

**Purchase Order Terms and Conditions**

This is an agreement (**Agreement**) between the relevant COLAS entity, namely, COLAS Australia Group Pty Ltd (ABN 11 000 388 161), COLAS Western Australia Pty Ltd (ABN: 99 073 445 324), COLAS Queensland Pty Ltd (ABN: 91 169 872 208), COLAS New South Wales Pty Ltd (ABN: 16 064 662 148) and COLAS Solutions Pty Ltd (ABN: 40 116 254 310) (**COLAS**) that issues the purchase order to which these Terms and Conditions apply (**Purchase Order**) and the entity identified as the supplier in the Purchase Order (**Supplier**).

1 Agreement

1.1 This Agreement comprises the following in the order of precedence (in descending ranking):

- (a) the Purchase Order;
- (b) these Terms and Conditions; and
- (c) any quotation issued by the Supplier, and

to the extent that there is any inconsistency, the inconsistency is to be interpreted in accordance with the order of precedence set out above.

1.2 Unless prior to the date of the Purchase Order the Supplier and COLAS have entered into an agreement which governs or pertains to the supply of the Goods and/or Services specified in the Purchase Order, the Supplier agrees to provide and COLAS agrees to acquire the Goods and/or Services from the Supplier at the Price and on the terms and conditions contained in this Agreement.

1.3 If the Supplier accepts the Purchase Order, the Supplier must send COLAS a written notice confirming its acceptance within 1 Business Day after the Supplier receives the Purchase Order. If the Supplier does not comply with this clause the Supplier is deemed to have accepted this Purchase Order, and the Terms and Conditions contained in this Agreement, when the Supplier supplies the Goods and/or Services to COLAS.

2 Supplier's obligations

The Supplier must:

- (a) act in a lawful, competent, professional and timely manner;
- (b) promptly, diligently and professionally devote sufficient time and attention as is necessary to properly provide the Goods and/or Services in accordance with this Agreement;
- (c) obtain at its expense, any necessary licences, permits, qualifications, registrations and other statutory requirements necessary for the provision of the Goods and/or Services under this Agreement;
- (d) comply, at its own expense, with the requirements of all Applicable Laws in connection with the Goods and/or Services;
- (e) during the course of providing the Goods and/or Services, at its own expense, comply, and ensure that all Personnel comply, with all lawful and reasonable directions of COLAS, including any direction to comply with any of COLAS's policies or procedures and any request to comply with the police check requirement that COLAS may notify the Supplier of from time to time;
- (f) if the Supplier accesses the site occupied or nominated by COLAS, the Supplier must follow COLAS's instructions in respect of accessing or using the site. COLAS may deny any Supplier's Personnel access to the site if it considers in its absolute discretion that the Personnel represent a safety risk. The Supplier is responsible for replacing the Personnel and any delay caused thereof;
- (g) avoid and disclose any potential or actual conflict with COLAS; and
- (h) not, and must ensure that its Personnel do not, do anything which would cause or would be likely to cause:
 - (i) damage to COLAS's business or reputation; or
 - (ii) COLAS to:
 - (A) lose or jeopardise or have conditions imposed in relation to its accreditation, any operating licenses or any Authorisations; or
 - (B) breach any laws or any policies, procedures or directives of a Governmental Agency which are applicable to COLAS.

3 Workplace health and safety

3.1 The Supplier acknowledges that it has obligations under the WHS Legislation to persons that could be affected by the conduct of its business and/or the provision of the Goods and/or Services and undertakes to comply with those obligations.

3.2 Without limiting the Supplier's obligations under this Agreement, the Supplier undertakes to comply with its WHS obligations and warrants that it has systems and procedures in place to ensure that it meets such obligations.

3.3 The Supplier will co-operate with COLAS in respect of work health and safety and will comply with any lawful and reasonable instructions issued by COLAS in respect of work health and safety matters.

3.4 The Supplier must comply with any duties and obligations imposed under any of COLAS's policies or procedures which are relevant to the provision of the Goods and/or Services.

