

# Purchase Agreement (Long Form)

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[Insert ONSTREAM entity] (ONSTREAM)

[Insert name of Supplier] (Supplier)

Contract Number [Insert]

Description [Insert]

# Agreement Form

<b>Contract Number</b>	<input style="width: 100%;" type="text"/>
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<b>Between the the Supplier</b>	<input style="width: 100%;" type="text" value="[Insert name of Supplier]"/>	
	<input style="width: 60%;" type="text" value="[Insert address]"/>	<b>ABN:</b>
<b>and ONSTREAM</b>	<input style="width: 100%;" type="text" value="[Insert ONSTREAM entity]"/>	
	<input style="width: 60%;" type="text" value="[Insert address]"/>	<b>ABN:</b>

1. This Agreement is constituted by the Contract Documents listed in Item E of the Agreement Details.
2. The Supplier must supply and Deliver the Goods in accordance with this Agreement and any Purchase Order and otherwise comply with this Agreement.
3. Subject to the provisions of this Agreement, ONSTREAM must pay to the Supplier the amounts which become payable under this Agreement and otherwise comply with this Agreement.

## Executed as an agreement

<b>The Supplier</b> Signed in accordance with section 127(1) of the <i>Corporations Act 2001</i> (Cth) by <input style="width: 100%;" type="text" value="[Insert full name of Supplier]"/>		<b>ONSTREAM</b> Signed by a duly authorised representative for and on behalf of <input style="width: 100%;" type="text" value="[Insert ONSTREAM entity]"/> in the presence of the witness	
<b>Director</b>	<b>Director / Secretary</b>	<b>Signatory (authorised representative)</b>	<b>Witness</b>
<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>
<b>Name of director</b>	<b>Name of director / secretary</b>	<b>Name of signatory</b>	<b>Name of witness</b>
<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>
<b>Date of signing</b>	<input style="width: 100%;" type="text"/>	<b>Date of signing</b>	<input style="width: 100%;" type="text"/>

# Purchase Agreement

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# Part I - Agreement Details

Item	Description	Details
A	<b>Agreement Date</b>	
B	<b>Goods</b>	The goods as described in Schedule 1
C	<b>Supplier Representative</b>	Name:
		Title:
		Address for notices:
		Telephone:
		Facsimile:
		Email:
D	<b>ONSTREAM Representative</b>	Name:
		Title:
		Address for notices:
		Telephone:
		Facsimile:
		Email:
E	<b>Contract Documents</b> <i>(delete those not applicable)</i> <i>(add any other applicable documents)</i>	Agreement Form Part I - Agreement Details Schedule 1 - Specifications Schedule 2 - Schedule of Unit Prices Schedule 3 - Site Conditions Schedule 4 - Delivery Point Schedule 5 - Price Variation Part II - Special Conditions Part III - Agreed Terms
F	<b>Commencement Date</b>	[Option A] The Agreement Date [Option B] [Insert other date when Supplier commenced/is to commence supply of Goods]
G	<b>Initial Term</b>	[Option A] [Insert period] months [Option B] Not applicable
H	<b>Further Term</b>	[Option A] Yes, [Insert period] months [Option B] No [Option C] Not applicable
I	<b>Warranty Period</b>	[Option A] [Insert period (in months)] [Option B] Not applicable
J	<b>Contract Sum</b>	[Option A] Lump Sum \$[Insert amount]
		[Option B] Schedule of Unit Prices As set out in Schedule 2
K	<b>Period of Unit Prices</b>	[Option A] [Insert period (in months)] months [Option B] Not applicable
K1	<b>Date for Delivery</b>	[Option A] [Insert date for Delivery of Goods]

Item	Description	Details	
		[Option B] The date stated in a Purchase Order by which the Supplier must Deliver the Goods subject to that Purchase Order	
L	<b>Date for payment</b>	<p>If ERS System does not apply, [30 or insert other number] days after the end of the period of invoicing specified in Item M below in which the Tax Invoice is issued by the Supplier and received by ONSTREAM.</p> <p>If ERS System apply, [30 or insert other number] days after the end of the period of invoicing specified in Item M below in which the Supplier submits the payment claim and the Tax Invoice is generated by ONSTREAM in accordance with clause 18.1.</p>	
M	<b>Period of invoicing</b>	[Option A] Monthly [Option B] On Delivery of Goods [Option C] [Insert other period of invoicing]	
N	<b>Insurance policies required</b>	<b>Minimum Amount of Coverage</b>	<b>Period</b>
	<b>Public liability Policy</b>	\$ <i>(if blank, \$20 million per event)</i>	Term (plus Warranty Period)
	<b>Product liability policy</b>	\$ <i>(if blank, \$20 million per event)</i>	No time period applies
	<b>Professional indemnity policy</b>	\$	Term (plus 7 years)
	<b>Third party motor vehicle Policy</b>	Comprehensive	Term (plus Warranty Period)
	<b>Goods insurance Policy</b>	Full value of Goods including loss or damage in transit or unloading	Term (plus Warranty Period)
	<b>Workers' compensation policy</b>	As required by Legislative Requirements	As required by Legislative Requirements
	<b>Employees</b>	Against liability for death of or injury to persons employed by the Supplier including liability under statute and at common law	Term (plus Warranty Period)
	<b>Other policies</b>	\$ <i>(if blank, not required)</i>	
O	<b>Status of Supplier IP</b>	[Option A] Owned by ONSTREAM [Option B] Retained by Supplier - Licensed to ONSTREAM	
P	<b>Applicable Jurisdiction</b>	[Option A] Victoria, Australia [Option B] [Insert other State or Territory]	
Q	<b>Security and Security Amount</b>	[Option A] Yes, \$[Insert amount] [Option B] Not applicable	
R	<b>Liquidated Damages Amount</b>	[Option A] \$[Insert amount] per day [Option B] Not applicable	
S	<b>Quality Assurance Certification</b>	[Option A] [Insert details] [Option B] Not applicable	
T	<b>Agreed Mark up</b>	[Option A] Non-Contract Items – [Insert mark up]% [Option B] Buy-In items – [Insert mark up]% [Option C] Not applicable	

# Schedule 1 - Specifications

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**[Note to contract officer: insert full details of all specifications on the Goods, including size, colour, model or any other specifications required by ONSTREAM.]**

## Schedule 2 - Schedule of Unit Prices

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**[Note to contract officer: the Unit Prices to be included in this schedule are to be exclusive of GST. If only one lump sum is payable, insert "Not applicable".]**



## Schedule 3 - Site Conditions

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**[Note to contract officer: insert any conditions applicable to the Site at which the Delivery Point is situated. If there are several Sites, insert conditions applicable to each Site. If there are no conditions applicable, insert "Not applicable".]**

# Schedule 4 – Delivery Point

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**[Note to contract officer: insert Delivery Point details.]**

# Schedule 5 – Price Variation

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**[Note to contract officer: insert any price variation formula or any agreed mechanism to vary the prices.]**

## Part II – Special Conditions

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**[Note to contract officer: insert any Special Conditions. Refer to the User Guide for further information.]**

# Part III - Agreed Terms

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## 1. Defined terms & interpretation

### 1.1 Defined terms in this Agreement:

Term	Meaning
<b>Accepted</b>	acceptance of the Goods by ONSTREAM under clause 8.1.
<b>Agreement</b>	the agreement constituted by the Contract Documents
<b>Agreement Details</b>	the items set out in Part I – Agreement Details.
<b>Agreement Date</b>	the date identified in Item A of the Agreement Details.
<b>Applicable Jurisdiction</b>	the jurisdiction named in Item P of the Agreement Details
<b>Authorisation</b>	any licence, consent, approval, permit, registration, accreditation, certification or other authorisation given or issued by any Regulatory Authority or any other person.
<b>Business Day</b>	a day that is not a Saturday, Sunday, public holiday or bank holiday in the Applicable
<b>Buy-In Items</b>	goods which the Supplier does not typically or usually supply but which the Supplier agrees to purchase on behalf of and supply to ONSTREAM.
<b>Claim</b>	any claim, cause of action, proceeding, suit, demand or claim for payment made against a party however it arises and whether it is present or future, fixed or unascertained, actual or contingent:  (a) under or arising out of, or in any way in connection with, this Agreement or any Direction of ONSTREAM;  (b) arising out of, or in any way in connection with the Goods, or any party's conduct before the Agreement Date; or  (c) at law or in equity.
<b>Commencement Date</b>	the date identified in Item F of the Agreement Details.
<b>Contract Documents</b>	the documents described in Item E of the Agreement Details.
<b>Contract Sum</b>	(a) where a lump sum is identified in Item J of the Agreement Details, the lump sum; or  (b) where Item J of the Agreement Details refers to the Schedule of Unit Prices, the sum ascertained by multiplying the unit prices in the Schedule of Unit Prices by the corresponding quantities in the Schedule of Unit Prices; or  (c) where Item J of the Agreement Details refers to both a lump sum and the Schedule of Unit Prices, the aggregate of the sums referred to in paragraphs (a) and (b) of this definition,  but excludes any additions or deductions which may be required to be made under this Agreement.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Date for Delivery</b>	has the meaning given in Item K1 of the Agreement Details.

