# DEFINITIONS AND INTERPRETATION

# Definitions

In this agreement, unless the context otherwise requires:

**Accepted** **Day** **Rate** means, in respect of each supply of an TIER 1 Employee by TIER 1 to the Client, the day and/or hourly rate specified at Item 3 of the Purchase Order, or if not specified then as published by TIER 1 in its statement of rates as issued by TIER 1 from time to time.

**Accepted** **Disbursements** means, in respect of each supply of a TIER 1 Employee by TIER 1 to the Client, the disbursements specified at Item 3 of the Purchase Order.

**Agreement** means these Standard Terms & Conditions together with the accompanying Purchase Order for the supply of TIER 1 Employees for Professional Services.

**Business** **Day** means a day other than a Saturday, Sunday, or public holiday in the State of Queensland.

**Claim** means any claim, complaint, demand, proceeding, suit, litigation, action, cause of action or other legal recourse (whether in contract, tort, under statute or otherwise).

**Client** means the party listed at Item 1 of the accompanying Purchase Order.

**Confidential** **Information** means information and material relating to a party which comes into the possession or knowledge of the other party, whether orally, in writing or electronically, and whether directly or indirectly, including (without limitation) strategic information, corporate information, information about the financial and labour needs of a part, and information relating to the business, clients, members, sales, know-how and operations of a party, that is marked as “confidential” or which the recipient knows or should reasonably know is confidential.

**Fees** means the fees payable by the Client to TIER 1 in respect of the supply of the TIER 1 Employee for Professional Services, as calculated in accordance with the Accepted Day Rate.

**TIER 1** **Employee** means the worker who is an employee of TIER 1 and is supplied or to be supplied to the Client to perform Professional Services.

**TIER 1** means Tier 1 Professionals Pty Ltd.

**Professional Services** means the services that the TIER 1 Employee is supplied to the Client to provide.

**Losses** means all losses, liabilities, damages, and claims (including taxes), and all related costs and expenses (including any and all legal fees and costs of investigation, litigation, settlement, judgement, interest, and penalties).

**Placement** **Fee** means the fee payable if an TIER 1 **Employee** is employed by the Client.

**Purchase** **Order** means the Purchase Order for the supply of TIER 1 Employees for Professional Services accompanying these Standard Terms & Conditions.

**Standard** **Terms** **&** **Conditions** means the Professional Services of TIER 1 Employees Standard Terms & Conditions.

# INTERPRETATION

# In this agreement:

* 1. headings are for convenience only and shall not be used in the interpretation or construction of this agreement; and
  2. unless the context otherwise requires:
     1. words importing the singular include the plural and vice versa;
     2. words importing any gender include the other genders;
     3. including and similar expressions are not words of limitation;
     4. month means calendar month and year means calendar year;
     5. references to currency are to Australian currency;
     6. a reference to a party is a reference to a party to this agreement;
     7. a reference to writing includes any communication sent by post, facsimile, or email;
     8. if the day on or by which a person must do something under this Agreement is not a Business Day, the person must do it on or by the next Business Day;
     9. where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
     10. a reference to a person includes a reference to a natural person, corporation, partnership, joint venture, association, authority, government, or governmental agency;
     11. a reference to a document (including this agreement) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated, or replaced; and
     12. references to the recitals, clauses, sub-clauses, paragraphs, items, schedules, or annexures are references to recitals, clauses, sub-clauses, paragraphs, items, schedules, and annexures respectively to or of this agreement.

# Persons bound jointly and severally

Where a party comprises two or more persons, the covenants, and agreements pursuant to this agreement on the part of that party shall bind those persons jointly and each of them severally.

# Agreement binding on heirs, executors etc.

This agreement shall be binding upon each party’s heirs, executors, administrators, successors, substitutes, personal representatives and permitted assigns.

# Contra Proferentem rule does not apply

In the interpretation of this agreement, no rule of construction applies to the disadvantage of a party on the basis that it put forward or drafted this agreement or any provision in it.

# TERM AND APPLICATION

# Term

The agreement commences on the Start Date specified at Item 2 of the Purchase Order and continues in full force and effect until the End Date specified at Item 2 of the Purchase Order or until terminated by either party pursuant to clause 12 (Term).

