

## 1. GENERAL

- 1.1 These General Terms and Conditions apply to all Agreements, contracts, orders, invitations to quote, quotations, tenders and acceptances relating to the sale, purchase and supply of Goods and/or Services. Application of the Customer's/Supplier's general terms and conditions is expressly excluded.
- 1.2 Specific terms and conditions on which such Goods and/or Services will be supplied will be set forth in an Agreement and shall govern all the understanding and agreements between the parties, together with these General Terms and Conditions.
- 1.3 The Agreement and these General Terms and Conditions supersede any previous terms and conditions.
- 1.4 In the event of a specific conflict between the provisions of these General Terms and Conditions and the Agreement, these General Terms and Conditions shall take precedence, unless amended in writing and signed by authorized personnel of the parties.

## 2. DEFINITIONS

In these General Terms and Conditions the following terms shall have the meaning defined herein:

- 2.1 **"Agreement"** means a specific authorised contract and/or a confirmed purchase order or the like, for the sale and purchase of the Goods and/or provision of the Services, including all appendices, agreed amendments and these General Terms and Conditions;
- 2.2 **"Oresome Products"** means Oresome Products (Pty) Limited, with ABN 24-160-854-544, a company duly registered and incorporated according to the company laws of Australia;
- 2.3 **"Customer"** means the Customer who accepts a quotation from Oresome Products for the sale of the Goods or provision of Services or whose order for the Goods and/or Services is accepted by Oresome Products;
- 2.4 **"Delivery"** means the delivery of Goods and/or Services in terms of the Agreement;
- 2.5 **"General Terms and Conditions"** means these general terms and conditions which shall form part of the Agreement or any proposal issued by Oresome Products Consult;
- 2.6 **"Goods and/or Services"** means the specific Goods and/or Services as specified in a quotation or an Agreement, and which may be referred to individually where appropriate;
- 2.7 **"Incoterms"** means the trade terms published by the International Chamber of Commerce entitled "Incoterms", as amended;
- 2.8 **"Price"** means the compensation defined in the Agreement or quotation to be paid by the respective Party;
- 2.9 **"Supplier"** means the supplier of the Goods as indicated on the Agreement;
- 2.10 **"Taxes"** means any form of value added tax, gross sale taxes, levies, import charges and duties imposed by any authority and the cost of customs clearance in relation to the Goods or any other taxes which may be applicable in terms of the Agreement.

## 3. THE GOODS

- 3.1 The Parties agree that the sale and/or purchase and/or supply of the Goods and/or Services will be subject to these General Terms and Conditions and the Agreement. An Agreement between the Parties shall come into effect only when the Parties have expressly accepted such Agreement in writing.
- 3.2 The Supplier acknowledges that Oresome Products will, at its discretion, purchase the Goods from it for resale to a third party, who may also be required, at the Supplier's discretion, to provide technical support to such third party. Such specific terms and conditions will be set out in an Agreement. In addition, the Supplier permits and provides its consent for Oresome Products to resell the Goods and/or Services to a third party;
- 3.3 The Supplier will ensure: -
  - 3.3.1 the Goods supplied conform to the Supplier's recommended specifications set out in the Agreement and are of good and acceptable quality;
  - 3.3.2 the necessary operating documentation together with adequate information (including material safety data sheets) about the use for which purpose the Goods are ordered are made available to Oresome Products;
  - 3.3.3 drawings and documentation required for normal maintenance of the Goods, if applicable, are provided for;
  - 3.3.4 the resale of the Goods and the provision of the Services by Oresome Products will not infringe the copyright or other rights of any third party and will not result in Oresome Products engaging or being involved in any unlawful act and neither will it result in Oresome Products incurring any liability whatsoever to any person, firm, company or other organisation;

- 3.4 For the avoidance of doubt no description, specification or illustration contained in any product pamphlet or other sales or marketing literature of the parties, and no representation written or oral, correspondence or statement shall form part of the Agreement unless specifically recorded therein.

