

# St Barbara Limited

## CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES IN AUSTRALIA

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

**Agreement** means:

- (a) these Conditions;
- (b) the Purchase Order;
- (c) the Specification; and
- (d) any other document attached to, or incorporated by reference in, the Purchase Order or these Conditions.

**CM3** means a web based system that St Barbara manages the prequalification process through risk specific workplace health, safety and environment assessments and monitoring of insurances.

**CM3 Obligations** means obtaining and maintaining CM3 prequalification during the term of the Agreement.

**Conditions** means these conditions for the supply of Goods and/or Services, as located at <https://stbarbara.com.au/contact/suppliers/>.

**Customs Duties** means any tax or tariff imposed, claimed, levied or assessed by, or payable to, any Governmental Agency regarding the import or export of Goods and/or Services.

**Delivery Date** means the date for Delivery of the Goods, as stated in the Purchase Order.

**Deliver** means packaging, transporting and unloading the Goods.

**Delivery Point** means the place for Delivery of the Goods, as stated in the Purchase Order.

**Excise Duties** means any tax imposed by, or payable to, any Government Agency in relation to the production or manufacture of Goods and/or Services.

**Force Majeure Event** means an event beyond the reasonable control of the party affected by that event which causes the non-performance by the affected party of any of its obligations under this Agreement and could not have been prevented or remedied by the exercise by the affected party of a standard of care and diligence consistent with that of a mine owner or a competent supplier (as the case may be).

**Goods** means the goods stated or described in the Purchase Order.

**Government Agency** means a government or government department or a court, port, transport or local authority or a person (whether autonomous or not) responsible for the administration of an applicable law, in Australia or elsewhere.

**GST** means the goods and services tax or similar value added tax levied or imposed in Australia under the GST Act or otherwise on a supply.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Insolvency Event** means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the *Corporations Act 2001 (Cth)*) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the *Corporations Act* to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the *Corporations Act*), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

**Legislative Requirements** includes any:

- (a) federal, state or local Acts, ordinances, regulations, by-laws, orders, awards, proclamations;
- (b) building codes, Australian Standards and any other standards and codes applicable to the Goods and Services; and
- (c) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the supply of Goods or the provision of Services.

**Personnel** means any employee, agent or contractor.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Price** means the price for the Goods or Services stated in the Purchase Order in Australian Dollars (unless otherwise expressly stated).

**Purchase Order** means the St Barbara Ltd Purchase Order which is governed by these Conditions.

**Services** means the services stated or described in the Purchase Order.

**Specification** means the specification for the supply of the Goods or Services, as approved in writing by St Barbara, and any variation to the specification in accordance with these Conditions.

**St Barbara's Policies and Procedures** includes any policy, procedure, publication or guideline of St Barbara (as amended from time to time) that is specifically provided by St Barbara to the Supplier or publicly available on St Barbara's website ([www.stbarbara.com.au](http://www.stbarbara.com.au)) or otherwise and relevant to the provision of the Goods or Services.

**Supplier** means the supplier listed in the Purchase Order.

**Tax Invoice** has the meaning defined in the GST Act.

#### 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to a clause is a reference to a clause in these Conditions.
- (d) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

### 2. PRELIMINARY AND GENERAL OBLIGATIONS

#### 2.1 Preliminary

- (a) Without limiting clause 20(c) the Supplier accepts the terms set out in the Agreement to the exclusion of any other terms unless otherwise agreed by St Barbara in writing, where the Supplier acknowledges that:
  - (i) the Supplier's standard terms and conditions do not apply;
  - (ii) the terms set out in the Agreement apply to the supply of Goods and/or performance of the Services; and
  - (iii) unless expressly provided in the Purchase Order, any prior representations, negotiations, arrangements, understandings or communications between the parties about the supply of Goods and/or the performance of the Services are superseded and replaced by the Agreement.
- (b) St Barbara is not obliged to request or acquire any minimum level of Goods or Services, other than as set out in the Purchase Order. The Agreement does not create an exclusive relationship between St Barbara and the Supplier for the supply of any Goods or Services.

