

PARTIES

BETWEEN LUMEN Australia Pty Ltd (ACN 007 285 501) for itself and its affiliates and related entities, and whether acting on its own behalf or through its nominated agent, Promedex, having its principal place of business at 10-12 Becon Court, Hallam, Victoria 3803 (hereinafter referred to as "Lumen")

AND The party at Item 1 of the Schedule ("Supplier").

SCHEDULE

Item 1 – The Supplier	[Insert COUNTERPARTY'S NAME IN FULL] [ACN] for itself and its affiliates and related entities, having its principal place of business at [REGISTERED OFFICE] (hereinafter referred to as "Supplier")		
	[Trading name] of [Trading Address] (if different from above)		
Item 2 – Commencement Date	[Date]	Item 3 – Term	36 Months, subject to renewal in accordance with this Agreement
Item 4 – Products	Y / N [refer to Schedule 4]	Item 5 – Warranty	Y / N [refer to Schedule 5]
Item 6 – Exclusivity	Y / N [refer to Schedule 6, as may be amended pursuant to clause 21.6]	Item 7 – Special Conditions	Y / N [refer to Schedule 7]
Item 8 – Forecasts	Y / N [refer to Schedule 8]	Item 9 –	

AGREEMENT

RECITALS

- A. The Supplier is the manufacturer or supplier of certain Goods or Services which Lumen wishes to purchase.
- B. The Supplier has agreed to Supply the Goods and Services to Lumen on the terms and conditions set out in this Agreement.

AGREEMENT

1. Interpretation and Definitions

1.1. In this Agreement:

- (a) "Business Day" means a day that is not a Saturday, Sunday, public holiday or bank holiday in Victoria, Australia;
- (b) "Carrying Amount" means the cost of the Contract Tooling, comprising labour, overheads, materials and research and development costs, less any accumulated depreciation and accumulated impairment losses;
- (c) "Confidential Information" means:
- (i) all technical information, trade secrets, processes and procedures, computer programs, circuit diagrams, circuit board layouts, prototypes, unreleased products, specifications, manuals, notes, diagrams, flow charts, algorithms, routines, drawings, applications, calculations, know how or any other verbal information or written data concerning or in any way relating to the design or development of the Products;
- (ii) all inventions, improvements, modifications, discoveries, concepts, ideas reduced to a physical manifestation and all other information relating to the design or development of

- the Products;
- (iii) all business and financial information, sales and Supply details, marketing strategies, customer and supplier listings, business listings, information concerning Lumen and its customers, whether or not marked confidential BUT does not include information which:
- (iv) at the time of first disclosure by one party to the other party is already in the public domain; and
- (v) after disclosure by one party to the other party, becomes part of the public domain otherwise than by disclosure in breach of the terms of this Agreement;
- (d) "Corporations Act" means the Corporations Act 2001 (Cth);
- (e) "Customers" means an end customer to Lumen under a separate customer agreement and terms and conditions, to which this Agreement is entered by Lumen for the express purpose of back to backing the obligations under a Lumen end customer agreement.
- (f) "Deliver" means delivery of Product and Service as described in clause 6 "Delivery";
- (g) "Delivery Date" means the date that the Supplier is required by Lumen to Deliver the Products to the required address, whether it be a single date or a Delivery Schedule as may be provided and amended by Lumen from time to time;
- (h) "force majeure event" means (as defined in and contemplated by clause 19.2 below)
- (i) "Goods" means a product or service designed, manufactured or assembled by

Supplier on behalf of Lumen pursuant to Supplier and / or Lumen's specifications under this agreement and as identified in a SOW, including any updates, renewals, modifications or amendments. Product and service may be identified by part number or as otherwise designated and stipulated in writing between Lumen and Supplier-;

- (j) "GST" means the Goods and Services Tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended;
- (k) "Head Contract" means a contract that Lumen has with its customer;
- (l) "Intellectual Property" means Lumen's Confidential Information, the Supplied Assets, drawings and Specifications, and all copyright (excluding Moral Rights) and all rights in relation to inventions (including patent rights), registered and unregistered trade marks (including service marks), registered and unregistered designs, Confidential Information (including trade secrets, know-how, data, formulae, expertise, methodology, technology, processes of knowledge, discoveries and inventions), Technical Data and circuit layouts, data collected, processed, logged or generated by Lumen business methodologies and technologies, business names, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world whether in existence or created in the future owned by or licensed to Lumen and authorised in writing to be used by the Supplier to Manufacture and Supply the Products from time to time-;
- (m) "Lumen" means Lumen Australia Pty Ltd, and its related bodies corporate who purchase Products from the Supplier;
- (n) "Lumen's Business Associates" means any person or entity which, buys from or sells to Lumen Goods or Services, whether contractually or otherwise;
- (o) "Moral Rights" has the meaning given to it under the *Copyright Act 1968 (Cth)*
- (p) "Manufacture" means the produced Product by Supplier as per the terms of this Agreement.
- (q) "Personal Information" has the meaning given to it in the *Privacy Act 1988 (Cth)*;
- (r) "Privacy Law" means any legislation affecting or regulating the privacy of personal information (including the collection, storage, use, processing or disclosure of that information), including the *Privacy Act 1988 (CTH)*;
- (s) "Products" means the Goods (including but not limited to systems, components, kits and accessories), including any Software or Services, specified in Item 4 of the Schedule (or otherwise agreed between the parties as being Products for the purposes of this Agreement from time to time) ordered by Lumen from the Supplier and which are more particularly described in a P.O.;
- (t) "Purchase Order" (P.O.) means an official written order for the Products sent by Lumen to the Supplier either by post, fax or other

electronic means;

