

Supplier has agreed to supply, and Distributor has agreed to purchase, the Products in exchange for the Invoiced Amount. The parties agree that, by reference to this document, the terms contained in this document and any terms contained in a Distribution Agreement (if applicable), govern the purchase and supply of Products (collectively, the “Agreement”).

The parties agree in consideration of the mutual promises contained in the Agreement:

1 Definitions and Interpretation

1.1 In the Agreement, unless the context otherwise requires:

AUD means Australian dollar currency;

Business Day means a day on which major Australian trading banks in Sydney are open for and conduct their normal business operations;

Confidential Information means all data and other information of whatever nature, provided by one party (**Provider**) to the other party (**Recipient**) under or in terms of the Agreement (including information of a third party which is used or disclosed pursuant to the Agreement by the Provider under licence from, or with the permission of, a third party) but excluding information:

- (a) known to the Recipient prior to the date it was provided to it and not obtained directly or indirectly from the Provider;
- (b) that is or becomes publicly available after the Commencement Date;
- (c) is independently developed by the Recipient; and
- (d) obtained bona fide from another person who is in lawful possession of the same and did not acquire the same directly or indirectly from the Provider under an obligation of confidence;

Consequential Loss means any indirect, incidental, special or consequential loss or damage, loss of anticipated profits, economic loss, loss of business opportunity, loss of data or loss and damage relating from wasted management time;

Customer means a customer who purchases Products from Distributor.

Distribution Agreement means a written agreement signed by Supplier and Customer containing additional terms for the supply of Products;

Delivery Date means the date of delivery of the Products as specified on the Invoice;

Delivery Point means the point at which the Products are deemed to have been delivered from Supplier to Distributor in accordance with the Incoterms;

Exchange Rate means the currency exchange rates published by the Reserve Bank of Australia;

Force Majeure means any event or circumstance which is beyond the reasonable control of either party and which results in, or causes the failure of, that party to perform any of its obligations under the Agreement, including but not limited to:

- (a) acts of God, strike, lock-out or other industrial disturbance, pandemic, epidemic, acts of a public enemy, declared or undeclared war, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, earthquake, explosion; and
- (b) governmental restraint or other intervention or request, Act of parliament, other legislation or by-law;

for the avoidance of doubt, lack of funds will be deemed not to be a matter beyond the reasonable control of the party concerned;

Forecast means the forecast for the quantities of Products that Distributor requires each month as specified in the Distribution Agreement or, if no forecast is specified or no Distribution Agreement is applicable, the most recent forecast provided by Distributor from time to time;

Forecast Surcharge means 15% of the Price per unit of Product;

Incoterms means the Incoterms specified in the Distribution Agreement or, if no Incoterms are specified or no Distribution Agreement is applicable, the Incoterms notified by Distributor from time to time, that sets out additional trading terms for the supply of the Products in accordance with Incoterms 2020 by the International Chamber of Commerce;

Intellectual Property means any patent, copyright, trademark, trade name, service mark, service name, brand mark, brand name, logo, corporate name, Internet domain name or industrial design (including without limitation Packaging Intellectual Property), any registrations thereof and pending applications therefor (to the extent applicable), any other intellectual property right (including, without limitation, any know-how, trade secret, trade right, formula, conditional or proprietary report or information, distributor or membership list, any marketing data, and any computer program, software, database or data right), and license or other contract (including without limitation license(s) to use specific telephone numbers and/or radio channels/frequencies) relating to any of the foregoing, and any goodwill associated with any business owning, holding or using any of the foregoing:

- (a) patents, trademarks, service marks, copyrights, registered designs, trade names, symbols and logos;
- (b) patent applications and applications to register trademarks and designs; and
- (c) all formulae, methods, plans, data, drawings, specifications, equipment, designs, inventions, discoveries, improvements, know-how, Confidential Information, software products, trade secrets and price lists which relate directly to the Products;

Invoice means the invoice provided by Supplier to Distributor for Products ordered by Distributor in a Purchase Order;

Invoiced Amount has the meaning attributed to that term in clause 15.1;

Latent Defective Product means Products that do not meet the Specifications where detection of the defect may not be reasonably detected within the timeframe specified in clause 12.4(a);

Latent Defective Products Notice means the notice as defined in clause 12.4(a);

Laws means all applicable laws, regulations, orders, directives, codes of practices and industry standards, including, but not limited to, any laws, regulations and standards relating to health, food, resource management, building, town planning, waste disposal and quality control;

Loss means any and all losses, claims, actions, liabilities, damages, expenses, diminutions in value or deficiencies of any kind or character including, without limitation, all interest and other amounts payable to third parties, all liabilities on account of taxes and all legal (on a full indemnity basis) and other expenses reasonably incurred in connection with investigating or defending any claims or actions, whether or not resulting in any liability and all amounts paid in settlement of claims or actions.

Material Quality Problems means quality problems in the Products and/or the Product's packaging where the extent of the quality problem affects more than 2% of the total volume of Products delivered for that delivery;

Material Quality Problems Notice means the notice as defined in clause 14.2(a);

Packaging Design means the design of the packaging used to package the Products and includes the shape of the packaging as well as graphics, images and branding (whether or not such branding is registered as a trade mark) which appear on the packaging;

Packaging Intellectual Property means Intellectual Property rights in the Packaging Design;

Premises means Supplier's premises;

Payment Terms means the terms for payment of the Invoiced Amount as specified in the Distribution Agreement or, if no payment terms are specified or no Distribution Agreement is applicable, then the payment terms shall be 30 days from the Invoice date;

Products means the products to be manufactured, packaged and delivered by Supplier in accordance with the terms of the Agreement as set out in Purchase Orders from time to time being, at the Commencement Date, the products set out in the Distribution Agreement or, if no products are specified or no Distribution Agreement is applicable, the products specified on the Invoice, and “**Product**” means any one of them;

Price means the price for the Products as specified in the Distribution Agreement or, if no price is specified or no Distribution Agreement is applicable, the price notified by Supplier from time to time;

Purchase Orders means written purchase orders submitted by Distributor from time to time for the Products;

Reporting Period means a 3-month period;

Specifications means the specifications for the Products set out in the Distribution Agreement or, if no specifications are specified or no Distribution Agreement is applicable, the specifications notified by Supplier from time to time, as amended from time to time pursuant to clause 12.2;

Territory means the area specified in the Distribution Agreement or of no area is specified, the area notified by Supplier from time to time; and

USD means United States dollar currency.

