

## Terms and Conditions of Purchase

### 1. FORMATION OF CONTRACT

This proposed Contract is Broens' offer to purchase the goods and services (Goods) described in this offer. Acceptance is strictly limited to the terms and conditions in this offer. Unless specifically agreed to in writing by Broens' Authorised Procurement Representative, Broens objects to, and is not bound by, any term or condition that differs from or adds to this offer. Seller's commencement of performance or acceptance of this offer in any manner shall conclusively evidence acceptance of this offer as written.

### 2. DEFINITIONS

"Contract" means these terms and conditions, each and every Order, all exhibits, supplements, attachments, annexures and/or schedules now or hereafter made part of this Contract, that are incorporated by this reference, and all of the specifications, technical descriptions, Statements of Work, drawings, schedules, designs, documents and any other requirements of provisions attached to, incorporated into, or otherwise specified in these terms and conditions or any contract.

"Authorised Procurement Representative" means the individual designated by Broens being primarily responsible for interacting with Seller regarding commercial aspects of this Order.

"Broens" means Broens Pty Ltd (ABN 28 600 877 790), its divisions.

"Goods" means all chattles personal, work, products, services, Tooling, including components and parts thereof, documents, data, software documentation and other information or items furnished or to be furnished to Broens under this Contract and any Order.

"Order" means each purchase order or any other instrument issued by Broens and either accepted by Seller under the terms of this Contract or issued within Broens' authority under this Contract.

"Seller" means the person or entity who agrees to sell or otherwise provide services in accordance with this Contract.

"Statement of Work" or "SOW" means the document that describes the goods, services and or tasks to be provided by Seller to fulfil the requirements of this Agreement and is attached to this Contract.

### 3. CONSTRUCTION

In this Contract unless the context otherwise requires:

3.1) References to a recital, Clause, schedule, annexure or exhibit are to a recital, Clause, schedule, annexure or exhibit of or to this Contract;

3.2) Headings are for convenience only and shall be ignored in construing this Contract; words and phrases defined in the recital or elsewhere in this Contract have the meaning ascribed to them in the Contract;

3.3) Words importing the singular include the plural and vice versa; Words importing any gender include all genders;

3.4) Reference to a person includes a corporation or any other legal entity or organisation;

3.5) Reference to a statute, ordinance, code or other law includes regulations and other statutory. Instruments under it and consolidation, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);

3.6) Reference to this document includes its schedules and annexure;

3.7) Unless otherwise indicated, \$ is a reference to the lawful currency of Australia;

3.8) Unless otherwise stated, measurements of physical quantities shall be in Australian legal units of measurement within the meaning of the *National Measurement Act 1960* (Cth) as amended from time to time.

3.9) "Including" means "including without limiting the generality of the foregoing" and other parts of speech have a corresponding meaning.

3.10) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Contract or any part of it.

### 4. INDEPENDENT CONTRACTOR

Seller is an independent contractor for all purposes. Seller shall have complete control over the performance of, and the details for accomplishing, the Services. In no event shall Seller or its agents, representatives or employees be deemed to be agents, representatives or employees of Broens.

Seller's employees shall be paid exclusively by Seller for all services performed. Seller shall comply with all requirements and obligations relating to such employees under federal, state and local law (or foreign law, if applicable). Such compliance shall include, but not be limited to, laws regarding minimum wages, social security, unemployment insurance, federal and state income taxes and workers' compensation insurance.

### 5. SCHEDULE

a) Seller shall strictly adhere to the shipment or delivery schedules specified in this Contract. In the event of any anticipated or actual delay, including but not limited to delays attributed to labour disputes, Seller shall:

i) Promptly notify Broens in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay;

ii) If reasonably required, provide Broens with a written recovery schedule; and

iii) If requested by Broens, ship via air or other expedited routing to avoid or minimize delay to the maximum extent possible, unless Seller is excused from prompt performance as provided in the "Force Majeure" article of this Contract. The added premium transportation costs are to be borne by Seller.

b) Seller shall not deliver Goods prior to the scheduled delivery dates unless authorised by Broens.

c) Broens shall, at no additional cost, retain goods furnished in excess of the specified quantity or in excess of any allowable overage unless, within 45 days of shipment, Seller requests return of such excess. In the event of such request, Seller shall reimburse Broens for reasonable costs associated with storage and return of the excess. If Goods are manufactured with reference to Broens' proprietary information or materials, Seller agrees that, pursuant to the "Confidential, Proprietary and Trade Secrets Information and Materials" article of this Contract, it will not sell or offer such Goods for sale to anyone other than Broens without Broens' prior written consent.