- (u) "Related Companies" means sister companies, joint venture partners who are related legal entities to Lumen Australia Pty Ltd, as defined in the *Corporations Act*;
- (v) "Service" means any design services, manufacturing services and/or additional services, agreed between the parties, and performed under the terms on this Agreement;
- (w) "Service Levels" means the services levels, defined by Lumen, under which the Supplier is to deliver the Service(s) as part of the terms of this Agreement;
- (x) "Software" means any "computer program" as defined in the *Copyright Act 1968 (Cth)*, namely, a set of statements or instructions to be, including the proprietary software licensed by Lumen to the Supplier in order to Manufacture and Supply the Products, used directly or indirectly in a computer in order to bring about a certain result;
- (y) "Software Design Data" means data which describes the internal design and operation of a Software program and its interface with the external software and hardware systems in which it operates including explanations of particular codes, standard headers or distinct procedures (with reference to inputs, outputs and processing);
- (z) "Software Updates" means in relation to Software (including Software Design Data and Source Code) a new release of or change to that Software (which is designed to overcome errors or malfunctions in, or designed to improve the operation of, the Software); or a new version of that Software (which is designed to enhance or provide extra functionality to that Software);
- (aa) "Source Code" means the expression of Software in human readable language which is necessary for the understanding, maintaining, modifying, correction and enhancing of that Software;
- (bb) "Specifications" means the specific performance requirements of the Products and/or the Software, product functionality and integration requirements, data management requirements and software platform, defined in a P.O. and/or Statement of Work, under which the Supplier will deliver the Products and/or the Software;
- (cc) "Statutory Guarantee" means statutory guarantee as defined under the *Australian Consumer Law (ACL) Schedule of the Competition and Consumer Act 2010 (Cth)*;
- (dd) "Supply" means the Delivery of Product(s) and/or Service(s) as per the terms of this Agreement;
- (ee) "Supplier Owned Tooling" means all production tooling, gauges, jigs and other ancillary equipment owned by Supplier to produce the Product as at the effective date of this Agreement;
- (ff) "Supplied Assets" means all drawings, CAD and CAM files, blue prints, Lumen Tooling and Specifications supplied to the Supplier by Lumen for the Manufacture and Supply of the Products;

- (gg) "Technical Data" means all technical know-how and information reduced to a material form produced, acquired or used by the Supplier in relation to Supplying the Products and includes all data, databases, manuals, handbooks, designs, standards, specifications, reports, writings, models, sketches, plans, drawings, calculations, Source Code, Software Design Data, test results, Software and Software Updates and other items describing or providing information relating to the Supplies or their operations or the Services
- (hh) "Term" means the term of this Agreement specified in Item 3 of the Schedule and otherwise as provided for under this Agreement;
- (ii) "Lumen Tooling" means all tooling, gauges, jigs and other equipment owned by Lumen and/or Lumen Business Associates, and which is proprietary tooling that pre-dates the first day of this Agreement; and
- (jj) "Contract Tooling" means all production tooling, gauges, jigs and other ancillary equipment Manufactured or Procured by the Supplier to produce the Products, under the terms of this Agreement, and while generally exclusive to manufacture of Product is the Supplier's property until paid for by Lumen under or in connection with this Agreement.
- 1.2. In this Agreement, the following rules apply, unless the context requires otherwise:
- the singular includes the plural and vice versa;
 - a reference to a gender includes all genders;
 - a reference to a Clause, Addendum, or Schedule is a reference to a clause of, or addendum or schedule to, this Agreement;
 - headings are for convenience only and do not affect interpretation;
 - references to items in the Schedule have the meaning given in the Schedule; and
 - references to standard shipping terms are to be interpreted in accordance with the international rules for the interpretation of trade terms in foreign trade (INCOTERMS 2010 edition), published by the International Chamber of Commerce.

2. Basis of Agreement and Term

- The Supplier agrees to Supply the Products, including any Software and Services, in accordance with the Specifications, to Lumen, in accordance to the Service Levels, on the terms and conditions of this Agreement.
- This Agreement commences on the Commencement Date and continues for the Term.
- At the end of the Term, this Agreement will automatically extend for successive periods of 12 months unless notice of termination is given by Lumen at least six months before the end of the Term or the further term, as applicable.
- Subject to clause 2.5, these terms supersede and override any previously agreed terms or other terms proposed by the Supplier in relation to the Supply of the Products, unless expressly agreed to in writing.
- Any Special Conditions set out in the Schedule are incorporated into and form part of this Agreement.
- In the event of any inconsistency or conflict between

the clauses of this Agreement, the following order of precedence applies:

- any special terms and conditions listed in Item 7 of the Schedule;
 - the terms of this Agreement;
 - the relevant P.O.; and
 - the Specifications for the Products.
- No employee, agent or contractor of Lumen may vary or add to these terms without the prior written authority of an authorized company representative.
 - Lumen may vary these terms upon 30 days' written notice to the Supplier. Any varied terms will be communicated to the Supplier and will be deemed to apply to P.O.s placed after the period of notice.

