

TERMS AND CONDITIONS OF PURCHASE – TRIVANTAGE GROUP OF COMPANIES

The following Terms and Conditions govern all Purchase Orders placed by Trivantage and will be incorporated into each Contract entered into between Trivantage and the Supplier.

1. Definitions.

In these Terms and Conditions:

- (a) “**Approval**” includes any approval, authorisation, certificate, consent, determination, exemption, licence or permit of any Authority;
- (b) “**Authority**” means any government department, local government, government or statutory authority or agency or any other party which has a right to impose a requirement on, or whose consent is required, in relation to the Supply;
- (c) “**Business Day**” means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in Victoria, Australia or 27, 28, 29, 30 or 31 December;
- (d) “**Chain of Responsibility**” means chain of responsibility as that concept is enshrined in the Heavy Vehicle National Law;
- (e) “**Claim**” includes any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise;
- (f) “**Completion Date**” means the date specified in the Purchase Order for completion of the Services (if any) by the Supplier;
- (g) “**Confidential Information**” means any information which a party gives to another party under or in connection with the Contract that is not in the public domain and is confidential or proprietary in nature;
- (h) “**Contract**” has the meaning given to it in **clause 3(b)**;
- (i) “**Delivery Date**” means the date specified in the Purchase Order for the delivery of the Goods (if any) by the Supplier;
- (j) “**Delivery Point**” means the site specified in the Purchase Order for the delivery of Goods by the Supplier;
- (k) “**Goods**” means the goods (if any) that are specified in the Purchase Order to be provided to Trivantage by the Supplier;
- (l) “**GST**” means the tax payable on taxable supplies under the GST Law;
- (m) “**GST Law**” has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (n) “**Heavy Vehicle National Law**” means the road safety regime contained in the *Heavy Vehicle National Law Application Act 2013* (Vic) and related State or Territory legislation;
- (o) “**Indemnified Parties**” has the meaning given in **clause 12(b)**;
- (p) “**Insolvency Event**” means any of the following in respect of one of the parties:
 - (i) the party disposes of the whole or part of its assets, operations or business other than in the ordinary course of business;
 - (ii) the party ceases to carry on business or is deregistered;
 - (iii) the party ceases to be able to pay its debts as they become due;

- (iv) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, an administrator or other like person to the whole or part of a party's assets, operations or business;
- (v) any step is taken by a mortgagee to take possession or dispose of the whole or part of a party's assets, operations or business;
- (vi) any step is taken to enter into any arrangement between a party and its creditors;
- (vii) where the party is a partnership, any step is taken to dissolve that partnership or a partner die; or
- (viii) where the party is a person, a judgement is entered against the party in any court in any jurisdiction, the party becomes the subject of any bankruptcy petition or the party commits and act of bankruptcy or is made bankrupt.
- (q) **"Insurances"** has the meaning given in **clause 11(a)**;
- (r) **"Ipso Facto Law Reform"** means the law reform outlined in the *Corporations Amendment (Stay on Enforcing Certain Rights) Regulations 2018* (Cth) which prevents a party from enforcing a provision to terminate or amend a contract because the counterparty enters into voluntary administration, receivership or a scheme of arrangement to avoid being wound up in insolvency;
- (s) **"Law"** means any act, bill, regulation, ordinance, proclamation, permit, approval, by-law or statutory instrument or similar;
- (t) **"Legislative Requirement"** includes:
 - (i) Laws: and
 - (ii) certificates, licences, consents, permits, approvals or requirements of any Authority, including any fees or charges payable for any of these;
- (u) **"List Price"** means the list price published by the Supplier in relation to the provision of Goods or Services;
- (v) **"Notice"** has the meaning given to it in **clause 24(a)**;
- (w) **"Payment Date"** means, unless otherwise specified in the Contract or agreed in writing by the parties, 60 days following the end of the month of receipt of invoice;
- (x) **"Price"** means the price for Goods or Services specified in the Purchase Order;
- (y) **"Personal Information"** has the meaning given in the Privacy Law, and **"Privacy Law"** means the *Privacy Act 1988* (Cth), the Australian Privacy Principles in that Act and any other Australian legislation affecting the collection, use and handling of information such as Personal Information;
- (z) **"Personnel"** means in relation to a party, that party's employees, agents, consultants and subcontractors and the employees of its agents, consultants and subcontractors;
- (aa) **"Purchase Order"** means a purchase order issued by an authorised officer of Trivantage to the Supplier for the Supply;
- (bb) **"Related Body Corporate"** has the same meaning as in the *Corporations Act 2001* (Cth);
- (cc) **"Retention Amount"** has the meaning given in clause 21;
- (dd) **"Services"** means the services (if any) that are specified in the Purchase Order to be provided to Trivantage by the Supplier;
- (ee) **"Specific Contract"** means a formal written agreement executed by Trivantage and the Supplier for Supply by the Supplier for a specific project, whether or not that agreement includes subject matter other than Supply;
- (ff) **"Specification"** means any specification for Goods or Services incorporated in the Purchase Order or otherwise forming part of the Contract;