#### **4. THE SERVICES**

##### **4.1 Oresome Products' Obligations**

Oresome Products shall: -

- 4.1.1 from the date and for duration set out in the Agreement provide the Services to the Customer in accordance with the terms of the Agreement;
- 4.1.2 endeavour to meet performance dates for the Services specified in the Agreement. Oresome Products acknowledges that time is of the essence in respect of the performance of the Services;
- 4.1.3 co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
- 4.1.4 comply with all reasonable instructions issued by the Customer in respect of the Services and perform the Services with the best care, skill and diligence in accordance with best practice in Oresome Products' industry, profession or trade using personnel who are suitably skilled and experienced to perform tasks assigned to them to fulfil the obligations in accordance with the Agreement;
- 4.1.5 ensure that the Services will be performed in accordance with all relevant legal requirements from time to time in force, possess and maintain all necessary licenses and other governmental or official approvals, permits or authorisations where applicable;
- 4.1.6 acquaint itself with the working conditions at the place where the Services are provided and ensure that its personnel/subcontractors are informed of and comply with any safety regulations and instructions of the Customer in force at the place where the Services are carried out;
- 4.1.7 ensure that the Services conform with all descriptions and specifications set out in the Agreement;
- 4.1.8 provide the Customer with all reports and information concerning the Services, at intervals required by the Customer.

##### **4.2 Customer's Obligations**

4.2.1 The Customer shall ensure that Oresome Products has access to the premises where the Services shall be carried out. Unless otherwise agreed in the Agreement, the Services shall be carried out during the normal working hours of the place or site where the Services are provided. The Customer shall provide a suitable working area at the workplace where Oresome Products shall render the Services, unless alternatively outlined in the Agreement.

4.2.2 The Customer shall arrange the necessary safety training and/or ensure that Oresome Products and its personnel/subcontractors have received appropriate information about the scope requirement, safety and security at the workplace.

4.2.3 To enable Oresome Products to perform its obligations under this Agreement the Customer shall:

- 4.2.3.1 co-operate with Oresome Products;
- 4.2.3.2 provide Oresome Products with any information reasonably required by it;
- 4.2.3.3 obtain all necessary permissions and consents which may be required before the commencement of the Services; and
- 4.2.3.4 comply with such other requirements as may be set out in the Agreement or otherwise agreed between the Parties.

4.2.4 The Customer shall be liable to compensate Oresome Products for any expenses incurred by it as a result of the Customer's failure to comply with this Clause 4.

4.2.5 In the event that the Customer or any third party, not being a sub-contractor of Oresome Products, shall omit or commit anything which prevents or delays Oresome Products from undertaking or complying with any of its obligations under the Agreement, then Oresome Products shall notify the Customer as soon as possible and:

- 4.2.5.1 Oresome Products shall have no liability in respect of any delay to the completion of any project;
- 4.2.5.2 if applicable, the timetable for the project will be modified accordingly;
- 4.2.5.3 Oresome Products shall notify the Customer at the same time if it intends to make any claim for additional costs.

#### **5. PRICE, INVOICING AND PAYMENT**

5.1 The Price of the Goods and/or Services, Taxes and any other charges indicated on the Agreement, shall be in Australia Dollars, unless agreed to and detailed otherwise in the Agreement.

5.2 All Prices quoted shall be exclusive of value added tax which will be charged at the appropriate rate, where applicable.

5.3 The Price of the Goods shall be exclusive of any transportation or carriage costs, insurance costs, any Taxes payable in the jurisdiction of the place for delivery of the Goods (Port of Destination) including conveyance by land to the final place of destination, unless alternatively agreed to and noted in the Agreement.

5.4 Any quotation submitted by a party shall be valid for a period of not less than 30 days, after which time it may be altered by the respective party without giving notice to the other, unless alternatively notified in the Agreement.