3. Ordering and Supply of Products

- All quotations and tenders received by Lumen from the Supplier, whether in writing or not, will be deemed to be offers to sell Products to Lumen.
- Lumen may place its orders with the Supplier by submitting a P.O.
- The provision of a P.O. by Lumen will constitute acceptance by the Supplier to Supply the Products on the terms and conditions of this Agreement.
- If the P.O. imposes additional terms on the Supplier, then unless the Supplier notifies Lumen within 3 Business Days of receipt of the P.O. or prior to delivery (whichever is first), rejecting the additional terms then the Supplier is deemed to have accepted the P.O. in full.
- The parties hereby expressly exclude the provisions of the *United Nations Convention on Contracts for the International Sales of Goods*.

4. Pricing

- Prices quoted by the Supplier are exclusive of GST.
- Any other applicable costs and imposts including delivery charges, insurance and transportation costs payable by Lumen must be itemised separately and accepted by Lumen by way of inclusion on the P.O. (and agreed as per Item 4), otherwise it is deemed that there will not be any additional charges incurred.
- Quotations provided by the Supplier to Lumen are valid from the date of the quote until such time as Lumen may place a P.O., unless written notice of cancellation is provided by the Supplier.
- The Supplier may not increase any quoted prices after the date of a P.O. issuance.
- The Supplier represents and warrants that prices for the Products will be no less favourable than those which the Supplier presently, or in the future, offers to any other customer for the same or similar goods for similar quantities. If the Supplier offers to another customer the same or similar goods for similar quantities at a lower price than that offered to Lumen, the Supplier must, to the extent permitted by law, immediately offer Lumen the same price for the Products on the same terms and conditions offered to the customer.
- The price for the Products is fixed under this Agreement (refer to Schedule 4).
- In instances other than described in clause 4.6, the price for the Products may only be varied by written agreement between the parties.

5. Payment

- Unless otherwise agreed in writing, Lumen will make payment for the Products within 60 days from the end of the month during which an invoice is received from the Supplier, subject to compliance with the P.O. and delivery of the Products on the

Delivery Date. Lumen payments for Contract Tooling will be made via a progressive payment schedules as has been agreed between the parties.

- 5.2. The Supplier is not entitled to interest on unpaid monies, or for any other costs associated with recovery from Lumen for unpaid monies.
- 5.3. With Lumen agreement to a reschedule of Qtys, prior to delivery, should the Supplier makes partial delivery of the Products ordered, Lumen will make part payment, commensurate with agreed volumes delivered, until all Products are received and accepted.
- 5.4. Lumen will not pay the Supplier for any additional Products or alterations to the P.O., unless those additional Products or alterations were first agreed in writing by Lumen.
- 5.5. Lumen may offset any sums due to it by the Supplier.
- 5.6. Lumen has no liability for payment for any Products if the Supplier cannot produce to Lumen a delivery receipt, signed by Lumen's authorised representative. The signing of any delivery receipt on Lumen's behalf will not amount to an acceptance of the quality or quantity of the Products supplied.

6. Delivery

- 6.1. The Supplier agrees to deliver the Products to Lumen to the address specified on Lumen's P.O., or as otherwise directed by Lumen in writing from time to time.
- 6.2. Products must be delivered in accordance with the stated Delivery Date. Time is of the essence.
- 6.3. The Supplier is liable for any loss or damage of any kind caused to or suffered by Lumen, including any loss or damage under a Head Contract, either directly or indirectly by the Supplier's delay or failure in delivery of the Products.
- 6.4. Lumen reserves the right to alter the Delivery Date or suspend the delivery of the Products, by a period of up to 3 months, at any time before the Delivery Date by written notice to the Supplier.
- 6.5. Unless otherwise expressly agreed between the parties:
 - (a) the risk in the goods remains with the Supplier until the Products are delivered to the address specified by Lumen; and
 - (b) property in and ownership of the Products will pass to Lumen immediately upon delivery of the Products to the address specified by Lumen.

7. Packing, Shipping and Certification

- 7.1. The Supplier must:
 - (a) properly pack, mark and ship the Products in accordance with Lumen's express requirements, and in accordance with all relevant laws and regulations;
 - (b) engage carriers in a manner to secure lowest transportation cost or as otherwise advised by Lumen in writing;
 - (c) route shipments in accordance with Lumen's instructions;
 - (d) not charge for handling, packaging, storage or transportation of the Products, unless otherwise stated in the P.O.;
 - (e) print or affix the P.O. number on all packing slips, packages, invoices and other correspondence in respect of the P.O.;
 - (f) properly mark each package with a label/tag & Document name according to Lumen's shipping or delivery instructions; and

- (g) package the Products to ensure their safety and quality is retained during transport, delivery and storage.

