

Purchase Order Terms and Conditions



Upstream Production Solutions Pty Ltd

ABN 26 166 665 952

Purchase Order Terms and Conditions

(1) DEFINITION

In the Purchase Order Documents, the following words and expressions have the meanings hereby assigned to them except where the context otherwise requires:

- (a) **"Consequential Loss"** means any special, indirect, incidental or consequential damages including, but not limited to, loss of product, loss of use, non-operation or increased costs of operation of equipment or systems, loss of anticipated profits or revenue, costs of capital, or cost of purchased or replacement equipment or systems;
- (b) **"Contract"** means the agreement between Upstream PS and Supplier as evidenced in the Purchase Order Documents;
- (c) **"Defect"** has the meaning given to that term in clause (4)(g);
- (d) **"Incoterms 2010"** means International Rules for the Interpretation of Trade Terms published by the International Chamber of Commerce, January 2020;
- (e) **"Material or Materials"** means the articles, materials, supplies, goods or other items constituting the subject matter of the Purchase Order;
- (f) **"Premises"** means premises at which Upstream PS requires Work to be carried out but does not include premises owned or provided by Supplier or its agents and subcontractors;
- (g) **"Purchase Order"** means the order for Materials and Work issued by Upstream PS and governed by these terms and conditions and which forms part of the Purchase Order Documents;
- (h) **"Purchase Order Documents"** has the meaning given to that term in clause (2)(a);
- (i) **"Purchase Order Price"** means the price stated in the Purchase Order being the full amount Upstream PS will pay Supplier as full and complete consideration for its obligations under the Contract and including any additions or deductions which may be required to be made pursuant to any variations required by Upstream PS pursuant to the Contract;
- (j) **"Supplier"** means the party to which the Purchase Order is issued, including the legal successors and permitted assigns thereof;
- (k) **"Upstream PS"** means Upstream Production Solutions Pty Limited, ABN 26 166 665 952;
- (l) **"Warranty Period"** means the warranty period prescribed in clause (4)(f) or as otherwise is prescribed in any Purchase Order;
- (m) **"Work"** means all work and services, including but not limited to those works and services as set out in a Purchase Order or which may be necessary for supply of Materials pursuant to a Purchase Order.

(1.1) Interpretation:

- (a) Words importing persons include firms and corporations.
- (b) Words importing singular also include plural.
- (c) Words importing one gender include all genders.
- (d) The words 'includes' and 'including' are not words of limitation.

(2) CONTRACT

- (a) The Purchase Order and these Purchaser Order Terms and Conditions, together with all attached documents or documents

incorporated by reference ("**Purchase Order Documents**"), constitutes the entire terms of the Contract and shall not be modified except in writing. The Purchase Order shall not be valid unless executed by Upstream PS' authorised representative.

- (b) The order of precedence of Purchase Order Documents shall be the Purchase Order, these Purchase Order Terms and Conditions and attached specifications, instructions to Suppliers (if any), and then drawings as attached to any Purchase Order.
- (c) No waiver of a breach of any provision of the Contract shall constitute a waiver of any other breach.
- (d) Where a term used in the Contract is a term included in Incoterms 2020, then the rules and definitions applicable to that term in Incoterms 2020 shall be deemed to be incorporated in this Purchase Order, except insofar as they may conflict with any other provisions of the Contract.
- (e) The application of all or any of the provisions of the United Nations Convention on Contracts for International Sale of Goods (Vienna Sales Convention) to the Contract, or incorporation of such provisions into the Contract, at any time is expressly excluded in all respects.

(3) GOVERNING LAW AND JURISDICTION

The Contract shall be governed by and construed according to the laws in force in the state of Western Australia and the parties agree to submit to the jurisdiction of the courts of Western Australia.

