



PART 4

GENERAL CONDITIONS OF CONTRACT LGA ARRANGEMENT

Supply of New Trucks to Australian Local Government through a Register of Pre-Qualified Suppliers

NPN 04-13

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A. RECITALS

- i. Local Buy is a company registered under the Corporations Act whose only shareholder is the Local Government Association of Queensland.
- ii. Pursuant to section 234 of the *Local Government Regulation 2012* Local Buy has a statutory right to establish LGA Arrangements which constitute an exception to a Queensland Local Government's obligations to invite written quotes or tenders when entering into a contract. Other entities listed as Purchasers may also utilise this LGA Arrangement subject to compliance with their own procurement obligations.
- iii. The NPN Members have expressed an interest in accessing, and allowing their constituent local authorities to access, this LGA Arrangement. For the purposes of such access, Local Buy has been appointed by the NPN Members as the Lead Agency.
- iv. This LGA Arrangement (NPN 04-13) may be made up of one or a number of individual contracts between Local Buy and the contractor(s) whose offers in response to the RFT issued by Local Buy were accepted.
- v. Each Local Buy Contract details the overarching arrangement and contract management provisions that apply between Local Buy and the relevant Contractor.
- vi. Each Purchaser Agreement details the specific pricing, specification and provisions that apply between the relevant Purchaser and the chosen Contractor.

1. CONSTRUCTION OF CONTRACT

1.1 A reference to a party to the Contract includes:

- (a) in the case of a natural person, that person and his/her personal representatives and assigns (transferees); and
- (b) in the case of a corporation, the corporation, its successors and assigns (transferees).

1.2 Where a party is composed of 2 or more persons, each item of agreement by the party binds:

- (a) all of those persons collectively; and
- (b) each of them as an individual.

1.3 The parties to the Contract are:

- (a) Local Buy in its own right and as Lead Agency on behalf of the NPN Members;
and
- (b) the Contractor,

and the conditions of Contract apply to and as between each of those parties as if each of them had executed the Contract or had executed separate Contracts.

1.4 A reference to:

- (a) the singular includes the plural, and vice versa;
- (b) a gender includes each other gender;
- (c) a person includes a corporation, a firm, and a voluntary association;
- (d) an Act includes an Act that amends, consolidates or replaces the Act and includes subordinate legislation under that Act;
- (e) a section or other provision of an Act includes a section or provision that amends, consolidates or replaces the section or provision;
- (f) money is a reference to Australian dollars and cents;
- (g) a time of day is a reference to Australian Eastern Standard Time;

General Conditions of Contract

- (h) a document includes, but is not limited to, any drawing, specification, material, record or other means by which information can be stored or reproduced; and
 - (i) the words 'include', 'included' or 'including' when those words are used, will be interpreted as if they were preceded by the further words 'but not limited to' or the appropriate grammatical derivative.
- 1.5 No rule of construction or interpretation of the Contract shall apply to either Local Buy's or the Purchaser's disadvantage solely because Local Buy prepared the Contract or either of them relies on a provision of the Contract.
- 1.6 Clause headings exist for convenience only and are to be disregarded when interpreting the Contract.
- 1.7 All information delivered with the Truck/s supplied under a Purchaser Agreement must be written in English. Where any document is a translation into English, the translation must be accurate.
- 1.8 If a provision of the Contract is found by a court of competent jurisdiction to be void or unenforceable then that provision shall be deemed to be deleted from this Contract and the remaining provisions of this Contract shall continue in full force and effect.
- 1.9 Where a Purchaser is not from Queensland, a reference to a Queensland Act or a Queensland body in the Contract shall be deemed to be a reference to the equivalent legislation or body of the State in which the Purchaser is based.

2. DEFINITIONS

2.1 In the Contract, except where the context otherwise requires:

'Annual Administration Fee' means the annual administration fee set out in **Item 7 of Schedule A**.

'Authorised Officer' means the relevant Purchaser's authorised representative (and any authorised delegate) as notified to the Contractor in writing from time to time.

'Business Day' means a day that is not:

- (a) a Saturday, Sunday or 27, 28, 29, 30 or 31 December; or
- (b) public holiday, bank holiday or special holiday in Brisbane or in the case of a Purchaser Agreement, the place of business of the Purchaser where Truck/s are being provided.

'Category Manager' means the relevant Local Buy category manager as set out in **Item 9 of Schedule A** and as may be updated from time to time in writing to the Contractor by Local Buy.

'Clause' means a clause of the General Conditions of Contract.

'Condition' means a condition of the Purchaser Conditions.

'Contract' or **'Local Buy Contract'** means all the documents set out in Clause 4.1 which constitute or evidence the final and concluded agreement between Local Buy and the Contractor for sales of Truck/s to Purchasers in Queensland, New South Wales, Northern Territory, South Australia, Tasmania, Victoria and Western Australia.

'Contract Commencement Date' means the contract commencement date set out in **Item 2 of Schedule A** or such other date as may be set out in the Letter of Acceptance.

'Contract Expiry Date' means the contract expiry date set out in **Item 3 of Schedule A** unless otherwise extended pursuant to the terms of the Contract.

'Contract Extension Period' means the contract extension period set out in **Item 4 of Schedule A**.

'Contract Management Fee' means the contract management fee payable in accordance with Clause 34.

'Contract Management Rebate' means the contract management rebate figure set out in **Item 6 of Schedule A** used to calculate the Contract Management Fee.

'Contract Number' means the number given to the Contract as set out in **Item 1 of Schedule A**.

General Conditions of Contract

‘Contractor’ means the party whose Offer to supply Truck/s is accepted by Local Buy and available to Purchasers in Queensland, New South Wales, Northern Territory, South Australia, Tasmania, Victoria and Western Australia (by Letter of Acceptance).

‘Custom Built’ means made according to the specifications of an individual Purchaser

‘Contractor Data’ means information held electronically on Local Buy’s information directory or electronic RFQ system about the Contractor including the Contractor’s and its Dealer’s contact details, office location/s, and where applicable, pricing information.

‘Dealer’ means the party which actually supplies Truck/s to the Purchaser whether this be the Contractor who has accepted the General Conditions of Contract and Specification or an authorised agent, dealer or distributor who has accepted the Purchaser Conditions and agreed to be bound by them for the purpose of supplying Truck/s to the Purchaser, by completing and signing Part 3 Schedule 7 of the RFT documents (Dealer Agreement).

‘Force Majeure Event’ means any occurrence or omission outside a party’s reasonable control, by which the party relying on the event is prevented from or delayed in performing its obligations under this Contract (other than a payment obligation or an industrial dispute involving the Contractor’s own staff or sub-contractors), and includes:

- (a) a physical natural disaster including fire, cyclone, flood, lightning or earthquake;
- (b) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law;
- (c) epidemic or quarantine restriction;
- (d) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
- (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any Government Agency; and
- (f) a non-trivial change in the law taking effect after the Contract Commencement Date which could not have been reasonably anticipated by the party claiming force majeure and which has a material effect on that party’s ability to perform its obligations under the Contract (but for the avoidance of doubt does not include the introduction of any emissions trading scheme or carbon tax).

‘General Conditions of Contract’ means these conditions of Contract.

‘GST’ means the goods and services tax under the GST Act.

‘GST Act’ means *A New Tax System (Goods and Services Tax) Act 1999* and includes other GST related legislation.

‘Insolvency Event’ means any of the following events occurring in relation to the Contractor:

- (a) the Contractor is wound up, voluntarily or involuntarily;
- (b) the Contractor suspends payment of its debts or is unable to pay its debts;
- (c) the Contractor enters into an arrangement, reconstruction or compromise with its creditors or any of them;
- (d) if a receiver, receiver and manager, controller (as defined in the Corporations Act), administrator, liquidator, provisional liquidator or similar person is appointed to take, or the holder of a security interest takes, (or appoints an agent to take) possession of any property of the Contractor or any of its subsidiaries or is subject to any form of external administration;
- (e) the Contractor becomes insolvent or bankrupt or being a company goes into liquidation or has instituted against it any action or proceeding which has an object or may result in bankruptcy or liquidation; or
- (f) the Contractor ceases to carry on business.

'Intellectual Property Rights' includes copyright, and all rights conferred by any law in relation to inventions, patents, registered and unregistered trademarks, including service marks, registered and unregistered designs, semi-conductor or circuit layout rights, trade or other proprietary rights and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, whether created before, on or after the Contract Commencement Date.

'Lead Agency' means, for the purposes of this LGA Arrangement, Local Buy Pty Ltd.

'Letter of Acceptance' means a letter from Local Buy to the Contractor advising the Contractor of Local Buy's acceptance of the Contractor's Offer to offer for sale Trucks to Purchasers in Queensland, New South Wales, Northern Territory, South Australia, Tasmania, Victoria and Western Australia under an LGA Arrangement.

'LGA Arrangement' means the register of pre-qualified suppliers established by Local Buy pursuant to section 284 of the Local Government Regulation 2012 (and s.224 of the City of Brisbane Regulation 2012) which constitutes an exception to a Queensland local governments need to invite written quotes or tenders of which this Local Buy Contract forms part.

'LGAQ' or 'LGA' means the Local Government Association of Queensland.

'Local Buy' means Local Buy Pty Ltd.

'Nominated Territory' means a region to which the Contractor or its Dealers provide Trucks under this Contract as set out in the Contractor's completed Regional Representation Schedule (Schedule 4 of the RFT documents).

'National Procurement Network' or 'NPN' means the procurement arms of the local government associations in each State working together to achieve aggregated purchasing savings for their individual State local governments.

'NPN Member' for the purposes of this Contract means:

- Local Government Procurement (LGP) – NSW
- Municipal Association Victoria (MAV) – Vic
- Local Buy - Qld (Lead Agency for this LGA Arrangement)
- WALGA – Western Australian Local Government Association
- LGAP – Local Government Association Procurement - SA
- LGAT – Local Government Association Tasmania
- LGANT – Local Government Association of Northern Territory

'Offer' means the written offer (in the form of the RFT response) submitted to Local Buy by the Contractor via the APET 360PRO online portal to provide Trucks and, if applicable, as amended in writing by any post Offer negotiations or clarifications.

'Order' means an order for Truck/s placed by a Purchaser with the Dealer under the Contract to which the relevant Purchaser Conditions apply and **'Ordered'** has a corresponding meaning.

'Order Commencement Date' means where so specified in an Order the date for the commencement of the provision of Truck/s by the Contractor to the relevant Purchaser or otherwise the date of the Order.

'Order Price' means the price agreed between the Purchaser and Dealer for the supply of Truck/s pursuant to a Purchaser Agreement.

