

# TERMS OF BUSINESS (GOODS)

## Terms of Business for the Supply of Goods (with or without Ancillary Services)

TERMS OF BUSINESS DOCUMENT NUMBER:	00249
TERMS OF BUSINESS VERSION NUMBER & EFFECTIVE DATE:	Version 1 (01/08/2024)
STERLING'S DETAILS:	STERLING INFRASTRUCTURE Pty Ltd (ACN 139 882 376) ("Sterling") of 105 Bakehouse Rd, Kensington, Victoria, 3031

### BACKGROUND:

- A. Sterling is a company which provides a range of engineering related consultancy services and construction services to its clients, primarily in the rail and public services areas.
- B. The Supplier is a company which provides Goods which will assist Sterling in the delivery of its services to its clients.
- C. Sterling has requested the Supplier to Supply the Goods (and Ancillary Services where applicable) as set out in a Purchase Order.
- D. The Supplier has agreed to provide the Goods (without or without Ancillary Services) and has been provided with, or has had access to, a copy of these Terms of Business (hereinafter referred to as the "Terms"). After being provided with a copy of these Terms by Sterling, and then agreeing to supply the Goods (whether agreeing in writing, verbally or by delivering the Goods), the Supplier is deemed to have accepted these Terms to the exclusion of all other terms.
- E. Sterling has agreed to pay the Supplier for the supply of the Goods on the terms of this Agreement.

Upon acceptance by the Supplier (whether verbally, in writing, or by conduct), these Terms of Business (hereinafter referred to simply as "Terms") form an agreement between the Parties on the following terms:

### INTERPRETATION - In this Agreement:

**Active** in relation to a Purchase Order has the meaning set out in Clause 4.

**Ancillary Services** means services ancillary to the provision of Goods as referred to in clause 3. By way of example, Ancillary Services include services such as delivery of the Goods, installation of the Goods at Sterling's, (or Sterling's clients') site, commissioning of the Goods, training in relation to the use of the Goods, and service or maintenance of Goods supplied.

**Claim** includes any claim, demand, action, proceeding, cause of action or suit of any nature, made under or arising in connection with the Contract or under any Law.

**Defective Goods** has the meaning set out in Clause 8(a).

**Defective Ancillary Services** or **Defective Services** has the meaning set out in Clause 9(a).

**Delivery Date** means the date for delivery of the Goods or date for provision or performance of the Ancillary Services as set out in an Active Purchase Order.

**Delivery Point** means the place where the delivery of the Goods or the provision or performance of the Ancillary Services is to occur as set out in an Active Purchase Order.

**GST** has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Loss** includes any liability of any kind whatsoever, cost, expense, loss, personal injury (including illness), death or damage and includes direct and indirect, consequential or special damage, loss of use, loss of revenue and loss of profit.

**Goods** means the Goods and any associated goods purchased by Sterling from the Supplier as referred to in Clause 2.

**Personnel** means the officers, employees, agents, contractors and subcontractors of a party (other than, in respect of Sterling, the Supplier).

**Products** means the same as **Goods**.

**Purchase Order** means a written document provided by Sterling to the Supplier entitled 'Purchase Order', containing, as a minimum, details of the Delivery Point, Delivery Date, the quantity of Goods and Services to be purchased, and the price of the Goods and Services.

**Specifications** means the specifications for the Goods and Services as provided to the Supplier by Sterling, or provided to the Supplier by Sterling's clients, or as approved by Sterling, or as approved by Sterling's clients. Specifications as referred to in this Agreement may be made up of several different documents and may be in the form of a document entitled "Specifications". Specifications may be provided at the time of issuing a Purchase Order, or may be provided to the Supplier at a later date.

**Services** has the same meaning as **Ancillary Services** (ie/ "Services" and "Ancillary Services" are used interchangeably in this Agreement")

**Sterling** means Sterling Infrastructure Pty Ltd (ACN: 139 882 376) and any of its related entities as defined in the Corporations Act 2001 (Cth).

**Supplier** means the company noted on a Purchase Order and any of its related entities as defined in the Corporations Act 2001 (Cth).

