
KEMPE ENGINEERING PTY LTD
PURCHASE ORDER TERMS AND CONDITIONS FOR PURCHASE OF GOODS & SERVICES
(Non-Australia)

1. Definitions

“Business Day” means a day on which banks are open for business in the place identified as the address of Kempe on the Purchase Order.

“Contract” means the agreement between Kempe and the Supplier for the supply of Goods and/or Services evidenced by the Purchase Order, these Terms and Conditions and all other documents which are either attached to the Purchase Order or incorporated by reference.

“Contract price” means the price specified in the Purchase Order excluding any Indirect Transaction Taxes.

“Customs Duties” means a government tax on imports or exports of Goods or Services and include any applicable customs, import/export duties, fees, tariffs or similar analogous taxes.

“Delivery Location” means the location or locations for the delivery or provision of the Goods and/or Services specified in the Purchase Order.

“Excise Duties” means any tax imposed, claimed, levied or assessed by, or payable to, any Government Agency in relation to the production or manufacture of Goods.

“Goods” means any materials, supplies, plant, equipment and other things specified in the Purchase Order to be supplied by the Supplier and/or to be used in the performance of the Contract or developed in connection with the Services.

“Government Agency” means any government, governmental or semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

“Input Tax Credit” means any entitlement to a credit for, or offset against, reduction in or refund of, Indirect Transaction Taxes, in relation to any acquisition or the receipt of any supply.

“Kempe” means Kempe Engineering Pty Ltd or its related entity being the company designated as the purchaser of the Goods and/or Services on the Purchase Order.

“Indirect Transaction Taxes” means any applicable value added tax (VAT), goods and services tax (GST), sales, use or consumption or similar tax or impost imposed, levied or assessed by any Government Agency or otherwise payable, but excluding any related penalty, fine or interest.

“Liabilities” means actions, damages, claims, demands, losses, liabilities, costs and expenses of any kind.

“Purchase Order” means a purchase order (including any attachments or documents incorporated by reference) for Goods and/or Services from the Supplier that has been provided by Kempe to the Supplier.

“Supplier” means the Supplier designated on the Purchase Order.

“Services” means services, specified in the Purchase Order.

“Special Conditions” means any special conditions set out in the Purchase Order.

“Taxes” mean any and all taxes, including without limitation, Indirect Transaction Taxes, excise, stamp, documentary, customs, import/export, payroll, personal, property, real property, interest equalisation, business, occupation, turnover, income, capital, corporations, profits, gains, gross receipts or other taxes, fees, withholdings, imposts, levies, duties or other charges whatsoever or whensoever (other than taxes on Kempe’s net income), together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed by any Government Agency or otherwise payable, on or in respect of the supply of Goods or Services under the Contract.

“Tax Invoice” means an invoice or other document, including without limitation, a credit note or debit note, in a form that is valid under the applicable law of the jurisdiction in which a liability to pay Indirect Transaction Taxes is imposed, claimed, levied or assessed, which must be held by a person for that person to be able to claim Input Tax Credits.

“Terms and Conditions” means these Purchase Order Terms and Conditions for Purchase of Goods and Services.

“Wilful Misconduct” means any act or failure to act which was a deliberate and wrongful act or omission, or involved reckless disregard or wanton indifference to the likely consequences.

2. Application

(a) These Terms and Conditions and Special Conditions, apply to all Goods and Services supplied by the Supplier to Kempe pursuant to the Purchase Order and (any variation or amendment to

a Purchase Order) or any other agreement whether in writing or otherwise, whereby the Goods and/or Services are to be supplied or have been supplied by the Supplier to Kempe. The Supplier agrees that its written acceptance or commencement of work under the Purchase Order shall constitute its acceptance of these Terms and Conditions. All terms and conditions proposed by the Supplier which are different from or in addition to these Terms and Conditions and the Purchase Order are of no binding effect on Kempe and shall not become a part of the Contract.