#### 2.2 General Obligations

- (a) The Supplier must ensure that the Goods and/or Services and their design, performance, fabrication, testing, packaging, loading on transport, Delivery, installation and commissioning, as relevant, are in accordance with the Specification.
- (b) The Supplier must advise St Barbara in writing, immediately if the Supplier foresees any delay in performance of this Purchase Order. If the Supplier does not perform its obligations in a timely fashion, St Barbara may, in addition to any other right, require the Supplier to do, at the Supplier's expense, whatever is needed to ensure delivery of the Goods and/or performance of the Services on or as close to the specified date as possible, for example, by paying premium freight charges or undertaking work outside of ordinary operating hours.
- (c) Supplier must not subcontract or delegate the whole or any part of the Services or the production, manufacture or supply of the whole or any part of the Goods without the prior written consent of St Barbara. Any subcontracting by the Supplier will not relieve the Supplier of any of its obligations under the Agreement.
- (d) Supplier must comply with the CM3 Obligations.

### 3. SUPPLY AND DELIVERY OF GOODS

#### 3.1 General Obligations

- (a) The Supplier must Deliver the Goods to the Delivery Point by the Delivery Date, free of carriage and handling charges.
- (b) Unless otherwise agreed with SGCL, the Supplier must Deliver all Goods in one Delivery. The transport cost of any additional Deliveries, will be at the expense of the Supplier.

- (c) If requested by St Barbara, the Supplier must supply manufacturing schedules and progress reports to St Barbara as requested by St Barbara.
- (d) The Goods must be properly labelled and packed to avoid damage during loading, transit, unloading or storage and such labelling, packing and transport must comply with all relevant industry codes and practices and any reasonable safety and environmental requirements of St Barbara.
- (e) The Goods must be accompanied by:
  - (i) a packaging slip or delivery docket detailing the Goods and relevant Purchase Order number;
  - (ii) all relevant manufacturer's or supplier's instructions concerning the use of the Goods; and
  - (iii) all relevant manufacturer's or supplier's warranties in respect of the Goods.
- (f) The Goods must be provided in accordance with all applicable laws, including all Legislative Requirements and all applicable requirements of any Government Agency.
- (g) Unless otherwise stated in the Purchase Order and without limiting the effect of clause 23, the Supplier is responsible for all transport costs, including freight, customs and insurance charges, incurred in Delivering the Goods to the Delivery Point.
- (h) St Barbara may return at the Supplier's expense and risk any Goods delivered that are not covered by a Purchase Order, including any quantity of goods greater than the quantity specified in the Purchase Order.

### 3.2 Title and Risk in the Goods

- (a) The Goods remain at the Supplier's risk until they are delivered to the Delivery Point and, if applicable, installed and accepted in accordance with clause 3.2(b).
- (b) Subject to clause 3.2(e), title in the Goods passes to St Barbara on acceptance of the Goods by St Barbara at the Delivery Point, as evidenced by the relevant Goods receipt issued by St Barbara to the Supplier or any other document evidencing acceptance, as set out in the relevant Purchase Order.
- (c) The Supplier must not claim any lien over the Goods and must defend and indemnify St Barbara against any lien, attachment or third party claim on the Goods.
- (d) The Supplier must do all things (including executing all documents at any time) and provide all information reasonably required by St Barbara to enable St Barbara to lawfully register any charge or other interest in the Goods (including registration on the Personal Property Securities Register established under the PPSA) so as to ensure St Barbara's rights under this Purchase Order are not adversely affected.
- (e) If prior to delivery St Barbara pays for the Goods or makes a part payment for the Goods, title in the Goods (or if the Goods are incomplete, title in the partly completed Goods and any materials and parts to be used in their manufacture or assembly and then on hand) passes to St Barbara, and the Supplier must clearly mark them with St Barbara's name and the order number.

### 3.3 Hazardous Goods

- (a) If the Goods comprise any hazardous materials or dangerous goods, the Supplier is responsible for clearly marking, transporting and storing the Goods in accordance with all Legislative Requirements and must provide St Barbara with the relevant materials safety data sheet (**MSDS**) for all such Goods.
- (b) No hazardous goods may be Delivered or be required to be accepted by St Barbara until the relevant MSDS has been provided to St Barbara and the requirements of clause 3.3(a) have been complied with.

## 4. PROVISION OF SERVICES

- (a) The Supplier must provide the Services competently, diligently, with due care and skill, safely and to the standard that would be reasonably expected of an experienced, professional provider of services similar to the Services:
  - (i) at the time or times specified in the Purchase Order or otherwise in a timely manner;
  - (ii) in accordance with all directions given by St Barbara;
  - (iii) in compliance with all relevant laws, including any Legislative Requirements; and
  - (iv) in compliance with St Barbara's Policies and Procedures.