**IT IS AGREED AS FOLLOWS:**

**1. GENERAL TERMS AND CONDITIONS**

- (a) Sterling agrees to buy and the Supplier agrees to sell the Goods (and Ancillary Services, where applicable) in accordance with this Agreement.
- (b) The terms of this Agreement are activated whenever a Purchase Order becomes Active. That is, the terms of this Agreement are deemed to be incorporated into all transactions for the purchase of Goods and Ancillary Services by Sterling from the Supplier. The terms of this Agreement will override any other terms of the Supplier or Sterling which may appear on any of the Supplier's or Sterling's documentation or otherwise notified to Sterling or the Supplier unless otherwise agreed in writing. No previous representations, warranties, guarantees, contracts, agreements, terms or conditions have any effect. For the avoidance of doubt, the terms of this Agreement override any terms set out in the Supplier's credit application (or similar) documentation which may have been signed by Sterling.
- (c) This Agreement does not have an end date or provision for termination as it operates as an agreed set of terms that become legally binding whenever a Purchase Order becomes Active and continues for the duration of the period during which Goods are being provided and Ancillary Services (if any) are being performed. There are, however, some clauses within this Agreement that are stated as continuing without limitation in time.
- (d) Any variation to this Agreement, including changes to the Goods, Ancillary Services, Specifications or pricing must be clearly agreed to by both Parties.

**2. THE GOODS**

- (a) The Supplier agrees to supply the Goods as set out in an Active Purchase Order.
- (b) The Supplier represents and warrants that it will supply Goods with clear title that:
  - (i) match the description of the Goods ordered;
  - (ii) match the quantity of Goods ordered;
  - (iii) are fit for the purpose specified by Sterling or made known to the Supplier to be the purpose;
  - (iv) are of acceptable and merchantable quality, and are free from defects in material and workmanship;
  - (v) meet the Specifications;
  - (vi) meet any additional standards, quality or other criteria as required by Sterling from time to time and agreed in writing by the Supplier;
  - (vii) comply with all requirements of the law, industry standards, and of any government agency for the manufacture, production, packaging, promotion, distribution, storage or sale of the Goods;
  - (viii) do not infringe the intellectual property rights of any third party.

**3. ANCILLARY SERVICES**

- (a) This clause applies where the Supplier has agreed to provide Ancillary Services.
- (b) The Supplier agrees to supply Ancillary Services as set out in an Active Purchase Order, or as otherwise agreed or as can be assumed from the nature of the Goods.
- (c) The Supplier shall provide and perform the Ancillary Services in accordance with the requirements set out in clauses 3(d) and (e) below, and the Supplier must ensure that all persons involved in performing the Ancillary Services provide and perform those services in accordance with the requirements set out in clauses 3(d) and (e) below).
- (d) The Ancillary Services must:
  - (i) match the description of the Services ordered;
  - (ii) meet the requirements set out in the Specifications (if any);
  - (iii) be performed in accordance with agreed time frames;
  - (iv) be provided and performed in accordance with the directions, instructions, and Specifications provided by Sterling;
  - (v) be provided and performed with a high degree of skill, care and diligence and to the highest possible standard; and
  - (vi) be performed by appropriately trained personnel; and
  - (vii) be provided and performed by appropriately certified, qualified, licenced or registered Personnel as required by Sterling or Sterling's clients, or as required due to the inherent nature of the Services to be performed.
- (e) The Supplier must:
  - (i) comply with Sterling's reasonable directions (including but not limited to, safety related directions) at all times when on Sterling's (or Sterling's clients') premises. These directions may include verbal instructions, signage or written information;
  - (ii) comply with any reasonable additional obligations communicated by Sterling from time to time that may be required of Suppliers by Sterling's clients;
  - (iii) not do (or not do) anything unless communicated to the Supplier by Sterling. If Sterling's clients ask or direct the Supplier or its Personnel to do (or not do) something directly, the Supplier must first confirm the request or direction with Sterling;
  - (iv) comply with all OHS laws and regulations in relation to, and during, the provision and performance of the Services; and

- (v) comply with all employment and employment related laws and regulations (including but not limited to laws in relation to sexual harassment, bullying and discrimination) while performing the Services and while on Sterling's (or Sterling's clients') premises.
- (f) The Supplier warrants that it is responsible for all employment and/or contractor payments, obligations, taxes and other requirements in relation to any of its Personnel involved in the provision or performance of the Services and that it indemnifies Sterling for any Losses Sterling may incur as a result of any person providing or performing the Services being deemed to be an employee or direct contractor of Sterling.

