

ASSET SALE CONTRACT

Terms and Conditions

1. Defined terms and interpretation

1.1 Defined terms

Unless the context otherwise requires, the terms used in this Contract have the meanings set out below:

Auction means the online or offline auction for the sale of Assets conducted by the Auctioneer.

Asset means the plant, equipment, item or material (as applicable) available for sale by the Seller in respect of which the Buyer has made the winning bid at the Auction.

Asset Documents means the Asset Status Report, Asset Hazard Report (if any) and any other document nominated by the Seller from time to time as an Asset Document, which (if any) were set out in or with the Asset description, or otherwise made available to the Buyer through the Auction, and are now taken to comprise part of Schedule 1.

Asset Records means certificates of title and materials relating to the Asset including all operation, maintenance and other records and manuals relating to the Asset in the Seller's possession (if any).

Asset Status Report means the detailed assessment of the condition of the Asset, which (if any) is outlined in the Asset description and taken to comprise part of Schedule 1.

Associated Party means a Related Body Corporate of the Seller or any other person or entity on whose behalf the Seller enters into this Contract.

Auctioneer means the auctioneer and agent for the Seller in respect of the sale of the Asset.

Australian Consumer Law means the provisions set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Business Day means a calendar day ending at 5.00pm (GMT + 10:00), other than a Saturday, Sunday or public holiday in Melbourne, Victoria or Adelaide, South Australia.

Buyer means the person who has been announced by the Auctioneer at the Auction as the winning bidder in relation to the Asset, and who is confirmed in writing to be the winning bidder by the Auctioneer.

Claim means any existing or future allegations, debts, actions, liabilities, suits, causes of action, proceedings, claims and demands of any nature including by third parties whether based in contract, equity, tort (including negligence), statute or otherwise and whether in Australia or elsewhere.

Completion means completion of the sale and purchase of the Asset contemplated in the Contract.

Completion Date means the date the Buyer has agreed with the Seller to remove (all of) the Asset from the Site, which must be no later than 14 days from the date of this Contract unless otherwise agreed in writing between the parties, often but not exclusively in the Payment Instructions.

Confidential Information means:

- (a) all information relating to the Asset, this Contract or the business or operations of the Seller or any of the Seller's Associated Parties; and
- (b) all information provided by the Seller or any of the Seller's Associated Parties or any of their respective Personnel to the Buyer or otherwise obtained by the Buyer in connection with this Contract,

except information that is public knowledge (otherwise than as a result of a breach of confidentiality by the Buyer or any of its permitted disclosees).

Contract means the contract for the sale and purchase of the Asset, including details of the Buyer as provided by the Buyer when registering for the Auction, the Buyer's bid, these Terms and Conditions and any schedules, attachments, appendices or annexures to this contract and, unless otherwise agreed in writing by the parties, this contract does not include any discussions, documents or correspondence of any kind exchanged between the parties.

Corporations Act means the *Corporations Act 2001* (Cth).

date of this Contract means the date the Auctioneer confirms in writing to the Buyer that the Buyer is the winning bidder in respect of the Asset.

Deposit means a deposit of 25% of the Purchase Price or any other percentage of the Purchase Price notified to the Buyer prior to or during the Auction or (provided it is not a percentage exceeding 25%) after the Auction, often but not exclusively in the Payment Instructions.

Indemnified Party means the Seller, each Associated Party and each of their respective Personnel.

