

GREENCAP TERMS & CONDITIONS OF PURCHASE (“TERMS”) (NON SUBCONTRACTOR)

Unless agreed in writing by the Purchaser, these Terms will apply to the exclusion of any inconsistent terms and conditions which may appear on any order form or other document issued by the Supplier. For the avoidance of doubt, any subsequent terms provided by the Supplier are excluded and any acceptance or counter offer by the Supplier of these Terms will be deemed to be an acceptance of these Terms. These Terms will apply to any variations to the Purchase Order which may be agreed (verbally or in writing) by the Parties or ordered (verbally or in writing) by the Purchaser and to any supplementary services which may be agreed (verbally or in writing) by the Parties.

1 DEFINITIONS

In these Terms:

“Client” means a customer of Greencap receiving goods or services from the Purchaser

“Purchaser” means Greencap Pty Ltd or the relevant Greencap subsidiary (or subsidiaries) (as that term is defined in the Corporations Act 2001 (Cth)) that issued the Purchase Order to which these Terms and Conditions are to apply to.

“Supplier” means the entity nominated as the relevant supplier or service provider in the Purchase Order to which these Terms and Conditions apply.

2 ACCEPTANCE OF ORDER

- 2.1 The Purchase Order is the Purchaser's offer to the Supplier to purchase the goods and/or services described in the Purchase Order on the terms and conditions contained in this document, and prevails over any conflicting terms in the Supplier's documents. Acceptance of the Purchase Order by the Supplier constitutes a binding contract comprising:
- a) the terms and conditions contained in this document;
 - b) the Purchase Order; and
 - c) any attachments to the Purchase Order, (this **“Agreement”**).
- 2.2 Subject to clause 2.6, this Agreement is a complete and exclusive statement of the terms and conditions of the contract between the parties. If the Supplier issues any terms and conditions in relation to the goods and/or services (whether on consignment notes or other documents), those terms and conditions will not constitute part of this Agreement even if the Purchaser signs those terms and conditions or attaches them to this Agreement.
- 2.3 If there is any ambiguity or inconsistency between the documents comprising this Agreement, the documents rank in the order of precedence shown in clause 1.1, in descending order with the document listed first ranking highest.
- 2.4 If the Supplier is unwilling or unable to accept the offer made by the Purchaser in the Purchase Order under the terms and conditions specified in this document, the Supplier must immediately contact the Purchaser and advise of any variations it requires to be made for acceptance or rejection in writing by the Purchaser. Subject to clause 2.5, no contract will be taken to have been formed between the Purchaser and the Supplier until such time as any variations to these terms and conditions are agreed in writing by duly authorised representatives of the Supplier and the Purchaser.
- 2.5 If the Supplier does proceed with the manufacture or supply of the goods and/or services without first requesting the Purchaser's written acceptance of variations proposed by the Supplier, then the Supplier is deemed to have accepted the terms and conditions contained in this Agreement.
- 2.6 The *Competition and Consumer Act 2010* (Cth) as well as State and Territory laws guarantee certain conditions, warranties and undertakings, and give the Purchaser other legal rights, in relation to the quality and fitness for purpose of consumer goods sold in Australia. These guarantees cannot be modified or excluded by any contract. Nothing in this Agreement purports to modify or exclude the conditions, warranties and undertakings, and other legal rights, under the *Competition and Consumer Act 2010* (Cth) and other laws.
- 2.7 The Purchaser:
- a) is under no obligation to order any minimum quantity or value of goods or services from the Supplier;

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- and
- b) reserves the right to obtain similar goods and/or services from any other supplier or service provider.

