

To: **AWN Food & Fibre Holdings Pty Ltd ACN 627 193 104, including, but not limited to, any related body corporate, any subsidiary or associated entity and as trustee of any trust from time to time (individually and together called "AWN").**

Effective date: **23 January, 2019**

1 STRUCTURE OF AGREEMENT

- 1.1 These Terms and Conditions apply to all Purchase orders for Goods and Services placed by AWN and the Supplier where there is no existing and valid written contract in place between AWN and the Supplier that would be applicable to the supply of those Goods and Services.
- 1.2 The acceptance of a Purchase Order constitutes acceptance of these Terms and Conditions by the Supplier.
- 1.3 These Terms and Conditions prevail over any terms in any quote, proposal, or invoice from the Supplier or any terms included on other Supplier documentation.

2 SUPPLY OF GOODS

In respect to a supply of Goods, the Supplier must:

- 2.1 Deliver the Goods to AWN at the time, place and in the manner specified in the Purchase Order, or as otherwise specified by AWN; and
- 2.2 Install the Goods (if required by the Purchase Order) in a proper, timely and efficient manner using the standard of care, skill and diligence that would reasonably be expected from an experienced installer of goods that are similar to the Goods.

3 SUPPLY OF SERVICES

In respect of a supply of Services, the Supplier must provide:

- (a) the Services to AWN in accordance with the Agreement, all laws, AWN and NSW government policies, guidelines, codes of conduct and all relevant Australian and international standards, as applicable from time to time;
- (b) the Services in a proper, timely and efficient manner using the standard of care, skill and diligence that would reasonably be expected from an experienced provider of services that are similar to the Services; and
- (c) the Services at the time and place nominated in the Purchase Order, or if no time or place is nominated, at the time and place requested by AWN from time to time.

4 DEFECTIVE GOODS OR SERVICES

- 4.1. Without limiting any other clause in the Agreement, and whether before or after acceptance of a Good or Service:
 - (a) AWN may reject or return some or all of the Goods or Services if they are not in accordance with the Agreement (including if AWN considers Defective);
 - (b) if requested by AWN, the Supplier must, at its own cost, promptly remove any rejected Goods from the delivery location;
 - (c) AWN is not required to pay Fees in respect of any Goods or Services that AWN considers Defective;
 - (d) AWN may direct the Supplier to rectify the Defective Goods or Services, by way of repairing, replacing, modifying, performing or taking other actions acceptable to AWN (acting reasonably) within and by such time as agreed by AWN; and
 - (e) if the Supplier fails to rectify the Defective Goods or Services described in clause 4.1 (d), AWN may arrange for the resupply or remedial work by a third party at the Supplier's expense.

5 PRICE, INVOICING & PAYMENT

- 5.1 Unless otherwise specified in the Purchase Order, prices referred to in a Purchase Order (the Fees):
 - (a) are fixed;
 - (b) sets out all amounts payable by AWN under the Agreement;

- (c) are inclusive of insurance, freight, delivery, packaging costs and costs associated with the return of Goods wrongly supplied or defective Goods or Services; and

- (d) are inclusive of all taxes other than GST.

- 5.2 AWN will pay the Fees for Goods and Services supplied in accordance with the Agreement within 30 days of receipt of a properly rendered tax invoice, or the delivery of the goods or service, whichever is the later. A tax invoice will be properly rendered if it:

- (a) contains a valid PO Number and name of the AWN representative who placed the Purchase Order;
- (b) is correctly addressed to AWN;
- (c) is in respect of Goods or Services which have been accepted and not subsequently rejected by AWN; and
- (d) is complete and, where additional explanation is necessary, is accompanied by documentation substantiating the amount claimed.

- 5.3 Payment by AWN is not an acknowledgement that the Goods or Services have been supplied in accordance with the Agreement.

- 5.4 AWN is entitled to withhold, retain or set off against the Fees for the Goods or Services, any monies that the Supplier owes to AWN. The right to withhold, retain or set off does not limit AWN's rights to recover those amounts in any other way.

6 WARRANTIES AND REPRESENTATIONS

6.1 General

The Supplier warrants and represents that:

- (a) it is entitled to enter into the Agreement to perform its obligations;
- (b) there are no actions, claims, proceedings or investigations pending or threatened against it or by it which may have a material effect on the subject matter of the Agreement;
- (c) it and its Personnel has and will maintain at all times all licences, authorisations, consents, approvals and permits required by all applicable laws, standards, regulatory and industry requirements in order to perform its obligations under the Agreement;
- (d) no conflict of interest concerning the Supplier and its Personnel exists or will arise in the performance of its obligations under the Agreement;
- (e) there are no matters which will or may adversely affect its ability to perform its obligations under the Agreement;
- (f) it will provide and maintain at all times appropriate resources to enable it to fulfil its obligations under the Agreement; and
- (g) it will at all times comply with any applicable laws, industry or regulatory requirements.

