

Australasian Solvents & Chemicals Company Pty Ltd

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TERMS AND CONDITIONS OF SALE

Effective as of January 2021

1. THE AGREEMENT

- 1.1 These terms and conditions of sale are incorporated into, and form part of, each Order between the party named as the buyer on the Order ("**Buyer**") and Australasian Solvents & Chemicals Pty Ltd (ABN 57 095 441 080) ("**Seller**") (the "**Agreement**").
- 1.2 This Agreement commences on the date of the applicable Order and continues until the termination or expiry of the Order.
- 1.3 By submitting an Order, you acknowledge and agree:
 - (a) That you have read and understand this Agreement
 - (b) To be bound by its terms and conditions; and
 - (c) To the extent you are entering into this Agreement on behalf of a company or other legal entity, you have the power and authority to bind that company or legal entity.
- 1.4 This Agreement (including the Order) and the Credit Application Terms and Conditions (if applicable) represent the parties' entire agreement and supersedes all other prior representations, communications, agreements, statements, and understandings (whether oral or in writing) relating to its subject matter. Any purchase order terms and conditions submitted by the Buyer will not apply to this Agreement.

2. ORDERING

- 2.1 The Seller supplies the goods and services as specified at <https://ascc.group/products/> (the "**Goods**" and "**Services**" respectively).
- 2.2 The Buyer may submit a request for the Goods and Services using the Seller's website, by email or by telephone.
- 2.3 The Seller will provide to the Buyer a quote for the requested Goods and Services (the "**Quote**").
- 2.4 The Buyer must accept or reject the Quote within the time stated on the Quote.
- 2.5 Once the Quote is accepted, the Seller will provide to the Buyer a confirmation of the accepted Quote, specifying the Goods and Services to be provided by the Seller, estimated delivery dates, delivery location and the fees payable (the "**Order**").
- 2.6 If the Buyer cancels an Order prior to the Goods and Services being delivered, the Seller may charge to the Buyer, and the Buyer may pay, any out-of-pocket costs of the Seller, including but not limited to any third party fees and costs incurred by the Seller in disposing of any Products at a lower price.

3. SUPPLY OF GOODS AND SERVICES

- 3.1 The Seller will provide the Goods and Services as specified in the Order.
- 3.2 The Buyer must:
 - (a) Give the Seller access to the Buyer's premises as necessary to enable the Seller to provide the Goods and Services
 - (b) Give the Seller the information and assistance necessary to enable the Seller to provide the Goods and Services; and
 - (c) Cooperate with the Seller and act reasonably in connection with this Agreement and receipt of the Goods and Services.
- 3.3 The Buyer represents and warrants that all information provided by the Buyer or on the Buyer's behalf to the Seller is accurate and is not, whether by omission of information or otherwise, misleading.
- 3.4 The Buyer acknowledges and agrees that:
 - (a) The Seller is relying on the Buyer's representations and warranties of the Customer under clause 3.3 in entering into this Agreement; and
 - (b) If the Buyer does not comply with clause 3.2 then the Seller is only obliged to try to supply the Goods and Services to the Buyer.

4. RISK AND TITLE

- 4.1 The risk in the Goods passes to the Buyer upon delivery to the Buyer's delivery address, Buyer's agent or a carrier commissioned by the Buyer or commissioned on behalf of the Buyer by the Seller at the Buyer's request.
- 4.2 If the Goods are ascertained and in a deliverable state, or if the Goods are not yet ascertained or not in a deliverable state when the Goods are ascertained and deliverable, then the title in the Goods then passes to the Buyer when the Goods are paid for by the Buyer in full.
- 4.3 The Buyer shall be responsible for the safe-handling and storage of the Goods, and compliance with all relevant statutes and regulations, from the time of delivery.
- 4.4 The Buyer indemnifies the Seller, and the Seller excludes all liability or responsibility whatsoever, for any discharge, omission or escape of Goods or damage caused by the Goods:
 - (a) If the Seller is delivering the goods, after the time of delivery; or
 - (b) If the Buyer is collecting the goods, at the time of collection.

5. FEES AND PAYMENT

- 5.1 **Pricing**
 - (a) The pricing agreed under an Order only applies to the Goods and Services purchased by the Buyer under that Order, and is not a standing offer price. The Seller may alter any prices without notice.
 - (b) Quoted prices for Goods and Services may not apply at the time that the Buyer submits a request for the Goods and Services in accordance with clause 2.2.