- (gg) **“Supply”** means the supply of Goods to Trivantage, or the provision of Services to Trivantage, as relevant;
- (hh) **“Supplier”** means the supplier of the Goods and/or provider of the Services identified in the Purchase Order;
- (ii) **“Terms and Conditions”** means the terms and conditions set out in this document;
- (jj) **“Trivantage”** means the member of the Trivantage Group in whose name the Purchase Order is issued;
- (kk) **“Trivantage Group”** means Trivantage Group Pty Ltd ACN 132 756 551 and each of its Related Bodies Corporate;
- (ll) **“Trivantage IP”** has the meaning given in **clause 13(c)**; and
- (mm) **“Warranty Period”** means a period of 24 months (or such other period as stated in the Contract) from the date of delivery of the Goods and/or the date of completion of the Services.

2. Interpretation.

- (a) In the Contract, headings and bold text are for ease of reference only and do not affect the interpretation of this agreement and, unless the context otherwise requires:
 - (i) the singular includes the plural and vice versa;
 - (ii) another grammatical form of a defined word or expression has a corresponding meaning;
 - (iii) a reference to a clause, paragraph or schedule is to a clause or paragraph of or schedule to the Contract and a reference to the Contract includes any schedule or annexure;
 - (iv) a reference to a document or instrument, includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - (v) subject to **clause 24**, a reference to time is to Victorian time;
 - (vi) a reference to a party to the Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
 - (vii) a reference to a person includes a natural body, partnership, body corporate, association, governmental or local authority or agency or other entity;
 - (viii) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (ix) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and
 - (x) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Contract or any part of it.
- (b) If a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed, or the event must occur on or by the next Business Day.

3. Application of these Terms and Conditions.

- (a) Unless:
 - (i) Trivantage otherwise agrees in writing; or
 - (ii) Trivantage and the Supplier have executed a Specific Contract for the relevant purchase of Goods or Services,the Terms and Conditions apply to every Purchase Order, and acceptance of a Purchase Order by the Supplier is deemed acceptance that these Terms and Conditions apply to, and govern the purchase of, the Goods or Services.

(b) The Terms and Conditions, together with the Purchase Order and any other documents expressly incorporated into the Purchase Order constitute the entire agreement between Trivantage and the Supplier with respect to any Purchase Order (**Contract**).

(c) To the extent of any inconsistency, unless expressly agreed in writing to the contrary, the Contract must be interpreted according to the following hierarchy, in descending order of priority:

- (i) Purchase Order;
- (ii) Terms and Conditions; and
- (iii) any other incorporated documents.

All prior negotiations, proposals, previous dealings, correspondence, trade custom and/or trade usage are superseded by and will not affect the interpretation of the Contract.

(d) Any purported incorporation of other standard terms by the Supplier is void and of no effect, unless specifically identified in the Contract.

4. Purchase Orders.

(a) Trivantage may submit a Purchase Order to the Supplier from time to time, in its absolute discretion.

(b) If Trivantage submits a Purchase Order to the Supplier, the Supplier may accept or reject the Purchase Order.

(c) A Purchase Order is accepted by the Supplier when:

- (i) the Supplier gives Trivantage written notice that it accepts the Purchase Order;
- (ii) the Supplier does not give Trivantage written notice of rejection of the Purchase Order by 4.00pm on the 2nd Business Day after receipt of the Purchase Order (not counting the date of receipt of the Purchase Order); or
- (iii) the Supplier commences delivery of the Goods, or performance of the Services, identified in the Purchase Order,

whichever occurs first.

5. Delivery, Acceptance and Title of Goods.

(a) The Supplier must deliver the Goods to the Delivery Point by the Delivery Date (or earlier with Trivantage's prior written consent).