1.1 In the interpretation of the Agreement:

- (a) **Headings:** Clause and other headings are for ease of reference only and will be ignored in construing the Agreement.
- (b) **References:** Unless the context otherwise requires, references to recitals, clauses and schedules are references to recitals, clauses of, and schedules of or to, the Agreement and references to a paragraph in a schedule are references to paragraphs in that schedule.
- (c) **Statutes:** Any reference in the Agreement to a statute, statutory instrument, regulation or order will be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time.
- (d) **Parties:** Reference to a party is to a party to the Agreement and will be deemed to include its successors and permitted assigns.
- (e) **Person:** A reference to a “person” includes an individual, firm, company, corporation, unincorporated body of persons, state or government or agency thereof and any other body or entity (in each case whether or not having separate legal personality).
- (f) **GST:** Unless the context otherwise requires, all amounts payable under the Agreement are expressed exclusive of Goods and Services Tax. If Goods and Services Tax is payable on any amount it will be added to that amount and will be payable on each such amount at the time the amount itself is payable.
- (g) **Gender:** Any reference in the Agreement to any gender includes all genders.
- (h) **Plural:** a reference to the singular in the Agreement includes the plural and vice versa.

2 Supply and Delivery

2.1 Customer Lists

On or before the Commencement Date, Supplier must give Distributor a list of the initial customers.

2.2 **Supply**

In consideration for the payment of the Invoiced Amount in relation to any Products the subject of a Purchase Order.

2.3 **Delivery**

- (a) Supplier must deliver the Products to the Delivery Point in accordance with the Incoterms.
- (b) Notwithstanding clause 27.5(b), the parties acknowledge and agree that any dates and/or times specified in Purchase Orders regarding shipment and/or arrival of Products to the Delivery Point or otherwise are indicative only and are not binding.

3 **Distributor's obligations**

3.1 **Obligation to promote Products**

Distributor must use its best endeavours to market, advertise, promote, distribute and sell the Products and expand the market for the Products throughout the Territory including, but not limited to:

- (a) regularly visiting Customers and prospective Customers for those purposes;
- (b) undertaking promotion and advertising of the Products in accordance with clause 6; and
- (c) providing expert advice and other assistance to Customers in relation to the Products, including to enhance sales of the Products.

3.2 **Other obligations**

Distributor must:

- (a) supply Customers with quantities of the Products ordered by Distributor in a manner and at intervals reasonably prescribed by Supplier or Distributor;
- (b) carry inventories of the Products of a number and range suitable to allow Distributor to satisfy the needs of Customers and to perform its obligations under clauses 3.1 and 3.2(a);
- (c) co-operate in every way possible with Supplier to establish and maintain the reputation of the Products and Supplier;
- (d) provide and maintain adequate premises, facilities, equipment and vehicles and do all other things necessary to ensure that the Products remain in good condition and are stored, handled and transported in accordance with standards as to safety, cleanliness and efficiency prescribed by Supplier or, if such standards are not prescribed by Supplier, then in accordance with good industry practices;
- (e) permit any representative of Supplier to inspect the condition of Distributor's premises, facilities, equipment and vehicles used for storing, handling and transporting the Products to ensure compliance by Distributor with its obligations under this clause 3.2, and permit the representative to take samples of the Products;
- (f) observe all legal requirements in relation to the conduct of its business of distribution of the Products and carrying out its obligations under the Agreement including, but not limited to, obtaining and maintaining all necessary permits, licences and registrations;
- (g) not distribute or sell any of the Products which are not in good condition or which do not comply with any express or implied warranty given in relation to the Products or which have a use-by date which has passed;

- (h) immediately notify Supplier if it becomes aware of any defect in any of the Products or their packaging;
 - (i) support and comply with the requirements of any Product recall program initiated by Supplier or any relevant government agency;
 - (j) promptly inform Supplier of any suggestions to modify, vary or improve the Products (including, but not limited to, any suggestion to modify, vary or improve to meet specific local requirements in the Territory), whether the suggestion is made by an employee, agent, contractor or adviser of Distributor or by a Customer or any other person;
 - (k) promptly inform Supplier of all material matters concerning the Products or the Agreement which come to Distributor's attention including, but not limited to, the activities of any competitors in the Territory; and
 - (l) if it receives any orders for, offers to purchase or enquiries relating to, any of the Products from outside the Territory or from any person that it knows, ought to know, or suspects will distribute or sell any of the Products outside the Territory, promptly refer the order, offer or enquiry to Supplier.
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4 Restrictions on Distributor

4.1 Distributor must not, without the prior written consent of Supplier:

- (a) incur any liability or accept any obligations on behalf of Supplier;
 - (b) alter, obscure, remove, conceal or otherwise interfere with any marking, nameplate or label on the Products including, but not limited to, any marking, nameplate or label indicating the source or origin of the Products;
 - (c) make, or authorise the making of, any reproduction of the Products, or any part of them;
 - (d) make any representation, or give any warranty, in relation to the Products;
 - (e) do anything which will have or is likely to have an adverse effect the reputation of any of the Products and/or of Supplier;
 - (f) directly or indirectly, distribute or sell any of the Products outside the Territory; or
 - (g) directly or indirectly sell any of the Products to any person that it knows, ought to know, or suspects will distribute or sell any of the Products outside the Territory.
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5 Records and reporting

5.1 Proper records

Distributor must keep proper records relating to the sale and distribution of the Products.

5.2 Access

Supplier or its representative may enter any premises occupied by Distributor at all reasonable times by providing reasonable notice to:

- (a) examine and take copies of the books, records and documents of Distributor's business; and
- (b) monitor and observe the operations of Distributor's business, relating to the Products.

5.3 Reporting

Distributor must give Supplier:

- (a) sales information and statistics reasonably required by Supplier relating to the sales (dollar values and quantity volumes) of the Products (individually and in aggregate) to

Customers (individually and in aggregate), within 7 days after the end of each Reporting Period, relating to that Reporting Period; and

- (b) on request by Supplier, a list of all Customers current to the date of the request.

6 Advertising and advertising material

6.1 Provision of advertising material

Supplier may provide Distributor with Supplier's advertising material in relation to the Products.