5.5 Payment shall be made to a bank account nominated in writing by the respective party.

- 5.6 Payment terms will be outlined in the Agreement. However, Oresome Products may require compensation for Goods and/or Services supplied, on a Cash on Delivery (COD) basis or within 30 days of the date of the Invoice/Tax Invoice (whichever is applicable), without set-off or deduction.
- 5.7 Oresome Products reserves the right to demand security payment from the Customer at any point during the contract period at its discretion.
- 5.8 Should the Customer withhold payment of any Oresome Products' invoice where the Goods and/or Services have not been provided in accordance with the terms and conditions of the Agreement, the amount withheld shall not exceed the value of the defective Delivery.
- 5.9 A delay in payment to Oresome Products will attract interest at 2% per month, compounded monthly.
- 5.10 If the Customer has not paid an undisputed Price within 14 days after the due date of the Price, Oresome Products is entitled to suspend the supply of the Goods and/or Services. However, in case of failure to pay the invoiced amount despite reminders, Oresome Products reserves the right to proceed legally against the Customer, including availing the services of third-party recovery companies, and the costs incurred thereon shall exclusively be borne by the Customer.
- 5.11 The Customer's obligation to pay shall survive the term of the Agreement and shall not be deemed fulfilled for so long as the Price and any other costs, expenses and charges have not been credited in full into Oresome Products' bank account.
- 5.12 Travelling, subsistence and accommodation shall be for the Customer's account and is excluded from the Price, unless otherwise agreed to by both parties and recorded in the Agreement.

## **6. PRICE ADJUSTMENT**

- 6.1 The Price for the Goods and/or Services shall be fixed for the term of the respective Agreement and shall not be subject to any revision, unless agreed to by the parties and recorded in the Agreement.
- 6.2 The Customer shall pay any additional sums which are agreed between Oresome Products and the Customer for the provision of the Services or which, in Oresome Products' sole discretion, are required as a result of the Customer's instructions, change or lack of instructions, or any other cause attributable to the Customer.
- 6.3 Where the duration of the Services exceeds 12 months, Oresome Products reserves the right to review the Price at its discretion.

## **7. DELIVERY**

### **7.1 General**

- 7.1.1 All Goods shall be delivered in accordance with the terms and place of delivery specified herein and in the Agreement.
- 7.1.2 The delivery dates contained in the Agreement are the dates that the Goods are required on dock by Oresome Products and/or its Customer.
- 7.1.3 In the absence of specific shipping instructions, shipment shall be routed via the most economical mode of commercially reasonable transportation available. Time is of the essence with respect to delivery of Goods listed in the Agreement.
- 7.1.4 The Supplier must immediately advise Oresome Products if any Goods cannot be delivered as ordered by the stated date. Oresome Products shall be liable only for the shipping charges identified on the face of the Agreement. If Oresome Products is responsible for some or all of the shipping charges, shipping terms and rates must be agreed upon in advance. If the Supplier elects a more expensive shipping method to meet a required delivery date, the Supplier will be responsible for any increased shipping expense.

### **7.2 Delivery Method**

#### **7.2.1 Shipment by Ocean - (CFR and CIF)**

- (a) The Supplier agrees to fulfil its obligations as described herein, based on the specific delivery terms incorporated into the Agreement for Port of Shipment and Port of Destination. Such terms are governed by the provisions of Incoterms as published by the International Chamber of Commerce, as amended. In case of any conflict between the provisions of an Agreement and Incoterms, the provisions of the Agreement shall govern as far as it is permitted by law.
- (b) Upon Oresome Products' approval, the Supplier shall be responsible for arranging and booking the shipping space. Within 3 days before each shipment, the Supplier shall notify Oresome Products of the delivery information including the name of the proposed vessel, shipping line, the shipping route, container number and the estimated date of departure from Port of Shipment and the estimated date of arrival at Port of Destination.
- (c) The Supplier will obtain at its own risk and expense all necessary export licenses and pay all export duties and taxes and other export related charges, contract at its own expense for the carriage of the Goods to the named Port of Destination and if applicable, contract at its own expense for cargo insurance with a reputable insurance company acceptable to Oresome Products, which contract shall insure the full purchase Price of the Goods in a currency agreed to by the Parties, and name Oresome Products as the insured party, unless alternatively instructed by Oresome Products. The Supplier at its own expense shall provide Oresome Products, without delay, with the usual transport documents for the agreed Port of Destination.
- (d) Where the Supplier has affected insurance and such Goods are lost and/or damaged in the ocean transportation, the Supplier shall assist Oresome Products or the nominated third party, to apply to the insurance company for compensation or lodge claims against the insurance company on behalf of Oresome Products or the nominated third party and effect, upon Oresome Products' request, supplementary supply of the same at the original contract value.
- (e) Oresome Products or its Customer, however, reserves the right to choose the shipping company and provide insurance for each shipment, in which case Oresome Products or its Customer, will provide all necessary information to the Supplier in order to book the shipping space for each order.

