

1. Definitions and Interpretation

In these Terms and Conditions:

- (a) **"ADC"** means the Australian Disputes Centre.
- (b) **"Act"** means the *Corporations Act 2001 (Cth)*.
- (c) **"Business Day"** means any day that is not a Saturday, Sunday, statutory, public or bank holiday in New South Wales.
- (d) **"Consequential Loss"** means any loss of revenue, loss of income, loss of business, loss of profits, loss of production, loss of or damage to goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, losses arising from claims by third parties, loss of or damage to credit rating, loss of anticipated savings, loss or denial of opportunity or any other loss, damage, cost or expense incurred by a party or any other person that is indirect or consequential.
- (e) **"Developed IP"** is defined in **clause 16(b)**.
- (f) **"Hallite"** means Hallite Seals Australia Pty Ltd ABN 91 000 484 953.
- (g) **"Hallite Beneficiaries"** is defined in **clause 16(e)**.
- (h) **"Hallite Materials"** is defined in **clause 16(a)**.
- (i) **"Hallite Tools"** means any tooling, dies, gauges, jigs, fixtures, moulds, equipment, patterns and other facilities supplied by Hallite or its Related Body Corporate, either directly or indirectly, to Supplier or paid or to be paid for by Hallite or its Related Body Corporate.
- (j) **"Goods"** means the products specified in the Purchase Contract.
- (k) **"GST"** and **"Tax Invoice"** will have the meaning attributed to those terms in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- (l) **"Improvement"** means any improvement, change, modification, adaptation or derivative work.
- (m) **"INCOTERMS"** means the standard accepted commonly used trade terms and conditions utilised in international trade as published by the International Chamber of Commerce and entitled "Incoterms 2010".
- (n) **"Insolvency Event"** means in respect of Supplier: death, liquidation, provisional liquidation, voluntary administration, compromise, arrangement, amalgamation, administration, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, the appointment of a receiver, the inability of Supplier to pay its debts when they fall due, bankruptcy or the filing for bankruptcy under Chapter 11 of the United States Bankruptcy Code or any event that is analogous to the aforementioned events under any Law.
- (o) **"Intellectual Property Rights"** means patents, design rights, copyrights, trademarks and service marks (whether registered or not and including applications for any of the foregoing), know-how and rights of a like nature throughout the world.
- (p) **"Law"** means any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future and whether state,

federal or otherwise.

- (q) **"Material Adverse Change"** means any change to the circumstances of Hallite (beyond the reasonable control of Hallite) which Hallite believes has a material adverse impact on the ability of Hallite to utilise the Goods and/or Services. A Material Adverse Change includes, but is not limited to, the cancellation or variation of an order for products or services, into which the Goods and/or Services have been incorporated, by an entity to which Hallite supplies the said products or services.
- (r) **"Personal Information"** has the meaning given to it in the Privacy Act.
- (s) **"Privacy Act"** means the Privacy Act 1988 (Cth).
- (t) **"Purchase Contract"** means the contract for the purchase of Goods and/or Services arising out of an order issued by Hallite and accepted by Supplier stipulating the Goods and/or Services to be supplied, the agreed price for the Goods and/or Services and other details relevant to the supply of the Goods or the performance of the Services. The Purchase Contract includes any document sent by Hallite to Supplier stipulating the quantity and timing of the delivery of the Goods or the performance of the Services. The Purchase Contract includes and is subject to these Terms and Conditions.
- (u) **"Related Body Corporate"** has the meaning given to it under the Act.
- (v) **"Rules"** means the ADC Guidelines for Commercial Mediation.
- (w) **"Services"** means the services (if any) specified in the Purchase Contract.
- (x) **"Supplier"** means the seller of the Goods and/or Services specified in the Purchase Contract.
- (y) **"Supplier Background IP"** means Intellectual Property Rights of the Supplier which: (i) exist prior to the commencement of a Purchase Contract; (ii) were not created pursuant to or in the course of fulfilling the obligations under a Purchase Contract; and (iii) are not derived from, adapted from or otherwise based on any Intellectual Property Rights of Hallite or its Related Bodies Corporate.
- (z) **"Technical Materials"** means all plans, designs, drawings, engineering information, data, specifications, reports, accounts and other material of a technical nature.
- (aa) **"Tender"** means any document, drawing, specification or design issued by Hallite pursuant to which Hallite has agreed to purchase the Goods and/or Services from Supplier as described in the Purchase Contract. This includes, but is not limited to, documents, drawings, specifications or designs of an entity to which Hallite supplies products.
- (bb) **"Tender Documents"** means the documents applicable to the Tender.
- (cc) **"Terms and Conditions"** means these "Terms and Conditions of Purchase Contract".
- (dd) The terms **"EXW"**, **"FCA"**, **"FAS"**, **"FOB"**, **"CFR"**, **"CIF"**, **"CPT"**, **"CIP"**, **"DAF"**, **"DES"**, **"DEQ"**, **"DDU"** and **"DDP"** have the meaning these terms are given in the INCOTERMS.
- (ee) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. General

- (a) The Purchase Contract (including these Terms and Conditions) applies to the exclusion of any document or communication used by Supplier in relation to the supply of Goods and/or Services (including any terms and conditions that may be printed on the underside of or attached to an invoice or delivery docket provided by Supplier).
- (b) If the Purchase Contract refers to a Tender the Tender Documents will not form part of the Purchase Contract unless expressly incorporated in the Purchase Contract.
- (c) If any INCOTERM is nominated in the Purchase Contract, the terms of INCOTERMS applies except as otherwise provided or as inconsistent to the Purchase Contract.
- (d) The Purchase Contract does not prevent Hallite from entering into arrangements or agreements with third parties for the supply of goods or services equivalent or similar to the Goods or Services.
- (e) Hallite gives no representations that it will engage Supplier to supply a minimum volume of Goods. Unless otherwise agreed under a Purchase Contract, Hallite will be under no obligation to submit orders for Goods or Services to, or purchase Goods or Services from, Supplier.