8. Insurance

- 8.1. Before providing any Products, the Supplier must have appropriate current insurance cover including but not limited to:
 - (a) Work cover or other workers compensation insurance;
 - (b) Public and Product liability, including cover for product recall campaigns; and
 - (c) Transport, theft, loss and damage.
- 8.2. The Supplier is liable for any insurance premium excess payments caused by the Supplier and claimed by Lumen against its insurance policy.

9. Order Compliance

- 9.1. The Supplier must deliver Products that are of the quantity, quality and description detailed in a P.O.
- 9.2. Products will not conform with a P.O. unless they:
 - (a) are fit for the purposes for which Products of the same description would ordinarily be used;
 - (b) are fit for any particular purpose expressly or impliedly made known to the Supplier at the time of the P.O.;
 - (c) possess the qualities of Products which the Supplier has held out to Lumen by way of a sample or model;
 - (d) are Supplied in accordance with and comply with any engineering Specifications and drawings provided by Lumen to the Supplier; and
 - (e) have complied with any specifications as declared by the Supplier to Lumen and/or met Lumen expectations and requirements.
- 9.3. All Products must comply with the provisions of all applicable occupational health and safety legislation and any other applicable laws or regulations that may apply to the Products.
- 9.4. The Supplier must ensure that hazardous Products have prominent and suitable warnings on all containers, packages and documents, in accordance with all statutory requirements and as Lumen otherwise reasonably requires.
- 9.5. Upon Delivery of the Products, Lumen reserves the right to quarantine, inspect and assess any Products that Lumen reasonably believes to be defective and/or to maintain high levels of Product quality control standards.
- 9.6. If Lumen determines that any Products are non-conforming then it will advise the Supplier, who will have the opportunity to investigate and respond to Lumen within five (5) Business Days as to the non-conformance findings and proposed resolution. The Supplier's failure to respond within the required time may affect its monthly performance rating.
- 9.7. Rejected non-conforming Products may be returned by Lumen to the Supplier at the Supplier's risk and cost.
- 9.8. Upon rejection of any non-conforming Products, the Supplier must, at Lumen's option, either:
 - (a) allow Lumen to offset payment by the end of month;
 - (b) refund the price paid for the Products by the end of month; or
 - (c) re-Supply complying Products within the agreed timeframe.
- 9.9. Lumen reserves the right to seek recoupment of administrative and/or processing costs at the

agreed rate (refer to Schedule 7) in relation to rejected non-conforming Products.

10. Intellectual Property

- 10.1. During the Term, Lumen authorises the Supplier to use the Intellectual Property for the sole purpose of undertaking and complying with its obligations under this Agreement and the sale of the Products to Lumen.
- 10.2. The Supplier acknowledges Lumen's title to the Intellectual Property and must not:
- (a) claim any right, title or interest in the Intellectual Property or any part of it;
 - (b) register or record or attempt to register or record anywhere in the world any of the Intellectual Property or any derivations, improvements or variations to it, nor aid or abet anyone else to do so; or
 - (c) Manufacture or have Manufactured or sell or have sold any products using or taking advantage of the Intellectual Property.
- 10.3. The Supplier warrants that it owns or is licensed to sell any Products that are the subject of any patent, trade mark, design, copyright or any other form of intellectual property.
- 10.4. The Supplier indemnifies Lumen against any and all direct liability, loss, damages and expenses arising out of any claim in respect of infringement or alleged infringement, of any patent, trade mark or design, copyright or any other form of intellectual property whether in Australia or overseas, relating to the Products.
- 10.5. If any of the Products are labeled with the Supplier's registered trademark, Lumen is authorised to:
- (a) remove or obscure that trademark in the course of any further manufacture of the Products by Lumen; and
 - (b) replace that trademark with its own trade mark.

11. Supplied Assets

- 11.1. All Supplied Assets remain Lumen's property.
- 11.2. The Supplier must promptly deliver the Supplied Assets to Lumen, at the Supplier's cost, if so requested.
- 11.3. The Supplied Assets must not be used in the manufacture of goods or the provision of services to any party other than Lumen.
- 11.4. The risk in the Supplied Assets remains with the Supplier, whilst in the Supplier's possession, which must ensure that the Supplied Assets are insured for replacement cost, or such other amount that Lumen may advise from time to time.
- 11.5. The Supplier must maintain, at its cost, all Supplied Assets in a serviceable condition and ensure that all Supplied Assets are clearly marked as Lumen's property and generate and maintain a register showing items owned by Lumen and applicable maintenance records. The register must be available for audit upon request by Lumen.
- 11.6. From time to time Lumen may request to inspect the Supplied Assets and/or the Supplier's premises for quality compliance.

12. Tooling

- 12.1. The Lumen Tooling remains Lumen's property through the Term, and Lumen grants to the Supplier, a limited, non-exclusive license for the term of this Agreement to use the Lumen Tooling to meet the Supplier's obligations under this Agreement.
- 12.2. The Supplier must:

- (a) insure all tooling used in connection with the Supply of the Products against all risks;
- (b) not modify or copy the Lumen Tooling or the Contract Tooling in any way without Lumen's prior written approval; and
- (c) not use the Lumen Tooling or the Contract Tooling except as permitted or required under this Agreement for the purpose of Supplying Lumen with the Products.

