

The following terms apply to the Goods and/or Services purchased by Cleanaway under a Purchase Order on and from 22 December 2023

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these terms and conditions:

Agreement means an agreement between Cleanaway and the Supplier for the supply of Goods and/or Services constituted by a Purchase Order, these Conditions and any agreed variation or amendment.

Approved Subcontractor means a subcontractor of the Supplier approved in writing by Cleanaway.

Business Day means any day other than a Saturday, Sunday or public holiday observed at the Delivery Point, and if no Delivery Point is specified, refer to Melbourne, Victoria.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand.

Cleanaway means Cleanaway Operations Pty Ltd (ACN 010 745 383) or any related body corporate (within the meaning of section 50 of the *Corporations Act 2001* (Cth)) as specified in the Purchase Order.

Cleanaway Data means data of any kind of Cleanaway or of any customer or supplier of Cleanaway (other than the Supplier) that the Supplier accesses, stores or handles in the course of providing the Goods and/or Services, and includes all data that is:

- (a) Personal Information;
- (b) Cleanaway's Confidential Information; or
- (c) corporate proprietary or financial information.

Cleanaway Third Parties mean Cleanaway's third party contractors and service providers.

Conditions mean these terms and conditions of purchase.

Confidential Information of a party means:

- (a) information of a confidential nature relating to or developed in connection with the party's business or affairs which is disclosed to, learnt by, or which otherwise comes to the knowledge of or into the possession of, the other party;
- (b) information designated by that party as confidential; or
- (c) information about clients, customers, employees, or contractors of, or other persons doing business with, that party,

but does not include information that:

- (d) is or becomes generally available in the public domain or is rightfully received from a third person, other than through any breach of confidence; or
- (e) has been independently developed by the other party without using any other Confidential Information of the first party. Cleanaway's Confidential Information includes the terms of the Agreement and Cleanaway Data.

Date for Delivery means the date for delivery of the Goods and/or performance of the Services as set out in the Purchase Order. If there is no date specified, it is 30 days of the Purchase Order issue date.

Delivery Point means in relation to Goods, the delivery address for the Goods as set out in the Purchase Order and in relation to the Services, the place for performance of the Services as set out in the Purchase Order.

Developed Material means any Materials that are created by or on behalf of the Supplier under the Agreement in connection with the Goods and/or Services.

Environment means components of the earth, including:

- (a) land, air and water;
- (b) ecosystems and their constituent parts, including people and communities;
- (c) natural and physical resources;
- (d) any layer of the atmosphere;
- (e) any organic or inorganic matter and any living organism; and
- (f) human made or modified structures and areas,

and **Environmental** has a corresponding meaning.

Environmental Incident means an incident or event that is a breach of, or requires notification or is reportable in accordance with any applicable Environmental Laws.

Force Majeure Event includes any:

- (a) act of God, lightning, storm, cyclone, flood, earthquake, explosion, tsunami;
- (b) strike, lockout or other labour difficulty which applies in respect of state or Australia-wide industrial disputes (but which is not directed at the affected party or its Representatives);
- (c) epidemic or quarantine by order of Law;
- (d) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, act of terrorism, rebellion, riot, revolution, insurrection, martial law or confiscation by order of Law;

to the extent it:

- (e) was not caused by an act or omission of the affected party or its Representatives;
- (f) was beyond the reasonable control of the affected party and its Representatives; and
- (g) could not have been avoided or overcome by the affected party or its Representatives taking reasonable precautions or steps.

Goods means the goods described in the Purchase Order.

GST means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended or any replacement or any other relevant legislation and regulations.

Material means software, firmware, tools, documentation, reports, data, diagrams, procedures, plans and other materials.

Notifiable Incident means an incident which is notifiable under workplace, health and safety related Laws or Environmental Laws.

Infringement Claim means any Claim by a third party that the provision of the Supplier Materials, the Third Party Materials, the Developed Material, the Goods and/or Services, or any modifications or enhancements to Cleanaway Material made by or on behalf of the Supplier or the enjoyment or use of any of the foregoing in accordance with the Agreement infringe that third party's Intellectual Property Rights.

Intellectual Property Rights means any intellectual or industrial property right, whether protected by statute, at common law or in equity, including any patent, registered design, (whether or not registrable), invention, trade secret, circuit layout design, or right in relation to circuit layouts, right to confidential information, technical information, trademark or name, copyright or other protected right.

Laws means any law of Australia and any applicable jurisdiction, including common law, equity, statute, regulation, proclamation, statutory instrument of any kind, judgment, order, policy, or official directive or request of any government, government agency, or person charged with the administration of a law.

Loss means any loss, liability, damage, costs (including legal costs at the higher of an indemnity or solicitor-client basis) or expense incurred by a party relating to the Agreement.

Personal Information means all personal information (as defined in the *Privacy Act 1988* (Cth)) which is received or learnt by a party from any source as a consequence of or in the course of exercising or performing its rights and obligations under the Agreement.

Policies means any standard, code, guideline, specification, rule, policy procedure, directive, circular or practice issued by Cleanaway from time to time (available at <https://www.cleanaway.com.au/supplier-terms-and-conditions/>) or as notified by Cleanaway to the Supplier in writing from time to time.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Price means the price payable by Cleanaway to the Supplier as shown on the Purchase Order.

Privacy Policy means the document available at <https://www.cleanaway.com.au/privacy-statement/>.

