



## Purchase Order Terms and Conditions

### 1 Review and acceptance

- 1.1 Thank you for reviewing the Purchase Order (the “**PO**”) that has been transmitted (via facsimile, e-mail or other electronic means) to you (“**Supplier**”) by Tasmanian Alkaloids Pty Ltd identified in the PO (“**Buyer**”). Notwithstanding any prior dealings between Buyer and Supplier, the PO is expressly made conditional on, and Buyer expressly limits Supplier’s provision of any goods or services set forth in the PO to, the terms and conditions in the PO and herein.
- 1.2 By accepting the PO and/or starting performance, shipping any goods or furnishing any services (or providing any deliverable arising therefrom) in connection with the PO, Supplier acknowledges that Supplier has read, understands, and agrees to be bound by the terms and conditions set forth in the PO and herein.
- 1.3 If Supplier objects to any such terms and conditions, Supplier shall notify Buyer in writing within seven days after its receipt of the PO and withhold acceptance of the PO and not start any performance, ship any goods or furnish any services (or provide any deliverable arising) in connection with the PO until/unless such objection is settled by written agreement by both parties.
- 1.4 Supplier should re-read the terms and conditions referenced in each subsequently issued purchase order that Supplier receives because by accepting such purchase order and/or starting performance, shipping any goods or furnishing any services (or providing any deliverable arising therefrom) after a revised version of the terms and conditions on the Site has been posted, Supplier will be deemed to have accepted the revised version.
- 1.5 If revised, the revised terms and conditions will be transmitted (via facsimile, e-mail or other electronic means) and will thereafter be immediately effective for purchase orders issued thereafter.

### 2 Agreement, amendments and conflicts

- 2.1 It is the mutual desire and intent of both parties to provide certainty as to their respective rights and remedies against each other by defining the extent of their mutual undertakings. Accordingly, the PO, these terms and conditions and, if applicable, the agreement (e.g., supply agreement, service agreement, statement of work) pursuant to which the PO was issued governing the relationship between Buyer and Supplier for the PO (“**Applicable Agreement**”).
  - 2.1.1 Contain the entire understanding of the parties with respect to the subject matter of the PO and incorporate all representations, warranties, covenants, commitments and understandings on which both parties have relied, and neither party makes any other representations, warranties, covenants, commitments or understandings.
  - 2.1.2 Supersede all previous representations, warranties, covenants, commitments and understandings between the parties, written or oral, including any terms in an estimate, an offer or other similar document, with respect to the subject matter of the PO and any back of invoice terms provided by the Supplier.
- 2.2 No modification, amendment or waiver of any term or condition in the PO or herein shall be effective, nor shall any additional or different terms or conditions, whether transmitted hereafter in an invoice, confirmation, acceptance or any other similar document in connection with the PO or pursuant to any course of dealing, usage of the trade or Buyer’s acceptance of any goods or services, be effective, unless set forth in a writing signed by Buyer and Supplier. In the event of any conflict or inconsistency between these terms and conditions and those in an Applicable Agreement, the terms and conditions in an Applicable Agreement will govern to the extent of the conflict or inconsistency.
- 2.3 All communications relating to the PO, to be effective, shall be addressed, if from Supplier to Buyer, to the Buyer’s representative, and if from Buyer to Supplier, to the Supplier’s representative, identified in the PO or as otherwise provided to the other party in writing. Any communications transmitted via facsimile or electronically;
  - 2.3.1.1 shall be considered a “writing” or “in writing,”
  - 2.3.1.2 shall be deemed “signed” if a signature is affixed that is valid in accordance with applicable law (including a valid electronic signature) and will constitute an “original” when printed. Communications introduced as evidence on paper will be admissible to the same extent and under the same conditions as other business records originated and maintained in



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documentary form and admissibility shall not be contested on the basis that the communication was not originated or maintained in documentary form.

### **3 Goods and Services**

- 3.1 Supplier shall provide to Buyer the goods and services set forth in the PO.
- 3.2 Supplier shall permit Buyer or its representatives to review and observe, from time to time upon reasonable notice, Supplier's progress under or performance in connection with the PO.
- 3.3 Supplier shall promptly respond to any request from Buyer in relation to the status of the PO.
- 3.4 Supplier shall provide Buyer with such reports as are appropriate to the nature of the goods and services set forth in the PO and as may be reasonably requested by Buyer from time to time.