6.2 Display and distribution of advertising material

Distributor must:

- (a) prominently display all items of advertising material in relation to any of the Products supplied by Supplier to Distributor at each of Distributor's places of business and (if applicable) on each of Distributor's vehicles used in its business in a manner that ensures that the advertising material is publicly conspicuous at all times; and
- (b) at Distributor's expense, distribute to Customers and prospective Customers items of advertising material in relation to any of the Products supplied by Supplier to Distributor.

6.3 Advertising material to be kept in good order

All advertising material supplied by Supplier to Distributor in relation to the Products remains Supplier's property. Distributor must keep the advertising material clean and in good condition and repair, and must not mutilate, deface or alter any of the advertising material.

6.4 Supplier's guidelines regarding advertising

Distributor must comply with any guidelines issued by Supplier to Distributor in connection with advertising in relation to the Products including, but not limited to, any guidelines which require Distributor to submit to Supplier for approval any proposed scripts, advertising material or promotion campaigns.

7 Claims

Distributor must

- (a) promptly notify Supplier of all material complaints or claims in respect of any of the Products;
- (b) not admit liability on behalf of Supplier regarding any complaint or claim in respect of any of the Products without Supplier's consent;
- (c) not resolve or settle any complaint or claim in respect of any of the Products which may result in Supplier incurring any liability (whether to a Customer, Distributor or any other person) except with Supplier's consent and in accordance with Supplier's written directions;
- (d) promptly comply with any written directions given by Supplier; and
- (e) promptly deal with all complaints or claims in respect of any of the Products which will not result in Supplier incurring any liability.

8 Additional Products and Discontinuation

8.1 Additional Products

Distributor may request Supplier to supply other products in addition to the Products. The parties may agree to the supply of new products subject to a variation of the Agreement in accordance with clause 27.7(a).

8.2 Discontinuation of supply and alteration of Products

Despite any other provision of the Agreement, Supplier may, in its absolute discretion:

- (a) discontinue the manufacture for sale in the Territory of any of the Products; or
- (b) alter the design or nature or any other aspect of any of the Products.

9 Purchase Orders

9.1 Submission

- (a) All orders for the Products must be submitted in accordance with the Distribution Agreement or, if the requirements in clauses 9.1(a)(i) to 9.1(a)(iv) below are not specified in the Distribution Agreement or no Distribution Agreement is applicable, then all orders must:
 - (i) be submitted in writing in the form and by the method notified by Supplier from time to time;
 - (ii) be consistent with the Forecast;
 - (iii) order a quantity of Products greater than or equal to any minimum purchase order quantity notified by Supplier from time to time; and
 - (iv) be submitted with at least the period of advance notice prior to the Delivery Date as notified by Supplier from time to time.
- (b) Only Purchase Orders that comply with the clause 9.1(a)**Error! Reference source not found. (Compliant Purchase Orders)** and that are accepted by Supplier in writing will be binding.
- (c) Supplier is under no obligation in respect of and may reject, Purchase Orders that are not Compliant Purchase Orders and/or where no Forecast was provided for that Purchase Order (**Non-compliant Purchase Orders**).
- (d) Supplier may, at its absolute discretion, reject or accept Non-compliant Purchase Orders in whole or in part. Where Supplier accepts the whole or part of a Non-compliant Purchase Order, Supplier will use reasonable endeavours to supply and deliver the Products specified in the partly or wholly accepted Non-compliant Purchase Order pursuant to the terms and conditions set out in the Agreement.
- (e) Supplier may, in its absolute discretion, apply a Forecast Surcharge to Purchase Orders that are more than +/-10% of the Forecast.

9.2 No Variation

No quotation, confirmation, shipment or delivery docket, purchase order or other document or email issued by or on behalf of Distributor, without the prior written consent of Supplier, in relation to the manufacture of Products will vary the provisions of the Agreement. To the extent that a Purchase Order requires Supplier to supply Products in a manner inconsistent with the Agreement (**Inconsistent Purchase Order**), that Inconsistent Purchase Order shall not be binding on Supplier unless Supplier, in its absolute discretion, agrees in writing to comply with the whole or part of that Inconsistent Purchase Order. For the avoidance of doubt, acceptance of an Inconsistent Purchase Order shall only apply to that Inconsistent Purchase Order.

9.3 Short Supply of Products

- (a) Only a variance of greater than -10% between the actual units of Products delivered and the units of Products specified in a Compliant Purchase Order may render a short supply.
- (b) Within 2 days of the Products arrival at the Delivery Point, Distributor must inspect the Products and may provide a notice in respect of the short supply (**Short Supply Notice**) including written evidence (to the satisfaction of Supplier).
- (c) On receipt of the Short Supply Notice, Supplier must review the notice and notify Distributor in writing whether it accepts or rejects the notice and, if rejected, provide written reasons for its rejection.

- (d) If Supplier accepts the Short Supply Notice, or it is determined through dispute resolution that the Products are in short supply, then Supplier will, at Supplier's election:
 - (i) deliver the short supply amount to Distributor as soon as practicable; or
 - (ii) refund the relevant payments made by Distributor for the short supply.
- (e) If Supplier rejects the Short Supply Notice, then the parties will resolve any dispute in relation to any short supply in accordance with the dispute resolution process set out in clause 23.
- (f) If Distributor does not provide a Short Supply Notice within the timeframe specified in clause 9.3(b), then the Products will be deemed to have been accepted by Distributor and are not in short supply.
- (g) For the avoidance of doubt, Supplier will have no liability to Distributor for any failure to supply a Non-Compliant Purchase Order regardless of whether the Non-Compliant Purchase Order was wholly or partly accepted by Supplier.

10 Protection of Products

10.1 Storage of Products

Each Party must ensure that all Products that are in its possession are stored in accordance with good commercial practice and all applicable Laws.

10.2 Security

Supplier must maintain a reasonable level of security designed to prevent the unauthorised tampering, distribution or removal of the Products, while they are on the Premises.

11 Packaging Design and Compliance

Distributor at all times remains responsible for ensuring that the Products and the Packaging Design (including, without limitation, the ingredients and any nutrition list and/or list of ingredients) comply with all Laws in the areas and regions in which the Product is offered for sale. Distributor acknowledges and agrees that Supplier has absolutely no responsibility for compliance with any legal and administrative requirements (save to the extent referred to in clause 17) and indemnifies and holds harmless Supplier for any Loss suffered or costs incurred by Supplier as a result of a breach of this clause by Distributor.