- (b) Any quotation or proposal provided by the Supplier and accepted by Kempe is accepted on these Terms and Conditions and any Purchase Order will be upon and subject to these Terms and Conditions.
- (c) Except as may be otherwise agreed by Kempe in writing, these Terms and Conditions supersede and exclude all discussions, representations and arrangements relating to the supply of the Goods and/or Services or any part thereof.
- (d) If there is any inconsistency or variance between these Terms and Conditions and any quotation or tender proposal these Terms and Conditions will prevail. In the event of any inconsistency in the documents comprising the Contract, the order of precedence shall be (i) the Purchase Order (including any Special Conditions) (ii) documents attached to the Purchase Order and (iii) these Terms and Conditions.
- (e) In the event of one or more clauses of the Contract is held by a court of law to be legally invalid or unenforceable the remainder of the clauses shall in no way be affected. Where a provision is held to be invalid or unenforceable, the parties must negotiate in good faith to replace the invalid or unenforceable provision by a provision which is in accordance with the applicable law and which must be as close as possible to the parties' original intent and appropriate consequential amendments (if any) will be made to the Contract.

3. Performance of the Contract

- (a) The Supplier will perform the Contract in accordance with its terms in consideration of payment.
- (b) The Supplier must commence performance of the Contract as soon as possible after receipt of a Purchase Order and must complete its obligations under the Contract in a timely manner and in any event, by no later than any specified date for

completion set out in the Purchase Order or as subsequently agreed by the parties in writing.

- (c) Time is of the essence for the performance of the Supplier's obligations under the Contract.
- (d) The Supplier will perform the Contract at the location (if any) specified in the Purchase Order or as directed by Kempe and shall bear the costs of mobilisation to that location unless otherwise agreed by Kempe.
- (e) The Supplier is an independent contractor and will not act as, or be or be regarded as, an agent or employee of Kempe. The Supplier and the Supplier's personnel will not be entitled to any benefits which would ordinarily accrue to any employee of Kempe by virtue of their status as an employee.

4. Inspection and information

- (a) The Supplier must:
 - (i) inform Kempe if any aspects of the performance of the Contract will not be in accordance with the Contract; and
 - (ii) provide to Kempe any details of or information about such aspects of the performance of the Contract as Kempe may reasonably request including technical reports and information, progress reports and project supply program.
- (b) At reasonable times, Kempe may through itself or through an agent:
 - (i) review, inspect, audit, examine and witness tests of Goods, Services or work performed under the Contract;
 - (ii) inspect any equipment used in measuring work performed under the Contract at any time up to 12 months after the measurement occurs; and
 - (iii) carry out site inspections, at any site, the Supplier's premises, Kempe's premises and/or at the premises of any of the Supplier's sub-contractors.
- (c) The Supplier must ensure that Kempe has access to premises of the Supplier and any sub-contractors for the purposes of sub-clause 4(b).
- (d) The Supplier must on request by Kempe provide to Kempe any information and assistance required to identify, evaluate, implement and report on any matter required by law in respect of anything used, produced or created in connection with the performance of the Supplier's obligations under the Contract.

5. Pricing

- (a) The Contract price is firm and is inclusive of all Taxes excluding Indirect Transaction Taxes payable under clause 6.
- (b) The Contract price includes the cost of any packaging, marking, handling, freight and delivery to the Delivery Location, insurance and any other applicable costs and charges.

6. Taxes including Indirect Transaction Taxes

- (a) All amounts payable under or in connection with the Contract are:
 - (i) inclusive of Taxes; and
 - (ii) exclusive of Indirect Transaction Taxes, unless expressed otherwise.
- (b) If Indirect Transaction Taxes are payable on a supply, transfer or sale (supply) made under or in connection with the Contract, and if the party making that supply (supplier) is liable, under the applicable law, to pay, or collect and remit, the Indirect Transaction Taxes to the appropriate Government Agency, the party receiving that supply (recipient) shall pay to the supplier an additional amount equal to the Indirect Transaction Taxes payable by the supplier in respect of the supply. The recipient must pay the additional amount to the supplier on the date when payment on account of the relevant supply is made to the supplier subject to a Tax Invoice being received prior to payment date. This sub-clause does not apply to the extent that the consideration for the supply is expressed to be inclusive of Indirect Transaction Taxes.
- (c) The supplier shall ensure that each invoice it presents to the recipient in respect of any Indirect Transaction Taxes is a Tax Invoice. If the supplier fails to provide the recipient with a Tax Invoice within the time period required by applicable law of that jurisdiction, the recipient may withhold payment of the amount payable on account of Indirect Transaction Taxes either pursuant to sub-clause (b) or as part of the consideration where that consideration is expressed to be inclusive of Indirect Transaction Taxes, until such time as the Tax Invoice is received.
- (d) Any reference in:
 - (i) the Contract, to a cost, expense or other liability (Cost) incurred by a party; or
 - (ii) the calculation of consideration, or of any indemnity, reimbursement or similar amount to a Cost,