(b) The Supplier must ensure that the packaging, labelling and transportation of the Goods:

- (i) complies with the delivery and packaging instructions in the Contract;
- (ii) complies with all applicable Legislative Requirements and, where applicable, appropriate Australian and other standards; and
- (iii) is done in such a way as to prevent damage during transportation.

(c) Each delivery must be accompanied by a delivery note, including the Purchase Order number, the date and location of the delivery and the detailed contents of the delivery.

(d) The Supplier must notify Trivantage immediately if the Supplier becomes aware that the Goods (or part of the Goods) will not be delivered to the Delivery Point by the Delivery Date. Trivantage will not accept any partial delivery of Goods, or partial fulfilment of the Purchase Order, unless such variation is agreed to in writing by Trivantage. If the Goods are not delivered in full to the Delivery Point by the Delivery Date or any alternative date agreed by Trivantage, Trivantage may, without prejudice to any other remedy available to Trivantage, immediately terminate the Contract by written Notice to the Supplier.

(e) Title to the Goods will pass from the Supplier to Trivantage upon the first to occur of:

- (i) delivery at the Delivery Point;

- (ii) payment of any deposit for the supply of the Goods; or
 - (iii) payment to the Supplier of the Price for the Goods.
- (f) Risk in the Goods will pass from the Supplier to Trivantage upon the unloading of the Goods following delivery at the Delivery Point.
- (g) Prior to accepting the Goods, Trivantage may reject the Goods if Trivantage (acting reasonably) considers any of the Warranties are untrue or have been breached or the Goods do not otherwise comply with the terms of the Purchase Order. Trivantage accepts the Goods if:
- (i) Trivantage gives the Supplier written notice that the Goods have been accepted (but signing for delivery does not constitute acceptance);
 - (ii) Trivantage has not rejected the Goods within 20 Business Days from the date of receipt at the Delivery Point; or
 - (iii) Trivantage uses the Goods in a manner that materially changes their condition.
- (h) Trivantage's acceptance of the Goods will not preclude or prejudice any rights, powers or remedies Trivantage may have as a result of a breach of any warranty or any other provision of the Contract.

6. Performance of Services.

The Supplier must complete the Services on or before the Completion Date and must perform the Services in accordance with the Contract, including any Specifications or instructions.

7. Price.

- (a) The Supplier will provide the Supply for the Price, and payment of the Price by Trivantage is subject to the Supplier completing the Supply in accordance with the Contract.
- (b) Unless otherwise stated, the Price includes:
- (i) in relation to Goods, all freight costs, charges for packing, insurance, and packaging, and all other charges payable in connection with the sale of Goods;
 - (ii) in relation to Services, all costs and expenses associated with the provision of the Services; and
 - (iii) all taxes (except GST), duties, imposts and levies payable in accordance with the Legislative Requirements of the relevant jurisdiction.
- (c) If the Price is based on a List Price, whether or not Trivantage is entitled to a discount on the List Price, the Supplier must give Trivantage not less than 2 months prior written notice of any increase to the List Price. In any event, unless the Contract provides otherwise, no increase in the List Price will affect the Price stated in the Purchase Order.
- (d) Despite **clause 7(c)**, the Price will not be subject to variation by the Supplier unless the Contract expressly states otherwise, or unless otherwise agreed by the parties in writing.

8. Invoicing and Payment.

- (a) Subject to **clause 8(c)**, the Supplier must issue a valid tax invoice to Trivantage only at or after the completion of the Supply in accordance with the Contract.
- (b) All tax invoices referred to in **clause 8(a)** must be in the form required under the GST Law and must:
- (i) be issued to the contact person nominated by Trivantage in the Purchase Order;
 - (ii) include the Purchase Order number;
 - (iii) include a description of the Goods and/or Services;
 - (iv) if Goods, include the quantity of Goods and date of delivery of the Goods;
 - (v) if Services, include the date of performance of the Services; and

(vi) be dated the date the invoice is sent to Trivantage.