'Purchaser' means the relevant entity from those set out in **Item 11 of Schedule A**, which has contracted to purchase Truck/s from the Dealer pursuant to a Purchaser Agreement in a particular transaction.

'Purchaser Agreement' means the legally binding agreement (made pursuant to the Local Buy Contract) between the Purchaser and the Dealer for the provision of Truck/s comprising the documents set out in Condition 4.1 of the Purchaser Conditions.

'Purchaser Conditions' means the relevant Purchaser terms and conditions detailed in **Item 10 of Schedule A**.

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‘Quotation’ or ‘RFQ Response’ means a Truck specific priced quotation issued by a Contractor or a Dealer in response to a Purchaser’s RFQ.

‘Regional Representation Schedule’ means the schedule completed by the Contractor, that details the name and location of a Contractor’s Dealers by Council area and Postcode and the regions to which the Contractor or its Dealers are able to supply Truck/s subject to the registration of the relevant Dealer with Local Buy.

‘RFT’ or ‘Request for Tender’ means the Request for Tender given to prospective tenderers inviting offers to tender for the supply of Truck/s of which these General Conditions of Contract form part.

‘RFQ’ or ‘Request for Quotation’ means a document inviting price quotations from the Dealer which defines the criteria of service, quality, quantity and delivery of Truck/s required by a Purchaser.

‘RTI Act’ means the Right to Information Act 2009 (Qld).

‘Special Conditions of Contract’ means the special conditions of Contract included in the Request for Tender (if any).

‘Specification’ means the specification included in the Request for Tender including any amendments set out in the Letter of Acceptance and the specification included in a Purchaser’s RFQ which details that particular Purchaser’s requirements including any amendments to those requirements set out in the relevant Purchaser’s actual Order.

‘Suspension’ means a temporary postponement of the Contractor’s ability to supply Truck/s for a period of time and **‘Suspend’** has a corresponding meaning.

‘Term’ means the period for which the Contract will be in effect as specified in Clause 3, including any period of extension under Clauses 3.2 or 3.3.

‘Truck/s’ means the goods (new truck chassis above 2.5t GVM) the subject of the Contract which are more particularly described in the Contract documents (including the Specification) including all variations to the goods provided for by the Contract or such of them as shall be described in a Purchaser Agreement but excluding any third-party modifications for which the Contractor or Dealer do not issue an invoice.

‘Vendor Panel’ means the relevant NPN Member’s online electronic Request for Quotation application.

‘Warranty Period’ means the longer of any warranty offered by the manufacturer or required by law.

3. **TERM**

3.1 The Term of the Contract shall begin on the Contract Commencement Date [refer **Item 2 of Schedule A**] and expire on the Contract Expiry Date [refer **Item 3 of Schedule A**] unless:

- (a) terminated earlier in accordance with the terms and conditions of the Contract; or
- (b) extended by Local Buy in accordance with Clause 3.2 or 3.3.

3.2 Local Buy may, at its sole discretion, by written notice to the Contractor extend this Contract for the Contract Extension Period. Where such written notice is returned duly executed by the Contractor, the Contract will be extended by the Contract Extension Period nominated by Local Buy.

3.3 Local Buy may, at its sole discretion, extend the Contract Term for a period of up to four (4) months beyond the expiry of the Contract Extension Period in the event that it has not completed the procurement process for any replacement LGA Arrangement.

3.4 The Contractor acknowledges that it is one supplier on a Local Buy LGA Arrangement and accepts and agrees that Local Buy may from time to time appoint additional suppliers to or expand the categories of Truck/s which current suppliers are able to provide under this LGA Arrangement (on terms substantially similar to the terms of these General Conditions of Contract) for the remainder of the term of the LGA Arrangement to supply goods and/or services which are the same or similar to the Truck/s, provided that each such supplier meets the same or reasonably similar (as determined by Local Buy) evaluation criteria as to those originally set out in the Request for Tender.

3.5 The Contractor will not hold Local Buy liable for any action, claims, liability and/or loss whatsoever the Contractor may suffer arising from or in any way related to Local Buy’s use of Clause 3.4.

4. **EVIDENCE OF CONTRACT**

4.1 The Contract is constituted by the following documents:

- (a) Letter of Acceptance;
- (b) Special Conditions of Contract (if any);
- (c) General Conditions of Contract;
- (d) Specification;
- (e) Offer; and
- (f) correspondence passing between the Local Buy and the Contractor clarifying any aspect of the Request for Tender (including for the avoidance of doubt any clarifications posted by Local Buy in the LG Tender Box forum as part of the tender process).

4.2 Where there arises any inconsistency or ambiguity between provisions in the different documents which constitute the Contract, the order of precedence to resolve the inconsistency or ambiguity shall be from document (a) to (f) in Clause 4.1.

4.3 The Contract is formed by Local Buy's acceptance of the Contractor's Offer by way of the Letter of Acceptance (for the avoidance of doubt, Local Buy reserves the right to deliver the Letter of Acceptance to the Contractor electronically).

4.4 After formation of the Contract, Local Buy may deliver a completed Contract to the Contractor. Within 10 Business Days after the date of delivery of the completed Contract to the Contractor, the Contractor must execute and return the completed Contract to Local Buy for execution by Local Buy. Local Buy may extend the period for execution of the completed Contract by giving written notice to the Contractor.

4.5 In consideration of being selected as a successful supplier of Trucks under an LGA Arrangement and the benefits which accrue thereto, the Contractor agrees to meet its obligations pursuant to and provide Truck/s in accordance with the Contract terms and conditions.

4.6 Local Buy does not guarantee any volume of Orders or level of income to the Contractor. For the avoidance of doubt, any figures set out in the Request for Tender or the Contract relating to real or potential expenditure are estimates only and should not be relied on by the Contractor.

4.7 The Contractor may add or remove Dealers from the Contract by giving Local Buy thirty (30) day's notice in writing. Where a Dealer is to be added, the Contractor must supply an executed Dealer Acknowledgement Form (Part 3 Schedule 7 of the RFT) with the notice in writing.

4.8 Notwithstanding Clause 4.7, a Dealer cannot be removed from the Contract where there are outstanding Orders in place unless the relevant Purchaser consents (for the avoidance of doubt, such consent may include a requirement that the Contractor nominate an alternate Dealer to fulfil the Order). Such consent should be obtained by the Contractor in advance and included with the notice given by the Contractor to Local Buy.

4.9 Local Buy shall confirm the acceptance or rejection of the Contractor's request pursuant to Clause 4.7 to add or delete a Dealer from the Contract in writing. Where Local Buy requires additional information, the Contractor shall provide such additional information promptly. Local Buy's decision on the inclusion or exclusion of a Dealer is final.

5. **PURCHASER RFQ PROCESS**

5.1 The Purchaser RFQ process set out in Condition 5 of the Purchaser Conditions shall be used for all purchases under this Contract unless otherwise approved by Local Buy's Category Manager.

5.2 Local Buy shall provide the Contractor with the authorised Purchaser List (as updated from time to time by Local Buy) which the Contractor shall distribute to its Dealers. Neither the Contractor nor Dealer shall respond to any RFQ issued by a Purchaser who is not on the current Authorised Purchaser List at the time the RFQ is issued. Where the Contractor or Dealer receive an RFQ from an unlisted Purchaser, the recipient shall bring the anomaly to the Category Manager's attention promptly.

5.3 The Contractor shall use all reasonable endeavours to ensure that its Dealers comply at all times with the RFQ process referred to in Clause 5.1 above and shall bring any non-compliance it becomes aware of to the Category Manager's attention promptly.

- 5.4 The Contractor acknowledges and accepts that Local Buy has and accepts no liability whatsoever with respect to any action, claims, liability and/or loss arising from or in any way related to the Contractors or its Dealers use of Vendor Panel (including for the avoidance of doubt, a fault in or failure of the Vendor Panel system, a failure to correctly register with Vendor Panel, RFQs issued or responded to via Vendor Panel and/or any Orders arising there from).
- 5.5 The Contractor's and each individual Dealers ratio of RFQs received to responses provided may be monitored by Local Buy. Where the Contractor's or any of its Dealers level of responses to RFQs drops below 95% in any three month period, Local Buy may require that the Contractor provide a written explanation of the low level of its or its Dealers level of responses to RFQs and a proposed plan to improve the response levels. The Contractor shall supply such written explanation and any subsequent clarifications within the reasonable timeframe(s) set by Local Buy's Category Manager.
- 5.6 Where the Contractor fails to submit a written explanation pursuant to Clause 5.5 or there has been no improvement in the level of responses to RFQs in the three month period following receipt of the written explanation, Local Buy may at its sole discretion Suspend the Contractor or relevant Dealers pursuant to Clause 16 or immediately terminate the Contract.

Vendor Panel

- 5.7 Following the Contract Commencement Date, the Contractor will receive notification via their nominated email address requiring them to register and create an electronic profile within the Vendor Panel system. Once registered, the Contractor will have the right within the Vendor Panel system to set up individual Dealer accounts.
- 5.8 Local Buy reserves the right to review the Contractor's, Dealer's or a Purchaser's Vendor Panel profile and to require changes to be made where those profiles do not reflect the terms of this Contract. Where required to make changes by Local Buy, the Contractor, Dealer or relevant Purchaser shall make such changes as required within three (3) Business Days of notification to their nominated email address.
- 5.9 The Contractor acknowledge and agrees that where they fail to register and create an electronic profile within the Vendor Panel system, they will not be entitled to receive and must not respond to Purchaser RFQs issued through Vendor Panel.
- 5.10 Local Buy reserves the right to monitor RFQs issued and the responses received for compliance with the terms and conditions of the Local Buy Contract and other general purposes including but not limited to contract review, forecasting and administration purposes.
- 5.11 Local Buy, after consultation will all NPN Members, may at its sole discretion Suspend the Contractor or relevant Dealers pursuant to Clause 16 or immediately terminate the Contract where the Contractor or any of its Dealers breaches any conditions relating to the usage of Vendor Panel

6. SUPPLY OF TRUCK/S

- 6.1 Supply of the Truck/s must be in accordance with the requirements of Condition 6 of the Purchaser Conditions.
- 6.2 The Contractor shall use all reasonable endeavours to ensure that its Dealers comply at all times with the requirements for the supply of Truck/s referred to in Clause 6.1 above and bring any discrepancies to the Category Manager's attention promptly.
- 6.3 Where the Contractor provides the Truck/s to a Purchaser without the Purchaser having undertaken a separate legally valid tender process, such purchase shall constitute an Order for the purposes of the Contract irrespective of whether or not the order is identified as an "Order" and be included as part of the Contract Management Fee calculation [refer Clause 34].
- 6.4 The Contract does not confer on the Contractor an exclusive right to supply the Truck/s to a Purchaser and a Purchaser may obtain the Truck/s or any part of the Truck/s from an alternate supplier at any time during the Term.
- 6.5 The Contractor must not supply other categories or brands of goods, services and/or works to Purchasers under the Contract other than those tendered and appointed for, without the written approval of Local Buy.

