

## Simberi Gold Company Limited

# Conditions for the supply of goods and/or services in Papua New Guinea

## 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.

**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 Papua New Guinea or elsewhere.

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

**GST Act** means the *Goods and Services Tax Act 2003 (PNG)*.

**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 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, 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.

**Modern Slavery** means internationally recognised exploitative practices including human trafficking, slavery, slavery-like practices, servitude, forced labour, forced marriage, debt bondage, the worst forms of child labour, deceptive recruiting for labour services.

**Modern Slavery Laws** means any law of any relevant jurisdiction that creates a reporting or due diligence obligation in connection with Modern Slavery or otherwise criminalises or imposes a penalty for Modern Slavery.

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

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

**PPSA (PNG)** means the *Personal Property Security Act 2011 (PNG)*.

**Price** means the price for the Goods or Services stated in the Purchase Order:

- (a) in Kina, if the Supplier is a resident company in Papua New Guinea; or
- (b) in Australian Dollars if the Supplier is not a resident company in Papua New Guinea, (unless another currency is otherwise expressly stated).

**Purchase Order** means the SGCL Purchase Order which is governed by these Conditions.

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

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

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

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

**Tax Invoice** has the meaning defined in the relevant 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 SGCL 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) SGCL 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 SGCL and the Supplier for the supply of any Goods or Services.

### 2.2 General Obligations

- (a) The Supplier must comply with St Barbara Limited's Supplier Code of Conduct, as available on St Barbara Limited's website, when providing the Goods and Services.
- (b) 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.
- (c) The Supplier must advise SGCL in writing immediately if the Supplier anticipates any delay in performance of this Purchase Order. If the Supplier does not perform its

obligations in a timely fashion, SGCL may, in addition to any other right, require the Supplier to do, at the Supplier's expense, whatever is reasonably required 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.

- (d) 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 SGCL. Any subcontracting by the Supplier will not relieve the Supplier of any of its obligations under the Agreement.
- (e) The Supplier must use reasonable endeavours to ensure that the goods or services that it provides are not the product of Modern Slavery and must otherwise comply with all relevant Modern Slavery Laws. The Supplier must use reasonable endeavours to require its suppliers to do likewise. In addition, the Supplier must promptly provide SGCL with information and documentation as it reasonably requests to permit SGCL to undertake due diligence on its supply chain, including by way of a questionnaire issued periodically.

### 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 SGCL, the Supplier must supply manufacturing schedules and progress reports to SGCL as requested by SGCL.
- (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 SGCL.
- (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) SGCL 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 SGCL on acceptance of the Goods by SGCL at the Delivery Point, as evidenced by the relevant Goods receipt issued by SGCL 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 SGCL 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 SGCL to enable SGCL 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 SGCL's rights under this Purchase Order are not adversely affected.
- (e) If prior to delivery SGCL 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 SGCL, and the

Supplier must clearly mark them with SGCL'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 SGCL 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 SGCL until the relevant MSDS has been provided to SGCL 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 SGCL;
  - (iii) in compliance with all relevant laws, including any Legislative Requirements; and
  - (iv) in compliance with SGCL's Policies and Procedures.
- (b) Where the Services are to be performed on SGCL'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 SGCL;
  - (ii) comply with SGCL's Health, Safety, Environment and Community Management Standard (**HSECMS**) or if required by SGCL, submit a Health, Safety, Environment and Community Management Plan (**HSECMP**) to SGCL for approval, and not commence the Services until the HSECMP is approved and otherwise perform the Services in accordance with the HSECMS or approved HSECMP, as relevant;
  - (iii) co-operate, liaise and co-ordinate the Services with SGCL's operations so as to not interfere with, or delay any other work in progress on SGCL'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) SGCL may remove any Supplier Personnel from any SGCL mine site if SGCL is of the reasonable opinion that such Personnel is in breach of an obligation under this Agreement or any SGCL Site Policy and Procedure or otherwise is acting in an unsafe, negligent or disruptive manner.

### 5. VARIATIONS

- (a) SGCL 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 SGCL, 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 SGCL'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) SGCL 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 SGCL. No inspection by SGCL will affect the Supplier's warranties or be deemed to have been acceptance of such Goods.
- (b) SGCL must have a reasonable time to inspect the Goods after Delivery and/or the Services after its performance.
- (c) Without limiting SGCL's rights in clause 7, after any inspection and despite previous acceptance of or payment for the Goods or Services, SGCL may reject the Goods or Services if it reasonably determines that the Goods or Services do not comply with the Agreement.
- (d) SGCL will not pay for rejected Goods and Services and is entitled to a reimbursement for any part of the Price paid for rejected Goods and Services.