### 6. PACKING AND SHIPPING

a) Seller shall pack the Goods to prevent damage and deterioration. Seller shall comply with carrier tariffs. Unless this Contract specifies otherwise, the price includes all charges and duties in accordance with the relevant Incoterms 2000. Seller shall make no declaration concerning the value of the Goods shipped except on Goods where the tariff rating is dependent upon released or declared value. In such event, Seller shall release or declare such value at the maximum value within the lowest rating. Broens may charge Seller for damage to or deterioration of any Goods resulting from improper packing or packaging.

b) Incoterms 2000, published by the International Chamber of Commerce shall govern this Contract to the extent this Contract specifies terms covered by Incoterms 2000, provided that in the event of any conflict between this Contract and Incoterms 2000, this Contract shall govern.

c) Unless this Contract specifies otherwise, Seller will ship the Goods in accordance with the following instructions:

i) Shipments by Seller or its subcontractors must include packing sheets containing Broens' Contract number, line item number, description and quantity of Goods shipped, part number or size, if applicable, and appropriate evidence of inspections. A shipment

## Terms and Conditions of Purchase

containing hazardous and nonhazardous materials must have separate packing sheets for the hazardous and nonhazardous materials. Seller shall not include vermiculite or other hazardous substance in any packing material included with the Goods. Items shipped on the same day will be consolidated on one bill of lading or air bill unless Broens' Authorised Procurement Representative authorises otherwise. The shipping documents will describe the material according to the applicable classification and/or tariff. The total number of shipping containers will be referenced on all shipping documents. Originals of all Government bills of lading will be surrendered to the origin carrier at the time of shipment.

ii) If applicable, Seller will, in accordance with the exporting country's legal requirements, obtain at its own risk and expense any export licences and other official authorisations or other documents, and carry out where applicable, all customs formalities necessary for the export of the Goods and for their transit through any country.

iii) Seller will deliver the Goods to Broens in accordance with the relevant Incoterms 2000. If the Contract requires Goods to be delivered DDU, Seller will bear all costs and risks associated in delivering the Goods to Broens' named place of delivery except for costs associated with customs formalities, customs duties, taxes and other local charges in the country of destination.

iv) Seller will label each shipping container with the Contract number and the number that each container represents of the total number being shipped (e.g., box 1 of 2, box 2 of 2).

v) Broens will select the carrier and mode of transportation for all shipments where freight costs will be charged to Broens.

vi) Seller will include copies of documentation supporting prepaid freight charges (e.g., carrier invoices or UPS shipping log/manifest), if any, with its invoices.

vii) If Seller is unable to comply with the shipping instructions in this Contract, Seller will contact Broens' Traffic Management Department referenced elsewhere in this Contract or Broens' Authorised Procurement Representative.

### 7. QUALITY CONTROL

Seller shall establish and maintain a quality control system acceptable to Broens for the Goods purchased under this Contract. Seller shall provide right of access to Broens, its customers, and regulatory authorities to all facilities involved in the order and to all applicable records. Seller shall have a continuing obligation to promptly notify Broens of any violation of or deviation from Seller's approved inspection/quality control system and to advise Broens of the quantity and specific identity of any Goods delivered to Broens during the period of any such violation or deviation.

### 8. SELLER'S NOTICE OF DISCREPANCIES

Seller shall notify Broens in writing when discrepancies in Seller's process or Goods are discovered or suspected regarding Goods delivered or to be delivered under this Contract.

### 9. INSPECTION

a. At no additional cost to Broens, goods shall be subject to inspection by Broens, its customer, and or nominated authorities.

b. Inspection may incur surveillance and test at reasonable times and places, including Seller's subcontractors' locations. Inspections, surveillance and tests will be prearranged by Broens so as not to unduly delay the work.

c. Seller shall maintain an inspection system acceptable to Broens for the Goods purchased under this Contract.

d) Seller shall furnish, and require its subcontractors to furnish, without additional charge, reasonable facilities and assistance for the safe and convenient performance of these duties.

### 10. ACCEPTANCE AND REJECTION

a) Broens shall accept the Goods or give Seller notice of rejection or revocation of acceptance ("rejection" herein), notwithstanding any payment, prior test or inspection, or passage of title. No inspection, test, delay or failure to inspect or test or failure to discover any defect or other non-conformance shall relieve Seller of any obligations under this Contract or impair any rights or remedies of Broens.

b) If Seller delivers non-conforming Goods, Broens may at its option and at Seller's expense (i) return the Goods for credit or refund; (ii) require Seller to promptly correct or replace the Goods; (iii) correct the Goods; or (iv) obtain replacement Goods from another source.

c) Seller shall not redeliver corrected or rejected goods without disclosing the former rejection or requirement for correction. Seller shall disclose any corrective action taken. Repair, replacement and other correction and redelivery shall be completed within the original delivery schedule or such later time as Broens' Authorised Procurement Representative may reasonably direct.

d) All costs and expenses and loss of value incurred as a result of or in connection with non-conformance and repair, replacement or other correction may be recovered from Seller by equitable price reduction or credit against any amounts that may be owed to Seller under this Contract or otherwise.

### 11. WARRANTY

a) Seller warrants that all Goods furnished under this Contract shall conform to all specifications and requirements of this Contract and shall be free from defects in materials and workmanship. To the extent Goods are not manufactured pursuant to detailed designs and specifications furnished by Broens, the Goods shall be free from design and specification defects. This warranty shall survive inspection, test and acceptance of, and payment for, the Goods. This warranty shall run to Broens and its successors, assigns and customers. Such warranty shall begin after Broens' final acceptance. Broens may, at its option, either (i) return for credit or refund, or (ii) require prompt correction or replacement of the defective or non-conforming Goods. Return to Seller of defective or non-conforming Goods and redelivery to Broens of corrected or replaced Goods shall be at Seller's expense. Goods required to be corrected or replaced shall be subject to this article and the "Inspection" article of this Contract in the same manner and to the same extent as Goods originally delivered under this Contract, but only as to the corrected or replaced part or parts thereof. Even if the parties disagree about the existence of a breach of this warranty, Seller shall promptly comply with Broens' direction to: (i) repair, rework or replace the Goods, or (ii) furnish any materials or parts and installation instructions required to successfully correct the defect or non-conformance. If the parties later determine that Seller did not breach this warranty, the parties shall equitably adjust the Contract price.