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- 6.6 If Local Buy finds that any aspect of a Purchaser Agreement is substantially in conflict with the terms and conditions of the Contract or Purchaser Conditions, Local Buy shall consult the relevant Purchaser and Contractor to resolve the matter.
- 6.7 If the matter cannot be resolved as set out above, the Order will be deemed to be cancelled and, with respect to Queensland Local Government, will no longer constitute a valid LGA arrangement exemption for the purposes of the Local Government Regulation 2012.
- 6.8 Unless approved by Local Buy's Category Manager in writing or explicitly confirmed in writing by a duly authorised representative of the Purchaser in respect of a particular Purchaser Agreement, the Contractor's standard terms and conditions (whether included in an RFQ response, quotation, invoice, receipt or the like) shall not apply to this Contract or any Purchaser Agreement.
- 6.9 The Warranty Period shall apply to all Truck/s supplied under this Contract and any Purchaser Agreement.

Modifications

- 6.10 A Purchaser may request a Dealer to arrange delivery of the Truck/s to a nominated location nominated by a Purchaser ("Delivery Location") for the purpose of a third party ("Modifier") carrying out modification works to the Truck/s ("Modifications") and the Dealer may agree to deliver the Truck/s as requested subject to and conditional upon these terms and conditions. This Clause 6.10 does not apply when a Dealer has recommended modification works to the Purchaser from their own third party suppliers.
- (a) The Dealer is not the contractor, supplier or provider of the Modifications. The Dealer is not an agent or representative of or a contractor of the Modifier and the Dealer has not in any way induced or influenced a Purchaser in ordering the Modifications from the Modifier. The Purchaser has relied solely on its own judgment, skill and experience in ordering the Modifications from the Modifier.
- (b) The Contractor will provide its standard manufacturer's warranty in force at the date of delivery of the Truck/s to the Modifier which applies in respect of the Truck/s for the standard warranty period.
- (c) The Contractor and Dealer are unable to provide an unconditional warranty on all components of the body where the body is taken to mean the modifications. No representations or warranties in respect of any third party goods or modifications to the body are provided by the Contractor or Dealer.
- (d) Local Buy or a Purchaser acknowledges and agrees that the Contractor and/or Dealer are not the manufacturer or supplier of the body and to the maximum extent permitted by law will not be liable for and assumes no risk in respect of any one or more of:
- i. any defects in the body of any nature;
 - ii. any delay, loss, damage, claim or expense arising in relation to the body; and
 - iii. any delay, loss, damage, claim or expense arising in relation to any act, omission or default of, or work, performed by, the manufacturers, suppliers and providers of the body.

7. QUALITY OF TRUCK/S

- 7.1 The quality of the Truck/s must be in accordance with the requirements of Condition 7 of the Purchaser Conditions.
- 7.2 The Contractor shall use all reasonable endeavours to ensure that its Dealers comply at all times with the requirements for the quality of the Truck/s referred to in Clause 7.1 above and bring any discrepancies to the Category Manager's attention promptly.

8. INSURANCE

- 8.1 The Contractor must take out and keep current at its own expense insurance policies as follows:
- (a) public liability insurance until the Contract Expiry Date and then for a further period of six months in the amount set out in **Item 5 of Schedule A** per event and in the aggregate; and

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- (b) workers' compensation insurance until the Contract Expiry Date covering liability for loss, damage, claim and all direct or associated costs and expenses arising at common law or under workers' compensation insurance in respect of persons employed by the Contractor; and
 - (c) product liability insurance in an amount not less than the amount set out in **Item 5 of Schedule A** in respect of any one occurrence and for an unlimited number of claims; and
 - (d) any other insurances set out in **Item 5 of Schedule A**; and
 - (e) any other insurances as may be reasonably expected to be held by a contractor with expertise and experience in manufacturing and distributing goods similar to the **Truck/s**.
- 8.2 Every policy of general insurance the subject of Clause 8.1 must issue from an insurer registered in Australia to conduct insurance business or such other insurer as Local Buy may approve from time to time and must remain current for the Term. Local Buy reserves the right to accept a self-insuring Contractor subject to receipt of acceptable evidence of financial soundness.
- 8.3 Within 7 days of a written request by Local Buy, the Contractor must provide Local Buy with a certificate of currency for any insurance policy the Contractor is required to hold pursuant to Clause 8.1 or held by its Dealers pursuant to Clause 8.6.
- 8.4 The Contractor must promptly notify Local Buy of any cancellation or lapse of any policy of insurance required by Clause 8.1.
- 8.5 The Contractor shall within five (5) Business Days of any claim it is aware of which relates to, or has implications for the supply of any Truck/s, notify Local Buy and keep Local Buy informed of such claim.
- 8.6 The Contractor warrants that its standard agreements with its Dealers require the Dealers to maintain appropriate insurance for the supply of the Truck/s to its customers.
- 8.7 Where the Contractor anticipates reaching, reaches or exceeds any aggregated insurance level set out in the Contract or any Purchaser Agreement, the Contractor shall immediately advise Local Buy's Category Manager. Local Buy may require the Contractor to take out and provide evidence of top up insurance. Where evidence of such top up insurance is not provided promptly, Local Buy may terminate the Contract.
- 8.8 If the Contractor fails to discharge an obligation under this Clause 8, Local Buy may immediately suspend the Contractor or relevant Dealers pursuant to Clause 16 until such time as the Contractor or relevant Dealers satisfy Local Buy of compliance.
- 8.9 Nothing in this Clause 8 limits the obligations, liabilities and responsibilities of the Contractor under this Contract.

9. OBLIGATIONS OF CONTRACTOR & WARRANTIES

- 9.1 Notwithstanding that the Contractor is named as the Contractor under this Contract, Local Buy acknowledges and agrees that the performance of the Contractor's obligations under this Contract in respect of the sale, delivery, servicing and invoicing of the vehicles will, in certain circumstances, be undertaken and performed by the Contractor's independent dealers (Dealers) and that the Contractor's obligations under this Contract with respect to the sale, delivery, servicing and invoice of vehicles is limited to using all reasonable endeavours to ensure that the independent dealers (Dealers) perform such obligations as if they were named as Contractor under this Contract.
- 9.2 For the avoidance of doubt, Clause 9.1 does not take precedence over any of the Contractor's obligations under Clauses 33 (Reporting), 34 (Contract Management Fee) and 35 (Annual Administration Fee). The obligations under these Clauses are the Contractor's alone.
- 9.3 The Contractor warrants that its Dealers have the necessary skills and expertise to be able to competently supply the Truck/s and that the Contractor has in place a written contractual arrangement with its Dealers which gives it the right to terminate for breach of contract including in the case of poor performance.
- 9.4 The Contractor warrants the accuracy and completeness of all the information provided in its Offer. The Contractor acknowledges that Local Buy has accepted the Contractor's Offer and Purchasers accept the Contractor's and/or its Dealer's quotations in reliance on this warranty.
- 9.5 The Contractor shall take reasonable steps to put in place processes and systems to give assistance to its Dealers allowing them to comply with the terms and conditions of the Local Buy Contract and the standard Purchaser Agreement.

- 9.6 The Contractor will immediately inform Local Buy where a Dealer loses its franchise rights or other relevant accreditation, its contract with the Contractor is suspended, terminated or expires or any similar circumstance which may affect in a material way the supply of the Truck/s to any Purchaser. Upon receipt of such notification, Local Buy shall be entitled to suspend the relevant Dealer pursuant to Clause 16.

10. VARIATION OF TRUCK/S

By Local Buy

- 10.1 Local Buy may, by written notice given to the Contractor, require the Contractor to vary the Truck/s supplied under the Contract.
- 10.2 Where Local Buy requires a variation to the Truck/s, the parties must negotiate in good faith a variation of the Specification and, where required, any times listed for completion of supply of the Truck/s. Failing agreement, either party may invoke the dispute resolution procedure in Clause 19.
- 10.3 The Contractor must not begin offering the varied Truck/s to Purchasers unless and until the variation is agreed in writing by Local Buy and the Contractor.

By the Contractor

- 10.4 The Contractor may request to add new goods to the Truck/s it supplies under the Contract by way of written notification by either e-mail or letter sent for the attention of the Category Manager.
- 10.5 No change to the Truck/s that a Contractor supplies under the Contract shall be valid until such time as written approval from the Category Manager has been issued.
- 10.6 For the avoidance of doubt, this Contract does not restrict a Contractor or its Dealers from supplying any goods outside of the Contract where a separate legally valid procurement process has been undertaken by a Purchaser.

11. PRICING

- 11.1 The Contract Price is firm and not subject to rise or fall for the initial first twelve (12) months of the Term.

Price Increases

- 11.2 No later than thirty (30) days prior to the anniversary of the Contract Commencement Date, the Contractor may submit a revised Pricing Schedule (8) to the Category Manager for approval. If approved, the revised Pricing Schedule (8) shall be fixed for the subsequent twelve (12) months of the Contract Term.
- 11.3 On receipt of a revised Pricing Schedule (8) the Category Manager may request an explanation and/or evidence supporting any price increases and the Contractor shall provide such information within three (3) Business Days of such request.
- 11.4 If the Contractor fails to make an application pursuant to Clause 11.2 then the Contractor's Pricing Schedule (8) will be deemed unchanged and will remain in force for the subsequent twelve (12) month period.
- 11.5 Where the Category Manager believes that any price increases set out in the proposed revised Pricing Schedule pursuant to Clause 11.2 are unreasonable then the Contractor's Representative and Category Manager will meet in good faith to discuss the Contractor's proposal. Where agreement cannot be reached the matter shall be dealt with as a dispute pursuant to Clause 19.
- 11.6 Changes to the Contract Price at any other time during the Term shall only be allowed in extenuating circumstances (which the Contractor must document in writing) and entirely at Local Buy's sole discretion.
- 11.7 Where extraordinary market circumstances have adversely affected the Contractor's ability to continue to provide the Truck/s at the agreed pricing under the Contract, an application for an increase to pricing may be submitted by the Contractor to Local Buy. Any such application must be made in writing, and must be submitted to Local Buy as soon as practicable. Upon receipt of such an application, Local Buy may ask the Contractor to provide additional evidence to support such an application. Within five (5) Business Days of receipt of such an application, or within five (5) Business Days of receipt of the requested additional

evidence to support such an application, Local Buy will advise the Contractor in writing whether the application has been accepted or declined.