3 WARRANTIES

- 3.1 The provisions of sections 51 to 62 (inclusive) of the Australian Consumer Law, applying under the *Competition and Consumer Act 2010* (Cth) (as amended), form part of this Agreement as if they were set out in full in this Agreement with the effect that they would have if:
 - a) “the Purchaser” was substituted for “consumer”; and
 - b) the ‘Supplier’ was substituted for the words “a person”, “a supplier” or “the supplier” (as applicable), wherever appearing.
- 3.2 The Supplier warrants that the goods:
 - a) will be new;
 - b) will be of merchantable quality and fit for their intended purpose;
 - c) will be manufactured and delivered strictly in accordance with the requirements of this Agreement, including but not limited to any drawings, specifications and other instructions of the Purchaser given for the purpose of this Agreement;
 - d) will be free from defects in design, materials and workmanship;
 - e) do not and will not infringe the intellectual property of any third party; and
 - f) comply with the requirements of any relevant statutes or regulations.
- 3.3 The Supplier warrants that the services:
 - a) will be performed strictly in accordance with the requirements of this Agreement, including but not limited to any drawings, specifications and other instructions of the Purchaser given for the purposes of this Agreement;
 - b) will be rendered with due skill and care;
 - c) do not and will not infringe the intellectual property of any third party; and
 - d) comply with the requirements of any relevant statutes or regulations.
- 3.4 The Supplier must:
 - a) ensure that the Purchaser has the benefit of any manufacturer's warranties applicable to the goods, and if requested by the Purchaser must pursue any manufacturer's warranties on the Purchaser's behalf; and
 - b) comply with any relevant statutes or regulations when performing its obligations under this Agreement.
- 3.5 The Purchaser relies on the Supplier's skill and judgement. The Supplier must advise the Purchaser in writing as soon as practicable after the Supplier becomes aware that compliance with a specification of the Purchaser would render the goods and/or services unsuitable for the Purchaser's requirements.
- 3.6 In addition to its other rights and remedies at law, the Purchaser may reject goods which are defective in materials or workmanship, or which are contrary to its drawings, specifications or other instructions. The Supplier must at the Purchaser's option replace goods so rejected, or refund their purchase price and compensate the Purchaser for any loss suffered by the Purchaser in respect of such goods (including but not limited to packing, handling and transportation expenses). The Purchaser may recover the purchase price and any compensation as a debt due from the Supplier or, if requested by the Purchaser, the Supplier must credit the purchase price and the amount of the compensation to the Purchaser's account with the Supplier.

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4 PRICE AND PAYMENT

- 4.1 The Purchaser must pay the price specified in this Agreement, unless subject to alteration in accordance with a formula agreed in writing by the parties and noted in the Purchase Order or an attachment to it.
- 4.2 The Purchaser may by written notice to the Supplier vary the quantity or quality of goods or services to be delivered or performed by the Supplier. The Supplier must comply with the variation notice, and is entitled to an adjustment to the price and Delivery Date for the varied goods and services.
- 4.3 The Purchaser is not liable for additional costs or charges or an increase in price unless accepted by it in writing prior to the specified delivery date of the goods or prior to the specified commencement date of any work involving such increased cost or charges or price.
- 4.4 The price includes all charges for packaging, packing, insurance and delivery of the goods and any other costs and expenses the Supplier incurs in complying with its obligations under this Agreement.
- 4.5 Subject to clauses 4.7 and 4.8, the Purchaser must pay amounts payable under this Agreement at the end of the month next following the month of delivery of goods or services and receipt of the Supplier's invoice.
- 4.6 Unless the price is specified to be GST inclusive, the Purchaser must, subject to receipt of a valid tax invoice from the Supplier, pay to the Supplier an additional amount on account of any GST payable.
- 4.7 If the Purchaser disputes the amount claimed in any invoice, the Purchaser may withhold payment of the amount in dispute unless and until the dispute is resolved in favour of the Supplier.
- 4.8 The Purchaser may set off or deduct from any payments due to the Supplier any debt or other moneys due from the Supplier.

