



Standard Terms and Conditions for supply of gas and gas equipment

These Standard Terms and Conditions set out the terms on which Motukea Gas Company Limited ("MGC") have agreed to provide the Supply to the Customer.

1. INTERPRETATION

1.1 Definitions

In these Standard Terms:

"Agreement" means the agreement comprising the Schedule, the Rates and these Standard Terms.

"Business Day" means a day that is not a Saturday, Sunday or public holiday in Port Moresby.

"Consequential Loss" means any loss or anticipated loss of profit, loss or anticipated loss of revenue, business interruption, loss of use of any equipment, loss of any contract or other business opportunity and any other indirect loss of a similar nature.

"Customer" means the party to whom MGC provides the Supply under this Agreement or any person who is or who appears on reasonable grounds to be an agent, employee, Subcontractor or a representative of any one or more of the foregoing.

"Customer Gas Equipment" means any Cylinders and/or Manifold Packs not the property of MGC which is filled by MGC for the Customer.

"Cylinder" means a pressurised gas container.

"Gas" means any industrial, medical or special gases provided by MGC to the Customer.

"Gas Equipment" means any Cylinders and/or Manifold Packs supplied by MGC under this agreement.

"Gas Equipment Bond" means any bond paid by the Customer to MGC under this agreement as detailed in Item 3.5.

"Force Majeure Event" means a circumstance beyond the reasonable direct or indirect control and without the fault or negligence of the party claiming force majeure including one or more act of god, earthquake, storm, cyclone, flood, accident, epidemic, fire or explosion, strikes, riots, civil commotions, lockouts, stoppages, restraints of labour of whatsoever nature or kind (whether actual or threatened), any other industrial or environmental action, landowner action, war, civil war, hostilities, acts of terrorists, breakdown of or accident or failure of any crane or plant or machinery or equipment or software/hardware or other facility from any cause whatsoever, inherent vice or quality of goods, or any action or act whatsoever caused beyond the control of the party.

"Gross Negligence" means any act or failure to act (whether sole, joint or concurrent) which seriously and substantially deviates from a diligent course of action or which is in reckless disregard of or indifference to the harmful consequences.

"GST" means the Good and Services Tax as defined in the *Goods and Services Tax Act 2003 (PNG)*.

"Manifold Pack" means a group of Cylinders permanently contained in a transport frame.

"Period" means the equipment rental period set out in item 3.2.

"Premises" means those areas where MGC provides the Supply pursuant to the Agreement.

"Property" means any property of the Customer including goods, motor vehicles, plant, machinery, equipment, buildings or other items.

"Purchase Order" means an order by the Customer to MGC for:

- (a) the supply of Gas(es);
- (b) the supply of Gas Equipment;
- (c) supply, transport and storage facilities; and/or
- (d) any other incidental products or services.

"Rates" means the fees, rates, charges and/or tariffs payable by the Customer to MGC for the provision of the Supply as set out in:

- (a) any schedule of rates provided from time to time by MGC to the Customer; and/or
- (b) the Schedule,

as varied from time to time in accordance with [clause 3.4](#).

"Returned" has the meaning given in [clause 2.4.5](#).

"Redelivery" means placement on the MGC cylinder dock at the Premises ready for inspection for serviceability and valve closure.

"Representative" means the MGC representative or the Customer representative (as the case may be) appointed by the parties under [clause 6.1](#).

"Review Meeting" means the meetings held for the purposes set out in [clause 6.3](#).

"Schedule" means the Schedule for supply of gas and gas equipment signed by the Customer and MGC, including any Special Conditions contained in such Schedule.

"Special Conditions" means the special terms or conditions (if any) included in the Schedule and applicable to the Supply.

"Standard Terms" means these standard terms and conditions for Supply.

"Subcontractor" means any person, its servants or agents, who pursuant to a contract or arrangement with any other person provides or agrees to provide the Supply or any part of the Supply.

"Supply" means the supply of Gas or Gas Equipment by MGC in any way whatsoever connected with or arising out of the Purchase Order and/or under this Agreement.

"Uplift" means transition from the MGC cylinder dock and placement onto the Customer's own, or contracted, transport (whether shipping or transport container or a vehicle deck).

"Wilful Misconduct" means an intentional disregard of good and prudent standards of performance or of any of the terms of this Agreement.