### **4 Inspection**

- 4.1 All goods and deliverables are subject to final review, inspection and acceptance by Buyer notwithstanding any payment or initial inspection. Final inspection will be made by Buyer within a reasonable time after receipt of goods or deliverables.

### **5 Non-conforming goods or services**

- 5.1 Buyer reserves the right to refuse any goods or services and to cancel all or any part of the PO if Supplier does not, or goods or services provided by Supplier to Buyer do not, conform to any applicable industry standards or practices, any applicable specifications, certificates of analysis, drawings, samples, descriptions or any other similar criteria in the PO or otherwise provided to Supplier by Buyer (the "**Specifications**") or any terms and conditions set forth in the Applicable Agreement, PO and herein. Acceptance of any part of the shipment of goods or any part of the services shall not bind Buyer to accept any non-conforming goods or non-conforming services simultaneously provided by Supplier, nor deprive Buyer of the right to reject any previous or future non-conforming goods or services. Buyer may, if it rejects any non-conforming goods, return such goods to Supplier at Supplier's expense for transportation both ways, and Supplier shall not deliver to Buyer any replacement or substitution goods for such rejected goods unless so authorized by Buyer.

### **6 Delivery**

- 6.1 The delivery of goods and services shall strictly comply with the delivery date or delivery schedule, if any, provided to Supplier by Buyer. If at any time it appears Supplier will not meet such delivery date or schedule, Supplier shall promptly notify Buyer in writing of reasons for, and the estimated duration of, the delay. If requested by Buyer, Supplier shall ship such delayed goods by means to avoid or minimize delay to the maximum extent possible, including rerouting any shipment if appropriate and the use of a dedicated motor carrier or air freight, and any added costs shall be borne by Supplier.
- 6.2 Notwithstanding the foregoing, Buyer may cancel the PO and seek any other remedies available in accordance with applicable law, including cover and incidental and consequential damages from Supplier, if Supplier does not, or goods or services provided by Supplier to Buyer do not, conform to the Applicable Agreement, PO and these terms and conditions, including delivery of goods or services that do not strictly comply with the Specifications or the delivery date or schedule, if any, provided to Supplier by Buyer.

### **7 Replacement personnel**

- 7.1 With respect to any personnel assigned by Supplier to provide goods or services to Buyer, Buyer reserves the right to request for any lawful reason whatsoever the removal or reassignment of any such personnel, which right shall not relieve Supplier of any responsibility it has for the PO. Supplier shall as soon as possible thereafter provide replacement personnel satisfactory to Buyer. Supplier shall not, however, leave any position(s) without staffing acceptable to Buyer during any replacement assessment period(s).



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### 8 Cancellation

- 8.1 Buyer may cancel the PO at any time and for any reason upon written notice to Supplier. In the event of such cancellation, Supplier shall comply with any directions given by Buyer in such notice with respect to the goods and services in the PO and cease all other shipment of goods and all other work with respect to the PO. Within 45 days from the effective date of such cancellation, Supplier shall provide to Buyer all material, drawings, work-in-progress and co-developed intellectual property and submit an invoice to Buyer for all work done by Supplier in accordance with the PO prior to cancellation. Buyer agrees to pay all undisputed amounts in accordance with the Applicable Agreement, PO and these terms and conditions.
- 8.2 In no event shall Buyer be responsible for any amounts in the aggregate greater than the total that would have been due under the PO or the value of the work done by Supplier in accordance with the PO prior to cancellations, whichever is less.

### 9 Invoice

- 9.1 Unless Buyer otherwise informs Supplier, Supplier shall issue a separate invoice for each shipment of goods delivered by Supplier and, for services, each set of completed services. Supplier shall not issue any invoices before the goods or services are delivered to Buyer. Payment due dates will be computed from the date the invoice is received by Buyer to the date payment is otherwise transmitted by Buyer.
- 9.2 All invoices submitted by Supplier shall include the PO number, a description of goods and/or services provided, details of any travel and out-of-pocket expenditures approved by Buyer; and a detailed description of the number of hours worked and fee per hour, if services are provided based on time and material pricing.

