



PIONEER
WATER TANKS

AGENT AGREEMENT TERMS & CONDITIONS

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OPERATIVE PROVISIONS

1 INTERPRETATION

1.1 Definitions

In this document:

“Agent” means the person as described in the Legal entity name section of the Referral Agent Application Form.

“Business Day” means a day on which trading banks are open for general banking business in Perth.

(a) **“Class A Products”** means, subject to clause 2.3, the Products (all standard rural tanks, liners for rural tanks and associated standard and optional accessories manufactured by on behalf of the Supplier)

“Confidential Information” means information of every kind contained in or concerning:

- (a) the past, present or future business, operations or affairs of the disclosing party;
- (b) the procedures, operations, practices, studies, feasibilities, evaluations, processes, organisation and procedures of the disclosing party directly or indirectly touching or concerning the disclosing party's business;
- (c) written reports, memoranda and other writings and papers or computer records or electronic databases including any technical data files relating to the disclosing party's business;
- (d) prices and cost information relating to the disclosing party's business;
- (e) any intellectual or industrial property owned or otherwise available for use by the disclosing party;
- (f) the business transactions, business methods, records, forms, costings, charges, financial affairs and trade secrets of the disclosing party;
- (g) all manuals, records, computer files and software, documents and materials generated or arising directly or indirectly out of any disclosure by the disclosing party;
- (h) all other documents and things whether recorded or not and however recorded, supplied or made available by the disclosing party to the other; and
- (i) this document,

whether or not such information is described as confidential, but excludes:

- (b) information in the public domain; or
- (c) information which one or more of the parties is required to disclose by operation of law or the rules of the stock exchange.

“Control” of a corporation includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, a composition of the board of directors of that corporation, the voting rights of the majority of the voting shares (as defined in the Corporations Law) of the corporation or the management of the affairs of the corporation.

“Corporations Law” means the Corporations Act 2001.

“Insolvency Event” means the occurrence of any of the following:

- (a) In the case of a corporation:
- (i) an application is made to a court for an order or an order is made that the corporation be wound up;
 - (ii) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of that corporation or one of them is appointed, whether or not under an order;
 - (iii) a meeting is convened or a resolution is passed to appoint an administrator in respect of that corporation;
 - (iv) except to reconstruct or amalgamate while solvent on terms approved by the Supplier, the corporation enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class or its creditors, or it proposes a re-organisation, moratorium or other administration or arrangement involving any of them;
 - (v) the corporation proposes or enters into a deed of company arrangement with or for the benefit of all or any class of its creditors without the consent of the Supplier;
 - (vi) a resolution is passed to wind up or dissolve that corporation;
 - (vii) the corporation is dissolved;
 - (viii) the corporation is or becomes insolvent within the meaning of that expression in Section 95A(2) of the Corporations Law or any of the events mentioned in paragraphs (a) to (f) inclusive of Section 459C(2) of the Corporations Law occurs in respect of the corporation;
 - (ix) the appointment of an administrator in respect of the corporation or a receiver or manager or receiver and manager of the whole or part of the assets and undertaking of the corporation; or
 - (x) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;
- (b) In the case of an individual:
- (i) the individual proposes or enters into a deed of arrangement, composition with or deed of assignment or an assignment for the benefit of all or any of his creditors or any class of them;
 - (ii) the individual commits an act of bankruptcy; or
 - (iii) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

“Intellectual Property” means any patent, copyright, registered design, trademark, drawings, software, design calculations or other industrial or intellectual property right subsisting in the Territory (including the Trade Marks) in respect of the Products, and applications of or for any of the foregoing.

“Operative Date” means the date of when the Supplier approves the relevant Application form..

“Personal Information” means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether the information or opinion

is recorded in a material form or not, or any other definitions of the term or any corresponding term under applicable laws, which the Agent collects or handles in the performance of, or otherwise in relation to, or in connection with, this Agreement (including but not limited to Personal Information provided to the Agent by the Supplier).