- (c) If the Price is to be paid in instalments, the Supplier must issue the tax invoices in accordance with the method or timeframe specified in the Contract.
- (d) Unless otherwise specified, amounts payable under the Contract do not include GST. Trivantage is not obliged to pay GST to the Supplier in respect of Goods and/or Services unless a valid tax invoice has been issued.
- (e) Provided the Supplier has issued a valid tax invoice, Trivantage will pay the amount due under the invoice no later than the Payment Date. If the Payment Date is on a day that is not a Business Day, payment must be made on the next Business Day. The amount which will be paid by Trivantage is the amount Trivantage considers to be payable under the Contract. This may not necessarily be the same as the amount claimed by the Supplier.
- (f) Where Trivantage disputes the amount claimed by the Supplier in the tax invoice:
 - (i) Trivantage will pay the undisputed portion owing under the tax invoice (if any);
 - (ii) the parties must attempt to resolve the dispute in accordance with **clause 25**.
 - (iii) if the resolution of the dispute determines that Trivantage must pay an amount to the Supplier, Trivantage will pay the outstanding amount; and
 - (iv) the parties continue to be bound by their obligations under the Contract.
- (g) Trivantage may deduct from an amount payable to the Supplier under the Contract any amount that is, or in the opinion of Trivantage is likely to become, payable by the Supplier to Trivantage under the Contract or otherwise.
- (h) Payments by Trivantage are on account only and do not evidence Trivantage's acceptance of the Goods or the Services.
- (i) Trivantage is not obliged to pay any invoice which is received by Trivantage more than 90 days after the date of Delivery of the Goods and/or completion of performance of the Services.

9. Inspection.

- (a) The Supplier must, on reasonable notice, provide Trivantage with access to its premises, or any other site at which the Goods are being manufactured or stored or the Services are being carried out, at all reasonable times for the purpose of inspecting any activities connected with the Supply of Goods or Services.
- (b) Trivantage may reject any Goods or Services which an inspection under **clause 9(a)** reveals do not comply with the Contract, upon which rejection Trivantage may, at its election and without prejudice to any other remedy available to it, either:
 - (i) require the Supplier to immediately undertake the Supply the subject of the rejection in proper compliance with the Contract; or
 - (ii) immediately terminate the Contract.

10. Warranties and Defects.

- (a) The Supplier warrants, for the duration of the Warranty Period, that the Goods and/or Services the subject of the Supply (as relevant) will:
 - (i) be free from defects in design, performance, materials and workmanship;
 - (ii) conform to all Specifications contained in the Contract;
 - (iii) be fit for the purposes made known to the Supplier by Trivantage;
 - (iv) be manufactured or performed expeditiously and in a proper and workmanlike manner;

- (v) not infringe any third party intellectual property rights;
 - (vi) be free from all mortgages, charges, encumbrances, liens and other third party rights or claims; and
 - (vii) comply with all Legislative Requirements in the jurisdiction in which they are supplied.
- (b) The Supplier must ensure that Trivantage obtains the benefit of warranties provided by manufacturers of the Goods or of materials or other components which are used in the performance of Services where ownership of those components or materials ultimately vests in Trivantage.
- (c) If the Supplier breaches any of the warranties under **clause 10(a)** during the Warranty Period, the Supplier must, at Trivantage's option (where appropriate):
- (i) repair the Goods;
 - (ii) replace the Goods;
 - (iii) re-perform the Services; or
 - (iv) refund Trivantage the amount of the Price paid in respect of the relevant Goods or Services, within such period as Trivantage may reasonably direct, upon which time the Warranty Period will recommence in respect of those Goods or Services.
- (d) If the Supplier fails to rectify a breach of warranty in accordance with **clause 10(c)**, or otherwise fails to comply with the Contract, Trivantage may, without prejudice to any other remedy available to Trivantage, immediately terminate the contract.
- (e) Without limiting **clauses 10(c) and 10(d)**, if any Goods supplied to Trivantage fail to meet the Specifications under the Contract, or are otherwise damaged or defective, Trivantage reserves the right to reject the Goods within a reasonable time after becoming aware of such an issue, despite any prior acceptance of or payment for the Supply.

11. Insurance.

- (a) Without limiting the Supplier's liability under the Contract, the Supplier must effect and maintain, at its own cost:
- (i) workers' compensation or employers' liability insurance in accordance with the Legislative Requirements covering all claims and liabilities arising from any accident or injury to any person employed by the Supplier;
 - (ii) public and product liability insurance with a limit of liability not less than \$20,000,000 for each and every claim, covering legal liability for:
 - (A) death of, or bodily injury (including disease or illness) to, any person; and
 - (B) loss of, or damage to, property,arising from or in connection with the performance of the Supplier's obligations under the Contract;
 - (iii) if the Contract includes the supply of professional services, professional indemnity insurance, on a claims incurred basis, with a limit of liability not less than \$5,000,000 for each and every claim;
 - (iv) for any motor vehicles to be brought onto Trivantage's site, third party property damage motor vehicle insurance with a limit of liability not less than \$10,000,000 for each and every claim;
 - (v) insurance for the Goods and/or Services up to the time they have been delivered, performed or installed (whichever occurs last), for an amount not less than their replacement value.
- (collectively, **Insurances**)
- (b) All Insurances must be placed with a reputable insurer or insurers on terms and conditions consistent with prudent risk management.
- (c) The Supplier must:

- (i) ensure that the insurances required under clauses 11(a)(i), 11(a)(ii), 11(a)(iv) and 11(a)(v) are maintained until completion of the Supply, and that any insurance required under clause 11(a)(iii) is maintained until 6 years after completion of the Supply;
- (ii) unless prevented by Law, ensure that the Insurances maintained by the Supplier note the interests of Trivantage under the Contract (except in the case of professional indemnity insurance);
- (iii) upon Trivantage's request, provide Trivantage with certificates of currency with respect to these Insurances; and
- (iv) ensure that any subcontractors appointed to perform any of the Supplier's obligations under the Contract maintain the Insurances referred to in clause 11(a).

12. Liability and Indemnity.

- (a) Nothing in the Contract excludes, restricts or modifies any terms, conditions or warranties or a party's liability for them which are imposed or implied by any statute, including the Competition and Consumer Act 2010 (Cth), and which by statute cannot be excluded, restricted or modified. Limitations and exclusions are made only to the extent a party may legally do so.
- (b) The Supplier agrees to indemnify and will keep indemnified Trivantage and Trivantage's Personnel (**Indemnified Parties**) against all Claims whether incurred by or awarded against an Indemnified Party arising from or as a result, whether directly or indirectly, of:
 - (i) injury or death to any of the Supplier's Personnel;
 - (ii) damage to or destruction of any property belonging to the Supplier or in the Supplier's possession or under the Supplier's control;
 - (iii) Trivantage's inability to meet its obligations to a third party as a result of the Supplier failing for any reason to perform its obligations under the Contract;
 - (iv) any damage to or destruction of any property (including the Goods or any property of any Indemnified Party) or injury to or death of any person (including Trivantage's Personnel) to the extent that it is caused by any negligent or unlawful act or omission or wilful misconduct of the Supplier or any of its Personnel or a breach of the Contract by the Supplier;
 - (v) a failure by the Supplier or the Supplier's Personnel to comply with any Legislative Requirement; and
 - (vi) without limiting **clauses 12(b)(i) to 12(b)(v)**, a breach by the Supplier or the Supplier's Personnel of any of the Supplier's obligations under the Contract, or the negligence, fraud or wilful misconduct of the Supplier or the Supplier's Personnel or of any other person for which the Supplier is vicariously liable, in connection with the performance of the Contract,except to the extent the Claim arises as a direct result of the negligent or unlawful act or omission or wilful misconduct of an Indemnified Party or a breach of the Contract by Trivantage.
- (c) To the maximum extent permitted by Law, Trivantage will not be liable to the Supplier for any loss not arising naturally according to the usual course of things, loss of opportunity, loss of earnings, loss of profits, loss of goodwill or loss of reputation or any indirect or consequential loss or damage arising out of or in connection with the Contract (including in negligence).
- (d) To the maximum extent permitted by Law, the maximum aggregate liability of Trivantage arising out of or in connection with the Contract, whether arising under contract, in tort (including negligence), in equity, under statute or otherwise, will be limited to the Price.

- (e) The indemnities in this Contract are continuing obligations, independent of the other obligations of the parties under the Contract and continue after the Contract ends. It is not necessary for a party to incur an expense or make payment before enforcing a right of indemnity under the Contract.
- (f) The parties acknowledge and agree that Trivantage is entering into this agreement and obtaining the benefit of **clause 12** both on its own behalf and on behalf of each of the Indemnified Parties.

