

Terms & Conditions for Quotations

1. Definitions

Agreement means the terms and conditions contained in this document that govern the purchase and supply of products.

Business Day means a day that is not a Saturday, Sunday or public holiday in Toowoomba, Queensland.

Consequential Loss means any indirect, incidental, special or consequential loss or damage, loss of anticipated profits, economic loss, loss of business opportunity, loss of data or loss and damage relating to wasted management time.

Credit Approved means the credit application completed by the Customer that has been formally approved by IIS in writing.

Customer means the person/s, partnership, trustee of a trust, company or entity (including agents, employees or contractors) engaging IIS to inspect a Product and/or complete a Service.

Delivery means the transfer of Product from IIS to the Customer at IIS's premises.

Delivery Date means the date of delivery of the Product and/or Service as specified on the Quote or as nominated by IIS from time to time.

Force Majeure means any event or circumstance which is beyond the reasonable control of either party and which results in, or causes the failure of, that party to perform any of its obligations under this Agreement, including but not limited to:

- (a) Acts of God, strike, lock-out or other industrial disturbance, pandemic, act of a public enemy, declared or undeclared war, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, earthquake, explosion; and
- (b) Governmental restraint or other intervention or request, act of parliament, other legislation or by-law.

IIS means Integrity Inspection Services (ACN 161 627 069) or any Related Body Corporate.

Incoterms means the Incoterms notified by IIS from time to time that sets out additional terms for the supply of the Products in accordance with Incoterms 2020 by the International Chamber of Commerce.

Intellectual Property means any patent, copyright, trademark, trade name, service mark, service name, brand mark, brand name, logo, corporate name, internet domain name or industrial design, any registrations thereof and pending applications therefor (to the extent applicable), any other intellectual property right (including but not limited to any know-how, trade secret, trade right, formula, conditional or proprietary report or information, customer or membership list, any marketing data, and any computer program, software, database or data right), and license or other contract relating to any of the following and any goodwill associated with any business owning, holding or using any of the following:

- (a) Patents, trademarks, service marks, copyrights, registered designs, trade names, symbols and logos;
- (b) Patent applications and applications to register trademarks and designs; and
- (c) All formulae, methods, plans, data, drawings, specifications, equipment, designs, inventions, discoveries, improvements, know-how, confidential information, software products, trade secrets and price lists which relate directly to the Products.

Invoice means the invoice provided by IIS to the Customer for Products and/or Service ordered by the Customer in a Purchase Order.

Laws means any statute, regulation, bylaw, ordinance or subordinate legislation in force from time to time, the common law and the law of equity (if applicable), and any applicable direction, policy, permission, consent, licence, rule, undertaking or order over or in respect of the Territory and/or the Products that is binding on a party and that is made or given by any Governmental Authority.

Loss means any and all losses, claims, actions, liabilities, damages, expenses, diminutions in value or deficiencies of any kind or character including, without limitation all interest and other amounts payable to third parties, all liabilities on account of taxes and all legal (on a full indemnity basis) and other expenses reasonably incurred in connection with investigating or defending any claims or actions, whether or not resulting in any liability and all amounts paid in settlement of claims or actions.

Product means the products inspected, sold and/or delivered by IIS to the Customer in accordance with the Quote, this Agreement and any Purchase Orders provided by the Customer.

Price means the price for the Product as specified in the Quote or as amended from time to time by written variations.

Purchase Order means written purchase orders provided by Customers from time to time for the Products.

Quote means a written quotation, estimate or Price given by IIS to the Customer in respect of the specified Product or Service.

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth).

Services means any inspection, maintenance or other services supplied by IIS to the Customer from time to time.

Specifications means the specifications for the Products or Service as specified by IIS or the Customer from time to time.

Variation means a change to the Product or Service and includes any deviation from the method in which IIS intended to inspect the Product or complete the Service.

