

Terms and Conditions of Purchase

1. GENERAL

- 1.1 These Terms and Conditions of Purchase (**Conditions**) shall apply to all Agreements (as defined below) entered into by any company belonging to LMS UK group, LMS UK being the ultimate parent company of the LMS UK group of companies, and a seller (**Supplier**) concerning supply and purchase of goods and/or services, LMS UK and Supplier each individually a "Party" and collectively the "Parties".
- 1.2 The Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, proposals and other representations and communications between the Parties. Any modification of or addition to these Conditions shall be valid only if expressly agreed in writing.
- 1.3 The applicability of general and/or special terms and conditions of Supplier is hereby expressly excluded. Any possible terms contained in Supplier's acknowledgment of Purchase Order (as defined below) in deviation from these Conditions are only valid if LMS UK notifies Supplier in writing of its express approval of Supplier's terms.
- 1.4 The Supplier is not permitted to assign all or any part of the Agreement without the prior written consent of LMS UK. The Supplier acknowledges that no permitted assignment in any way relieves it from the performance of its obligations under the Agreement. The Supplier is not permitted to pledge its rights under the Agreement.
- 1.5 If any provision of the Agreement is void or unenforceable, the provision shall be severed from the Agreement to the extent it is void or unenforceable without affecting the validity or enforceability of the rest of the Agreement.

2. DEFINITIONS

- 2.1 In these Conditions: **ABC-Laws** means any applicable international, national, federal, state, municipal and local laws, orders, statutes, directives, decrees, treaties and regulations relating to anti-bribery and corruption legislation, including for the avoidance of doubt, the US Foreign Corrupt Practices Act, the UK Bribery Act 2010, the UN Convention Against Corruption, Inter-American Convention Against Corruption, Group of States Against Corruption (GRECO) and any applicable country legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and any other applicable legislation enacted to enforce or implement any international convention prohibiting bribery and/or corruption; **Affiliate** means any entity which is controlled by a Party, which controls a Party hereto or which is under common control with a Party hereto. For purposes of this Agreement, "control" of an entity means the direct or indirect ownership of more than fifty per cent (50%) of the shares or interests entitled to vote for the directors of such entity or equivalent power over the management of such entity, for so long as such entitlement or power exists; **Agreement** means (i) the written supply and purchase agreement including its appendices, if any, (ii) the Purchase Order including its appendices, if any, (iii) these Conditions and (iv) Supplier's acknowledgement of Purchase Order. In case of any discrepancies between the main body of the written supply and purchase agreement and any of its appendices, the content of the main body of the Agreement shall prevail. In case of any discrepancies between any of the appendices of the written supply and purchase agreement, the appendix with the smallest number shall prevail. In case of any discrepancies between the Purchase Order, these Conditions and Supplier's acknowledgement of the Purchase Order, the order of priority shall be as numbered above, i.e. first priority is given to the Purchase Order, followed by these Conditions and lastly Supplier's acknowledgement of Purchase Order, unless otherwise agreed in writing; **Anti-Slavery Laws** means the *Criminal Code Act (Chapter 262)*, the *Modern Slavery Act 2018 (Cth)*, and any other law which prohibits exploitation of a worker, human trafficking, slavery, slavery-like behaviour, servitude, forced labour, child labour, debt bondage or deceptive recruiting for

labour or services (or similar), and is applicable in the jurisdiction in which the Seller and the Purchaser are registered or conduct business or in which activities relevant to the supply and delivery of the Goods are to be performed; **Chain of Responsibility Legislation** means all law imposing responsibilities, obligations and/or liabilities on any person who is deemed to have control over any aspect of the transportation of goods by road, together with supporting regulations, in place from time to time; **Confidential Information** means any information or data, in respect of a Party or its Affiliates or representatives or their respective operations, including but not limited to reports, brochures, technical documents, specifications, part-numbers, service manuals, drawings, information, interpretations, production methods and records containing or otherwise reflecting any information that is or may be proprietary and/or includes, but is not limited to, trade secrets, concepts, know-how, designs, patent applications, inventions, software, (cross)references, processes, business plans, financial information, that a Party discloses to the other Party or its Affiliates or representatives in writing, orally or in some other manner; **Data Protection Legislation** means (i) if directly applicable, the *General Data Protection Regulation ((EU) 2016/679)*, and/or (ii) *National Information and Technology Act 2009*, as amended or updated from time to time; **Delivery Date** means (i) for Goods, the date the Goods must be delivered to the delivery location; and (ii) for services, the date the services must be completed, as set out in the Purchase Order; **Documentation** means (i) for Proprietary Goods: installation and assembly drawings and instructions; transport, handling and storage instructions; manuals and user guides; information for use of Goods, spare parts list with identification drawings; identification and tracking system of Goods (if applicable); appropriate EC Declaration of conformity or Declaration of incorporation of partly completed machinery; and (ii) for all Goods: the country of origin; information of hazardous Goods and substances (if any); documentation containing required customs or export information; safety labels for the Goods (if applicable) and all other documentation and information as specified in the Agreement and related to the Goods and the use, installation, support and maintenance thereof; **Goods** means (i) tangible and intangible goods (including software, firmware and hardware), equipment, accessories, tools, structures, parts, machines, systems (including but not limited to any raw materials and components of any of the foregoing), designs, documentation, and (ii) services and/or consultancy to be purchased by LMS UK and designed, manufactured, tested, stored and/or delivered by the Supplier pursuant to the Agreement and the Purchase Order(s); **GST** means the goods and services tax governed by the *Goods and Services Tax Act 2003*; **Intellectual Property** means including but not limited to any and all patents, copyrights, trademarks, trade dress, knowhow, trade secrets, industrial design rights and all other intellectual property rights or intellectual property (whether registered or unregistered) anywhere in the world. Intellectual Property shall also include any improvements, enhancements and derivative works based on any pre-existing Intellectual Property; **PPSA** means the *Personal Property Security Act 2011*; **Price** means the price set out in the Purchase Order; **Production Tools** means all special tooling, patterns, molds, templates, special equipment, other hardware and/or software required for the manufacturing, delivery, installation and/or commissioning of the Goods including all related Intellectual Property rights; **Proprietary Goods** means all Production Tools, drawings, production methods, prototypes or Documentation and Specifications supplied by a Party to the other Party for the manufacturing, delivery, installation, operation and/or commissioning of the Goods under the Agreement and which contain Intellectual Property of a Party or to which a party has a right to license or otherwise provide them to the other Party; **Purchase Order** means the purchase order issued by LMS UK to the Supplier for the purchase of the Goods; **Security Interest** means a security