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- (a) All pricing specified in an Order is exclusive of GST and other taxes. GST and any other taxes, duties or government charges are additional to the price and must be paid by the Buyer.
- (b) Where GST is imposed on a taxable supply made in connection with this agreement and the recipient of that supply receives a tax invoice for that supply, the recipient must pay the GST to the supplier (without deduction or set-off) by the tax invoice due date.
- (c) If one party is required to indemnify or reimburse another party (**Payee**) for any cost, loss or expense, the indemnity or reimbursement payable does not include any amount for which the Payee (or an entity grouped with the payee for GST purposes) is entitled to an input tax credit, but will be increased in accordance with clause 5.2(b) if the amount payable is consideration for a taxable supply.
- (d) In this clause 5.12, capitalised terms not otherwise defined in clause 211.1 have the definition given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), unless the context makes it clear that a different meaning is intended.

5.3 Invoicing

- (a) The Seller will issue a tax invoice to the Buyer on the day after the goods or services are delivered.

5.4 Payment

- (a) No Commercial Credit Account: If the Buyer does not hold a commercial credit account with the Seller, the Buyer must pay the fees in cash or by electronic transfer on or before the date specified in the invoice.
- (b) Commercial Credit Account: If the Buyer holds a commercial credit account with the Seller:
 - (i) Within 5 Business Days from the end of each calendar month, the Seller will issue a written statement to the Buyer, listing the Goods and Services purchased and the fees payable by the Buyer for the prior calendar month ("**Statement of Account**"); and
 - (ii) Subject to written notification to the contrary and subject to the ASCC Forms, the Buyer must pay the fees in accordance with the Statement of Account within the agreed credit term payment date.
- (c) Time for payment is of the essence.

5.5 Late payments

- (a) If the Buyer fails to make any payment on the due date then, without prejudice to any of the Seller's other rights, the Seller may take one or more of the following actions:
 - (i) Suspend performance by the Seller under any or all unfulfilled Orders without notice
 - (ii) Treat this Agreement as repudiated by the Buyer; and/or
 - (iii) Appropriate any payment made by the Buyer to such of the Goods and Services as the Seller may think fit and, at the Seller's sole discretion, apply payments made by the Buyer first in payment of default interest and secondly in reduction of invoiced amounts. The Seller is entitled to recover from the Buyer any discount given to the Buyer for the payment of any Order (in whole or in part) that remains outstanding.
 - (iv) In the event of a default, all amounts outstanding under all of the then current contracts between the Buyer and the Seller will, whether or not due for payment, immediately become due and payable.
- (b) All sums due from the Buyer to the Seller that are not paid on the due date (without prejudice to the rights of the Seller under this Agreement) will bear interest from day to day at the annual rate of BBSY plus a margin of 2%. The Buyer must pay all amounts due without deduction or setoff.
- (c) The Buyer indemnifies the Seller for all legal costs, expenses and other recovery costs on a full indemnity basis relating to any default of the Buyer under this Agreement.

6. LIMITATION OF LIABILITY**6.1 To the maximum extent permitted by law:**

- (a) The Seller does not make any warranties or representations of any kind (whether express or implied, or written or oral) to the Buyer or any of the Buyer's third parties with respect to the Goods or Services;
- (b) Without limiting clause 6.1(a), any implied warranty of quality, accuracy and fitness for purpose in relation to the Goods and Services is expressly excluded and disclaimed; and
- (c) The Seller will not be liable for any loss, damage, cost or expense suffered or incurred by the Buyer or any third party if the Goods are used by unqualified tradesmen, fitted in an un-tradesman like manner, adapted to a use to which they are not specifically intended, or added to components not recommended or approved by the manufacturer
- (d) Subject to clause 6.2 and 6.3, the Seller's aggregate liability under or in connection with this Agreement and the applicable Order is limited to the fees paid by the Buyer under that Order.