5 DELIVERY

- 5.1 The Supplier must deliver the goods on the date specified in the Purchase Order, or where a delivery schedule is specified, on the scheduled dates, except where expressly agreed in writing otherwise for any particular delivery (the "Delivery Date"). The Purchaser may require that all goods ordered for a specified Delivery Date be delivered at the same time, or may accept delivery in part from time to time as specified in this Agreement. The Supplier must perform the services for the Purchaser by the date specified in the Purchase Order or in accordance with the schedule for completion of the services specified in the Purchase Order, whichever is applicable, except where expressly agreed in writing otherwise for any particular services.
- 5.2 Subject to clauses 3.6 and 6.3, title passes to the Purchaser on delivery to the Purchaser or its agent at the nominated place of delivery.
- 5.3 The Supplier must:
 - a) pack the goods to ensure that no loss or damage results from weather or transportation, and in particular, ensure that all exposed machined surfaces are coated with a suitable rust preventative;
 - b) pack and deliver the goods in accordance with applicable industry codes and standards;
 - c) clearly mark the goods and any delivery documents (including a packing list) with details required by the Purchaser, and ensure the delivery documents accompany the goods to the nominated place for delivery; and
 - d) assist the Purchaser to obtain any documents and other information required to resolve any transport dispute.
- 5.4 The Purchaser must specify the method of delivery required at the time of placing of the order. Where the Supplier arranges transportation of the goods (regardless of whether the carrier is nominated by the Purchaser or not), risk remains with the Supplier until the goods are delivered to the nominated place of delivery. Where the Purchaser nominates that delivery be made to a specific carrier, risk will pass on delivery of the goods to such carrier.

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6 TIMELINESS

- 6.1 Time is of the essence in this Agreement.
- 6.2 If any circumstances arise which may delay the provision of the goods and/or services, the Supplier shall immediately notify the Purchaser of the circumstances and propose a revised delivery date or delivery schedule which the Purchaser may elect to agree or not agree to in its sole discretion.
- 6.3 The Supplier acknowledges that the Purchaser may return part or all of any shipment received after the Delivery Date. The Purchaser may recover from the Supplier any loss or expense sustained as a result of the Supplier's failure to deliver the goods by the Delivery Date. The exercise by the Purchaser of its rights under this clause 6.3 is without prejudice to any claim for damages or other rights it may have against the Supplier.
- 6.4 The Purchaser may terminate this Agreement if the Supplier does not provide the goods and/or services by the date(s) specified in the Purchase Order and the Purchaser shall not be liable to pay for any goods and/or services which are delivered or performed outside of the date(s) specified in the Purchase Order (unless the Purchaser elects to accept the relevant goods and/or services or the parties have agreed in writing to extend the relevant date).

7 INSPECTION AND INFORMATION

- 7.1 The Supplier shall establish and maintain a quality assurance program and quality control procedures to ensure that the quality of the goods and/or services is delivered and maintained at a consistently high standard.
- 7.2 On request and after being given reasonable notice, the Supplier must give or arrange for the Purchaser's representative to have access to its and any subcontractor's premises or processes for the purposes of inspecting any materials, services, work in progress or finished goods being supplied or manufactured for the Purchaser.
- 7.3 Such inspection will not be deemed to be acceptance by the Purchaser of the materials, work or goods inspected or affect any obligation of the Supplier under this Agreement.
- 7.4 On request, the Supplier must provide the Purchaser with information:
 - a) about the goods and services, including any technical material such as specifications and data sheets; and
 - b) the delivery of the goods and performance of the services, including a detailed program for the projected supply of the goods and services.

8 INDEMNITIES

The Supplier must indemnify and keep indemnified the Purchaser from and against any loss, damage or expense (including legal fees) incurred by the Purchaser and arising directly or indirectly out of:

- a) any claim or suit for alleged infringement of any intellectual property rights, including patents or copyright, relating to any use or sale of goods or services, including all costs and expenses of defending and incidental to the claim or suit (and, if required by the Purchaser, must conduct the defence of any and all such claims or suits);
- b) any non-compliance with applicable laws, regulations or standards by the Supplier or its personnel in connection with this Agreement;
- c) the failure of the goods and/or services to conform to or fulfil any term or condition of this Agreement (including any term or condition implied or incorporated by any legislation or law); or
- d) the Supplier's performance or non-performance of any services or other obligations under this Agreement,

including claims for personal injuries, death and property loss or damage and the claims or liens of workmen or suppliers of goods, except where such injury, death, damage or loss arises solely from the wilful misconduct of the Purchaser or the Purchaser's employees or agents.

9 NOTICES

Any notice in connection with this Agreement will be deemed to be sufficiently given if sent by facsimile, electronic mail (email) or electronic transfer to the number or address provided by each party for that purpose, or delivered to either party personally or by forwarding the same to either party by pre-paid letter post, or addressed to or delivered at the registered office of the relevant party.