Purchase Order means Cleanaway's order accompanying these Conditions or otherwise placed or communicated with the Supplier and includes these Conditions.

Representatives of a party means that party's directors, officers, employees, agents and sub-contractors and **Representative** means the person of the relevant party referred to in the Purchase Order. For the Supplier, Representatives includes any Approved Subcontractor(s).

Services means the services described in the Purchase Order.

Specifications means any technical or other specification relating to the Goods and/or Services referred to in the Purchase Order and details of which have been supplied by Cleanaway or its Representative to the Supplier.

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Supplier means the person who sells the Goods and/or provides the Services to Cleanaway.

Supplier Code of Conduct means the document available at <https://www.cleanaway.com.au/about-us/suppliers/>.

Third Party Materials means Materials provided by or on behalf of the Supplier in connection with the Agreement which contain the Intellectual Property Rights owned by a third party, including any modifications and enhancements to those Materials.

Warranty Period means, unless otherwise identified in the Purchase Order, the period of 24 months from:

- (a) the later of the Date for Delivery or date of commissioning (where applicable); or
- (b) if the Goods and/or Services are subject to an acceptance process, the date of acceptance of the Goods and/or Services or first use by Cleanaway, and, for Goods and/or Services that are repaired or replaced during this period, will continue for the longer of: (i) the remainder of the original warranty period for those Goods and/or Services; or (ii) 12 months from the date on which those Goods and/or Services were last repaired or replaced.

1.2 Interpretation

In the interpretation of these Conditions, unless the context or subject matter otherwise requires:

- (a) the singular includes plural and vice versa;
- (b) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (c) a reference to legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate or delegated legislation issued under it;
- (d) a reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (e) if a party consists of more than 1 person, the Agreement binds each of them separately and any 2 or more of them jointly;
- (f) an obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly; and
- (g) time is of the essence in respect of all of the Supplier's obligations to Cleanaway.

2. AGREEMENT

2.1 Consideration

- (a) The Supplier agrees to supply the Goods and/or Services to Cleanaway in accordance with the Agreement, and in consideration for this Cleanaway agrees to pay the Price to the Supplier.
- (b) The Supplier is not obliged to provide (and must not charge for) any Goods and/or Services until Cleanaway has issued a Purchase Order.

2.2 Acceptance

Acceptance of a Purchase Order by the Supplier will occur on the earlier of:

- (a) the Supplier's oral or written acceptance being received by Cleanaway; or
 - (b) the Supplier supplying the Goods and/or Services to Cleanaway,
- and will constitute acceptance of these Conditions by the Supplier.

2.3 Term

- (a) The Agreement will commence on the earlier of the date:
 - (i) set out in the Purchase Order; or
 - (ii) the Supplier commences providing the Goods and/or Services, and continues until the later of:
 - (iii) any expiry date specified in the Purchase Order; or
 - (iv) all the Goods and/or Services have been provided under the Purchase Order,

(the **Term**).
- (b) If the Purchase Order has the option for Cleanaway to renew or extend the Purchase Order, then such renewal or extension will be governed by the latest version of these Conditions published by Cleanaway on its website at the time

of that renewal or extension.

2.4 Basis of engagement

The Supplier is not an exclusive provider of the Goods and/or Services to Cleanaway. Cleanaway is under no obligation to meet any minimum volume or fee commitments.

2.5 Entire Agreement

The entire Agreement between Cleanaway and the Supplier for the purchase of the Goods and/or Services by Cleanaway from the Supplier is constituted by (in the following order of precedence):

- (a) the Purchase Order (including any Specifications);
- (b) these Conditions;
- (c) any other terms and conditions which are imposed by Law and which cannot be excluded; and
- (d) any agreed written variation.

For the avoidance of doubt, nothing in these Conditions is intended to exclude liability for fraud or fraudulent misrepresentation or any other representation which cannot be excluded by Law.

2.6 Exclusion of other terms

These Conditions shall apply to all contracts for the purchase of Goods and/or Services by Cleanaway from the Supplier to the exclusion of:

- (a) any other terms and conditions or any other materials which the Supplier may purport to apply or which are endorsed upon any correspondence or documents issued by the Supplier, irrespective of their date of communication to Cleanaway, except to the extent that the Supplier's terms and conditions are agreed to in writing and signed by Cleanaway; and
- (b) any terms and conditions implied by statute or otherwise,

to the extent it is lawful to do so.

3. DELIVERY AND PERFORMANCE

3.1 Provision of Goods and/or Services

The Supplier must:

- (a) provide Goods and/or Services in accordance with the Agreement;
- (b) ensure that the Goods and/or Services are fit for the purposes set out in the Agreement, match the description and comply with the Specifications, the Purchase Order and are of acceptable quality;
- (c) maintain appropriate resources to provide the Goods and/or Services;
- (d) perform its obligations with due care and skill and in a manner consistent with applicable industry standards;
- (e) use best endeavours to ensure that the provision of the Goods and/or Services causes as little disruption as possible to Cleanaway's operations;
- (f) ensure that the Goods:
 - (i) are free from all defects or faults;
 - (ii) are clearly and durably labelled identifying the Goods and include any appropriate and correct warning and instructions;
 - (iii) comply with any representations, descriptions, samples or other specifications (including the Specifications) including quality, function, performance or design;
- (g) ensure that its Representatives are aware of and comply with the Supplier's obligations under the Agreement; and
- (h) not do any act, engage in any practice, or omit to do any act or engage in any practice, that would breach (or cause Cleanaway to breach) any Laws.