6.2 The Seller is not liable for any Consequential Loss of any kind suffered by the Buyer or any third party in connection with this Agreement.**6.3 If the *Competition and Consumer Act 2010* (Cth) or any other legislation provides that there is a guarantee in relation to any Good or Service supplied by the Seller in connection with this Agreement and the Seller's liability for failing to comply with that guarantee cannot be excluded but may be limited, then clauses 6.1(c) and 6.2 do not apply to that liability and instead the Seller's liability for such failure is limited to (at the Seller's election), in the case of a supply of Goods, the Seller replacing the Goods or supplying equivalent goods or repairing the Goods, or in the case of a supply of Services, the Seller supplying the Services again or paying the cost of having the Services supplied again.**

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- 6.4 Any claim by the Buyer against the Seller for loss or damage, however caused (including by the negligence of the Seller), suffered by the Buyer in connection with a Good or Service must be made within 30 days from the date that the Good or Service was delivered, and any claim not made within that period is absolutely barred.

7. INDEMNITY

- 7.1 The Buyer is liable for, and indemnifies the Seller from and against, all loss or damage (including legal costs) suffered or incurred by the Seller, however caused (including by the negligence of the Buyer or its third parties), in connection with:
- (a) Any claim by the Buyer or a third party against the Seller in connection with this Agreement or a Good or Service;
 - (b) Personal injury or death of any person (including any employee of the Seller or the Buyer) in connection with the provision or use of the Goods or provision of the Services; or
 - (c) Any loss of or damage to property in connection with the provision, resale or use of the Goods or provision of the Services.

8. PPSR: SECURITY FOR PAYMENT

- 8.1 The Buyer (for the purposes of this clause 8, the "Grantor") grants a security interest to the Seller, and the Seller may register the security interest, in all Goods supplied by the Seller (secured party) to the Grantor from time to time, together with all proceeds (including, without limitation, accounts receivable, chattel paper, negotiable instruments, investment securities and inventory), to secure payment of the purchase price.
- 8.2 Words herein have the same meaning as that which is given to them in Section 10 of the PPSA. The Seller does not have to provide a Verification Statement to the Buyer. The Buyer waives its rights to receive notices or to do other things pursuant to Sections 95, 130, 143 and 157(1) and agrees that its rights as Grantor in Sections 96, 121(4), 123(2), 130, 132(3)(d), 132(4), 135, 142 and 143 shall not apply to these terms and conditions and where applicable waives its rights to receive notices or to do other things pursuant to any sections.
- 8.3 The Buyer will immediately notify the Seller in writing of any change in the Buyer's name or other material identifying characteristics of either the Buyer or the Goods purchased.

9. DELIVERY OF GOODS

- 9.1 Subject to the Order, when the Buyer does not choose to purchase Free on Board ("FOB"):
- (a) The Seller is responsible for arranging the carriage of the Goods from the Seller's premises to the delivery location specified in the Order
 - (b) If no delivery date has been agreed, then the Seller will arrange for the delivery of the Goods within a reasonable time and will notify the Buyer of the delivery date
 - (c) The Buyer must be available at the Buyer's premises to take delivery of the Goods
 - (d) When the Goods at the date of this Agreement are in possession of a third person there is no delivery by Seller to Buyer unless and until such third person acknowledges to the Buyer that the Goods are being held on behalf of the Buyer subject to the issue or transfer by the Seller of documents of title to the Goods.
- 9.2 Subject to the Order if the Buyer chooses to purchase FOB:
- (a) It is the Buyer's sole responsibility to collect and take possession of the Goods from the Seller's nominated premises
 - (b) If no delivery date has been agreed, then Seller will make the Goods available for collection within a reasonable time and will notify the Buyer of the delivery date
 - (c) Delivery is deemed complete when the Goods are available for collection from the Seller's nominated premises on the agreed delivery date or, if no delivery date has been agreed, then delivery is deemed complete when the Goods are available for collection from the Seller's nominated premises.
 - (d) When the Goods at the date of this Agreement are in possession of a third person there is no delivery by Seller to Buyer unless and until such third person acknowledges to the Buyer that the Goods are being held on behalf of the Buyer subject to the issue or transfer by the Seller of documents of title to the Goods.
 - (e) If the Buyer arranges for the carriage of the Goods to the Buyer's address or nominates a carrier to be organised by the Seller, the cost of carriage and reasonable insurance is the sole responsibility of the Buyer. The carrier shall be deemed to be the Buyer's agent.
- 9.3 Subject to the Order:
- (a) The Seller may deliver an Order in parts; and
 - (b) Where it is agreed that the Seller will deliver the Goods in instalments, which are to be separately paid for, if the Seller delivers an instalment of Goods that is rejected under clause 11 or the Buyer refuses to take delivery of or pay for an instalment, then the breach will be treated as a severable breach, however the Buyer may not treat the whole contract as repudiated.
- 9.4 The Buyer acknowledges that any agreed delivery date is an estimate only. Notwithstanding that delivery of the Goods may be delayed, the Buyer shall be bound to accept delivery and to pay for the Goods in full.
- 9.5 If the Seller is unable to deliver, or delayed in delivering, the Goods for reasons attributable to the Buyer, the Seller will charge, and the Buyer must pay, for all costs incurred by the Seller for the delay in delivery or inability to deliver.
- 9.6 Where the Buyer arranges its own transport carrier or collects the goods then the Buyer is responsible for ensuring its vehicles compliance with transport legislation as well as all licences and legislated requirements of transportation.