### **7.2.2 Inland Transportation of Goods**

- (a) Oresome Products or its Customer will fulfil its obligations in terms of inland transportation from the Point of Destination to the Point of Final Delivery, unless alternatively notified in the Agreement. The expense of inland transport costs and all necessary import Taxes imposed by any government authority with respect to the Goods at or after title and risk of loss passes to Oresome Products or its Customer, shall rest with Oresome Products or its Customer (whichever is applicable).
- (b) If the Supplier is required to remit or pay Taxes that are Oresome Products or its Customer's responsibility, Oresome Products or its Customer (whichever is applicable) shall reimburse the Supplier for such Taxes within a period agreed to by the Parties.

### **7.3 Delivery Time**

- 7.3.1 **Partial Shipment:** At Oresome Products' option, in the event of shipment or receipt of less than all the Goods ordered, Oresome Products may either accept shipment and pay only for the Goods received, pro rata, based on the unit price of the item ordered, or reject the entire shipment.
- 7.3.2 **Late Shipment:** Oresome Products reserves the right to cancel the Agreement or any portion thereof if delivery is not made when and as specified, and shall charge the Supplier for any loss sustained as a result of such cancellation, including, but not limited to, shipping charges. Further, Oresome Products may reject the late delivery without cancellation of the Agreement as to other subsequent required deliveries. Each shipment required under the Agreement is to be considered separately, and Oresome Products' right to reject a late delivery shall not be affected by acceptance of other late deliveries by the Supplier. All such cancelled shipments shall be returned to the Supplier at the Supplier's expense.
- 7.3.3 **Early Shipment:** Goods delivered prior to the date specified, at Oresome Products' option, may be subject to anticipation and warehouse charges, payable by the Supplier, or may be returned to the Supplier, at the Supplier's sole expense, to be held until the proper shipping date.

### **7.4 Shipment**

- 7.4.1 The Goods shall be properly and appropriately packed for Shipment, i.e. in suitable containers to permit safe transportation and handling. Packaging material shall fully comply with the applicable legislation of the relevant authorities of the importing country.
- 7.4.2 A Shipping Invoice shall accompany every international consignment, which shall in all respects be a true reflection of the values as indicated on the invoice.
- 7.4.3 The Agreement number must appear on all shipping containers, packing sheets, delivery tickets, bills of lading and Invoice.
- 7.4.4 The Supplier shall comply with Oresome Products' standard routing and shipping instructions as they appear on the Agreement, if applicable.
- 7.4.5 Notwithstanding the provisions of this Clause 7, any loss of or damage to the Goods, whenever occurring, which results from the Supplier's improper packaging or crating shall be borne solely by the Supplier.

### **7.5 Export Terms**

- 7.5.1 The Supplier is the exporter of record. The Supplier will comply with all export laws and administrative requirements, including the payment of all associated duties, taxes and fees and all applicable laws, regulations, certifications and registrations associated with the export of the Supplier's Goods. Upon Oresome Products' request, the Supplier will promptly provide all information necessary to export the Goods and will notify Oresome Products in writing of any changes to the information provided by the Supplier to the export of Goods

## **8. INDEPENDENT CONTRACTORS**

- 8.1 The Supplier, Customer and Oresome Products are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by the parties. Oresome Products may, in addition to its own employees, engage sub-contractors to provide all or part of the Services being provided to the Customer and such engagement shall not relieve Oresome Products of its obligations under this Agreement.

## **9. RISK AND OWNERSHIP**

- 9.1 Risk of loss or damage to the Goods shall be upon the Supplier until Oresome Products or its Customer has care, custody and control of the Goods upon its acceptance at such Point of Destination, during normal business hours.
- 9.2 Title to the Goods shall pass to Oresome Products or its Customer (whichever is applicable) upon full and final payment by Oresome Products or its Customer. Such condition shall not absolve the Supplier from liability outlined herein, the Agreement or by law.