# APPLICATION

Upon written acceptance of the completed Purchase Order by the Client, the Purchase Order, together with these Standard Terms & Conditions, shall form an agreement between TIER 1 and the Client, which shall not be varied unless in accordance with these Standard Terms & Conditions or as agreed in writing by the parties.

# SUPPLY OF TIER 1 EMPLOYEES FOR PROFESSIONAL SERVICES

# Purchase Order

As required, the Client’s request for the supply of TIER 1 Employees for Professional Services will be submitted in writing to TIER 1 in the form and containing the details in the Purchase Order accompanying these Standard Terms & Conditions.

# TIER 1 may supply TIER 1 Employees

* 1. In response to a Purchase Order, TIER 1 may, but will not be obliged to, offer to supply Professional Services to the Client.
  2. If TIER 1 is willing and able to supply Professional Services to the Client in response to a Purchase Order, it will give written notice to the Client by returning the completed Purchase Order.

# Acceptance of TIER 1’s offer

1. If the Client wishes to proceed with TIER 1’s offer to supply Professional Services contained in the completed Purchase Order, the Client will return the completed and executed Purchase Order to TIER 1.
2. In returning the completed and executed Purchase Order to TIER 1, the Client accepts responsibility to pay TIER 1 fees on the basis of the Accepted Day Rate specified in the Purchase Order, and to reimburse to TIER 1 the amount of the Accepted Disbursements in respect of that supply.

# Non-exclusive

For the avoidance of doubt, neither TIER 1 nor the Client is subject to any exclusivity requirement with respect to the supply and receipt of TIER 1 Employees for Professional Services.

# Replacement of TIER 1 Employee

If the Client is not satisfied with an TIER 1 Employee and wants a replacement, the Client agrees that the Client will speak to TIER 1 directly about replacement of the TIER 1 Employee and is not to communicate anything to the TIER 1 Employee indicating that the supply of their Professional Services will be cancelled or words to that effect.

# Communication after End Date

Unless TIER 1 agrees otherwise, the Client agrees that during the period of, or after an TIER 1 Employee has completed provision of Professional Services with the Client, the Client will not contact the TIER 1 Employee directly or indirectly to offer them employment with the Client or any other organisation.

# RELATIONSHIPS

# The Client engages TIER 1 to provide the Professional Services as an independent contractor.

# No contractual relationship will exist between the Client and any TIER 1 Employee by virtue of this Agreement.

# Neither TIER 1 nor any TIER 1 Employee is the Client’s employee, partner, legal representative, agent, joint venturer, or franchisee.

# The Client acknowledges that TIER 1 supplies its workers, at the Client’s request, to perform the work that the Client has described.

# TIER 1’S CHARGES

# TIER 1’s charges will be based on the number of hours that TIER 1 Employees provide the Professional Services, as recorded in TIER 1’s time sheets, and signed for by the Client’s representative. The Client agrees to have these time sheets checked and signed, so that TIER 1 Employees are able to submit them to TIER 1 promptly.

# If the Client fails to provide TIER 1 with the time sheets detailed at clause 7.1, TIER 1 may, in calculating the charges payable by the Client to TIER 1 relating to the supply of Professional Services, rely on information provided to TIER 1 by the relevant TIER 1 Employee or otherwise undertake the calculations on the basis of TIER 1’s reasonable estimates.

# TIER 1’s charges are as set out in the Purchase Order or as otherwise agreed with the Client.

# The Client acknowledges that to the extent in the compilation of any quotation or communication of any charges, TIER 1 has relied upon information supplied by the Client, then should such information be incorrect in the reasonable opinion of TIER 1, then TIER 1 may vary that quote or those charges for the Professional Services without the Client’s consent, and such variation shall be deemed to have been agreed to by the Client.

# Regardless of anything stated to the contrary in this Agreement or elsewhere, the Client is deemed to have ordered the Professional Services for a period of 8 hours at least, or such longer time as may be nominated in any Award or Industrial Agreement covering the scope of work, as the minimum period of employment.

# Regardless of the period for which the Professional Services are in fact provided to the Client, TIER 1 may render to the Client an Invoice for the provision of Professional Services for the minimum period (at the least) and recover that amount from the Client.

# The parties agree that the imposition of the minimum period is to reasonably compensate TIER 1 for the expense incurred in providing the Professional Services for any shorter period of time.