b) Seller warrants that any hardware, software and firmware Goods delivered under this Contract shall be able to accurately process date/time data (including, but not limited to, calculating, comparing and sequencing) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it. The duration of this warranty and the remedies available to Broens for breach of this warranty shall be as defined in, and subject to, the other warranties contained in this Contract, provided that notwithstanding any provision to the contrary in such warranties, the remedies available to Broens under this warranty shall include repair or replacement of any non-compliant Goods discovered and made known to Seller in writing. Nothing in this warranty shall be construed to limit any rights or remedies Broens may otherwise have under this Contract with respect to defects other than year- 2000 performance.

## Terms and Conditions of Purchase

### 12. TAXES

#### 12.1 Inclusion of Taxes in Price

Unless this Contract, or Order issued under this Contract specifies otherwise, the price of this Contract includes, and Seller is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this Contract and the Orders issued hereunder, except for sales, use taxes or Goods and Services Taxes (GST) on sales to Broens ("Sales Taxes") for which Broens specifically agrees to pay and which are separately stated in the Order and on Seller's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Broens has furnished a valid exemption certificate or other evidence of exemption.

#### 12.2 Litigation

In the event that any taxing authority has claimed or does claim payment for GST and/or Sales Taxes, Seller shall promptly notify Broens, and Seller shall take such action as Broens may direct to pay or protest such taxes or to defend against such claim. The actual and direct expenses, without the addition of profit and overhead, of such defense and the amount of such taxes as ultimately determined as due and payable shall be paid directly by Broens or reimbursed to Seller. If Seller or Broens is successful in defending such claim, the amount of such taxes recovered by Seller, which had previously been paid by Seller and reimbursed by Broens or paid directly by Broens, shall be immediately refunded to Broens.

#### 12.3 Rebates

If any taxes paid by Broens are subject to rebate or reimbursement, Seller shall take the necessary actions to secure such rebates or reimbursement and shall promptly refund to Broens any amount recovered.

#### 12.4 Withholding Tax

12.4.1) If applicable, the parties agree that for the purposes of the foreign resident withholding obligations contained in Schedule 1 to the *Taxation Administration Act 1953* (Cth), Broens will withhold from any payment, the amount as required by section 15-10 unless Seller provides to Broens within 7 days of the date of this agreement any of the following:

- i) written notice of an exemption issued by the Commissioner of Taxation in accordance with section 12-319 – in which case the amount withheld will be nil; or
- ii) Written notice issued by the Commissioner of Taxation in accordance with Section 15-15 varying Seller's PAYG withholding rate - in which case the amount withheld will be the amount disclosed on that notice; or
- iii) A written statement by Seller that it is an Australian resident for taxation purposes and that Seller will notify Broens within 30 days if Seller ceases to be an Australian resident during the term of this agreement - in which case the amount withheld will be nil; or
- iv) Written documentation (including a certificate of Residency or a Certificate of Domicile) to demonstrate that Seller it is an Australian resident for taxation purposes and that Seller will notify Broens within 30 days if Broens ceases to be an Australian resident during the term of this agreement - in which case the amount withheld will be nil.

12.4.2) For the purposes of paragraph 12.2.1 (iii), Broens may, in its absolute, sole and unfettered discretion, request that Seller provide to Broens, within 30 days, a certificate of Residency or a Certificate of Domicile.

12.4.3) All section references contained in this clause are to Schedule 1 to the *Taxation Administration Act 1953* (Cth).

### 13. INVOICES AND PAYMENT

Unless otherwise authorised by Broens' Authorised Procurement Representative, Seller shall issue a separate original invoice for each delivery that shall include Broens' Contract number and line

item number. Seller shall forward its invoice to the address specified elsewhere in this Contract. Unless freight or other charges are itemized, Broens may take any offered discount on the full amount of the invoice. Payment due date, including discount periods, shall be computed from the later of the scheduled delivery date, the actual delivery date or the date of receipt of a correct invoice. Payment shall be deemed made on the date Broens' check is mailed or payment is otherwise tendered. Seller shall promptly repay Broens any amounts paid in excess of amounts due Seller.

### 14. CHANGES

a) Broens' Authorised Procurement Representative may, without notice to sureties and in writing, direct changes within the general scope of this Contract in any of the following: (i) technical requirements and descriptions, specifications, statement of work, drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of Broens-furnished property; and, if this Contract includes services, (vi) description of services to be performed; (vii) time of performance (e.g., hours of the day, days of the week); (viii) place of performance, and (ix) terms and conditions of this Contract required to meet Broens' obligations under Government prime contracts or subcontracts. Seller shall comply immediately with such direction.

b) If such change increases or decreases the cost or time required to perform this Contract, Broens and Seller shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Broens shall modify this Contract in writing accordingly. Unless otherwise agreed in writing, Seller must assert any claim for adjustment to Broens' Authorised Procurement Representative in writing within 25 days and deliver a fully supported proposal to Broens' Authorised Procurement Representative within 60 days after Seller's receipt of such direction. Broens may, at its sole discretion, consider any claim regardless of when asserted. If Seller's proposal includes the cost of property made obsolete or excess by the change, Broens may direct the disposition of the property. Broens may examine Seller's pertinent books and records to verify the amount of Seller's claim. Failure of the parties to agree upon any adjustment shall not excuse Seller from performing in accordance with Broens' direction.

c) If Seller considers that Broens' conduct constitutes a change, Seller shall notify Broens' Authorised Procurement Representative immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from Broens' Authorised Procurement Representative, Seller shall take no action to implement any such change.