3.5 The Supplier is responsible for:

- (a) notifying COLAS immediately of any notifiable incidents, and complying with all obligations under WHS Legislation in relation to notifiable incidents;
- (b) identifying and assessing any WHS risks or potential WHS risk relating to the provision of the Goods and/or Services; and
- (c) notifying COLAS of the identified risk, in which event COLAS may conduct its own assessment and provide recommendations to address the risk.

4 Equipment

4.1 Subject to clause 4.2, the Supplier must supply all equipment necessary for it to provide the Goods and/or Services in accordance with this Agreement.

4.2 If COLAS makes available equipment for the Supplier to use in the course of providing the Goods and/or Services, the Supplier accepts the equipment as being in good operating condition and agrees that it will pay all costs for repairing the equipment if it is damaged when it is under the Supplier's control or care. The Supplier must not damage the equipment or knowingly use or allow the equipment to be used for any purpose other than that for which the equipment is designed.

5 Provision of the Goods and/or Services

5.1 The Supplier must deliver the Goods (and all relevant manuals, manufacturer's warranties, documents and other information relating to the operation and service of the Goods) and/or provide the Services:

- (a) to or at the location specified in the Purchase Order;
- (b) in accordance with requirements specified in the Purchase Order; and
- (c) by the date specified in the Purchase Order.

5.2 If any details required under clause 5.1 are not specified in the Purchase Order, the Supplier must comply with the reasonable direction from COLAS from time to time.

5.3 The Supplier must:

- (a) promptly, and in any event at least 5 Business Days in advance, notify COLAS of any dispatch date and anticipated delivery date of the Goods;
- (b) at its own expense, arrange the storage, handling, packaging, transport and delivery of the Goods; and
- (c) at its own expense, comply with all relevant health, safety, security and environmental legislation relating to the storage, handling, packaging delivery and transport of the Goods; and
- (d) include with every delivery a detailed docket that includes the Purchase Order number, the item description and quantity as well as the Supplier's contact details.

5.4 In the event the Supplier becomes aware of any circumstances that may cause the delivery of the Goods and/or the provision of the Services to be delayed or may cause the Supplier to not be able to supply the Goods and/or Services, the Supplier must immediately notify COLAS of the delay and COLAS may:

- (a) grant an extension of time;
- (b) cancel the Purchase Order in whole or in part;
- (c) request the Supplier to pay the liquidated damages of 2% of the Price or the amount specified in the Purchase Order for each day or part hereof by which the delivery is delayed. The parties agree that the liquidated damages represents a genuine pre-estimate of COLAS's loss as a result of the delay and is not a penalty; or
- (d) purchase goods and/or services similar to the Goods and/or Services from a third party and the Supplier will provide COLAS with any reasonably requested assistance in sourcing such goods and/or services. If COLAS purchases goods and/or services similar to the Goods and/or Services from a third party at a higher price than the Price, the Supplier will be liable to reimburse COLAS with an amount equal to the difference between the Price and the price specified by the third party.

The parties agree that the remedies in this clause are cumulative and in addition to any other remedy available to COLAS under this Agreement, at law or in equity.

5.5 Delivery of the Goods and/or Services is not deemed as effected until COLAS acknowledges the receipt of the Goods and/or Services in writing. For the avoidance of doubt, COLAS are not deemed to have accepted the Goods and/or Services provided until the inspection, test and assessment of the Goods and/or Services are carried out in accordance with clause 6.1.

5.6 Title and risk to the Goods passes from the Supplier to COLAS on delivery.

6 Inspection, returns and replacement

6.1 COLAS has 10 Business Days after the delivery is effected to inspect and test the Goods delivered and/or assess the Services provided.

6.2 COLAS will notify the Supplier if there is an under or oversupply of the Goods. In the event of an undersupply, the undersupply is treated as delayed or non-supply of the Goods in accordance with clause 5.4. In the event of an oversupply, COLAS must not be charged for the oversupply and may request the Supplier to remove the oversupply immediately or pay for the handling, storage or disposal of the oversupply.

6.3 COLAS will notify the Supplier if any Goods and/or Services are supplied in breach of, or otherwise fail to meet the requirements, warranties or any other provision of this Agreement.