3.2 Delivery of Goods and Performance of Services

- (a) The Supplier must ensure that the Goods and/or Services are delivered or performed (as applicable) at the Delivery Point on the Date for Delivery. Should any change in the Date for Delivery (or dates) be proposed by the Supplier for any reason, it must promptly provide written notice to Cleanaway who may, acting reasonably, accept or reject such proposal.
- (b) If Cleanaway rejects a proposal to change the Date for Delivery and the Supplier fails to deliver on the Date for Delivery, Cleanaway may by written notice to the Supplier, terminate the all or part of the respective Purchase Order. If

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Cleanaway has paid a deposit, the Supplier must refund the deposit in full to Cleanaway. This clause 3.2 does not limit other rights or remedies available to Cleanaway under the Agreement.

3.3 Force Majeure Event

- (a) A party must give timely notice to the other party of any Force Majeure Event that precludes the party (whether partially or wholly) from complying with its obligations under the Agreement, including providing a reasonable estimate of the length of delay that will result from the Force Majeure Event.
- (b) The party's obligation to perform any obligation prevented by the Force Majeure Event (an **Affected Obligation**) is suspended for as long as performance of the obligation is prevented by the Force Majeure Event.
- (c) The parties must use their reasonable endeavours to remove or relieve the Force Majeure Event and to minimise the delay caused by any Force Majeure Event.
- (d) If a Force Majeure Event continues to affect the provision of the Services for a continuous period of 30 days, either party may terminate the Agreement or the Purchase Order by serving written notice on the other party and neither party has liability to the other except in respect of any event arising prior to the date of that contract being terminated.
- (e) The parties will be responsible for their own costs incurred during the period of the Force Majeure Event.

3.4 Work on Cleanaway's premises

The Supplier will provide Cleanaway with a complete list of all chemicals, hazardous materials, and ingredients in the composition of goods used in the performance of the Services and a copy of the material safety data sheet for such chemicals and hazardous materials. The submission of such list by the Supplier will not relieve the Supplier of exclusive responsibility for the safe transportation, use, storage and disposal of such materials prior to acceptance by Cleanaway. All chemicals and hazardous materials brought by the Supplier to Cleanaway's premises must bear a label stating the identity of the chemical of material and the hazards associated therewith.

4. PRICE

4.1 Price of Goods and/or Services supplied

The Price specified in the Purchase Order is fixed and, unless expressly set out in the Purchase Order, is not subject to increase. The price includes all costs of testing, inspection, labelling, packing and freight and delivery to and off-loading at the Delivery Point as specified in the Purchase Order.

4.2 GST

Unless otherwise stated or agreed in writing, the Price includes GST.

4.3 Freight

Unless otherwise stated or agreed in writing, the Supplier is responsible for freight and delivery to the Delivery Point as specified in the Purchase Order.

4.4 ABN withholding

Where the Supplier does not provide Cleanaway with an Australian Business Number (**ABN**) as part of the Purchase Order, the Supplier:

- (a) represents and warrants that the Supplier is not making a supply to Cleanaway in the course of or furtherance of an enterprise carried on in Australia by the Supplier and therefore is not required to provide an ABN; and
- (b) must pay Cleanaway any liability for taxes, including any penalties and interest, incurred by Cleanaway as a result of a breach of clause 4.4(a).

5. PAYMENT

5.1 Payment Terms

Unless specified by in Purchase Order, payment for Goods and/or Services supplied by the Supplier to Cleanaway will be tendered within 45 days after the end of the month in which the Supplier issues a valid invoice for those Goods and/or Services in accordance with clause 5.2.

5.2 Invoices

The Supplier must provide Cleanaway with a GST compliant tax invoice for the Goods and/or Services provided under the Agreement. Each invoice must include:

- (a) a reference to the Purchase Order number;
- (b) a reference to the item number;

- (c) a detailed description of the delivered Goods or performed Services (including sizes, quantities, weight, unit and price);
- (d) the Price relating to the Goods and/or Services, broken down to reflect the same Price components on the Purchase Order; and
- (e) the amount of any applicable GST.

Cleanaway will only accept invoices which bear such information and may require the Supplier to reissue a valid invoice prior to payment.

5.3 Payment disputes

If Cleanaway reasonably disputes part or all of an invoice (including in relation to suspected non-compliance with the Agreement) it may withhold payment of the disputed amount until the dispute is resolved.

5.4 Set off and withholding of payment

Any debt due from or moneys payable by a party (**Owing Party**) to the other party under the Agreement may be deducted by the Owing Party from any moneys due or to become due to the other party under the Agreement. The Owing Party is entitled to recover from the other party any balance that remains owing after deduction.

6. TITLE AND RISK

6.1 Title

Property in the Goods passes to Cleanaway free of any encumbrances on delivery of the Goods by the Supplier.

6.2 Risk

The Supplier bears all risks of loss and damage (excluding Loss caused by Cleanaway) to the Goods and/or Services until final acceptance by Cleanaway in accordance with clause 6.4.

6.3 Final inspection and acceptance

Notwithstanding any prior inspections, usage or payments, all Goods shall be subject to:

- (a) final inspection which may include measurement, testing or examination; and
- (b) acceptance at Cleanaway's facility within a reasonable time (but not more than 30 days) after receipt of the Goods.