1.2 General provisions

1.2.1 The Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by the Agreement and has no further effect.

1.2.2 All rights, immunities, indemnities and limitations of liability in the Agreement will continue to have their full force and effect in all circumstances and notwithstanding any breach of the Agreement by MGC or any other person entitled to the benefit of such provisions.

1.2.3 If any provision or any part of any provision of the Agreement is unenforceable such unenforceability will not affect any other provision or any other part of such provision.

1.2.4 Any right that a person may have under the Agreement is in addition to, and does not replace or limit, any other right that the person may have.

1.2.5 Any Special Conditions will prevail in the event of any inconsistency with the terms of the Agreement.

1.3 Rules for Interpreting this Document

1.3.1 Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

1.3.2 A reference to:

- a) legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- b) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- c) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
- d) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
- e) anything (including a right, obligation or concept) includes each part of it.

1.3.3 A singular word includes the plural, and vice versa.

1.3.4 A reference to dollars, AUD or \$ is to an amount in Australian currency, a reference to USD is to United States Dollars and a reference to PGK is to Papua New Guinea Kina.

2. SUPPLY, GAS AND GAS EQUIPMENT

2.1 Supply

2.1.1 The Customer may request that MGC provide the Supply by delivering a Purchase Order to MGC either orally or in writing (including by fax, letter or email).

2.1.2 Subject to availability and [clause 7.1](#), MGC must accept a Purchase Order where the Customer is not in breach under this Agreement.

2.1.3 Upon acceptance of a Purchase Order MGC shall promptly and diligently provide the Supply to the reasonable satisfaction of the Customer and in accordance with the Agreement.

2.2 Gas

2.2.1 Any residual Gas in the Gas Equipment reverts to MGC on Redelivery, and no allowance for value will be made against the Customer's account for such Gas.

2.2.2 MGC gives no warranty as to the fitness for purpose of the Gas. Any statutory warranty as to the fitness for purpose of the Gas is expressly excluded to the extent to which it can be excluded.

2.3 Valves

2.3.1 The Customer must ensure that Gas Equipment has all valves closed prior to being disconnected.

2.3.2 The Customer must return Gas Equipment to MGC with all valves closed.

2.4 MGC Gas Equipment

2.4.1 Gas Equipment remains the property of MGC at all times. MGC may reclaim and repossess the Gas Equipment from any location at any time at its sole discretion.

2.4.2 Gas Equipment may only be refilled by MGC, and the Customer must not allow the Gas Equipment to be refilled by any other supplier or with any other gas or any other product.

2.4.3 The Customer must only use Gas Equipment for the storage of pressurised Gas sold by MGC.

2.4.4 Gas and Gas Equipment is supplied "ex-works" MGC for transport away from, and return to, the Premises at the expense and risk of the Customer.

2.4.5 Gas Equipment is Returned when an official and uniquely numbered MGC receipt, noting:

- (a) the date and time of return;
- (b) the condition of the relevant Gas Equipment as regards serviceability and valve closure;
- (c) any damage or deleterious action and the charges (if any) to effect good repair of the Gas Equipment,

is issued to the Customer's authorised delivery agent in triplicate and all copies are signed by that delivery agent. One copy will be given to the delivery agent, one copy posted to the Customer's address and one copy will be retained by MGC.

2.4.6 MGC gives no warranty as to the fitness for purpose of the Gas Equipment. Any statutory warranty as to the fitness for purpose of the Gas Equipment is expressly excluded to the extent to which it can be excluded.

2.4.7 The Customer will:

- (a) at its own expense transport or transfer the Gas Equipment including undertaking safe loading, securing and unloading of the Gas Equipment and all necessary equipment, labour and facilities provided however that the Customer may request MGC to undertake the transport of the Gas Equipment and the parties may agree rates at which MGC will undertake to transport the Gas Equipment;
- (b) secure the Gas Equipment, after placement into a shipping or transport container and/or onto a vehicle deck, for transport away from, and return to, the Premises;
- (c) use the Gas and the Gas Equipment in a skilful and proper manner and only for the purposes and within the capacity for which it was designed;
- (d) comply with all statutory and other regulations in relation to the use of the Gas and Gas Equipment;
- (e) comply will all reasonable directions of MGC as to use of the Gas and Gas Equipment and all manufacturers' specifications;
- (f) immediately advise MGC of any failure of or damage to the Gas Equipment; and
- (g) not part with possession of, including by way of security, grant any rights in respect of or allow any other party to use the Gas or the Gas Equipment.

2.4.8 The Customer will be responsible for the security of the Gas Equipment during the hire period and will ensure that it is not used in a manner or in circumstances in which it is at risk of sustaining loss or damage.

2.5 Customer Gas Equipment

The Customer will be responsible for the safety and security of the Customer Gas Equipment and will comply with all statutory and other regulations in relation to the maintenance and use of the Customer Gas Equipment and at the time of refilling the Customer Gas Equipment must have a valid pressure test certificate and be of serviceable condition.

3. PAYMENT

3.1 Rates

3.1.1 The Customer must pay MGC for the Supply in accordance with the Rates.

3.1.2 The Rates for rental of Gas Equipment are calculated on the number and type of items of Gas Equipment which have not been Returned at the end of each calendar month. The Customer may receive and return any number of items of Gas Equipment during a period.

3.1.3 If the Gas Equipment has not been Returned by the latest to occur of:

- (a) 4 months from Uplift of the Gas Equipment; or
- (b) where the Equipment Return Period is greater than 4 months, then at the end of the Equipment Rental Period,

then MGC shall charge the Customer will the full value of the Gas Equipment.

3.1.4 The Customer shall pay all charges to effect good repair of the Gas Equipment and is responsible for all loss of, and damage to, the Gas Equipment.

3.2 Gas Equipment Bond

At the end of this agreement, upon payment of all monies owing to MGC by the Customer and Redelivery of all Gas Equipment in serviceable condition, the Gas Equipment Bond will be refunded to the Customer. If, at the end of the hire period:

- (a) there are moneys outstanding from the Customer to MGC; or
- (b) some or all of the Gas Equipment has not been Redelivered or Returned; or
- (c) some or all of the Gas Equipment is not in serviceable condition,

then MGC may apply the Gas Equipment Bond (or part of it) against the moneys outstanding or the repair and/or replacement of the Gas Equipment.

3.3 Terms of Payment

3.3.1 The Customer must pay cash for the Gas prior to MGC delivering Gas to the Customer. Provided however that MGC may agree credit terms with the Customer. Any such credit terms must be agreed in writing and be signed by both parties.

3.3.2 All payments are to be in the Papua New Guinea Kina and must be made to the bank account details set out on the invoice and must quote the reference number on the invoice. Interest will be payable on any sum which remains due and unpaid after the date for payment. Interest will be charged at the relevant Bank of Papua New Guinea Kina facility rate plus 8%. Interest will apply to any disputed invoices that remain unpaid once the dispute has been settled.

3.3.3 The Customer shall be liable for all costs, expenses or fees reasonably incurred by MGC in recovering overdue amounts.

3.3.4 The Customer acknowledges that the Rates are exclusive of GST and that if GST or any other tax in substitution of or in addition to it is or becomes payable, such will be payable by the Customer and if paid by MGC on behalf of the Customer it shall become a debt immediately due and payable to MGC by the Customer.

3.4 Review of Rates

MGC may vary the Rates either:

- (a) at any time, with the agreement of the Customer; or
- (b) every 6 months, provided that revised Rates will be notified in writing to the Customer and such revised Rates shall come into effect at the end of the month where such notice is given.

4. CUSTOMER'S WARRANTIES, OBLIGATIONS AND INDEMNITIES

4.1 General Warranties and Obligations

- 4.1.1 A failure by the Customer to fulfill its obligations under the Agreement will constitute a material breach.
- 4.1.2 The Customer warrants that:
- (a) it is a corporate entity, validly existing under the laws of its place of incorporation;
 - (b) it has the power to enter into and perform its obligations under this agreement and to carry out the transactions contemplated by this agreement;
 - (c) it has taken all necessary action to authorise its entry into and performance of this agreement and to carry out the transactions contemplated by this agreement; and
 - (d) its obligations under this Agreement are valid and binding and enforceable against it in accordance with their terms.
- 4.1.3 The Customer and its servants, agents and Subcontractors will at all times comply with all applicable laws and any policies or procedures of MGC in relation to the provision of the Supply or the Premises including but not limited to regulations and statutes relating to sound environmental practice and the handling of dangerous, hazardous or noxious goods and substances.
- 4.1.4 The Customer will provide MGC with immediate access to any commercial documentation which MGC is obliged to produce at the request of any government or government department or governmental, semi-governmental or judicial person, or a person (whether autonomous or not) who is charged with the administration of a law.
- 4.1.5 If at any time the Customer becomes aware that it is in breach, or is likely to be in breach, of any duty or obligation in the Agreement, the Customer agrees to immediately notify MGC and follow all directions to avoid, remedy or mitigate any such breach or anticipated breach.

4.2 Customer's Insurance

The Customer will obtain and maintain public liability insurance to a minimum value of AUD 20 million for each and every occurrence.

4.3 Customer's Personnel

- 4.3.1 The Customer shall ensure that its personnel comply with any rules or directions of MGC or others in respect of the Premises, the Gas or the Gas Equipment.
- 4.3.2 The Customer shall be liable for, and shall indemnify MGC in respect of:
- (a) any damage to the Premises caused by its personnel;
 - (b) any loss or damage to the property of any person caused or contributed to by its personnel; and/or
 - (c) personal injury to, or the death of, any person caused or contributed to by its personnel.

4.4 Customer Environmental Warranties

The Customer warrants that in respect of the Premises and/or the Gas and/or the Gas Equipment that it will not do or omit to do anything or to use materials, substances or processes which breach or are likely to breach any duty or obligation under any relevant resource management or pollution legislation or the terms of any resource consents held by MGC or which is likely to result in the issue of an abatement order, enforcement proceedings or similar under the legislation.

4.5 Joint and Several Liability

Where the Customer is liable pursuant to the Agreement and more than one person or entity comprises the "Customer", then liability will be joint and several.

5. MGC'S RIGHTS & LIABILITIES

5.1 MGC's Rights

- 5.1.1 MGC may, if in the sole opinion of MGC it is necessary and reasonable to do so, refuse to provide all or any part of the Services.
- 5.1.2 MGC may subcontract the Services (in whole or in part) on any terms.
- 5.1.3 Every exemption, limitation, condition, right, defence and immunity available to MGC will be available to protect a Subcontractor or any person who may be vicariously liable for the acts or omissions of MGC or a Subcontractor.

5.2 Where MGC is Liable

Subject to the limitations in **clause 4** and this **clause 5**, MGC will be liable for:

- (a) physical loss or damage (but not for indirect, special or Consequential Loss or damage) to the Property; and
 - (b) personal injury or death of the Customer's personnel,
- where caused by the negligence of MGC, its employees or agents.

5.3 Cap on MGC's Liability

MGC's liability under **clause 5.2** in respect of the sum claimed or the aggregate of sums claimed under any cause of action or entitlement shall not exceed, in respect of any one event or interconnected series of events, the maximum aggregate sum of AUD 20 million.

5.4 Where MGC is not liable

- 5.4.1 Other than under **clauses 5.2 and 5.3**, both the Property, use of the Premises, Gas and Gas Equipment is, at all times and in all circumstances, at the sole risk of the Customer and MGC will be under no liability whatsoever for any loss, damage or Consequential Loss sustained by the Customer or for any liability of the Customer to third parties, howsoever caused including where MGC has been negligent, and such exclusion shall have the full effect permissible by law.
- 5.4.2 MGC will not be liable in any circumstances whatsoever for any:
 - (a) loss, damage, expense, accident or injury to any property or person caused wholly or principally by the failure of the Customer to comply with any of these Standard Terms;
 - (b) delay or other costs of transportation of any kind howsoever caused including as a result of the negligence of MGC, its employees or agents;
 - (c) any costs, charges, expenses, damages, compensation or any other monies whatsoever for any injury or loss arising out of a failure or negligence by any person, whether or not an agent, employee, or Subcontractor of MGC to properly and adequately secure any Property or Gas Equipment on any vehicle or other form of transport; and/or
 - (d) costs, charges, expenses, damages, compensation or any other monies whatsoever for any injury or loss arising from any negligent failure to inspect Property or Gas Equipment, any failure to note or to report damage thereto (whether apparent or not), or any negligent failure to take steps to protect Property or Gas Equipment.
- 5.4.3 Other than under **clauses 5.2 and 5.3**, MGC will not be liable in any circumstances whatsoever for any:
 - (a) loss of or damage to any Property, Gas or Gas Equipment;
 - (b) death of or bodily injury to a person;
 - (c) deterioration, contamination or evaporation of any Property, Gas or Gas Equipment;

- (d) delay in delivering or failure to deliver any Gas or Gas Equipment;
- (e) delay arising out of the breakdown of any plant, equipment or infrastructure; and/or
- (f) delay or failure to provide the Services.

5.5 Customer's indemnity to MGC

Irrespective of the negligence, breach of contract or wilful default of MGC or others, the Customer agrees to fully indemnify MGC, its employees and agents in all circumstances arising out of the provision of the Services and in respect of the Gas and Gas Equipment the subject of the Services in respect of any loss, cost, expense, demand, damage, claim, liability or compensation:

- (a) arising out of any claim or allegation made against MGC (other than by the Customer);
- (b) arising out of any claim for death of or bodily injury to a person made against MGC (other than by the Customer);
- (c) arising out of or caused by the negligence, breach of contract, breach of statutory duty, Gross Negligence or Wilful Misconduct of the Customer, its employees, agents or Subcontractors;
- (d) to the extent that the liability of MGC has been excluded under these Standard Terms; and/or
- (e) to the extent that the liability of MGC exceeds the limit on liability under **clause 5.3**.

5.6 Notification of Incidents

Any alleged loss, damage, death or personal injury must be notified to MGC at the time of the alleged incident. Written notice of the alleged incident must be given to MGC in accordance with **clause 7.4** within 30 days of the alleged incident. If no such notice is given within this period any claim will be deemed waived and absolutely barred.

5.7 Non- Excludable Rights

5.7.1 The parties acknowledge that:

- (a) under applicable laws, certain conditions and warranties may be implied in any contract and rights and remedies may be conferred on consumers which cannot be excluded, restricted or modified by agreement (the "Non-Excludable Rights"); and
- (b) notwithstanding any clause of this Agreement, the Non-Excludable Rights are not excluded, restricted or modified by these conditions except to the extent permitted by law.

5.7.2 The liability of MGC to the Customer for a breach of any Non-Excludable Right is limited, at MGC's option to:

- (a) supplying the Services again; or
- (b) the payment of the cost of having the Services supplied again.

6. RELATIONSHIP MANAGEMENT

6.1 Appointment of Representatives

The parties agree to appoint representatives for the purposes of the Agreement and either party may change its Representative provided it notifies the other party of the new appointment.

6.2 Representative's Role

The parties must ensure that their Representative:

- (a) is available at all reasonable times for consultation on the Supply or any other issues relating to the Agreement; and
- (b) attends the Review Meetings.

6.3 Review Meeting

The parties must hold Review Meetings to:

- (a) review the performance of both parties under this Agreement;
- (b) discuss any improvement to the provision of the Supply;
- (c) discuss any dispute regarding an invoice or part of an invoice of MGC;
- (d) discuss any proposed variation of Rates; and
- (e) discuss any other issues or disputes arising between the parties in relation to the Agreement.

6.4 Place and Timing of Review Meetings

Review Meetings will be on the dates and at the location(s) as agreed between the parties, being not less than:

- (a) every 3 months for the first year of this Agreement; and
- (b) thereafter every 6 months.

6.5 Dispute Resolution Procedure

6.5.1 If a dispute arises in relation to the Agreement, the parties will endeavour to settle the dispute in good faith within 14 days of written notification of the dispute.

6.5.2 Where a dispute cannot be settled in accordance with clause 6.5.1, the parties will endeavour to settle the matter with the assistance of a mediator appointed by the President of the Papua New Guinea Law Society. Either party may request the President of the Papua New Guinea Law Society to appoint a mediator to the dispute and must, at the time of making that request, provide a copy of that request to the other party.

6.5.3 All mediations will be conducted in Port Moresby.

6.5.4 Nothing in this clause precludes a party from seeking urgent injunctions or other urgent interlocutory relief.

7. MISCELLANEOUS PROVISIONS

7.1 Force Majeure

7.1.1 A party (the "Affected Party") will not be responsible for any complete or partial failure to perform or delay in performing or incorrect performance of its obligations under the Agreement, save for the payment of money, if and to the extent that the delay or failure is caused by Force Majeure.

7.1.2 The Affected Party must use reasonable endeavours to resume fulfilling its obligations as promptly as possible and give prompt notice to the other party of the cessation of the Force Majeure.

7.1.3 The Affected Party must promptly give notice to the other party of the occurrence of the Force Majeure providing details of the Force Majeure and its anticipated likely duration and effect.

7.2 Confidentiality

Each party must keep the terms of the Agreement confidential and must not cause or permit any persons to disclose the terms of the Agreement without the consent of the other party except:

- (a) where necessary for the exercise of any right or compliance with any obligation under the Agreement;
- (b) as required by law or the rule of a stock exchange; or
- (c) to lawyers, accountants and auditors of that party for the purpose of those persons providing services in that capacity to the party that engaged them.

7.3 Notices

7.3.1 A notice, consent or other communication by a party under the Agreement must be in writing and in English and delivered by hand, certified mail or facsimile to the party's Representative at the address of the Representative or to such other addresses or facsimile numbers as a party may notify to the other from time to time in writing.

7.3.2 Notices sent by:

- (a) personal delivery shall be deemed to have been served at the time at which the notice was received;
- (b) certified mail shall be deemed to have been served on the date indicated on the return receipt; and
- (c) facsimile shall be deemed to have been served at the time the written confirmation of the successful transmission is received by the sender

provided that if a communication is given after 5.00 pm in the place of receipt or on a day which is not a Business Day in the place of receipt, it is taken as having been given at 9.00 am on the next day which is a Business Day.

7.4 Amendment and Assignment

7.4.1 The Agreement can only be amended, supplemented, replaced or novated by another document signed by both parties.

7.4.2 The Customer's rights, interests, entitlements and obligations under the Agreement are not capable of being assigned or transferred without the prior written consent of MGC.

7.5 Expenses

Each party must pay its own expenses incurred in negotiating, executing, stamping and registering the Agreement.

7.6 Giving Effect to the Agreement

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to the Agreement.

7.7 Default, Insolvency and Termination

7.7.1 If either party breaches any term of this agreement the non-defaulting party may, if the breach is capable of remedy, serve a notice on the defaulting party requiring that the breach be remedied within a specified period not less than 30 days after service of the notice on the defaulting party.

7.7.2 In the event that the breach is incapable of remedy or if capable of remedy is not remedied within the period specified in the notice, then the non-defaulting party may give further notice to the defaulting party to:

- (a) elect wholly or partly to suspend performance of the agreement until the breach, if capable of being remedied, has been remedied by the defaulting party;
- (b) take such action as the party deems reasonably necessary to cure the breach (the cost of such action being recoverable from the defaulting party as a debt due); or
- (c) terminate all or part of the agreement.

7.7.3 If a party, being a company:

- (a) stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;

- (b) is insolvent within the meaning of section 21(1) of the *Insolvency Act 1951 (PNG)* (the “Insolvency Act”);
- (c) is presumed by a court to be insolvent by reason of section 153 of the Insolvency Act;
- (d) fails to comply with a statutory demand under the Insolvency Act;
- (e) has an administrator, controller or similar officer appointed over all or any of its assets or undertakings, or any step preliminary to such an appointment is taken; or
- (f) has an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting, or steps taken for its winding up or dissolution or for it to enter into an arrangement, compromise or composition with or assignment for the benefits of its creditors, or a class of them or any of them,

then the other party may terminate the agreement by notice to that party.

7.7.4 Either party may terminate this agreement at any time and for any reason by giving written notice of termination 90 days in advance to the other party and upon such termination neither party shall be liable to the other for any costs, claims, damages or liabilities arising out of such early termination including, without limitation, Consequential Loss, punitive or exemplary damages.

7.8 Waiver of Rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

7.9 Consents

The parties may agree or consent, not agree or consent, or agree or consent subject to conditions, in their absolute discretion unless the Agreement expressly contemplates otherwise.

7.10 Jurisdiction

The Agreement will be governed and construed in accordance with the laws of Papua New Guinea and the parties submit to the non-exclusive jurisdiction of the Courts of Papua New Guinea.

7.11 Relationship

Nothing in the Agreement creates a relationship of employer and employee, principal and agent or partnership between the parties.

7.12 GST

7.12.1 In this clause, a word or expression defined in the *Goods and Services Tax Act 2003 (PNG)* has the meaning given to it in that Act.

7.12.2 If a party makes a supply under or in connection with this agreement in respect of which GST is payable, the consideration for the supply but for the application of this clause (GST exclusive consideration) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

7.12.3 If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with [clause 7.12.2](#).

7.12.4 A party does not have to make a payment for a taxable supply made under or in connection with this agreement until it receives a tax invoice for the supply to which the payment relates.