Insolvent means, if the Buyer is a company:

- (a) a meeting has been convened, resolution proposed, petition presented or order made for the winding up of the Buyer;
- (b) a receiver, receiver and manager, provisional liquidator, liquidator or other officer of the Court has been appointed in relation to all or any material asset of the Buyer;
- (c) a mortgagee or chargee has taken, attempted or indicated an intention to exercise its rights under any security of which the Buyer is the mortgagor or chargor;
- (d) the Buyer is insolvent within the meaning of section 95A of the Corporations Act;
- (e) the Buyer has stopped paying its debts as and when they fall due;
- (f) the Buyer has been served with a demand under section 459E of the Corporations Act which it is taken under section 459F of the Corporations Act to have failed to comply with;
- (g) the Buyer is subject to voluntary administration under Part 5.3A of the Corporations Act; or
- (h) anything that is analogous to the events in paragraphs (a) to (g) above (inclusive) in the jurisdiction of incorporation of the Buyer has occurred or is subsisting,

or, if the Buyer is an individual:

- (i) a trustee or similar officer is appointed in respect of the Buyer or any of the Buyer's assets;
- (j) an order is made for the bankruptcy of the Buyer or his or her estate and no event has occurred that would give a court the right to make such an order;
- (k) a moratorium of any debts of the Buyer, a personal insolvency agreement or any other assignment, composition or arrangement with the Buyer's creditors or any similar proceeding or arrangement by which the assets of the Buyer are subjected conditionally or unconditionally to the control of the Buyer's creditors or a trustee has been ordered or applied for;
- (l) the Buyer has declared or is taken under any applicable law to be insolvent or unable to pay his or her debts or the Buyer has admitted in writing that he or she is insolvent or unable to pay his or her debts;
- (m) a writ of execution, garnishee order, *mareva* injunction or similar order, attachment, distress or other process has been made or issued against or in relation to any asset of the Buyer;
- (n) or an event under any law which is analogous to, or which has a substantially similar effect to, any of the events referred to in paragraphs (a) to (m) (inclusive) has occurred or is subsisting in relation to the Buyer.

Government Agency means any Federal, State or Local Government, or any ministry, department, court, tribunal, competition authority, commission, board, agency, institution or similar entity of such government.

Intellectual Property means all intellectual property rights subsisting anywhere in the world, including copyright, designs, trade and service marks (including goodwill in those marks), domain names and trade names and any right to have confidential information kept confidential, whether or not such rights are registered or capable of being registered.

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Losses means any liabilities, losses, damages, costs and expenses (including legal costs and expenses) whether present, unascertained, actual or contingent or prospective.

Payment Instructions means the Seller's instructions notified to the Buyer by the Auctioneer for the payment by the Buyer of the Deposit (if any) and Purchase Price, and may also include details on the preferred or agreed Completion Date and time (if any).

Personnel means employees, officers, representatives, agents, contractors and sub-contractors.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Purchase Price means the agreed purchase price in respect of the Asset, as bid by the Buyer at the Auction and accepted by the Auctioneer acting for and on behalf of the Seller. For the avoidance of doubt, the Purchase Price excludes any Buyer's Premium payable to the Auctioneer.

Related Body Corporate has the meaning given in the Corporations Act.

Removal Plan means the plan, substantially in accordance with the Seller's Procedures, for the collection and removal of the Asset from the Site by the Buyer or the Buyer's contractor (if any).

Security Interest includes a security interest as defined in the PPSA and any regulation made at any time under the PPSA including the *Personal Property Securities Regulations 2010* (Cth).

Seller means GM Holden Ltd ABN 84 006 893 232 of 191 Salmon Street, Port Melbourne, Victoria, Australia 3207.

Seller's Procedures means the document entitled 'Requirements For Assets Removal For Contractors and Buyers' (Dated: September 2015) as amended or replaced from time to time, the document entitled 'Site Contractors Reference Booklet' (Form Number HS083/6; Latest Issue Date: May 2014) as amended or replaced from time to time, and any other document nominated by the Seller from time to time as a Seller's Procedure and provided to the Buyer, which were set out in or with the Asset description, or otherwise made available to the Buyer through the Auction, and are now taken to comprise part of Schedule 1.

Site means the location of the Asset as notified to the Buyer by or on behalf of the Seller.