PPSA, a mortgage, transfer, pledge, lien or charge, or any security or preferential interest or arrangement of any kind which allows a creditor to have its claims satisfied prior to other creditors from the proceeds of an asset (including retention of title, deposit of money by way of security or a conditionally repayable deposit or flawed asset arrangement); **Specifications** means all instructions, references to standards, Documentation and other information which together specify the technical form and characteristics of the Goods, such as performance, operation, quality, health, safety, traceability and other requirements, any inspection and test procedures and/or any other requirements of the Goods, as specified in the Agreement; and, **Technical Data** means all data relating to or derived from the technical operation of any Goods delivered, including without limitation, all information gathered from sensors, instruments, monitors, or other industrial control or devices or control systems at least partly located or used at LMS's end-customer's site or on the Goods.

3. CONCLUSION OF THE AGREEMENT

- 3.1 An Agreement is concluded between the Parties when both Parties have duly signed the Agreement or when LMS UK has issued a Purchase Order to Supplier and Supplier has confirmed such Purchase Order. Supplier shall submit a written order confirmation to LMS UK within three (3) business days from the receipt of the Purchase Order.
- 3.2 LMS UK may from time to time issue forecasts of its anticipated future requirements for the Goods. Unless otherwise agreed in writing between the Parties, such forecasts are non-binding on LMS UK.
- 3.3 In case the Agreement is a frame agreement, Supplier shall not be entitled to reject Purchase Orders, which are based on the frame agreement between the Parties, provided that: (a) they are pursuant to the terms and conditions of the frame agreement, (b) they contain the prices applicable pursuant to the frame agreement during the relevant price period as set out in the frame agreement, and (c) the delivery dates of the ordered quantities are reasonably allocated over time.

4. DELIVERY TERMS

- 4.1 Supplier shall make the Goods available to LMS UK on the delivery terms specified in the Agreement. Unless otherwise agreed in writing, the delivery term shall be FCA (Incoterms 2020) at the place of manufacture of the Goods.
- 4.2 In respect of each delivery, unless otherwise agreed in writing, Supplier shall provide the Documentation to LMS UK. The Documentation shall be delivered on both printed paper and in electronic format in the English language. Documentation is considered as an integral part of the Goods and the delivery of the Goods is therefore not duly completed until delivery of the Documentation is to LMS UK's satisfaction.
- 4.3 Supplier shall pack and mark the Goods as specified in the Agreement and at its expense. If the Agreement does not include packing instructions, Supplier shall use appropriate commercial packaging to prevent damage during transport.
- 4.4 Supplier shall provide LMS UK with all necessary information for customs declaration as applicable, including information on general origin of the Goods. Where applicable, Supplier shall issue a supplier's declaration or a long-term supplier's declaration for the Goods having preferential or non-preferential origin status in accordance with European Union rules of origin governing the preferential trade.
- 4.5 Time is of the essence to LMS UK. The Supplier shall not make partial deliveries or deliver any earlier or any later than the agreed delivery date, unless otherwise agreed in writing.
- 4.6 Should any delivery be at risk of being delayed due to reasons attributable to Supplier, Supplier shall undertake all necessary measures at its expense in order to meet the agreed delivery date, including but not limited to organizing express or airfreight shipment. If Supplier anticipates that any delivery is in danger of being