must exclude the amount of any Input Tax Credit entitlement of that party in relation to that Cost.

- (e) Each party will take all reasonable steps to co-operate with and provide all necessary assistance to the other party to ensure so far as possible that the Taxes treatment is accepted by the relevant Government Agency, including the provision of invoices, proof of payment, proof of source and/or origination and other documentation for this purpose.

7. Withholding Taxes

- (a) If a party (payer) is required by any applicable law to make a deduction or withholding from a payment to the other party (payee) for or on account of any Taxes, the payer is entitled to make that withholding or deduction unless the payee provides the payer with valid documentation (received prior to the date when the payment is to be made) showing to the satisfaction of the payer that an exemption applies. If the payer is required by law to deduct or withhold, then the payer shall use its best endeavours to furnish the payee 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, the payer will not be liable to pay to the payee any amount on account of an amount deducted or withheld in accordance with this sub-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 payee shall reimburse the payer for, or otherwise pay to the payer, 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.

8. Customs & Excise Duties

- (a) Where the Supplier is the importer of record in relation to Goods supplied under the Contract, 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 are imported free of Customs Duties.
- (b) The Supplier will, at Kempe's request, provide Kempe with all information and documentation

necessary for Kempe 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 limitation, exemptions, reductions, duty-free access and preferential rates of duty available under bilateral free trade agreements (or the equivalent).

9. Survival of provisions

- (a) Clauses 6, 7 and 8 continue to apply after expiration and termination of the Contract.

10. Invoicing

- (a) The Supplier must submit correctly rendered Tax Invoices to Kempe.
- (b) A Tax Invoice is correctly rendered if it:
 - (i) is correctly addressed;
 - (ii) identifies the title of the Goods and/or Services;
 - (iii) identifies the Purchase Order number and specific details pertaining to that Purchase Order (if applicable);
 - (iv) includes sufficient detail to allow Kempe to assess progress against milestones (if applicable);
 - (v) is supported by records of time spent by individuals involved in the Services (for Services carried out on a time basis) and that can be verified by Kempe;
 - (vi) is correctly calculated in accordance with the Contract;
 - (vii) relates to Goods and/or Services that meet the requirements of the Contract;
 - (viii) is for an amount which together with all previously correctly rendered invoices does not exceed the Contract price; and
 - (ix) is a valid Tax Invoice in accordance with applicable laws.
- (c) The Supplier must promptly provide to Kempe such supporting documentation and other evidence reasonably required by Kempe to substantiate performance of the Contract or payment of the Contract price.

11. Payment

- (a) Unless otherwise specified in the Purchase Order, Kempe will make payment within 45 days after the end of the month in which a correctly rendered Tax Invoice is received or, if additional information or

evidence is required by Kempe pursuant to clause 10, 45 days after the end of the month in which the additional information or evidence is received.

- (b) Unless otherwise provided in the Contract, all payments required to be made to the Supplier by Kempe pursuant to the Contract must be made in the currency specified in the Purchase Order by electronic funds transfer into the Supplier's nominated bank account. If no currency is specified, payment shall be made in the currency of the pricing set out in the Purchase Order.
- (c) If the Contract provides for payment to the Supplier:
 - (i) outside the country in which the place identified as the address of Kempe on the Purchase Order is located;
 - (ii) other than in the currency of the country in which the place identified as the address of Kempe on the Purchase Order is located; or
 - (iii) in a manner subject to control by any Government Agency,payment is conditional upon Kempe obtaining or being provided with the necessary authorities and consents to make the payment.
- (d) Approval or payment of an invoice is not an admission of liability or evidence that the Supplier's obligations under the Contract have been completed satisfactorily, but is payment on account only.
- (e) If the Supplier owes any debt, payment or damages to Kempe in connection with the Contract, Kempe may set off that amount, or part of it, against its obligations to pay any Supplier invoice. Nothing in this clause affects the right of Kempe to recover from the Supplier the whole of such moneys or any balance that remains owing.