### 15. DISPUTES

Any dispute that arises under or is related to this Contract that cannot be settled by mutual agreement of the parties may be decided by a court of competent jurisdiction. Pending final resolution of any dispute, Seller shall proceed with performance of this Contract according to Broens' instructions so long as Broens continues to pay amounts not in dispute.

### 16. FORCE MAJEURE

Seller shall not be liable for excess procurement costs pursuant to the "Cancellation for Default" article of this Contract, incurred by Broens because of any failure to perform this Contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of Seller (Force Majeure). Examples of these causes are (a) acts of God or of the public enemy, (b) acts of the Government in either its sovereign or contractual capacity, (c) fires, (d) floods, (e) epidemics, (f) quarantine restrictions, (g) general Nationwide and/or State-wide strikes, (h) freight embargoes and (i) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of Seller. Whether or not any default was caused by

## Terms and Conditions of Purchase

Force Majeure will be decided collaterally by Broens and Seller. If the delay is caused by delay of a subcontractor of Seller and if such delay arises out of causes beyond the reasonable control of both, and if such delay is without the fault or negligence of either, Seller shall not be liable for excess costs unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedules. Seller shall notify Broens in writing within 10 days after the beginning of any such cause.

### 17. TERMINATION FOR CONVENIENCE

Broens reserves the right to terminate this Contract, or any part hereof, for its sole convenience. In the event of such termination, Seller shall immediately cease all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. In case of termination for convenience by Broens of all or any part of this Contract, Seller may submit a claim to Broens within 60 days after the effective date of termination. In no event shall Broens be obligated to pay Seller any amount in excess of the Contract price. The provisions of this article shall not limit or affect the right of Broens to cancel this Contract for default.

### 18. CANCELLATION FOR DEFAULT

- a) Broens may, by written notice to Seller, cancel all or part of this Contract if (i) Seller fails to deliver the Goods within the time specified by this Contract or any written extension; (ii) Seller fails to perform any other provision of this Contract or fails to make progress, so as to endanger performance of this Contract, and, in either of these two circumstances, does not cure the failure within 10 days after receipt of notice from Broens specifying the failure; or (iii) in the event of Seller's suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of its creditors.
- b) Seller shall continue work not cancelled. If Broens cancels all or part of this Contract, Seller shall be liable for Broens' excess procurement costs.
- c) Broens may require Seller to transfer title and deliver to Broens, as directed by Broens, any (i) completed Goods, and (ii) any partially completed Goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and Contract rights (collectively, "Manufacturing Materials") that Seller has specifically produced or acquired for the cancelled portion of this Contract. Upon direction from Broens, Seller shall also protect and preserve property in its possession in which Broens or its Customer has an interest.
- d) Broens shall pay the Contract price for Goods accepted. Payment for Manufacturing Materials accepted by Broens and for the protection and preservation of property shall be at a price determined in accordance with the "Termination for Convenience" article of this Contract, except that Seller shall not be entitled to profit. Broens may withhold from any amount due under this Contract any sum Broens determines to be necessary to protect Broens or Broens' customer against loss because of outstanding liens or claims of former lien holders.
- e) If, after cancellation, it is determined that Seller was not in default, the rights and remedies of the parties shall be as if the Contract had been terminated according to the "Termination for Convenience" article of this Contract.

### 19. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

Seller shall not assign any of its rights or interest in this Contract or subcontract all or substantially all of its performance of this Contract, without Broens' prior written consent. Seller shall not delegate any of its duties or obligations under this Contract. Seller may assign its right to monies due or to become due. No assignment, delegation or subcontracting by Seller, with or without Broens' consent, shall relieve Seller of any of its obligations under

this Contract or prejudice any of Broens' rights against Seller whether arising before or after the date of any assignment. This article does not limit Seller's ability to purchase standard commercial supplies or raw materials.

### 20. PUBLICITY

Without Broens' prior written approval, Seller shall not, and shall require that its subcontractors at any tier shall not, release any publicity, advertisement, news release or denial or confirmation of same regarding this Contract or the Goods or program to which it pertains. Seller shall be liable to Broens for any breach of such obligation by any subcontractor.