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10 SITE WORK

- 10.1 Where the Supplier provides work in connection with the installation or fitting of the goods or where the Supplier, its employees, contractors or agents enter upon the Purchaser's or Client's premises to deliver any goods or perform any services, the Supplier must, and must procure that its employees, agents and contractors:
- a) perform all work in a manner that is safe and complies with all applicable occupational health and safety regulations and legislation;
 - b) perform all work in a proper and workmanlike manner and in strict accordance with any drawings, specifications and instructions;
 - c) ensure that all personnel involved in the provision of the services or performance of other obligations are suitably experienced and trained, and all the plant and equipment used is in good working order;
 - d) perform all work so as not to impede, or interfere with any activities being carried out on the Purchaser's premises;
 - e) comply with the Purchaser's safety regulations and with the Purchaser's direction and orders;
 - f) provide at its own expense (except where otherwise specified in this Agreement) all labour, tools, equipment and material necessary to complete the work; and
 - g) enter upon the Purchaser's premises at their own risk.
- 10.2 The Supplier must not subcontract or assign the work or any part thereof without the Purchaser's prior written consent. If the Supplier sub-contracts any part of the work the Supplier continues to be liable for all of its obligations under this Agreement and for any acts, defaults or omissions of the subcontractor.
- 10.3 The Supplier is an independent contractor and not an agent or employee of the Purchaser.

11 DEFECTS LIABILITY PERIOD

- 11.1 Without limiting the Purchaser's rights under clause 3.6 or under any legislation or law, the Supplier must, if required by the Purchaser, rectify at the Supplier's cost any omission or defect in any goods or services delivered or performed under this Agreement which become apparent at any time during the performance of this Agreement and prior to the expiration of the Defects Liability Period.
- 11.2 Unless otherwise agreed, the Defects Liability Period will be twelve (12) months from the date of delivery of the last of the goods to be delivered or completion of the services, whichever is the later.
- 11.3 If the Supplier does not commence and complete the rectification work as required by the Purchaser, the Purchaser may have the rectification work carried out at the Supplier's expense but without prejudice to any other rights the Purchaser may have, and the cost of rectification incurred by the Purchaser will be a debt due from the Supplier.
- 11.4 The Supplier must reimburse the Purchaser for all packing, handling and transportation expenses incurred by the Purchaser in relation to the rectification of any goods in accordance with this clause.

12 INSURANCE

- 12.1 The Supplier, at its cost, must effect and maintain throughout the currency of this Agreement (including any Defects Liability Period):
- a) Transit and Material Damage Insurance in respect of the goods, for their replacement cost (including freight and other charges), up until title and risk in the goods pass to the Purchaser; and
 - b) Workers' Compensation Insurance in accordance with the law of the State or Territory in which the work is performed. To the extent permitted by law such insurance must extend to include cover for common law liability;
 - c) Public and Products Liability Insurance that covers all claims made in consequence of or in respect of bodily injury, death or damage to property, including contractual liability to cover the liabilities assumed under this Agreement, for an amount in respect of any one occurrence of not less than the sum of twenty million dollars;
 - d) Professional Indemnity Insurance that covers all claims in respect of any negligent acts, errors or omissions in connection with the services under this Agreement, for an amount in respect of any one occurrence of not less than the sum of ten million dollars and for a period of not less than six years after expiry or termination of this Agreement;
 - e) Motor Vehicle Third Party Injury and Property Damage Insurance in respect of all vehicles used by the Supplier in connection with the performance of its obligations under this Agreement, with a limit

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of liability of not less than twenty million dollars for any one occurrence;

- f) Compulsory Motor Vehicle Third Party Liability Insurance as required by law in the State or Territory in which the work is performed; and
 - g) any other insurances required by law.
- 12.2 The insurances specified in clause 12.1 must cover the Purchaser, the Supplier and any subcontractors for their respective rights and interests and be on terms reasonably acceptable for an Agreement of this nature. The Purchaser's interest must be noted on the insurance policies specified in clauses a) and c). The insurance policy specified in clause b) shall include a Principal's Indemnity extension in favour of the Purchaser.
- 12.3 As and when requested by the Purchaser, the Supplier must provide the Purchaser with copies of certificates of currency regarding the policies the Supplier is required to effect.
- 12.4 If the Supplier fails to effect or maintain any insurance as specified above, the Purchaser may effect or maintain such insurance and recover from the Supplier as a debt any premium so paid by the Purchaser.

