1. DEFINITIONS
In the Contract:

**Background IP** means any Intellectual Property Rights of the Supplier (or licensed to the Supplier by a third party) which were in existence before the date of the Contract or which come into existence after the date of the Contract other than in connection with the Contract.

**Contract** means these terms and conditions for the supply of Goods and/or Services and the Purchase Order.

**Delivery Address** means the place for delivery of the Goods or performance of the Services as specified on the Purchase Order.

**Delivery Date** means the date on which the Goods must be delivered by or the Services must be performed by as specified on the Purchase Order.

**Goods** means the goods to be supplied by the Supplier as described in the Purchase Order.

**GST** has the meaning given to that term in the GST Act.

**GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Intellectual Property Rights** means all copyright and analogous rights (including moral rights), all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets), know-how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields, including (a) all rights in all applications to register these rights; and (b) all renewals and extensions of these rights.

**Invoice** has the meaning given in clause 9(a).

**Notice Period** has the meaning given in clause 17(b).

**Price** means the price as set out in the Purchase Order.

**Purchase Order** means the order placed by Sheffield or an authorised representative of Sheffield with the Supplier that incorporates these terms and conditions for the supply of Goods and/or Services by reference.

**Security Interest** means any lien, mortgage, encumbrance, charge or security interest within the meaning of the Personal Property Securities Act 2009 (Cth) or other third party right or claim.

**Site** means the Delivery Address.

**Supplier** means the entity to which the Purchase Order is issued and which is named as Supplier on the Purchase Order.

**Services** means the services to be supplied by the Supplier and as described in the Purchase Order.

**Sheffield** means:

(a) Sheffield Resources Limited ACN 125 811 083; or

(b) Thunderbird Operations Pty Ltd ACN 611 351 743; and

(c) any Related Body Corporate (as defined in the Corporations Act 2001 (Cth)) of either entity stated in sub paragraph 1(a) or 1(b).

**Warranty Period** means the period of 24 months for Goods and 12 months for Services commencing on the date of supply of the Goods or the date of the performance of the Services.

2. THE CONTRACT

(a) The Contract is formed when the Supplier accepts a Purchase Order or provides the Goods and/or Services.

(b) The parties intend to contract for the supply of Goods and/or Services only on the terms of the Contract. If the Supplier provides terms and conditions (including, without limitation, those printed on a quotation, consignment note, correspondence or other document) with or in connection with the supply of Goods and/or Services described in the Purchase Order, whether before or after the supply of the Goods and/or Services, they will be of no legal effect and will not constitute part of the Contract (even if any representative of Sheffield signs the document or the terms and conditions comprised in the relevant document).

(c) In the event of inconsistency, the order of precedence of documents comprising the Contract is:

(i) the Purchase Order including any 'Special Conditions' stated on the Purchase Order; and

(ii) these terms and conditions.

(d) The Contract continues until the Goods are supplied and/or the Services are performed in accordance with the Contract unless terminated earlier in accordance with the Contract.

3. SUPPLY OF GOODS AND/OR PERFORMANCE OF SERVICES

(a) In consideration of payment of the Price by Sheffield, the Supplier agrees to supply and deliver the Goods to, and/or perform the Services at, the Site, by the Delivery Date in accordance with the Contract.

(b) The Supplier must supply and maintain, at its cost, everything the Supplier requires to supply the Goods and/or perform the Services in accordance with the Contract, including, but not limited to, all personnel, goods, tools, equipment, materials, authorisations and insurance required to be effected and maintained in accordance with clause 14.

4. WARRANTIES

(a) The Supplier warrants that the Goods and Services will:

(i) be of merchantable quality and free from defects;

(ii) be new, as at the Delivery Date (unless otherwise specified in the Contract);

(iii) match the description in the Purchase Order;

(iv) be of the same nature and quality as the sample or demonstration given, if the Supplier gave Sheffield a demonstration or sample of the Goods or Services;

(v) be fit for the specific purpose for which those Goods and/or Services are intended to be used as specified in the Purchase Order, or if no purpose is specified, for the purpose for which those Goods and/or Services would ordinarily be used;

(vi) comply with the requirements of the Contract, any law and the standards of Standards of Australia Limited applicable to those Goods and/or Services;

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

(viii) be free from any Security Interests, and that the Supplier has complete ownership of the Goods;

(ix) be performed in such a way as to comply with all applicable Sheffield policies and procedures;

(x) not interfere with the activities of Sheffield or any other person on the Site; and