### 21. PATENT, TRADEMARK AND COPYRIGHT INDEMNITY

Seller shall indemnify, defend and hold harmless Broens and its customer from all claims, suits, actions, awards (including, but not limited to, awards based on intentional infringement of patents known at the time of such infringement, exceeding actual damages and/or including legal fees and/or costs), liabilities, damages, costs and legal fees related to the actual or alleged infringement of any Australian, United States of America, or any other foreign intellectual property right (including, but not limited to, any right in a patent, copyright, industrial design or semiconductor mask work, or based on misappropriation or wrongful use of information or documents) and arising out of the manufacture, sale or use of Goods by either Broens or its customer. Broens and/or its customer will duly notify Seller of any such claim, suit or action; and Seller will, at its own expense, fully defend such claim, suit or action on behalf of indemnitees. Seller will have no obligation under this article with regard to any infringement arising from (a) Seller's compliance with formal specifications issued by Broens where infringement could not be avoided in complying with such specifications or (b) use or sale of Goods in combination with other items when such infringement would not have occurred from the use or sale of those Goods solely for the purpose for which they were designed or sold by Seller. For purposes of this article only, the term Broens will include The Broens Company and all Broens subsidiaries and all officers, agents and employees of Broens or any Broens subsidiary.

### 22. CONFIDENTIAL, PROPRIETARY AND TRADE SECRET INFORMATION AND MATERIALS

Broens and Seller shall each keep confidential and protect from unauthorised use and disclosure all (a) confidential, proprietary and/or trade secret information; (b) tangible items and software containing, conveying or embodying such information; and (c) tooling identified as being subject to this article and obtained, directly or indirectly, from the other in connection with this Contract or other agreement referencing this Contract (collectively referred to as "Proprietary Information and Materials"). Broens and Seller shall each use Proprietary Information and Materials of the other only in the performance of and for the purpose of this Contract and/or any other agreement referencing this Contract. However, despite any other obligations or restrictions imposed by this article, Broens shall have the right to use, disclose and reproduce Seller's Proprietary Information and Materials, and make derivative works thereof, for the purposes of testing, certification, use, sale or support of any Goods delivered under this Contract or any other agreement referencing this Contract. Any such use, disclosure, reproduction or derivative work by Broens shall, whenever appropriate, include a restrictive legend suitable for the particular circumstances. The restrictions on disclosure or use of Proprietary Information and Materials by Seller shall apply to all materials derived by Seller or others from Broens' Proprietary Information and Materials. Upon Broens' request at any time, and in any event upon the completion, termination or cancellation of this Contract, Seller shall return to Broens all of Broens' Proprietary Information and Materials and all materials derived there from, unless specifically directed otherwise

## Terms and Conditions of Purchase

in writing by Broens. Seller shall not, without the prior written authorisation of Broens, sell or otherwise dispose of (as scrap or otherwise) any parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Broens. Prior to disposing of such parts or other materials as scrap, Seller shall render them unusable. Broens shall have the right to audit Seller's compliance with this article. Seller may disclose Proprietary Information and Materials of Broens to its subcontractors as required for the performance of this Contract, provided that each such subcontractor first agrees in writing to the same obligations imposed upon Seller under this article relating to Proprietary Information and Material. Seller shall be liable to Broens for any breach of such obligation by such subcontractor. The provisions of this article are effective in lieu of any restrictive legends or notices applied to Proprietary Information and Materials. The provisions of this article shall survive the performance, completion, termination or cancellation of this Contract.

### 23. BROENS' RIGHTS IN SELLER'S PATENTS, COPYRIGHTS, TRADE SECRETS, AND TOOLING

Seller hereby grants to Broens an irrevocable, nonexclusive, paid-up worldwide license to practice and/or use, and license others to practice and/or use on Broens' behalf, all of Seller's patents, copyrights, trade secrets (including, without limitation, designs, processes, drawings, technical data and tooling), industrial designs, semiconductor mask works, and tooling (collectively hereinafter referred to as "Licensed Property") related to the development, production, maintenance or repair of Products. Broens hereafter retains all of the aforementioned license rights in Licensed Property, but Broens hereby covenants not to exercise such rights except in connection with the making, having made, using and selling of Products or products of the same kind provided that such undelivered quantity of Product cannot, in Broens' sole and unfettered discretion, be reasonably obtained in the required time frame at a reasonable price from commercially available sources (including Broens) without the use of Seller's Licensed Property and if one or more of the following situations occur:

- a) Seller discontinues or suspends business operations or the production of any or all of the Products;
- b) Seller is acquired by or transfers any or all of its rights to manufacture any Product to any third party, whether or not related, without Broens' prior written concurrence;
- c) Broens cancels this Contract or any Order;
- d) In Broens' judgment it becomes necessary, in order for Seller to comply with the terms of this Contract or any Order, for Broens to provide support to Seller (in the form of design, manufacturing, or on-site personnel assistance) substantially in excess of that which Broens normally provides to its sellers';
- e) Seller's trustee in bankruptcy (or Seller as debtor in possession) fails to assume this Contract and all Orders by formal entry of an order in the bankruptcy court within sixty (60) days after entry of an order for relief in a bankruptcy case of the Seller, or Broens elects to retain its rights to Licensed Property under the bankruptcy laws;
- f) Seller is at any time insolvent (whether measured under a balance sheet test or by the failure to pay debts as they come due) or the subject of any insolvency or debt assignment proceeding under state or non-bankruptcy law; or
- g) Seller voluntarily becomes a debtor in any case under bankruptcy law or, in the event an involuntary bankruptcy petition is filed against Builder, such petition is not dismissed within thirty (30) days.