12 Manufacture, Quality Control and Specifications

12.1 Specifications

Supplier must ensure the Products comply with Specifications.

12.2 Variation to Specifications

- (a) From time to time, Distributor and Supplier may, by written agreement signed by the parties, vary the Specifications and any additional costs payable to Supplier in respect of the amended Specifications subject to clause 12.2(b) below.
- (b) Any variations to the Specifications must be proposed in good faith and must be reasonable in the circumstances. If the parties are unable to agree on any adjustment in Price as a result of a variation to the Specifications, the parties agree to resolve the matter in accordance with the dispute resolution procedure set out in clause 23. Until such determination, the parties agree that Supplier will continue to manufacture and supply the Products in accordance with the applicable Specifications (prior to the proposed variation) at the Price in place prior to the proposed variation.
- (c) Where variations to the Specifications are agreed under clause 12.2(a), Distributor must pay Supplier on demand for any raw materials that become redundant as a result of the variation, plus any disposal costs. Supplier is not obliged to manufacture the

Products in accordance with the varied Specifications until Distributor has complied with this clause 12.2(c).

- (d) Subject to clauses 12.2(a), 12.2(b) and 12.2(c), all Purchase Orders for Products manufactured from the date commencing eight weeks after the date of any agreement relating to a variation to the Specifications relevant to such Products made pursuant to this clause must be manufactured, packed and delivered in accordance with the Specifications as so amended unless Distributor specifies a later date for compliance with the amended Specifications.

12.3 Defective Products

- (a) Within 2 days of the Products arrival at the Delivery Point, Distributor must inspect the Products and may reject Defective Products by providing Supplier with written notice of its rejection (**Defective Products Notice**) including written evidence (to the satisfaction of Supplier) of the non-conformity with the Specifications.
- (b) On receipt of the Defective Products Notice, Supplier must review the notice and notify Distributor in writing whether it accepts or rejects the notice and, if rejected, provide written reasons for its rejection.
- (c) If Supplier accepts the Defective Products Notice, or it is determined through dispute resolution that the Products are Defective Products, then Supplier will, at Supplier's election:
 - (i) supply replacement Products that satisfy the Specifications as soon as practicable; or
 - (ii) refund all payments made by Distributor for the Defective Products.
- (d) If Supplier rejects the Defective Products Notice, then the parties will resolve any dispute in relation to any Defective Products in accordance with the dispute resolution process set out in clause 23.
- (e) If Distributor does not provide a Defective Products Notice within the timeframe specified in clause 12.3(a), then the Products will be deemed to have been accepted by Distributor and are not Defective Products.
- (f) Distributor must comply with any reasonable request and direction from Supplier in relation to the return or disposal of Defective Products.

12.4 Latent Defective Products

- (a) Distributor may reject Defective Products where the defect could not, in Supplier's reasonable opinion, have been reasonably detected within 2 days of the Product arrival at the Delivery Point (**Latent Defective Product**), by providing Supplier with written notice of its rejection (**Latent Defective Products Notice**) including written evidence (to the satisfaction of Supplier) of the non-conformity with the Specifications within 5 days of becoming aware of Latent Defective Products.
- (b) On receipt of the Latent Defective Products Notice, Supplier must review the notice and notify Distributor in writing whether it accepts or rejects the notice and, if rejected, provide written reasons for its rejection.
- (c) If Supplier accepts the Latent Defective Products Notice, or it is determined through dispute resolution that the Products are Latent Defective Products, then Supplier will, at Supplier's election:
 - (i) supply replacement Products that satisfy the Specifications as soon as practicable; or
 - (ii) refund all payments made by Distributor for the Latent Defective Products.

- (d) If Supplier rejects the Latent Defective Products Notice, then the parties will determine any dispute in relation to any Latent Defective Products in accordance with the dispute resolution process set out in clause 23.
- (e) Distributor must comply with any reasonable requests and directions from Supplier in relation to the return or disposal Latent Defective Products.

12.5 Variance in the Specifications of Products

Notwithstanding anything else in the Agreement, a variance of up to and including +/- 5% between the actual specifications of a Product and the Specifications in respect of that Product, does not of itself render that Product a Defective Product or otherwise non-conforming for the purposes of the Agreement and, for the avoidance of doubt, does not:

- (a) amount to a breach by Supplier of the Agreement; or
- (b) entitle Distributor to withhold payment for the relevant Product, return that Product or require Supplier to provide a replacement for that Product.

13 Records and Samples

13.1 Retain samples

Supplier must, at Supplier's cost, retain samples of each batch of Products manufactured and packed by it in accordance with the Specifications and such samples must be retained in their original packaging with the appropriate labelling affixed for a period corresponding to the shelf life of the Product plus one month. The samples must be provided to (or made available for inspection by) Distributor on reasonable request.

13.2 Retain records

Supplier must retain records in respect of each batch of Products produced pursuant to the Agreement for the Product's shelf life plus one month or as otherwise specified in the Specifications and must provide these records to Distributor upon reasonable request. Without limiting this clause, Supplier may take photographs of Products manufactured, packed and supplied by it under the Agreement and each of the parties hereby acknowledges that such photographs shall be prima facie evidence of the existence and quality of the Products manufactured, packed and supplied under the Agreement, in the absence of manifest error.

14 Risk, Quality and Title

14.1 Risk passes

All risks in the Products, including without limitation risks of loss and damage, passes from Supplier to Distributor in accordance with the Incoterms.

14.2 Quality problems

- (a) Without prejudice to Distributor taking the necessary and reasonable steps to minimise damage to the public or its consumers, within 2 days of arrival of the Products at the Delivery Point, Distributor must inspect the Products and reject any Products that have visibly apparent Material Quality Problems by providing Supplier with written notice (**Material Quality Problems Notice**) of its rejection including written evidence (to the satisfaction of Supplier) of the Material Quality Problems.
- (b) On receipt of the Material Quality Problems Notice, Supplier must review the notice and notify Distributor in writing whether it accepts or rejects the notice and, if rejected, provide written reasons for its rejection.
- (c) If Supplier accepts the Material Quality Problems Notice, or it is determined through dispute resolution that the Products have Material Quality Problems, then Supplier will, at Supplier's election:

- (i) supply replacement Products that satisfy the Specifications and that are free of any Material Quality Problems as soon as practicable; or
- (ii) refund all payments made by Distributor for the Products that are determined to have Material Quality Problems.
- (d) If Supplier rejects the Material Quality Problems Notice, then the parties will resolve any dispute in relation to any Material Quality Problems in accordance with the dispute resolution process set out in clause 23.
- (e) If Distributor does not provide a Material Quality Problems Notice within the timeframe specified in clause 14.2(a), then the Products will be deemed to have been accepted by Distributor and the Products will be deemed not to have any Material Quality Problems.
- (f) Distributor must comply with any reasonable requests and directions from Supplier in relation to the return or disposal of Products that are determined to have Material Quality Problems.