12.3. If:

- (a) the Supplier becomes bankrupt or insolvent or has a liquidator or similar functionary appointed in respect of its assets;
- (b) this Agreement is terminated pursuant to clause 14; or
- (c) the parties agree to terminate a particular Product line,

Lumen may require the Supplier to disclose the current calculation of the Carrying Amount and sell the Contract Tooling to Lumen for the Carrying Amount.

- 12.4. Lumen is not required to purchase generic tooling which is not used exclusively for the Supply of Products to Lumen under this Agreement.
- 12.5. The Supplier Owned Tooling remains the Supplier's property through the term of this Agreement, and the Supplier grants to Lumen a limited, non-exclusive license for the term of this Agreement to use the Supplier Owned Tooling if required to Manufacture the Products.
- 12.6. The Contract Tooling is the Supplier's property, until paid for by Lumen in accordance with the terms of this Agreement.

13. Cancellation

- 13.1. Lumen may cancel a P.O., or part of it, prior to delivery of the Products by providing written notice to the Supplier, and upon such termination, its total liability is limited to payment to the Supplier for:
- (a) any Products already delivered;
 - (b) work in progress, subject to the work in progress being related to Products already ordered by Lumen; and
 - (c) fixed forecast amounts specified in Item 8.
- 13.2. Lumen may cancel a P.O., or part thereof, at any time until delivery without any liability or penalty by written notice to the Supplier if:
- (a) the Supplier fails or is unable to comply with the terms of this Agreement;
 - (b) the Supplier, in Lumen's reasonable opinion, fails to take action so as not to endanger timely and proper Supply of the Products;
 - (c) the Supplier's business, or part of its business that provides the Products, is sold, or is about to be sold to a third party under a sale agreement, or the control of the Supplier changes to the extent that the original owner of the Supplier loses control or is about to lose control under a sale agreement; or
 - (d) where the Supplier becomes bankrupt or insolvent or enters into any scheme of arrangement with or for the benefit of its creditors, or has a receiver or similar functionary appointed in respect of its assets, or becomes subject to an application for winding up, or ceases to carry on business.
- 13.3. Cancellation as a result of the Supplier's failure to fulfill any part of this Agreement will not prejudice any claim that Lumen may have against the Supplier resulting from the Supplier's failure.

- 13.4. The Supplier must:
- (a) Provide a minimum cancellation notice of 52 weeks prior to product discontinuance and / or end of product life.
 - (b) Cover the cost of any / all re-validation testing of a suitable agreed replacement product to meet Lumen requirements prior to end of contract and or End of Model Life.
- 14. Termination**
- 14.1. This Agreement may be terminated at any time by the mutual agreement of the parties.
- 14.2. If either party ("Defaulting Party") commits a breach of this Agreement and fails to remedy such breach within 30 days of written notice from the other party ("Non-defaulting Party") requiring such breach to be remedied, the Non-defaulting Party may terminate this Agreement forthwith by giving written notice of termination to the Defaulting Party.
- 14.3. Termination of this Agreement shall not relieve a party of liability to the other party in respect of the rights or remedies of the other party which have accrued prior to termination.
- 15. Consequences of Termination**
- 15.1. On service of a notice of termination pursuant to clause 14.2:
- (a) the Supplier must continue to fulfill any P.O. placed by Lumen that was due for delivery prior to the expiration of the notice of termination; and
 - (b) the Supplier must immediately cease using all Intellectual Property and Supplied Assets, and return to Lumen all Intellectual Property and Supplied Assets as reasonably practicable.
- 16. Liability**
- 16.1. The Supplier is liable to compensate Lumen for any direct losses or expenses suffered by Lumen or any third party arising out of the Agreement or the use of the Products howsoever caused, including, but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.
- 16.2. The Supplier is liable to compensate Lumen for any loss or damage suffered by Lumen (including under a Head Contract) or any third party where the Supplier has failed to meet any Delivery Date, or cancels or suspends the Supply of the Products. This includes, but is not limited to:
- (a) the costs of freighting the Goods by special passage to avoid a breach by Lumen or its obligations under a contract with its customer;
 - (b) liquidated damages claims;
 - (c) loss of turnover, profits, business or goodwill; and
 - (d) any liability to any other party.
- 16.3. The Supplier is liable to compensate Lumen for the cost of all non-conforming product containment and/or corrective action undertaken by Lumen.
- 16.4. Nothing in the Terms is interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or Supply of services which cannot be excluded, restricted or modified.
- 17. Warranty and Indemnity**
- 17.1. The Supplier warrants:
- (a) that it has the necessary skills, ability and capacity to provide the Products;
 - (b) the quality of materials and workmanship of the Products and that the Products will be free from defects both upon receipt and within the warranty period;
 - (c) the conformity of the Products to any P.O., including but not restricted to compliance with Product Specifications, fit, function, performance, appearance and meeting statutory and legislative requirements;
 - (d) that the Products are free from any mortgage, lien or encumbrance whatsoever whereby Lumen could or might be liable to be dispossessed of the same;
 - (e) that Lumen will have and enjoy quiet possession of the Products;
 - (f) that the Products are supported by repair facilities and spare parts;
 - (g) that the Products comply with all standards and safety regulations; and
 - (h) it will indemnify Lumen in full for reimbursement of any damages or costs associated with the failure and/or re-Supply of the Products to Lumen.
- 17.2. The Supplier will indemnify Lumen, along with its servants, agents, invitees or licensees, and keep them indemnified at all times, against all direct loss, liability, damage, costs, actions, demands and suits of whatsoever kind or nature arising out of:
- (a) any claim for injury or death of any person, loss or damage caused in whole or in part by any act or omission whatsoever by the Supplier, its servants agents whilst executing a P.O. or making a delivery hereunder, and the Products the Supplier supplies;
 - (b) any claim with respect to the Products arising out of any latent or inherent defect in any of the Products;
 - (c) any litigation or arbitration from any claim referred to above;
 - (d) any Products received which do not meet specifications and/or requirements; and
 - (e) any liability or damage suffered by Lumen as a result of a claim for failure of a Statutory Guarantee that was caused or contributed to by the Supplier or relates to the Goods as supplied by the Supplier.
- 17.3. During the Term, the Supplier must:
- (a) provide such back up support and information in relation to the Products as may be required by Lumen; and
 - (b) within a reasonable timeframe answer any queries concerning the Products, their use or application which Lumen may submit to the Supplier.
- 17.4. The Supplier must provide a warranty period to Lumen of 60 months unless otherwise agreed in writing (Item 5).
- 18. Privacy & Confidentiality**
- 18.1. The Supplier must not, except with Lumen's written consent, make any advertisement or promote its own goods or the Products in any manner by way of reference to Lumen, or that it is a supplier of Products to Lumen.
- 18.2. The Supplier agrees to keep as Confidential Information:
- (a) the terms of this Agreement and the contents of all negotiations leading to its preparation; and
 - (b) the Intellectual Property.

