

STANDARD TERMS AND CONDITIONS

 Suite 169, 580 Hay Street, Perth, Western Australia 6000
ABN 37 637 013 097

Exnovo Pty Ltd Standard Terms & Conditions

1 Overview of Agreement

1.1 Unless otherwise expressly agreed in writing, all Products, Services and Projects are supplied on the following terms and conditions which shall include:

- (a) The proposal or quote ("Quote") provided by Exnovo Pty Ltd;
- (b) These Terms and Conditions;
- (c) Each purchase order submitted by the Customer and accepted by Exnovo Pty Ltd.

For the purposes of these terms a reference to "Agreement" shall mean the above documents in clauses 1.1(a) to 1.1(c).

1.2 If there is any conflict or inconsistency between the above documents, the documents will rank in order of precedence with the order in which they are listed in clause 1.1 above.

1.3 Each Order issued by the Customer and accepted by Exnovo Pty Ltd will be accepted on these Terms and Conditions, to the exclusion of all other terms including any terms and conditions referenced or set forth on the face or reverse side of any Order or other document presented by the Customer.

1.4 No amendment or variation of the Agreement is valid or binding on a Party unless made in writing and signed by both Parties.

2 Definitions

2.1 The following capitalised terms will be defined as follows:

Acceptance Tests means tests agreed between the Customer and Exnovo Pty Ltd which are based on agreed objective criteria.

Agreement has the meaning given to that term in clause 1.1 of these Terms and Conditions.

Australian Consumer Law means the Competition and Consumer Act 2010 (Cth) as amended from time to time.

Australian Privacy Principles means the Australian Privacy Principles which are contained under schedule 1 of the Privacy Act.

Background IP means with respect to both parties Intellectual Property owned by that party existing at the date the Order is made including any modifications made during the course of the Agreement to such Background IP.

Confidential Information means any information of a confidential nature which relates to the business, affairs or activities of a Party including information comprised in Intellectual Property Rights of any Party, process or operational information, calculations or analysis, financial and business information and information of third parties which is required to be kept confidential.

Consequential Loss means indirect, special, or consequential loss or damage (including but not limited to loss of profits, revenue, loss of use and data, loss production, loss of overheads, costs of capital, costs of financing, loss of business opportunity, loss of contracts, loss of anticipated savings or any increase in operating costs).

Credit Terms means the Credit terms and conditions referred to in the Credit Application completed by the Customer with Exnovo Pty Ltd.

Customer means the party who Exnovo Pty Ltd will supply the Products, Services and Projects, as specified in the Order.

Cyber Threat shall have the meaning set out in clause 17.1.

Date of Acceptance has the meaning given to that term in clause 21.2 of the Addendum for the Supply of Projects.

Delivery Date has the meaning given to that term in clause 21.1 of these Terms and Conditions.

Delivery Point has the meaning given to that term in clause 4.2 of these Terms and Conditions.

Effective Date means the date of acceptance of an Order by Exnovo Pty Ltd in accordance with clause 1.3 of these Terms and Conditions.

Exnovo Products or Project Deliverables means Exnovo proprietary products, including any and all products manufactured or developed by Exnovo Pty Ltd including the software.

Exnovo Pty Ltd means any of the following entities which will be listed on the Order:
Exnovo Pty Ltd (ABN 37 637 013 097)

Fixed Price means the lump sum amount quoted by Exnovo Pty Ltd for the supply of specified Products, Services and Projects.

Force Majeure has the meaning given to that term in clause 16.2 of these Terms and Conditions.

GST Act means the A New Tax System (Products and Services) Tax Act 1999 (Cth).

Intellectual Property Rights means all and any rights in issued patents and patent applications, rights to inventions, design rights, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, moral rights, rights in confidential information (including know-how and trade secrets).

Law means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, rule or subordinate. legislation and includes a modification or re-enactment of it.

Order means the Quote submitted by Exnovo Pty Ltd and the purchase order issued by the Customer and accepted by Exnovo in accordance with clause 1.3 of these Terms and Conditions.

Party means a party to the Agreement.

Personal Information means all information about a person that is "personal information" as defined in the Privacy Act, which is collected and/or handled by any of the Parties in connection with this Agreement.

Price means the aggregate amount payable by the Customer to Exnovo Pty Ltd in relation to the Products, Services and Projects, as specified in the Order.

Privacy Act means the Privacy Act 1988 (Cth) as amended from time to time.

Products means any Exnovo Pty Ltd Products or such other third-party products, equipment, materials, supplies or items, as specified in the Order including Software.