- (b) Where the Services are to be performed on St Barbara's premises, the Supplier must at its own cost:
  - (i) comply, and ensure its Personnel comply, with any site safety and induction requirements specified by St Barbara;
  - (ii) comply with St Barbara's HSEMP or, if required by St Barbara, submit a Health, Safety and Environment Management Plan (**HSEMP**) to St Barbara for approval, and not commence the Services until the HSEMP is approved and otherwise perform the Services in accordance with the approved HSEMP;
  - (iii) co-operate, liaise and co-ordinate the Services with St Barbara's operations so as to not interfere with or delay any other work in progress on St Barbara's premises or site; and
  - (iv) obtain and comply with every permit, visa, licence and approval, and give every notice required to comply with applicable law and with any requirement of a Government Agency.
- (c) The Supplier must provide all labour, tools, equipment and materials needed to complete the Services.
- (d) St Barbara may remove any Supplier Personnel from any St Barbara mine site if St Barbara is of the reasonable opinion that such Personnel is in breach of an obligation under this Agreement or any St Barbara Site Policy and Procedure or otherwise is acting in an unsafe, negligent or disruptive manner.

## 5. VARIATIONS

- (a) St Barbara may at any time request to vary the Goods and Services by providing written notice to the Supplier.
- (b) If the Supplier is able to provide the variation requested by St Barbara, the Supplier may claim any reasonable additional costs, or claim any reasonable adjustment to the date for the delivery of the Goods or the completion of the Services, as a direct result of St Barbara's variation. The parties must agree in writing any price and time impact of any proposed variation before the variation is carried out.

## 6. INSPECTION AND REJECTION

- (a) St Barbara may, at any time, including during the manufacturing of the Goods, inspect all or part of work connected with the Goods and Services being provided until final acceptance of those Goods and Services by St Barbara. No inspection by St Barbara will affect the Supplier's warranties or be deemed to have been acceptance of such Goods.
- (b) St Barbara must have a reasonable time to inspect the Goods after Delivery and/or the Services after its performance.
- (c) Without limiting St Barbara's rights in clause 7, after any inspection and despite previous acceptance of or payment for the Goods or Services, St Barbara may reject the Goods or Services if it reasonably determines that:
  - (i) the Goods or Services do not comply with the Agreement; or
  - (ii) the Goods are Delivered in excess of the quantities stated in the Purchase Order.
- (d) St Barbara will not pay for rejected Goods and Services and is entitled to a reimbursement for any part of the Price paid for the rejected Goods and Services.
- (e) St Barbara may, at the Supplier's cost, sell or dispose of the rejected delivered Goods if the Supplier does not repossess the Goods within 45 days of being notified of the rejection.
- (f) If there is a shortfall in the quantity of Goods delivered, St Barbara may either require the Supplier to credit St Barbara for the shortfall or within 7 days of delivery require the Supplier to deliver the outstanding Goods, which the Supplier must promptly do at its own cost.

## 7. DEFECT

- (a) Without limiting the rights of St Barbara under clause 14, the Supplier must, within a reasonable period as notified by St Barbara, remedy, at the Supplier's cost, any defect in the Goods and Services which, for the Goods, arises within either:
  - (i) 12 months of the date that St Barbara puts the Goods into service; or
  - (ii) 18 months of the date of Delivery and/or the completion of installation of the Goods,

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whichever is earlier, and for the Services, within 12 months of the date the Services were completed.

- (b) If the Supplier fails to remedy any defect in the Goods or the Services within the reasonable period specified by St Barbara in accordance with clause 7(a) to St Barbara's reasonable satisfaction, St Barbara may remedy that defect and any reasonable costs incurred by St Barbara in doing so will be a debt due and owing by the Supplier to St Barbara.
- (c) Without limiting the effect of clause 7, if there is a defect in the Goods or Services, St Barbara may require the Supplier to resupply the Goods or Services at the Supplier's cost.