2. Quotes & Orders

- 2.1. The Customer is responsible for requesting a Quote from IIS and accepts responsibility for accuracy of any information, dimensions or drawings provided to IIS.
- 2.2. IIS may provide the Customer with a Quote. Unless stated otherwise in the Quote, Prices contained in Quotes:
 - (a) are valid for thirty (30) days from the date of the Quote (except in the case of clerical error); and
 - (b) are based on the work being conducted during normal working hours Monday to Friday, 6:00am to 4:00pm unless otherwise specified by IIS; and
 - (c) are based on the assumption that all Product or Service particulars that are supplied by the Customer are accurate; and
 - (d) are subject to the Customer's Purchase Order being for the full quantity of Products or Services ordered; and
 - (e) do not include delivery or insurance; and
 - (f) are exclusive of GST.
- 2.3. Any lead times or Delivery Dates stated on the Quote are estimates only based on existing workloads at the time of the Quote and may be subject to change.
- 2.4. Any supply, inspection, service or repair reports (as relevant) and other associated Product or Service documentation included in the Price and that is to be provided upon Delivery will be noted on the Quote. Any additional documentation requirements may constitute a variation as per Clause 4 of this Agreement.
- 2.5. The Customer is to notify IIS of acceptance of a quote by provision of a Purchase Order for the value of the Quote or execution and return of the Quote.
- 2.6. Any Purchase Order or signed quote submitted by the Customer or written or verbal acceptance provided by the Customer, is an offer to purchase the relevant Product or Service on the terms of this Agreement. A Purchase Order is not binding unless and until it is accepted in writing by IIS.
- 2.7. IIS reserves the right to accept or reject (in IIS's sole discretion), any offer to purchase received.
- 2.8. Quotes made by IIS to the Customer shall not be construed as an offer or obligation to supply in accordance with the quote.

3. Price

- 3.1. The Price provided in a Quote does not include:
- Any additional Services or Products not detailed in the Quote; or
 - Provision for site specific conditions or allowances unless otherwise specified; or
 - The cost of inductions for crews, except for an onsite induction prior to commencement of a Service of up to twenty (20) minutes when Services take place at a Customer controlled site; or
 - Work being conducted outside of normal working hours Monday to Friday, 6:00am to 4:00pm unless otherwise specified by IIS.
- 3.2. Pricing is dependent upon the quantities stated in a Quote. Any variance to quantities from those stated in the Quote may result in a variation in Price under Clause 4.

4. Variations

- 4.1. In the event that IIS's costs increase (including without limitation and increase in raw materials, labour and/or freight) then IIS may increase the price for the Products or Service by an amount equal to the percentage increased by providing 60 days written notice to the Customer. The Customer may request IIS to provide reasonable evidence of the increased costs. The parties agree that a notice of increased costs shall constitute a variation to the Agreement which will become effective 60 days after the date of the notice.
- 4.2. In the event the Customer requests an amendment to the Product or Service from that listed on the Quote and associated Purchase order, IIS will complete a Variation Quote for the Customer to review and approve. IIS is not obligated to provide evidence of additional costs it quotes under this Clause 4.2.
- 4.3. Any decision of IIS to perform or refuse to perform a Variation is at the discretion of IIS entirely, without any obligation to act reasonably.
- 4.4. Any variations to the Product or Service will not commence until the Quote for the variation has been accepted by the Customer and an updated Purchase Order provided.
- 4.5. If the Customer rejects the Variation Quote, IIS is not obligated to perform the Variation.

5. Payment

- 5.1. The Customer agrees to pay the Price for the Product or Service on the terms noted on the Quote and this Agreement.
- 5.2. All Invoices for Products or Services are payable thirty (30) days from the date of the invoice where the Customer holds a Credit Approved account with IIS. For all other Customers Invoices are payable prior to Delivery or as per the terms provided on the Quote.
- 5.3. Where the Customer makes payment of any Invoice by credit card, IIS reserves the right to charge a processing fee of 2.5% of the invoice amount.
- 5.4. If the Customer fails to pay an Invoice in full by the due date, IIS reserves the right to charge interest (in addition to any other costs recoverable under this Agreement and legal remedy IIS may have) on the amount outstanding calculated monthly at an interest rate of fifteen (15) percent per annum.
- 5.5. All costs and expenses associated with recovering overdue amounts or otherwise enforcing this Agreement (including but not limited to legal costs on an indemnity basis) are to be paid by the Customer as a debt due and payable to IIS.
- 5.6. The Customer, where applicable, must pay any taxes, duties (including stamp and import duties), levies, charges, fines or imposts on or in connection with the Agreement.

