

TECHNICRETE GENERAL TERMS AND CONDITIONS OF SUPPLY

1 Definitions and interpretation

1.1 Definitions

In this Agreement unless the context indicates otherwise, the following words have the following meanings:

Agreement means these General Conditions and the Order.

Australian Consumer Law and **ACL** means Schedule 2 of the *Competition and Consumer Act* (Cth) 2010.

Business Day means a day on which banks are open for business in Sydney, NSW, other than a Saturday, Sunday or public holiday in that city.

Background IP means Intellectual Property of Technicrete which was in existence prior to the commencement of this Agreement or which is subsequently developed by Technicrete independently of and for purposes unconnected with this Agreement.

Change means a change to the scope, nature, volume or execution of the Services under this Agreement.

Claims means all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise).

Commencement Date means date on which Technicrete is to start performing the Services, subject to satisfaction by the Customer of any Conditions Precedent.

Completion Date means date on which Technicrete is to complete performing the Services or such other date as the Parties may agree in writing.

Conditions Precedent means the conditions precedent, if any, to the commencement of the Services by Technicrete, as specified in the Order.

Confidential Information includes any information marked as confidential and any information received or developed by Technicrete during the term of this Agreement, which is not publicly available and relates to processes, equipment and techniques used by the Customer in the course of the Customer's business. This includes all information, data, drawings, specifications, documentation, source

or object code, designs, construction, workings, functions, features and performance notes, techniques, concepts not reduced to material form, Agreements with third parties, schematics and proposals and intentions, technical data and marketing information such as customer lists, financial information and business plans.

Consumer Guarantee means a guarantee applicable to the supply of goods or services which is incorporated into this Agreement pursuant to Part 3-2, Division 1 of the Australian Consumer Law.

Contract IP means Intellectual Property created by Technicrete in the course of performing its obligations under this Agreement.

Customer means the recipient of the Services being the person specified in the Order.

Customer Furnished Equipment or **CFE** means any equipment, or material supplied by or on behalf of the Customer to Technicrete to assist in the performance of the Agreement.

Customer Furnished Information or **CFI** means those items of Information supplied by or on behalf of the Customer to Technicrete to assist in the performance of this Agreement.

Deliverable means a report, data or other Information to be supplied by Technicrete as part of the Services pursuant to this Agreement.

Fees means the amount or rates set out in the Order, including any cost and disbursements.

Force Majeure Event means any occurrence or omission as a direct or indirect result of which the Party relying on it is prevented from or delayed in performing any of its obligations under this Agreement and which is beyond the reasonable control of that Party and could not have been prevented or mitigated by reasonable diligence or precautionary measures, including forces of nature, natural disasters, acts of terrorism, riots, revolution, civil commotion, epidemic, industrial action and action or inaction by a government agency.

General Conditions means these General Terms and Conditions of Supply of Goods.

GST Law means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Information means all information in documentary or visual form supplied or to be supplied by a party to another party including (but not by way of limitation) data, plans, specifications, blueprints, performance details and other intellectual property.

Intellectual Property means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, service marks, designs, patents, circuit layouts, plant varieties, business and domain names, database rights, confidential information, know how, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields existing anywhere in the world, whether or not registered or capable of registration, and any goodwill associated with such activity and any applications, renewals and extensions of such rights.

Losses means all losses including financial losses, damages, legal costs and other expenses of any nature whatsoever.

Order means the document headed "Order" or similar to which these General Conditions are annexed or incorporated by reference.

Parties means Technicrete and the Customer, and **Party** means either one of them.

Related Body Corporate has the meaning given in section 50 of the *Corporations Act 2001* (Cth) (**Corporations Act**).

Services means the services and Deliverables specified in the Order to be provided by Technicrete under this Agreement.

Technicrete means Technicrete Pty Ltd ACN 120 174 683.

Technicrete's Personnel means any person or persons that Technicrete designates to perform the Services on Technicrete's behalf.

Termination Date means the earlier of:

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- (a) the date of termination of this Agreement by the Customer or Technicrete; and
- (b) the date of expiry of this Agreement.

1.2 Interpretations

In this Agreement unless the context otherwise requires:

- (a) words importing any gender include every gender;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing persons include firms, companies and corporations and vice versa;
- (d) references to dollars, \$A or \$ mean Australian Dollars;
- (e) references to numbered clauses, paragraphs and schedules are references to the relevant clause or paragraph in or schedule to this Agreement;
- (f) reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- (g) any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- (h) the headings to the clauses and schedules of this Agreement are not to affect the interpretation;
- (i) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or bylaw made under that enactment; and
- (j) the word "including" (and related forms including "includes") means "including without limitation".