1.2 Interpretation

In this Contract, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of this Contract;
- (b) the singular includes the plural and vice versa;
- (c) words importing a gender include other genders;
- (d) the words 'include' and 'including' are to be construed without limitation;
- (e) other grammatical forms of defined words or expressions have corresponding meanings;
- (f) a reference to:
 - (i) a clause, schedule, attachment or appendix is a reference to a clause, schedule, attachment or appendix to this Contract and a reference to this Contract includes any schedules, attachments and appendices;
 - (ii) a document or agreement includes a reference to that document or agreement as novated, varied or replaced from time to time;
 - (iii) 'A\$', '\$A', 'AUD', 'dollar' or '\$' is a reference to Australian currency;
 - (iv) a person includes any individual, firm, body corporate, partnership, unincorporated association, government, authority or agency of a state, joint venture or Government Agency;
 - (v) a party includes its executors, administrators, successors and permitted assigns; and
 - (vi) a day means a period of 24 consecutive hours from midnight;

- (g) if the Buyer is more than one person, this Contract binds all of them separately and each of them together; and
- (h) if the due date for anything to be done under this Contract falls on a day that is not a Business Day, then it must be done on the next Business Day.

2. Sale and Purchase

The Seller agrees to sell the Asset, and the Buyer agrees to purchase the Asset, for the Purchase Price on the terms and conditions of this Contract.

3. Payment

- (a) The Buyer must pay the Deposit specified in the Payment Instructions (if any) within 3 Business Days of the date of this Contract or any later date agreed in writing between the parties.
- (b) The Buyer must pay the Purchase Price (less any Deposit paid under clause 3(a)) on or before the Completion Date.
- (c) The Deposit (if any) and the Purchase Price must be paid by cash, bank cheque or electronic bank transfer in accordance with the Payment Instructions.

4. Completion

- (a) Completion will take place on the Completion Date at the Site or at any other time or place agreed in writing between the parties.
- (b) At Completion, the Seller must make available for collection by the Buyer the Asset and any Asset Records, subject to the Buyer complying with any removal requirements of the Seller or the Auctioneer including complying with the Removal Plan (if applicable).
- (c) At Completion, the Buyer must:
 - (i) pay or have paid the Purchase Price (less any Deposit paid under clause 3(a)); and
 - (ii) have complied with clause 9 to:
 - (A) if no Removal Plan is required, collect and remove the Asset and Asset Records from the Site on the Completion Date; or
 - (B) if a Removal Plan is required, have agreed with the Seller a Removal Plan to collect and remove the Asset and Asset Records from the Site on or by a future date.
- (d) The obligations under this clause 4 are interdependent and will be taken to have occurred simultaneously on the Completion Date.

5. Termination

5.1 Termination events

- (a) If the Buyer fails to perform its obligations under clauses 3(a), 3(b) or 4(c) by the Completion Date, the Seller may immediately terminate this Contract by giving written notice to the Buyer.
- (b) If the Buyer breaches a provision of this Contract (other than clauses 3(a), 3(b) or 4(c)) in a material respect, the Seller may notify the Buyer to remedy the breach within 5 Business Days after receipt of the notice. If the Buyer fails to remedy the breach within that period, the Seller may immediately terminate this Contract by giving written notice to the Buyer.
- (c) If the Asset is lost, damaged or destroyed between the date of this Contract and Completion by any cause other than due to any acts or omissions of Buyer or its Personnel, the Seller may immediately terminate this Contract by giving written notice to the Buyer.

5.2 Effect of termination

- (a) If the Seller terminates this Contract in accordance with clause 5.1(a), 5.1(b), 9(g) or 10.3, then without limiting any of the Seller's rights at law (including the right to recover the Purchase Price from the Buyer as a debt due):