3. Acceptance

- (a) An order by Hallite constitutes an offer by Hallite to purchase the Goods and/or Services in accordance with the Purchase Contract (including these Terms and Conditions).
- (b) An order will be deemed to be accepted on the earlier of Supplier issuing a written acceptance of the order or doing any act consistent with fulfilling the order and/or supplying the Goods and/or Services, at which point the Purchase Contract shall come into existence.

4. Price

- (a) The price of the Goods and/or Services is fixed in accordance with the prices listed on the Purchase Contract and is not subject to increases in price without Hallite's prior approval in writing. Unless an INCOTERM to the contrary is agreed to by the parties and nominated on the Purchase Contract, the price of the Goods includes the cost of packaging, storage, insurance, delivery to the destination stated in the Purchase Contract and the off- loading of the Goods by Supplier at the point of destination.
- (b) The Price includes any applicable GST. Where GST is payable either:
 - (i) Supplier must provide Hallite with a Tax Invoice that complies with all requirements in the GST Act at or before the time for payment; or
 - (ii) Hallite may require Supplier to accept a Recipient Created Tax Invoice (as provided for in the GST Act) as created by Hallite.
- (c) Supplier must submit monthly itemised invoices to Hallite in a form approved by Hallite. Unless otherwise stated on the face of the Purchase Contract, Hallite will have at least 60 days from the end of the month in which the invoice is received in which to pay Supplier the invoiced amount. Hallite may withhold any amount that it disputes in good faith until the dispute has been resolved. Hallite will not be required to pay Supplier until Supplier has provided a valid Tax Invoice which complies with the requirements of this **clause 4**.

- (d) No interest is payable on the late payment of any amounts by Hallite.
- (e) Notwithstanding the remainder of this clause, Hallite will be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by Supplier.
- (f) In the case of any ongoing arrangement between Hallite and Supplier with respect to the supply of Goods or Services, Hallite will be entitled to seek quotes from other third party providers of equivalent goods or services at least once in any 12 month period during the term of the arrangement and, if requested by Hallite, Supplier agrees to adjust the prices charged to Hallite under a relevant Purchase Contract to prices that are equal to or more favourable to Hallite than those offered by the relevant third party providers.

5. Delivery and performance

- (a) Time is of the essence in relation to the delivery of Goods and/or performance of the Services and deliveries of the Goods and/or completion of the Services must be made both in the quantities, manner and at times specified in the Purchase Contract. In respect of any Goods provided under a Purchase Contract, delivery should be made to the location nominated in the Purchase Contract or such other place nominated by Hallite by providing Supplier at least one Business Days' notice of any change of delivery location. Unless otherwise agreed, deliveries will only be accepted by Hallite during its normal business hours at the delivery location.
- (b) Supplier agrees that, in respect of any Goods, the cost of delivery is determined according to the INCOTERM nominated on the Purchase Contract, and if no INCOTERM has been nominated, delivery will be DDP.
- (c) If delivery of Goods and/or completion of Services is not made by the date specified in the Purchase Contract, or within 28 days of Hallite's placing an order if no date is specified, Hallite will be entitled to refuse delivery of the Goods or completion of the Services and may terminate the contract in respect of:
 - (i) the Goods undelivered or delivered late and of any Goods already delivered under this contract which cannot be effectively and commercially used by Hallite by reason of the non-delivery or late delivery of the first mentioned Goods; and
 - (ii) the Services which are not completed or a completed late and of any part of the Services performed but which cannot be effectively or commercially used by Hallite by reason of the failure to complete or late completion of the first mentioned Services.
- (d) Without limiting the generality of **clause 13**, upon termination according to **clause 5(c)** Hallite is entitled to:
 - (i) return to Supplier, at Supplier's risk and expense any Goods detailed in **clause 5(c)** and to recover from Supplier any money paid by Hallite in respect of such Goods, and Goods already delivered but which cannot be effectively and commercially used due to non- delivery or late delivery of other Goods;
 - (ii) recover from Supplier any money paid by Hallite in respect of Services detailed in **clause 5(c)**, and Services already completed but which cannot be effectively and commercially