6.4 Date of acceptance

Acceptance of the Goods and/or Services by Cleanaway will occur on the earlier of:

- (a) the date upon which Cleanaway notifies the Supplier in writing of acceptance; or
- (b) if Cleanaway has not rejected the Goods and/or Services under clause 6.5, after the expiry of the period set out in clause 6.5.

6.5 Rejected Goods and/or Services after delivery

Cleanaway may, within 30 days of delivery of the Goods or performance of the Services at the Delivery Point, reject any Goods and/or Services which do not comply strictly with the Agreement. Once the Goods and/or Services are rejected, Cleanaway, in its sole discretion, may require:

- (a) in the case of either Goods or Services, the Supplier to refund any payment within 14 days;
- (b) in the case of Goods, replacement of the Goods to Cleanaway's satisfaction; or
- (c) in the case of Services, the re-supply of the Services.

Title and risk in the rejected Goods immediately re-vests in the Supplier. Where the Supplier has removed the Goods from Cleanaway's premises at Cleanaway's request, the Supplier must, at its cost, remove from the rejected Goods any of Cleanaway's intellectual property or any other distinguishing features such as name or symbols.

6.6 No Waiver

Cleanaway's acceptance of any of the Goods and/or Services does not waive its rights.

6.7 Defects during Warranty Period

- (a) During the Warranty Period, if the Goods and/or Services supplied to Cleanaway do not comply with the Agreement, or are inconsistent with the Specifications (**Defect**), the Supplier must, as soon as practicable and at no cost or expense to Cleanaway, rectify any Defect.
- (b) If the Supplier does not rectify the Defect in accordance with clause 6.7(a) above, then Cleanaway may, itself or through a third party, rectify such Defect and the Supplier must reimburse the reasonable costs of such rectification on

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request by Cleanaway.

- (c) If any of the Goods and/or Services are covered (in whole or in part) under a warranty from a third party, the Supplier must ensure that Cleanaway has, and that the Supplier makes use of, the benefits offered by that warranty.

7. LAWS AND POLICIES

7.1 Compliance

In the course of supplying the Goods and/or Services under the Agreement, the Supplier must comply with:

- (a) all applicable Laws and Policies;
- (b) the Supplier Code of Conduct;
- (c) all lawful directions of Cleanaway's representative or any person authorised by Law or Policy to give direction to the Supplier; and
- (d) obtain and maintain, all requisite licences, permits, qualifications, registrations, authorisations and statutory requirements necessary to perform its obligations under the Agreement.

7.2 Warranties relating to Laws and Policies

The Supplier warrants that the Goods and/or Services will not knowingly be provided under the Agreement in breach of the Policies and relevant Laws.

7.3 Changes to Policies

- (a) Cleanaway may add to or change the Policies by providing written notice in accordance with the below:
 - (i) Where the change is due to additions or changes required by Law, or is reasonably necessary for safety, environmental, security or technical reasons or to prevent fraud (**Urgent Changes**) - Cleanaway must provide at least 3 days' notice or, if Cleanaway is unable to do so, as much notice as Cleanaway can reasonably provide; and
 - (ii) All other additions or changes that are not Urgent Changes (**Standard Changes**) - Cleanaway must provide at least 30 days' notice,(the Urgent Changes and Standard Changes together being **Policy Changes**).
- (b) Subject to clause 7.3(c), the Supplier must comply with the additional or updated Policies on and from the end of the applicable notice period.
- (c) Where the Supplier believes that the Policy Change is materially detrimental to the Supplier, and:
 - (i) the change is an Urgent Change, the Supplier may notify Cleanaway in writing of this within 3 days; or
 - (ii) the change is a Standard Change, the Supplier may notify Cleanaway in writing of this within 20 Business Days,

of receiving Cleanaway's notice under clause 7.3(a), and the parties must promptly hold good faith discussions to resolve the issue. The Supplier will not need to comply with the Policy Change until the issue is resolved. If the parties are unable to resolve the issue within 20 Business Days, then either party may terminate the Agreement and Purchase Order with 10 Business Days' written notice to the other party.

7.4 Health, safety and Environment

- (a) The Supplier must ensure that its Representatives are appropriately inducted, trained and supervised in relation to the health, safety and Environmental risks associated with the provision or performance of the Goods and/or Services, as well as the procedures required to manage those risks.
- (b) The Supplier must:
 - (i) promptly notify Cleanaway (and, in any case, within 24 hours) of any accident or Notifiable Incident, injury, property damage or damage to the Environment which occurs in the course of providing the Goods and/or Services, and provide the details of the measures taken to remedy the situation; and
 - (ii) within 5 Business Days, provide a written report to Cleanaway giving complete details, including the results of investigations into its cause and any recommendations or strategies for prevention of a recurrence.
- (c) Without limiting Cleanaway's rights under the Agreement, if the Supplier is providing Goods and/or Services on Cleanaway's premises and Cleanaway informs the Supplier that in its reasonable opinion the Supplier is:
 - (i) not performing in compliance with the Supplier's health, safety and

Environmental obligations; or

- (ii) providing the Goods and/or Services in such a way that endangers or harms (or is likely to endanger or harm) the Environment or any person's health and safety or impacts Cleanaway's reputation (**Adverse Action**),

the Supplier must promptly at its own expense remedy that breach or Adverse Action and, until it is remedied, Cleanaway may (acting reasonably) direct the Supplier to:

- (iii) suspend the performance of all or part of the Purchase Order; and
- (iv) remove any of the Supplier's Representatives who Cleanaway considers have caused or contributed to the breach or Adverse Action, from carrying out the provision of Goods and/or Services under the Agreement.