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- delayed, Supplier shall notify LMS UK without delay in writing, giving the reason for the delay and specifying a new delivery date. Supplier shall pay for any special delivery costs in case of changed delivery dates.
- 4.7 LMS UK shall be entitled to liquidated damages, without any need of further notice or judicial intervention, for delayed delivery of Goods or any part of it, or its related Documentation, at a rate of 2% of the purchase price of the delayed Goods calculated for each beginning week of delay. The liquidated damages shall not exceed 20% of the purchase price of the delayed Goods.
- 4.8 LMS UK is not obliged to inspect the Goods upon delivery. Instead, LMS UK must be able to rely on the quality management system of Supplier which shall control the production process and shall assure that the Goods are in accordance with the Specifications and the Agreement.
- ### 5. SUPPLIER'S GENERAL OBLIGATIONS
- 5.1 Supplier shall perform its obligations in a professional, timely, efficient and careful manner according to highest market standards and in accordance with and in full compliance with the Agreement, all applicable laws and regulations and good industry practice.
- 5.2 Supplier shall verify before confirming the Purchase Order that Supplier has obtained all information necessary to determine that the Goods are fit for their intended purpose for which LMS UK is purchasing the Goods. Supplier is aware that the Goods will be used as a part of or in connection with mining and construction applications or equipment that may operate under extreme load, hard climatic conditions and/or twenty-four (24) hours a day.
- 5.3 Supplier shall with due diligence inspect the drawings and Specifications provided by LMS UK. Supplier shall without delay notify LMS UK of any defect, discrepancy and inconsistency discovered therein.
- 5.4 Supplier shall not make any changes to the Goods or Specifications or the production methods without LMS's prior written consent. Supplier shall be allowed to, upon notice to LMS UK & with no additional cost to LMS UK, make minor modifications to the Specifications, which do not affect the delivery dates, fit, performance, function or warranty of the Goods.
- 5.5 Supplier shall provide the Technical Data, if any, shall belong to LMS UK, & shall be transmitted to LMS UK for purposes including, but not limited to, developing its products, solutions and services. LMS UK shall own all works, products, reports & improvements based upon, derived from, or incorporating Technical Data. Technical Data may be transferred (a) to the LMS UK's Affiliates & (b) to third parties who act for or on LMS UK's behalf for processing in accordance with the non-exclusive purpose(s) listed above or as may otherwise be lawfully processed. LMS UK's rights to use Technical Data shall survive the termination or expiration of the Agreement, any applicable warranty period & any other commercial contract between Supplier and LMS UK. For the avoidance of doubt, Technical Data shall be considered as Supplier's Confidential Information.
- 5.6 Supplier warrants that the Goods, including its logic-bearing system components (e.g. hardware, firmware, and software hereafter referred to collectively as the "Critical Components") shall in no event contain any viruses, trojans, spyware or any other malware and it shall not manufacture, distribute or subject any of LMS UK's information systems to the same. The Goods shall be delivered with the latest authentic Supplier security patches. Supplier agrees to provide summary documentation of all known & reasonably suspected vulnerabilities for the Critical Components and agrees to deliver the relevant documentation with the recommended compensating mitigation workarounds for the Goods. LMS UK and Supplier shall agree on the maintenance and support of any Critical Components separately in writing.
- 5.7 Supplier represents and warrants that the Goods do not contain, do not interfere with, do not require, are not linked to and do not make use of any third-party software, including any open source software, unless agreed otherwise in accordance with this Clause 5.7. This means that Supplier shall not, without the prior written consent of LMS, include any third-party software, including open source software, in the Goods. In case Supplier intends to use any third-party software in the Goods, including open source software, Supplier shall provide LMS with all information on any third-party software to be included in the Goods as well as a comprehensive and accurate risk evaluation report in which Supplier defines any identified legal and technical risks (if any) associated with the use of the third-party software in question. After LMS has reviewed the report, the Parties shall agree mutually in writing upon the conditions of the use of such third-party software prior to the use in order to minimize any such risks. Supplier shall always comply with the license terms of any third-party software used as part of the Goods as well as the conditions of the use agreed by the Parties. Supplier is obliged to maintain a list of used third-party software and provide LMS with a comprehensive and up-to-date list of the same without undue delay, if such list is requested by LMS. For the avoidance of any doubt, inclusion of any third-party software in the Goods in accordance with this Clause 5.7 does not in any way limit or affect any of Supplier's liabilities under this Agreement or otherwise.
- ### 6. PRICE AND PAYMENT
- 6.1 The purchase prices included in the Agreement and/or the separate Purchase Order are fixed and are excluding GST but shall include (i) any other taxes, duties, fees and other charges that need to be added to the prices for the Goods according to valid statutory provisions related to the country of origin/manufacture and/or country of delivery, and (ii) all packaging and packing costs. If the supplied Goods are subject to GST, LMS will pay an additional amount on account of such GST, provided that the GST amount is invoiced at the same time and in the same manner as the payment for the supplied Goods and LMS is provided with a tax invoice or similar prescribed document as required by law.