- (e) SGCL 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, SGCL may either require the Supplier to credit SGCL 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 OR FAILURE TO SUPPLY**

- (a) The Supplier must, within a reasonable period as notified by SGCL, remedy (including resupply) 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 SGCL puts the Goods into service; or
  - (ii) 18 months of the date of Delivery and/or the completion of installation of the Goods, 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 SGCL in accordance with clause 7(a) to SGCL's reasonable satisfaction, SGCL may remedy that defect and any reasonable costs incurred by SGCL in doing so will be a debt due and owing by the Supplier to SGCL.
- (c) If the Supplier does not deliver the Goods and/or perform the Services by the relevant specified date (and if no date, within a reasonable period of time), SGCL 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 SGCL.

**8. SUPPLIER'S WARRANTIES**

- (a) The Supplier warrants to SGCL that it has the right to sell and transfer unencumbered title to the Goods to SGCL 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 SGCL;
  - (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 SGCL'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 and undertakes, as relevant, to SGCL 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 by appropriately qualified, trained and skilled personnel and otherwise 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.

The Supplier acknowledges that SGCL has relied upon such warranties in entering into the Agreement.

- (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 must provide or procure for the Goods and/or Services, any associated trade warranties. Where the Specification provides, the Supplier must obtain for SGCL the benefit of any manufacturer's warranty in respect of the Goods.
- (e) 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 SGCL against, and releases SGCL 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 SGCL) that SGCL 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 SGCL's use of the Goods and/or Services.
- (b) The Supplier's liability to indemnify SGCL will be reduced proportionally to the extent that any loss or liability was caused by SGCL.

**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 5 million Kina or equivalent;
  - (ii) if Services are provided, workers' compensation insurance as required by applicable Legislative Requirements;
  - (iii) if the Agreement requires the Supplier to use or provide for the use of motor vehicles, motor vehicle insurance covering both personal injury and property damage;
  - (iv) if the Agreement requires the Supplier to use or provide any plant or equipment for use on Site, insurance covering all loss or damage to such plant and equipment, with coverage for an amount not less than 100% of the replacement value; and
  - (v) if the Agreement requires the Supplier to provide professional advice or services, professional indemnity insurance with a minimum limit of 1 million Kina for each claim.
- (b) SGCL 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 SGCL.
- (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 SGCL.

**11. PAYMENT TERMS AND GST**

- (a) The amount payable for the Goods and/or Services by SGCL 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 SGCL.

- (b) SGCL 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 SGCL 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 SGCL 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 SGCL to verify the amount stated in the Tax Invoice,

where, SGCL 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), SGCL will pay the Supplier within 30 days from the end of the month in which the Tax Invoice is received, except where SGCL disputes the Tax Invoice in which case SGCL 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 SGCL is to pay an amount to the Supplier, SGCL will pay that amount to the Supplier within 30 days of the date of the determination.
- (e) Payment is subject to SGCL 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

- (a) If, in the supply of the Goods or the performance of the Services or otherwise, the Supplier receives any sensitive or confidential information relating to SGCL or its business (Confidential Information), the Supplier must not, without SGCL'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 SGCL 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 (including data) provided by SGCL 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 SGCL 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 SGCL may disclose information of the kind mentioned in section 275(1) of the PPSA to the extent that SGCL 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.

## 13. PRIVACY AND DATA BREACH

- (a) 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.
- (b) The Supplier must not do anything with Personal Information (as that term is defined in the Privacy Act 1988 (Cth)) that will cause SGCL or its parent to breach any applicable privacy and data protection laws. The Supplier must co-operate with SGCL to assist in any notification obligation or resolve any complaint, inquiry or enquiry made under the any applicable privacy and data protection laws, including:
  - (i) report any accidental loss or destruction of, or unauthorised disclosure of or access to, SGCL Personal Information;
  - (ii) to the extent practicable, mitigate any harmful effect of such disclosure or access that is known to the Supplier;
  - (iii) cooperate with SGCL in providing any notices to individuals or regulators regarding the incident; and
  - (iv) cooperate with any investigation undertaken by any privacy data authority, in consultation with SGCL.
- (c) The Supplier must:
  - (i) not disclose SGCL Personal Information without SGCL's prior written consent, unless the disclosure is required by applicable law and is notified to SGCL as being disclosed for that reason;
  - (ii) promptly notify SGCL if it receives a complaint from any individual regarding the way SGCL Personal Information has been processed and advise SGCL how it has addressed the complaint; and
  - (iii) provide reasonable assistance to SGCL to enable SGCL or another party authorised by SGCL to audit the Supplier's compliance with this clause 13.
- (d) At any time after expiry or termination of the Agreement, the Supplier must return, destroy, store or dispose of the Supplier Personal Information at its own cost, as directed by SGCL, unless applicable law requires the Supplier to retain such Personal Information.