## **10. INSPECTION, GUARANTEES, DEFECTS AND REJECTIONS**

- 10.1 Oresome Products and/or the Customer shall have a reasonable time after receipt of the Goods and before payment to inspect the Goods so as to ensure conformity with the specifications of the Agreement, and Goods received prior to inspection shall not be deemed accepted until the Oresome Products and/or the Customer has run an adequate test to determine whether the Goods indeed conform to such specifications.
- 10.2 The Supplier will assign to Oresome Products or the Customer (whichever is applicable) the full benefits of any warranties or guarantees of the Goods.
- 10.3 If the Goods and/or Services are not supplied in accordance with the Agreement and/or there is a defect in the Goods and/or Services, the defaulting Party shall without delay at its own cost remedy the breach or defect unless alternatively detailed herein or the Agreement.
- 10.4 The aggrieved party shall notify the defaulting party of the defects in the supplied Goods and/or Services within a reasonable period after having become aware of such defect. If the aggrieved party fails to give such notification within a reasonable time period, the aggrieved party shall lose its right to present claims towards the defaulting party, except for apparent defects that should have been in the knowledge of the defaulting party and defects that have been caused by the defaulting party's gross negligence or wilful acts. The Supplier shall not be absolved from liability for latent or patent defects.

- 10.5 If the defaulting party fails to remedy the breach or defect in the Goods and/or Services within a reasonable time after having received a written notice from the aggrieved party, the aggrieved party is entitled to remedy the breach or defect itself or have it repaired/remedied by a third party at the cost of the defaulting party. Alternatively, the aggrieved party shall be entitled to a reduction of the Price reflecting the difference between the defect-free Goods and/or Services and the defective Goods and/or Services. Such decision shall be at the sole discretion of Oresome Products.
- 10.6 Notwithstanding Clause 10.5, Oresome Products is not liable to remedy breaches or defects that have been caused by the actions of the Supplier or Customer.

## **11. INDEMNITY**

Without prejudice to any other rights to which Oresome Products may be entitled: -

- 11.1 The Supplier/Customer indemnifies and holds Oresome Products, and their respective directors and employees harmless from and against –
- 11.1.1 any liability, loss and expense which Oresome Products, its directors or employees may sustain or incur based on any act or omission of the Supplier/Customer or any of its employees and arising from whatsoever cause, including delict, contract or a breach of any statutory duty; and/or
- 11.1.2 any liability, loss or expense which Oresome Products, its directors and employees may incur, arising from any injury to, death or disease of any of their employees and whether or not in the course of supplying the Services; unless such injury or death or disease was caused by the wilful conduct of Oresome Products, its directors or employees.
- 11.2 The Supplier/Customer hereby indemnifies and holds Oresome Products, its directors or employees harmless against any liability, loss, claim, costs or damages including consequential loss or damage which may be incurred by Oresome Products, its directors or employees, or brought against or claimed from Oresome Products, its directors or employees, arising out of or in connection with the conclusion of the Agreement, the supply of the Goods and/or Services and/or Oresome Products' presence at the site/workplace, including, without derogating from the generality of the foregoing-
- 11.2.1 Any negligence or wilful misconduct of the Supplier/Customer, its employees, workmen, servants or agents, relating to the Agreement;
- 11.2.2 the Supplier/Customer's breach of any representation, warranty or covenant contained in the Agreement;
- 11.2.3 any defect of whatsoever nature in the Goods and/or Services; or
- 11.2.4 any violation of law by the Supplier/Customer or its employees, workmen, servants or agents in the performance of the Agreement;
- 11.2.5 any and all claims related to the infringement or claimed infringement of any patent in the manufacture and/or sale of the Goods and Services covered by the Agreement or connected with the use thereof by Oresome Products or its Customer.
- 11.3 Should Oresome Products at any time incur any liability, loss, damages, costs or claims as envisaged in this clause, it shall be entitled, without prejudice to any other rights which it may have, to withhold any or all monies due to the Supplier/Customer in terms of the Agreement until such time as the Supplier/Customer has made good its obligations in terms of this Clause 11.

## **12. PROTECTION OF THE PARTIES' NAME AND LOGOS**

- 12.1 No reference may be made by either party to the other party's name or logos in any marketing or promotional material, or for any other purpose whatsoever without such party's prior written consent.