used due to the failure to complete or late completion of other Services; and

- (iii) recover from Supplier any additional expenditure reasonably incurred by Hallite in obtaining other goods or services in replacement of the Goods and/or Services detailed in **clause 5(c)** and any other damages and losses incurred by Hallite arising from late or non-delivery of Goods or non-performance of Services or any part thereof.
- (e) A notice of shipment must be sent by Supplier to Hallite at the time the Goods are shipped, which must state the description of the Goods, the reference number of the Purchase Contract, the name of the vessel, the port of shipment or delivery, shipping route, the quantity loaded, the invoice amount and other particulars from time to time as requested by Hallite.
- (f) Supplier must ensure that the Goods:
 - (i) are suitably packed and secured to ensure they reach their destination in good condition and in accordance with the carriers' requirements; and
 - (ii) to the fullest extent possible without conflicting with clause 5(f)(i), appropriately prepared for shipment so as to secure the lowest transportation and insurance rates.
- (g) Hallite is not obliged to return any packaging or packing materials to Supplier, whether or not any Goods are accepted by Hallite.
- (h) The packing and marking of the Goods must comply with the Law of Australia and any country from which the Goods are to be exported and in accordance with the instructions of Hallite.
- (i) All documents related to the shipping of the Goods must be provided to Hallite at the time that the Goods depart the port of export including, without limitation:
 - (i) the bills of lading;
 - (ii) certificate of insurance;
 - (iii) packing declaration;
 - (iv) declarations to customs and quarantine authorities;
 - (v) evidence of payment of all customs duties and other charges; and
 - (vi) certificate of origin of the Goods.
- (j) If Supplier considers Goods cannot be delivered or Services cannot be performed on time in accordance with Hallite's Purchase Contract, Supplier must notify Hallite immediately and give to Hallite an estimate of the period of delay and details of the steps which Supplier proposes to take to minimise the delay. Supplier must comply with Hallite's reasonable instructions in order to minimise the delay.
- (k) Supplier must not deliver Goods in instalments without Hallite's prior written consent. Where Hallite agrees to accept delivery of the Goods by instalments the Purchase Contract will be construed as a single contract in respect of each instalment. Nevertheless, failure by Supplier to deliver any one instalment shall entitle Hallite at its option to treat the whole Purchase Contract as repudiated.

- (l) If the Goods delivered or Services performed by Supplier are in excess of the quantities ordered, Hallite shall not be bound to pay for the excess and any excess will be and will remain at Supplier's risk and Goods will be returnable at Supplier's expense.
- (m) If the Goods delivered or Services performed by Supplier are less than the quantities ordered, Hallite shall have the right, but not obligation to either:
 - (i) accept the quantity of Goods or Services received from Supplier and make payment only for that quantity received. Hallite will have the discretion to cancel any outstanding Goods or Services remaining on the Purchase Contract; or
 - (ii) reject the Goods or Services delivered, with Supplier required to resupply at the correct quantity levels. Any Goods or Services rejected will remain at Supplier's risk and Goods will be returnable at Supplier's expense.
- (n) Supplier shall give Hallite prior written notice of:
 - (i) any delivery of the Goods or items accompanying the Goods having toxic or other hazards to the safety or health of persons or property and shall provide full details of such hazards and of all precautions which should be taken by Hallite in respect of the delivery, storage, handling, installation and use of the Goods or items and provide Hallite with all information relating to the properties of the Goods or items to enable Hallite to comply with all relevant legislation relating to the Goods or items and/or such hazards; and
 - (ii) any delivery of Goods which are perishable or of limited lifespan and of any circumstances which may adversely affect the lifespan of such Goods.
- (o) If for any reason Hallite is unable to accept delivery of the Goods at the time when they are due for delivery Supplier shall, if its storage facilities permit, store the Goods in a secure manner until Hallite is ready to accept delivery and Hallite shall pay Supplier's reasonable charges for storage.
- (p) Where Supplier performs the Services on Hallite's premises, Supplier shall, and shall procure that its personnel comply with Hallite's safety and security regulations and shall not, without the prior written consent of Hallite, use any of Hallite's facilities, tools, apparatus or equipment. Where such consent is given by Hallite, Supplier must satisfy itself as to the fitness and suitability of such facilities, tools, apparatus and equipment and to the extent permitted by Law, assume all liability arising out of their use.

6. Warranties and Indemnity

- (a) These Terms and Conditions are additional to all warranties, conditions and undertakings express or implied by the *Competition and Consumer Act 2010* (Cth) or any other Law or as set out in the Tender Documents (if applicable).
- (b) Supplier warrants that all Goods and/or Services meet the description; specification drawings, data or samples and quality standards provided by Supplier or set out in the Purchase Contract or other document issued by Hallite or its representatives to Supplier regarding Hallite's requirements for the Goods and/or Services including, without limitation,

the Tender Documents. Any in-progress inspection by Hallite's employees or agents or other representative does not affect this warranty.