6.4 COLAS may request the Supplier to collect any defective Goods at the Supplier's expense and at the election of COLAS and without limiting any other rights of COLAS under this Agreement or at law, the Supplier must at its expense:

- (a) promptly replace the non-conforming Goods and/or resupply the non-conforming Services;
- (b) promptly repair the non-conforming Goods and/or rectify the non-conforming Services;
- (c) provide a credit to COLAS for the full amount paid by COLAS for the non-conforming Goods and/or Services; or
- (d) refund the full amount paid by COLAS for the non-conforming Goods and/or Services within 7 days of receipt of a demand by COLAS to do so.

6.5 Nothing in this clause 6 will affect the rights of COLAS under clauses 9 and 10.

7 Price, invoicing and set-off

7.1 The Price must be expressed in Australian dollars and is all inclusive and COLAS is not liable for any other charges, levies or fees (including delivery fees) payable on or in respect of the Goods and/or Services.

7.2 The Supplier must not vary the Price unless first obtaining a written approval from COLAS.

7.3 The Supplier must provide to COLAS on provision of the Goods and/or Services an invoice detailing particulars of the actual Price for Products supplied to COLAS in accordance with this Agreement. The Supplier must include the Purchase Order



number on the invoice and must attach to the invoice any supporting documentation reasonably requested by COLAS.

- 7.4 If COLAS disputes any of the items or amounts in an invoice issued by the Supplier, such amounts will not be due and payable until such time as the dispute has been resolved in accordance with clause 14.
- 7.5 Provided that the Supplier provides a valid tax invoice in the format required by the GST Law and in accordance with the requirements set out in this Agreement, COLAS accepts the Goods and/or Services in accordance with clause 6 and does not dispute the invoice, COLAS will pay the amount stated in the invoice no later than 30 days from the first day of the month after the month in which the invoice was received by COLAS.
- 7.6 The Supplier agrees that any amount which may be owing by the Supplier to COLAS on any account whatsoever, may be deducted from any amount which COLAS may be liable to pay the Supplier.

8 GST

- 8.1 Expressions in this clause 8 which are not defined in this Agreement but which are defined in the GST Law have the same meaning as in the GST Law.
- 8.2 Unless otherwise expressly stated, all amounts, prices, values or other sums payable or to be provided under this Agreement are exclusive of GST.
- 8.3 If GST is payable on any supply made under this Agreement:
 - (a) the recipient of the taxable supply must pay to the supplier an amount equal to the GST payable on the taxable supply in addition to and at the same time as payment for the taxable supply is required to be made under this Agreement; and
 - (b) the supplier must give the recipient a tax invoice for the taxable supply.