As a part of the license granted under this Clause, Seller shall, at the written request of Broens and at no additional cost to Broens, promptly deliver to Broens any and all Licensed Property considered by Broens to be necessary to satisfy Broens' requirements for Products and their substitutes.

### 24. OWNERSHIP OF INTELLECTUAL PROPERTY

#### 24.1 Technical Work Product

All technical work products, including, but not limited to, ideas, information, data, documents, drawings, software, software documentation, software tools, designs, specifications, and processes produced by or for Seller, either alone or with others, in the course of or as a result of any work performed by or for Seller in the performance of this Contract will be the exclusive property of Broens and be delivered to Broens promptly upon request.

#### 24.2 Inventions and Patents

All inventions conceived, developed, or first reduced to practice by or for Seller, either alone or with others, in the course of or as a result of any work performed by or for Seller in the performance of this Contract and any patents based upon such inventions (both domestic and foreign), will be the exclusive property of Broens and Broens has exclusive title over such inventions as defined in the *Patents Act 1990* (Cth) as amended from time to time. Seller will (i) promptly disclose all such inventions to Broens in written detail and (ii) execute all papers, cooperate with Broens, and perform all acts necessary or appropriate in connection with the filing, prosecution, maintenance, or assignment of related patents or patent applications on behalf of Broens.

#### 24.3 Works of Authorship and Copyrights

All works of authorship and/or design (including, but not limited to, documents, drawings, software, software documentation, software tools, photographs, video tapes, sound recordings and images) created by or for Seller, either alone or with others, in the course of or as a result of any work performed by or for Seller in the performance of this Contract, together with all copyrights subsisting therein, will be the sole property of Broens and Broens remains the Owner and/or Entitled Person for the purpose of the *Copyright Act 1968* (Cth) and the *Designs Act 2003* (Cth) both as amended from time to time. To the extent permitted under United States of America copyright law, all such works will be works made for hire, with the copyrights therein vesting in Broens. The copyrights in all other such works, including all of the exclusive rights therein, will be promptly transferred and formally assigned free of charge to Broens.

#### 24.4 Pre-Existing Inventions and Works of Authorship

Seller grants to Broens, and to Broens' subcontractors, suppliers, and customers in connection with Products or work being performed for Broens, an irrevocably, nonexclusive, paid-up, worldwide license under any patents, copyrights, industrial designs and mask works (whether domestic or foreign) owned or controlled by Seller at any time and existing prior to or during the term of this Contract, but only to the extent that such patents or copyrights would otherwise interfere with Broens' or Broens' subcontractors', suppliers', or customers' use or enjoyment of Products or the work product, inventions, or works of authorship and design belonging to Broens under this Contract.

#### 24.5 Exclusive Option

Broens shall have exclusive option for six (6) months following completion of the Contract, under reasonable terms and conditions, including a reasonable royalty, an assignment of or exclusive rights to title and interest and to intellectual property conceived or reduced to practice by Seller during the performance of this Contract but unrelated to the subject matter contained in the Statement of Work.

### 25. RECORDS AND AUDIT

Seller shall retain all records and documents pertaining to the Goods for a period of no less than three years after final payment. Such records and documents shall date back to the time this Contract was issued and shall include without limitation, catalogues,

## Terms and Conditions of Purchase

price lists, invoices and inventory records for purposes of verification of prices or rates charged by Seller for Goods procured by Broens. Broens shall have the right to examine, reproduce and audit all such records related to pricing and performance to evaluate the accuracy, completeness and currency of cost and pricing data submitted with Seller's bid or offer to sell; and related to "Changes," "Termination for Convenience" or "Cancellation for Default" articles of this Contract.

### 26. RIGHTS OF BROENS' CUSTOMERS AND REGULATORS TO PERFORM INSPECTION, SURVEILLANCE AND TESTING

Broens' rights to perform inspections, surveillance and tests and to review procedures, practices, processes and related documents related to quality assurance.

### 27. GRATUITIES

Seller warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Broens' employees, agents or representatives for the purpose of securing this Contract or securing favourable treatment under this Contract.

### 28. RIGHTS AND REMEDIES

Any failures, delays or forbearances of either party in insisting upon or enforcing any provisions of this Contract, or in exercising any rights or remedies under this Contract, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect. Except as otherwise limited in this Contract, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the parties may have at law or in equity.

If any provision of this Contract is or becomes void or unenforceable by law, the remainder shall be valid and enforceable.

### 29. GOVERNING LAW

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Australia and the State of NSW.

### 30. GOVERNMENT CLAUSES

Government clauses applicable to this Contract are incorporated herein either by attachment to this document or by other means of reference

### 31. SUSPENSION OF WORK

a) Broens' Authorised Procurement Representative may, by written order, suspend all or part of the work to be performed under this Contract for a period not to exceed 100 days. Within such period of any suspension of work, Broens shall either:

- i) cancel the suspension of work order;
- ii) Terminate this Contract in accordance with the "Termination for Convenience" article of this Contract;
- iii) Cancel this Contract in accordance with the "Cancellation for Default" article of this Contract; or
- iv) Extend the stop work period.

b) Seller shall resume work whenever a suspension is cancelled. Broens and Seller shall negotiate an equitable adjustment in the price or schedule or both if:

- i) this Contract is not cancelled or terminated;
- ii) The suspension results in a change in Seller's cost of performance or ability to meet the Contract delivery schedule; and
- iii) Seller submits a claim for adjustment within 20 days after the suspension is cancelled.