- (d) If Cleanaway suspends the Purchase Order under clause 7.3(c), Cleanaway:

- (i) will not be required to make any payment to the Supplier for the Goods and/or Services impacted by the breach or Adverse Action the subject of the suspension, during the suspension; and
- (ii) will not be liable for any of the Supplier's costs of such suspension.

7.5 Modern slavery

- (a) In the course of supplying Goods and/or Services under the Agreement, the Supplier must:
 - (i) comply with all Laws relating to Modern Slavery;
 - (ii) take all reasonable steps to ensure that its Representatives and suppliers do not promote or engage in Modern Slavery in their operations and supply chains;
 - (iii) promptly provide Cleanaway with any information and documents Cleanaway reasonably requests in connection with verifying the Supplier's compliance with this clause and/or Cleanaway's compliance with its legal obligations in relation to Modern Slavery; and
 - (iv) notify Cleanaway in writing of any breach of this clause, or any actual, reasonably suspected or potential Modern Slavery in a supply chain or operations relevant to the Supplier's supply of Goods and/or Services under the Agreement, as soon as possible upon the Supplier becoming aware of it.
- (b) Cleanaway may suspend all or part of a Purchase Order if it reasonably believes that the Supplier has breached this clause 7.5 until such breach is addressed.
- (c) The Supplier represents and warrants that it and, to the best of its knowledge, its supply chain (including, where applicable, its Representatives and suppliers) have not been:
 - (i) and are not, engaged in any instances of Modern Slavery; and
 - (ii) convicted of any offence relating to Modern Slavery or are under investigation by any government authority for such offences.

- (d) Cleanaway may audit (upon reasonable notice) the Supplier's operations and/or supply chain at the Supplier's cost, and the Supplier agrees to cooperate and grant access to any premises to which the Goods and/or Services are connected. The Supplier must, at its cost, take remedial actions specified by Cleanaway in response to identified issues from the audit.

- (e) For the purposes of this clause 7.5, **Modern Slavery** has the meaning given under the *Modern Slavery Act 2018* (Cth).

8. PRIVACY AND DATA

8.1 Privacy Laws

If the Supplier deals with any Personal Information under the Agreement, the Supplier must:

- (a) only collect, store, process, use, disclose or otherwise deal with Personal Information as required for the purposes of providing the Goods and/or Services to Cleanaway or as otherwise expressly permitted under this Agreement;
- (b) keep, and make available to Cleanaway upon request, records detailing the receipt of any Personal Information the Supplier has disclosed, the date of disclosure and the Personal Information that has been disclosed;
- (c) take reasonable steps to:
 - (i) ensure that the Personal Information it uses or discloses in providing the

Goods and/or Services is up-to-date, complete and relevant having regard to the nature of the Goods and/or Services; and

- (ii) protect the Personal Information from misuse, interference and loss, and from unauthorised access, modification or disclosure; and
- (d) if the Supplier discloses any Personal Information to a third party as permitted under the Agreement:
 - (i) ensure that the third party is aware of and complies with the Supplier's privacy obligations as if it was the Supplier; and
 - (ii) accept responsibility for any act or omission by that third party in relation to the Personal Information as if it was an act or omission of the Supplier under the Agreement.
- (e) notify Cleanaway as soon as reasonably practicable if the Supplier becomes aware of any breach or alleged breach of its obligations under this clause, or that a disclosure of Personal Information may be required by Law.

8.2 Data security requirements

If the Supplier deals with any Cleanaway Data, the Supplier must:

- (a) implement, maintain and enforce appropriate security procedures and safeguards in order to protect Cleanaway Data in the Supplier's possession and control against any misuse, loss, interference unauthorised access, modification or disclosure;
- (b) ensure that Cleanaway has access at all times to Cleanaway Data while it is in the Supplier's possession or control and provide that Cleanaway Data to Cleanaway upon request;
- (c) if any Cleanaway Data is lost, damaged, corrupted or otherwise unable to be accessed, take all reasonably practicable measures available to the Supplier to recover and restore that Cleanaway Data promptly (and such measures will be at Supplier's cost to the extent such loss, damage, corruption or loss of access is caused or contributed to by the Supplier or its Representatives);
- (d) immediately notify Cleanaway if it becomes aware of any likely, suspected or actual misuse or loss of, interference with or unauthorised access to, modification of, or disclosure of, Cleanaway Data, or breach of the Supplier's obligations relating to Cleanaway Data (a **Data Breach**), or is or may be required by Law to disclose any Cleanaway Data or Data Breach (**Notifiable Event**);
- (e) comply with any reasonable direction from Cleanaway with respect to:
 - (i) assessing, investigating, remedying and addressing a Data Breach; or
 - (ii) a Notifiable Event, including providing information requested by Cleanaway relevant to the Notifiable Event, and not otherwise disclosing to any third party the circumstances regarding the Notifiable Event without express prior written approval from Cleanaway;
- (f) inform and co-operate with Cleanaway in the event of any breach or risk regarding the security of Cleanaway Data;
- (g) ensure that any person who is authorised by the Supplier to have access to Cleanaway Data complies and agrees to comply with this clause to the same extent as the Supplier;
- (h) comply with any additional data security requirements set out in the Purchase Order or Specifications (in which case the parties agree that the more onerous requirement will take precedence to the extent of any inconsistency); and
- (i) only disclose, store, transfer, and make accessible Cleanaway Data within Australia or as otherwise set out in the Purchase Order.