9 Warranties

- 9.1 The Supplier agrees and warrants:
 - (a) it is validly existing and of good financial standing;
 - (b) it has complete and unrestricted power and authority to enter into this Agreement and provide the Goods and/or Services and perform its other obligations under this Agreement;
 - (c) if it has represented itself to be a corporation, it is validly incorporated, organised and subsisting in accordance with the laws of its place of incorporation;
 - (d) this Agreement constitutes valid legal and binding obligations of the Supplier;
 - (e) it possesses and will maintain, at its sole expense, all licences, accreditation, registrations and permits required by law or as reasonably required by COLAS to provide the Goods and/or Services, including but not limited to any permits or checks that COLAS may reasonably require for access to its premises;
 - (f) the Goods and/or Services provided by the Supplier will be free from faults or defects during the Warranty Period and the Supplier will do all things necessary to assign the benefit of any manufacturer's warranty to COLAS that relates to the Goods provided under this Agreement; and
 - (g) without limiting any other provision of this Agreement, that the consumer guarantees provided under Division 1 of Part 3-2 of the *Australian Consumer Law* will form part of this Agreement, whether or not COLAS is a "consumer" within the meaning of the *Australian Consumer Law* in relation to the supply of the Goods and/or Services.
- 9.2 With respect to the Goods provided by the Supplier, the Supplier warrants:
 - (a) the Goods when delivered to COLAS will be new, of merchantable and/or workmanlike quality and fit for the purpose for which they are intended;
 - (b) the Goods when delivered to COLAS will be in compliance with all Applicable Law, applicable Standards and with the Building Code of Australia where applicable and conform with any specifications set out in the Purchase Order, the Supplier's quotation, this Agreement or as agreed between the parties;
 - (c) where the Supplier uses materials from a manufacturer in providing the Goods, those materials are handled, stored, applied, installed, maintained, finished or otherwise treated in accordance with the proper requirements as stipulated by the manufacturer or any Australian standard;
 - (d) it is the legal and beneficial owner of the Goods and no person other than COLAS holds or is entitled to hold any interest in the Goods; and
 - (e) the provision of the Goods by the Supplier and use of the Goods by COLAS will not infringe the intellectual property rights of any third party.
- 9.3 With respect to the Services provided by the Supplier, the Supplier warrants:
 - (a) it has and its Personnel have the competence and skill to perform the Services;
 - (b) the Services are performed promptly, with due diligence, care, skill and competence, in good faith, in compliance with all Applicable Law, applicable Standards and with the Building Code of Australia where applicable and in accordance with the specifications set out in the Purchase Order, the Supplier's quotation, this Agreement or as agreed between the parties;
 - (c) the provision of the Services by the Supplier and use of the Services by COLAS will not infringe the intellectual property rights of any third party;
- 9.4 The Supplier acknowledges that COLAS enters into this Agreement in reliance on the representations, warranties and promises made by the Supplier to COLAS in this Agreement, including but not limited to those set out in this clause 9.

10 Indemnity

- 10.1 The Supplier indemnifies COLAS and any of its associated companies (Colas Group) and any officers, employees and agents of COLAS and COLAS Group against all loss (including loss of profit and loss of anticipated savings), damages, costs, expenses (including legal costs on a solicitor and own client basis) and any other liabilities whatsoever, including third party claims, which may be suffered or incurred by that

COLAS or a member of COLAS Group arising out of, in connection with or in relation to:

- (a) any act or omission of the Supplier or its Personnel;
- (b) any negligent, wrongful, wilful or reckless act or omission of the Supplier or its Personnel;
- (c) the provision or use of the Goods and/or Services; and/or
- (d) any breach or non-observance by the Supplier of the terms contained or implied in this Agreement including a breach of warranty.

10.2 The Supplier's liability under the indemnity in clause 10.1 will be reduced to the extent to which any action, proceeding, claim or demand arises out of any negligence or other wrongful act or omission of COLAS.

10.3 The Supplier agrees that COLAS Group will be a beneficiary of the rights under this clause 10, and COLAS will be taken to be acting as agent or trustee for or on behalf of COLAS Group and any officers, employees and agents of COLAS Group from time to time in relation to the enforcement of the indemnity under this clause 10.

11 Insurance

- 11.1 The Supplier must effect and maintain the Supplier Insurance at all times during the Term.
- 11.2 If an insurance policy effected and maintained under this clause 11 is a claims made policy, the Supplier must maintain a current policy for at least 7 years after the termination of this Agreement.
- 11.3 On receipt of a written request from a COLAS, the Supplier must provide documentary evidence to COLAS that the Supplier Insurance is current and in force.

12 Termination

12.1 Termination for default

If the Supplier:

- (a) suspends or neglects or fails to promptly, efficiently or safely supply the Goods and/or Services to COLAS;
- (b) fails to supply the Goods and/or Services in a manner in accordance with this Agreement or the Purchase Order;
- (c) neglects or omits to properly carry out any instructions or requirements of COLAS given or made in accordance with this Agreement;
- (d) commits any breach or fails in any respect to comply with any provision of this Agreement, and where such breach or failure is capable of being remedied but has not been remedied within 5 Business Days following the receipt of written notice from COLAS (or such other time as may be agreed between the parties in writing); or
- (e) becomes subject to an Insolvency Event.
- (f) or its Personnel act in any way in breach of clause 15,

then, in any such case, COLAS is entitled to terminate this Agreement by giving written notice to the Supplier of the termination which will be effective immediately.