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- 10.1 Notwithstanding that the Goods have been delivered, all rights, title and interest in and to the Goods shall not pass to the Buyer until the Seller has received payment in full for the Goods.
- 10.2 If the Buyer fails to pay for the Goods when payment is due to the Seller, the Seller may without notice and without prejudice to any of its other rights and remedies, recover or re-sell the Goods (or both) and may enter upon any premises owned, occupied or controlled by the Buyer where the Goods are situated.
- 10.3 Until the Buyer has paid for the Goods in full, the Buyer must store the Goods separately from all other Goods in its possession and marked in a way that clearly manifests the Seller's title.
- 10.4 The Buyer acknowledges that until the Buyer has paid for the Goods in full, it holds the Goods on trust for the Seller and that a fiduciary relationship exists between them.
- 10.5 The Buyer acknowledges that the Seller has, pursuant to Clause 8, a security interest in the Goods and, notwithstanding the provisions of Clause 8, until payment for the Goods is made in full, the Seller may register a purchase monies security interest in respect of the Goods and, for the purposes of registering that interest, the parties agree that the security interest arises on the date of delivery of the Goods.
- 10.6 If an Event of Default occurs, any rights that the Buyer may have had in respect of the Goods terminates on the date of the first occurrence of the Event of Default and all monies payable by the Buyer in respect of the Goods shall immediately become due and payable.

11. INSPECTION AND ACCEPTANCE

- 11.1 Within 5 Business Days from the date of delivery of the Goods, the Buyer must inspect the Goods and notify (quoting docket number and date of receipt of the Goods) the Seller in writing of any alleged defect, shortage in quantity, damage or failure to comply with description or sample.
- 11.2 If the Buyer does not identify any defect, shortage in quantity, damage or failure to comply with description or sample in accordance with 11.1, the Buyer must accept the Goods.
- 11.3 If the Seller delivers to the Buyer the Goods mixed with Goods other than those specified in the Order, the Buyer may, by written notice to the Seller within 5 Business Days from the date of delivery:
 - (a) Accept the Goods that have been delivered in accordance with the Order and reject the other Goods that do not conform with the Order; or
 - (b) Reject the delivery as a whole.
- 11.4 If the Buyer notifies the Seller under clause 11.1, the Buyer must provide to the Seller a reasonable opportunity to inspect the Goods within a reasonable time following notice (and in any event, no less than 10 Business Days) and before any use is made of the Goods.
- 11.5 If the Seller inspects the Goods and the Buyer is able to demonstrate the defect, shortage in quantity, damage or failure to comply with description or sample to the Seller's reasonable satisfaction, the Buyer may reject and return the Goods, and request a credit for the value of the Goods returned in accordance with clause 11.9.
- 11.6 If the Seller considers that a Good has a defect that is covered by a warranty given by the third party manufacturer of that Good, the Seller may request that the manufacturer repair or replace the Good under that warranty. Subject to clause 6.3, the Buyer acknowledges that the Seller is not responsible for the repair or replacement by the manufacturer.
- 11.7 If the Buyer does not notify the Seller in accordance with clause 11.1 or provide a reasonable opportunity to inspect the Goods under clause 11.4:
 - (a) The Goods will be deemed to be delivered in accordance with this Agreement
 - (b) The Goods will be deemed to be free from any defects or damage, which would otherwise have been apparent on a reasonable examination of the Goods
 - (c) The Buyer will be deemed to have accepted the Goods; and
 - (d) Any claim made by the Buyer in relation to any defect, shortage in quantity, damage or failure to comply with description or sample is absolutely barred.
- 11.8 Notwithstanding the receipt by the Seller of any notice under clause 11.1, a clear signature on the carrier's delivery advice sheet will be deemed to signify receipt of the quantity of Goods indicated on the advice sheet, and the Seller may elect to disregard any part of a notice relating to the quantity of Goods.
- 11.9 Any credits sought for Goods returned under Clause 11.5 are at the Seller's sole discretion and:
 - (a) The Goods must be returned by the Buyer within 30 days of receipt of Goods
 - (b) Unless the Goods are of the kind described under clause 11.5 or 11.6, the Buyer shall bear all costs of return freight and the Goods must be received by the Seller free from freight charges
 - (c) The Goods must be in unused, as new and good saleable condition in the manufacturers or Seller's original containers, unsoiled and undamaged
 - (d) The Goods must be accompanied by documents showing purchase order number, delivery note number, invoice number and date of purchase.
- 11.10 The Buyer must notify the Seller of any query the Buyer has relating to the tax invoice within five 5 working days of receipt of the tax invoice by notifying the Seller of such queries at: quickorderau@ascc.net.au . If the Buyer fails to comply with these provisions, then the tax invoice shall be conclusively presumed to be correct.
- 11.11 The Seller is not liable for any shortages or damage to Goods where the Goods are left on the Seller's premises unattended following delivery, or on the Buyer's premises following transmission to the Buyer.