# The Client agrees to pay any statutory charges, levies, and taxes for which TIER 1 may become liable in respect of performing TIER 1’s obligations under these Standard Terms & Conditions by reason of such statutory charges, levies or taxes being introduced after the acceptance of the offer to supply Professional Services.

# EMPLOYMENT OF TIER 1 EMPLOYEE

# If, following the supply of a TIER 1 Employee to the Client to perform Professional Services by virtue of this Agreement or the introduction of a TIER 1 Employee to the Client, that TIER 1 Employee is employed by the Client (whether on a casual, part-time, or full-time basis), then in addition to any other moneys payable by the Client to TIER 1 pursuant to this Agreement, the Client is not liable to pay to TIER 1 a Placement Fee.

# INVOICES

# The Client agrees to pay each invoice within 30 days following the end of the week during which the services are provided.

# Payment is to be made to TIER 1. The Client agrees not to pay any TIER 1 Employee directly for Professional Services.

# All payments by the Client to TIER 1 of invoices under this Agreement must be made:

1. without deduction or set-off;
2. in immediately available funds; and
3. by way of electronic funds to the bank account TIER 1 nominates in writing from time to time.

# TIER 1 RESPONSIBILITIES

# TIER 1 is responsible for the following in relation to TIER 1 Employees whilst performing Professional Services to the Client:

1. the payment of all amounts due to TIER 1 Employees under the terms of any relevant industrial instrument or contract;
2. If TIER 1 Employee is an employee, and subject to the individual employee agreement, the payment of leave entitlements, including but not limited to annual leave, sick leave, parental leave, and long service leave;
3. subject to these Standard Terms & Conditions, the deduction of all appropriate Federal and State taxation, including but not limited to income tax, fringe benefits tax and payroll tax;
4. the payment of an amount as superannuation into a superannuation fund to avoid the imposition of a charge under the Superannuation Guarantee Charge Act 1992 (Commonwealth); and
5. such other matters or things as may be negotiated between the Client and TIER 1.

# TIER 1 will use its best endeavors to provide a TIER 1 Employee that meets the Client’s skill-set requirements as advised to TIER 1 by the Client from time to time.

# TIER 1 will advise the Client promptly of any failure on TIER 1’s part to meet the Client’s requirements, either at the commencement, or during, the supply of Professional Services.

# Unless specified otherwise in the Purchase Order, TIER 1 does not provide or supply tools or equipment with, or as part of, the Professional Services and is not responsible for and makes no representation concerning any tools or equipment supplied by any employee or the condition or the capacity of them. However, it is a requirement of all tradespersons assigned to a contract to supply and carry with them a standard tradesperson's toolkit.

# TIER 1 agrees, warrants and assumes all responsibility for the following to ensure that TIER 1 Employees will be covered by, and that TIER 1 will be a beneficiary of, the following insurance policies, taken out with an insurance office approved to undertake insurance business in Australia under the Insurance Act 1973 (Cth), or other suitable and permissible statutory Indemnity or self-insurance arrangement whilst performing Professional Services for the Client:

1. Public liability insurance to provide cover of at least AUD$10,000,000 and which covers acts or omissions of the supplied TIER 1 Employees;
2. Professional indemnity insurance to provide cover of at least AUD$1,000,000 and which covers acts or omissions of the supplied TIER 1 Employees;
3. Active Labour Hire Licensing as per the requirements set out by the State in which TIER 1 is based.
4. Workers' compensation insurance that covers the supplied TIER 1 Employees;
5. Compulsory third-party motor vehicle Insurance;
6. comprehensive motor vehicle insurance for any TIER 1 owned or rented vehicles used as part of the Services;
7. any other insurance that TIER 1 reasonably considers necessary to ensure that the interests of TIER 1 are protected against any liability incurred through the performance of this Agreement.

# CLIENT RESPONSIBILITIES AND OBLIGATIONS

# Responsibility for TIER 1 Employee

# The Client acknowledges and agrees that during the period the TIER 1 Employee is supplied to the Client, the supplied TIER 1 Employee is subject to the Client’s control, direction and supervision unless stated otherwise in the Purchase Order.