(4) WARRANTY

- (a) Supplier represents and warrants that the Material (and/or Work, wherever applicable):
 - (i) is new, fit and sufficient for the use and purpose intended in the Contract;
 - (ii) is of merchantable quality;
 - (iii) is of sound design, workmanship and material and without defects; and
 - (iv) conforms with the requirements of the Purchase Order; and
 - (v) will achieve any operating performance requirements specified in the Purchase Order.
- (b) Supplier acknowledges and agrees that all warranties and obligations of the Supplier expressed in the Contract may be held by Upstream PS as agent for the benefit of its affiliates and for Upstream PS' customers. Supplier warrants that the Material and Work provided under the Contract will not infringe or violate any patents, trademarks or copyrights or other rights of any third party. Supplier shall assign all express warranties of any manufacturer of the Material and Work for the benefit of Upstream PS.
- (c) Supplier must provide adequate competent and appropriately trained staff and supervision and will in all respects perform its obligations under the Contract with at least that degree of care, skill and diligence normally exercised by persons regularly engaged in Supplier's business or profession.
- (d) Supplier is solely responsible for performance of its obligations under the Contract, including the performance of all Work and delivery of all Materials.
- (e) Unless specified to the contrary by Upstream PS, all Material and Work shall comply with the latest revision of the Standards or Codes issued by the Standards Australia or any other relevant standards or codes referred to in the Contract.

- (f) Unless otherwise stated in the Purchase Order, the Warranty Period shall expire:
- (i) in respect of any Materials, twelve (12) months from the date of acceptance of the Materials by Upstream PS; and
 - (ii) for any other Work twenty four (24) months after the date of acceptance of the Work by Upstream PS.
- (g) During the Warranty Period, or at such other times prescribed by this Contract, Supplier shall, at its own expense, repair or replace any Material or re-perform any Work that is defective, incomplete, damaged or that does not otherwise conform with the requirements of the Contract (**Defect**), promptly upon receipt of written notice from Upstream PS specifying the nature of the Defect.
- (h) Supplier must proceed to remedy any Defect in a manner satisfactory to Upstream PS. Supplier shall assume all risks of loss or damage to Material, which is to be corrected or replaced in accordance with the Supplier's obligation to remedy Defects.
- (i) Where the Supplier fails to remedy any Defects in the manner required by clause (g), Upstream PS may at its option return the Material to the Supplier or remedy such Defects, including by engaging third parties and the reasonable direct costs incurred by Upstream PS in relation to the Materials (including their purchase in the context of any election to return Materials) will be recoverable by Upstream PS as a debt due and payable by the Supplier.

(5) TITLE AND PROPERTY

- (a) Supplier warrants the Material is (and at the time title in the Material pass to Upstream PS, the Material will be) free and clear of all liens, charges and encumbrances.
- (b) Title in Materials shall pass to Upstream PS upon acceptance by Upstream PS or Upstream PS having made payment or the Materials (whichever is the earlier).

(6) RISK IN MATERIAL

Risk in Material and any Work shall remain that of the Suppliers until the Materials are accepted by Upstream PS following delivery.

(7) INVOICING

- (a) Unless otherwise stated, invoices shall be submitted to Upstream PS upon delivery of the Material in accordance with the Contract. All invoices sent to Upstream PS shall be complete, correct and have sufficient detail for Upstream PS to verify any invoiced amounts and to effect payment.
- (b) In this clause terms have the meanings given those expressions in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). Unless otherwise specified, the fees payable and any other consideration under the Contract are exclusive of GST. If GST is imposed on any supply made under or in accordance with the Contract, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Any reimbursement of expenses under the Contract will be net of input tax credits to which the party is entitled.
- (c) The recipient may be required to withhold from any payment it is to make to the supplier such amount required by the Taxation Administration Act 1953 (Cth) unless the supplier has, on or before the time payment is due, provided the recipient with an invoice quoting the supplier's correct ABN.
- (d) Invoices shall be issued separately for each Purchase Order. The invoice must contain the following information:
- (i) Project name and number
 - (ii) Purchase Order date and number

(8) PURCHASE ORDER

- (a) All orders for Work or Materials must be made via an approved Purchase Order issued by Upstream PS.
- (b) Upstream PS will have no obligations under this Contract (including to make payment) in respect of any requests for Work or Materials that have been made in a manner other than in accordance with an approved Purchase Order.
- (c) When the Work commissioned under the Purchase Order is to be invoiced on a consumption or utilisation basis at rates and prices specified in the Contract, supporting data of such consumption or utilisation (including timesheet), unless otherwise agreed, shall be attached to any tax invoice submitted by the Supplier under this Contract.