**4. PRICE**

- (a) Sterling agrees to pay the price for the Goods and the Ancillary Services as set out in an Active Purchase Order.
- (b) If the Supplier issues an Invoice to Sterling which has any incorrect or missing details Sterling will send the invoice back to the Supplier and will not be deemed to have received the invoice until a correct and complete one has been submitted.

**5. ORDERING**

- (a) If Sterling wishes to order Goods or Goods with Ancillary Services from the Supplier, it will send the Supplier a Purchase Order.
- (b) If the Supplier wants to make any change to any of the details set out in a Purchase Order or clarify or confirm any details within it, it must notify Sterling in writing within 2 business days of receiving the Purchase Order. In this case, the Purchase Order will not become "active" until the Purchase Order details have been finalised and agreed to in writing by both Sterling and the Supplier.
- (c) If the Supplier wishes to reject a Purchase Order, it must send written confirmation of its rejection within 2 business days of receiving Sterling's Purchase Order.
- (d) If the Supplier doesn't notify Sterling in accordance with either clause 5(b) or (c), the Purchase Order is deemed to be "active" at the expiration of 2 business days.
- (e) Sterling may cancel or amend a Purchase Order at any time prior to the Delivery Date, but must reimburse the Supplier for any reasonable costs incurred by the Supplier in connection with that Purchase Order prior to the date of cancellation or amendment. Sterling does not anticipate needing to rely on this clause other than in exceptional circumstances which are beyond the reasonable control of Sterling and will use its best efforts to work with the Supplier to minimise the impact of relying on this right to cancel or amend a Purchase Order.

**6. DELIVERY**

- (a) The Supplier shall deliver the Goods in accordance with the delivery terms specified in an Active Purchase Order.
- (b) The Supplier shall perform any applicable Ancillary Services in accordance with the terms specified in an Active Purchase Order or if none specified, then as otherwise agreed by the Parties.

Delay or failure to deliver (with prior notice):

- (c) If the Supplier becomes aware at any stage that it may not be able to deliver the Goods or perform the Services on the on the Delivery Date/s, it must notify Sterling immediately and provide an estimated new Delivery Date. Wherever reasonable, Sterling shall accept the new Delivery Date, however, where the documented requirements of Sterling's clients' orders dictate that the Goods or Services are required prior to the estimated new Delivery Date, Sterling may, in addition to any other remedy:
  - (i) obtain Goods and/or Services from another source and will not be liable for any payment to the Supplier for the Goods or the Services;
  - (ii) refuse to accept the late delivery of the Goods, or late performance of the Services, and will not be liable for any payment of the Goods or Services;
  - (iii) at its election accept or reject partial deliveries of Goods, or partial performance of the Services, and will not be liable for any payment for the undelivered portion of those Goods or Services;
  - (iv) request shipment via air or other expeditious route for the Goods to minimise delay in delivery with the Supplier to bear all costs occasioned thereby;or

Failure to Deliver (without prior notice):

- (d) If the Supplier has not notified Sterling of a potential delay in the delivery of Goods and/or Services, and does not deliver any or all of the Goods or Services to the Delivery Point on the Delivery Date, Sterling may, in addition to any other remedy, take the actions set out in 6(b)(i)-(iv) above.

**7. PACKING, LABELLING AND SHIPPING**

- (a) The Supplier:
  - (i) must ensure that all Goods are properly packed (i) to prevent damage or deterioration;
  - (ii) is responsible for all transportation related and other costs unless otherwise agreed; and
- (b) The Supplier must comply with any reasonable directions given by Sterling in relation to the packing, marking and delivery of Goods, including (but not limited to) the provision of any additional documentation at delivery, or any additional labelling required by Sterling.