6. GST

- 6.1. Any reference in this Clause to a term defined or used in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- 6.2. Unless expressly included, the consideration for any supply made under or in connection with this Agreement does not include an amount on account of GST in respect of the supply ('GST Exclusive Consideration') except as provided under this clause.
- 6.3. Any amount referred to in this Agreement (other than an amount referred to in Clause 6.8) which is relevant in determining a payment to be made by one of the Parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- 6.4. To the extent that GST is payable in respect of any supply made by a Party ('Supplier') under or in connection with this Agreement, the consideration to be provided under this Agreement for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the relevant part of the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- 6.5. The recipient must pay the additional amount payable under Clause 6.4 to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- 6.6. The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under Clause 6.4 or at such other time as the Parties agree.
- 6.7. Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Agreement the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under Clause 6.5, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- 6.8. If one of the Parties to this Contract is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the Party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with Clause 6.4.

7. No Reliance

- 7.1. The Customer acknowledges that it has not relied on any representation made by IIS which is not expressly in the Agreement.
- 7.2. Unless specified otherwise, and agreed to in writing, IIS does not make any representation, warranty or statement that a Product or Service is fit for its intended purpose or that the Specifications are correct or appropriate for the intended purpose.

8. Specifications

- 8.1. IIS will inspect the Products or complete the Service to the extent referred to in the Specifications. IIS shall not be obliged to disclose design drawings or inspection specifications, however general arrangement drawings may be made available to the Customer upon request.
- 8.2. From time to time, IIS and the Customer may, by written agreement signed by the parties, vary the Specifications

and any additional costs payable to IIS in respect of the amended Specifications are subject to Clause 4 of this Agreement.

- 8.3. Any variations to the Specifications must be proposed in good faith and must be reasonable in the circumstances. If the parties are unable to agree on any adjustment in Price as a result of a variation to the Specifications, the parties agree to resolve the matter in accordance with the dispute resolution process set out in Clause 21. Until such determination, the parties agree that IIS will continue to inspect the Products or complete the Service in accordance with the applicable Specifications (prior to the proposed variation) at the Price in place prior to the proposed variation.
- 8.4. Where variations to the Specifications are agreed under Clause 8.2, the Customer must pay IIS on demand for any raw materials that become redundant as a result of the variation, plus any disposal costs. IIS is not obliged to inspect the Product or complete the Service in accordance with the varied Specifications until the Customer has complied with this Clause 8.4.
- 8.5. Subject to clauses 8.2, 8.3 and 8.4, all Purchase Orders for Products inspected or Services required from the date commencing eight weeks after the date of any agreement relating to a variation to the Specifications relevant to such Products or Services made pursuant to this clause must be inspected in accordance with the Specifications as so amended unless the Customer specifies a later date for compliance with the amended Specifications.
- 9. Intellectual Property**
- 9.1. All Intellectual Property rights, ownership and title for any new concepts, solutions, inventions or designs developed by IIS during the completion of the Product or Service under this Agreement will be retained by IIS.
- 9.2. The Customer hereby grants to IIS the non-exclusive and royalty-free license to use the Customers Intellectual Property to perform its obligations under this Agreement including but not limited to inspecting and delivering the Products or Service ordered by the Customer.