### 8. SUPPLIER'S WARRANTIES

- (a) The Supplier warrants to St Barbara that it has the right to sell and transfer unencumbered title to the Goods to St Barbara and that the Goods:
  - (i) will be new (except as otherwise provided in the Specification), free from defects and of merchantable quality when Delivered to St Barbara;
  - (ii) will be fit for the purpose stated in the Specification, or if no purpose is stated, the purpose for which the Goods would ordinarily be used;
  - (iii) will conform to the description, model number and the sample (if any) provided by the Supplier or, if no sample or description has been provided, to the highest industry quality standards for their manufacture;
  - (iv) complies with all applicable laws and industry standards and all applicable Legislative Requirements; and
  - (v) do not, and St Barbara's use of the Goods will not, infringe any intellectual property rights conferred under statute, common law or equity in any country.
- (b) The Supplier warrants to St Barbara that the Services:
  - (i) will comply in every aspect with the description in the Specification, or if there is no description, with the highest industry quality standards for performance;
  - (ii) will be performed with all due care and skill;
  - (iii) will be free from defects in materials, design and workmanship;
  - (iv) complies with all applicable laws and industry standards and all applicable Legislative Requirements; and
  - (v) do not infringe any intellectual property rights conferred under statute, common law or equity in any country.
- (c) The Supplier further warrants that it has not been convicted of any offence involving slavery and human trafficking nor has it been subject to any investigation or proceedings by any Government Agency in connection with slavery and human trafficking.
- (d) The Supplier acknowledges that St Barbara has relied upon all such warranties in entering into the Agreement.
- (e) The Supplier must provide or procure for the Goods and/or Services, any associated trade warranties. Where the Specification provides, the Supplier must obtain for St Barbara the benefit of any manufacturer's warranty in respect of the Goods.
- (f) The Vienna Convention on the Sale of Goods are expressly excluded from the Purchase Order and do not apply to the supply of the Goods or Services or to any materials, plant or equipment supplied as part of the Services.

### 9. INDEMNITY AND LIABILITY

- (a) To the extent permitted by law, the Supplier indemnifies St Barbara against, and releases St Barbara from, all actions, claims, costs, charges, damages, expenses, liabilities, losses or damages (including legal costs on an indemnity basis whether incurred by or awarded against St Barbara) that St Barbara may incur or sustain arising out of or in connection with:

- (i) the loss of, or damage to, or loss of use of, any real or personal property, or the personal injury, disease or illness to, or death of, any person arising from the condition of the Goods or otherwise from the provision of the Goods or Services;
- (ii) a breach of clauses 3.1(f) and 4(a)(iii) (compliance with laws) and 25 (anti-bribery and anti-corruption); and
- (iii) any claim by a third party that its intellectual property rights have been, or will be, infringed by St Barbara's use of the Goods and/or Services.

- (b) The Supplier's liability to indemnify St Barbara will be reduced proportionally to the extent that any negligent act or omission of St Barbara contributes to the loss or liability.
- (c) Without limiting clause 9(a), St Barbara is not liable for, and the Supplier releases St Barbara from, all actions, claims, costs, charges, damages, expenses, liabilities, losses or damages, arising from or in connection with any:
  - (i) injury or death of the Supplier's employees, agents or contractors; or
  - (ii) any damage or loss sustained by the Supplier, its agent or contractors;while on any premises of St Barbara or otherwise in the course of providing the Goods or Services, except to the extent it arises from the negligent act of St Barbara.

### 10. INSURANCE

- (a) The Supplier must insure itself fully in respect of all potential liability arising out of the supply of the Goods or the performance of the Services, including having the following insurances:
  - (i) public and products liability insurance for at least AUD 10 million;
  - (ii) if Services are provided, workers' compensation insurance as required by applicable Legislative Requirements;
  - (iii) where relevant, motor vehicle insurance; and
  - (iv) any other insurance as specified in the Purchase Order, including, where relevant professional indemnity insurance to a minimum limit of AUD 1M.
- (b) St Barbara will be responsible for obtaining all transit insurance.
- (c) The Supplier must provide certificates of currency or such other evidence of the insurances being effected and maintained under this clause as and when directed by St Barbara.
- (d) The Supplier will be responsible for the payment of any insurance excess or deductible for the insurances provided under this clause 10 and is not entitled to recover such amount from St Barbara.