8.3 Audit

If permitted under the Purchase Order or applicable Policy, Cleanaway (or a third party nominated by Cleanaway) may audit the Supplier's compliance with its obligations relating to the Agreement and the Supplier must comply with any additional audit obligations set out in the Purchase Order or applicable Policy.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 Cleanaway IP

- (a) Cleanaway will own all Intellectual Property Rights in and to Cleanaway Material and Developed Material and any other Intellectual Property Rights made available to the Supplier by or on behalf of Cleanaway (together, **Cleanaway IP**).
- (b) The Supplier assigns to Cleanaway all Intellectual Property Rights in and to the Developed Material, and any modifications or enhancements to Cleanaway Material, made by or on behalf of the Supplier on and from creation.

- (c) Cleanaway grants the Supplier a non-exclusive, non-transferable, royalty free, personal licence during the Term to use (and to sublicense its Approved Subcontractors to use) Cleanaway IP solely to the extent directly necessary for the purpose of performing its obligations under the Agreement.
- (d) Where the Supplier holds any property which is subject to Cleanaway IP, while in the Supplier's custody and control, such property is held at the Supplier's sole risk and, upon Cleanaway's request upon reasonable notice, must be returned to Cleanaway in good condition, normal wear and tear accepted.

9.2 Supplier IP

- (a) The Supplier will own all Intellectual Property Rights in and to the Supplier Materials and any other Intellectual Property Rights made available to Cleanaway by or on behalf of the Supplier (excluding Third Party Materials and any Developed Material) (together, the **Supplier IP**).
- (b) To the extent it is not assigned to Cleanaway or otherwise licensed under the Agreement, the Supplier grants Cleanaway a non-exclusive, perpetual, irrevocable, royalty free and worldwide licence to use, reproduce, modify, develop and otherwise exploit (and to allow Cleanaway Third Parties to use, reproduce, modify, develop and otherwise exploit) the Supplier IP as required to receive, use and otherwise enjoy the full benefit of the Goods and/or Services.
- (c) For the avoidance of doubt, the licence in clause 9.2(b) does not apply to any Supplier IP that the Supplier makes generally available under a standalone licence agreement.

9.3 Third Party IP

To the extent that Third Party Materials are incorporated into the Goods and/or Services or are otherwise provided to Cleanaway by the Supplier under the Agreement, the Supplier must use best endeavours to procure for Cleanaway:

- (a) rights in respect of the Intellectual Property Rights in and to the Third Party Material (**Third Party IP**) no less extensive than the rights granted to Cleanaway in respect of the Supplier IP set out in clause 9.2; or
- (b) such other licence rights in respect of the Third Party IP as agreed in writing by the parties.

9.4 Infringement Claim

If an Infringement Claim is made, the Supplier must:

- (a) without prejudice to Cleanaway's other rights or remedies and at no additional cost to Cleanaway, and at Cleanaway's reasonable discretion:
 - (i) modify the affected Goods and/or Services in order to avoid any infringement without any adverse effects to the functionality, performance and quality of the Goods and/or Services;
 - (ii) procure for Cleanaway all rights required to continue using and exploiting the affected, unmodified Goods and/or Services in accordance with the Agreement; or
 - (iii) procure for Cleanaway non-infringing replacements for the affected Goods and/or Services equivalent in functionality, performance and quality.
- (b) If the options in clause 9.4(a) above are not possible, the Supplier must accept return of the affected Goods and/or Services or cease to provide or perform the affected Goods and/or Services (as applicable) and reimburse the Price paid by Cleanaway for those Goods and/or Services.

10. CONFIDENTIALITY

10.1 Protection

Each party must only use or copy the other party's Confidential Information for the purposes of the Agreement and must take all steps reasonably necessary to:

- (a) maintain the confidentiality of the other party's Confidential Information;
- (b) ensure that any person who has access to Confidential Information of the other party through it or on its behalf does not use, copy or disclose that Confidential Information other than in accordance with the Agreement; and
- (c) enforce the confidentiality obligations under the Agreement.

10.2 Disclosure

Each party must not disclose the Confidential Information of the other party to any person except:

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- (a) to its Representatives (and, in the case of Cleanaway, includes Cleanaway Third Parties) who need to know the Confidential Information for the purposes of the Agreement;
- (b) as required to be disclosed by Law;
- (c) if the other party has given its consent to the disclosure or use; or
- (d) as expressly permitted by the Agreement.

10.3 Return

- (a) Subject to clause 10.3(b) each party must, at the other party's option, return, destroy or permanently de-identify all copies of the other party's Confidential Information in its possession or control within 10 Business Days of expiry or termination of the Agreement.
- (b) If a party needs to retain the other party's Confidential Information for the purposes of complying with any Law, litigation, or internal quality assurance and record-keeping, then it may retain it and use it solely for this purpose (but must deal with it in accordance with clause 10.3(a) promptly after it is no longer required for this purpose).

10.4 Relief

In addition to other remedies, a party will be entitled to injunctive relief for any breach or threatened breach of the other party's obligations of confidentiality under the Agreement.

11. INDEMNITY AND LIABILITY

11.1 Indemnity

The Supplier indemnifies Cleanaway and its Representatives and holds them harmless from and against any and all Claims and Loss arising from any breach of the Agreement by the Supplier and the acts or omissions of the Supplier (including its Representatives) under the Agreement.

