Purchase Order Terms and Conditions

1. Contract

1.1 The contract between Fenix and the Supplier consists of the following documents:

(a) the Purchase Order issued by Fenix to the Supplier; and

(b) these Terms and Conditions,

(**Contract**).

1.2 These Terms and Conditions will supersede and replace any of the Supplier's terms and conditions supplied to Fenix in respect of the Goods and/or Services or which purport to apply, which shall be of no legal effect and will not constitute part of this Contract.

1.3 Fenix may enter into a Contract as principal and/or as agent for any Fenix Group Member. Any Fenix Group Member may enter into a Contract as agent for another Fenix Group Member or for a person with whom the Fenix Group Member is in a joint venture, partnership or other similar association.

1.4 Fenix may purchase the Supply for use by a Fenix User. If this is the case, the Fenix User will enjoy the same rights under this Contract as Fenix and may enforce those rights. Fenix holds rights under this Contract in trust for the benefit of the Fenix User and its Personnel.

1.5 This Contract does not confer upon the Supplier any exclusivity in respect of any Goods and/or Services and does not prevent Fenix from entering into arrangements or agreements with third parties for the purchase of any services similar to the Goods and/or Services.

2. Purchase Order

2.1 In consideration of the payment of the Price by Fenix, the Supplier must supply the Goods and/or provide the Services to Fenix in accordance with this Contract.

2.2 A Purchase Order may:

(a) specify the Delivery Dates and/or Delivery Points;

(b) specify the Goods and/or Services the Supplier is required to provide;

(c) include the Price or applicable rates or prices payable for the Goods and/or Services under that Purchase Order (only); and/or

(d) specify any other matter relevant to the supply of the Goods and/or Services.

2.3 A Purchase Order may not amend or vary any of these Terms and Conditions unless expressly agreed by Fenix and signed by an authorised officer of Fenix.

3. Price

3.1 Fenix will pay the Price to the Supplier for the proper provision of the Goods and/or Services in accordance with, and as specified in, the Purchase Order (which includes these Terms and Conditions).

3.2 Unless the parties otherwise agree in the Purchase Order:

(a) the Price is inclusive of all charges, including insurance, premiums and costs, leave entitlements, freight, packaging, packing and delivery costs and Taxes;

(b) the Price is inclusive of the cost of any miscellaneous services of a kind which are commonly provided with the supply of goods of the same or a similar nature to the Goods and any miscellaneous items of a kind which are commonly used or supplied in conjunction with goods of the same or a similar nature to the Goods;

(c) Supplier rates will be fixed for the term of this Contract; and

(d) where Fenix agrees in writing to reimburse the Supplier for any expenses, such amounts will be reimbursed at cost.

3.3 No variation in the Price may be made without the prior consent in writing of Fenix.

4. Variation to the Purchase Order

4.1 Fenix may request that the Supplier prepare a Variation Proposal in accordance with this clause. The Supplier must as soon as practical (but no later than 7 days) after receiving such request, submit the Variation Proposal to Fenix addressing the effect on and value of the proposed Variation.

4.2 The Supplier may initiate and submit a Variation Proposal to Fenix. Following receipt of a Variation Proposal under this clause, Fenix may either:

(a) direct the Supplier to perform the Variation in accordance with the Variation Proposal; or

(b) advise that it does not wish to proceed with the Variation.

4.3 If under clause 4.2 Fenix directs the Supplier to perform a Variation, Fenix will pay the Supplier in accordance with the Variation Proposal.

5. Invoices and Payment

5.1 On delivery of the Goods and/or completion of the Services, the Supplier must provide to the Company a tax invoice within 30 days after the end of each month in which the Supply was provided.

5.2 Any invoices provided by the Supplier must:

(a) be addressed to the attention of the relevant Fenix representative;

(b) refer to the Purchase Order and/or reference number(s) to which the invoice relates;

(c) refer to the Supplier's reference number (if any);

(d) state the issue date of the invoice;

(e) include a detailed description of the delivered Goods and/or Services completed, including the date of delivery in respect of which the invoice relates and the relevant quantity;

(f) detail the Price relating to the relevant Goods and/or Services, broken down to reflect the same Price components on the relevant Purchase Order;

(g) satisfy the requirements for a valid tax invoice as specified in GST Law; and

(h) include any other information required by Law or by Fenix (acting reasonably).

5.3 Fenix is not required to pay:

(a) any amount exceeding the Price; or

(b) for any Goods and/or Services until:

(i) all requirements of the Purchase Order have been satisfied in respect of the Goods and/or Services; and

(ii) a valid tax invoice has been properly rendered to Fenix by the Supplier.

5.4 Upon receipt of a correctly rendered tax invoice, Fenix will pay to the Supplier all undisputed amounts within 30 Calendar

Days from the end of the month in which the invoice was received.

5.5 Fenix may deduct or set off against invoices any undisputed sums.

5.6 Any money payable under this Contract is to be paid by electronic funds transfer to the Supplier's nominated bank account or by such other means as the parties agree.

5.7 A payment made pursuant to this Contract will not be taken or construed as proof or admission that the Goods delivered or Services completed, or any part of the Goods delivered or Services completed, were to the satisfaction of the Company but will only be taken to be payment on account.

5.8 If Fenix disputes an invoice, it will notify the Supplier of the dispute and:

(a) to the extent permitted by Law, Fenix may withhold payment of the disputed part of the relevant invoice pending resolution of the dispute; and

(b) if the resolution of the dispute determines that Fenix must pay an amount to the Supplier, Fenix must pay that amount within 5 Business Days of resolution of the dispute.