- 9.3. Each party acknowledges and agrees that:
- it is not the owner of the other party's Intellectual Property;
 - nothing in the Agreement gives a party any interest or other rights or title in or to the other party's Intellectual Property;
 - it must not use any of the other party's Intellectual Property other than for the purposes of meeting its obligations under the Agreement without the other party's prior written approval; and
 - it must not directly or indirectly challenge or contest the validity of the Intellectual Property.
- 9.4. Each party agrees to promptly advise the other party of any actual or alleged infringement of the other party's Intellectual Property. Each party agrees to cooperate with the other party in order to protect the rights of the other party and not, without the prior written consent of the other party, take any action in respect of such matters.
- 9.5. The Customer must not:
- take any steps to register any rights included in IIS's Intellectual Property or any rights that are:
 - deceptively similar to IIS's Intellectual Property rights; and/or
 - capable of misleading others to believing that such rights are associated with IIS and/or IIS's Intellectual Property.
 - use any of IIS's Intellectual Property as part of any corporate, trade or business name; or
 - do anything which would in any way infringe, call in question or lessen the validity or value of IIS's Intellectual Property.
- 9.6. The Customer warrants to IIS that it owns or has the right to license the use of Intellectual Property and shall indemnify and keep IIS, its officers, agents, contractors and employees indemnified against all Loss resulting from or in connection to a breach of this warranty.
- 10. Delivery**
- 10.1. IIS will notify the Customer that the Product is ready for Delivery on or before the Delivery Date.
- 10.2. The Customer must arrange transport and collection of the Products at its expense. Where a Customer advises of a nominated freight account, IIS shall not be responsible for the timeliness of collection or the accuracy of or timeframe for delivery.
- 10.3. IIS will have been deemed to have completed Delivery of the Product upon the earlier of:
- the Customer effecting Delivery; or
 - five (5) Business Days after the Customer has been advised by IIS that the Product is ready for collection.
- 10.4. If IIS agrees to a request from the Customer for Products to be delivered at a place other than IIS's premises, the Customer will be responsible for, and must indemnify IIS against all costs, expenses and liabilities associated with that Delivery (except to the extent caused or contributed to by IIS).
- 10.5. If there is a dispute as to the time of Delivery, Delivery will be deemed to have occurred when the Products were completed and ready for Delivery at IIS's premises.
- 10.6. The Customer must notify IIS in writing within 5 Business Days of delivery of any shortfall, loss or damage to the Products delivered, failing which IIS will have no liability for any such shortfall, loss or damage. IIS must be given a reasonable opportunity to inspect the Product in the same condition in which they were delivered.
- 10.7. Any special packing and packing materials used in delivering the Product is at the Customer's expense (even if not included in a Quote).
- 10.8. IIS reserves the right to charge the Customer reasonable holding costs if the Customer does not take delivery of the Product within ten (10) Business Days of notice being provided under Clause 10.1.
- 11. Risk**
- 11.1. All risk in the Products, including without limitation risk of loss and damage, passes from IIS to the Customer upon Delivery, even if title in the Product has not passed under Clause 12.
- 11.2. The Customer is responsible for insuring all Products with a reputable insurer for their full replacement value from the time the risk passes. The Customer must provide IIS with Certificates of Currency for insurances upon request.
- 11.3. The Customer must hold the proceeds from any insurance claim on trust for IIS up to the amount owing to IIS for the Product.
- 12. Title**
- 12.1. Title in the Product shall not pass to the Customer unless the Customer has made payment in full for those Products and all other monies owing by the Customer to IIS.
- 12.2. The Customer agrees that while the Customer has not paid for any Products in full, IIS retains the legal and equitable title in the Product.