<b>Deliver, Delivered or Delivery</b>	packaging the Goods, transporting the Goods to, and unloading the Goods at, the Delivery Point
<b>Delivery Point</b>	the location or address for Delivery of Goods as set out in Schedule 4, the relevant Purchase Order or as otherwise Directed by ONSTREAM.
<b>Direct or Direction</b>	any instruction, decision, demand or determination given by ONSTREAM or the ONSTREAM Representative to the Supplier.
<b>Electronic Means</b>	electronic funds transfer, e-procurement, e-commerce, facsimile transmission, electronic mail or other means of electronically exchanging information, which forms part of a commercial transaction.
<b>ERS System</b>	the Evaluated Receipt Settlement System, the process by which ONSTREAM automatically creates an invoice at the time that a claim for payment is made using the Supplier's payment claim number as the invoice number, and then making payment to the Supplier against the ERS System invoice based on the payment terms.
<b>Further Term</b>	the further term (if any) identified in Item H of the Agreement Details.
<b>Goods</b>	the goods or any of them described in Item B of the Agreement Details.
<b>Goods Receipt Entry</b>	the data entry procedure having the name "Goods Receipt entry (Transaction MIGO)" forming part of the NAVISION System.
<b>GST</b>	any tax imposed under any GST Law and includes GST within the meaning of the GST Act.
<b>GST Act</b>	the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>GST Law</b>	the "GST Law" as defined in the GST Act and any other Act of the Parliament of Australia that imposes or deals with GST.
<b>Information</b>	all information (whether in writing, oral or electronic form), documents or data however held, stored or recorded including drawings, plans, specifications, calculations reports, models, concepts, source codes, files, computerised data, photographic recordings, audio or audio visual recordings.
<b>Initial Term</b>	the period (if any) identified in Item G of the Agreement Details.
<b>Insolvency Event</b>	in respect of a party: <ul style="list-style-type: none"> <li>(a) if the party is an individual: <ul style="list-style-type: none"> <li>(i) a trustee or similar officer is appointed in respect of the party or any of the party's assets;</li> <li>(ii) an order is made for the bankruptcy of the party or his or her estate or an event occurs that would give a court the right to make such an order;</li> <li>(iii) a moratorium of any debts of the party, a personal insolvency agreement or any other assignment, composition or arrangement with the party's creditors or any similar proceeding or arrangement by which the assets of the party are subjected conditionally or unconditionally to the control of the party's creditors or a trustee is ordered or applied for;</li> <li>(iv) the party is declared or taken under any applicable law to</li> </ul> </li> </ul>

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be insolvent or unable to pay his or her debts or the party admits in writing that he or she is insolvent or unable to pay his or her debts;

(v) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made or issued against or in relation to any asset of the party; or

(vi) any event under any law which is analogous to, or which has a substantially similar effect to, any of the events referred to in paragraphs (a)(i) to (b)(v) of this definition.

(b) if the party is a company:

(i) a receiver, receiver and manager, liquidator, provisional liquidator, administrator or trustee is appointed in respect of the party or any of its assets or anyone else is appointed who (whether or not as agent for the party) is in possession, or has control, of any of the party's assets for the purpose of enforcing a charge;

(ii) an event occurs that gives any person the right to seek an appointment referred to in paragraph (b)(i) of this definition;

(iii) an application is made to court or a resolution is passed or an order is made for the winding up or dissolution of the party or an event occurs that would give any person the right to make such an application;

(iv) the party proposes or takes any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them;

(v) the party stops paying its debts when they become due or is declared or taken under any applicable law to be insolvent or the party's board of directors resolves that the party is, or is likely to become at some future time, insolvent;

(vi) any person in whose favour the party has granted any security becomes entitled to enforce any security under that security or any floating charge under that security crystallises; or

(vii) any event under any law which is analogous to, or which has a substantially similar effect to, any of the events referred to in paragraphs (b)(i) to (b)(vi) of this definition.

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**Intellectual Property**

all existing and future rights in the nature of intellectual property or industrial property and includes:

(a) copyright;

(b) trade marks whether registered or unregistered, and any copyright subsisting in those trade marks;

(c) designs (whether registered or unregistered);

	<p>(d) patents and inventions (whether patented, and whether patentable or not);</p> <p>(e) circuit layouts, documents, reports, results of tests, photographs, video tapes, statements, diagrams, technical information, plans, drawings, calculations, tables and schedules;</p> <p>(f) internet domain names;</p> <p>(g) trade names and business names;</p> <p>(h) confidential information and trade secrets; and</p> <p>(i) any application or the right to apply for registration of any of the rights referred to in paragraphs (a) to (h) of this definition.</p>
<b>Legislative Requirements</b>	<p>includes each of the following as enacted, amended or repealed from time to time:</p> <p>(a) any decree, legislation, statute, Act or by-law of the Commonwealth of Australia or any State or Territory or any local government authority;</p> <p>(b) any decree, regulation, award, proclamation, order, ordinance or administrative order made under or pursuant to any thing referred to in paragraph (a) of this definition; and</p> <p>(c) any Authorisation.</p>
<b>Liquidated Damages Amount</b>	the amount (if any) set out in Item R of the Agreement Details.
<b>Loss</b>	without limitation, any loss, damage, liability, compensation, fine, penalty, charge, payment, cost or expense (including any legal cost and expense) however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
<b>ONSTREAM Information</b>	any Information that is the property of or in the possession of ONSTREAM or any of its Related Body Corporate, including any Information that may be used by the Supplier in the provision of the Goods.
<b>ONSTREAM Policies and Procedures</b>	<p>any policy, procedure, publication or guideline which ONSTREAM is subject to and (as amended from time to time) that is:</p> <p>(a) specifically identified as such in Part IV - ONSTREAM Policies and Procedures;</p> <p>(b) the subject of a Direction;</p> <p>(c) publicly available and relevant to the Goods or this Agreement including without limitation, any policies relating to occupational health and safety; or</p> <p>(d) notified by ONSTREAM to the Supplier from time to time.</p>
<b>ONSTREAM Representative</b>	the person named in Item D of the Agreement Details.
<b>MSDS</b>	has the meaning given in clause 5.1(c)(v).
<b>Non-Contract Items</b>	goods which are usually or typically supplied by the Supplier but which are not Goods.



<b>Purchase Order</b>	an order from the NAVISION System by ONSTREAM to the Supplier to supply the Goods.
<b>Purchase Order Special Conditions</b>	any additional condition or variation to a condition in a Purchase Order which will form part of that Purchase Order.
<b>Purchase Price</b>	the sum ascertained by multiplying the Unit Price for the appropriate category of Goods by the number of units to be Delivered and accepted under a Purchase Order.
<b>Quality Assurance Certification</b>	any certification, approval or registration concerning assurance of quality of the Supplier's systems, procedures, processes, business practices and production: <ul style="list-style-type: none"> <li>(a) held by the Supplier as at the Commencement Date; or</li> <li>(b) otherwise identified in Item S of the Agreement Details.</li> </ul>
<b>RCTI</b>	Recipient Created Tax Invoice, being a Tax Invoice created by ONSTREAM, which is to be delivered to the Supplier when payments are processed by the NAVISION System.
<b>Received</b>	in relation to a document, the first to occur of: <ul style="list-style-type: none"> <li>(a) the document actually being received by the intended recipient; or</li> <li>(b) the document being deemed to be received by the intended recipient under clause 29.2.</li> </ul>
<b>Regulatory Authority</b>	<ul style="list-style-type: none"> <li>(a) any government or local authority and any department, minister or agency of any government; and</li> <li>(b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation.</li> </ul>
<b>Related Body Corporate</b>	has the meaning given in the Corporations Act.
<b>NAVISION System</b>	the computer software programs owned or licensed by ONSTREAM which is an ordering, logistics and sales invoicing system, consisting of a set of instructions or statements in machine readable form, including manuals and revisions, enhancements, updates, new versions and new releases of and functional changes to the computer software program or parts of it.
<b>Schedule of Unit Prices</b>	the unit price or respective unit prices (or other sums, quantities and prices) for any items of Goods as set out in Schedule 2.
<b>Security</b>	an unconditional undertaking in respect of the Supplier's obligations under this Agreement: <ul style="list-style-type: none"> <li>(a) on terms; and</li> <li>(b) given by a financial institution, approved by ONSTREAM.</li> </ul>
<b>Site</b>	the premises at which the Delivery Point is situated.
<b>Site Conditions</b>	the Site Conditions stated in Schedule 3, in the relevant Purchase Order or as otherwise Directed by ONSTREAM.
<b>Special Conditions</b>	the conditions set out in Part II – Special Conditions.