- (c) Supplier warrants that the Goods are new, of good title, of merchantable quality, made of good materials and workmanship, free from defects, encumbrance, lien or security interest and comply with all applicable Laws and codes.
- (d) Supplier warrants that all Goods are fit for the purpose for which goods of the same kind are commonly supplied and any purpose which Hallite or its representatives make known to Supplier, and must be accompanied by any necessary instructions, technical documents, operating and service manuals and any applicable warranties. If a standard of performance is specified Supplier warrants that Goods will be capable of such performance.
- (e) The Goods must carry any applicable manufacturer's warranty which passes on to any buyer or customer from Hallite without liability to Hallite. Supplier must assign to Hallite at the request of Hallite the benefit of any warranty or guarantee that Supplier has received from any supplier (whether under contract or by implication or operation of Law).
- (f) Supplier warrants to Hallite that it will provide all information required by Hallite to report the export, import or transport of the Goods in a timely and accurate manner to enable Hallite to observe its requirements pursuant to any Law.
- (g) Supplier warrants to Hallite that it holds good title to any Intellectual Property Rights in or associated with the Goods and/or Services and any Supplier Background IP it provides or makes available to Hallite in connection with a Purchase Contract.
- (h) Supplier warrants that the receipt or use of the Goods, Services, Developed IP, Supplier Background IP, and any other materials and items provided by or on behalf of Supplier to Hallite in connection with a Purchase Contract, will not (when used in accordance with the terms of this document) infringe any third-party rights (including Intellectual Property Rights) or breach any Law.
- (i) Supplier warrants to Hallite that it holds all statutory and other licences, registrations, approvals, permits and authorisations as are necessary to supply the Goods and/or Services to Hallite.
- (j) Supplier warrants to Hallite that Supplier has the capabilities, skill, facilities and resources to perform the Services and that the Services will be provided with due care and skill.
- (k) Supplier warrants to Hallite that Supplier will maintain and implement quality and specification control, testing and inspection procedures to enable Supplier to consistently comply with its obligations under the Purchase Contract and, at the request of Hallite, will supply Hallite with full details of such procedures and Supplier's test results and inspection reports.
- (l) Supplier must keep Hallite, its successor, assigns, customers and the users of Hallite's products and/or services (incorporating the Goods and/or Services) and any Related Body Corporate of Hallite (each, an **Indemnified Party**) indemnified against all loss (including Consequential Loss), damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by

Hallite as a result of or in connection with:

- (i) defective Goods or Services including without limitation, defective workmanship, quality or materials;
 - (ii) breach of any warranty provided pursuant to **clause 6**;
 - (iii) any breach by Supplier of the Purchase Contract;
 - (iv) any infringement or alleged infringement of any Intellectual Property Rights caused by the possession, use, manufacture or supply of the Goods or possession or use of the work the product of the Services; and
 - (v) any claim made against Hallite in respect of any liability, loss, damage, injury, cost or expense sustained by Hallite's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods or the performance of the Services.
- (m) Hallite holds the benefit of the indemnity in **clause 6(I)** for itself and on trust for each other Indemnified Party.
- (n) Supplier acknowledges that it is not necessary for Hallite to incur an expense or make a payment before enforcing a right of indemnity conferred by the Purchase Contract or to mitigate its loss.
- (o) The indemnity in **clause 6(I)** and any other indemnity in the Purchase Contract is a continuing obligation separate and independent from any other obligation and survives the expiry or termination of the Purchase Contract.

7. Inspection and return

- (a) All Goods are received and Services are performed subject to inspection within a reasonable time after delivery or completion or before delivery or completion at Hallite's discretion irrespective of the date of payment. In respect of Goods, signed delivery dockets do not mean acceptance by Hallite of the Goods delivered but only the number of packages or cartons delivered.
- (b) Hallite may reject any Goods or Services or parts thereof that are not in accordance with the Purchase Contract. Notice of rejection will be provided to Supplier in writing by Hallite and must specify the reasons for rejection. Hallite is entitled to return the rejected Goods to Supplier at Supplier's expense and risk.
- (c) Hallite may reject further deliveries of Goods or performance of Services without liability to Supplier where Hallite reasonably believes that they will not be supplied in accordance with the Purchase Contract.
- (d) In all cases of rejection Hallite will be entitled to require Supplier to:
- (i) replace the rejected Goods with goods which are acceptable to Hallite;
 - (ii) remedy the rejected Services and/or re-perform the rejected Services in a manner which is acceptable to Hallite; or
 - (iii) request repayment of any money paid to Supplier in respect of the rejected Goods and/or Services and may terminate this contract.
- (e) Without limiting the generality of **clause 13**, upon termination according

to this clause:

- (i) Hallite is entitled to return to Supplier at Supplier's risk and expense any Goods previously delivered to Hallite which cannot be effectively and commercially used by Hallite and to recover from Supplier any moneys paid by Hallite in respect of such Goods;
- (ii) Hallite is entitled to recover from Supplier any moneys paid by Hallite in respect of Services which have been performed but which cannot be effectively and commercially used by Hallite; and
- (iii) Supplier is liable for any costs, loss or damage suffered or incurred by Hallite in relation to Goods and/or Services that are rejected including the cost of replacement goods and/or re-performance of services.

8. Defective goods and/or services

- (a) Should any Goods or Services fail to conform to the warranties contained in **clause 6**, Hallite will notify Supplier and Supplier must indemnify Hallite for any incidental and consequential damages caused by such non-conforming Goods or Services, including but not limited to, costs, expenses and losses (including Consequential Losses) incurred by Hallite:
 - (i) in inspecting, sorting, repairing or replacing such nonconforming Goods or Services;
 - (ii) resulting from production interruptions;
 - (iii) conducting recall campaigns or other corrective services actions regardless of whether such campaigns are conducted by Hallite or an entity that Hallite supplies to and regardless of whether the recall campaign relates to the Goods or a product in which the Goods have been incorporated; and
 - (iv) for personal injury (including death) or property damage caused by such non-conforming Goods or Services.
- (b) If Supplier becomes aware of any matter which may affect the Goods or Services or Hallite's use of the Goods or Services, Supplier must notify Hallite in writing immediately of the matter giving full details of all relevant information. This includes anything which may affect the composition, characteristics or Hallite's use of the Goods or Services, the health, hygiene or safety of any person and Suppliers', Hallite's or the Good's compliance with any Law, standard or code of practice.
- (c) Hallite may set-off the amounts owing under **clause 8(a)** against any amounts otherwise payable by Hallite or Hallite's Related Body Corporates to Supplier or Supplier's Related Body Corporates.