(xi) in the case of Services, be performed safely, with all due care and diligence, in accordance with all of Sheffield’s policies and procedures, all lawful directions and orders given by any Sheffield representative, and in a skilful and competent fashion by appropriately qualified and trained personnel.
7. MATERIALS AND EQUIPMENT
Where Sheffield provides its own materials or equipment to the Supplier for use in connection with the supply of Goods or performance of Services:

(a) the materials and equipment will be and will remain the property of Sheffield;
(b) the Supplier must keep the materials and equipment free from any Security Interests;
(c) the Supplier must maintain all of the materials and equipment in good working order and condition (subject to fair wear and tear);
(d) the Supplier may only use the materials and equipment solely in connection with the supply of Goods or performance of Services and must return them to Sheffield immediately on termination or expiry of the Contract or when they are no longer required to supply the Goods or perform the Services (whichever is the earliest to occur); and
(e) any damage to or loss of the materials or equipment will be made good at the Supplier’s sole expense.

8. PRESERVATION OF RIGHTS
Neither the rejection of, or the failure of Sheffield to in any way reject, the Goods and/or the Services, nor the acceptance of the Goods under clause 6, nor the making of any payment, will prejudice any rights Sheffield may have against the Supplier arising in any way in relation to failure by the Supplier to provide the Goods and/or Services in accordance with the Contract or otherwise affect the Supplier’s warranties, liabilities or obligations under the Contract or at law.

9. INVOICING AND PAYMENT
(a) Upon acceptance of the Goods and/or completion of the Services, the Supplier must provide to Sheffield a valid tax invoice (Invoice) for the Price, which must comply with the requirements of the GST Act and include (without limitation):
   (i) a reference to a valid Purchase Order;
   (ii) a detailed description of the Goods supplied and/or Services performed;
   (iii) the Price of the Goods and/or Services, broken down to reflect any Price components on the Purchase Order;
   (iv) the amount of any applicable GST;
   (v) a Sheffield contact name and Site; and
   (vi) an individual reference number for Sheffield to quote with remittance of payment.
(b) Sheffield will pay each Invoice that complies with clause 9(a) 30 days from the Invoice date unless otherwise stated on the Purchase Order, except:
   (i) without limiting any other right or remedy, Sheffield may withhold payment of the amount in dispute where Sheffield disputes the Invoice until the dispute is resolved in accordance with clause 17;
   (ii) Sheffield is not obliged to pay any amount on the Invoice if the Goods or Services (or any part of them) are defective or it has any other claim in relation to them; and
   (iii) Sheffield may reduce or withhold any payment due to the Supplier by any amount which the Supplier must pay Sheffield, including costs, charges, damages and expenses and any debts owed by the Supplier to Sheffield on any account whatsoever. This does not limit Sheffield’s right to recover those amounts in any other way.
10. ASSIGNMENT AND SUBCONTRACTING
The Supplier must not, without the prior written consent of Sheffield, assign any or all of the Supplier’s rights or obligations under the Contract or subcontract all or part of the supply of Goods and/or performance of Services to any other party.

11. INDEMNITY
(a) The Supplier indemnifies, and keeps indemnified, Sheffield, and the directors, officers, employees, agents and contractors of Sheffield, from and against any loss, liability, cost, damage or expense suffered or incurred arising from or in connection with the supply of Goods or the performance of the Services including, without limitation:
(i) the breach of any of the Supplier’s obligations, warranties or representations under the Contract;
(ii) the misconduct or negligent act or omission of the Supplier or its contractors, employees, officers, agents or invitees, in the provision of the Goods or the performance of the Services;
(iii) the loss of, or any damage to, any property of any person;
(iv) the death of, or injury to any person; and
(v) the breach of the Intellectual Property Rights of any third party.
(b) The Supplier’s liability to indemnify Sheffield, and the directors, officers, employees, agents and contractors of Sheffield under clause 11(a) will be reduced to the extent that the loss, liability, cost, damage or expense is directly caused by the negligent act or omission of Sheffield or the directors, officers, employees, agents and contractors of Sheffield.
(c) The rights and obligations under this clause 11 continue after termination or expiry of the Contract.

12. TERMINATION
(a) A party may immediately terminate the Contract by notice in writing to the other party if the other party:
(i) breaches any term under the Contract and such breach is not remedied within 14 days of notice being given to the party to remedy the breach (unless such breach is not able to be remedied);
(ii) breaches any law relating to the supply of the Goods or Services;
(iii) becomes insolvent; or
(iv) is convicted of a criminal offence.
(b) In addition to any other rights of termination available to Sheffield, Sheffield may terminate the Contract by giving 14 days’ notice to the Supplier, in which case, subject to Sheffield being reasonably satisfied that the Supplier has complied with its obligations under the Contract, Sheffield will pay the Supplier:
(i) amounts that are properly due and payable to it for the Goods supplied and/or Services performed prior to the date of termination;
(ii) all verifiable work in progress; and
(iii) all direct, verifiable and reasonable expenses incurred up to the date of the notice of termination, incurred in compliance with the Contract, and which cannot be reversed or mitigated by the Supplier applying best efforts.