<b>Specifications</b>	the specifications for any item of the Goods in Schedule 1.
<b>Subcontractor</b>	any subcontractor engaged by the Supplier for the performance of any part of the obligations of the Supplier under this Agreement.
<b>Supplier IP</b>	Intellectual Property owned by or licensed to the Supplier and which is or may be used by the Supplier in connection with the supply of Goods.
<b>Supplier Personnel</b>	each of the Supplier's officers, employees, agents and Subcontractor.
<b>Supplier Representative</b>	the person named in Item C of the Agreement Details.
<b>Supplier Warranty</b>	each warranty given by the Supplier under clause 14.
<b>Standards</b>	all standards, specifications, requirements and rules issued by the various worldwide standards association bodies and identified by the abbreviations assigned to each of those standards and includes the standards and testing requirements (if any) stated in the Specifications.
<b>Tax</b>	all forms of taxes, duties, imposts, charges, withholdings, rates, levies or other governmental impositions of whatever nature and by whatever authority imposed, assessed or charged together with all costs, charges, interest, penalties, fines, expenses and other additional statutory charges, incidental or related to the imposition and <b>Taxation</b> has a corresponding meaning.
<b>Tax Invoice</b>	has the meaning given in the GST Act.
<b>Term</b>	the Initial Term, any Further Term and such further period of time as is mutually agreed in writing between ONSTREAM and the Supplier.
<b>Third Party IP</b>	has the meaning in clause 11.2(j).
<b>Unit Price</b>	for each type of Good to be supplied by the Supplier, the price per unit of that type of Good as stated in Schedule 2.
<b>Variation</b>	any written variation under clause 17.
<b>Warranty Period</b>	for each Good supplied by the Supplier, the period stated in Item I of the Agreement Details, commencing from Acceptance of that Good in accordance with clause 8.

## 1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (d) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (e) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's officers, employees, executors, administrators, successors and permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (i) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (j) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (k) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it.

### **1.3 Headings**

Headings are for ease of reference only and do not affect interpretation.

### **1.4 Order of precedence**

If there is any inconsistency between the Contract Documents, the inconsistency will be resolved by applying the provision or interpretation that is most favourable to ONSTREAM except that Special Conditions will at all times take precedence over Part III – Agreed Terms. The Supplier will not be entitled to any additional payment as a consequence.

### **1.5 Rights of ONSTREAM**

The exercise by ONSTREAM of any right to inspect or test Goods or require evidence of compliance by the Supplier with this Agreement, or any Purchase Order does not limit or affect the obligations of the Supplier. ONSTREAM's rights under this Agreement or any Purchase Order are in addition to, and do not limit, ONSTREAM's rights at law.

### **1.6 Status of Supplier**

The Supplier is an independent supplier and is not for any purpose a partner, joint venturer, agent or employee of ONSTREAM.

### **1.7 ONSTREAM Representative**

The ONSTREAM Representative, or another person nominated by ONSTREAM by notice to the Supplier, may exercise any of ONSTREAM's functions under this Agreement. The appointment of the ONSTREAM Representative does not limit any of ONSTREAM's powers or rights under this Agreement.

### **1.8 Supplier Representative**

The Supplier Representative, or another person nominated by the Supplier and approved by ONSTREAM, will act as the Supplier's representative under this Agreement and any Direction given by ONSTREAM to the Supplier Representative is binding on the Supplier.

## **2. Term**

### **2.1 Initial Term**

Subject to clauses 2.2 and 2.3, the Supplier must supply and Deliver the Goods during the Initial Term.

## **2.2 Further Term**

Where Item H of the Agreement Details indicates that a Further Term applies, ONSTREAM may, by Direction given not later than 10 Business Days prior to the end of the Initial Term, extend that period for the period referred to in Item H of the Agreement Details.

## **2.3 Single supply**

If Item G of the Agreement Details states that an Initial Term is not applicable, the Supplier agrees to supply and Deliver the Good to ONSTREAM for the Purchase Price in accordance with this Agreement and this Agreement will constitute the Purchase Order for the Goods.

# **3. Supply of Goods**

## **3.1 Delivery of Purchase Order**

If ONSTREAM requires the Supplier to supply the Goods, it may provide the Supplier with a Purchase Order. A Purchase Order may be exchanged by Electronic Means.

## **3.2 ONSTREAM not bound to order**

- (a) ONSTREAM is not obliged to give any Purchase Order to the Supplier or to order any minimum quantity of the Goods from the Supplier. Any quantities set out in this Agreement are estimated quantities only.
- (b) This Agreement is not evidence of, nor does it create an exclusive relationship between ONSTREAM and the Supplier in respect of the Goods. The Supplier acknowledges that ONSTREAM may purchase Goods or goods similar to the Goods from any person.

# **4. Purchase Order**

## **4.1 Binding contract**

A binding contract will be formed when a Purchase Order is Received by the Supplier.

## **4.2 Purchase Order Special Conditions**

- (a) ONSTREAM may include any Purchase Order Special Condition in a Purchase Order.
- (b) Where a Purchase Order contains Purchase Order Special Conditions, a binding contract incorporating those Purchase Order Special Conditions will be formed if the Supplier:
  - (i) notifies ONSTREAM that it accepts that Purchase Order;
  - (ii) does not give notice within 48 hours after that Purchase Order is Received that it does not accept that Purchase Order; or
  - (iii) Delivers the Goods in accordance with that Purchase Order.

## **4.3 Documents forming a Purchase Order**

A Purchase Order in its entirety consists of:

- (a) the Purchase Order;
- (b) any Purchase Order Special Condition;
- (c) the terms of the Contract Documents which will be construed so as to apply to the Purchase Order; and
- (d) any document or provision that the documents referred to in clauses 4.3(a) to 4.3(c) expressly incorporate as part of this Agreement.

#### **4.4 Effect of termination**

Despite any other provision of this Agreement, the termination of a Purchase Order will not operate to terminate this Agreement and the termination of this Agreement will not operate to terminate any Purchase Order.

## **5. Supply and Delivery**

### **5.1 Delivery**

- (a) The Supplier must Deliver the Goods to the Delivery Point by the Date for Delivery. Delivery is not complete until the Goods have been Accepted.
- (b) Unless otherwise agreed between the parties in writing, the Supplier must Deliver all Goods free of carriage and handling charges to the Delivery Point.
- (c) All Goods Delivered to ONSTREAM must be accompanied by:
  - (i) a delivery docket detailing the Goods being Delivered;
  - (ii) ONSTREAM's Purchase Order number and line item;
  - (iii) all relevant manufacturer's or Supplier's instructions concerning the use of the Goods;
  - (iv) all relevant Supplier Warranties in respect of the Goods; and
  - (v) if applicable, a "Material Safety Data Sheet" (**MSDS**) for any Goods constituting or consisting of chemicals, chemical substances or other hazardous goods and all other information required by any relevant Legislative Requirements. The MSDS will (at a minimum) explain, the physical properties, hazards to personnel, fire and explosion potential, safe handling recommendations, health effects, fire fighting techniques, reactivity, and proper disposal, regarding the Goods.

### **5.2 Early Delivery**

- (a) ONSTREAM is not bound to accept Delivery of any Good earlier than the Date for Delivery, and may elect to return that Good to the Supplier at the Supplier's expense, or hold them at the Supplier's risk.
- (b) If ONSTREAM accepts Delivery of a Good at a time or date that is earlier than the Date for Delivery, that Good will still be treated as if it was delivered on the Date for Delivery for the purposes of clause 18.1.

### **5.3 Occupational health and safety**

The Supplier must comply, and ensure that all Supplier Personnel complies, with all relevant occupational health and safety laws and ONSTREAM Policies and Procedures, which are in any way applicable to the performance of the Supplier's obligations under this Agreement.

### **5.4 Inventory**

The Supplier must keep sufficient inventory of the Goods to meet all Purchase Orders.

### **5.5 Packaging**

- (a) The Supplier must ensure that, and is liable for, any loss or damage caused if it does not ensure that:
  - (i) the Goods are suitably packed to avoid damage during loading, storage or Delivery having regard to the road and climatic conditions through which the Goods will pass; and
  - (ii) the Goods are packed and transported in accordance with any applicable regulations and industry codes and any reasonable safety or environmental requirement of ONSTREAM.
- (b) The Supplier must pay any increase in freight charges arising from the Supplier's failure to follow any transport instruction in this Agreement and a Purchase Order or to properly describe the Goods being transported.

- (c) The Supplier must assist ONSTREAM in obtaining documents or information required for the resolution of any transport dispute.

## **5.6 Labelling**

- (a) Packages and loose pieces must be clearly marked as shown on the face of the Purchase Order and if required by ONSTREAM, must indicate gross weight.
- (b) The Supplier must label all packages in accordance with all Legislative Requirements.