12.2 Termination by notice

In addition to and without in any way affecting the rights of COLAS under clause 12.1, COLAS may terminate this Agreement for any reason by giving not less than 14 days' written notice to the Supplier.

12.3 Consequences of termination

- (a) Any termination of this Agreement, which is made in accordance with the provisions of this Agreement, will not prejudice the rights of COLAS in respect of any antecedent breach or non-observance of any provision of this Agreement.
- (b) Upon termination or expiry of this Agreement:
 - (i) the Supplier must stop supplying the Goods and/or Services;
 - (ii) the Supplier will cease any reference to or use of the Confidential Information of COLAS and the Supplier must return to COLAS any Confidential Information of COLAS which are in the Supplier's possession or control;
 - (iii) the Supplier must within 5 Business Days of the date of termination of this Agreement return any COLAS's equipment;
 - (iv) if the Agreement is terminated by COLAS in accordance with clause 12.2 and provided that the Supplier is not in default, COLAS will pay the Supplier for the Goods and/or Services provided prior to the termination.
- (c) COLAS is not otherwise liable for any costs of the Supplier in respect of the termination.
- (d) COLAS may set off any amounts the Supplier owes COLAS against any amounts COLAS owes to the Supplier at the date of termination.

13 Confidentiality

13.1 The Supplier acknowledges and agrees that:

- (a) in connection with this Agreement, COLAS may disclose or provide Confidential Information to it or it may otherwise become aware of or come to possess Confidential Information relating to COLAS; and
- (b) the Supplier does not acquire any right, title or interest in or to any of the Confidential Information referred to in clause 13.1(a).

13.2 The Supplier acknowledges that the terms of this Agreement are confidential and should be treated in accordance with this clause 13.

13.3 Subject to this clause 13, the Supplier must:

- (a) keep all Confidential Information secret and confidential and not disclose it to any other person; and
- (b) only use Confidential Information for the purposes of this Agreement.

13.4 The Supplier may disclose Confidential Information to the extent that:

- (a) it has obtained written approval from COLAS for the disclosure;



- (b) the relevant Confidential Information is already in the public domain, other than as a result of any breach of any obligation of confidentiality; or
- (c) it is compelled by law or by order or direction of any competent authority to disclose Confidential Information, provided that (where permitted by the disclosure requirement) it must give notice to COLAS of the disclosure requirement and the Supplier must comply with any reasonable direction of COLAS to prevent or minimise such disclosure.

13.5 Notwithstanding the foregoing, the Supplier may disclose Confidential Information to its employees, on a need to know basis, where the disclosure is essential to enable the performance of their duties in connection with this Agreement, and only after such employees have been advised of the confidential nature of such information and agreed to be bound by obligations of confidentiality to COLAS, at least as restrictive as those set out in this Agreement.

13.6 The Supplier acknowledges that COLAS may disclose Confidential Information disclosed to it by the Supplier to a member of COLAS Group.

14 Dispute resolution

14.1 Before commencing litigation in respect of any dispute relating to this Agreement, the relevant parties must attempt to resolve the dispute in accordance with the following:

- (a) a party claiming that a dispute has arisen, must give written notice to the other party specifying the nature of the dispute;
- (b) following receipt of the notice under clause 14.1(a), the parties must seek to resolve the dispute by consultation between the Supplier Representative and COLAS Representative;
- (c) if the dispute is not resolved under clause 14.1(b) within 15 Business Days or any other period agreed to in writing by the relevant parties then the relevant parties must refer the matter to the parties' respective chief executive officers or their delegates;
- (d) if the dispute is not resolved under clause 14.1(c) within 15 Business Days or any further or any other period agreed to in writing by the parties then the parties must refer the matter to the ADC for mediation;
- (e) the mediation must be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the dispute is referred to ADC which set out the procedures to be adopted, the process of selection of the mediator and the costs involved; and
- (f) if the dispute has not settled within 20 Business Days after appointment of the mediator, or any other period agreed to in writing by the parties, either party may commence litigation in relation to the relevant dispute.