- 18.3. Except as necessary pursuant to this Agreement, the Supplier must keep any Confidential Information secret and secure and preserve its confidential nature, not use the Confidential Information for any purpose other than the Supply of the Products, must not reverse engineer, decompile or disassemble the Confidential Information and must not disclose nor discuss any of the Confidential Information without Lumen's prior written consent.
- 18.4. The Supplier may not collect additional personal information about Lumen (or its Directors or partners) from, and disclose such personal information to, other credit providers or credit reporting agencies for any purpose.
- 18.5. The Supplier agrees that it will not seek a personal guarantee, nor attempt to impose any personal liability on the Directors of Lumen in relation to any aspect of this Agreement.
- 18.6. The Supplier must not communicate with any of Lumen's Business Associates without the prior written consent of Lumen in relation to any Confidential Information, Intellectual Property, Head Contract, Supplied Assets or P.O.s.
- 18.7. The same applies as in 18.6, if any of Lumen's Business Associates attempt to contact the Supplier direct. If Lumen's Business Associates do attempt to contact the Supplier direct, authorised Lumen personnel must be contacted immediately.
- 18.8. All on-site visits by Lumen's Business Associates to the Supplier's premises must be agreed to and accompanied by authorised Lumen personnel.
- 18.9. Each party agrees to comply with the Privacy Law in connection with their respective obligations under this Agreement;
- 18.10. Lumen undertakes not to do anything (or fail to do anything) that could cause the Supplier to be in breach of the Privacy Law;
- 18.11. The Supplier undertakes not to do anything (or fail to do anything) that could cause Lumen to be in breach of the Privacy Law;
- 18.12. Each party must notify the other party as soon as reasonably practical after it:
- (a) becomes aware of or suspects any unauthorised use, collection or disclosure of Personal Information; or
 - (b) becomes aware that the disclosure of any Personal Information may be required by law; and
 - (c) fails to comply with any reasonable directions given by the other party to:
 - I. Personal Information from unauthorised collection, use or disclosure; or
 - II. take any action the other party considers reasonably necessary to assist to comply with the Privacy Law in relation to the Personal Information.

19. Force Majeure

- 19.1. If Lumen is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement by reason of any force majeure event, then Lumen shall be relieved of its obligations hereunder during the period that such event continues, and shall not be liable for any delay and/or failure in the performance of its obligations under this Agreement during such period.
- 19.2. A "force majeure event" shall mean any event or circumstance whatsoever which is not within the reasonable control of Lumen including *vis major*,

casus fortuitus, any act of God, strike, theft, fire, explosion, riot, insurrection or other civil disorder, war (whether declared or not) or military operations, international restrictions, any requirement of any international authority, any requirement of any government or other competent local authority, any court order, export control and shortage of transport facilities, the downtime of any external line, and if the *force majeure* event continues for a period of longer than 30 (thirty) Business Days, Lumen may cancel the Agreement.