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- 11.12 In the absence of a proven defect in the Seller's system of weighing, the weight of Goods sold shall be the last weight determined by the Seller's system of weighing prior to delivery.

12. LIEN

- 12.1 Where the Seller has not received the whole payment of the fees payable under an Order, or where a bill of exchange or other negotiable instrument or the like has been dishonoured, the Seller shall have rights that include:
- (a) A lien on the Goods
 - (b) The right to retain them for the price while the Seller is in possession of them
 - (c) A right of stopping the Goods in transit whether or not delivery has been made or ownership has passed
 - (d) A right of resale; and
 - (e) The foregoing right of disposal
- 12.2 The lien of the Seller shall continue despite the commencement of proceedings or judgment awarded for the price having been obtained.
- 12.3 To the extent that it is required under the PPSA, Clause 12.1 shall be a security interest.

13. UNPAID SELLER'S RIGHTS OF DISPOSAL

- 13.1 In the event that:
- (a) The Seller retains possession or control of the Goods
 - (b) Payment of the fees payable under an Order are due to the Seller
 - (c) The Seller has made a demand in writing to the Buyer for payment of the fees under an Order; and
 - (d) The Seller has not received payment of the fees,
- then, whether the title in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of any Goods and may claim from the Buyer the loss of the Seller on such disposal.
- 13.2 The Seller reserves the foregoing right of disposal of the Goods until payment of all outstanding invoices is received in full by the Seller.
- 13.3 Where the Goods are shipped and, by the bill of lading, the Goods are deliverable to the Seller or the Seller's agent, the Seller reserves the right of disposal.

14. SALES NOT RESCINDED BY OBLIGATION OF BUYER TO PAY DESPITE LIEN OR STOPPAGE IN TRANSIT

- 14.1 If the Seller has not received payment of fees that are due and payable under the Order:
- (a) Subject to this Agreement, the Buyer's obligation to pay the fees under an Order is not discharged by the mere exercise by the Seller of the right of lien or retention or stoppage in transit or sale of the Goods or part of;
 - (b) If the Seller exercises the right of lien or retention or stoppage in transit and resells the Goods, a third party that purchases the Goods from the Seller acquires good title as against the Buyer; and
 - (c) Where the Goods are of a perishable nature, or where the Seller gives reasonable notice to the Buyer of the intention to resell and the Buyer does not within a reasonable time pay all outstanding invoices in full, the Seller may resell the Goods and recover from the Buyer damages for any loss.
- 14.2 The sale by the Seller in terms of the lien or stoppage in transit or rights of resale for non-payment are always without prejudice to any claim the Seller may have for loss, and the Seller may claim from the Buyer for any other loss after payment of all expenses, directly or indirectly resulting from the breach of this Agreement by the Buyer.