6. Supply of Goods and/or Services

6.1 The Supplier must, in supplying the Goods and/or Services:

(a) not interfere with Fenix's activities or the activities of any other person at the Site;

(b) comply with, and procure that the Supplier's Personnel comply with:

(i) all applicable Laws;

(ii) all Site Standards and Procedures, to the extent that these documents are applicable to the supply of the Goods and/or Services by the Supplier; and

(iii) all lawful directions and orders given by Fenix's representative or any person authorised by Law of the Site Standards and Procedures to give directions to the Supplier;

(c) ensure that the Supplier's Personnel entering the Site deliver the Goods and/or perform the Services in a safe manner and in a way that does not prejudice safe working practices, safety and care of property and continuity of work at the Site;

(d) provide all such information and assistance as Fenix reasonably requires in connection with any statutory or internal HSE or community investigation in connection with this Contract, the supply of the Goods and/or Services;

(e) obtain, at the Supplier's expense, any necessary licences, permits, qualifications, registrations and other statutory requirements necessary for the performance of its obligations under this Contract;

(f) leave Fenix's premises secure, clean, orderly and fit for immediate use having regard to the condition of Fenix's premises immediately prior to the performance of Services; and

(g) on request by Fenix, provide to Fenix and its Personnel any information and assistance required to identify, evaluate, implement and report on any matter required by Law in respect of anything used, produced or created in connection with the performance of the Supplier's obligations under this Contract.

7. Supplies that are Goods

7.1 Where the Supply includes Goods, the Supplier:

(a) must deliver the Goods at the Delivery Point by the Delivery Date;

(b) will be responsible for packing, protecting and transporting the Goods to the Delivery Point in accordance with the requirements of this Contract and applicable Laws; and

(c) will be liable for all costs up to and including the Goods' acceptance by Fenix at the Delivery Point.

7.2 Full unencumbered title to Goods will pass to Fenix on the earlier of acceptance of the Goods in accordance with this Contract or when Fenix pays for the Goods. If the Goods are delivered on consignment, the Supplier will retain title until the earlier of when Fenix pays for the Goods or removes them from storage for its use.

7.3 Risk in Goods passes to Fenix in accordance with the applicable Incoterm. If no Incoterm is stated in this Contract, risk in Goods passes on the earlier of acceptance of the Goods in accordance with this Contract or when Fenix pays for the Goods. The reference to any Incoterm in this Contract is solely to indicate passing of risk and, unless otherwise indicated, does not specify the Delivery Point or when title transfers.

7.4 Title and risk do not pass to Fenix in any Goods which are not accepted pursuant to clause 11, or are otherwise rejected by Fenix.

7.5 To the extent the Goods consist of software which is the Supplier's Intellectual Property:

(a) clause 7.2 will not apply to software;

(b) the software may, if agreed in writing by Fenix, be delivered by making it available electronically;

(c) on the earlier of when the Goods are paid for or upon completion of testing, inspection and acceptance of the Goods by Fenix, Fenix:

(i) is granted a non-exclusive, transferrable, royalty-free, irrevocable and perpetual licence to use and reproduce the software for its business purposes; and

(ii) may make the software available for use by third parties that are engaged to perform any services for, or supply any goods to, Fenix in connection with the provision of those services or goods.

8. Supplies that are Services

8.1 Where the Supply includes Services, the Supplier must:

(a) regularly consult with Fenix in relation to its requirements for the Supply of the Services;

(b) if requested by Fenix, consult with Fenix's other consultants or contractors where this is necessary or desirable for the proper performance of the Services;

(c) comply with all and any reasonable directions of Fenix concerning the performance of the Services;

(d) attend all meetings as may be necessary or reasonably required by Fenix for the performance of the Services; and

(e) proceed diligently and according to any time limit prescribed under this Contract or, where no time is prescribed, within a reasonable time.

9. Supplier's Personnel

9.1 Where required, the Supplier must engage all personnel necessary for the supply of the Goods and/or Services under the Contract.

9.2 The Supplier must employ or cause to be employed only personnel that are trained (including in HSE), skilled and experienced to the degree ordinarily expected of personnel engaged in the supply of goods and/or services similar to the Goods and/or Services.

10. Site Access and Safety

10.1 Where required, Fenix will grant the Supplier access to the Site to the extent necessary to perform the Supply. The Supplier and its Personnel will comply with any applicable

policies and standards as may be communicated by or on behalf of Fenix.

10.2 No Supplier's Personnel may commence work on Site unless they have attended the induction courses required by Fenix to be attended by all persons engaged at the Site.

10.3 Where the Supplier has accessed or will access the Site, Fenix may at any time require the Supplier to supply and/or amend its HSE management plan to the extent it applies to the Site in order to comply with its HSE obligations.

10.4 For operational, safety or other reasons, Fenix may restrict or deny the Supplier or its Personnel access to the Site.

11. Acceptance and Defects

11.1 Within 30 days of delivery or performance (unless otherwise stated in this Contract), Fenix may inspect and test the Supply and perform, or require the Supplier to perform, acceptance tests.

11.2 Acceptance of a relevant Supply occurs on the later of:

(a) notification by Fenix of acceptance; or

(b) 30 days after delivery or performance.