9. Tooling to remain Hallite's property

- (a) The Hallite Tools remain Hallite's property whether during or after the termination of the Purchase Contract.
- (b) Supplier must:
 - (i) ensure the Hallite Tools are clearly identifiable and where possible, physically marked as Hallite's property;
 - (ii) keep the Hallite Tools in good condition; and

- (iii) when necessary, repair the Hallite Tools at its own expense.
- (c) Supplier agrees that it will not use any Hallite Tools for any purpose other than to supply Goods and/or Services to Hallite and will return and deliver up the Hallite Tools following the expiry or termination of the Purchase Contract.

10. Changes, Cancellation and Variations

- (a) Hallite may at any time direct Supplier in writing to change the Goods and/or Services or any aspect of the supply of the Goods and/or Services. Supplier's obligation to supply the Goods and/or Services following such a change will be subject to the parties agreeing upon the applicable prices, rates or charges acting reasonably and with reference to the prices, rates and charges set out in the Purchase Contract.
- (b) Hallite may cancel or vary the Purchase Contract (in whole or part) at any time in response to a legitimate business need of Hallite including, without limitation, a Material Adverse Change. Hallite must give Supplier written notice of such cancellation or variation and must pay Supplier for all Goods delivered and/or Services performed up to the date of cancellation or variation. Unless otherwise agreed, Hallite must also purchase Goods and/or Services which have actually been provided by Supplier but not delivered or completed by Supplier and work in progress and other materials produced or acquired by Supplier to manufacture the Goods or perform the Services but only to the extent to which such items cannot be used by Supplier producing goods and/or services for itself. Save as expressly set out in this clause, Hallite will have no liability to Supplier for cancelling or varying the Purchase Contract.
- (c) To the extent Hallite provides Supplier with forecasts of the Goods or Services that Hallite may order from Supplier, Supplier acknowledges and agrees that such forecasts are estimates only, are not binding on Hallite and are subject to change but Supplier must, at all times, be able to meet the forecasts by maintaining sufficient stocks of the Goods and being prepared to perform the Services as required by the forecasts.

11. Deduction & Set-Off

Hallite may deduct or set-off against any amount payable to Supplier or Supplier's Related Body Corporates, any amount payable by Supplier or Supplier's Related Body Corporates to Hallite or Hallite's Related Body Corporates, including but not limited to any amount due by Supplier for Goods or Services rejected by Hallite or for warranty claims made by Hallite or by its customers that relate to the Goods or Services.

12. Notification of certain events

Supplier must promptly notify Hallite in writing if any of the following events occur or is likely to occur to Supplier:

- (a) a change in trade name, or place of business;
- (b) change in the ownership or control of Supplier;
- (c) the sale or transfer of all or any part of Supplier's business;
- (d) the acquisition by any competitor of Hallite or a Related Body Corporate of Hallite of any interest of any kind in the ownership of Supplier;
- (e) an Insolvency Event concerning Supplier or a Related Body Corporate;
and

- (f) any other matter or thing which may affect Supplier's ability or capacity to supply the Goods to or perform the Services for Hallite.

13. Termination

- (a) In addition to termination rights set out elsewhere in the Purchase Contract, Hallite may terminate any applicable Purchase Contract by written notice to Supplier if:
 - (i) Supplier is in default of any of its obligations set out in the Purchase Contract (including these Terms and Conditions) that is not capable of remedy, or if capable of remedy is not remedied within 30 days of written notice by Hallite of such default;
 - (ii) Supplier breaches any warranties Supplier has provided under the Purchase Contract;
 - (iii) an event in **clause 12** has occurred in relation to Supplier other than a change of trade name or place of business;
 - (iv) an Insolvency Event has occurred in relation to a Related Body Corporate of Supplier; or
 - (v) a Material Adverse Change has occurred in relation to Hallite.
- (b) Upon termination under this **clause 13**:
 - (i) Hallite will have the right to withhold any payment for any Goods not yet delivered or Services not yet completed by Supplier;
 - (ii) Supplier will be liable to Hallite for any Consequential Loss incurred by Hallite as a result of Supplier's default (if any) under the Purchase Contract; and
 - (iii) Supplier must return the Hallite Tools and grant to Hallite an irrevocable licence to enter Supplier's premises for the purpose of taking possession of the Hallite Tools.
- (c) To the extent permitted by Law, Supplier does not have any claim whatsoever at Law or equity against Hallite if Hallite cancels an order or Purchase Contract in accordance with the terms of the Purchase Contract.