Price Decreases

- 11.8 The Contractor is to notify Local Buy's Category Manager of any decrease in the Contract Price as soon as practicable and in writing. Upon receipt of such notification, any decrease to the Contract Price will have immediate effect.
- 11.9 The Contractor may offer short term price reductions. A written notification by email or letter attention to the Local Buy Category Manager for approval is required prior to price short term reduction commences.
- 11.10 The Contractor after receiving approval may promote this price short term reduction period via their website and communications with Purchasers.
- 11.11 The Contractor shall assume responsibility for notifying the Category Manager when the short term price reduction expires.

Price Accessories and Bodies

- 11.12 Pricing for the Accessories and Bodies (Truck/s) shall be undertaken by way of request for quotation through Vendor Panel.

12. INVOICING

- 12.1 The Contractor must use all reasonable endeavours to ensure that its Dealers comply with the invoicing requirements detailed in the Purchaser Conditions of Contract.
- 12.2 Where Local Buy is unable to obtain information in relation to an invoice rendered under a Purchaser Agreement from a Dealer, the Contractor shall within five (5) Business Days supply such information in respect of any invoice rendered under a Purchaser Agreement as Local Buy may from time to time request.

13. PAYMENT

- 13.1 Payment terms relating to the provision of the Truck/s shall be as set out in Condition 13 of the Purchaser Conditions.

14. SUSPENSION OF CONTRACTOR/ DEALER - GENERAL

- 14.1 The terms of this Clause 14 apply when a Contractor (or one of its Dealers) is suspended whether pursuant to Clause 15, Clause 16 or as otherwise provided for under the Contract.
- 14.2 The effect of a Suspension is that the Contractor (or the relevant Dealer (s)) is not, for the period of the Suspension, eligible to offer the Truck/s to Purchasers under the LGA Arrangement.
- 14.3 A Suspension is based upon an expectation by both the Contractor and Local Buy to resume the Contractor's eligibility to provide the Truck/s under the LGA Arrangement, after the period of Suspension, providing the cause giving rise to the Suspension is resolved to Local Buy's satisfaction.
- 14.4 The Suspension period will form part of the defined Term of the Contract.
- 14.5 During the Suspension period, the Contractor and Local Buy are required to keep in regular contact about the prospects and timeframe for resuming the provision of the Truck/s under the Contract.
- 14.6 The Contractor's (or the relevant Dealers) rights to supply the Trucks to Purchasers under the LGA Arrangement resumes at the end of the Suspension period. However, if both the Contractor and Local Buy agree in writing, the Contractor can resume providing the Truck/s under the LGA Arrangement prior to the end date of the Suspension period.
- 14.7 During the Suspension period, Local Buy will immediately notify any existing or inquiring prospective Purchaser(s) of the Contractor's (or relevant Dealers) Suspension, and will provide reasons for the Contractor's (or relevant Dealers) Suspension to any existing or inquiring prospective Purchaser(s).
- 14.8 During the Suspension period, Local Buy may remove, amend or alter the Contractor's (or relevant Dealer's) Contractor Data and turn the Contractor's (or relevant Dealers) profile off in Vendor Panel.
- 14.9 The Contractor (or its Dealers) may be suspended under the following circumstances:

- (a) where the Contractor has legitimate business reasons affecting the Contractor's (or its Dealers) ability to supply the Truck/s ("Suspension by Contractor"- as per Clause 15); or
 - (b) where, in the reasonable opinion of Local Buy, the Contractor (or its Dealer s) has breached the Contract or a Purchaser Agreement, or if Local Buy has a reasonably held belief that the Contractor (or its Dealers) is likely to breach the Contract or a Purchaser Agreement ("Suspension by Local Buy" – as per Clause 16).
- 14.10 During the Suspension period, the Contractor (or any relevant Dealers) must not accept any new Orders for the supply of Truck/s from any Purchaser without the prior written approval of Local Buy.
- 14.11 Where Local Buy is of the view that the breach or potential breach relates only to one or more States, Local Buy retains the option to suspend the Contractor (or relevant Dealers) in the relevant State(s) only.
- 14.12 For the avoidance of doubt, the Suspension of a Contractor also includes the Suspension of all its Dealers, sub-contractors and/or agents.

15. SUSPENSION REQUEST BY CONTRACTOR

- 15.1 An application for Suspension may be made by the Contractor only for legitimate business reasons affecting the Contractor's (or it's Dealers) ability to supply the Truck/s. Legitimate business reasons may include, but are not limited to, business re-location or a Force Majeure Event.
- 15.2 An application for Suspension by the Contractor must be made in writing to the Category Manager. The Contractor must provide Local Buy with evidence that the Contractor (or the relevant Dealer) has used their best endeavours to avoid the need for a Suspension.
- 15.3 Within five (5) Business Days of receipt of an application for Suspension for legitimate business reasons, the Category Manager will advise the Contractor in writing of whether the Suspension application has been accepted or declined.
- 15.4 During the period of Suspension approved for a legitimate business reason, the Contractor (or its Dealers) must use their best endeavours to avoid the need to request an extension of the Suspension period. If the Contractor needs to extend the initial Suspension period for legitimate business reasons, then the Contractor must provide Local Buy with reasons in writing as to why an extension of the Suspension period is required.
- 15.5 The maximum period for Suspension of the Contractor (or a Dealer) for a legitimate business reason is thirty (30) days. However, if the Contractor has submitted a request for an extension of the Suspension period to Local Buy, the Suspension period may be extended by Local Buy upon consideration of all the circumstances, including the best endeavours used by the Contractor (or relevant Dealer) during the initial Suspension period, together with the evidence provided by the Contractor to support an extension of the initial Suspension period.
- 15.6 Within five (5) Business Days of receipt of a request for an extension of the Suspension period, Local Buy will advise the Contractor whether the application for an extension of the initial Suspension period has been accepted or declined.
- 15.7 If the Contractor (or a Dealer) has been suspended under this Clause 15, it will be at the sole discretion of Local Buy to resume the Contractor's (or relevant Dealer's) right to supply the Trucks under the LGA Arrangement to Purchasers. If Local Buy agrees to lift the Contractor's (or a relevant Dealer) Suspension, Local Buy will require:
- (a) evidence that the Contractor (or a relevant Dealer) is capable of supplying the Trucks;
 - (b) payment in full from the Contractor of any outstanding amounts of money the Contractor is required to pay under the Contract within seven (7) Business Days; and
 - (c) at the discretion of Local Buy's Category Manager, payment of the Reactivation Fee within thirty (30) days.

16. SUSPENSION BY LOCAL BUY

- 16.1 Local Buy, after consultation will all NPN Members, may, by written notice, Suspend the Contractor (or any Dealer (s)) at any time on terms and conditions specified by Local Buy (including by State) if, in the reasonable opinion of Local Buy, the Contractor (or its Dealers) has breached the Contract or a Purchaser

Agreement, has had proceedings for corruption, collusion or any other anti-competitive or illegal activity issued against it or as otherwise provided under the Contract.

- 16.2 Local Buy will notify the Contractor in writing of its or its Dealers Suspension from the LGA Arrangement by issuing a "Suspension Notification Form". The Suspension Notification Form must be signed by Local Buy. The Suspension Notification Form will contain:
- (a) the reason(s) for the Suspension; and
 - (b) a review or expiry date for the Suspension.
- 16.3 The Contractor and its Dealers shall remain liable for the delivery of all Truck/s Ordered prior to the Suspension date, as well as for all fees and charges due throughout the Suspension period.
- 16.4 If the Contractor (or a Dealer) has been suspended under this Clause 16, it will be at the sole discretion of Local Buy to resume the Contractor's (or relevant Dealer's) right to supply the Trucks under the LGA Arrangement to Purchasers. If Local Buy agrees to lift the Contractor's (or a relevant Dealer) Suspension, Local Buy will require:
- (a) payment in full from the Contractor of any outstanding amounts of money the Contractor is required to pay under the Contract within seven (7) Business Days; and
 - (b) payment of the Reactivation Fee within thirty (30) days.
- 16.5 Local Buy is under no obligation to provide the Contractor with a copy of the Contractor Data if Local Buy has suspended the Contractor under this Clause 16. However, at the Contractor's request Local Buy may agree to provide the Contractor with a copy of their Contractor Data, and if so Local Buy are entitled to charge a reasonable fee for service.

17. **GOODS AND SERVICES TAX**

- 17.1 Words and phrases defined in the GST Act have the same meaning in this Clause 17 unless the context indicates otherwise.
- 17.2 The Order Price includes the liability for GST on the supply of the Truck(s) unless otherwise indicated and agreed by a Purchaser. A Purchaser is not obliged to pay any additional amount to a Contractor or Dealer on account of GST on the supply of the Truck(s).
- 17.3 The Contractor must use its reasonable endeavours to ensure that all invoices rendered to a Purchaser under a Purchaser Agreement are in a format that identifies any GST paid, and which permits that Purchaser to claim an input tax credit. However, this Clause 17.3 does not apply if the supply of the Truck(s) is not a taxable supply.

18. **TERMINATION**

Termination at Will

- 18.1 No earlier than 12 (twelve) months after the Contract Commencement Date, Local Buy, after consultation will all NPN Members, may, upon giving the Contractor not less than one month's prior written notice, terminate the Contract. At the end of the notice period, the Contract will end.

Termination for Cause

- 18.2 Without prejudice to its rights at common law, Local Buy may immediately terminate the Contract, by written notice to the Contractor (a Notice of Termination for Cause):
- (a) where the Contractor makes (or has made) any statement, fact, information, representation or provides material which is false, untrue, or incorrect in a way which adversely affects the Contract in a material way;
 - (b) where proceedings or investigations are commenced or threatened by the Independent Commission Against Corruption, Australian Competition and Consumer Commission or similar public body against the Contractor including for corrupt conduct or for collusive pricing;
 - (c) where the Contractor commits a substantial breach of the Contract that is not capable of remedy;
 - (d) where the Contractor commits a substantial breach of the Contract in a manner that is capable of remedy and does not remedy the breach within fourteen (14) days of receiving a notice from Local

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Buy requiring it to do so (Notice of Breach), or such further time, having regard to the nature of the breach and a reasonable time to remedy it, as Local Buy may reasonably allow;

- (e) where the Contractor has been Suspended from the Contract pursuant to Clauses 15 or 16 for more than thirty (30) days;
- (f) on the occurrence of an Insolvency Event; or
- (g) as otherwise explicitly provided for in the Contract.

