

Purchase Order Terms and Conditions (Australia)

PART 1 – GENERAL TERMS AND CONDITIONS

(applicable to every Purchase Order)

1. Definitions

In the Contract:

Asbestos Containing Material has the meaning given in sub-regulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).

Babcock means the relevant affiliate of Babcock International Group PLC as specified in the Purchase Order, and any of its related bodies corporate (as defined by the *Corporations Act 2001* (Cth)).

Confidential Information means any information that:

- (a) is by its nature confidential;
- (b) is designated by the discloser as confidential; or
- (c) the recipient knows or ought reasonably to have known is confidential in nature,

and includes all information whether disclosed orally or in writing, but does not include information which:

- (d) is or becomes public knowledge other than by breach of the Contract;
- (e) is in the possession of the recipient without restriction in relation to disclosure before the date of receipt from the discloser; or
- (f) has been independently developed, gained or acquired by the recipient without any reference to the Confidential Information.

Contract has the meaning given in clause 2.

Delivery Date means the date(s) for provision of the Supplies specified in the Purchase Order.

Delivery Location means the location(s) for provision of the Supplies specified in the Purchase Order.

Goods means the goods specified in the Purchase Order (if any) to be provided by the Supplier and any goods or component parts supplied by the Supplier as part of the Services.

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

Jurisdiction means South Australia.

Loss means any cost (including legal costs), expense, loss, damage, claim, action, proceeding or liability whatever and however arising (whether in contract, tort (including negligence) or otherwise).

Notifiable Incident has the meaning given in sections 35 to 37 of the *Work Health and Safety Act 2011* (Cth).

Privacy Act means the *Privacy Act 1988* (Cth).

Purchase Order means an individual purchase order issued by Babcock to the Supplier in respect of the Supplies.

Services means the services specified in the Purchase Order (if any) to be provided by the Supplier.

Special Conditions means any special conditions stated in or attached to the Purchase Order.

Supplier means the supplier specified in the Purchase Order.

Supplies comprises the Goods and Services.

Total Price means the price specified in the Purchase Order, including any GST component payable.

WHS Legislation means:

- (a) the *Work Health and Safety Act 2011* (Cth) and the *Work Health and Safety Regulations 2011* (Cth); and
- (b) any corresponding WHS law as defined in section 4 of the *Work Health and Safety Act 2011* (Cth).

2. Contract

The Contract consists of:

- (a) the Special Conditions;
- (b) the Purchase Order (other than the Special Conditions); and
- (c) these Purchase Order Terms and Conditions.

If there is any ambiguity or inconsistency between the documents comprising the Contract, the document appearing first in the list will take precedence to the extent of any ambiguity or inconsistency.

3. Commencement and Term

The Contract will commence on the earlier of:

- (a) the date that the Supplier acknowledges acceptance of the Purchase Order; or
- (b) the date that the Supplier commences performance of the Supplies,

and will remain in force, unless terminated earlier in accordance with the Contract, until the Supplier has completed all of its obligations under the Contract.

4. Existing Contracts

Subject to the terms of the Purchase Order and any Special Conditions, if the Purchase Order is issued under the terms of an existing contract, the terms of that existing contract will apply and these Purchase Order Terms and Conditions (other than this clause) will have no effect.

5. Provision of the Supplies

The Supplier must provide the Supplies to Babcock at the Delivery Location on or before the relevant Delivery Date and in accordance with any special instructions for the delivery of the Supplies specified in the Purchase Order.

6. Delay

The Supplier must notify Babcock as soon as reasonably practicable if it becomes aware that it will be unable to provide all or any part of the Supplies by the relevant Delivery Date and advise Babcock as to when it will be able to do so.

The Supplier must take all reasonable steps to minimise any delay and comply with any reasonable requests made by Babcock to rectify the delay.