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- (i) any Deposit or Purchase Price paid by the Buyer is forfeited and may be retained by the Seller;
 - (ii) the Buyer has no further rights to, claim to, or interest in the Asset and Asset Records; and
 - (iii) the Seller will be entitled to treat the Asset and Asset Records as abandoned and re-sell, destroy or otherwise deal with the Asset and Asset Records at its absolute discretion.
- (b) If the Seller terminates the Contract in accordance with clause 5.1(c):
- (i) any Deposit or Purchase Price paid by the Buyer will be returned to the Buyer;
 - (ii) the Seller will have no other liability to the Buyer with respect to the Asset and Asset Records; and
 - (iii) the Buyer will have no further rights to, claim to, or interest in the Asset and Asset Records.
- 6. Title, risk and insurance**
- (a) The parties agree that:
- (i) title to the Asset passes to the Buyer at Completion; and
 - (ii) risk of loss or damage to the Asset passes to the Buyer on the date of this Contract, and the Buyer is responsible for insuring the Asset on and from the date of this Contract.
- (b) The parties agree that from Completion:
- (i) the Seller will have no liability to the Buyer whatsoever in respect of the Asset or the Asset Records (or any part thereof); and
 - (ii) the Buyer absolutely and irrevocably releases the Seller and its Associated Parties and each of their respective Personnel from all or any Claims, liabilities or obligations in respect of the Asset and the Asset Records (or any part thereof).
- 7. Seller's liability**
- 7.1 Australian Consumer Law**
- (a) Under the Australian Consumer Law (and other similar legislation of Australian States and territories), certain statutory guarantees are conferred in relation to the supply of goods or services to a consumer (as defined in the Australian Consumer Law) and cannot be excluded, restricted or modified by a contract (**Consumer Guarantees**).
- (b) To the extent permitted by law, the Seller limits its liability under this Contract for a failure to comply with any Consumer Guarantees to, at the Seller's option:
- (i) the payment of the cost of replacing the Asset or its equivalent; or
 - (ii) replacing or repairing the Asset, but only to the same or equivalent condition,
- and the parties agree that it is fair and reasonable in all the circumstances for the Seller's liability to be limited.
- 7.2 Exclusion of liability**
- Except where expressly stated in the terms of this Contract, and except to the extent prohibited by law, the Seller gives no representations, guarantees, warranties, and agrees to no conditions, rights, remedies, liability or other terms, express or implied, in relation to any goods or services supplied under this Contract.
- 7.3 Indirect loss excluded**
- Subject to clause 7.1, the Seller has no liability to the Buyer for any of the following that may arise out of or in connection with this Contract or the sale and purchase, dismantling, collection, removal, transport, commissioning, use or operation of the Asset (or any part thereof) by any person, whether arising under breach of contract, in equity, breach of warranty, tort (including negligence), under statute or otherwise:
- (a) losses suffered by a person that cannot reasonably be considered to arise from a breach of this Contract by the Seller;
 - (b) actual or anticipated loss of profits, revenue, goodwill, savings, data, business opportunity or expectation; and
 - (c) indirect, special, consequential, punitive or exemplary Losses.
- 7.4 Aggregate limit of liability**
- Subject to clause 7.1, the aggregate limit of the Seller's liability for any other Losses arising under or in connection with the sale of the Asset to the Buyer under this Contract or otherwise is limited to an amount equal to the Purchase Price.
- 7.5 Buyer to give notice of Claim**
- If any facts arise to the knowledge of the Buyer which might give rise to a Claim under this Contract:
- (a) the Buyer must immediately give written notice of the Claim to the Seller setting out reasonable particulars of the Claim; and
 - (b) at the expense and direction of the Buyer, the Buyer must take such action (including legal proceedings) as the Seller may reasonably require to avoid, dispute, defend, appeal or compromise that Claim.
- 7.6 Limitation on claims**
- Subject to clause 7.1, the Buyer may not make a Claim under or in connection with this Contract unless full details of the Claim are given to the Seller within three months after the Completion Date.
- 7.7 Payment for breach**
- A payment made for a breach of any warranty under clause 10.1 that:
- (a) relates to any one or more parts of the Asset, is to be treated as a reduction in the amount of the Purchase Price attributed to each relevant part of the Asset; or
 - (b) does not relate to a specific part of the Asset, is to be treated as a reduction in the Purchase Price for all of the Asset on a pro rata basis.
- 8. Asset Condition**
- (a) On the date of this Contract or any other time prior to the Completion Date, if required by law or at the Seller's discretion, the Seller may provide any or all of the Asset Documents to the Buyer.
- (b) The Buyer acknowledges and agrees that:
- (i) it has had the opportunity to inspect the Asset and relied on its own enquiries with respect to the Asset;
 - (ii) the Asset is being sold on an 'as is where is' basis and subject to all faults and defects whether or not they are apparent;
 - (iii) the Seller is not liable, whether in contract, tort (including negligence), under statute or otherwise, for any defect or other deficiency in the Asset;
 - (iv) neither the Seller nor any of its Associated Parties nor any of their respective Personnel has made, and the Buyer has not relied on, any statement, representation, guarantee, warranty or condition in relation to the Asset or this Contract other than the warranties in clause 10.1;
 - (v) it purchases the Asset subject to the limitations, hazards, conditions, requirements and defects (if any) identified in the Asset Documents and Asset Status Report (if any);
 - (vi) if the Asset is identified in the Asset Documents as being sold for 'spare parts' or as 'scrap' it must not be re-used, permitted to be re-used or on-sold for re-use;
 - (vii) the Asset Documents must not be relied upon by the Buyer as a warranty or representation as to the condition of the Asset, the appropriate uses of the Asset or that the Asset is safe;