- 12.3. Until payment has been made to IIS, the Customer will hold the Products in a fiduciary capacity for IIS and store the Products in a manner that they can be identified as IIS property and will not mix the Products with other similar Products.
- 12.4. The Customer agrees that while property and title remains with IIS, IIS has the right, without prior written notice, 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 and to repossess the Products in the Customer's possession, custody or control when payment is overdue.
- 12.5. The Customer will be responsible for IIS's costs and expenses in exercising IIS's rights under this clause 12. Where IIS exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action against IIS, IIS employees, servants or agents.
- 12.6. The Customer agrees that where Products have been retaken into IIS possession, IIS has the absolute right 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 IIS an irrevocable license to IIS to do all things necessary to sell the Products bearing the Customer's name or trademark.
- 13. Personal Property Securities Act 2009 (Cth) (PPSA)**
- 13.1. In relation to any security interest constituted or contemplated in any Products, the Customer consents to IIS affecting and maintaining a registration on the register (in the manner IIS considers necessary) of that security interest. The Customer also agrees to sign any documents and provide all cooperation to IIS required to facilitate that registration and maintenance. At IIS's sole discretion IIS may register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest) at any time. The Customer's right to receive notice of a verification statement regarding the registration of a security interest on the register in respect of any Goods or Services is hereby waived.
- 13.2. The Customer agrees not to register a financing change statement in respect of a security interest contemplated or constituted by this Agreement, or in favour of a third party, without IIS's prior written consent.
- 13.3. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising under or in connection with this Agreement and sections 115(1) or 115(7) of the PPSA allows for contracting out, then the following provisions of the PPSA will not apply and the Customer will have no rights under them.
- (a) in respect of section 115(1), section 95 (to the extent of notices to the grantor); section 96; section 118 (to the extent of notices to the grantor); sections 121(4); 125; 130; 132(3)(d); 132(4); 135; 142; and 143; and
- (b) in respect of section 115(7): sections 127; 129(2); 129(3); 130(i); 132; 134(s); 135; 136(3); 136(4); 136(5); 137; and 275(7)(c).
- 13.4. The Customer and IIS agree not to disclose information of the kind referred to in section 275(1) of the PPSA.
- 13.5. Money received from the Customer in connection with any agreement may be applied by IIS towards the Customer's obligations under any security interest contemplated or constituted by any agreement in any way IIS determines.
- 13.6. The Customer agrees to notify IIS immediately in writing of any material change to the information the Customer has provided.
- 14. Storage**
- 14.1. Each party must ensure that all Products that are in its possession are stored in accordance with required storage procedures (if any) set out in the Specifications and, in any event, in accordance with good commercial practice and all applicable Laws.
- 15. Cancellation**
- 15.1. IIS reserves the right to withdraw the Quote at any time prior to the commencement of work, with no liability in respect of any costs or expenses, loss or damage whatsoever incurred by the Customer as a consequence.
- 15.2. If the Customer cancels an order through no fault of IIS, the Customer agrees that it will, on demand, pay IIS for any expenses that IIS incurs in connection with the cancelled order.
- 15.3. A cancellation fee and administration fee may be charged by IIS where manufacturing of the Product or completing a Service has been cancelled without reasonable notice or the Customer fails to take delivery of the Product.
- 16. Privacy**
- 16.1. IIS will comply with the Australian Privacy Principles (as amended or replaced) in all dealings with the Customer.
- 16.2. Each party must:
- (a) comply with all Laws and IIS's policies relating to privacy and/or personal information including but not limited to the *Privacy Act 1998* (Cth);
- (b) only collect or use personal information for the purpose of fulfilling its obligations under this Agreement;
- (c) ensure that personal information held by the parties is protected against misuse, interference, loss, unauthorized access, modification or disclosure; and
- (d) promptly report to and cooperate with the other party regarding any actual or suspected breach of this Clause 16.2.
- 17. Warranties**
- 17.1. Except as provided for in this Agreement, to the maximum extent permitted by law, all warranties, conditions, representations and guarantees (whether expressed or implied) in respect of this Agreement, the Products or Service are excluded. Used Products are sold in an "as is" condition and no warranties (expressed or implied) of any kind are given in respect of used Products.
- 17.2. IIS will comply with the Warranty Policy as published on the Obadare Website as www.obadare.com.au. IIS reserves the right to vary the Warranty Policy at any time without prior notice by publishing the varied version at www.obadare.com.au. The varied policy will apply to any Quotes issued, and Purchase Orders subsequently accepted, by IIS after the varied policy is published. Accepted Purchase Orders which remain incomplete at the date of publication are not affected.
- 17.3. The Customer must use best endeavours to ensure that any Products to be repaired by IIS (whether at IIS's premises or otherwise) are not contaminated by hazardous materials (including but not limited to asbestos). Any apparent risk of contamination must immediately be notified to IIS.
- 18. Limitation Of Liability**

