

Purchase Order Terms and Conditions – for Suppliers of Goods and/or Services to NMA, NFSA, and NCAP

1. Interpretation

In these terms and conditions, unless the context otherwise requires, the following words have the following meanings:

'Agreement' means the Purchase Order for the Supplies as agreed by the parties and also incorporating these terms and conditions.

'Business Day' means a day which is not a Saturday, Sunday or public holiday (being a public holiday appointed as such under the *Public Holidays Act 1993* (Vic)) in Melbourne.

'Confidential Information' means the confidential information of a party to this Agreement, including designs, process, components, inventions, techniques, confidential Intellectual Property, methods, ideas, discoveries, developments, formula, specifications, trade secrets, customer lists, sales data, financial data, other knowledge, or any of the other details connected with this Agreement that is designated by a party to be confidential, or otherwise known to the parties as being confidential, but excludes information which:

- A. is in or which subsequently enters the public domain, other than as a result of a breach of confidentiality;
- B. the receiving party can demonstrate was in its possession prior to the date of this Agreement;
- C. the receiving party can demonstrate was developed by it independently of any previous disclosures by the disclosing party;
- D. is lawfully obtained by the receiving party on a non-confidential basis from a person who is not bound by a confidentiality agreement with the other party or otherwise prohibited from disclosing the information to the receiving party.

'Delivery' means:

- A. if this Agreement is for the supply of goods (including goods fabricated utilising materials and/or equipment supplied by the Vendor), the actual delivery of all the goods specified in a Purchase Order by the Vendor to Nissan to the address specified by Nissan; and
- B. if this Agreement is for the supply of services, the supply of all the services specified in a Purchase Order by the Vendor to Nissan to the address specified by Nissan,

and 'deliver' and 'delivered' have corresponding meanings.

'Intellectual Property' means all present and future rights conferred under statute, common law or equity, title and interests in and to the inventions, know-how, patents, patent applications, registered and unregistered trade marks, services marks, registered and unregistered designs, look and feel, copyrights, circuit layouts, domain names, internet addresses, computer programs, designs, specifications, methodologies, confidential information, trade secrets, trade or business names, brand names and all other rights resulting from intellectual activity in, but not limited to, the industrial, scientific, literary or artistic fields.

'NCAP' means Nissan Casting Australia Pty Ltd (ACN 005 092 704).

'NFSA' means Nissan Financial Services Australia Pty Ltd (ACN 130 046 794).

'Nissan' means NMA, NFSA, and/or NCAP, as is expressly specified as the Purchaser on the relevant Purchase Order.

'NMA' means Nissan Motor Co. (Australia) Pty Ltd (004 663 156).

'Purchase Order' means a written document containing

the details of the goods and/or services ordered by Nissan from the Vendor.

'Related Bodies Corporate' has the meaning provided in the *Corporations Act 2001* (Cth).

'Supplies' means the goods and/or services:

- A. to be supplied; or
- B. as actually supplied;

by the Vendor to Nissan pursuant to this Agreement.

'Supplier Code of Conduct' means the Supplier Code of Conduct published by Nissan and available at <https://www.nissan.com.au/procurement.html> as amended from time to time.

'Vendor' means the supplier of the Supplies specified on the Purchase Order, and any references to 'Supplier' in this Agreement or any connected documents means the same.

'Personnel' of a party includes the directors, officers, employees, agents, contractors and sub-contractors of that party.

2. General

- 2.1 This Agreement, constitutes the entire agreement between the parties relating to the goods or services specified herein unless superseded or varied by written agreement accepted by signature of an authorised representative of both parties. The terms of such superseding or varying agreement (if any) will prevail to the extent of any inconsistency with these terms.
- 2.2 Any of the Vendor's standard or special terms for the provision of the Supplies (including any terms that may be printed on any confirmation order, invoice, delivery advice, statement or other writing that may be issued by the Vendor for the provision of the Supplies) shall not apply to this Agreement. This is the case notwithstanding any statement (oral or written) by the Vendor to the contrary (including on forms printed or provided by the Vendor).

3. Changes

- 3.1 Nissan may, at any time in writing, request changes in any one or more of the following:
 - (a) Quantity of Supplies ordered;
 - (b) Specifications, design, drawings, and data;
 - (c) the place or time of Delivery;
 - (d) shipping schedules specified in a Purchase Order or contained in written instructions (including directing temporary suspensions of scheduled shipments); and
 - (e) Methods of packing or shipment.
- 3.2 If any such change causes an increase or decrease in the cost of providing the Supplies or in the time required for providing the Supplies, the Vendor shall propose an equitable adjustment in price and/or the delivery schedule which reflects the increase or decrease. Any such change will be valid and binding on the parties when incorporated in a written change order or written additional order and signed by an authorised representative of each party.
- 3.3 The Vendor will charge Nissan for Supplies specified in this Agreement at a price no greater than the latest price accepted in writing by Nissan.
- 3.4 Any reduction in the Vendor's costs which results from a reduction in the rate of freight, customs duties, sales tax and/or any other duties or taxes from those rates in force at the date of the Agreement will be passed on to Nissan by the Vendor by reducing the price of the Supplies by an amount equivalent to such reduction. The Vendor agrees to notify Nissan of any such reduction prior to the relevant invoice date and provide Nissan with reasonable evidence of such reduced rates on request.
- 3.5 This Agreement may only be varied or replaced by a written document executed by the parties. No verbal understandings

or variations in respect of supply, price, delivery or any other conditions from those stated herein will be recognised.