Project means a set of activities including the development, provision, modification, configuration, enhancement and integration of the Products and Services, by Exnovo Pty Ltd to meet the Specifications.

Project Deliverable means the Products and other deliverables required to be developed or integrated by Exnovo Pty Ltd pursuant to a particular Project in accordance with agreed Specifications.

Quote means a proposal or quote provided by Exnovo Pty Ltd relating to the Products, Services and Projects referred to in the Order.

Services means any services Exnovo Pty Ltd agrees to perform, as specified in the Order.

Site means the Customer's site where the Products are to be delivered and or installed, the Services are to be performed, or the Project is to be implemented as specified in the Order.

Software means machine readable computer programs that comprise a series of instructions rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer, or other machine, to perform a specific operation or series of operations;

Software Documentation means the printed materials supplied with the Software.

Specifications means the drawings, specifications and/or plans for the Products, Services and Projects as specified in the Order or as otherwise agreed by the Parties in accordance with clause 19 of the Addendum for the Supply of Projects.

Terms and Conditions means these terms and conditions of Sale.

Timetable means the document setting out the dates by which the Products, Services and Projects are to be supplied, as specified in the Order or as otherwise agreed between the Parties in accordance with clause 19.1 of the Addendum for the Supply of Projects.

Time and Materials means Services supplied in accordance with the Order where (i) all labour time utilised and (ii) expenses incurred are payable by the Customer at the prices set out in Exnovo's schedule of rates and (iii) all products supplied are payable by the Customer in accordance with Exnovo's price list, unless indicated otherwise by Exnovo Pty Ltd in writing.

Use shall have the same meaning as set out in clause 6.2.

Variation has the meaning given to that term in clause 20.1 of the Addendum for the Supply of Projects.

Warranty Period (unless expressly stated) means:

- (a) For all Exnovo's Products, the earlier of:
 - (i) twelve (12) months from the Delivery Date; and
 - (ii) the date that is twelve (12) months from commercial or operational use of the Products by the Customer; and
- (b) For all Services, a period of ninety (90) days from the date of delivery of the Services; and
- (c) For all Projects, a period of ninety (90) days from the date of acceptance of the Project.

3 Quotes and Ordering

3.1 Any quotes provided by Exnovo Pty Ltd are subject to the Products, Services and Projects being available at such time when the Customer places an Order.

3.2 Unless indicated otherwise by Exnovo Pty Ltd in writing, all Prices referred to in any Quotes are based on the quantity of Products, Services, Software, Projects and delivery timetable described in the Quote and will only be valid for thirty (30) days from the date the Quote is submitted. In the event the Customer changes the time required for delivery or the volume or scope of Products, Services and Projects required or places an Order more than thirty (30) days after the Quote is submitted, Exnovo Pty Ltd reserves the right to vary its Prices.

3.3 Unless otherwise indicated in an Order or Quote in writing, an Order will not be considered binding on Exnovo Pty Ltd or come into force until Exnovo Pty Ltd has received from the Customer a cash deposit or a bank guarantee or other security acceptable to Exnovo Pty Ltd for 30% of the Price set out in the Order.

4 Delivery, Risk and Title

4.1 Exnovo Pty Ltd agrees to supply the Products, Services and Projects in accordance with the terms of the Agreement and in consideration of payment of the Price by the Customer.

4.2 Unless specified otherwise it will be presumed that delivery of;

- (a) Products manufactured in Australia will occur ex works at the place of manufacture
- (b) Products which are manufactured outside Australia will occur ex works at a warehouse of Exnovo's choosing

4.3 Delivery Point

Exnovo Pty Ltd will deliver the Products to the Delivery Point. The Customer acknowledges that the Products or part thereof are produced in, or otherwise sourced from, or will be installed in areas already affected by, or that may be affected in the future by, the prevailing COVID-19 epidemics/pandemic and that the situation may trigger stoppage, hindrance or delays in Exnovo's (or its subcontractors) capacity to produce, deliver, install or service the products, irrespective of whether such stoppage, hindrance or delays are due to measures imposed by authorities or deliberately implemented by Exnovo Pty Ltd (or its subcontractors) as preventive or curative measures to avoid harmful contamination exposure of Exnovo's (or its subcontractors') employees. The Customer therefore recognizes that such circumstances shall be considered as a cause for **excusable delay** not exposing Exnovo Pty Ltd to contractual sanctions including without limitation, delay penalties, liquidated or other damages or termination for default.