The indemnity in this clause 11.1 is reduced to the extent that Cleanaway and its Representatives have caused or contributed to such Claims or Loss, or could have been avoided had Cleanaway taken reasonable steps to mitigate such Loss.

Cleanaway holds the benefit of this clause 11.1 for itself and on trust for each of Cleanaway's Representatives.

11.2 Consequential loss

Neither party shall be liable to the other for any special, exemplary, punitive or consequential Loss (including without limitation, any loss of profit, loss of opportunity and loss of goodwill) incurred directly or indirectly in connection with the Goods and/or Services, except for liability in respect of:

- (a) third party damage or loss of use of third party property;
- (b) damage to the Environment;
- (c) personal injury to or death of any person;
- (d) any wilful misconduct or fraudulent act or omission or criminal conduct of the Supplier or its Representatives;
- (e) breaches of clauses 8 or 10;
- (f) any infringement of third party Intellectual Property Rights; and
- (g) liability which cannot be limited at Law.

12. TERM AND TERMINATION

12.1 Without cause

Cleanaway may, at any time on the provision of reasonable written notice, terminate the Purchase Order, in whole or in part, without cause. Following receipt of such notice by the Supplier, the Supplier must, to the extent specified by Cleanaway, stop all work on the Purchase Order, and cause its Representatives to stop work.

If Cleanaway terminates the Purchase Order under this clause 12.1, the Supplier will be entitled to claim, by written notice to Cleanaway, any actual, reasonable, unavoidable, substantiated and properly incurred costs directly incurred prior to the date of termination for the purpose of fulfilling the Purchase Order. For the avoidance of doubt, such costs will not include anticipated profits for undelivered Goods or unperformed Services.

12.2 With cause (Cleanaway)

Cleanaway may terminate the Agreement immediately, in whole or in part, if the Supplier:

- (a) fails to make delivery of the Goods or perform the Services within the time

specified in that Purchase Order, except if the delay is caused by Cleanaway or its Representatives;

- (b) fails to rectify a Defect in accordance with the Agreement;
- (c) breaches a term of the Agreement that cannot be remedied, or for a breach capable of remedy, fails to remedy said breach within 14 days' written notice by Cleanaway; or
- (d) becomes insolvent, files or has filed against petition in bankruptcy, or makes an assignment for the benefit or creditors.

12.3 With cause (Supplier)

The Supplier may terminate the Agreement immediately, in whole or in part, if Cleanaway:

- (a) breaches a term of the Agreement that cannot be remedied, or for a breach capable of remedy, fails to remedy said breach within 60 days' written notice by the Supplier; or
- (b) becomes insolvent, files or has filed against petition in bankruptcy, or makes an assignment for the benefit or creditors.

Where a Purchase Order renewal or extension is governed by a new version of these Conditions published by Cleanaway under clause 2.3(b) that materially disadvantages the Supplier, the Supplier may terminate the Agreement with 30 days' written notice if it provides such notice of termination within 30 days of the commencement of the renewal or extension.

12.4 Consequences of termination and expiry

On expiry or termination (in whole or in part) of the Agreement, in addition to any termination assistance obligations set out in the Purchase Order (if any), or otherwise agreed by the parties:

- (a) Cleanaway will only be liable to pay the Supplier for Goods and/or Services completed in accordance with the requirements of the Agreement by the effective date of termination and may recover from the Supplier any money paid for Goods and/or not completed by that date;
- (b) on request by Cleanaway, the Supplier must remove from Cleanaway's premises all of the Supplier's Representatives, plant and equipment and provide any disengagement assistance reasonably requested by Cleanaway.

12.5 Survival

The rights, obligations and indemnities in clauses 1, 6.7, 4.4, 7.1, 7.2, 17.5(c), 8, 9, 10, 11, 12.4, 12.5 and any other obligations which are expressed to, or by their nature, survive expiry or termination of the Agreement, will survive the termination or expiry of this Agreement. The expiry or termination of the Agreement does not affect any rights which accrued before the date of expiry or termination.

13. SUBCONTRACTING, ASSIGNMENT AND ADVERTISING

The Supplier must obtain Cleanaway's written consent (which must not be unreasonably withheld) before it:

- (a) subcontracts any obligation under the Agreement. The Supplier agrees that it remains liable for the actions of any subcontractors engaged to perform its obligations under the Agreement, including any Approved Subcontractors;
- (b) assigns, charges or encumbers the Agreement or any rights under the Agreement; or
- (c) advertises or publishes anything concerning the Agreement.

14. INSURANCE

During the Term, unless otherwise agreed between the parties, the Supplier must at its cost maintain valid and enforceable insurance policies for:

- (a) public liability and product liability with a reputable insurer for at least \$20,000,000;
- (b) professional indemnity with a reputable insurer for at least \$5,000,000;
- (c) workers' compensation in accordance with applicable Laws;
- (d) insure the Goods and/or Services with a reputable insurer for their full replacement cost; and
- (e) any other insurance requirements set out in the Purchase Order.

The Supplier must, upon reasonable notice from Cleanaway, provide Cleanaway with certificates of currency with respect to these insurance policies.