- 6.2 Supplier shall not be entitled to increase prices unless otherwise agreed between the Parties.
- 6.3 Payment shall be made within 90 calendar days from the receipt of the invoice. Invoicing may not be made until the relevant Goods have been delivered and accepted by LMS. The invoice shall always state a Purchase Order number. Supplier shall comply with LMS's invoicing routines, as applicable and informed to Supplier by LMS UK from time to time. Supplier acknowledges and agrees that invoices that do not comply with the invoicing routines will be considered incomplete and not due for payment.
- 6.4 Payment for the Goods is subject to deduction or set-off of any claim related to the Agreement which LMS UK may have against Supplier.
- 6.5 Payment under an Agreement shall not be construed as an acceptance of the relevant Goods or as a waiver of any rights by LMS UK.
- ### 7. VARIATION AND CANCELLATION
- 7.1 LMS has the right to direct variations in the Goods ordered without separate compensation to Supplier. Variations may include, but are not limited to, increases or decreases in the quantity, changes in Specifications and execution of the Goods or any part thereof, as well as changes in the delivery schedule. If such variation has a substantial effect for the costs of Supplier, a fair adjustment of the price may be made. If LMS has ordered variation of its Purchase Order, Supplier shall honor its obligations arising under the altered order within the delivery time originally provided, unless such variation reasonably requires that Supplier be allowed a later delivery date.
- 7.2 LMS may cancel the Agreement, partly or in its entirety, without reason at any time. Should LMS UK cancel the Agreement, partly or in its entirety, for convenience, LMS UK shall: (a) for Goods that are ready for delivery from Supplier, and which Supplier cannot reasonably reallocate to a third party, take delivery of such part of the Goods and pay the relevant parts of the agreed price set forth in the Agreement; (b) for Goods that are not ready for delivery from Supplier, and which Supplier cannot reasonably reallocate to a third party, pay Supplier's proven direct costs for such Goods (or the relevant part thereof) prior to the cancellation; or (c) for Goods that Supplier reasonably can and is allowed to reallocate to a third party, be entitled to such cancellation without paying any part of the price for such Goods or incurring any costs.
- ### 8. TESTS AND INSPECTIONS
- 8.1 Supplier shall conduct all necessary tests and inspections of the Goods prior to the delivery at its own expense to ensure that the Goods meet the Specifications. Supplier shall obtain all inspection or test certificates required by the laws and regulations of the country of manufacture and/or as specified in the Agreement.
- 8.2 Supplier shall keep written records of all tests and inspections referred to in Clause 8.1, stating the time, purpose, object, results, findings and the conductor of the test or inspection. Such records shall be available to LMS UK for at least 10 years after the delivery of the Goods.
- 8.3 LMS UK or its representative shall upon reasonable notice to Supplier be entitled to perform and conduct tests and inspections of the Goods and manufacturing procedure at Supplier's premises during normal working hours. Such tests or inspections shall not constitute acceptance of the Goods and shall be aimed to evaluate Supplier's compliance with the Agreement.
- 8.4 If the Goods do not meet the Specifications during such tests or inspections or if any defects exist, Supplier shall immediately correct such defects and shall pay LMS UK's expenses, if any, resulting from further tests and inspections.
- 8.5 LMS UK may perform tests or inspections on test samples. If LMS rejects a test sample LMS shall, at Supplier's request, return the test sample to Supplier and Supplier shall without delay deliver a new or corrected test sample to LMS at Supplier's cost. If such new or corrected sample fails to pass LMS's tests or inspections or fails to conform with the Agreement, LMS is entitled to cancel the Agreement without any liability on its part and return all test samples to Supplier at Supplier's cost.
- 8.6 Approved or rejected tests or inspections shall not relieve Supplier of its obligations under the Agreement.
- 8.7 No failure or inability of LMS to inspect or test any part of the Goods, including drawings, information and samples, as well as any approval, consent or rejection by LMS, shall release Supplier from its obligations and/or liability under the Agreement and/or law.
- ### 9. RISK OF LOSS AND TRANSFER OF TITLE
- 9.1 The risk of loss and title to the Goods shall pass from Supplier to LMS upon completed delivery and acceptance of the Goods in accordance with the agreed delivery term.
- 9.2 If LMS is unable to receive the Goods or any part thereof on the agreed delivery date, the risk of such Goods shall pass to LMS when such Goods have been stored by Supplier as agreed by LMS UK.
- 9.3 Supplier hereby waives all rights and powers it may have in relation to the right of retention of title, the right of recovery and the right to claim back goods.
- ### 10. PRODUCTION TOOLS
- 10.1 Supplier shall provide all Production Tools at its own cost unless otherwise agreed. Production Tools provided by LMS shall fully remain and be marked as the property of LMS. Production Tools paid for by LMS and provided by Supplier shall become the property of LMS UK.
- ### 11. WARRANTY
- 11.1 Supplier represents and warrants that: (i) the Goods meet the Specifications, (ii) the Goods are free from defects including defects resulting from faulty design,