4.4 Risk of any loss or damage to the Products passes to the Customer upon delivery to the Customer at the Delivery Point. Title in the Products does not pass to the Customer until the Customer has made payment in full for the

Products and, further, until the Customer has made payment in full of all the other money owing by the Customer to Exnovo Pty Ltd (whether in respect of money payable under a specific contract or on any other account whatsoever). Whilst the Customer has not paid for the Products supplied in full at any time, the Customer agrees that property and title in the Products will not pass to the Customer and Exnovo retains the legal and equitable title in those Products supplied and not yet sold.

4.5 Until payment in full has been made to Exnovo Pty Ltd:

(a) the Customer will hold the Products in a fiduciary capacity for Exnovo Pty Ltd and agrees to store the Products in such a manner that they can be identified as the property of Exnovo Pty Ltd and will not mix the products with other similar products.

(b) The Customer will be entitled to sell the Products in the ordinary course of its business, but until full payment for the Products has been made to Exnovo Pty Ltd, the Customer will sell as agent and bailee

(c) for Exnovo Pty Ltd and the proceeds of sale of the Products will be held by the Customer on trust for Exnovo Pty Ltd absolutely.

(d) The Customer's indebtedness to Exnovo Pty Ltd, whether in full or in part, will not be discharged by the operation of clause 4.5(b) unless and until the funds held on trust are remitted to Exnovo Pty Ltd.

(e) The Customer agrees that whilst property and title in the Products remains with Exnovo Pty Ltd has the right, with or without prior notice to the Customer, to enter upon any premises occupied by the Customer (or any receiver, receiver and manager, administrator, liquidator, or trustee in bankruptcy of the Customer) to inspect the Products of Exnovo Pty Ltd and to repossess the Products

(f) which may be in the Customer's possession, custody or control when payment is overdue.

(g) The Customer will be responsible for Exnovo's costs and expenses in exercising its rights under clause 4.5(d).

Where Exnovo Pty Ltd exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against Exnovo Pty Ltd, its employees, servants or agents.

(h) The Customer agrees that where the Products have been retaken into the possession of Exnovo Pty Ltd has the absolute right

(i) to sell or deal with the Products, and if necessary, sell the Products with the trademark or name of the Customer on those Products, and the Customer hereby grants an irrevocable licence to Exnovo Pty Ltd to do all things necessary to sell the Products bearing the name or trademark of the Customer.

5 Provision of Services

5.1 Exnovo Pty Ltd will provide suitably qualified, experienced and competent personnel to carry out the Services and related tasks in accordance with these Terms and Conditions and any Specifications in a professional manner with due skill and care.

5.2 Exnovo Pty Ltd will follow all reasonable directions provided by the Customer when delivering the Services which are necessary and incidental to the performance of the Services under this Agreement.

5.3 Exnovo Pty Ltd will ensure the Services are provided in accordance with all applicable laws and regulations and general industry practice.

5.4 If an Order indicates that Exnovo Pty Ltd is to perform Services at the Site, then:

(a) the Customer will at its cost prepare the Site and provide Exnovo Pty Ltd with reasonable access to the Site and other associated necessary facilities to allow Exnovo Pty Ltd to perform its obligations under this Agreement; (b) The Customer will also ensure that Exnovo's representatives attending the Site receive (where appropriate) all necessary safety site induction and personal protection equipment.

(c) at the Customer's cost, in a timely manner and so as to avoid any delay to Exnovo Pty Ltd, provide all information, approvals, permits, authorisations, licenses, customs clearances, instructions, materials, civil works, reports, drawings, geotechnical and survey information, access and other things which may be required in relation to the performance of Exnovo's obligations and which are not expressly stated to be Exnovo's responsibility.

(d) The Customer shall provide to Exnovo Pty Ltd any approval or comment with respect to drawings submitted by Exnovo Pty Ltd to the Customer

(e) within five (5) days from the date of the submission by Exnovo Pty Ltd of such drawings unless some other time is provided for in the Order.

(f) If Exnovo Pty Ltd considers the information, documents and other particulars made available to Exnovo Pty Ltd by the Customer are not sufficient to enable Exnovo Pty Ltd to provide the services in accordance with the contract and the provision of which is not reasonably to be considered within the responsibility of Exnovo under the contract, Exnovo Pty Ltd may advise the Customer who shall then provide such further assistance, information or other particulars as necessary in the circumstances or as requested by Exnovo Pty Ltd as the case may be.