**8. DEFECTIVE GOODS**

- (a) Goods supplied to Sterling that, in Sterling's sole but reasonable discretion, fail to satisfy the requirements set out in clause 2(b), are deemed to be "Defective Goods" for the purposes of this Agreement.
- (b) Any action or remedy available to Sterling in this clause 8 for the supply of Defective Goods is in addition to any other remedies that may be available to Sterling under this Agreement or at law.

Discovery and rejection of Defective Goods

- (c) Sterling shall perform an initial inspection of the Goods after delivery. If such inspection does not reveal the Goods to be Defective Goods, then the Goods are accepted by Sterling and payment will be approved (without prejudice to Sterling's rights if the Goods are later found to be Defective Goods). If such inspection reveals Goods to be Defective Goods, Sterling may, acting reasonably, reject the Defective Goods.
- (d) Sterling will use its best efforts to inspect Goods as soon as practicable after delivery, however, the Supplier acknowledges and agrees that in some circumstances the Goods (or some parts of the Goods) cannot be inspected (or inspected completely) until they are required to be used in the course of Sterling's business activities. In this case, regardless of when an inspection takes place, any discovery of Defective Goods at any stage will revoke any previous acceptance of the Goods, and Sterling may, acting reasonably, reject the Defective Goods.
- (e) In the event that Sterling becomes aware of a defect in the Goods through a later inspection or by any means other than its own initial inspection process, any previous acceptance of the Goods by Sterling is revoked, and Sterling may reject the Defective Goods.
- (f) In the event that the Supplier becomes aware of a defect in the Goods, it must notify Sterling immediately. In this case, any previous acceptance of the Goods by Sterling is revoked, and Sterling may, acting reasonably, reject the Defective Goods.

What happens if Goods are Defective

- (g) In the event that Sterling rejects any Defective Goods, Sterling shall notify the Supplier whereupon the Supplier shall have 2 weeks to collect the Goods. If the Supplier fails to collect the Goods within the 2 week period, Sterling shall, at its discretion (but acting reasonably) and at the Supplier's cost, and without prejudice to any other rights or remedies available to Sterling, return the Goods to the Supplier or remove and/or destroy the Goods.
- (h) In the event that the Supplier has delivered Defective Goods:
  - (i) Sterling shall notify the Supplier immediately upon discovery of the defect;
  - (ii) the Supplier must provide all information, documentation and assistance required by Sterling to help Sterling minimise the loss and damage to Sterling and Sterling's clients.
  - (iii) the Supplier may request supervised access to Sterling's premises to review the Goods or any end product in which the Goods have been used, but it may not remove any end product from Sterling's premises.
  - (iv) If requested by Sterling, the Supplier must provide Sterling with a "Root Cause Analysis" of the issue in a form, and with the level of detail required by Sterling. A Root Cause Analysis is a report detailing how and why the defect happened and how the Supplier intends to ensure it does not happen again.

**9. DEFECTIVE ANCILLARY SERVICES**

- (a) Ancillary Services supplied to Sterling that, in Sterling's sole but reasonable discretion, fail to satisfy the requirements set out in clauses 3(d) and 3(e), are deemed to be "Defective Services" for the purposes of this Agreement.
- (b) Any action or remedy available to Sterling in this clause 9 for the supply of Defective Services is in addition to any other remedies that may be available to Sterling under this Agreement or at law.

Discovery and rejection of Defective Services

- (c) Sterling shall perform an initial inspection of the Services being performed or the end result of such performance. If such inspection does not reveal the Services to be Defective Services, then the Services are accepted by Sterling and payment will be approved (without prejudice to Sterling's rights if the Services are later found to be Defective Services). If such inspection reveals Services to be Defective Services, Sterling may, acting reasonably, reject the Defective Services.
- (d) Sterling will use its best efforts to inspect how the Services have been performed as soon as practicable after they have been performed, however, the Supplier acknowledges and agrees that in some circumstances defects in how Services have been provided or performed will not become apparent for some time after the Delivery Date. In this case, regardless of when the defect becomes apparent, Sterling may, acting reasonably, reject the Defective Services.
- (e) In the event that Sterling becomes aware of a defect in the Services through a later inspection or by any means other than its own initial inspection process, any previous acceptance of the Services by Sterling is revoked, and Sterling may reject the Defective Services.
- (f) In the event that the Supplier becomes aware of a defect in the Services, it must notify Sterling immediately. In this case, any previous acceptance of the Services by Sterling is revoked, and Sterling may, acting reasonably, reject the Services.