# The Client agrees and warrants and assumes all responsibility for the following:

1. to provide TIER 1 with full and accurate information about the job requirements relevant to the supply of Professional Services by completing the Purchase Order and providing any other relevant information;
2. not to on-hire or re-supply TIER 1 Employees to any other person without the prior written consent of TIER 1;
3. not to allocate tasks or responsibilities to TIER 1 Employees or require TIER 1 Employees to perform or participate in work, other than in accordance with the relevant Purchase Order for the supply of Professional Services; or
4. not to request TIER 1 Employees to perform or participate in any work or use any equipment with which TIER 1 Employees are unfamiliar or in respect of which they are unqualified or have not received adequate training;
5. to supervise, instruct and direct TIER 1 Employees adequately at all times whilst they are supplying Professional Services to the Client;
6. to supervise, instruct and direct the Client’s own employees and contractors properly at all times whilst TIER 1 Employees are supplying Professional Services to the Client;
7. to comply with the Client’s obligations to TIER 1 Employees pursuant to relevant legislation, including legislation regarding Workplace or Occupational Health and Safely, discrimination and harassment; and
8. to maintain a safe work environment and safe systems of work for TIER 1 Employees including:
9. establishing safe work practices;
10. communicating safe work procedures to each TIER 1 Employee;
11. ensuring that systems of work and the working environment of TIER 1 Employees are safe and without risks to health;
12. ensuring that TIER 1 Employees are not exposed to risks to their health or safety or to hazards arising from carrying out the Professional Services.
13. complying with all occupational health and safety requirements under all applicable statutes and regulations;
14. maintaining plant and equipment and ensuring that all facilities and equipment provided for use by TIER 1 Employees in carrying out the Professional Services are safe and without risks to health and safety when properly used;
15. providing induction, information, instructions, training, supervision, and safety consumables to TIER 1 Employees where appropriate;
16. informing TIER 1 Employees and TIER 1 promptly of any unusual workplace risk or practice or of any change in site or safety conditions that may present a hazard to TIER 1 Employees;
17. complying with TIER 1’S reasonable requests to ensure the workplace health and safety of workers;
18. to notify TIER 1 of any injury sustained by any TIER 1 Employee on the Client’s premises or otherwise during the time the TIER 1 Employee is performing Professional Services for the Client.
19. to ensure that TIER 1 Employees will be covered by, and that TIER 1 will be a beneficiary of, the following insurance policies, taken out with an insurance office approved to undertake insurance business in Australia under the Insurance Act 1973 (Cth), or other suitable and permissible statutory Indemnity or self-insurance arrangement whilst performing Professional Services for the Client:
    1. Compulsory third-party motor vehicle Insurance;
    2. comprehensive motor vehicle insurance of not less than AUD$20,000,000 for any client owned or rented vehicles used as part of the Services;
    3. travel Insurance (if applicable); and
    4. any other insurance that TIER 1 reasonably considers necessary to ensure that the interests of TIER 1 are protected against any liability incurred through the performance of this Agreement.
20. to provide TIER 1 with evidence of the currency and suitability of all insurances, statutory indemnity or self-insurance arrangements that extend cover to TIER 1 Employees upon our request;
21. to notify TIER 1 immediately of any event that may give rise to a claim under any insurance policy, statutory indemnity or self-insurance arrangement that relates to a TIER 1 Employee whether such policy, indemnity or arrangement be held or established by the Client or by TIER 1;
22. to report to TIER 1 in writing covering any performance issues in relation to TIER 1 Employees, so that TIER 1 can manage the feedback process to the relevant TIER 1 Employees;
23. to forward to TIER 1 promptly a written notification of any workplace incident that may give rise to a claim by, against or involving TIER 1 Employees;
24. to abide by all Federal and State laws that impose upon the Client any obligation to do, or refrain from doing, anything, or to make or pay any payment, deduction, premium, levy, allowance, compensation, damages, interest, or costs in respect of or in connection with the engagement of TIER 1 Employees under these Standard Terms & Conditions or any work done by them whilst on performing Professional Services for the Client;
25. to maintain the confidentiality and privacy of information TIER 1 provides to the Client about TIER 1 Employees, whether written or verbal; and
26. to release TIER 1 from all claims which the Client or any other person claiming through the Client now have or has or might have in the future, in respect of TIER 1’s liability for any damage, loss or injury to or death of TIER 1 Employees, or any other person, to the extent that TIER 1’s liability is not required by law to be covered by insurance or other suitable and permissible statutory indemnity or self-Insurance arrangement, or if not so required is not covered thereby.