“Privacy Laws” means each party must comply with all Privacy Laws in relation to Personal Information, whether or not the party is an organisation bound by the Privacy Act 1988

“Products” means, subject to **clause 2.3**, Class A Products, including Rural Tanks, s and such other products, which are agreed in writing between the Supplier and the Agent from time to time.

“Promotional Material” means any advertising or promotional material and signage which promotes the Products.

“Related Bodies Corporate” has the meaning it has in the Corporations Law.

“Supplier” means Pioneer Water Tanks Pty Ltd (ABN 65 604 579 651)

“Term” means the period referred to in clause 3.

“Trade Marks” means:

- a) the trade marks registered or for which an application is pending in the name of the Supplier of which particulars are given in the Supplier’s document “Brand Guidelines” regarding the use of PIONEER WATER TANKS®, AQUALINER® and INDUSTRIATEX®
- b) such other trade marks, service marks, brand names, logos and other names and slogans as are used by the Supplier on or in relation to the Products at any time during the Term, which the Supplier permits the Agent to use.

1.2 Construction

Unless expressed to the contrary:

- (a) words importing:
 - (i) the singular include the plural and vice versa;
 - (ii) any gender includes the other genders;
- (b) if a word or phrase is defined cognate words and phrases have corresponding definitions;
- (c) a reference to:
 - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes its legal personal representatives, successors and assigns;
 - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) a right includes a benefit, remedy, discretion, authority or power;
 - (v) an obligation includes a conditional warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vi) provisions or terms of this document or another document, agreement understanding or arrangement include a reference to both express and implied provisions and terms;

- (vii) time is to local time in Perth, Western Australia. (Western Standard Time)
 - (viii) "\$" or "dollars" is a reference to the lawful currency of Australia.
 - (ix) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties;
 - (x) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmission; and
 - (xi) anything (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them.
- (d) a reference to this document includes all Schedules and annexures referred to in it if applicable

1.3 Headings

Clause headings do not affect the interpretation of this document.

2 APPOINTMENT

2.1 Non Exclusive agent

The Supplier appoints the Agent as:

Its a non exclusive Agent of the Class A Products

subject to the terms of this Agreement.

2.2 Changes in Products

From time to time, the Supplier may discontinue, amend or vary the Products which the Agent may refer in the Territory. The Supplier agrees to give not less than one (1) month's written notice to the Agent of the discontinuation, amendment or variation. All design changes to the Product are to be notified as soon as reasonably possible as and when these changes occur to the Agent.

2.3 No Agency

The Agent is entitled to describe itself as the Supplier's "Authorised Agent" for the Products, but shall not hold itself out as the Supplier's agent for sales of the Products or as being entitled to bind the Supplier in any way.

2.4 Conditions for Referral

- (a) The Agent must at all times during the Term refer any enquiries for the Suppliers Products as goods manufactured by the Supplier and according to the specifications supplied by the Supplier to the Agent from time to time either generally or in any particular case to the Supplier or an authorised Distributor on the provided Lead Referral Form.
- (b) The Agent must not make any representation or give any warranty in respect of the Products other than those offered by the Supplier at the time of the offering the Products for sale or the sale.

3 TERM

3.1 Term

This Agreement commences on the Operative Date and continues for a period of three (3) years unless:

- (a) Terminated earlier under clause 11.1; or
- (b) Terminated by either party giving to the other party not less than one (1) weeks written notice.

4 PRICE & PAYMENT

4.1 Price

- (a) The Supplier may from time to time provide to the Agent by way of recommendation only a list of prices at which Products may be sold.
- (b) The parties agree that:
 - (i) the prices set out in that list are only recommended retail prices and there is no obligation on the part of the Agent to comply with those recommendations; and
 - (ii) this clause 5.1(b) is taken to be incorporated by reference into every price list issued by the Supplier to the Agent under this Agreement.