14.3 Legal title in Products

Legal title in the Products passes to Distributor upon Supplier's receipt of the full payment for the Products.

15 Price, Payment and Terms

15.1 Price

- (a) Subject to clauses 15.2 and 15.3, the amount to be paid by Distributor to Supplier for the Products is specified on the Invoice (**Invoiced Amount**). The Invoiced Amount includes the Price, all processing, manufacturing, packaging, delivery costs, applicable insurance costs to Delivery Point and in accordance with the Incoterms, and any applicable Australian taxes (excluding Goods and Services Tax) and duties. If the supply of Products is an export supply, then the use of export pallets is included in the Price. For the avoidance of doubt, all customs and import duties in the destination country and any transit countries are excluded from the price and are the responsibility of Distributor.

15.2 Change in Price

- (a) In the event that Supplier's input costs increase including, without limitation, an increase by Supplier's suppliers of raw materials, paper, packaging materials and/or freight (**Increased Input Costs**), then Supplier may increase the price for the Products by an amount equal to the Increased Input Costs by providing 3 months written notice to Distributor (**Increased Input Costs Notice**). Distributor may request Supplier to provide reasonable evidence of the Increased Input Costs.
- (b) In the event that Distributor fails to meet the Minimum Annual Order Quantity, then Supplier may increase the price for the Products by providing 1 month written notice to Distributor (**Order Volume Price Adjustment Notice**). Distributor may request Supplier to provide reasonable evidence of the failure to meet the Minimum Annual Order Quantity.
- (c) Notwithstanding clause 27.7(a), the parties agree that an Increased Input Costs Notice and an Order Volume Price Adjustment Notice shall constitute a unilateral variation to the Agreement.

15.3 USD Price and Foreign Exchange Movements

If the Invoiced Amount is expressed in USD, then:

- (a) Supplier will calculate the USD Invoiced Amount by dividing the AUD Price by USD Exchange Rate;
- (b) Supplier may from to time to time issue Distributor with an additional invoice to cover any movements in the Exchange Rate which adversely impacts Supplier (**FX Invoice**).

Distributor must pay FX Invoices within 14 days from the FX Invoice date. The FX Invoice will show the supporting calculations and non-payment will be deemed a breach of the Agreement; and

- (c) the parties agree that the FX Invoice amount will compensate Supplier for any differences between the FX rate on receipt of invoiced payments and the FX rate.

16 Warranties, Liability and Indemnity

16.1 Supplier Warranties

Supplier represents and warrants to Distributor (without limiting any provision of the Agreement) that the Products will be fit for human consumption up to the expiry date specified on that Product, except that Distributor may not make a claim against Supplier for breach of this warranty if the breach arises (directly or indirectly) as a result of:

- (a) an act or omission of a person other than Supplier, including a failure to comply with all applicable Laws and good business practice in relation to the storage, transportation, handling and any other step in the on-sale and distribution of the Products;
- (b) abnormal use of the Products by Distributor or any other person;
- (c) compliance with the Specification; or
- (d) circumstances outside of the reasonable control of Supplier.

16.2 Liability

- (a) Subject to clauses 16.2(b) and 16.2(c), Supplier's aggregate liability in respect of all claims under the Agreement, including clause 16.1, is limited to, the highest of:
 - (i) the reimbursement by Supplier to Distributor of the price paid by Distributor to Supplier for, the Products the subject of the relevant claim; or
 - (ii) the insurance monies received in respect of the relevant claim by Supplier under the insurance policy referred to in clause 18.
- (b) All other terms, conditions, representations or warranties which would otherwise be implied by statute or otherwise are hereby excluded.
- (c) Supplier does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified, or which cannot be excluded, restricted or modified except to a limited extent, as between Supplier and Distributor by law including liability under the *Competition and Consumer Act 2010* (Cth). However, where such statutory provisions apply, to the extent to which Supplier is entitled to do so, Supplier's liability shall be limited, at the option of Supplier, to one or more of the following:
 - (i) if the breach relates to goods, the replacement of the goods or the supply of equivalent goods, the repair of such goods, the payment of the costs of replacing the goods, or of acquiring equivalent goods whether or not Supplier is the source of such equivalent goods, or the payment of the costs of having the goods repaired; and
 - (ii) if the breach relates to services, the supply of the services again or the payment of the costs of having the services supplied again.
- (d) Subject to clause 16.2(e) and notwithstanding any other clause in the Agreement, neither party will be liable for any Consequential Loss arising out of or in connection with the Agreement, howsoever caused.
- (e) There shall be no limit on the liability of either party for the amount of any loss or damage suffered by the other party for:
 - (i) death or injury caused by negligent or wrongful acts or omissions of the first party, its employees, contractors and agents; or

- (ii) a breach of, or claim made under, any of clauses 20 and 21.

16.3 Exclusion

Distributor acknowledges that it has not relied on any representations made by Supplier which is not stated expressly in the Agreement.

16.4 Indemnity

Distributor indemnifies Supplier against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which Supplier pays, suffers, incurs or is liable for in connection with any of the following:

- (a) any act or omission of Distributor including, but not limited to, any unauthorised representation made or warranty given by Distributor in connection with the Products; and
- (b) any breach of, or default under, the Agreement by Distributor.

17 Compliance with Laws

17.1 Licences and permits

- (a) Supplier must obtain and maintain (all at its cost) the validity of all licences and permits required by Law to manufacture, pack and deliver the Products.
- (b) Supplier must comply with all Laws in Australia relating to the manufacturing, packing and delivery of the Products.
- (c) Distributor must obtain and maintain (all at its cost) the validity of all licences and permits required by Law to market, advertise, distribute and sell the Products.
- (d) Distributor must comply with all Laws relating to the marketing, advertising, distribution and selling the Products.