### 32. ACCESS TO PLANTS AND PROPERTIES

Seller shall comply with all the rules and regulations established by Broens for access to and activities in and around premises controlled by Broens or Broens' customer.

### 33. CODE OF CONDUCT

Broens is committed to conducting its business fairly, impartially, and in an ethical and proper manner. Broens' expectation is that Seller also will conduct its business fairly, impartially, and in an ethical and proper manner. Broens' further expectation is that Seller will have (or will develop) and adhere to a code of ethical standards. If Seller has cause to believe that Broens or any employee or agent of Broens has behaved improperly or unethically under this Contract, Seller shall report such behaviour to The Broens Company care of the General Manager. Although Broens will not use the failure to report improper or unethical behaviour as a basis for claiming breach of Contract by Seller, Seller is encouraged to exert reasonable effort to report such behaviour when Warranted.

### 34. PRIVACY

a) Seller agrees that it will not collect, use, disclose, store, transfer or otherwise handle Personal Information it collects in connection with this Contract except in accordance with:

- i) Any Privacy Legislation that applies to Seller (whether by force of this Contract or otherwise); and
- ii) Such policies or directions relating to the collection, use, disclosure, storage, transfer or handling of Personal Information as are notified by Broens to Seller from time to time.

b) Seller must co-operate and comply with any request, inquiry or direction Broens makes that either:

- i) Relates to the protection of Personal Information collected in connection with this Contract; or
- ii) Is in Broens' opinion reasonably necessary to give effect to or comply with a request, inquiry, direction or order of the Federal Privacy Commissioner or a Court, and given or made under any applicable Privacy Legislation.

c) Seller agrees and warrants to Broens that:

- i) Any Personal Information that Seller provides to Broens in connection with this Contract has been collected in accordance with Privacy Legislation that applies to that collection;
- ii) That the individual to whom the information relates has been made aware of the identity of Broens and of the other matters of which the individual is required to be informed under Privacy Legislation that applies to the organisation collecting the information; and
- iii) That the disclosure of the information to, and its use by, Broens is authorised by the individual to whom the information relates, or by law.

d) Seller agrees to continually indemnify Broens in respect of any loss, liability or expense suffered or incurred by Broens arising out of or in connection with a breach of the obligations of Seller, its employees or contractors, under this clause or of any disclosure to Broens or any other person, or any loss or misuse of Personal Information, in breach of an obligation arising in relation to that information whether arising under Privacy Legislation or otherwise.

e) This clause survives the expiry or termination of this Contract.

f) In this clause:

*Personal Information* has the meaning given in the *Privacy Act 1988*; and *Privacy Legislation* means laws in respect of privacy and the protection of personal information including, without limitation, the *Privacy Act 1988*.

### 35. INDEMNIFICATION, INSURANCE AND PROTECTION OF PROPERTY

a) Indemnification Negligence of Seller or Subcontractor. Seller shall indemnify and hold harmless The Broens Company, its subsidiaries, and their directors, officers, employees and agents from and against all actions, causes of action, liabilities, claims, suits, judgments, liens, awards and damages of any kind and nature whatsoever for property damage, personal injury or death (including without limitation injury to or death of employees of Seller or any subcontractor thereof) and expenses, costs of litigation and counsel fees related thereto or incident to establishing the right to

## Terms and Conditions of Purchase

indemnification, arising out of or in any way related to this Contract, the performance thereof by Seller or any subcontractor thereof or other third parties, including, without limitation, the provision of services, personnel, facilities, equipment, support, supervision or review. The foregoing indemnity shall apply only to the extent of the negligence of Seller, any subcontractor thereof or their respective employees. In no event shall Seller's obligations hereunder be limited to the extent of any insurance available to or provided by Seller or any subcontractor thereof. Seller expressly waives any immunity under industrial insurance, whether arising out of statute or source, to the extent of the indemnity set forth in this paragraph (a).

b) Public Liability Insurance. If Seller or any subcontractor thereof will be performing work on Broens' premises, Seller shall carry and maintain, and ensure that all subcontractors thereof carry and maintain, throughout the period when work is performed and until final acceptance by Broens, Public Liability insurance with available limits of not less than 10 million dollars (\$10,000,000) per occurrence for bodily injury and property damage combined. Such insurance shall contain coverage for all premises and operations, broad form property damage, contractual liability (including, without limitation, that specifically assumed under paragraph (a) herein) and goods and completed operations insurance with limits of not less than 10 million dollars (\$10,000,000) per occurrence for a minimum of 24 months after final acceptance of the work by Broens. Such insurance shall not be maintained on a per-project basis unless the respective Seller or subcontractor thereof does not have blanket coverage.

c) Motor Vehicle Insurance. If licensed vehicles will be used in connection with the performance of the work, Seller shall carry and maintain, and ensure that any subcontractor thereof who uses a licensed vehicle in connection with the performance of the work carries and maintains, throughout the period when work is performed and until final acceptance by Broens, Motor Vehicle insurance covering all vehicles, whether owned, hired, rented, borrowed or otherwise, with available limits of not less than 10 million dollars (\$10,000,000) per occurrence combined single limit for bodily injury and property damage.