5.5 If the Customer is ordering Energy Consulting Services, the following additional conditions will apply:

- (a) the Customer shall make all necessary information regarding electrical utilities ("Utility Information") available to Exnovo Pty Ltd within 14 days of the request. Exnovo Pty Ltd reserves the right to alter its Price if there is a substantial material change between the information which it has based its Price on and the information provided by the Customer pursuant to this clause;
- (b) The Customer acknowledges that Exnovo Pty Ltd is acting as its agent to analyse and interpret the Utility Information that it provides for the purposes of providing the Energy Consulting Services;
- (c) The Customer warrants that in providing such Utility Information it is not breaching the terms of any contract it has with the Utility Provider or any other third party for the Energy Consulting Services;
- (d) The Customer warrants that it is the owner or lessee of the premises the subject of the Utility Information.

5.6 If Exnovo Pty Ltd is providing the Customer Services which are cloud based and hosted by Exnovo Pty Ltd then the following terms and conditions will apply in addition to any terms and conditions of use which the Customer may be required to agree to when accessing the cloud-based services:

- (a) Any Personal Information will be collected and used in accordance with the terms of Exnovo Privacy Policy and the terms set out in section 11. By accessing the Services, the Customer signifies its consent to the collection and use of the personal information in accordance with Exnovo's Privacy Policy including receiving marketing communications and agreeing to the personal information being used in accordance with this Policy.
- (b) The Customer represents and warrants that if any data provided by it includes other parties Personal Information that they have obtained all the necessary consents to disclose such Personal Information to Exnovo Pty Ltd in accordance with these Terms and Conditions and the Privacy Act.

6 Warranties

6.1 Exnovo Pty Ltd warrants that:

- (a) All Exnovo Pty Ltd Products (excluding third party Product) will operate in accordance with their published specifications for the duration of the Warranty Period; and
- (b) All Services will be performed in a professional manner with due skill and care, using appropriately skilled and qualified personnel and in accordance with all applicable laws and regulations; and
- (c) Provided a separate Project Deliverable warranty is indicated in the Order, then all Project Deliverables provided pursuant to the Addendum for the Supply of Projects shall perform in accordance with the Specification agreed with the Customer for the Warranty Period defined in the Order. For the avoidance of doubt where there is no reference to an additional warranty period for Project Deliverables in the Order then this Project Deliverable warranty shall not apply.

6.2 If the Customer makes a claim during the Warranty Period it will be handled as follows:

- (a) In the case of Exnovo Pty Ltd Products and Project Deliverables (where relevant), where there is a defect in such Products, Exnovo Pty Ltd will replace or repair or in the case of Software provide an update to address the non-conformance. (at its discretion and cost) Exnovo Pty Ltd will not be responsible for the cost of retrieving, removing, reinstalling, retesting or transporting the Products or Project Deliverables to and from the location where the Products are located.
- (b) In the case of Services, where there is a defect in the Services, Exnovo Pty Ltd will re-perform the Services at a mutually agreed time.
- (c) For the avoidance of doubt if Services were delivered on a Time and Materials basis Exnovo Pty Ltd will not provide any additional warranties for any deliverables provided pursuant to those Services other than the standard warranties referred to in clause 6.1.
- (d) In the case of a Project, if it is not practical to return the defective Product to Exnovo Pty Ltd in accordance with clause 6.2(a), Exnovo Pty Ltd will bear the cost of correcting the defects, by either attending the Customer's Site where the Project is located or by remote means, as determined at the sole discretion of Exnovo Pty Ltd and at a mutually agreed time.
- (e) All warranties for any Products repaired or replaced or Services resupplied during the Warranty Period will expire at the same time as the original warranty of the products and services that were replaced or resupplied.

6.3 The Customer agrees that, unless otherwise agreed in writing by Exnovo Pty Ltd, any warranty on any third-party Products is limited to the warranty given by the manufacturer of those Products and, to the maximum extent permitted by law, Exnovo Pty Ltd gives no additional warranties in relation to any third party Products or Software.

6.4 Exnovo Pty Ltd will not be responsible for any defect arising out of or in connection to:

- (a) Misuse, abuse, neglect, errors or any other act or omission of or by the Customer or third party not contracted by Exnovo Pty Ltd; or
- (b) Alteration (improper or otherwise) or installation of the Products and Projects by the Customer or any person other than Exnovo Pty Ltd; or
- (c) Power failure, power surge, lightning, flood, fire, accidental breakage or other events outside of Exnovo Pty Ltd's reasonable control; or
- (d) The Products not being maintained, installed or energised in accordance with Exnovo's instructions or in the absence of such instructions, in accordance with generally accepted practices for maintenance of such Products; or
- (e) Improper environmental conditions where the Products are used or installed; or
- (f) The Products being stored for more than twelve (12) months prior to being put into operation; or
- (g) Any consumables; or
- (h) Following a direction from the Customer where Exnovo Pty Ltd has recommended to the Customer against following such direction.