## **13. TERMINATION AND BREACH**

- 13.1 In terms of Services, either party may terminate the Agreement in full by giving 60 days written notice of termination, or for a portion of Services by giving 30 days written notice of termination. The Customer shall pay Oresome Products for the value of all work performed up to and including the date of termination.
- 13.2 In terms of Goods, either party may terminate the Agreement in full or part by giving 30 days written notice of termination, one party to the other.
- 13.3 Either party may notify the other in writing in case of the other's alleged breach of a material provision of the Agreement. The defaulting party shall remedy the breach within a reasonable time. If the defaulting party fails to remedy the breach within such reasonable period, then the aggrieved party shall have the option of either terminating the Agreement in full, or only the part associated with the breach. Notice shall take effect upon receipt thereof.
- 13.4 The expiry or termination of the Agreement shall not affect the rights which have accrued before that expiry or termination or any rights and obligations of the parties which survive expiry or termination.
- 13.5 On termination or expiry of the Agreement, Oresome Products shall immediately deliver to the Customer all deliverables whether or not then complete, and return all Customer materials.
- 13.6 Either party shall terminate the Agreement with immediate effect in the event that the other party becomes subject to any bankruptcy or insolvency proceeding.

- 13.7 Without prejudice to any other rights to which Oresome Products may be entitled, in the event that the Supplier/Customer unlawfully terminates or cancels the Goods and/or Services agreed to in the Agreement, the Supplier/Customer shall be required to pay to Oresome Products as agreed, damages and not as a penalty, the full amount of any third-party costs to which Oresome Products has committed.

#### **14. CONFIDENTIALITY**

- 14.1 In terms of these General Terms and Conditions, "Confidential Information" means any information of a confidential or proprietary nature owned by a party including but not limited to, technical, business, financial, marketing and commercial information and all documentation and manuals in respect of such information, information relating to any clients of the parties, know-how, trade secrets, the contents of this Agreement, techniques and methodologies and all record-bearing media (inclusive of samples) containing or disclosing such information and techniques and any other information which relates to the business of the disclosing party in respect of which information is not readily available in the normal course of business and which comes to the knowledge of the other party during the term of the Agreement.
- 14.2 All Confidential Information disclosed by the disclosing party to the receiving party pursuant to the negotiations, conclusion and during the term of this Agreement shall not at any time whether directly or indirectly be distributed, disclosed, or disseminated in any way or form by the receiving party to any third party and such Confidential Information shall remain the property of the disclosing party.
- 14.3 The receiving party shall protect the Confidential Information in the manner and with the endeavour of a reasonable person protecting its own Confidential Information. Under no circumstances shall the receiving party use less than reasonable efforts to protect the confidentiality of the Confidential Information.
- 14.4 The confidentiality obligations referred to in Clauses 14.1 and 14.2 shall not apply to any information which: -
- 14.4.1 the receiving party can demonstrate, is already in the public domain;
  - 14.4.2 the receiving party can demonstrate becomes available to the public through no breach by the receiving party;
  - 14.4.3 was rightfully in the receiving party's possession without obligation of confidence prior to receipt from the disclosing party as proven by his written records;
  - 14.4.4 can be proved to have been rightfully received by the receiving party from a third party without obligation of confidence;
  - 14.4.5 is approved for release with the prior written consent of the disclosing party;
  - 14.4.6 is required to be disclosed in order to comply with a judicial order or decree, provided the receiving party has given the disclosing party sufficient prior written notice of such request to enable the disclosing party to prevent or protect such disclosure.
- 14.5 At the request of the disclosing party at any time, the receiving party if requested to do so, shall promptly deliver to the disclosing party all written, copied Confidential Information including Confidential Information electronically stored and drawings, sketches or diagrams of whatever nature disclosed to it without retaining any copies thereof.
- 14.5 The receiving party agrees to use the Confidential Information for the sole purpose of this Agreement only, unless agreed to otherwise in writing.
- 14.6 The rights and obligations in terms of this Clause 14 are divisible from the rest of the Agreement and shall remain of full force and effect notwithstanding termination of the Agreement for any reason whatsoever.