2 Contract and acceptance

- (a) The Customer shall be deemed to have accepted the Order and these General Conditions by directing Technicrete to proceed with Technicrete's activities

under this Agreement. If the Customer directs Technicrete to commence its activities after the expiry of any Order validity or acceptance period stated therein, Technicrete may by written notice reject Customer's acceptance of the Order.

- (b) Subject to the satisfaction of any applicable Conditions Precedent, the Contract shall enter into force on the Commencement Date.

3 Services

- (a) Technicrete will provide the Services to the Customer in consideration for the Customer paying the Fee to Technicrete, subject to the provisions of this Agreement.
- (b) Technicrete will use reasonable endeavours to complete the Services including the provision of data, materials or reports by the Completion Date, the dates specified in the Order or the dates agreed by the Parties in writing but these dates are estimates only. Time is not of the essence for the performance of any of Technicrete's obligations in this Agreement.
- (c) The Services will be performed by the employees or agents that Technicrete may choose as most appropriate to carry out the Services, as set out in the Order.

4 Location

Technicrete will provide the Services in places and locations as Technicrete considers appropriate to the type and nature of the requirements of the Customer or as otherwise set out in the Order or as agreed by the Parties from time to time.

5 Fees

5.1 Payment of Fees

- (a) In consideration of the provision of the Services in accordance with this Agreement, the Customer will pay Technicrete the Fees.
- (b) Where Technicrete's charges are based on an hourly rate, any time spent which is less than an

hour is charged on a pro-rated basis in 15 minute intervals or as otherwise specified in the Order.

- (c) The Customer acknowledges that the Fees are exclusive of any GST that may be charged by Technicrete to the Customer, and therefore, Technicrete will be entitled to add on GST.

5.2 Invoicing

- (a) Technicrete will provide the Customer with a tax invoice in accordance with the GST Law in relation to fees and charges payable under this clause 5.
- (b) Technicrete may issue invoices to the Customer on a monthly basis or on completion of the Services. Each invoice (**Tax Invoice**) shall set out details of:
 - (i) the hours that Technicrete's Personnel have worked during the relevant period;
 - (ii) the Services provided during the relevant period;
 - (iii) the amount of the Fees to be payable for the Services provided during the relevant period; and
 - (iv) any expenses, costs or disbursements incurred during the relevant period.
- (c) The Customer must pay each Tax Invoice submitted by Technicrete within 30 days after the date of the invoice.

5.3 Variation of Fees

Technicrete is entitled to vary the rates specified in the Order during the term of this Agreement with written notice to the Customer 14 days prior to the change being implemented.

5.4 Costs and disbursements

Technicrete is permitted to charge for all costs and expenses incurred in performing the Services, including travel, courier services, postage, together with an administration fee as specified in the Order.

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5.5 Failure to pay

If the Customer does not make a payment by the date stated in an invoice or as otherwise provided for in the Agreement, Technicrete is, without prejudice to any other right or remedy, entitled to do any or all of the following:

- (a) charge interest on the outstanding amount at the rate of 5% per year above the base lending rate of Commonwealth Bank's Corporate Overdraft Reference Rate, accruing daily;
- (b) require the Customer to pay, in advance, for any Services (or any part of the Services) which have not yet been performed; and
- (c) suspend any further Services (or any part of the Services).

5.6 Disputed invoices

If the Customer disputes the whole or any portion of the amount claimed in an invoice submitted by Technicrete, the Customer must:

- (a) pay the portion of the amount stated in the invoice which is not in dispute in accordance with the terms of payment set out in this Agreement; and
- (b) notify Technicrete in writing (within 5 days of receipt of the invoice) of the reasons for disputing the remainder of the invoice.

6 Customer's obligations and delays

6.1 Obligations of Customer

- (a) During performance of the Services the Customer will:
 - (i) cooperate with Technicrete as Technicrete reasonably requires;
 - (ii) provide the information and documentation, including Customer Furnished Information, that Technicrete reasonably requires;
 - (iii) provide clear and prompt feedback on draft Deliverables submitted

by Technicrete to the Customer;

- (iv) make available to Technicrete such facilities as Technicrete reasonably requires; and
 - (v) ensure that the Customer's staff and agents cooperate with and assist Technicrete.
- (b) The Customer will not charge for Technicrete's use of the facilities made available by the Customer.
 - (c) If the Customer does not provide the facilities that Technicrete reasonably requires (and within the time period) to perform the Services, then any additional costs and expenses which are reasonably incurred by Technicrete will be paid by the Customer.