## **5.7 Goods unavailable**

- (a) Whenever possible, the Supplier must Deliver the full quantity of a Goods ordered in the Purchase Order in one delivery.
- (b) If the Supplier is unable to Deliver any Good ordered by ONSTREAM pursuant to a Purchase Order:
  - (i) within 14 days of receipt of that Purchase Order, the Supplier must immediately notify ONSTREAM in writing (the **Alternative Delivery Notice**) and advise of the date when such Goods will be available for Delivery;
  - (ii) upon Receiving an Alternative Delivery Notice, ONSTREAM may notify the Supplier that ONSTREAM elects to order that Good from an alternative source; and
  - (iii) if ONSTREAM elects to purchase that Good from an alternative source, that part of the Purchase Order, which relates to the unavailable Good will be deemed to be withdrawn and ONSTREAM will not be required to make any payment in relation to that Good and the balance of that Purchase Order will remain in full force and effect.

## **5.8 Delivery of unavailable Goods**

If ONSTREAM requires the Supplier to supply a Good pursuant to clause 5.7(b)(i), the Supplier must Deliver that Good by the date advised by the Supplier in the Alternative Delivery Notice which the date will constitute the Date for Delivery of that Goods.

## **5.9 Unloading**

Unless otherwise Directed, the Goods must be unloaded at the Delivery Point by the Supplier.

## **5.10 ONSTREAM not liable**

ONSTREAM is not liable for any injury, damage or loss sustained by the Supplier or any Supplier Personnel on ONSTREAM's premises or at any Site or elsewhere.

# **6. Inspection and testing**

## **6.1 Inspection and testing**

- (a) ONSTREAM may inspect or test the Goods, at any time prior to Delivery and upon reasonable notice, to determine whether they comply with this Agreement and the relevant Purchase Order.
- (b) The Supplier must ensure that ONSTREAM is permitted to attend at any premises where the Goods are being manufactured or stored for the purpose of carrying out an inspection or test. The Supplier must cooperate with ONSTREAM in respect of any inspection or test and provide ONSTREAM with access to the premises for such purpose.
- (c) ONSTREAM may test the Goods by the means specified in the Specifications or by other means that ONSTREAM considers appropriate, including selection of samples for testing and analysis.
- (d) The Supplier must perform the tests required by this Agreement or as Directed by ONSTREAM. The Supplier must provide ONSTREAM with copies of the results of any tests performed by the Supplier or anyone on the Supplier's behalf in connection with the Goods.
- (e) No inspection by ONSTREAM prior to Delivery of any Good affects any Supplier Warranty. The Supplier must promptly remedy any defect arising from the defective design, material or

workmanship or from any act or omission of the Supplier that appears in the Goods under proper use.

## **6.2 Compliance**

ONSTREAM may Direct the Supplier to provide evidence, acceptable to ONSTREAM, that the Goods are in accordance with this Agreement. The Supplier must provide such evidence in response to any Direction. The evidence must be provided within the time set out in the Direction or such longer time as may be agreed.

## **6.3 Cost of testing**

Unless otherwise stated in this Agreement or a Purchase Order, ONSTREAM must bear the costs of any test conducted on the Goods by ONSTREAM unless the Goods fail such tests in which case the Supplier must pay:

- (a) the cost of such tests incurred by ONSTREAM; and
- (b) the costs of any further tests ONSTREAM reasonably requires to be assured that the Goods comply with this Agreement and the relevant Purchase Order.

# **7. Hazardous materials**

## **7.1 Compliance with Legislative Requirements**

The Supplier warrants that the transport and storage of all chemicals, chemical substances and other hazardous materials and dangerous goods supplied under this Agreement will comply with all Legislative Requirements.

## **7.2 Materials Safety Data Sheet**

- (a) The Supplier must provide ONSTREAM with the relevant MSDS for all chemicals, chemical substances and other hazardous goods supplied under this Agreement.
- (b) No chemical, chemical substance or other hazardous goods must be brought on the Site until the relevant MSDS has been lodged with ONSTREAM.

# **8. Acceptance of Goods**

## **8.1 Acceptance**

The Goods are accepted by ONSTREAM when the ONSTREAM Representative completes the Goods Receipt Entry.

## **8.2 Title and risk**

Subject to clause 8.3, title to and property and risk in the Goods passes to ONSTREAM upon Acceptance.

## **8.3 Goods held on consignment**

If ONSTREAM specifies in a Purchase Order that the Goods are to be held on consignment by ONSTREAM, title to those Goods passes to ONSTREAM when the Goods are removed from stock held on consignment and used or applied by ONSTREAM.

## **8.4 Property in Goods part paid for**

- (a) If, prior to Delivery, ONSTREAM pays for the Goods or makes a part payment for the Goods, title to, and property in, the Goods (or if the Goods are incomplete, title to, and property in, the partly completed Goods and any materials and parts to be used in their manufacture or assembly, then on hand) passes to ONSTREAM, and the Supplier must clearly mark them with ONSTREAM's name and Purchase Order number.
- (b) If ONSTREAM considers that the Supplier has failed, or indicated that it may be unable to fulfil any obligation under clause 8.4(a), ONSTREAM may at any time enter the Supplier's land or premises and remove the Goods and any materials or parts to which ONSTREAM has title.

## **9. Rejection**

### **9.1 ONSTREAM may reject**

If ONSTREAM reasonably determines that:

- (a) the Goods do not comply with this Agreement or the relevant Purchase Order; or
- (b) the Supplier has breached a term of this Agreement or any Purchase Order,

ONSTREAM may reject the Goods by giving a rejection notice to the Supplier. A determination by ONSTREAM in accordance with this clause 9.1 is final and binding on the Supplier.

### **9.2 Possession of Goods after rejection**

ONSTREAM may, at the Supplier's cost, store the Goods rejected under clause 9.1 for a maximum period of 30 days after the date of the rejection notice and, if the Supplier does not repossess the Goods within the 30 day period, ONSTREAM will be entitled to sell or otherwise dispose of the rejected Goods at the Supplier's cost.

### **9.3 Reimbursement of ONSTREAM's costs**

ONSTREAM may, by a written notice, require the Supplier to reimburse ONSTREAM for any costs or expenses incurred by ONSTREAM as a consequence of the rejection of any Good. A notice for reimbursement that is served in accordance with this clause 9.3 is conclusive evidence of the costs and expenses incurred by ONSTREAM, and the Supplier must reimburse ONSTREAM for those costs and expenses within 21 days of the date of that notice.

### **9.4 Rights preserved**

ONSTREAM's right to reject the Goods or otherwise claim against the Supplier for the Goods that do not comply with this Agreement or the relevant Purchase Order is not limited or precluded by Acceptance of the Goods or by payment of any money to the Supplier.

## **10. Return of Goods**

### **10.1 Excess Goods**

ONSTREAM is not required to accept any Goods that are Delivered in excess of the quantities stated in the relevant Purchase Order. The Supplier must reimburse the cost of any demurrage, freight, cartage, haulage and other such costs incurred by ONSTREAM in returning excess Goods.

### **10.2 Incorrectly ordered Goods**

ONSTREAM may return any Goods that have been incorrectly ordered by ONSTREAM. ONSTREAM must pay all freight costs and handling charges associated with the return of such Goods.

### **10.3 Consignment**

On the expiration or termination of this Agreement, ONSTREAM may either purchase or return to the Supplier, in part or whole, any Good held on consignment where title has not passed to ONSTREAM. ONSTREAM must pay all freight and handling costs associated with the return of that Good except where this Agreement is terminated by request, or due to default, of the Supplier, in which case all freight and handling costs must be borne by the Supplier.

## **11. Supplier's obligations and warranties**

### **11.1 Supplier's obligations**

- (a) The Supplier must supply the Goods in accordance with:
  - (i) all Legislative Requirements;
  - (ii) all relevant Standards; and



- (iii) any Quality Assurance Certification that the Supplier is required under this Agreement to hold or which the Supplier held at the Commencement Date.
- (b) The Supplier will not:
  - (i) vary the Specifications, design, shape, configuration or characteristics of; and
  - (ii) where the Specifications specifies trade name products, supply or substitute an equivalent item for,
 any Good, in each case without the prior written consent of ONSTREAM.