### 11. PAYMENT TERMS AND GST

- (a) The amount payable for the Goods and/or Services by St Barbara will be the Price. The Price:
  - (i) includes all applicable taxes, levies, duties and charges, except for GST;
  - (ii) is inclusive of all costs incurred by the Supplier in the supply of the Goods and/or Services including all charges for packing, packaging, insurance and delivery of the Goods in accordance with the terms of this order and the cost of any items used or supplied in conjunction with the Services; and
  - (iii) unless otherwise expressly stated in a Purchase Order, is fixed and the Supplier may not vary the Price without the prior written consent of St Barbara.
- (b) St Barbara must pay to the Supplier any amount which is payable by the Supplier on account of GST as a consequence of any taxable supply made to St Barbara under the Agreement. Any reimbursement of cost or expense incurred in connection with the Agreement must not include any GST component of the cost or expense to the extent that the Supplier is entitled to claim an input tax credit on the expenditure.

- (c) The Supplier may only submit a Tax Invoice to St Barbara upon the later to occur of:
  - (i) the delivery of the Goods in accordance with the Purchase Order;
  - (ii) unless the Purchase Order states that progress payments are to be made, the completion of the Services; or
  - (iii) where progress payments are to be made for the provision of Services, on the last business day of each calendar month for Services performed by the Supplier in that month.
- (d) The Tax Invoice must:
  - (i) be fully compliant with the GST Act; and
  - (ii) state the Purchase Order number, full details of the Goods Delivered or Services performed, the Price and separately any GST and other information required in the Purchase Order or by St Barbara to verify the amount stated in the Tax Invoice,

where, St Barbara shall be under no obligation to pay any invoice which is not rendered in accordance with this clause 11(d). Following receipt of a valid Tax Invoice under clause 11(d), but subject to clause 11(e), St Barbara will pay the Supplier within 30 days from the end of the month in which the Tax Invoice is received, except where St Barbara disputes the Tax Invoice in which case St Barbara will pay the undisputed part of the relevant Tax Invoice (if any) and dispute the balance in accordance with clause 19. If the resolution of the dispute determines that St Barbara is to pay an amount to the Supplier, St Barbara will pay that amount to the Supplier within 30 days of the date of the determination.

- (e) Payment is subject to St Barbara being satisfied that the Goods have been supplied, or the Services have been performed, strictly in accordance with the Agreement. Making a payment will not be construed as evidence or an admission that the Goods or Services have been supplied in accordance with the Agreement but is a payment on account only.
- (f) If the day of payment falls on a Saturday, Sunday or public holiday in Melbourne, Victoria, the payment obligation must be performed on the next day that is not a Saturday, Sunday or such public holiday.

## 12. CONFIDENTIALITY AND PRIVACY

- (a) If, in the supply of the Goods or the performance of the Services or otherwise, the Supplier obtains or becomes aware of any sensitive or confidential information relating to St Barbara or its business (Confidential Information), the Supplier must not, without St Barbara's prior written consent, disclose to any person the Confidential Information, except to those of its employees that are involved in the supply of the Goods or the performance of the Services and need to know the information, and then only on a strictly confidential basis or unless otherwise required to be disclosed at law. The Supplier must immediately notify St Barbara if it knows of, or suspects, any unauthorised disclosure of the Confidential Information.
- (b) For the purposes of clause 12(a), Confidential Information includes,
  - (i) every enquiry and every order of the Goods and Services;
  - (ii) any information provided by St Barbara as being confidential; and
  - (iii) the Agreement.
- (c) The parties must not disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances required by sections 275(7)(b) to (e) of the PPSA. Nothing in this paragraph prevents any disclosure by St Barbara that it believes is necessary to comply with its other obligations under the PPSA.
- (d) To the extent that it is not inconsistent with clause 12(c) constituting a "confidentiality agreement" for the purposes of section 275(6)(a) of the PPSA, the Supplier agrees that St Barbara may disclose information of the kind mentioned in section 275(1) of the PPSA to the extent that St Barbara is not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.

- (e) The Supplier agrees to be bound by applicable privacy and data protection Laws with respect to any act done or practice engaged in by Supplier personnel for the purposes of this Agreement. The Supplier must not do anything with Personal Information (as that term is defined in the Privacy Act 1988 (Cth) that will cause St Barbara to breach any applicable privacy and data protection laws and co-operate with St Barbara to resolve any complaint made under the any applicable privacy and data protection laws.