6.2 Failure or delay caused by Customer

To the extent that Technicrete's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer or any of its agents, consultants or other suppliers (**Excusable Cause**), Technicrete will not be in breach of this Agreement nor liable for any Loss incurred by the Customer as a result of its performance being prevented or delayed. Without prejudice to any other right or remedy, the Technicrete will be entitled to:

- (a) an extension of time to perform its obligations equal to the delay caused by the Excusable Cause; and
- (b) recover any Loss, including additional costs, incurred as a result of the Excusable Cause.

7 Use of subcontractors

- (a) Technicrete is permitted to use other persons to provide some or all of the Services.
- (b) Technicrete is responsible for the work of any of Technicrete's subcontractors.

8 Disclosure and ownership of Intellectual Property

- (a) The Parties agree that, other than as expressly provided in this clause, nothing in this Agreement transfers or grants to any party any right, title or interest in or to any Intellectual Property in any Background IP.
- (b) Technicrete grants to the Customer a worldwide, royalty free, perpetual, irrevocable, transferable, non-exclusive licence to use the Background IP to the extent necessary for the Customer to derive full benefit from its acquisition of the Deliverables.
- (c) The Customer acknowledges that ownership of the Contract IP remains vested in Technicrete. Technicrete grants to the Customer an exclusive, perpetual, fully paid-up, irrevocable, worldwide licence to use the Contract IP for the sole purpose of enabling the Customer to derive full benefit from its acquisition of the Deliverables.
- (d) Technicrete agrees to indemnify the Customer fully against all liabilities, costs and expenses which the Customer may incur if the Contract IP or Background IP infringes the rights of a third party, save that Technicrete will have no indemnity obligation if any infringement, suspected infringement or alleged infringement of the Contract IP or Background IP arises from:
 - (i) use of the Deliverables in combination by any means and in any form with other goods not specifically approved by Technicrete;
 - (ii) use of the Deliverables in a manner or for a purpose not reasonably contemplated or not authorised by Technicrete;
 - (iii) modification or alteration of the Deliverables without prior consent in writing of Technicrete; or

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- (iv) any transaction entered into by Technicrete relating to the Deliverables without Technicrete's prior consent in writing.
- (e) The obligations accepted by the Parties under this clause 8 survive termination or expiry of this Agreement.

9 Deliverables

- (a) Any Deliverable in the form of a report supplied by Technicrete under this Agreement is provided solely for the use of Customer in connection with any express purpose specified in the Order for which it was supplied (**Purpose**).
- (b) Technicrete will not be liable for any Loss incurred by the Customer as a result of using draft Deliverables as finished work without the Technicrete's prior written approval.
- (c) Any opinions expressed in such Deliverables are based on facts, assumptions, and materials identified in the report, which are assumed to be accurate and complete as at the date of the report. Any material change to the underlying test data, exposure conditions, construction records, standards, or material specifications may require revision of the opinions expressed.
- (d) Any opinion expressed in the Deliverable is provided solely for the benefit and use of the Customer in connection with the Purpose. No responsibility is accepted for any reliance on this opinion by any other person, or for any use other than the purpose for which it was prepared.
- (e) Any qualifications or limitations to the opinions expressed in the Deliverable, including those arising from insufficient data or matters outside Technicrete's field of expertise, will be stated in the report. In particular, the report assumes that:

- (i) all Information provided by the Customer is accurate and complete as at the date of the report.
- (ii) all standards and codes referenced in the report are current as at the date of the report.
- (iii) the Customer has provided all relevant Information that may affect the subject matter of the report and the Services, and Technicrete has not independently verified the completeness or accuracy of that information.

- (f) The Customer shall review the Deliverables following delivery by Technicrete. Where an error or omission in the Deliverables is identified by the Customer and Technicrete accepts such defect, Technicrete shall rectify any defects in the Deliverables free of charge.

10 Confidentiality

- (a) A Party which receives Confidential Information (**Recipient**) from the other Party (**Discloser**) must keep the Discloser's Confidential Information confidential and not deal with it in any way that might prejudice its confidentiality.
- (b) The Recipient's obligations in relation to the Confidential Information will continue for as long as the Confidential Information is maintained on a confidential basis by the Discloser.
- (c) Subject to clause 10(d), at the Termination Date or when earlier directed by the Discloser:
 - (i) all Confidential Information must be returned to the Discloser, including all copies of the Confidential Information or any extracts or summaries of the

Confidential Information that the Recipient makes and any software that the Recipient creates based on the Confidential Information; and

- (ii) the Recipient must erase and destroy any copies of any software containing or comprising the Confidential Information in the Recipient's possession or under the Recipient's control or that may have been loaded onto a computer possessed or controlled by the Recipient.