6.5 Exnovo Pty Ltd makes no warranty that the Products or Services will meet the Customer's requirements or will operate uninterrupted or be secure or error free. Exnovo Pty Ltd does not represent, warrant or guarantee that the Products or Services will be secure or free from vulnerabilities, corruption, attach viruses, interference, hacking or other security intrusions or cyber threats and Exnovo Pty Ltd will not be liable for any such events. Unless otherwise agreed in writing between the parties, the Customer agrees that by using the Products and Services it understands these limitations and agrees that it accesses and uses the Products and Services at its own risk and subject to the limitations set out in this clause.

6.6 Certain legislation, including the Australian Consumer Law, may imply warranties or conditions or impose guarantees or obligations upon Exnovo Pty Ltd which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent. Any Order and these terms including this clause 6.5 must be read subject to these statutory provisions. If these statutory provisions apply, to the extent to which Exnovo Pty Ltd is entitled to do so, Exnovo limits its liability in respect of any claim under the provisions to:

- (a) in the case of Products, at Exnovo Pty Ltd's option:
 - (i) the replacement of Products or the supply of equivalent Products;
 - (ii) the repair of the Products;
 - (iii) the payment of the cost of replacing the Products or of acquiring equivalent Products; or
 - (iv) the payment of the cost of having the Products repaired; and
- (b) in the case of services, at Exnovo Pty Ltd's option:
 - (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

7 Price and Payment

7.1 The Customer must pay the Price mutually agreed by the Parties in the Order.

7.2 Unless specifically set out in the Order, Exnovo Pty Ltd will issue all invoices for the Products, Services and Projects as follows:

- (a) For Services provided on Time and Materials basis, Exnovo Pty Ltd will invoice monthly in arrears.
- (b) For Services provided at a Fixed Price, Exnovo Pty Ltd will invoice in advance.
- (c) For Products, Exnovo Pty Ltd will invoice on or after delivery to the Delivery Point.
- (d) For all other Products and Projects delivered, Exnovo Pty Ltd will invoice in accordance with agreed payment milestones set out in the Order. If no milestones are set out in the order, invoicing will be monthly in arrears in accordance with the work completed.

7.3 The Customer acknowledges that the Price may contain elements which are sourced by Exnovo Pty Ltd in foreign currency, and/or be subject to raw material pricing. The Customer shall indemnify Exnovo Pty Ltd against any loss incurred by Exnovo Pty Ltd which results from any variation in the rates of exchange or raw material indexation between the date of the quotation and the date upon which Exnovo obtains a suitable hedge mechanism.

7.4 The Customer must pay the amount shown on any invoice rendered by Exnovo Pty Ltd within thirty (30) days from the date of issue of the invoice.

8 Intellectual Property

8.1 Each party will retain all Intellectual Property Rights in their respective Background IP. Subject to payment in full for the Products, Services and Projects, Exnovo Pty Ltd will grant to Customer a royalty free, non-exclusive, irrevocable, and perpetual license to use Exnovo's Background IP necessary for Customer to enjoy the benefit of the Products, Services and Projects for the purposes of or in connection with Customer's business.

8.2 The Customer acknowledges that Exnovo Pty Ltd retains ownership of the Intellectual Property Rights of Exnovo Pty Ltd used or created under the Agreement. Exnovo Pty Ltd acknowledges that the Customer retains ownership of the Intellectual Property Rights of any Customer Background IP. To enable each party to perform their obligations under each Order and for the Customer to enjoy the benefit of the Products, Services and Projects for the purpose of or in connection with its business, each party grants to the other Party a non-exclusive, royalty free, irrevocable and perpetual licence to use its Intellectual Property Rights for that purpose.

8.3 In the event that any claim is made against the Customer for infringement of any person's Intellectual Property Rights arising of the Customer's use of Exnovo's Products supplied under the Agreement, Exnovo will, at its own expense, conduct any ensuing litigation and all negotiations for a settlement of the claim. Exnovo will bear the costs of any payment made in settlement, or as a result of an award in a judgment provided that:

- (a) The Customer promptly notifies Exnovo Pty Ltd in writing of any such claim being made or action threatened or brought against the Customer;
- (b) The Customer grants Exnovo Pty Ltd the right to assume sole authority to conduct the defence or settlement of such claim or any related negotiations; and
- (c) The Customer provides Exnovo Pty Ltd with all reasonable information, co-operation and assistance.