### 10 Payments

- 10.1 **Unless Buyer otherwise informs Supplier, payment terms shall be net 60 days from invoice date on the Supplier invoice.**
- 10.2 Except for amounts expressly set forth in the PO, Buyer shall not be responsible for any;
- 10.2.1 other charges, including charges for delivery, parts or services;
- 10.2.2 expenses of Supplier or any mark-ups on any expenses of Supplier and
- 10.2.3 taxes, charges, levies and other costs in connection with the supply of the goods or services.
- 10.3 The parties agree that all payments and other amounts of consideration expressed in the PO are exclusive of any relevant goods and services tax, value added tax or other similar tax (“**GST**”), unless expressly indicated to the contrary. Buyer agrees that where a payment or consideration under the PO is not expressed to include GST, it must pay, in addition to the payment or consideration expressed, an amount in respect of GST applicable to the supply by Supplier under the PO. Supplier must issue Buyer with a correctly rendered tax invoice for any amount collected by Supplier on account of GST.

### 11 Warranty

- 11.1 Notwithstanding any other representation, warranty or agreement to the contrary, Supplier unconditionally represents and warrants the following
- 11.1.1 the goods and services supplied pursuant to the PO shall be of merchantable quality, conform to applicable industry standards and practices and the Specifications, be suitable for Buyer’s intended uses and purposes in the ordinary course of its business, be free from defects in design, material and workmanship and, in the case of the goods, be unencumbered;
- 11.1.2 all services provided by Supplier shall be provided by qualified personnel reasonably skilled and trained in the performance of the services and in a workmanlike and professional manner;



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- 11.1.3 any documentation provided to Buyer by Supplier shall meet reasonable standards of clarity and detail;
- 11.1.4 the goods and services provided to Buyer and the use thereof by Buyer shall not infringe on any party's intellectual property rights, including any party's confidential information, trade secrets, copyrights or patents;
- 11.2 Supplier is currently under no obligation to any party, nor will Supplier enter into any obligation to any party, that could interfere with Supplier delivering the goods or services in the PO;
- 11.3 Supplier has all authorizations, permits, approvals and licenses necessary to supply the goods and services in accordance with all applicable national, local and municipal statutes, laws, ordinances and regulations and
- 11.4 Supplier shall comply with, and the goods and services provided by Supplier shall be in compliance with, all national, local and municipal statutes, laws, ordinances and regulations, including those relating to the environment, occupational safety and health, labor standards, assembly and supply of the Products, International Standards Organization Rules 9000 and any permits, licenses and certifications Supplier is required to have.
- 11.5 If Supplier, the goods and services provided to Buyer or the use thereof by Buyer infringes on any party's intellectual property rights, including any party's confidential information, trade secrets, copyrights or patents, such that the sale or use of such goods or services is enjoined, Supplier shall, at its expense and option, either procure for Buyer the right to continue to use such goods or services, replace such goods or services with equivalent non-infringing goods or services or modify such goods or services so they become equivalent non-infringing goods or services. The foregoing, however, shall not be construed to limit or exclude any other claims or remedies that Buyer may assert.
- 11.6 All representations and warranties shall run to Buyer, its customers and the users of the goods or services or products into which such goods or services may be incorporated. All third party warranties and representations obtained by or applicable to Supplier in connection with any goods and services in the PO are hereby deemed provided, in addition, for the benefit of Buyer, its affiliates and their users and customers. Nothing in this clause shall be construed as limiting in any way Supplier's other warranties to Buyer.

## 12 Indemnification

- 12.1 Supplier agrees to indemnify and hold harmless Buyer, its affiliates (and its and their respective directors, employees and agents) against any and all losses, claims, liabilities, damages and expenses, including without limitation reasonable attorney's fees, (collectively, "Claims") in connection with or arising out of the following:
- 12.2 Any unlawful, negligent or willful act or omission of Supplier, its personnel, agents, consultants or subcontractors; or Supplier's (including its personnel, agents, consultants or subcontractors) breach of any provision of the PO, these terms and conditions or the Applicable Agreement.