- (d) Notwithstanding clause 10(c), if Technicrete holds Confidential Information disclosed by the Customer, Technicrete may retain such Confidential Information for a period of 7 years from completion of the Services for record keeping or compliance purposes provided that Technicrete shall protect such information in accordance with this Agreement.

- (e) The Confidential Information does not include information which:
 - (i) is generally available in the public domain otherwise than as a result of a breach of clause 10(a) by Technicrete; or
 - (ii) was known by the Recipient prior to the Discloser disclosing the information to Technicrete.
- (f) The Recipient agrees that the Discloser may require any of the Recipient's personnel to sign a confidentiality Agreement in a form that the Discloser approves, as a condition of the Discloser's acceptance of any of the Recipient's personnel.

- (g) The Recipient agrees to indemnify the Discloser fully against all liabilities, costs and expenses which the Discloser may incur as a result of any

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breach of this clause 10 by the Recipient.

- (h) The Recipient acknowledges that damages may be an inadequate remedy for breach of this clause 10 and that the Discloser may obtain injunctive relief against the Recipient for any breach of this clause 10.
- (i) The obligations accepted by the Recipient under this clause 10 survive termination or expiry of this Agreement.

11 Warranties and liability

11.1 Warranties

- (a) Technicrete warrants that it will use reasonable care and skill in performing the Services to the standard of care, skill, judgement and diligence expected of a contractor experienced in supplying the same or similar Services.
- (b) If Technicrete performs the Services (or any part of the Services) negligently or materially in breach of this Agreement, then, if requested by the Customer, Technicrete will re-perform the relevant part of the Services, subject to clauses 11.5(a), 11.5(b) and 11.6 below.
- (c) The Customer's request referred to in clause 11.1(b) must be made within 60 days of the date Technicrete completed performing the Services.

11.2 Insurances

Technicrete represents it holds the following insurance:

- (a) worker's compensation insurance as prescribed by law for Technicrete's Personnel;
- (b) professional indemnity insurance with a minimum indemnity limit of \$10 million; and
- (c) public and products liability insurance with a minimum indemnity limit of \$20 million.

11.3 Employees and subcontractors

- (a) Technicrete covenants that Technicrete is solely responsible for the payment to Technicrete's employees and agents of all amounts due by way of salary, superannuation, annual leave, long service leave and any other benefits to which they are entitled as Technicrete's employees or agents.
- (b) Technicrete must otherwise comply with legislation applicable to Technicrete's employees and agents.

11.4 No warranties in relation to completion

Technicrete provides no warranty that any result or objective can or will be achieved or attained at all or by a given completion date or the Completion Date or any other date, whether stated in this Agreement, the Order or elsewhere.

11.5 Limitation on liability

- (a) Except in the case of:
 - (i) death or personal injury caused by Technicrete's negligence;
 - (ii) for fraud or fraudulent misrepresentation by Technicrete or Technicrete's Personnel;
 - (iii) where liability cannot be limited or excluded by applicable law;
 - (iv) for repudiation or abandonment of this Agreement;
 - (v) for their infringement of a third party's Intellectual Property Rights
 - (vi) for breach by Technicrete of the Customer's Intellectual Property Rights;

the liability of Technicrete under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall not exceed the Fees paid or payable by the

Customer to Technicrete under this Agreement.

- (b) Neither Party is liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill. For the purposes of this sub-clause, "**consequential loss or damage**" means any Loss that does not arise naturally and according to the usual course of things as a result of a breach of this Agreement or other event giving rise to such Loss, whether or not such Loss may reasonably be supposed to have been in the contemplation of the Parties at the time they made this Agreement.
- (c) Nothing in this Agreement is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the Australian Consumer Law, or the exercise of a right conferred by such a provision, or any liability of Technicrete in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the Australian Consumer Law to a supply of goods or services.
- (d) Technicrete's liability for failure to comply with a Consumer Guarantee is, where permitted by law, limited to:
 - (i) in the case of goods supplied to the Customer, the replacement of the goods or the supply of equivalent goods (or the payment of the cost to the Customer of the replacement or supply), or the repair of the goods (or the payment of the cost to the Customer of the repair); and
 - (ii) in the case of Services supplied to the

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Customer, the supply of the Services again or the payment of the cost to the Customer of having the Services supplied again.