12. Warranties

- (a) The Supplier warrants that:
 - (i) all Goods and/or Services shall comply in all respects with:
 - (1) the terms of the Contract including specifications;
 - (2) applicable laws;
 - (3) applicable codes and standards;
 - (ii) it will exercise all the skill, care and diligence that would be expected of a professional experienced in providing the work required by the Contract;
 - (iii) it will perform the Contract in a timely, safe and professional manner using appropriately trained and experienced personnel;

- (iv) any equipment the Supplier uses will:
 - (1) be in a safe working condition;
 - (2) comply with all applicable laws and standards; and
 - (3) be operated by suitably qualified and competent personnel.
- (v) in respect of any design work, the Services when complete will be:
 - (1) be fit for the purpose for which they were intended or the purpose to be inferred;
 - (2) comply with all requirements of the Contract; and
 - (3) comply with good design and engineering practice.
- (vi) in respect of any Goods developed, produced or supplied:
 - (1) will be in new and unused condition and of recent origin, unless otherwise specified;
 - (2) will be suitably packed and appropriately prepared for transportation;
 - (3) the Goods will be fit for the purpose for which they are supplied;
 - (4) all usual and customary trade warranties will be obtained for the Goods as well as any warranties which Kempe may specifically request and the Supplier will at its cost ensure that Kempe is assigned and has the benefit of any unexpired warranties upon completion of the Contract;
 - (5) it has good and marketable title to the Goods; and
 - (6) copies of all warranties will be supplied to Kempe with invoices for payment.
- (b) if any part of the Services or Goods are found by Kempe to be defective and not in compliance with the Contract, and the Supplier on the request of Kempe fails to remedy any such defect or default to the satisfaction of Kempe within a reasonable period of time specified by Kempe, such defect or default may be remedied by Kempe at the cost of the Supplier.

13. Security of payment laws

- (a) The Supplier must promptly and without delay give Kempe a copy of any written communication of any nature in relation to security of payment laws that the Supplier receives relating to the subject matter of the Contract.
- (b) If Kempe becomes aware that a sub-contractor engaged by the Supplier is entitled to suspend or

has suspended work pursuant to security of payment legislation, Kempe may in its absolute discretion pay the sub-contractor such money that the sub-contractor certifies as owing to the sub-contractor in respect of that work and any amount paid by Kempe will be a liquidated debt due from the Supplier to Kempe.

14. Suspension

- (a) Kempe may elect in its sole and absolute discretion, to suspend the Supplier's performance of the Contract by providing five (5) Business Days written notice to the Supplier (**Suspension Notice**).
- (b) Where a Suspension Notice is issued, the Supplier must:
 - (i) take any action specified in the Suspension Notice which Kempe may reasonably require;
 - (ii) do all things reasonably necessary to reduce and limit any expenses or costs incurred in connection with suspension of the Services; and
 - (iii) recommence performance of the Services as directed by Kempe.
- (c) Except where the suspension is necessitated by the act, omission or default of the Supplier, the Supplier shall be entitled to request by written notice, reimbursement of actual direct costs incurred in connection with suspension of the Contract. The Supplier must submit to Kempe all documentation to substantiate any reimbursement claim made under this clause.