11.3 Without prejudice to clauses 11.4 to 11.7 below, if there are any defects in the Goods and/or Services, or any defects remain in any Goods and/or Services after following the process described in clause 11.1, then without limiting any of its other rights or remedies, Fenix may at its absolute discretion:

(a) accept the Goods and/or Services at a reduced price agreed with the Supplier;

(b) require the Supplier, at the Supplier's expense, to:

(i) accept the Goods for return and refund any monies paid by Fenix in respect of the Goods; or

(ii) promptly resupply, re-perform or modify the Goods and/or Services as directed by Fenix; or

(c) by written notice, terminate the Contract.

11.4 Fenix may give the Supplier a defect notice within the Defect Liability Period.

11.5 Upon receipt of a notice under clause 11.4, the Supplier must, in addition to any other obligations it may have under this Contract, correct any such defect within the timeframe specified in the notice, or if no timeframe is specified, within a reasonable timeframe. The Defect Liability Period will restart from the date the defect is corrected for that portion of the Supply.

11.6 Clause 11.5 does not apply to the extent the defect is caused by the Supply being used by Fenix or its Personnel in a manner which is contrary to the published operating instructions for the Supply.

11.7 If the Supplier fails to comply with clause 11.5, Fenix may rectify the defect itself or by a third party, or reject the Supply and require re-performance, in either case at the Supplier's risk and with the Supplier indemnifying Fenix's costs. Where practicable, Fenix will mitigate any costs it claims under this indemnity.

12. Subcontracting

12.1 The Supplier must obtain the written approval of Fenix before appointing a subcontractor to perform any part of its obligations under the Contract.

12.2 The Supplier must ensure that all subcontracts contain terms that oblige the subcontractor to perform its obligations under this Contract.

12.3 The Supplier is liable to Fenix for the acts and omissions of any subcontractor as if they were acts and omissions of the Supplier.

13. Representations and Warranties

13.1 The Supplier represents and warrants to Fenix that:

(a) the Goods and/or the Services will:

(i) be provided with reasonable care and skill and in accordance with generally recognised commercial practices and standards by appropriately trained, competent and qualified Personnel;

(ii) be supplied in accordance with Good Industry Practice;

(iii) be fit for the purposes for which the Goods and/or Services are ordinarily used and for the purpose for which they are supplied;

(iv) conform to any description or any sample provided by the Supplier;

(v) be free from any defects in materials, manufacture and workmanship;

(vi) not infringe any Intellectual Property Rights of any third party;

(vii) be free of any encumbrances, liens, security interest or other charge;

(viii) conform to the requirements set out in the Contract; and

(ix) conform to any applicable Australian Standards and Legislative Requirements;

(b) in relation to this Contract:

(i) it and its Personnel are in compliance, and will comply with all applicable Laws, rules, regulations; and

(ii) neither it nor any of its Personnel has undertaken, and will not undertake, any prohibited activity.

13.2 If the Supplier breaches clause 13.1, Fenix may in its sole discretion:

(a) instruct the Supplier to suspend performance of the Contract immediately;

(b) where the Supplier has accessed the Site, instruct the Supplier to leave the Site immediately;

(c) terminate the Contract; and/or

(d) claim damages from the Supplier.

14. Compliance

14.1 In performing its obligations under the Contract, the Supplier will at all times comply with:

(a) these Terms and Conditions and any conditions set out in the Purchase Order;

(b) all lawful directions given by Fenix; and

(c) all relevant Legislative Requirements including any relevant Australian Standards, building codes and work health and safety legislation.

14.2 The Supplier must promptly give Fenix written notice upon finding that compliance with any relevant Legislative Requirements necessitates a change to the Goods and/or Services or the provision of them, and such notice will include:

(a) details of the change in Legislative Requirements;

(b) how the change impacts the provision of the Goods and/or Services, including any time delay and costs.

14.3 Fenix will assess the notice given by the Supplier in accordance with clause 14.2 and the Price may be increased or decreased in Fenix's sole discretion.

14.4 The Supplier will:

(a) take all reasonable measures necessary to protect people and property;

(b) avoid unnecessary interference with the passage or people and vehicles at the Delivery Point of the Goods and/or Services; and

(c) prevent nuisance and unreasonable noise and disturbance.

14.5 The Supplier must promptly give Fenix notice in writing of any loss, damage, injury or accident to any person or property in connection with the provision of the Goods and/or Services and such notice will include:

(a) details of loss, damage, injury or accident;

(b) any steps the Supplier has taken to mitigate the loss, damage, injury or accident; and

(c) what further steps the Supplier will take to rectify the, loss, damage, injury or accident.

14.6 The Supplier will follow Fenix's reasonable directions in respect of any notice given in accordance with clause 14.5.

15. Intellectual Property

15.1 Supplier remains the owner of the Supplier's Background IP and all Intellectual Property Rights in Fenix's Technical Material remains vested in Fenix.

15.2 The Supplier grants Fenix (or will procure the granting to Fenix) a non-exclusive, transferrable, sub-licensable, royalty-free, irrevocable, worldwide and perpetual licence to use (including reproduce, modify or adapt) Supplier's Background IP for the purposes of or in connection with the business of Fenix.

15.3 The Supplier acknowledges and agrees that all Intellectual Property created by the Supplier for the benefit of Fenix (whether existing or created prior to the date of the Contract or otherwise) (**Contract IP**) will vest in Fenix, and the Supplier hereby assigns all rights, title and interest in and to the Contract IP to Fenix and agrees to notify Fenix immediately that any such Contract IP is created.

15.4 Supplier must execute all necessary formal documents to assign all rights, title and interest in any Contract IP to Fenix and ensure that its Personnel do the same.