18.3 In addition, or as an alternative to termination of the Contract in accordance with Clause 18.2, Local Buy may at its sole discretion, in circumstances which would otherwise entitle Local Buy to terminate the Contract:

- (a) provide the Contractor with a notice (a "Rectification Notice") setting out the details of the Contractor's default and giving the Contractor a timeframe within which to rectify that default to Local Buy's satisfaction; and/or
- (b) let such contracts as Local Buy decides are necessary to perform that part of the obligations of the Contractor under the Contract as are yet to be performed or any of them; and/or
- (c) Suspend the Contractor from the panel of LGA Arrangement providers.

18.4 Upon termination of the Contract pursuant to Clauses 18.1 or 18.2, all money which has been paid and all money to be paid for Truck/s supplied to the date of the termination will be in full and final satisfaction of all claims by the Contractor under the Contract.

18.5 The termination of the Contractor also terminates all its Dealer's. Local Buy reserves the right to accept a Dealer's application to become a contractor under the LGA Arrangement pursuant to Clause 3.4 where its related Contractor has been terminated.

18.6 Notwithstanding the termination or expiry of the Contract, the terms and conditions of the Contract shall continue to apply to each Purchaser Agreement which remains ongoing past the termination or expiry of the Contract until such time as that relevant Purchaser Agreement is itself terminated or expires.

19. DISPUTE RESOLUTION

19.1 The parties agree to attempt in good faith to resolve through negotiation any dispute regarding the Contract.

19.2 If a dispute arises between the parties regarding the Contract or where notification is received of a dispute between a Purchaser and Dealer under any Purchaser Agreement, a party may give written notice of the dispute to the other party (a "Dispute Notice"). A Dispute Notice must adequately identify and provide details of the dispute.

19.3 A Dispute Notice must be referred to a panel consisting of a representative of the Contractor who is authorised to settle the dispute and a senior Local Buy representative.

19.4 Within 7 days of the giving of the Dispute Notice (or such other period agreed between the parties), the panel must confer at least once to attempt to resolve the dispute or to agree on resolving the dispute by other means.

19.5 If the dispute has not been resolved within twenty eight (28) days of the giving of the Dispute Notice (or such other period agreed between the parties), the dispute may be referred to arbitration by either party.

19.6 Arbitration shall be effected by an arbitrator who shall be nominated by Local Buy and agreed by both parties. Failing agreement, the arbitrator shall be appointed by the Queensland Chapter of the Institute of Arbitrators and Mediators Australia. The arbitration shall be conducted in accordance with the provisions of the *Commercial Arbitration Act 1990* and all hearings held in Brisbane.

19.7 Nothing in this Clause 19 shall prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief in respect of a dispute under this Clause 19 or any matter arising under the Contract.

19.8 The parties must continue to perform their obligations under this Contract despite the existence of a dispute.

20. CLAUSES TO SURVIVE EXPIRATION OR TERMINATION

- 20.1 Clauses 1, 2, 3.5, 4, 8, 20 to 24, 27, 38 and 44 (inclusive) and any provisions relating to warranties provided by the Contractor shall survive the expiry or termination of the Contract.
- 20.2 Clauses 33 to 35 (inclusive) shall survive the expiry or termination of the Contract to the extent that they relate to outstanding payments, reporting and amounts owing with respect to ongoing Purchaser Agreements, calculation of payments owing (including where the amount owing has been calculated incorrectly by the Contractor), remedies available to Local Buy and interest payable on amounts owing.

21. INTELLECTUAL PROPERTY RIGHTS

- 21.1 The provisions set out in the Specification and relevant Purchaser Agreement relating to ownership of Intellectual Property Rights shall apply to the supply of the Truck/s under that Purchaser Agreement.
- 21.2 Unless otherwise explicitly set out as provided for in an individual Purchaser Agreement, the Contract shall not affect the Intellectual Property Rights of either party.

22. CONFLICT OF INTEREST

- 22.1 The Contractor warrants that, to the best of its knowledge, information and belief, at the commencement of the Term, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract. If, during the Term, a conflict of interest or risk of such conflict arises because of work undertaken for any person other than Local Buy or the Purchaser, the Contractor must promptly give written notice to Local Buy and the relevant Authorised Officer of that conflict of interest or risk of it.
- 22.2 The Contractor must, and must take all reasonable commercial measures to, ensure that the Contractor's employees, Dealers, agents and sub-contractors, do not during the Term, engage in any activity or obtain any interest, which is in conflict with the Contractor's obligations with respect to providing the Truck/s to Local Buy and/or any Purchaser. Any such activity must be disclosed in writing to Local Buy and the relevant Authorised Officer immediately.
- 22.3 Where Local Buy receives notice of a conflict of interest or risk of such conflict pursuant to Clause 22.2, Local Buy may at its sole discretion, Suspend the Contractor pursuant to Clause 16 until such time as the conflict has been resolved to Local Buy's satisfaction or terminate the Contract.

23. RELEASE AND INDEMNITY

- 23.1 To the extent permitted by law, the Contractor indemnifies Local Buy, each NPN Member, each Purchaser and their respective employees (collectively referred to as the "Indemnified Parties") against, and must pay the Indemnified Parties on demand, the amount of any damages, losses, claims, expenses (including reasonable legal costs) or liabilities which the Indemnified Parties suffer or incur in respect of the acts or omissions of the Contractor or the Contractor's personnel, agents or sub-contractors resulting in:
- (a) loss of, or damage to, or loss of use of, any real or tangible personal property, or the personal injury, disease or illness (including mental illness) to, or death of, any person;
 - (b) any wilful misconduct, fraudulent, unlawful and/or negligent act or omission; and/or
 - (c) any infringement or alleged infringement of any Intellectual Property Rights in respect of the provision of the Truck(s) and/or Associated Charging Equipment and Services or anything used or supplied by the Contractor in connection with the Truck(s) and/or Associated Charging Equipment and Services.
- 23.2 The liability of the Contractor to indemnify the Indemnified Parties will be reduced proportionally to the extent that an act or omission of the Indemnified Parties contributed to the damage, expense, loss or liability.
- 23.3 Neither Local Buy nor the Contractor shall be liable to the other (whether under contract, tort, statute or in equity) arising out of or in connection with this Contract, for any loss of profits, loss of revenue, loss of any contract value, loss of anticipated profit or damages for lost opportunity, or cost of finance.
- 23.4 To the extent any liability of Local Buy cannot be excluded by law, and to the maximum extent permitted by law, Local Buy's maximum aggregate liability under the Contract (whether under contract, tort, statute or in

equity) to the Contractor is limited to the Administration Fee(s) paid by the Contractor in the twelve (12) months immediately prior to the action arising.

- 23.5 Any indemnity granted under this Contract is in addition to Local Buy's and/or a Purchaser's rights under the Contract or a Purchaser Agreement and does not in any way restrict Local Buy's and/or any Purchaser's right to take legal action.

24. CONFIDENTIALITY

- 24.1 The Contractor must and must take all reasonable measures to ensure that its Dealers, employees, agents and subcontractors keep confidential any information on Purchasers purchasing history and expenditure, Purchaser employee personal details and any similar commercial in confidence information obtained in the course of performing the Contract.

- 24.2 Without Local Buy's prior written consent, the Contractor may only disclose information obtained pursuant to the Contract:

- (a) which it is legally required or entitled to disclose (but only to the extent of such required disclosure);
- (b) to the extent necessary to perform its obligations under the Contract; or
- (c) to its professional advisers for the purposes of obtaining advice in relation to the Contract or any matter arising from the Contract.

25. ASSIGNMENT & SUBCONTRACTING

- 25.1 The Contractor must not assign, novate or sub-contract any of its rights or obligations under the Contract (either for the supply of the Truck/s or otherwise) without the prior written consent of Local Buy. Any consent given by Local Buy:

- (a) may be conditional;
- (b) require execution of a formal document;
- (c) in the case of assignment or novation, require payment to Local Buy of a two hundred and fifty dollar (\$250) GST-exclusive administration fee; and
- (d) will not relieve the Contractor from any of its liabilities or obligations under the Contract.

- 25.2 The Contractor must inform Local Buy promptly of any change in control or structure. Where such change in control or structure results in a change of legal identity (for instance by way of acquisition, merger or the like), the new legal entity will be required to meet such eligibility requirements (based on the original RFT requirements) as Local Buy may set prior to being allowed to supply the Truck/s pursuant to the LGA Arrangement.

- 25.3 The Contractor is liable to Local Buy and each relevant Purchaser for the acts and omissions of its, subcontractors, employees and agents as if they were the acts or omissions of the Contractor.

26. NEGATION OF EMPLOYMENT AGENCY

- 26.1 The Contractor must not represent itself or allow itself to be represented as being an employee or agent of Local Buy or any Purchaser.

- 26.2 The Contractor will not, by virtue of the Contract, be or become an employee or agent of Local Buy or any Purchaser.

- 26.3 Nothing in the Contract or any Purchaser Agreement is to be taken or construed as creating the relationship of a partnership, joint venture or principal and agent, between any of the parties to the Contract.

27. NOTICES

- 27.1 Notices under the Contract may be delivered by pre-paid postage or certified mail, by hand or by facsimile transmission. Notices are deemed given five (5) days after deposit in the mail with postage pre-paid or certified, when delivered by hand, or if sent by facsimile transmission, upon completion as evidenced by a facsimile transmission record. Where a notice is given by facsimile the original document must be posted on the same day as the transmission is sent. The addresses for service of notices are:

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- (a) for Local Buy (PO Box 2230, Fortitude Valley BC QLD 4006)
 - (b) for the Contractor – the address for service and facsimile number (if any) of the Contractor specified in the Offer.
- 27.2 A party may change its address for service of notices by giving seven (7) days prior written notice of the change to the other party to the Contract.
- 27.3 Where a notice relates to an operational or contract management matter only, the notice may validly be delivered to the email address provided by the party for:
- (a) Local Buy – the Category Manager;
 - (b) the Contractor – the Contractors Representative.
- 27.4 Any email notice sent pursuant to Clause 27.3 is deemed to be received on the following Business Day. Where an “out of office” or undeliverable message is received in response to an email notice, the notice will be deemed not to have been delivered unless a reply to the contrary is received from the receiving party.