## 11.2 Supplier's warranties

The Supplier warrants to ONSTREAM that:

- (a) the Supplier has full power and authority to enter into and give effect to this Agreement and to perform its obligations under this Agreement and all steps required to authorise the execution and performance of this Agreement by the Supplier have been properly taken;
- (b) this Agreement constitutes legal, valid and binding obligations, and subject to any necessary stamping and registration, is enforceable in accordance with its terms;
- (c) all Authorisations required in connection with the performance by it of this Agreement are in full force and effect, and there has been no material default by it in the performance of any of the terms and conditions of any of those Authorisations;
- (d) no Insolvency Event has occurred in relation to the Supplier;
- (e) it has the right to sell and transfer title to the Goods to ONSTREAM;
- (f) the Goods will:
  - (i) be free of any charge, encumbrance or any third party interest;
  - (ii) be new when Delivered to ONSTREAM (except as otherwise provided in the Specifications);
  - (iii) be fit for the purpose stated in the Specifications, a Purchase Order or elsewhere, or if no purpose is stated, the purpose for which the Goods would ordinarily be used;
  - (iv) conform to the description, model number and the sample (if any) provided by the Supplier;
  - (v) conform with the requirements of this Agreement and the Purchase Orders;
  - (vi) be free from defects (including defects in design, materials, workmanship and installation);
  - (vii) be of good merchantable quality and comply with the Standards; and
  - (viii) comply with all relevant Legislative Requirements;
- (g) all information and documentation supplied by the Supplier with or in connection with the Goods is accurate, complete and not misleading;
- (h) it validly holds and will continue to hold the Quality Assurance Certification for the duration of the term of this Agreement;
- (i) it has:
  - (i) made proper allowance in the Unit Price for:
    - (A) all matters which might impact upon the Supplier's ability to Deliver the Goods within any particular time, cost or quality constraints; and
    - (B) all risks associated with the Delivery of the Goods; and
    - (C) informed itself as to all matters which might impact on the Delivery of the Goods; and

- (j) where any Supplier IP is owned by a party other than the Supplier (**Third Party IP**), it has or will obtain all necessary rights and licences and pay all necessary fees in relation to the use of that Third Party IP by the Supplier.

### **11.3 Nature of warranties**

Each warranty given in clause 11.2 must be given full effect in its own right. No individual warranty will be read down by reason of the existence, or absence of any other warranty.

## **12. Security**

### **12.1 Provision of Security**

If required by Item Q of the Agreement Details, the Supplier must provide the Security to ONSTREAM in the amount stated in Item Q of the Agreement Details.

### **12.2 Form of Security**

The Security must, unless ONSTREAM otherwise Directs, be in the form of a bank guarantee that is unlimited as to time, irrevocable, unconditional and given by an Australian bank approved by ONSTREAM.

### **12.3 Lodgement of Security**

The Security must be lodged with the ONSTREAM Representative within 5 days of the Commencement Date, failing which ONSTREAM may withhold any payment due to the Supplier until the Supplier has complied with this clause 12.3.

### **12.4 Recourse to Security**

Without limiting the unconditional nature of the Security, ONSTREAM may have recourse to the Security in relation to any amounts, which ONSTREAM claims to be due from the Supplier to ONSTREAM in connection with this Agreement or otherwise.

### **12.5 Return of Security**

Subject to clause 12.4, ONSTREAM must return:

- (a) 50% of the Security within 14 days of the end of the Term for Delivery; and
- (b) the remaining Security within 14 days of the end of the Warranty Period.

## **13. Liquidated Damages**

### **13.1 Liability for Liquidated Damages**

If the Supplier fails to Deliver any Good by the relevant Date for Delivery, the Supplier must pay as a debt due to ONSTREAM Liquidated Damages for each day (or part of a day) between the Date for Delivery and the actual date of Delivery of that Good.

### **13.2 Deduction of Liquidated Damages**

The amount of Liquidated Damages payable by the Supplier under this clause 13 may be deducted by ONSTREAM from any moneys payable or to become payable by ONSTREAM to the Supplier, whether under this Agreement, any Purchase Order or otherwise.

### **13.3 Adjustment**

If:

- (a) the Supplier has paid, or ONSTREAM has deducted, Liquidated Damages in respect of the Supplier's failure to Deliver any Good by the relevant Date for Delivery; and
- (b) the Date for Delivery of that Good is subsequently extended in accordance with this Agreement,

ONSTREAM must, at the time of the next payment to the Supplier, repay to the Supplier any Liquidated Damages paid or deducted in respect of the period to and including the new Date for Delivery of that Good.

#### **13.4 General law damages**

If no amount for Liquidated Damages is stated in Item R of the Agreement Details, or if ONSTREAM for any reason becomes disentitled to Liquidated Damages, ONSTREAM is entitled to all remedies available to it (including damages) for late Delivery from the Supplier under general principles of law.

### **14. Warranty Period**

- (a) Without limiting any other warranty, whether expressed in this Agreement, implied by the Legislative Requirements or generally at law:
  - (i) if any defect (fair wear and tear excepted) appears in any Good within the Warranty Period for that Good, ONSTREAM may Direct the Supplier to promptly remedy such defect at its cost by either repairing or replacing that Good, such election being at the sole discretion of ONSTREAM; and
  - (ii) the Supplier must, where the Specifications so provide, obtain for ONSTREAM the benefit of any manufacturer's warranty in a manner reasonably Directed by ONSTREAM.
- (b) If the Supplier does not remedy a defect in the Goods within the time Directed by the ONSTREAM Representative (or, if no time is stated, within 14 days of being notified of the defect) ONSTREAM may engage others to repair or replace the Goods. The reasonable costs incurred by ONSTREAM in doing so, together with any loss or damage suffered by ONSTREAM as a result of the engagement of others, will be a debt due from the Supplier to ONSTREAM.

### **15. Import Duty**

- (a) ONSTREAM may make applications for import duty concessions in relation to the Goods procured in accordance with this Agreement.
- (b) The Supplier will provide all assistance and information in timely manner in relation to such applications as requested by ONSTREAM and, where ONSTREAM succeeds with such applications, the Supplier will obtain duty refunds as requested by ONSTREAM and will remit the proceeds to ONSTREAM.

### **16. Unit Prices**

#### **16.1 Unit Price inclusive**

All Unit Prices are inclusive of all costs and expenses of the Supplier whether foreseen or unforeseen, including all costs of Delivery, insurance and Taxes (other than GST) (if any), which must be paid by the Supplier.

#### **16.2 Variation of Unit Price**

Unit Prices are fixed for a period of months stated in Item K of the Agreement Details and thereafter may be varied at the beginning of each subsequent period of invoicing specified in Item M of the Agreement Details. Unit Prices are to be varied in accordance with Schedule 5 or by agreement between the Supplier and ONSTREAM.

#### **16.3 Goods Delivered after Term for Delivery**

Where Goods are ordered during the period referred to in Item K of the Agreement Details but are Delivered outside that period, the Unit Price payable for those Goods will be the Unit Price applicable at the date of the relevant Purchase Order.

## **16.4 Third parties**

The Supplier must extend the Unit Prices to a third party where Directed by ONSTREAM, if that third party is either using the Goods to perform services to ONSTREAM or is a Related Body Corporate of ONSTREAM.

## **17. Variations**

### **17.1 Direction to Vary**

- (a) ONSTREAM may Direct the Supplier to perform a Variation to vary any aspect of this Agreement or a Purchase Order, including:
  - (i) the quantity of the Goods to be supplied under any Purchase Order;
  - (ii) the Specifications as they apply to part or all of the Goods;
  - (iii) the Date for Delivery of the Goods;
  - (iv) the Delivery Point; and
  - (v) the methodology or other circumstances of Delivery.
- (b) The Supplier must not vary the Goods except as Directed. A Direction to supply the Goods in accordance with this Agreement is not a Variation.

### **17.2 Proposed variations**

ONSTREAM must give the Supplier a written notice of a proposed Variation. The Supplier must, as soon as practicable after receiving such notice, notify ONSTREAM whether the proposed Variation can be performed, together with, if it can be performed, the Supplier's estimate of:

- (a) the effect on the Date for Delivery of the Goods; and
- (b) the cost of performing the proposed Variation.

### **17.3 Pricing of Variations**

The Supplier must, as soon as practicable, price each Variation using the following order of precedence:

- (a) any prior agreements between the parties in respect of the Goods;
- (b) prices in the Schedule of Unit Prices, to the extent that it is reasonable to use them; and
- (c) other reasonable rates or prices selected by ONSTREAM.

### **17.4 Variations for the convenience of the Supplier**

If the Supplier requests ONSTREAM to Direct a Variation for the convenience of the Supplier, ONSTREAM may in its absolute discretion do so. The Direction may be subject to any conditions ONSTREAM considers appropriate. Unless the Direction expressly provides otherwise, the Supplier will not be entitled to extra time or extra money.

### **17.5 Effecting Variations**

- (a) Upon receipt of the Supplier's estimate referred to in clause 17.2, ONSTREAM may determine whether to proceed with, or withdraw, that Variation.
- (b) If ONSTREAM determines to proceed with a Variation, ONSTREAM and the Supplier must enter into an amendment agreement in a form satisfactory to ONSTREAM to effect that Variation.