15.5 Supplier may use Fenix's Background IP for the sole purpose of performing its obligations under the Contract.

15.6 The Supplier must not disclose, reproduce or otherwise deal with the Intellectual Property, or allow any other person to do the same, for any purpose other than to provide Goods and/or Services under the Contract.

15.7 The Supplier warrants that:

(a) it owns the Background IP and that the use of the Background IP does not and will not infringe any Intellectual Property Rights of third parties;

(b) the provision of the Goods and/or Services does not and will not infringe the Intellectual Property Rights of any third party;

(c) it will, at no further cost to Fenix, procure all licences and consents to use any Intellectual Property Rights of a third party which are necessary to provide the Goods and/or Services;

(d) the Intellectual Property created in connection with this Contract does not and will not infringe any Intellectual Property Rights; and

(e) the Supplier has the right to assign all Intellectual Property to Fenix in accordance with clause 15.3.

15.8 In the event of an Intellectual Property Rights infringement claim, the Supplier is responsible for securing, at its own expense, the necessary rights to allow Fenix uninterrupted use of the Supply.

16. Maintenance of Records

16.1 The Supplier will maintain accurate and reasonably detailed books and financial records of all its activities and operations in connection with the provision of the Goods and/or Services.

16.2 The Supplier will, upon request, permit Fenix to audit and examine any books and financial records necessary for the verification of compliance with the Supplier's obligations under the Contract.

17. Confidentiality

17.1 The Supplier must not, and must ensure that the Supplier's Personnel do not, without the prior written approval of Fenix:

(a) use Confidential Information other than as necessary for the purposes of fulfilling the Supplier's obligations under this Contract; and

(b) disclose, issue any media release, or disclose for distribution through any communications media any information, including Confidential Information, other than to Fenix's legal advisors, accountants, auditors, or where disclosure is required by Law.

17.2 Neither party will make any public announcement about this Contract without the other party's prior written consent, unless required by Law or stock exchange listing rules.

17.3 Any design or specification created, developed or produced for Fenix by the Supplier, or provided by Fenix to the Supplier, in connection with the Goods and/or Services:

(a) will belong to Fenix and the Supplier will do all things reasonably necessary (including signing any document) to assign the Intellectual Property Rights created or arising out of such design or specification to Fenix; and

(b) the Supplier must keep confidential and not use, disclose, reproduce, reverse engineer those designs, specifications, Goods or the work created, developed or produced in connection with such design or specification,

unless agreed in writing otherwise by Fenix.

17.4 Upon termination or expiry of this Contract, the Supplier must:

(a) promptly cease use of the Confidential Information; and

(b) where requested by Fenix, return, delete or destroy any copies of Confidential Information, and confirm such return, deletion or destruction to Fenix in writing.

17.5 The obligations in clause 17.4 do not apply to Confidential Information retained:

(a) in accordance with applicable Laws or generally accepted corporate governance practices; or

(b) in archival or back up computer storage, provided it is destroyed at the time such backed up records are destroyed in line with the receiving party's usual practices,

provided that such retained Confidential Information is kept secure and confidential in accordance with this Contract.

17.6 The Supplier must immediately notify Fenix if it becomes aware or has reason to believe that any breach of clause 17 has occurred, that any unauthorised access to or use of, or any security breach relating to or otherwise affecting, any Confidential Information has occurred, or that any Supplier's Personnel who has had access to Confidential Information has breached or intends to breach these Terms and Conditions.

17.7 The rights and obligations under this clause 17 continue after termination or expiry of this Contract.

18. Default and Termination

18.1 If at any time a party becomes Insolvent, the other party may terminate the Contract with immediate effect by giving written notice, to the extent permitted by law.

18.2 The Supplier may terminate the Contract by notice in writing to Fenix if Fenix fails to make a payment due to the Supplier under the Contract, in respect of which there is no bona fide dispute as to Fenix's liability to make the payment, and provided the Supplier has delivered a notice of default to Fenix and Fenix fails to remedy the non-payment within the time specified in the

notice of default (which must be no less than 10 Business Days).

18.3 Fenix may, at any time, terminate the Contract in whole or in part without cause at its absolute discretion by giving the Supplier no less than 7 days' written notice.

18.4 Fenix may terminate the Contract in whole or in part and with immediate effect, by notice to the Supplier, if:

(a) the Supplier or any of its Personnel commits an act of gross negligence, wilful misconduct, fraud or dishonesty in respect of any matter in connection with the Contract;

(b) the Supplier is in breach of any provision of this Contract and Fenix reasonably determines that the breach is not capable of remedy;

(c) the Supplier is in breach of any provision of the Contract which is capable of remedy and fails to remedy that breach at its own expense and to the reasonable satisfaction of Fenix within 20 Business Days after receipt of a notice from Fenix specifying the breach; or

(d) Fenix is expressly entitled to exercise a right of termination under any other provision of the Contract.

18.5 If Fenix terminates the Contract pursuant to 18.4(a), 18.4(b) or 18.4(c), Fenix is entitled to recover from the Supplier any costs, losses, damages and liabilities incurred or suffered by it as a result of, arising out of or in any way connected to the termination or any preceding breach.

18.6 Without prejudice to any other rights of Fenix under the Contract, in the event of termination under clause 18.3 only, Fenix will pay to the Supplier:

(a) the Price for Goods and/or Services provided to Fenix prior to the effective date of termination and not included in any previous payment by Fenix;

(b) the cost of materials reasonably ordered by the Supplier for the purpose of providing the Goods and/or Services prior to the date of termination, which the Supplier is legally liable to accept and cannot otherwise utilise, but only if the materials become the property of Fenix upon payment;

(c) reasonable and substantiated costs of demobilisation from Site; and

(d) reasonable costs of complying with any directions given by Fenix upon, or subsequent to, termination.