17.2 Relevant law

Supplier shall ensure that the Premises complies at all times and in all respects with all applicable Laws in Australia.

18 Insurance

18.1 Product Liability

- (a) Each party must:
 - (i) take out and maintain adequate product liability insurance policies (allowing \$10 million in the aggregate, or any greater amount agreed between the parties) to cover any potential liability:
 - (A) arising out of the Agreement; and
 - (B) arising out of the other party's breach of the Agreement or any negligent act or omission of the other party, as if other party were a jointly insured party under that policy;
- (b) Supplier must
 - (i) take and maintain an adequate contaminated products insurance policy which specifically notes the Products and provides cover of:
 - (A) at least \$3 million for accidental contamination;
 - (B) at least \$3 million for product tampering; and

- (C) at least \$3 million for product extortion; and
- (ii) provide Distributor with certificates of currency and any other evidence of those policies which Distributor may reasonably require.

18.2 Public liability

Each party must at its own expense obtain public liability insurance to a level of \$10 million. Each party must provide to the other party on request proof of such insurance.

19 Recall

19.1 Notice

If either party becomes aware of any fact or circumstance that may require the recall of any Products from the marketplace, then that party must immediately notify the other party of that fact or circumstance as soon as reasonably practicable.

19.2 Procedure

Supplier shall retain the sole control over all interactions and communications with government authorities and all public comments, public announcements and public relations responses in respect of the recall of Products. Distributor must provide all reasonable assistance requested by Supplier. Distributor must not communicate with government authorities, media or make any public statements without the express approval and direction of Distributor.

19.3 Responsibility

The party responsible for causing the recall will be responsible for relevant liabilities and costs incurred in relation to such recall of Products (including costs of replacing or destroying Products, recall costs, compensations made to consumers and Supplier's costs of implementing a government and public relations strategy in connection with the recall of the Products). If both parties are jointly responsible for causing the recall or contributing to the liabilities incurred, the parties will both be responsible for the costs incurred in accordance with their respective extent of responsibility.

20 Intellectual Property

20.1 Licence

Supplier hereby grants to Distributor for the Term the non-exclusive, revocable, non-sublicensable, non-transferable, non-assignable and royalty free licence to use Supplier's Intellectual Property to perform its obligations under the Agreement including, without limitation, promoting, selling and distributing the Products.

20.2 Acknowledgements

Each party acknowledges and agrees that:

- (a) it is not the owner of the other party's Intellectual Property;
- (b) nothing in the Agreement gives a party any interest or other rights or title in or to the other party's Intellectual Property;
- (c) it must not use any of the other party's Intellectual Property other than for the purposes of meeting its obligations under the Agreement without the other party's prior written approval; and
- (d) it must not directly or indirectly challenge or contest the validity of the Intellectual Property.

20.3 Infringements

Distributor agrees promptly notify Supplier of any actual or alleged infringement of Supplier's Intellectual Property which it may become aware of and to co-operate with Supplier in order to

protect the rights of Supplier and not, without the prior written consent of Supplier, take any action in respect of such matters.

20.4 **Restriction on Distributor**

Distributor must not:

- (a) take any steps to register any rights included in Supplier's Intellectual Property or any rights that are:
 - (i) deceptively similar to Supplier's Intellectual Property rights; and/or
 - (ii) capable of misleading others to believing that such rights are associated with Supplier and/or Supplier's Intellectual Property.
 - (b) use any of Supplier's Intellectual Property as part of any corporate, trade or business name; or
 - (c) do anything which would in any way infringe, call in question or lessen the validity or value of Supplier's Intellectual Property.
-

21 **Confidential Information**

21.1 **Authority to use**

- (a) Subject to this clause 21, Distributor is authorised to use Supplier's Confidential Information and Intellectual Property in the Territory only to the extent necessary for, and for the sole purpose of, exercising its rights and performing its obligations under the Agreement.
- (b) Distributor must comply with any guidelines issued by Supplier to Distributor in connection with Supplier's Intellectual Property.

21.2 **Acknowledgments**

Distributor acknowledges that:

- (a) Supplier's Confidential Information and Intellectual Property are Supplier's property; and
- (b) nothing in this clause 21 grants any interest in the Supplier's Confidential Information or the Intellectual Property to Distributor.

21.3 **Undertakings**

Distributor undertakes to Supplier that:

- (a) Distributor will use the Supplier's Confidential Information and Intellectual Property only to the extent necessary for, and for the sole purpose of, exercising its rights and performing its obligations under the Agreement;
- (b) Distributor will only disclose the Supplier's Confidential Information and Intellectual Property to those of its officers, employees, agents, contractors and advisers to whom it is necessary to disclose the Supplier's Confidential Information and Intellectual Property for the purpose of exercising its rights and performing its obligations under the Agreement;
- (c) Distributor will not, and will ensure that its officers, employees, agents, contractors and advisers will not, use, provide or disclose the Supplier's Confidential Information and Intellectual Property to any person, except as expressly permitted in this clause 21; and
- (d) Distributor will take all steps necessary to prevent or stop, and comply with all reasonable directions of Supplier in respect of suspected or actual breaches of, or defaults under, this clause 21.

21.4 **Obligations on termination or expiry of agreement**

- (a) Subject to clause 21.4(b), Distributor must cease all use of the Supplier's Confidential Information and Intellectual Property on termination or expiry of the Agreement.
- (b) Subject to clauses 21.5, Distributor may use the Supplier's Confidential Information and Intellectual Property in connection with the sale of the Products (in accordance with the terms of the Agreement) which Distributor has in stock at the termination or expiry of the Agreement and which Distributor is not required to return to Supplier under clause 21.4.

21.5 **Obligations continue after termination or expiry of the Agreement**

Distributor's obligations and undertakings under this clause 21 continue after the termination or expiry of the Agreement.

21.6 **Confidential Information in the public domain**

- (a) Subject to clause 21.7, the undertakings in clause 21.3 do not extend to any Confidential Information which Distributor proves:
 - (i) was in Distributor's possession before the disclosure to it by Supplier and was not acquired directly or indirectly from Supplier or from any person who owed an obligation of confidence to Supplier;
 - (ii) is, or has become, part of the public domain, except as a result of a breach by Distributor of its obligations under this clause 21;
 - (iii) has been received in good faith by Distributor from a third party not in breach of any obligation of confidence owing by the third party to Supplier; or
 - (iv) Distributor is required by law or by the listing rules of a nationally recognised stock exchange to disclose.