### **17.6 Non-Contract Items and Buy-In Items**

- (a) ONSTREAM may, in a Purchase Order or by Direction, require the Supplier to supply Non-Contract Items or Buy-In Items.
- (b) The price for:

- (i) any Non-Contract Items will be the Supplier's purchase price (less any discount received from a Subcontractor); and
  - (ii) any Buy-In Items will be the net cost (after the deduction of any applicable Subcontractor discounts) to purchase the Buy-In Item,together with, in each case, the agreed mark up identified in Item U of the Agreement Details.
- (c) The Supplier must provide to ONSTREAM on request:
  - (i) in relation to all Non-Contract Items, details of the Supplier's net purchase price for the Non-Contract Item for audit purposes; and
  - (ii) in relation to all Buy-In Items, three quotations for the purchase of the Buy-In Items for audit purposes.
- (d) The net cost of the Buy-In Items for the purposes of clause 17.6(c)(ii) will not exceed the amount of the lowest quote for the Buy-In Items.

## **18. Payment**

### **18.1 Invoicing**

- (a) The Supplier must at the time referred to in Item M of the Agreement Details deliver a Tax Invoice in relation to Goods Delivered and Accepted up to the date of the Tax Invoice.
- (b) Where the Supplier is required to provide a Tax Invoice to ONSTREAM, the Tax Invoice must comply with the requirements of the GST Law (as a Tax Invoice) and must, unless inconsistent with the GST Law, specify:
  - (i) the Supplier's Australian Business Number;
  - (ii) the Purchase Price due to the Supplier and the basis of its calculation;
  - (iii) the amount of any GST paid or payable by the Supplier with respect to the Purchase Price;
  - (iv) the date of Delivery of the Goods to which the Tax Invoice relates;
  - (v) a description (including quantity) of the Goods Delivered;
  - (vi) if a discount is applicable, the amount of the discount;
  - (vii) the Supplier's bank account details for direct transfer of payment; and
  - (viii) the Purchase Order number.

### **18.2 Payment**

Subject to clause 18.4, ONSTREAM must pay to the Supplier the amount specified in a Tax Invoice by the date for payment specified in Item L of the Agreement Details.

### **18.3 Effect of payment**

The making of any payment under this Agreement is not:

- (a) evidence or an admission that the Goods have been Accepted;
- (b) evidence of the value of the Goods Accepted;
- (c) an admission of liability; or
- (d) acceptance or approval of the Supplier's performance,

but is a payment on account only.

## 18.4 Set-off

ONSTREAM may set off against any amount owing to the Supplier any amount owing, or claimed by ONSTREAM to be owing, by the Supplier to ONSTREAM, whether under this Agreement or otherwise.

## 19. Goods & Services Tax

### 19.1 Interpretation

Words or expressions used in this clause 19 which are defined in the GST Act, the *A New Tax System (Goods and Services Tax) Regulations 1999* (Cth) or, if not so defined, then which are defined in the *Competition and Consumer Act 2010* (Cth), have the same meaning in this clause 19.

### 19.2 Evaluated Receipt Settlement System

- (a) If Item **Error! Reference source not found.** of the Agreement Details states that the ERS System is to apply, ONSTREAM and the Supplier agree that in relation to the provision of any of the Goods the Supplier makes:
- (i) ONSTREAM may issue a RCTI in respect to those Goods; and
  - (ii) the Supplier will not issue a Tax Invoice in respect to those Goods.
- (b) If Item **Error! Reference source not found.** of the Agreement Details states that the ERS System is not to apply, the Supplier must submit Tax Invoices to ONSTREAM. ONSTREAM will have no obligation to pay any amount due until it receives a Tax Invoice for the relevant amount.

### 19.3 Consideration is GST exclusive

Any consideration to be paid or provided to the Supplier for the provision of Goods made by the Supplier under or in connection with this Agreement, unless otherwise stated, is exclusive of GST.

### 19.4 Gross up of consideration

- (a) Despite any other provision in this Agreement, if a party (**Supplying Party**) makes a taxable supply under or in connection with this Agreement on which GST is imposed:
- (i) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause 19.4 (**GST exclusive consideration**) is increased by, and the recipient of that supply (**Receiving Party**) must pay to the Supplying Party, an amount equal to the GST payable by the Supplying Party to the Australian Taxation Office on that supply; and
  - (ii) the amount by which the GST exclusive consideration is increased must be paid to the Supplying Party by the Receiving Party without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided, but not before a Tax Invoice is issued by the Supplying Party.
- (b) Provided the Receiving Party is registered for GST, the gross up amount for GST in clause 19.4(a) is only payable to the Supplying Party if the Supplying Party issues a Tax Invoice for that supply within the time limits set out in the GST Act that will allow the Receiving Party to claim an input tax credit

### 19.5 Reimbursements (net down)

If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

## 20. Withholding for payments and Taxes

- (a) ONSTREAM may, in relation to any payment it is required to make to the Supplier, withhold from that payment any amount it is required to withhold as Tax under a Legislative Requirement.

- (b) If any consideration paid to the Supplier by ONSTREAM under or in connection with this Agreement is paid free of withholding Tax, and at any time after such payment, ONSTREAM becomes aware (either by notification from a Regulatory Authority or otherwise), that an amount of Tax should have been withheld from such payment, ONSTREAM shall be entitled to recover from the Supplier that amount of Tax and any subsequent amount ONSTREAM may be required to pay to a Regulatory Authority for failing to withhold (including any amounts required to be withheld). Such payments must be paid to ONSTREAM within 30 days of receipt of notice from ONSTREAM.

## 21. Indemnity by Supplier

- (a) The Supplier indemnifies ONSTREAM, its Related Body Corporate and each of their officers, employees, subcontractors and agents (together the **Indemnified Persons**) against all Loss or Claims arising out of or in connection with any act or omission (including negligence) of the Supplier or any Supplier Personnel in providing or failing to provide the Goods including any Loss or Claim arising from:
- (i) any breach of this Agreement, any Legislative Requirement or other law by the Supplier or any Supplier Personnel;
  - (ii) the Supplier or any Supplier Personnel acting outside the scope of its authority under this Agreement;
  - (iii) death of or injury to any person;
  - (iv) any loss of or damage to any property including:
    - (A) any records, files or materials provided to the Supplier or any Supplier Personnel; or
    - (B) existing property in or upon the Site;
  - (v) the provision of the Goods or ONSTREAM's use of any Supplier IP or Third Party IP infringing any Intellectual Property or other rights of any third party; or
  - (vi) any false, misleading or deceptive statement or conduct of the Supplier or any Supplier Personnel.
- (b) ONSTREAM holds the indemnity set out in clause 21(a) for itself and on trust for each Indemnified Person.
- (c) The Supplier's liability to indemnify the Indemnified Persons will be reduced proportionally to the extent that any negligent or unlawful act or omission of ONSTREAM or its Related Body Corporate contributes to the Loss.

## 22. Insurance

### 22.1 General insurance requirements

- (a) During the term of this Agreement, the Supplier must effect and maintain:
- (i) the policies of insurance specified in Item N of the Agreement Details;
  - (ii) all insurances required by any Legislative Requirement in order to perform its obligations under this Agreement; and
  - (iii) such other insurances as ONSTREAM may reasonably require.
- (b) Each policy of insurance must:
- (i) be for the amount of cover specified in Item N of the Agreement Details;

- (ii) be maintained for the period specified in Item N of the Agreement Details; and
- (iii) cover ONSTREAM, the Supplier and all Supplier Personnel for their respective rights, interests and liabilities.

## **22.2 Evidence of insurance**

- (a) The Supplier must produce to ONSTREAM on demand satisfactory evidence of the insurances required to be effected and maintained under this Agreement.
- (b) If the Supplier fails to provide satisfactory evidence of insurances within 2 Business Days of being requested then:
  - (i) the Supplier will not be entitled to submit any further Tax Invoices and ONSTREAM will not be required to make any further payment under this Agreement until evidence is provided;
  - (ii) ONSTREAM or its Related Body Corporate may take out the relevant insurance and the cost of doing so will be a debt due and payable by the Supplier to ONSTREAM; and
  - (iii) ONSTREAM may elect to terminate this Agreement until such evidence is forthcoming by giving a written notice to the Supplier.

## **22.3 Validity of insurance**

The Supplier must not do anything to make void or inapplicable any policy of insurance, which the Supplier is required to effect and maintain under this Agreement.

## **22.4 Notice of potential claim under insurance policy**

The Supplier must:

- (a) as soon as possible, give notice to ONSTREAM of any occurrence that may give rise to a claim under an insurance policy required under this Agreement;
- (b) keep ONSTREAM informed of subsequent developments concerning the claim; and
- (c) ensure its Subcontractors similarly inform the Supplier and ONSTREAM in respect of occurrences which may give rise to a claim by them.

## **22.5 Cross liability**

Where this Agreement requires insurance to be effected in joint names, the party effecting the insurance must ensure that the insurance policy provides that:

- (a) insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;
- (b) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured and that failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured; and
- (c) any non-disclosure by one insured does not prejudice the rights of the any other insured to claim on the policy.