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- (viii) the Buyer is responsible for ensuring that the Asset is not dismantled, removed, transported or used until any hazards or defects that need to be managed or rectified in order for the Asset to be safely dismantled, removed, transported or used have been appropriately managed or rectified;
- (ix) the Buyer is responsible for ensuring that the Asset is dismantled, removed, transported and used in accordance with all applicable laws including those in relation to workplace health, safety and the environment; and
- (x) the Seller does not warrant that the Asset complies with the requirements of any Australian federal, State, territory or local laws or those of any other jurisdiction; and
- (xi) the Asset may contain dangerous or hazardous materials or substances.

9. Removal and collection of Asset

- (a) If the Seller or its Personnel specify in writing that a Removal Plan is not required:
 - (i) the Buyer must collect and remove the Asset and any Asset Records from the Site on the Completion Date; and
 - (ii) clauses 9(c), 9(e), 9(f) and 9(g) will apply.
- (b) Subject to clause 9(a), the Seller or its Personnel require:
 - (i) on the date of this Contract or as soon as reasonably practicable after the date of this Contract but no later than the earlier of 2 Business Days before the Completion Date or one month after the date of this Contract, the Buyer must prepare a Removal Plan for the Asset and request written approval from the Seller in relation to the Buyer's Removal Plan;
 - (ii) once agreed, the Removal Plan must be signed by the parties and attached to this Contract and shall be deemed to form a part of this Contract, whether that plan is agreed on or after the date of this Contract;
 - (iii) the Buyer must collect and remove the Asset and any Asset Records from the Site in accordance with the agreed Removal Plan and this clause 9 by the Completion Date or such later date set out in the Removal Plan; and
 - (iv) clauses 9(c), 9(d), 9(e), 9(f) and 9(g) will apply.
- (c) Unless otherwise agreed in writing between the parties, the Buyer is responsible for and must bear the cost of the collection and removal of the Asset from the Site (including disconnecting (other than from utility services), dismantling, packaging, preparing for collection and loading the Asset) and any damage or loss to the Asset, the Site or the Seller's property incurred as a result of the collection and removal process.
- (d) The Buyer acknowledges receipt of the Seller's Procedures.
- (e) The Buyer must comply with and ensure its Personnel comply with:
 - (i) the Seller's Procedures;
 - (ii) any other policies, procedures and directions notified by the Seller to the Buyer, including those relating to health, safety, export controls, environment and accessing the Site; and
 - (iii) all laws, regulations and applicable Australian standards relating to the sale and purchase, collection, decommissioning, removal, transport, use and operation of the Asset, including those relating to health, safety, export controls and environment.