18.7 Except as set out in this clause 18, the Supplier will not be entitled to make and Fenix will not be liable for, any further cost, claim, expense or liability in relation to the termination of this Contract, including any loss caused by the termination of this Contract.

18.8 On the expiration or earlier termination of the Contract, the Supplier must:

(a) cease supply of the Goods and/or performance of the Services;

(b) take such action as necessary or as Fenix directs, for the transfer, protection and preservation of Fenix's Property;

(c) do its best to minimise the cost of termination to Fenix;

(d) immediately cease using all items of applicable Fenix's Property and Intellectual Property; and

(e) within 14 days after termination or expiration, return to Fenix (or if requested, erase and/or destroy) all copies in any form of the applicable Intellectual Property and Confidential Information in the possession or control of the Supplier and/or its Personnel.

19. Suspension

19.1 Fenix may instruct the Supplier to suspend performance of all or part of the Supply. If any suspension instructed by Fenix that is not caused or contributed to by the Supplier delays performance of the Supply, the Supplier will be granted an extension of time for the same length of time as the actual delay caused, provided the Supplier uses reasonable efforts to mitigate the impact of any such delay. The Supplier will not be entitled to make any other claims related to such suspension.

19.2 If the Supplier breaches any HSE-related obligations, Fenix may, without prejudice to any of its other rights under this Contract, require the Supplier and/or its Personnel to immediately suspend performance of all or part of the Supply and/or leave the Site at the Supplier's risk and cost.

19.3 Upon Fenix's reasonable request, the Supplier will promptly resume the Supply or the affected part of it.

20. Force Majeure

20.1 If a party is prevented from carrying out the whole or any part of its obligations under the Contract by reason of Force Majeure, that party must immediately give written notice to the other party. A notice must:

(a) specify the obligations the Supplier cannot fulfil;

(b) fully describe the Force Majeure;

(c) estimate the period during which the Force Majeure will continue; and

(d) specify the measures the Supplier proposes to adopt to remedy or mitigate the Force Majeure.

20.2 The affected party must keep the other party informed of any changes in the circumstances causing the Force Majeure or the effects of the Force Majeure.

20.3 The obligations of the affected party, so far as they are affected by Force Majeure, will be suspended for the period that the Force Majeure persists and the affected party will not be in default under the Contract. The affected party must use its best endeavours to remedy or mitigate the effect of any Force Majeure and comply with its obligations under the Contract.

20.4 Notwithstanding any provision of the Contract, if the Force Majeure causes the suspension of the Supplier's obligations for a continuous period of 30 days or a cumulative period of 30 days in any 90-day period, Fenix may terminate the Contract by written notice to the Supplier.

21. Liability and Indemnity

21.1 The Supplier indemnifies and holds Fenix harmless from and against any liability, loss, claim, costs, or damages which may be incurred by Fenix or brought against or claimed from Fenix arising out of or in connection with the Supplier's supply of the Goods and/or Services, or its failure to comply with the obligations under the Contract, including:

(a) negligent or wilful misconduct by the Supplier or its Personnel;

(b) claims in respect of loss of, or damage to, any other property (including Intellectual Property);

(c) claims in respect of personal injury or death; and

(d) claims, demands, proceedings, liability, loss, costs, expenses or damage brought against or suffered by Fenix,

directly or indirectly caused or contributed by any act or omission of the Supplier or its Personnel.

21.2 The Supplier's liability to indemnify Fenix shall be reduced proportionally to the extent that the act or omission of Fenix or its Personnel contributed to the loss or damage.

21.3 To the extent permitted by Law, Fenix's liability to the Supplier arising out of or in connection with this Contract is limited to the total Price paid or payable by Fenix under this Contract.

21.4 To the extent permitted by Law, the Supplier's liability to Fenix arising out of or in connection with this Contract is limited to the total Price paid or payable by Fenix under this Contract.

21.5 To the extent permitted by law, neither party shall be liable to the other Party under or in connection with the Contract for any Excluded Loss.

22. Insurance

22.1 Before supplying any Goods and/or Services, the Supplier will take out and maintain all insurances required to be effected by law, including, without limitation, worker's compensation insurance, with a reputable insurer.

22.2 In addition, the Supplier will effect:

(a) public and third party liability insurance of at least $20 million per event;

(b) product liability insurance of at least $20 million per event; and

(c) any insurance of Goods and/or Services stated in the Purchase Order,

for the period commencing from the date of the Purchase Order until the Supplier has completed its obligations under the Contract or as otherwise stated in the Purchase Order.

22.3 The Supplier must provide Fenix written notice, as soon as reasonably practicable, of any occurrence that may give rise to a claim under an insurance policy in connection with the provision of the Goods and/or Services and keep Fenix informed of subsequent developments concerning the claim.

22.4 The Supplier will consult Fenix in connection with an insurance claim notified to Fenix in accordance with clause 22.3 and follow Fenix's reasonable directions in relation to the investigation and settlement of such claim.

23. Dispute Resolution

23.1 A party claiming that a dispute or difference has arisen between the parties (**Dispute**) that party must give the other party a written notice within 10 Business Days of the dispute arising setting out sufficient details to identify the nature of the Dispute (**Dispute Notice**).

23.2 The party that receives the Dispute Notice must reply within 5 Business Days with a notice setting out that party's position on the Dispute (**Reply Notice**).