#### **15. INTELLECTUAL PROPERTY RIGHTS**

##### **15.1 Goods**

- 15.1.1 The existing Intellectual Property Rights in the Goods shall remain the property of the Supplier or its third party (whichever is applicable and which consent has been obtained in writing), and future rights in improved or modified models shall vest in the Supplier or its third party (whichever is applicable). The Supplier indemnifies and shall keep indemnified Oresome Products against all losses and costs (including legal costs as between attorney and client) and all other expenses whatsoever that Oresome Products may incur as a result of any action, proceeding or claim made against Oresome Products arising from the acquisition, use, reproduction or adaptation of the Goods or of any process associated therewith, or of any documents pertaining to the Goods, which may constitute an infringement of Intellectual Property Rights in respect of the Goods.
- 15.1.2 This indemnity shall extend also to all losses, costs and expenses as aforesaid incurred by Oresome Products in the event that the Goods, or any part thereof, or any process, or any design, trademark, copyright, or documents in any way associated with the Goods or any part thereof, become the subject of an interdict or other process of law depriving Oresome Products of its rights to, or possession of, the Goods.
- 15.1.3 This indemnity shall not apply to any infringement which is due to the Supplier having followed in its entirety a design stipulated by Oresome Products which was not known by the Supplier to be an unauthorised infringement of patent or other protected rights as aforesaid.
- 15.1.4 The Supplier grants to Oresome Products or its Customer, the right to incorporate part numbers relating to the Goods, in its catalogue systems, and to reproduce the part numbers, in whole or in part, for any purpose and, in particular, for procuring such Goods, maintenance, or parts.
- 15.1.5 The Supplier shall disclose all Intellectual Property Rights in the Goods, including patents, patent applications, and patent numbers held in respect of Goods supplied in terms of the Agreement.

15.1.6 In the event that the Supplier admits that the Goods it supplies infringes on any current third-party intellectual and industrial property rights and/or constitute a wrongful act towards any third party, or in the event that Oresome Products is prohibited from this use pursuant to an arbitral award or court ruling, the Supplier shall, at the choice of Oresome Products, either:

- a) acquire the right, on behalf of Oresome Products, to continue using the Goods under the conditions of the Agreement in question; or
- b) replace the Goods or change them in such a way that the infringement no longer exists; or, if the aforementioned options are not reasonably feasible, or
- c) take back the Goods, crediting Oresome Products for the amounts it has already paid to the Supplier; all of this without prejudice to Oresome Products' other rights, including its right to compensation.

## 15.2 **Services**

15.2.1 Unless otherwise agreed by the parties in the Agreement, copyright of calculations, schedules, specifications and reports created or evolved in or as a result of the performance of the Services, shall be ceded to the Customer.

15.2.2 All documentation provided by Oresome Products to the Customer in the performance of the Goods and/or Services which is proprietary and confidential to a third party shall remain the property of such third party and shall not form part of the materials referred to in Clause 15.2.1.

15.2.3 All of Oresome Products' pre-existing Intellectual Property Rights used in the supply of the Goods and/or the Services shall remain the sole and exclusive property of Oresome Products (or such third party) and the Customer shall make no claim whatsoever to such Intellectual Property Rights.

15.2.4 All of the Customer's pre-existing Intellectual Property Rights provided to Oresome Products for use in the provision of the Services shall remain the sole and exclusive property of the Customer.

15.2.5 Save as may be expressly provided herein or in the Agreement, neither Party will gain by virtue of this Agreement any rights of ownership of or in any copyright, patents, trade secrets, trademarks or other intellectual property or proprietary rights owned by the other party or third party.

15.3 The rights and obligations contained in this Clause 15 shall continue in full force and effect for 10 (ten) years from termination of the Agreement.

## 16. **SUPPLIER'S WARRANTIES**

16.1 The Supplier warrants to Oresome Products that the Goods shall –

16.1.1 conform to the agreed specifications;

16.1.2 be to the complete satisfaction of Oresome Products and its Customer, which shall have the right, without prejudice to any other rights which it may have in terms of the Agreement or in law, to reject any Goods that is defective by reason of workmanship, material or preparation, or which does not conform to the required specification;

16.1.3 be free from both patent and latent defects and be of good quality and workmanship;

16.1.4 be fit for the purpose for which it is intended and for which Oresome Products purchases it from the Supplier;

16.1.5 will not infringe any third party's intellectual property rights.

16.2 The Supplier warrants it has obtained and maintains all permits, licences, other certificates or other consents or approvals required by the Supplier under any statute and shall provide Oresome Products with copies thereof on request.