15. Default and Termination

- (a) If the Supplier fails to perform or observe any of its obligations under the Contract Kempe may give the Supplier a notice specifying the default (Default Notice) and stating Kempe's intention to terminate the Contract if the Supplier fails to remedy the default within a reasonable period specified by Kempe. The Default Notice may not be unreasonably given and must specify that it is a notice under this clause.
- (b) If after receipt of the Default Notice the Supplier fails within a reasonable time to:
 - (i) remedy the default to Kempe's satisfaction;
 - (ii) provide adequate assurance and outline remedial measures to be taken by the Supplier to remedy the default; or
 - (iii) implement any remedial measures proposed under (ii) within a reasonable time (in the opinion of Kempe),

Kempe may (without prejudice to any other rights or remedies of Kempe under the Contract or otherwise), exercise one or both of the following powers:

- (1) provide written notice with immediate effect that Kempe will wholly or partly suspend payment under the Contract until the default has been remedied (**Payment Suspension Notice**); or
 - (2) provide written notice with immediate effect that the Contract is terminated (**Termination Notice**).
- (c) In addition to its other rights, Kempe may at any time and in its sole and absolute discretion by providing written notice, terminate the Contract in whole or in part with immediate effect (or upon such notice period that Kempe considers appropriate) and in such case, Kempe shall pay the Supplier for the value of work performed up to the date of termination and actual costs incurred on account by the Supplier for work to be performed in the future. The Supplier must submit to Kempe all documentation requested by Kempe to substantiate any reimbursement claim made under this clause. For the avoidance of doubt, the Supplier is not entitled to claim any indirect and consequential costs, or amounts for loss of or foregone profit or overhead costs.
- (d) The Supplier must on receipt of the Termination Notice (whether under sub-clause 15(b) or 15(c):
- (i) do all things possible to reduce any cost or expense consequent on the termination;
 - (ii) do only that work as is specified in the Termination Notice;
 - (iii) comply in all respects with any directions contained in the Termination Notice;
 - (iv) take any other action relating to the termination of the Contract which Kempe may reasonably require including without limitation, reporting on the status of works in progress and providing documentation in support thereof; and
 - (v) return all property of Kempe or other parties which has been provided to the Supplier to enable performance of the Contract;
- (e) Except as provided in this clause, Kempe shall not be liable to the Supplier for claims by the Supplier or the Supplier's sub-contractors, for loss of anticipated profit, unabsorbed overhead, interest, development costs, facilities or equipment costs or administrative costs from termination of the Contract.

- (f) Kempe or its agents shall have the right to audit and examine all books, records, facilities, work, material, inventories, and other items relating to any termination claim by the Supplier.

16. Co-Operation With Other Contractors and Suppliers

- (a) The Supplier must co-operate with and not impede other contractors and suppliers (whether employed or engaged by Kempe or not) and give them any information or data reasonably necessary to ensure proper and timely performance of their respective work.
- (b) The Supplier is not entitled to any claim, payment increase, damages, costs or any other financial or other compensation as a result of any interference from other contractors and suppliers (whether employed or engaged by Kempe not).

17. Variations

- (a) Kempe may by written notice direct the Supplier to alter, amend, omit, add to or otherwise vary any aspect of the Goods and/or Services (**Variation Notice**). The Supplier will comply with the notice and be bound by the same conditions as though the contents of the notice and any variation thereby made were included in the Contract.
- (b) The difference in cost, if any, occasioned by variations directed by Kempe will be added to or deducted from the Contract price, as the case may require.
- (c) As soon as reasonably practicable following receipt of a Variation Notice, the Supplier must provide Kempe with a quote estimating the cost of the variation (**Variation Quote**). In so far as they are applicable, the rates (or price breakdown if no relevant rates exist) contained or referenced in the Purchase Order will be used by the Supplier to calculate the cost of a variation but otherwise the cost of a variation must be estimated by the Supplier at the lowest reasonable cost consistent with sound work practices.
- (d) As soon as reasonably practicable following receipt of a Variation Quote, Kempe must confirm in writing whether or not it accepts the Variation Quote and set out any qualifications to or conditions of its acceptance.
- (e) Commencement of any work in connection with a variation before Kempe responds in writing to the Variation Quote is at the Supplier's risk.

