

**Terms and Conditions Stoke Consulting Pty Ltd**

Version 230518

**Preamble:**

These terms and conditions together with any quotation, order (including on-line or web-based orders), proposal, or contract to which these terms are attached or in which these terms are referred, together make up a legally binding agreement (**Agreement**) between: Stoke Consulting Pty Ltd ACN 603 476 848 (**Stoke Consulting**) AND the person(s) or company named as the purchaser (**Purchaser**) in the attached or previously signed or submitted quotation, order, proposal or contract AND if the Purchaser is a corporation, the directors of the Purchaser who have signed or otherwise agreed to this Agreement (**Guarantor/s**). For the purposes of this Agreement, any reference to "Stoke Consulting" includes Stoke Consulting's employees, contractors, consultants and agents who are engaged by Stoke Consulting.

This Agreement may be accepted by doing either one or more of the following:

- (a) Signing these terms and conditions of trade; or
- (b) Signing the order, quotation, proposal or contract issued by Stoke Consulting in which these terms and conditions were attached or referred to; or
- (c) Placing an order, accepting a quotation, proposal or contract or instructing Stoke Consulting to provide services (whether in writing, via email or other electronic means or orally) after receiving notice of these terms and conditions of trade.

THE PARTIES AGREE as follows:

**1. Agreement to Provide Services**

- 1.1 Stoke Consulting will provide services to the Purchaser as detailed in the order, quotation, proposal or contract.
- 1.2 The parties acknowledge that Stoke Consulting will provide and the Purchaser will purchase services from time to time pursuant to these terms and conditions. If any future contract or document between Stoke Consulting and the Purchaser is inconsistent with this Agreement, then this Agreement will apply unless the subsequent contract is in writing, is signed by Stoke Consulting, refers to and specifically alters this Agreement.
- 1.3 Should there be any variation to any of the information supplied to Stoke Consulting by or on behalf of the Purchaser or in the structure of the Purchaser's business (such as a conversion to or from a company or trust or the appointment of new directors or change in shareholders or shareholding), Stoke Consulting must be notified in writing. Unless and until a new order, quotation, proposal or contract is signed and approved in writing by Stoke Consulting, the original Purchaser and those person(s) who signed as Guarantor(s) shall remain liable to Stoke Consulting as though all services were supplied to the original Purchaser.

**2. Placement of Orders and Variations**

- 2.1 The Purchaser may order services from Stoke Consulting in writing, by phone, face-to-face meeting, email, facsimile, Stoke Consulting -hosted on-line or web-based ordering (if Stoke Consulting has this facility) or other electronic communication or telecommunication acceptable to Stoke Consulting (which includes without

limitation purchase orders, the acceptance by the Purchaser of a quotation, proposal, contract or variation prepared by Stoke Consulting) (**order/s**). Upon placement of the order, the Purchaser will be bound to proceed with the purchase of the services at a price confirmed by Stoke Consulting.