## 13 Limitation of Liability

- 13.1 Under no circumstances will buyer or its affiliates be liable for consequential, indirect, special, punitive, exemplary, multiplied or incidental damages or lost profits, whether foreseeable or unforeseeable or prejudgment interest or attorney's fees or costs based on claims of supplier or any other party arising out of breach or failure of express or implied warranty, breach of contract, misrepresentation, negligence, strict liability in tort, failure of any remedy to achieve its essential purpose or otherwise. Notwithstanding the form (e.g. contract, tort or otherwise) in which any legal or equitable action may be brought. In no event will buyer or its affiliates be liable for damages or losses that exceed, in the aggregate, the greater of
- 13.2 The amount due from buyer as set forth in the PO, but not already paid to supplier for the goods or services provided by supplier in accordance with the PO and these terms and conditions or \$1000.
- 13.3 This section will not apply only when and to the extent that applicable law specifically requires liability despite the foregoing disclaimer, exclusion and limitation.



# TASMANIAN ALKALOIDS PTY. LTD.

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### 14 Insurance

- 14.1 For the period beginning when Supplier accepts the PO and/or starts performance, ships any goods or furnishes any services (or provides any deliverable arising therefrom) in connection with the PO and ending at least 4 years after Supplier completes the PO in full or the PO was cancelled by Buyer, Supplier shall, at its own expense, maintain with a reputable insurer (and provide written certificate(s) of insurance to Buyer if and when requested) reasonable and customary insurance coverage, including, but not limited to,
- 14.2 Provide copies of current certificates of insurance, if requested, for applicable insurance coverage such as workers compensation, public liability and motor vehicle.
- 14.3 Any other insurance as required by law or that a prudent person would take out in relation to the supply of the goods or the services. The commercial general/public liability insurance shall include worldwide coverage and include Buyer and its affiliates, and their directors, officers and employees, as Additional Named Insured/co-insured. The certificate(s) of insurance will include the agreement for the insurer to give Buyer written notice at least 30 days prior to the effective date of any cancellation, lapse or material change in the policy, and will contain a waiver of subrogation in favor of Buyer and its affiliates, and their directors, officers and employees.

### 15 Rights to Intervention; Copyright

- 15.1 Supplier acknowledges that Buyer will be the exclusive owner of all deliverables created by Supplier in connection with or during the performance of the PO, any works based on or derived from such deliverables (“**Derivatives**”), and any ideas, concepts, inventions or techniques that Supplier may conceive or first reduce to practice in connection with or during the performance of the PO (“**Deliverable Concepts**”) (the deliverables, Derivatives, and Deliverable Concepts being collectively referred to as “**Buyer Materials**”) and all intellectual property rights therein, including patents, copyrights, trade secrets, trademarks, moral rights, and similar rights of any type under the laws of any jurisdiction and/or governmental authority (collectively, “**Intellectual Property Rights**”).

### 16 Government contracting

- 16.1 Supplier represents that the price it is charging is not in excess of the ceiling prices, if any, established by any government agency.

### 17 Force Majeure

- 17.1 Supplier and Buyer, as the case may be, shall be excused for delays in performance or failure of performance to the extent arising from causes beyond such party’s reasonable control, including without limitation strikes, wars, fires, acts of terror or acts of God, such as floods and earthquakes. In the event of any such event or condition, the party whose performance is excused hereunder shall notify the other party promptly thereof and shall make diligent efforts to perform at its earliest opportunity. If Supplier’s performance is excused hereunder, Buyer may cancel the PO and Supplier agrees to provide to Buyer the assistance and information necessary for Buyer to make, have made, or otherwise procure replacement goods and services.

### 18 Shipping Terms

- 18.1 Unless Buyer otherwise informs Supplier, delivery of goods is to be FOB (**FOB, The Incoterms 2010 Rules**) Buyer’s plant and all amounts in the PO include all delivery charges thereto. If both parties mutually agree that goods are to be shipped FOB shipping point, and Buyer has not designated routing, Supplier shall ship goods via the most economical method that will meet the delivery date provided to Supplier by Buyer. Supplier shall provide a packing list to Buyer for all shipments referencing the appropriate order number. Bills of lading, if any, shall also reference the appropriate order number.

### 19 Transportation Liability

- 19.1 Supplier agrees that in any case where freight regulations covering goods transported by common carrier establish a maximum limit on the carrier’s liability for loss or damage suffered in transit, Supplier will be liable to Buyer for any loss or damage in excess of such maximum limit.