20. Miscellaneous

- 20.1. The law of Victoria from time to time governs this Agreement. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those courts.
- 20.2. Notwithstanding clause 20.1, in the event of a dispute, and the dispute not being resolved within 14 days from the date of notification of the dispute by the aggrieved party, then Lumen in its absolute discretion, irrespective of which party is the aggrieved party, reserves the right to refer the dispute to arbitration by the Institute of Mediators & Arbitrators Australia in the English language, before three arbitrators, or such other arbitration centre under its appropriate rules as Lumen may decide, in which the decision of the arbitrators will be binding on the parties.
- 20.3. Other than as set out in clause 21.6 and contemplated in the definition of "Products", an amendment or change to these terms or to this agreement is only effective once it is made in writing and executed by all parties.
- 20.4. Nothing in this Agreement shall imply or constitute a partnership or joint venture between the parties.
- 20.5. The Supplier does not have any right or authority to assume, create or incur any commitment, liability or obligation of any kind against, or in the name of, or on behalf of, Lumen except as expressly provided in this Agreement.
- 20.6. Lumen may assign its rights under this Agreement upon notice to the Supplier.
- 20.7. The Supplier must not assign its rights or obligations under this Agreement without Lumen's prior written consent.
- 20.8. Lumen's failure to enforce any of the terms of this Agreement will not be construed as a waiver of any of Lumen's rights.
- 20.9. Any of the Supplier's obligations which are of a continuing nature or which are not fully satisfied and discharged will not merge upon expiration or termination of this Agreement (for whatever reason), but will continue in Lumen's favour and remain in full force for so long as is necessary to give effect to the terms of this Agreement.
- 20.10. If any Term is unenforceable it shall be read down to be enforceable or, if it cannot be read down, the term shall be severed from this Agreement without affecting the enforceability of the remaining terms.
- 20.11. A notice must be in writing and handed personally or sent by facsimile, email or prepaid mail to the last known address of the addressee. Notices sent by prepaid post are deemed to be received one Business Day subsequent to posting. Notices sent by facsimile or email are deemed received upon confirmation of successful transmission.
- ## 21. Exclusive and Non-Exclusive Supply
- 21.1. If Item 6 of the Schedule expressly provides for an

- exclusive Supply arrangement, Lumen will purchase the Products exclusively from the Supplier and the Supplier will exclusively Supply the Products.
- 21.2. If Item 6 of the Schedule expressly provides for an exclusive Supply arrangement, the Supplier agrees not to Supply any other entity or person with that Product in the defined Territory.
- 21.3. Notwithstanding clause 21.1, Lumen is not required to exclusively purchase any Products from the Supplier if:
- (a) Lumen provides evidence to the Supplier that Lumen can obtain Supply of a substantially similar product or service, in substantially similar quantities and for substantially the same period as the Supplier is required to Supply that Product under this Agreement, at a price lower than the price charged by the Supplier or on other terms more favourable to Lumen (such evidence being the name of the alternative supplier and an indication of the variance only) and the Supplier does not match or better that price or those terms of Supply within 10 Business Days after Lumen has provided such evidence; or

- (b) the Supplier is unable or unwilling for any reason to Supply that Product, as and when required by Lumen under this Agreement.
- 21.4. If clause 21.3 applies, then without limiting any other rights or remedies Lumen may have:
- (a) Lumen may by notice to the Supplier cancel, with immediate effect, that part of any outstanding P.O. that relates to that Product;
- (b) any money paid by Lumen in respect of the relevant part of any such P.O. must be immediately repaid to Lumen by the Supplier within five (5) Business Days; and
- (c) Lumen may obtain, without notice to the Supplier, all or any future supplies of that Product during the term of this Agreement from an alternative supplier.
- 21.5. Lumen may, at any time (whether or not clause 21.1 then applies), trial alternative products or services for the purposes of determining a suitable alternative supplier of the Products.
- 21.6. Lumen and the Supplier may agree to add additional details to Schedule 4 and Schedule 6 from time to time by separate written agreement or as confirmed in a Purchase Order provided by Lumen, in which case the agreed details shall be inversely taken to be included in either Schedule.

ACCEPTANCE OF TERMS AND SIGNING

The Supplier and Lumen agree to the above Terms of Supply.

EXECUTED as an AGREEMENT

SIGNED for and on behalf of)
LUMEN AUSTRALIA PTY LTD in accordance)
with Section 127 of the Corporations Act 2001 (Cth))
in the presence of:)

.....
Name of Director/Company Secretary

.....
Signature of Director/ Company Secretary who states they are the sole director/company secretary of Lumen Australia Pty Ltd

.....
On [INSERT DATE]

SIGNED for and on behalf of)
[Registered Name] [ABN/ACN])
with Section 127(1)(b) of the Corporations Act 2001 (Cth))
in the presence of:)

.....
Signature of Director

.....
Signature of Director/ Company Secretary

.....
Name of Director (Print)

.....
Name of Director/ Company Secretary (Print)

Date of Agreement: _____

Date of Agreement: _____

Schedule 4 – Products

Date of Agreement: _____

Part number	Price	Currency	MOQ	Lead-time

Schedule 5 – Warranty

Date of Agreement: _____

Warranty Period

- I. Warranty period: 60 months from the production date code shown on the product.
- II. The Supplier shall ensure the production date and Delivery Date (ex-factory) is as per RFQ / Supplier Agreement.
- III. It shall be the responsibility of the Supplier to ensure parts are traceable to a date code or any form of traceability identification on the product. However, if no traceability identification is evident on the product, the claim is warrantable.