- 2.2 Stoke Consulting will not be bound by any terms or conditions expressed in orders or acceptances generated by the Purchaser except to the extent that such terms have been expressly agreed upon between the parties in writing and signed by Stoke Consulting. For the avoidance of doubt, even where the Purchaser attaches or refers to other terms and conditions in purchase orders or other requests for quotations or supply of services received after this Agreement has been entered into (**additional terms**), such additional terms are expressly excluded from this Agreement and will be of no force or effect against Stoke Consulting unless it expressly agrees otherwise (by notice in writing, signed by a director of Stoke Consulting).
  - 2.3 Stoke Consulting may decline to accept any order or provide services without providing a reason in its absolute discretion.
  - 2.4 If the Purchaser requests or Stoke Consulting deems there to be a variation in the scope of the supply, then Stoke Consulting may (but is not obliged to) notify the Purchaser in writing of the variation, the price variation, associated delays and any other information Stoke Consulting deems relevant.
  - 2.5 Stoke Consulting is not obliged to commence any supply associated with any variation identified in accordance with **clause 2.4** unless and until the Purchaser acknowledges and accepts in writing the variations contained in Stoke Consulting's notice.
- 3. Completion of Services**
- 3.1 If a date for completion of the services is nominated by the Purchaser, Stoke Consulting will not be bound to complete the services by that date unless it expressly agrees to do so in writing, signed by Stoke Consulting, in which case, it will be deemed to agree to use reasonable endeavours to complete the services by the relevant date. Stoke Consulting shall be excused from any failure to complete which is contributed to by causes beyond its reasonable control and the time specified for delivery or completion shall be extended commensurately. Delay in completion shall not constitute a breach of this Agreement, nor shall it affect any other provisions of this Agreement to Stoke Consulting's disadvantage.
  - 3.2 In the event that the services are not completed, and are not able to be completed, and Stoke Consulting reasonably determines that the reason for the services not being completed, or not being able to be completed, is: the result of action or inaction by the Purchaser; or, termination of the Agreement by Stoke Consulting due to breach by the Purchaser, the Purchaser agrees that it will still pay the full price or fee for the services to Stoke Consulting as if the services had been completed, less any expenses that Stoke Consulting had not yet incurred.
- 4. Payment, Quotations and Price**
- 4.1 Unless otherwise agreed, services are performed at the prices or rates current and published by Stoke Consulting

at the time of performance in \$AUD. All proposals remain current for 30 days only from the date of proposal but are not fixed. The Purchaser must pay the fees to Stoke Consulting in accordance with the terms of the Agreement.

- 4.2 The Purchaser acknowledge and agrees that it may be reasonably necessary from time to time, but at intervals no more frequently than 6 months, for Stoke Consulting to increase the prices on account of increases in operating costs and other costs incurred by Stoke Consulting which are outside of the control of Stoke Consulting. Stoke Consulting will use reasonable endeavours to notify the Purchaser not less than 14 days in advance of any such increase, which once notified will apply to the Purchaser for the balance of the term of the relevant order, quotation, proposal or contract.
- 4.3 Stoke Consulting may provide estimates of fees based on information or documents provided by the Purchaser prior to commencement of the provisions of the services. If information or documents supplied by the Purchaser are incorrect or inaccurate then these estimates will vary.
- 4.4 The Purchaser must pay to Stoke Consulting the fees in relation to each purchase of services as set out in the corresponding tax invoice. Stoke Consulting may issue tax invoices electronically and the Purchaser agrees to accept tax invoices issued electronically.
- 4.5 As an alternative to the preceding **clause 4.4**, the parties may from time to time agree in writing to the Purchaser making payment of all fees due and payable to Stoke Consulting by an approved Recipient Created Tax Invoice.
- 4.6 Where any payment is not made on the due date, the obligations of Stoke Consulting to provide the services may be suspended until such time as the payment is no longer overdue. Further, where any payment is not made on the due date the Purchaser agrees to pay Stoke Consulting an account service fee in relation to any amounts owed to Stoke Consulting under or in connection with this Agreement which are not paid by their due date for payment. The account service fee will be calculated at the rate equal to 2% above the interest rate charged by Stoke Consulting's financial institution on overdrafts of \$100,000 (or where there is more than one such rate, the higher of them), calculated daily and compounding monthly.

**5. Limitation of Liability and Release**

- 5.1 This Agreement does not attempt to exclude, restrict or modify the application of any applicable laws of the Commonwealth State or Territory which cannot be excluded, restricted or modified including Australian Consumer Laws.
- 5.2 The Purchaser acknowledges and agrees that to the extent permitted by law, Stoke Consulting will not be liable for, and the Purchaser releases and holds harmless Stoke Consulting in respect of, any claim, loss, cost, damage or expense (**Claim**) arising out of the provision of the services including, but not limited to, any loss or damage to the Purchaser's property unless that Claim is a direct result of the negligence of Stoke Consulting.
- 5.3 The Purchaser acknowledges and agrees that to the extent permitted by law, Stoke Consulting will not be liable for, and the Purchaser releases Stoke Consulting in respect of, any claim, loss, cost, damage or expense

(**Claim**) arising out of any act or omission of Stoke Consulting or its employees, officers or agents unless that Claim is a direct result of the negligence or breach of this Agreement or a warranty by Stoke Consulting.