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- materials or workmanship, (iii) the Goods are fit and safe for the intended purpose and use, which is known to Supplier; and (vi) the Documentation is free from defects including errors, omissions or unclear statements.
- 11.2 In event of a warranty claim by LMS UK, Supplier shall without delay investigate the reason for the defect in the Goods and secure the supply chain to eliminate the risk of such claim in the future. Supplier shall within 30 days of the claim from LMS deliver a report to LMS explaining the results of the claim investigation and also what corrective and preventive measures are being taken to avoid similar quality problems in the future.
- 11.3 The responsibility of Supplier under the warranties shall be limited to defects which occur during the warranty period or which can be satisfactorily demonstrated to have been in the Goods during the warranty period. LMS shall promptly notify Supplier of any defects in the Goods & Supplier shall, at its discretion & without delay, repair or replace the defective Goods at Supplier's cost. Repair shall be carried out at the place where the Goods are located unless Supplier deems it more appropriate that the Goods are sent to Supplier or a destination specified by Supplier at Supplier's cost. The Goods for replacement by Supplier shall be made available for collection by Supplier at its own cost at the location specified by Supplier.
- 11.4 Supplier is not responsible under the warranties for defects caused by (i) a failure by LMS to follow the instructions in the Documentation, (ii) modifications or alterations made to the Goods after the delivery without the prior consent of Supplier, or (iii) materials or structures prescribed or provided by LMS.
- 11.5 The warranty period shall be 24 months from the date of takeover, or 36 months from the date of the completed delivery of the Goods to LMS, whichever is longer. The date of takeover means the date when LMS UK's customer or end-user (as the case may be) of the Goods has accepted delivery of the Goods to it. LMS UK shall inform Supplier in writing of the date of takeover upon request.
- 11.6 Notwithstanding the warranty period provided to LMS as set out in Clause 11.5, in the event of defective Goods repaired or replaced by Supplier, a new warranty period of 24 months shall commence on the date LMS UK accepts the repaired or replaced Goods.
- 11.7 In urgent cases or if Supplier fails to remedy any defect in the Goods within a reasonable time, LMS or a third party appointed by LMS shall be entitled to repair or replace such defect at Supplier's cost or, if the defect is not capable of reasonable repair by LMS UK, to terminate the Agreement and withhold payment of invoice entirely or in part. Any such repair by LMS in accordance with this Clause 11.7 shall not release Supplier from any responsibility under its warranties, provided that such repair has been performed in accordance with the instructions of Supplier or otherwise with adequate skill and expertise. In case the Agreement is partly terminated, LMS shall be entitled to compensation for its loss, costs and damage up to a maximum of 100 per cent of that part of the purchase price which is attributable to the part of the Goods in respect of which the Agreement is terminated.
- 11.8 The parties agree to handle warranty claims in a practical manner and in a way that minimizes the costs and damage to LMS's end-users. This means that in certain situations, for example in the event of safety risks, LMS or a third party appointed by LMS may replace or repair the defect Goods or part thereof, without prior notification to Supplier, and Supplier shall compensate the purchasing price of replacement parts, materials and labour used for the replacement or repair, and the related travel and freight cost.
- 11.9 all defect in the Goods is such that LMS decides it appropriate to carry out a product recall to repair or replace the defective Goods, LMS shall promptly notify Supplier. Supplier shall at its own cost give such assistance to LMS UK as is reasonably requested and pay for LMS UK's expenses resulting from such product recall.
- 11.10 If a fault, defect or deficiency is discovered in the Goods and LMS UK has a reason to assume that it may also occur in other Goods delivered by Supplier, all such Goods shall be considered defective regardless of their warranty period.
- ### 12. LIABILITY
- 12.1 Without prejudice to any liability set out in these Conditions, in the Agreement or at law, a Party shall compensate the other Party for any loss or damage suffered as a result of a breach of the Agreement.
- 12.2 Supplier shall indemnify and hold LMS harmless from any and all liabilities, damage, costs (including reasonable legal fees), expenses or loss incurred by LMS and its directors, subcontractors and customers as a result of claims, suits, actions, demands or proceedings related to and/or arising from injury and/or death, loss of and/or damage to property which may be attributable to Supplier's performance of its obligations under the Agreement, or to the delivery of the Goods or the use thereof. In case of third-party litigation, LMS shall agree on settlements at its discretion and Supplier shall assist and fully cooperate with LMS in all stages of the proceedings and processes.
- 12.3 The product liability for the Goods rests with Supplier. In case LMS, despite Supplier's product liability for Goods, becomes liable towards a third party under any law or regulation, Supplier shall fully indemnify and hold LMS harmless against and from such liability. If LMS is, as to the Goods, liable under a law or regulation to provide a third party with a notification regarding the identity of (i) the party primarily responsible for product liability (e.g. the original manufacturer or the importer of the Goods) or (ii) the party from which the Goods was procured (e.g. a subcontractor of Supplier), and Supplier fails to provide the said information to the third party within a reasonable period of time due to the acts or omissions of Supplier, then LMS shall be entitled to receive from Supplier any compensation paid to the party incurring the loss or damage.