d) Workers' Compensation Insurance. Throughout the period when work is performed and until final acceptance by Broens, Seller shall, and ensure that any subcontractor thereof shall, cover or maintain insurance in accordance with the applicable laws relating to Workers' Compensation with respect to all of their respective employees working on or about Broens' premises. If Broens is required by any applicable law to pay any Workers' Compensation premiums with respect to an employee of Seller or any subcontractor, Seller shall indemnify Broens for such payment.

e) Certificates of Insurance. Prior to commencement of the work, Seller shall provide for Broens' review and approval certificates of insurance reflecting full compliance with the requirements set forth in paragraphs (b) Public Liability Insurance, (c) Motor Vehicle Insurance and (d) Workers' Compensation Insurance. Such certificates shall be kept current and in compliance throughout the period when work is being performed and until final acceptance by Broens, and shall provide for 30 days advance written notice to Broens in the event of cancellation. Failure of Seller or any subcontractor thereof to furnish certificates of insurance, or to procure and maintain the insurance required herein or failure of Broens to request such certificates, endorsements or other proof of coverage shall not constitute a waiver of Seller's or subcontractor's obligations hereunder.

f) Self-Assumption. Any self-insured retention, deductibles and exclusions in coverage in the policies required under this article shall be assumed by, for the account of and at the sole risk of Seller or the subcontractor which provides the insurance and to the extent applicable shall be paid by such Seller or subcontractor. In no event shall the liability of Seller or any subcontractor thereof be limited to the extent of any of the minimum limits of insurance required herein.

g) Protection of Property. Seller assumes, and shall ensure that all subcontractors thereof and their respective employees assume, the risk of loss or destruction of or damage to any property of such parties whether owned, hired, rented, borrowed or otherwise. Seller waives, and shall ensure that any subcontractor thereof and their respective employees waive, all rights of recovery against Broens, its subsidiaries and their respective directors, officers, employees and agents for any such loss or destruction of or damage to any property of Seller, any subcontractor or their respective employees.

h) At all times Seller shall, and ensure that any subcontractor thereof shall, use suitable precautions to prevent damage to Broens' property. If any such property is damaged by the fault or negligence of Seller or any subcontractor thereof, Seller shall, at no cost to Broens, promptly and equitably reimburse Broens for such damage or repair or otherwise make good such property to Broens' satisfaction. If Seller fails to do so, Broens may do so and recover from Seller the cost thereof.

### 36. BROENS' PROPERTY

Seller shall clearly mark, maintain an inventory of and keep segregated or identifiable all of Broens' property and all property to which Broens acquires an interest by virtue of this Contract. Seller assumes all risk of loss, destruction or damage of such property while in Seller's possession, custody or control.

Upon request, Seller shall provide Broens with adequate proof of insurance against such risk of loss.

Seller shall not use such property other than in performance of this Contract without Broens' prior written consent. Seller shall notify Broens' Authorised Procurement Representative if Broens' property is lost, damaged or destroyed. As directed by Broens, upon completion, termination or cancellation of this Contract, Seller shall deliver such property, to the extent not incorporated in delivered materials, to Broens in good condition subject to ordinary wear and tear and normal manufacturing losses. Nothing in this article limits Seller's use, in its direct contracts with the Government, of property in which the Government has an interest.

### 37. NOTICE TO BROENS OF LABOR DISPUTES

Whenever Seller has knowledge that any actual or potential labour dispute is delaying or threatens to delay the timely performance of this Contract, Seller shall immediately give notice thereof, including all relevant information, to Broens.

### 38. ASBESTOS

Seller and or its subcontractors shall not provide any goods that contain asbestos, and or asbestos containing material and shall comply with all relevant Federal and State laws and regulations, prohibiting such use, manufacture or provision. Seller shall bear all costs associated with the safe removal of any Goods containing asbestos or asbestos containing material in the event asbestos or asbestos containing material has been delivered, installed, or otherwise by Seller to Broens.

### 39. DELAY

Seller shall and ensure its subcontractors notify Broens immediately of any circumstances, including labour disputes that may cause a delay, in delivery or any other performance of this Contract. The notice shall state without limitation, the nature of the delay, the estimated period of delay and reasons therefore. If requested by Broens, Seller and or its subcontractors shall use additional effort, including premium effort, and shall ship via air or other expedited routing to avoid or minimise delay to the maximum extent possible. All additional costs resulting from such additional or premium effort will be borne by Seller. Nothing herein shall prejudice any of the rights or remedies provided to Broens.

## Terms and Conditions of Purchase

### 40. ENTIRE AGREEMENT

This Contract contains the entire agreement of the parties and supersedes any and all prior agreements, understandings and communications between Broens and Seller related to the subject matter of this Contract. No amendment or modification of this Contract shall bind either party unless it is in writing and is signed by Broens' Authorised Procurement Representative and an authorised representative of Seller.

### 41. TIME

Time shall be of the essence of the Seller's obligations and performance in this Contract.

### 42. ORDER OF PRECEDENCE

In the event of any inconsistency arising from any part of an Order, the inconsistency shall be resolved by giving precedence in the following order:

- i) Order;
- ii) This Contract
- iii) Statement of Work; and
- iv) Other relevant documents.