8.4 Notwithstanding any other provision of the Agreement, Exnovo Pty Ltd will not be liable in any case whatsoever where the claim is based on:

- (a) Specifications that the Customer provided to Exnovo Pty Ltd;
- (b) Where the Customer has combined Exnovo's supplied Products with non-Exnovo's supplied Products, data or business processes; and
- (c) Where the Customer has altered or modified the Products.

9 Confidentiality

9.1 Each Party agrees to hold in strict confidence all Confidential Information and not to disclose or permit or cause the disclosure of any Confidential Information to any person except and solely to the extent necessary for the performance of that Party's obligations under the agreement, unless that Party has obtained the prior written consent of the other Party.

9.2 Clause 10.1 does not apply to:

- (a) Information after it becomes generally available to the public other than as a result of the breach of this clause 9.2 or any other obligations of confidentiality imposed on a Party; or
- (b) The disclosure of information in order to comply with any applicable law or legally binding order of any court, government agency or recognised stock exchange, provided that prior to such disclosure the disclosing Party gives notice to the other Party with full particulars or the proposed disclosure.

10 Compliance with Privacy Laws

10.1 Each Party agrees to comply with its obligations under the Privacy Act in respect of Personal Information obtained by or disclosed to it pursuant to this Agreement.

10.2 Each Party must only collect, use and disclose Personal Information for the purpose of fulfilling its obligations under this Agreement unless otherwise permitted under this Agreement or the Australian Privacy Principles.

10.3 A Party must notify the other Party as soon as possible when it becomes aware of:

- (a) a complaint alleging an interference with privacy;
- (b) any breach, or possible breach of this clause 10; or
- (c) in relation to any Personal Information collected and/ or handled by any of the Parties in connection with this Agreement.

11 Limitation of Liability

11.1 Notwithstanding any other term of the Agreement, whether express or implied, Exnovo's total liability under the Agreement arising out of or in connection with the Agreement, whether in contract, tort (including negligence of any kind), statute, strict liability, indemnity or otherwise arising out of Exnovo's performance or non-performance of

the Agreement, will not exceed in the aggregate the Price actually paid to Exnovo pursuant to the Order giving rise to such liability. This limitation shall continue to apply notwithstanding fundamental breach, breach of a fundamental term, rescission, repudiation or termination for any reason or frustration, whether unintentional or by operation of law.

11.2 Notwithstanding any other term of the Agreement, whether express or implied, to the maximum extent permitted by law, in no event will either Party, its affiliates, or their officers, directors, employees or their subcontractors be liable in contract or in tort (including negligence of any kind), statute, strict liability, indemnity or otherwise for any form of Consequential Loss arising out of that party's performance or non-performance of the Agreement

12 Taxes

12.1 Unless otherwise stated, all amounts referred to under or in connection with the Agreement are exclusive of GST or any other value added or withholding taxes. In relation to any GST payable for a taxable supply (under GST Law) by a Party, the recipient of the supply will pay the GST subject to the supplier providing a tax invoice (as defined under GST Law). Terms used in this clause 12 which are defined in the GST Act have the same meaning as in the GST Act. In the case of a withholding or deduction Exnovo Pty Ltd may increase its prices to include the withholding tax amount and the Customer agrees to pay such increased price.

12.2 Prices quoted in an Order are based on the tax laws and regulations (Tax Laws) in force at the date of the Order. The Customer will compensate Exnovo Pty Ltd in the event there is a change in the Laws or interpretation of them, between the date of the Order and the delivery of the Product or Service which increases the cost of providing the Product or Service for Exnovo Pty Ltd.

13 Suspension and Termination

13.1 If the Customer fails to pay any sum due under the Agreement by the due date, Exnovo Pty Ltd may by notice, in addition to any other rights it may have, suspend supplying the Products, Services and Projects until all overdue amounts are paid. The Customer will be liable to Exnovo Pty Ltd for all expenses, including reasonable legal fees, relating to the collection of overdue amounts.

13.2 A Party may terminate the Agreement by providing notice to the other Party if any of the following events or circumstances occurs:

- (a) The other Party goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration (or the equivalent under the laws of another jurisdiction); or
- (b) A Party fails to remedy any breach of an essential obligation under the Agreement within thirty (30) days after receipt of written notice from the other Party of details of the breach.