4.2 Agent Incentive Programme

The Supplier may implement a reward and/or Incentive Programme subject to its own Terms & Conditions and payment will be made through the local Distributor. This Programme if introduced will be subject to review at the end of the relevant financial year and in addition the Terms and Conditions may be updated from time to time.

5 AGENT'S DUTIES

5.1 Promote the Products

- (d) The Agent must not do anything which might injure or destroy the market for the Products in the Territory.
- (e) The Agent must promptly refer to the Supplier any inquiries the Agent receives regarding sales or potential sales of the Product outside the Territory.

5.2 Privacy

To the extent the Agent collects or handles Personal Information, the Agent agrees to comply with all applicable laws relating to privacy and the processing of Personal Information.

Without limiting the Agent's obligations under this clause the Agent must:

- (c) take all reasonable steps to ensure that the Personal Information is protected against misuse, interference and loss, and from unauthorised access, modification or disclosure;
- (d) not, directly or indirectly, use the Personal Information except to the extent necessary to perform its obligations under this Agreement;

- (e) keep that Personal Information confidential and must not disclose the Personal Information whether directly or indirectly to any person without the prior written consent of the Supplier except to the extent expressly permitted under this Agreement, required by law, or as necessary to perform its obligations under this Agreement or unless disclosure is to the individual to whom the Personal Information relates;
- (f) ensure that only the Agent's personnel who are authorised to fulfil obligations under this Agreement and who need to have access to particular Personal Information for that purpose have access to that Personal Information;
- (g) ensure that all the Agent's personnel who have access to Personal Information in connection with this Agreement are provided with adequate training to enable them to comply with Agent's obligations in this clause 8.5;
- (h) to the extent permitted by law, notify the Supplier as soon as reasonably possible when it becomes aware that use or disclosure of the Personal Information is required or authorised by or under law;
- (i) comply with the Supplier's Privacy Policy as amended from time to time and with any directions of the Supplier regarding the handling of Personal Information; and
- (j) notify the Supplier immediately if it becomes aware or suspects at any time that:
 - (i) the Agent has or may have breached its privacy or security obligations under this clause (o); or
 - (ii) there has been unauthorised use or disclosure of, or a complaint made in relation to, any Personal Information handled by Supplier in connection with this Agreement by a third party.
- (k) ensure all applicable notifications are provided to, and consents are obtained from, the individuals as required in order to collect, use or disclose Personal Information of that individual;
- (l) maintain in a form acceptable to the Supplier acting reasonably a register of all consents in relation to Personal Information required to be obtained under this Agreement or applicable privacy laws as well as any request from such a person not to be contacted for marketing purposes (including any notification of an "opt-out" or notification not to be contacted by particular mediums such as telephone or electronic communications) and must make such a register available to the Supplier as reasonably requested by the Supplier;

Without limiting the Agent's obligation under clause 5.2 the Agent must:

- (m) not disclose any Personal Information to overseas recipients without the prior written consent of the Supplier;
- (n) comply with all applicable legal and regulatory requirements for disclosing the Personal Information to overseas recipients; and
- (o) take all reasonable steps to ensure that overseas recipients of the disclosed Personal Information do not breach any applicable privacy and data protection law and regulatory requirements.
- (p) On termination or expiry of this Agreement, subject to any legal or auditing requirements to retain the Personal Information, the Agent must promptly return to the Supplier or, if requested by the Supplier, destroy all copies of the Personal Information, in which case any right to use, copy or disclose that Personal Information ceases.
- (o) Agent will indemnify and keep indemnified the Supplier for any cost, loss, expense, liability, compensation, claim, fine or penalty suffered or incurred by the Supplier as a result of the Agent breaching its obligations under this clause 8.5, except to the extent that such liabilities have been caused or contributed to by the Supplier.