What happens if the Ancillary Services are Defective

- (g) In the event that the Supplier has performed Defective Services, any one or all of the following actions may be taken by Sterling, in addition to any other remedy available to Sterling:
  - (i) Sterling shall notify the Supplier immediately upon discovery of the defect;
  - (ii) the Supplier must provide all information, documentation and assistance required by Sterling to help Sterling minimise the loss and damage to Sterling and Sterling's clients;
  - (iii) the Supplier may request supervised access to Sterling's premises to review the Defective Services; and
  - (iv) If requested, the Supplier must provide Sterling with a "Root Cause Analysis" of the issue in a form, and with the level of detail required by Sterling. A Root Cause Analysis is a report detailing how and why the defect happened and how the Supplier intends to ensure it does not happen again;
  - (v) Sterling may require the Supplier to re-provide or re-perform Defective Services at the Supplier's expense.
  - (vi) Sterling may engage an alternate Supplier to provide or perform the Defective Services to remedy the defects and the Supplier will be liable for the costs incurred by Sterling.

**10. SUPPLIER'S OBLIGATIONS**

- (a) The Supplier must contact Sterling and ask for guidance or further information if they are in any way uncertain about any aspect of the requirements of the Goods or the Specifications or the Ancillary Services;
- (b) The Supplier must notify and obtain approval from Sterling in writing prior to departing from, or changing any aspect of, the Specifications.
- (c) The Supplier must notify Sterling in writing in advance if the Supplier considers that additional work is required that the Supplier believes constitutes a Variation. The Supplier must obtain Sterling's approval in writing prior to commencing such additional work. If a dispute on a Variation occurs, the parties shall continue to perform their obligations under this Agreement which are not the subject of the dispute.

**11. SITE AND INSPECTION.**

- (a) The Supplier will give Sterling, or Sterling's agents, access to the site/s where the Goods are produced or processed or any items relating to the performance of the Services are located for the purposes of:
  - (i) Inspecting the facilities, equipment and materials used in the production, processing or storage of the Goods or any items relating to the provision of the Services;
  - (ii) Inspecting the processes, operations and methods used by the Supplier in relation to the production, processing or storage of the Goods or provision of the Services; or
  - (iii) Inspecting the production records and quality reports held by the Supplier in relation to the production, processing or storage of the Goods or any items relating to the provision of the Services.

**12. SUBCONTRACTORS AND THIRD PARTY SUPPLIERS**

- (a) If requested, the Supplier must disclose to Sterling the names and details of any subcontractors the Supplier engages to perform or fulfil any of its obligations under this Agreement.
- (b) The Supplier remains fully liable at all times for the actions or omissions of any subcontractors that it engages to perform or fulfil any of its obligations under this Agreement as if they were the acts or omissions of the Supplier.
- (c) If requested, the Supplier must disclose to Sterling the names and details of any third parties that supply any product or process that becomes part of the Goods or Services.
- (d) The Supplier remains fully liable at all times for the actions or omissions of any third party supplier and for any product or service supplied by a third party supplier that becomes part of the Goods or part of the Services as if they were the acts or omissions of the Supplier.

**13. INVOICING & PAYMENT**

- (a) The Supplier will provide reasonable records setting out the rates, charges and expenses incurred to support each invoice if so required by Sterling.
- (b) Subject to this clause 13, Sterling shall pay for the Goods no later than 30 days from the end of the month following the month in which a valid invoice is received by Sterling.
- (c) In the event of delivery of Defective Goods or Defective Services, in addition to any other remedy available to it, Sterling may at its complete discretion withhold payment for those Goods or Services until Sterling is satisfied, if at all, with the resolution of the deficiency.
- (d) In the event of Sterling's discovery of Defective Goods or Defective Services after payment (or part payment) for those Goods or Services has been made, in addition to any other remedy available to Sterling, Sterling may deduct such payment from any other monies payable to the Supplier. If Sterling becomes satisfied, if at all, with a resolution of the deficiency, payment shall be made by Sterling at that time.