4. Performance of Work and Shipping Supplies

- 4.1 Unless specific delivery dates are provided in this Agreement, the Vendor shall not carry out any work in respect of any of the Supplies specified in this Agreement, nor procure any of the materials required in their fabrication, nor ship any Supplies to Nissan, except to the extent authorised in written instructions furnished to the Vendor by Nissan.
- 4.2 Nissan shall not be responsible for Supplies for which written instructions have not been provided.
- 4.3 The Vendor shall not delegate in any manner to any other person the performance of any work or the supplying of any Supplies under this Agreement, unless specifically agreed in writing by Nissan.
- 4.4 Shipments in excess of those authorised by Nissan may be returned to the Vendor and the Vendor shall pay Nissan for all packing, handling and transportation expenses incurred in connection with such shipments and such shipments shall be at the Vendor's risk.

5. Delivery

- 5.1 Unless due to a Force Majeure Event or a delay caused or contributed to by Nissan, if Delivery of Supplies is not completed by the time specified in the Purchase Order, Nissan reserves the right, acting reasonably, without liability, and in addition to other remedies available to it at law, to terminate this Agreement by notice to the Vendor, in addition to any other remedies available to it.
- 5.2 On the occurrence of any late or partial delivery of Supplies by the Vendor, if Nissan has not terminated this Agreement:
 - (a) Nissan may, at its option, reject the Supplies, or approve a revised delivery schedule and/or service performance schedule, which may include the acceptance of partial or late deliveries in lieu of a single delivery; and
 - (b) the Vendor agrees to pay, or reimburse Nissan, for all reasonable additional freight charges, expenses, and damages incurred as a result of the failure to achieve full delivery by the date of Delivery originally agreed by the parties. Where such cost is incurred by Nissan, Nissan must provide documents substantiating those costs on request by the Vendor.

6. Force Majeure

- 6.1 Neither Nissan nor the Vendor shall be liable for any delay or failure to comply with the terms and conditions of this Agreement when such failure or delay is caused by or arises from any event which is unforeseen by, beyond the control of the parties and occurs without fault or negligence of the party prevented or delayed in performing the obligation ('Force Majeure Event'). A Force Majeure Event may include but is not limited to:
 - (a) earthquake, act of God, natural disaster, fire flood, storm, explosion, volcanic eruption, riots, civil commotion, malicious damage, sabotage, war, act of public enemy, revolution, government restrictions, unavoidable accidents;
 - (b) radioactive, biological or chemical contamination or warfare, currency restriction, embargo or a failure of a public utility;
 - (c) power shortage, breakdown of plant, machinery or equipment;
 - (d) epidemic or pandemic; and
 - (e) a change of law.
- 6.2 A party must promptly notify the other party of any Force Majeure Event that is preventing or delaying it from performing or carrying out its obligations under this Agreement.
- 6.3 In the event of a failure by the Vendor to perform or carry out any or all of its obligations under this Agreement arising from

a Force Majeure Event, Nissan shall be entitled to obtain the same or similar Supplies as those covered by this Agreement elsewhere for the duration of the failure and without any obligation to the Vendor. In these circumstances, Nissan may require a variation of the Agreement to achieve a proportionate reduction of the Supplies ordered from the Vendor.

7. Receipt and Inspection of Goods

- 7.1 Nissan will give to the Vendor, an acknowledgement of receipt of goods on arrival, but such acknowledgement will be subject to Nissan reserving the right to inspect the goods. Payment to the Vendor will not constitute acceptance or agreement by Nissan that the goods conform to the terms and conditions of this Agreement.
- 7.2 Deliveries in excess of quantities ordered and /or scheduled for delivery and/or items specified in the Purchase Order, may be returned by Nissan and not admitted for payment.
- 7.3 Inspection and acceptance of all goods as to quantity, weight, and conformity to Nissan's specifications will be performed within a reasonable timeframe after receipt of the goods by Nissan, regardless of method of shipment. The Vendor agrees to provide reasonable access to facilities and assistance for the safe and convenient inspection and/or audit of goods at the Vendor's premises, if deemed necessary by Nissan.
- 7.4 Any inspection, sum paid or extension of time prior to receipt and inspection of the goods by Nissan will be without prejudice to Nissan's rights and will not constitute any approval or waiver of Nissan's rights under this Agreement.
- 7.5 Subject to clause 7.6, title in the goods will pass to Nissan on acceptance of the goods. Risk in the goods will pass to Nissan when the Goods are delivered to Nissan's premises.
- 7.6 On rejection of any goods or return of excess quantities, title and risk in and to the goods shall pass back to the Vendor on the date of the Vendor receiving the Defect Notice. If defected goods are remedied in accordance with clause 8.4, ownership and title in and to the remedied goods will pass from the Vendor to Nissan on re-Delivery (or the date of remedy if the goods did not leave Nissan's premises).