Warranty Reimbursement

- IV. Each suspect Products physically returned to the Supplier shall be verified & if deemed legitimate, corrective and preventive actions with lessons learnt must be taken for product improvement purposes.
- V. Warranty costs incurred by the Lumen's customers shall be reimbursed by the Supplier based on part(s) cost or replacement plus Other Costs.
- VI. Other Costs shall be defined as operational costs including Dealer labor fitment and claim, containment, investigation, warranty handling and administration, and freight.
- VII. The warranty return handling by the Supplier is as per agreed procedure. It is at Lumen's discretion to advise the Supplier of decisions as to whether to replace part(s) or reimburse part(s) costs in addition to the Other Costs.
- VIII. Lumen will provide warranty costs and data including dealer comments and failure description to the Supplier on a rolling monthly basis. Any costs to be borne by Supplier shall be discussed and confirmed by both parties based on concrete proof.
- IX. A Supplier Credit Request (SCR) will be issued at the same time on amount owing; e.g. Lumen is to provide the Supplier with the SCR of warranty costs and data for the previous month by the second week of the current month. Amount owing is to be settled by the end of the current month.
- X. Upon receipt of the SCR, the amount owing after accepted by Supplier shall be automatically deducted from outstanding payment (if any) by Lumen, reconciled via a Credit Note to be issued by the Supplier.
- XI. If there is no outstanding payment, the Supplier shall credit the amount into Lumen's nominated bank account by the end of that month.
- XII. Faulty parts and other stock returnable to the Supplier for rework purposes is to be returned to the Supplier on freight collect basis. The Supplier shall cover costs for the return of reworked stock to Lumen.
- XIII. The Supplier shall keep those returns upon completion of failure analysis performed without re-cycling them into normal stock unless otherwise advised by Lumen in writing.

- XIV. It is at the Lumen's discretion to advise decisions such as to scrap or rework Products. The authority for the Supplier to scrap or rework Products resulting from a failure in hardware or software must be obtained from the Lumen in writing. The Supplier may propose to Lumen to rework Products at Lumen's end in order to support supply. Such rework costs shall be reimbursed by the Supplier in full.
- XV. The Supplier shall rework but not repair Products. For the purpose of this Warranty, "Rework" means to bring a non-conforming part back into conformance by simply re-processing a prior sequence. Rework is permissible using the original manufacturing tools or equipment of the process; e.g. software programming. All Rework shall meet the requirements of this standard and approved engineering and quality documentation. Repair is not Rework. For the purpose of this Warranty, "Repair" means to bring a non-conforming part back into conformance using methods outside of the original process or manufacturing tools/equipment, e.g soldering – the original process is SMT process and repair on solder by using a soldering iron which is not the original process. Rework is permissible only with prior written special authorization from Lumen Quality. Repairs shall be accomplished using documented methods approved by Lumen Quality.
- XVI. Damages to the Product due to insufficient packaging prior to usage shall be replaceable by the Supplier at no costs to the Lumen.
- XVII. The Supplier shall be responsible for any additional freight cost as agreed in section 6.3 in order to maintain seamless supply if quality concerns affect delivery.
- XVIII. In addition to 17.1, the Warranty also covers any costs of field recall due to design error or part not meeting fit, function, performance and specifications which deemed to be the responsibility of the Supplier.

Warranty Exceptions

- XIX. Any troubles caused by improper or unauthorized installation not in accordance with installation manual or by improper or unauthorized use by end customer not in accordance with user manual shall not be covered by the Warranty.
- XX. Any damages incurred due to mishandling during transportation from the Supplier to the Lumen and Lumen's customers shall not be covered by the Warranty. Under such circumstances, damages shall be investigated and analyzed by the Supplier, transportation forwarder and Lumen traceable to the responsible party in order for the damage costs to be negotiated and decided separately.
- XXI. Damages to a Product or components of Products as a result of application with a non-genuine Supplier part, accident, negligence, modification, importer care and or maintenance will not be covered by the Warranty.

Schedule 6 – Exclusivity

Date of Agreement: _____

Product	Part number	Territory

E.g. Administration/processing rate for rejected non-conforming product

1. Forecast

- a. Lumen shall monthly provide a 6 month rolling forecast on all current production part numbers.
- b. The Supplier shall use this forecast for ordering of all raw materials to achieve the Lumen forecast.
- c. Lumen has no commitment to any materials or minimum purchase levels. The Supplier will use any purchased materials elsewhere if the forecast does not convert into a firm Purchase Order.

2. Safety Stock.

- a. The Supplier shall hold an additional 1 month minimum of raw materials in stock based on the forecast provided, as safety stock.

3. Lead Time

- a. For all products where a forecast is provided, the Supplier shall support a 4 week production lead time
- b. Any products ordered above the indicated variances below, shall be treated as an injection order with lead times to be negotiated on a case by case basis
 - i. Month 1 - +100%
 - ii. Month 2 - +100%
 - iii. Month 3 - +100%