7. Acceptance

Babcock, or its authorised agent, may accept or reject the relevant Supplies within 28 days after delivery of the Supplies to the Delivery Location. If Babcock does not notify the Supplier of acceptance or rejection within the 28 day period, Babcock will be taken to have accepted the Supplies on the expiry of the 28 day period.

Babcock may reject the Supplies if they do not comply with the requirements of the Contract, including any acceptance tests specified in the Special Conditions.

If Babcock rejects the Supplies, Babcock may:

- (a) require the Supplier to provide, at the Supplier's cost, replacement Supplies which comply with the requirements of the Contract within a reasonable period agreed by Babcock; or
- (b) terminate the Contract in accordance with clause 15(b).

In either case and at Babcock's request, the Supplier must promptly remove any relevant Goods from Babcock's premises at its own cost.

8. Title and Risk

Title in the Goods transfers to Babcock, or its nominee, on the earlier of:

- (a) acceptance by Babcock in accordance with clause 7; or
 - (b) payment by Babcock for the Supplies.
- The risk of any loss or damage to the Goods remains with the Supplier until their delivery to Babcock at the Delivery Location.

If the Services include the repair of any items, the Supplier bears the risk of any loss or damage to the item being repaired from the date on which it is delivered to the Supplier until it is returned to Babcock at the Delivery Location.

9. Price

The Total Price is fixed and is inclusive of GST and all taxes, duties (including any customs duty), and government charges imposed or levied in Australia or overseas.

Unless expressly stated otherwise in the Purchase Order, the Total Price includes the cost of any insurance, packaging, marking, handling, freight and delivery, and any other applicable costs and charges.

10. Payment

Unless otherwise stated in the Purchase Order, the Supplier will invoice Babcock on completion of the Services or on delivery of the Goods.

Babcock must pay the Supplier within 30 days of receiving a correctly rendered invoice.

An invoice is correctly rendered if:

- (a) it is correctly addressed and calculated in accordance with the Contract;
- (b) Babcock has not rejected the Supplies under clause 7;
- (c) it is for an amount that does not exceed the Total Price;
- (d) it includes the Purchase Order number, and the name and contact details specified in the Purchase Order; and
- (e) it is a valid tax invoice in accordance with the GST Act.

Unless otherwise agreed by Babcock, if the Services are provided in New South Wales, the Supplier's invoice must also be accompanied by a Subcontractor Statement in the form provided at: www.revenue.nsw.gov.au/help-centre/resources-library/forms/payroll/opt011.pdf.

The Supplier must promptly provide any supporting documentation and other evidence reasonably required by Babcock to substantiate performance of the Contract by the Supplier or payment of the Total Price by Babcock.

Babcock is entitled to withhold payment of an invoice to the extent that it relates to Supplies that do not meet the requirements of the Contract.

11. Set Off

If the Supplier owes any debt to Babcock in connection with the Contract, Babcock may deduct the amount of the debt from payment of the Total Price.

12. Intellectual Property

The Supplier warrants that it has all intellectual property (IP) rights and moral rights necessary to provide the Supplies to Babcock and licences those rights to Babcock, including the right to sublicense, to allow Babcock and its customers (and their customers and contractors) to have the full benefit of the Supplies.

The Supplier also warrants that the provision of the Supplies in accordance with the Contract will not infringe any third party's IP or moral rights.

13. Warranty

The Supplier warrants and agrees that:

- (a) the Goods are:
 - (i) new and in good condition;
 - (ii) compliant with all applicable industry standards and codes;

- (iii) free from defects in design, materials and workmanship; and
- (iv) fit for the purposes for which goods of a similar nature are commonly supplied and for any other purposes notified by Babcock to the Supplier; and

(b) in providing the Services:

- (i) it will use workmanship of a standard consistent with best industry standards for work of a similar nature and which is fit for its intended purpose; and
- (ii) it will comply with all applicable industry standards and codes.

14. Defects

Notwithstanding acceptance of the Supplies under clause 7, the Supplier must remedy at its cost any defects in the Supplies notified by Babcock to the Supplier at any time within the period of 12 months, or the Supplier's or manufacturer's standard warranty period (whichever is longer), following acceptance of the Supplies by Babcock.

The Supplier will be responsible for any costs of removing the Goods and delivering any repaired or replacement Supplies to Babcock.

If the Supplier does not remedy the defect, Babcock may remedy the defect and recover the costs incurred from the Supplier.

15. Termination for Default

Babcock may terminate the Contract if:

- (a) the Supplier:
 - (i) does not deliver all of the Supplies to the Delivery Location by the relevant Delivery Date; or
 - (ii) notifies Babcock that it will be unable to deliver the Supplies to the Delivery Location by the Delivery Date,
 provided that Babcock acts reasonably in exercising this right;
- (b) Babcock rejects any of the Supplies under clause 7, provided that Babcock acts reasonably in exercising this right;
- (c) the Supplier commits a material breach of the Contract that:
 - (i) is not capable of being remedied; or
 - (ii) is capable of being remedied but is not remedied within 28 days of receiving a notice from Babcock specifying the breach;
- (d) the Supplier becomes bankrupt or insolvent, except to the extent that the exercise of a right under this clause 15(d) is prevented by law; or
- (e) the Supplier breaches any of its obligations under clause 18, 39, or 42 (if applicable).

The Supplier may terminate the Contract if Babcock does not pay the Supplier's correctly rendered invoice within 60 days of it becoming due in accordance with clause 10.

16. Termination for Convenience

In addition to any other rights it has under the Contract, Babcock may at any time terminate the Contract or reduce its scope by notifying the Supplier in writing.

If Babcock gives such a notice, the Supplier must:

- (a) stop work in accordance with the notice;
- (b) comply with any reasonable directions given by Babcock; and
- (c) mitigate all loss, costs, and expenses in connection with the termination or reduction, including those arising from affected subcontracts.

Babcock will only be liable for payments to Supplier for Supplies accepted in accordance with clause 7 before the effective date of termination and any reasonable costs incurred by the Supplier that are directly attributable to the termination or reduction, provided the Supplier substantiates these amounts to the reasonable satisfaction of Babcock.

The Supplier will not be entitled to profit anticipated on any part of the Contract terminated.

17. Access and Records

At Babcock's request (acting reasonably), the Supplier must permit Babcock and its nominees timely and sufficient access to the Supplier's premises and records relevant to the Contract to:

- (a) undertake quality audits and quality surveillance (as defined in AS/NZ ISO 9000) of the Supplier's quality system and/or the production processes related to the Supplies; and
- (b) monitor the Supplier's work, health and safety and environmental compliance in connection with the provision of the Supplies.

18. Security and Safety

If Babcock provides the Supplier with access to any Babcock or Babcock customer place, area, facility, or equipment, the Supplier must comply with any security and safety requirements notified to the Supplier by Babcock or of which the Supplier is aware and ensure that its officers, employees, agents and subcontractors are aware of and comply with any such security and safety requirements.

Where the Supplies are designed, manufactured, supplied, installed, commissioned, or constructed by the Supplier within Australia or the Supplier imports the Supplies into Australia (and is an importer for the purposes of the WHS Legislation), the Supplier must:

- (a) comply with, and ensure that all subcontractors comply with, the applicable WHS Legislation when performing work under the Contract in Australia; and
- (b) where applicable, comply with, and ensure that all subcontractors comply with, the obligation under the WHS Legislation to, so far as is reasonably practicable, consult, co-operate, and co-ordinate with Babcock, its customers, the Supplier or any subcontractors (as the case may be) and any other person who, concurrently with Babcock, its customers, the Supplier or any subcontractors (as the case may be), has a work health and safety duty under the WHS Legislation in relation to the same matter.

The Supplier must ensure, so far as is reasonably practicable, that the Supplies are without risk to the health and safety of persons who use the Supplies for a purpose for which they were designed or manufactured.

Without limiting its obligations under the Contract, at law or in equity (and subject to any foreign government restrictions), the Supplier must provide, and use its reasonable endeavours to ensure that its subcontractors provide, to Babcock within 14 days of a request by Babcock any information or copies of documentation requested by Babcock and held by the Supplier or subcontractor (as the case may be) to enable Babcock and its customers to comply with their obligations under the WHS Legislation relating to the Contract.

The Supplier must not provide Supplies containing Asbestos Containing Material and must not take any Asbestos Containing Material onto Babcock or Babcock customer premises in connection with providing the Supplies.

If a Notifiable Incident occurs in connection with work carried out under the Contract:

- (c) on Babcock or Babcock customer premises;
- (d) which involves Babcock or Babcock customer personnel; or
- (e) which involves a Babcock or Babcock customer specified system of work,

the Supplier must:

- (f) immediately report the incident to Babcock;
- (g) promptly provide Babcock copies of any notices or other documentation provided to, or issued by, the relevant Commonwealth, State, or Territory regulator in relation to the Notifiable Incident;
- (h) provide Babcock with such other information as may be required to facilitate the notification to or investigation by any regulator of the Notifiable Incident in accordance with the WHS Legislation; and
- (i) provide other reasonable assistance required by Babcock to undertake mandatory incident reporting.

19. Insurance

The Supplier must procure and maintain such insurances and on such terms and conditions as a prudent supplier, providing supplies similar to the Supplies, would procure and maintain.

At a minimum, this must include:

- (a) Workers compensation insurance as required by Australian law or regulation;
- (b) Public and Products Liability insurance covering the Supplier and its personnel against any liability to any party (including Babcock) arising out of or in connection with the Contract, for an insured amount of at least AU\$10,000,000 per occurrence and in the aggregate annually; and
- (c) Professional Indemnity insurance (only if the Supplies include the provision of Services of a professional nature), for an insured amount of at least AU\$5,000,000 per claim.

20. Indemnity

The Supplier indemnifies Babcock in respect of any Loss in connection with any action, claim, dispute, suit, or proceeding brought by a third party in respect of:

- (a) the death or personal injury of any person;
- (b) loss of or damage to any third party property;
- (c) an infringement or alleged infringement of that third party's IP rights or moral rights in connection with the Supplies; or
- (d) a breach or alleged breach of any obligation of confidentiality owed to that third party in connection with the Supplies.

21. Limitation of Liability

Each party's aggregate liability to the other for any Loss arising out of or in connection with the Contract is limited to the greater of:

- (a) 150% of the total fees paid or payable by Babcock under the Contract; or
- (b) AU\$500,000.

This limitation does not apply to any liability of a party for:

- (c) personal injury and death;
- (d) loss of or damage to property;
- (e) breach of intellectual property rights, confidentiality, privacy, or security obligations;
- (f) fraud or fraudulent misrepresentation;
- (g) the indemnities in clause 20(c) and 20(d); or
- (h) any other liability which cannot be limited or excluded by applicable law.

Neither party has any liability to the other, however arising (whether in contract, tort (including negligence) or otherwise), for any loss of use, revenues, profits, goodwill, bargain, opportunities, or anticipated savings, or for any indirect, consequential, or special loss or damage.

The liability of each party to the other for any Loss is reduced to the extent that any wilful, unlawful, or negligent act or omission of the other party (or its affiliates, employees, contractors, or agents) caused or contributed to the Loss.

22. Confidentiality

The parties may disclose Confidential Information to each other during the course of the Contract. Each party must keep the other party's Confidential Information confidential to itself and not disclose it to any third party without the disclosing party's prior written consent, other than when required by law.

The recipient must take all precautions that are reasonably necessary to prevent any theft, loss or unauthorised use or disclosure of the disclosing party's Confidential Information and promptly notify that party of any suspected or actual unauthorised use or disclosure of the Confidential Information.

On expiry or termination of the Contract, or upon the reasonable written request of the disclosing party, the recipient must promptly return or

destroy all Confidential Information of the disclosing party in its possession, power, or control, provided however that the recipient may retain a copy of the Confidential Information as required by law or in accordance with its standard backup or recordkeeping procedures and the terms of this clause 22 will continue to apply to any retained Confidential Information.

The Supplier may not make any public statement about the Contract, or disclose the existence of the Contract or any of its terms and conditions to a third party without Babcock's prior written consent.

23. Privacy

If the Supplier obtains any personal information in the course of delivering the Supplies, the Supplier must comply with all requirements of the Privacy Act and, in particular, must:

- (a) collect, use and disclose personal information only for the purposes specified in the Contract, and in accordance with the Privacy Act and any other applicable privacy laws;
- (b) protect personal information from misuse, interference, loss, unauthorized access, modification or disclosure in accordance with the Privacy Act and any other applicable privacy laws;
- (c) promptly notify Babcock of any actual or suspected data breaches involving personal information, and cooperate with Babcock in responding to and mitigating the effects of such breaches, in accordance with the Privacy Act;
- (d) assist Babcock in fulfilling its obligations under the Privacy Act, including by providing information, cooperation and assistance as reasonably requested by Babcock;
- (e) ensure that all personnel who have access to personal information are aware of and comply with the Privacy Act and any other applicable privacy laws; and
- (f) upon the expiration or termination of the Contract, promptly return or destroy all personal information that it has collected, used or disclosed in the course of providing services under the Contract, in accordance with the Privacy Act and any other applicable privacy laws.

24. Notices

Any notice to be given under the Contract must be in writing, delivered by hand, registered post, or email, and be signed by an authorised officer of the party giving the notice.

A notice is deemed to be delivered:

- (a) if delivered by hand, on delivery to the address set out in the Purchase Order;
- (b) if sent by registered post, on delivery to the address set out in the Purchase Order; or
- (c) if transmitted by email, immediately unless the sender receives an automated reply stating that the email was not delivered.

25. Subcontracting

Subcontracting the whole or any part of the Supplier's obligations under the Contract will not relieve the Supplier of its obligations under the Contract.

On request, the Supplier must provide to Babcock the details of all subcontractors engaged in providing the Supplies. The Supplier acknowledges that Babcock may be required to disclose such information to its customers.

26. Business Ethics

The Supplier warrants that neither the Supplier nor (so far as it is reasonably aware) any of its officers, employees, agents, and subcontractors:

- (a) have been convicted of any offence involving bribery, corruption, fraud or dishonesty;
- (b) have been or are currently under investigation, inquiry or enforcement proceedings by a government, administrative or regulatory body regarding an offence or alleged offence regarding bribery, corruption, modern slavery, fraud, or health safety and environment;

- (c) have been listed by a government agency as being disqualified, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programs or contracts;
- (d) (if the Supplier is an entity registered outside of Australia or New Zealand) is an entity controlled or owned by a government or government controlled entity; or
- (e) is an entity controlled by a director or officer who is a government official.

The Supplier must promptly notify Babcock if it becomes aware of any circumstances that would prevent it from repeating the warranties contained in this clause.

Babcock and the Supplier must comply with the Code of Business Conduct available at www.babcock.com.au/suppliers.

27. Authorisations

The Supplier must obtain and maintain in force any necessary licences, accreditations, permits, registrations, regulatory approvals, export licences, or other documented authorities required by law and necessary for the delivery of the Supplies, and arrange any necessary customs entry for the Supplies.

On request, the Supplier must promptly provide a copy of any such authorisations to Babcock.

28. Compliance with Laws

The Supplier must comply with and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in the State, Territory or other jurisdictions (including overseas) in which any part of the Contract is to be carried out.

29. Survival

The expiry or termination of the Contract will not affect the coming into force or the continuation in force of any of its provisions which expressly or by implication are intended to come into force or continue in force on or after termination.

30. Negation of Employment and Agency

The Contract and any cooperation of the parties contemplated under the Contract will not be deemed or construed to create any partnership, joint venture, employment, franchise or agency relationship between Babcock and the Supplier. The Supplier is an independent contractor operating a business wholly separate from and not controlled by Babcock.

31. Miscellaneous

The Contract may only be amended by a written document signed by both parties.

The delay or failure of any party to exercise any right or remedy provided under the Contract or by law does not constitute a waiver of that right or any other right or remedy.

If any part of the Contract is found to be illegal, unenforceable, or invalid, it will be severed from the Contract and the remaining portions of the Contract will remain in full force and effect.

Neither party may assign or novate any of its rights or obligations under the Contract without the other party's consent.

32. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes any prior discussions, representations, understandings, or written agreements.

33. Governing Law

The Contract is to be governed by and construed in accordance with all applicable laws in force in the Jurisdiction from time to time, and the parties submit to the non-exclusive jurisdiction of the courts of the Jurisdiction.

PART 2 – COMMONWEALTH SPECIFIC TERMS

(applicable only to Purchase Orders relating to an Australian Defence project or where Babcock's end customer is the Commonwealth)

If there is any ambiguity or inconsistency between the terms of this Part 2 and the terms of Part 1, Part 2 will take precedence to the extent of any ambiguity or inconsistency.

34. Definitions

In this Part 2:

Commonwealth means the Commonwealth of Australia represented by the Department of Defence ABN 68 706 814 312.

Hazardous Substance means:

- (a) any substance identified as having ozone depleting potential, or any gas identified as a Synthetic Greenhouse Gas, in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) or any regulations made under that Act;
- (b) any dangerous goods as defined in the *Australian Code for the Transport of Dangerous Goods by Road and Rail* (extant edition and as amended); or
- (c) any hazardous chemicals as defined in sub-regulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).

35. Novation

The Supplier consents to the Contract being novated from Babcock to the Commonwealth and will do all things reasonably required by Babcock to give effect to such novation if requested.

36. Workplace Gender

The Supplier warrants that it is not an employer named by the Workplace Gender Equality Agency as an employer not currently complying with the *Workplace Gender Equality Act 2012* (Cth) and will notify Babcock as soon as is reasonably practicable in the event such circumstances change.

37. Indigenous Procurement Policy

The Supplier must use reasonable endeavours to increase its

- (a) purchasing from Indigenous enterprises; and
- (b) employment of Indigenous Australians in the performance of the Contract.

In this context, "Indigenous enterprise" means an organisation that is 50% or more Indigenous owned that is operating a business.

Supply Nation maintains a list of enterprises that meet the definition of "Indigenous enterprises" at www.supplynation.org.au.

38. Commonwealth Policies

Unless otherwise agreed by Babcock in writing, the Supplier must use all reasonable endeavours to comply with and ensure that its personnel and subcontractors comply with Commonwealth policies of general application relevant or applicable to the Contract, including:

- (a) Defence Instruction Administrative Policy (**DI ADMINPOL**) and in particular:
 - (i) Annex C, AG4 - Incident reporting and management and the Incident Reporting and Management Manual;
 - (ii) Annex C, AG5 - Conflicts of interest and declarations of interest and the Integrity Policy Manual; and
 - (iii) Annex J, PPL 7 - Required behaviours in Defence and Chapter 3 of the Complaints and Alternative Resolutions Manual;
- (b) Gifts, hospitality and sponsorship detailed in DI(G) PERS 25-7;
- (c) ADF alcohol policy detailed in DI(G) PERS 15-1;
- (d) Public Interest Disclosure policy detailed at: www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure;
- (e) Performance Exchange Scorecard policy detailed at:

www.defence.gov.au/business-industry/industry-programs/performance-exchange-scorecard; and

- (f) any other Commonwealth policy reasonably notified to the Supplier by Babcock or the Commonwealth from time to time.

39. Defence Security

Where the Supplier requires access to any Commonwealth premises or any security classified information or assets in order to perform the obligations of the Contract, the Supplier must:

- (a) comply with any security requirements (including those contained in the Defence Security Principles Framework (**DSPF**)) notified to the Supplier by Babcock;
- (b) ensure that Supplier personnel are aware of and comply with the Commonwealth's security requirements;
- (c) undertake any security checks, clearances or accreditations reasonably required by Babcock;
- (d) promptly notify Babcock of any changes to circumstances which may affect the Supplier's capacity to provide the Supplies in accordance with the security requirements; and
- (e) if requested by Babcock (on behalf of the Commonwealth), provide a written undertaking in respect of security or access to the Commonwealth premises.

40. Packaging and Marking

The Supplier must:

- (a) package the Supplies in accordance with DEF(AUST)1000C Part 2 Section C, Commercial Trade Pack / Export Trade Pack; and
- (b) identify and mark the Supplies in accordance with DEF(AUST)1000C Part 5,

each available at: www.defence.gov.au/business-industry/procurement/contracting-with-defence/packaging-standard.

41. Commonwealth Access

In addition to any rights granted under clause 17, if the value of the Contract (by itself or cumulatively with previous changes to the Contract) is equal to or greater than AU\$100,000, the Supplier must permit the Commonwealth and its nominees timely and sufficient access to the Supplier's premises, records or accounts relevant to the Contract to conduct audits under the *Auditor-General Act 1997* (Cth).

The Commonwealth and its nominees may copy any records or accounts relevant to the Contract and retain or use these records and accounts for the purposes of this clause.

42. Hazardous Substances

Unless Babcock otherwise agrees in writing, the Supplier must not:

- (a) deliver Supplies that contain or emit a Hazardous Substance where:
 - (i) the Hazardous Substance may affect the health or safety of persons who may be exposed to the Hazardous Substance; or
 - (ii) a person's health or safety may be affected by the Hazardous Substance when (A) using the Supplies for a purpose for which they were designed or manufactured; (B) handling or storing the Supplies; or (C) carrying out any reasonably foreseeable activity in relation to the assembly or use of the Supplies for a purpose for which it was designed or manufactured, or the proper storage, decommissioning, dismantling, demolition or disposal of the Supplies; and
- (b) use, handle or store a Hazardous Substance on Babcock or Commonwealth premises when delivering the Supplies.

Where Babcock agrees that the Supplies may contain a Hazardous Substance or that the Supplier may use, handle or store a Hazardous Substance on Babcock or Commonwealth premises, the Supplier must, subject to any foreign government restrictions, ensure that:

- (c) full details of the Hazardous Substance are provided to Babcock in the format of a Safety Data Sheet (**SDS**) compliant with WHS

Legislation, except where the applicable SDS exists within the Australian ChemAlert database and the Supplier identifies that SDS to Babcock by reference to its unique record within that database; or

- (d) if the Supplier provides the Supplies to Babcock outside Australia and the Supplier demonstrates it is unable to comply with the requirements of clause 42(c), the Supplier must provide all information necessary to facilitate Babcock complying with the requirements of clause 42(c) prior to or at the time the Supplies are provided to Babcock.

In addition, the Supplier must, subject to any foreign government restrictions, ensure that:

- (e) at the time of provision to Babcock, the Hazardous Substance is correctly labelled and packaged (including to clearly identify the nature of the substance and its associated hazards) in accordance with Australian legislative and regulatory requirements, and that all documentation supporting the Supplies clearly identifies the nature of the substance and its associated hazards; or
- (f) if the Supplier provides the Supplies to Babcock outside Australia and the Supplier demonstrates it is unable to comply with the requirements of clause 42(e), the Supplier must provide all information necessary to facilitate Babcock complying with the requirements of clause 42(e) prior to or at the time the Supplies are provided to Babcock.

A copy of these Purchase Order Terms and Conditions can also be downloaded at www.babcock.com.au/suppliers.