13 TERMINATION

- 13.1 The Purchaser may terminate this Agreement forthwith by notice in writing if the Supplier is in breach or default of any term or condition of this Agreement.
- 13.2 If judgment is entered against the Supplier or if the Supplier is insolvent or makes or endeavours to make any scheme or arrangement with creditors, or if any order appointing a receiver or for the winding up of the Supplier (whether voluntary or otherwise) is made in any court of competent jurisdiction, then the Purchaser may without prejudice to any other rights or remedies terminate this Agreement forthwith by notice in writing to the Supplier.
- 13.3 The Purchaser may terminate this Agreement at the Purchaser's absolute discretion at any time upon written notice to the Supplier. If the Purchaser terminates this Agreement pursuant to this clause 13.3:
- a) if this Agreement requires goods to be manufactured to the Purchaser's specification or requires the Supplier to install or fit goods:
 - (i) upon receipt of the termination notice the Supplier must stop manufacturing, installing or fitting the goods (as the case may be), except as may be otherwise directed by the Purchaser; and
 - (ii) the Purchaser must pay to the Supplier an amount equal to:
 - (A) the completed pro-rata amount of the price; and
 - (B) five percent (5%) of the amount calculated in accordance with clause 13.1(a)(ii)(A). The amount described in 13.1(a)(ii)(A) will be as agreed by both parties or (if the parties cannot agree) as determined by the Purchaser, and must:
 - (C) reflect the proportion or value of the work completed or committed by the Supplier at the date of termination;
 - (D) not exceed the price; and
 - (E) not include any amount for anticipated profit for performance not rendered or any amount for consequential loss or damage; and
 - b) if clause 13. a) does not apply, the Purchaser must pay (subject to the other terms of this Agreement) for the goods shipped or delivered prior to the date of termination but does not have any further obligation in relation to any unshipped or undelivered goods.

14 INTELLECTUAL PROPERTY

- 14.1 The Supplier acknowledges that the property of the Purchase includes and will include all documents and other media relating to the affairs or business of the Purchaser, or which come into the Supplier's possession in the course, and by reason, of this agreement, whether or not the same were originally supplied by the Purchaser.
- 14.2 The Supplier must immediately communicate to the Purchaser all intellectual property rights (both present and future) created, discovered or coming into existence as a result of, or for the purpose of, or in connection with the provision of goods or services under this Agreement ('Agreement IP'); and
- 14.3 Immediately deliver to the Purchaser full particulars concerning the Agreement IP and will, at the Purchaser's expense, execute all documents and do and execute all such acts, matters, and things as may be necessary or reasonable to enable the Purchaser to obtain protection for, or registration of, the Agreement IP, and to assign to the Purchaser all rights which may be acquired by it in relation to the Agreement IP and to vest title in them in the Purchaser absolutely, including the right to disclose all information in the material containing the Agreement IP.
- 14.4 Any Agreement IP will vest or is otherwise assigned to the Purchaser upon creation. The Supplier warrants

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that any Agreement IP will not infringe any intellectual property rights of any person or entity.

- 14.5 The Supplier shall provide the Purchaser with all reasonable assistance if requested to do so in relation to all of the following:
- a) the Purchaser's efforts to register or protect any of the Purchaser's intellectual property rights in connection with this Agreement; and
 - b) the Purchaser's conduct of legal proceedings relevant to any claim that the Purchaser has infringed the intellectual property rights of any third party or where the Purchaser is seeking to enforce its own intellectual property rights that have accrued or are otherwise relied upon in connection with this Agreement.
- 14.6 In respect of any copyright works that may be created by the Supplier or any of its personnel, the Supplier will procure from the individual who authored the copyright works, consents to the Supplier doing all of the following together with a waiver of his/her moral rights in respect of the following acts or omissions, or classes, or types of acts or omissions:
- a) any adaptation, alteration, or modification of the copyright works;
 - b) any use of the copyright works without attribution of authorship of the copyright works; and
 - c) any use of the copyright works where the Supplier claims the copyright works as its own.
- 14.7 The Supplier irrevocably appoints the Purchaser to be the Purchaser's attorney:
- a) to sign any instrument on the Purchaser's behalf; and
 - b) to do any act in the Purchaser's name, to give effect to this clause 14.
- 14.8 The Supplier grants the Purchaser an assignable, irrevocable, royalty-free, perpetual, worldwide and sub-licensable licence in any intellectual property rights it holds or is entitled to the benefit of that are required for the use of any document, software or other material produced in the supply of the goods or the performance of the services and any pre-existing intellectual property rights of the Supplier necessary for the foregoing for any purpose in connection with the goods or services or the businesses of the Purchaser.