- 12.4 Supplier shall hold and maintain (i) public liability insurance of at least K20 million; motor vehicle third party accident liability insurance as required by law; and workers compensation insurance as required by law, with a reputable insurer reasonably satisfactory to LMS. Such insurance must include a waiver of subrogation clause and state LMS UK as an additional insured. A certificate of such insurance shall be provided to LMS UK upon request.
- 12.5 Neither Party is liable for any indirect or consequential, damage, including, without limitation, loss of profits, unless a Party acted gross negligent or in wilful misconduct. This limitation of liability does not apply to the warranty obligations, the obligation of the Supplier in relation to delay of delivery, the indemnification obligations of Supplier and/or consequences of infringement of Intellectual Property rights of the Parties (to the extent any of them would be considered consequential damages and/or losses). Any damage caused by the Goods to any property other than the Goods or persons, and costs attributable to the mitigation or prevention of such damage, shall always be deemed as direct damage.
- 12.6 Supplier's liability towards LMS for its undertakings shall be the same regardless of whether the undertaking is performed by Supplier or its subcontractor.
- ### 13. INTELLECTUAL PROPERTY RIGHTS
- 13.1 A Party acknowledges and agrees that the other Party's Proprietary Goods shall at all times be and remain the exclusive and absolute property of the other Party.
- 13.2 Supplier hereby grants to LMS, without in any way limiting LMS's right to use the Goods throughout its lifetime, a worldwide, non-exclusive, non-transferable, irrevocable, sub-licensable, perpetual, royalty free and fully paid-up right and license to use any Supplier Proprietary Goods for the sole purpose and to the extent necessary for the utilization of the Goods purchased from Supplier, including but not limited to repair, support and service the Goods, integrate it with other products and/or develop interfaces of interoperability with other products, with no accounting or reporting obligations towards Supplier. Supplier will during the validity of the Agreement, provide LMS UK with access to any related information necessary for the utilization of the Goods purchased from Supplier.
- 13.3 Unless specifically agreed otherwise between LMS and Supplier in writing, all Intellectual Property related to the Goods created in co-operation between LMS and Supplier during the term of the Agreement (including but not limited to design changes or updates or upgrades of LMS Proprietary Goods), shall be vested in LMS or any LMS Affiliate designated by LMS. Supplier hereby transfers the Intellectual Property, including the right to modify and right to assign the Intellectual Property further, to LMS or any LMS Affiliate designated by LMS and waives its rights thereto. Supplier must acquire all relevant rights in order to ensure that Supplier can transfer the Intellectual Property in accordance with this Clause 13.3 to LMS or any LMS UK Affiliate designated by LMS UK.
- 13.4 Supplier warrants that the Goods and Supplier Proprietary Goods do not infringe any Intellectual Property or any other rights of any third party. Supplier shall, at its own expense, indemnify, defend and hold LMS UK its agents and employees, and anyone selling or using the Goods and Supplier Proprietary Goods harmless, from and against any and all claims, losses, damage, costs and expenses (including reasonable attorneys' fees) arising out of or in connection with any and all claims brought by a third party alleging that the production, use or sale of the Goods and Supplier Proprietary Goods constitute an infringement or alleged infringement or misappropriation of any third party right, including, without limitation, any third party Intellectual Property right.
- 13.5 In the event that Supplier, at any time during the duration of the Agreement or thereafter, transfers or assigns any of its Intellectual Property rights to any third party, such assignment shall be subject to the rights granted to LMS UK and LMS UK's end-users.
- 13.6 Supplier shall honor and refrain from using or referring to the trademarks or trade names (as for example LMS UK®) owned or generally used by LMS or any company belonging to LMS group unless: i) in connection with the activities of Supplier with LMS, and ii) the Agreement explicitly allows or obliges Supplier to use those trademarks or trade names.
- ### 14. CONFIDENTIALITY
- 14.1 Each Party undertakes, under the term of the Agreement and for a period of ten (10) years thereafter, to refrain from revealing or forwarding to a third party or otherwise making public any Confidential Information.
- 14.2 The non-disclosure obligation shall not include information that: (a) is in the public domain at the time of execution of the Agreement, or which comes in the public domain during the term of the Agreement other than pursuant to a breach of the Agreement by the Party receiving the information; (b) is known to the receiving Party at the time of disclosure by the other Party without a restriction on further disclosure; (c) is received from a third party without a restriction on further disclosure; (d) is independently developed without using material or information received from the other Party by an employee, subcontractor or consultant of the receiving Party; or (e) the receiving Party is required to disclose by law or by a governmental or administrative agency or body (including without limitation any securities exchange body) or decision by a court of law, but then only after first notifying the other Party of the required disclosure. In the event either of a), b), c) or e) above applies, the receiving Party shall keep confidential that it has also obtained the information from the other Party.
- 14.3 In the event that a Party should commit a breach of any of the confidentiality provisions, then such Party shall indemnify the other party against any claim, liability, loss, damage or expense (including legal fees and costs on a full indemnity basis) that the non-breaching Party incurs