21.7 **Disclosure**

If Distributor believes it is required to make a disclosure as described in clause 21.6(iv), Distributor must immediately notify Supplier of this fact so that Supplier may seek an appropriate remedy to prevent the disclosure or protect the confidentiality of what is disclosed. Distributor must take any steps Supplier reasonably requires for this purpose. If disclosure is required by Distributor, it must disclose only the minimum information required to comply with the law or the listing rules of a nationally recognised stock exchange (as applicable).

21.8 **Survival**

The provisions of this clause 21 will continue to bind the parties notwithstanding the termination or expiry of the Agreement.

22 **Termination**

22.1 **Termination for Breach**

Subject to clause 22.2, if a party breaches the Agreement (**Breaching Party**) and:

- (a) the breach is remediable and the Breaching Party fails to remedy the breach within thirty (30) days of receipt of a notice from the other party (**Affected Party**) requiring the Breaching Party to remedy the breach, then the Affected Party may immediately terminate the Agreement by providing written notice to the Breaching Party; or
- (b) the breach cannot be reasonably remedied including without limitation a breach of clause 3, 4, 5, 6, 7, 9.1, 15, 16.4, 17, 19, 20, 21, 23, 24, 24, 25 and/or 27.13 then the Affected Party may immediately terminate the Agreement by providing written notice to the Breaching Party.

22.2 **Termination for Cause**

Either party may terminate the Agreement immediately by notice in writing to the other party if, otherwise than for the purpose of a solvent reconstruction:

- (a) the other party enters into an arrangement or composition with creditors;
- (b) an application is made for the appointment of a liquidator, provisional liquidator, controller, administrator, official manager, receiver, receiver and manager or similar officer or one of them is appointed (by any method) to the other party or any of its income, property or undertaking or any event occurs which would allow such an application to be made;
- (c) an event happens to the other party which would allow a court to wind it up; or
- (d) the other party ceases to carry on business or is unable to pay its debts as and when they fall due.

22.3 Termination for Convenience

Supplier may terminate the Agreement at any time without cause or penalty by providing Distributor with 30 days written notice.

22.4 Effects of Termination or Expiry

- (a) On termination or expiry of the Agreement:
 - (i) Distributor will promptly stop making use of Supplier's Intellectual Property or any other materials used or intended for use by Supplier in connection with the Products;
 - (ii) each party must as soon as practicable return to the other party all Confidential Information disclosed by the other party and all Intellectual Property owned or licensed by the other party, without retaining any copies;
 - (iii) each party must co-operate with the other to bring the Agreement to an end in such a manner so as to minimise any losses or costs to either or both parties;
 - (iv) Supplier may dispose of any Products completed or in the process of manufacture and Distributor shall promptly reimburse Supplier for the cost of such disposal;
 - (v) all orders placed by Distributor with Supplier for the Products which do not relate to a current Customer order are automatically cancelled, unless otherwise agreed in writing by Supplier;
 - (vi) Distributor must, within 7 days after the date of expiry or termination, pay Supplier all amounts owing by Distributor to Supplier, whether due at that time or not; and
 - (vii) Distributor must promptly return to Supplier all advertising material, literature, displays and similar items supplied by Supplier. If Distributor fails to do this, Supplier or its representative may enter any premises occupied by Distributor on reasonable prior notice to Distributor and take possession of and remove those items.
- (b) If Distributor holds any Products which are not subject to a current Customer order when the Agreement expires or is terminated:
 - (i) Distributor must, if Supplier requests this, immediately return the Products to Supplier at Distributor's cost; and
 - (ii) Supplier must (if Distributor has paid for the Products and the Products are still within their use-by date and in the same condition as they were when supplied by Supplier) pay Distributor an amount equal to the amount paid by Distributor to Supplier for those Products.

- (c) If any raw materials, paper and/or packaging materials (including, without limitation, transportation boxes) or the like have been ordered and paid for by Supplier for the purpose of fulfilling Supplier's obligations under the Agreement, including to ensure continuity of production of Distributor's Products, and taking into consideration minimum order quantities of third party suppliers of raw materials, paper and packaging materials and those raw materials, paper or packaging materials have not yet been paid by Distributor and will become redundant following the termination of the Agreement, then Distributor must pay Supplier on demand for such raw materials, paper and packaging materials, plus any disposal costs.

22.5 **Accrual of rights**

Termination of the Agreement will not discharge or vary the rights or obligations of either party which have accrued up to the date of termination or which expressly or impliedly survive termination.

23 **Dispute Resolution**

23.1 Should any dispute or differences arise between the parties concerning the Agreement:

- (a) the party raising the dispute must provide written notice to the other party of the dispute including reasons for the dispute (**Dispute Notice**); and
- (b) promptly after receipt of the Dispute Notice the Chief Executives of the parties or an officer appointed by them in writing will, in good faith, endeavour to resolve the dispute by consultation and negotiation, but;
- (c) failing agreement within 21 days, any party may submit the dispute to an independent arbitrator appointed by the Institute of Arbitrators and Mediators Australia (**IAMA**) for determination in accordance with the then current IAMA rules. The arbitral award is final and binding upon both parties. Arbitration will take place in Australia and the costs of arbitration shall be borne equally between the parties.

23.2 Neither party may commence legal proceedings without first complying with the dispute resolution process in clause 23.1.

24 **Anti-Bribery and Anti-Corruption**

24.1 Each party must:

- (a) comply with all applicable Laws and Supplier's policies relating to anti-bribery and anti-corruption; and
- (b) promptly report to the other party any request or demand for any undue financial or other advantage of any kind that it receives in connection with the Agreement.

25 **Modern Slavery**

25.1 Each party must, and must procure that its personnel and all other parties that it deals with:

- (a) comply with all applicable Laws and Supplier's policies relating to modern slavery or human trafficking, including but not limited to the Modern Slavery Act 2018 (Cth); and
- (b) take reasonable steps to ensure that there is no modern slavery or human trafficking in any part of their business or supply chains.

25.2 Each party represents and warrants that it has not, nor its officers, employees or others associated with it, been convicted or investigated for modern slavery or human trafficking offences.

25.3 Each party must promptly report to the other party any actual or suspected slavery or human trafficking in a supply chain in connection with the Agreement.