18. Indemnity

- (a) The Supplier will indemnify and keep indemnified, Kempe (and each of its directors, personnel, employees and officers) against all Liabilities caused, whether wholly or in part, directly or indirectly by the Supplier's (or its employee, agents, contractors or personnel) performance of the Contract or as a result of any other act, omission or conduct of the Supplier (or its employee, agents, contractors or personnel) including death or injury of any person, damage to property and business interruption of Kempe or a third party or loss resulting from Kempe's reliance on the performance of the Contract except to the extent that the Liabilities incurred or suffered are a direct result of Kempe's negligence.
- (b) The Supplier shall indemnify and hold harmless Kempe against all Liabilities of any kind that Kempe may sustain or incur as a result of any claim or proceeding for infringement of intellectual property brought in relation to the subject matter of the Contract and the Supplier shall unless Kempe elects otherwise, defend at its own cost, any claim that the Goods and/or Services or performance of the Contract infringes the intellectual property rights of any person or any proceedings arising from such a claim.

19. Limitation on liability

- (a) Subject to sub-clause 19(c) the liability of a party arising under or in connection with the Contract shall to the extent permitted by law exclude liability for loss of profit, loss of revenue, loss of opportunity, or special, indirect or consequential loss.
- (b) The liability of a party to the other party for loss or damage under or in connection with the Contract shall be reduced proportionately to the extent that the loss or damage was caused or contributed to by the other party's negligent act or omission.
- (c) Nothing in sub-clause 19(a) excludes or limits a party's liability:
 - (i) in respect of death or personal injury to any person, third party property damage or breach of third party intellectual property rights;
 - (ii) for a deliberate breach of the Contract or any Wilful Misconduct;
 - (iii) in respect of liquidated damages (if any) or under any provision in the Contract where a debt or other payment is due,or the Supplier's liability:

- (iv) to the extent that the Supplier is required by the Contract to procure and maintain insurance in respect of that liability;
- (v) to the extent that the Supplier recovers any amount for which it is liable under or in connection with the Contract from a sub-contractor or third party; or
- (vi) to rectify any defect or to perform the Contract by a particular date.

20. Insurance

- (a) The Supplier shall maintain adequate insurance including, without limitation, public liability, worker's compensation (including common law liability), professional indemnity, automotive and other means of transportation/freight liability insurance and product damage insurance upon such terms and for such amounts as are reasonable and prudent in the circumstances of the Contract. Public and product liability insurance must be for an amount of not less than \$20,000,000 and must cover Kempe's interest as principal.
- (b) The Supplier's insurances must be effected with a reputable insurer acceptable to Kempe with a security rating of not less than "A".
- (c) The Supplier must, if requested by Kempe, promptly provide copies of the Supplier's insurance policies and a certificate of currency for each policy.

21. Confidentiality

- (a) Each party undertakes to treat as confidential and keep secret all information relating to the technical, operational, procedural, financial information of the other party (including any information relating to a party's client's) which is disclosed directly, indirectly or by observation (**Confidential Information**). Any disclosure of confidential information to a third party may only be made with the prior consent in writing of the other party and on such terms and conditions as that discloser of the information reasonably requires.
- (b) A party must:
 - (i) keep confidential;
 - (ii) take reasonable steps to ensure that the employees, officers, agents or servants of that party do not disclose to a third party;
 - (iii) maintain proper and secure custody of; and
 - (iv) not use or reproduce in any form; any Confidential Information without the written consent of the other party or as required by law.
- (c) Each party agrees, if requested by the other party, to procure the execution of an agreement with the

other party containing the same terms and conditions as this clause by any of its staff or sub-contractors or consultants engaged in any capacity who may have access to the Confidential Information.

- (d) This clause shall be subordinate in operation to the terms of any independent confidentiality agreement entered into by the parties in connection with the subject matter of the Contract.