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or suffers directly or indirectly as a result of such breach.

14.4 Notwithstanding the above, each Party shall be entitled to disclose the other Party's Confidential Information to its Affiliates and their respective directors, officers, employees or consultants, who need to know such material and information for the purposes set forth in the Agreement, on the condition that such Party undertakes to have confidentiality obligations in force with such Party, which is not less restrictive than those set forth herein. Notwithstanding the before mentioned, a Party disclosing information to any of its Affiliates and their respective directors, officers, employees or consultants, is at all times responsible and liable for the compliance by its Affiliates and their respective directors, officers, employees or consultants with the confidentiality provisions pursuant to the Agreement including these Conditions.

1.5. COMPLIANCE

15.1 Supplier undertakes to comply with LMS Supplier

Code of Conduct, the Anti-Slavery Laws and ABC-Laws in the performance of its obligations in relation to the Agreement. Supplier shall ensure that its entire subcontractor and sub-supplier chain involved in supply of the Goods comply with LMS UK Supplier Code of Conduct and ABC-Laws.

15.2 Supplier shall ensure that the Goods are in conformity with all applicable laws and regulations including those regarding registration, evaluation, authorization and restriction of use of hazardous substances and chemicals.

15.3 Supplier shall furnish to LMS UK all relevant Documentation and information about the Goods to enable LMS to comply with all applicable environmental, health and safety legislation, licenses and permits in its use of the Goods.

15.4 Supplier undertakes to specify in writing to LMS at the earliest opportunity and, prior to accepting a Purchase Order, any Goods, parts, components or devices included in the Goods which are subject to export restrictions in the country of manufacture or in the countries where any of the Goods, parts or components incorporated in the Goods originate from. Supplier shall also specify the scope of such export restrictions. Supplier shall always provide LMS UK without undue delay and in appropriate language: a valid certificate of origin for supplied Goods (including included US components); a valid HS Code (the code of the Harmonized System, or the Harmonized Commodity Description and Coding System, which is an internationally standardized system of names and numbers to classify traded products, developed and maintained by the World Customs Organization); a valid Long Term Declaration (the Supplier's one-off declaration which is valid for consignments over a longer period of time and which can be made out for any consignments delivered during a period up to a maximum of two years) or a certificate of preferential origin; a declaration of conformity; a valid item test certificate; the current customs certification program participation status (C-TPAT, AEO, etc.); an up to date MSDS sheet (the material safety data sheet prepared in accordance with the laws and regulations applicable to the delivery and the Goods); an ECCN (the Export Control Classification Number, as listed in the Commerce Control List (Supplement No. 1 to Part 774 of the U.S. Export Administration Regulations)) relating to the Goods; and advanced manifest details. LMS shall make available to Supplier Trade Data Guidelines

15.5 The Goods shall be CE marked (the symbol annexed to the CE mark) before they can be sold on the European market, indicating that a product fulfills the requirements of relevant European product directives; meets all the requirements of the relevant recognized European harmonized performance and safety standards; and is fit for its purpose and will not endanger lives or property) according to valid EU rules (or in accordance with similar quality and/or authority certification/requirements for any country outside of EU). The Goods shall be in

compliance with any environmental and safety regulations prescribed in the law or by the authorities in the country where the Goods will be manufactured/operating/used.

15.6 Supplier undertakes to comply with any and all Data Protection Legislation, as well as with the Agreement, including any appended data protection agreement, when processing personal data under the Agreement. Supplier may only process personal data under the Agreement in accordance with LMS's instructions as applicable from time to time and shall not be entitled to process personal data under the Agreement for any purpose or in any manner other than is necessary to perform obligations pursuant to the Agreement. Where Supplier processes personal data in connection with the provision of the Goods or otherwise in the performance of its obligations under the Agreement, it is acknowledged that Supplier shall take all such appropriate technical and organizational measures in order to protect the personal data processed under the Agreement. If the Parties have not concluded a data processing agreement (either separately or by attaching such an agreement as an integral part of the Agreement), Supplier is not allowed to process

15.7 If the Supplier becomes aware or suspects that there has been unauthorised access, modification, disclosure or other misuse or interference with any Personal Information (as defined under the Data Protection Legislation) which it collects, stores, and handles (**Data Breach**), the Supplier must immediately notify LMS of that Data Breach. The Supplier must promptly disclose to LMS all information relevant to that actual or suspected Data Breach and provide LMS with access to the copies of relevant records relating to the investigation. Without limiting the Supplier's other obligations under this Agreement, if the Supplier becomes aware of a Data Breach, the Supplier must, at its own cost, and as a matter of priority (i) take all reasonable steps to contain and remedy the Data Breach; and (ii) take appropriate remedial action to prevent the affected Personal Information from further breach.

15.8 At LMS's request, the Supplier must (at the Supplier's cost) provide all reasonable assistance (including the provision of information, access to documents and the Supplier's personnel) as LMS may require from time to time, including to investigate any actual, alleged or reasonably suspected breaches by the Supplier or its employees of the Code of Conduct, Anti-Slavery Laws or ABC Laws.

15.9 If LMS exercises its right under clause 17.1 because of a failure to comply with requirements of the Code of Conduct, Anti-Slavery Laws or ABC Laws, LMS (i) will not be liable for any losses suffered by the Supplier; and (ii) the Supplier provides a release and indemnity to LMS in respect of any losses incurred by the Supplier.

16. FORCE MAJEURE

16.1 Neither Party shall be liable in respect of any breach or non-performance of the Agreement if and to the extent that such Party is prevented or delayed from performing its obligations under the Agreement due to extraordinary circumstances outside such Party's control and provided that such circumstances could not have been avoided by such Party and were not foreseeable at the time of execution of the Agreement. Force Majeure events shall not include financial difficulties, non-performance of a sub-supplier, shortage or lack of material or resources or shortage of transport.

16.2 A Party who wishes to rely on an impediment referred to in Clause 16.1 above for discharge of its obligations hereunder must, without delay, inform the other Party thereof. A corresponding duty to inform the other Party shall apply when the impediment, which the Party has relied on for release of its obligations, has come to an end.

16.3 If the fulfilment of the Agreement or a delivery thereunder is delayed or is likely to be delayed for at least three (3)

months due to Force Majeure, each Party is entitled to terminate the Agreement with immediate effect upon providing the other Party with written notification.

17. TERMINATION

17.1 Without prejudice to any other right or remedy available under the Agreement, law or these Conditions, either Party shall have the right to terminate the Agreement and any or all Purchase Orders with immediate effect and without compensation to the other Party if: (a) the other Party should pass a resolution, or any court should make an order, that the other Party shall be wound up or if a trustee in bankruptcy, liquidator, receiver, or manager on behalf of a creditor should be appointed or if circumstances shall arise which would entitle the court or a creditor to make a winding-up order or if it otherwise is likely that the other Party is insolvent in the reasonable opinion of the other Party; or (b) a Party has committed a material breach of the Agreement (including LMS Supplier Code of Conduct, ABC-Laws and Anti-Slavery Laws), and if rectifiable, not rectified the same within thirty (30) days after receipt of a written notice specifying the breach. For the purpose hereof, a breach of any ABC-Laws, Anti-Slavery Laws or LMS UK Supplier Code of Conduct shall for the purpose of the Agreement not be considered to be rectifiable; or (c) in the event that a Force Majeure situation has not been cured within three

(3) months.

17.2 LMS shall have the right to terminate the Agreement or a part of it with immediate effect and without compensation to Supplier if Supplier ceases to carry out its business or the ownership or control of Supplier or a material part of its business change.

17.3 If LMS UK terminates the Agreement under Clauses 17.1 or 17.2 above, LMS shall be entitled to return all or part of the unused Goods to Supplier at Supplier's cost and Supplier shall reimburse LMS UK for all paid invoices of the returned Goods in full.

18. PACKING, LABELLING AND TRANSPORT

18.1 The Supplier shall properly pack, mark, and provide transport documentation for the Goods in accordance with instructions provided by LMS. The Supplier will be liable for all loss or damage caused by unsuitably packed Goods. The Supplier will comply with all applicable laws, awards, codes, agreements or arrangements, in relation to, without limitation, fatigue management and the transportation of dangerous goods, and the Chain of Responsibility Legislation.

18.2 The Supplier shall further provide all documentation required by the carriers involved and by the authorities of the country of destination and any other country in relation to which such documentation would be required. Separate packing slips must be submitted for each Purchase Order, and should clearly show (i) Purchase Order Number; (ii) Quantity and description of material forwarded (if part number shown on Purchase Order is superseded, annotate documents accordingly); (iii) Purchaser's stock number for each item if applicable; (iv) Date and method of dispatch; number of packages dispatched; and, (v) Weight of each package.

19. APPLICABLE LAW

19.1 Any dispute arising out of or in connection with the Agreement (including any question regarding its existence, validity or termination) shall be governed by the laws of Papua New Guinea. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Papua New Guinea.

19.2 The submission to the jurisdiction of Papua New Guinea Courts shall not limit the right of LMS to take proceedings against the Supplier in any court which may otherwise exercise jurisdiction over the Supplier or any of its assets.

19.3 Any dispute, controversy or claim arising out of or in connection with the Agreement shall be finally settled by arbitration in accordance with the Arbitration Rules ("Rules") of the Australian Centre for International Commercial Arbitration (the "ACICA"). The place for such proceedings shall be Brisbane, Queensland. The arbitration proceedings, information disclosed during the

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arbitration proceedings and the result of such proceedings is subject to confidentiality.

20. PPSA

20.1 Unless otherwise defined, capitalised terms and expressions used in this clause 20 shall have the same meaning as they have in the PPSA.

20.2 LMS acknowledges that the Supplier may have a Security Interest in the Goods, securing LMS UK's obligations under the Agreement. The Supplier's Security Interest in the Goods shall cease without the need for any further action by the Supplier upon title to the Goods passing to LMS UK in accordance with these terms.

20.3 LMS UK agrees to provide any information reasonably requested by the Supplier in order to enable the Supplier to register a Notice on the Register in respect of a Security Interest arising under these terms and to notify the Supplier in writing of any change in LMS's details which is relevant to a Notice registered on the Register in connection with these terms.

20.4 The Supplier agrees to register a Termination Statement discharging any Notice registered by it on the Register in connection with an Agreement upon title to the Goods passing to the Purchaser in accordance with these terms.

21. PROHIBITED IMPORTS

21.1 The Supplier warrants that Goods covered by a Purchase Order are not a prohibited import as defined under Customs Act (Chapter 101) and that the Goods may be legally imported into Papua New Guinea. The Supplier will indemnify and save harmless LMS from all loss or damage arising from breach of this warranty.

21.2 Supplier shall always provide LMS without undue delay and in appropriate language: A valid Certificate of Origin for supplied Goods (including included US components); a valid HS Code; a valid Long Term Declaration or a certificate of preferential origin; a declaration of conformity; a valid item test certificate; the current customs certification program participation status (CTPAT, AEO, etc.); an up to date MSDS sheet; an ECCN relating to the Good; and advanced manifest details.