14.2 Nothing in this clause will prevent a party from seeking urgent injunctive or interlocutory relief.

15 Anti-Slavery

15.1 The Supplier agrees and warrants it will comply with all Applicable Laws in its provision of the Goods and/or Services, including in respect of any third party materials used in the provision of the Goods and/or Services by the Supplier.

15.2 Without limiting clause 15.1, the Supplier shall not knowingly provide any Goods and/or Services or use any raw materials which have been sourced from any manufacturers, suppliers, producers, etc. which engage in practices of 'slavery', 'servitude' and/or 'forced labour' as those terms are defined in the *Criminal Code Act 1995* (Cth).

15.3 The Supplier agrees to provide all reasonable assistance, documentation and information as may be reasonably requested by COLAS in order to enable COLAS to fulfil its responsibilities and requirements (including but not limited to any reporting requirements) under the *Modern Slavery Act 2018* (Cth) and any associated COLAS policies.

16 General

16.1 Force majeure

A party is not to be held liable for any failure to observe its obligations under this Agreement where such failure is wholly or substantially due to strikes, industrial action, war, blockades or governmental interference or request or any act of God provided that in any of these circumstances the party seeking to rely on the benefit of this clause must use its best endeavours to put itself in a position where it is able to meet its obligations under this Agreement as quickly as possible.

16.2 Claims, liens and encumbrances

- (a) The Supplier agrees that it will not make any claim for or permit or suffer any claim by a third party for a lien or encumbrance over the Goods.
- (b) Furthermore, without limiting any representations and warranties under any Applicable Laws, and in addition to any other warranties agreed to in this Agreement, the Supplier warrants and it is a condition of the Agreement that no part of the supply of the Goods is, or will become, subject to a security interest which is registered on the Personal Property Securities Register being a register maintained pursuant to the *Personal Property Securities Act 2009* (Cth) (**Register**).
- (c) Notwithstanding clauses 16.2(a) and 16.2(b), if the Supplier registers or causes or permits the registration of a financing statement on the Register in respect of any Goods supplied under this Agreement, then as soon as practicable (but no later than within 20 Business Days) of a request by COLAS the Supplier will take all necessary steps to remove such financing statement, and give COLAS evidence that it has been removed.

16.3 Notices

- (a) A notice given under this Agreement must be in writing and signed by or on behalf of the sender addressed to the recipient and:
 - (i) delivered by personal service;
 - (ii) sent by pre-paid mail; or
 - (iii) transmitted by e-mail,

to the recipient's address set out in the Purchase Order as applicable.

(b) A notice given to a person in accordance with this clause is treated as having been given and received:

- (i) if delivered in person, on the day of delivery;
- (ii) if sent by pre-paid mail within Australia, on the third Business Day after posting;
- (iii) if sent by pre-paid airmail to an address outside Australia or from outside Australia, on the fifth Business Day (at the address to which it is posted) after posting; and
- (iv) if transmitted by email, on the day of transmission, provided that the sender does not receive an automated notice generated by the sender's or the recipient's email server that the email was not delivered.

(c) A party may change its contact details by giving notice of that change to the other party.

(d) If the receipt of a notice pursuant to clause 16.3(b) is after 4.00 pm (local time) on a day in which business generally is carried on in the place to which the notice is sent, the notice will be deemed to have been received at the commencement of business on the next Business Day at that place.

16.4 Further assurance

Each party must do and perform all such other acts matters and things as may be necessary or convenient to implement the provisions of this Agreement so as to give effect to the intentions of the parties as expressed in this Agreement.

16.5 Relationship of the parties

Nothing in this Agreement is to constitute or be deemed to constitute a partnership among the parties or any party as agent for another for any purpose. No party will have authority to bind another or contract in the name of another in any way or for any purpose.

16.6 Waiver and consents

- (a) No failure on the part of a party to exercise, or delay on its part in exercising, any of the rights or remedies provided by this document or by law operates as a waiver of them. Any single or partial exercise of any of the rights or remedies does not preclude any further or other exercise of such right or remedy or the exercise of any other of the rights or remedies.
- (b) Any waiver or consent by a party is effective only if it is in writing signed by or on behalf of that party and then only to the extent expressly stated in the writing and in the specific instance and the purpose for which it is given.