Contractor Specific Signature Policy

- 27.5 Notwithstanding any other provision of this Contract, where the Contractor has a specific signature policy which applies to any contractual notices that it issues and it has informed Local Buy’s Category Manager (and thereafter any replacement Category Manager) of this policy and received acknowledgement in writing, Local Buy will from the date of such acknowledgement not rely upon and the Contractor will not be bound by any written communication to Local Buy which does not comply with the Contractor’s notified signature policy.

Communication with Dealers

- 27.6 Where the Purchaser Conditions require a Dealer to bring a matter to the Contractor’s attention, the Contractor shall:
- (a) where it is a minor issue, deal with the matter directly;
 - (b) where it is a material issue or where the Contractor has been unable to resolve a minor matter, bring it to the Category Manager’s attention promptly.
- 27.7 For the avoidance of doubt, Local Buy reserves the right to communicate directly with the Contractor’s Dealers on matters of an operational nature, as agreed with the Contractor and/or where requested to do so by a Purchaser.

28. FORCE MAJEURE

- 28.1 A party will not be entitled to exercise its rights or remedies upon the default of another party to the Contract (whether at common law or pursuant to the Contract) if that default is caused by Force Majeure Event.
- 28.2 For the avoidance of doubt, Force Majeure alone does not excuse a Purchaser from any obligation to make payment under a Purchaser Agreement.
- 28.3 Without limitation, where a Force Majeure Event continues for a period of more than fourteen (14) days, Local Buy may terminate the Contract by giving written notice to the Contractor.

29. CONTRACTORS REPRESENTATIVE

- 29.1 Not later than fourteen (14) days after the Contract Commencement Date the Contractor must appoint a representative (the ‘Contractor’s Representative’) who shall be responsible for administering the Contract on behalf of the Contractor by giving written notice to Local Buy. The Contractor may change the identity of the Contractor’s Representative from time to time. The Contractor must give written notice to Local Buy of any change in the identity of the Contractor’s Representative within forty eight (48) hours of the change occurring.
- 29.2 The Contractor’s Representative must have a detailed knowledge of all activities associated with the supply and performance of the Truck/s and be authorised by the Contractor to make decisions and act on behalf of the Contractor.

29.3 The Contractor's Representative must:

- (a) liaise with and report to Local Buy's Category Manager;
- (b) be available for discussions with, and attend briefings when reasonably requested by, Local Buy's Category Manager;
- (c) reply promptly to any correspondence from Local Buy's Category Manager dealing with the Contract; and
- (d) if required, provide written reports to Local Buy's Category Manager in a form, to a standard, and containing such information as may be required by, Local Buy's Category Manager.

30. SECURITY AND ACCESS

30.1 The Contractor must, when using any premises or facilities of Local Buy or any Purchaser, comply with all reasonable directions and procedures as notified by Local Buy or the relevant Purchaser, including those relating to security and occupational health and safety which are in effect at the premises or facility.

31. INDUSTRIAL DISPUTES

31.1 The Contractor must not involve Local Buy or any Purchaser in any industrial dispute arising between the Contractor and any employee, Dealer, sub-contractor or agent of the Contractor.

32. CONTRACT MANAGEMENT

- 32.1 Local Buy may from time to time nominate in writing to the Contractor an NPN Member that will undertake day to day contract management for their State.
- 32.2 Nomination pursuant to Clause 32.1 may include, but is not limited to, contract administration, reporting, payment of the Contract Management Fee and the like. For the avoidance of doubt, reporting and payment of fees pursuant to such a nomination may be on a monthly rather than quarterly basis and may not be online.
- 32.3 Upon receiving a nomination notice pursuant to this Clause 32, the Contractor shall comply with the requirements of that nomination notice (including any State NPN Member specific reporting or payment requirements) until such time as otherwise advised in writing by Local Buy.

33. REPORTING - QUARTERLY SALES RETURNS (QSR)

- 33.1 Contractors are required to provide Quarterly Sales Returns ('QSR') detailing the accumulative total of all tax invoices (exclusive of GST) raised by the Contractor, the Contractor's sub-contractors, Dealers or agents ('Sales') made to Purchasers under the Contract and any Purchaser Agreement.
- 33.2 QSRs using Local Buy's online reporting system are to be provided to Local Buy by no later than the 21st day of January, April, July and October of each year of the Term.
- 33.3 In the case of no Orders commissioned during any given quarter, a 'nil' QSR must be provided through Local Buy's online reporting system.
- 33.4 If the Contractor submits three (3) consecutive 'nil' QSRs Local Buy will request a meeting to be held at Local Buy's office or if required a telephone appointment between the Contractor and Local Buy's Category Manager to discuss the 'nil' QSR. The Contractor shall provide a detailed marketing and sales engagement strategy for the next calendar quarter.
- 33.5 If the Contractor:
- (a) does not attend the meeting (or where applicable, participate in a telephone appointment) as per Clause 33.4;
 - (b) submits 'nil' QSRs in any four (4) quarters during the Term; or
 - (c) fails to submit a QSR;

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the Contractor shall be deemed to be in breach of the Contract and Local Buy may at its sole discretion Suspend the Contractor pursuant to Clause 16 or immediately terminate the Contract.

- 33.6 Local Buy reserves the right to transition to a monthly online reporting regime during the Term. Where Local Buy gives notice to the Contractor that such a transition has occurred, all references to 'quarterly' reporting and fee payments in the Contract shall be deemed to refer to 'monthly' reporting from the date nominated in Local Buy's notice. The Contractor shall from the nominated date comply with the monthly reporting and fee payment regime.
- 33.7 Local Buy may at any time during the Term of the Contract and thereafter, during any ongoing Purchaser Agreement, query suspected unreported Sales with the Contractor. The Contractor shall within seven (7) days of such query provide Local Buy with detailed information in respect of such suspected unreported Sales and, if not made under the Local Buy Contract, details of the valid procurement process followed by the Purchaser to engage the Contractor or relevant Dealer.
- 33.8 Unless otherwise directed in writing by Local Buy, the Contractor shall report all Sales (including for the avoidance of doubt those to South Australian, Victorian, Tasmanian and Northern Territory Purchasers) and pay the related Contract Management Fee to Local Buy.
- 33.9 Pursuant to Clause 32, Local Buy nominates:
- (a) each State NPN Member to undertake day to day contract management for their relevant State; and
 - (b) the following NPN Members for the reporting and payment of the Contract Management Fee for Sales to Purchasers in their States:
 - i. New South Wales – LGP.
 - ii. Western Australia - WALGA.

34. LOCAL BUY CONTRACT MANAGEMENT FEE

- 34.1 The Contractor will pay to Local Buy each quarter of the Contract Term a value of money referred to as the Contract Management Fee.
- 34.2 The value of the Contract Management Fee is calculated as the accumulative total of the prices of all Truck/s supplied to each Purchaser under the Contract and each Purchaser Agreement as evidenced by the tax invoices (exclusive of GST) raised by the Contractor, the Contractor's Dealers, sub-contractors or agents for each quarter multiplied by the Contract Management Rebate [refer **Item 6 Schedule A**].
- 34.3 For the avoidance of doubt, any reductions in the price of the Truck/s due to trade-ins, set-offs, or any other like items shall be excluded from the Contract Management Fee calculation.
- 34.4 The amount of the Contract Management Fee will not under any circumstances be on-charged or included as a separate line item in any quote or invoice to a Purchaser.
- 34.5 The Contractor agrees that Local Buy may treat all purchases of Truck/s by Purchaser's orders through the Contractor's Vendors as Orders under the Contract, irrespective of a Local Buy Contract Number being quoted, unless the Contractor can provide evidence satisfactory to Local Buy that the purchase was made under some other validly tendered and awarded agreement between the Purchaser and the Contractor and/or its Vendors. Confirmation in writing from a Purchaser that a purchase was made pursuant to the LGA Arrangement shall be deemed conclusive.
- 34.6 Notwithstanding Clause 34.5, where a Purchaser publishes (whether pursuant to their obligations under section 237 of the *Local Government Regulation 2012* (Qld), the State Procurement Policy or otherwise) that a purchase has been made under this LGA Arrangement, such publication shall be deemed conclusive (subject to evidence by the Contractor to the contrary) and the Contractor shall be liable for the Contract Management Fee associated with such purchase.
- 34.7 The Contractor agrees that the Contract Management Fee payable has been allowed for in the Contract Price specified in the Pricing Schedule together with all costs associated with the calculation and proving payment of the Contract Management Fee.
- 34.8 The Contractor may elect to include payment simultaneously to the submission of its QSR.

- 34.9 Where the Contractor does not include payment as set out in Clause 34.8 and/or where the Contractor has outstanding Contract Management Fees under another contract with Local Buy, Local Buy shall invoice the Contractor for the sum owing.
- 34.10 The Contractor shall pay such invoice raised pursuant to Clause 34.9 within thirty (30) days of the invoice date.
- 34.11 Local Buy may at its sole discretion immediately Suspend or terminate the Contract where the Contractor fails to comply with Clause 34.10.
- 34.12 Local Buy may at its own cost, take such measures as it considers reasonable in the circumstances (including the appointment of an auditor) to verify the amount of the Contract Management Fee due to Local Buy by the Contractor.
- 34.13 If the measures taken under Clause 34.12 verify that the Contractor has not paid the Contract Management Fee that is actually due to Local Buy, the Contractor must:
- (a) remit the difference between the Contract Management Fee paid to Local Buy and the Contract Management Fee actually due to Local Buy within thirty (30) days of a direction from Local Buy;
 - (b) pay interest on the difference between the Contract Management Fee actually due to Local Buy and the amount paid at 4% above the Commonwealth Bank base rate; and
 - (c) at the discretion of Local Buy, reimburse Local Buy's costs and expenses of the measures taken (including any auditor's fees) under Clause 34.12.
- 34.14 The Contractor shall during the Term and for a thirty-six (36) month period after the Contract Expiry Date, keep secure all relevant documents and information for the purposes of this Clause 34 and give any auditor appointed by Local Buy access to those documents and information at all reasonable times
- 34.15 Termination or expiry of the Contract shall not affect the Contract Management Fee due to Local Buy in respect of any ongoing Purchaser Agreement. Such ongoing Purchaser Agreement Contract Management Fee shall continue to be due and payable to Local Buy in full.
- 34.16 The Contract Management Rebate is not peculiar to the Contractor, and is payable by all automotive suppliers that do business with Local Buy. Nothing in these General Conditions of Contract prevents the Contractor from disclosing that a Contract Management Fee is payable to Local Buy and disclosing the value of that fee to any Purchaser or prospective Purchaser.
- 34.17 Each party has satisfied itself that the Contract Management Rebate paid by the Contractor and the receipt of such payment by Local Buy does not breach any Australian laws, is not a secret commission and is not provided to Local Buy to secure the business of the Contractor.