- 5.4 The parties agree that to the extent permitted by law any liability for a Claim against Stoke Consulting that cannot be excluded will be limited to one of the following (at the election of Stoke Consulting):
  - (a) the rectification of defective services (if applicable); or
  - (b) the amount paid by the Purchaser in respect of the original supply of the services.
- 5.5 Notwithstanding any of the above, the parties agree that Stoke Consulting will under no circumstances be liable to the Purchaser for any indirect or consequential loss, loss of income, profit or opportunity or for any contingent, consequential direct/indirect special, or punitive damages arising out of or in connection with this Agreement, at law or in equity.
- 5.6 Stoke Consulting's liability/obligations to honour any Claim under or in connection with this Agreement do not extend to rectification of defects, loss or damage which is caused or contributed to by use, or treatment of any part of the completed services other than in accordance with the more stringent of either: guidelines or specifications supplied by Stoke Consulting; industry best practice; or use under normal working conditions. Stoke Consulting will also not be liable for defects, loss, costs or damage arising out of or in connection with:
  - (a) the misuse, neglect, or wilful destruction of any part of the completed services; or
  - (b) any damage caused by or to the completed services as a result of continued use after a defect has been detected or ought to have been detected; or
  - (c) tampering with or alteration of the completed services by a third party or by services supplied by a third party.
- 5.7 To the extent permitted by law and unless otherwise set out in this Agreement, Stoke Consulting does not provide and expressly excludes all warranties whether implied by statute or otherwise in respect of any services.
- 5.8 The Purchaser indemnifies Stoke Consulting and keeps Stoke Consulting indemnified against all liability, loss, cost or damage in connection with or arising out, whether directly or indirectly, of any of the following:
  - (a) any breach by the Purchaser of this Agreement or any order, quotation, proposal or contract between Stoke Consulting and the Purchaser;
  - (b) any Claim arising out of or in any way related to any injury to or death of any person or loss of or damage to any tangible property arising out of or in any way relating to this Agreement or any order, quotation, proposal or contract between Stoke Consulting and the Purchaser and caused or contributed to by an act or omission of the Purchaser or its employees or agents; and
  - (c) any Claim by a third party arising out of or in any way related to any wilful, reckless, negligent or unlawful act or omission of the Purchaser or its employees or agents,
 provided however that the Purchaser's liability to indemnify Stoke Consulting under this **clause 5.8** will be reduced proportionally to the extent that any negligent act or omission of Stoke Consulting contributed to the liability.

5.9 Notwithstanding any other provision in this Agreement, the Purchaser acknowledges and agrees that, to the full extent permitted by law, any Claim that the Purchaser makes against Stoke Consulting must be commenced within six (6) months after the date that the Purchaser becomes aware, or ought to have become aware of, the Claim but not later than the date that is 12 months after the act, omission or incident upon which the Claim is based.

**6. Purchaser's Warranties**

- 6.1 The Purchaser warrants that:
  - (a) it has full capacity, power and authority to enter into this Agreement with Stoke Consulting and has obtained all necessary approvals to do so;
  - (b) the Purchaser will cooperate with Stoke Consulting in the provision of the services and will give Stoke Consulting such guidance, support, access to facilities and information as Stoke Consulting may reasonably require to provide the services;
  - (c) the Purchaser will, in a timely manner and without special request from Stoke Consulting, provide all information and documents to Stoke Consulting to enable Stoke Consulting to provide the services;
  - (d) the Purchaser will, in a timely manner and without special request from Stoke Consulting, inform Stoke Consulting of all activities and conditions relevant to the provision of the services;
  - (e) the Purchaser has informed all of its relevant employees, contractors or agents of the services that Stoke Consulting is providing prior to the commencement of the services and the Purchaser covenants with Stoke Consulting to ensure that all relevant employees, contractors and agents comply these terms and conditions;
  - (f) all information and documents provided by the Purchaser to Stoke Consulting, including in the order, quotation, proposal or contract are accurate, correct and not misleading in any way;
  - (g) the Purchaser is responsible for determining whether the services are appropriate for its intended use or purpose; and
  - (h) the Purchaser has made the necessary enquiries to satisfy itself that the services are appropriate for its intended use or purpose.