5.3 Other Obligations

The Agent shall during the Term:

- (a) **(no representations)** not make any representations or give any warranties or other benefits in favour of any proposed purchaser or to the detriment of the Supplier beyond those authorised in writing from time to time by the Supplier;
- (b) **(description of the Agent as Authorised Agent)** in all correspondence, commercial documents and on any name plate or sign on any premises, on vehicles or in directories, websites and similar media, describe itself as an "Authorised Agent" of the Products and take any other necessary steps as required by the Supplier or otherwise to make clear the extent of the limitation of the Agent's authority to act on behalf of the Supplier;
- (c) **(observe laws)** observe all laws applicable in the Territory in relation to the supply, installation and promotion of the Products;
- (d) **(apply for applicable licences)** apply for and obtain all necessary licences, permits or other authorisations required by the laws applicable in the Territory in relation to the promotion, marketing and supply of the Products by the Agent;
- (e) **(referral of inquiries)** refer promptly to the Supplier any inquiries made by persons regarding sales or potential sales of Commercial Tanks, and Light industrial Tanks and Products outside the Territory;
- (f) **(process and procedure)** comply with the relevant procedures in the Supplier's Quality Management System covering such activities as, but not limited to ordering, customer service, warranties and payment;
- (g) **(customer complaints)** note details of any customer complaints about the Products and of any Product returns and forward those details to the Supplier without delay. The Agent must consult with the Supplier to agree on any action to be taken about any customer complaint or Product return and must provide all reasonable assistance to the Supplier to investigate any customer complaint or Product return;
- (h) **(enhancements)** promptly inform the Supplier of, and assign to the Supplier the benefit of, any development or improvement which could be made to the Products of which the Agent becomes aware; and
- (i) **(act in good faith)** act in good faith in all its dealing with the Supplier

6 SUPPLIER'S DUTIES

6.1 General obligations

The Supplier shall at all times during the Term:

- (a) **(act in good faith)** act towards the Agent in good faith;
- (b) **(observe laws)** comply with all the applicable laws and regulations.

6.2 Promotion by the Supplier

- (a) The Supplier may conduct promotional exercises and promotions, and publish Promotional Material, as determined by the Supplier, from time to time. The Supplier shall not do anything which could undermine the Agent's activities.

6.3 Technical materials

The Supplier shall supply to the Agent reasonable quantities of all technical data sheets, manuals and drawings relating to the Products, including all developments, improvements, updates and new products.

7 SUPPORT AND TRAINING

7.1 Samples and catalogues

The Supplier shall from time to time provide the Agent with such samples, catalogues, brochures and up to date information concerning the Products as the Supplier may consider appropriate or as the Agent may reasonably require in order to assist the Agent in the sale of the Products in the Territory, and the Supplier shall endeavour to answer as soon as practicable any technical enquiries concerning the Products which are made by the Agent or its customers.

7.2 Keep the Agent Informed

The Supplier shall make all reasonable efforts to supply to the Agent any information, which may come into its possession which is likely to be relevant in relation to the marketing of the Products and which may assist the Agent to effect sales.

8 INTELLECTUAL PROPERTY

8.1 Licence to use the Trade Mark

- (a) Subject to clause 8.4, the Supplier grants the Agent the non-exclusive right and licence to use the Trade Marks Promotional Material relating to the Products in the Territory.
- (b) The Agent must not, without the Supplier's written consent, use the Trade Marks other than as stated in this clause 8.

8.2 Intellectual property ownership

The Trade Marks and all copyrights, patents and other industrial and intellectual property rights (including unpatented production methods and technical and confidential information so long as they are not public knowledge) embodied in or used in connection with the Products remain the exclusive property of the Supplier.

8.3 Infringement of rights

The Agent shall report forthwith to the Supplier any infringement of the rights referred to in **clause 8.2** above by third parties, which come to the notice of the Agent, and the Supplier has the exclusive right to determine whether any action is brought, maintained or disposed of in respect of any infringement. The Agent agrees that it will co-operate at the cost of the Supplier in the conduct of any action brought by the Supplier.