23.3 Within 10 Business Days of service of the Reply Notice, each party must promptly designate a senior representative (who has the authority to bind the party and negotiate and settle the Dispute) and ensure that its senior representative meets with the other party's senior representative in a genuine attempt to negotiate in good faith with a view to resolving the Dispute.

23.4 If:

(a) the parties are unable to resolve the Dispute within 30 Business Days of service of the Reply Notice (or such longer period as the senior representatives agree);

(b) the parties are unable to agree on a method of resolution of the Dispute; or

(c) no Reply Notice is issued,

either Party may commence legal proceedings in relation to the Dispute.

23.5 No party may commence court proceedings or arbitration relation to a Dispute until clauses 23.1 to 23.4 have been exhausted.

23.6 Notwithstanding that a formal Dispute Resolution Process is happening, the Supplier must continue without delay to undertake its obligations under the Contract.

23.7 Nothing in this clause 23 prevents a party from seeking urgent interlocutory or declaratory relief.

24. Goods and Services Tax (GST)

24.1 Unless defined in these Terms and Conditions, capitalised words in this clause have the meaning given to them by the GST Law.

24.2 Unless otherwise stated in these Terms and Conditions, the Price does not include any amount for Goods and Services Tax (**GST**).

24.3 If a Supply under this Contract is subject to GST, the recipient must pay to the Supplier an additional amount equal to the applicable GST in respect of the Taxable Supply (except to the extent that the consideration is expressed to be inclusive of GST) which is payable at the same time as the Price for the supply is payable. However, the recipient need not pay the additional amount until the Supplier gives the recipient a tax invoice or an adjustment note.

24.4 Notwithstanding any other provision in these Terms and Conditions, the recipient is not required to pay the amount referred to in clause 24.3 unless it has received a tax invoice in respect of the supply within three years and eleven months after the end of:

(a) the first calendar month in which any of the consideration for the supply is provided; or

(b) if an invoice is issued prior to the provision of any of the consideration for the supply, the calendar month in which the invoice is issued.

25. Trade Controls

25.1 The Supplier must not, without the prior written consent of Fenix, provide to Fenix any:

(a) Goods that have been imported by a Sanctioned Person or sourced (including but not limited to any Goods that have been grown, produced, manufactured extracted or processed) in whole or part from a Sanctioned Country or Territory, or Sanctioned Party and any Goods that have entered into commerce in a Sanctioned Country or Territory; and/or

(b) Services from a Sanctioned Country or Territory origin, including but not limited to any services performed in a Sanctioned Country or Territory or outside of a Sanctioned Country or Territory by an entity organised under the laws of a Sanctioned Country or Territory or a person ordinarily a resident of a Sanctioned Country or Territory, or Services that involve a Sanctioned Party in any respect.

25.2 A party may terminate the Contract by written notice to the other Party if that other Party breaches clause 25.1. If Fenix terminates this Contract pursuant to this clause 25.2, Fenix will be under no obligation to return any Goods, make any payments or pay any compensation to the Supplier unless Fenix has received all government authorisations required to do so.

26. Bribery and Corruption

26.1 The Supplier and its Affiliates must not, and must procure that its Personnel do not:

(a) pay or accept any commissions or fees, or make or accept any payments or rebates to or from any employee or officer of Fenix or its Affiliates, or favour any of those persons with gifts or entertainment of unusual or substantial value, or enter into any business arrangements with any of those persons, that would result in a detriment to Fenix or is contrary to fair dealing; and

(b) provide or offer to provide a benefit (which is not legitimately due) to a public official (including a foreign public official) in order to retain or obtain a business advantage.

26.2 The Supplier must, and must ensure that its Personnel, immediately report to Fenix, and in any event within 5 Business Days, any offer, payment, rebate or other benefit, or any receipt of any payment, benefit or rebate of the kind referred to in clause 26.1.

26.3 The Supplier will implement and maintain appropriate internal controls to ensure that any payments made pursuant to or in connection with the Contract, or transactions which relate to

the Contract or performance of it, are properly and accurately recorded.

27. Modern Slavery

27.1 The Supplier represents and warrants that it is committed to preventing modern slavery and human trafficking in its operations and supply chains. The Supplier further represents and warrants that, if the *Modern Slavery Act 2018* (Cth) requires, it has implemented policies and procedures to identify and mitigate modern slavery risks in its operations and supply chains.

27.2 The Supplier agrees to comply with all applicable laws and regulations related to modern slavery, including but not limited to the Modern Slavery Act 2018, and to cooperate with Fenix's efforts to assess and address modern slavery risks in its supply chains.

27.3 The Supplier agrees to notify Fenix in writing immediately if it becomes aware of any actual or potential modern slavery or human trafficking in its operations or supply chains and to cooperate fully with any investigation or audit conducted by Fenix or its representatives.

27.4 Fenix reserves the right to terminate this Contract and/or the Supplier's engagement with Fenix if the Supplier breaches this clause or if Fenix determines that the Supplier is engaged in modern slavery or human trafficking in its operations or supply chains.

28. Privacy

28.1 Where the Supplier collects, uses or discloses Personal Information in connection with this Contract, the Supplier must:

(a) comply with all applicable Data Privacy Laws; and

(b) take all appropriate measures against unauthorised or unlawful collection, use or disclosure of Personal Information and against accidental loss, disclosure or destruction of, or damage to, Personal Information.

29. General

29.1 **Notices**:

(a) A notice, consent or other communication under this Contract is only effective if it is in writing and either left at the recipient's address or sent to the recipient by courier, mail or email.