6.2 In entering into this Agreement, the Purchaser acknowledges that Stoke Consulting relies upon the warranties provided above and upon the accuracy of any information and documents supplied by the Purchaser in the order, quotation, proposal or contract.

**7. Term and Amendment**

- 7.1 This Agreement will commence and will have effect on and from the date of acceptance as set out in the preamble of these terms and conditions and will expire upon reasonable notice being given by one party to the other or in accordance with **clause 7.2** or if the Agreement has a set expiry date then upon the expiration of that expiry date.
- 7.2 Without limiting any other rights of Stoke Consulting, Stoke Consulting may immediately terminate the Agreement if the Purchaser is in default under this Agreement in any way or commits an act of insolvency or an external administrator or controller, liquidator or

trustee in bankruptcy is appointed to the Purchaser or the Guarantor.

7.3 Stoke Consulting reserves the right to amend this Agreement, provided such amendments are conveyed to the Purchaser in writing. The Purchaser further acknowledges that such writing will be by ordinary mail to the address set out in the original order, quotation, proposal or contract, unless the Purchaser advises in writing to Stoke Consulting a new address, and this new address is acknowledged by return in writing by Stoke Consulting. Where the Purchaser does not accept any amendments it must notify Stoke Consulting in writing within 28 days. In the absence of any written notification from the Purchaser, any amendments will be deemed to be accepted upon placement of a further order with Stoke Consulting after notice of the amendment, or 28 days, from notice, whichever occurs first.

**8. Defaults and Rights**

- 8.1 In the event of a default under this Agreement by the Purchaser, the whole of any outstanding balance will become immediately due and payable by the Purchaser to Stoke Consulting together with all legal costs and expenses associated with recovery of the outstanding balance on an indemnity basis.
- 8.2 The certificate of a director or the credit manager of Stoke Consulting will, in the absence of evidence to the contrary, be conclusive as to the amount of the outstanding balance.
- 8.3 No failure or delay of Stoke Consulting to exercise any right or enforce any obligation of the Purchaser hereunder; and no custom or practice of the parties which is at variance with the terms of this Agreement; and no indulgence or forbearance by Stoke Consulting of its rights under this Agreement shall adversely affect or prejudice its rights in relation to any current or subsequent default or to enforce the terms of this Agreement.
- 8.4 No waiver by Stoke Consulting of any particular default by the Purchaser shall affect or prejudice Stoke Consulting's rights in respect of any subsequent default.

**9. Intellectual Property**

- 9.1 For the purposes of this Agreement, "Intellectual Property Rights" means copyright, trademark, design, patent, semiconductor or circuit layout rights and any other rights whether or not they are registered or registrable, relevant to, among other things, the textual, graphical, audio and other information, content, data or material used by Stoke Consulting in respect to this Agreement .
- 9.2 Any pre-existing Intellectual Property Rights owned by Stoke Consulting before the commencement of this Agreement, will remain vested in Stoke Consulting.
- 9.3 Any pre-existing Intellectual Property Rights owned by the Purchaser before the commencement of this Agreement, will remain vested in the Purchaser.
- 9.4 The Purchaser agrees to grant to Stoke Consulting a non-exclusive, transferable, royalty free licence to use the Purchaser's pre-existing Intellectual Property Rights to the extent that use relates to any material created by Stoke Consulting pursuant to this Agreement.
- 9.5 Subject to any Intellectual Property Rights existing in any third party materials, all Intellectual Property Rights, created by Stoke Consulting on or after the

commencement of this Agreement will remain vested in Stoke Consulting notwithstanding those rights were created pursuant to or for use in or with the services.