22. Intellectual Property

- (a) Any drawings, documents, samples, models, patterns, tools, specifications, or process information supplied (in any format) by Kempe or its client to the Supplier or otherwise obtained by the Supplier in connection with the Contract (**Kempe Intellectual Property**) shall remain the property of Kempe (or its client as the case may be) and any information derived therefrom or otherwise communicated to the Supplier in connection with the Contract shall be kept confidential and shall not without the written consent of Kempe be published or disclosed to any third party or made use of by the Supplier except for the purpose of performing the Contract.
- (b) Any drawings, documents, samples, models, patterns, tools, specifications, or process information supplied (in any format) by Kempe to the Supplier (including all copies) must be returned to Kempe on request by Kempe.
- (c) Any invention, improvement, modification, development or addition to Kempe Intellectual Property created or made by the Supplier incorporating or attributable in whole or in part to the Kempe Intellectual Property shall be the property of Kempe (or its client as the case may be). The Supplier shall execute such reasonable documentation as Kempe may require to perfect its ownership of such material.
- (d) The Supplier grants to Kempe a non-exclusive, perpetual, royalty-free, irrevocable, transferable licence (with the right to assign and sub-licence) to use Supplier's intellectual property in or relating to the subject matter of the Contract to the extent necessary to enable Kempe or its client to use the Contract subject matter.

23. Force Majeure

- (a) Any delay or failure of either party to perform its obligations shall be excused if, and to the extent that, it is caused by an event or occurrence beyond the reasonable control of the party and without its

fault or negligence including, without limitation, act of God, act by any government authority, fire, flood, storm, explosion, riot, natural disaster, war, terrorism, sabotage, labour disputes (including lockouts, strikes and slowdowns) or court order provided that written notice of such delay shall be given by the affected party to the other party within 7 Business Days. During the period of such delay or failure to perform by the Supplier, Kempe may at its option purchase Goods and/or Services from other sources without liability to the Supplier. If the delay lasts more than 30 days then Kempe may immediately terminate the Contract without liability.

24. Assignment and Sub-Contracting

- (a) The Supplier will notify Kempe in writing of all proposed sub-contractors together with details of the work to be performed prior to the sub-contractors commencing work.
- (b) The Supplier may not assign or sub-contract the Contract or any part thereof except with the prior written consent of Kempe. Kempe may in its absolute discretion refuse to consent to the assignment or approve the sub-contractor without giving reasons therefore and may give that consent or approval on whatever terms and conditions Kempe considers appropriate.
- (c) Kempe may assign, transfer, novate or otherwise deal with any or all of its rights or obligations under the Contract at any time to any party that is financially capable of meeting Kempe's obligations under the Contract.
- (d) If required by Kempe, the Supplier must enter into documentation in a form provided by Kempe to give effect to the assignment, novation or transfer of Kempe's rights or obligations under the Contract.
- (e) No sub-contract or assignment (whether with or without the consent of Kempe will in any way relieve the Supplier from full responsibility for the Services and the performance of the Contract or its obligations or liabilities under the Contract.
- (f) As between the Supplier and Kempe, the Supplier's sub-contractor will be considered the agent and employee of the Supplier. The acts and omissions of each sub-contractor and of all persons either directly or indirectly acting for it will be deemed to be the acts and omissions of the Supplier.

25. Applicable Law

- (a) The Contract shall be governed by the laws of the country in which the place identified as the address

of Kempe on the Purchase Order is located. The parties submit to the non-exclusive jurisdiction of the Courts of that country and any courts that may hear appeals from those courts in respect of any proceedings under, arising out of or in connection with the Contract.

26. Privacy

- (a) Each party must comply with:
 - (i) applicable privacy laws; and
 - (ii) any reasonable directions of the other party in relation to the handling of personal information held by that party, including without limitation, the other party's privacy policy.
- (b) For the purposes of this clause "personal information" means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

27. General

- (a) Each party must take any reasonable steps (including executing any document) and must ensure that its personnel including sub-contractors take any reasonable steps (including executing any document) that the other party may reasonably require to give full effect to the Contract.
 - (b) A failure to exercise, or any delay in the exercise of any right, power or remedy by a part to the Contract does not operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
 - (c) The Supplier must ensure that neither Kempe nor any of its related entities or personnel (including sub-contractors) will receive or agree to accept any payment, gift or other advantage which violates any applicable anti-corruption law in relation to Kempe or the Contract.
 - (d) The parties agree that Kempe may vary these Terms and Conditions from time to time and to be effective any such variation to these Terms and Conditions must be in writing and signed by an authorised representative of Kempe.
-