**14. TITLE & RISK**

- (a) Risk in Goods (or in any item which is provided as part of the provision or performance of the Services – hereinafter referred to as an “Item”)) shall pass to Sterling at the time of delivery to the delivery point.
- (b) Title in the Goods or any Item shall pass to Sterling upon the earlier of:
  - (i) the date Sterling commences use of the Goods or Item in the course of its business activities; or
  - (ii) the date Sterling makes payment in full for the Goods or Services.

**15. SUPPLIER’S LIABILITY AND INDEMNITY**

- (a) The Supplier indemnifies Sterling, its clients and its Personnel against any Claim or Loss arising from or in connection with:
  - (i) any breach of this Agreement by the Supplier or its Personnel; or
  - (ii) any act or omission by the Supplier or its Personnel,
- (b) The indemnities set out in Clause 15(a) above do not apply to the extent that the Claim or Loss is caused by the negligence of Sterling.
- (c) The indemnity in clause 15(a) continues without limitation in time.
- (d) In the event that Sterling is obligated under a liquidated damages clause in its contract with its client, additional terms will be communicated to the Supplier and will apply as if they were terms of these Terms.

**16. STERLING’S LIABILITY & INDEMNITY**

- (a) Sterling indemnifies the Supplier against any Claim or Loss arising from or in connection with:
  - (i) any breach of this Agreement by Sterling; or
  - (ii) any wilful, tortious or unlawful act or omission by Sterling,
  - (iii) a breach of a third party’s intellectual property rights as a result of the Supplier performing its obligations in accordance with any specific documentation or instructions provided in writing by Sterling.
- (b) The indemnities set out in Clause 16(a) above do not apply to the extent that the Claim or Loss is caused by the Supplier or the Supplier’s Personnel.
- (c) The indemnity in this clause 16(a) continues without limitation in time.

**17. CONSEQUENTIAL LOSS**

- (a) Subject to clause 17(b) below, and to the extent permitted by Law, neither party is liable to the other party for any indirect or consequential loss, including any loss of profit, loss of revenue, loss of business, loss of opportunity, loss of anticipated savings or loss of business reputation.
- (b) The exclusion of liability for indirect or consequential loss in clause 17(a) above does not apply to:
  - (i) any statutory fine arising from any breach of Law;
  - (ii) any special, exemplary or punitive damages;
  - (iii) any personal injury, sickness or death;
  - (iv) any loss of or damage to property;
  - (v) the indemnity in clause 16(a)(iii) or a breach of clause 19 or 18(c)
  - (vi) criminal or fraudulent acts or omissions of, or fraudulent misrepresentation by, a party;
  - (vii) wrongful acts committed by a party with a reckless indifference to the consequences;
  - (viii) wilful default by a party or abandonment of the Agreement by the Supplier; or
  - (ix) the extent the Supplier recovers or is entitled to recover under the policies of insurance required by the Contract, or for amounts the Supplier would have been entitled to recover but for the Supplier's breach of the policies of insurance required by the Contract or breach of the Contract, with no deduction made for any deductible or excess applicable under such insurance paid or payable to the insurer.

**18. INTELLECTUAL PROPERTY**

- (a) The Supplier may be required to access or use the intellectual property of Sterling or Sterling’s clients in order to provide Sterling with the Goods or Ancillary Services. This may include (but is not limited to) technical specifications and drawings as well as Sterling or Sterling’s clients’ proprietary information. In such circumstances, Sterling grants to the Supplier a non-exclusive licence for the duration of this Agreement to use its rights for the sole purpose of fulfilling Purchase Orders in accordance with this Agreement.
- (b) The Supplier acknowledges that there is no transfer of title, interest or ownership to the Supplier of any intellectual property rights licensed by Sterling under this Agreement.
- (c) Any Intellectual Property in material created by the Supplier for Sterling under this Agreement is created for Sterling’s benefit and the Supplier agrees, if required, to sign an acknowledgement of ownership and formalise any transfer of ownership.