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15. DISPUTE

- (a) Any dispute, controversy or claim arising out of or in connection with the Agreement (**Dispute**) must be resolved, at first instance, by Representatives of each party within 10 days of the disputing party providing a Dispute notice to the other party setting out full particulars and the resolution(s) being sought.
- (b) If the Representatives fail to resolve the Dispute, the Dispute shall be escalated to senior managers of the parties to resolve within 30 days.
- (c) The senior managers must use their best endeavours and act in good faith to attempt to resolve any Dispute. If the senior managers fail to resolve the Dispute, then either party may refer the matter to mediation.
- (d) The mediator and the process will be agreed upon by the Supplier and Cleanaway.
- (e) Notwithstanding the existence of a dispute, the parties must continue to perform their obligations (not subject to the dispute) under the Agreement.

16. WAIVER

A waiver by either party:

- (a) in respect of a breach of a provision of the Agreement by the other party will not constitute a waiver in respect of any other breach of that or any other provision; and
- (b) is not effective unless it is in writing, and only relates to the specific purpose for which it is given.

17. CONFLICT OF INTEREST

The Supplier must promptly notify Cleanaway as soon as it is aware of any actual or potential:

- (a) Claim against or involving the Supplier or Representative of the Supplier; or
- (b) the supply or proposed supply of goods or services by the Supplier in a manner and to an extent,

which may adversely affect the Supplier's ability to provide the Goods and/or Services to Cleanaway in accordance with the Agreement, and must use reasonable endeavours to avoid and resolve such conflicts which arise.

18. NO LIMITATION OF STATUTORY RIGHTS AND SEVERANCE

Nothing in these Conditions has the effect of or is taken to have the effect of excluding, restricting or modifying the provisions of any relevant or applicable statute. If it is determined that a word, phrase, sentence, paragraph or clause is unenforceable, illegal or void, then it is severed and the other provisions of these Conditions remain operative.

19. VARIATIONS

19.1 Variation

Cleanaway may with reasonable notice, prior to delivery of Goods or performance of the Services, direct the Supplier in writing to add, omit, amend, supplement or replace any Purchase Order Specification or these Conditions. The Supplier must, within 7 days of such direction, advise Cleanaway in writing if it accepts the variation to the Purchase Order or proposes any amendments to the proposed variation. If the Supplier rejects the variation (or its proposed variation) or fails to advise Cleanaway with the specified period, the Purchase Order shall be terminated unless otherwise agreed between the parties.

19.2 Price

Where a direction for a variation would result in variation to the Price, the Supplier must as soon as reasonably practicable Cleanaway in writing of the varied Price (which must be determined by the same method of pricing for the provision of the original Goods and/or Services). A variation to the Price is not effective unless it is communicated to Cleanaway in writing and signed by Cleanaway.

19.3 Agreement

If, in the opinion of the Supplier, a direction for a variation is likely to prevent the Supplier from meeting its obligations under the Agreement, it must immediately notify Cleanaway. Cleanaway will decide (acting reasonably) whether the variation will take effect and notify the Supplier of its decision in writing and may, in its reasonable discretion, modify the Agreement to the extent required to enable the Supplier to deliver the variation.

20. PRIVACY

Cleanaway collects Personal Information for the purposes of performing its obligations under the Agreement.

By executing the Agreement the Supplier consents to Cleanaway using the Supplier's Personal Information to perform its obligations under the Agreement. Cleanaway will use that Personal Information in accordance with the Privacy Policy.

The Supplier may contact Cleanaway to gain access to and request correction or amendment to the Supplier's Personal Information.

Cleanaway may disclose the Supplier's Personal Information to:

- (a) third parties that are associated or connected with giving effect to the transaction contemplated under the Agreement and the performance of the Supplier's obligations under the Agreement; and
- (b) the Supplier's Related Entities (as defined in section 9 of the *Corporations Act 2001* (Cth)).

Where Cleanaway has been requested to extend credit to the Supplier, the Supplier:

- (c) agrees that Cleanaway may disclose the Supplier's Personal Information to investigate the credit worthiness of the Supplier, including (without limitation), conducting a credit check at any time, making enquiries with persons nominated by the Supplier as trade references, its bankers or any other credit providers (**Information Sources**);
- (d) authorises the Information Sources to disclose to Cleanaway all information concerning the Supplier which is within the possession of the Information Sources, and which is requested by Cleanaway; and
- (e) consents to Cleanaway giving to, and obtaining from, the Information Sources, Personal Information about the Supplier and information about the commercial credit arrangements of the Supplier for the purpose of collecting overdue payments or for notifying other credit providers of default by the Supplier.

21. GENERAL

21.1 Entire agreement

The Agreement represents the entire agreement between the parties in relation to the Goods and/or Services and supersedes all prior discussions, negotiations, understandings and agreements in relation to those Goods and/or Services.

21.2 Governing law

The Agreement shall be governed by and construed in accordance with the laws of the state or territory in which the Goods are delivered to and/or the Services are primarily performed. Any court proceedings shall be filed and heard in that state or territory. If the Goods and/or Services are delivered or performed in one or more state and/or territory in accordance with the Agreement, the laws of the state of Victoria shall prevail and any court proceedings shall be held in the state of Victoria.

21.3 Relationship

The Supplier is an independent contractor of Cleanaway. Nothing in these Conditions constitutes any other type of relationship between the parties. The Supplier and its Representatives must not represent themselves as employees or agents of Cleanaway.

21.4 Notices

All written notices made under the Agreement may be served personally, via email, or sent by express post as per the details set out in the Purchase Order.

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