(c) If the Contract is terminated pursuant to clauses 12(a) or 12(b), the Supplier must cease the supply of the Goods and/or Services the subject of the Purchase Order and must deliver all Goods and/or Services in progress or completed as Sheffield may request.
(d) Unless expressly stated otherwise, termination of the Contract in accordance with clause 12 does not affect the rights or obligations of a party which have accrued prior to termination.
(e) The Supplier may terminate the Contract with 14 days prior written notice to Sheffield, if Sheffield fails to make a payment due in accordance with clause 9(b) for 3 consecutive calendar months.

13. TAXES
(a) If GST is imposed on any supply made by the Supplier under or in connection with the Contract, the Supplier may (subject to the provision of the Invoice) recover from Sheffield, in addition to the Price, an amount equal to the GST payable in respect of that supply.
(b) The Supplier shall be solely responsible for all other taxes or levies imposed on the Supplier under law that arise out of the supply of Goods and/or performance of Services.

14. INSURANCE
(a) The Supplier must, for so long as any obligations remain in connection with the Contract, effect and maintain, at its own expense all appropriate policies of insurance including, but not limited to the following unless the Purchase Order specifies otherwise (each policy to note Sheffield’s interest as a ‘Principal’):

(i) where the Services require the Supplier to provide a motor vehicle, motor vehicle insurance policy to cover third party liability for an insured sum of not less than $20,000,000 for each claim;
(ii) public and products liability insurance in relation to legal liability for loss of, loss of use, of, damage to or destruction of real or personal property, death or bodily injury, and disease and sickness in each case in an amount not less than an amount to $50,000,000 for each claim, and unlimited in the amount of aggregate claims;
(iii) workers’ compensation insurance in compliance with all applicable laws to cover the Supplier and each of the Supplier’s employees; and
(iv) where the Services include design services, professional indemnity insurance in an amount not less than an amount to $5,000,000 for each claim, such policy to be maintained for a period of 7 years after the completion of the Services.

(b) Upon request by Sheffield, the Supplier will provide Sheffield with proof of insurance acceptable to Sheffield.

(c) The Supplier must ensure that, in relation to any insurance policy required to be maintained under clause 14(a), it:

(i) does not do or omit to do or allow to be done, any act or omission whereby any of the insurances referred to in clause 14(a) may be prejudiced, vitiated, or rendered void or voidable;
(ii) does not cancel or materially vary the policy in a manner adverse to its obligations under the Contract, or allow an insurance policy to lapse, without the prior consent, in writing, of Sheffield;
(iii) immediately notifies Sheffield of any event which may result in an insurance policy lapsing or being cancelled or vitiating, rendered void or voidable;
14. CONFIDENTIALITY
(a) The Supplier must keep confidential:
(i) any information or details relating to the Contract or Sheffield’s business affairs and operations; and
(ii) any other information designated by Sheffield as confidential or received by the Supplier in circumstances implying an obligation of confidentiality or reasonably expected to be confidential.
(b) This clause 15 does not apply to the disclosure of information to comply with any law, the requirements of any government agency or stock exchange or to information that is already in the public domain, provided that prior to such disclosure the disclosing party gives notice to the other party with full particulars of the proposed disclosure.
(c) This clause 15 shall survive termination or expiry of the Contract.

15. INTELLECTUAL PROPERTY
(a) Subject to this clause 16, all Intellectual Property Rights in the Background IP of the Supplier remain vested in the Supplier.
(b) The Supplier grants to Sheffield a non-exclusive, perpetual, royalty-free, irrevocable, transferable licence (with the right to assign and sub licence) to use the Background IP of the Supplier to the extent necessary to use the Background IP of the Supplier.
(c) The Supplier warrants that:
(i) use by it of any Intellectual Property Right arising from or in connection with the supply of Goods or Services will not infringe any Intellectual Property Right of any third party;
(ii) it is able to licence the Intellectual Property Rights in the Background IP of the Supplier as described in clause 16(b); and
(iii) use by Sheffield (or any assignee or sub-licensee) of the Background IP of the Supplier in accordance with the Contract will not infringe any Intellectual Property Right of any third party or breach any law.
(d) This clause 16 shall survive termination or expiry of the Contract.

17. DISPUTES
(a) If a dispute arises in connection with this Contract, a party must give to the other party a dispute notice specifying the dispute and requiring its resolution under this clause 17.