35. ANNUAL ADMINISTRATION FEE

- 35.1 The Contractor shall pay the Annual Administration Fee [refer **Item 7 Schedule A**] within fourteen (14) days of the Contract Commencement Date.
- 35.2 On the first anniversary of the Contract Commencement Date, and each subsequent anniversary thereafter during the Term, the Annual Administration Fee becomes owing and payable within fourteen (14) days for each such twelve (12) month period (or part thereof).
- 35.3 Where the Contractor has outstanding Annual Administration Fees (including under another contract with Local Buy), Local Buy may invoice the Contractor for the sum owing.
- 35.4 The Contractor shall pay an invoice issued under Clause 35.3 within thirty (30) days of the invoice date.
- 35.5 Local Buy shall at its sole discretion be entitled to immediately suspend or terminate this Contract where the Contractor fails to pay any invoice within the timeframes set out in this Clause 35.
- 35.6 Notwithstanding Clause 35.5, any invoices that remain unpaid after sixty (60) days from date of issue, shall incur interest at 4% above the Commonwealth Bank base rate until such time as they are paid. Any unpaid amounts shall be deemed a debt due and owing to Local Buy.
- 35.7 The Annual Administration Fee is not peculiar to the Contractor, and is payable by all automotive suppliers that do business with Local Buy. Nothing in these General Conditions of Contract prevents the Contractor

from disclosing that an Annual Administration Fee is payable to Local Buy and disclosing the value of that fee to any Purchaser or prospective Purchaser.

- 35.8 Each party has satisfied itself that the Annual Administration Fee paid by the Contractor and the receipt of such payment by Local Buy does not breach any Australian laws, is not a secret commission and is not provided to Local Buy to secure the business of the Contractor.

36. MARKETING AND PROMOTION

- 36.1 No information relating to the acceptance of any Offer or the provision of any Truck/s under the Contract may be published in any advertising medium without the prior written approval of the other party. Each party's written approval must clearly indicate the precise material on which the information can be used.
- 36.2 A party may only use the other party's logo in its marketing strategy upon receipt of the other party's written confirmation to do so (which shall not be unreasonably refused). The party who is providing permission for the use of its logo may place reasonable terms on the use of the logo. Any consent to use a party's logo shall end at the longer of the expiration of the Contract or any Purchaser Agreement.
- 36.3 By entering into this Contract, the Contractor is deemed to have provided its consent pursuant to Clauses 36.1 and 36.2 for Local Buy to use the Contractor's name, logo and details of the Truck/s for the purposes of promoting the Contract to prospective Purchasers.
- 36.4 The Contractor shall to the best of its ability supply all personnel and equipment necessary for the proper promotion of the Contract.
- 36.5 The Contractor shall ensure that the information contained on the Local Buy directory and Dealer Panel about their company, Dealers and Truck/s is accurate and kept up-to-date at all times.

37. FEEDBACK

- 37.1 When a Purchaser conveys a complaint or conveys comments to Local Buy either directly or through an NPN Member which could be reasonably taken to indicate that the Contractor (or any of its Dealers) is not compliant with the terms and conditions of the Contract or any Purchaser Agreement, Local Buy shall seek feedback by making any enquiries of any persons for the purpose of becoming more and suitably informed of the nature of such feedback.
- 37.2 At any instance where Local Buy issues written advice to a Contractor where the word "Feedback" appears in the subject heading of the written correspondence, within twenty four (24) hours of the issue date of the said correspondence the Contractor shall acknowledge receipt and within seventy two (72) hours (or such other longer timeframe specified by Local Buy) shall:
- (a) provide a reasonable and suitably detailed response to the written advice to Local Buy, and
 - (b) take all reasonable steps to resolve the matter in absolute compliance with the Contract.
- 37.3 For the avoidance of doubt, unless otherwise deemed necessary by Local Buy all communications relating to Dealers will in the first instance be directed by Local Buy to the Contractor.
- 37.4 The Contractor must maintain a current register of complaints received from Purchasers and record actions taken to resolve the complaint. This register must be made available to Local Buy upon request.
- 37.5 Where Local Buy believes that the response or the steps taken to resolve a matter referred to in Clauses 37.1 and 37.2 are insufficient Local Buy may at its discretion suspend the Contractor pursuant to Clause 16 until such time as the matter has been resolved to Local Buy's satisfaction.

38. SUPPLIER TRANSITION

- 38.1 In the event that a Purchaser changes its supplier of Truck/s and this change of suppliers involves the transfer of infrastructure or information to occur between the previous supplier and the new supplier, the Contractor shall do all things reasonably within its power to ensure the transition is efficient, orderly, prompt and timely. This applies whether the transition occurs from another supplier to the Contractor or from the Contractor to another supplier under Local Buy's LGA Arrangement.

39. FINANCIAL VIABILITY

- 39.1 The Contractor shall advise Local Buy immediately if the Contractor's (or any Dealer's) financial viability is compromised to the extent that the compromise could reasonably be considered to be a risk to the provision of Truck/s in accordance with the terms and conditions of the Contract or any Purchaser Agreement.
- 39.2 Upon receipt of advice pursuant to Clause 39.1, Local Buy's Category Manager and the Contractor's Representative shall liaise and agree a course of action agreeable to both parties. Where Local Buy believes that an agreeable position is unlikely to be reached, it shall be entitled to suspend the Contractor (or relevant Dealers) pursuant to Clause 16 until such time as the Contractor (or relevant Dealer) has demonstrated to Local Buy's satisfaction that it is financially sound.

40. BEST TERMS TO BE PROVIDED

- 40.1 The Contractor shall offer the Purchaser the best price, fee, term and/or condition for the Truck/s as detailed in the Pricing Schedule. For the avoidance of doubt, the prices set out in the Pricing Schedule are the highest prices that the Contractor may charge under this LGA Arrangement. A Dealer may at any time offer a lower price. Where the Truck/s are Custom Built a contract discount shall replace the Best Price requirements of this arrangement.
- 40.2 Where a Contractor offers a Purchaser a more favourable price, fee, margin, term, condition or discount than those specified in the Contract, it will make the more favourable price, fee, margin, term, condition or discount available to all Purchasers entitled to the benefit of the LGA Arrangement (subject to the Purchaser orders being reasonably comparable).
- 40.3 Where a Contractor offers a temporary or periodic price, fee, margin, term, condition or discount or special that is lower than a Price or margin, or greater than a discount respectively, specified or periodical price, margin or discount special in the Pricing Schedule it will make available that lower price or margin, or greater discount to all Purchasers and will promptly notify Local Buy of such temporary or periodical Price, margin or discount special.
- 40.4 The Contractor shall not suggest to any Purchaser that they may benefit from purchasing outside of the terms and conditions of the Local Buy Contract to avoid the Contractor's obligation of paying the Contract Management Fee. For the avoidance of doubt, this Clause 40.4 does not restrict a Contractor from offering a more favourable price, fee, margin, term, condition or discount outside of this LGA Arrangement where the Purchaser has complied with its legally mandated procurement process obligations.
- 40.5 Failure by the Contractor to comply with any obligation set out in this Clause 40 shall entitle Local Buy at its sole discretion to either suspend the Contractor pursuant to Clause 16 or immediately terminate the Contract.
- 40.6 The Contractor shall issue to its Dealers an NPN government price list, Part 3 Schedule 8, which is accessible by Purchasers under this arrangement.
- 40.7 The NPN government price:
- (a) will be the highest price for which a Dealer can sell a standard version of the Truck/s to a Purchaser under this LGA Arrangement; and
 - (b) will represent a reasonable discount over the Contractor's standard Recommended Retail Price for the Truck/s.
- 40.8 For the avoidance of doubt, nothing in this Contract prevents a Dealer from offering Purchasers a price which is lower than the NPN government price.

41. CONTRACT WARRANTIES – TENDER & QUOTATIONS

- 41.1 The Contractor warrants that its tender Offer and any quotation provided to a Purchaser under this Contract have not been prepared with any consultation, communication, contact, arrangement or understanding with any competitor, other than:
- (a) where certain joint venture arrangements exist between the Contractor and a competitor,

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- (b) where the Contractor and a competitor have an agreement that has been authorised by the Australian Competition and Consumer Commission (ACCC), or
 - (c) where the Contractor has communicated with a competitor for the purpose of subcontracting a portion of the Truck/s, and where the communication with that competitor is limited to the information required to facilitate that particular subcontract.
- 41.2 If one of the exceptions under Clause 41.1 applies, the Contractor agrees to fully disclose the full nature and extent of any agreements with competitors to Local Buy and the relevant Purchaser.
- 41.3 In the event that no such disclosure pursuant to Clause 41.2 is made, the Contractor warrants that its tender Offer and any quotation provided to a Purchaser under this Contract has not been prepared with any consultation, communication, contact, arrangement or understanding with any competitor regarding:
- (a) prices;
 - (b) methods, factors or formulas used to calculate prices;
 - (c) the intention or decision to submit, or not submit, a bid;
 - (d) the submission of a bid that is non-conforming;
 - (e) the quality, quantity, specifications and/or delivery particulars of the Truck/s to which the call for bids relates; or
 - (f) the terms of the bid.
- 41.4 The Contractor acknowledges and accepts that Local Buy has accepted the Contractor's Offer and Purchasers accept the Dealer's quotations in reliance on this warranty.

42. DISCLOSURE OF PRIOR ANTI-COMPETITIVE CONDUCT

- 42.1 Contractors must indicate to Local Buy if it or its nominated Dealers, including directors and senior management, are or have ever been subject to proceedings related to anti-competitive conduct in Australia or overseas to the extent the Contractor is aware of any such proceedings. The information must include:
- (a) the names of the parties to the proceedings;
 - (b) the case number;
 - (c) the general nature of the proceedings; and
 - (d) the outcome or current status of the proceedings
- 42.2 Local Buy reserves the right, at its discretion, to suspend a Contractor from the Contract if the Contractor, Dealer or person, including directors or senior managers associated with the Contractor's tender Offer, have ever contravened the anti-competitive provisions of the *Competition and Consumer Act 2010* or equivalent laws in Australia or overseas.
- 42.3 Local Buy reserves the right, at its discretion; to immediately terminate the Contract if full disclosure of any or all contraventions of the anti-competitive provisions of the *Competition and Consumer Act 2010* or equivalent laws in Australia or overseas has not been made by the Contractor.