- (f) The Seller will permit the Buyer to have reasonable access to the Site during specified periods notified by the Seller to the Buyer, to permit the Buyer to perform its obligations under this clause 9.
- (g) If the Buyer has not collected and removed, or arranged with the Seller's agreement for the collection and removal of the Asset and any Asset Records from the Site in accordance with the provisions of this clause 9 by the Completion Date or such later date set out in the Removal Plan (if applicable) then the Seller will be entitled to immediately terminate this Contract by written notice to the Buyer.

10. Warranties

10.1 Seller warranties

At the date of this Contract and on the Completion Date, the Seller represents and warrants to the Buyer that:

- (a) the Seller is validly incorporated;
- (b) the Seller has full authority to enter into and perform this Contract; and
- (c) the Seller's obligations under this Contract are valid and binding and enforceable against it.

10.2 Buyer warranties

At the date of this Contract and on the Completion Date, the Buyer represents and warrants to the Seller that:

- (a) where the Buyer is a company, the Buyer is validly incorporated;
- (b) the Buyer has full authority to enter into and perform this Contract;
- (c) the Buyer's obligations under this Contract are valid and binding and enforceable against it;
- (d) the execution, delivery and performance by the Buyer of this Contract will not:
 - (i) result in a breach of, or constitute a default under, any agreement or arrangement to which it is party or by which it is bound; or
 - (ii) result in a breach of any law or order, judgment or decree of any court, governmental agency or regulatory body to which it is a party or by which it is bound; and
- (e) it is not Insolvent.

10.3 Buyer export compliance

At the date of this Contract and on the Completion Date, the Buyer:

- (a) represents and warrants to the Seller that it will comply with and require that any future owners of all or part of the Asset comply with all applicable export control and sanctions laws in relation to the sale and purchase, transport, use and any intended further sale or supply of the Asset, including all applicable export control and sanctions laws of Australia (and the USA for any item obtained from General Motors Company); and
- (b) agrees to comply with all information requests made by the Seller in relation to any further or final use or destination of the Asset including the further or final destination country of the Asset, any on-sale or on-supply arrangements and details of the ownership and associations of the further or final owner or user of the Asset; and
- (c) agrees that the Seller may immediately terminate this Contract by written notice to the Buyer without compensation to the Buyer if the Seller reasonably believes that:
 - (i) this Contract or the acts or omissions of the Buyer may contravene applicable laws, or result in an indirect export that may cause the Seller, General Motors Company or their Associated Parties to contravene applicable laws; or
 - (ii) the Buyer has supplied incorrect or false information requested under this clause 10.3.

11. Indemnity

11.1 Indemnity

The Buyer indemnifies each Indemnified Party from and against any Losses that may be suffered or incurred by

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any Indemnified Party in connection with, arising out of or in any way relating to this Contract including in relation to:

- (a) a breach of this Contract by the Buyer;
- (b) the sale and purchase, collection, packing, transport, removal, use or operation of the Asset or Asset Records by the Buyer or its Related Bodies Corporate or any of their respective Personnel;
- (c) unless otherwise expressly approved by the Seller in an agreed Removal Plan, any damage to or contamination of the Site or the Seller's property caused by or contributed to by the Buyer, its Related Bodies Corporate or any of their respective Personnel when accessing the Site or collecting or removing the Asset or Asset Records from the Site; and
- (d) death of or personal injury to Personnel of the Seller or the Buyer or any of their respective Related Bodies Corporate arising out of any act or omission by the Buyer, its Related Bodies Corporate or any of their Personnel under or in connection with this Contract.

11.2 Indemnity held on trust

The benefit of the indemnity given by the Buyer under clause 11.1 in favour of an Indemnified Party who is not a party to this Contract is held on trust by the Seller for each of those persons or entities.