## 13. INTELLECTUAL PROPERTY

- (a) The Supplier assigns to St Barbara ownership of all copyright and other intellectual property rights in and to all documents, drawings, maps, characters, images, photographs, artwork, blueprints, calculations, information and instructions prepared in connection with or arising from the Agreement, other than intellectual property rights of the Supplier in existence before entering into this Purchase Order.
- (b) The Supplier grants St Barbara an irrevocable, royalty free, non-exclusive, fully-assignable, perpetual license to use all Supplier intellectual property rights associated with the Goods and/or the Services and any documentation provided pursuant to the Purchase Order for the installation, use, support, repair, maintenance and alteration of the Goods or other works, that is not otherwise assigned in clause 13(a).

## 14. ALTERNATIVE SUPPLY

If the Supplier does not deliver the Goods and/or perform the Services by the specified date, or supplies any Goods and/or Services, which in the opinion of St Barbara do not comply with every requirement of the terms applying to the order, St Barbara may purchase replacement goods from a third party or engage another contractor to perform the Services and the difference (if any) between the cost of the replacement goods or services and the purchase price of the Goods or Services (as applicable) will be a debt due and owing from the Supplier to St Barbara.

## 15. TERMINATION

- (a) If a party materially breaches any provision of the Agreement, including a breach of the clause 25 anti-bribery and anti-corruption obligations, the non-defaulting party may provide notice to the defaulting party setting out the nature of the default and the period in which the default must be rectified (being no less than 5 days from the date of the default notice).
- (b) If the default is not rectified in the period set out in the default notice or the defaulting party has not otherwise provided reasonable evidence that the default is to be rectified within a reasonable time to the reasonable satisfaction of the non-defaulting party, then the non-defaulting party may, at its option and without prejudice to any of its other rights, terminate the Purchase Order. The Supplier has no claim for the price of Goods and/or Services not delivered or performed at the time of termination or for any other compensation for that termination.
- (c) To the extent permitted by law, if an Insolvency Event occurs in relation to a party, the other party may elect to terminate the Purchase Order and the provisions of clause 15(b) will apply to the termination.
- (d) St Barbara may, at any time and for any reason, terminate a Purchase Order, in part or in whole, by giving the Supplier notice in writing and otherwise on the following basis:
  - (i) St Barbara must pay for any part of the Goods delivered and/or Services provided prior to the termination and accepted by St Barbara;
  - (ii) if the Supplier has prior to the termination shipped any Goods which have not been delivered to St Barbara at the time of termination, St Barbara may either accept delivery of those Goods, or return them to the Supplier at St Barbara's expense (and the Supplier has no claim for the price of those Goods or for any compensation for that termination); and
  - (iii) if the Goods are unshipped at the time of termination, the Supplier has no claim for the price of those Goods or for any compensation for that termination, except to the extent that the Goods are manufactured or fabricated to St Barbara's specification or to a specification prepared by the Supplier for St Barbara, and for those Goods:

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- (A) on receiving the notice of termination the Supplier must cease manufacture in accordance with and to the extent specified in the notice and immediately do everything possible to mitigate any costs incurred;
- (B) St Barbara must pay to the Supplier any expenditure reasonably incurred by the Supplier prior to the date of the termination which is directly attributable to St Barbara's Purchase Order and which the Supplier is not able to recoup in some other way; and
- (C) title to and property in materials or incomplete Goods passes to St Barbara upon payment and the Supplier must upon St Barbara's demand and at the Supplier's cost deliver to St Barbara any such property and/or incomplete Goods.
- (e) On St Barbara making payment pursuant to clause 15, St Barbara is not liable for any other claims, expenses or costs under the Agreement, general law, equity, statute or otherwise.
- 16. SUSPENSION AND FORCE MAJEURE**
- (a) St Barbara may immediately suspend the performance of any or all Services or supply of Goods at any time for any reason by giving written notice to the Supplier.
- (b) If St Barbara suspends any of the Services or supply of Goods under this clause, St Barbara may at any time give the Supplier a written notice to resume performing the suspended Services or supply of Goods. The Supplier must resume performing the relevant Services or provide the relevant Goods as soon as practicable after the date of such notice.
- (c) St Barbara and the Supplier must agree in good faith as to whether any additional fees are payable to the Supplier for the suspension, where the Supplier must mitigate its exposure to such additional fees wherever possible. The Supplier is not entitled to any additional fees if the suspension is caused by the Supplier's act, omission or breach.
- (d) Where a party is unable, wholly or in part, by reason of a Force Majeure Event, to carry out any obligations under the Agreement and that party:
- gives the other party prompt notice and reasonable particulars of that Force Majeure Event;
  - uses all possible diligence to remove and mitigate the effect of the Force Majeure Event; and
  - has not caused or contributed to the Force Majeure Event,
- then that obligation is suspended so far as it is affected by that Force Majeure.
- (e) Unless otherwise expressly stated in the Agreement, the Supplier has no entitlement to any costs (including delay costs), losses, expenses, damages or the payment of any part of the Price during a Force Majeure Event or any delay costs as a result of a Force Majeure Event.
- (f) Either party may elect to terminate by providing written notice to the other party if the Force Majeure Event exceeds 30 continuous days.
- 17. GOVERNING LAW**
- The Agreement is governed by the laws of the State of Western Australia, and the Parties submit to the jurisdiction of the courts in that jurisdiction and any court that may hear appeals from any of those courts.
- 18. SURVIVAL**
- This clause 18 and the obligations of the Supplier under clauses 8 (Supplier's Warranties), 9 (Indemnity and liability), 12 (Confidentiality and Privacy), and 13 (Intellectual Property) will be of a continuing nature and survive the termination or expiration of the Agreement.
- 19. DISPUTES**
- (a) If any dispute arises in connection with this Agreement which cannot be settled amicably between St Barbara and the Supplier, either party may give written notice of the dispute to the other party.
- (b) Within 14 days after service of a notice of dispute in clause 19(a), a general manager or equivalent or higher position of St Barbara and the Supplier (**Senior Managers**) must meet and endeavour to resolve the dispute and failing resolution of the dispute to explore and if possible agree on methods of resolving the dispute by other means. The Senior Managers are to determine their own procedures for meeting. Any decision of the Senior Managers is binding on the parties.
- (c) If the dispute has not been resolved within 30 days of giving written notice of the dispute in clause 19(a) (or such additional period the parties agree in writing), or if at any time either party considers that the other party is not making reasonable efforts to resolve the dispute, either party may take any action necessary to have the dispute determined by litigation.
- (d) Notwithstanding clause 19(a) and clause 19(b), the Supplier must continue to supply the Goods and/or provide the Services and in doing so must comply with all directions of St Barbara (unless the direction involves the subject matter of the dispute or difference in respect of which notice has been given pursuant to this clause 19).
- 20. GENERAL**
- (a) Each party must promptly, at its own cost, do all things (including executing all documents) necessary or desirable to give full effect to the Agreement.
- (b) If anything in the Agreement is unenforceable, illegal or void then that part of the Agreement will be severed to the extent necessary to remove the offending provision and the remaining part of the Agreement will remain in force.
- (c) The Agreement contains the entire agreement and understanding between the parties on everything connected with the subject matter of the Agreement and supersedes any prior agreement or understanding on anything connected with that subject matter.
- (d) Each party has entered into the Agreement without relying on any representation by any other party or any person purporting to represent that party.
- (e) A party's failure to exercise or delay in exercising a power, right or remedy does not constitute an election to waive that power, right or remedy. An election to waive must be in writing, signed by the relevant party.
- (f) A notice or other communication connected with the Agreement has no legal effect unless it is in writing, signed and delivered to the other party at its address set out on the Purchase Order, or otherwise notified in writing by the relevant party, or sent by email or facsimile transmission as nominated in the Purchase Order or otherwise notified in writing by the relevant party. If it is sent by mail, it is taken to have been received 3 working days after it is posted. If it is sent by facsimile, it is taken to have been received when the addressee actually receives it in full and in legible form. If sent by email, on receiving a delivery confirmation report or unless the sender receives a return email notification that the email was not delivered, undeliverable or similar, at the time which is 12 hours from the time the email was sent. If the delivery, receipt or transmission is after 5.00pm, the notice is taken to be received at 9.00am on the next day.
- (g) The Supplier is not an employee, agent or representative of St Barbara and has no authority to act on St Barbara's behalf.
- (h) Subject to clause 20(i), neither party may assign its rights in the Agreement without the prior written consent of the other party.
- (i) St Barbara may assign its rights under this Agreement to a third party providing that third party has the financial capability to meet the obligations under this Agreement.
- (j) This Agreement may only be amended, supplemented, replaced or novated by another document signed by St Barbara and the Supplier.