# EXCLUSIONS, INDEMNITY AND LIMITATION OF LIABILITY

# TIER 1 makes no representation or guarantee that any TIER 1 Employee will achieve a certain level of performance, achieve a certain outcome, solve a particular problem, or attain a specific goal.

# It is agreed that TIER 1 Employees will not attend work if:

1. their ability to function effectively and safely is limited, in which case TIER 1 may replace them with another TIER 1 Employee; or
2. it reasonably appears that the working environment is or has become unsafe for any reason, including that the Client:
   1. has not established safe work procedures;
   2. is not complying with safety standards, maintaining plant and equipment, or complying with any health or safety legislation or regulations; and/or
   3. not otherwise complying with the Client’s obligations under clause 10.

# Subject to clause 11.8 TIER 1 will not be liable to the Client, whether for breach of contract, in tort (including negligence) or otherwise, in respect of any Claim against or damage, loss or injury of whatsoever nature or kind, however caused, whether by TIER 1’s negligence or misconduct, the negligence or misconduct of an TIER 1 Employee including loss of profit, revenue, production or reputation or any special punitive or exemplary damages, which may be suffered or incurred, whether direct, indirect or consequential, in respect of the supply of an TIER 1 Employee or the Professional Services provided under this Agreement.

# The Client agrees to indemnify and keep indemnified and hold harmless TIER 1 against any Losses suffered or incurred by TIER 1, or Claims against TIER 1, as a result of the TIER 1 Employee undertaking work for the Client, or any acts or omissions whatsoever of the TIER 1 Employee while the Professional Services are being supplied to the Client.

# Further Indemnity

# The Client will indemnify and keep indemnified and hold harmless TIER 1 against any Losses that TIER 1 may suffer or incur, and any Claims against TIER 1, as a result, whether directly or indirectly, of:

1. any breach of this Agreement by the Client; and
2. any negligent act or omission or willful misconduct of the Client.

# Limitation of liability

If, notwithstanding this clause 11, TIER 1 is liable to the Client under or in relation to this Agreement, its liability shall be limited to the amount of any Fees payable under this Agreement.

# The Client agrees to indemnify TIER 1 to the full extent of TIER 1’s liability for all damages, compensation (including damages and compensation for personal injury to or the death of an TIER 1 Employee or to any other person whatsoever), expenses, interest, and costs that we may have to pay to any person, as a result of any damage, loss or injury that has been caused by or contributed to, in any material degree, whether directly or indirectly, by:

* 1. a breach by the Client of any of the Client’s obligations under these Standard Terms & Conditions; or
  2. any act, error or omission of the Client or the Client’s employees, agents, officers, or servants of the Client including, without limitation, any act, error, or omission that may contravene the provisions of any equal opportunity legislation.

# Where any Act of Parliament implies in these Standard Terms & Conditions any term and that Act voids or prohibits provisions in a contract excluding or modifying the application or exercise of or liability under such term, such term shall be deemed to be included in these Standard Terms & Conditions. TIER 1’s liability for any breach of such term shall be limited, however, at TIER 1’s option to any one or more of the following:

1. providing the Professional Services again; or
2. the payment of the cost of providing, the Professional Services again.

# TERMINATION, DEFAULT AND BREACH

# Subject to clause 12.2, the supply of Professional Services will end at the End Date specified at Item 2 of the Purchase Order.

# TIER 1 can terminate this Agreement without notice and without incurring any liability to the Client for the following reasons:

1. a breach of these Standard Terms & Conditions; or
2. failure of the Client to pay any amounts outstanding to TIER 1.

# If the Client terminates a supply of Professional Services other than as provided in these Standard Terms & Conditions, the Client agrees to indemnify TIER 1 for any liability, damages, compensation, expenses or costs that TIER 1 may incur as a result of any proceedings which may be commenced or Claim that may be made by an TIER 1 Employee arising out of, or in any way related to termination of the supply of Professional Services.

# Payment default

# If the Client fails to make any payment to TIER 1 under this Agreement on or before its due date for payment, then without limiting any other right or remedy of TIER 1 under this Agreement, at law or in equity:

1. default interest will accrue on the outstanding amount on and from the due date for payment up to but excluding its date of payment, which default interest:
   1. will be calculated at 1.5% per month or part thereof on a daily basis for actual days elapsed;
   2. will be compounded monthly until the invoice is paid in full; and
   3. is payable on demand.
2. The Client must, on demand by TIER 1, pay to, or as directed by, TIER 1, and indemnify TIER 1 against, all costs and expenses (including all legal costs) paid or incurred by TIER 1 of or incidental to the default.