14. Property and risk

- (a) Unless otherwise agreed in writing by the parties, property and risk in the Goods will pass to Hallite upon Hallite taking delivery of the Goods and the Goods having been inspected and accepted by an authorised representative of Hallite. Where Goods are delivered in instalments, the property and risk in the Goods subject to a particular instalment pass to Hallite upon delivery and acceptance of that instalment. The passing of property and risk in the Goods will be without prejudice to any right of rejection which Hallite is entitled under these Terms and Conditions.
- (b) If Hallite pays for Goods before they are accepted, that does not constitute acceptance of the Goods but property in the Goods will nevertheless pass to Hallite at the time such payment is made. In such circumstances, risk in the Goods will remain with Supplier until Hallite has inspected and accepted the Goods as contemplated under these Terms and Conditions.

15. Insurance

- (a) Supplier must, before providing the Goods and/or Services, at its own cost, take out and maintain with a reputable insurer:

- (i) product liability insurance in respect of the Goods for a minimum cover for an amount of \$10 million in aggregate in any one policy year, unless varied with the written consent of Hallite;
 - (ii) professional indemnity insurance in respect of the supply of the Goods and Services for an amount of at least \$10 million (such insurance must be maintained during the term of the Purchase Contract and for a period of not less than seven years after the expiry or termination of the Purchase Contract or where a term is not specified, for a period of not less than seven years after the Goods and Services were supplied to Hallite);
 - (iii) a comprehensive public liability insurance policy to cover all sums which Supplier may become legally liable to pay as compensation consequent on death of, or bodily injury (including disease or illness) to, any person and loss of, or damage to, property happening anywhere in Australia arising out of or in connection with the Purchase Contract, for an amount of at least \$10 million per event;
 - (iv) insurance in respect of all claims and liabilities arising, whether at common law or under statute, relating to workers compensation or employer's liability, from any accident or injury to any person employed by Supplier in connection with the Goods and Services. This insurance must be in compliance with the Laws of the relevant jurisdiction in which the Goods and Services are supplied and be extended to indemnify Hallite where the jurisdiction allows; and
 - (v) any other insurance policies reasonably required by Hallite from time to time.
- (b) Supplier must ensure that the policies of insurance that it is required to take out under the Purchase Contract to note Hallite's interest as a principal.
- (c) Supplier must provide to Hallite within 48 hours of a request, evidence of the currency of the insurance policies it is required to maintain under this **clause 15** and a copy of the relevant policies.
- (d) Without prejudice to any other right it may have under the Purchase Contract, if Supplier fails to comply with this **clause 15** Hallite may:
- (i) refuse to make payments owed to Supplier under the Purchase Contract until Supplier complies with this **clause 15**; or
 - (ii) take out and maintain any policies of insurance required by this **clause 15** and, at its option, set off payment of any invoice against the expenses incurred in taking out such policies on behalf of Supplier or recover the expenses as a debt payable by Supplier on demand.
- (e) Supplier must ensure any subcontractor engaged by Supplier in relation to the supply of the Goods and Services effects and maintains the insurances, and for the amounts, required by this **clause 15**.

16. Intellectual Property

- (a) Hallite retains the Intellectual Property Rights in any Technical Materials, Hallite Tools and any other materials, data and items provided to Supplier in connection with a Purchase Contract (**Hallite Materials**). Nothing in this document assigns or transfers any Hallite Materials to the

Supplier. Hallite grants the Supplier a personal, non-transferable, non-exclusive, revocable, royalty free licence during the term of a Purchase Contract to use the Hallite IP and Developed IP solely for the purposes of and only to the extent required to perform its obligations under that Purchase Contract and for no other purpose.

- (b) In return for the payment of the purchase price for the Goods and/or Services, Supplier hereby assigns immediately on creation to Hallite, without additional compensation, full and complete title to any Intellectual Property Rights:
 - (i) created or developed by Supplier or on Supplier's behalf in the course of performing its obligations under any Purchase Contract (including any work product arising from performance of the Services); and
 - (ii) without limiting the generality of sub-clause (i), subsisting in any Hallite Materials (and Improvements to any Hallite Materials created by Supplier or on Supplier's behalf in connection with a Purchase Contract),
(Developed IP), including any and all accrued and future rights to take action against third parties for infringement of the Developed IP.
- (c) Any Developed IP will be deemed to be the Confidential Information of Hallite and Supplier must promptly disclose to Hallite any Developed IP, and provide any copies of such Developed IP to Hallite on request.
- (d) Nothing in clause 16(b) assigns or transfers any Supplier Background IP to Hallite.
- (e) Supplier hereby grants to Hallite, its Related Bodies Corporate, and any of their successors, assigns, customers and users of Hallite's products or services (incorporating the Goods and/or Services) (collectively, the **Hallite Beneficiaries**) a non-exclusive, irrevocable, perpetual, worldwide, royalty free and fully paid up licence (including the right to sub-licence) to use, copy, modify and exploit any Supplier Background IP and any other Intellectual Property Rights incorporated in or necessary for the use of any Goods, Services, Developed IP, Hallite Tools and Technical Materials (including Improvements to them) and other materials and items provided to Hallite by or on behalf of Supplier in connection with a Purchase Contract (together, the **"contract items"**), as required for the Hallite Beneficiaries to have the full use and benefit of the contract items. Unless prior agreed by Hallite and specified in a Purchase Contract, no additional fee, charge or royalty is payable by any Hallite Beneficiaries to the Supplier or any third party in order for the Hallite Beneficiaries to use and have the full benefit of the contract items.
- (f) Supplier must obtain (and on request provide to Hallite) any necessary consents from any person (**author**) who has any moral rights as defined in the *Copyright Act 1968* (Cth) (and equivalent rights overseas) in any Developed IP or Supplier Background IP licensed to Hallite, to permit the Hallite Beneficiaries to use any such works in a manner which (but for such consent) would breach the moral rights of any such author.
- (g) Supplier must (and will procure its employees, officers, agents and contractors to) promptly do all things reasonably required by Hallite and execute, procure and deliver to Hallite all assignments and any other documentation required by Hallite to give full effect to this **clause 16**.