15. CONTAINERS AND PALLETS

- 15.1 Containers in which the Goods are delivered remain the property of the Seller and must not be used for any commodity other than the Goods contained therein at the time of delivery. If the Buyer, at the Buyer's expense, returns any containers in good order and condition to the factory or store of the Seller from which the Goods were delivered, then the Seller will repay the Buyer the full amount of any deposit charged.
- 15.2 The Seller retains ownership of any pallets used for delivery of the Goods and the Buyer indemnifies the Seller for the cost of any pallets not returned to the Seller in good order and condition within thirty (30) days of delivery of the Goods.
- 15.3 Unless otherwise provided in writing the Seller retains ownership of any containers used for delivery of the Goods and the Buyer indemnifies the Seller for the cost of any containers not returned to the Seller in good order and condition within thirty (30) days of delivery of the Goods unless agreed otherwise in writing.
- 15.4 The Buyer will not reject any transfer of pallets to their CHEP account without prior contact with ASCC to advise query. The Buyer will compensate the Seller for any expenses incurred by the seller for incorrect rejection of transfer without consultation.

16. CONFIDENTIALITY

- 16.1 Unless otherwise permitted by this Agreement, the Buyer must keep confidential, and not to use or disclose any Confidential Information of the Seller, provided to or obtained by the Buyer before or after entry into this Agreement.
- 16.2 The obligations of confidence in clause 16.1 do not apply Confidential information that is:
- (a) Required to be disclosed by law or under compulsion of law by a court or government agency, as long as the Buyer:
 - (i) discloses the minimum amount of Confidential Information required to satisfy the law or rules; and
 - (ii) before disclosing any information, gives all available written notice to the Seller and takes all available steps (whether required by the Seller or not) to maintain such Confidential Information in confidence; or
 - (b) In the public domain otherwise than as a result of a breach of this agreement or other obligation of confidence.

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- 16.3 The Buyer may disclose Confidential Information of the Seller only:
- (a) With the prior written consent of the Seller; or
 - (b) To its directors, agents, professional advisors, employees, contractors and permitted subcontractors solely for the exercise of rights or the performance of obligations under this Agreement, provided that the Buyer ensures that the information is kept confidential by the person to whom it is disclosed.
- 16.4 The Buyer acknowledges that the Seller may suffer financial and other loss and damage if any unauthorised act occurs in relation to Confidential Information of the Seller, and that monetary damages would be an insufficient remedy. In addition to any other remedy available at law or in equity, the Seller is entitled to injunctive relief to prevent a breach of, and to compel specific performance of this clause 16.

17. INTELLECTUAL PROPERTY RIGHTS

- 17.1 The Buyer acknowledges and agrees that nothing in this Agreement grants the Buyer any intellectual property rights in the Goods, Services or any other intellectual property rights of the Seller.

18. PRIVACY

- 18.1 The Buyer authorises and directs the Seller to seek and obtain from and supply any information concerning the credit or business standing of the Buyer to any other person whether trader, merchant, firm, organisation, company, or any agency of source whatever including any credit agency or association of the like and directs any such person to supply or receive and record such information to and from the Seller. While the Buyer continues to be a customer of an amount is due from the Buyer to the Seller, the Seller is authorised to obtain repeat credit checks from time to time.

19. TERMINATION

- 19.1 If the Buyer commits a breach of this Agreement or an Event of Default occurs in relation to the Buyer, then the Seller may terminate this Agreement and any Order by written notice to the Buyer, in which case this Agreement and the applicable Orders will terminate on the date specified in that written notice or, if no date is specified, immediately.
- 19.2 If the Seller commits a material breach of a fundamental term of this Agreement that has a serious adverse effect on the Buyer and fails to remedy that breach within 60 days of receiving notice from the Buyer requiring it to do so, then the Buyer may terminate this agreement by notice to the Seller, in which case this agreement will terminate immediately.
- 19.3 The Buyer expressly waives any rights it may have to terminate this agreement other than as contemplated by clauses 19.1 and 20.3.
- 19.4 Clauses 1, 5, 6, 7, 8, 12, 13, 14, 15, 16, **Error! Reference source not found.**, 19.4, 20 and 21, and any provision of this Agreement that is expressly or by implication intended to come into force or continue on or after termination or expiry, survive the termination or expiry of this Agreement.