## 21. PPSA

To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by either party of any security interest provided for by the Agreement, the parties agree that the following provisions of the PPSA do not apply:

- (a) to the extent that section 115(1) of the PPSA allows them to be excluded: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and
- (b) to the extent that section 115(7) of the PPSA allows them to be excluded: sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137.

## 22. SET OFF

Any amount payable by the Supplier to St Barbara or any amount to be borne by the Supplier in connection with this Agreement may be set off by St Barbara against any amount owing by St Barbara to the Supplier under this Agreement, and St Barbara may recover any net amount as a debt due to St Barbara.

## 23. CUSTOMS AND EXCISE DUTIES

- (a) Where St Barbara elects to acquire Goods and/or Services and the Supplier is the importer of record, the Supplier will:
  - (i) be responsible for, and remit payment of all Customs Duties assessed by or payable to any Government Agency as well as any other foreign shipping charges; and
  - (ii) use its best endeavours to ensure that any Goods and/or Services are imported free of Customs duties including, without limit, through the use of applicable bilateral free trade agreements (or the equivalent).
- (b) The Supplier will, at St Barbara's request, provide St Barbara with all information and documentation necessary for St Barbara to make or assess the Supplier's entitlement to make, in accordance with any applicable laws, applications or certifications for:
  - (i) a drawback, refund, rebate, remission or other reduction of Customs Duties or Excise Duties; and
  - (ii) Customs Duties or Excise Duties concessions, including, without limit, exemptions, reductions, duty-free access and preferential rates of duty available under bilateral free trade agreements (or the equivalent).
- (c) The Supplier must make any application or certification requested by St Barbara in a form that is satisfactory to St Barbara. Where any such application or certification is successful, the Supplier will pass on to St Barbara the full economic benefit of the exemption, reduction, concession, drawback, refund, rebate or remission of Customs Duty or Excise Duty, as appropriate, by way of a reduction in the Price. This clause applies regardless of the shipping, insurance or freight terms used.

## 24. WITHHOLDING TAX AND FUEL TAX CREDITS

- (a) If St Barbara is required by any applicable law to make a deduction or withholding from a payment to the Supplier for or on account of any Taxes, St Barbara is entitled to make that deduction or withholding unless the Supplier provides St Barbara with valid documentation (received prior to the date when the payment is to be made) showing to the satisfaction of St Barbara that an exemption applies. If St Barbara is required by law to deduct or withhold, then St Barbara shall use its best endeavours to furnish the Supplier with all receipts, proof of payment and other relevant documentation for all deductions and withholding Taxes so paid to the relevant Government Agency. For the avoidance of doubt, St Barbara will not be liable to pay any amount to the Supplier on account of an amount deducted or withheld in accordance with this clause.
- (b) Where a payment is made without a deduction or withholding for or on account of Taxes and such a deduction or withholding was required by any applicable law, the Supplier shall reimburse St Barbara for, or otherwise pay to St Barbara, the amount that should have been withheld or deducted within 14 days of receiving an official receipt (or certified copy) or other documentation evidencing the

amount that was required to have been withheld or deducted.

- (c) For the purposes of this clause 24 "Taxes" means, unless the contrary intention is expressed, any and all taxes, including, without limitation, GST, excise, stamp duty, withholding, income, payroll, interest equalisation, capital gains or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever together with any penalties, fines or interest thereon imposed by any Government Agency or otherwise payable.
- (d) The Contractor acknowledges that it has no entitlement to any fuel tax credit or similar credit in connection with fuel supplied by St Barbara to the Contractor in accordance with the terms of this Agreement.

## 25. ANTI-BRIBERY AND ANTI-CORRUPTION

The Supplier must, in performing this Agreement, comply with any anti-bribery and corruption laws that are applicable to St Barbara, the Supplier, this Agreement or the jurisdictions in which this Agreement is performed, including the US Foreign Corrupt Practices Act, the UK Bribery Act 2010 and the Australian Criminal Code Act 1995 (Cth) (**ABAC Legislation**) and must not do any act prohibited by the ABAC Legislation, give or offer to give, receive, or agree to accept, any payment, gift, benefit or other advantage which is given with the intention of inducing the recipient to act improperly, offer, promise or pay facilitation payments or any other act which is otherwise inconsistent with St Barbara's Policies and Procedures.