8.4 Use of Trade Marks

- (a) All Products advertised, and by the Agent shall bear the Trade Marks and shall meet the minimum standards as per the Suppliers document "Brand Guidelines".
- (b) The Agent must give to the Supplier a draft of the Promotional Material containing the Trade Mark for approval by the Supplier at least ten (10) Business Days prior to the date on which the Promotional Material is to be produced, distributed, published or displayed.

8.5 No challenge by Agent

The Agent shall not challenge the validity or ownership of the Trade Marks or that the use of the Trade Marks by the Agent is only on behalf of the Supplier as a licensee under its control.

8.6 No authorisation of act by third party

The Agent shall not do or authorise any third party to do any act, which would or might invalidate or be inconsistent with any Intellectual Property of the Supplier and shall not omit or authorise any third party to omit to do any act, which, by its omission, would have that effect.

8.7 Restriction on use of Trade Marks

The Agent shall not:

- (a) alter, remove, conceal or tamper with any trade marks (including the Trade Marks), numbers, or other means of identification used on or in relation to the Products;
- (b) use any of the Trade Marks or any of the Supplier's Intellectual Property in any way which might prejudice their distinctiveness or validity or the goodwill of the Supplier;
- (c) use in relation to the Products any trade marks other than the Trade Marks without obtaining the prior written consent of the Supplier;
- (d) use the Trade Marks either as part of a corporate title or business name.

8.8 Validity of Intellectual Property

The Supplier shall at its own expense take all reasonable steps to maintain the validity and enforceability of the Intellectual Property of the Supplier during the Term. The Agent shall, at the expense of the Supplier, take all such steps as the Supplier may reasonably require to assist the Supplier in maintaining the validity and enforceability of the Intellectual Property of the Supplier during the Term.

8.9 Use of Trade Marks

The Agent shall only use the Trade Marks on or in relation to the Products and a trademark legend, a copyright notice and patent legend approved by the Supplier is to be prominently displayed on the and all publications relating to the Products.

9 CONFIDENTIALITY

Each party shall treat Confidential Information disclosed to it by the other party as confidential and to this end (but without limiting the generality of the obligation hereunder) each party shall:

- (a) initiate a system for the safe custody of the Confidential Information and for the control of the making of copies of it and their safe custody;
- (b) instruct each and every employee who will be required to use the Confidential Information to the effect that it is to be treated as confidential and kept in safe custody; and
- (c) allow each party to inspect the premises and method of administration of these provisions by the other at any reasonable time.

The obligation of confidentiality under this clause shall continue for the term of this document and after it unless it is agreed by both parties that any such Confidential Information is in the public domain or is otherwise sufficiently public as to negate this obligation.

10 INDEMNITIES

- 10.1** The Agent agrees to indemnify the Supplier on a full indemnity basis for all direct and consequential loss and damage and liabilities (each a “loss”) (whether monetary or capable of being converted into money) suffered by the Supplier as a result of or caused by or contributed to by any act or omission or default of the Agent or its employees, agents, representatives or sub-contractors (including but not limited to negligence).
- 10.2** Without limiting the generality of this clause 14, the indemnity extends to all loss that the Supplier suffers or may suffer:
- (a) that is a civil or criminal or penal nature;
 - (b) that involves increased expenditure or effort in supply Products to customers;
 - (c) that is not indemnified under any contract of insurance in which the Supplier is interested;
 - (d) as a result of any breach or default of the Agent of any stipulation in this document;
 - (e) whether during or after termination of this document.
- 10.3** Each indemnity in this Agreement is a continuing obligation separate and independent from the Agent’s other obligations and survives expiry or termination of the Agreement.