20. GENERAL

- 20.1 The Seller reserves the right to vary this Agreement from time to time. Such variations will apply to all subsequent Orders.
- 20.2 In the event of any inconsistency between this Agreement and any other documents relating to the Goods or Services specified in an Order, this Agreement will prevail. Any usage of trade, special agreement, or course of dealing between the parties at variance with the terms of this Agreement are expressly excluded.
- 20.3 If any term of this Agreement is illegal, invalid or unenforceable for any reason whatsoever including, but without limitation, legislation or other provisions having the force of law or any decision of any court or other body or authority having jurisdiction, such term will be deemed to be deleted from this Agreement, and the remaining clauses or parts of the clause of this agreement continue in force.
- 20.4 Any notice, document, request, demand or other communication ("**notice**") to be given for the purposes of this Agreement must be in writing. The Seller may give written notice by email. Time is of the essence.
- 20.5 If there is any failure or delay in the performance of its obligations under this Agreement to the extent that the failure or delay is wholly or partially caused, directly or indirectly, by a Force Majeure Event or any act or omission of the Buyer, the Seller will not be in breach of this Agreement or liable for such failure or delay, and the Buyer will not be entitled to cancel the relevant Order.
- 20.6 This Agreement is governed by the laws of Queensland, Australia and the Commonwealth of Australia. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Queensland, Australia.
- 20.7 The Buyer must not assign, in whole or in part, or novate the Buyer's rights and obligations under this Agreement without the prior written consent of the Seller. The Seller may assign its interests under this Agreement.
- 20.8 Time is not of the essence in the performance of obligations under this Agreement except in relation to performance of payment obligations.
- 20.9 Nothing in this Agreement creates a relationship of employment, trust, agency or partnership between the parties.
- 20.10 The Seller may subcontract the performance of all or any part of the Seller's obligations under this Agreement.
- 20.11 A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A right under this Agreement may only be waived in writing signed by the party granting the waiver and is effective only to the extent specifically set out in that waiver.
- 20.12 The Buyers is responsible for all licences and legislated requirements with regards to, purchasing, handling, storing and use of products supplied by ASCC

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21. DEFINITIONS AND INTERPRETATION

21.1 Unless otherwise defined in the body of this Agreement, the defined terms have the meanings given as follows:

- (a) **"Business Day"** means any day that is not a Saturday, Sunday, or designated Public Holiday in Brisbane, Queensland.
- (b) **"Confidential Information"** means the terms of any Order or document related to this Agreement, and any information about the business and affairs of that party, about the customers, clients, employees, subcontractors or other persons doing business with that party, any information which is by its nature confidential, which is designated as confidential by that party, which the other party knows or ought to know, is confidential, and all trade secrets, knowhow, financial information and other commercially valuable information of that party.
- (c) **"Consequential Loss"** means any loss of bargain, loss of revenue, loss of profits, loss of reputation, loss of actual or anticipated savings, lost opportunities (including opportunities to enter into arrangements with third parties), loss or damage in connection with claims against the Buyer by third parties, loss or damages suffered or incurred in connection with any third party claim relating to the Goods, Services or this Agreement, any losses of the kind described in clause 6.1(c), and any other indirect or consequential loss of any nature (including losses that do not flow naturally, that is, according to the usual course of things, from the relevant breach, act or omission).
- (d) **"Event of Default"** includes failure to pay amounts due, failure of the Buyer to comply with any other obligation owed to the Seller, or in the Seller's opinion the Buyer is likely to be unable to meet its obligations to the Seller, or the Buyer becomes insolvent or has a receiver appointed in respect of all or some of the Buyer's assets, or makes or is likely to make an arrangement with the Buyer's creditors or has a liquidator (provisional or otherwise) appointed or is placed under statutory management.
- (e) **"Force Majeure Event"** means an act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies, labour disputes of whatever nature, failure by or delay of a third party, any circumstances relating to a pandemic or epidemic, and any other reason beyond the control of a party.
- (f) **"Guarantor"** means the Director or Directors as named on the face of this Application.
- (g) **"PPSA"** means the *Personal Property Securities Act 2009* (Cth).

21.2 Headings are inserted for convenience and reference only and shall not affect the meaning or interpretation of this Agreement.