17. Confidentiality

- (a) Unless otherwise required by Law, Supplier must keep confidential the terms of the Purchase Contract (including but not limited to prices and these Terms and Conditions) and all confidential information it receives from Hallite or which relates to the Goods, Services or Hallite's business, Intellectual Property Rights or other products (**Confidential Information**).
- (b) Supplier must restrict disclosure of Confidential Information to such of its employees, agents or sub-contractors that need to know the Confidential Information for the purpose of discharging Supplier's obligations to Hallite and must ensure that such employees, agents or sub-contractors have entered into a written agreement to keep the Confidential Information confidential. Supplier must, on written request, return to Hallite (or if directed, permanently destroy) any Confidential Information in its possession or control (including all electronic and other copies).
- (c) Supplier must not make any public announcements or disclosure (including in any advertising or promotion) in relation to the Goods and/or Services, the Purchase Contract or its relationship with Hallite without Hallite's prior written consent.
- (d) The obligations of this **clause 17** continue to apply after the fulfilment of any part of the Purchase Contract or termination or cancellation of the Purchase Contract.

18. Privacy and Credit Reports

- (a) Supplier must at all times comply and do all things necessary to comply with the requirements of the Privacy Act and all other applicable laws as may regulate the collection, storage, use and disclosure of Personal Information.
- (b) In relation to any Personal Information provided by Hallite to Supplier, Supplier must:
 - (i) only use such Personal Information for the purposes for which it was provided to Supplier, or as permitted by Law;
 - (ii) restrict access to any such Personal Information to those of Supplier's personnel who need to access the Personal Information to fulfil Supplier's obligations under the Purchase Contract;
 - (iii) not disclose or permit the disclosure of the Personal Information to any third party, including a third party outside Australia, unless expressly required under the Purchase Contract or otherwise with the written consent of Hallite;
 - (iv) immediately notify Hallite if there is security breach, loss, misuse, interference or unauthorised access, modification or disclosure of any such Personal Information in the power, possession or control of Supplier or any breach by Supplier of the Privacy Act (**Privacy Issue**);
 - (v) take such steps as Hallite reasonably requires to facilitate Hallite's compliance with the Privacy Act or to rectify any Privacy Issue;
 - (vi) procure compliance with this clause 18(b) by any third party to whom Supplier discloses or permits disclosure of the Personal Information.

- (c) Supplier agrees that Personal Information provided by Supplier may be used and retained by Hallite for the following purposes and for other purposes as may be agreed between Supplier and Hallite or required by Law from time to time:
 - (i) the acquisition, use or subsequent sale of the Goods and Services or similar or equivalent goods and services;
 - (ii) analysing, verifying or checking Supplier's credit status and/or compliance with the Purchase Contract in relation to provision of Goods and Services.
- (d) Hallite may give information about Supplier to a credit reporting agency to obtain a consumer credit report about Supplier.

19. Limit of liability

- (a) The maximum liability of Hallite to Supplier as a result of any and all breaches of the Purchase Contract by Hallite will be limited to the liability cap nominated on the Purchase Contract.
- (b) Should a liability cap not be nominated on the Purchase Contract, the maximum liability of Hallite for any and all breaches of the Purchase Contract will be the total price of Goods and/or Services ordered under the Purchase Contract.
- (c) Hallite will in no circumstances be liable to Supplier, whether in contract or tort or any other basis, for any Consequential Loss.

20. Compliance with Laws

- (a) Supplier must comply at all times with all requirements of any Laws of Australia, or of the country of origin of the Goods and/or Services, applying to the Goods and/or Services including, but not limited to:
 - (i) the manufacture, labelling, transportation, importation, exportation, licensing, approval or certification of the Goods and/or Services;
 - (ii) the Laws referred to in **clause 32**; and
 - (iii) all other Laws from which liability may accrue to Hallite from violation.
- (b) Supplier agrees to defend, protect and completely indemnify (including legal expenses on the requisite hourly basis set by Hallite's lawyers) the Indemnified Parties from and against any claim arising from any breach of this **clause 20** by Supplier.

21. Claims

To the extent permitted by Law, any claim that Hallite has breached the Purchase Contract must be brought by Supplier within three months of the alleged breach.

22. Governing Law

These Terms and Conditions and any Purchase Contract is governed by the Law of the State of New South Wales without giving effect to international principles of the conflict of Laws and Supplier and Hallite expressly exclude the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods with respect to sales covered by these Terms and Conditions or a Purchase Contract. Hallite and Supplier submit to the non-exclusive jurisdiction of the Courts of New South Wales.