# Liability for Fees and Accepted Disbursements survives termination

Termination of this Agreement does not relieve the Client of its obligation to pay TIER 1 any:

1. Outstanding Fees or Accepted Disbursements due and payable under this Agreement at the time of termination; or
2. Fees or Accepted Disbursements that become due and payable after termination of this Agreement in respect of any Professional Services supplied prior to such termination.

# CONFIDENTIALITY

# Obligation to keep matters confidential

Subject to clause 13.2, the parties agree that neither party may disclose, or suffer or permit the disclosure of any Confidential Information of the other party.

# Exceptions

Clause 13.1 does not prohibit the disclosure by a party of any Confidential Information of the other party:

1. to an employee, consultant, or professional advisor of that party, provided such person is subject to an obligation to maintain confidentiality in respect of the Confidential Information;
2. with the prior written consent of the other party;
3. where disclosure is required by any applicable law or requirement of any government agency; or
4. where the information is generally and publicly available other than as a result of a breach of this clause.

# Obligations survive termination

The parties obligations pursuant to this clause 13 survive the termination of this Agreement.

# GST

# Amounts exclusive of GST

All amounts referred to in this agreement are exclusive of GST, unless otherwise specified.

# Payment of GST

If any payment under or in connection with this agreement is the consideration for a taxable supply:

1. the recipient must pay the amount of the GST in respect of the taxable supply at the same time and in the same manner as the consideration for the taxable supply is payable; and
2. the supplier must provide the recipient a tax invoice in respect of the taxable supply.

# Definitions

Unless the context otherwise requires, words used in this clause which are defined in the GST Law have the same meaning as in the GST Law.

# DISPUTE RESOLUTION

# No Court proceedings without compliance

A party must not commence court proceedings relating to any dispute between some or all of the parties arising from, or in connection with, this Agreement (**Dispute**) without first complying with this clause 15 unless:

1. The party is seeking urgent interlocutory relief; or
2. The Dispute relates to compliance with this clause 15.

# Parties must continue to perform obligations

Notwithstanding the existence of a Dispute, the parties must continue to perform their obligations under this Agreement.

# Dispute Notices

In the event of a Dispute:

1. The party claiming there is a Dispute must give written notice to the other party setting out the details of the Dispute and proposing a resolution (Dispute Notice); and
2. Within ten (10) Business Days following service of the Dispute Notice, each party must (if applicable by its senior executives or senior managers who have authority to reach a resolution on its behalf) meet at least once to attempt to resolve the Dispute in good faith. All aspects of every such conference, except for the occurrence of the conference, will be privileged.

# Mediation

If the parties are unable to resolve the Dispute within fifteen (15) Business Days after receipt of the Dispute Notice, either party may (by written notice to the other party) submit the Dispute to mediation administered by the Australian Disputes Centre (ADC), with such mediation to be conducted:

1. in good faith;
2. in Queensland; and
3. in accordance with the ADC Mediation Guidelines.

# Costs of mediation

The mediator’s costs in respect of the mediation are the responsibility of the parties equally, with each party to otherwise bear its own costs in relation to the mediation.

# Litigation if Dispute not settled

If the Dispute has not been settled within twenty (20) Business Days after the appointment of a mediator, or such other period as agreed in writing between the parties, any of the parties may (by written notice to the other party) commence litigation in respect of the Dispute.

# GENERAL MATTERS

# Purchase Order

The Purchase Order accompanying these Standard Terms & Conditions forms part of the binding and operative provisions of this Agreement.

# Governing Law and Jurisdiction

1. this Agreement is governed by the law of the State of Queensland.
2. the parties irrevocably submit to the jurisdiction of the courts and tribunals of the State of Queensland.

# Entire Agreement

1. The parties agree that the whole of their agreement is expressed in this document. Any and all prior agreements, warranties or representations made by or on behalf of TIER 1, either verbally or written are superseded by this Agreement.
2. There are no express or implied conditions, warranties, promises, representations, or obligations, written or oral, in relation to this agreement other than those expressly stated in it or necessarily implied by statute.