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### 20 **Confidentiality**

- 20.1 Supplier shall not, without securing the prior written consent of Buyer, originate any publicity (including any news release or public announcement), use any logos, trademarks, service marks or names of Buyer or any of its affiliate, disclose to any third party Confidential Information (as defined below) or use or reproduce any such Confidential Information for any purpose other than in connection with providing to Buyer the goods and/or services set forth in the PO.
- 20.2 ("**Confidential Information**") shall mean any information relating to the following: the existence of the relationship with Buyer; Buyer's purchasing systems or practices (including, without limitation, descriptions of purchased items, quantities purchased and prices paid); the nature of the services performed or deliverables or goods delivered under the PO; or any data, designs or any other information relating to Buyer or its affiliates or their businesses.
- 20.3 Notwithstanding the foregoing, Supplier may disclose Confidential Information;
- 20.3.1 to Supplier's employees having a need to know such information in connection with Supplier's performance of the PO or
- 20.3.2 to comply with applicable laws, court orders or government regulations, provided, in such case Supplier promptly provides notice thereof to Buyer prior to any disclosure to allow Buyer to comment thereon and to seek a protective order or similar relief.
- 20.4 Supplier shall not use or reproduce the Confidential Information for any purpose other than in connection with the PO. Supplier agrees that it will take appropriate action by instruction, agreement or otherwise with its employees who are permitted access to the aforementioned information to notify them of the obligations hereunder. No right, title, interest or license to Supplier is either granted or implied under any trademark, patent, copyright or any other intellectual property right by the disclosure of the Confidential Information hereunder. Upon Buyer's request at any time, all documents and other material containing Confidential Information, and any other data, designs, or other information furnished to Supplier (and copies thereof), shall be returned to Buyer or destroyed, as directed by Buyer.

### 21 **Buyers Property**

- 21.1 All tools, equipment and materials of every description furnished to Supplier by, or paid for by, Buyer, and any replacement thereof, and any materials affixed or attached thereto, shall be and remain the personal property of Buyer, and shall be safely stored separate and apart from Supplier's property. Supplier shall not substitute any property for Buyer's property and shall not use such property except in filling Buyer's purchase orders.
- 21.2 Such property while in Supplier's custody or control shall be held at Supplier's risk, shall be kept insured by Supplier at Supplier's expense in an amount equal to the replacement cost with loss payable to Buyer and shall be subject to removal at Buyer's written request, in which event Supplier shall prepare such property for shipment and shall redeliver to Buyer in the same condition as originally received by Supplier, reasonable wear and tear excepted.

### 22 **Safety Data Sheets**

- 22.1 An appropriate safety data sheet ("**SDS**") and labeling, as and if required by law, will precede or accompany each shipment by Supplier. Further, Supplier shall send to Buyer updated SDSs and labeling as required by law.

### 23 **Environmental, Safety and Industrial Hygiene**

- 23.1 Supplier agrees to use commercially reasonable efforts to implement a policy of environmental responsibility concerning its products and processes, including where applicable, pollution prevention and waste reduction programs.
- 23.2 With respect to all environmental, safety and industrial hygiene matters related to Supplier's activities in providing goods and/or services to Buyer, Supplier shall:
- 23.2.1 comply with all applicable laws and regulations issued by federal, state and local authorities;



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- 23.2.2 inform Buyer promptly of any significant adverse event (e.g., fires, explosions, accidental discharges) that has the potential of affecting the quality of the goods and/or services to be delivered;
- 23.2.3 inform Buyer promptly of any allegations or findings of violations of applicable laws or regulations that have the potential of affecting the quality of the goods and/or services to be delivered;
- 23.2.4 allow Buyer's representatives to inspect Supplier's facilities, such inspections to be at reasonable times and upon reasonable notice; and
- 23.2.5 implement promptly any corrective action which may be reasonably requested by Buyer, including (without limitation) adhering to reasonable and significant elements of the environmental, safety and industrial hygiene program adhered to by Buyer in its own operations. Supplier shall provide Buyer accurate information concerning ozone depleting chemicals used in its products or processes when required by any applicable regulations or laws.