**10. Force Majeure**

- 10.1 A Force Majeure event means anything outside of the reasonable control of a party, including but not limited to:
  - (a) power, data or communication outages or computer virus;
  - (b) acts of God or the public enemy, national emergencies, radioactive contamination, insurrection, riot, hostile or warlike action or sabotage;
  - (c) a transaction embargo;
  - (d) industrial action (including a picket); and
  - (e) any legislation or regulation and any action or inaction of any government or government agency.

- 10.2 If Stoke Consulting is wholly or partially unable to perform its obligations because of a Force Majeure event, then:
  - (a) as soon as reasonably practicable after the Force Majeure event arises, Stoke Consulting will notify the Purchaser of the extent to which Stoke Consulting is unable to perform its obligations; and
  - (b) Stoke Consulting's obligation to perform will be suspended for the duration of the delay arising out of the Force Majeure event.

**11. Applicable Law**

- 11.1 This Agreement will be governed by and interpreted in accordance with the laws of New South Wales. The parties submit to the jurisdiction of the Courts of that State.

**12. Guarantor and Purchaser's Warranties**

- 12.1 The Guarantor/s and Purchaser (and each director and office bearer if the Purchaser is a company) separately warrants that:
  - (a) in the case of a natural person, he/she has never been a bankrupt or entered into a deed of arrangement or compromise or any other arrangement under Part X of the *Bankruptcy Act* or otherwise assigned his/her assets for the benefit of creditors;
  - (b) it has never been under external administration or subject to the appointment of an external receiver or controller or entered into a deed of company arrangement and that it is solvent and able to pay its debts as and when they fall due;
  - (c) it is not executing this Agreement as a result of or by reason of or in reliance upon any promise, representation, statement or information of any kind whatever given or offered to them by or on behalf of Stoke Consulting whether in answer to an enquiry or otherwise;
  - (d) prior to the placement of any order or proposal it has made its own independent enquiries and satisfied itself as to the capacity, quality and fitness for purpose of the services and, to the extent permitted by law, the Purchaser is not relying on any warranty, promise or representation in relation to the services, either expressly or impliedly given by Stoke Consulting;
  - (e) it has satisfied itself that it and its personnel are suitably qualified and hold requisite experience to safely and efficiently deploy and use the completed services.

**13. Stoke Consulting Relies on Guarantor and Purchaser's Warranties**

- 13.1 In entering into this Agreement, Stoke Consulting relies upon the warranties provided above and upon any information supplied by the Purchaser in an accompanying credit account application.
- 13.2 Stoke Consulting relies upon the representation that the person signing this Agreement has authority to execute it on behalf of the Purchaser.

**14. Confidentiality**

- 14.1 For the purposes of this Agreement, Confidential Information means all information (whether written or oral) disclosed by a party (Disclosing Party) to any other party (Receiving Party) which is either:
  - (a) identified as confidential by the Disclosing Party at the time of disclosure; or
  - (b) of a nature which should reasonably be regarded by the Receiving Party as confidential, but does not include information which:
    - (c) was in the public domain when it was given to the Receiving Party;
    - (d) becomes, after being given to the Receiving Party, part of the public domain, except through disclosure contrary to this Agreement;
    - (e) was in the Receiving Party's possession at the time of disclosure;
    - (f) the Receiving Party lawfully receives from a third party who has the right to disclose it to the Receiving Party; or
    - (g) the Receiving Party is required by law, by an order of a court or tribunal or by the requirements of a stock exchange to disclose.
- 14.2 The conduct of the business of Stoke Consulting, negotiations between the parties and the activities of Stoke Consulting in providing the services will be regarded as Confidential Information (unless such information falls into the categories set out in (c) to (g) above) and is deemed to:
  - (a) have been disclosed by each party; and
  - (b) to be of a nature which should reasonably be regarded by each party as confidential.
- 14.3 The Receiving Party must:
  - (a) use the Confidential Information solely as contemplated by this Agreement, unless further use of the Confidential Information is specifically authorised in writing by the Disclosing Party;
  - (b) keep secret and confidential all Confidential Information;
  - (c) use reasonable care to protect the Confidential Information, whether in storage or in use, against public disclosure;
  - (d) not disclose the Confidential Information to or in the presence of any director, officer, employee, adviser, financier, potential financier or agent of the Receiving Party other than those for whom such knowledge is essential for the purposes of or as permitted by this Agreement and upon those persons undertaking to keep strictly confidential any Confidential Information so disclosed; and
  - (e) promptly notify the Disclosing Party if it becomes aware of any breach of confidentiality by any person, firm or corporation to whom it has divulged any Confidential Information or by any person, firm or corporation who becomes aware of it in an