## **19. CONFIDENTIALITY**

- (a) During the course of dealing with Sterling, the Supplier may be provided with, or otherwise have access to, confidential information relating to Sterling's business or the business of Sterling's clients. This information may include (but is not limited to) information relating to:
- (i) Sterling's practices, business or financial affairs,
  - (ii) Identification of Sterling's clients and their practices, business or financial affairs, and
  - (iii) The formulation of Sterling's or Sterling's clients' products,
- but does not include information already in the public domain, or otherwise known to the Supplier through legitimate means.
- (b) The Supplier:
- (i) must keep all confidential information private and secret;
  - (ii) must not disclose confidential information except as permitted under this Agreement or as required by law;
  - (iii) must take all steps reasonably necessary to safeguard confidential information from unauthorised access, use or disclosure;
  - (iv) must use confidential information for the sole purpose of supplying Goods and Services to Sterling pursuant to this Agreement;
  - (v) must not use confidential information in a manner which is inconsistent with Sterling's interests; and
  - (vi) acknowledges that confidential information is the property of Sterling.
  - (vii) During the process of negotiating and conducting business dealings, the Supplier may find it necessary to disclose all or part of the confidential information to an employee or contractor in order to perform its obligations to Sterling. Before doing so, however, they must before any disclosure, ensure that such employees/contractors are subject to formal obligations of confidentiality whether as part of their employment terms & conditions or otherwise.
- (c) This clause continues without limitation in time.

## **20. INSURANCE**

- (a) All Suppliers shall maintain insurance coverage for the minimum amounts in relation to the following areas:
- (i) Public Liability Insurance including product liability – for a minimum amount of \$20,000,000 for each and every claim and in the aggregate including costs and expenses;
  - (ii) Workcover insurance as required by law where Ancillary Services form part of this Agreement;
  - (iii) Motor vehicle insurance other insurance related to equipment needed to provide the Ancillary Services; and
  - (iv) Professional Indemnity Insurance – for a minimum amount of \$20,000,000 for each and every claim and in the aggregate including costs and expense
- (b) At Sterling's request, the Supplier shall provide copies and proof of the currency of the insurance policies referred to above.
- (c) If required by Sterling, the Supplier shall add Sterling as an additional insured to the above policies.

## **21. GST**

- (a) Unless otherwise stated, the price is GST exclusive.
- (b) In addition to the price for the Goods, Sterling shall pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this Agreement.
- (c) Sterling must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as Sterling pays the price (or the corresponding first part of it if the Supplier agrees to Sterling paying the price by instalments).

## **22. GENERAL CONDITIONS**

### **(a) Entire agreement**

This Agreement constitutes the entire agreement and understanding between the parties concerning its subject matter and succeeds and cancels all other previous agreements, whether verbal or in writing, including any terms agreed to by Sterling as part of the Supplier's credit application process.

### **(b) Non-exclusive**

Sterling reserves the rights to acquire the Goods from a third party or parties at any time.

### **(c) Jurisdiction**

This Agreement, each Purchase Order, and all associated transactions are governed by and construed in accordance with the laws in force in the state of Victoria in the Commonwealth of Australia from time to time and the parties submit to the non-exclusive jurisdiction of the courts of that state.

### **(d) Assignment**

Neither Party may assign its benefits or obligations under this Agreement without the prior written consent of Sterling in writing.

### **(e) Waiver**

- (i) A right of Sterling may only be waived in writing, signed by Sterling.

(ii) A waiver of a right by Sterling on one or more occasions does not operate as a waiver of that right if it arises again.

(iii) The exercise, or non-exercise, of a right by Sterling does not prevent any further exercise of that right or of any other right.

**(f) Severability**

Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of the Terms.

**(g) Time is of the essence**

In this agreement time is of the essence unless otherwise stipulated.