13.3 If Exnovo suspends the Agreement under clause 13.1 or terminates the Agreement under clause 13.2, the Customer must pay Exnovo for all monies due (including an allowance for profit) under the Agreement which may include but shall not be limited to:

- (a) payment for the Products and Services provided or performed to the date of the suspension or termination;
- (b) Products or materials wholly or partially procured by Exnovo for the performance of the Agreement;
- (c) costs of demobilisation from Site.

13.4 The customer may terminate the Agreement for convenience by written notice and shall be liable to Exnovo Pty Ltd under the Agreement, according to the following (time after the order is issued):

- 0 – 2 weeks 35% of the total sum
- 2 – 12 weeks 75% of the total sum
- > 12 weeks 100% of total sum

14 Dispute Resolution

14.1 The parties will attempt in good faith to resolve all disputes, disagreements or claims between the parties relating to an Order. The preferred method of determination of unresolved disputes shall be by amicable agreement at the senior management level of the Customer and Exnovo Pty Ltd.

14.2 If the parties cannot resolve the dispute themselves they may agree to appoint an expert or mediator to help them resolve the dispute. In such event both parties agree to jointly bear the costs of such mediator or expert and be bound by the determination of such person.

14.3 In the event the parties cannot resolve the dispute and:

- (a) The parties cannot agree upon a mediator or expert;
 - (b) A mediator or expert has been appointed but resolution has not been reached within six weeks of appointment of the mediator or expert;
- then either party may initiate legal proceedings.

15 Miscellaneous

15.1 Nothing contained or implied in the Agreement will create a relationship of partnership or agency between the Parties and neither Party has any authority to bind the other Party to any obligations.

15.2 Exnovo Pty Ltd will not be liable for any non-performance of a Purchase Order if such delay or non-performance is due to a Force Majeure event whether foreseen or not, which delays, interrupts or prevents Exnovo Pty Ltd from performing its obligations under the Agreement. For the purposes of this clause Force Majeure means an event beyond the reasonable control of Exnovo Pty Ltd which may include but not be limited to hostilities, revolution, acts of war or terrorism, civil commotion, epidemic, accident or quarantines or regional medical crisis, pandemic, cyber attack, fire, flood, wind, earthquake or storms, strikes and lockouts or shortage of materials whether at Exnovo Pty Ltd or one of its suppliers, or transport facilities or any other acts of god or act of any government or governmental agency including laws regulation or ordinance and proclamation affecting the manufacture or delivery of the Products or Project Deliverables. Any delay resulting from such cause shall extend the date of delivery accordingly. Exnovo Pty Ltd reserves the right to cancel a Purchase Order, if in its opinion such circumstances threaten or cause extended delay in the performance thereof.

15.3 The Customer agrees that during the term of any Order and for a period of six months after expiry of that Order it will not solicit or hire directly or indirectly any employees that Exnovo Pty Ltd used to provide any Services or Project under that Order to the Customer.

15.4 Neither Party may assign its rights and obligations under the Agreement without the prior written approval of the other Party (such approval not to be unreasonably withheld) provided that either Party may assign its rights and obligations to a related body corporate within the meaning of the *Corporations Act 2001 (Cth)* provided that the related body corporate is of similar financial standing and has the ability to discharge its obligations under the Agreement.

15.5 Each Order will be governed by and will be construed in accordance with the laws of the State of Western Australia, Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the State of New South Wales and its appellate courts and waives any right to object to proceedings being brought in those courts for any reason.

15.6 If any provision of the Agreement, or the application thereof to any person, place or circumstance, will be held by a court or tribunal of competent jurisdiction to be invalid, unenforceable, or void, the remainder of the Agreement and such provisions as applied to other persons, places or circumstances will remain in full force and effect.

15.7 For the purposes of each Order, the Order together with these Terms and Conditions and the Credit Terms will form the entire agreement between the parties and as such both parties exclude all statements, representations, warranties, conditions, promises, undertakings, covenants and other provisions, express or implied (and whether implied by law including Act of Parliament or otherwise) relating to that Order.

16 Agreement on Specifications and Provision of Information

16.1 If the Products, Services and Projects involve preparing and agreeing the Specifications with the Customer, Exnovo Pty Ltd will prepare the necessary Specifications in conjunction with the Customer in accordance with the Timetable, or if there is no Timetable, within thirty (30) days of acceptance of the Order or such other time as is agreed between the Parties. The Customer will review and either provide amendments or approve the Specifications within five (5) working days of receipt of the Specifications. In the absence of any written comments within five (5) working days the Customer will be deemed to have approved the Specifications. Any changes to the approved Specifications will be considered a Variation in accordance with clause 17.