13. Intellectual Property.

- (a) If the Supplier is manufacturing or procuring the manufacture of the Goods, and the Goods are required to be manufactured or fabricated to Trivantage's Specifications, unless the Supplier and Trivantage otherwise agree in writing, all intellectual property rights that arise in the course of, or in relation to, the design or manufacture of the Goods belong to Trivantage.
- (b) Unless the Supplier and Trivantage otherwise agree in writing, all intellectual property rights that arise in the course of, or in relation to, the performance of the Services belong to Trivantage.
- (c) The Supplier must execute all documents and perform all other acts reasonably required by Trivantage to perfect Trivantage's ownership of any intellectual property referred to in **clauses 13(a) and 13(b) (Trivantage IP)**.
- (d) The Supplier indemnifies Trivantage against all loss, cost, expense or damage suffered or incurred by Trivantage as a result of the Goods or the Services infringing intellectual property rights of any person.
- (e) Subject to the provisions of the Contract, Trivantage grants to the Supplier a non-exclusive, non-transferrable, royalty-free license to use the Trivantage IP for the sole purpose of performing its obligations under the Contract.

14. Confidential Information.

- (a) Each of the parties agree:
 - (i) to maintain as confidential and not to disclose, unless the disclosure is required by Law, any Confidential Information provided to them by, or on behalf of, the other party; and
 - (ii) to use Confidential Information only for the purposes of fulfilling its obligations under the Contract or of obtaining legal advice in relation to the Contract.
- (b) Any obligation of the parties under this **clause 14** will not be taken to have been breached if the confidential information was required to be disclosed by law or court order, provided that the disclosing party, to the extent reasonably practicable, gives the other party prompt notice of the existence of such an obligation and makes a reasonable effort to otherwise protect the confidentiality of such information.

15. Variation, Suspension and Cancellation.

- (a) In relation to Goods, Trivantage may at any time prior to the acceptance of the Goods, give notice to the Supplier to vary any or all of the Purchase Order including to the location, manner, materials, sequence or time. The Supplier must comply with that instruction and a reasonable adjustment will be made by Trivantage to the Purchase Price and/or the Delivery Date (to the extent impacted by Trivantage's instruction).
- (b) In relation to Services, Trivantage may give Notice to the Supplier to vary the scope including by adding or deleting any of the Services. The Supplier must comply with that instruction and a reasonable adjustment will be made by Trivantage to the Purchase Price and/or the Completion Date (to the extent impacted by Trivantage's instruction).
- (c) Trivantage may at its option and without cause:
 - (i) in relation to Goods, at any time up to 14 days prior to the Delivery Date cancel all or any part of a Purchase Order by written Notice to the Supplier; and

- (ii) in relation to Services, cancel all or any part of the Purchase Order or suspend the performance of the Services (or any part of them) for up to 6 months by written Notice to the Supplier;
and upon such cancellation or suspension Trivantage has no obligations except for those set out in **clauses 15(d) and 15(e)**.
- (d) For the purposes of **clause 15(c)**, in relation to a cancelled Purchase Order for Goods:
 - (i) if the Goods are goods ordinarily supplied by the Supplier, Trivantage will be under no obligation whatsoever to pay any money to the Supplier;
 - (ii) if the Goods have been manufactured or fabricated to particular Specifications under the Contract and are not goods ordinarily supplied by the Supplier, then upon receipt of Notice the Supplier must:
 - (A) immediately cease the Supply (including any manufacture or other associated work) in accordance with and to the extent specified in the Notice of cancellation; and
 - (B) do everything possible to mitigate any costs associated with the relevant Supply following such cancellation.
 - (iii) Where the Goods are of the type referred to in **clause 15(d)(ii)**, Trivantage must pay to the Supplier, in full and final satisfaction of all of the Supplier's rights against Trivantage, the reasonable actual direct costs incurred by the Supplier prior to the effective date of cancellation less any mitigated costs and resale proceeds.
 - (iv) Without limiting **clauses 5(e) and 5(f)**, title to and property in any materials or incomplete Goods for which Trivantage makes payment under **clause 15(d)(iii)** will immediately pass to Trivantage upon such payment.
- (e) For the purposes of **clause 15(c)**, in relation to a cancelled Purchase Order for Services, Trivantage will pay the Supplier for a fair and reasonable amount calculated by Trivantage for the Services performed up to the receipt of notice of cancellation, based on the actual direct costs reasonably incurred by the Supplier to that time.
- (f) For the avoidance of doubt, Trivantage's only liability in relation to the cancellation of any Purchase Order under this **clause 15** is set out in **clauses 15(d) and 15(e)** above, and Trivantage is not liable to the Supplier for any indirect or consequential costs, loss of profits or opportunity costs, or any other cost, loss, damage or expense.

16. Privacy.

- (a) Each party must comply with its obligations under the Privacy Law.
- (b) The Supplier acknowledges and agrees that it will, in respect of any Personal Information it receives or has access to under the Purchase Order, comply with the Privacy Law.