8. Acceptance, Rejection and Replacement

- 8.1 After Nissan undertakes such tests or reviews as it considers necessary to determine whether the Supplies and/or deliverable(s) are fit for purpose and comply with this Agreement, Nissan will promptly issue written notification of acceptance of those Supplies. If Nissan does not give written notification of acceptance or rejection of the Supplies, or that there is a defect, within 30 days of Delivery, acceptance of the Supplies will be deemed to have occurred on the date of Delivery.
- 8.2 If any of the Supplies:
 - (a) are unfit for purpose or do not fulfil the requirements of this Agreement, including any Purchase Order; or
 - (b) on Delivery, are damaged or not of merchantable quality, Nissan may either:
 - (a) reject the Supplies by giving written notice to the Vendor within 30 days of Delivery. Nissan is not obliged to pay for any rejected goods ('Rejection Notice'); or
 - (b) give written notice to the Vendor specifying a failure or defect and request rectification of the failure or defect ('Defect Notice').
- 8.3 Rejection: The Vendor must, at its cost, collect and remove any rejected goods as soon as practicable following receipt of a Rejection Notice. If the Vendor fails to collect and remove the rejected goods within a reasonable time, Nissan may return the goods to the Vendor at the Vendor's expense, or, following further notification, destroy the goods or otherwise dispose of the goods in its discretion.
- 8.4 Defect: On receipt of a Defect Notice, the Vendor must remedy the defect as soon as possible and take all reasonable steps necessary to meet the requirements of this Agreement,

including any Purchase Order. If the Vendor fails to do so within a reasonable timeframe, Nissan may either:

- (a) rectify the defect at the Vendor's expense, or
- (b) reject the goods by returning them to the Vendor at the Vendor's expense in which case the Vendor must provide Nissan with a full refund for the Supplies within 7 Business Days.

9. Packing slips, Bills of Lading, Invoicing and Payment

- 9.1 Unless stated in the Purchase Order, or otherwise agreed in writing, the price stated in this Agreement will be deemed to be the 'into store' price at the specified Nissan premises.
 - 9.2 The Vendor will ensure that:
 - (a) each packing slip, bill of lading and invoice bears the applicable Purchase Order number and the delivery location; and
 - (b) the original bill of lading is mailed or emailed to Nissan at the address specified by Nissan.
 - 9.3 Unless otherwise specified, payment will not become due until the Vendor has fully performed and complied with its obligations under this Agreement. No payment to the Vendor will be construed as irrevocable acceptance by Nissan in case of defective work or goods. The Vendor will submit a separate invoice for each separate Purchase Order number and comply with any other reasonable invoicing requirements of Nissan. Nissan invoicing requirements are outlined in the Invoicing and Payment Guidelines available at <https://www.nissan.com.au/procurement.html>.
 - 9.4 Invoices for NFSA and NMA must be sent promptly via email to apinvoices@nissan.com.au. Invoices for NCAP must be sent promptly via email to ncap_invoices@nissan.com.au. An invoice must not cover more than one purchase order. The purchase order number and line items must always, as shown on the Purchase Order, be marked on the invoice(s) and related correspondence. The date used to calculate the due date for payment will be based on a valid invoice date and Nissan's Standard Payment terms shall apply, being 60 days after the invoice date, unless otherwise agreed by the parties in writing and with reference to Nissan's Invoicing and Payment Guidelines and Small Supplier Payment Policy available at <https://www.nissan.com.au/procurement.html>. All taxes to be paid by Nissan, including any Goods and Services Tax or value added tax, must be separately itemised on the invoice. The number and items, as shown on the Purchase Order, must appear on all invoices. Invoices may be rejected for non-compliance with any reasonable Nissan invoicing requirements outlined in the above Guidelines or Policy (as applicable). If an invoice is rejected by Nissan due to non-compliance with any reasonable Nissan invoicing requirements, any discount period and due date for payment will apply from the date the corrected invoice(s) are received by Nissan.
- ## 10. Packing, Marking and Shipping
- 10.1 The Vendor is to provide Advance Shipping Notice by EDI or in writing to the National Parts Distribution Centre, Dandenong, Victoria, prior to any order of goods being dispatched to any Nissan premises.
 - 10.2 Packing slips must accompany deliveries of goods.
 - 10.3 Unless otherwise agreed, the Vendor will arrange insurance of goods delivered to Nissan's premises as stated in the instructions issued by Nissan. Nissan is not obliged to insure rejected goods, or excess goods returned.
 - 10.4 Deliveries of goods by the Vendor will only be recognised against firm orders placed by Nissan, and will be made in the times and for the quantities specified in such orders, or in delivery schedules issued relative to such order. Nissan reserves the right to accept, at its sole discretion acting reasonably, in whole or in part, any such shipments in excess of quantities or outside the specifications included in Nissan's Purchase Order and/or Release.