16.2 The Customer will respond to any requests for further information or instructions from Exnovo Pty Ltd within five (5) working days after the receipt of such request for further information or instructions by the Customer. If the Customer does not respond within that period (or such other period identified by Exnovo Pty Ltd), Exnovo will have the right to claim an extension of time relating to such failure to provide the necessary information.

17 Delay and Extension of Time

17.1 Unless there is a Timetable specified in an Order, Exnovo Pty Ltd will, if so requested by the Customer, submit a Timetable to the Customer for approval prior to commencing the supply of the Products, Services and Projects.

17.2 Any Timetable submitted by Exnovo Pty Ltd pursuant to clause 16.1 as requiring the Customer's approval will be approved or commented on in writing by the Customer within five (5) working days after the receipt of such Timetable by the Customer. If the Customer does not respond within that period (or such other period agreed with Exnovo Pty Ltd), it will be deemed to have approved the Timetable.

17.3 Exnovo Pty Ltd, at all times, take all reasonable steps to ensure that the Products, Services and Projects are supplied in accordance with the Timetable. If the supply of the Products, Services and Projects will be delayed by an act or omission of the Customer or by an event beyond Exnovo's reasonable control, and the delay was not contributed to by Exnovo Pty Ltd, Exnovo Pty Ltd will promptly submit a claim to the Customer for an extension of time to the Timetable setting out the details of the cause of the delay, the activities affected and the extension of time needed. The Customer will, acting reasonably, consider Exnovo's claim and grant the extension of time requested or such other mutually acceptable period of time as an extension to the Timetable.

17.4 Any changes to the approved Timetable including those pursuant to clause 16.2 will be considered a Variation in accordance with clause 17.

18 Variations

18.1 If the Customer wishes to alter, amend, omit, add to or otherwise vary an Order or Timetable including suspend the delivery of the Order, it will issue Exnovo Pty Ltd with a written Variation request (**Variation**). Exnovo will review the Variation request and provide a quote to the Customer setting out the cost of the Variation and the impact on the Timetable.

18.2 As soon as practicable after receipt of the quote from Exnovo Pty Ltd, the Customer will either accept the quote by signing and returning it to Exnovo Pty Ltd or reject the quote in writing. If the Customer and Exnovo Pty Ltd are unable to agree upon the amount of the difference in cost or impact on the Timetable the provisions of clause 17.3 shall apply.

18.3 If the parties can agree upon the variation to the Timetable and the only outstanding item is pricing, the Customer may direct Exnovo Pty Ltd to proceed with the Variation request on a Time and Materials basis in accordance with Exnovo's standard schedule of rates. Unless Exnovo Pty Ltd reaches agreement with the Customer under clause 17.2 or it receives a direction under this clause, Exnovo Pty Ltd will not be required to proceed with the Variation request.

19 Testing and Acceptance

19.1 For Products, the Customer will be deemed to have accepted the Products on the date that the Products are delivered to the Customer at the Delivery Point (**Delivery Date**).

19.2 For all Project Deliverables, the following provisions will apply:

(a) Exnovo Pty Ltd will notify the Customer in writing when the Project Deliverables are ready to be submitted for Acceptance Tests and within five (5) days after receiving such notice, the Customer will conduct Acceptance Tests on the Project Deliverables and advise Exnovo in writing of whether the Project Deliverables have passed the Acceptance Tests or the Project Deliverables have failed the Acceptance Tests.

(b) If the Project Deliverables fail to pass the Acceptance Tests then the Customer must notify Exnovo Pty Ltd in writing setting out details of the known defects in the Project and permit Exnovo Pty Ltd, within a reasonable period of time taking into account the nature of the defects and the likely time it will take to remedy the defects, which period shall not be less than ten (10) working days, to correct the defects and resubmit the Project to the Customer to conduct Acceptance Tests again.

(c) The Project Deliverables will be deemed accepted upon the occurrence of the earlier of:

(i) The date that the Customer gives written notice to Exnovo Pty Ltd that the Project Deliverables have passed the Acceptance Tests; or

(ii) The date that is fourteen (14) days after completion of the Acceptance Tests, provided that during the fourteen (14) day period after completion of the Acceptance Tests the Customer did not notify Exnovo Pty Ltd in writing of any defects in the Project Deliverables; or

(iii) The date the Customer makes commercial or operational use of the Project Deliverables other than for the purposes of conducting the Acceptance Tests. **(Date of Acceptance)**.