23. Dispute resolution

- (a) In the case of a dispute between the parties, the following process for resolution will be followed:
 - (i) internal management conference between the parties within 14 days;
 - (ii) mediation within a further 14 days conducted in accordance with Guidelines for Commercial Mediation issued from time to time by the ADC and in force at the date of the dispute;
 - (iii) if the party making the claim remains dissatisfied after the meeting convened under **clause 23(a)(i)**, or at any time during or at the conclusion of any mediation held pursuant to **clause 23(a)(ii)**, that party may then institute proceedings against the other party.
- (b) For the purposes of **clause 23**:
 - (i) the language of the dispute resolution will be English;
 - (ii) the venue of the dispute resolution will be Australia;
 - (iii) each party will bear their own costs and one-half of the costs of any mediation;
 - (iv) each party is entitled to legal representation at all stages; and
 - (v) the process set out in **clause 23(a)** will not exclude the rights of the parties to seek urgent interlocutory relief.
- (c) This **clause 23** does not constitute an arbitration agreement within the meaning of the *Commercial Arbitration Act 2011* (Vic).

24. Assignment

- (a) Hallite is entitled to assign any rights, benefits or duties under the Purchase Contract to:
 - (i) a Related Body Corporate; or
 - (ii) any third party provided that Hallite has reasonably formed the opinion such third party is capable of performing Hallite's obligations under the Purchase Contract,without requiring the consent of Supplier.
- (b) Supplier will not assign or delegate its rights or obligations under the Purchase Contract without the prior written consent of Hallite. For these purposes any change to the directors or shareholders of Supplier from the date of the relevant Purchase Contract will require the prior written consent of Hallite.

25. Rights are cumulative

The rights of Hallite under the Purchase Contract (including these Terms and Conditions) are cumulative and additional to any other rights Hallite may have at Law or in equity.

26. Severability

If any term or condition or part of the Purchase Contract (including these Terms and Conditions) is illegal, unenforceable or invalid, those terms and conditions or part of the terms and conditions are to be treated as removed from the Purchase Contract, but the rest of the Purchase Contract is not affected.

27. Waiver

Hallite will not be deemed to have waived any of its rights or remedies under the Purchase Contract or at Law by allowing any time or indulgence or by not exercising any right or remedy arising out of any default by Supplier.

28. Variation and replacement

- (a) No variation of the Purchase Contract (other than in accordance with **clause 10**) will be of any force unless it is in writing and signed by both parties.
- (b) Hallite may at any time replace or amend these Terms and Conditions, such replacement to be effective from the date specified by Hallite in its notice to Supplier advising of the replacement or amendment (**Effective Date**) and applicable to Goods and/or Services subsequently ordered by Hallite on and from the Effective Date.

29. Further assurances

Supplier must do everything reasonably requested by Hallite to give effect to these Terms and Conditions and any relevant Purchase Contract and the transactions contemplated by them.

30. Record keeping and audits

Supplier must:

- (a) maintain accurate and complete records of, and in connection with, the Goods supplied and the Services performed under the Purchase Contract;
- (b) permit Hallite (or any third party appointed by Hallite) to audit the records of Supplier (including financial records) and the performance of Supplier's obligations against the Purchase Contract;
- (c) provide and ensure that its representatives provide Hallite, or any third party on behalf of Hallite, with all reasonable assistance, including the provision of any information reasonably requested by Hallite or the third party (as the case may be) in relation to such an audit; and
- (d) comply with any reporting requirements notified by Hallite to Supplier from time to time.

31. Sub-contracting

Supplier must not sub-contract the performance of any of its obligations under the Purchase Contract to any other party without the prior written consent of Hallite.

32. Anti-bribery and Anti-Slavery Laws

Supplier must:

- (a) comply with all Laws relating to anti-bribery, anti-corruption, anti-slavery and human trafficking (including the UK Modern Slavery Act 2015) in force from time to time and all policies of Hallite relating thereto as notified to Supplier from time to time and not contravene any such Law or policy;
- (b) promptly notify Hallite if any request or demand for financial or other advantage of any kind is received by Supplier in connection with the provision of the Goods or Services or if any foreign public official is appointed as an officer or employer of or acquires an interest in Supplier;
- (c) have and enforce as appropriate its own policies and procedures to

ensure compliance with this **clause 32**; and

- (d) ensure that any person for whom the Goods or Services are to be provided complies with this **clause 32**.

33. Access and Safety

If Supplier is required to enter the premises of Hallite in order to deliver the Goods or Services:

- (a) subject to **clause 33(b)** and any Laws which cannot be excluded, Hallite will not be responsible for any damage done to Supplier's property or that of Supplier's employees or representatives or for any personal injury sustained by any of Supplier's employees or representatives occurring on Hallite's premises. Supplier unconditionally and irrevocably releases Hallite from such responsibility and agrees to indemnify Hallite against any loss which Hallite or any of its Related Bodies Corporate suffer as a result of any third party bringing an action in respect of such circumstances; and
- (b) **clause 33(a)** will not apply to the extent that any damage or personal injury was caused by Hallite's negligence or wilful recklessness.

34. Notices

Any notice required or permitted to be given by either party to the other under the Purchase Contract shall be in writing addressed to that other party at its principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.