16.7 Use of COLAS Name and Logo

The Supplier must not use the names, trademarks, logos or any other intellectual property rights of COLAS or any Member of COLAS Group including in any marketing, media, promotional or other materials without the prior written consent of COLAS.

16.8 Remedies

- (a) The rights and remedies contained in this Agreement are cumulative and are not exclusive of any rights and remedies provided by law.
- (b) Unless otherwise expressly provided in this Agreement, any right or remedy which may be exercised, or any determination which may be made, under this Agreement by COLAS may be exercised or made (or declined to be exercised or made) in the absolute discretion of COLAS who is not under any obligation to do so or to give reasons for its decision.

16.9 Whole agreement

- (a) The contents of this Agreement record the entire agreement between the parties in relation to its subject matter. Subject to clause 1.2, it supersedes all previous negotiations, understandings or agreements in relation to the subject matter.
- (b) If there is any inconsistency, conflict, ambiguity or discrepancy within any of the documents forming this Agreement, then the provision which imposes a greater or higher requirement, standard, level of service or scope on the Supplier will prevail.
- (c) No modification of this Agreement is to be binding unless it is in writing, expressly makes reference to this Agreement and is signed by or on behalf of each party.
- (d) The Supplier agrees that its standard terms and conditions of supply do not apply to COLAS and that any terms and conditions that may be printed on any invoice, consignment notes or other delivery documents issued by the Supplier to COLAS do not apply to COLAS regardless of whether or not they have been endorsed by COLAS.
- (e) Notwithstanding the expiration or termination of this Agreement, it is acknowledged and agreed that those rights and obligations which by their nature are intended to survive such expiration or earlier termination shall survive, including, without limiting the provisions in clauses 9 (Warranties), 10 (Indemnity), 11 (Insurance), 12.3 (Consequences of Termination), 13 (Confidentiality), 14 (Dispute Resolution), 16.3 (Notices), 16.9 (Whole Agreement), and 16.12 (Governing Law).

16.10 Invalidation

If any part of this Agreement is for any reason declared invalid or unenforceable, the validity of the remaining portion is not affected and is to remain in full effect as if this document had been signed with the invalid portion eliminated.

16.11 Assignment and subcontracting

- (a) The Supplier must not assign or novate the benefit of, or its obligations under, this Agreement without the prior written consent of COLAS.
- (b) The Supplier must not subcontract any of its rights or obligations under this Agreement without the prior written consent of COLAS and subject always to clause 16.11(c).
- (c) For the avoidance of doubt, the Supplier will continue to be bound by, and responsible for performance of, its obligations under this Agreement despite that part or all of it may have been subcontracted under clause



16.11(b) and the Supplier shall indemnify COLAS for the acts and omissions of the subcontractor.

- (d) COLAS may assign or novate its rights and obligations under this Agreement to any Member of COLAS Group.
- (e) Where any Goods provided under this Agreement, or any part thereof, is not manufactured by the Supplier, the supply of such Goods, or part thereof, shall be treated for the purposes of this Agreement as a subcontract under this Agreement and the Supplier shall remain liable and responsible for this third party goods, in accordance with the provisions of this Agreement.

16.12 Governing law

The contents of this Agreement, its meaning and interpretation and the relationship of the parties are to be governed by the laws of the state or territory in which COLAS is located. The parties submit to the jurisdiction of the courts of that state or territory.

17 Definitions and interpretation

17.1 Definitions

The following words have these meanings in this document:

ADC means the Australian Disputes Centre.

Applicable Laws means any acts, regulations, ordinances, by-laws, permits relating to COLAS, the Supplier, or the Goods and/or Services.

Authorisation means any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit authority or exemption by or with a Governmental Agency.

Business Day means a day on which the banks are open for business in the place in which COLAS is located, other than a Saturday, Sunday or public holiday in such city.

COLAS Group means:

- (a) COLAS; and
- (b) any:
 - (i) Related Body Corporate (as defined in the *Corporations Act 2001* (Cth));
 - (ii) joint venture; or
 - (iii) trust,
 - which is controlled, associated or affiliated with COLAS.

and **Member of COLAS Group** means each of them.