17. Subcontracting and Assignment.

- (a) Trivantage may assign its rights and obligations under the Contract (in whole or in part) to any person without the consent of the Supplier.
- (b) The Supplier may not assign or otherwise transfer its rights under the Contract or subcontract the performance of any part of the Supply without prior written notice to and consent from Trivantage, which consent must not be unreasonably withheld.
- (c) The Supplier is liable for the acts and omissions of any subcontractor as if they were the acts or omissions of the Supplier itself and approval to subcontract will not relieve the Supplier from any liability or obligation under the Contract.

18. Termination.

- (a) In addition to any other right of termination in these Terms and Conditions:

- (i) either party may terminate the Contract immediately by Notice to the other party if the other party suffers an Insolvency Event;
 - (ii) if the Supplier breaches the Contract, Trivantage may suspend payment to the Supplier until the breach is rectified to the reasonable satisfaction of Trivantage;
 - (iii) regardless of whether or not Trivantage has suspended payment under **clause 18(a)(ii)**, Trivantage may terminate the Contract immediately by notice to the Supplier if the Supplier breaches the Contract and the Supplier fails to remedy the breach within 5 Business Days of receiving Notice from Trivantage requiring the Supplier to do so, or if in the reasonable opinion of Trivantage, the breach is incapable of remedy; and
 - (iv) the Supplier may terminate the Contract immediately by notice to Trivantage if Trivantage breaches the Contract and Trivantage fails to remedy the breach within 10 Business Days of receiving notice from the Supplier requiring Trivantage to do so, or if in the reasonable opinion of the Supplier, the breach is incapable of remedy.
- (b) **Clause 18(a)(i)** does not apply if the defaulting party enters into voluntary administration, receivership or is subject to a scheme of arrangement, as contemplated by the Ipso Facto Law Reform. For clarity, this **clause 18(b)** will only apply while the administration, receivership or scheme of arrangement is ongoing, and will cease in the event that the defaulting party is wound up.

19. Approvals.

Unless otherwise specified in the Contract, the Supplier is responsible for obtaining all Approvals required in connection with the Supply.

20. Drawings and Information.

Any drawings, materials and information provided by Trivantage to the Supplier in connection with the Supply remain the property of Trivantage and must not be used for any other purpose or distributed or copied without Trivantage's prior permission.

21. Retention and Security

Except to the extent the Contract provides otherwise:

- (a) Trivantage may retain 5% of the amount otherwise payable from each instalment of the Price as security for the performance by the Supplier of its obligations under the Contract (**Retention Sum**).
- (b) Any Retention Sum retained by Trivantage will be available to Trivantage whenever it is, in its reasonable opinion, entitled to the payment of moneys by the Supplier under or in connection with the Contract, or whenever Trivantage is, in its reasonable opinion, entitled to reimbursement of any monies paid to others under or in connection with the Contract, in all such cases including in respect of a breach of the Contract by the Supplier or if an event set out in clause 18(a)(i) occurs in respect of the Supplier.
- (c) When making a payment to the Supplier, Trivantage will be entitled to deduct from the amount payable, the Retention Sum which will be held by Trivantage under the terms of the Contract.
- (d) Subject to the provisions of clause 21(e):
 - (i) on completion of the Supply, Trivantage will release one half of the Retention Sum to the Supplier; and
 - (ii) on expiration of the Warranty Period or when all the defects have been rectified, whichever is the later, Trivantage must release the balance of the retention monies, if any, to the Supplier.
- (e) Trivantage will be entitled to deduct from the Retention Sum any monies due under the Contract by the Supplier to Trivantage.

- (f) Trivantage does not hold the Retention Sum on trust for the Supplier and is not obliged to pay the Supplier interest on that amount.

22. PPSA.

- (a) If the Supplier believes that a Security Interest arises under the Contract or otherwise, the Supplier must notify Trivantage at least 7 days before the Supplier takes steps to register such Security Interest on the PPS Register. Within 14 days of the earlier of:
- (i) the expiry or termination of the Contract; or
 - (ii) receipt of the Price,
- the Seller will at its cost procure the removal from the PPS Register each Security Interest it has registered in respect of the Goods or Services and must provide Trivantage with verification of the removal of the Security Interest pursuant to section 157 of the PPSA.
- (b) In this clause 21:
- (i) “**PPS Register**” means the Personal Property Securities Register established under the PPSA;
 - (ii) “**PPSA**” means the *Personal Property Securities Act 2009* (Cth); and
 - (iii) “**Security Interest**” has the meaning given to it in the PPSA.