11.6 Erroneous, defective or incomplete Customer Furnished Information (CFI) or Customer Furnished Equipment (CFE)

Technicrete's obligations and liability under this Agreement shall be reduced to the extent the Customer's acts or omissions have contributed to any losses, including provision of ambiguous, erroneous, defective or incomplete CFI or CFE.

11.7 No reliance

Each of the Parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement. Any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.

11.8 Survival of obligations

The obligations accepted by Technicrete and the Customer under this clause 11 survive termination or expiry of this Agreement.

12 Termination

- (a) Either Party may terminate this Agreement by notice in writing to the other if the Party notified:
 - (i) fails to observe any material term of this Agreement; and
 - (ii) fails to rectify this material breach, to the satisfaction of the notifying Party, following the expiration of 7 days' notice of the breach being given in writing by the notifying Party to the other Party.
- (b) Either Party may terminate this Agreement immediately upon the happening of any of the following events:

- (i) if the other Party commits a material breach of the Agreement which is incapable of rectification;
 - (ii) if the Customer enters into a deed of arrangement or an order is made for it to be wound up;
 - (iii) if an administrator, receiver or receiver/manager or a liquidator is appointed to the Customer pursuant to the Corporations Act; or
 - (iv) if the Customer would be presumed to be insolvent by a court in any of the circumstances referred to in the Corporations Act.
- (c) Upon termination of this Agreement any fees, expenses or reimbursements payable by the Customer to Technicrete in respect of any period prior to the Termination Date must be paid by the Customer within 7 days after the Termination Date.

13 Non Solicitation

During the term of this Agreement and for a period of 24 months following the termination or expiration of this Agreement, neither party will make any solicitation to employ the other party's personnel without the prior written consent of the other party. For the purposes of this clause, a general advertisement or notice of a job listing or opening or other similar general publication of a job search or availability to fill employment positions, including on the internet, will not be construed as a solicitation or inducement, and the hiring of any such employees or independent contractor who freely responds thereto will not be a breach of this clause.

14 General

14.1 Force Majeure

- (a) Neither Party has any liability under or may be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement

which result from a Force Majeure Event.

- (b) The Party affected by these circumstances must promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- (c) If such circumstances continue for a continuous period of more than 6 months, either Party may terminate this Agreement by written notice to the other Party.

14.2 Amendment

This Agreement including any Order may only be amended in writing signed by duly authorised representatives of the Parties.

14.3 Assignment

- (a) Subject to clause 14.3(b), neither Party may assign, delegate, subcontract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other Party.
- (b) A Party may assign and transfer all its rights and obligations under this Agreement to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other Party to be bound by the obligations of the assignor under this Agreement.

14.4 Entire Agreement

- (a) This Agreement contains the whole Agreement between the Parties in respect of the subject matter of the Agreement.
- (b) The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

14.5 Waiver

- (a) No failure or delay by Technicrete in exercising any right, power or privilege under this Agreement will impair the same or operate as a waiver of

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the same nor may any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.

- (b) The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

14.6 Agency, partnership etc

- (a) This Agreement will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.
- (b) Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

14.7 Further assurance

Each Party to this Agreement must at the request and expense of the other do all things reasonably necessary to carry out the provisions of this Agreement or to make it easier to enforce.

14.8 Severance

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and will not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

14.9 Announcements

- (a) Subject to clause 14.9(b), no Party may issue or make any public announcement or disclose any information regarding this Agreement unless prior to such public announcement or disclosure it furnishes the other Party with a copy of such announcement or information and obtains the

approval of the other Party to its terms.

- (b) No Party will be prohibited from issuing or making any such public announcement or disclosing such information if it is necessary to do so to comply with any applicable law or the regulations of a recognised stock exchange.

14.10 Notices

A notice or other communication connected with this Agreement has no legal effect unless it is in writing. In addition to any other method of service provided by law, the notice may be sent by pre-paid post to the address of the addressee or sent by email to the email address of the addressee, as set out in the Order,

14.11 Work, health and safety

To the extent Technicrete performs part or all of the Services at the Customer's premises, Technicrete shall observe all health and safety and security requirements that apply at the Customer's premises they access and that have been communicated to Technicrete in advance.

14.12 Law and jurisdiction

This Agreement takes effect, is governed by, and will be construed in accordance with the laws from time to time in force in New South Wales, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales.