

**Ixom Operations Pty Ltd (NZ Branch)**  
**Company Number 5488365**  
**Conditions of Sale**  
**Effective 6<sup>th</sup> August 2015**

**1. DEFINITION**

In these terms and conditions:

**"Buyer"** means the person to whom any quotation is made, any person offering to contract with Ixom on these Conditions of Sale and any person who purchases Goods from Ixom;

**"Consumer"** means a person who acquires Goods of a kind ordinarily acquired for personal, domestic or household use or consumption but excludes a Person acquiring the Goods, or holding himself or herself out as acquiring the Goods, for a commercial purpose including for the purpose of:

- (i) resupplying the Goods in trade;
- (ii) consuming them in the course of a process of production or manufacturer; or
- (iii) repairing or treating other goods or fixtures on land;

**"Contract"** means Ixom's pricing letter or letter of offer to which the supply of the Goods relates, as updated in writing by the mutual agreement of the parties, the attachments (if any) to that letter and these Conditions of Sale;

**"Goods"** means all equipment, products and services agreed to be supplied or performed by Ixom to/for the Buyer under any contract, arrangement or understanding between Ixom and the Buyer (including pursuant to a quotation or letter of offer accepted by the Buyer);

**"Individual"** means a Buyer who is a natural person;

**"Ixom"** means Ixom Operations Pty Ltd (NZ Branch), incorporated in Australia;

**"Person"** means an Individual and a corporation;

**"PMSI"** means a "purchase money security interest", which has the meaning ascribed to that term by section 16 of the PPS Act;

**"PPS Act"** means the Personal Property Securities Act 1999 as amended; and

**"Security Interest"** has the meaning given to that term by section 17 of the PPSA (except where the PPSA does not apply to the creation of any such interest, "Security Interest" means a fixed charge).

**2. ENTIRE AGREEMENT**

(a) Clause 2(b) and (d) shall not apply to a Consumer.

(b) Unless Ixom otherwise agrees in writing, the Contract contains the only terms and conditions of sale to which Ixom will be bound in connection with the supply of Goods to the Buyer.

(c) The Buyer agrees that the Conditions of Sale contained in this Contract will in all circumstances prevail over the Buyer's terms and conditions of purchase or supply (if any).

(d) These Conditions of Sale supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods including, but not limited to, those relating to the performance of the Goods or the results that ought to be expected from using the Goods.

(e) Without limiting any other mode of acceptance of this Contract exercised by the Buyer, the Buyer acknowledges that by accepting delivery of the Goods and/or the credit terms offered by Ixom, the Buyer by such conduct agrees to be bound by the Conditions of Sale of this Contract. Where the Buyer is not a Consumer, these Conditions of Sale will apply to the exclusion of all other terms and conditions of purchase or supply.

(f) Ixom may change these Conditions of Sale from time to time. These Conditions of Sale and any changes to the Conditions of Sale will be shown on the website <http://www.ixom.com/saleconditions>, together with the date on which any new Conditions of Sale become effective. It is your obligation to check the Ixom website or ask Ixom to provide a copy of the most up to date Conditions of Sale at the time you enter into a Contract. By entering into a Contract after the date upon which the new Conditions of Sale become effective the Buyer accepts and is bound by the changed Conditions of Sale for that Contract and future Contracts. If the Buyer does not accept the changes to the Conditions of Sale, it may notify Ixom to close its account. No amendment or variation of the Contract, other than amendment or variation to the Conditions of Sale as set out in this clause 2, is valid or binding on a party unless made in writing and executed by both parties. Ixom may change these Conditions of Sale from time to time.

**3. WARRANTIES, GUARANTEES & LIABILITY**

(a) Clause 3(c), (d), (e) and (f) shall not apply to a Consumer.

(b) Ixom warrants that the Goods supplied accord with any relevant specification contained or referenced in the Contract and are of acceptable quality.

(c) Apart from the warranties contained in clause 3(b), to the maximum extent permitted by law, all warranties and guarantees expressed or implied by statute, the common law, equity, trade, custom or usage or otherwise, in relation to the supply of the Goods, not including the supply of Good to Consumers, are expressly excluded. Nothing in this clause is intended to attempt to contract out of any liability which may arise under the Consumer Guarantees Act 1993.

(d) Ixom's liability for its breach of clause 3(b) or a non-excludable guarantee or warranty implied into the Contract by law or other means is limited to any one of the following as determined by Ixom:

- (i) the prompt retrieval of the non-compliant Goods at Ixom's cost and the replacement of the Goods or the supply of equivalent Goods;
- (ii) the repair at Ixom's cost of the Goods or payment of the cost of having the Goods repaired; or
- (iii) the payment by Ixom of the cost of replacing the Goods or of acquiring equivalent Goods.

(e) Subject to clause 3(d) and without limiting any other provision in these Conditions of Sale, Ixom's total liability to the Buyer for any claim howsoever arising in connection with the Contract or the supply of Goods, whether based on contract, tort, statute, equity or any other cause, is limited to 10% of the Contract's price of the Goods to which the claim relates.

(f) The Buyer will examine the Goods for non-conformance with clause 3(b) and shall notify Ixom of any non-conformances in writing within 30 days of delivery and the Buyer may reject the non-conforming Goods in that period. If the Buyer does not notify Ixom within 30 days of delivery the Buyer shall be deemed to have accepted the Goods and it shall no longer be entitled to exercise its rights in this clause 3(f) in respect of the relevant batch of Goods or its rights in respect of clause 3(b).

(g) To the extent permitted by law and notwithstanding anything else in the Contract, where the Buyer is not a Consumer, Ixom excludes all liability whatsoever to the Buyer and its related parties and affiliates arising out of or in any way connected with a Contract for any loss of profits, loss of business revenue, failure to realise expected profits or savings, overhead costs, loss of goodwill, loss of reputation, loss of value in any intellectual property, damages or liquidated sums payable pursuant to other agreements or in connection with third party claims, other economic losses, and/or any consequential or indirect losses of any kind howsoever arising and whether caused by or arising in connection with breach of statute, breach of contract, equity, negligence or other tort.

**4. FAIR TRADING**

(a) Clause 4 shall not apply to a Consumer.

(b) Ixom and the Buyer agree to contract out of sections 9, 12A, 13 or 14(1) of the *Fair Trading Act 1986* and that such sections will not apply in connection with this Contract, the supply or delivery of the Goods, the negotiation of the Contract or representations made in connection with those subjects.

**5. ADVICES**

(a) Clause 5 shall not apply to a Consumer.

(b) The Buyer hereby acknowledges that:

- (i) it has not relied on any service involving skill or judgement, or on any advice, recommendation, information or assistance provided by Ixom in relation to the Goods or their use or application; and
- (ii) it is responsible for ensuring that Goods that comply with the warranties in clause 3(b) are fit and suitable for its purposes, requirements, processes, plant and equipment.

**6. DELIVERY & RESPONSIBILITY TO PURCHASE**

(a) Clause 6(c) shall not apply to a Consumer.

(b) Ixom will make all reasonable efforts to have the Goods delivered to the Buyer on or about the date or within the timeframe forming part of the Contract.

(c) Ixom shall not be liable for any failure to deliver or delay in delivery for any reason.

(d) The Buyer will be contractually obligated to take delivery of and pay for all Goods ordered by it from Ixom, and which Ixom supplies or makes available to the Buyer in accordance with the Contract.

**7. RISK**

(a) Unless otherwise agreed in writing, all risk in and to the Goods purchased shall pass to the Buyer upon the unloading of the Goods at the Buyer's premises or such other delivery point agreed in writing by the parties.

(b) Without in any way limiting the operation of the foregoing, upon delivery of the Goods to the Buyer or his agent or to a carrier commissioned by the Buyer, the Buyer covenants and warrants to Ixom that, in the storage and handling of the Goods, the Buyer and his agents and carriers shall comply with all relevant environmental laws and regulations, and comply with all necessary and/or relevant permits or licences pertaining to the storing and handling of the Goods, and the Buyer shall ensure that the Buyer and his agents and carriers are familiar with and adhere to all the necessary and appropriate precautions and safety measures relating to the storing and handling of the Goods. Without limiting the foregoing, the Buyer shall ensure that where the Goods are comprised of bulk chemicals, its storage tanks and vessels and the pipes, hoses, valves and other components used for the storage or transfer of those Goods are properly installed and maintained so as to prevent any death, injury or loss of containment during the processes of unloading the Goods into and storing those Goods in those tanks or vessels.

(c) If Ixom does not receive forwarding instructions sufficient to enable it to despatch the Goods within 14 days of notification to the Buyer that they are ready,

the Buyer shall be deemed to have taken delivery of the Goods from such date. The Buyer shall thereafter be liable for reasonable storage charges payable monthly on demand.

- (d) Where the Buyer re-sells or distributes the Goods to any third parties, it shall be responsible for ensuring that it provides detailed instructions to those third parties regarding the safe storage, handling and use of those Goods and any cylinders, drums or other packaging in which those Goods are stored.

#### 8. TITLE

- (a) Title in and to the Goods shall not pass to the Buyer until payment in full for all Goods supplied is received in full and in cleared funds.
- (b) The Buyer acknowledges that until title in and to the Goods passes to the Buyer in accordance with this clause, the Buyer holds the Goods as bailee of Ixom and that a fiduciary relationship exists between the Buyer and Ixom.
- (c) Until title in and to the Goods passes to the Buyer in accordance with this clause the Buyer shall store the Goods separately and in such a manner that they are clearly identified as the property of Ixom. In addition to any rights Ixom may have under Part 9 of the PPS Act, Ixom shall be entitled at any time until title in and to the Goods passes to the Buyer to demand the return of the Goods and, except where the Buyer is an Individual, shall be entitled without notice to the Buyer and without liability to the Buyer to enter (or have its representatives enter) any premises occupied by the Buyer in order to search for and remove the Goods. The Buyer and its representatives shall provide all reasonable assistance to Ixom and its representatives for this purpose. If there is any inconsistency between Ixom's rights under this clause 8(c) and its rights under Part 9 of the PPS Act, this clause 8(c) prevails.
- (d) The Buyer acknowledges that if it sells, leases or otherwise deals with the Goods or products incorporating the Goods before title in and to the Goods has passed to the Buyer in accordance with this clause, it shall hold the proceeds of sale, lease or such dealing on trust for Ixom in a separate account.
- (e) If title in and to the Goods has not passed to the Buyer in accordance with this clause, the Buyer's implied right to sell, use or consume the Goods in its operations shall immediately terminate upon the happening of any of the events stipulated in paragraph 11(b)(i)-(v) hereof.
- (f) In part consideration for the supply of the Goods, the Buyer grants and acknowledges that Ixom may register:
- (i) a PMSI and a Security Interest in:
    - (A) all Goods supplied under this Agreement; and
    - (B) all present and after-acquired personal property which is the proceeds of the Goods referred to in sub-clause 8(f)(i)A, (together referred to as the "Collateral") as continuing security for the purpose of securing all money payable, and Buyer's obligations, under this Agreement.
- (g) By accepting delivery of any Collateral, the Buyer acknowledges that:
- (i) this Agreement constitutes a security agreement for the purposes of section 36 of the PPS Act; and
  - (ii) Buyer has received value as at the date of first delivery of the Collateral and has not agreed to postpone the time for attachment of the Security Interest granted under this Agreement.
- (h) Pursuant to section 148 of the PPS Act, the Buyer waives its right to be given a copy of any verification statement in respect of registration of any financing statement or financing change statement relating to any Security Interest (including, where applicable, a PMSI) which relates to or arises from this Agreement (including, where this Agreement gives rise to any prior security interest as defined in section 193 of the PPS Act, any registration pursuant to Part 12 of the PPS Act).
- (i) The Buyer agrees that if it requests Ixom to discharge or amend any financing statement which Ixom has registered under the PPS Act in respect of the Collateral, pursuant to section 162 of the PPS Act, Ixom shall be entitled to charge the Buyer such fees as Ixom may from time to time determine in respect of processing such request (including any legal costs sustained).
- (j) The Buyer agrees that if and when requested by Ixom, it shall at its own cost do all such things as are reasonably necessary to enable Ixom to obtain and maintain, in respect of all the Collateral, a Security Interest (including, where applicable, a PMSI) in respect of this Agreement that is at all times perfected under the PPS Act with the priority required by Ixom, including:
- (i) the provision of such information as Ixom may require in order to register (including under Part 12 of the PPS Act, if appropriate) or renew registration under the PPS Act of any Security Interest (including, where applicable, a PMSI) relating to or arising from this Agreement; and
  - (ii) the execution of such further documentation as Ixom may reasonably require for that purpose.
- (k) The Buyer agrees that if the rights and obligations of either party under this Agreement are inconsistent with any provision of the PPS Act, then to the extent permitted by PPS Act, the relevant provisions of this Agreement shall prevail.
- (l) The parties agree that nothing in section 114(1)(a), 133 and 134 of the PPS Act will apply to this Agreement.
- (m) The Buyer waives its rights as debtor to:
- (i) receive a statement of account under Section 116 of the PPS Act;
  - (ii) receive notice of a secured party's proposal to retain collateral under Section 120(2) of the PPS Act;
  - (iii) object to a secured party's proposal to retain collateral under Section 121 of the PPS Act;
  - (iv) not have goods damaged when a secured party removes an accession under Section 125 of the PPS Act;
  - (v) be reimbursed for damage caused when a secured party removes an accession under Section 126 of the PPS Act;
  - (vi) refuse permission to remove an accession under Section 127 of the PPS Act;
  - (vii) receive notice of the removal of an accession under Section 129 of the PPS Act; and
  - (viii) apply to the Court for an order concerning the removal of an accession under Section 131 of the PPS Act.

#### 8A OBLIGATIONS IN RESPECT OF SECURED PROPERTY

- (a) Until all amounts owing to Ixom have been paid and all other obligations owed by the Buyer to Ixom have been met, the Buyer:
- (i) must keep full and complete records of the Collateral supplied under this Agreement;
  - (ii) must return any Collateral supplied under this Agreement if requested to do so by Ixom following non-payment of any amount owing by the Buyer to Ixom or non-fulfilment of any other obligation owed by the Buyer to Ixom, without affecting any other rights Ixom may have;
  - (iii) gives Ixom the right to inspect any Collateral supplied under this Agreement or any part of such Collateral at all reasonable times;
  - (iv) must not change name, address or contact details without providing at least 30 days' prior written notice;
  - (v) must not attempt to sell, lease, rent, dispose of, assign, grant, part with, mortgage, create a security interest in or permit any lien over any Collateral supplied under this Agreement other than in the ordinary course of carrying out the Buyer's business, without our prior written consent.
  - (vi) must not give Ixom a written demand or allow any other person to give Ixom a written demand requiring Ixom to register a financing change statement under the PPS Act or enter into or allow any other person to enter into the register of personal property securities a financing change statement under the PPS Act in relation to the Collateral;
  - (vii) must advise Ixom immediately of any event that may lead to termination of this Agreement or any action by third parties (including any of the Buyer's creditors) affecting Ixom's interest in the Collateral; and
- (b) Ixom, as your agent, may, subject to the Credit (Repossession) Act 1997, and without notice, enter any premises where the Goods supplied under this Agreement are stored and remove them (including any Collateral supplied under this Agreement that have become an accession under the PPS Act), without being responsible for any damage caused in doing so. Ixom may resell any of the Collateral supplied under this Agreement and apply the proceeds of sale in reduction of any amount owing (or retain any of the Products or Equipment supplied under this Agreement for our own benefit).
- (c) The Buyer acknowledges that Ixom has a security interest (for the purposes of the PPS Act) in the Goods and any proceeds described in sub-clause 8(f)(i)B until title passes to the Buyer in accordance with clause 8. This security interest secures all moneys owing by the Buyer to Ixom under any Contract or otherwise. The Buyer acknowledges that each security interest over Goods (or their proceeds) arising under this clause is a "purchase money security interest" under the PPS Act to the extent that it secures payment of the amounts owing in relation to those particular Goods. The Buyer will do anything reasonably required by Ixom to enable Ixom to register these security interests, with the priority Ixom requires, and to maintain those registrations.
- (d) The security interests arising under this clause attach to the Goods when the Buyer obtains possession of the Goods and the parties confirm that they have not agreed that any security interest arising under this clause attaches at any later time.

#### 9. PRICE

Unless otherwise agreed in writing, the price charged for the Goods shall be determined and adjusted in accordance with Ixom's final pricing letter or offer forming part of the Contract. Without limiting its rights in clause 10, Ixom may in its sole discretion charge interest on overdue invoiced amounts at the rate of 1.5% per calendar month (pro-rated to part of a month), compounding monthly and commencing from the date on which the invoiced amount becomes overdue.

#### 10. FORCE MAJEURE

Deliveries may be totally or partially suspended by Ixom during any period in which Ixom may be prevented or hindered from manufacture, delivery or supply through any circumstances outside Ixom's reasonable control or where such manufacture, delivery or supply is rendered materially more expensive by such circumstances. Circumstances beyond Ixom's reasonable control shall include, without limitation, strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, inputs, equipment, facilities or services on usual terms, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network. Ixom shall not incur any liability to the Buyer in respect of such suspension.

#### 11. PAYMENT AND DEFAULT

- (a) Subject to sub-clause 11(c) hereof, and unless otherwise agreed in writing all invoices shall be payable by the 20<sup>th</sup> day of the month following the month in which the invoice is dated, or as otherwise agreed in writing between Ixom and the Buyer.
- (b) If any of the events set out in (i) to (v) below occur, Ixom may at its option and absolute discretion withhold further deliveries or cancel the Contract without notice to the Buyer and without prejudice to any other action or remedy which Ixom has or might otherwise have had, and/or open a new trading account for the Buyer with cash on delivery payment terms.
- (i) The Buyer makes default in any payments or is unable or states that it is unable to pay its debts as and when they fall due.
  - (ii) The Buyer being an individual commits an act of bankruptcy or has a controller or trustee appointed in respect of the Buyer's estate or any part of the

- Buyer's property or assets.
- (iii) The Buyer being a company passes a resolution for its winding up or enters into liquidation or has an application for winding up filed against it.
  - (iv) A receiver, receiver and manager, controller or voluntary administrator is appointed over any part of the property or assets of the Buyer.
  - (v) The Buyer experiences any analogous event having substantially similar effect to any of the events specified above.
- (c) In such circumstances all moneys owing and outstanding to Ixom on any account whatsoever and irrespective of whether the due date on any statement of account has occurred or passed shall become immediately due and payable. The Buyer shall indemnify Ixom from and against all costs and disbursements incurred by Ixom in pursuing payment of any overdue debt owed by the Buyer to Ixom (including enforcing any security interest arising under this Contract), including without limitation legal costs on a solicitor and own client basis and the costs charged to Ixom by a debt collection agency and/or bailiff.
- (d) Notwithstanding sub-clause 11(a) hereof Ixom may at all times in its sole and unfettered discretion and without being under any duty or obligation to assign reasons therefore review, alter or terminate the Buyer's credit limit or payment terms without notice. Without limiting the generality of the foregoing, the decision of Ixom shall be final and Ixom accepts no liability or responsibility for any loss, howsoever arising, incurred by the Buyer due to the operation of this condition.
- 12. CONTAINERS, CYLINDERS & OTHER PACKAGING**
- (a) Containers, drums, cylinders, other storage vessels and packaging in which Goods are delivered and for which a deposit or rental charge is payable or which are otherwise made available by Ixom on a returnable basis, remain the property of Ixom and must not be used for any other commodity than that contained therein at the time of delivery.
- (b) On their return in good order and condition by the Buyer and at the Buyer's expense, to the factory or store of Ixom from which the Goods were delivered, the full amount of any deposit will be repaid to the Buyer. Containers will be deemed to be still in the Buyer's hands until received at such factory or store. In the case of containers which are received at a factory or store of Ixom otherwise than in good order and condition, only such part of the deposit as in the opinion of Ixom is reasonable, having regard to their actual condition, will be allowed to the Buyer.
- (c) Containers in which Goods are delivered and for which a separate charge other than a deposit or rental charge is shown in the face of the invoice are, unless otherwise specified therein or agreed by the parties, sold with the Goods and their price as shown on the invoice must be paid with the price of the Goods.
- (d) No deposit charges are made for cylinders or drums containing compressed gases but such cylinders and drums are not sold to the Buyer and always remain the property of Ixom. Cylinders and drums must be returned at the Buyer's expense in good order and condition to the factory or store of Ixom from which they were delivered. Cylinders and drums will be deemed to be still in the Buyer's hands until received at such factory or store. Except where the Buyer is a Consumer and to the extent the law permits, all risks whatsoever associated with the deterioration of those cylinders or drums or those cylinders or drums becoming defective rests with the Buyer absolutely and the Buyer agrees to indemnify Ixom in respect of any cylinder or drum that is not returned in good order or condition to Ixom within one month of any demand being made by Ixom for the return of the cylinder or drum.
- (e) The Buyer acknowledges that Ixom may have a security interest (for the purposes of the PPS Act) in any containers, drums and cylinders described in sub-clause 12(a) or 12(c) and the proceeds of these items. The Buyer will do anything required by Ixom to enable Ixom to register these security interests, with the priority Ixom requires, and to maintain those registrations.
- 13. PALLETS**
- (a) Unless otherwise agreed to in writing all pallets on which Goods are delivered remain the property of Ixom and must be returned to Ixom at the Buyer's expense in good order and condition to the factory or the store of Ixom from which they were delivered. Pallets will be deemed to be still in the Buyer's hands until received at such factory or store. Except where the Buyer is a Consumer and to the extent the law permits, all risks whatsoever associated with the pallets rest with the Buyer absolutely and the Buyer agrees to indemnify Ixom in respect of any pallet that is not returned in good order and condition to Ixom within one month of delivery of the Goods.
- (b) The Buyer acknowledges that Ixom may have a security interest (for the purposes of the PPS Act) in any pallets described in this clause 13 and the proceeds of these items. The Buyer will do anything required by Ixom to enable Ixom to register these security interests, with the priority Ixom requires, and to maintain those registrations.
- 14. GENERAL LIEN**
- (a) In addition to any right of lien to which Ixom may be entitled under the common law, Ixom shall be entitled to exercise a general lien over all items in its possession belonging to the Buyer until the Buyer has paid in full for all Goods supplied by Ixom to the Buyer. Ixom may in its sole discretion sell any item that is subject to the said lien, provided that Ixom shall pay to the Buyer any surplus proceeds that are realised by it from a sale of any such items after discharging in full all monies outstanding to Ixom in respect of Goods that have been delivered by it to the Buyer and all reasonable costs of sale incurred by Ixom.
- (b) The Buyer acknowledges that Ixom has a security interest (for the purposes of the PPS Act) in these items, and the proceeds of these items, until the Buyer has paid in full for all Goods supplied by Ixom in accordance with this clause 14. The Buyer will do anything required by Ixom to enable Ixom to register this security interest, with the priority Ixom requires, and to maintain that registration. Despite this requirement for registration of this security interest, and regardless of whether or not it is actually registered, Ixom may perfect this security interest by possession of the relevant items.
- 15. WAIVER**
- No failure to exercise nor any delay or omission in exercising any right, power or remedy by Ixom operates as or constitutes a waiver. A single or partial exercise by Ixom of any right, power or remedy does not preclude any other or further exercise by it of that or any other right, power or remedy. A waiver is not valid or binding on Ixom unless made in writing. No failure by Ixom to exercise, nor any delay or omission by Ixom in exercising, any right, power or remedy, nor any representation made or conduct carried out by Ixom under the Contract or in connection with the supply of the Goods or any of them shall constitute or provide grounds for a common law or equitable estoppel. Nothing in this clause is intended to contract out of any rights or remedies available to Consumers under the Consumer Guarantees Act 1993.
- 16. SEVERANCE**
- If any provision of these Conditions of Sale or its application to any person or circumstance is or becomes invalid, illegal or unenforceable the provision shall so far as possible be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and the remaining provisions of these Conditions of Sale shall not in any way be affected or impaired.
- 17. GOVERNING LAW**
- The supply of Goods under these Conditions of Sale is governed by the laws of New Zealand and Ixom and the Buyer submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 18. TRANSACTION TAX**
- Where a transaction tax, including a goods and services tax ("GST") and any transaction taxes that come into existence after the date of these Conditions of Sale, applies to any supply made under these Conditions of Sale, Ixom may recover from the Buyer an additional amount on account of that transaction tax in accordance with clause 11.
- 19. HARDSHIP**
- (i) For the purposes of this clause, "Hardship Event" means:
- (A) any changes in raw material inputs outside of the manufacturer's control which leads to increased costs to Ixom in sourcing the Goods from a manufacturer in a country outside New Zealand, including but not restricted to increases in fuel prices, energy costs, raw material cost or freight and transport costs; and/or
  - (B) any changes to or introduction of new national, central or regional laws, regulations or policies in a country outside New Zealand which lead to increased costs to Ixom in sourcing the Goods from a manufacturer or supplier in that country, including but not restricted to increases in government charges, taxes, excises, or any other duties or charges, or any change or re-valuation in the medium or long term exchange rate between the local currency in the relevant country and the US dollar.
- (ii) If, at any time during the supply period to which the Contract relates, a Hardship Event occurs, Ixom may notify the Buyer of such occurrence, and request a meeting to discuss appropriate changes to the terms of the Contract (including pricing terms or delivery dates) or adjustments to the supply price in light of such Hardship Event (such notice, a Hardship Notice).
- (iii) The Buyer is not obliged to agree to any change to the terms of the Contract as a result of a Hardship Event, however, if the parties are unable to reach agreement on appropriate changes to the Contract price or other terms of the Contract within 14 days of the date of the Hardship Notice from Ixom, and Ixom is not prepared to continue supplying the Goods, then Ixom may suspend supply of the Goods for the balance of the term of this Contract.
- 20. CHANGE OF LAWS**
- Without limiting clause 18, if any of Ixom's costs of:
- (i) manufacturing, importing, supplying or transporting the Goods; or
  - (ii) procuring raw materials, services or inputs directly related to the activities in (a),
- increase as a result of compliance by Ixom, Ixom's affiliates and related bodies corporate, or third parties, with:
- (iii) the introduction of or any change (including a change in interpretation) in any federal, state, local or other law or regulation or order in New Zealand, including any introduction of or a change in a tax, tax rebate, excise or duty; or
  - (iv) any introduction of or change in New Zealand (including a change in interpretation in) a scheme for management or reduction of greenhouse gas emissions or concentrations, or water use conservation or management,
- then Ixom may, by notice to the Buyer, increase the Price for the Goods to the extent required to pass through such increased costs (which may include, without limitation costs of acquiring permits or credits or costs of required plant modifications or additions). Such cost increase shall take effect immediately from the date such notice is provided.
- 21. MISCELLANEOUS**
- Additional terms relating to price, delivery date/time frame, place(s) of delivery, delivery quantities, purchasing deadlines Incoterms, documents and Goods

specifications and other commercial matters are as indicated in the pricing letter or letter of offer to which the supply of the Goods relates, as updated in writing by the mutual agreement of the parties.

22.

**CONFIDENTIALITY**

The Buyer and Ixom agree that neither party will disclose to any other party any information associated with or arising out of this Agreement including the terms of this Agreement.