23. Workplace Health and Safety

- (a) The Supplier must:
- (i) comply, and ensure that all persons for whom it is responsible or over whom it is capable of exercising control while executing the work under the Contract comply, with the Contract and all workplace health and safety obligations under all applicable Laws;
 - (ii) comply with, and ensure that all persons for whom it is responsible or over whom it is capable of exercising control while executing the work under the Contract comply with, the requirements of Trivantage’s policies, procedures and management plans;
 - (iii) comply with all reasonable directions of Trivantage given following any potential perceived breach of any Legislative Requirements including all applicable workplace health and safety Laws;
 - (iv) maintain appropriate safety precautions and programs so as to prevent injury to persons or damage to property;
 - (v) implement and comply with all necessary security requirements of Trivantage; and
 - (vi) ensure that all work performed by the Supplier is executed in a manner that ensures the health and safety of persons.
- (b) If Trivantage reasonably considers that there is a risk of injury to persons or damage to property arising out of the work under the Contract, Trivantage may direct the Supplier to change its manner of working at the cost of the Supplier and without entitlement to any claim against Trivantage or any other person.
- (c) Nothing contained in this clause or elsewhere in the Contract will in any way reduce the Supplier’s responsibility to identify and control foreseeable risks arising from or in connection with the Supplier or its Personnel performing the Services or supplying the Goods under the Contract.

24. Chain of Responsibility

- (a) The Supplier acknowledges that under the Heavy Vehicle National Law, all parties in the road transport supply chain (including consignor, consignee, packer, loader and scheduler, drivers, owner-drivers and operators as well as directors, partners and managers) could be held responsible for their actions (or

inactions) relating to breaches of the road transport, fatigue, speed, mass, dimension and load restraint Laws.

- (b) The Supplier must ensure that it and its Personnel, at all times, takes all reasonable steps to ensure that any carriage of goods by road performed in connection with the Supply is performed safely and in accordance with the Heavy Vehicle National Law and the chain of responsibility provisions it contains.
- (c) Without limiting any of its other compliance, reporting or record keeping requirements, the Supplier must create and maintain, and must ensure that its Personnel create and maintain, records covering compliance with obligations under the Heavy Vehicle National Law, which must be provided to Trivantage upon request, including after any identification of non-compliance by Trivantage and after any incident.
- (d) The Supplier must notify Trivantage in writing immediately in the event that it or any of its Personnel is issued with any warning, request for information, notice or fine in respect of any breach of the chain of responsibility provisions in respect of any Supply and must provide Trivantage with a copy of any such warning, request, notice or fine any response or submission made.

25. Notices.

- (a) A notice, demand, consent, approval or communication under this agreement (**Notice**) must be in writing and hand delivered or sent by prepaid post or email to the recipient.
- (b) A Notice is deemed to be received:
 - (i) if hand delivered, on delivery;
 - (ii) if sent by prepaid post, on the seventh Business Day after the date of posting; or
 - (iii) if sent by email, when the sender's email system generated a confirmation of receipt of the Notice, but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.
- (c) Trivantage may at any time vary these Terms and Conditions as they apply to future Contracts and may notify the Supplier of these variations by notice complying with **clause 24** including notification in writing with a Purchase Order or by publishing the revised Terms and Conditions or notice on its website.

26. Disputes.

The parties must attempt to resolve disputes arising under the Contract promptly by negotiation in good faith before referring the dispute to conciliation or arbitration or commencing court proceedings. Senior personnel nominated by each party will attempt to resolve the dispute.

27. Third Parties.

Nothing in the Contract confers or purports to confer on any third party any benefit or rights to enforce any term of the Contract.

28. Waiver.

Except as expressly set out in the Contract, a party may only waive or vary a right under this Contract by written notice addressed to the other party. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it was given.

29. Severance.

If a provision of the Contract would, but for this clause, be unenforceable:

- (a) the provision must be read down to the extent necessary to avoid that result; and
- (b) if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of the Contract.

30. Survival.

The warranties, indemnities and confidentiality obligations in the Contract survive rescission, termination or completion of the Contract and do not merge on completion of any transaction under the Contract.

31. Governing Law and Jurisdiction.

The Contract is governed by the law of, the State of Victoria. The courts of the State of Victoria have non-exclusive jurisdiction in connection with the Contract.