15 CONFIDENTIALITY

For the term of this Agreement and for 2 years after the expiry of the Defects Liability Period the Supplier must treat as confidential, and must not (without the Purchaser's prior approval or as required by law or the rules of a securities exchange) disclose to a third party, the terms of this Agreement or any information provided or made available by the Purchaser to the Supplier during this Agreement which is by its nature confidential or which the Purchaser designates as confidential.

16 PRIVACY

Capitalised terms used in this clause 16 have the same meaning as those used in the *Privacy Act 1988* (Cth).

The Supplier must:

- 15.1 comply with take all reasonable measures to ensure that Personal Information in its possession or control in connection with this agreement is protected against loss and unauthorised access, use, modification, or disclosure;
- 15.2 comply with the Australian Privacy Principles which concern the collection, solicitation, security, use, and disclosure of Personal Information to the extent that the content of those principles apply to the types of activities the Supplier is undertaking under this Agreement; and
- 15.3 co-operate with any reasonable demands or inquiries made by the Purchaser including, but not limited to, a request from the Purchaser to comply with its guidelines concerning the handling of Personal Information.

17 ANTI-CORRUPTION

The Supplier must:

- 17.1 at all times comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and improper payments including but not limited to the *Criminal Code Act 1995* (Cth) (Australia), the *Foreign Corrupt Practices Act 1977* (United States), and the *Bribery Act 2010* (United Kingdom) ("**Relevant Requirements**");
- 17.2 not give or offer or promise to give, receive, or agree to accept, any payment, gift or other benefit or advantage which violates a Relevant Requirement;
- 17.3 have and maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Relevant Requirements, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
- 17.4 not prepare, approve or execute any contract or other document or make any record in connection with this agreement that the Supplier knows, or ought to reasonably know, is false, inaccurate or misleading;

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- 17.5 promptly report to the Purchaser any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement which will or may be in breach of the Relevant Requirements; and
- 17.6 procure, and shall be responsible for, the observance and performance of the Relevant Requirements by all persons performing services or providing goods in connection with this agreement on behalf of the Supplier or under its supervision or control.

18 PROPORTIONATE LIABILITY LEGISLATION

- 18.1 The parties agree that, to the maximum extent permitted by law, the operation of the Proportionate Liability Legislation is excluded in relation to all and any obligations and liabilities of the Supplier, whether such obligations or liabilities are sought to be enforced by the Purchaser as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at law.
- 18.2 For the purposes of this clause 18, “**Proportionate Liability Legislation**” means, as applicable:
- a) Part 1F of the *Civil Liability Act 2002* (WA);
 - b) Part 4 of the *Civil Liability Act 2002* (NSW);
 - c) Part 9A of the *Civil Liability Act 2002* (Tas);
 - d) the *Proportionate Liability Act 2005* (NT);
 - e) Part IVAA of the *Wrongs Act 1958* (Vic);
 - f) Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT); and / or
 - g) Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA).

19 LAW OF CONTRACT AND JURISDICTION

This Agreement is governed by and must be construed according to the laws of Victoria, and the parties submit to the jurisdiction of the Courts of Victoria.

20 ETHICAL SOURCING AND MODERN SLAVERY

Supplier must, at all times, comply with all of Greencap’s policies, procedures, instructions, directions, publications or guidelines (as amended from time to time) and which are available at <https://www.greencap.com.au/privacy-policies> in relation to ethical sourcing practices and modern slavery. If the Supplier is unable to demonstrate a commitment to complying with Greencap’s policies, we reserve the right to immediately terminate this purchase order upon written notice.