

Standard Purchase Terms

Definitions and Interpretation

In the terms and conditions set out below (**Standard Purchase Terms**):

- (1) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or bank holiday in the place where an act is to be performed or a payment is to be made.
- (2) **Mars Contractor's Handbook** means MARS's then current contractor's handbook as updated and amended by MARS from time to time, if any.
- (3) **MARS** means MARS NEW ZEALAND LIMITED (117682) or the member of the MARS GROUP set out on the front page of the Purchase Order under the heading "*Invoice to*".
- (4) **MARS GROUP** means any and all companies from time to time owned, directly or indirectly, wholly or partly, by Mars Inc., McLean, Virginia (U.S.A.), as well as Mars Inc.
- (5) **MARS PARTIES** means the MARS GROUP and the respective directors, officers, employees, consultants, subcontractors and agents of each member of the MARS GROUP.
- (6) **Purchase Order** means an order for the supply of Goods or performance of Services placed with the SUPPLIER by MARS with a MARS Purchase Order number.
- (7) **SUPPLIER** means the party specified as the supplier on the Purchase Order.
- (8) **SUPPLIER PARTIES** means the SUPPLIER, its related bodies corporate and their respective directors, officers, employees, consultants, subcontractors and agents.
- (9) References to **Goods** or **Services** refer to the goods or services referred to in a Purchase Order and supplied or performed under the Contract.
- (10) Words used in these Standard Purchase Terms which have a particular meaning in the **GST law** (as defined in the GST Act) or any applicable legislative determinations and New Zealand Inland Revenue public rulings, have the same meaning, unless the context otherwise requires.

2. Application

- 2.1 The Standard Purchase Terms, and the terms and conditions contained in the Mars Contractor's Handbook apply to any Purchase Order and, together with the Purchase Order, constitute a contract between the SUPPLIER and MARS (**Contract**).
- 2.2 No terms and conditions of the SUPPLIER which vary or are in any way inconsistent with the Contract will be incorporated into the Contract. The acceptance of, or payment for, Goods or Services by MARS shall not constitute acknowledgement or acceptance of the SUPPLIER's terms and conditions.
- 2.3 The Contract shall constitute the entire agreement between the SUPPLIER and MARS on the subject matter of the Contract and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing, except to the extent to which they contain details relating to the Purchase Order which are required or necessary in order to give effect to the Contract and which do not vary and are not in any way inconsistent with the Contract.
- 2.4 The SUPPLIER acknowledges and agrees that the provisions of the Mars Contractor's Handbook form part of and are hereby incorporated into the Contract. The Contract must be

read in the following order of precedence: the terms and conditions contained in the Purchase Order; then the Standard Purchase Terms, and then the Mars Contractor's Handbook.

- 2.5 A Purchase Order constitutes a revocable offer to purchase the Goods or Services from the SUPPLIER on the terms of the Contract, and may be freely amended by MARS at any time prior to acceptance. MARS will not be liable for any order or commitment unless it is issued or confirmed by a Purchase Order.
- 2.6 Subject to prior revocation of the Purchase Order by MARS, the SUPPLIER's engagement under the Contract is deemed to be accepted by the SUPPLIER upon the earlier of:
- (1) the SUPPLIER's written or verbal acknowledgement of receipt of this document and of the Purchase Order, or, if the SUPPLIER has previously signed an acknowledgment of receipt of the Standard Purchase Terms, upon the SUPPLIER's written or verbal acknowledgment of the Purchase Order; or
 - (2) the SUPPLIER commencing to supply the Goods or perform the Services; or
 - (3) any other conduct on the part of the SUPPLIER which is, in the reasonable opinion of MARS, consistent with acceptance by the SUPPLIER of the Contract.
- 2.7 The Contract commences on the date on which the SUPPLIER is deemed to have accepted engagement under the Contract in accordance with clause 2.6 (**Commencement Date**) and concludes on the date on which the Goods have been supplied or the Services performed (as applicable) to the satisfaction of MARS in accordance with the Contract, subject to clause 12.

3. Goods - Delivery, Title and Risk

- 3.1 Delivery of the Goods to MARS (**Delivery**) takes place when the Goods are fully unloaded at the premises as specified in the Purchase Order under the heading "*Deliver to*" or "*Ship to*". In all cases where the Purchase Order specifies the unit of measurement of the Goods to be supplied, the unit of measurement as shown by MARS's processes shall be conclusive.
- 3.2 Unless otherwise specified in the Contract or as otherwise agreed in writing by the parties, title to and risk in the Goods shall pass from the SUPPLIER to MARS upon Delivery. Any retention of title by the SUPPLIER is expressly excluded.
- 3.3 All Goods must be accompanied by the necessary shipping documents (including, without limitation, any export licenses, certificates of origin or permits) and by a delivery note which precisely details the Goods and quotes MARS's Purchase Order number and any other information that MARS requires and notifies to the SUPPLIER. All applicable fees, taxes, duties (including, without limitation, any import or export duties or both) and charges must be paid by the SUPPLIER prior to Delivery. MARS must be given every assistance by the SUPPLIER in obtaining any other documents relating, directly or indirectly, to the Goods to be supplied which MARS may reasonably require, whether such documents are in the possession, custody and control of the SUPPLIER or a third party.
- 3.4 Goods must be properly packed by the SUPPLIER or otherwise prepared for transportation in such a way as to avoid damage to the Goods. If recycling is a requirement under the law of the country in which the Goods are to be delivered or used by MARS, the SUPPLIER warrants that the protective packaging is recyclable or re-useable outside the public waste disposal system. At the request of MARS, the SUPPLIER must collect this packaging from MARS free of charge and recover or recycle the packaging if and as required by any applicable law.
- 3.5 MARS reserves the right, on giving reasonable notice to the SUPPLIER, to inspect, and where practicable test, the Goods or their manufacturing process or both and any Services at any reasonable time. Such inspection may occur at the SUPPLIER's premises and MARS may for this purpose enter upon the premises of the SUPPLIER or its subcontractors from time to time. The SUPPLIER must procure that its subcontractors allow MARS to enter upon the subcontractors' premises for the purpose of conducting inspections under this clause. Any such inspection shall not relieve the SUPPLIER of its obligations under the Contract.

- 3.6 All Goods shall, notwithstanding the acceptance of delivery, or payment of all or part of the agreed price, be subject to inspection and testing by MARS after Delivery and unpacking. If, after any inspection, the Goods are found to be unsatisfactory, defective or not in accordance with the Contract or any warranty implied by statute or guarantee imposed by law, MARS may, without prejudice to any rights or remedies available to MARS under the Contract or at law, reject the Goods and return the Goods to the SUPPLIER at the SUPPLIER's cost and expense, whereupon the SUPPLIER shall upon demand by MARS, reimburse MARS for any amount paid by MARS to the SUPPLIER for the Goods and for the costs and expenses incurred by MARS in so returning the Goods.
- 3.7 Any inspection, whether before or after Delivery or any approval by MARS of any specifications, drawings, samples or other descriptions of the Goods prepared by the SUPPLIER, is without prejudice to any rights or remedies that accrue to MARS under the Contract or at law or otherwise.
- 3.8 If the SUPPLIER is unable to supply MARS's total order set out in the Purchase Order, MARS may, at its discretion, accept partial supply and the Contract will apply to the Goods or Services supplied. MARS reserves the right to refuse to accept liability for any Goods delivered in excess of the quantity ordered or not in accordance with any delivery schedule referred to in the Contract.

4. Delays

- 4.1 Time is of the essence in respect of each obligation of the SUPPLIER under the Contract.
- 4.2 If the SUPPLIER does not supply the Goods or perform the Services at the time or times specified in the Contract then, without prejudice to any rights or remedies that accrue to MARS under the Contract or at law or otherwise, MARS may terminate the Contract immediately by giving written notice to the SUPPLIER.
- 4.3 Notwithstanding any other provision of the Contract, the SUPPLIER must give reasonable notice to MARS in writing if, for any reason, the SUPPLIER anticipates that the performance of all or any of its obligations under the Contract may or will be delayed beyond any date specified in the Contract or as otherwise agreed between the parties. The SUPPLIER acknowledges and agrees that if it fails to so notify MARS, MARS may terminate the Contract immediately by giving written notice to the SUPPLIER.
- 4.4 If MARS terminates the Contract pursuant to this clause 4, the SUPPLIER acknowledges and agrees that the MARS PARTIES will have no liability on any basis, including, without limitation, in respect of any loss, damage, costs (including legal costs) or expenses (including legal expenses) incurred or suffered by any of the SUPPLIER PARTIES, arising directly or indirectly as a result of the termination.

5. PPSA

- 5.1 MARS may register on the Personal Property Securities Register (as defined in the *Personal Properties Securities Act 1999*, the "**PPSA**") any and all Security Interests (as defined in the PPSA) created in favour of MARS by or pursuant to the Contract including but not limited to any Security Interests arising as a result of any goods owned by MARS (including MARS Equipment) being delivered into the possession of the SUPPLIER as bailee (for the purposes of the PPSA) pursuant to the Contract.
- 5.2 MARS and the SUPPLIER agree that the sections of the PPSA listed in section 107 of the PPSA shall not apply on the enforcement by MARS of any Security Interest created in favour of MARS by or pursuant to the Contract.
- 5.3 The SUPPLIER waives its right to receive a copy of any financing statement, financing change statement or verification statement (as those terms are defined in the PPSA) registered or received by MARS in respect of the Security Interests created in favour of MARS by or pursuant to the Contract.

- 5.4 The SUPPLIER agrees to do all things necessary, including executing all documents that MARS requires and providing all relevant information and co-operating fully with MARS, to enable MARS to register a financing statement on the Personal Property Securities Register to ensure that at all times MARS has a perfected Security Interest in relation to all Security Interests created in its favour by or pursuant to the Contract and, if applicable, a Purchase Money Security Interest (as defined in the PPSA) in respect of the goods provided by MARS.
- 5.5 The SUPPLIER shall not grant any other Security Interest in goods in which MARS has a Security Interest pursuant to the Contract except with the prior written permission of MARS.
- 5.6 The SUPPLIER agrees to reimburse MARS for all costs and/or expenses incurred or payable by MARS in relation to registering, maintaining or releasing any finance statement or any other document in respect of any Security Interest created in favour of MARS by or pursuant to the Contract.

6. Prices and Terms of Payment

- 6.1 The price for the Goods or Services will be as stated in the Purchase Order. The SUPPLIER must give a tax invoice to MARS for the Goods or Services and, unless otherwise agreed by the parties, the price stated on the tax invoice includes all ancillary costs associated with supplying the Goods or performing the Services including, without limitation, the cost of labour and materials, delivery and packaging costs, insurance costs and all applicable fees, taxes, duties (including, without limitation, any import or export duties or both) and charges. No additional charges will be paid unless agreed by MARS in writing in advance.
- 6.2 If alternative payment terms are not specified in the Purchase Order, and provided the invoice is not in dispute, payment will be made by MARS 120 days from date of the SUPPLIER's valid tax invoice.
- 6.3 Unless otherwise agreed by the parties, the SUPPLIER must not invoice MARS until the Goods or Services have been supplied or performed (as applicable) to the satisfaction of MARS.
- 6.4 All payments are contingent on the Goods conforming with the Contract or the Services being performed in accordance with the Contract and the receipt of complete and accurate tax invoices and documentation.
- 6.5 All tax invoices must be sent by the SUPPLIER to MARS by post or by electronic transmission and in accordance with the processes stipulated by MARS from time to time. The SUPPLIER must ensure that all tax invoices quote MARS's Purchase Order number, MARS's line number (if appropriate), the date of the Purchase Order, the specific nature of the Goods supplied or Services performed, the date of supply of the Goods or performance of the Services, the price excluding GST and other taxes, the amount of GST and other taxes, and the price including GST and other taxes, and any other data MARS may reasonably require.
- 6.6 The SUPPLIER must keep records in sufficient detail to enable its invoices to be audited and verified (including timesheets for personnel, detailed expense reporting and all other usual accounting books and records). MARS or its auditors may examine these records at the SUPPLIER's premises during usual business hours upon at least 5 Business Days' notice and conduct at MARS's expense an audit to verify that any invoice(s) comply with the Contract. If any audit discloses that an invoice overcharges MARS by more than 5%, then the SUPPLIER will adjust the invoice and reimburse MARS for the costs of the audit. MARS and its nominated auditors will comply with any confidentiality requirements reasonably requested by the SUPPLIER in relation to the audit in order to take account of any restrictions imposed on the SUPPLIER or its parent company by any law or stock exchange rules relating to public companies.
- 6.7 Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with the Contract.

7. SUPPLIER's Obligations

WORK, HEALTH AND SAFETY OBLIGATIONS

- 7.1 The SUPPLIER must at all times exercise all necessary precautions to ensure the health and safety of all persons including the SUPPLIER PARTIES, the MARS PARTIES and others who may be affected by the performance of the Services or supply of Goods under the Contract.
- 7.2 Without limiting any other provision of the Contract, where the SUPPLIER is supplying Goods, the SUPPLIER must:
- (1) so far as is reasonably practicable, ensure that the Goods are without risk to health and safety;
 - (2) without limiting clauses 7.1 or 7.9, comply with all relevant work health and safety (**WHS**) laws and codes of practice, and relevant New Zealand Standards;
 - (3) carry out or arrange for the carrying out of any calculations, testing or examination of the Goods that is necessary to ensure compliance with clause 7.2(1) above, without cost to MARS;
 - (4) ensure that the Goods are clearly and durably labelled in a manner that identifies the Goods;
- provide all relevant information in relation to the intended purpose and proper and safe use, maintenance and storage of the Goods including any relevant technical information in a manual or similar which is in hard copy or machine-readable format.
- 7.3 In addition to the requirements set out in clause 7.2:
- (1) if the Goods supplied are hazardous substances or hazardous materials, radiation substances or biological substances, the SUPPLIER agrees to supply the Goods with copies of all relevant technical information sheets including Material Safety Data Sheets (**MSDS**), radiation safety data sheets and information data sheets (as relevant);
 - (2) if the Goods supplied are electrical equipment, the SUPPLIER is responsible for the initial electrical safety of the new equipment and the Goods must be provided tagged as tested.
- 7.4 Without limiting any other provision of the Contract, where the SUPPLIER is supplying Services, the SUPPLIER must:
- (a) identify all reasonably foreseeable hazards arising from the Services and, with respect to each hazard, assess the risks arising from the hazard and minimise those risks as far as is reasonably practicable;
 - (b) prepare, as a minimum, a safe work method statement (**SWMS**) for the Services, supervise the provision of the Services in accordance with the SWMS and provide MARS with a copy of the SWMS upon request; and
 - (c) ensure that all the SUPPLIER PARTIES involved in the provision of the Services under the Contract are provided with sufficient information, instruction, training and supervision to ensure health and safety in the performance of the Services.
- 7.5 In relation to the performance of the Services or supply of the Goods under the Contract, the SUPPLIER must promptly notify MARS of any:
- (1) fatality;

- (2) serious injury or illness;
 - (3) serious safety incident or accident including any incident that would be "notifiable" under applicable WHS legislation and any near miss that could have resulted in a fatality or serious illness or injury;
 - (4) environmental and property damage; and
 - (5) legislative breach or notice issued against the SUPPLIER.
- 7.6 The SUPPLIER must consult, cooperate and coordinate with MARS in relation to work health and safety matters and activities, attend any induction courses required by MARS relating to these matters and comply with any policies or guidelines provided by MARS in relation to these matters.
- 7.7 Without limiting clause 12, in the event that the SUPPLIER breaches any of clauses 7.1 to 7.6 of this Contract (inclusive) MARS will be entitled to:
- (1) suspend this Contract without further payment until such time as the breach is remedied to the satisfaction of MARS; and/or
 - (2) terminate this Contract in accordance with clause 12.2.

GENERAL OBLIGATIONS

- 7.8 The SUPPLIER agrees to supply the Goods and to perform the Services at the premises nominated in the Purchase Order in accordance with the Contract to the satisfaction of MARS.
- 7.9 The SUPPLIER must familiarise itself with and at all times observe and comply with:
- (1) the provisions of the Mars Contractor's Handbook;
 - (2) all safety and working practices guidelines (by whatever name called), procedures, directions or instructions issued by MARS (including, without limitation, MARS's "*Good Manufacturing Practices*" handbook), as amended from time to time, whether written or verbal; and
 - (3) all applicable laws.
- 7.10 The SUPPLIER must at all times:
- (1) exercise due care, skill, diligence and judgement and at all times act in an honest and ethical manner and in accordance with the highest professional principles and standards;
 - (2) act in good faith in its dealings with the MARS PARTIES;
 - (3) supply the Goods or perform the Services in a timely manner and within the agreed timeframes;
 - (4) comply with MARS's directions and protocols as notified by MARS from time to time, including directions and protocols regarding the use of MARS's intellectual property;
 - (5) prepare and submit, in the form required by MARS and within such reasonable time as may be stipulated by MARS and notified to the SUPPLIER, such progress or other accurate reports on the performance by the SUPPLIER and any SUPPLIER PARTIES of the SUPPLIER's obligations under the Contract, as required by MARS;
 - (6) hold all permits, licences, consents and authorisations required or necessary to enter into and observe the SUPPLIER's obligations under the Contract;

- (7) not, without MARS's prior written consent, make or permit any change in the composition, characteristics or origin of the Goods or Services, including ingredients, additives and use of processing aids, compared with previous supplies to MARS by the SUPPLIER, whether the change is made by the SUPPLIER or earlier participants in the supply chain;
- (8) employ or engage a sufficient number of suitably trained, qualified, skilled and experienced personnel to properly and efficiently comply with the SUPPLIER's obligations under the Contract;
- (9) not represent that it is associated with MARS or any member of the MARS GROUP; and
- (10) not do or be involved in anything which may impair or prejudicially affect the reputation or intellectual property of MARS or any member of the MARS GROUP and act in the best interests of the MARS GROUP at all times.

7.11 The SUPPLIER:

- (1) acknowledges that, as between the parties, any equipment, tools or other items provided or made available to any of the SUPPLIER PARTIES by any member of the MARS GROUP for use in the course of providing the Services or performing the Contract (**MARS Equipment**) is and will remain MARS's property;
- (2) is responsible for the MARS Equipment (including its loss or damage) while it is being used by or is in the possession, custody, care or control of the SUPPLIER;
- (3) must, without limiting clause 7.11(2), protect the MARS Equipment (and any other property owned by a member of the MARS GROUP which is in the possession, custody or control of the SUPPLIER) from theft, loss or damage and without delay give notice to MARS of any such theft, loss or damage; and
- (4) must return the MARS Equipment and other property of the kind described in clause 7.11(3) to MARS on termination or expiry of the Contract, or on request from MARS.

7.12 The SUPPLIER must promptly notify MARS in writing of any complaint, allegation or claim received by the SUPPLIER from any person in connection with the Goods or Services, or their supply, and must consult with MARS before responding to such complaint, allegation or claim if such response may be detrimental to MARS's or any of the MARS GROUP's businesses, brands, reputation or trading relationships.

7.13 The SUPPLIER must ensure that each of the SUPPLIER PARTIES involved in the performance of the SUPPLIER's obligations under the Contract comply with the requirements imposed on the SUPPLIER in this clause 7 as though those requirements were imposed directly on the relevant SUPPLIER PARTY.

8. SUPPLIER's Warranties

8.1 The SUPPLIER undertakes and warrants that:

- (1) the SUPPLIER has the right to sell the Goods and/or perform the Services, and that the Goods are free from any charge or encumbrance;
- (2) the Goods and Services will satisfy MARS's stated requirements in all respects and comply with any description or specification contained in the Purchase Order and with any other specifications which MARS has made known to the SUPPLIER in connection with the Purchase Order;
- (3) the Goods and Services will comply with or be performed in accordance with all applicable laws, industry codes and standards, including any relevant licensing and

registration requirements and any MARS standards that may be notified to the SUPPLIER from time to time;

- (4) the Goods will:
 - (a) be of merchantable and acceptable quality;
 - (b) be free from all defects;
 - (c) be fit for their intended purpose(s), including any purpose which MARS has made known to the SUPPLIER directly or indirectly;
 - (d) comply with any contractual or other description, demonstration model or sample, and be free from any defect in materials, workmanship, design or information;
 - (e) (without limiting clause 8.1(3)), be labelled and packaged in accordance with all applicable laws. Without limiting this clause 8.1(4)(e), the SUPPLIER represents and warrants that all product information, including but not limited to information in and on labels, warnings, instructions, manuals and brochures, supplied on or with the Goods, is adequate, accurate and complies in its form and content with all applicable laws; and
 - (f) be free from foreign bodies, contamination and objectionable odours, and, in the case of food, feeding stuffs or their ingredients, will be wholesome and:
 - (i) will be fit for human consumption; or
 - (ii) in the case of raw materials intended to be used for pet food manufacture, will be derived from animals properly inspected and found to be fit for human consumption
- (5) it will provide to MARS promptly on request any information relating to the Goods, including the ingredients of any food products, as may be reasonably requested by MARS from time to time;
- (6) the Goods are not subject to an interim or permanent ban or recall, or subject to a safety warning or unsafe goods notice, under New Zealand laws or the laws of any other jurisdiction;
- (7) the Goods do not have a safety defect within the meaning of New Zealand laws;
- (8) descriptions of the Goods, including but not limited to descriptions of standard, quality, value, grade, composition, style, model, performance or place or origin, are not false, misleading or deceptive within the meaning of the *Fair Trading 1986*;
- (9) the terms of any express warranty, representation or guarantee provided in respect of the Goods comply with all applicable laws, and will be fully honoured by the SUPPLIER;
- (10) it is able to substantiate any claims or representations made about the Goods, and will provide MARS with such substantiation promptly upon request;
- (11) it is qualified to provide the Services and will provide evidence of such qualification if requested by MARS;
- (12) any materials supplied or equipment used in connection with the Services will be safe, of acceptable quality and reasonably fit for the purpose(s) for which they are supplied or used, including any purpose(s) which MARS makes known to the SUPPLIER directly or indirectly;

- (13) it will supply Services within a reasonable time where no time period is fixed for their supply;
- (14) it has the power to, and has obtained at its own risk and expense all permits, licences, consents and authorisations required or necessary to, enter into and observe its obligations under the Contract;
- (15) it will ensure that all of the SUPPLIER PARTIES engaged in the performance of the Contract comply with the Contract including all obligations placed on the SUPPLIER under the Contract;
- (16) it will do all things necessary to supply the Goods or perform the Services to the satisfaction of MARS;
- (17) it will comply with all lawful directions of MARS in carrying out its obligations under the Contract;
- (18) it has no professional or contractual obligations which currently or may during the term of the Contract conflict with or adversely affect its ability to carry out its obligations under the Contract;
- (19) it has the necessary expertise, skill, knowledge and resources to enable it to comply with its obligations under the Contract; and
- (20) without limiting the foregoing, it will perform its obligations under the Contract:
 - (a) to the highest professional standards; and
 - (b) with all due care and skill.

8.2 The SUPPLIER agrees that MARS has a right to direct the suspension of Services which are provided in an unsafe manner.

8.3 The SUPPLIER acknowledges that it has fully acquainted itself with all conditions of the Contract affecting the supply of the Goods and performance of the Services. Any failure by the SUPPLIER to acquaint itself with any condition affecting the supply of the Goods or performance of the Services will not relieve the SUPPLIER from responsibility for performing its obligations under the Contract.

8.4 These warranties are in addition to all applicable statutory warranties and guarantees, and apply for the benefit of the MARS PARTIES and their successors and assignees.

9. Liability and Insurance

9.1 The SUPPLIER indemnifies each of the MARS PARTIES from and against all liabilities, expenses, losses (including loss of profits, income, interest and/or goodwill), damages (including indirect, incidental, consequential or special damages) and costs (including legal costs) that any of the MARS PARTIES may incur as a direct or indirect result of:

- (1) (a) any breach by any of the SUPPLIER PARTIES of any term of the Contract (including any warranty);
- (2) the death of, any injury to, or loss of property of, any person in or on any premises at which the Services are performed or Goods manufactured or to which the Goods are delivered, except to the extent that such death, injury or loss is attributable to the direct conduct of any of the MARS PARTIES;
- (3) without limiting clause 9.1(2), any loss or damage to the tangible property of any of the MARS PARTIES (including the MARS Equipment) which is in the possession, custody or control of any of the SUPPLIER PARTIES; and

- (4) any negligent or wilful act or omission of any of the SUPPLIER PARTIES.
- 9.2 MARS's rights at law and under the Contract, including its right to be indemnified under this clause, are not affected by termination of the Contract, or MARS accepting the SUPPLIER's repudiation of the Contract; or any other matter, fact or thing. To the extent that any indemnity in the Contract is in favour of a person other than MARS, MARS contracts as trustee of the rights under the indemnity.
- 9.3 To the full extent permitted by law:
- (1) MARS's entire liability to the SUPPLIER arising from or in connection with the Contract and the Contractor's supply of the Goods and/or performance of the Services, whether in contract, tort (including negligence and strict liability), equity, under statute or otherwise, will not exceed, in the aggregate, the Contract price; and
 - (2) in no event will MARS be liable (whether in contract, negligence or otherwise) to the SUPPLIER for any loss of profits, income, interest or goodwill, or for any indirect, incidental, consequential or special damages, no matter how arising, even if MARS has been advised in advance of the possibility of such loss or damage.
- 9.4 The SUPPLIER acknowledges that it is responsible for any non-compliance with the Contract by any of the SUPPLIER PARTIES.
- 9.5 The SUPPLIER must effect and maintain on and from the Commencement Date with an insurer approved by MARS appropriate product liability insurance cover and such other insurance cover (including, without limitation, professional indemnity insurance cover) as is reasonably requested by MARS at the time of submitting the Purchase Order to the SUPPLIER. On MARS's request, the SUPPLIER must include MARS as an additional insured or named beneficiary on any such policy.
- 9.6 The SUPPLIER must produce evidence on demand to the satisfaction of MARS of the insurance policy or policies effected and maintained in accordance with clause 9.5. If the SUPPLIER fails to do so, MARS may effect the insurance itself and may recover from the SUPPLIER, as a debt due to MARS, all costs incurred in effecting appropriate insurance.

10. Intellectual Property Rights

- 10.1 In this clause:
- (1) **"Materials"** includes works or materials including documents, reports, charts, drawings, databases, products, software, source codes, models, graphic designs, moulds, samples, prototypes, systems, slides, tapes, graphs, notes, logos, specifications and photographs; and
 - (2) **"Intellectual Property Rights"** means all rights in or to any patent, copyright, database rights, registered design or other design right, utility model, trade marks (whether registered or not and including any rights in get up or trade dress), brand name, service mark, trade name, eligible layout right, chip topography right and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields relating to the manufacture or sale of the Goods, whether registrable or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights.
- 10.2 All Intellectual Property Rights in Materials, processes, tools and methodologies created by any SUPPLIER PARTIES in performance of the SUPPLIER's obligations under the Contract vest in and are owned by MARS, and the SUPPLIER hereby assigns (or, in the case of Materials, processes, tools and methodologies created by SUPPLIER PARTIES other than the SUPPLIER, must procure the assignment of) all present and future Intellectual Property Rights subsisting in such Materials, processes, tools and methodologies to MARS.

- 10.3 All Intellectual Property Rights in Materials, processes, tools and methodologies prepared or developed by the SUPPLIER prior to the Commencement Date and improvements to those Materials, processes, tools and methodologies developed (other than by or at the request of MARS) during the SUPPLIER's engagement under the Contract vest in and are owned by the SUPPLIER.
- 10.4 The SUPPLIER grants to MARS and MARS accepts an irrevocable, perpetual, non-exclusive, world-wide, royalty-free, sub-licensable, fully assignable licence to use, reproduce, publish, adapt and exploit all the SUPPLIER's Intellectual Property Rights referred to in clause 10.3 to enable MARS to enjoy the full benefit of (i) the Goods and/or Services provided under the Contract; and (ii) MARS's proprietary rights under clause 10.2.
- 10.5 The SUPPLIER warrants to MARS that MARS's use of Materials, processes, tools and methodologies provided to MARS by or on behalf of the SUPPLIER under or in connection with the Contract will not infringe the Intellectual Property Rights of any third party.
- 10.6 The SUPPLIER indemnifies each of the MARS PARTIES from and against all liabilities, expenses, losses (including loss of profits, income, interest and/or goodwill), damages (including indirect, incidental, consequential or special damages) and costs (including legal costs) that any of the MARS PARTIES may incur as a direct or indirect result of any third party claim that any use of Materials, processes, tools or methodologies provided to MARS by or on behalf of the SUPPLIER under or in connection with the Contract infringes the Intellectual Property Rights of a third party.
- 10.7 The SUPPLIER acknowledges that any Intellectual Property Rights or Materials provided to the SUPPLIER by MARS will remain the exclusive property of MARS or a member of the MARS GROUP, as the case may be.
- 10.8 The SUPPLIER may only use any Intellectual Property Rights owned by the MARS GROUP (including the names, trade marks or trade names of any member of the MARS GROUP, or any substantially identical or deceptively similar name or mark) with the prior written consent of MARS and for the sole purpose of complying with its obligations under the Contract. If MARS consents to the SUPPLIER using any of the MARS GROUP's intellectual property then the SUPPLIER may only use such intellectual property in the manner required and on the terms specified by MARS from time to time. Any written consent by MARS to the SUPPLIER to reproduce any of the MARS GROUP's intellectual property on any Goods or materials is solely for the purposes of the Contract and will expire upon the termination or cancellation of the Contract whichever occurs first.

11. Confidentiality

- 11.1 Each party must not disclose any Confidential Information of the other party to any other person (save that MARS may disclose such information to the MARS PARTIES) or otherwise use such Confidential Information except with the consent of the other party and for the purpose of or in connection with the performance of the first party's obligations under the Contract.
- 11.2 For the purposes of this clause 11 "**Confidential Information**" means:
- (1) the terms of the Contract;
 - (2) marketing information, customer lists, contact lists or prospect lists;
 - (3) pricing methods, the cost price of products and profit margins;
 - (4) all information relating to the internal management, structure, personnel, policies, strategies, clients, suppliers or affairs of a party;
 - (5) all information comprised in or relating to any Intellectual Property Rights of a party;

- (6) all information relating to the financial position or reputation of a party and in particular, any information relating to the assets or liabilities of a party or any other matter that does or may affect the financial position or reputation of a party;
- (7) all product specifications,

or any other information relating to a party which has been disclosed to or learned by the other party under or in connection with the Contract, but excludes any information which is or becomes public knowledge (otherwise than through a breach of the Contract) or which is required to be disclosed by a court of government authority of competent jurisdiction). In this clause 11.2, a reference to a party includes each of its related bodies corporate.

- 11.3 Each party is responsible for any unauthorised disclosure made by any of its related bodies corporate and its and their respective directors, officers, employees, consultants, agents or subcontractors and must take all reasonable precautions to prevent such disclosures.
- 11.4 The SUPPLIER must only disclose MARS's Confidential Information to such SUPPLIER PARTIES as have a need to know the Confidential Information for the purposes of the SUPPLIER fulfilling its obligations under the Contract. If requested by MARS, the SUPPLIER must execute, and ensure that each of the SUPPLIER PARTIES engaged in the performance of the Contract have executed, a confidentiality agreement in a form approved by MARS.
- 11.5 The SUPPLIER must not issue any press release, capability statement, notice to shareholders or other public document or communication which refers to MARS (or any member of the MARS GROUP), the Contract or matter relating to the business or relationship arising from the Contract without first obtaining the written consent of MARS to the relevant communication and its form and content, such consent not to be unreasonably withheld, whether or not the communication contains any Confidential Information. The SUPPLIER acknowledges and agrees that any data (including without limitation personal data) owned by the SUPPLIER and provided to MARS in the course of or in connection with the Contract may if lawful be stored, processed and utilised by MARS or by a third party engaged by MARS.

12. Termination

- 12.1 MARS may, at its option, by written notice terminate the Contract in whole or in part with respect to any undelivered Goods or any Services not fully performed at any time. If the SUPPLIER is not in default under the Contract, the MARS PARTIES' only liability for terminating the Contract in accordance with this clause 12.1 will be: (a) where the Goods have been shipped prior to termination, subject to delivery of the Goods and the Contract, to pay for the shipped Goods at the agreed price; (b) where Goods are not yet completed for delivery or Services not yet fully performed, to pay for the direct and proven reasonable costs actually incurred by the SUPPLIER up to the date of termination; and (c) where it is proven that the Goods are completed in accordance with the Contract and prior to the termination notice, subject to delivery and the Contract, to pay the agreed price for the completed Goods but only where the SUPPLIER is not able to readily dispose of the Goods elsewhere. The total payment upon termination will not in any circumstances exceed the agreed Contract price and the MARS PARTIES will have no liability on any basis, including, without limitation, in respect of any costs, loss (including loss of profits, income, interest and/or goodwill), damages (including indirect, incidental, consequential or special damages) or expenses (including legal expenses) incurred or suffered by any SUPPLIER PARTIES arising directly or indirectly as a result of or in connection with the termination of the Contract.
- 12.2 Either party may terminate the Contract in whole or in part with immediate effect by giving notice in writing to the other party if:
 - (1) there is a material breach of the Contract by that other party, which that other party has not remedied within fourteen days of being given notice to do so (or such greater time as is specified in such notice);
 - (2) the other party suffers an Insolvency Event;

- (3) the other party is guilty of fraud, or is convicted of a criminal offence or other serious misconduct.
- (4) For the purposes of this clause 12.2, "**Insolvency Event**" means the happening of one of more of the following events:
 - (a) except for the purpose of a solvent reconstruction or amalgamation which has the prior written consent of the other party:
 - (i) process is filed in a court seeking an order that a party be wound up or that a Administrator be appointed to it or any of its assets, unless the application is withdrawn, struck out or dismissed within five (5) Business Days of it being filed; or
 - (ii) an order is made that a party be wound up or that a Administrator be appointed to it or any of its assets; or
 - (iii) a resolution that a party be wound up is passed or proposed;
 - (b) a liquidator, provisional liquidator, Administrator or any similar official is appointed to, or takes possession or control of, all or any of a party's assets or undertaking;
 - (c) an administrator is appointed to a party, a resolution that an administrator be appointed to a party is passed or proposed, or any other steps are taken to appoint an administrator to a party;
 - (d) a party enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or members, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise or composition;
 - (e) a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of a party's creditors is proposed or effected;
 - (f) any action is taken by the New Zealand Companies Office with a view to a party's deregistration or dissolution, or an application is made to the New Zealand Companies Office that any such action be taken;
 - (g) a party is insolvent within the meaning of section 239C of the Companies Act, as disclosed in its accounts or otherwise, states that it is unable to pay its debts or it is presumed to be insolvent under any applicable law;
 - (h) a party fails to comply with a statutory demand;
 - (i) a party stops or suspends or threatens to stop or suspend the payment of all or a class of its debts or the conduct of all or a substantial part of its business;
 - (j) any event or circumstance set out in section 241 of the Companies Act occurs in relation to a party; or
 - (k) anything having a substantially similar effect to any of the events specified in paragraphs (a) to (j) inclusive happens to a party under the law of any jurisdiction,

where "**Administrator**" has the meaning given in section 239B of the *Companies Act* and "**Companies Act**" means the *Companies Act* 1993.

12.3 MARS may immediately terminate the Contract by giving notice in writing to the SUPPLIER: (a) in the circumstances referred to in clause 4; (b) if there is any change in the ownership or control of the SUPPLIER which could, in the reasonable opinion of MARS, materially affect the interests of MARS or another company of the MARS GROUP. The SUPPLIER must procure that no change of control or control occurs in the SUPPLIER without first giving MARS 30 Business Days prior notice of the proposed change in ownership or control and obtaining MARS's written consent to the proposed change in ownership or control; or (c) the SUPPLIER assigns or attempts to assign the Contract or any of its rights under the Contract without MARS's prior written consent

12.4 On termination of the Contract for whatever reason, the SUPPLIER must:

- (1) co-operate with the other SUPPLIER PARTIES and MARS PARTIES as directed by MARS to ensure the orderly termination of the Contract;
- (2) refund advance payments in respect of Goods which have not been supplied and Services which have not been performed as at the date of termination or Goods or Services which have been rejected by MARS on or before the date of termination;
- (3) immediately cease all use and disclosure of MARS's Confidential Information;
- (4) return to MARS all Equipment, Materials and other property belonging to MARS (or any other member of the MARS GROUP) which were provided to any SUPPLIER PARTY by or on behalf of MARS in connection with the Contract;
- (5) if there are any other Materials in any SUPPLIER PARTY's possession or control which contain any Confidential Information of MARS or any information derived from that information, either:
 - (a) deliver up those Materials to MARS; or
 - (b) delete or destroy entirely and permanently those Materials or the Confidential Information or any information derived from the Confidential Information in those Materials; and
 - (c) on request by MARS, deliver to MARS a certificate signed by a duly authorised representative certifying compliance with the provisions of this clause 12.4(5) within 10 Business Days of receiving a request from MARS to do so.

12.5 Termination of the Contract for any reason in accordance with its terms or in exercise of any right at law or in equity will not give rise to any claim by the SUPPLIER against MARS or any member of the MARS GROUP for the payment of any damages or compensation of any kind whether on account of present or prospective loss of business, interest, profits, goodwill or otherwise, but termination will not affect any rights and remedies of either party which have accrued prior to termination.

13. **Dispute Resolution**

13.1 If a dispute arises under the Contract other than in circumstances where MARS wishes to seek urgent interlocutory relief (**Dispute**), a party may not commence any court or arbitration proceedings relating to the Dispute unless it has first complied with the provisions of this clause 13.

13.2 A party claiming that a Dispute has arisen must give written notice to the other party specifying the nature of the dispute (**Notice**).

13.3 Within five Business Days (or any other period agreed between the parties) after a Notice is given, the parties must use all reasonable endeavours to resolve the Dispute.

- 13.4 If the parties cannot resolve the dispute within five Business Days after the Notice is given (or any other period agreed between the parties), the parties must immediately refer the Dispute to be resolved by the Managing Director of each party.
- 13.5 If the Managing Directors cannot resolve the Dispute within ten Business Days after the Notice is given (or any other period agreed between the parties), the parties must refer the Dispute to be resolved by mediation under the then current mediation rules used by the New Zealand Dispute Resolution Centre (**NZDRC**), and the mediation will take place in Auckland. The NZDRC will select the mediator and determine the mediator's compensation.
- 13.6 Each party must bear its own costs of complying with this clause 13 and comply with its obligations under the Contract during the dispute resolution process.
- 13.7 Any settlement reached by a mediation under this clause 13 is binding on the parties.

14. Miscellaneous

- 14.1 Each party must, at its own expense, and when requested by the other party, promptly do or cause to be done everything reasonably necessary to give full effect to the Contract.
- 14.2 The SUPPLIER must keep and produce on MARS's request all documentation relating to the Goods supplied or Services performed as reasonably required by MARS including such documents necessary for tracing the Goods or any part thereof for a minimum period of five years following Delivery and will procure that its suppliers do the same. The SUPPLIER must, at its own cost, fully co-operate with and render all necessary assistance to MARS in the event of any actual or anticipated (in the reasonable opinion of MARS) product recall where the product recalled or anticipated to be recalled contains part or all of any Goods supplied by the SUPPLIER.
- 14.3 No assignment or novation of the whole or any part of the benefit of or its obligations under the Contract by a party is permitted without the prior written consent of the other party, save that MARS may by notice to the SUPPLIER at any time assign or novate the whole or any part of the benefit of or its obligations under the Contract to any member of the MARS GROUP at its sole discretion. In addition to the warranties under clause 8, the SUPPLIER agrees to assign to MARS the benefit of any warranties or guarantees in connection with the Goods and Services that the SUPPLIER is granted by third parties. The SUPPLIER must not sub-contract or otherwise delegate the performance of the whole or any part of its obligations under the Contract without the prior written approval of MARS. The SUPPLIER shall remain fully liable at all times for all of its obligations under the Contract and for all the acts or omissions of the SUPPLIER PARTIES.
- 14.4 MARS has the right to set off its claims and the claims of other companies of the MARS GROUP against the claims of, and monies owing to, the SUPPLIER. The SUPPLIER must make all payments without set-off or counterclaim.
- 14.5 An amendment or variation to the provisions of the Contract is not effective unless it is in writing and signed by the parties.
- 14.6 A provision of or a right created under the Contract may not be waived except by a document signed and dated by the party granting the waiver. The waiver of a provision of or a right created under the Contract by a party does not preclude:
- (1) its future exercise; or
 - (2) the exercise of any other provision of or right created under the Contract,
- by that party.
- 14.7 Each provision of the Contract is severable and independent so that if a clause, provision or any part of a clause or provision is held or found to be wholly or partly unenforceable, then that

clause or provision or part will be deemed eliminated or modified to the minimum extent necessary to make the remainder of the Contract or that clause or provision or part enforceable.

- 14.8 The relationship between each member of the MARS GROUP specified on the Purchase Order with the SUPPLIER shall be constituted by separate binding contracts between the relevant member of the MARS GROUP and the SUPPLIER on the terms of the Contract. MARS holds on trust for the MARS PARTIES, jointly and severally, the benefits conferred on the MARS PARTIES by the Contract.
- 14.9 The SUPPLIER is an independent contractor. Neither the SUPPLIER nor any of the SUPPLIER PARTIES will be an employee, agent, joint venturer or partner of MARS or any member of the MARS GROUP for any purpose.
- 14.10 Neither the SUPPLIER nor any SUPPLIER PARTIES will be or represent themselves in any manner as being an agent of MARS or any member of the MARS GROUP, nor have the authority to enter into commitments on behalf of MARS or any member of the MARS GROUP.
- 14.11 The United Nations Convention on Contracts for the International Sale of Goods (CISG) as well as the Uniform Laws on the International Sale of Goods and on the Formation of Contracts for such sales, and the *Sale of Goods (Vienna Convention) Act 1987* (Vic) are expressly excluded from the Contract.
- 14.12 The Contract shall be subject to the laws of New Zealand and all disputes arising in connection with the Contract shall be submitted to the non-exclusive jurisdiction of the courts of New Zealand.
- 14.13 If any provision of the Contract is held invalid, unenforceable or illegal for any reason, the Contract remains otherwise in full force apart from such provision which will be deemed deleted.
- 14.14 Neither party will be liable for any delay or failure to perform its obligations pursuant to the Contract if such delay is due to an event beyond that party's reasonable control (**Force Majeure Event**).
- 14.15 If a delay or failure of a party to perform its obligations is caused or anticipated due to Force Majeure Event, the performance of that party's obligations will be suspended but only for the period that the Force Majeure Event reasonably prevents the affected party from performing its obligations under the Contract.
- 14.16 If a delay or failure by a party to perform its obligations due to Force Majeure Event exceeds sixty (60) days, either party may immediately terminate the Contract on providing notice in writing to the other party.
- 14.17 The covenants, conditions and provisions of the Contract which are capable of having effect after the expiration or termination of this Contract remain in full force and effect following the expiration or termination of this Contract including without limitation clauses 5, 9, 10, 11, 12, 13, 14 and 15.

15. Notices

- 15.1 A notice or other communication connected with the Contract (**Notice**) must be:
 - (1) in writing in English and addressed to the recipient at the address or facsimile number set out in the Purchase Order;
 - (2) marked to the attention of the nominated representative of the party to whom it is addressed;
 - (3) sent by registered mail, facsimile or electronic transmission; and

(4) signed by a person duly authorised by the sender.

15.2 Without limiting any other means by which a party may be able to prove that a notice has been received by another party, a notice will be deemed to be duly received:

- (1) if sent by registered post, three Business Days (if posted within New Zealand to an address in New Zealand) or ten Business Days (if posted from one country to another) after the date of posting; or
- (2) if sent by facsimile or electronic transmission, upon receipt by the sender of an acknowledgment or transmission report generated by the machine from which the message was sent indicating that the message was sent successfully in its entirety to the recipient,

except if a notice is received on a day which is not a Business Day, or after 4:00 pm on any Business Day, that notice will be deemed to be duly received by the recipient at 9.00 am on the next Business Day.

16. Chain of Responsibility (CoR) compliance

16.1 The SUPPLIER acknowledges and agrees that the provisions of the Mars Chain of Responsibility Compliance Policy apply to the provision of all Services and Goods under the Contract. The SUPPLIER acknowledges having received, read and understood a copy of the Mars Chain of Responsibility Compliance Policy.

16.2 For the purposes of this section and the balance of the Standard Purchase Terms, "CoR laws" means the means the *Health and Safety at Work Law 2015 (NZ)* and the *Land Transport Act 1998 (NZ)* For the purposes of this section and the balance of the Standard Purchase Terms, "CoR laws" and any other applicable laws (or any replacement or modification thereof).

16.3 The SUPPLIER must at all times during the Term of and provision of Services or Goods under the Contract comply with the terms of the Mars Chain of Responsibility Compliance Policy.

16.4 The SUPPLIER must at all times take all reasonable steps to prevent any contravention of the CoR laws.

16.5 Without limiting any other provision of the Contract, in the provision of any Services or Goods under the Contract, the SUPPLIER must take all reasonable steps to:

- (1) accurately and safely weigh or measure the heavy vehicle or its load, or to safely restrain the load in the heavy vehicle;
- (2) provide and obtain sufficient and reliable evidence from which the weight or measurement of the heavy vehicle or its load might be calculated;
- (3) manage, reduce or eliminate a potential contravention of CoR laws arising from the location of the heavy vehicle, or from the location of the load in the heavy vehicle, or from the location of goods in the load;
- (4) manage, reduce or eliminate a potential contravention of CoR laws arising from weather and climatic conditions, or from potential weather and climatic conditions, affecting or potentially affecting the weight or measurement of the load;
- (5) exercise supervision or control over others involved in activities which may lead to a contravention of CoR laws;
- (6) include CoR laws compliance assurance conditions in relevant commercial arrangements with other responsible persons for heavy vehicles;

- (7) provide information, instruction, training and supervision to employees to enable compliance with CoR laws;
- (8) maintain equipment and work systems to enable compliance with CoR laws; and
- (9) address and remedy similar CoR laws compliance problems that may have happened in the past.

16.6 Without limiting any other provision of the Agreement, in the provision of any Services or Goods under the Contract, in relation to the speed and fatigue management obligations under the CoR laws, the SUPPLIER must take all reasonable steps to:

- (1) prevent, eliminate or minimise the likelihood of a potential contravention of the CoR laws happening;
- (2) eliminate or minimise the likelihood of risks to public safety arising from a potential contravention of the CoR laws;
- (3) manage, minimise or eliminate risks to public safety arising from a potential contravention of the CoR laws;
- (4) identify and assess the aspects of the activities of the SUPPLIER and drivers of the SUPPLIER that may lead to a contravention of the CoR laws by any such driver;
- (5) for each aspect identified and assessed under clause 16.6(4), identify and assess-
 - (a) the risk of the aspect leading to a relevant contravention; and
 - (b) if there is a substantial risk of the aspect leading to a relevant contravention, the measures the SUPPLIER may take to eliminate the risk or, if it is not reasonably possible to eliminate the risk, to minimise the risk;
- (6) carry out the identification and assessment mentioned in paragraphs 16.6(4) and 16.6(5)-
 - (a) at least annually; and
 - (b) after any event that indicates the way the activities the subject of the identification and assessment are being carried out have led, or may lead, to a relevant contravention;
- (7) take the measures identified and assessed under paragraph 16.6(5)(b);
- (8) for each action mentioned in any of paragraphs 16.6(4) to 16.6(7) taken by the SUPPLIER:
 - (A) keep a record of the action for at least 3 years after taking it; or
 - (B) if 3 years have not passed since taking the action, keep a record of the action since taking it.

16.7 In addition to any other conditions contained in the Contract, the SUPPLIER may only subcontract all or any part of the performance of the Contract if the SUPPLIER first:

- (a) satisfies itself that any such subcontractor has in place a system and work practices to ensure its compliance with the CoR laws, including the matters contained in clauses 16.4 to 16.6 (inclusive);
- (b) provides any such subcontractor with sufficient information, instruction, training and supervision to ensure compliance with the CoR laws in the provision of any Services or Goods under the Contract; and

- (c) provides any such subcontractor with a copy of the Mars Chain of Responsibility Compliance Policy and obtains in writing and retains the subcontractor's acknowledgement and agreement to comply with the policy.

16.8 In relation to the provision of any Services or Goods under the Contract, the SUPPLIER must notify MARS of any:

- (a) warning or caution;
- (b) request for information or production of documents;
- (c) infringement notice;
- (d) fine; or
- (e) commencement of prosecution proceedings,

by any State or Territory road safety authority or authorised officer in respect of any breach or suspected breach of any CoR law in respect of Services or Goods provided by the SUPPLIER to or on behalf of any of the Company or in respect of the road transport of any good or product of any of MARS. The SUPPLIER further undertakes to provide MARS with a copy of any such warning, request, notice, fine or proceedings and any response or submissions made by or on behalf of the SUPPLIER within 14 days of receiving or making the same.

16.9 The SUPPLIER must at its own cost consult, cooperate and coordinate with MARS in relation to compliance with the CoR laws, attend any induction courses required by MARS relating to these matters, participate in any CoR compliance management program operated by MARS and comply with any policies or guidelines provided by MARS in relation to these matters.

16.10 In the event of any breach or suspected breach of the CoR laws by any of the SUPPLIER in relation to any Services or Goods provided under the Contract, MARS will be entitled to, in its sole and absolute discretion:

- (a) report any breach or suspected breach of the CoR laws to any relevant authority, including disclosing any or all documentary materials in relation to the circumstances of any such breach or suspected breach; and/or
- (b) issue the SUPPLIER with a 'show cause' notice requiring the SUPPLIER to explain to the reasonable satisfaction of MARS within fourteen days of the date of the notice (i) the circumstances of the breach or suspected breach, (ii) any steps taken to respond to the breach or suspected breach, and (iii) any steps taken to prevent any other breach similar to the breach or suspected breach from occurring.

16.11 In addition to any other rights or entitlements of MARS under and despite anything to the contrary contained in any other provision of the Contract, in the event of any breach or suspected breach of the CoR laws by any of the SUPPLIER in relation to any Services or Goods provided under the Contract, or any breach by the SUPPLIER of any of clauses 16.3 to 16.9 of the Contract (inclusive) or any failure of the SUPPLIER to respond to the reasonable satisfaction of MARS to any 'show cause' notice issued in accordance with clause 16.10(b), MARS will be entitled, in its sole and absolute discretion:

- (a) not to pay for the provision of any Services or Goods in circumstances of breach of the CoR laws;
- (b) to require that the person(s) responsible for any breach(es), including any subcontractor(s) are not used or engaged to provide Services or Goods to or on behalf of MARS in future;
- (c) not purchase any further Services or Goods from any person(s) responsible for any breach(es) of the CoR laws;

- (d) suspend the Contract (or any part of it) without further payment until such time as the breach is remedied to the satisfaction of MARS; and
- (e) terminate the Contract with immediate effect by giving notice in writing to the Contractor.

17. DATA PRIVACY

17.1 In this Contract the following terms shall have the meanings set out below:

- (a) “data subject” means a living individual who is the subject of any of the personal data;
- (b) “Data Privacy Legislation” means all laws and regulations, in any country of the world, which protect the privacy rights of individuals, in so far as those laws and regulations apply to the processing of personal data in connection with this Contract;
- (c) “Data Security Breach” means as is defined in clause 18.1(c) below.
- (d) “personal data” shall mean any information which relates to an identified or identifiable living individual which is processed by you for the purposes of performing your obligations under this Contract (and for this purpose an identifiable individual is one who can be identified, directly or indirectly, (i) from that information or (ii) from that information and any other information which is in the possession of, or likely to come into the possession of, the entity controlling the processing of that information);
- (e) “processing” shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;
- (f) “we”, “us”, “our” means MARS;
- (g) “you” means the SUPPLIER.

17.2 You must:

- (a) Comply with Data Privacy Legislation, and use all reasonable endeavours to assist us in our own compliance with Data Privacy Legislation, including without limitation the preparation of necessary notifications, registrations and documentation which we may be required to make or enter into in order to comply with Data Privacy Legislation in connection with this Contract;
- (b) Not do, or cause or permit to be done, anything in relation to the information provided to or processed by you which may result in a breach by us of any applicable laws, regulations, regulatory requirements, or the Data Privacy Legislation;
- (c) Only process the personal data in accordance with our documented instructions, which may be specific instructions or standing instructions of general application in relation to the performance of your obligations under this Contract;
- (d) Put in place measures to ensure:
 - (i) that any employees who have access to personal data do not process the data except on instructions from us; and

- (ii) that any employees who have access to personal data are reliable and have committed themselves to confidentiality;
- (e) Adopt all reasonable recommendations which we may make concerning measures, programs and procedures to be adopted to ensure ongoing compliance with the data privacy provisions of this Contract, including any company policies which we may have regarding information security which we notify to you;
- (f) Not disclose the personal data to any other body (including any subcontractor) without our express agreement in writing;
- (g) Not subcontract any of your duties under this Contract unless you have obtained our prior express agreement in writing. Any consent which we give pursuant to this clause or this Contract generally for subcontracting will not relieve you for any liability for the performance of your obligations under this Contract.
- (h) Promptly notify us if you receive a request from a data subject to have access to personal data or exercise any other applicable data subject rights, or if you receive any other complaint or request relating to our obligations under the Data Privacy Legislation, and assist us insofar as possible in responding to any such complaint or request, including, without limitation:
 - (i) where authorised by us, by allowing data subjects to have access to their personal data or to have that personal data corrected, deleted, or blocked within the relevant time frames set out by applicable law;
 - (ii) by providing us with any information we request relating to the processing of personal data under this Contract;
 - (iii) by providing us with any personal data you hold in relation to a data subject, if required in a commonly-used, structured, electronic, and machine-readable format;
- (i) Permit us (or our duly authorised representatives or any regulator to which we are subject) to inspect and audit your processing activities under this Contract (and/or those of any of your agents or subcontractors to whom you have been permitted by us to disclose the personal data), and comply with all reasonable requests or directions by us to enable us to verify and/or procure that you are in full compliance with your obligations under this Contract;
- (j) If so requested by us at any time, provide us with a copy of the personal data or (at our option) destroy it; and
- (k) Upon termination of your provision of services relating to personal data, delete or return all the personal data to us and delete any existing copies of the personal data, save where applicable law requires you to retain copies of such data.

18. SECURITY

18.1 You must:

- (a) at a minimum, implement and maintain appropriate technical and organizational measures to ensure the security and protection of personal data, taking into account the nature and sensitivity of the information to be protected, the risk presented by processing, the state of the art, and the costs of implementation, in compliance with applicable Data Privacy Legislation. Such measures shall include appropriate physical, electronic and procedural safeguards, to (A) ensure the security and confidentiality of personal data, (B) protect against any threats or hazards to the security or integrity of personal data, and (C) prevent unauthorized access to or use of personal data.

You shall promptly notify Mars of any reason why you cannot or are not likely to be able to comply with the provisions of this Section, in which case Mars shall, at its sole discretion, be entitled to suspend or terminate the provision of Services according to the terms of this Contract.

- (b) immediately notify Mars if you know, discover or reasonably believe that there has been (1) any unauthorized access to or acquisition of data that compromises the security, confidentiality or integrity of personal data, or (2) any unauthorized disclosure of, access to or use of any personal data, or (3) any unauthorized intrusion into systems containing personal data resulting in unauthorized access or access in excess of authorization ("Data Security Breach").
- (c) in the event of a Data Security Breach, (1) immediately investigate, correct, mitigate, remediate and otherwise handle the Data Security Breach, including without limitation, by identifying personal data affected by the Data Security Breach and taking sufficient steps to prevent the continuation and recurrence of the Data Security Breach; and (2) provide information and assistance needed to enable Mars to evaluate the Data Security Breach and, as applicable, to provide timely notices disclosing a Data Security Breach and to comply with any obligations to provide information that the Data Security Breach to relevant regulators.
- (d) reimburse Mars for the reasonable expenses that Mars may incur as a result of such Data Breach caused by your acts or omissions or those of any of your authorized subcontractors, including but not limited to, the expenses incurred in investigating the Data Security Breach and notifying affected individuals, and providing these individuals with the support necessary under the circumstances, such as credit monitoring.