- 10.5 The Vendor must (and must procure its representatives to) comply with any reasonable directions, procedures or policies advised or notified by Nissan or its representatives to the Vendor with respect to the packing, securing, loading or unloading of any goods or entry into, use of or egress from the premises where goods are delivered.
- 10.6 If, because of the failure of the Vendor to meet the Delivery requirements of this Agreement, Nissan finds it necessary to require shipment of any of the Supplies by a method of transportation other than the method originally agreed by the parties, the Vendor shall reimburse Nissan the full amount, if any, of its reasonable costs for any alternative method of transportation which exceed the cost of the method of transportation originally agreed, unless the change of delivery method is due to causes beyond the control and without the fault or negligence of the Vendor.
- 10.7 No variation or addition to the packing charges, transportation charges or duties indicated on the Purchase Order will be accepted unless agreed in writing by both parties. The Vendor will appropriately pack, mark and ship in accordance with any reasonable specific instructions from Nissan and the requirements of common carriers. The Vendor will be liable for any damage to the goods from its failure to comply with these instructions and requirements. The Vendor will further be liable for any freight charges or duties beyond those agreed by the parties. Shipments sent by the Vendor C.O.D. without Nissan's written consent will not be accepted and will be at the Vendor's risk.

11. Sample Parts

Where this Agreement is for production components, the Vendor, at its own expense, shall fabricate from production tooling and furnish to Nissan the number of sample parts specified by Nissan and agreed by the Vendor. The Vendor shall inspect these sample parts prior to Delivery and shall certify inspection results in the manner reasonably requested by Nissan.

12. Termination at Option of Nissan

- 12.1 This Agreement may be terminated by Nissan at its option, in whole or in part, at any time by written notice to the Vendor ('Notice of Termination').
- 12.2 After receipt of a Notice of Termination, the Vendor must, unless otherwise directed by Nissan, terminate all work under this Agreement as soon as possible and must, unless otherwise directed by Nissan:
 - (a) terminate all orders and subcontracts relating to the performance of the work terminated by the Notice of Termination;
 - (b) settle all claims arising out of such termination of orders and subcontracts;
 - (c) take all reasonable steps to minimise any losses and claims arising out of such termination;
 - (d) transfer title and deliver to Nissan:
 - (i) all completed work which conforms to the requirements of this Agreement, including any Purchase Order and does not exceed, in quantity, the amount authorised for production by Nissan; and
 - (ii) all reasonable quantities (but not in excess of amounts authorised by Nissan) of work in process and materials produced or acquired in respect of the performance of the work terminated which are of a type and quality suitable for producing supplies which conform to the requirements of the Purchase Order and which cannot reasonably be used by Vendor in producing supplies for itself or for its other customers; and
 - (iii) take all action necessary to protect property in the Vendor's possession in which Nissan has or may acquire a legal or beneficial interest.
- 12.3 In the event of Termination by Nissan under this clause, the Vendor will be entitled to claim from Nissan any out

unavoidable and substantiated costs and expenses (excluding any loss of profit) incurred by the Vendor as a direct result of the termination of the Agreement by Nissan ('Termination Claim').

12.4 To make a Termination Claim, the Vendor shall submit to Nissan, within 30 Business Days of the effective date of the Notice of Termination (unless further extended by Nissan), full details of the amounts claimed ('Termination Costs').

12.5 The Termination Costs shall be limited to include the following:

- (a) the price shown in the Purchase Order for Supplies which have been Delivered by the Vendor to Nissan in accordance with this Agreement and unpaid by Nissan at the effective date of the termination;
- (b) the actual costs incurred by the Vendor under this Agreement to the extent that such costs can be reasonably apportioned (under generally accepted accounting practices) to the Supplies set out in the Purchase Order which are yet to be provided at the effective date of termination, including the actual cost of work in process and materials transferred to Nissan under clause 12.2(d);
- (c) the actual cost of the Vendor discharging liabilities which cannot be cancelled and which can be reasonably apportioned (under generally accepted accounting practices) to the Supplies set out in the Purchase Order which are yet to be provided at the effective date of termination; and
- (d) the reasonable costs incurred by the Vendor in protecting property in its possession in which Nissan has or may acquire an interest.

12.6 Termination Costs shall not exceed the aggregate price specified in the Purchase Order (unless due to costs covered by clause 12.2(d)), and Nissan has no other liability to the Vendor in relation to that termination.

12.7 Termination Costs exclude any amounts already paid by Nissan to the Vendor under the Agreement.

12.8 The Vendor will provide Nissan with access to its premises and any records, before or after payment of a Termination Claim, to verify Termination Costs.

12.9 The Vendor's right to Termination Costs only applies if this Agreement is terminated by Nissan under clause 12.1 and in no other instances of termination of the Agreement.

