

## **Australian addendum to Volvo's General Purchasing Conditions for Services (September 2017)** **("Addendum")**

- 1 **When this document applies.** This document applies if Volvo Group Australia Pty Ltd ("Volvo") and Supplier enter into an Agreement under Volvo's General Purchasing Conditions for Services (**GPC**) that is a 'small business contract' (as defined in the Australian Consumer Law – Schedule 2 to the *Competition and Consumer Act 2010* (Cth)) and prevails over the GPC.
- 2 **Set off.** Volvo will only exercise its rights under Section 16.6 of the GPC (in relation to set off) to set off against amounts owing to the Supplier amounts which the Supplier owes Volvo (or a Volvo Group Company) under the Agreement.
- 3 **Supplier's due diligence.** Section 7.1 of the GPC (in relation to the Supplier's due diligence obligations) is amended so that Volvo is required to provide to the Supplier all information that is necessary for the Supplier to develop and deliver the Services and Results.
- 4 **New or amended requirements.** (a) Any changes during the term of an Agreement to any instructions or requirements which Volvo imposes on the Supplier under the GPC (including Volvo Policies and Procedures) which are material and will cause the Supplier to incur additional costs are subject to the Parties' agreement on change in price. (b) The Parties must meet and negotiate any proposed price change in good faith. (c) However, if following such negotiations, no agreement is reached, then Volvo may terminate any Agreement, purchase order, Master Agreement or Stand-Alone Agreement with the Supplier.
- 5 **Termination after failure to agree new or amended requirements.** If Volvo exercises its right to terminate any Agreement, purchase order, Master Agreement or Stand-Alone Agreement under section 4 of this Addendum, then this is deemed to be a termination under Section 24.3 of the GPC.
- 6 **Supplier's liability for defects, delays and other non-conforming deliveries.** The Supplier acknowledges that the consequences Volvo may suffer due to the Supplier's Defective Services and/or delays may be significant, especially where those defects or delays cause, for example: (a) downtime in its factories; and/or (b) delays to its production line. Having regard to the nature of the Services and the nature of the defect or delay, Volvo will only claim consequential or indirect losses under Section 9 of the GPC where it is fair and reasonable to do so in the circumstances.
- 7 **Indemnities for Intellectual Property Rights infringement.** If the Supplier receives any claim from a third party alleging that the Supplier's use of any item provided by Volvo pursuant to this Agreement infringes any third party Intellectual Property Rights ("IP Claim"), Volvo shall, at its cost and expense, indemnify and hold the Supplier harmless against the IP Claim (including without limitation reasonable costs for external counsel), except to the extent that the IP Claim was directly caused by (1) non-agreed modification of the item by the Supplier, (2) non-agreed combination of the item with other items, methods or processes by the Supplier, or (3) the use of the item for purposes outside the scope of this Agreement by the Supplier. Volvo additionally agrees that where there is an IP Claim, Volvo shall either promptly replace the allegedly infringing item with a non-infringing item, or promptly obtain all necessary consents for the continued use of such item. Volvo shall, at the Supplier's request, reasonably assist the Supplier in disputes with respect to any IP Claim and if requested, to the extent legally possible, take on the conduct of any such dispute.
- 8 **Use of Volvo's name.** Nothing in Section 11.8 of the GPC (which prohibits the Supplier from using Volvo's corporate name or trademarks) prevents the Supplier from using Volvo's name as reasonably required to in the process of litigation or arbitration under the Agreement.
- 9 **Assignment and transfer of rights.** In relation to Volvo's right to assign or transfer the Agreement or its rights under the Agreement in Section 22.2 of the GPC, Volvo will not assign or transfer its rights or obligations to a third party contractor in connection with any sourcing / outsourcing activity, or to a third party in connection with the sale of a part of Volvo's business operations to such third party, without the Supplier's consent. Volvo will only assign or transfer its rights and obligations to any other company within the Volvo Group without the Supplier's consent if the other company within the Volvo Group is capable of performing the Agreement.
- 10 **Termination for insolvency.** A Party may only terminate the Agreement under Section 24.1(b) of the GPC (for the other Party's insolvency) to the extent permitted by applicable law.
- 11 **Applicable law.** Subject to section 12 (Disputes) of this Addendum, the governing law of the Agreement (including the GPC) is the law of Queensland, Australia.
- 12 **Disputes.** Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any questions regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Expedited Arbitration Rules. The seat of arbitration shall be Brisbane, Australia. The language of the arbitration shall be English. Notwithstanding the foregoing, this arbitration clause shall not apply

to claims for indemnification from third-party claims where the said third party has initiated litigation against Volvo or Supplier, or both.

- 13 **Losses claimed by Volvo.** Notwithstanding anything in the GPC, Volvo must take reasonable steps to mitigate any loss or damage it claims against the Supplier under an indemnity or under any provision of the GPC.
- 14 **Volvo's liability.** Notwithstanding anything in the GPC, nothing excludes Volvo's liability for, and the Supplier is not responsible for, Volvo's breach of contract, breach of law, negligence or misconduct. Any liability of the Supplier is reduced to the extent Volvo caused or contributed to the relevant event giving rise to liability.