unauthorised way and provide the Disclosing Party and each other party all reasonable assistance in connection with any proceedings which a party may institute against such person, firm or corporation for breach of confidentiality or otherwise.

- 14.4 All Confidential Information provided by a Disclosing Party to a Receiving Party together with any copies made by the Receiving Party's directors, officers or employees or any other person to whom the Receiving Party disclosed the Confidential Information in accordance with this Agreement must be returned to the Disclosing Party on receipt of a request from the Disclosing Party for its return, except to the extent that the Receiving Party is obliged by law to keep records of its business.
- 14.5 If the Receiving Party has generated its own internal documents containing the Confidential Information, then these may be destroyed rather than returned to the Disclosing Party and the Receiving Party must provide to the Disclosing Party written confirmation that such destruction has taken place.
- 14.6 Nothing in this Agreement prohibits the Receiving Party from disclosing the contents of this Agreement to the extent necessary to enable it to enforce its rights under this Agreement or any other agreement.

**15. Personal Information and Privacy**

- 15.1 The Purchaser and Guarantors consent to Stoke Consulting from time to time, seeking, advising, exchanging and verifying any personal or commercial information of the Purchaser or the Guarantors with any third party and to carrying out any further pertinent investigation about the Purchaser's or Guarantor's contact/address details, credit arrangements, trading terms, credit worthiness, credit standing, credit history or credit capacity, financial status etc.
- 15.2 Stoke Consulting will use reasonable endeavours to keep the Purchaser's personal information confidential. Stoke Consulting will make reasonable efforts to keep any information that Stoke Consulting has about the Purchaser secure and to ensure that any of Stoke Consulting's employees or agents who have access to information about the Purchaser do not make any unauthorised use, modification, reproduction or disclosure of that information.
- 15.3 Notwithstanding **clause 15.2**, Stoke Consulting cannot and does not guarantee that its systems are totally secure or resistant to malicious attempts to hack or obtain or destroy confidential information. To the fullest extent permitted by law Stoke Consulting excludes all liability arising out of loss or disclosure of the Purchaser's confidential information in circumstances where Stoke Consulting has used reasonable endeavours to protect that information.
- 15.4 Stoke Consulting will only disclose information that it has about the Purchaser:
  - (a) to the extent specifically required by law; or
  - (b) with the Purchaser's consent, including as detailed in **clause 15.1**; or
  - (c) for the purposes of this Agreement (including disclosing information in connection with any query or claim).

- 15.5 If the Purchaser wishes to notify Stoke Consulting about anything relating to this Agreement, the Purchaser should do so in writing via email to [info@stokeconsulting.com.au](mailto:info@stokeconsulting.com.au)
- 15.6 The Purchaser acknowledges and agrees that Stoke Consulting may refer to the fact that Stoke Consulting has and is performing services for the Purchaser as part of its marketing and media outputs. Provided that Stoke Consulting gives the Purchaser notice of its intended reference and the Purchaser has a reasonable opportunity to object to such reference.

**16. Goods and Services Tax (GST)**

- 16.1 All amounts payable by the Purchaser under this Agreement are exclusive of GST. If GST is payable on any supply made by a party under or in connection with this Agreement, the consideration provided (or to be provided) for that supply will be increased by an amount equal to the GST liability properly incurred by the party making the supply (the "GST Amount") and paid at the same time and in the same manner as the consideration.