13. Termination for Default

13.1 A party may terminate this Agreement at any time by notice to the other party ('Defaulting Party') if:

- (a) the Defaulting Party ceases to conduct business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors or suffers or permits the appointment of a receiver or administrator for its business or assets (to the extent the termination is permitted by law and subject to any stay of this provision pursuant to section 415D of the Corporations Act 2001 (Cth)); or
- (b) the Defaulting Party has committed a breach or is in default of this Agreement and such breach or default is either not capable of being rectified, or is capable of being rectified but the Defaulting Party has failed to rectify the breach or default within 20 Business Days after receiving written notice from the other party.

13.2 Termination of this Agreement under any clause of this Agreement does not affect any accrued rights or remedies of either party.

14. Warranties

14.1 The Vendor represents and warrants that:

- (a) Capacity: it has the right to enter into the Agreement and provide the Supplies;
- (b) Purpose: where Nissan has, either expressly or by implication, made known to the Vendor any particular

purpose for which the services are required, the services will be performed in such a way as to achieve that result;

(c) Conflict: it and its Personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under the Agreement;

(d) IP: it is entitled to use and deal with any Intellectual Property rights which may be used by it in connection with the provision of the Supplies and to grant to Nissan the licences contemplated by this Agreement;

(e) Trust: it has not entered into the Agreement on behalf of a trust; and

(f) Goods: the goods actually or to be Supplied under this Agreement:

(i) irrespective of whether engineering design, data or information has been furnished, reviewed or approved by Nissan, will be produced in compliance with any descriptions and specifications provided in this Agreement, including any Purchase Order;

(ii) are of acceptable quality, that is, fit for purpose, acceptable in appearance and finish, free from defects and safe and durable, and that they comply with any applicable Australian Standards;

(iii) if the Vendor provided a sample that was approved by Nissan, that the goods conform to that sample;

(iv) all Supplies will be fit for the purpose stated in the Purchase Order (or, if no purpose is stated, the purpose for which the Supplies would ordinarily be used or provided);

(v) goods will be of high quality material and workmanship;

(vi) goods are free from defect or fault (including defects in installation);

(vii) goods are accompanied by any necessary instructions, and technical documents (including operating and service manuals);

(viii) Vendor has good title to all such goods, free from any encumbrance including without limitation liens, security interests and charges; and

(ix) goods will comply with any applicable prescribed consumer information standards or product safety standards.

15. Provision of Services

15.1 The Vendor must:

(a) complete the services by the Delivery date and any other date(s) for delivery of the services specified in the Purchase Order;

(b) promptly notify Nissan as soon as it becomes aware of any delay or possible delay in the supply of the services in accordance with this Agreement;

(c) provide fit for purpose services in a timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the services to be or actually supplied under this Agreement; and

(d) use appropriately skilled and qualified Personnel to provide the services.

16. Indemnity

16.1 The Vendor indemnifies and must keep indemnified Nissan and its Personnel from and against any liability, loss, harm, damage, duty, compensation, cost or expense (including all legal and settlement costs determined on a full indemnity basis) which they may suffer, incur or sustain as a direct result of:

- (a) personal injury, including sickness and death;
 - (b) property damage;
 - (c) breach of an obligation of confidence or privacy, whether under this Agreement or otherwise;
 - (d) fraudulent acts or omissions;
 - (e) wilful misconduct or unlawful act or omission;
 - (f) a Security Breach (as defined in 29.2), and any claim by a third party arising from a Security Breach;
 - (g) third party claim arising out of a breach of the Agreement by the Vendor or its Personnel, including a breach of warranty, or any negligent act or omission of the Vendor or its Personnel;
 - (h) infringement or alleged infringement of the Intellectual Property rights or any other rights of any person, including any third party which was caused, or contributed to by, any act or omission by the Vendor or any of its Personnel; and
 - (i) the cost of any recall campaign or other corrective action or field service actions required (in the reasonable opinion of Nissan) to rectify any defective or potentially defective products produced by the Vendor, except to the extent that the defect is caused by the act or omission of Nissan or its Personnel.
- 16.2 The Vendor will not be liable under clause 16.1 and will not be required to indemnify those indemnified under clause 16.1 to the extent that the liability, loss, harm, damage, duty, cost or expense was caused or contributed to by the conduct of Nissan or its Personnel. To the extent that the indemnity in this clause 16 refers to persons other than Nissan, Nissan holds this clause on trust for those other persons.

16.3 This clause shall survive the termination of the Agreement.

17. Safety

Vendor agrees that all work performed pursuant to this Agreement must be performed in a safe manner and in compliance with any applicable safety regulations, codes of practice and industry standards. Any person performing such work must be suitably qualified and hold any necessary license or permit in relation to the work undertaken.