# Variation

This Agreement may only be varied by agreement between the parties in writing.

# Assignment

A party must not assign or otherwise transfer, create any charge, trust, or other interest in, or otherwise deal in any other way with, any of its rights under this agreement without the prior written consent of the other party.

# Waiver

If there is failure to, delay, relaxation or indulgence in enforcing or requiring strict or prompt compliance with TIER 1’s rights under these Standard Terms & Conditions, this will not waive or in any way limit TIER 1’s rights to exercise remedies TIER 1 has in respect of breaches.

# No single or partial exercise of any power or right precludes any other or future exercise of it, or the exercise of any other power or right under this Agreement.

# Costs

All costs and expenses in connection with the negotiation, preparation and execution of this agreement, and any other agreements or documents entered into or signed pursuant to this agreement, will be the responsibility of the party that incurred the costs.

# Notices

1. A notice given to a party under this agreement must be:
   1. in writing in English;
   2. sent to the address, fax number or email address of the relevant party as the relevant party may notify to the other party from time to time; and
   3. delivered/sent either:
      1. personally;
      2. by commercial courier;
      3. by pre-paid post;
      4. if the notice is to be served by post outside the country from which it is sent, by airmail;
      5. by fax; or
      6. by e-mail.
2. A notice is deemed to have been received:
   1. if delivered personally, at the time of delivery;
   2. if delivered by commercial courier, at the time of signature of the addressee’s receipt;
   3. if sent by pre-paid post, 5 Business Days from the

date of posting;

* 1. if sent by airmail, 10 Business Days after the date of posting;
  2. if sent by fax, at the time shown in the transmission report generated by the machine from which the fax was sent; or
  3. if sent by e-mail, 4 hours after the sent time (as recorded on the sender’s e-mail server), unless the sender receives a notice from the party’s email server or internet service provider that the message has not been delivered to the party, except that, if such deemed receipt is not within business hours (meaning 9:00 am to 5:00 pm on a Business Day), the notice will be deemed to have been received at the next commencement of business hours in the place of deemed receipt.

1. To prove service, it is sufficient to prove that:
   1. in the case of post – that the envelope containing the notice was properly addressed and posted;
   2. in the case of fax – the notice was transmitted to the fax number of the party; and
   3. in the case of email – the email was transmitted to the party’s email server or internet service provider.

# Trustee provision

If the Client enters into this Agreement in the capacity as trustee of a trust (whether or not it is expressed to enter into this agreement in that capacity), the Client:

1. is bound both in its personal capacity and its capacity as trustee of the trust; and
2. hereby represents and warrants that:
   1. it has power under the trust deed to enter into and execute this Agreement and to perform the obligations imposed under this Agreement as trustee;
   2. all necessary resolutions have been passed as required by the trust deed in order to make this Agreement fully binding upon it;
   3. the entering into of this Agreement is for the benefit of the trust;
   4. it is not in default under the trust deed;
   5. there is not now, and it will not do anything by virtue of which there will be in the future any restriction or limitation on its right to be indemnified out of the assets of the trust; and
   6. there is no material fact or circumstance relating to the assets matters or affairs of the trust that might if disclosed be expected to affect the decision of TIER 1 acting reasonably to enter into this Agreement.

# Authority

Each party represents and warrants to the other party that it has the power and authority to enter into and perform this Agreement and to execute the obligations assumed or imposed upon it under this Agreement.

# Severability

If any part of this Agreement is or becomes void, voidable, or unenforceable, that part will be severed from this Agreement with all remaining parts of this Agreement to continue to have full force and effect.

# Further assurances

The parties will do all acts and things reasonably required to give effect to this Agreement.

# Relationship of the parties

Nothing in this Agreement, or any circumstances associated with it or its performance, gives rise to any agency or partnership between TIER 1 and the Client.

# Counterparts

This Agreement may be executed in any number of counterparts. All counterparts taken together shall constitute one and the same instrument. A signature to this Agreement transmitted electronically shall have the same authority, effect, and enforceability as an original signature. Without limiting the foregoing, if the signatures on behalf of one party are on different counterparts, this shall be taken to be, and have the same effect as, signatures on the same counterpart and on a single copy of this Agreement.

# Additional Provisions

The Additional Provisions in the Purchase Order are incorporated into this Agreement and to the extent they are inconsistent with any other provisions of this Agreement they will prevail.