12. Intellectual Property

12.1 Intellectual property relating to the Asset

The Buyer acknowledges that:

- (a) unless this Contract expressly states otherwise, nothing in this Contract grants the Buyer any rights to any Intellectual Property, input data, embedded software, software codes, or technical information (including reproducible product engineering drawings, material specifications or process specifications) that may be contained within the Asset, Asset Records, Asset Documents or Seller's Procedures and the Buyer expressly acknowledges and agrees that it has no licence or other right to use, disassemble, reverse engineer, transfer, sell or otherwise deal with any such Intellectual Property at any time;
- (b) the Seller gives no warranties as to the status or ownership of any Intellectual Property;
- (c) the Asset and the Asset Records are acquired subject to any subsisting Intellectual Property or other restrictions held by third parties which may prevent the Buyer from utilising the Asset or the Asset Records in part or full; and
- (d) the Buyer indemnifies the Seller for any Claim by a third party that the Buyer's use of the Asset or the Asset Records infringes the third party's Intellectual Property.

12.2 Seller's intellectual property

- (a) The Buyer acknowledges that nothing in this Contract grants the Buyer any rights in or to any trade names or trademarks of the Seller or any of its Associated Parties.
- (b) Unless agreed in writing between the parties, the Buyer must not:
 - (i) use, including authorising others to use, in connection with the manufacture, sale, or service of any products resulting from or created with the Asset; or
 - (ii) alter, deface, make additions to, remove, erase or obliterate, wholly or partly, any trade name or trademark of the Seller or its Related Bodies Corporate affixed to or appearing on the Asset, Asset Records, Asset Documents or Seller's Procedures.
- (c) Unless otherwise agreed in writing between the parties, the Buyer must, and must procure that any future owners of the Asset, conspicuously mark and identify any products produced by it utilising the Asset as being the products of Buyer and must not publicise or otherwise disclose that any such Asset

was formerly owned by the Seller or any Associated Party.

13. GST

- (a) In this clause 13, words or expressions have the same meaning as defined in *the A New Tax System (Goods and Services Tax) Act 1999* (Cth) unless the context makes it clear that a different meaning is intended.
- (b) All amounts used in this Contract, including amounts and variables in formulas, are exclusive of GST, unless it is clearly stated that they are intended to be GST inclusive.
- (c) If a party makes a supply under or in connection with this Contract in respect of which GST is payable, the consideration for the supply but for the application of this clause 13 is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- (d) If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit to which the other party is entitled for the loss, cost or expense and then increased in accordance with clause 13(c). That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be paid, that its entitlement is otherwise.
- (e) Notwithstanding any other provision of this Contract, the recipient of a taxable supply made under or in connection with this Contract need not make a payment until the supplier has given the recipient a valid tax invoice for the supply to which the payment relates. The supplier must give the recipient an adjustment note for an adjustment arising from an adjustment event relating to a taxable supply made under or in connection with this Contract within seven days after the date the supplier becomes aware of the adjustment event.
- (f) If a party is a member of a GST group, references to GST which the party must pay, and to input tax credits to which the party is entitled, include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.
- (g) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay and indemnify the payee against the amount of that GST.

14. Confidential information

- (a) The Buyer:
 - (i) may use Confidential Information only for the purposes of this Contract; and
 - (ii) must keep all Confidential Information confidential except for disclosures permitted under clause 14(b) and to the extent (if any) the Buyer is required by law to disclose particular Confidential Information.
- (b) The Buyer may disclose Confidential Information to Personnel of the Buyer who:
 - (i) have a need to know for the purposes of this Contract (and only to the extent that each has a need to know); and
 - (ii) before disclosure, have been directed by the Buyer to keep all Confidential Information confidential.
- (c) If the Buyer is required by law to disclose any Confidential Information to a third person (including any Government Agency) the Buyer must, before doing so:
 - (i) notify the Seller; and
 - (ii) give the Seller a reasonable opportunity to take any steps that the Seller considers necessary to protect the confidentiality of that information; and

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- (iii) notify the third person that the information is confidential information of the Seller.