6.2 SERVICE WARRANTIES

The Supplier warrants and represents to AWN that:

- (a) where AWN has either expressly or by implication, made known to the Supplier any particular purpose for which the Services are required, the Services will be performed in such a way to achieve that result;
- (b) all Services will be supplied in a diligent and professional manner with the degree of skill and care that is normally exercised by recognised professionals or tradespersons or entities which supply services of a similar nature;
- (c) the Supplier Personnel will be sufficiently skilled, experienced and qualified to perform the Services;
- (d) it will not engage in any activity that is likely to compromise the ability of the Supplier to perform its obligations under the Agreement fairly and independently; and

- (e) the provision and taking of the benefit of the Services will not infringe the Intellectual Property Rights of any third party.

6.3 GOODS WARRANTIES

The Supplier warrants and represents that:

- (a) the Goods:
- (i) supplied are free from any charge, encumbrance or liability to third parties;
 - (ii) are new and fit for the purpose disclosed by AWN (or, if no purpose is stated, the purpose for which the Goods would ordinarily be used);
 - (iii) conform in all respects with the specification (if stated in the Purchase Order or any other document, or if not stated, the original manufacturer's published specifications);
 - (iv) are free from Defects, omissions in design, materials, performance and workmanship; and
 - (v) are of merchantable quality and comply with all laws;
- (b) it is entitled to use and deal with any Intellectual Property Rights which may be used by the Supplier in connection with the Goods;
- (c) where the Goods require Installation, the Installed Goods will be properly Installed and the service warranties in clause 6.2 apply as if the Service is the Supplier's Installation works; and
- (d) where the Goods incorporate computer software, the Supplier warrants that: (i) the software is free from viruses, trojan horses, bugs, worms or any other defects that are intended to, or do, damage or interfere with the proper working of the software;
- (ii) the software will be free from any back door, time bomb, drop dead device or any other code designed to disable the software; and
 - (iii) any software maintenance, upgrade, patch or fix supplied by the Supplier for the software will comply with subparagraph (a) and will be compatible with the existing version of the software.

6.4 Where the Goods or Services have been procured from third parties, the Supplier hereby assigns to AWN, the benefit of any warranties (including manufacturer's warranties) given by the third parties in relation to the Goods or Services.

6.5 In the event of a breach of a warranty in this clause 6, the Supplier will, at no charge, correct or replace the Goods or alter the Services so that they comply with the warranty breached.

6.6 A repeated breach of warranty will be considered a material breach of the Agreement which is not capable of remedy entitling AWN to terminate the Agreement in accordance with clause 11.1(a)(ii).

7 REINSTATEMENT

The Supplier must, upon AWN giving written notice, immediately rectify and make good, at its cost, any loss or damage to AWN's premises, property or the environment, caused by the Supplier or its Personnel.

8 INTELLECTUAL PROPERTY RIGHTS

8.1 All Intellectual Property Rights developed by the Supplier specifically for AWN in connection with the provision of the Goods or Services vests in AWN from the date they are developed, but any Intellectual Property Rights created by the Supplier before the relevant Purchase Order was issued do not vest in AWN unless the parties have expressly agreed otherwise.

8.2 The Supplier grants to AWN a non-exclusive, perpetual, royalty-free, transferable licence to use any Intellectual Property Rights in respect of the Goods or Services to the extent necessary to receive the full use and benefit of the Goods and Services.

8.3 AWN grants to the Supplier, and to the extent necessary any relevant subcontractor, a royalty free, non-exclusive, non-transferable licence to use AWN's Intellectual Property Rights only to the extent necessary to provide the Goods and Services under the Agreement.

8.4 The Supplier must do all things necessary (including executing any documents) to give effect to this clause 8.

9 INDEMNITY

9.1 The Supplier indemnifies AWN and its employees and agents against all liabilities (including legal costs on a solicitor client basis) or losses which any of them incurs or suffers in respect of:

- (a) a negligent or wilful act or omission of the Supplier;
- (b) loss or damage to any property;
- (c) personal injury (including death of any person); and
- (d) claims that the Goods or Services breach the Intellectual Property Rights of any third party or constitute a misuse of any persons confidential information, arising out of or in connection with the performance of the Supplier's obligations under the Agreement, including the failure of the Supplier to provide the Goods or Services in accordance with the Agreement.

9.2 The parties agree that the operation of Part 4 of the Civil Liability Act 2002 (NSW) is excluded in relation to any rights, obligations and liabilities arising under the Agreement regardless of how such rights, obligations or liabilities are sought to be enforced.

10 INSURANCE

10.1 The Supplier must hold and maintain appropriate insurance (including where appropriate, public liability, product liability, material damage, motor vehicle liability and CTP, workers' compensation and professional indemnity insurance) to cover the risk for the Goods and/or Services under the Agreement that represent a standard of good practice expected of a competent and prudent supplier of such goods and/or services. The Supplier must provide a certificate of currency for these insurances to AWN on demand.

11 TERMINATION AND SUSPENSIONS

11.1 Rights to terminate

(a) AWN may terminate the Agreement immediately by notice to the Supplier if:

- (i) the Supplier commits a breach of the Agreement which is capable of remedy, and fails to remedy that breach within 7 days from receiving notice of the breach from AWN;
- (ii) the Supplier commits a breach which is not capable of remedy; or
- (iii) the Supplier becomes bankrupt, insolvent or an administrator, liquidator, or controller is appointed.

(b) AWN may terminate the Agreement without cause, by giving written notice to the Supplier, in which case the Supplier must stop supplying the relevant Goods or Services and take steps to mitigate its losses and prevent further costs being incurred. AWN must pay all reasonable amounts due in accordance with clause 5 for all Goods and Services delivered by the Supplier up until date of termination (but not any loss of prospective profits).

(c) The Supplier may terminate the Agreement for non-payment of the Fees by AWN, provided that the outstanding amount is an undisputed amount above \$50,000 and the Supplier has issued two reminder notices (the second reminder notice to be issued after 60 calendar days after the first reminder notice) to AWN and the amount still remains outstanding after 60 calendar days from AWN's receipt of the second notice.

11.2 INSTALMENTS

Notwithstanding that any Goods or Services are to be supplied in instalments, each Purchase Order constitutes a single agreement and if the Supplier fails to deliver or perform any instalment, AWN may treat the whole Purchase Order as repudiated.

11.3 Suspension

(a) AWN may at any time and for any reason direct the Supplier to suspend providing all or part of the Goods or Services. The Supplier must promptly comply with any direction that AWN may give, including a direction to remove its personnel and plant from AWN's premises and must not resume providing the Goods or Services until directed to do so by AWN.

(b) The Supplier will not be entitled to any payments, or reimbursement of its costs, except for any amounts due in accordance with clause 6 for Goods and Services delivered by the Supplier up until date of suspension.

11.4 On expiry or termination of the Agreement, the Supplier must provide all assistance reasonably requested by AWN in relation to the termination of the Agreement ("Transition Out Services"). AWN will reimburse the Supplier for any additional out-of-pocket costs where they are incurred in relation to providing the Transition Out Services, except where the termination relates to a breach of the Agreement by the Supplier.

12 CONFIDENTIALITY

12.1 The Supplier must:

(a) keep confidential, disclose to only those of its employees, agents and subcontractors who have a need to know and use only for the purpose of performing its obligations under the Agreement, all data, drawings, samples, specifications and other information, items or things, regardless of form, given or disclosed to the Supplier by AWN, unless otherwise approved in writing by AWN or required by law;

(b) not issue any information, publication, document or article or make any statement, or advertise in any media about any matters relating to the Agreement, unless otherwise approved in writing by AWN; and

(c) if requested by AWN, on delivery and Installation of the Goods (as applicable) or completion of the Services, return all information referred to in clause 13.1(a) to AWN or provide evidence, to the reasonable satisfaction of AWN that such information has been destroyed.

12.2 The Supplier's obligations under clause 12.1(a) shall survive expiry or termination of the Agreement. 13 Privacy

(a) The Supplier must, when it collects, receives, uses, discloses, transfers or otherwise handles Personal Information in the course of performing its obligations under the Agreement, comply with the Privacy Laws.

(b) The Supplier must not do anything or omit to do anything with the Personal Information that will cause AWN to breach its obligations under a Privacy Law.

13 NO EXCLUSIVITY AND NO VOLUME COMMITMENT

13.1 No provision of the Agreement creates an exclusive agreement between the parties for the supply of Goods or Services.

13.2 The Supplier acknowledges that AWN makes no commitment to purchase any quantity of Goods or Services other than as specified in a Purchase Order.

14 TAXES

14.1 GST

(a) Any amounts to be paid and any other value deemed by the GST Law as consideration in respect of a supply under or in connection with this Agreement ("Agreed Amount") is exclusive of GST

(b) An additional amount will be payable by the party providing consideration for that supply ("Recipient"), equal to the amount of GST payable by the supplier ("Supplier") for that supply.

(c) The additional amount shall be payable by the Recipient at the same time any part of the Agreed Amount is first required to be provided for that supply.

(d) Notwithstanding any other provision of this Agreement, any amount payable for a supply made under or in connection with this Agreement, which is calculated by reference to a cost, expense or amount paid or incurred by a party to this Agreement, will be reduced by an amount equal to any input tax credits to which that party is entitled to in respect of any acquisition relating to that cost, expense or amount

14.2 Other taxes and duties

With the exception of GST, the treatment of which is outlined in clause 15.1 above, the Supplier will pay all other taxes, duties, fees or other Government imposts or charges in relation to the sale or supply of goods or services to AWN.

15 GOVERNING LAW AND JURISDICTION

This agreement is governed by the laws of New South Wales, and the Parties irrevocably submit to the jurisdiction of the New South Wales and the Federal Court of Australia.