## 24 Compliance

- 24.1 Any provisions, representations or agreements required by any law or regulation to be included in the contract resulting from acceptance of the PO are hereby incorporated by reference into these terms and conditions, including, but not limited to, OH&S laws and regulations, those prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sex or national origin, or physical or mental handicap.
- 24.2 Supplier guarantees that no article shipped pursuant to this PO is modified, misbranded or altered in any way in breach of national, local and municipal statutes, laws, ordinances and regulations.
- 24.3 In the manufacture of the goods or delivery of the services which are the subject of the PO, Supplier shall only employ young people only as permitted by the following policy;
  - 24.3.1 Age, Health & Safety – No person under the age of 16 shall be employed. No person between the ages of 16 and 18 shall be employed unless such employment is in compliance with the health, safety and morals provisions of the International Labour Organization Convention 138 Concerning Minimum Age;
  - 24.3.2 Hours – No persons under the age of 18 ("Young Person") shall be required to work more than 48 hours of regularly scheduled time and 12 hours of overtime per week, nor more than six days per week; and
  - 24.3.3 Law & Regulations – No Young Person shall be employed unless such employment is in compliance with all applicable laws and regulations concerning age, hours, compensation, health and safety,
  - 24.3.4 Supplier agrees to submit to periodic compliance inspections by Buyer and/or its affiliates and representatives, to maintain the records necessary to demonstrate compliance and to provide annual certifications of compliance to the foregoing.
- 24.4 Supplier shall not subcontract any of its obligations under the PO without the prior written consent of Buyer.
- 24.5 While on the premises of Buyer or any of its affiliates (the "Premises"), Supplier shall comply with all rules and regulations while on and applicable to the Premises. Supplier shall be responsible for its personnel and agents while they are on the Premises whether or not any of their actions fall outside the scope and course of employment or engagement by Supplier. Supplier shall ensure that its personnel and agents proceed directly to the site where Services are to be provided and do not enter any other part of the Premises, except as directed by Buyer.
- 24.6 Supplier agrees that Buyer or its affiliate, as the case may be, may search Supplier's personnel and agents, their vehicles and packages while they are on, leaving or entering the Premises.



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### 25 Wood Pallets

25.1 This clause applies to all products and/or materials shipped to Buyer or its affiliates or authorized locations on wood pallets. Wood pallets must be constructed from lumber sourced from countries that prohibit the treatment of wood with any form of halophenol based chemicals (including but not limited to 2, 4, 6 trichlorophenol, 2, 4, 6 tribromophenol, any of the tetrachlorophenols, any of the tetrabromophenols and pentachlorophenol). Wood pallets used must have been heat treated only, in accordance with the Heat Treatment standards set forth in International Standards for Phytosanitary Measures Publication No. 15, 2009 Revision (**ISPM 15**). Additionally, the sourced lumber or finished pallets shall not be shipped or stored with pallets or materials that may contain the chemicals mentioned above. While ISPM 15 currently provides for the use of Methyl Bromide (**MB**), the use of pallets fumigated with Methyl Bromide is also prohibited. All wood pallets must be labeled with the HT stamp in accordance with ISPM 15 Annex II. Failure to meet the above requirements of this paragraph may lead to rejection of shipments at Supplier's expense.

### 26 Dispute resolution

- 26.1 Governing Law: The laws of the location in which the goods are delivered or services are provided, without regard to principles of conflict of laws or Buyer's place of residence, will govern these terms and conditions and the PO.
- 26.2 Arbitration: Subject to section (26.3) below, any dispute that might arise between Supplier and Buyer relating to or arising from use of the Site or from the PO or these terms and conditions shall be settled by binding arbitration in accordance with the then prevailing
- 26.3 Australian Centre for International Commercial Arbitration ("**ACICA**") Arbitration Rules, if this agreement is governed by the laws of Australia; or
- 26.4 International Arbitration Rules of the International Centre for Dispute Resolution ("**ICDR**") ("**ICDR Rules**"), in other circumstances,
- 26.5 (the applicable rules being the "Rules"), except where those rules conflict with this provision, in which case this provision controls. Arbitration shall be conducted before three arbitrators, one named by each party and the third appointed in accordance with the Rules, unless the parties agree otherwise. The arbitration shall be held, and Supplier and Buyer irrevocably consent to arbitrate, in Australia (if (26.3) applies) or Singapore if (26.4) applies, unless they mutually agree upon an alternative location. The arbitration shall be conducted in English. In rendering the award the arbitrators must apply the substantive law applicable under clause 26.1 above (except where that law conflicts with this clause). Under no circumstances shall the arbitrator award damages in excess of or inconsistent with the limitations contained in the "Limitation of Liability" section of these terms and conditions. Any court with jurisdiction shall enforce this clause and enter judgment on any award. The arbitrators, by accepting appointment, undertake to exert their best efforts to conduct the process so as to issue an award within nine months of the appointment of the last arbitrator, but failure to meet that timetable shall not affect the validity of the award. Supplier and Buyer each have the right before or during the mediation or arbitration to seek and obtain from the appropriate court provisional remedies such as attachment, an injunction, replevin, etc., to avoid irreparable harm, maintain the status quo or preserve the subject matter of the arbitration.
- 26.6 Mediation: Prior to initiation of arbitration, Supplier and Buyer must attempt to mediate, within a period of 45 days after the request for mediation, the dispute using a professional mediator from the ACICA (if this agreement is governed by the laws of Australia) or the ICDR (in other circumstances) or like organization selected by agreement or, absent agreement, through selection procedures administered by the ACICA in accordance with the ACICA Mediation Rules (if this agreement is governed by the laws of Australia) or the ICDR in accordance with the International Mediation Rules (in other circumstances). Such mediation shall be attended on behalf of each party for at least one session by a senior business person with authority to resolve the dispute. In no event will mediation delay commencement of the arbitration for more than 45 days or interfere with the availability of emergency relief.
- 26.7 No Publicity: The arbitration and mediation proceedings shall be confidential and neither party shall publicize the nature of any dispute or the outcome of any mediation or arbitration proceedings except to the extent required by law, provided in such case the party required to make any disclosure informs the other party of such requirement to allow the other party to seek a protective order. The