(b) A notice will be deemed to have been received:

(i) if delivered or sent by courier, at the time of delivery to the address of the recipient;

(ii) if sent by mail, three Business Days after it is posted; or

(iii) if sent by email, 2 hours after the time sent (as recorded on the device of the sender) unless the sender receives an automated message that the email has not been received or that the recipient of the email is unavailable.

29.2 **Waiver**:

(a) A failure or delay by a party in exercising any right or remedy conferred on the party by the Contract does not operate as a waiver of the right or remedy.

(b) A single or partial exercise of a right or remedy does not preclude a further exercise of it or the exercise of any other right or remedy under the Contract.

(c) A waiver of a breach does not operate as a waiver of any other breach.

29.3 **Assignment**:

(a) The Supplier must not assign, transfer, charge or otherwise dispose of any part or the whole of its rights or obligations under the Agreement except with the prior written consent of the Principal (which must not be unreasonably withheld). If required by the Principal, the Supplier must enter into any document reasonably required to effect the assignment, delegation or novation.

(b) Fenix may assign its rights or delegate any obligation in respect of this Contract or novate the Contract to an Affiliate or a party financially capable of meeting its obligations, and the Supplier irrevocably consents to such assignment, delegation or novation. If required by Fenix, the Supplier must enter into any document reasonably required to give effect to the assignment, delegation or novation.

29.4 **Severability**: If any provision of the Contract is in any way unenforceable, invalid or illegal it is to be read down so as to be enforceable, valid and legal. If this is not possible the provision is to be severed from this document without affecting the enforceability, validity or legality of the remaining provisions which will continue in full force and effect.

29.5 **Indemnities generally**: The indemnities in these Terms and Conditions are continuing obligations, independent from the other obligations of the parties under these Terms and Conditions and continue after the Contract ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under these Terms and Conditions.

29.6 **Jurisdiction**: The parties agree that the law of Western Australia governs the Contract. The parties submit to the non-exclusive jurisdiction of the courts of Western Australia and the Federal Court of Australia.

30. Definitions and Interpretation

30.1 **Definitions**

In this document, capitalised terms have the meaning given below unless the context provides otherwise:

Affiliate means any corporate entity which, directly or indirectly, controls, is controlled by, or which is under the same management or control of, a party.

Background IP means the Intellectual Property Rights of the Supplier or Fenix (as applicable) which:

(a) are in existence prior to or at the date of the Purchase Order; or

(b) come into existence after the date of the Contract otherwise than in connection with the Contract.

Business Day means any other day on which banks are open for general banking business in Perth, Western Australia, excluding a Saturday, Sunday or public holiday in that city.

Confidential Information means the terms of this Contract and all commercial, technical and other information in any form whatsoever in the possession or knowledge of a party which is disclosed to the other party at any time in connection with the Contract which is confidential in nature, including any information of that sort which is provided verbally to a party by any Personnel of the other party and includes any information received or obtained by the Supplier in the course of providing the Supply.

Contract has the meaning given in clause 1.1.

Contract IP has the meaning given in clause 15.3.

Data Privacy Laws means all laws now or in the future relating to data protection, privacy and information security, including all applicable international, regional, federal, or national data protection laws, regulations and regulatory guidance.

Defect Liability Period means the period which runs from:

(a) in connection with Goods, the date on which the Goods are accepted in accordance with this Contract; or

(b) in connection with Services, the date on which provision of the Services is completed,

and which ceases on the expiry of the period identified as such in the Purchase Order or, where such period is not identified in the Purchase Order, a period of 1 year or the

minimum period required by any applicable Law, whichever is the latest.

Delivery Date means (where relevant) the date the Goods must be delivered or the Services must be completed as specified in the Purchase Order.

Delivery Point means the Site, or such other place which is specified in the Purchase Order as the place for delivery of the Goods.

Dispute has the meaning given in clause 23.1.

Dispute Notice has the meaning given in clause 23.1.

Excluded Loss means any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business, loss of contract, loss of use, loss of goodwill, loss of production and any other economic loss (whether the loss or Loss is direct or indirect), any direct or indirect financing costs or increase in operating costs.

Fenix means the relevant Fenix entity named on the Purchase Order and, if no entity is named, means Fenix Resources Ltd (ACN 125 323 622)**.**

Fenix Group Member means Fenix Resources Ltd (ACN 125 323 622) and its Affiliates and includes any unincorporated joint venture in which Fenix Resources Ltd (ACN 125 323 622) or any of its Affiliates has a participating interest of 50% or more.

Fenix User means a Fenix Group Member which receives and/or uses the Supply.

Fenix's Property means any plant, equipment, tools, appliances or other property and items that Fenix provides to the Supplier to enable it to perform its obligations under the Contract.

Force Majeure means any event or circumstance beyond the control of the party claiming Force Majeure and which by the exercise of a standard of care and diligence consistent with that of a reasonable and prudent operator, the affected party could not reasonably have been expected to have prevented, avoided or overcome. Notwithstanding the foregoing, it is expressly agreed that the following matters shall not constitute Force Majeure:

(a) lack of or inability to use funds for any reason; or

(b) any occurrence which results from the wrongful act or omission of the affected party or the failure by the affected party to act in a prudent and proper manner and in accordance with Good Industry Practice.

Good Industry Practice means the practices, methods and acts engaged in or approved by an organisation who, in the conduct of its undertaking, exercises that degree of diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced professional contractors engaged in the same type of undertaking under the same or similar circumstances and conditions and in accordance with generally accepted industry and professional standards and practices.

Goods means the goods stated in the Purchase Order and includes software unless expressly stated otherwise.