43. COMPLIANCE WITH ANTI-CORRUPTION LAWS

- 43.1 Each party represents and warrants that:
- (a) it will comply with all Anti-Corruption Laws:
 - (b) that neither the Purchaser nor any of its Affiliated Persons has, in connection with transactions under this LGA Arrangement, offered, paid, given or loaned or promised to pay, give or loan, or will offer, pay, give or loan or promise to pay, give or loan, directly or indirectly, money or any other thing of value to or for the benefit of any government official, employee or representative of a business for the purpose of corruptly:
 - (i) influencing any act or decision of such person in exercising its function

- (ii) inducing such person to do or omit to do any act in violation of the government official's lawful duty
- (iii) securing any improper advantage; or
- (iv) inducing such person to use its influence with a government entity, employee or representative of a business engagement to affect or influence any act or decision of that government entity or business,

in each instance to direct business to the Contractor, the Contractor's authorised resellers, the Contractor's dealers or any Contractors Group Company; and

- (c) to inform the other party without undue delay of any conflict of interest that arises, and the measures taken if such a conflict arises.
- (d) to the full extent permitted by law, each party will indemnify and hold the other party harmless in relation to any and all claims arising out of or in connection with a claim or breach of any legislation that this clause contemplates.

The following definitions apply to this clause:

"Anti-Corruption Laws" means all Australian anti-corruption legislation.

"Affiliated Persons" means a party's officers, directors, employees, or agents, or any of its stockholders, principals or owners acting on its behalf or in its interests.

"Contractors Group Company" means any entity ultimately owned or held by the Contractor or in which the Contractor has a controlling interest.

44. **RIGHT TO INFORMATION**

- 44.1 The Contractor accepts and acknowledges that Local Buy and/or any Purchaser may be subject to the provisions of the RTI Act and that information relating to this Contract, Purchaser Agreement and/or any Order placed under it may be subject to disclosure to third parties.
- 44.2 The Contractor shall clearly label any information which it believes may cause it harm if disclosed (for instance; trade secrets, confidential information, information with a commercial value) and provide the reasoning supporting its position prior to disclosing such information to Local Buy and/or any Purchaser.
- 44.3 Notwithstanding Clause 44.2 above, the Contractor accepts and acknowledges that Local Buy and/or any Purchaser is unable to guarantee that any information provided by the Contractor will not have to be disclosed under the provisions of the RTI Act.
- 44.4 The Contractor acknowledges and accepts that there is no obligation whatsoever on Local Buy to advise the Contractor of the receipt of an RTI Act request for information, the decision made (or reasoning behind any such decision) or the details surrounding the release of any documents.
- 44.5 The Contractor acknowledges and accepts that Local Buy or a Purchaser may be required to publish certain information about the Contract or a relevant Purchaser Agreement in its public office or on a website (including for the avoidance of doubt the value of any purchases made).
- 44.6 The Contractor acknowledges and accepts that Local Buy discloses information relating to the Contract, Contractor and its Dealers to Purchasers and prospective Purchasers.
- 44.7 While every care is taken to retain the integrity of the disclosure process, Local Buy accepts no liability whatsoever where any information or documentation supplied by the Contractor or any Dealer is disclosed in error or for the use made of the information or documentation by any Purchaser or prospective Purchaser.

45. **WORKPLACE HEALTH, SAFETY AND WELFARE**

- 45.1 Without limiting in any way the generality of the foregoing, the Contractor agrees to comply with the provisions of State and Territory workplace health, safety and welfare legislation and all associated

regulations (as amended from time to time) and will ensure that its own agents, sub-contractors and employees comply with the relevant legislation and all regulations, improvement notices, prohibition notices and codes of practice issued there under and having application to the Contract.

- 45.2 The Contractor acknowledges that Local Buy and each Purchaser have duties imposed upon them by State and Territory workplace health, safety and welfare legislation and as such Local Buy has the right to request and/or inspect the Contractor's or its Dealers safety measures and/or documentation and where such measures and/or documentation are lacking, Suspend the Contractor and/or relevant Dealer pursuant to Clause 16 until such time as the deficiency has been rectified to Local Buy's satisfaction.

46. MISCELLANEOUS

- 46.1 The Contractor must comply with all relevant laws and the requirements of any relevant statutory authority in supplying the Truck/s.
- 46.2 No agreement or understanding that varies or amends the Contract will bind either party unless and until agreed to in writing by the parties.
- 46.3 None of the conditions of the Contract will be waived or deemed waived, except by notice in writing signed by the party waiving the right.
- 46.4 The Contract constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements either oral or written between the parties with respect to the subject matter referred to in the Contract.
- 46.5 The parties to the Contract are independent contractors and nothing in the Contract will appoint the Contractor as an agent or employee of Local Buy or any Purchaser.
- 46.6 The Contract is governed by and construed in accordance with the laws of the State of Queensland, and the parties submit to the jurisdiction of the Courts of that State and all Courts competent to hear appeals there from.

SCHEDULE A – CONTRACT DETAILS

Item 1	Contract Number: NPN 04-13
Item 2	Contract Commencement Date: WA – 01JUL13 Qld, NSW, NT, SA, Tas & Vic – 01OCT13
Item 3	Contract Expiry Date: 30 th September 2018
Item 4	Contract Extension Period: Five (5) periods of up to twelve (12) months each
Item 5	Minimum Insurance Levels: (a) Public Liability Insurance: \$20 Million (b) Product Liability Insurance: \$20 Million (c) Statutory Work cover Insurance
Item 6	Contract Management Rebate: 1.5% Example Calculation of the Contract Management Fee: <ul style="list-style-type: none"> ▪ In the first quarter the Contractor raises a total of six (6) tax invoices and the Contractor's sub-contractor raises a total of two (2) tax invoices each with a total value of five thousand dollars (\$5,000.00) exclusive of GST. ▪ $8 \times \\$5,000.00 = \\$40,000.00 \times [1.5\%] = [\\$600]$ [in Contract Management Fees owed by the Contractor to Local Buy for the first quarter]. <p>The Contract Management Rebate is not peculiar to the Contractor, and is payable by all automotive suppliers that do business with Local Buy. Nothing in these General Conditions of Contract prevents the Contractor from disclosing that a Contract Management Fee is payable to Local Buy and disclosing the value of that fee to any Purchaser or prospective Purchaser.</p> <p>Each party has satisfied itself that the Contract Management Rebate by the Contractor and the receipt of such payment by Local Buy does not breach any Australian laws, is not a secret commission and is not provided to Local Buy to secure the business of the Contractor.</p>
Item 7	Annual Administration Fee: \$1,100.00 (including GST)
Item 8	Reactivation Fee: \$1,100.00 (including GST)
Item 9	Category Manager: Brett Piraner

<p>Item 10</p>	<p>Purchaser Conditions: ‘Purchaser Conditions’ means the Purchaser conditions of contract set out in Part 5 of the RFT which apply to any Order issued by a Purchaser for the supply of the Truck/s by a Dealer.</p>
<p>Item 11</p>	<p>Purchasers:</p> <p>Queensland</p> <ul style="list-style-type: none"> • LGAQ • Local Buy acting in its own capacity. • Queensland Local Governments (including Brisbane City Council). • Queensland Community Councils. • Queensland Government Owned Corporations • Queensland Regional Organisation of Councils (ROCS). • Queensland Regional Natural Resource Management Groups Collective http://www.rgc.org.au/ • Queensland statutory authorities. • Queensland water authorities. • Queensland ports. • Queensland state government departments and agencies. • Queensland based charity and not-for-profit organisations. <p>And any other organisation that may reasonably be considered as a Queensland public sector, government or government-related body.</p> <p>New South Wales</p> <p>Any local governments or subsidiaries as constituted under the New South Wales Local Government Act 1993 (as amended) and any joint authorities to which they are party or any corporations wholly owned by those local governments.</p> <p>Northern Territory</p> <p>Any local governments or subsidiaries as constituted under the Northern Territory Local Government Act 2008 (as amended), and any joint authorities to which they are party or any corporations wholly owned by those local governments.</p> <p>South Australia</p> <p>Any council or subsidiary constituted under the South Australian Local Government Act 1999 as amended and other organizations as listed; Adelaide Hills Region Waste Management Authority, Adelaide Parklands Authority, Centennial Park Cemetery Authority, Central Local Government Region, East Waste Management Authority, Eastern Health Authority Inc., Eyre Peninsula Local Government Association, Fleurieu Regional Waste Authority, Flinders Mobile Library, Gawler Flood Plains Management Authority, Highbury Landfill Authority, Local Government Risk Services, Local Government Systems Inc, Local Government Association of SA, Local Government Corporate Services, Local Government Finance Authority, Local Government Manager Australia SA Division Inc., Local Super Pty Ltd, Murray & Mallee Local Government Association, Murray Mallee Community Transport Scheme, North Adelaide Waste Management Authority, Nuriootpa Centennial Park Authority, Outback Areas Community Development Trust, Provincial Cities SA, Queen Elizabeth Park Trust, Rundle Mall Authority, South East Local Government Association, Southern & Hills</p>

Local Government Association, Southern Eyre Peninsula Subsidiary, Southern Region Waste Resource Authority, Waste Care, Waterproofing Northern Adelaide Regional Subsidiary, West Beach Trust, Western Region Waste Management Authority

Tasmania

Any local governments or subsidiaries constituted under the Tasmanian Local Government Act 1993 (as amended), and any joint authorities to which they are party or any corporations wholly owned by those local governments.

Victoria

Alpine Shire Council, Bass Coast Shire Council, Benalla Rural City Council, Boroondara City Council, Campaspe Shire Council, Cardinia Shire Council, Casey City Council, Corangamite Shire Council, Darebin City Council, Gannawarra Shire Council, Glen Eira City Council, Glenelg Shire Council, Golden Plains Shire Council, Greater Dandenong City Council, Hepburn Shire Council, Hobsons Bay City Council, Hume City Council, Indigo Shire Council, Knox City Council, Loddon Shire Council, Macedon Ranges Shire Council, Manningham City Council, Mildura Rural City Council, Mitchell Shire Council, Monash City Council, Moonee Valley City Council, Moreland City Council, Mount Alexander Shire Council, Nillumbik Shire Council, Northern Grampians Shire Council, Southern Grampians Shire Council, Surf Coast Shire Council, Wangaratta Rural City Council, Warrnambool City Council, Whitehorse City Council, Whittlesea City Council, Wyndham City Council, Yarra Ranges Shire Council

Western Australia

Any local governments or subsidiaries as constituted under the Victorian Local Government Act 1995 (as amended) and any joint authorities to which they are party or any corporations wholly owned by those local governments.