- 25.4 Each party must maintain records evidencing its compliance with this clause 25 and grants to the other party the right to audit it for compliance with this clause 25.

26 Privacy

26.1 Each party must:

- (a) comply with all Laws and Supplier's policies relating to privacy and/or personal information including but not limited to the Privacy Act 1988 (Cth);
- (b) only collect or use personal information for the purpose of fulfilling its obligations under the Agreement;
- (c) ensure that personal information held by it is protected against misuse, interference, loss, unauthorised access, modification or disclosure; and
- (d) promptly report to, and cooperate with, the other party regarding any actual or suspected breach of this clause 26.

27 General

27.1 Relationship of the Parties

Supplier is an independent contractor and not an agent, employee or partner of Distributor. The parties agree that they will not represent that they are an agent, employee or partner of the other, nor will they hold themselves out as such.

27.2 Further assurances

Supplier and Distributor agree at all times to do all such things and execute all such documents as may be reasonably required in order to give effect to the provisions of the Agreement.

27.3 Force Majeure

- (a) If either party is unable to carry out any of its obligations under the Agreement because of Force Majeure, the Agreement will remain in effect but except as otherwise provided, both parties' obligations (other than an obligation as to payment of Product accrued up to the date of the Force Majeure) will be suspended without liability for a period equal to the period of the Force Majeure, and:
 - (i) the non-performing party will give the other party prompt notice describing the event or circumstance claimed to be Force Majeure, including the nature of the occurrence and its expected duration and, where reasonably practicable, continue to furnish regular reports with respect thereto during the period of Force Majeure;
 - (ii) the suspension of obligations will be of no greater scope and of no longer duration than is required by the Force Majeure;
 - (iii) no obligations of either party which accrued before the notice referred to in clause 27.3(a)(i) is given will be suspended as a result of the Force Majeure; and
 - (iv) the non-performing party will use all reasonable efforts to remedy as quickly as possible its inability to perform its obligations.
- (b) In the event that the Force Majeure affects the supply of Products to Distributor for a period in excess of 90 consecutive days, either party may terminate the Agreement forthwith by notice in writing to the other.
- (c) Neither party will be liable to the other for any breach of the Agreement, which is directly or indirectly caused by Force Majeure.

27.4 **Waiver**

- (a) None of the provisions of the Agreement will be considered to be waived by either party except when such waiver is given in writing.
- (b) No delay or omission of either party in exercising any right, power, privilege or remedy under the Agreement will operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy will not preclude any other future exercise thereof or the exercise of any other right, power, privilege or remedy.
- (c) No waiver by a party of any breach will be deemed a waiver of any continuing or re-occurring breach unless it is expressly agreed to be so in writing by the parties.

27.5 **Entire agreement**

- (a) The Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all previous agreements, communications and understandings, whether oral or written, between the parties.
- (b) In the event of any inconsistency, the Agreement must be interpreted in accordance with the following order of precedence:
 - (i) the terms and conditions set out in the Distribution Agreement (if applicable);
 - (ii) the terms and conditions set out in this document;
 - (iii) the terms and conditions set out on the Invoice; then
 - (iv) any other documents related to the supply of Products.

27.6 **Governing Law**

The Agreement will be governed by and construed in all respects in accordance with the laws of New South Wales, Australia and each of the parties submit to the exclusive jurisdiction of the courts of New South Wales, Australia.

27.7 **Notices**

- (a) Any notice, demand, consent, agreement, certificate or other communication required or permitted to be given or sent under the Agreement will, unless expressly provided otherwise, be in writing and will be delivered personally or by pre-paid post, by courier delivery or by facsimile.
- (b) The required address and email for a party for the purposes of this clause 27.7 is set out on the Invoice or Purchaser Order, provided that either party may alter its address and/or email address for the purposes of this clause 27.7 by notice in writing to the other party.
- (c) Subject to clause 27.7(d), a notice or other form of communication will be deemed to have been served as follows:
 - (i) if given or delivered personally or by courier delivery, at the time when given or delivered;
 - (ii) if sent by pre-paid post, at the expiration of seven days after the document was delivered into the custody of the postal authorities; and
 - (iii) if sent by email, the earlier of either the sender receiving a confirmation of receipt (whether from the recipient or from the email system generating a read-receipt confirmation) or by 5.00 p.m. on the day that the email is sent.
- (d) A notice or other form of communication which, but for the provisions of this clause 27.7(c), would be deemed to be received after 5.00 p.m. on a Business Day or on a day which is not a Business Day, will be deemed to be received at 8.30 a.m. on the following Business Day.

27.8 Acceptance

Payment of the Invoice or the continuation of supply of Products to Distributor (whichever occurs first) will be construed as Distributor's acceptance and agreement of these terms.

27.9 Updates

Supplier may update these terms from time to time by providing Distributor with 10 days' notice. The parties agree that such notice may be provided in several ways including without limitation by incorporating a weblink to the updated terms on an Invoice or other documents issued by Supplier. The payment of the Invoice and/or the continuation of supply of Products to Distributor (whichever occurs first) will be construed as Distributor's acceptance and agreement of the updated terms.

27.10 Costs

- (a) The parties will bear their own costs and expenses incurred in connection with the preparation, negotiation and execution of the Agreement.
- (b) Any action to be taken by Distributor in performing its obligations under the Agreement must be taken at its own cost and expense, unless otherwise provided in the Agreement.

27.11 Equipment

Distributor agrees to comply with all of the Supplier's policies related to any equipment that is used to deliver the Products including without limitation pallets and pallets, as updated from time to time.

27.12 Remedies

The exercise or failure to exercise any right or remedy by either party under the Agreement will be without prejudice to any other right or remedy that party may have.

27.13 No deduction or withholding

Distributor must pay all money payable by it under the Agreement unconditionally and in full without demand, set off, withholding, counterclaim or deduction.

27.14 Severance

If any provision of the Agreement is invalid or unenforceable in any jurisdiction, it is to be read down or severed to the extent of the invalidity or unenforceability for that jurisdiction, and the remainder of the Agreement will remain in full force and effect.

27.15 Survival

Clauses 16.2, 16.3, 16.4 17,19, 20, 21, 23, 24, 25, 26, 27.5(a), 27.14, 27.15 and any other clauses which by implication survive termination of this Agreement and all clauses necessary to give effect to those clauses will survive termination of this Agreement.