Confidential Information means:

- (a) all oral or written information, data, intellectual property, knowledge, experience and other information relating to COLAS, or any Member of COLAS Group (and any information, materials or analysis derived from, containing or reflecting such information), whether of a financial, technical, scientific, technological, marketing, sales or legal nature and whether disclosed or acquired directly or indirectly before or after the date of this Agreement;
- (b) information about the Goods and/or Services and the existence and contents of any document, agreement, meeting or discussions between the parties about the supply of the Goods and/or Services; and
- (c) all information made available by or on behalf of COLAS which by its nature is confidential or the Supplier knows, or ought to know, is confidential.

COLAS Representative means the person described as COLAS representative in the Purchase Order and any replacement of that person notified by COLAS to the Supplier from time to time.

Goods means the goods to be provided by the Supplier as specified in the Purchase Order.

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

GST means Goods & Services Tax as provided by the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended or replaced from time to time and also includes any associated legislation and delegation.

Insolvency Event means the occurrence of any one or more of the following events in relation to any party to this Agreement:

- (a) a meeting has been convened, resolution proposed, petition presented or order made for the winding up of that party;
- (b) a receiver, receiver and manager, provisional liquidator, liquidator, or other officer of the Court, or other person of similar function has been appointed in relation to all or any material asset of the party;
- (c) a security holder, mortgagee or charge has taken attempted or indicated an intention to exercise its rights under any security of which the party is the security provider, mortgagor or charger; or
- (d) an event has taken place with respect to the party which would make, or deem it to be, insolvent under any law applicable to it.

Personnel means in relation to a person, any officer, employee, contractor or agent of that person.

Price means the price specified in the Purchase Order.

Services means the services to be provided by the Supplier as specified in the Purchase Order.

Standards mean, with respect to the Goods or the supply of the Goods, any Australian Standards and, to the extent that they are not inconsistent with any Australian Standards, any ISO Standards that may be applicable, including without limitation, any such standards which may be specified from time to time by COLAS.

Supplier Insurance means:

- (a) public liability insurance policy with no less than A\$20 million for any one occurrence and in the annual aggregate;
- (b) products liability insurance policy with no less than A\$20 million for any one occurrence and in the annual aggregate;

(c) professional indemnity insurance policy with no less than A\$20 million for any one claim and in the annual aggregate if requested by COLAS;

(d) workers Compensation Insurance in accordance with Applicable Laws; and

(e) any other insurance policy as requested by COLAS from time to time.

Supplier Representative means the person described as the supplier representative in the Purchase Order and any replacement of that person notified by the Supplier to COLAS from time to time.

WHS Legislation means the *Work Health and Safety Act 2011* (Cth) and the corresponding WHS law within the meaning of section 4 of this Act and their regulations and other statutory instruments, which are applicable to COLAS or the provision of the Goods and/or Services by the Supplier.

17.2 Interpretation

(a) In this Agreement unless the contrary intention appears:

- (i) a reference to this Agreement includes any variation or replacement of it which has been agreed in writing by the parties;
- (ii) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements or any of them;
- (iii) words in the singular include the plural and vice versa;
- (iv) a reference to any one gender includes each other gender (as the case may require);
- (v) the word 'person' includes a firm, corporation, body corporate, unincorporated association or any governmental authority;
- (vi) a reference to a person includes a reference to the person's executors, administrators, legal personal representatives, successors and permitted assigns;
- (vii) an agreement on the part of, or in favour of, two or more persons binds or is for the benefit of them or any one or more of them jointly and severally;
- (viii) a reference to a party means a person who is named as a party to, and is bound to observe the provisions of, this Agreement.

(b) All headings in this Agreement have been inserted for the purpose of ease of reference only. They do not affect the meaning or interpretation of it.

(c) Where an obligation is imposed on the Supplier in this Agreement, that obligation will be deemed to include an obligation to ensure that no act, error or omission on the part of the Supplier's employees, agents or contractors occurs, which will prevent the discharge of the Supplier's obligation.

(d) A reference to dollars or \$ is to an amount in Australian currency.