GST has the same meaning as that term is given by GST Law.

GST Law has the meaning given in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

HSE means health, safety and environment.

Incoterm means the Incoterms 2020 published by the International Chamber of Commerce.

Insolvency and Insolvent has the meaning given to it in the *Corporations Act 2001* (Cth).

Intellectual Property means any subject matter, whether tangible or intangible, that attracts, or is susceptible to protection by, Intellectual Property Rights.

Intellectual Property Rights means all intellectual property rights at any time recognised by Law, including all present and future copyrights, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, trade secrets and know-how, registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary, or artistic fields.

Law means:

(a) all legislation including regulations, by-laws, orders and other subordinate legislation;

(b) other than in circumstances where the Site is located in a civil law jurisdiction, common law; and

(c) any licence, permit, consent, authorisation, registration, filing, agreement, notice, notarisation, approval, determination, certificate, ruling, exemption from any condition or requirement under the foregoing.

Legislative Requirements includes all statutory acts, ordinances, regulations, by-laws, court orders, awards, proclamations, determinations or approvals of any authority having jurisdiction where the Goods are delivered or Services are provided. For the avoidance of doubt, Legislative Requirements includes any relevant Australian Standard, building codes and work, health and safety legislation.

Modern Slavery is as defined in the *Modern Slavery Act 2018* (Cth).

Personal Information means information and data which relates to a living individual who can be identified from that information or from that information in combination with other information reasonably likely to come into the possession of the same party, whether the information is recorded in a material form or not.

Personnel means a party's officers, employees, agents, consultants, contractors or subcontractors (but references to Fenix's Personnel do not include the Supplier).

Price means the price or rates payable in respect of the Purchase Order, which is deemed to include, unless expressly stated otherwise in the Purchase Order, all costs of delivery, including any customs duty, storage, and packaging of the Goods, and/or all costs for providing the Services.

Property means any plant, equipment, tools, appliances or other property and items that Fenix provides to the Supplier to enable it to perform its obligations under the Contract.

Purchase Order means the purchase order issued by Fenix to the Supplier to order any Goods and/or Services. A Purchase Order incorporates the Terms and Conditions, and any other document attached by Fenix to, or incorporated by Fenix by reference in, the Purchase Order or these Terms and Conditions.

Reply Notice has the meaning given in clause 23.2.

Sanctioned Country or Territory means any country or territory against which comprehensive sanctions are imposed by the United States, the United Kingdom, the United Nations, the European Union, any European Union member states, Australia, Switzerland or any other country with jurisdiction over the activities in connection with the Agreement, and currently includes Cuba, Iran, North Korea, South Sudan, Syria and the Crimea.

Sanctioned Party means any person or entity or vessel that is listed on, or owned, or controlled by a person (including an entity that is 50% or more controlled or owned, directly or indirectly by a Restricted Party) listed on the U.S. of Specially Designated Nationals and Blocked Person List maintained by the U.S. Treasury Department's Office of Foreign Assets Control or any similar restricted party or sanctions list maintained by the United States, the United Kingdom, the United Nations and the European Union, Australia, Canada or any other relevant government.

Services means the services provided or to be provided by the Supplier under these Terms and Conditions.

Site means the place described as such in the Purchase Order as the place for the use or storage of the Goods by Fenix or for the performance of the Services.

Site Standards and Procedures means all of Fenix's standards, policies and procedures that are of general application at the Site in relation to matters concerning safety, health, the environment, industrial relations and personal conduct as provided to the Supplier by Fenix from time to time.

Supplier means the party supplying the Goods and/or Services to Fenix under the Purchase Order.

Supply means all Goods, Services and any other deliverables or items to be provided by the Supplier under, and incidental activities necessary for the proper performance of, this Contract.

Technical Material means the models, software (including source code and object code versions), information, design concepts, audio, video, drawings (including "as built" drawings), programmes, schedules, manuals, diagrams, charts, specifications, records, concepts, plans, formulae, designs (including structural, mechanical, electrical and instrumentation designs) in any medium, methods and processes, including all copies of and extracts from them and data stored by any means.

Terms and Conditions means these terms and conditions.

Variation means any addition, reduction or change to the Purchase Order.

Variation Proposal means a written proposal provided by the Supplier addressing the particulars of any Variation.

30.2 **Interpretation**

In this Contract, unless the context requires otherwise:

(a) headings and sub-headings are used for convenience only and do not affect the interpretation of these Terms and Conditions;

(b) wherever "include", "for example", or any form of those words or similar expression is used, it means including without limitation;

(c) a reference to a document includes the document as modified, extended or supplemented from time to time and any document replacing, novating or restating it;

(d) the word "person" includes a natural person, partnership, body corporate, association, governmental or other authority and any body or entity whether incorporated or not;

(e) a reference to a party is to a party to the these Terms and Conditions (as applicable) and includes the party's executors, attorneys, administrators, successors, permitted assigns and substitutes (including by novation);

(f) if something is to be or may be done on a day that is not a Business Day, then it must be done on the next Business Day;

(g) if a party must do something under these Terms and Conditions on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day;

(h) reference to money amounts are to amounts in AUD, unless otherwise stated;

(i) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Contract or any part of it (including these Terms and Conditions);

(j) any agreement, representation, warranty or indemnity in favour of two or more parties (whether those parties are included in the same defined term or not) is for the benefit of them jointly and severally; and

(k) any agreement, representation, warranty or indemnity by two or more parties (whether those parties are included in the same defined term or not) binds them jointly and severally.