## 14. INTELLECTUAL PROPERTY

- (a) Subject to clause 14(b), all Intellectual Property Rights created by the Supplier in connection with or arising from the Agreement is owned by SGCL at the time of creation. The Supplier assigns to SGCL ownership of all such Intellectual Property Rights.
- (b) The Supplier remains owner of any Supplier intellectual Property Rights in existence before the commencement of this Agreement. The Supplier grants SGCL 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 14(a).
- (c) The Supplier must disclose to SGCL all of the Intellectual Property Rights created by the Supplier and owned by SGCL in a format acceptable to SGCL as soon as it is created.
- (d) The Supplier represents and warrants to SGCL that if any third party Intellectual Property Rights are used by it in the performance of the supply or by St Barbra in the use or enjoyment of the supply, the Supplier will obtain at no cost to SGCL all necessary licenses and consents to use such rights.
- (e) For the purposes of this clause 14, Intellectual Property Rights means patents, inventions, copyrights, moral rights, design rights, designs, drawings, specifications, studies, calculations, work product, technical documents, documentations, recommendations, reports, records, deliverables, sketches, shop drawings, trademarks, and any other intellectual property or proprietary rights, including in computer software, in any country or jurisdiction.

## 15. TERM AND TERMINATION

- (a) The Agreement will commence on the date that the Supplier receives a Purchase Order from SGCL, and will remain in force, unless terminated earlier, until the completion of the supply of Goods and Services by Supplier governed by this Agreement.

- (b) 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 (taking into account the nature of the breach).
- (c) 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.
- (d) 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(c) will apply to the termination.
- (e) SGCL 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) SGCL must pay for any part of the Goods delivered and/or Services provided prior to the termination;
  - (ii) if the Supplier has prior to the termination shipped any Goods which have not been delivered to SGCL at the time of termination, SGCL may either accept delivery of those Goods, or return them to the Supplier at SGCL'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 SGCL's specification or to a specification prepared by the Supplier for SGCL, and for those Goods:
    - (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) SGCL must pay to the Supplier any expenditure reasonably incurred by the Supplier prior to the date of the termination which is directly attributable to SGCL'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 SGCL upon payment and the Supplier must upon SGCL's demand and at the Supplier's cost deliver to SGCL any such property and/or incomplete Goods.
- (f) On SGCL making payment pursuant to clause 15, SGCL is not liable for any other claims, expenses or costs under the Agreement, general law, equity, statute or otherwise directly related to the termination.
- 16. SUSPENSION AND FORCE MAJEURE**
- (a) SGCL 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 SGCL suspends any of the Services or supply of Goods under this clause, SGCL 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) SGCL 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:
    - (i) gives the other party prompt notice and reasonable particulars of that Force Majeure Event, including specifying the obligations unable to be performed, estimate of the delay arising from the Force Majeure Event and specify any proposed measures to be taken by the relevant party to mitigate or remedy the Force Majeure Event;
    - (ii) uses all possible diligence to remove and mitigate the effect of the Force Majeure Event; and
    - (iii) 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 Victoria, 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 7 (Defect and Failure to Supply), 8 (Supplier's Warranties), 9 (Indemnity and liability), 12 (Confidentiality), 13 (Privacy and Data Breach) and 14 (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 SGCL 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 SGCL 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, including 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 SGCL (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 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 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 SGCL and has no authority to act on SGCL's behalf and has entered into this Agreement as an independent contractor of SGCL.
- (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) SGCL 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 SGCL 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.

If SGCL determines that a transaction is or contains a security interest for the purposes of the PPSA(PNG), the Supplier shall do anything (such as obtaining consents, signing and producing documents, obtaining documents completed and signed and supplying information) which SGCL asks for and considers necessary for the purposes of:

- (a) ensuring the security interest is enforceable, perfected and otherwise effective; or
- (b) enabling SGCL to apply for registration, or give any notification, in connection with the security interest so that the security interest has the priority required by SGCL; or
- (c) enabling SGCL to exercise rights in connection with the security interest.

SGCL need not give any notice under the PPSA(PNG) (including a notice of a verification statement) unless the notice is required and cannot be excluded.

## 22. SET OFF

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

## 23. CUSTOMS AND EXCISE DUTIES

- (a) Where SGCL 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 SGCL's request, provide SGCL with all information and documentation necessary for SGCL 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 SGCL in a form that is satisfactory to SGCL. Where any such application or certification is successful, the Supplier will pass on to SGCL 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

- (a) If SGCL 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, SGCL is entitled to make that deduction or withholding unless the Supplier provides SGCL with valid documentation (received prior to the date when the payment is to be made) showing to the satisfaction of SGCL that an exemption applies. If SGCL is required by law to deduct or withhold, then SGCL 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, SGCL 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 SGCL for, or otherwise pay to SGCL, 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 Supplier must make any necessary tax filings or registrations required to comply with any Legislative Requirements, including the PNG Internal Revenue Commission requirements in connection with foreign contractor withholding tax and business income withholding tax.

## 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 SGCL, the Supplier, this Agreement and 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 SGCL's Policies and Procedures.