**17. Guarantee and Indemnity by Director/s**

- 17.1 In consideration of Stoke Consulting agreeing to perform the services:
  - (a) the Guarantors unconditionally guarantee to Stoke Consulting the due and punctual performance by the Purchaser of all the Purchaser's obligations under each and every Agreement including, without limiting the generality of the foregoing, the payment by the Purchaser of all moneys (which term includes, without limitation, principal, fees, interest and costs) payable or repayable (whether presently or in the future, actually or contingently) under each and every Agreement and the Guarantors promise to pay to Stoke Consulting on demand all moneys which the Purchaser defaults in paying under any Agreement including all moneys arising by way of costs, expenses, bank charges, losses or damages incurred by Stoke Consulting arising from any default by the Purchaser under or relating to any Agreement;
  - (b) the Guarantors also acknowledge and agree in their capacity as Guarantor that the Guarantee and Indemnity that they may have previously given continues to secure any and all liabilities and obligations of the Purchaser.

**18. Notices**

- 18.1 Any notices, demands, consents or other communications under this Agreement shall be in writing signed by the party or the party's solicitor and sent by pre-paid post, facsimile, electronic mail or by hand to the address for the party detailed in this Agreement or in any corresponding credit application, quotation or order form or otherwise as notified by one party to the other party during the Agreement and will be deemed to be duly served:
  - (a) if in person, at the time of delivery;
  - (b) if by post, within Australia to an Australian address 5 business days after posting and in any other case 10 business days after posting by airmail;
  - (c) if by facsimile, the date and time the sender's facsimile machine produces a confirmation of transmission; or
  - (d) if by electronic mail, the date and time depicted on the sender's email account sent item.

**19. Dispute Resolution**

- 19.1 In the event that a dispute arises between the parties in connection with this Agreement and the parties are unable to resolve the dispute between themselves, the parties agree to refer the dispute to mediation.
- 19.2 A party may not commence any court or arbitration proceedings relating to a dispute until it complies with this **clause 19** except where the party seeks urgent interlocutory relief.
- 19.3 A party claiming that a dispute has arisen under or in relation to this Agreement must give written notice to the other party specifying the nature of the dispute (**Dispute Notice**).
- 19.4 On receipt of a Dispute Notice by that other party, the parties must in good faith meet to attempt to resolve the dispute informally between them within 7 days of the date of the Dispute Notice.
- 19.5 If the parties cannot resolve the dispute in accordance with **clause 19.4** then within a further 7 days, the parties must appoint a mediator to mediate the dispute. If the parties cannot agree on a mediator, the parties must approach the Australian Commercial Disputes Centre to appoint a mediator.
- 19.6 If the dispute is not resolved within 30 days after the issue of the Dispute Notice is given under **clause 19.3** then any party which has complied with the provisions of this clause may in writing terminate any dispute resolution process undertaken pursuant to this clause and may then refer the dispute to arbitration or commence Court proceedings in relation to the dispute.
- 19.7 The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute concerned. No party may use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause for any purpose other than in an attempt to settle the dispute concerned.

**20. General**

- 20.1 The Agreement incorporating these terms and conditions contains the entire agreement between the parties as at the date of the Agreement with respect to its subject matter and supersedes all prior agreements and understandings between all parties in connection with it.
- 20.2 Nothing in this Agreement will be deemed to constitute a partnership, joint venture, agency or other form of fiduciary relationship between Stoke Consulting and the Purchaser and neither Stoke Consulting nor the Purchaser has the power to bind the other except as expressly authorised by this Agreement.
- 20.3 If any provision of this Agreement is held to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation, it is to be replaced with a provision which best corresponds to the intentions and economic purpose of the invalid provision where possible, or if the provision is not able to be replaced it will be severed so that the validity and enforceability of the remaining provisions are not affected.
- 20.4 Stoke Consulting may assign or otherwise transfer any of its rights under this Agreement. The Purchaser may only

assign or otherwise transfer any of its rights or obligations under this Agreement if it has obtained the prior written consent of Stoke Consulting.