- 18.1. The Customer indemnifies IIS against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which IIS pays, suffers, incurs or is liable for in connection with any of the following:
- (a) any act or omission of the Customer, including but not limited to, any unauthorized representation made or warranty given by the Customer in connection with the Product; and
 - (b) any breach of, or default under, the Agreement by the Customer.
- 18.2. IIS's liability for consequential, special or indirect loss, loss of profits, loss of expected savings, loss of business or opportunity or business interruption arising under or in connection with the Agreement or Products, whether in contract, tort (including negligence) at law or in equity and whether or not foreseeable, is excluded to the maximum extent permitted by law.
- 18.3. Notwithstanding any other provision of this Agreement, IIS's liability under or in connection with this Agreement or the Product, whether in contract, tort (including negligence), by statute or otherwise at law or in equity, will be limited to, at the option of IIS (acting reasonably giving consideration to the circumstance):
- (a) the value of the Purchase Order associated with the Product or Service;
 - (b) inspection/repairing the Product; or
 - (c) the cost of repairing the Product; or
 - (d) the cost of completing a Service.
- 19. Default**
- 19.1. IIS may terminate all or any part of an unperformed Purchase Order or the Agreement as a whole immediately on written notice to the Customer if:
- (a) the Customer breaches the Agreement and fails to remedy that breach within 5 days of receiving notice to do so;
 - (b) the Customer becomes insolvent, bankrupt, dies, ceases to carry on business, enters into liquidation or administration or has a receiver appointed to any of its assets;
 - (c) in IIS's reasonable opinion any other event occurs which is likely to materially affect the Customer's ability to meet its obligations to IIS.
- 19.2. The Customer may terminate an unperformed Purchase Order or the Agreement as a whole immediately if IIS becomes insolvent, ceases to carry on a business, enters into liquidation or administration or has a receiver appointed to any of its assets.
- 19.3. The parties termination rights are in addition to any other rights or remedies they have under the Agreement or at law or in equity.
- 19.4. Following termination of a Purchase Order as a whole, IIS may take all necessary steps to repossess any Product in respect of which ownership has not transferred to the Customer. The Customer authorizes IIS to enter the Customer's premises to enable IIS to repossess the Products. If IIS reasonably suspects that the Products are located on premises other than the Customer's premises, IIS or its agents may enter those other premises as the Customer's agent to repossess the Product. The Customer indemnifies IIS from and against all costs, claims, actions and liabilities IIS suffers or incurs as a consequence of or repossessing the Products, including legal costs on an indemnity basis.
- 20. Dispute Resolution**
- 20.1. A party must not commence legal proceedings in respect of a dispute arising out of this Agreement (**Dispute**) unless it has first complied with this Clause 20.
- 20.2. A party claiming that a Dispute has arisen must give each part to the Dispute (**Disputant**) written notice (**Dispute Notice**) setting out the details of the Dispute. The Dispute Notice must be provided within 5 Business Days of becoming aware of the grounds for the Dispute.
- 20.3. Any Dispute the subject of a Dispute Notice must be initially referred to the representative (or his or her nominee) of each Disputant who must use their best efforts to resolve the Dispute within 20 Business Days after the Dispute is referred to them.
- 20.4. If the representatives (or their nominees) of the Disputants cannot resolve the Dispute under clause 20.3, then a Disputant may give written notice to each other Disputant requiring each of them to resolve the Dispute by mediation.
- 20.5. The identity of mediator is to be agreed in writing by the Disputants or, failing such agreement within 10 Business Days, is to be selected by the representative for the time being of the International Institute of Arbitrators (or his or her nominee).
- 20.6. Each Disputant shall bear the costs and expenses that it incurs in connection with the mediation and will share equally the fees and costs of the mediator.
- 20.7. The mediation will be non-binding.
- 20.8. Despite any reference of a Dispute to mediation under this clause 20, the Parties must continue to perform and comply with their respective obligations under this Agreement.
- 20.9. This clause 20 does not prevent any Party from seeking urgent interlocutory or declaratory relief from a court of competent jurisdiction where, in that Party's reasonable opinion, that action is necessary to protect its rights.
- 21. General**
- 21.1. Force Majeure**
- (a) If either party is unable to carry out any of its obligations under the Agreement because of Force Majeure, the Agreement will remain in effect except as otherwise provided, both parties' obligations (other than an obligation as to payment of a Product accrued up to the date of the Force Majeure) will be suspended without liability for a period equal to the period of the Force Majeure, and:
 - i. the non-performing party will give the other party prompt notice describing the event or circumstance claimed to be Force Majeure, including the nature of the occurrence and its expected duration, and where reasonably practicable, continue to furnish regular reports with respect thereto during the period of Force Majeure;
 - ii. the suspension of obligations will be of no greater scope and of no longer duration than is required by the Force Majeure;
 - iii. no obligations of either party which accrued before the notice referred to in clause 22.1(a)(i) is given will be suspended as a result of the Force Majeure; and
 - iv. the non-performing party will use all reasonable efforts to remedy as quickly as possible its inability to perform its obligations.
 - (b) In the event the Force Majeure affects the supply of Products to a Customer for a period in excess of 90 consecutive days, either party