## **23. Extension of time**

### **23.1 Notice of delay**

- (a) If the Supplier encounters events or circumstances, which have resulted in, or might reasonably be expected to result in, a delay to Delivery, the Supplier must:
  - (i) immediately give a written notice of the delay to ONSTREAM;
  - (ii) use its best endeavours to mitigate the delay or any consequences of the delay; and



- (iii) as soon as reasonably practicable and to the extent reasonably practicable:
  - (A) remedy the cause of such delay; or
  - (B) if remedy is not possible, minimise the effects of such delay.
- (b) Each notice given under clause 23.1(a) must state:
  - (i) all relevant details of the cause of the delay and the extent of the delay;
  - (ii) any steps which have been taken to mitigate the delay or the consequences of the delay; and
  - (iii) any steps which have been taken or will be taken so as to remedy the delay or the cause of the delay and minimise its effects.

## **23.2 ONSTREAM's rights**

- (a) Upon receiving a notice in accordance with clause 23.1, ONSTREAM may:
  - (i) terminate all or any part of the Purchase Order; or
  - (ii) request the Supplier to source all or any part of the Goods from a third party.
- (b) Unless the termination or request arises as a result of an event or circumstance which would otherwise have entitled the Supplier to an extension of time under clause 23.3(a), the Supplier must bear all costs incurred in connection with the termination or request.
- (c) If the termination or request arises as a result of an event or circumstance which would otherwise have entitled the Supplier to an extension of time under clause 23.3(a), ONSTREAM must, in the case of a:
  - (i) termination, pay to the Supplier an amount calculated in accordance with clause 24.1(b); or
  - (ii) request, pay to the Supplier the reasonable costs incurred by the Supplier in complying with the request.

## **23.3 Extension of time**

- (a) Subject to the Supplier complying with clause 23.1, if the delay in Delivery of a Good is due to:
  - (i) any breach of this Agreement by, or any act, default or omission of, ONSTREAM; or
  - (ii) the performance of any Variation,
 the Date for Delivery for that Good will be extended for the period of any the delay.
- (b) Notwithstanding that the Supplier is not entitled to an extension of time, ONSTREAM may, in its absolute discretion, extend the Date for Delivery.

## **24. Termination**

### **24.1 Termination for convenience**

- (a) ONSTREAM may, without cause and at any time, by giving a written notice to the Supplier, terminate this Agreement or any Purchase Order (in whole or in part) in respect of Goods that have not been Delivered.
- (b) If ONSTREAM terminates this Agreement or a Purchase Order, other than pursuant to clause 24.2 or clause 24.4, ONSTREAM must pay to the Supplier any costs reasonably and necessarily incurred by the Supplier:
  - (i) prior to the date of the termination notice; or
  - (ii) which the Supplier is legally bound to pay,

in relation to the manufacture or supply of the Goods, after deducting any amount which the Supplier receives for the sale of those Goods to any third party.

- (c) If ONSTREAM terminates a Purchase Order other than as a result of the termination of this Agreement in accordance with clause 24.2 or clause 24.4 the Supplier must use its best endeavours to sell those Goods subject to that Purchase Order to a third party.

#### **24.2 Insolvency of either party**

Either party may immediately terminate this Agreement by a written notice to the other party if the other party is affected by an Insolvency Event.

#### **24.3 Supplier's default**

If the Supplier breaches this Agreement, ONSTREAM may give the Supplier a written notice of default requiring the default to be remedied within a specified time not less than 5 Business Days from the time the notice was issued by ONSTREAM.

#### **24.4 ONSTREAM's rights**

If the Supplier fails to remedy a breach within the period specified in the notice referred to in clause 24.3 or, if a breach is not capable of remedy, ONSTREAM may, by a further notice to the Supplier, terminate this Agreement.

#### **24.5 ONSTREAM's default**

- (a) If ONSTREAM fails to make a payment due and payable pursuant to this Agreement, within 5 Business Days of receiving notice from the Supplier requiring it to do so (which notice cannot be given prior to the time upon which payment falls due), the Supplier may give ONSTREAM a written notice of default.
- (b) If ONSTREAM commits a substantial breach of this Agreement (other than a failure to make a payment), the Supplier may give ONSTREAM a written notice of default requiring the default to be remedied within a specified time not less than 5 Business Days.

#### **24.6 Supplier's rights**

- (a) If ONSTREAM fails to remedy a breach or, if a breach is not capable of remedy, the Supplier may, by a written notice to ONSTREAM, suspend Delivery of the Goods under any Purchase Order. The Supplier must remove the suspension if ONSTREAM remedies the breach.
- (b) The Supplier may, by a written notice to ONSTREAM, terminate the Agreement, if within 28 days of the date of suspension under this clause 24.6, ONSTREAM fails to:
  - (i) remedy the breach; or
  - (ii) if the breach is not capable of remedy, make other arrangements to compensate the Supplier in relation to the breach.

#### **24.7 Termination**

If the Agreement is terminated pursuant to clause 24.1 or clause 24.5(b), the parties' remedies, rights and liabilities shall be the same as they would have been under the Applicable Jurisdiction had the defaulting party repudiated this Agreement and the other party elected to treat this Agreement as at an end and recover damages.

#### **24.8 Dumping**

ONSTREAM may terminate this Agreement or a Purchase Order for default by the Supplier or suspend the procurement of the Goods where the Goods supplied by the Supplier are subject to investigation by the "Anti-Dumping Authority" under the *Anti-Dumping Authority Act 1988* (Cth).

## 25. Notification of Claims

### 25.1 Required notice

- (a) The Supplier must, within 28 Business Days after the first day upon which an experienced and competent Supplier could reasonably have been aware of or an entitlement to make any Claim, give to ONSTREAM a prescribed notice (as described in clause 25.1(b)). ONSTREAM will not have any liability in respect of a Claim unless the Supplier has strictly complied with this clause 25.
- (b) A prescribed notice must contain particulars of all of the following:
  - (i) the breach, act, omission, Direction, approval or circumstances on which the Claim is or will be based;
  - (ii) the provision of this Agreement or other legal basis for the Claim or proposed Claim; and
  - (iii) the quantum or likely quantum of the Claim.

### 25.2 Release

The Supplier releases ONSTREAM from any Claim where the Supplier has not strictly complied with this clause 25 in respect of that Claim.

## 26. Intellectual Property

### 26.1 Supplier IP

If the Supplier is required to transfer any Supplier IP to ONSTREAM pursuant to Item O of the Agreement Details, the Supplier must do everything to perfect that transfer. If any Supplier IP is to be retained by the Supplier, the Supplier grants to ONSTREAM a perpetual, irrevocable, royalty-free and non-exclusive licence to use the Supplier IP in relation to the Goods.

### 26.2 ONSTREAM Intellectual Property

Intellectual Property in all ONSTREAM Information remains vested in ONSTREAM and its Related Body Corporate and must not be used or reproduced by the Supplier or any Supplier Personnel for any purpose other than for the purpose of the Supplier's obligations under this Agreement without ONSTREAM's prior written approval.

### 26.3 Third Party IP

The Supplier must ensure ONSTREAM is granted, by the owner of any Third Party IP, a perpetual, irrevocable, royalty-free and non-exclusive licence to use that Third Party IP for any purpose in relation to the Goods.

### 26.4 Moral Rights

The Supplier must, at its own expense, procure from every person (including its employees, Subcontractors or agents) who is the author of any Contract Material in which Intellectual Property subsists under or by virtue of the *Copyright Act 1968* (Cth), an unconditional consent to ONSTREAM, or persons authorised by ONSTREAM, to do, or omit to do, with respect to any Contract Material (or a substantial part or adaptation of the Contract Material), any act that ONSTREAM requires.

## 27. Confidentiality

### 27.1 Confidentiality

- (a) This Agreement and all Information provided to, obtained or produced by, the Supplier in connection with this Agreement must be treated as confidential by the Supplier. In this clause 27, such Information is referred to as **Confidential Information**.
- (b) The Supplier must ensure that its employees, agents, directors, partners, shareholders and consultants do not disclose to any person, any Confidential Information or Information relating to

ONSTREAM or its Related Body Corporate which may have come to their knowledge as a result of this Agreement.

## **27.2 Property in Confidential Information**

All Confidential Information remains the property of ONSTREAM or its Related Body Corporate. All Confidential Information must be returned to ONSTREAM (or destroyed or deleted at ONSTREAM's election) on expiration or termination of this Agreement, except 1 copy may be retained by the Supplier for compliance with laws and regulations.

## **27.3 Security of Confidential Information**

The Supplier must take all reasonable steps to protect the Confidential Information and keep it secure from unauthorised persons.

## **27.4 Use of Confidential Information**

The Confidential Information supplied to the Supplier pursuant to this Agreement must be used only as directed by ONSTREAM and must not be reproduced or used for any purpose other than pursuant to this Agreement.

## **27.5 Relief**

The Supplier acknowledges that ONSTREAM and its Related Body Corporate will be entitled (in addition to any entitlement to damages) to an injunction or other equitable relief with respect to any actual or threatened breach by the Supplier or any Supplier Personnel of this clause 27 and without the need on the part of ONSTREAM or its related Body Corporate to prove any special damage.