18. Insurance

- 18.1 The Vendor must obtain and maintain insurance cover for the duration of the Agreement and, if requested by Nissan, for a period of up to 7 years after the Supplies have been completed, sufficient to cover any loss or costs that may be incurred and for which the Vendor may be liable in connection with this Agreement, including if applicable, workers compensation and occupational disease, professional indemnity, public and product liability, property damage, and recall insurance, to the value agreed with Nissan in writing or, if no value is agreed, to a value sufficient to cover any loss or costs that may be incurred.
- 18.2 The Vendor will ensure that every contractor and sub-contractor engaged by it in connection with this Agreement maintains adequate insurance.
- 18.3 On request, the Vendor must, within 10 Business Days, provide Nissan with evidence of the currency of any insurance it is required to obtain under this Agreement. The failure by the Vendor to furnish to Nissan, or the failure by Nissan to obtain, such a certificate of currency of insurance will not constitute a waiver of the requirement for the Vendor to hold such insurance.
- 18.4 Where the required insurance is due to expire, on request by Nissan, the Vendor must provide evidence of the replacement insurance prior to the expiry of the initial insurance.

19. Work Performed on Nissan's Premises or Utilising Nissan's Property

- 19.1 If the Vendor performs any work on Nissan's premises or utilises the property of Nissan, whether on or off Nissan's

premises, the Vendor must comply with any reasonable direction of Nissan in relation to such work, including (without limitation) any direction regarding safety or environmental standards or procedures.

- 19.2 The Vendor must at all times during the performance of work under this Agreement comply with the statutory duties imposed by the Model Work Health and Safety Act, Occupational Health and Safety Act 2004 (Vic), or similar law (as applicable) and on demand by Nissan will produce to Nissan evidence that it has instituted and is carrying out a compliance and training program in relation to that Act with its applicable Personnel.

19.3 This clause shall survive the termination of the Agreement.

20. Bailed Property

- 20.1 Where the Vendor uses tools, fixtures, jigs, dies, supplies, materials, facilities, equipment, patterns or artwork (hereinafter called 'Tools') supplied by or paid for by Nissan, the ownership of the Tools shall remain with Nissan and the Vendor will ensure that such Tools are so marked as to be readily identifiable as the property of Nissan at all times.
- 20.2 Where the Vendor provides and pays for Tools and recovers the cost in the overall cost of the Supplies, the ownership of the Tools shall remain with the Vendor.
- 20.3 Irrespective of whether the Tools are supplied by Nissan or the Vendor, the Vendor undertakes to maintain the Tools in good order and condition (fair wear and tear expected) and capable of proper use in providing the Supplies.
- 20.4 Tools owned by Nissan which are stored at the Vendor's premises:
- (a) must not be moved from the Vendor's premises without Nissan's prior approval;
 - (b) on reasonable request of Nissan, must be delivered to Nissan by the Vendor as soon as possible; and
 - (c) on reasonable request of Nissan, must be delivered to any location reasonably designated by Nissan, in which event, Nissan will pay to the Vendor the cost of delivering such property to such location.
- 20.5 Nissan will have the right to enter the Vendor's premises at all reasonable times, with reasonable prior notice, to inspect the Tools and the Vendor's records with respect to the Tools.

21. Intellectual Property

- 21.1 Any Supplies bearing the registered trade mark of Nissan or its Related Bodies Corporates which are returned to the Vendor or rejected or otherwise not accepted by Nissan shall not be sold or otherwise disposed of by the Vendor while still bearing such registered trade mark.
- 21.2 Supplies manufactured or supplied to specifications or designs partially or wholly developed by Nissan shall be exclusive to Nissan. These Supplies shall not be sold or supplied to any third party or otherwise used or disposed of by the Vendor without express written consent of Nissan, which must not be unreasonably withheld or delayed.
- 21.3 The Vendor agrees that all Intellectual Property existing at the date of this Agreement, or coming into existence during the term of this Agreement, that is owned by Nissan, its Related Bodies Corporates, or its affiliates, ('Nissan Intellectual Property') remains the property of Nissan, its Related Bodies Corporate, or its affiliates (as the case may be). The Vendor must not use or disclose any Nissan Intellectual Property for any purpose other than for the purpose of performing its obligations under this Agreement.
- 21.4 Unless stated otherwise in writing and signed by Nissan, the Vendor acknowledges that all Intellectual Property discovered, developed, or that otherwise comes into existence as a direct result of this Agreement ('Developed Intellectual Property'), will vest in, be assigned to, and remain the property of, Nissan on creation. The Vendor agrees to execute any document and do anything reasonably required by Nissan to assist Nissan in obtaining or perfecting Nissan's title to such Developed

Intellectual Property.

- 21.5 Nissan grants the Vendor a personal, non-exclusive, non-transferable and non-assignable licence to use Nissan's Intellectual Property and the Developed Intellectual Property as required to perform its obligations under this Agreement. No other right is given to the Vendor to use any Nissan Intellectual Property or Developed Intellectual Property except in connection with the performance of the Vendor's obligations under this Agreement.
- 21.6 Nissan acknowledges and agrees that the Vendor continues to own all of its Intellectual Property existing at the date of this Agreement, or coming into existence during the term of this Agreement ('Vendor Intellectual Property') other than the Developed Intellectual Property.
- 21.7 The Vendor grants to Nissan, an irrevocable, worldwide, perpetual, non-exclusive, royalty-free, paid-up licence to use, adapt, modify, communicate and/or develop any Vendor Intellectual Property and Developed Intellectual Property to the extent necessary to enable Nissan to receive the benefit of the Supplies.