- may terminate the Agreement forthwith by notice in writing to the other.
- (c) Neither party will be liable to the other for any breach of the Agreement, which is directly or indirectly caused by Force Majeure.
- 21.2. Notices**
- (a) All notices under this Agreement must be provided in writing and in English and may be given by personally serving it on the other party or by sending it by courier, registered mail, post or email.
- (b) Any notice so given will be deemed to be received:
- if personally served or sent by courier or registered mail, at the time when it was actually delivered;
 - if sent by post, 5 Business Days after the time it was posted to the recipient; or
 - if sent by email, at the time the email leaves the communication systems of the sender, provided that the sender does not receive any error message relating to the sending of the email at the time of sending, provided that if a Notice or document is received by a party on a date that is not a Business Day, or the delivery or transmission is made after 5.00pm on a Business Day, then the notice will be deemed to have been received on the next Business Day
- 21.3. Compliance with Laws**
- (a) IIS will ensure that its premises and Products comply with all applicable Laws in Australia.
- (b) IIS will obtain and maintain (all at its cost) the validity of all licenses and permits required by Law to inspect the Product.
- 21.4. Set Off**
- (a) The Customer must pay all money payable by it under this Agreement in full and without demand, set-off, withholding, counterclaim or deduction.
- (b) Any amount due to IIS from time to time may be deducted from any monies which may be or may become payable to the Customer by IIS.
- 21.5. Records**
- IIS will retain relevant records in respect of the Products produced and must provide these records to the Customer upon reasonable request. Without limiting this clause IIS may take photographs of Products inspected by it under the Agreement and each of the parties hereby acknowledges that such photographs shall be evidence of the existence and quality of the Products inspected under the Agreement.
- 21.6. Waiver**
- (a) None of the provisions of this Agreement will be considered to be waived by either party except when such waiver is given in writing.
- (b) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right by a party under this Agreement will not in any way preclude or operate as a waiver of any exercise or enforcement, or further exercise or enforcement, of that right.
- (c) No waiver of a breach of any term of this Agreement will operate as a waiver of another breach of that term or of a breach of any other term of this Agreement.
- 21.7. Remedies**
- The exercise or failure to exercise any right or remedy by either party under the Agreement will be without prejudice to any other right or remedy that party may have.
- 21.8. Further Assurances**
- Each party will make all applications, execute all documents and do all acts and things necessary to implement and carry out its obligations under this Agreement.
- 21.9. Relationship of the Parties**
- (a) IIS is an independent contractor and not an agent, employee or partner of the Customer.
- (b) Neither the Customer nor any employee of the Customer is an employee or agent of IIS for any purposes whatsoever and none has any right or authority to assume or create on behalf of IIS any commitment, expense or liability whatsoever.
- 21.10. Authorisation**
- The Customer is responsible for ensuring that all persons placing orders under this Agreement have the Customer's authority to do so.
- 21.11. Entire Agreement**
- This constitutes the entire agreement and understanding between IIS and the Customer and supersedes any previous written or oral agreement or understanding between the parties in relation to this Agreement. Each party acknowledges and confirms that it does not enter this Agreement in reliance on any representation or warranty or other undertaking not fully reflected in the terms of this Agreement.
- 21.12. Severance**
- If any provision of the Agreement is invalid or unenforceable in any jurisdiction, it is to be read down or severed to the extent of the invalidity or unenforceability for that jurisdiction, and the remainder of the Agreement will remain in full force and effect.
- 21.13. Amendments**
- IIS reserves the right to vary this Agreement at any time without prior notice by publishing the varied version at www.obadare.com.au. The varied terms will apply to any Quotes issued, and Purchase Orders subsequently accepted, by IIS after the varied terms are published. Accepted Purchase Orders which remain incomplete at the date of publication are not affected. No other variations to this Agreement can be made without the written consent of IIS.
- 21.14. Costs**
- (a) The parties will bear their own costs and expenses incurred in connection with the preparation, negotiation and execution of the Agreement.
- (b) Any action to be taken by the Customer in performing its obligations under the Agreement must be taken at its own cost and expense, unless otherwise provided in the Agreement.
- 21.15. Survival**
- (a) Except as otherwise provided in this Agreement, termination or expiry of this Agreement does not affect any party pursuing whatever rights and remedies that may be available to it under this Agreement, at Law or in equity as a result of termination or which

accrued up to and including the termination date.

- (b) Clauses 17, 21.3, 19, 21.11 and 21.15 and any other clauses which by implication survive termination of the Agreement and all clauses necessary to give effect to those clauses will survive termination of the Agreement.

21.16. Order of Precedence

In the event of an inconsistency between the provisions of this Agreement and any other document forming part of this Agreement, the following order of precedence shall apply:

- (a) the Quote;
- (b) this Agreement; and
- (c) the Purchase Order.

21.17. Governing Law

The governing law and jurisdiction for any claim, action, enforcement of right or legal proceeding in respect of this Agreement must be Queensland, Australia, and the Commonwealth of Australia as the case may be.