution).

**Competent Supplier** means an experienced and competent supplier of the highest skill and quality, with particular experience in Australia performing services similar in nature to the services forming part of the Items.

**Confidential Information** means information (regardless of form or medium on which it is stored) of a confidential, non-public, or proprietary nature which relates to the business of a Party or the Customer, including without limitation:

(a) information about the Contract contents, negotiation and the exercise of rights under the Contract;

(b) information communicated by a Party or the Customer in connection with the Contract;

(c) information which by its nature is confidential;

(d) information that the recipient knows or ought to know is confidential;

(e) trade secrets, know-how, and other commercially valuable information of a Party or the Customer;

(f) information which a Party or the Customer designates as confidential; and

(g) in the case of MM and the Customer, the MM Personal Information,

but does not include:

(h) information which is or becomes public knowledge other than through a breach of the Contract; or

(i) information the recipient can prove was rightfully received from a third party free of any obligation of confidence.

**Data Security Incident** is as defined in clause 15.3(b).

**Defect** in an Item is any part or aspect of it which is not in compliance with the PO and requirements (including design, workmanship or operating characteristics) as agreed between You and the Customer.

**Delivery Site** means any site specified in the PO to which Items are to be delivered

**Dispute** means any dispute or disagreement arising between the Parties relating to the interpretation of the Contract or any matter arising out of or in connection with the Contract or the Items the subject of the applicable PO.

**Fees** means the fees for the Items as set out in the PO.

**Government Authority** means any government or governmental, semi governmental, judicial, quasi judicial or administrative entity, department, commission, tribunal, agency, authority or entity having jurisdiction over all or any part of, or in connection with, the Items, or all or any of the Customer, MM, and You.

**GST and Tax Invoice and Taxable Supply** have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Harmful Code** means any computer code, product, device or component designed to:

(a) threaten the integrity of MM's or the Customer's operations or the Items;

(b) prohibit, impair or prevent performance of MM's or

the Customer's operations or the Items; or

- (c) pose a threat or hazard to the security or integrity of MM's or the Customer's operations, or the Items.

**Information Asset** means MM Data, MM Personal Information, the Items, and other information technology (including software and hardware) of the Supplier and MM Customer.

**Insolvency Event** means where:

- (a) You inform MM or any of Your creditors that You are insolvent or unable to pay Your debts as they fall due;
- (b) You enter into a composition or arrangement with Your creditors or calls a meeting of creditors to enter into a composition or arrangement;
- (c) a mortgagee seeks to exercise a right of possession or control over the whole or part of Your property;
- (d) You take or have instituted against You an action or proceedings whether voluntary or compulsory which may result in Your the winding up;
- (e) You have a winding up order made against You or pass a resolution for winding up;
- (f) You go into liquidation;
- (g) any writ of execution, garnishee order, *mareva* injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of Yours; or
- (h) an act is done or an event occurs which, under the Laws from time to time of a country having jurisdiction in relation to You, has an analogous or similar effect to any of the events in paragraphs (a) to (g) of this definition.

**Intellectual Property Rights** means any current and future intellectual and industrial property rights and interests throughout the world, including any:

- (a) patents, copyrights and related rights, utility models, designs, trade marks, service marks, rights in relation to circuit layouts and databases, inventions, discoveries, trade secrets, know how, and improvements;
- (b) trade, business, or company name, indication, source or appellation of origin;
- (c) applications for, or rights to apply for registration of any of those rights;

whether registered or unregistered, for the duration of the rights and interests.

**Law** includes from time to time all applicable present and future legislation, ordinances, regulations, by laws, local laws, orders and proclamations, approvals, principles of law or equity, standards, industry codes and guidelines, directions or notices issued by any Government Authority, and fees, rates, taxes, levies and charges payable under those laws.

**Loss** includes any loss, cost, expense, damage or liability (including any statutory or regulatory fine or penalty) whether arising under contract, in equity, under statute (to the maximum extent possible), in tort (including for negligence) or otherwise, and includes an award for

damages or legal costs on a solicitor and own client basis.

**MM Group** means MM, the Customers and their respective Related Bodies Corporate, and each entity in the MM Group is a **MM Group Member**.

**MM Data** means all data (including metadata) and information relating to a MM Group Member's business, operations, facilities, plans, customers, Personal Information, clients, employees, programs, assets, products, sales and transactions, in whatever form the information exists, and includes any database in which data or information is contained, documentation or records related to data or information, products resulting from the use or manipulation of data or information, and copies of any of the above.

**MM Personal Information** means Personal Information provided by MM, collected by the Supplier, or otherwise handled under or in connection with the Contract.

**Modern Slavery** has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children.

**Modern Slavery Laws** means:

- (a) Division 270 and 271 of the Criminal Code Schedule to the Criminal Code Act 1995 (Cth);
- (b) the Modern Slavery Act 2018 (Cth); and
- (c) any other Laws or policies, regardless of jurisdiction, addressing the same or similar subject matter.

**Moral Rights** means moral rights under the *Copyright Act 1968* (Cth) or equivalent Laws of another jurisdiction.

**Personal Information** has the meaning given in the Privacy Act, and any other similar concept under any Privacy Law.

**Personnel** means in relation to a Party or the Customer any employee, director, officer, agent or representative employed or engaged by that entity or a Related Body Corporate of that entity.

**Privacy Act** means the *Privacy Act 1988* (Cth).

**Privacy Law** means the Privacy Act and any other applicable Laws whether Australian or otherwise, which affects the collection, storage, handling, use or processing of MM Personal Information.

**Policies** means any policies of MM and/or the Customer that MM notifies You are applicable to the supply of the Items.

**Related Body Corporate** has the meaning given in the *Corporations Act 2001* (Cth).

**Subcontractor** includes any subcontractor, consultant or supplier engaged by You in connection with the Items.

**Supply Costs** means any damages, compensation or reimbursement for any Items supplied or performed or expense incurred by You after the date of termination or any cost, charge or expense or loss of profit or other economic loss of any kind arising from or consequent upon such termination.

**Supplier Responsible Party** means You, Your Personnel or Subcontractors, and the Personnel and subcontractors of Your subcontractors.