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mediator or arbitrator, as the case may be, shall issue appropriate protective orders to safeguard each party's confidential information.

### **27**     **Audit**

- 27.1 For the period beginning when Supplier accepts the PO and/or starts performance, ships any goods or furnishes any services (or provides any deliverable arising therefrom) in connection with the PO and ending at least 4 years after Supplier completes the PO in full or the PO was cancelled by Buyer, Supplier agrees to make, keep and maintain, in accordance with generally accepted accounting principles and practices, consistently applied from year to year, complete books, invoices, records of payments, correspondence, instructions, specifications, plans, drawings, receipts, manuals, contracts, purchase orders, tax returns, memoranda and other records relating to the PO, including the goods and/or services provided there under and if applicable, cost of materials used, expenses incurred, hours worked.
- 27.2 Buyer shall have the right to audit and/or examine all such items, either directly or through its authorized representative or agents, during regular business hours and upon reasonable prior notice. If any audit or examination reveals that Supplier collected more from Buyer than it was entitled to collect under the PO, Supplier shall promptly reimburse such Buyer for the amount of any overcharges. Supplier shall also pay Buyer interest at the rate of one percent (1%) per month on such amount, but in no event to exceed the highest lawful rate of interest, calculated from the date the amount was paid to Supplier until the date of actual reimbursement to Buyer. In the event that any such audit or examination reveals that Supplier collected more than five percent (5%) than what it was entitled to collect under the PO, Supplier shall also reimburse Buyer for the cost of such audit in addition to the other amount owed pursuant to this section.

### **28**     **Assignment**

- 28.1 The PO and the rights and duties under the PO and these terms and condition shall not be assignable by either party without the prior written consent of the other party, which consent may be withheld in such other party's sole discretion; provided however, Buyer may assign its rights and obligations to any one or more of its affiliates. The PO and these terms and conditions shall inure to the benefit of and be binding upon Buyer and Supplier and their respective successors and permitted assigns. Nothing contained in the PO or herein shall give to any other person any benefit or any legal or equitable right, remedy or claim.

### **29**     **Relationship**

- 29.1 The relationship of Buyer and Supplier is that of independent contractors, and nothing contained herein shall be construed to give either party any right or authority to create or assume any obligation of any kind on behalf of the other or constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking.
- 29.2 Buyer shall not be liable for any of its affiliates under any circumstances.
- 29.3 The relationship between Buyer and Supplier is not one of exclusivity.

### **30**     **Miscellaneous**

- 30.1 Headings used herein are for convenience only and shall not be used for interpretive purpose. A party's failure to act with respect to another party's breach of any provision contained herein does not constitute a waiver. If any provision herein is held to be invalid or unenforceable, such provision shall be narrowly construed, if possible, or otherwise deemed ineffective and the remaining provisions shall not be affected. No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, the terms or any part of the terms. The terms and conditions in the PO and herein will survive the fulfillment of the PO.

**END OF DOCUMENT**