16.3 Oresome Products enters into the Agreement on the strength of the warranties undertaken by the Supplier herein.

16.4 The Supplier indemnifies Oresome Products against all loss, liability, damage and expense (including legal costs on the scale as between attorney and own client and disbursements) incurred by Oresome Products as a result of any breach by the Supplier of any of the warranties given by the Supplier in terms of this **Clause 16**.

## 17. **FORCE MAJEURE**

17.1 Save as otherwise provided for herein, the parties shall be discharged from obligations in terms of the Agreement and released from all liability in respect thereof whether for damages or otherwise during such time that a party is prevented from fulfilling obligations in terms of the Agreement by reason of force majeure which shall include but not be limited to Acts of God, strikes, riots, interference by civil or military authorities, compliance with Governmental, Provincial or Municipal laws, regulations, requests or policies, inability to secure Governmental, Provincial or Municipal permission, or any other circumstance beyond the reasonable control of a party. It shall be incumbent upon the party so affected, to immediately notify the other in writing of any inability to fulfil contractual obligations by reasons of any of the circumstances set out in this paragraph.

17.2 If by virtue of the provisions hereof either party is excused from the performance of its obligations under the Agreement for a continuous period of 30 days, then the effected party may, at any time after the expiry of the 30-day period and provided such performance is still excused, terminate the Services by notice in writing to the other party.

## 18. **ETHICS**

18.1 In acceptance of the Agreement the Supplier/Customer undertakes to act only on the basis of utmost good faith and trust in the execution thereof. Should the Supplier/Customer commit an act which may compromise the ethical relationships between the Supplier/Customer and Oresome Products, in terms of this or other contracts, or which is contrary to standard business practices, then Oresome Products shall have the power at its discretion to terminate the Agreement immediately by giving notice to that effect to the Supplier/Customer.

**19. CONFLICT OF INTEREST**

19.1 The Supplier/Customer shall not cause, or in any way contribute to a conflict of interest. If the Supplier/Customer is aware of, or suspects, a conflict of interest, the Supplier/Customer shall immediately report such conflict of interest to an appropriate senior manager of Oresome Products. The obligation on the Supplier/Customer is continuous and a conflict of interest must be reported when it arises, not merely at the inception of the Agreement.

**20. ASSIGNMENT AND CESSION**

20.1 The Parties shall not cede, assign or transfer its rights and obligations under the Agreement or any part thereof or any benefits or obligations thereof to any other person except with the consent in writing of the other party.

**21. DISPUTE RESOLUTION**

21.1 Should any disputes or differences arise between the parties and should the parties fail to resolve such dispute amicably then either party may declare a dispute by giving to the other party notice thereof in writing, specifying the nature of the dispute, its details and the point at issue.

21.2 The aggrieved party may elect to resolve the dispute by way of litigation. Should the aggrieved party fail to so elect, then the dispute shall be resolved in accordance with the rules of the Arbitration Foundation of Australia by an arbitrator or arbitrators appointed by the Foundation. Such arbitration shall be held at a place nominated by Oresome Products. Any award made by the arbitrator shall be subject to appeal in terms of the rules of the Arbitration Foundation of Australia.

**22. VALIDITY**

22.1 Any quotation or proposal submitted by the parties shall be valid for a period of not less than **30 (thirty) days** from the date of submission, unless alternatively recorded in the Agreement.

**23. NOTICES, DOMICILII CITANDI ET EXECUTANDI**

23.1 All notices, consents, demands or communications intended for the parties and all payments to be made pursuant to the Agreement shall be made or given at such party's domicile for the time being and, unless faxed on the transmission date or forwarded by prepaid registered post on the date of registration, shall be deemed to have been made or given on the tenth day after the date of posting.

**24. GENERAL**

24.1 Unless expressly provided otherwise in the Agreement a variation of or amendment to the Agreement is only valid if it is in writing and signed by authorised representatives of the parties. No waiver on the part of any party of any rights arising from a breach of any provision of the Agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

24.2 In the event that any of the terms of the Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

24.3 Any legal proceedings arising out of the Agreement will be governed by the law of Australia and adjudged in the relevant Australian Court, but should the Parties agree, the relevant Magistrates Court will have jurisdiction.

24.4 The Agreement shall be governed, construed and interpreted in accordance with the laws of Australia.