11 TERMINATION

11.1 Termination for breach

- (a) Either party may terminate this document with immediate effect by written notice to the other if the other party commits any substantial breach of the provisions contained in this document and does not remedy the breach within fourteen (14) days after receipt of written notice requiring it to do so. If the breach is not capable of being remedied, the party not in breach is entitled to terminate this document with immediate effect by written notice to the other. For the purposes of this clause, a substantial breach is a breach of **clause 2.4,5,6.1**.
- (b) In addition to the right of termination granted by **clause 11.1(a)** a party (“**Innocent Party**”) may terminate this document with immediate effect by written notice to the other party (“**Default Party**”) in any of the following events:
 - (i) if any monies payable under this Agreement are in arrears and the Default Party fails to pay the same within 14 days of a written notice to pay from the Innocent Party;
 - (ii) if the Agent assigns or attempts to assign its rights under this Agreement without the consent of the Supplier under **clause 14.6(a)**;
 - (iii) if at any time there is any change in the organisation, management, direction, Control or constitution of the Agent without the prior written consent of the Supplier;
 - (iv) if an Insolvency Event occurs in respect of the Default Party;
 - (v) if the Default Party is prohibited by any law, regulation or requirement of any government or governmental authority from complying with this document;

- (vi) if the Default Party ceases to carry on business in the normal course; and
- (vii) by the Supplier if the Agent at any time challenges the validity of any Intellectual Property of the Supplier.

Any termination under **clause 11.1** is without prejudice to the rights and remedies of either party against the other in respect of any antecedent claim or breach of any of the provisions of this Agreement.

11.2 Consequences of Termination or Expiration of this Agreement

Upon termination or expiration of this Agreement, the Agent must:

- (a) **Cease promotions:** cease to promote or market the Products or use the Trade Marks without the written consent of the Supplier.
- (b) **Actions following determinations:** immediately:
 - (i) refrain from using the Trade Marks, or any name or names deceptively similar to the Trade Marks alone or in connection with any other names;
 - (ii) refrain from representing orally or in writing to members of the public that its business has a sponsorship, approval or affiliation with the Supplier;
 - (iii) refrain from using any Confidential Information to anyone except as required by law;
 - (iii) refrain from advertising whether by the publication of newspaper advertisements or the issue of booklets, leaflets, brochures or otherwise representing that its business or goods is or are in any way connected with the Supplier; and
 - (iv) at the Agent's cost deliver up to the Supplier all stationery and other documents, including business cards, on which appear the Trade Marks or destroy all such documents at the written direction of the Supplier.
- (c) **Details of Products:** within seven (7) days of termination, furnish the Supplier with written details of:
 - (i) all partially completed contracts with customers of the Products;
- (d) **Return of records:** forthwith return to the Supplier all records of information and documents supplied to Agent under this document.
- (e) Except as otherwise expressly provided in this document and subject to any rights or obligations which have accrued prior to termination or expiration, neither party has any further obligation to the other under this Agreement.

11.3 Survival

Clauses 5.2,8,9,10,11.2, and 14 of this Agreement survive expiry or termination of this Agreement. Any other term of this Agreement which by its nature is intended to survive expiry or termination of the Agreement shall also survive such expiry or termination.

12 RELATIONSHIP

The relationship between the parties is that of seller and an agent and is not that of employer/employee, principal/agent, joint venture, partnership or otherwise. The Agent is not authorised to act on behalf of the Supplier purporting to bind the Supplier but acts as an independent contractor referring sales ing for potential new customers and selling in the Agent's own name and at the Agent's own risk. The Agent is not authorised and undertakes not to contract on behalf of or bind the credit of the Supplier.

13 NOTICES

13.1 Manner of service

A notice or other communication required or permitted to be given by a party to another is in writing and -

- (a) delivered personally;
- (b) sent to an address in the Commonwealth of Australia by security post or certified mail, postage prepaid;
- (c) sent to an address outside the Commonwealth of Australia by registered prepaid first class airmail;
- (d) sent by facsimile transmission with acknowledgement of receipt from the addressee, to the address for service, or to the facsimile number of the sender.
- (e) sent by email with acknowledgement of receipt from the addressee, to the email address for service.