22. Sub-Contractors

- 22.1 The Vendor agrees that, notwithstanding that Nissan may consent to Vendor's engagement of a subcontractor, the Vendor will:
- (a) remain principally responsible for the due fulfilment of each of its obligations under this Agreement, and fully liable for any failure to fulfil such obligations; and
- (b) be liable for the fees and costs of any subcontractor and will be responsible and liable for all acts and omissions of the subcontractor.
- 22.2 The Vendor must ensure that any goods or services (or any element thereof) supplied by any subcontractor meets the requirements of this agreement.

23. Assignment

- 23.1 Subject to clause 23.2, neither party may assign, sublet or transfer its rights or obligations, or any part thereof, under this Agreement, without the prior written consent of the other party (where such consent must not be unreasonably withheld or delayed).
- 23.2 Nissan may assign its rights or obligations under this Agreement to its Related Bodies Corporate.

24. Waiver

The Waiver by a party of any specific default or defaults by the other party or failure by a party to cancel or terminate this Agreement or any part of it when a right of cancellation or termination arises shall not constitute waiver by that party of any of the terms and conditions of this Agreement with respect to any further or subsequent default or defaults by the other party or any cause herein stated which gives rise to a right of cancellation or termination.

25. Compliance with Laws and Nissan Policies

- 25.1 The Vendor agrees that in providing the Supplies to Nissan, Vendor will comply with all applicable laws, including any legislation, regulation, by-law, directive of any authority with jurisdiction, or Registered Industry Codes of Practice (including but not limited to that of the National Heavy Vehicle Regulator) with regard to Vendor's activities.
- 25.2 The Vendor and Nissan acknowledge they must comply with laws and regulations relating to the chain of responsibility obligations under the Heavy Vehicle National Law Application Act (2013) (Vic) and such other equivalent Acts and regulations in other Australian states and territories.
- 25.3 The Vendor will obtain all necessary consents, permits and licences and pay any regulatory or license fees necessary to comply with this Agreement including but not limited to those required to be held under the Labour Hire Licensing Act 2018 (Vic) or the equivalent Act and regulations in other Australian states and territories ('Labour Hire Laws'). The Vendor will

notify Nissan if it ceases to hold any licence required under the Labour Hire Laws.

- 25.4 The Vendor warrants that, if applicable to the Vendor, the Vendor will comply with the Modern Slavery Act 2018 (Cth) and will take steps (including to maintain due diligence procedures) to minimise modern slavery in its, or its sub-contractors', supply chains. Vendor must notify Nissan as soon as reasonably practicable if it becomes aware of any suspected modern slavery in a supply chain connected to this Agreement and it will maintain records to trace the supply chain of all goods and services.
- 25.5 On request from Nissan, the Vendor must provide Nissan with copies of any consents, permits, licences, certificates, records, reports or other documents relevant to Vendor's compliance with relevant laws (including but not limited to those set out in this clause).
- 25.6 The Vendor will use reasonable endeavors to comply with applicable Nissan policies and procedures as specified by Nissan from time to time relating to the Vendor and the supply of goods and/or services under this Agreement (including but not limited to the Supplier Code of Conduct). To the extent that such policies and procedures were not available to the Vendor at the time of entering into this Agreement, Nissan agrees that, unless it has the prior written agreement of the Vendor, it will not impose a policy or procedure on the Vendor which will have a materially adverse effect on the Vendor's business, rights under this Agreement or materially alter the commercial benefit the Vendor expects to derive from this Agreement.

26. GST

- 26.1 The terms used in this clause 26 have the same meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ('GST Act').
- 26.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.
- 26.3 If GST is imposed on any supply made under or in accordance with this Agreement, the recipient of the taxable supply must pay to the party making the taxable supply an amount equal to the GST payable on or for the taxable supply. Subject to the recipient first receiving a valid tax invoice, payment of the GST amount will be made at the same time the consideration for the taxable supply is to be paid or provided in accordance with this Agreement.

27. Confidential Information

- 27.1 Any drawings, blueprints, specifications, patents and other Confidential Information supplied by Nissan in connection with this Agreement (including any bailed property) at any time remains the confidential property of Nissan and, except with the prior consent in writing of Nissan, must be used solely for the provision of Supplies by the Vendor to Nissan, and must be returned to Nissan on request at any time.
- 27.2 The Vendor must not divulge to any other person any information with regard to specifications provided by Nissan or its Related Bodies Corporate or any information with regard to specifications or drawings received from or provided by Nissan or its Related Bodies Corporate.
- 27.3 Goods (including raw or half-finished goods) made by the Vendor in accordance with Nissan's specifications, drawings, or samples must not be directly or indirectly disclosed, reproduced, copied (either in whole or in part), provided to any other person, sold, offered to, or advertised for sale by the Vendor without Nissan's prior written consent.
- 27.4 Each party that receives Confidential Information ('Receiving Party') disclosed by the other party ('Disclosing Party') or otherwise acquired through the Receiving Party's access to or observation of the Disclosing Party's facilities, records, studies, or activities, agrees that, during and after its fulfilment of its obligations under this Agreement, and, unless expressly permitted by this Agreement, or required by law, or as required to obtain professional advice in relation to matters arising

under or in connection with this Agreement, it will:

- (a) keep the Disclosing Party's Confidential Information confidential;
- (b) not use, disclose or reproduce the Disclosing Party's Confidential Information for any purpose other than the purposes of this Agreement;
- (c) not, without the Disclosing Party's written consent, disclose the Disclosing Party's Confidential Information to any person other than its Personnel who need the information for the purposes of this Agreement; and
- (d) ensure that the Disclosing Party's Confidential Information is reasonably safeguarded from unauthorised access, use, copying or disclosure.

27.5 This clause shall survive the termination of the Agreement, and, unless otherwise agreed between the parties, the obligations of confidentiality therein shall apply for three years after that termination.

28. Publication

The Vendor should not without first gaining the consent of Nissan advertise or publish the fact that the Supplies are being supplied to Nissan.

29. Privacy and Data Security

29.1 The Vendor represents and warrants that it has in place appropriate legal, organisational, and technical measures necessary to:

- (a) preserve the security and confidentiality of all Nissan data processed by it and to which it has access, being any data, information or 'Personal Information' (as defined in the *Privacy Act 1988* (Cth)) accessible to Vendor under this agreement and which relates in any way to Nissan or its Personnel, customers, suppliers, assets or property ('Data'); and
- (b) prevent any computer program, trojan, virus or other trapdoor, easter egg or code which is harmful, destructive or disabling or which assists in or enables theft, alteration, denial of service, unauthorised access to or disclosure, destruction or corruption of information, data or software ('Harmful Code') from being introduced into Nissan's IT systems.

29.2 Vendor will notify Nissan as soon as possible if Vendor learns or has reason to suspect:

- (a) Nissan's Data has been subject to unauthorised or unlawful processing, accidental loss, destruction or damage; or
- (b) that any Harmful Code has been introduced into Nissan's IT systems,

as a result of any act or omission of the Vendor (each a 'Security Breach').

29.3 In the case of a Security Breach the Vendor agrees to:

- (a) not inform any third party of the Security Breach without first obtaining Nissan's prior written consent unless strictly required by applicable laws; and
- (b) take steps as soon as reasonably practicable (but not longer than within 48 hours) to remedy the Security Breach at Vendor's expense.

30. Set-Off

Nissan may set off any amount it owes the Vendor under this Agreement against any amount that the Vendor owes it under this Agreement.

31. Dispute Resolution

31.1 A party must not start court proceedings (except proceedings seeking interlocutory relief) against the other under this Agreement unless it has first complied with this clause 31 in full.

31.2 A party claiming that a dispute, difference or question arising

out of this Agreement has arisen ('Dispute') must give the other party notice of details of the Dispute including the action that they propose to settle the dispute ('Dispute Notice').

31.3 During the 14 Business Days after a Dispute Notice is given under clause 31.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts to resolve the Dispute.

31.4 If the parties are unable to resolve the Dispute, the Dispute must be referred to mediation to be conducted in Victoria, Australia (or electronically by audio-visual link if agreed between the parties acting in good faith). The parties must attempt to agree on a mediator (failing agreement within 10 Business Days, the parties shall request the President of the Law Institute of Victoria to nominate a mediator) and the parties shall share the costs of the mediation equally.

32. Remedies

The warranties and remedies available to the parties under the terms of this agreement will be cumulative and in addition to those implied by or available at law or equity. No waiver of any breach of this agreement will be construed to constitute a waiver of any other breach or of any provision hereof.

33. Severability

If any part of this Agreement is held to be invalid or unenforceable in any way, the remaining provisions will not be affected and remain in full force for the duration of the Agreement.

34. Applicable Law

This Agreement will be governed by the laws of the State of Victoria, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts in that State.

35. Advantaged Party Term

If any term of this Agreement is regulated by legislation relating to unfair contract terms and a party is advantaged by that term, that party ('Advantaged Party') may not apply or rely on that term if it:

- (a) would cause significant imbalance in the parties' rights and obligations under this Agreement,
- (b) is not reasonably necessary to protect the legitimate interests of the Advantaged Party, and
- (c) would cause detriment (financial or otherwise) to the other party if the Advantaged Party applied or relied on that term.

Words used in this clause 35 have the same meaning as under the applicable legislation.

The Vendor is deemed to have accepted these terms and conditions on the happening of the first of the following events:

- (d) acceptance of these terms and conditions by the Vendor (including any form of confirmation of order issued by the Vendor);
 - (e) in the case of the supply of goods, the commencement of manufacture or the setting aside of the goods for Delivery to Nissan or the supply of any samples to Nissan;
 - (f) in the case of services, the commencement of any work or services in connection with this Agreement or the Supplies;
 - (g) the issuing of an invoice in respect of the Supplies; and
 - (h) the Delivery of the Supplies to Nissan.
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