15. Notices

A notice, request, consent, approval, direction or other communication (**Notice**) under or for the purposes of this Contract must be in writing, in English and addressed to the Seller or the Buyer. The Buyer must provide its contact details to the Auctioneer before or immediately after the Auction. A Notice will be deemed to have been received:

- (a) if posted, on the 3rd Business Day (or the 14th Business Day if posted to or from a place outside Australia) after posting;
- (b) if delivered personally, upon delivery; or
- (c) if sent by facsimile or email:
 - (i) on a Business Day, on dispatch of the transmission; or
 - (ii) on a day other than a Business Day, on the next Business Day,unless the sender's facsimile machine or server indicates a malfunction or error in transmission or the recipient immediately notifies the sender of an incomplete transmission.

16. Capacity and authority of Seller

- (a) The Seller enters into this Contract either:
 - (i) on its own behalf as the owner of the Asset; or
 - (ii) on behalf of and with the authority of an Associated Party who is the owner of the Asset.
- (b) If the Seller enters into this Contract on behalf of an Associated Party, the Seller confirms that it has the authority to bind the Associated Party to the terms and conditions of this Contract.

17. General

- (a) The Buyer must pay any stamp duty, duties or other taxes of a similar nature (including fines, penalties and interest) on this Contract and on any instrument or other document executed to give effect to any provisions of this Contract and on any transaction contemplated by this Contract.
- (b) Each party must bear its own costs in relation to the preparation and execution of this Contract.
- (c) This Contract may be amended only in writing signed by each party.
- (d) The Buyer must not assign this Contract or a right under this Contract without the prior written consent of the Seller.
- (e) This Contract may be executed in counterparts. All executed counterparts constitute one document.
- (f) The rights and obligations of the parties under this Contract do not merge on completion of any transaction contemplated by this Contract.
- (g) This Contract contains the entire Contract between the parties and supersedes all prior arrangements, letters of intent, memorandums of understanding, purchase orders, representations and documents (if any) relating to the Asset or this Contract.
- (h) Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Contract and any transactions contemplated by it.
- (i) If any provision contained in this Contract is void, illegal or unenforceable, that provision is severable from the Contract and the remainder of the Contract has full force and effect.
- (j) A provision of this Contract must not be interpreted to adversely affect a party solely on the basis that that party was responsible for preparing it.
- (k) A waiver of any provision of or right under this Contract must be in writing signed by the party entitled to the benefit of that provision or right and is effective only to the extent set out in the written waiver.
- (l) If any consent or approval of the Seller is required under or in relation to this Contract, the Seller may give its consent or approval conditionally or

unconditionally or withhold the consent or approval at its absolute discretion (unless this Contract expressly provides otherwise).

- (m) This Contract is governed by and must be construed and enforced in accordance with the laws of Victoria, Australia and the parties unconditionally submit to the non-exclusive jurisdiction of the courts of that place (and the courts of appeal from them).
- (n) If there is any inconsistency between the terms and conditions of this Contract, the Removal Plan, the Asset Documents or the Seller's Procedures, the terms of this Contract prevail to the extent of the inconsistency.
- (o) The Seller and the Buyer agree that this Contract is not intended to and does not create a Security Interest in favour of the Buyer.
- (p) Prior to Completion, to the extent that the Buyer is deemed to hold a Security Interest, the Buyer agrees that it will not register any such Security Interest, or any financing statement in relation to it, or take any steps to do so.
- (q) All rights and obligations of the parties under this agreement which by their nature are intended to continue after Completion or survive any termination of this agreement, continue after Completion and survive any such termination, including the rights and obligations of the parties under clause 11 (*Indemnity*), clause 12 (*Intellectual Property*) and clause 14 (*Confidential Information*).

ASSET SALE CONTRACT

Schedule 1– Asset Documents and Seller’s Procedures

Note: If applicable, attach:

- 'Asset Status Report';
- 'Asset Hazard Report'
- 'Requirements For Assets Removal For Contractors and Buyers' (Dated: September 2015) as amended or replaced from time to time; and
- 'Site Contractors Reference Booklet' (Form Number HS083/6; Latest Issue Date: May 2014) as amended or replaced from time to time