## **27.6 Exempt Information**

The Supplier's obligations under this clause 27 will not extend to:

- (a) Information already in the public domain other than due to a breach of this Agreement by the Supplier or any Supplier Personnel; and
- (b) any disclosure required by Legislative Requirement or other law.

## **27.7 Deed of confidentiality**

If required by ONSTREAM, the Supplier must require all Supplier Personnel to whom Confidential Information is disclosed to execute a deed of confidentiality in a form satisfactory to ONSTREAM at the cost of the Supplier.

## **27.8 Breach**

The Supplier must inform ONSTREAM immediately if the Supplier:

- (a) becomes aware or suspects that there has been a breach of this clause 27; or
- (b) is required to disclose the Confidential Information by law.

## **27.9 Assistance**

The Supplier must provide assistance requested by ONSTREAM in relation to any proceedings ONSTREAM or its Related Body Corporate may take against any person for unauthorised use, copying or disclosure of Confidential Information.

## **28. Privacy**

The Supplier agrees to be bound by the provisions of the *Privacy Act 1988* (Cth) as amended by the *Privacy Amendment (Private Sector) Act 2000* (Cth) that may apply to ONSTREAM with respect to any act done, or practice engaged in, by the Supplier for the purposes of this Agreement in the same way and to the same extent as ONSTREAM would have been bound by them had it been directly done or engaged in by ONSTREAM.

## **29. Service of notices**

### **29.1 Method**

A Purchase Order, notice, demand, consent, approval or communication under this Agreement (each a **Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile or by Electronic Means to the recipient's "Address for notices" specified in Item C or Item D of the Agreement Details (as applicable), as varied by any Notice given by the recipient to the sender.

### **29.2 Time of service**

A Notice given in accordance with clause 29.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the 2nd Business Day after the date of posting (or on the 7th Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight hours after the transmission, the recipient informs the sender that it has not received the entire Notice; and
- (d) in the case of electronic mail, if the receiving party has agreed to receipt in that form under this Agreement, and the message is correctly addressed to and successfully transmitted to that party's electronic mail address (e-mail address), and acknowledgment of receipt is recorded on the sender's computer,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

## **30. Records and audit**

- (a) The Supplier must maintain and retain for a period of not less than 7 years full and proper records of all Goods provided including all details and data used in the creation of Tax Invoices delivered.
- (b) The Supplier must provide ONSTREAM with all reasonable access during the period referred to in clause 30(a) to all of the Supplier's personnel (including all Supplier Personnel), books, records, systems, procedures and correspondence relating to this Agreement, to audit and verify that charges are in accordance with this Agreement or for any other reasonable purpose.

## **31. Subcontracting or assignment**

### **31.1 Subcontracting**

- (a) The Supplier must not, without the prior written approval of ONSTREAM (which must not be unreasonably withheld), subcontract the performance of any part of this Agreement.
- (b) Any consent to subcontract granted by ONSTREAM may be conditional upon (without limitation):
  - (i) the Supplier obtaining from the Subcontractor evidence of appropriate insurance and expertise; and
  - (ii) the Subcontractor granting to, and the vesting in ONSTREAM of, any Intellectual Property rights in respect of this Agreement.
- (c) Any agreement between the Supplier and a Subcontractor must:

- (i) be consistent with, and to the extent possible (having regard to the subcontracted obligations) impose the same obligations on the Subcontractor as this Agreement; and
  - (ii) provide that the Subcontractor may not sub-subcontract the performance of its obligations without the prior written approval of the Supplier and ONSTREAM.
- (d) If ONSTREAM has a policy to (wherever possible) provide Australian suppliers with a full, fair and reasonable opportunity to supply goods and services to ONSTREAM, then, without otherwise limiting or affecting this clause 31, if the Supplier proposes to subcontract the performance of any of its obligations under this Agreement, it must ensure that Australian suppliers are given a full, fair and reasonable opportunity to perform the obligations to be subcontracted.

### **31.2 Liability of Supplier unaffected**

Any consent to subcontract or to sub-subcontract will not relieve the Supplier from any of its liabilities or obligations under this Agreement nor create any liability or obligation on ONSTREAM. The Supplier will be liable to ONSTREAM for the acts and omissions of any Subcontractors and such Subcontractor's employees and agents, as if they were acts or omissions of the Supplier.

### **31.3 Assignment**

- (a) The Supplier must not assign or transfer its rights under this Agreement without ONSTREAM prior written consent, which may be granted on such reasonable terms, as ONSTREAM considers appropriate.
- (b) ONSTREAM may assign or transfer its rights under this Agreement without the Supplier's consent.

## **32. Disputes**

### **32.1 Settlement of disputes**

- (a) Any dispute in connection with this Agreement must be notified in writing by either party to the other party. The notice must set out details of the dispute (**Dispute Notice**).
- (b) Within 14 days of delivery of the Dispute Notice the Supplier Representative and the ONSTREAM Representative must meet to attempt to resolve the dispute.
- (c) If the dispute is not resolved in accordance with clause 32.1(b) within 14 days of the first meeting, the dispute must be referred to the senior managers of the parties who must meet to attempt to resolve the dispute within 14 days of the first meeting.

### **32.2 Litigation**

Subject to any other dispute resolution mechanism agreed between the parties, if the dispute has not been resolved within 45 Business Days after the relevant Dispute Notice was issued, either party may issue proceedings to have the dispute determined. No dispute may be referred to litigation before the procedures in clause 32.1 have been completed.

### **32.3 Performance during dispute resolution**

The parties must continue to perform their obligations under this Agreement despite the existence of a dispute.

### **32.4 Summary relief**

Nothing in this Agreement will prejudice the right of a party to commence proceedings to enforce payment due under this Agreement or to seek injunctive or urgent declaratory relief in respect of any matter arising in connection with this Agreement.

## **33. General**

### **33.1 Amendments**

This Agreement may be amended only in writing signed by all parties.

### **33.2 Approvals and consents**

Except where this Agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.

### **33.3 Conflict of interest & gifts and inducements**

The Supplier:

- (a) warrants that it does not have a conflict of interest with the interests of ONSTREAM;
- (b) must not:
  - (i) allow a conflict of interest to arise during the performance of its obligations under this Agreement; or
  - (ii) provide, or offer to provide, any gift or inducement to any of ONSTREAM's personnel; and
- (c) must immediately inform ONSTREAM of the existence of, or potential for, a conflict of interest.

### **33.4 Costs**

Each party must pay its own costs of negotiating, preparing and executing this Agreement.

### **33.5 Other duties and taxes**

Any stamp duty, duties or other taxes of a similar nature (including fines, penalties and interest) in connection with this Agreement or any transaction contemplated by this Agreement, must be paid by the Supplier.

### **33.6 Survival**

The obligations of the Supplier under clauses 14, 21, 22, 24, 26, 27, 28, 30 and 32 will be of a continuing nature and survive the termination or expiration of this Agreement of any Purchase Order.

### **33.7 Time is of the essence**

- (a) Time is of the essence in this Agreement.
- (b) The Supplier must advise ONSTREAM in writing, immediately if the Supplier foresees any delay in performance of this Agreement or a Purchase Order.
- (c) If the Supplier does not perform its obligations in a timely fashion, ONSTREAM may, in addition to any other right, require the Supplier to do, at the Supplier's expense, whatever is needed to ensure delivery of the Goods on or as close to the Date for Delivery as possible, for example, by paying premium freight charges.

### **33.8 Counterparts**

- (a) This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Agreement, all of which together constitute one agreement.
- (b) The exchange of duly executed counterparts of this Agreement by the parties using facsimile transmission (whether by fax machine, email or other electronic means of exchanging facsimile copies) will be effective to create a binding agreement as between the parties.

### **33.9 No merger**

None of the terms or conditions of this Agreement or any thing done under or in connection with this Agreement or any other agreement between the parties will operate as a merger of any of the rights and remedies of the parties under this Agreement or under that other agreement, all of which will continue in full force and effect.

### **33.10 Entire agreement**

To the extent permitted by law, in relation to the subject matter of this Agreement, this Agreement:

- (a) embodies the entire understanding of the parties, and constitute the entire terms agreed on between the parties; and
- (b) supersedes any prior written or other agreement between the parties.

### **33.11 Further action**

Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this Agreement.

### **33.12 Severability**

If the whole or any part of a provision of this Agreement is void, unenforceable or illegal it is severed. The remainder of this Agreement continues to have full force and effect.

### **33.13 Waiver**

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

### **33.14 Jurisdiction**

- (a) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the Applicable Jurisdiction and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this Agreement.
- (b) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within clause 33.14(a).

### **33.15 Indemnities**

- (a) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Agreement.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Agreement.

### **33.16 Governing Law**

This Agreement is governed by and must be construed according to the law applying in the Applicable Jurisdiction.

### **33.17 No representation or reliance**

Each party acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Agreement.