13.2 Notice given

A notice or other communication is taken to have been given if:

- (a) personally delivered, upon delivery;
- (b) mailed to an address in the Commonwealth of Australia, on actual delivery to the addressee, as evidenced by documentation of the relevant postal authority;
- (c) mailed to an address outside the Commonwealth of Australia, twenty one (21) days after posting;
- (d) sent by facsimile, upon the sender receiving acknowledgement of receipt from the address.
- (e) sent by email upon the sender receiving acknowledgement of receipt from the address.

13.3 Acknowledgement of receipt

A party who receives a notice or the communication by facsimile or email shall immediately acknowledge receipt to the sender.

13.4 Address

A notice or other communication is taken to be duly given if given in the manner specified in this clause and if delivered or posted to the Company Secretary of the party to whom the same is addressed to the address set forth on the first page of this document or to such other address as shall have been furnished.

14 MISCELLANEOUS

14.1 Stamp duty

- (a) As between the parties, the Supplier is liable for and shall pay all stamp duty (including any fine or penalty except where it arises from default by another party) on or relating to this document and any document executed under it.
- (b) If a party other than the Supplier pays any stamp duty (including any fine or penalty) on or relating to this document or any document executed under it, the Agent shall pay that amount to that party upon demand.

14.2 Legal costs

Subject to any express provision in this document to the contrary, each party shall bear its own legal costs and expenses relating to the preparation and performance of its obligations under this document.

14.3 Amendment

This document may only be varied or replaced by a document duly executed by the parties.

14.4 Waiver and exercise of rights

- (a) A single or partial exercise or waiver of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

14.5 Approvals and consent

Subject to any express provision in this document to the contrary, the Supplier may conditionally or unconditionally give or withhold any consent to be given under this document and is not obliged to give its reasons for doing so.

14.6 Assignment

- (a) The Agent must not assign or purport to assign the benefit of this document without the prior written consent of the Supplier such consent not to be unreasonably withheld.
- (b) In the event that the Supplier consents to the assignment of the benefit of this document, such assignment shall be subject to the assignee executing the covenant agreeing to comply with the conditions of this document.
- (c) The Supplier shall be entitled to assign its rights and obligations under this document and such an assignment being effected the Agent shall have no right of action against the Supplier as and from the date of assignment.
- (d) The Supplier may consent to the appointment of a sub Agent on reasonable terms if the Agent determines on reasonable grounds that such appointment is desirable to meet its obligations and to achieve best results under this document. The Agent shall be liable to the Supplier for the acts and omissions of the agent or sub-Agent as if they were the Agent's acts or omissions. Without limiting the provisions of this sub-clause the Agent agrees to indemnify the Supplier on a full indemnity basis:
 - (i) for any loss to the Supplier itself; or
 - (ii) against any liability the Supplier incurs in relation to any third party that is caused or contributed to by an act or omission of a sub-Agent.

14.7 Further assurance

Each party shall promptly execute all documents and do all things that another party from time to time reasonably requires of it to effect, perfect or complete the provisions of this document.

14.8 Governing law and jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws in force in Western Australia.

- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts and tribunals of Western Australia.

14.9 Arbitration

Any dispute arising out of or in connection with this document shall, in the first instance, be referred to arbitration under the Commercial Arbitration Act 1985 (WA) of a single arbitrator appointed by agreement between the parties, or in default of agreement, nominated on the application of either party by the President for the time being of the Law Society of Western Australia.

14.10 Entire understanding

- (a) This document embodies the entire understanding and document between the parties as to the subject matter of this document.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this document are merged in and superseded by this document and are of no force or effect whatever and no party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this document; or
 - (ii) constitutes any collateral document, warranty or understanding between any of the parties.