(9) PAYMENT

- (a) Upstream PS shall make payment for the undisputed portion of any tax invoice issued by the Supplier for Materials or Work provided under this Purchase Order:
- (i) in immediately available funds by way of electronic funds transfer; and
 - (ii) within 30 days following the end of the month in which the Supplier's invoice is received by Upstream PS.
- (b) Upstream PS shall have the right to withhold from payments due to the Supplier any amounts that have become due and payable by the Supplier to Upstream PS under this Contract.
- (c) Payment shall not constitute acceptance of Material and/or Work or otherwise prejudice Upstream PS' rights under this Contract.
- (d) Upstream PS may withhold such percentage of the Purchase Order Price specified in the Purchase Order as a retention to secure the Supplier's performance of its obligations under this Contract, or may require the Supplier to provide, at Supplier's expense within seven (7) days of the date of the Purchase Order, an unconditional, on demand bank guarantee for an equal amount and in lieu of retention.
- (e) Where specified in the Purchase Order, Upstream PS may also retain the percentage of the Purchase Order Price nominated in the Purchase Order to secure the receipt of any mechanical catalogues, final arrangement drawings and detailed certified drawings and certificates as required by the Contract.
- (f) Upstream PS may have recourse to any security that it holds pursuant to clause (9)(d) where the Supplier is in breach of any of its performance obligations under this Contract (including the remedy any Defects) and such breach is not remedied within thirty (30) days of Upstream PS issuing notice to the Supplier in writing requiring it to do so.

- (g) Upstream PS must release fifty percent (50%) of any security that it holds pursuant to clause (9)(d) upon acceptance of all Material and Work under this Contract. The balance of any security must be released upon the expiry of the Warranty Period.
- (h) Upstream PS may set off against any payments required to be made to the Supplier under this Contract all monies due or becoming due from Supplier to Upstream PS arising out of or in connection with the Contract.

(10) PLANS, SPECIFICATIONS AND REPORTS

- (a) Supplier shall furnish all engineering and other data in accordance with and within the time stated in the Contract.
- (b) The review of drawings and data by Upstream PS shall not alter Supplier's performance obligations under the Contract or constitute Upstream PS' acceptance of any Materials of Work.
- (c) Supplier shall provide Upstream PS with a detailed programme for the supply of Material and/ or execution of Work.
- (d) Supplier shall submit to Upstream PS each month (or at such other intervals as Upstream PS directs) a progress report that shall cover all aspects of the Work (including, where relevant, planning, engineering, procurement, fabrication, inspection and testing, and shall include a description of all inspection rejections and test failures and their resolution).

(11) CONFIDENTIALITY

- (e) Supplier shall keep secret and confidential, and shall not disclose to any third party without prior written consent of Upstream PS any information, data, specifications, drawings, reports, accounts or other documents supplied or made available by Upstream PS to Supplier or brought into existence by Supplier in or for the purpose of the Contract, and Supplier shall take precautions as may be necessary to prevent such disclosure, including obtaining confidentiality agreements from its employees, agents and subcontractors. Supplier shall indemnify and hold harmless Upstream PS, its directors, officers, customers, agents, subcontractors and employees from and against any and all liabilities, claims, suits, demands, disputes, resources, damages and expenses including reasonable legal fees arising from any and all claims in respect of, or resulting from, the use or the disclosure of Confidential Information by Supplier, its employees, agents and subcontractors. Upon completion, cancellation, or termination of the Purchase Order for any reason whatsoever, Supplier shall turn over to Upstream PS any and all copies it may have of confidential information. The obligations contained in Clause 11 shall survive the term or termination of the Contract and shall be enforceable at law or in equity at any time.

(12) INSPECTION AND EXPEDITING

- (a) Upstream PS or its nominated representative shall be entitled at all reasonable times during manufacture to expedite or inspect, examine and witness tests on Material and/or Work, workmanship and performance at Supplier's and/or Supplier's sub-contractor's premises without additional charges, and Supplier shall make this a condition of any sub-contract work. Inspection may also be carried out by Upstream PS at its discretion at the job site within reasonable time after delivery.
- (b) Supplier shall ensure access at all reasonable times to Supplier's and Supplier's sub-contractor's premises, without additional charges, for the purpose of inspection of the Material and/or Work, or for the purpose of expediting the supply of Material or the execution of Work. Upstream PS may also request unpriced copies of Supplier's and/or Supplier's sub-contractor's purchase orders placed for Material for the Contract, and Supplier shall make this a condition of any sub-contract work.
- (c) Supplier shall advise Upstream PS and its nominated inspection representative(s) ten (10) days in advance of the date the Material will be ready for final inspection or for performance tests, when required, in order that appropriate representatives will be present.
- (d) If upon inspection any Material is found to contain a Defect, the Supplier must proceed in accordance with clause (4)(g) to remedy such Defect. Any costs associated with the making good will be for the Supplier's account. Payment for Material prior to inspection shall not be construed to be an acceptance of Material the subject of a Defect.
- (e) Acceptance of all or any part of the Material by Upstream PS shall not constitute a waiver of Upstream PS' rights to return all or any part thereof because of failure of such Material to conform to the requirements set out in the Contract or by reason of Defect.

(13) ASSEMBLY MARKS

Supplier shall ensure that all Material is adequately, visibly and indelibly hand marked with such identification marks as are required by Upstream PS. These identification marks shall also be shown on drawings and on despatch and shop lists.

(14) PACKING AND SHIPPING

- (a) Supplier shall package all Material in suitable containers to permit safe transportation and handling, to prevent damage, and deterioration and contamination, and to be despatched as instructed in the Contract. Supplier shall be liable for any expense, loss or damage or difference in freight charges arising from failure to follow these instructions. Upstream PS reserves the right to arrange transportation for any or all Material.
- (b) Each delivered container must be labelled and marked to identify its contents without having to be opened, with gross deadweight, and all boxes and packages must contain packing sheets listing the

contents. The Purchase Order number as well as part number must appear on all shipping containers, packing sheets, delivery tickets and bills of lading.

- (c) Should Supplier experience any delay in performing the Purchase Order, Supplier shall immediately notify Upstream PS in writing of such delay, its expected duration and the reason for the delay. Such notification and acknowledgement by Supplier shall not constitute a waiver of the delivery schedule for the Materials.

(15) WORK ON UPSTREAM PS's PREMISES

- (a) Supplier shall use best endeavours not to impede or interfere with any activities being carried out by Upstream PS or any third party on the Premises.
- (b) Supplier shall ensure that its servants, agents and sub-contractors observe all applicable laws with respect to safety matters and comply with the safety regulations of Upstream PS, and with the directions and orders of Upstream PS or its authorised officers in regard thereto.
- (c) Supplier shall pay all labour engaged in the performance of its obligations hereunder not less than the prevailing award wage.
- (d) Supplier shall observe such safety rules as Upstream PS shall prescribe as necessary for the protection of personnel and Upstream PS' property, and shall limit smoking and the use of fire, including welding and torch cutting, to such locations and occasions as are specifically authorised in writing by Upstream PS.
- (e) All labour, tools, instruments, materials and appliances necessary for the completion of Supplier's obligation hereunder shall be provided by Supplier at Supplier's own expense, except where otherwise specified by the Contract, and shall at all times be sufficient to ensure completion of such obligation at the time and in the manner provided for in the Contract.

(16) UPSTREAM PS SUPPLIED MATERIALS

- (a) Where Upstream PS, for the purpose of the Contract, issues materials, tools or equipment "free of charge" to Supplier, such materials, tools or equipment shall be and shall remain the property of Upstream PS. Supplier shall be responsible for and shall make good any loss of or damage to such materials. Supplier shall maintain all such materials, tools or equipment in good order and condition, subject, in the case of tooling patterns and the like, to fair wear and tear.
- (b) Supplier shall use such materials, tools or equipment solely in connection with the Contract. Any surplus materials shall be disposed of at Upstream PS' discretion. Waste of Upstream PS supplied materials, tools or equipment arising from bad workmanship or negligence of Supplier shall be made good at Supplier's expense.

(17) INDEMNITIES

- (a) Supplier shall indemnify and hold harmless Upstream PS and its directors, officers, customers, agents, subcontractors and employees against any liability, loss, damages, claim, suit, action, demand, expense or proceedings of whatsoever nature arising from or incurred by reason of any infringement or alleged infringement of letters, patent, design, trade mark or name, copyright or other protected rights in respect of any machine, equipment, work, material, system or method used or supplied by the Supplier for the purpose of the Contract.
- (b) The Supplier shall be solely liable for and shall indemnify and hold harmless Upstream PS and its directors, officers, customers, agents, subcontractors and employees against any liability, loss, damages, claim, suit, action, demand, expense or proceedings of whatsoever nature and however arising:
- (i) under statute or at common law in respect of personal injury (which expression shall include illness) to or death of any or all persons whomsoever; or
 - (ii) out of the negligence, acts or omissions, or wilful misconduct of Supplier or Supplier's employees, officers, consultants, agents and subcontractors; or
 - (iii) In respect of loss, or destruction of, or injury or damage to, or loss of use of any and all property, employees, officers, consultants, agents and subcontractors (including but not

- limited to the property of Upstream PS) arising out of, or in the course of, or caused by the execution of the Work, or other obligations hereunder.
- (c) To the maximum extent permitted by law, the Supplier shall be solely liable for and shall indemnify and hold harmless Upstream PS from and against all loss, liability and damage caused by, or to the extent contributed to by any act or omission of Supplier's personnel whilst under the direction, supervision, instruction or control of Upstream PS.
- (d) In addition to the indemnities expressed elsewhere in this Contract, Upstream PS shall not be liable for, and the Supplier shall indemnify Upstream PS against, any claim (whether in tort, contract or otherwise at law) or loss incurred or suffered by any person arising out of or in connection with any pollution or environmental contamination of any nature, including but not limited to:
- (i) any pollution occurring on or near the premises of Upstream PS or any third party, or emanating from the property or equipment of the Supplier, Upstream PS or other property, premises or equipment used or accessed in the performance of the Services;
 - (ii) clean up, rehabilitation and pollution containment and associated costs with such pollution or environmental contamination;
 - (iii) where the pollution or environmental contamination arises out of or in connection with the performance of the Work or supply of Materials, and regardless of whether caused or contributed to by Upstream PS.
- (e) Neither Upstream PS nor Supplier shall be liable to the other for any Consequential Loss, whether under this Contract, at law or in equity.
- (f) Each indemnity will survive the expiry or any termination (for cause or otherwise) of this Contract.
- (d) The Supplier must furnish to Upstream PS certificates of currency evidencing the effecting and maintaining of the insurances required by clause (18)(a).
- (e) If the Supplier fails to provide to the Client certificates of currency upon request as required by clause (18)(d), Upstream PS may effect and maintain the relevant insurances and pay the premium. The costs incurred by Upstream PS in connection with taking such action will be recoverable from the Supplier as a debt due and payable from the Supplier to Upstream PS.
- (f) The Supplier's general insurance requirements and obligations are as follows:
- (i) The Supplier's insurances must be effected and maintained with reputable insurers or insurers otherwise agreed between Upstream PS and the Supplier;
 - (ii) The Supplier's liability insurance must note the interests of Upstream PS and those of its contractors arising out of or in connection with the performance of this Contract; and
- (g) The Supplier must:
- (i) not do or permit, or omit to do, anything which prejudices any insurance;
 - (ii) rectify anything which might, if not rectified, prejudice any insurance;
 - (iii) fully and promptly disclose all material information to insurers relating to the insurances where failure to do so may prejudice or invalidate an insurance; and
 - (iv) comply at all times with the terms of each insurance.

(18) INSURANCE

- (a) Prior to the Supplier performing any Work pursuant to this Contract, the Supplier must effect (or cause to be effected) and thereafter maintain (or cause to be maintained) the following insurances for amounts not less than and deductibles not more than those specified:
- (i) third party liability insurance covering claims in respect of:
 - (A) damage to, loss or destruction of, or loss of use of, real or personal property; and
 - (B) injury to, or disease or death of, persons; and with a limit of indemnity of not less than \$10 million, arising out of or in connection with the Supplier's performance of the Work.
 - (ii) Motor Vehicle insurance:
 - (A) in respect of third party property damage and death or injury to persons for all plant, equipment and motor vehicles to be used in connection with the Work;
 - (B) with a limit of indemnity in respect of third party property damage of \$20 million any one claim;
 - (iii) for compulsory third party insurance covering death or injury to persons, as required by applicable law; and
 - (iv) Plant and Equipment insurance:
 - (A) in respect of all plant, equipment not for incorporation into the Work, used or to be used by the Supplier in connection with the Work;
 - (B) for a sum equivalent to the full replacement value of all such plant, equipment and supplies; and
 - (v) Workers compensation insurance against any liability for death of, or injury to persons employed (or deemed to be employed) by the Supplier in the performance of Work whether under statute or common law.
- (b) Compliance by the Supplier with its obligations under clauses (18)(a), is a condition precedent to the Supplier being entitled to make a claim for payment of the Purchase Order Price.
- (c) The Supplier must maintain, or cause to be maintained, the insurances referred to in clause (18)(a) until the expiry of the Warranty Period.

(19) GENERAL

- (a) Supplier shall at its own expense obtain all requisite licences and permits and comply with all applicable laws and regulations in connection with the Work or installation or supply of the Material.
- (b) Upstream PS may at any time by written notice add to, vary, alter, amend or omit Work under the Contract without prejudice to the Contract, and Supplier shall carry out such variations and shall be bound by the same conditions, so far as they are applicable, as if such variation was part of the Work originally included to them.
- (c) Supplier is an independent contractor and not the employee or agent of Upstream PS for any purpose.
- (d) Supplier hereby grants to Upstream PS a royalty free, worldwide, irrevocable licence to copy or reproduce any documents, manuals, calculations, data, reference literature or other documentation or parts thereof relating to or included with the Material to be supplied or delivered under the Contract for use by Upstream PS and its personnel as required to properly utilise the Material, including installation, operating and maintaining the Material.

(20) TERMINATION/SUSPENSION

- (a) Upstream PS may terminate all or any part of this Contract or purchase order at any time upon seven (7) days written notice to the Supplier without assigning any reason, therefore. In such event, the Purchase Order shall, if Supplier's written claim for adjustment is received within thirty (30) days after effective date of termination, be equitably adjusted, provided that such adjustment shall not exceed the total Purchase Order price, nor allow any amount for profit or anticipated profit for performance not rendered, nor any allowance for Consequential Loss.
- (b) Termination shall not relieve Upstream PS or Supplier of their respective obligations as to any unterminated Work. Upon receipt of written termination notice, Supplier shall stop Work to the extent specified in the notice and take such other action as may be necessary, or as Upstream PS may direct for the transfer, protection and preservation of property and contract rights which related to the termination, and Supplier shall use its best endeavours to minimise the costs arising from such termination.

- (c) Upstream PS may, at any time and from time to time, suspend the Work or any part thereof, for any reason whatsoever, by giving written notice to the Supplier, whereupon the Supplier shall suspend the Work or part thereof for such time or times as Upstream PS may direct.
- (d) Supplier shall promptly comply with a direction of Upstream PS to recommence the Work, or any suspended part.

(21) ASSIGNMENT

- (a) Supplier shall not assign, transfer, novate or sub-contract this Contract in whole or in part without Upstream PS's prior written approval.
- (b) An approval to subcontract pursuant to Clause (21(a)) given by Upstream PS shall not relieve the Supplier from any of its obligations or liabilities under the Contract. Notwithstanding any approval to subcontract the Supplier shall be liable to Upstream PS for the acts, defaults and neglects of any subcontractor of the Supplier as fully as if they were the acts, defaults or neglects of the Supplier.
- (c) Upstream PS shall have the right to assign all or any of its obligations or rights under the Contract at any time to any related body corporate (as the expression is defined in the Corporations Act 2001 (Cth)) or to any principal or customer of Upstream PS

(22) COMPLETION

Supplier shall complete the Work and deliver the Materials on or before the date specified in the Purchase Order. Where a date is specified for completion of a part of the Work or delivery of some of the Materials, the Supplier shall complete such part of the Work or deliver such Materials on or before the date so specified.

(23) EXTENSION ON TIME FOR DELIVERY

- (a) If Supplier is delayed in the completion of the Work or part thereof or the delivery of Materials to Upstream PS will be delayed, Supplier must immediately upon becoming aware of such delay give notice to Upstream PS in writing of the cause of the delay and the effect on the completion of the Work or delivery of the Materials or part thereof.
- (b) Upstream PS may, at any time and from time to time for any reason it thinks fit, by notice in writing to the Supplier, extend the time for completion of the Work or part thereof by nominating a date specified in the notice as the date for completion of the Work or a part thereof, and the date so specified in the notice shall be deemed to be the date for completion of the Work or part thereof as specified in the notice.

(24) LIQUIDATED DAMAGES

Supplier shall pay Upstream PS as liquidated damages a sum equal to the amount stated in the Purchase Order for each day the completion of the Work or delivery of the Materials is delayed beyond the date so specified for completion or delivery in the Purchase Order (as may be extended pursuant to Clause (23)), to a maximum also specified in the Purchaser Order.

(25) AUDIT

Where this order involves the supply of goods and/or services or the hire of equipment on a cost plus basis or on a rate per hour basis, Upstream PS reserves the right to conduct an audit of the basis of charges utilising records maintained by Supplier for the purposes of calculating invoice charges to Upstream PS. Such audit right to extend for a period of twelve (12) months after payment of subject invoices of Upstream PS.

(26) DEFAULT

A party is in default of its obligations under the Purchase Order if any of the following events occur, namely:

- (i) Such party is adjudged bankrupt or insolvent by a court of competent jurisdiction, or otherwise becomes insolvent, as evidenced by its inability to pay its debts generally as and when they become due; or

- (ii) such party is in breach of its obligations under the Contract and where and to the extent such breach is capable of being cured, fails to cure such breach within thirty (30) days of receiving written notice from the other party.

Upon the occurrence of any of the above events, the party not in default may, by written notice to the defaulting party, terminate the Purchase Order without prejudice to any other right or remedy available to it under this Contract, at law or in equity.

(27) BUSINESS STANDARDS

Supplier shall establish and maintain precautions to prevent its employees, agents or representatives from making, receiving, providing, or offering substantial gifts, entertainment, payments, loans, or other considerations to employees, agents, subcontractors or representatives of Upstream PS for the purpose of influencing those persons to act contrary to the best interests of Upstream PS. These obligations shall apply to the activities of the employees of Supplier and its subcontractors in their relations with the employees of Upstream PS or third parties arising from the Purchase Order.

(28) PPSA

- (a) If Upstream PS determines that this Contract (or a transaction in connection with it) is or contains a Security Interest (as defined in the *Personal Property Securities Act 2009* (Cth)) (**PPSA**) (**Security Interest**), for the purposes of the PPSA, the Supplier agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information), at the Supplier's cost, which Upstream PS asks and considers necessary for the purposes of:
 - (i) ensuring that the Security Interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective; or
 - (ii) enabling Upstream PS to apply for any registration, or give any notification, in connection with the security interest so that the Security Interest has the priority required by Upstream PS; or
 - (iii) enabling Upstream PS to exercise rights in connection with the Security Interest.
- (b) The Supplier agrees:
 - (i) not to create any security interest or lien over any of Upstream PS' Personal Property (as defined in the PPSA);
 - (ii) not to sell, lease or dispose of its interest in the Upstream PS' Personal Property; and
 - (iii) not to give possession of Upstream PS' Personal Property to another person except where the Company expressly authorises it to do so.